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To: Aspen Election Commission
Kathryn Koch, Aspen City Clerk (via email: Kathryn.Koch@ci.aspen.co.us)
Christopher Bryan, Esq. (via email: cbryan@garfieldhecht.com)
Elizabeth Miliias (via email: elizabeth.miliias@comcast.net)

August 30, 2009

Re: Complaint

Dear Aspen Election Commissioners:

I am a full time resident of Aspen, Colorado, and I am a duly registered Aspen voter. I voted in the Aspen municipal election held on Tuesday, May 5, 2009.

I am writing to complain to the Aspen Election Commission that the City of Aspen violated my voting rights. Specifically, in that election I was deprived of my right under Colorado law to have a secret ballot.

I: Background

Marilyn Marks recently requested that the City of Aspen produced the ballot images from this election under the Colorado Open Records Act. The City of Aspen refused to do so, citing voter privacy concerns.

That refusal puzzled me, as I wondered what those privacy concerns might be. I wanted to make sure that Big Brother (or anyone else for that matter) could not tell how I voted. So I started investigating how safe was my vote, and this complaint is the result of my investigation.

I want to stress that I am making this complaint independently of Marilyn, or anyone else, and so this complaint is entirely separate from any complaints, document production requests, or legal actions that anyone else may choose to undertake.

I also want to stress that my sole motivation is the privacy of my ballot, and this complaint is not to be construed as a criticism of, or attack upon any elected official, candidate, government employee, entity or institution. And this is not about the outcome of the election.

Finally, I also want to stress that I am making this complaint solely as to my vote, and not as to the vote of any other citizen, as I may not have the standing to complain for others. That being said, I do believe that the logic underlying my complaint would also be applicable to a great number of Aspen voters.

II: Facts

The key fact underlying this complaint is that the City of Aspen never “shuffled”, or otherwise randomly distributed, the ballots. Rather, the City took the ballots, substantially in the same sequence in which they were placed into the ballot boxes by the voters, and then scanned them using two separate scanners. This scanning process created data “Strings” showing the voter rankings for each ballot.

The City then released the Strings to the public. The Strings were also not “shuffled” or otherwise randomly distributed; rather, they appear in the sequence in which the ballots were scanned. I obtained a copy of the Strings, and have attached that copy as **Exhibit A** to this complaint.

On April 22, 2009, I voted at the early voting station located at City Hall. Please find attached as **Exhibit B** to this complaint a copy of the page from the log maintained by the City at that voting station. The log shows that I was assigned ballot #282. After I voted I placed my ballot into the ballot box at that voting station. I was the only person using the early voting station at that time.

The log shows the names of all the people who voted around me. Likewise, I also obtained from a person who worked on one of the council campaigns the more complete log that is attached to this complaint as **Exhibit C**. That more complete log confirms that I was ballot #282, and lists all the names in ballot number order of the voters who used the early voting station through April 30, and those who requested a mail in ballot. The log includes ballots assigned to both mail-in and walk in voters.

This **Exhibit C** also shows in some detail when a given ballot was received in the clerk’s office, so it is possible to keep a running order of how ballots were placed into the early voting ballot box. So my ballot at the time I voted was nestled right between ballots 281 and 283. I also believe that my ballot remains in that position to this very day, but since the City of Aspen has custody of the ballots and ballot images and refuses to release them or the scanned images (which apparently are in the same order), it is impossible for me to confirm that that is the case.

I have corresponded with the Assistant City Attorney, James True, regarding this matter. He confirmed for me that the election judges or election operators (True Ballot) didn’t “shuffle” the ballots or otherwise randomly distribute them; so there would be lengthy stretches where the ballots were scanned in exact order voted. However, he did

state that the order of the Strings does not match up exactly with the order of names on the ballot logs because the decks of ballots were “cut” on at least two separate occasions (True Ballot used two scanning machines¹). Also, I had to consider that because I was an “early voter” my ballot was assigned from the absentee ballot log that was assigning the ballot numbers for both early walk-in voters and mail-in voters. So my ballot would not have been the 282nd ballot up from the bottom of the pile; rather, my ballot would be much lower in the pile, reflecting that my ballot was placed in the box with early voter ballots only (the mail-in ballots were placed in another box and scanned separately).

Be that as it may, I reviewed the section of the Strings that pertains to the results from the early voting ballots². I was able to find my string in a matter of moments, as my string was about exactly where it should have been (once I factored out the mail-in ballots) and my voting pattern was distinctive (at least to me).

Once I had located my string it became apparent to me that, if I were to use the log from my voting station, I could probably tell how the walk-in voters listed on the log nearby my name voted. Likewise, I had to conclude that if they were to use the same publicly available information and the same methodology they could probably tell how I voted. So all our votes were not secret.

The only way this would not be true would be if the “deck” of ballots happened to have been “cut” twice right at my ballot (i.e., once to separate my ballot from ballot #281 and once to separate it from ballot #283, both of whom were walk-in voters who voted directly before and after me). That is highly improbable given that around 800 voters used my ballot box. Rather, it is far more likely that my ballot was scanned directly in sequence together with the ballots of the walk-in voters around me as listed on the log from my voting station. I acknowledge that it is remotely possible that walk in voters did not vote in the exact order listed on the log, however, given lack of voting stations in the clerk’s office and the single voter processing there, the ability to identify order of voting is highly probable in most cases for voters in that polling place.

The Assistant City Attorney stated to me that the City does not believe that anyone can tell who voted for whom. I respectfully disagree. I believe that I could figure out how the people around me on the log voted with a high degree of probability. Likewise, they could also tell how I voted. The same analysis would be applicable to hundreds of other Aspen voters. This may be particularly true for the first early morning voters into the polling places on Election Day, when few people were simultaneously voting, and the ballots likely to be in the same sequence as assigned in the precinct poll book.

¹ Note that in the Strings attached hereto as Exhibit A some of the TIF files begin “00” and some begin “50”, and this may indicate which scanning machine was used.

² In the Strings attached as Exhibit A the “A” series TIF’s were from Precinct 1, the “B” series TIF’s were from Precinct 2, the “C” series TIF’s were from Precinct 3, the “D” series TIF’s were from Precinct 4, the “E” series TIF’s were from walk in ballots like mine, and the “F” series TIF’s were from mail in ballots. Can you find your string?

III: Conclusion

The City failed to randomly distribute (i) the ballots; or (ii) the Strings; or (iii) the names of the voters and the order in which they were logged in. And the City made public the resulting data strings and poll list order. So this was not a secret ballot election for all voters³.

IV: Prayer for Relief

The Aspen Election Commission, pursuant to the Aspen Municipal Code, is charged with oversight of Aspen's municipal elections. Accordingly, I hereby respectfully make demand that the Aspen Election Commission:

1. Conduct (or cause to be conducted) a prompt, thorough, and independent investigation of this matter, and report the Commission's findings to the public. Specifically, I would like the Commission to review the facts and determine whether Aspen held a secret ballot election as required by the Colorado Constitution.
2. Immediately obtain the ballots and CD of ballot images from the City, or otherwise arrange for their safekeeping. The City has stated that the City intends to destroy the ballots and ballot images, and a key fact of my complaint is that the ballots were kept (and are probably kept to this very day) in the same sequence in which they were voted in most cases. If the ballots were to be destroyed, or now "shuffled" or otherwise randomly distributed, then a key piece of evidence underlying this complaint would be destroyed.
3. Perform (or commission to have performed) comprehensive independent review of Aspen's election procedures. The review team must be independent of elected officials and should not be appointed by elected officials. The review team should have extensive experience in election systems and systems.
4. Institute "best practices" for future Aspen elections.
5. Grant such other relief and/or remedies as the Commission may determine to be in the public interest in order to preserve Aspen election integrity.

Very truly yours,



Millard J. Zimet

³ Big Brother knows how you voted.