

## Andrea Gyger

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**From:** Tim White [REDACTED]  
**Sent:** Wednesday, February 20, 2013 5:39 PM  
**To:** SoS Rulemaking; Scott Gessler  
**Subject:** PUBLIC COMMENT: Use of Serial Numbers on Ballots

18 Feb 2013

### **RULE COMMENT: Unique ballot identifiers (serial numbers, random numbers, bar codes)**

Dear Secretary Gessler,

Without public confidence in the guarantee of secrecy for our ballot choices, we lose the “free” in “free and fair elections.” The secret ballot thwarts voter coercion and vote buying.

We in WA state are currently simmering in this same court and legislative secret ballot stew of Unique Ballot Identifier (UBI) bar codes and Public Disclosure of cast ballots.

I applaud your solicitation of public input before drafting the Rule. My group, San Juan County Citizens for Fair Elections, is among several WA public interest groups monitoring parallel developments in our states. Although I write here on my own account only, I recognize that these views are the culmination of many minds in vigorous debate among elections activists and electeds in WA, other states and other nations.

Kindly allow me to offer our experiences and thoughts.

#### **The Clash**

WA is a year or so behind you in the same clash of the same interests over the same polarized positions crudely characterized thus:

Election officials and vendors: *pro-UBIs and anti-Disclosure.*

*versus*

Citizen activists: *anti-UBI and pro-Disclosure.*

The extreme positions are pretty clearly staked out:

Counties should issue, process and count ballots with tested and certified but publicly unobservable and technologically unverifiable electronic systems administered by elected officials and Elections professionals permitted access as needed to whose ballot is whose, but sworn to keep exposed choices of individual voters confidential.

*versus*

Lay out strictly anonymous cast ballots for all to see, including online posting of their images for anybody to examine and count.

Govt officials, vendors and election workers are subject to the same secret ballot provisions as the rest of us.

Your Rule will anchor CO on that spectrum, and provide the first major public weigh-in since CA officials confirmed the state ban on UBIs as violations of existing secret ballot protections there, and explicitly and specifically directed the Hart BallotNow serial number bar code option be kept in the OFF position to maintain Certification.

#### **UBIs and Disclosure**

Deciding one decides the other.

Avoiding one means avoiding both.

The UBI & Disclosure issues have turned out to be not just identical twins, but siamese sharing vitals.

Q: Is anyone advocating for online posting of CORA-disclosed ballot image files *with UBIs intact*?

A: Nope.

Too many guts on both sides rumble in protest. It's not on the table. It's in nobody's interest. It'll never happen, and shouldn't.

Ballot serial numbers have always invited outsider and insider schemes to game elections.

To Just about everybody agrees that ballots with UBIs will always have to be counted behind de facto closed doors, and kept forever secreted away from both official and public scrutiny.

Remember how these chilling accounts from Zimbabwe's last presidential election hammered home why we can't have both UBIs and Disclosure of cast ballots?

### **Zimbabwe votes in despair**

*Passport, A blog by the Editors of Foreign Policy*

Fri, 06/27/2008 - 4:45pm

[http://blog.foreignpolicy.com/posts/2008/06/27/zimbabwe\\_votes\\_in\\_despair](http://blog.foreignpolicy.com/posts/2008/06/27/zimbabwe_votes_in_despair)

John Simpson, the BBC World Affairs editor, reporting from Harare, said the atmosphere of fear and intimidation was the worst thing "he has seen in 40 years of reporting."

Many voters reportedly believed they would be subject to violence and harassment...election officials and Mugabe goons are requiring voters to write down the serial numbers of their ballots, so they will have a record of everyone who voted for the opposition.

### **Mugabe declared winner of discredited Zimbabwe vote**

<http://www.mcclatchydc.com/homepage/story/42640.html>

By Shashank Bengali | McClatchy Newspapers

Sunday, June 29, 2008

HARARE, Zimbabwe — President Robert Mugabe was declared the overwhelming winner Sunday of an election marred by the murders of scores of political opponents, death threats against voters and widespread international condemnation...

In the days leading up to the vote, Zimbabweans said that militias went door-to-door in parts of the country warning people that they'd be beaten or killed if they didn't vote for Mugabe. Following the runoff, many voters were ordered to produce ink-stained fingers — evidence that they'd cast a ballot — or the serial numbers on their ballot papers, accounts that were confirmed by independent election observers.

We all know CO and WA are not Zimbabwe.

### **Collision course**

CO and WA launched on this same collision course from about 04-05 when both states' mostly smaller counties (22 of WA's 39) started deploying a free (well, HAVA-paid) new voting system that introduced UBIs for the first time in our states' modern histories—both of which suffered elections corrupted by non-secret ballots in the distant past.

Flash fwd to 2013:

Relations sour, suspicions rife and accusations flying of surreptitious or unilateral moves by county elections officials, legislators, vendors, OSOS, citizen orgs and individuals.

Officials feel accused of idiocy or fraud when they know they conduct good elections.

Citizens perceive their calls for transparency met with defensive silence, dismissal, evasion, and *reduction* of public access.

Everyone's dug in.

Lawsuits.

Count me among the dogged citizens, but forget the conflictive gnarly path that got us here.

Use the Rule as your reset button.

Turn off the Hart BallotNow option for printing UBIs.

Cuz ya know what?

*This rancorous mess would never have happened without introducing UBIs.*

We'd all enjoyed the benefits of an unquestioned secret ballot so well so long, just about all of us missed what gradually has become obvious: adding bar code serial numbers to ballots—in the aftermath of 2000 and 2004 (esp in WA gov race) and without public notice or debate or vote—was not...wise.

### **UBIs worse than nothing**

UBIs' fate ought not be decided based on whether they have unfolded as some tactical political blunder. On the ground, in county election offices, UBIs jeopardize the "fair" of "free and fair" by suggesting results-altering "solutions" to non-problems that are but artifacts of the UBIs own making.

Hart advocates report relying on the UBIs to accomplish critical functions performed by other means by all Certified voting systems without unique ballot identifiers.

Consider how UBIs are claimed to...

*Assure every ballot is counted*

*Prevent the same ballot from being counted twice*

*Block the same voter from illegally voting multiple ballots*

*Identify sneaked-in counterfeit ballots*

Hart's preprinted UBIs assist all the above only in the exclusively poll-site elections for which they were primarily designed.

At precinct poll-stations the UBIs serve the same function as removable numbered stubs: to maintain the strict 1-to-1 correspondence, between one voter and one ballot, that every stockperson knows is the *sine qua non* of comprehensive inventory control.

Actual CO and WA elections using Hart *start out* with one UBI issued to one voter, but the 1-to-1 correspondence unravels into inventory chaos with the inclusion of remote voting, such as mail-in/absentee ballots.

Among multiple factors undermining the accuracy and sufficiency of UBI-based ballot tracking in elections incorporating remote voting:

- Issued UBI ballots disappearing, or not — non-voters don't return their ballots
- Valid ballots bearing no UBIs — Federal Write-in Absentee Ballots (FWABs); download-and-print ballots for overseas, for military and for ordinary replacement; non-standard cast ballots; ballots with blacked-out or cut-off bar codes
- Valid ballots bearing UBIs not issued (bar code altered by voter or damaged along way)
- Valid ballots bearing the same bar code (voter photocopies spouse's blank ballot after misplacing his own—and why not?)

UBIs are worse than inadequate for tracking such ballots or auditing real CO (or WA) elections. From a functional perspective, they invite misdetermination of what to do when, say, a cast ballot triggers the Hart central scanner into "*ding! ding! ding!—this bar code has already come thru*" or "*ding! ding!—this bar code was not issued in this election.*"

Simply discarding such ballots risks disenfranchising legal voters and accepting illegal ballots.

The *deciders* for counting or discounting a remotely-voted ballot are, and must be, whether it:

- arrives on time
- from a registered voter (typically confirmed by signature check)
- who hasn't already cast a ballot, and
- voter intent is clear.

*Except at a poll-station, whether a cast ballot bears a BallotNow-issued bar code, no bar code, non-issued bar code or dupe bar code is essentially **irrelevant** to its validity.*

### **Rule content**

I urge you to fashion an explicit unequivocal Rule that asserts the principle intended, delineates the parameters of "secret ballot," and lays out the method of requirements/prohibitions to secure it.

The principle is this:

Everything in a public election is publicly observable, verifiable and disclosable except how any individual marks her ballot, which is absolutely secret.

(OK, reasonable exceptions; in WA: voters' SS numbers, voter registration signatures, addresses of voters in protection programs. Like that.)

The parameters of a secret ballot are these:

Once the voter drops her ballot in the ballot box (whatever "casting" looks like, whether poll station, absentee, machine, or email/internet), no one—not even the voter—can demonstrate which ballot is hers.

It's impossible to fetch the ballot of a voter of interest.

It's impossible to fetch the voter of a ballot of interest.

The method is this:

For administrators: Each blank ballot issued is interchangeable with every other blank ballot issued in its precinct/ballot style.

For voters: Each voted ballot cast is differentiated only by how the ballot lines are voted.

A practical test to keep in mind:

Can we post online the digital image of each cast ballot (accepted or rejected) without risk of any insider or outsider identifying its voter?

(Reasonable redactions might be called for in cases of revealing write-ins or small precinct/ballot styles.)

**Rule form: *explicit and air-tight***

You know how creative interpretations in new circumstances down the line can muddy and compromise old statutes and rules. For example, here are WA's traditional secret ballot statutes and rules accumulated and refined over the last hundred-plus years:

**The Constitution**

*The legislature shall provide for such method of voting as will secure to every elector absolute secrecy in preparing and depositing his ballot.*

Article VI, Section 6

**The Law**

*The rights of Washington voters are protected by its constitution and laws and include the following fundamental rights:*

*(1) The right of qualified voters to vote at all elections;*

*(2) The right of absolute secrecy of the vote.*

RCW 29A.04.206 Voters' rights

*No record may be created or maintained by a state or local governmental agency or a political organization that identifies a voter with the information marked on the voter's ballot...*

RCW 29A.08.161

*All paper ballots and ballot cards used at a polling place must be sequentially numbered in such a way to permit removal of such numbers without leaving any identifying marks on the ballot.*

RCW 29A.36.161 (repealed following WA's move to all VBM)

*Every ballot for a single combination of issues, offices, and candidates shall be uniform within a precinct*

RCW 29A.36.111

*No paper ballot or ballot card may be marked by or at the direction of an election official in any way that would permit the identification of the person who voted that ballot.*

RCW 29A.36.111

**The Code**

*There shall be no marks on the ballot cards which would distinguish an individual voter's ballot card from other ballot cards.*

WAC 434-230-180

Despite apparent plain meaning, WA SOS attorneys currently brief that Hart UBIs are legally consistent with each of the above provisions.

However, just in case, WA's previous SOS quietly and arbitrarily repealed the above inconvenient WAC (Wash Admin Code) during litigation citing it, and every legislative session submitted request bills with provisions to water down the secret ballot.

Mindful of such legalistic stretching, the CO SOS Rule might therefore include blunt language explicitly forbidding UBIs, such as the considered wording of the King County (Seattle metro) Secret Ballot Ordinance passed unanimously by full Council to block the SOS-sponsored proposal, and King County Elections receptivity, to accept HAVA-paid deployment of UBIs in the Mail-in Ballot Tracker component of King County's new custom Premier election system:

**Metropolitan King County Council**

**Proceedings concerning Proposed Motion 2007-0312:**

**Establishing County policy to ensure the constitutional guarantee of every citizen to cast a secret ballot.**

<http://your.kingcounty.gov/mkcc/clerk/OldOrdsMotions/Motion%2012542.pdf>

*Sponsors: Councilmembers Dow Constantine, Larry Philips and Bob Ferguson*

*Passed unanimously by full Council July 9, 2007:*

Title:

A MOTION establishing county policy to ensure the constitutional guarantee of every citizen to cast a secret ballot.

Body:

WHEREAS, the Washington state Constitution guarantees every citizen the right to cast a secret ballot, and  
WHEREAS, state laws provide additional guarantees and guidance ensuring every citizen the right to cast a secret ballot, and

WHEREAS, King County might purchase and use new elections equipment that has the capability to track individual mail ballot envelopes as well as individual ballots, and

WHEREAS, the public has expressed significant concerns that ballot-tracking equipment could identify the ballots of individual voters;

NOW, THEREFORE, BE IT MOVED by the Council of King County:

A. County policy is hereby established that no unique identifying numbers or marks of any kind may be placed on ballots that could allow an individual voter to be identified with a particular ballot; and

B. In the process of tabulating ballots and reporting elections results, the highest priorities of King County shall be to ensure an accurate vote count and to preserve the secrecy of individual ballots.

### **What is a “Unique Ballot Identifier”?**

Finally, the Rule should be iron-clad clear not just about what tracking is “out,” but what is “in”—even recommended. Every stakeholder supports effective tracking and auditing.

Throughout this comment I’ve used “UBI” rather imprecisely to designate a permanent non-removable bar code (and, usually, the serial number numeral it encodes) printed on blank ballots issued to voters, aiming at the particular UBI at issue here now: the so-called “Inventory Control Number” of the Hart voting system’s BallotNow component.

The UBI issue is both broader and narrower.

#### *Broader:*

A UBI may have forms not yet conceived. The Rule should explicitly prohibit unique or identifying markings other than bar codes and serial numbers, such as watermarks, codings not accessible to the human eye, and emerging wireless non-contact systems like cheap radio frequency identification tags (RFID) embedded as remotely-read chips in ballot materials. US passports, various ID cards and customer discount cards are already fitted with such RFID UBIs.

What’s next? Applied radioactive isotope signatures? Paper fiber profile scans?

New voting platforms must also be protected from exposure of individual voters’ ballot choices to government officials and the public. The Rule should protect the secret ballot in the challenging remote-voting arenas utilizing email, fax, internet portals, kiosks, smart phones and accessibility innovations for disabled, military and overseas voters.

#### *Narrower:*

The problem is not unique ballot identifiers *per se*. UBIs can function as the friend of both the secret ballot and effective tracking. It’s all about *when* they are applied, their duration if temporary/removable, and what information they allow to be collected.

For example, citizen activists in WA have long settled on a best practice proposal mandating we vote a uniform anonymous ballot, and officials apply any UBI only after the cast ballot is permanently separated from the identity of its voter.

I defer to Mr. Kolwicz’s clear and succinct explication in his submitted Comment:

There is an alternative. The convenience for officials to conduct research on cast ballots (when ballots contain a permanent unique identifier) can be achieved instead by

(i) issuing ballots with a identified removable stub,

(ii) casting ballots after the stub is removed, and

(iii) printing an identifier on the stub-less, anonymous cast ballot after the number of ballots in the ballot box have been balanced and these anonymous ballots have been merged with other batches, shuffled and combined into counting batches.

...

As can be seen above, uniquely identified ballots have a place before a ballot is cast and after an anonymous cast ballot is merged, shuffled, and re-batched – but not in between. The voter must cast a ballot that does not contain a unique identifier or any mark that can be used to connect the voter and the cast ballot.

Mr. Secretary, thank you for the opportunity to comment. I hope you and staff find WA’s experience helpful. Good fortune in your endeavor to resolve these thorny issues by Rule, and, where necessary, by your considered recommendations to the CO legislature.

I suspect it is not only WA state which is anticipating your Rule as precedent and possible guidance for other jurisdictions.

Sincerely and respectfully,

Tim White

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San Juan Citizens for Fair Elections

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