

BOULDER COUNTY CLERK AND RECORDER



RESPONSE TO ELECTION REVIEW COMMITTEE REPORT

2004 GENERAL ELECTION

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ACKNOWLEDGEMENTS

The Boulder County Clerk and Recorder would like to begin by sincerely thanking the members of the Election Review Committee (ERC) for their hard work and long hours spent researching the events leading up to, and immediately following, the 2004 General Election as conducted in Boulder County. Much time was spent by the committee in pursuit of its charge.

The Election Review Committee was given the following charge:

1. To conduct a review of the 2004 Boulder County General Election process in its entirety including early and absentee voting, voter registration, the vote counting system and the administration of the system, staffing, training, supervision, data processing and ballot development, printing and processing.
2. Identify those areas that worked well and those where improvement is needed.
3. Recommend a specific action or group of alternative actions involving Boulder County equipment and/or processes that could be improved to expedite future elections.

We believe the members of the Election Review Committee pursued this charge seriously and with the best of intentions. We would like to thank the members of the committee for their hard work and efforts to improve the elections process in Boulder County.

The members of the Election Review Committee are as follows:

Richard N. Lyons, II (chair);

Tom Davidson (vice-chair);

Paul Tiger;

Richard E. Harris;

Linda L. Flack;

Jay L. Harbour;

Michael J. Taylor;

Hillary Hall;

David Leeds; and

Drew T. Durham, (a non-voting member representing the Secretary of State)

Special thanks also to Joanna Macy and Melba Shepard for their service as recording secretaries for the committee.

SUMMARY

The Hart System

The Boulder County Clerk and Recorder would like to thank the members of the Election Review Committee (ERC) for their hard work and steadfast determination in pursuit of their charge. We have cooperated fully with the ERC throughout this entire process and know that we have all worked together to improve the elections process in Boulder County.

As the ERC report documented, approximately 13,000 ballots in the 2004 General Election needed to be manually resolved because the Hart system could not locate the voting boxes on these ballots with sufficient accuracy. The system then alerted the resolution teams that resolution of these particular ballots would have to be done manually, and allowed this manual resolution to take place by viewing images of each voted ballot in the Hart system to ensure accuracy in the counting of votes. Many other voting systems would not have caught the printing discrepancies the Hart system found, which speaks as an attribute to the precision of the Hart system. While it is clear that the manual resolution of 13,000 ballots contributed to the delay in the reporting of the election results, it is most important to note that when the results were reported, they were accurate. Every vote cast by an eligible elector in Boulder County was counted. *The results were accurate*, and that fact is far more important than the speed with which each vote was tallied.

In the 2004 General Election, the posting of election results on the county website was delayed. Elections Division staff turned their focus to the accurate counting and resolution of ballots, rather than to the updating of election results for public consumption. While it is regrettable that up-to-the minute election results were not readily available, with the limited staff and resources of the County Clerk's Elections Division, it was more important to make sure the ballots were being processed accurately and efficiently than it was to continually distribute partial results. However, the Office of the County Clerk and Recorder does understand that it is important for the public to access election results as they become available and we are currently working to improve our ability to make changes to the website which will allow just that. In addition, for all future elections one permanent or temporary staff member will be tasked with the sole purpose of updating unofficial election results on the County Clerk and Recorder's website on Election Night.

Printing Issues

It is the belief of the County Clerk and Recorder that printing issues caused a significant portion of the delays in the counting process, and that improperly printed ballots were the direct cause of the requirement for manual resolution of approximately 13,000 ballots. It is important to note that the Election Review Committee cited that "There were no damaged races on any ballot printed on the County's in-house printers". The ballots printed in-house by the Hart "Ballot Now" system were printed properly and presented no problems during counting.

It is also important to note that testimony presented to the committee indicated that all known damaged ballots came from the equipment of a subcontractor of EagleDirect. While the committee fell short of identifying one root cause of the printing problems, it is interesting to learn that the damaged ballots can all be traced to the same source.

Boulder County has used a formalized procurement process in the past for ballot printing, and expects to use the same process in the future. Unusual circumstances during the 2004 election

required that many counties had to find a print vendor quickly, as did Boulder County. In anticipation of any similar circumstances in future elections, the Boulder County Clerk and Recorder will seek written assurances from any future print vendors that statutory deadlines can be met without sacrificing anything in the areas of print quality and quality control.

It is a fact that the size of ballots in the State of Colorado is consistently growing. Each general election year, more candidates run for office and more issues are on the ballot than ever before. With the ever-growing ballots, print vendors, voting system vendors, and election officials are going to have to make changes to their systems and processes to accommodate larger ballots and multiple page ballots. This is a reality of the modern election world.

Because of the enormous volume of candidates and issues on the ballot in November 2004, it was decided that a larger size ballot would be needed in order to accommodate the ballot content without using numerous other pages for one ballot. An 11" x 17" ballot can hold more candidates and issues than an 8½" x 11" ballot, thus reducing the total number of pages needed per ballot. The fact is, with the number of candidates and issues on the ballot in 2004, there would be no way to fit everything on an 8½ x 11" single page ballot without printing so small that the language would be unreadable. With respect to the conflict between multiple-page ballots vs. larger-sized ballots, The County Clerk and Recorder will continue to pursue the best way to have ballots printed that are easy to read, easy to use, and easy to count.

This was not the first election in which Boulder County used multiple page ballots. In fact, in many previous general elections while using the Datavote punch card system, the voters of Boulder County often voted on ballots that were more than one page. The Datavote system recognized for each page the race being voted on, and the candidate/issue/question that has been selected on the ballot without the need for reordering ballots. We would like to see the Hart software changed to handle multiple page ballots in the same manner.

The County Clerk and Recorder has already obtained permission from the Board of County Commissioners to conduct the 2005 Coordinated Election as a mail ballot election and will be using the Hart system to conduct this election, as recommended by the Election Review Committee. The ERC is correct in the conclusion that the Hart system is ideally suited for such an election, as was proven in the conduct of the 2005 City of Boulder Municipal Election, and we will be monitoring the system carefully to ensure that it operates at peak performance levels once again this November.

Planning, Staffing and Education Issues

Registration Issues

In the weeks leading up to the 2004 General Election, Boulder County saw a record number of new voter registrations. Public interest in the elections process increased because it was a presidential election year, and voter registration drives were out in full force. In the month leading up to Election Day, Boulder County received over 37,000 voter registration documents to be processed. In addition, many of the largest voter registration drives operated within Boulder County. The re-routing of these registrations, as well as the processing of a record number of new registrations for Boulder County residents put an enormous strain on the limited staff and resources of the Boulder County Clerk and Recorder's Office.

Early Voting

The State of Colorado has seen steady increases of voter participation in early and absentee voting, and Boulder County is no exception. However, the large volume of people who showed up for early voting in 2004 was not anticipated. The reasoning for the low number of early voting sites was two-fold: First, with a limited number of staff, there was a limited ability to control and support numerous early voting sites. Second, there were not many adequate sites available (that had the proper connectivity, size, and met ADA requirements) to be suitable as early voting locations. Future preparations will be made to accommodate the increasing number of people who wish to participate in early voting.

Election Night & Current Staffing

Although the Office of the County Clerk and Recorder already has written procedures in place for the processing of ballots on Election Day, the events of the 2004 General Election have made it clear that these procedures and other processes must be reviewed and revised in preparation for a “worst-case-scenario”, as we experienced last year. We will evaluate all processes from the procurement of print vendors, to election judge training, testing, staffing, personnel evaluation, Election Day procedures, and post-election procedures and testing.

As revealed in the ERC report, the Boulder County Elections Division is drastically understaffed. While the Election Review Committee has recommended the hiring of an “Integrated Quality Management Analyst” to decide whether or not the Elections Division needs more FTE, the County Clerk and Recorder feels confident, without the opinion of an outside consultant, in making the emphatic statement that **we need more staff**.

The current staff on hand is experienced, knowledgeable, skilled and efficient. However, with the conduct of elections becoming more and more complicated with the advent of HAVA, provisional ballots, voter-verifiable paper audit trails, increasing voter registration numbers and increasing election legislation on the state level, more staff is needed in order to effectively conduct elections. This is an urgent need of the Office of the County Clerk and Recorder in order to keep up with these changing times in the elections world.

Help America Vote Act (HAVA)

The Help America Vote Act (HAVA) requires the use of at least one direct record electronic voting system (DRE) “or other voting system equipped for individuals with disabilities” per polling location by 2006. Currently in Colorado, there are no such “other systems”. DREs are currently the only voting systems certified for use in the State of Colorado that satisfy this requirement of HAVA. Just recently, one election system manufacturer received federal certification for a ballot-marking device used for paper ballots that is said to meet the accessibility requirements of HAVA. This voting system has not yet been certified by the Secretary of State for use in Colorado. However, the Office of the Boulder County Clerk and Recorder will research the feasibility of this system and monitor the state certification process to see if this, or any other system, would be a viable alternative to the purchasing of DREs. Boulder County will have in each polling place at least one DRE machine or other accessible voting system for the 2006 General Election in accordance with this federal mandate.

Canvass Board

The Boulder County Clerk and Recorder is currently working with the Office of the Secretary of State to set procedures and promulgate election rules that will ensure the uniform conduct of canvass boards statewide. These procedures will direct election officials and canvass board members as to the scope of the duties of the canvass board, and provide written instruction as to exactly how the canvass should be conducted. These rules are expected to be promulgated and in effect for this November's election.

Voter Education

With regard to the reallocation of voter education funds in the contract with Hart InterCivic, the County found that much of the voter education materials could be produced in-house at a lower cost. In addition, since Boulder County decided to go with a paper-based voting system, rather than an electronic voting system, less voter education was needed than originally anticipated. Voters were given clear written instructions on how to mark their ballots, etc., and additional resources were used in the form of public service announcements, handout sheets circulated during registration activities, and voter informational mailings included in utility bills. Early and absentee voting dates and information was included in all voter education pieces given out to the public.

Vote Centers

Boulder County plans to study the possibility of conducting a Vote Center Election in 2006. This type of election has been successfully conducted in Larimer County, as well as to some extent in the City and County of Denver. It is anticipated that some other counties may conduct vote center elections in 2005. The Boulder County Clerk and Recorder will assess the feasibility, logistical implications, and cost efficiency of such an election in Boulder County.

Physical Facilities

We agree with the ERC's assessment that the current facilities used for ballot counting are too small. The Office of the County Clerk and Recorder needs a permanent physical location to store voting equipment, conduct training, and use as a counting facility. If Boulder County moves to a precinct counting optical scan system, as recommended by the Election Review Committee, the need for this facility would be even greater. We would need a facility large enough to store more than 227 precinct scanners, in addition to central counting equipment and the accessible voting systems mandated by HAVA. Such a facility would also drastically improve the logistical aspects of training and election preparation.

Precinct Polling Locations

Like many other counties, Boulder County is starting to outgrow some of the polling locations we have used in the past. HAVA requires that all polling places be compliant with the Americans with Disabilities Act (ADA). The Secretary of State's Office can award grants from HAVA funds to counties to make their polling places ADA compliant, but this grant money may not cover all costs, and some facilities simply may not be able to be brought up to ADA standards. In order to conduct a regular polling place election in 2006, Boulder County will have to find several new polling places unless Vote Centers are used.

External Factors Beyond the Control of the County Clerk

Of the external factors beyond our control, those that most contributed to the delays in counting were pre-election lawsuits filed against Boulder County and the State of Colorado, and activist interference in the election process.

When the interpretation of an election law is called into question in the form of a lawsuit, election officials are put on hold as to how to conduct the election until courts decide on the lawsuit. Such lawsuits, if brought with mal-intent, cause confusion and interruption, as they did in 2004. Sadly, many then take action to criticize local election officials, and not the parties who commenced the lawsuit.

As admitted in this report, strategic lawsuits and “picketing” of LATs cause delays in election activities and rulemaking. Neither the County Clerk and Recorder, nor the Secretary of State can prevent someone from bringing a lawsuit at the last moment. Hopefully, future frivolous lawsuits will be dismissed or decided quickly enough so they do not delay the election process. Thankfully statutory provisions are now in place to prevent activist interference during the pre-election testing so some of the delays encountered in 2004 will not be revisited.

RESPONSE TO ERC'S IDENTIFIED MAJOR FACTORS CONTRIBUTING TO DELAY

FACTOR #1: Hart InterCivic Voting System

The crux of the issue as related to the Hart system is that it is slow to tabulate ballots. This is true. It is slower than some other systems when it comes to the tabulation of ballots. This should not come as a surprise to anyone who has been involved in the conduct of elections in Boulder County over the last few years. Before the system was purchased, everyone involved in the decision, from the County Clerk to the previous Board of County Commissioners to the members of the public who attended the meetings knew that the system would be slower to tabulate ballots than some of the other alternatives available. While some of their estimates may have been optimistic, representatives from Hart even told us this system would be slower than others. The Commissioners and County Clerk have reinforced an emphatic belief as recently as June of this year that accuracy was far more important than speed. If anyone believes that the speed with which ballots are processed is more important than how accurately those ballots are counted, they certainly have not said so.

In the beginning of the process for procurement of a new voting system, the initial intent was to purchase a voting system that was the combination of a central count optical scan system for absentee and mail ballots, a precinct-based optical scan system to process and count early voting and Election Day ballots, and DRE machines for use at the polls in compliance with HAVA. The sentiment at the time, voiced by members of the public and the previous Board of County Commissioners, was that they were not comfortable with precinct optical scan or DRE equipment for use in the polling place. In addition, federal standards had not yet been set by the Federal Election Assistance Commission for the certification of DRE equipment. Finally, as it turned out, the Secretary of State also promulgated an Election Rule that prohibited any counties from purchasing DRE equipment until after the aforementioned standards had been set by the EAC. To this day, standards are yet to be adopted.

The combination of all of those factors dictated that the County Clerk only move forward with the first phase of implementing a robust, secure and accurate voting system by purchasing the Hart "Ballot Now" system. As stated before, at the time, everyone involved knew that going into a general election with this system only would mean that ballot counting would take longer. Unfortunately, nobody knew exactly how long it would take. As the many factors fell into place to contribute to the delay in the election results, it became clear that other systems would need to be used in conjunction with the Hart "Ballot Now" system in order to speed things up.

The County Clerk and Recorder believes the Election Review Committee did an admirable job in explaining the way the Hart InterCivic voting system works and was very thorough in the description of its processes. The description of creating the ballots, operation of the counting system and resolution of ballots was detailed, although it was not entirely accurate. However, considering most of the ERC members have not ever used the system, they gave a fairly reasonable explanation of its functionality.

The precision of the Hart system itself should be emphasized. The system allows resolutions to be completed automatically for undervotes, but also allows for manual resolution in the case of overvotes, write-in votes, and situations when the voting boxes cannot be found by the system automatically. This manual resolution is conducted by a bi-partisan team of election judges, known as a resolution board.

As the ERC report documented, approximately 13,000 ballots in the 2004 General Election needed to be manually resolved because the Hart system could not locate the voting boxes on these ballots with sufficient accuracy. To clarify, the status for these ballots in the Hart system was “damaged”, not “rejected”. The system then alerted the resolution teams that resolution of these particular ballots would have to be done manually, and allowed this manual resolution to take place by viewing images of each voted ballot in the Hart system to ensure accuracy in the counting of votes.

Many other paper ballot optical scan systems would not have identified the discrepancies in printing that the Hart system found. In addition, other systems may not have allowed for manual resolution of ballots to ensure accuracy. While it is clear that the manual resolution of 13,000 ballots contributed to the delay in the reporting of the election results, it is most important to note that when the results were reported, they were accurate. Every vote cast by an eligible elector in Boulder County was counted. ***The results were accurate***, and that fact is far more important than the speed with which each vote was tallied.

Logic and Accuracy Testing

As the ERC Report documented, one of the major causes of delay in the counting of the election results was the delay of the Logic and Accuracy Testing prior to Election Day. One party representative appointed to attend the LAT testing made repeated and deliberate attempts to delay and sabotage the tests, including, but not limited to, the filing of an injunction in court to delay the testing. The effect of these efforts is well documented on pages 17 and 43 of the Election Review Committee Report.

As the committee report illustrated, were it not for such delays, the LATs could have been completed well before Election Day, as originally planned, and early and absentee ballots could have already been counted before Election Day. However, the committee report implies that counting of early and absentee ballots did not even begin until after 7 p.m. on Election Day, which is not entirely accurate. In fact, about one-third of the early and absentee ballots had been counted before the polls closed on Election Day, and that initial count was reflected on the County Clerk’s website. The fact remains that were it not for the repeated delays in the LAT testing, all of those ballots could have been counted before Election Day, leaving only polling place ballots left to count at 7 p.m. This delay in the Logic and Accuracy Testing was the first step in a chain reaction that caused further delays during the 2004 Election.

This is not the first instance in which this individual, or members of his/her association, have attempted to sabotage the election process in Boulder County. While the ERC report claims that the County Clerk had the authority to remove this individual from the LAT testing, this “authority” could have certainly been the subject of a legal debate at the time. There was no direct language contained in the LAT statute at the time that unequivocally authorized her to do so, but there is now. To prevent further delays in the logic and accuracy testing, the Secretary of State’s Blue Ribbon Election Panel has worked with the Colorado General Assembly to draft statutory language as follows:

“If an observer or designee hinders or disturbs the test process, the designated election official may remove the person from the test area. An observer or designee who has been removed from the public test may be barred from future tests. The absence of observers or designees shall not delay or stop the public test.” C.R.S. 1-7-509(2)(b); SB05-206; SB05-198

This language was drafted due to the delays experienced by Boulder County during the Logic and Accuracy Testing for the 2004 General Election. This language will help ensure that the people who attend testing to verify the accuracy of the system will be allowed to conduct and witness testing without being disturbed or delayed by others who intentionally attempt to hinder the process. The above statutory provision will eliminate the delays in the testing process that were experienced in 2004.

Ballot Incompatibility

As previously mentioned, the Hart system identified several unreadable ballots relatively early in the counting process. The ERC outlined in its report one of the advantages of the Hart system in that once these unreadable ballots were discovered, manual resolution could be done by viewing the scanned ballot images stored in the system. The ERC report points out that this is “a far more efficient method than manipulating the paper ballots in a direct hand count”. A direct hand count of these 13,000 paper ballots would have taken even longer than the count experienced in 2004, and at a much higher cost for Boulder County, both financially and politically.

Tallying of the Votes

There is a need for some clarification of the information presented in this section of the ERC report. In its description of the tallying process, the report says,

“When a batch of ballots is finally fully resolved, the votes counted are written to a Mobile Ballot Box™ (MBB). The MBB is then carried to another computer running the Hart Tally™ software that records the contents of the MBB and adds the totals from the batch to other batches already counted. The MBB is then returned to the scanner and scanning and resolution begins with another batch of ballots.”

It is important to clarify that once used, the MBBs are retired, not returned for repeat use. Once written to record votes, the MBBs cannot be used again for the same election.

In the 2004 General Election, the posting of election results on the county website was indeed delayed. In the past, the Datavote system was networked directly to the website so as votes were tallied, the results on the web would be updated automatically. Prior to the purchase of a new voting system, members of the public voiced concern about the security of linking the voting system directly to the website. It was decided that the two should not be linked, and that results on the County Clerk’s website should be updated manually by Elections Division staff. This reliance upon staff was ultimately dependant on the premise that members of the staff would have time on Election Night to data enter this information. On Election Night 2004, staff did not have that kind of time.

Elections Division staff turned their focus to the accurate counting and resolution of ballots, rather than to the updating of election results for public consumption. While this may have inconvenienced or confused members of the public or media, the decision was made that the priority should be to accurately resolve and count the election ballots. While it is regrettable that up-to-the minute election results were not readily available, with the limited staff and resources of the County Clerk’s Elections Division, certain sacrifices had to be made. It was more important to make sure the ballots were being processed accurately and efficiently than it was to continually distribute partial results. However, the Office of the County Clerk and Recorder does understand

that it is important for the public to access election results as they become available and we are currently working to improve our ability to make changes to the website which will allow just that. In addition, for all future elections one permanent or temporary staff member will be tasked with the sole purpose of updating unofficial election results on the County Clerk and Recorder's website on Election Night.

Current state law provides that if a mail ballot or absentee ballot is returned and the signature on the return envelope is missing or does not match the signature on file with the County Clerk and Recorder, the County Clerk must send a letter to the voter explaining the signature is missing or there is a discrepancy in the signature. This letter must be sent no later than 2 days after Election Day. The letter can be returned from the voter up to 8 days after the election. In addition, provisional ballots can be processed up to 8 days after a Primary Election, and up to 14 days after a General, Odd-year or Coordinated Election. In 2004, some ballots were allowed to be accepted from absentee military personnel and overseas citizens after Election Day. The fact is, as these post-election procedures outlined in statute and election rule are mandated, it may be several days after the election before official election results are released in any county. As more accommodations are made in statute for signature verification, provisional ballots, and ballots for uniformed overseas citizens, we are entering a new elections era. The days of having *certified* election results on Election Day are long gone. This is not to say that such statutory provisions are wrong or unnecessary; it is simply to say that in order to ensure the accurate counting of every ballot for every voter, more time is often needed.

Qualitative Observations

The County Clerk and Recorder will not address the conflicting testimony the ERC heard from either the voting system vendor, Hart InterCivic, or the print vendor, EagleDirect, but would like to comment on one part of the committee's qualitative observations in this section. The committee claimed "The County refused to allow the audit logs to be examined to attempt to trace ballots with damaged races to the printing machine used." This observation is not entirely accurate. Mr. Lyons, chair of the Election Review Committee, was informed by the County Clerk and Recorder that the audit logs could be viewed by the committee at the office of the County Clerk. However, these logs were not allowed to be removed from the office of the County Clerk. The committee members did view this information in the Elections office.

Hart Software

One particular recommended change to the Hart software regarding the reordering of multiple page ballots does have merit, but we would like to adapt it slightly. The second recommendation listed in the report is for the Hart software to be able to "...reorder multiple page ballots that are not in sequence, at least within a batch, saving substantial time that precinct and central counting workers spend doing that task." With the same goal of saving time in mind, we would like to alter that recommendation of the software so that it does not matter if the multiple page ballots are out of order.

This was not the first election in which Boulder County used multiple page ballots. In fact, in many previous general elections while using the Datavote punch card system, the voters of Boulder County often voted on ballots that were more than one page. With the Datavote system, the first page of the multiple page ballots was coded to track the number of total ballots cast. So each time another page 1 was read by the system, the tally of total ballots cast would go up by one. The races printed on page 1, 2, 3, etc. of the ballot were exactly the same from ballot to ballot within each ballot style. For example, the Datavote system recognized that for ballot style

number 005, the first contest on page 2 was for County Commissioner, the second for County Clerk and Recorder, the third for County Treasurer, and so on. This way, if ballots became commingled, the system would automatically recognize that the particular card it was reading was ballot style 005, page 2, and count the votes cast on that page accordingly. The system recognized the race being voted on, and the candidate/issue/question that has been selected on the ballot without the need for reordering ballots. We would like to see the Hart software changed to handle multiple page ballots in the same manner.

Recommendations With Respect to the Hart System

The Office of the County Clerk and Recorder would like to thank the ERC, both for its recommendations regarding the Hart system, and also more importantly for resisting the temptation to pursue other recommendations outside the charge of the committee. Some public testimony could have easily swayed the committee in pursuing recommendations outside the scope of the committee's authority. The Election Review Committee remained steadfast in focusing within the parameters of its charge, and should be commended for it.

The County Clerk and Recorder has already obtained permission from the Board of County Commissioners to conduct the 2005 Coordinated Election as a mail ballot election and will be using the Hart system to conduct this election, as recommended by the Election Review Committee. The ERC is correct in the conclusion that the Hart system is ideally suited for such an election, as was proven in the conduct of the 2005 City of Boulder Municipal Election, and we will be monitoring the system carefully to ensure that it operates at peak performance levels once again this November.

The office of the County Clerk and Recorder will consider the other recommendations of the committee with regards to the voting system, as well as the requirements set by federal and state law in considering any potential changes to Boulder County's voting system.

FACTOR #2: Printing Issues

Issue: Printing Quality & Procurement

Statewide, counties experienced significant delays in the printing of their ballots for many reasons. Among those reasons was a delay in ballot certification from the Office of the Secretary of State due to a lawsuit regarding the presidential candidacy of Ralph Nader. The state was unable to officially certify the full ballot content to each county until it was determined by the courts whether or not Mr. Nader's name should appear on the ballot. This delay in receiving the official ballot language forced counties to delay in submitting orders to the print vendors. Many vendors print ballots for multiple counties in multiple states. When Colorado counties submitted their print orders later than others, they were often put at the bottom of the list, or told by their regular print vendors that the order could not be completed in time to meet statutory deadlines. Some counties were forced to scramble to find a print vendor who could accommodate their order quickly and properly without sufficient time for an official procurement process. Most voting system experts recommend using the voting system vendor to print ballots because of their inherent knowledge of the requirements of the voting system, but with the delays due to litigation, Hart InterCivic was not able to complete printing in time to meet statutory deadlines and another print vendor (EagleDirect) had to be used.

It is the belief of the County Clerk and Recorder that printing issues caused a significant portion of the delays in the counting process, and that improperly printed ballots were the direct cause of

the requirement for manual resolution of approximately 13,000 ballots. It is important to note that the Election Review Committee cited that “There were no damaged races on any ballot printed on the County’s in-house printers”. The ballots printed in-house by the Hart “Ballot Now” system were printed properly and presented no problems during counting. The report goes on to say that some of the practices of EagleDirect “...suggest a systematic problem with security and quality control checks at EagleDirect.”

Further, the report implies that Boulder County and Hart InterCivic refused to give printing specifications to EagleDirect, the print vendor, which is simply not the case. In fact, one would think EagleDirect would have a “due diligence” obligation to seek printing requirements from either Boulder County or Hart InterCivic prior to printing to ensure ballots were printed properly. The County provided EagleDirect with the only printing specifications given to us by Hart, which were:

*“Cougar brand
Virgin content
Opaque 60/24#
Smooth finish
Grain long
96 brightness
3/8” clipped bottom left corner
Color stripe at top margin – 6.5” long, 5/16” wide and 1/16 from top edge of paper.”*

Also, according to the Hart BallotNow operations manual, “When the Election requires a large number of paper ballots, a PostScript file containing the ballots can be created and then delivered to an outside printing company that will print the ballots.” (p. 72) All ballots printed by EagleDirect, both for absentees and for Election Day voting at the polling place, were supplied to them from the Elections Office in the form of PostScript files.

It is clear that Hart and the county provided electronic files to EagleDirect. What is not clear is why EagleDirect did not inquire as to “tolerances” prior to printing the ballots. This may be because EagleDirect had previously printed Boulder County’s ballots for the 2004 August Primary Election and the initial printing of approximately 10,000 absentee ballots for the General Election without any problems.

It is also important to note that testimony presented to the committee indicated that all known damaged ballots came from the equipment of a subcontractor of EagleDirect. While the committee fell short of identifying one root cause of the printing problems, it is interesting to learn that the damaged ballots can all be traced to the same source.

Issue: Paper Size

The ERC Report offers several contradicting arguments on this issue that should be addressed. First, criticism of the Hart system is offered claiming that it has difficulty handling multiple-page ballots. The report claims that ballots printed on multiple pages made proper collation of the ballots more difficult and added to the overall counting time.

Because of the enormous volume of candidates and issues on the ballot in November 2004, it was decided that a larger size ballot would be needed in order to accommodate the ballot content without using numerous other pages for one ballot. An 11” x 17” ballot can hold more candidates and issues than an 8.5” x 11” ballot, thus reducing the total number of pages needed per ballot.

However, the ERC Report then criticizes the use of a larger ballot, claiming that it is more difficult to handle, and the larger paper size may throw off the calibration of the corresponding barcodes that tell the Hart system where the voting boxes should be located on each ballot. The fact is, with the number of candidates and issues on the ballot in 2004, there would be no way to fit everything on an 8½ x 11” single page ballot without printing so small that the language would be unreadable. We needed larger multi-page ballots in order to accommodate the entire ballot content.

With respect to the conflict between multiple-page ballots vs. larger-sized ballots, The County Clerk and Recorder will continue to pursue the best way to have ballots printed that are easy to read, easy to use, and easy to count. Further research should be done to examine the techniques used in Orange County, California (who also uses the Hart system) to help find better ways for the printing and counting of ballots in Boulder County.

Finally, the report concludes that, “The County staff rejected the use of smaller type since it might have been difficult for voters to read”. This is absolutely correct. What good is a ballot if the voter is unable to read and understand it? Using smaller print for our ballots could have effectively disenfranchised thousands of voters throughout the county and the Office of the County Clerk and Recorder is not about to disenfranchise voters in order to squeeze down the number of pages on a ballot. The Election Review Committee refers to this decision under the category of “Problems That Can Be Fixed”. The Boulder County Clerk and Recorder views this as the *right* decision that will not change in future elections.

Recommendations Regarding Printing Issues

Boulder County has used a formalized procurement process in the past for ballot printing, and expects to use the same process in the future. As explained above, unusual circumstances during the 2004 election required that many counties had to find a print vendor quickly, as did Boulder County. In anticipation of any similar circumstances in future elections, the Boulder County Clerk and Recorder will seek written assurances from any future print vendors that statutory deadlines can be met without sacrificing anything in the areas of print quality and quality control.

Boulder County has already begun to take these steps, as evidenced by the actions of the County Clerk leading up to the 2005 Special Municipal Election. Hart InterCivic was selected as the print vendor for this election. The County Clerk, members of her staff, and the Boulder Municipal Clerk went to Texas, where the ballots were printed by Hart InterCivic. They selected their own test deck randomly from among the live ballots, brought them back to Boulder, and conducted the pre-election testing using these ballots, rather than using a standard test deck supplied by the vendor. This additional step to hand-pick random live ballots, rather than a standard numerically-sequential test deck supplied by the vendor, helped to ensure that the live ballots were printed properly, and added another level of quality-control checking in the process.

Prior to Election Day, each election judge is already trained to examine ballots before handing them to the voter to ensure that there are no obvious printing problems or discrepancies with the printing on the ballot. This process is already in place in Boulder County. However, having seen some of the actual live ballots used in the 2004 General Election that had printing errors on them, we are sure the Election Review Committee understands that many of the misprinted ballots had flaws in them that were not easily detected at a glance by the naked eye. In addition, poorly printed ballots that have already been voted and cast cannot be anticipated and there can be no contingency plan for that problem. As required by Secretary of State Election Rule 11.6, Boulder County did have a contingency plan on file with the Office of the Secretary of State prior to the

counting of ballots, but this problem could not be anticipated in that plan. Once ballots have been voted and returned to the counting center, the only contingency would have been to either duplicate or hand count all of the ballots. This would have caused more significant delays than experienced on Election Night. Had the election judges caught the obviously poorly printed ballots and reissued “good” ballots at the polling place, that may have helped, but the majority of the poorly printed ballots had defects that were barely detectable to the trained eye of a ballot expert familiar with the printing of ballots, let alone that of an election judge. The quality control testing standards used by the county in the 2005 Municipal Election, combined with the series of testing prior to Election Day mandated by SB05-206, will ensure that misprinted ballots will no longer be distributed to the public.

It is a fact that the size of ballots in the State of Colorado is consistently growing. Each general election year, more candidates run for office and more issues are on the ballot than ever before. With the ever-growing ballots, print vendors, voting system vendors, and election officials are going to have to make changes to their systems and processes to accommodate larger ballots and multiple page ballots. This is a reality of the modern election world.

Among the many changes brought on by Senate Bill 05-206 are changes to the election calendar. These changes were made in direct response to some of the issues encountered in the 2004 election. In general election years, the entire candidate ballot access process will now begin earlier than it has in the past. From holding precinct caucuses, to holding party assemblies and filing candidate petitions or write-in affidavits, each step of the process will begin and end sooner in the year to allow for the Secretary of State to certify ballot content to the County Clerks earlier. Thus allowing the counties to order, print, and distribute ballots earlier.

FACTOR #3: Planning, Staffing, and Education Issues

Office Staffing, Training and Management

Registration Records

In the weeks leading up to the 2004 General Election, Boulder County saw a record number of new voter registrations. Public interest in the elections process increased because it was a presidential election year, and voter registration drives were out in full force. In the month leading up to Election Day, Boulder County received over 37,000 voter registration documents to be processed. In addition, many of the largest voter registration drives operated within Boulder County. At this time, there was no effective regulation of voter registration drives, and as a result many problems occurred. Many voter registration drives collected forms, and held onto them until they were all submitted to the County Clerk at the same time on the day of the registration deadline. In 2004, voter registration drives were allowed to gather new registrations, keep them in their possession as long as they liked, and then forward the registrations to whichever county they wanted to. As a result, many of the registrations submitted to Boulder County from voter registration drives were for voters attempting to register in other counties. These registrations then had to be forwarded on to the appropriate county at Boulder County’s expense. The re-routing of these registrations, as well as the processing of a record number of new registrations for Boulder County residents put an enormous strain on the limited staff and resources of the Boulder County Clerk and Recorder’s Office.

Senate Bill 05-206 addresses many of the problems encountered in Boulder County, and statewide, in the 2004 General Election with regard to voter registration drives. Groups who wish

to conduct voter registration drives will be required to registered with, and receive training from the Office of the Secretary of State (SOS). They will only be allowed to use the voter registration application approved by the Secretary of State, and this form will have attached to it a receipt that is given to the elector upon registration, which shall serve as proof of registration. The receipt will also track which voter registration drive handed out that form. Voter registration drives will also be required to submit completed forms to the proper county in which the voter intends to register no later than five business days after the registration has been signed. These new statutory provisions should help to increase the effectiveness, efficiency and training of voter registration drives, while allowing a steady stream of new voter registrations to arrive at the proper County Clerk's office in a timely manner.

As in any major election, it is sometimes difficult to find qualified volunteers and temporary workers who are willing to put in the time it takes to conduct an election. In 2004, every effort was made to accommodate the diverse schedules of each in-office election worker while maintaining a consistently staffed office. Perhaps too much effort was made in accommodating every individual's personal schedule and taking whatever we could get. In future elections, in-office election workers will have to meet certain qualifications and will be assigned to predetermined shifts. Just as in any other job, if the worker cannot meet the requirements of their shift, they will be replaced with someone who can. The Elections Division of the County Clerk and Recorder is currently reviewing its process of selecting and staffing of in-office volunteers and temporary workers to better streamline productivity and efficiency.

As a note of clarification in response to the ERC report on this section, it should be mentioned that the registrations being entered on or after Election Day were not regular voter registrations, but emergency registrations and registrations from provisional ballot envelopes, entered in accordance with state statute.

Early Voting

The State of Colorado has seen steady increases of voter participation in early and absentee voting, and Boulder County is no exception. However, the large volume of people who showed up for early voting in 2004 was not anticipated. The reasoning for the low number of early voting sites was two-fold: First, with a limited number of staff, there was a limited ability to control and support numerous early voting sites. Second, there were not many adequate sites available (that had the proper connectivity, size, and met ADA requirements) to be suitable as early voting locations. While there were certainly some delays from printing over the course of the ten days of early voting, none of the delays were major. We responded as soon as possible to calls from judges at the early voting sites about printing problems, and no printer was stopped for more than fifteen minutes at most. Future preparations will be made to avoid any other minor printing delays and to accommodate the increasing number of people who wish to participate in early voting.

Judges

Some clarification is needed on this issue. The first item that needs to be clarified is the difference between election judges and in-office temporary workers. The only people who are defined by statute as being election judges are the people who are recommended by their respective political party, or are self-nominated (in the case of an unaffiliated voter) and appointed by the County Clerk and Recorder to perform election duties assigned by the County Clerk and Recorder. Election judges are the people conducting the election at the polling places. The County Clerk chooses from lists of recommended or self-nominated election judges to

appoint the judges who are needed. *Nothing in state law mandates the Clerk to appoint every judge recommended or self-nominated.* In some cases, more judges are listed than are needed. In other cases, potential election judges received unfavorable recommendations from fellow election judges and were not deemed suitable to return to service. Some potential election judges were even listed by political parties without their knowledge. When some of these individuals were contacted by the County Clerk and Recorder, they were unwilling or unable to serve. Despite these discrepancies, Boulder County had an adequate number of election judges, as 1,392 judges served on Election Day.

In-office temporary workers are paid employees or voluntary staff of the Elections Division of the County Clerk's Office. Very few of the workers are unpaid "volunteers." They are hired at the discretion of the County Clerk and Elections Coordinator. While political parties, citizen organizations and other groups are permitted to encourage their members to volunteer or apply for these in-office election worker positions, statute does not mandate that the County Clerk hire whomever shows up on the doorstep.

Per statute, Election Judges must attend a training session prior to each election in which they serve. In this training, Supply Judges are specifically instructed to ensure that all of their precinct supplies are present and accounted for prior to Election Day. If a judge does not have all of the supplies needed, they are instructed to inform the Elections Division immediately. Senate Bill 05-206 has changed the law that required training to be conducted no sooner than 20 days before the election. Election judge training may now take place as early as 32 days before the election. This will give us more time to thoroughly and effectively train judges before Election Day.

Election Night

Staff hired or appointed by the County Clerk and Recorder were all formally and thoroughly trained before the election. Volunteers or staff who showed up for the first time on Election Night and had no previous elections experience received basic training in the limited time available.

Elections Division staff, in-office workers, and election judges were all aware in advance that with multiple page ballots, some ballots would need to be sorted into proper order prior to scanning. Preparations in training and staffing were made ahead of time to account for this step in the process. However, regardless of the preparations made in advance, the sheer volume of the number of multiple page ballots to be sorted will always be a time consuming endeavor, and everyone involved was aware of that fact from the beginning.

The Election Review Committee report claims that, "Beginning election night until the end of the count on Friday, there was no time when all of the scanners were operating simultaneously." This statement, however, is not entirely true. When counting of the precinct ballots began on Election Night, all scanners were running at full force. There were periodic intervals for each machine when the scanning of one batch would be complete and preparations were being made to scan the next, but for the most part, all scanners were running simultaneously in the beginning. It wasn't until the problems with the damaged ballots came to light that the interruptions in scanning began.

In addition, there are some inaccuracies in the report's section discussing the counting of write-in votes. The counting standards for write-in votes were consistent throughout the counting process and did not change. The report claims there was confusion as to whether the box next to the write-in name had to be darkened, which is also untrue. Voters had written instructions on their

ballot and in each voting booth directing them that if they wished to vote for a write-in candidate, they had to write the candidate's name in the space provided and fill in the box for a write-in. Properly marked write-in votes were automatically caught by the Hart system for manual resolution. If the voter did not fill in the box for a write-in candidate as required by Secretary of State Election Rule 27.1.8, the system, by design, did not recognize the vote as a write-in for manual resolution. This could have resulted in an undervote if no other candidates for that race were marked. There was no confusion in the processing of write-in votes on, or after, Election Night.

Although the Office of the County Clerk and Recorder already has written procedures in place for the processing of ballots on Election Day, the events of the 2004 General Election have made it clear that these procedures and other processes must be reviewed and revised in preparation for a "worst-case-scenario", as we experienced last year. The Elections Division staff is currently working on this evaluation and revision. We will evaluate all processes from the procurement of print vendors, to election judge training, testing, staffing, personnel evaluation, Election Day procedures, and post-election procedures and testing.

Current Staffing

As revealed in the ERC report, the Boulder County Elections Division is drastically understaffed. While the Election Review Committee has recommended the hiring of an "Integrated Quality Management Analyst" to decide whether or not the Elections Division needs more FTE, the County Clerk and Recorder feels confident, without the opinion of an outside consultant, in making the emphatic statement that **we need more staff**.

The current staff on hand is experienced, knowledgeable, skilled and efficient. However, with the conduct of elections becoming more and more complicated with the advent of HAVA, provisional ballots, voter-verifiable paper audit trails, increasing voter registration numbers and increasing election legislation on the state level, more staff is needed in order to effectively conduct elections. This is an urgent need of the Office of the County Clerk and Recorder in order to keep up with these changing times in the elections world.

Twenty years ago, there were 125,492 registered voters in Boulder County. Ten years ago, in 1995, that number increased to 169,953 registered voters. Currently, there are 199,365 registered voters within Boulder County. This marks an increase of almost 75,000 new registered voters in the last twenty years. In that same time period, the size of the Elections Division staff has only increased by ½ of a full time equivalent (FTE) employee. The growth of the Elections Division staff has not kept up with the growth of Boulder County.

In addition, as compared to other large counties, it becomes even clearer that the Boulder County Elections Division is woefully understaffed. Adams County, with 185,076 registered voters, has a full time elections staff of eight (8) people. Similarly, Larimer County, with 183,561 registered voters, also has eight (8) FTE in their elections division. Douglas County, with 150,255 registered voters, has nine (9) permanent employees in their elections division. Boulder County has the fifth-largest number of registered voters of any county in this state, behind only Jefferson, Denver, El Paso and Arapahoe, and we have a staff of only 5½ permanent employees. With the elections world becoming more and more complex, and the number of registered voters steadily increasing, the workload of the Elections Division has also increased. It is imperative that the County Clerk and Recorder's Office be given more staff in order to ensure the proper conduct of elections.

Help America Vote Act (HAVA)

With regard to accessibility for individuals with disabilities, Section 301 of the Help America Vote Act reads as follows:

“The voting system shall –

- (A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters;*
- (B) satisfy the requirement of subparagraph (A) through the use of at least 1 direct record electronic voting system or other voting system equipped for individuals with disabilities”*

This requirement of HAVA must be in place in 2006. Subparagraph B of the language above requires the use of at least one direct record electronic voting system (DRE) “or other voting system equipped for individuals with disabilities” per polling location. Currently in Colorado, there are no such “other systems”. DREs are the only voting systems certified for use in the State of Colorado that satisfy this requirement of HAVA. Just recently, one election system manufacturer received federal certification for a ballot-marking device used for paper ballots that is said to meet the accessibility requirements of HAVA. This voting system has not yet been certified by the Secretary of State for use in Colorado. However, the Office of the Boulder County Clerk and Recorder will research the feasibility of this system and monitor the state certification process to see if this, or any other system, would be a viable alternative to the purchasing of DREs. Boulder County will have in each polling place at least one DRE machine or other accessible voting system for the 2006 General Election in accordance with this federal mandate.

Some have argued that HAVA allows for a county to “opt-out” of the voting system accessibility requirements through voter education and outreach. This notion is completely false. HAVA states the following:

“(B) A State or jurisdiction that uses a paper ballot voting system, a punch card voting system (including mail-in absentee ballots and mail-in ballots), may meet the requirements of subparagraph (A)(iii) by -

- (i) establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office; and*
- (ii) providing the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error).”*

The voter education and instruction outlined in this passage serve as a substitute for the requirements of HAVA Section 301, subparagraph (A)(iii). That subparagraph deals with second-chance voting in the case of an overvote. Using a paper-based system, voters do not have a chance to alter their original ballot once it has been filled out, so if they overvote a particular

race, they can either spoil that original ballot and receive a replacement ballot to correct any errors, or they can cast the ballot as is. Voter instruction and education must be done so the voter knows their options if they do overvote. The above passage refers only to second-chance voting, and has no relation whatsoever to the requirement for accessible voting systems in each polling place. There are no provisions within the Help America Vote Act that would allow any county to “opt-out” of providing accessible voting systems to its citizens. Further, even if there were such a provision, no county should want to opt-out of providing this service, and this *right*, to its citizens.

Canvass Board

The Boulder County Clerk and Recorder is currently working with the Office of the Secretary of State to set procedures and promulgate election rules that will ensure the uniform conduct of canvass boards statewide. These procedures will direct election officials and canvass board members as to the scope of the duties of the canvass board, and provide written instruction as to exactly how the canvass should be conducted. These rules are expected to be promulgated and in effect for this November’s election.

Voter Education

Many of the issues surrounding unregulated voter registration drives is covered under the Registration Records portion of this response. Senate Bill 05-206 will resolve many of the issues encountered in 2004 regarding voter registration drives.

With regard to the reallocation of voter education funds in the contract with Hart InterCivic, the County found that much of the voter education materials could be produced in-house at a lower cost. In addition, since Boulder County decided to go with a paper-based voting system, rather than an electronic voting system, less voter education was needed than originally anticipated. Voters were given clear written instructions on how to mark their ballots, etc., and additional resources were used in the form of public service announcements, handout sheets circulated during registration activities, and voter informational mailings included in utility bills. Early and absentee voting dates and information was included in all voter education materials given out to the public.

Approximately \$17,000 of the \$60,000 allotted for voter education in the contract with Hart InterCivic was paid to Hart for their contribution to the voter education materials. The remaining portion of that allotment was used for support of the voting system before and during the election.

With regard to the actual voter instructions, voters were indeed informed that the use of felt tip pens would not be suitable to mark their ballots. These instructions came from the specifications of the Hart system as certified. The Hart system was not certified by the National Association of State Election Directors (NASSED), nor the State of Colorado to allow for the use of a felt tip pen for ballot marking. While it is conceivable that a ballot marked with a felt tip pen could successfully be read using the system, it is not recommended or covered within the scope of the system’s certification. In the 2004 election, some ballots were found to have been marked with a felt tip pen and the markings did actually bleed through to the other side of the ballot. Such ballots then had to be duplicated by a bipartisan duplication board and run through the system, thus adding to the total ballot processing time.

Vote Centers

Boulder County does plan to study the possibility of conducting a Vote Center Election in 2006. This type of election has been successfully conducted in Larimer County, as well as to some extent in the City and County of Denver. It is anticipated that some other counties may conduct vote center elections in 2005. The Boulder County Clerk and Recorder will assess the feasibility, logistical implications, and cost efficiency of such an election in Boulder County.

FACTOR #4: Physical Facilities

Space for Counting

We agree with the ERC's assessment that the current facilities used for ballot counting are too small. The Office of the County Clerk and Recorder needs a permanent physical location to store voting equipment, conduct training, and use as a counting facility. Due to our space constraints, the voting equipment is returned to our current warehouse after each election. The limited space and access of this facility makes it difficult to research and answer post-election questions. If Boulder County moves to a precinct counting optical scan system, as recommended by the Election Review Committee, the need for a new facility would be even greater. We would need a facility large enough to store more than 227 precinct scanners, in addition to central counting equipment and the accessible voting systems mandated by HAVA. Such a facility would also drastically improve the logistical aspects of training and election preparation.

As addressed above, counting procedures are being reviewed and revised by the Elections Division. Some changes have already been put in place and were used successfully during the 2005 Special Municipal Election. We have also revised procedures to address security and crowd control of the counting facilities.

Precinct Polling Locations

Like many other counties, Boulder County is starting to outgrow some of the polling locations we have used in the past. In addition, after many of the electioneering activities that took place outside of polling places in 2004, we have had many of our polling place contacts refuse to allow us to use their facilities for future elections. HAVA requires that all polling places be compliant with the Americans with Disabilities Act (ADA). The Secretary of State's Office can award grants from HAVA funds to counties to make their polling places ADA compliant, but this grant money may not cover all costs, and some facilities simply may not be able to be brought up to ADA standards. In order to conduct a regular polling place election in 2006, Boulder County will have to find several new polling places unless Vote Centers are used.

HAVA also requires that each polling location have a voting system in it that allows for disabled voters to privately and independently cast their ballots before the 2006 election. Currently, the only voting systems certified in the State of Colorado that comply with this requirement are Direct Recording Electronic (DRE) voting systems. Boulder County will receive federal funding from HAVA to purchase these systems, but the federal funds will not cover the entire cost of purchasing these machines and their software and support. The County Clerk and Recorder will need to evaluate the cost of purchasing these systems for each polling location and evaluate the physical size of each location in order to accommodate for these machines.

Early Voting Locations

The County Clerk and Recorder is researching the possibility of finding new early voting sites for the 2006 election, and possibly expanding the total number of early voting sites open before Election Day. A factor in selecting new locations will be the type of voting equipment we use in the 2006 election, based on state and federal statutory requirements.

Factor #5: External Factors Beyond Control of the County Clerk that Caused or Contributed to Delay in Counting

Of the external factors beyond our control, those that most contributed to the delays in counting were pre-election lawsuits filed against Boulder County the State of Colorado, and activist interference in the election process.

Last-minute rule changes by the Secretary of State were occasioned by litigation filed merely days before the election and the lack of statutory structure in place at the time of the election. The Secretary of State is authorized to promulgate rules in order to effectuate Title 1 of the Colorado Revised Statutes and the federal Help America Vote Act. Therefore, in the absence of statutory law, the Secretary of State must promulgate rules, publish them, hold public hearings, and then post the final rules in order for the County Clerks to have guidance on the conduct of elections. The rule changes made by the Secretary of State in 2004, although late, were absolutely necessary in providing clarification of election procedures in response to recent court decisions.

Legally, the Boulder County Clerk does not feel it would be advisable to advocate a restraint on the Secretary of State's office to promulgate election rules within a given time frame. Limiting an agency's ability to promulgate rules could cause significant problems to the state or a given county in the event a situation arose necessitating the agency's exercise of its powers to promulgate rules. Agencies are sometimes mandated by courts to issue rules in accordance with a court ruling. This is precisely what happened last year as a result of the lawsuit vis a vis absentee voters' ability to vote a provisional ballot in the event they did not vote an absentee ballot.

Such a proposal would also cause a much wider impact on the issuance of election rules, since under the Administrative Procedures Act (APA), the deadlines are very specific and require a great deal of planning and forethought. If this proposal of the ERC were to go through, it is likely that no election rules could be put in place for a given election cycle. In addition, such a proposed statutory change would require the change of the Administrative Procedures Act, which governs the right of all state agencies to promulgate rules. Any changes to the APA would not only affect the rulemaking authority of the Secretary of State, but other state agencies as well.

When the interpretation of such laws or rules is called into question in the form of a lawsuit, election officials are put on hold as to how to conduct the election until courts decide on the lawsuit. Such lawsuits can cause confusion and interruption, as they did in 2004. Sadly, many then take action to criticize local election officials, and not the parties who commenced the lawsuit.

Activist interference with the pre-election testing combined with strategic filing of a lawsuit days before the election effectively crippled testing until shortly before Election Day. Had this interference not occurred, the testing could have been completed as early as ten days before the election, and election officials could have begun counting of the absentee and early ballots that

accounted for about 44% of the total ballots cast in the election. Nearly *half* of the election's ballots could have been counted before Election Day. As it were, counting of ballots did begin prior to Election Day, but only about one-third of the early and absentee ballots were counted ahead of time. The activists effectively accomplished their goal of hindering the election process without accepting any responsibilities for the delays they caused.

As documented in this report, strategic lawsuits and “picketing” of LATs cause delays in election activities and rulemaking. Neither the County Clerk and Recorder, nor the Secretary of State can prevent someone from bringing a lawsuit at the last moment. Hopefully, future lawsuits will be decided quickly enough so they do not delay the election process. Thankfully statutory provisions are now in place to prevent activist interference during the pre-election testing so some of the delays encountered in 2004 will not be revisited.

CONCLUSION

The Office of the County Clerk and Recorder wishes to thank the Election Review Committee for its hard work and dedication in investigating the events surrounding the 2004 General Election. We know much time was spent by the members of the ERC in the development of this report. The report makes some valid recommendations that can improve the way elections are conducted in Boulder County.

The County Clerk and Recorder has already begun reviewing processes and procedures of the Elections Division and will continue to review the suggestions outlined in the ERC report in an effort to ensure that elections run more efficiently than ever before. We will continue to evaluate all processes from the procurement of vendors, to election judge training, testing, staffing, personnel evaluation, Election Day procedures, and post-election procedures and testing.

In addition, the Office of the County Clerk and Recorder plans to continue with the next phase of building a robust, secure and accurate voting system for the citizens of Boulder County. The Hart BallotNow system was the first phase of a process that has been planned and budgeted for since 2003. We will work with Hart to make sure this system continues to accurately process our absentee and mail ballots in the future. The other phases of this plan will be in place by the 2006 General Election.

Phase 2: The Help America Vote Act requires that each polling location have a voting system that is accessible for voters with disabilities, “including nonvisual accessibility for the blind and visually impaired, in a manner that provides for the same opportunity for access and participation”. Currently, the only such accessible voting systems certified for use in the State of Colorado are Direct Record Electronic (DRE) machines. Until recently, it was believed that these DRE machines were the only viable solution in meeting the accessibility requirements of HAVA. Another system, produced by Election Systems & Software (ES&S), was recently certified by the National Association of State Election Directors (NASSED). This system works as a ballot marking device for paper ballots and may also meet the HAVA accessibility requirements. The Boulder County Clerk and Recorder will research this system to see if it is indeed compliant with HAVA, and if it will be certified by the State in time for use in the 2006 Primary Election. Before the 2006 Primary Election, Boulder County will have at least one DRE or other accessible voting system in every polling location to provide accessibility and convenience to voters with, or without, disabilities.

Phase 3: The County Clerk will also investigate the possibility of placing optical scan voting systems in each polling location so voters who wish to vote by paper ballot may do so with confidence that their vote is being counted right there at the polling place. These systems should increase the speed with which election results are counted on Election Day.

Phase 4: Finally, the County Clerk will also research the possible implementation of Vote Centers for use in the 2006 Election. Vote Centers are large polling locations similar to early voting sites. However, unlike early voting sites, these Vote Centers would be open on Election Day. A voter could go to any Vote Center throughout Boulder County and vote their ballot without having to go to a pre-assigned polling location. Vote Centers have been used successfully in Larimer County and the City and County of Denver, and the Boulder County Clerk’s Office will be watching very closely to determine their worth as several other counties use Vote Centers this year.

As we move forward to give the citizens of Boulder County the tools they need to be confident in the elections process, we also ask the Board of County Commissioners to give us the tools we need to instill that confidence and to conduct elections effectively, efficiently, and accurately. Clearly, the Elections Division of the County Clerk's office is understaffed. We need more staff to keep up with the changes in election law and growth of Boulder County's electorate. This is an urgent need of the County Clerk and Recorder's Office.

The 2004 General Election was categorized by the Election Review Committee as "the perfect storm". Numerous factors fell like dominoes, causing the counting of ballots to be delayed, and no one factor can be blamed entirely for the delay. However, in the midst of all of the different factors, problems, and the review that followed, it is most important to remember above all else that **the results of the election were accurate**. This singular fact has never been in dispute. The voters of Boulder County should have every confidence that although the counting of ballots took longer than expected, after all was said and done every vote cast by an eligible voter in the 2004 General Election was counted, and it was counted accurately.

In the future, we will continue to improve the way elections are conducted in Boulder County. We will learn from our past experience in order to improve. We will review and revise the way the elections office is operated. We will provide new voting technologies to the voters that will increase accessibility and decrease waiting times in the polling places. We will increase the speed with which ballots are counted and results are released without sacrificing accuracy and the integrity of the elections process. We will learn, we will teach, and we will grow.

APPENDIX

COUNTY CLERK AND RECORDER ELECTIONS DIVISION ACTION ITEMS

1. The County Clerk and Recorder (CCR) will be revising Logic and Accuracy Testing (LAT) procedures in accordance with the Colorado Revised Statutes to ensure testing is conducted well before Election Day. **(Page 10: Logic and Accuracy Testing)**
2. The CCR will make changes to the website and to staffing that will allow for quicker reporting of results on Election Night. **(Page 11: Tallying of the Votes)**
3. The CCR will recommend that Hart InterCivic change their software so that multiple page ballots will not have to be manually reordered prior to scanning. **(Page 12: Hart Software)**
4. The CCR will be conducting the 2005 Coordinated Election as a mail ballot election using the Hart system, as recommended by the Election Review Committee. **(Page 13: Recommendations With Respect to the Hart System)**
5. The CCR will continue to examine the best way to print ballots that are easy to read, easy to use, and easy to count. **(Page 14: Issue: Paper Size)**
6. The CCR will seek written assurances from any future print vendors that statutory deadlines can be met without sacrificing print quality or quality control. **(Page 15: Recommendations Regarding Printing Issues)**
7. The CCR will implement pre-election ballot testing randomly selecting and voting live ballots to further ensure the quality of printing. **(Page 15: Recommendations Regarding Printing Issues)**
8. The CCR will increase temporary elections staff leading up to the 2006 election in preparation for increases in voter registration applications. **(Page 16: Registration Records)**
9. Temporary election workers will be required to meet certain standardized and consistent qualifications and be assigned to predetermined shifts to increase efficiency. **(Page 16: Registration Records)**
10. The CCR will prepare for increasing participation in early voting.
 - a. New early voting locations will be assigned.
 - b. Additional early voting locations will be provided.
 - c. New voting systems will be implemented.**(Page 17: Early Voting)**
11. The CCR will revise election judge training procedures.
 - a. Training will begin earlier.
 - b. Training will be standardized and consistent.
 - c. Some interactive web-based training may be offered
 - d. An orientation and overview video will be produced to help ensure consistent information is being provided about election rules, laws and procedures.

- e. A skills checklist will be created that will be initialed and signed by both the instructor and judge that formally acknowledges that the judge is proficient in the skills listed.

(Page 17: Judges)

12. The CCR will continue to evaluate and revise all processes from the procurement of print vendors, to election judge training, testing, staffing, personnel evaluation, Election Day procedures, and post-election procedures and testing. **(Page 18: Election Night)**
13. The CCR will work with the Colorado Secretary of State to promulgate election rules that will establish guidelines for the conduct of the canvassing process. **(Page 21: Canvass Board)**
14. The CCR will execute Phase 2 of the process for creating a robust and secure voting system for Boulder County by placing at least one accessible voting system in each polling location in time for the 2006 elections in accordance with the Help America Vote Act. **(Page 25: Conclusion)**
15. The CCR will execute Phase 3 of the process for creating a robust and secure voting system for Boulder County by investigating the possibility of placing optical scan voting systems in each polling location in time for the 2006 elections. **(Page 25: Conclusion)**
16. The CCR will execute Phase 4 of the process for creating a robust and secure voting system for Boulder County by researching the possible implementation of Vote Centers for use in the 2006 elections. **(Page 25: Conclusion)**

NECESSARY ACTION ITEMS FROM THE BOARD OF COUNTY COMMISSIONERS

1. Funding/budget approval for an additional 3.5 FTEs **(Page 19: Current Staffing)**
 - a. These positions would perform the following duties: Assist in entering voter registration and change of address data, process absentee ballot requests, process provisional ballots, handle elections research, set up equipment, train and supervise election judges and in-office temporary employees, handle campaign finance filings and training, update and maintain the website, answer public/media inquiries, etc.
 - b. New staff would be cross-trained to handle multiple duties within the Elections Division.
 - c. Benefits would include:
 - i. Increased responsiveness to public through regular maintenance of the Website;
 - ii. Improvement in training of election judges;
 - iii. Improved accessibility by the public and judges on Election Day;
 - iv. Increased speed in processing voter registrations and absentee ballot requests;
 - v. Increased efficiency in the setup and tear-down of voting equipment before and after Election Day;
 - vi. Decreased need for temporary employees (Less repeat training);
 - vii. Lead employees who would effectively oversee various aspects of the election, such as:
 1. Provisional ballot processing;

2. Absentee ballot processing;
3. Signature verification.

2. Funding/budget approval for additional space (at least 60,000 square feet). (**Page 22: *Space for Counting***)

- a. This space would be used to:
 - i. Store additional election equipment such as handicapped-accessible voting systems and optical scan voting equipment;
 - ii. Set up ballot counting equipment and computers for testing;
 - iii. Keep equipment set up and usable year-round for on-going training purposes and for use in special elections or recounts;
 - iv. Provide security of the county voting and tallying equipment;
 - v. Reduce wear and tear on the equipment by not having to move it as often;
 - vi. Serve as a training facility for election judges and new staff on duties and the operation of equipment.