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Plaintiff

BEFORE THE UTAH STATE RECORDS COMMITTEE

KATHY DOPP, an Individual,	:	
	:	
Plaintiff,	:	PLAINTIFF’S RESPONSE
	:	AND OPPOSITION TO
vs.	:	POINTS AND AUTHORITIES IN
DEFENDANT	:	HEARING BRIEF
	:	
	:	
	:	
	:	
SUMMIT COUNTY, a body politic of the State of Utah,	:	Case No.
	:	
Defendant.	:	
	:	

Plaintiff Kathy Dopp provides the following response and opposition to Defendant Summit County’s (the “County”) points and authorities presented in its hearing brief submitted to the Utah State Records Committee:

Summary

Kathy Dopp, the Plaintiff, is seeking records concerning elections and voter registration activities for the purpose of ensuring the accuracy and currency of official lists of eligible voters in Summit County and to evaluate the integrity of the electoral process. The release and disposition of all items requested by Dopp is governed by GRAMA, the National Voting Rights Act (NVRA) of 1993 (U.S. Code Title 42 Chapter 20 Section 1973gg-6(i))¹, and Utah Election Code, Title 20A.

Voter registration records; summary records and tallies; and *copies* of documents and electronic data that the Utah code defines as election returns fall under GRAMA and must be made publicly available. Original documents and electronic data that the Utah code defines as election returns and are used by election officials after the canvass period to maintain the accuracy of voter registration records fall under GRAMA and must be made publicly available. All election documents not classified as private or controlled fall under GRAMA and must be made publicly available.

Notably, the Utah State Record Committee itself has suggested that the primary classification of

¹ Public Law 103-31 and US Code Title 42.

election returns be “public”. (Approved December 1997.)

Utah Election Code 20A-2-308, which is based on the NVRA , is very specific that records relating to voter registration shall be preserved for at least two years and be made available for public inspection and photocopying.

The NVRA, which requires public access to the records requested, supercedes any law in the Utah Code that the defendant believes might be interpreted as denying access to the records the plaintiff has requested.

Definitions:

DRE = Direct Recording Electronic machine is a touch-screen voting machine using an electronic ballot to tally the votes.

TSx = Touch Screen x, a particular DRE voting machine produced by Diebold Election Systems.

Answers to Summit County’s “Statement of Facts”

1. **As to point #1**, Dopp requested all documents containing any of the information she was seeking, to wit:

“...a copy of *All* electronic or computerized documents (of any type including text, databases or spreadsheets in original format) containing”:

- a. “tallies or vote counts”; including
- b. “election results, broken down by DRE machine”;

and specifically:

- c. “a list of each DRE serial number, the total number of ballots cast on each DRE, and the precinct identifier for the precinct each DRE was used in”; and
- d. “a report on the number of votes and ballots cast for each race *on each DRE*. (emphasis and itemization added)

“In the event any or all of the above are not available in electronic form, then and only then are they requested in print form.... Also, please *provide all segregable portions of otherwise exempt material.*”

2. **As to point #2**, What the Clerk produced in reply to Dopp’s request for the four items listed above was incomplete and non-responsive. Follett did not provide Dopp with a list of DRE serial numbers and Follett did not provide Dopp with the precincts where each DRE was used, nor even how many DREs were used in specific precincts, nor the election results on each. Nor did Summit County Clerk Follett provide the tallies for the absentee ballots counted on each optical scan machine.

3. **As to point #3**, Dopp requested “Ballot sign-in sheets” and “Reconciliation sheets”. Although there is no such document as “Ballot sign-in sheets”, the information which Dopp is seeking is contained in two records: one is called an “Official Register” and the other is called a “Poll Book”. Although there is no such document as “Reconciliation Sheets”, the information which Dopp is seeking is contained in “DRE Reconciliation forms (DRE Recap Forms)” and in “Provisional Ballot/Optical Scan Reconciliation Forms”.
4. **As to point #4**, Dopp requested “Provisional Ballot Forms” Although there is no specific document called “Provisional Ballot Forms, the information which Dopp is seeking is contained in two records: one is the “Provisional Ballot/Optical Scan Reconciliation Forms” and the other is copies of the “Provisional Ballot Envelop Affirmation/Affidavit Voter Registration Forms” that were filled out by provisional voters on the provisional ballot envelopes.
5. **As to point #5**, Follett offered Dopp the opportunity to review the “Official Register”, which Follett terms the “Poll Book Register.” However, Follett did not mention the existence of the “Poll Book” in her response to Dopp and denied the remainder of Dopp’s GRAMA requests. None of Dopp’s GRAMA requests were for electronic data and none were required to be sealed according to U.S. and Utah code; and in fact all are required to be publicly available according to both Utah and federal codes, including GRAMA.
6. **As to point #6**, Dopp’s appeal was made to the County Clerk and not to Summit County Commissioners because Utah code requires the appeal to a GRAMA request to be made to the Chief Administrative Officer of the entity to which the original GRAMA request was made and Summit County has passed no GRAMA statute that would change that. Follett’s request that the County Commissioners be the Chief Administrative Officer for the County Clerk’s Office would be an abdication of her authority to another elected branch of government.
7. **As to point #7**, Dopp agrees that Follett denied Dopp’s GRAMA appeal.
8. **As to point # 8**, Dopp disagrees with *all* definitions provided by Summit County.
 - a. **“DRE Reconciliation Forms”**: There is no definition or description of “DRE Reconciliation Form” under Utah code. A sample DRE Reconciliation form entitled “DRE Recap Form” from poll worker instructions was obtained by Dopp after the election and is explained in the arguments section below.
 - b. **“Poll Books”** under Utah code a “Poll Book” is defined as “A record of the names of voters in the order that they appear to cast votes.” What Follett describes as a “Poll Book Register” is really the “Official Register”, the book which lists all registered voters and is signed by the voters when they come to a polling station prior to their vote being cast.
 - c. **“DRE Zero Tapes”, “DRE Vote Total Tapes”, and “Print Canister Log Forms”** are all paper records. None of them are electronic and none are ballots. Voters do not record their selections on any of these records. There is no definition or description of “DRE Zero Tapes”, “DRE Vote Total Tapes”, or “Print Canister Log Forms” under Utah code. Descriptions are included below in the arguments section.

d. “**Provisional Ballot/Optical Scan Reconciliation Forms**” are one type of Provisional Ballot Form. There is no definition or description of Provisional Ballot Forms in Utah code. The “Provisional Ballot/Optical Scan Reconciliation Forms” are summary records and are not ballots and voters do not record their selections on them. A description is included below in the arguments section.

“**Provisional Ballot Envelope Affirmation/Affidavit Voter Registration Forms**” are not ballots. Voters do not record their selections on them. According to Utah code, the Provisional Ballot Application Form is the application on the outside of the provisional ballot envelopment. A description is included below in the arguments section.

9. **As to point #9**, Dopp agrees that the County Clerk’s duties are governed by the Utah Election Code Title 20A. However, Utah code does not state that “election returns must be sealed after the election for 22 months unless surrendered to a Court for purposes of an Election Contest”. The duties of Utah’s county clerks are also governed by Utah’s GRAMA code and the National Voter Registration Act (NVRA) of 1993. One of the duties of the County Clerk is to ensure that the public has access to election records that the public is explicitly allowed access under Utah GRAMA code and the NVRA. The Clerk is restricted from destroying ballots and election returns for 22 months, and is also explicitly required to maintain all election records for 22 months. All records concerning maintaining the accuracy and currency of official lists of voters, including poll books, must be kept for 24 months and must be made publicly available according to both federal and Utah law. Utah code does not prohibit the county clerk from making copies of election returns. Utah’s county clerks instruct poll workers to make copies of election records and regularly access these election records and returns in the course of doing their duties.²

10. **As to point #10**, none of the records that Dopp requested are ballots because none of them contain any information on how any specific voter voted³ At no time did Dopp make a GRAMA request for any Direct Recording Electronic (DRE) voting devices, voter-verifiable paper roll ballot records, absentee ballots, all counted ballots, or spoiled ballots.

None of the items that Dopp requested are election returns that are exempt from GRAMA.

No where in Utah code does it state that election results or election records “must be sealed after the election for 22 months unless surrendered to a Court for purposes of an Election Contest”.

Utah code 20A-4-202(2) requires only that election returns be destroyed without opening or examining them “after that time” of 22 months. It is common practice for Poll Books and other records such as Absentee Ballot Affidavits to be regularly accessed by Utah election officials long after the

² In fact, under Title 20A-1-102 (27) it states that “For bond elections the board of canvassers shall be provided election results and all of the election returns.” 20A-4-202 (1)(a) “Upon receipt of the election returns from an election judge, the election officer shall (iv.) For bond elections, provide a copy of the election results to the board of canvassers of the local political subdivision that called the bond election.”

³ Utah’s constitution requires a secret ballot, so although it *should* not be possible to determine how a particular voter voted, Summit County uses Diebold DRE voting systems and absentee ballot handling procedures that permit election officials to tell how individual voters voted in a few cases during elections. However, to information and belief, it is not possible for persons who are not election officials to match ballots to voters after an election.

canvass period is over. Utah’s election officials make copies of other election returns and there is nothing in federal or Utah code that says that the records cannot be copied or accessed during the 22 month period, with the exception that if there is an election contest, the election records must be sealed. In fact, the statute 20A-4-202(2) says to “preserve all official election returns for at least 22 months after an election”. As to destroying the Poll Books after 22 months, Utah code is in conflict with and superceded by federal NVRA code that requires all records pertaining to voter registration to be kept and be available to the public for at least 24 months following an election and federal code never requires that any records or ballots to be destroyed.⁴

11. **As to point #11,** Utah election officials regularly make multiple copies of election returns and voter registration materials and access them after the canvass period. Utah’s Diebold voting system generates multiple copies of original ballots and we agree with Summit County that this “invite[s] fraud simply through their existence” which is why citizen oversight is so important. Each Diebold touch-screen machine (DRE) generates three original “ballot records”:

- A. a ballot record on the TSx memory card,
- B. a ballot record on the TSx hard drive, and
- C. a ballot record on the paper printout in the TSx Print Canister.

According to Diebold Election Systems, the TSx DRE voting machines create three records of ballots and on September 1, 2005, Lt. Governor Gary Herbert stated on KUTV that the TSx computers were built with “triple redundancy”.

Never before in Utah history, until Diebold TSx machines, has Utah ever had more than one original of each voter’s ballot.⁵ The electronic ballot on the TSx memory card that is used to tally the official vote counts is invisible to both voters and election officials; is easily tampered with by persons with the right skills and access⁶; does not necessarily match the other two TSx ballot records; and is recorded and counted by proprietary secret software programmed by private companies. The accuracy and integrity of Utah’s electronic election outcomes are not checked for accuracy by any current Utah election procedure.⁷ Citizen oversight is necessary to ensure the integrity of the electoral process.

⁴ Most states allow all ballots and election returns to be inspected at any time and ballots and election returns to be preserved by libraries and other institutions for research purposes and do not require the destruction of election returns or voter registration records.

⁵ Utah conducts no procedures to verify that all three original ballot records match, despite studies in Ohio showing that these three TSx ballot records often do not match and the fact that these three ballot boxes could be electronically made not to match. The Lt. Governor’s audit procedure is a sham that compares the paper roll record of votes to the Vote Totals Tape and never compares the paper roll record of votes to the electronic record of votes.

⁶ See What Do the Experts Say <http://utahcountvotes.org/docs/WhatdotheExpertsSay.pdf> or read recent reports that the National Institute of Standards and Technology submitted to the U.S. Election Assistance Commission’s Technical Guidelines Development Committee in December 2006.

⁷ The Lt. Governor’s audit procedure is a sham that only compares the paper roll record of votes to the paper Vote Totals Tape and never compares the paper roll record of votes to the electronic record of votes.

However citizen oversight of elections is not possible when election records are kept secret that are necessary to verify the integrity of manual audits and voter registration histories, and are required by GRAMA to be public.

Arguments

Outline of Arguments:

- I. Utah GRAMA code requires *summary data* to be publicly disclosed.
- II. Utah GRAMA code requires *voter registration records* necessary to keep voter histories current and accurate and ensure electoral integrity, to be publicly disclosed.
- III. Utah's code which *defines election returns and forms*.
- IV. Utah's *election code specifies the handling of election returns*.
- V. *For each item Dopp requested, the reasons given for Summit County's refusals are invalid and each item Dopp requested is required to be made publicly available pursuant to GRAMA.*

I. **Utah GRAMA code requires summary data to be publicly disclosed.**

Summary data must be publicly disclosed. GRAMA code 63-2-301(2)(k) states that summary data must be publicly disclosed.

II. **Utah GRAMA code requires voter registration records necessary to comply with the National Voting Rights Act to keep voter histories current and accurate; and to ensure the integrity of the electoral process, to be publicly disclosed.**

The National Voting Rights Act (NVRA) supercedes the Utah code and requires that the public be given access to all records necessary to keep voter registration records current and accurate.

Utah GRAMA code 63-2-301(2)(l) states that any voter registration records must be publicly disclosed and Utah code **20A-2-308⁸** (a) states that:

"Voter registration records" means all records concerning the implementation of programs and activities conducted for the purpose of ensuring that the official register is accurate and current.

⁸ This section of Utah code was a result of US Code passed in 1965 requiring ballots be kept for 22 months, although Utah code added a provision to destroy the ballots after 22 months that has never been required federally. According to US Code Title 42 Chapter 20 – The Elective Franchise all election records

§ 1974. Retention and preservation of records and papers by officers of elections; deposit with custodian; penalty for violation

Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, ... are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election,...

The release of some items Dopp requested are governed by the NVRA of 1993 which expressly states that

(1) Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters,

III. Utah's code 20A-1-102 (28) defines election returns as:

"Election returns" includes the pollbook, all affidavits of registration, the military and overseas absentee voter registration and voting certificates, one of the tally sheets, any unprocessed absentee ballots, all counted ballots, all excess ballots, all unused ballots, all spoiled ballots, the ballot disposition form, and the total votes cast form.

20A-5-404. Election forms -- Preparation and contents.

(1) (a) For each election, the election officer shall prepare, for each voting precinct, a:

- (i) ballot disposition form;
- (ii) total votes cast form;
- (iii) tally sheet form; and
- (iv) pollbook.

(b) For each election, the election officer shall:

- (i) provide a copy of each form to each of those precincts using paper ballots; and
- (ii) provide a copy of the ballot disposition form and a pollbook to each of those voting

precincts using an automated voting system.

(2) The election officer shall ensure that the ballot disposition form contains a space for the judges to identify:

- (a) the number of ballots voted;
- (b) the number of substitute ballots voted, if any;
- (c) the number of ballots delivered to the voters;
- (d) the number of spoiled ballots;
- (e) the number of registered voters listed in the official register;
- (f) the total number of voters voting according to the pollbook; and
- (g) the number of unused ballots.

(3) The election officer shall ensure that the total votes cast form contains:

- (a) the name of each candidate appearing on the ballot, the office for which the candidate is running, and a blank space for the election judges to record the number of votes that the candidate received;
- (b) for each office, blank spaces for the election judges to record the names of write-in candidates, if any, and a blank space for the election judges to record the number of votes that the write-in candidate received;
- (c) a heading identifying each ballot proposition and blank spaces for the election judges to record the number of votes for and against each proposition; and
- (d) a certification, in substantially the following form, to be signed by the judges when they have completed the total votes cast form:

The following items are *not* ballots because voters do not record their votes on them:

- A. Tally Sheets - are summary records and on information and belief no tally sheets or the functional equivalent of any tally sheets were used in Summit County elections and none were requested by Dopp.
- B. Ballot Disposition Forms - are summary records and on information and belief no ballot disposition forms or the functional equivalent of ballot disposition forms were used in Summit county and none were requested by Dopp

- C. Total Votes Cast Forms - are summary records. On information and belief no "Total Votes Cast Forms" or the functional equivalent of "Total Votes Cast Forms" were used in Summit County elections and no "Total Votes Cast Forms" were requested by Dopp.

The tally sheet and the total votes cast forms are used exclusively for paper ballot election systems under Utah code. According to Carr Printing who has produced Utah election forms since the 1800's and according to Pat Beckstead, Davis County's Election Administrator, the forms that Summit County used in both June primary and November general elections in 2006 are not functionally equivalent to the four forms described in Utah code above.

A "Total Votes Cast" form is described exactly in Utah code.

"TOTAL VOTES CAST

At an election held at ____ in ____ voting precinct in _____(name of entity holding the election) and State of Utah, on _____(month\day\year), the following named persons received the number of votes annexed to their respective names for the following described offices: Total number of votes cast were as follows:

Certified by us ____, ____, ____, Judges of Election."

(4) The election officer shall ensure that the tally sheet form contains:

(a) for each office, the names of the candidates for that office, and blank spaces to tally the votes that each candidate receives;

(b) for each office, blank spaces for the election judges to record the names of write-in candidates, if any, and a blank space for the election judges to tally the votes for each write-in candidate;

(c) for each ballot proposition, a heading identifying the ballot proposition and the words "Yes" and "No" or "For" and "Against" on separate lines with blank spaces after each of them for the election judges to tally the ballot proposition votes; and

(d) a certification, in substantially the following form, to be signed by the judges when they have completed the tally sheet form:

"Tally Sheet

We the undersigned election judges for voting precinct # _____, _____(entity holding the election) certify that this is a true and correct list of all persons voted for and ballot propositions voted on at the election held in that voting precinct on _____(date of election) and is a tally of the votes cast for each of those persons. Certified by us ____, ____, ____, Judges of Election."

(5) The election officer shall ensure that the pollbook:

(a) identifies the voting precinct number on its face; and

(b) contains:(i) a section to record persons voting on election day, with columns entitled "Ballot Number" and "Voter's Name";

(ii) another section in which to record absentee ballots;

(iii) a section in which to record voters who are challenged; and

(iv) a certification, in substantially the following form:

"We, the undersigned, judges of an election held at _____ voting precinct, in _____ County, state of Utah, on _____(month\day\year), having first been sworn according to law, certify that the information listed in this book is a true statement of the number and names of the persons voting in the voting precinct at the election, and that the total number of persons voting at the election was ____."

Judges of Election

IV. **Utah's election code describing how to handle ballots and election returns.**

20A-4-106. Paper ballots -- Sealing.

(3) As soon as the judges have counted all the votes and sealed the ballots they shall sign and certify the pollbooks.

(4) (a) The judges, before they adjourn, shall:

(i) enclose and seal the official register, the posting book, the pollbook, all affidavits of registration received by them, the ballot disposition form, the military and overseas absentee voter registration and voting certificates, one of the tally sheets, and any unprocessed absentee ballots in a strong envelope or pouch;

20A-4-201. Delivery of election returns.

(2) (b) That poll worker or those poll workers shall:

(i) deliver the unopened envelopes or pouches to the election officer or counting center immediately but no later than 24 hours after the polls close;

20A-4-202. Election officers -- Disposition of ballots.

(1) (a) Upon receipt of the election returns from an election judge, the election officer shall:

(i) ensure that the election judge has provided all of the ballots and election returns;

(ii) inspect the ballots and election returns to ensure that they are sealed;

(iii) (A) for paper ballots, deposit and lock the ballots and election returns in a safe and secure place;

20A-4-202. Election officers -- Disposition of ballots.

(2) Each election officer shall:

(a) preserve ballots for 22 months after the election or until the time has expired during which the ballots could be used in an election contest;

(b) package and seal a true copy of the ballot label used in each voting precinct;

(c) preserve all other official election returns for at least 22 months after an election; and

(d) after that time, destroy them without opening or examining them.

In practice, Utah election officials do not keep original election returns closed and sealed after polls close. Election officials regularly open and examine the poll books during and after the canvass period to update voter histories because, according to Utah and federal law, they are public voter registration records. Salt Lake County regularly uses Poll Books after the election canvass period to update voter registration records and makes Poll Books publicly available in their office. In fact, Utah code does not require that election returns be locked, sealed and secured, and in fact nowhere does Utah code require that the electronic ballot boxes on the DRE voting machines or on the DRE memory cards be locked up and sealed; and Utah election officials are not planning any procedure which would destroy these ballot records at the end of 22 months.

Utah Election officials regularly make copies of election records and in fact instruct poll workers to copy the Zero Tapes, the Vote Totals Tapes, and the DRE Recap Form, and Provisional Ballot Recap Forms. On information and belief every County Clerk in Utah makes copies of the Provisional Ballot Envelope Affirmation/Affidavit Voter Registration forms. The copies of the Provisional Ballot Envelope Affirmation/Affidavit Voter Registration forms are not election returns and are voter

registration records.

Utah code requires that *if* an election contest is declared, that *then* the ballots and election returns be sealed and unopened until the election contest is complete or a court orders them unsealed.

V. Each Item Requested Must Be Made Publicly Available Pursuant to GRAMA.

Dopp requested summary records and other items needed to maintain the accuracy and currency of voter histories and to evaluate the integrity of the electoral process.

A copy or sample of each item is in the Appendices. Follett claimed that giving out the blanks or samples of the DRE Reconciliation forms, or in fact, any blank or sample forms, is a security risk and refused to give to the public any blanks, samples, or mock-ups of the DRE Reconciliation forms that were used during the election.

A. Dopp requested copies of **“A list of vote counts for each election race or contest on each DRE voting machine along with their serial numbers and precincts in which each machine was used.”**

Follett refused to provide **“A list of vote counts for each election race or contest on each DRE voting machine along with their serial numbers and precincts in which each machine was used”**

The reasons given for Follett’s refusal were:

1. “...this document is the Reconciliation Sheet for each polling location. These documents are sealed and will not be opened without a court order. Reference UCA 20A-4-202, 2 & 4.”
2. “This information is contained in the paperwork that has been sealed and according to Utah State Law is to remain sealed until destruction 22 months after the election.
3. “DRE voting tapes, summaries of such... are clearly ballots and election returns under the Utah election code...”
4. “It is not your job or prerogative to conduct such audits under state law.”

The reasons given by Follett are not valid because:

1. Poll workers are instructed to make copies of the reconciliation forms during poll closing.
2. Vote counts are summary data records which are to be publicly available under GRAMA.
3. DRE serial numbers are public record and precinct identifiers are public record under GRAMA.
4. This summary vote count data for each DRE can be used by the public to evaluate the integrity of the electoral process by comparing vote counts used to create the official tallies with the vote counts obtained by manual inspection of the paper roll record of votes during manual audits.
5. This summary vote count data for each DRE can be used by the public to evaluate whether the official register is accurate and current because a list of vote counts for each DRE machine has the

total number of ballots cast and counted on each and is required to be publicly available under the NVRA and GRAMA.

6. Summary vote count data is not defined as election returns anywhere in Utah code.
7. Summary vote count data is not ballots because no voter records their selections on the summary vote counts.
8. Reconciliation sheets are not defined as election returns under Utah code.
9. Follett claimed that Dopp's request for the list of DRE serial numbers and total number of ballots cast and election results on each DRE with the precinct(s) that each DRE was used in, were contained in the paperwork that has been sealed. This was an incomplete response because several other records exist containing this information. This information is contained in records such as the TSx audit logs, printed tapes for each TSx machine, TSx hard drives, the Diebold's Global Election Management Server (GEMS) server, and possibly on a backup disk, any intermediate machines used at the county office to upload TSx memory cards, and the copy made of Vote Total summary tapes for each TSx in each polling location. According to Summit County technical staff, it is possible to print out this summary vote count data in a standard Diebold report form, using GEMS central server. Poll workers are instructed to print a second copy of each DRE vote totals tape which contains all of this information requested by Dopp.⁹

The “A list of vote counts for each election race or contest on each DRE voting machine along with their serial numbers and precincts in which each machine was used” are public records and are to be made available pursuant to GRAMA.

B. Dopp requested copies of “DRE zero tapes”

“DRE zero tapes” are a public election record purporting to show that the DRE ballot boxes are empty. They are approximately 2” wide paper tapes printed by each DRE machine prior to poll opening to allegedly verify that the electronic ballot boxes are empty. It is a printed tape that indicates that zero votes have been cast on a DRE TSx at the beginning of an election. Two copies of DRE zero tapes are printed on 2” wide paper tape during poll opening.

Follett refused to provide copies of the “DRE zero tapes”

⁹ The refusal to publicly release a report of DRE machine counts means that it is impossible to verify the integrity of any manual audits of DRE vote counts by comparing them with the manual counts of paper roll ballots or to see if voters have been disenfranchised or if there were more ballots cast than number of voters listed in the Poll Books. In fact, in the June Summit County primary election, it was reported to Dopp by a poll worker in Woodland that there were five more votes than the total number of voters who signed the Official Register. The TSx vote total tapes contain the number of ballots cast on each DRE machine and the number of ballots not cast (blank voted). Together, the number of ballots cast and not cast for each TSx should add up to the total number of voters who used that machine and the total ballots cast and not cast of all vote total tapes for each polling location should equal the total number of voters who signed in, which allows one to determine whether every voter was given credit for voting and whether or not voters were disenfranchised by not having their ballots counted.

The reasons given for Follett’s refusal to provide copies of the “DRE zero tapes” were:

1. “... these documents are sealed according to UCA 20A-4-202, 2 & 4 and will not be released without a court order.”
2. “It is not your job or prerogative to conduct such audits under state law.”
3. The purpose behind the sealing of this data is to protect the integrity of the election process by having one and only one copy of the ballots and election returns.

The reasons given by Follett are not valid because:

1. Copies are made of DRE zero tapes during poll opening. Summit County instructs poll-workers to make two copies, one is to be torn off and another rolls up into the Print Canister.
2. DRE zero tapes are not the functional equivalent of any forms listed in Utah code, are not mentioned in Utah code, and are not defined as election returns under Utah code.
3. DRE tapes are not required to be sealed under Utah code.
4. “DRE Zero Tapes” are not “electronic balloting data” and in fact are not ballots and are not even electronic. DRE zero tapes are printed on 2” wide paper tape.
5. DRE machines can be used to print as many copies as desired of the zero tapes.

The “DRE zero tapes” are public records and are to be made available pursuant to GRAMA.

C. Dopp requested copies of “DRE vote total tapes”

A “DRE vote total tapes” is a summary record of vote counts, printed on 2” wide paper tape, by each DRE voting machine. There is no definition or description of ‘DRE Vote Total Tapes’ under Utah code. They are approximately 2” wide paper tape records, which are summary data records of the total number of ballots cast and votes counted on each DRE machine for each race or election contest. This tape is merely a printout of the votes counted on each DRE machine. It is a summary data record.

Follett refused to provide copies of the “DRE vote total tapes”

The reasons given for Follett’s refusal to provide copies were:

1. “... these documents are sealed according to UCA 20A-4-202, 2 & 4 and will not be released without a court order.”
2. “DRE voting tapes, summaries of such... are clearly ballots and election returns under the Utah election code...”
3. “It is not your job or prerogative to conduct such audits under state law.”
4. The purpose behind the sealing of this data is to protect the integrity of the election process by having one and only one copy of the ballots and election returns.

The reasons given by Follett are not valid because:

1. Summit County instructs poll workers in writing to make copies of DRE vote totals tapes during

poll closing. Two copies of the DRE Vote Total Tapes are printed for each DRE TSx machine during poll closing. One copy is rolled up with the paper record of ballots and is sealed with the voter verifiable paper record of ballots. A copy is used during the canvassing period by election officials for reconciliation purposes. A copy is used during the manual audits by election officials. In California, Florida, and other states, DRE vote total tapes and DRE zero tapes are made available publicly and a copy is publicly posted at each polling location during poll closing.

2. DRE vote total tapes are summary records, and are not the same as the voter verifiable paper record of ballots.
3. DRE Vote Total Tapes have data on them that can be used to see if the official register and voter registration records are accurate and current. (The Vote Totals Tape for each DRE machine has the total number of ballots cast and the total number of blank voted where a “blank voted” means a ballot in which no voter selection was made in any race, question, or issue.) This is part of the process of creating voter history information, and is can be used to mathematically verify that the voter history file is accurate and current and determine if voters may have been disenfranchised. The DRE vote total tapes have the total number of people who voted which can be used to check that everyone was given credit. Hence DRE Vote Total Tapes are subject to the federal NVRA and Utah GRAMA law.
4. The DRE vote total tape is not the functional equivalent of any forms listed under the definition of election returns, is not mentioned in Utah code, and is not defined as election returns under Utah code. DRE vote total tapes are not required to be sealed by Utah code.
5. DRE Vote Total Tapes are not “electronic balloting data” and in fact are not ballots and are not electronic, but paper.
6. DRE Vote Total Tapes can be used by the public to evaluate the integrity of the electoral process by comparison with the manual audits and the electronic tallies used on the GEMS server.
7. DRE machines are capable of printing as many copies of the DRE vote totals tapes as desired.

The “DRE vote total tapes” are public records and are to be made available pursuant to GRAMA.

D. Dopp requested copies of “Printer Canister Log Forms”

A “Printer Canister Log Forms” is (The Print Canister is the cylindrical plastic housing unit that contains the continuous, uncut paper roll on which is printed a zero tape, then, throughout Election Day, the ballots cast, in the order they are cast, and lastly a copy of the Vote Totals Tape in a continuous uncut roll.) The Print Canister Log is a paper form that asks for the date, voting precinct, polling location, total number of paper canisters used for the polling location, total number of paper canisters unused for the

polling location, a line for the Poll Manager and Election Clerk to sign, and, for each DRE TSx, the machine serial number, canister seal numbers for as many canisters used on the machine up to three per machine, and the total number of canisters per machine. There is no definition or description of ‘Print Canister Log Form’ under Utah code.

Follett refused to provide copies of the “Printer Canister Log Forms”.

The reason given for Follett’s refusal to provide copies was

1. “... these documents are sealed according to UCA 20A-4-202, 2 & 4 and will not be released without a court order.”

The reasons given by Follett are not valid because:

1. Printer Canister Log Forms are not defined as election returns under Utah code.
2. Print Canister Log Forms are not “electronic balloting data” and in fact are not even electronic. They are paper records.

The “Printer Canister Log Forms” are public records and are to be made available pursuant to GRAMA.

E. Dopp requested copies of “DRE reconciliation form (DRE recap form)”

A “DRE reconciliation form (DRE recap form)” is an 8.5”x11” paper form containing summary data. These 8.5”x11” forms are actually labeled “DRE Recap Forms”. The copies of “DRE Recap Forms” Dopp obtained provide spaces for:

- A. Date
- B. Voting Precinct¹⁰
- C. Polling Location
- D. Memory Card Pouch Seal Number
- E. Machine Serial #s
- F. Before Polls Open Machine Seal#
- G. A space to confirm the Before Polls Open Machine Serial #
- H. Memory Card Door Seal #
- I. Total Votes Cast on Each Machine
- J. Memory Card Door Seal #
- K. After Polls Close Seal Number #
- L. A space to confirm the After Polls Close Seal Number Prior to Canvass
- M. Total Votes Cast on All Machines
- N. Total Number of Voters listed in the Official Register
- O. Total Number of Persons Voting on all the machines
- P. Number of People Recorded in the Regular Section of the Poll Book (not including provisional or spoiled ballots)
- Q. A space to record if total number of persons voting matches Number of People Recorded in the Regular Section of the Poll Book, and if not, what the discrepancy is.

¹⁰ The “DRE Reconciliation” forms do not necessarily provide the voting precinct because, although the copy of a DRE Recap form that we obtained from Farmington Municipal asks for “Precinct” what is filled in instead, is the polling location ID number.

- R. Judges Certification (the printed name and signature of each election judge)
- S. Total number of PC Memory Cards Counted at the counting center
- T. The name of the person who counted the memory cards at the counting center

Follett refused to provide copies of the “DRE reconciliation form (DRE recap form)”

The reasons given for Follett’s refusal to provide copies were:

1. “as I have explained in previous conversations and GRAMA request denials, there sheets are in a sealed container and will not be opened without a court order. Reference UCA 20A-4-202, 2 & 4.
2. The purpose behind the sealing of this data is to protect the integrity of the election process by having one and only one copy of the ballots and election returns.

The reasons given by Follett are not valid because:

1. In Sue Follett’s affidavit in point #8, Follett states that two copies are made of DRE reconciliation forms.
2. Summit County instructs all poll workers to make two copies of DRE reconciliation (or recap) forms during poll closing. Summit County’s instructions are:
 - COMPLETE 2 COPIES*
 - *Place 1 copy in the zipper pouch with the PC Memory Cards*
 - *Place 1 copy in the appropriate pocket of the precinct binder*
3. DRE reconciliation forms (DRE recap forms) are not the functional equivalent of any forms listed under the definition of election returns, it is not mentioned in Utah code, and is not defined as election returns under Utah code.
4. It is not required to be sealed under Utah code.

The “DRE reconciliation form (DRE recap form)” are public records and are to be made available pursuant to GRAMA.

F. Dopp requested copies of “Poll Books”

A “**Poll Books**” is defined above, as the list of voters in order that voters appear at the polls.

Follett refused to provide copies of the “**Poll Books**”. Follett responded by saying that the “Poll Book Register” (she meant “Official Register”) would be available for viewing and never mentioned that there was a “Poll Book” or mentioned that there were other reconciliation forms used.

The reasons given for Follett’s refusal were:

1. “If an election contest is begun within 12 months, the election officer shall: (i) keep the ballots and election returns unopened....”
2. “Each election officer shall: (c) preserve all other official election returns for at least 22 months

after an election, and (d) after that time, destroy them without opening or examining them.

The reasons given by Follett are not valid because:

1. **Poll Books** are voter registration records and are subject to the federal NVRA and Utah's GRAMA laws. Utah code specifically mentions the Official Register as a Voter Registration Record that must be made public, under the Utah code that mentions the NVRA. Just because Utah code also did not specifically mention the Poll Book does not mean that it is also not a voter registration record that must be made publicly available. The Poll Book includes much of the same information and Summit County's new poll books are named the "Optical Scan Official Register and Poll Book". The poll books fall under federal NVRA statutes and although Utah categorizes them as election returns, copies must be made publicly available according to federal NVRA code, and this falls under GRAMA.
2. Utah election officials regularly access the poll books after the canvass period. In fact, Salt Lake County has allowed the public to view the original poll books from the November 2006 election during December, long after the canvass period was over.
3. Poll Books - are *not* ballots because voters do not record their votes on them.
4. Poll books are only required to be kept "unopened" according to Utah statute if there is an election contest. There was no election contest when Dopp requested to see the poll books. When there is not an election contest, Utah election code simply requires that poll books be preserved and the NVRA which supercedes Utah's code requires that poll books are publicly available and preserved for at least 24 months.
5. The Utah State Record Committee has suggested that the primary classification of election returns be "public". Approved December 1997.

The "**Poll Books**" are public records and are to be made available pursuant to GRAMA.

G. Dopp requested copies of "**Provisional Ballot Envelope Affirmation/Affidavit Voter Registration Form**"

A "**Provisional Ballot Envelope Affirmation/Affidavit Voter Registration Form**" is According to Utah code, the Provisional Ballot Application Form is the application on the outside of the provisional ballot envelopment. The provisional ballot envelope is an envelope printed in the form required by Section 20-A-6-105 that is used to identify provisional ballots and to provide information to verify a person's legal right to vote. The provisional ballot envelope is considered a voter registration form under section 20A-4-107.

Follett refused to provide copies of the "**Provisional Ballot Envelope Affirmation/Affidavit Voter Registration Form**"

The reasons given for Follett's refusal to provide copies were

1. "... these documents are sealed according to UCA 20A-4-202, 2 & 4 and will not be released without a court order."
2. Summit County claims that the provisional ballot envelope registration form is a ballot.
3. "It is not your job or prerogative to conduct such audits under state law."
4. All affidavits of registration are defined as election returns under Utah code.
5. The purpose behind the sealing of this data is to protect the integrity of the election process by having one and only one copy of the ballots and election returns.

The reasons given by Follett are not valid because:

1. Utah election officials regularly make copies of all the provisional ballot envelope affirmation/affidavit voter registration forms and access them after the canvass period. All provisional ballot forms are routinely copied by all Utah election officials during the canvass period to be used by the election office for various purposes throughout the year.
2. Under Utah code 20A-4-107(4)(a) the provisional ballot envelop affirmation/affidavit form is defined as a voter registration record and is therefore subject to the federal NVRA and Utah's GRAMA laws.
3. It is not a ballot because voters do not record their selections on it.
4. The provisional ballot application is not a ballot and is not a "privacy envelope".

The "**Provisional Ballot Envelope Affirmation/Affidavit Voter Registration Form**" are public records and are to be made available pursuant to GRAMA.

H. Dopp requested copies of “Provisional Ballot/Optical Scan Reconciliation Form”

A “**Provisional Ballot/Optical Scan Reconciliation Form**” is an 8.5”x11” paper summary data record containing:

- A. polling location,
- B. date,
- C. the seal number for the provisional ballot bag,
- D. the total number of voted optical scan ballots in sealed envelopes,
- E. total number of names recorded in the optical scan ballot poll and register book,
- F. total number of spoiled optical scan ballots,
- G. total number of unused optical scan ballots,
- H. total number optical scan ballots cast,
- I. total number optical scan ballots,
- J. total number of optical scan ballots received by the county clerk,
- K. poll worker provisional ballot certification where the poll workers print and sign their names.

Follett refused to provide copies of the “Provisional Ballot/Optical Scan Reconciliation Form”

The reason(s) given for Follett’s refusal to provide copies were:

1. “... these documents are sealed according to UCA 20A-4-202, 2 & 4 and will not be released without a court order.”
2. “.. as I have explained in previous conversations and GRAMS request denials, these sheets ae in a sealed container and will not be opened without a court order. Reference UCA 20A-4-202,2 &4.”
3. The purpose behind the sealing of this data is to protect the integrity of the election process by having one and only one copy of the ballots and election returns.

The reasons given by Follett are not valid because:

1. Summit County instructs its poll workers to make two copies of the Provisional Ballot/Optical Scan Reconciliation Forms. Its instructions are:
COMPLETE 2 COPIES:
 - *1st Copy – place face up in the pocket of the orange Provisional Ballot pouch.*
 - *2nd Copy – leave in the binder pocket*
2. This is an 8.5”x11” paper summary data record and subject to GRAMA’s requirement to make summary data records public.
3. The **Provisional Ballot/Optical Scan Reconciliation Form** pertains to ensuring that voter registration records are accurate and current. Hence it is subject to the federal NVRA and Utah’s GRAMA laws and must be made publicly available.
4. The **Provisional Ballot/Optical Scan Reconciliation Form** is not the functional equivalent of any forms listed under the definition of election returns and is not defined as an election return under Utah code. It is not required to be sealed under any Utah code.

The “Provisional Ballot/Optical Scan Reconciliation Form” are public records and are to be made available pursuant to GRAMA.

CONCLUSION

In sum, all of the items that Dopp requested fall under GRAMA because, as mentioned above:

- a. Voter registration records must be made public under both NVRA and Utah code, and
- b. Election officials regularly make copies of and access these records themselves after the canvass period, and
- c. Summary data records must be made public under GRAMA, and
- d. Utah code does not specifically prohibit any of these records from being made publicly available.
- e. The only records that Dopp requested that are defined as election returns under Utah code are the Poll Books and the federal NVRA and Utah GRAMA code define these as voter registration materials and requires that they be made publicly available,
- f. None of the records that Dopp requested are ballots because voters do not record their votes on any of these materials, and none are secrecy envelopes. In fact Summit County, under Follet’s administration, did not use any secrecy envelopes for absentee ballots¹¹.
- g. The Utah State Record Committee has suggested that the primary classification of election returns be “public”. Approved December 1997.

Summit County Clerk has other documents/records that Dopp requested that fall under GRAMA which contain the information that Dopp is seeking in reconciliation forms, in GEMS reports or log files, etc.

Follett steers the public to specific documents most of which she then claims are not public record and is not letting citizens know what documents and information the clerk’s office produces. In Follett’s letter of October 6, 2006 she states: “While I respect your motives to ensure appropriate audits of the DRE voting system, it is not your job or prerogative to conduct such audits under state law. That is the mission and duty of the Lt. Governor who serves as the state’s election officer.” To the contrary, Utah election code 20A-2-308 which governs public access is based on the NVRA of 1993 and requires the public release all of the documents and information that Dopp requested.

The disclosure of all the items, in one format or another that Dopp has requested, are governed by the GRAMA law and the information they contain should be made publicly available. The GRAMA code Title 63-2-301(2) is very specific that all voter registration records and summary data must be made public. The purposes of the NVRA include *protecting the integrity of the electoral*

¹¹ This sloppy election practice of not using secrecy envelopes permits the person opening the ballots and verifying the voters to know how absentee ballot votes cast their votes and violates Utah’s constitutional requirement for a secret ballot.

*process; and ensuring that accurate and current voter registration rolls are maintained.*¹² In fact, the mission of Dopp’s public interest organization is to protect the integrity of the electoral process.

APPENDIX A: Fundamental Problems with Keeping Election Records Secret

The problems with keeping election records secret from the public and then destroying all election records, including Poll Books, after 22 months in violation of the National Voting Rights Act, include:

1. Hides possible evidence of miscount or tampering that has disenfranchised voters from possible machine malfunction, programming error, or electronic error.
2. Prevents the public from verifying the integrity of the electoral process and from verifying the integrity of Utah’s manual vote count audits by keeping the summary records of electronic vote counts secret because there is no reason to trust that the three separate Diebold ballot box vote counts match each other¹³. Refusing to release the public records of our vote counts prevents the public from verifying that the number of ballots cast and counted is equal to the number of voters who signed in.
3. Hides possible evidence of ballot programming errors. Ballot programming errors were discovered in three Utah counties in the November 2006 election and in the Farmington 2005 municipal election. Ballot programming errors disenfranchised voters in some precincts by giving them the wrong ballots, preventing voters from voting on all races and contests that they were entitled to vote on. Ballot programming errors may have occurred state-wide but the election records that would allow for this determination are being withheld.
4. Hides possible evidence of Diebold’s fraudulent sale of used, rejected voting machines for the price of new voting machines to Utah by keeping original serial numbers secret.
5. Hides possible evidence of inaccuracies of voter registration records.
6. Hides possible evidence of phantom votes – i.e. cases where there are more votes than the number of voters. This would be an indication of vote fraud or failure to accurately record all voters who voted. In fact, it was reported to Dopp by a poll worker that there were 5 more votes than the total number of voters who signed the Official Register in a Summit County precinct in June, 2006.

¹² Utah code 20A-2-300.6(2) says that “The Lt. Governor shall (a) oversee all of Utah’s: (i.) voter registration activities; (ii) other responsibilities established by: A. Public Law 103-31, The National Voter Registration Act of 1993...” According to federal code Title 42, Chapter 20, *any officer of election or custodian who willfully fails to comply with this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both.*

¹³ In a recent independent audit of Cuyahoga County, Ohio’s June 2006 primary election, it was found that in 10% of the votes counted and in roughly 70% of the voting centers, the paper roll record of ballots when counted did not match the electronic vote counts used to tally votes. See Election Science Institute and Election Data Services report.

APPENDIX B: List of Attached Public Election Records

1. DRE Reconciliation Form (DRE Recap Form) – 2 pgs one blank and one made public from a prior Utah election
2. Poll Books
 - a. Poll book – Electronic Ballot Voters (cover and 1st page)
 - b. Poll book – Optical Scan Ballot/Official Register and Poll Book (cover, instructions, & 2 page form)
 - c. Poll book – records made publicly available from a former Utah election and made publicly available (4 pages)
3. Official Register – (cover & last page w/ totals)
4. DRE Zero Tape – records made publicly available from a former Utah election
5. DRE Vote Total Tape – records that were made publicly available from a former Utah election
6. Printer Canister Log Form – 2 pgs – one blank and one made public from a former Utah election
7. Sample List of DRE Serial Numbers with Precinct Assignments and Vote Counts – see Appendix C
8. Provisional Ballot/Optical Scan Reconciliation Form -2 pgs – one blank and one made publicly available from a former Utah election
9. Provisional Ballot Envelope Affirmation/Affidavit Voter Registration Form – 2 pgs – one blank and one sample for training election judges
10. Total Votes Cast Form (not in current use)
11. Tally Sheet (not in current use) – 2 pgs – cover & one page

APPENDIX C: Sample List of DRE Serial Numbers with Precinct Assignments and Vote Count

Sample List of DRE Machine Serial Numbers with Precinct IDs and Vote Counts - be Committed Prior to Audit to Verify Integrity of Manual Audits											Data Must
Machine Serial Number	Precinct ID	Race ID	Total Ballots Cast	Votes for Candidate e/Issue A	Votes for Candidate e/Issue B	Votes for Candidate e/Issue C	Votes FOR Issue A	Votes AGAINST Issue A	Calculated Total Votes Cast	Calculated UnderVotes	Calculated Phantom Votes
GH12223468	1	governor	25	15	10	0			25	0	0
GH12223468	2	governor	56	19	30	3			52	4	0
AH22589654	4	governor	100	55	45	5			105	0	5
FJ456125648	11	governor	115	65	40	10			115	0	0
JK456123581	12	governor	85	35	32	15			82	3	0
JK120369520	5	governor	26	7	10	10			27	0	1
JK120369520	6	governor	45	20	25				45	0	0
JK120369520	7	governor	85	35	30	18			83	2	0
KD555647895	8	governor	63	30	32	1			63	0	0
KD123456789	10	governor	15	6	7	3			16	0	1
AH22589653	9	governor	45	18	18	8			44	1	0
FJ456125649	13	governor	102	23	35	42			100	2	0
FJ456125649	14	governor	103	38	41	20			99	4	0
BK456963852	15	governor	55	23	25	10			58	0	3
BK456963855	22	governor	135	63	57	15			135	0	0
SC654654654	21	governor	129	55	64	10			129	0	0
NC159489265	19	governor	0	0	0	0			0	0	0
NC150123620	23	governor	55	22	23	7			52	3	0
NM002356894	16	governor	99	35	45	20			100	0	1
NP231102258	17	governor	118	48	49	20			117	1	0
Total			1456	612	618	217			1447	20	11

APPENDIX D: Newspaper Articles

1. New York Times, May 12, 2006 by Monica Davey “High-Tech Voting Machines Stir Debate Over Security”
2. Billings Gazette, January 23, 2007 “Sheridon vote count uncovers iffy ballots” by the Associated Press
3. CNN’s Lou Dobbs: Alarming Congressional Testimony on the Threat of Electronic Voting Machines

APPENDIX E: Pertinent Section of the National Voting Rights Act of 1973

U.S. Code Title 42 Chapter 20 Section 1973gg-6(i) Public disclosure of voter registration activities

(1) Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.

(2) The records maintained pursuant to paragraph (1) shall include lists of the names and addresses of all persons to whom notices described in subsection (d)(2) of this section are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made.