

Andrea Gyger

From: Dean Schooler [REDACTED]
Sent: Tuesday, August 12, 2014 9:57 PM
To: SoS Rulemaking
Cc: Dwight Shellman; Suzanne Staiert; Scott Gessler; 'Colorado Voter Group'; Dean Schooler
Subject: Watcher Perspective re: Proposed rules 8 CCR 1505-1 August 7, 2014
Attachments: watcher.statement.canvassboard.july2014.docx

Importance: High

Between June 27 and July 7, appointed by George Leing, Candidate, 2nd Congressional District, I served as a watcher to the Boulder County Canvass Board. Subsequent to that experience, I provided the attached letter sharing my observations. I hope they will be helpful to this very important and consequential rulemaking process. Thank you for your attention and consideration. Dean.

Dean Schooler
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[REDACTED]
[REDACTED]
[REDACTED]

July 11, 2014

The Honorable George Leing
Candidate, Second Congressional District, Colorado

Dear George,

As you are aware, I accepted your appointment of me as a watcher and have been able to attend most if not all of the meetings of the Canvass Board, including the Clerk's Staff Presentations, between June 27, 2014 and July 7, 2014.

I have waited until the conclusion of the Canvass Board meeting, July 7, 2014, to write this report of my observations, although some paragraphs were written earlier in the process.

Watching the process was like seeing the seen and attempting to see the unseen. Generally, I have little doubt, with some exceptions, that I can trust what I have seen. But far more importantly, I am gravely concerned about what I, and I am guessing the Board, was unable to see. Another way of summarizing my fear is that the "seen" is generally, with some exceptions, transparent, but the "unseen," the information asked for or available but not generated and presented and the prior steps in the election not only undescribed but unaudited, could well have been far more critical to an accurate description and accounting of original voter intent. In informal language, the devil is not so much in the details as in the details unseen, unaudited and unobservable. Shorter form, fear not the known, worry over the unknown. Because of the unknowns and because of the limited audit, I have grave concerns about the integrity of the general election in Boulder County, Colorado, November 4 and the weeks preceding. All this said, watchers no matter how perceptive cannot effectively witness and verify most of what is going on.

Using professional audits in the for-profit sector as a standard and model, what I experienced as a watcher was light-years far away, more akin to an accountant reviewing the addition and subtraction on a general ledger and aggregating income and expenditures into categories for a financial statement. With some possible exceptions, it seems to me the numbers I saw generally match-up and the scanners have operated well. But when I think outside the scanning and counting box, my confidence nose-dives because my mind butts up against the unknown.

I had complete access to meetings and staff presentations on June 27, July 1, July 3 and July 7, 2014. However, I was limited to seeing staff presentations projected on a screen or wall and unable to see and review hard paper copy or disks as provided to Canvass Board members. The rapidity of flashed images and constant cursor movement as staff ran through its projected slides made comprehension impossible and understanding questions and observations from members of the Canvass Board was difficult. I was able to observe and hear much of what little conversation, remarks and questions came from board members during staff presentations. I will say, however, that on July 3 and July 7 when the meetings were moved by the Clerk into the interior room the constant loud white noise generated by the air circulation made hearing some sentences and exchanges difficult.

I am concerned that staff presentations, almost entirely projected on the wall, occupied, except for periodic questions from the board, nearly 90% of the time when staff and board were meeting together. I would be interested in having an official recorded or written record or transcript of what was in my view a public meeting, independent of any video or recording made by the one press representative or individual board member(s). Barring such a transcript or

recording, I am unable to test my own memory and am profoundly concerned that the public is unable to hold the board accountable.

The Clerk and her staff routinely brought and referred to data on disks. Board members were given disks when the meeting began and not prior, resulting it seemed in board members not being able to review and prepare to question or discuss prior to presentations. Watchers and others were not provided copies of the disks but had no access to laptops or other means of accessing the material or even following the presentations at their own pace.

I heard and observed few instances of where the board was able to question the conduct of the election, advise on the conduct of future elections, or, in a more limited context, change the reporting and format of the presentations by staff. Going in to this first experience as a watcher I would have expected dialogue and discussion, and little, and that sporadic, occurred.

Generally, I had the impression that staff was leading and shaping the Board's meetings and that the Board had little time to itself. Having worked professionally with and served on nonprofit boards and knowing something about public, governmental boards at the federal level, I have the impression that what I have experienced here in my community is nothing less than "bizarre" and I think, worrisome and unsettling. The Clerk and Elections Division staff, intentionally in my view, had a strategy of controlling information given to the Canvass Board, created Excel spreadsheets to display information rather than reconcile and audit data, was open to questions and requests few of which were answered or fulfilled, and deliberately used hours of time which more properly could have been used by the Canvass Board for its own deliberations.

I recollect one aspect of the staff presentation as being particularly frustrating and mysterious, that being a cell of 7000+ ballots that was unlabeled, undefined. Whatever it was does not seem to have affected the actual vote count, but it could have represented potential or rejected ballots.

I also recollect some discussion over the use of term "votes cast." I have the impression that there were different ways of defining when a vote has been "cast". Some on staff seemed to believe that a vote was "cast" by a voter when it was received by the Clerk. I may be old-fashioned but with respect to my ballot I believe I "cast" that ballot, which must comply with Article VII, Section 8 of the Colorado Constitution, where it is anonymous and not identifiable, in a secure place where it can be absolutely assured of being counted as I intended. Defining a vote as "cast" when it is received by the Clerk misuses the term and worse leaves open a large block of time where anything can happen to my original intent at the time I marked my ballot.

I also recollect several mentions and discussions of the Canvass Board and those present being able to see or hear "confidential voter information." On more than one occasion the Clerk and staff were asked for specifics and examples. None were ever given. Moreover, at no time when I was present did I see or hear any information related to any SPECIFIC voter. None, nada.

Late in the process on the last day, July 7, 2014, I observed that the Clerk had prepared a statement for two signatures from unnamed members of the Canvass Board. The statement appeared to me to say that the Board, having randomly sampled batches and counted original and scans of ballots representing all contests and finding only one discrepancy, was to state that a "recount" was (therefore) not needed. I observed that the Canvass Board members and a representative of the Secretary of State's office edited out mention of a recount and changed the statement to say in essence that the random sample found only one discrepancy and that

the discrepancy was attributed to a voter marking a ballot and not an optical ballot scanner. Quite honestly, in retrospect, after reflection, it's hard not to think that the Clerk tried to slip in language that would have the Canvass Board or two members say that their test and random sampling showed that a "recount" was not necessary.

I would very much like to trust the November 4, 2014 general election based on this experience as a watcher, but unfortunately the only confidence I have is limited to the accuracy of the scanners to count votes. Consequently, but not casually and cynically, what I could be looking at in November is a variation of the old saw, "garbage in, garbage out." Primaries are less consequential than general elections. Integrity and accuracy count in both but the consequences of general elections are far more reaching and mistakes cannot be remedied.

Again, to be old-fashioned, eligible voters, voters, precincts and political parties are integral, important elements of elections. I heard some concern from some members of the Board about having reports on votes by precinct and contest. However, as of the close of the meetings, July 3, 2014 and July 7, 2014, I saw no data on votes by contest and precinct. I would think this information would be important to candidates and parties for wisely allocating their limited resources and guiding their precinct chairs, volunteers, campaigns and electioneering prior to the general election.

The two last meetings on July 3 and July 7 were held in a room deep within the Clerk's offices, a significant change from the first meeting in the Houston Room. The Clerk's requiring that the Canvass Board meeting place be changed had two very significant consequences – one, the air conditioning system in the inside room was disruptive and made hearing very difficult, particularly to watchers and anyone not around the meeting table – and the second, that controlled and limited access inhibited if not prohibited public and media observation.

Finally, I must make a general observation. On balance but throughout what I have observed wasn't even close to what I would expect of a public board. The Board was frustrated by the Clerk, who was only one member of the Board. The Clerk consistently tried and, more often than not, was able to control the agenda, pace and discussions of the Board. There were times when incivility replaced civility. Generally, what I observed could be characterized as "dysfunctional." Future canvasses and canvass board meetings in Boulder County must and should be conducted with higher standards, proper leadership and public focused procedures.

I appreciate this opportunity to serve.

Should you or anyone else have questions, I would be pleased to answer.

Dean Schooler

Watcher

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Appointed by George Leing, Candidate for Congress, Second Congressional District

cc:

Albin Kolwicz, Chairman, Canvass Board, 2014 Primary Election, Boulder County, Colorado.

Ellyn Hilliard, Chairwoman, Boulder County Republican Party