Steven Ward

Please forward this to the COVAMEC for its Nov 25 meeting, thanks.

To followers of new Colorado election methods and their increasingly apparent side effects and the members of the commission (COVAMEC) who are appointed to guide the implementation of the new law that has had significant and in some ways problematic impact on detailed processes in our elections:

(abstract - continued request for statewide elections practices survey - evidence from Broomfield election)

I have been "watching" at the Broomfield post election process starting with the post election audit. I discovered several unique characteristics of a Broomfield election under HB 13-1303 - some legacy practices have real beneficial effect and some not so much. Some ways the 1303 law was implemented are actually harmful to enfranchisement and some caused inappropriate enfranchisement. I suspect that the 1303 law has left many counties in a similar situation, perhaps some of them still unaware of the effects.

One of several probably unsolved holes in the 1303 law affects people who move between counties but still reside in the same school district or special district or municipality within 30 days of election day. There will be not just a few voters disenfranchised this way- particularly in populated areas near the borders of counties. I live at the intersection of three counties myself - less than 2 miles to the two borders. The nearby Town of Basalt is in two counties.

The COVAMEC commission would be remiss not to determine how many electors in the many special, school and municipal districts were disenfranchised when they indicated a registration effective date within 30 days of election deadline day and moved either within a county or within a district but were assumed to have changed residence into or out of the relevant district. Online registration changes in Colorado simply do not capture the effective date of the residence change, and registration forms do not capture when an address change results in continuous residency in any of the districts that are coordinated on a ballot. This is an impact of 1303 that has led to selective disenfranchisement.

After watching a 1303 election I am even more resolved than before to try to learn how each of Colorado's 64 elections actually functions even if I have to do it by personal observation and interview. Every time I add a new county, like Broomfield, to my experience, my concern about our statewide lack of knowledge increases. The survey of county clerks that I proposed to the COVAMEC 1303 Commission and the Secretary's Public Participation Panel (that I serve on) has apparently been stalled.

I can't imagine how Colorado officials can feel good about proceeding to change election law (104 pages), revise election rules (130 pages), and attempt to decide a Uniform Voting System (148 pages plus numerous appendixes) all without sufficient centralized knowledge of the way existing elections are actually performed. A wonderful demonstration of Denver's process was simply not a sufficient substitute to inform about the other 63 counties. I ask for a reopening of the survey project to determine the details of each of 64 different elections to advise on the future of 1303 related changes as well as other potential changes to
Colorado's elections.

To me it is a no-brainer that the 1303 commission (COVAMEC) could and should immediately set out to fill in this lack of information. I have attempted to assist it in doing so. As of the most recent COVAMEC meeting, there was no action taken to pursue the survey I proposed. The two subcommittees eventually did met but have not discussed the survey at all. A survey that will be attempted by the Secretary of State will apparently not bear fruit until January, too close to the time the UVS decision is presumably going to be made. And I doubt it will ask enough pertinent questions about side effects of 1303. **It is now time to ask the SOS IT personnel to query SCORE to obtain the information asked in the draft survey.**

I can't help but notice that many of the instances of weakness of SOS rules that I identified in my comments on the recent rulemaking - often creating obstacles for citizen oversight of elections or new weaknesses of recount and audit- have already been manifest in the Broomfield post election process. I am being confronted with them daily in recent days - usually by the County Attorney, but also by Mark Grueskin. I have been recommending to Broomfield to extend and enhance its process to obtain additional accuracy that is critically needed to obtain an accurate outcome after a recount with a 17 vote margin in a 21,000 voter election. I have advised Broomfield to learn from other counties such as El Paso that is also performing recounts with a similar older and known fallible voting system originally designed for use in precincts. Mr. Grueskin apparently advocates limiting Broomfield's process to precisely only what is in SOS rules. Following only the rules does not lead to what I would call a "best practice" election. Mr. Grueskin has unforgettably told me: "Harvie, you are not allowed to disagree with me. There are only 4 people who are allowed to disagree with me and you are not one of them." I hope this provides some much needed humor at this point.

Also on the bright side, an empowerment of watchers via new SOS rules has taken beneficial effect- the right to observe signatures. This has been of great assistance in understanding a major weakness of Colorado law in checking eligibility of electors prior to tabulating a returned mail-ballot. SOS staff advised Broomfield that a discrepant signature may be used on a signature cure affidavit that affirms simply that "I returned my voted ballot." The approved affidavit does not sensibly confirm that "I signed the envelope containing the ballot issued to me that I personally marked." In other words, a never-checked signature confirms a signature that was already determined faulty as long as an election acceptable ID accompanies the affidavit. And an affidavit allows a ballot to be counted that may not be the one that is being referred to in the affidavit.

This is more than a bit hard to believe. And worse, it would appear that would-be voters are disenfranchised when they fail to put an x in the checkbox that indicates what the affidavit is obviously written to do- this seems to be a **bureaucratic catch-22** that is waiting to trap electors who do not read and follow a whole page of printed material before sending it in. I have watched all this happen and seen discrepancies that apparently cannot be corrected without a new election.

The 1303 commission ought to become very aware of different county policies for processing signature discrepancies, because this is where I now know Colorado voters are disenfranchised unawares, and this is where Colorado unfortunately offers additional opportunities for improper casting of votes.

I looked at signatures on return envelopes that have been held back by judges because of an observed mismatch to the SCORE signature. I compared these to a signature on the affidavit affirming that "I returned my voted ballot." I observed that at least 30% of the "discrepant" signatures on the return ballot envelope **in Broomfield in no way resembled** the signature on the affidavit. This has raised considerable concern about the functionality of the signature checking and validating system and suggests that human signature checks of ballot envelopes are crucial, and the approach to cure by affidavit is weak and must be revisited in law.

Comments made by Hillary Hall at Thursday's Business Practices Subcommittee suggest that many clerks are unaware of this SOS advice. Some apparently handle signature cure affidavits differently than
Broomfield. Some counties may actually check affidavit signatures with SCORE. Some counties probably have staff doing this. Some counties probably have election judges doing this. The 1303 commission should know what practices are in place and where. And the public deserves to know.

I was surprised to hear the Business Practices Subcommittee meeting unfold. It was about 1/3 devoted to discussions of reporting to the DA names of electors who are found to have provided discrepant signatures and do not respond with an affidavit. My observation of the Broomfield election suggests that a much more wide ranging discussion and revision is needed. We need to address what to do if the affidavit signature in no way resembles the signature on the ballot envelope, when the SOS advises that the affidavit signature need not be read at all, but must only be present.

The second third of the meeting was devoted to watchers and how they might be restricted and possibly sanctioned. This I recognized as a discussion about me and people like me who are working hard and usually voluntarily to "witness and verify" and "assist in correction of discrepancies" of Colorado elections. Hearing a group of clerks plus a representative of the SOS and a leader of Colorado Common Cause discuss how to curtail watching was not something I wanted to hear. Particularly as this discussion to me substituted for a discussion of a constructive survey of county practices that would actually help expose good and bad in Colorado elections and help ground upcoming statewide decisions in reality.

The remaining third of the subcommittee meeting was devoted to a quick rundown on relative turnout in recent elections and a query of the clerks present to see if they wished to add anything to what the commission might care to hear about. Clerks apparently did feel that it would be valuable to track the daily use of VSPCs and relative use of mailed in ballot returns vs. drop off.

I agree that these topics are of interest, but there are many other items of interest, apparently perhaps not so much to the clerks but to those who will have to guide major statewide election decisions in the next year and beyond.

I beg the commission to pursue a more active pursuit of knowledge about 64 Colorado elections have been conducted in the past few weeks.

Here is a comment I wrote to the Colorado Observer in response to errors I read about in their article published on Saturday about the Broomfield post election process and the pending recount of a 17 vote margin on a fracking ban question.


Harvie Branscomb
November 23, 2013 at 5:31 pm

I am a credentialed “watcher” in this election and have observed the post election process. There are several errors of fact in the article, located within the quotes that were taken from Peak Politics and the City Manager’s email.

Regardless of the errors of sources quoted by the article – the conclusion I have reached by watching the process is that Colorado’s vote-by-mail may easily result in disenfranchisement that the voter is unaware of. The original vote-in-person method at a precinct polling place did not have this weakness, and it had many other excellent integrity features including easy citizen involvement and oversight. My experience in watching
the new election mechanism has been anything but easy. Yet I am in a position to make corrections on the quotes in the article.

Peak Politics is quoted as saying “[Broomfield] Clerk and Recorder is actively considering counting a FedEx package full of votes mailed from Boulder and received after the election date.”

This is misleading. I have observed the FedEx envelope and contents myself and heard the Clerk address this issue. Neither is Clerk Candelarie nor is any election judge actively considering counting the contents of this FedEx package. The contents are 10 signed Broomfield ballot envelopes presumably containing marked ballots that were received at a Boulder elections department instead of Broomfield. Several were officially stamped as received on November 2 and November 4. They were not opened for counting and no one else has actively pursued their inclusion. Boulder officials couriered them to Broomfield too late to arrive by the election day deadline.

City Manager Ozaki is quoted concerning a woman “who had legally changed her name and provided notice…” alleging that “her ballot was excluded from the certified count because election judges could not verify her signature…” This ballot was not counted but the reason was the result of a county mistake and then lack of proper affidavit, not just a failure of the initial signature comparison. Her name had changed and she had properly notified the county well in advance of the election. The name change was not made in the elections database. Therefore the judges were initially looking for the wrong name to match to the signature. The unsuspicious voter then received the standard letter containing an affidavit to sign and return to affirm she had returned a voted ballot. She attempted to cure the signature discrepancy by sending a fax but did not provide exactly the necessary three items- an affidavit with a particular checkbox checked, any signature on the affidavit and a copy of an ID that satisfied election law. Its true that a validated signature is not needed on such an affidavit to confirm that “I returned my voted ballot” in Broomfield and possibly elsewhere in the state depending on local interpretation of law.

This voter did attempt to cure after receiving the letter and blank affidavit, but faxed an ID that came in unreadable and failed to return the affidavit letter with the checkbox. So the vote was not counted for reason of a staff mistake well before the election followed by a failure of the would-be voter (unfortunate victim of unintended error) to follow directions on an official letter. This is a letter any voter might receive when their eligibility to vote in a mail-ballot election is questioned by election judges for reason of mismatching signature. Yes, any signature on the affidavit with a copy of an ID (e.g. utility bill) and checked box would have satisfied the requirements and yes, this seems absurd. Even so, her attempt to cure was rejected even after a well intentioned watcher challenge that attempted to serve the harmed elector and include the vote.

Residency eligibility issues are an absurd consequence of the new HB 13-1303 all-mail-ballot law. School board elections and municipal elections require different advance residency than the State of Colorado. Broomfield asked an insufficient question on a self-affirmation form when determining the eligibility of its voters for school board and municipal contests. Some voters who already lived within Broomfield and indicated they moved within 30 days of election day were not allowed to vote on the municipal issues including the one with a 17 vote margin- and these voters may not realize that they were inappropriately and selectively disenfranchised by not counting part of the ballot they marked. And their votes might have determined the outcome of the fracking ban.

Citizens may want to focus more attention on how these new election laws fail to function fairly and ask their legislators and election officials to bring back eligibility checks and voting in person so that voters who care will be able to know whether they are voting or not.
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