

**Colorado Secretary of State
Scott Gessler**



**City and County of Broomfield
Coordinated Election Report
November 27, 2012**

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City and County of Broomfield: Report on the 2013 Coordinated Election

Executive Summary

The City and County Clerk for Broomfield conducted a coordinated election on November 5, 2013. At that election, Broomfield voters narrowly approved one of the questions on the ballot, Ballot Question 300, a five-year ban on hydraulic fracturing, or “fracking.” There was a 17 vote margin of victory.¹ State law requires a mandatory recount if the difference between the votes “For” a question and the votes “Against” a question is less than or equal to one-half of one percent of the votes cast for prevailing choice.² In this instance, the 17-vote difference fell within that margin, triggering a mandatory recount.

Shortly after the election, the Broomfield Clerk and Recorder, Jim Candelarie (the “Clerk”), notified the Secretary of State’s office (the “Office”) of the mandatory recount and sought guidance on how to conduct the recount. During these conversations, it became clear to the Office that the Clerk may have committed several errors in conducting the election, including:

- Failing to correctly determine voter eligibility;
- Instituting an incomplete and faulty process in an attempt to rectify the failure to correctly determine voter eligibility;
- Illegally and improperly updating voters’ residential addresses;
- Illegally issuing ballots from drop-off locations away from the Clerk’s office;
- Improperly counting ballots cast by ineligible electors; and
- Improperly rejecting ballots cast by eligible electors.

The Secretary of State has a duty to supervise coordinated elections in Colorado.³ The Office sent staff to the Broomfield Elections office to investigate the conduct of the election.

This report outlines the Office’s concerns with the City and County of Broomfield Coordinated Election. As of the date of this report, and based on the information provided by the Clerk’s office, the Clerk’s errors in conducting the election cast doubt on the legality of numerous votes. The conclusions in this report are based on the most current information available. These conclusions may change if different information comes to light.

A. Election violations that directly affected the results of the election.

1. *The Clerk misapplied state and local residency requirements, which led to the rejection of valid votes and the acceptance of invalid votes.*

¹ Appendix A

² Sections 1-10.5.101 (1) and 1-10.5-103, C.R.S.

³ Section 1-1-107 (1) (a), C.R.S.

Despite guidance and training from the Secretary of State's office, the Clerk misapplied the differing residency requirements for statewide and local elections. To vote in statewide and federal races in Colorado, an elector must reside in the state for the 22 days immediately preceding the election.⁴ Statutes governing the conduct of municipal elections state that an elector must reside in the municipality for the 30 days immediately preceding the election. Further, other statutes set the in-district residency deadline for special district and school-board elections at 30 and 25 days, respectively.⁵

Because of the differing eligibility requirements in state law, the Clerk should have reviewed the list of eligible voters in Broomfield to determine when each voter moved to his or her current residence. This would have enabled the Broomfield Elections Division to send an appropriate ballot to each elector. For instance, a voter who moved to Colorado more than 22 days before Election Day but who did not live in the City and County of Broomfield for the 30 days before Election Day should have received a ballot containing only statewide questions. Conversely, a voter who lived in Broomfield for more than 30 days should have received a ballot containing statewide and local questions. Because of the differing residency requirements, the Secretary of State's office promulgated a rule requiring all county clerks to follow the various residency requirements in Colorado law.⁶ The Clerk had notice of this rule and the various residency statutes.

Despite the Clerk's actual notice, this investigation revealed that Broomfield election officials failed to determine electors' eligibility for the various races on the ballot before printing and mailing ballots. Essentially, the Clerk sent full ballots to all electors meeting the 22-day state residency requirement, without regard to the voters' eligibility in local races. As such, many electors received ballots with municipal or school board races for which they were not eligible to vote.

- 2. The Clerk tried to remedy the residency error by sending affirmations to voters who moved within 30 days of Election Day, but he failed to distinguish voters who moved within Broomfield city limits.*

At some point after the ballots were mailed but before Election Day, the Clerk realized the error. To remedy the initial mistake, Broomfield elections officials sent a separate mailing, which included a "Self-Affirmation of Elector" form, to all electors who moved during the 30 days preceding the election. The form instructed voters to return the completed affirmation by Election Day. The Clerk did not inform the Secretary of State of his error and did not seek guidance on the proper remedy before sending out the forms.

The self-created affirmation form contained checkboxes for a voter to confirm his or her eligibility:

⁴ Section 1-2-101(1)(b), C.R.S.

⁵ Sections 31-10-201(1)(b) and 22-31-101(1), C.R.S.

⁶ Election Rule 2.2.3

Place an X in the box indicating when you moved to your current address.

I moved on or before October 6, 2013. (All races and questions will count.)

OR

I moved between the dates of October 7, 2013 and October 11, 2013. (All statewide and school district races and questions will count.)

OR

I moved on or after October 12, 2013. (All statewide questions will count.)

While this form may have appropriately addressed voters who moved *into* Broomfield during the 30 days before the election, it failed to address voters who moved *within* Broomfield during those 30 days. Thus, the Clerk failed to accurately narrow the universe of voters who should receive the form. Voters who moved *within* the City and County of Broomfield were eligible to vote in both statewide and local races; their in-county move never affected their eligibility. As such, rather than remedying the residency problem, the Clerk exacerbated it by mailing an inadequate affirmation to an over-inclusive subset of voters.

Evidence shows Broomfield officials were aware of the problem it created by failing to require the elector to specify whether he or she had moved within the City and County of Broomfield: one elector noted on his form that, although he had recently moved, he moved *within* the City and County of Broomfield so he was checking the box that would prompt all races and questions to be counted “Per Jim C,” suggesting that the voter had contacted the Clerk and that the Clerk instructed him to mark his affirmation in such manner.⁷

3. *Despite knowing the affirmation’s deficiencies, the Clerk sent the same faulty affirmation a second time to voters who failed to return the first affirmation.*

Many electors returned the “Self-Affirmation of Elector” forms with their ballots. But at least 41 electors who voted in the election did not respond to the first “Self-Affirmation of Elector” mailing. Rather than fixing the error on the affirmation card, Broomfield elections officials sent a second “Self-Affirmation of Elector” to these 41 electors on November 6, 2013. The deadline to return this second card was extended to November 13, 2013. Instead of resending the same deficient affidavit, the Clerk should have sent a corrected affidavit to only those voters who moved into Broomfield. When the “Self-Affirmation of Elector” form arrived at the county, staff compared the voter’s signature on the card to both the signature on the mail-ballot envelope and the voter’s signature in the statewide voter registration database (“SCORE”). Election officials rejected one ballot because the signature on the affirmation card did not match the signature in SCORE.

⁷ Appendix B

This is problematic because there is no legal requirement that a voter return a separate affidavit to prove eligibility and certainly no requirement that the signatures be verified.

4. *After receiving the faulty affidavits, the Clerk failed to further research voter eligibility. Instead he counted only the statewide races for all the affected voters, effectively disenfranchising voters who had moved within the City and County of Broomfield.*

Despite knowing that the affirmations did not provide a viable option for voters who moved within the City and County of Broomfield, the Clerk ordered his election staff to duplicate the affected ballots and only count statewide races. This means the votes cast for statewide races were duplicated onto a new ballot and the rest of the ballot was left blank. The duplicated ballot was the ballot that was tabulated for the purposes of counting votes.

On November 20, 2013, the Secretary of State's office obtained a list of the voters to whom Broomfield sent the affirmation card and the disposition of each of those voters' ballots. According to the list, 30 electors affirmed that they had moved within the 30 days before the election. Election judges duplicated these 30 ballots and counted only statewide questions, regardless of whether these electors moved *into* or *within* Broomfield. Due in part to Broomfield's inadequate record keeping, as of the date of this report, it remains unclear how many voters were prohibited from voting in races in which they were eligible, including Ballot Question 300.

Furthermore, based on information provided by the Broomfield Clerk's office, an additional 10 electors cast ballots without returning the "Self-Affirmation of Elector" form. Instead of researching these 10 voters' eligibility, Broomfield staff again defaulted to the 22-day residency requirement, duplicated the ballots, and counted only the statewide questions. Also, in addition to these 10 ballots, Broomfield counted the ballots of another three electors who did not return the affirmation because Broomfield received and processed the ballots before sending the affirmation card.

5. *The Clerk improperly used forwarding addresses on returned mail ballots to update voter records.*

In accordance with state law, a county mails a ballot to the elector's address in the SCORE. If USPS has a different address for the elector, rather than forwarding the ballot to the new address, USPS returns the ballot to the county and provides the county with the updated address information. In each election, approximately 7-10 percent of all ballots mailed are returned to the clerks as undeliverable. State law requires counties to keep these returned ballots and mark these electors "inactive."⁸

Based on research using information in SCORE, it appears that Broomfield staff, instead of marking the elector "inactive," as required by law, updated the elector's residential address in

⁸ Section 1-7.5-108.5, C.R.S.

SCORE to the forwarding address provided by USPS. This triggered the generation of a new ballot, which was sent to the address provided by USPS. As such, the Clerk's actions effectively circumvented statutory prohibitions against forwarding mail ballots.⁹ The Secretary of State's office has not completed its review of all of the records where it appears the county automatically updated the voter's residential address, but has identified at least 100 records where this occurred.

This caused a new round of affidavits that went out to any voter that returned the forwarded ballot. Again, the affidavit is not required by law and did not contemplate moves within the county.

Broomfield did not follow Colorado law when it automatically updated voter addresses in this manner. Doing so ignores longstanding state law, Secretary of State Rules, and best practices and training. Because eligibility to vote and eligibility to run as a candidate in certain races hinges on the effective date of a voter's address, Broomfield may have unilaterally disqualified the affected individuals from voting in certain races or holding office.

6. *The Clerk improperly rejected ballots received by other counties by 7 p.m. on Election Day.*

The Clerk rejected legally cast ballots because the electors mistakenly delivered their ballots to a county other than Broomfield. State law requires an elector to return his or her ballot to the county clerk and recorder by 7 p.m. on Election Day.¹⁰ Despite this requirement, voters often mistakenly hand-deliver ballots to drop-off boxes outside their county of residence. To address this, the Secretary of State's policy manual provides specific guidance: "If you receive a ballot for another county, you should date stamp the ballot and forward it to the correct county. The correct county should treat the ballot as received as of the date the first county received it."¹¹

Though the other counties in this instance received the ballots and properly forwarded them to Broomfield, Broomfield refused to count the ballots unless the county clerk and recorder for the other county was a designated election official for a Broomfield ballot question or race. This meant that Broomfield only counted ballots delivered to Adams County – the one county with whom Broomfield had a cross-county race for which the other county clerk was the designated election official.

Thus Broomfield counted the ballots delivered to Adams County by 7 p.m. on Election Day. Broomfield did not count the other ballots because Broomfield did not share any races with those counties. On November 14, the Clerk told Secretary of State staff that there were four ballots that had been submitted to Adams County, one submitted to Eagle County, and six submitted to Boulder County. Then on November 26, the County Attorney provided Secretary of State staff different numbers, indicating that four ballots that were submitted to Adams County

⁹ See section 1-7.5-107(3)(a)(1), C.R.S.

¹⁰ Section 1-7.5-107(4)(b)(II), C.R.S.

¹¹ *Election Division Policy Manual*, Colorado Secretary of State's Office, 2012.

had been counted. One ballot submitted to Eagle County and ten ballots submitted to Boulder County had not been counted.

Broomfield's rationale regarding shared races and designated election officials has no basis in law or policy. The Secretary of State's office specifically instructed Broomfield to count these ballots during meetings with the Broomfield staff immediately following the election. Despite these explicit instructions, the Clerk devised his own arbitrary scheme for counting ballots mistakenly delivered to other counties, treating voters differently with no justification and effectively disenfranchising 11 voters.

B. Election violations that did not directly affect the result of the election.

1. *The Clerk failed to send the correct missing-signature letter and form to voters who did not sign their ballots.*

If a mail ballot is returned without a signature, election staff must contact the voter in writing by sending the approved missing signature letter and form.¹² To cure the missing signature, the voter must sign the affidavit and return it to the election office by mail, fax, e-mail, or in person. Instead, Broomfield sent a letter that wrongly required electors to go to the election office in order to sign the mail ballot return envelope.

Broomfield's failure to send electors the correct letter and form in turn raised questions among elections officials as to whether to count ballots with missing signatures. As of the date of this report, it appears that Broomfield properly counted these ballots.

2. *The Clerk improperly issued replacement mail ballots from designated drop-off locations.*

Under state law, drop-off locations are for the receipt of mail ballots.¹³ Counties must establish stand-alone drop-off locations for the purpose of allowing electors to deposit their completed mail ballots.¹⁴

Broomfield designated three drop-off locations to receive mail ballots. For some reason, and with no basis in law, Broomfield also issued replacement ballots from these drop-off locations. This directly violated state law and election rule, but there is no evidence that this practice affected the results of the election.

In an addendum to Broomfield's security plan, Broomfield stated that designated drop-off locations would possibly be converted to voter service and polling centers under contingency situations. But Broomfield never indicated that it converted drop-off locations into voter service

¹² Election Rule 7.6.

¹³ Section 1-1-104(9.8), C.R.S.

¹⁴ Section 1-5-102.9(4)(a), C.R.S.

and polling centers. Furthermore, the designated drop-off locations did not have real-time access to SCORE and did not provide every service required by law.¹⁵

Information in SCORE indicates that Broomfield issued 38 ballots from the Risen Savior Lutheran Church drop-off location, but information in Broomfield's canvass report indicates it issued 51 ballots from that location. Similarly, according to SCORE, Broomfield issued 33 ballots from the King Soopers drop-off location, but according to Broomfield's canvass report, it issued 30 ballots from that location.

As expected, the Clerk was unable to explain these discrepancies. Presumably, these discrepancies exist because Broomfield did not have real-time access to SCORE at the drop-off locations. Therefore, election judges had to call the election office to determine whether a replacement ballot could be issued.

The lack of real-time access to SCORE also led to nine electors receiving mail ballots without a proper label. Because the mail ballot return envelopes were not properly labeled, in some instances there was no way for an election judge to determine an elector's identity except for the signature. Election judges researched in SCORE to find the signature that matched the one on the ballot envelope. This is completely opposite of the process intended to verify the identity of voters by confirming the signature in SCORE matches the signature on the ballot envelope. Using only the signature to verify the identity removes any check from the verification process.

C. Conclusion

Based on the information received to date from Broomfield, it is clear that the Clerk's office committed several errors in conducting the election. The Secretary of State discovered these errors as it worked with Broomfield following the close of polls but before the tabulation of votes had finished, during which time the Secretary had an interest in seeing statewide questions properly counted. At the time of this report, tabulation has finished and the results of the election have been certified. Though the certification is complete the Secretary of State believes the people of Broomfield deserve an accurate accounting of the conduct of the election. Therefore, we have published our findings here.

¹⁵ Section 1-5-102.9(3), C.R.S., Section 1-5-102.9(3), C.R.S., and Election Rule 7.10.1.

Appendix A



E-MAILED

RECEIVED

CITY AND COUNTY OF BROOMFIELD

NOV 22 2013
DesCombes Dr. • Broomfield, CO 80020 • Phone: (303) 469-3301

ELECTIONS
SECRETARY OF STATE

STATE OF COLORADO)

) SS.

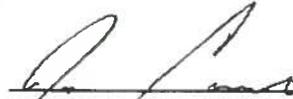
AMENDMENT TO THE ABSTRACT OF VOTES CAST

CITY AND COUNTY OF BROOMFIELD

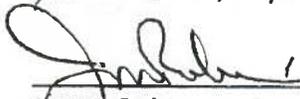
I, Jim Candelarie, the City and County Clerk for the City and County of Broomfield, do hereby amend the Official Abstract of Votes Cast attached herein for the 2013 Coordinated Election held in the City and County of Broomfield on the 5th of November, 2013.

The purpose of this amendment is to include the votes cast for Amy Speers, candidate for Adams 12 Five Star Schools District 4 Director.

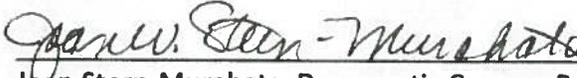
Witness our hands and seal this 22nd of November, 2013.



Jim Candelarie, City and County Clerk



Marty Robinson, Republican Canvass Board Member



Joan Stern-Murahata, Democratic Canvass Board Member

County Seal



City and County of Broomfield
 Official Abstract of Votes Cast (Amended)
 November 5, 2013
 Coordinated Election

Date: 11/22/13
 Time: 08:11:30
 Page: 1 of 4

Amended to include votes cast for Amy Speers,
 candidate for Adams 12 Five Star Schools District 4 Director

Registered Voters 34967 - Cards Cast 20916 59.82%

Mayoral		
Times Counted	Total	
Total Votes	20916/34967	59.8 %
Ahrens	11413	60.18%
McCloskey	7414	39.10%
Write-in Votes	137	0.72%

Ward 1		
Times Counted	Total	
Total Votes	3899/6682	58.4 %
Law-Evans	2181	63.03%
Jezierski	1261	36.45%
Write-in Votes	18	0.52%

Ward 2		
Times Counted	Total	
Total Votes	2995/6074	49.3 %
Tessier	1490	58.13%
Leone	1058	41.28%
Write-in Votes	15	0.59%

Ward 3		
Times Counted	Total	
Total Votes	4945/7633	64.8 %
Chervenak	1893	44.05%
Taylor	2378	55.34%
Write-in Votes	26	0.61%

Ward 4		
Times Counted	Total	
Total Votes	5440/8040	67.7 %
Stokes	3349	72.82%
Cannan	1223	26.59%
Write-in Votes	27	0.59%

Ward 5		
Times Counted	Total	
Total Votes	3637/6538	55.6 %
Derda	2747	96.25%
Write-in Votes	107	3.75%

City and County of Broomfield
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 Page: 2 of 4

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 candidate for Adams 12 Five Star Schools District 4 Director

Registered Voters 34967 - Cards Cast 20916 59.82%

Adams 12 Dist 3		Total	
Times Counted		10873/18099	60.1 %
Total Votes		8279	
Elliott		1062	12.83%
Christensen		2933	35.43%
Bastian		822	9.93%
Plomer		3462	41.82%

Adams 12 Dist 4		Total	
Times Counted		10873/18099	60.1 %
Total Votes		8099	
Figueroa		3110	38.40%
Speers		4989	61.60%

JeffCo Dist 1		Total	
Times Counted		658/1539	42.8 %
Total Votes		470	
Williams		281	59.79%
Aultman-Bettridge		189	40.21%

JeffCo Dist 2		Total	
Times Counted		658/1539	42.8 %
Total Votes		460	
Lamontagne		249	54.13%
Newkirk		211	45.87%

JeffCo Dist 5		Total	
Times Counted		658/1539	42.8 %
Total Votes		460	
Witt		260	56.52%
Van de Water		200	43.48%

Weld RE-8 Dist C		Total	
Times Counted		6/14	42.9 %
Total Votes		4	
Wilkin		2	50.00%
G. Montoya		2	50.00%

City and County of Broomfield
 Official Abstract of Votes Cast (Amended)
 November 5, 2013
 Coordinated Election

Date:11/22/13
 Time:08:11:30
 Page:3 of 4

Amended to include votes cast for Amy Speers,
 candidate for Adams 12 Five Star Schools District 4 Director

Registered Voters 34967 - Cards Cast 20916 59.82%

Weld RE-8 Dist D		Total	
Times Counted		6/14	42.9 %
Total Votes		1	
McCrum		1	100.00%

Weld RE-8 Dist E		Total	
Times Counted		6/14	42.9 %
Total Votes		4	
Simone		3	75.00%
V. Montoya		1	25.00%

Weld RE-8 Dist F		Total	
Times Counted		6/14	42.9 %
Total Votes		4	
Rhoda		1	25.00%
Cardenas		1	25.00%
Alvarado		2	50.00%

Weld RE-8 Dist G		Total	
Times Counted		6/14	42.9 %
Total Votes		4	
Schwickrath		3	75.00%
Perez		1	25.00%

Aims District C		Total	
Times Counted		6/14	42.9 %
Total Votes		3	
Peterson		2	66.67%
Beard		1	33.33%

Aims District D		Total	
Times Counted		6/14	42.9 %
Total Votes		1	
Wood		1	100.00%

School Funding Issue		Total	
Times Counted		20916/34967	59.8 %
Total Votes		20373	
YES		7925	38.90%
NO		12448	61.10%

City and County of Broomfield
 Official Abstract of Votes Cast (Amended)
 November 5, 2013
 Coordinated Election

Date: 11/22/13
 Time: 08:11:30
 Page: 4 of 4

Amended to include votes cast for Amy Speers,
 candidate for Adams 12 Five Star Schools District 4 Director

Registered Voters 34967 - Cards Cast 20916 59.82%

Marijuana Tax		Total	
Times Counted		20916/34967	59.8 %
Total Votes		20599	
YES		14518	70.48%
NO		6081	29.52%

2A Chickens		Total	
Times Counted		20916/34967	59.8 %
Total Votes		20525	
FOR		11062	53.90%
AGAINST		9463	46.10%

300 Fracking		Total	
Times Counted		20916/34967	59.8 %
Total Votes		20683	
YES		10350	50.04%
NO		10333	49.96%

Appendix B

Instructions: Complete the affirmation below, sign and date. Return to the Elections Division no later than 7:00 pm on Tuesday, November 5, 2013. You may return the affidavit either with your voted ballot, or in the enclosed postage paid envelope, or via email to electionsdivision@broomfield.org (scanned as a PDF attachment). If you have any questions, please call (303) 464-5857.

IMPORTANT: Whether you already mailed in or returned your ballot, you need to complete this affidavit so your ballot can properly be counted.

[REDACTED]
300 CENTER DR #G-323
SUPERIOR, CO 80027

RECEIVED

OCT 31 2013

CITY AND COUNTY OF
BROOMFIELD

VOTER ID: 200381946

SELF-AFFIRMATION OF ELECTOR

Based on current Rules adopted by the Colorado Secretary of State, the City and County of Broomfield Elections Division is required to establish your residency for Municipal, Special District, and School District Elections. Our records indicate that the date you moved to your current residence may fall within a timeframe for which different residency requirements apply to different races and questions. Please complete the affirmation form below:

When did you move to the above address?

Place an X in the box indicating when you moved to your current address.

I moved on or before October 6, 2013. (All races and questions will count.)

OR

I moved between the dates of October 7, 2013 and October 11, 2013. (All statewide and school district races and questions will count.)

OR

I moved on or after October 12, 2013. (All statewide questions will count.)

OR The above is my mailing address. I moved into Broomfield County in September of 2011.

The information I have provided on this form is true to the best of my knowledge and belief.

10/30/13

(Date)

[REDACTED]
(Elector's Signature)

I moved from 13630
Vista Varras Rd to
401 Interlocken Blvd
Apt 2325 on 10/25/11
(Broomfield)