

FOUNDED IN 1898 ★ VOL. 108, NO. 43 ★ DENVER, CO ★ OCT. 26, 2007 ©

Despite thorny record, Coffman retains Gardner

BY CHRIS BRAGG

THE COLORADO STATESMAN

The Department of State employee at the heart of a lawsuit to disallow electronic voting in 2006 remains in charge of testing and analyzing the state's voting equipment for 2008.

John Gardner, the state's voting systems expert, came under heavy scrutiny for his credentials and job performance during a September 2006 lawsuit filed against then-Secretary of State Gigi Dennis. In that case, *Conroy v. Dennis*, a bipartisan group of 13 plaintiffs sought to stop Colorado from using electronic voting equipment by arguing the process used to certify the equipment was flawed.

Denver District Judge Larry Manzanares ruled that there were serious mistakes made during the certification, but allowed their use in November 2006 because it was too close to the election to switch to another system. The machines, however, were immediately decertified following the election.

Since then, the standards Gardner wrote for electronic voting machine certification, which the judge said were inadequate, have been rewritten. Gardner's documentation of tests performed on the machines, which the judge called "abysmal," is being redone.

Brian Balay, the former Chief Information Officer for the secretary of state's office, who retired in March, said his former colleague Gardner simply does not have the IT background for the job. "He's gotten a ton of info [from voting machine vendors]," said Balay, "but can he read it? I think on some points vendors are having to point out what's in the documentation."

Balay, who had been the head of the IT division as CIO since 1999, said he's not quite sure why the new secretary of state, Mike Coffman, chose to keep Gardner in charge of the recertification. "Mr. Coffman just does not know that he needs a little more horsepower in there," Balay said.

In January, Dan Kopelman came to the Department of State as the Elections Technology Manager and likely would have called many of the shots regarding the recertification. He was transferred from that job in May, however, for offering to sell voter data to Republicans through his own private website.

The Department of State is required by state law to certify all the state's electronic voting machines to ensure they are secure, accurate and follow state and federal guidelines. Creating a more rigorous process for certification was a campaign issue for Coffman, when he pledged his first act if elected would be a full review of all voting systems in Colorado.

In Coffman's first year in office, the Department of State has created more stringent rules for testing equipment and implemented a more thorough process for documenting the tests.

In the midst of those reforms, Deputy Secretary of State Bill Hobbs defended the decision to keep Gardner as the Department's voting systems expert. "He actually did a terrific job [in 2006]," Hobbs said. "The judge didn't say the certification itself was abysmal, he said the documentation was." And Hobbs said that Gardner simply didn't have the resources or time in 2006 to do a more thorough job of documenting the certification process.

While Gardner may now have more time and support, another lawsuit is still expected if the machines are

recertified. That means there's a decent chance Gardner hasn't seen his last day in court.

Thrown into chaos

When John Gardner assumed duties as the state's voting machine expert, the certification process was already in crisis.

State law says that the secretary of state must appoint one or more "experts in the fields of data processing, mechanical engineering or public administration." Len Vest was supposed to be that appointed expert.

"Vest was extremely talented in the 'quality assurance' process," said Balay, the former IT director. Vest had an extensive IT background at the Colorado Department of Human Services and as a senior analyst at the Office of Innovation and Technology. In those capacities, he directed a number of large projects for the state. He was recruited to come to the secretary of state's office in 2003.

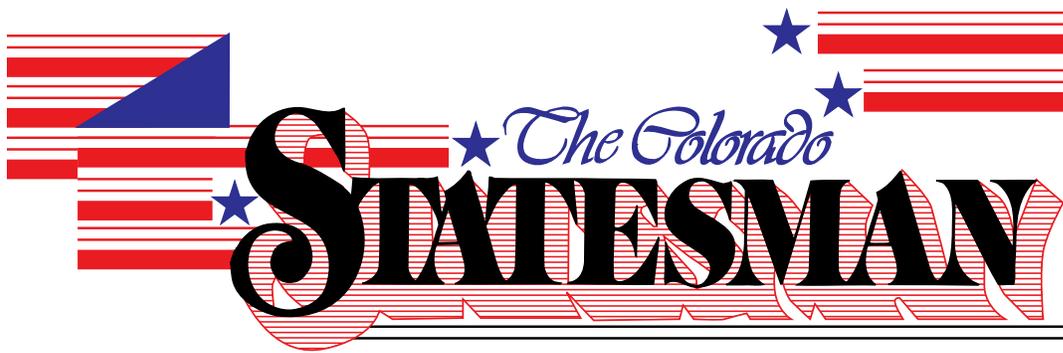
Gardner came into the secretary of state's office in July 2005 as an assistant to Vest. "Together, they were a great team," said Balay. But after only a few months, interoffice conflicts broke the team up.

Vest had originally worked under Drew Durham, who was the director of Help America Vote Act (HAVA) compliance. But Durham quit in the summer of 2005 and was replaced by Patti Frederick.

Frederick and Vest clashed, however, and Vest decided to quit in October 2005. Suddenly, after only three months at the Department of State, Gardner assumed responsibility for writing the state's voting machine certification rules and for testing those machines.

At the time Secretary of State

Continued on Page 2



FOUNDED IN 1898 ★ VOL. 108, NO. 43 ★ DENVER, CO ★ OCT. 26, 2007 ©

...Gardner will once again review and test voting systems

Continued from Page 1

Dennis appointed Gardner, federal deadlines to write electronic voting rules were looming. In the midst of that time crunch, there's no evidence that either Dennis or anyone else ever reviewed Gardner's qualifications for his new job, even though by law he was required to have an expertise in "the fields of data processing, mechanical engineering or public administration."

But during the 2006 lawsuit, Gardner's credentials for the job did come under fire.

Gardner has an undergraduate degree in architecture but no degree in data processing, mechanical engineering or public administration, plus no formal academic training in computer science.

Prior to the 2006 certification, he had gained some work experience in data processing, as the IT manager at the El Paso County Clerk's office from 2001-2005; and in public administration at both El Paso and at the Department of State.

Still, according to Balay, Gardner lacks some necessary skills for his job. "He was an 'IT power user'," said Balay. "That means he's pretty good on a PC, that he can use a spreadsheet, word processor, et cetera. He does not have an IT background."

"What you needed to do is go out and find someone who has been involved in senior IT projects and equipment purchases, where 'independent validation and verification' and 'quality assurance' processes are utilized," Balay said, "thus knowing what to look for in this project."

In his ruling, Judge Manzanares didn't give Gardner's credentials a glowing review. Still, he said the statute under which Gardner was hired was too vague to pronounce him

unqualified for the job.

"Would you like somebody with different qualifications than Mr. Gardner looking at some of these issues? Absolutely," Manzanares said. "But nonetheless, he didn't have those skills and probably did not a bad job, considering the skills and experience and education that he has."

"Another lawsuit is still expected if the machines are recertified. That means there's a decent chance Gardner hasn't seen his last day in court."

"And if it turns out he doesn't have the expertise that's required of the job, it's — that's not his fault," he added. "It's the person who did the appointing that was supposed to make sure that was true, not him."

Questions about job performance

One of Gardner's first tasks was to write minimum standards for electronic voting machines, required by the state legislature, which came to be known as "Rule 45." Gardner hurriedly wrote the rule in October 2005 after delays had created a time crunch. Before coming to the Department of State, Gardner had never written standards or regulations.

In his ruling, Manzanares found Rule 45 to be in violation of state statute because it did not contain minimum security standards for electronic voting machines. While it required vendors to provide documentation that their voting machines were functional, it did not require that anyone test, analyze or read the documentation.

"I can't tell you what those standards should be, only that rather than

require standards, [the Department of State] primarily simply requires companies to provide documentation," Manzanares said. "And that's not standards."

"And it certainly is not meaningful to say that you've met standards, when you have not in any meaningful way adopted standards," he added.

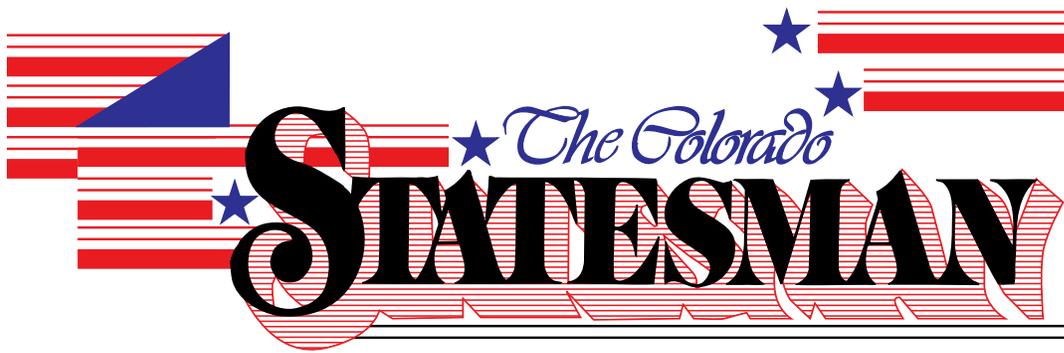
Because of the loose rules, Manzanares found that in practice none of the required documentation submitted by the vendors "was ever reviewed, analyzed, or evaluated by the Secretary's office."

Manzanares reserved his harshest criticism, however, for the state's documentation of "functional testing" performed on voting machines. The testing logs compiled by Gardner and his staff did not identify the tests actually performed or the methodologies used in testing voting equipment, but only whether a piece of equipment had passed or failed a test. "Measured by any scientific method, the secretary of state has done an abysmal job of documenting their tests or of logging their procedures and their tests," Manzanares said.

In the end, Manzanares permitted the machines to be used in the 2006 election because he said decertifying them six weeks before an election would cause more problems than it would solve. But he also ruled the state would have to retest the electronic voting systems before they could be reused and would have to rewrite Rule 45.

Under Coffman, a panel of nine Colorado IT experts redrafted Rule 45 and made it much more stringent. To address Manzanares' judgment that Rule 45 allowed vendors to make their

Continued on Page 3



FOUNDED IN 1898 ★ VOL. 108, NO. 43 ★ DENVER, CO ★ OCT. 26, 2007 ©

...Gardner could come under fire again in future lawsuit

Continued from Page 2

own minimum standards, the Department of State developed its own minimum standards: it is now required to “install, witness or document the trusted build software and firmware on all devices.”

In addition, to address concerns about the “abysmal” documentation of vote machine tests, the secretary of state’s office now says it will produce 2,000 pages of documentation evaluating each system.

Another round in court?

The process of recertifying the machines has begun and so far has been met with a number of delays.

The deadline for vendors to comply with the new regulations, originally July 1, then Oct. 1, is now Nov. 16. Hobbs said his office was shooting for a final decision about recertification by Dec. 1, but that no hard date had been set. If approved, the electronic voting equipment would first be used in primary elections in August 2008.

At the end of August, Coffman chided the four electronic voting companies up for recertification — Premier Elections Solutions, Hart InterCivic, ES&S and Sequoia — for being too slow in providing hardware and documentation needed to test and recertify the machines. Coffman has said the “threat is real” that one or more of the vendors could fail recertification.

On Wednesday, Coffman told ES&S in a letter that he is suspending its certification application because it has failed to meet deadlines. Coffman wrote that ES&S has a “history of coordination issues” and asked what “administrative and personnel changes” the company would make so it could resume the certification process. ES&S provides voting equipment for Jefferson and Mesa counties.

Chris Riggall, a spokesman for Premier Election Solutions, said in an interview that there has been a lack of communication between the vendors and the Department of State. “These are very cryptic directives that we get [from the Department of State],” he said.

Riggall added that while his company is in constant contact with Ohio elections officials, for instance, most correspondence with Colorado has been through the mail. “It’s a little difficult to deal with something this complicated unless you can have a dialogue,” he said.

The recertification in Colorado comes as questions about the reliability and security of electronic voting are raised nationally. Paperless, touch-screen machines were in vogue after the 2000 election disaster in Florida, but just seven years later have fallen out of favor.

Florida is selling off its electronic voting machines wholesale after 18,000 votes simply disappeared in a Sarasota County congressional race in 2006. And the California secretary of state decided in August to severely limit the use of electronic voting equipment because of security concerns.

Those decisions only increase the likelihood of another lawsuit in Colorado, should the electronic voting equipment be recertified, according to opponents of electronic voting. (The judge in that case, however, would not again be Manzanares, who tragically committed suicide this summer.)

Paul Hultin, the plaintiff’s attorney in the 2006 case, said despite the new rules and regulations implemented under Coffman, Gardner would still come under fire in future litigation. “The thing that really matters is whether there is rigor or competency

in the analytical process,” he said, “and John Gardner doesn’t have the training or experience to really even know what that is.”

Opponents of electronic voting have filed open records requests in an attempt to monitor the progress of the recertification process. The Department of State, however, has said some of the information comes from “working documents,” and thus is unavailable.

In 2006, the plaintiffs used e-mails and phone calls between Gardner and Mesa County as evidence against the state. As *The Statesman* reported on Oct. 5, the Department of State has now cut off direct communications with county clerks regarding the recertification, because it fears those communications could again be used in a future lawsuit. (See sidebar on page 4.)

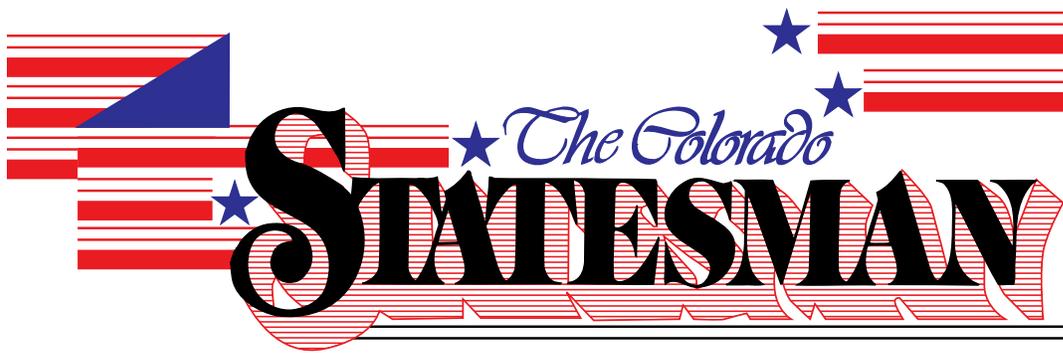
In addition, both Gardner and Secretary Coffman said they could not speak about issues raised in this article until December, when the certification process is supposed to be complete, because of the prospect of a future litigation.

With the possibility of another lawsuit swirling, the fact that Secretary Coffman has kept Gardner in charge of voting machine certification has Colorado Democratic Party Chair Pat Waak very upset.

“I am outraged by the fact that he’s still there,” Waak said. “I have no clue why he’s still there. To me, it’s incompetence on the part of the secretary of state’s office. Nobody else is competent to do the job? I can’t believe that.”

Waak said she has written two letters to Coffman seeking an explanation but has not received an answer back. “I find it really ironic that he talks about transparency in the sys-

Continued on Page 4



FOUNDED IN 1898 ★ VOL. 108, NO. 43 ★ DENVER, CO ★ OCT. 26, 2007 ©

...Independent audit will be conducted on certification

Continued from Page 3

tem but won't answer questions about John Gardner," she said. "He was not able to do the work before, he was part of the problem before, and under Coffman nothing changes."

Adams County Clerk Karen Long said she is also wondering why Gardner is still in charge. "The court said it wasn't done properly," said Long, "and the Secretary [Coffman] made that an issue. And yet they're leaving him in place."

"It's nothing personal," she added. "I just hope he's given the tools to succeed this time around."

Hobbs, the deputy secretary of state, said in order to alleviate any lingering questions about the recertification, an independent audit will be conducted once the certification process is complete. "We're going to send the results to outside experts who will do audits of the results before they go to the Secretary," he said. "That is intended to address any concerns about the personnel in our office and the results of their work."

The audit will be conducted by Paul Craft, a partner at the Freeman, Craft, McGregor Group, in Florida and by Glenn Newkirk, the president of InfoSentry, a North Carolina consulting firm. Both of the auditors also served on the committee that rewrote Rule 45 this spring. Craft and Newkirk will check to see that the documentation collected and generated in tests by Gardner and his staff comply with the new rules.

Opponents of electronic voting also have their doubts about Craft and Newkirk, however, saying that both have been longtime boosters of electronic voting vendors.

By a number of accounts, Gardner and his staff are working tirelessly to get through all of the documentation.

Mesa County did not apply political pressure on Secretary of State as alleged by John Gardner

Dear Editor,

It's interesting to note that Mesa County was NOT a party to the 2006 lawsuit against then Secretary of State Gigi Dennis. That being said, both sides of that lawsuit were quick to bring up Mesa County from time to time. Too bad neither side wanted to have our testimony because Mesa County would, in fact, have disputed John Gardner's version of events, and would have proven he was incorrect that Mesa County applied political pressure and/or purchased voting equipment prior to certification.

He must have forgotten that all counties were required to have contracts approved by the Secretary of State only AFTER the equipment was certified in the state.

He must have forgotten that the Board of County Commissioners had to approve the contract only AFTER the Secretary of State signed off that it was an acceptable contract with the vendor.

He must have forgotten that the equipment in Mesa County's warehouse in 2006 (and used in 2004 and 2005 elections) was traded in for the 2006 certified equipment only AFTER all of the paperwork was approved and signed by all respective

parties. A delivery date for the "trade-in" and "delivery" of new equipment had to then be worked out with our elections vendor. No 2006 certified equipment was even delivered to Mesa County until late May/early June 2006. No monies were expended by Mesa County for 2006 certified voting equipment until AFTER trade-in and delivery of the voting equipment. All of this is well documented.

I don't know what or where Mr. Gardner gets his information, but I know what we have in our possession to actually prove our account of events.

While the court apparently did not take it into account, then Secretary of State Gigi Dennis even said in her Affidavit that there was no political pressure from Mesa County.

I worked with attorneys for more than 25 years prior to becoming Mesa County Clerk & Recorder. (For 20 of those years, I worked for former State Representative, Jim Robb.) I have a very clear understanding of laws, protocol and procedures that are required to be followed.

*Sincerely,
Janice Rich
Mesa County Clerk & Recorder*

Nonetheless, Balay, the former IT director, said that it would have made sense for Coffman to hire an independent, neutral IT expert, thoroughly qualified in "quality assurance testing and certification," to do Gardner's job – not just to check his work at the end of the process.

Balay said there has been a shortage of IT expertise in the certification process since the departure of Len Vest, whom Gardner replaced. "When Len left, it left a vacuum," Balay said. "If Len was still there, I think they would be much further along in the certification process."