To the COVAMEC (1303 commission) from Harvie Branscomb largely concerning the EAC motivated survey. 10/11/2013

Thank you for spending time during the Oct 7 meeting to discuss the proposed survey of Colorado election officials. During the past week there has been considerable time spent by many Colorado citizens and officials discussing election rules that were adopted on Wednesday evening. The rules discussion has made public a number of basic policy issues concerning Colorado elections that do merit further discussion in public, based on a full understanding of what the practices are in Colorado counties. Many of these rules changes were created in response to HB 13-1303 and the end of precinct counting of ballots in Colorado. The rules discussions have clarified the need for per county information, and exposed some additional areas where information is needed beyond what I have suggested to be included in the survey.

Also thank you for visiting the Denver Elections facility. That proved to be very informative and interesting and has lead to some additional questions.

The nature of the discussion concerning the EAC-based survey at the previous meetings suggests to me that not all members of the COVAMEC are as acutely aware as I am of the need for detailed instrumentation of the Colorado election. We need the survey in order to understand the 1303 effects (beneficial or otherwise) on seemingly minor but really important practices.

I would like to say also that non uniformity can be a good thing. There are wonderful reasons for Colorado’s diversity and its counties do need to perform some things differently for some very good reasons. The proposed survey is in no way intended to force Colorado elections into lock step uniformity. Far from it.

The survey information is useful to anyone who wants to discuss and be a credible advocate for changes to rules and law. The only parties who probably do not directly benefit are the clerks themselves who already have the information and have little need for information from other counties. This is why I would hope that the clerks will not be taken as the only source of advice on what information is valuable. In this rare instance, they are not the primary experts nor the primary beneficiaries. On the other hand it is clearly the clerks responsibility to provide information and this is simply a significant statewide coordinated information request, avoiding the need for very difficult 64 county CORA access to the same information.

This information will be a service to be provided by the clerks via the legislative committee in the course of preparing to evaluate the 2014 election as required by statute. Of course the best way to prepare for an evaluation of a 2014 election (by January 2014 when a report on preparation is due) is to attempt a draft evaluation mechanism for the 2013 election. This is what I have proposed and I am confident that no county official in Colorado wants to form an obstacle to the legislative mandate. In fact in my experience all Colorado officials are justifiably proud of their practices and willing to discuss them when asked. I see no need for drastic reductions in the scope of the inquiry to avoid overworking of officials since we can let them wait until after the election is certified to respond.

Colorado clerks are of course expert in the difficulty of obtaining the information. Most if not all of the questions I have asked are either data to be received centrally from SCORE or information that can be answered immediately from memory. This approach acknowledges the concerns about workload for the clerks. The survey need not be reported during the election process. Questions ought to be made available early to ensure that information is not lost.
The following second portion of my email is my reaction to the excellent Denver demonstration and its implications for the survey. Proposed new questions are shown in italics and indented.

Denver VSPCs will apparently provide government controlled privacy for voting either on DRE or on a flat ballot or on a ballot that is intended to be returned in a signed mail envelope. Ample privacy booths were set up at Denver's center and Amber McReynolds explained that these were available for use by electors to vote their mail-in ballot prior to sealing it in the envelope. Presumably this opportunity also applies to a mail ballot packet brought by the voter from outside the facility.

On the other hand, a previous verbal report by Colorado Elections Director Judd Choate to the UVSAC suggests that some counties will not allow mail ballots to be brought in and voted at a VSPC even if the voter does subsequently seal the ballot into the appropriate return envelope and sign it. And perhaps some might not allow a mail ballot packet provided by the VSPC to be voted at the facility and immediately returned. This possible difference in practice deserves to be understood better via a survey question and like so many others the question can be asked and answered in a matter of seconds e.g.:

Are voter privacy booths and similar facilities available to be used for marking a ballot from a mail ballot packet to be returned in that return envelope that is 1) provided at the VSPC to the elector? and or 2) brought in by the elector to the VSPC? or 3) not at all available for these uses? (mark all that apply)

In Denver I may have seen the demonstration voter receive a flat ballot as a replacement mail ballot that will need to be folded to fit in the mailing envelope also provided. If so, this folding by the voter could have an impact on accuracy of tabulation since locations of folds on ballots do affect the ability of an optical scanner to accurately detect the marks on preprinted targets. In particular, additional dust often collects on the fold or the fold may create a shadow effect and if this intersects the target an unintended vote detection may result or an intended vote mark may be left undetected. Likewise it is possible for voter marks or original toner/ink to transfer under pressure to the facing page across a fold. These effects have actually been found in Eagle County. This is why it is highly desirable to test the voting system with both flat ballots and folded ballots but for this to be effective the ballots will preferably be folded consistently and not folded by the voter.

Denver's plan to use common ballot stock for at least three voting methods is I think a best practice plan- ballots for in person voting, return by mail ballot return envelope, and also provisional voting are from the same stock. The use of common print runs per ballot style for all ballots to be used including those to be tested is a practice that is consistent both with best integrity and voter privacy and should be commended.

It is desirable then to learn which counties have pre-folded ballots - either all ballots or the ballots intended for use in mail ballot packets- whether sent in bulk, or individually sent by officials later, or handed to voters in person at a VSPC. This is and example of the level of detail that will need to really understand the Colorado election and the effects of making replacement ballots available at VSPCs under 1303. Fortunately like most of my additional questions this kind of information is readily in mind of each county clerk during the election and requires only the time to check a box on a form to convey the information to the state e.g.:

Which eventual uses of ballot stock share a common print run per ballot style for the bulk of ballots even if not all ballots for that use share (check all that apply): 1) in-person
voting? 2) mail ballot packet? 3) provisional? 4) test? 5) other? (this means that any distinctive marks that distinguish these uses is added after the original printing run is complete and separate initial print runs are not needed)

Which uses of ballot stock utilize identically folded ballots per ballot style (check all that apply): 1) mail ballot packet sent from central facility? 2) mail ballot packet provided at VSPC? 3) in-person ballot at VSPC (usually but perhaps incorrectly known as flat)? 4) provisional ballot? 5) test ballots?

Is folding done by 1) automated machinery? 2) by hand by election officials 3) by the voter 4) other (check all that apply)

Note that Boulder does not provide a stub on any ballot in the election. We learned that Denver does not use the stub on in-person ballots at a VSPC but provides the removable stub on ballots sent with mail ballot packets. Something we do not know is whether ballots intended for use in mail ballot packets provided at a VSPC also have a stub in Denver. This is another question that deserves to be asked of the county clerks. The relevant question on this matter in the proposed survey is apparently not detailed enough. For example the folding of the mail ballots with a stub may well be different from the folding of a ballot supplied at a VSPC that will be returned in a mail ballot packet. Not only does folding affect the accuracy of the tabulation, it also affects voter privacy, if the folded version of the ballot style reveals the identity of the voter because of uniqueness. The basic question about the use of stub by type of voting is already in the proposed survey. The following question is not:

Which uses of ballot stock utilize one or more removable stubs: 1) in-person ballots, 2) provisional, 3) mail ballot packets sent in bulk, 4) mail ballot packets sent after bulk mailing, 5) mail ballots provided to the voter at VSPC?

When is the stub removed from the Denver mail in ballot? I do not recall seeing that part of the process. There is a question regarding use of stub for ballot to voter accounting in the survey. I believe that we need to better understand varied use of stubs for integrity in the Colorado election.

Amber McReynolds impressed me when she answered that the provisional ballot affidavit is printed on the envelope used to protect the provisional ballot, and that the form that contains answers to the challenge questions is attached to that envelope and effectively becomes part of the affidavit. Rules require that all information for treatment of a provisional ballot come from SCORE or the affidavit or some government agency. It therefore becomes important that the challenge questions answers be included with the affidavit as Denver does. Denver also places the CORA confidential information in one location on the envelope. Hence the following additional questions:

Is the provisional ballot affidavit printed on the envelope to enclose the provisional ballot? 1) yes 2) no
Are the answers to challenge questions kept with the provisional affidavit? 1) yes 2) no
Is confidential information (defined by CORA) located on the affidavit in a place where it can be easily redacted for public access under CORA? 1) yes 2) no

The review of ballots by election judges prior to tabulation is a key to accuracy of all centrally counted ballots (by far the bulk of ballots in a 1303 election and all paper ballots in some counties) Ballots
tabulated in front of the voter have the inherent advantage of being checked for overvotes and damage at the time the voter is present to make corrections. Centrally counted ballots including those not voted by mail but rather in a VSPC and then carried to central count do not share this valuable opportunity. Hence it is necessary for fair treatment of voters to review ballots by eye to remove those that cannot be correctly tabulated by machine including ballots that will not be sorted as uncountable by the machine itself. These include ballots that contain technically invisible marks, or clear voter intent surrounding the target area. Ballots that need duplication to be counted correctly are to be duplicated before the machine attempts to tabulate. Counties have different policies regarding the place and time and way this is done. Denver has a team of two at each central count machine to perform this function.

Does your central count equipment allow resolution from a digitally recorded ballot scan?

A review of each ballot during the central count process to select ballots for duplication prior to any scanning is done by a team of (enter how many on a team) 1) permanent staff ____? 2) Election judges ____ 3) Staff acting as election judges ____

What roles perform post scanning resolution of each ballot sorted by central count? If there are teams enter how many of each on a team
1) permanent staff ____ 2) Election judges ____ 3) Staff acting as election judges ____

How many ballots duplicated? ____

How is each ballot duplicated? 1) By ballot marking device 2) by one judge reading one paper and then marking another 3) by two judges – one reading and one writing 4) by teams of more than two

We saw that Denver separates secrecy sleeves from envelopes and ballots from secrecy sleeves in close proximity. I asked about it and did not understand the answer. I believe this practice varies.

How far apart are the processes of removing secrecy sleeve from ballot and ballot from secrecy sleeve:
1) same judge performs both actions sequentially 2) Judges seated next to each other 3) seated across a table 4) Different places in the same room 5) Different room

Are the two separations done at nearly the same time? 1) yes 2) no

I want to thank the Denver team for an excellent and thought provoking demonstration that shows how well organized a VSPC and a central count facility can be. No doubt other facilities in other counties have similar or perhaps different but excellent choices for their own process. I'm hoping that the survey questions help us understand some of the beneficial differences so that we can as a state benefit from the best of all of our diversity, and I would hope that innovation and the seeking of best practices will continue regardless of the “uniform voting system” that of course need not be uniform to an extreme.

The rules process has led me to read about 80% of the draft changes to election rules and the final rules in detail. I understand some rough edges that have been exposed by the rewrite launched as a result of the significant 1303 changes. Some of the resulting changes in rule (particularly those required by 1303) are surely of concern to the 1303 committee.
One is the replacement of “election judge” with “election official” in the rules. While this substitution was massive in one draft it has been substantially backed off, but I counted about 38 entries remaining in about 20 significant places in the rules where election official replaced what was formerly a function for “election judge.”

It is a disagreement about who selects the people who operate the election that is behind this controversy - and there are several interests represented – among them the SOS and staff, the county official and staff, the political parties and their recommended election judges, and the canvass board. There are also people who are listed as “election officials” in statute including county commissioners who are might benefit by mistaken inclusion as appropriate actors in these election management roles.

CRS 1-1-104:

(10) "Election official" means any county clerk and recorder, election judge, member of a canvassing board, member of a board of county commissioners, member or secretary of a board of directors authorized to conduct public elections, representative of a governing body, or other person contracting for or engaged in the performance of election duties as required by this code.

Note that some candidates are included in this list of election officials as are vendors working under contract and temporary workers not recommended by a political party. It is this controversy that leads to the survey questions that separate election judges from staff and election judges who are staff. It is important to understand what is the current practice in counties regarding selection of election judges and the use of staff as judges or substituting for judges. Therefore the questions in the survey at present. What I did not ask and does need to be asked is of the election judges working, how many are from the list from parties after caucus or are recommended or later approved by party chairs prior to the election and how many are not resulting from a party originated process. It also matters what parties are represented in these different categories. Hence the following questions:

How many election judges by party and source (first two categories do not include supervisor judges):

VSPC election judge (party by list/recommended/approved) U ___ R ___ D ___ other___
VSPC election judge (permanent staff) U ___ R ___ D ___ other___
VSPC election judge (other) U ___ R ___ D ___ other___

central count election judge (party by list/recommended/approved) D ___ R ___ U ___ other___
central count election judge (permanent staff) D ___ R ___ U ___ other___
central count election judge (other) D ___ R ___ U ___ other___

supervisor judge (party by list/recommended/approved) R ___ D ___ U ___ other___
supervisor judge (permanent staff) R ___ D ___ U ___ other___
supervisor judge (other) R ___ D ___ U ___ other___

There are many public comments on the rulemaking expressing concern about the roles of election officials and election judges and emphasizing the need for party recommended election judges in those roles. The above questions will help sort out what the current practices are.

Another issue that has come up in the rulemaking and during the recalls is the concern over registration deadlines that differ between special districts, school districts, municipalities and the state. It will be of
great value to the 1303 commission to learn how large this problem is. In addition to several questions already posed in the draft survey concerning registering on or prior to election day, we can ask the following question:

How many electors changed address within Colorado and how many newly registered in Colorado within the following date ranges:

30 and 25 days prior to election day changed ______ new _______
24 and 22 days prior to election day changed ______ new _______
21 and 8 days prior to election day changed ______ new _______
7 days and 1 day prior to election day changed ______ new _______

election day changed ______ new _______

No doubt the above question is to be answered from SCORE.

The CRS 1-7-514 Post Election Audit has been seriously affected in rules by the 1303 changes that eliminate precinct scanning of ballots. Now all scanning is considered to be central count, and the audit will pick 5% of scanners and that means in almost all counties one scanner will be audited as well as 5% of DRE used. The single scanner randomly picked is highly likely not to be the central count scanner unless no scanners are used in VSPCs. In 100% central count counties, 5% of ballots to a maximum of 500 will be audited by a recount that is not an audit of election night tallies. In counties with VSPC scanners, it is likely the VSPC scanner will be chosen and it may have relatively few ballots on it, nevertheless a percentage of those ballots are to be randomly selected and recounted and compared to a hand count.

In the El Paso recall election, only two devices were selected by the SOS using the interpretation of law that has now become rule- all scanners are central count. The SOS selected one scanner containing 15 votes and another a DRE with no votes. So the entire Senate District (and very controversial) election was “audited” by counting 15 votes. The CRS 1-7-514 calls for a report of the audit that should describe how the audit was conducted. Colorado deserves to know if counties are actually recounting 15 ballots for an audit, or actually comparing 15 votes from election night. This does not need to be in a survey because there is already law requiring the report. But the report is rarely produced in recent elections (although El Paso county did write a report that is difficult to understand) because the SOS has stopped demonstrating that the requirement exists by placing a page in its form for the narrative part of the report.

Another question that has come up is when under a 1303 run election will interim tabulations become visible before 7PM on election night. I noticed no provision in the rules that prevents tabulation, although there are provisions to prevent release of tabulations. Most equipment can be operated in a manner to avoid tabulation until election night... but when VSPCs are open for many days, these technical defense mechanisms may not work. I hope that the COVAMEC business practices committee will consider some kind of self regulation to prevent any observation of machine created tabulations prior to 7PM on election day if the rules and law are insufficient to guarantee that.

I hope the 1303 commission will closely monitor detailed effects of the 1303 bill such as the drastic reduction in audit levels that may result from moving to the central count model for all scanners.

Harvie Branscomb 10/11/2013