

Colorado Supreme Court Decision Assures That Ballots Remain Public Records

Written by Reggie
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by **Bev Harris**, founder of BlackBoxVoting.org

The Colorado Supreme Court's decision has reaffirmed that election ballots are open public records. As a result, the public will be able to verify that untraceable votes are accurately interpreted and counted. This decision comes as election officials are preparing for the 2012 presidential election.

In September, 2011, the Colorado Appeals Court ruled that ballots are indeed open public records. The City filed requested that the Colorado Supreme Court reverse the decision. The Supreme Court has now decided not to hear the Koch v. Marks case. The Court chose to end the controversy in favor of election transparency.

"This is a welcome decision that reconfirms the vitality of the Colorado Open Records Act as a powerful tool that permits ordinary Coloradans to hold their state and local governments accountable," said Marks's attorney Robert A. McGuire of Denver.

"Colorado elections once again belong to the people. This decision puts to rest a long-standing controversy between the public and election officials across the state who improperly prohibit the public and press from verifying Colorado's elections. Just as Florida officials welcomed the press to analyze voted ballots in the 2000 Bush/Gore controversy, Colorado officials needed to accept similar transparency rights in our election battleground state," said Marilyn Marks, founder of Citizen Center, and plaintiff in the Aspen case that began in 2009.

"Colorado election officials have fought transparency, despite numerous pro-transparency court rulings and Secretary of State Gessler's guidance that anonymous, untraceable ballots are open public records. Voters' ballots must be untraceable, voted in private and counted in public, as the courts continue to affirm," Marks added.

The Court of Appeals awarded attorney's fees to Marks in an amount yet to be determined. Marks states that the fees incurred to date exceed \$100,000. "Each party has well over \$100,000 in resources invested in this litigation. The government must pay reasonable attorneys' fees when they improperly withhold records and the courts intervene. I trust that the City will want to put this controversy to rest and that we can come to a reasonable settlement without controversy that would be a further waste of public funds," Marks said.

The Court's decision is an important one for the work of Citizen Center, currently in litigation against the Secretary of State and six Colorado County clerks in Citizen Center v. Gessler, et al. The lawsuit seeks to vindicate Colorado voters' constitutional rights to a secret ballot. In recent

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years, many Colorado election officials have used computerized voting systems and record-keeping to compromise the voters' right to maintain private ballot choices and keep them secret from the prying eyes of government.

Secretary Gessler and the defendant clerks of Boulder, Chaffee, Eagle, Jefferson, Larimer, and Mesa claim that Colorado voters have no constitutional right to a secret ballot. These officials believe that Colorado election officials are not prohibited from knowing how individual voters' vote. "The Supreme Court of Colorado obviously disagrees with the outrageous position of these election officials," said Marilyn Marks. "We hope that the federal court will act in time to protect the 2012 presidential election from the clerks' improper continuing practices of creating traceable ballots."

Harvie Branscomb, election quality advocate who has worked with Marks since 2009 to seek the Aspen ballots for analysis of the Instant Runoff Voting process said, "The Supreme Court decision serves as a valuable reality check. Colorado election officials must now recognize that we ordinary citizens deserve the access we need to independently count our publicly owned and untraceable ballots."

Colorado Voter Group Trustee, Al Kolwicz, said, "The Court's decision strongly supports the concept that elections belong to the people, not to government bureaucrats."

Marks acknowledged the research, support and expertise provided by Bev Harris and BlackBoxVoting.org. as instrumental in helping achieve this victory. "The Colorado Project" of BlackBoxVoting.org also supports the efforts of Citizen Center through providing expertise and technical resources on matters of election transparency.

Citizen Center is a non-profit non-partisan organization based in Aspen, Colorado, with a focus on government transparency and election quality. For more information on The Citizen Center, visit:

<http://www.thecitizencenter.com>

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