Here are some relevant portions of the enabling legislation for the COVAME Commission:

ALL MEETINGS OF THE COMMISSION ARE OPEN TO THE PUBLIC, AND THE COMMISSION SHALL ENDEAVOR TO SOLICIT PUBLIC COMMENT AS PART OF ITS EVALUATION AND REVIEW PROCESS. TO THE EXTENT IT DEEMS APPROPRIATE, THE COMMISSION SHALL INCORPORATE THE COMMENTS RECEIVED FROM THE PUBLIC INTO ITS RECOMMENDATIONS AND FINDINGS.


I am Harvie Branscomb. I presented watcher credentials from the state Green and Libertarian parties to watch the 2014 General Election in over 10 counties. I did extensive multiple full day watching in three counties: Adams, Pueblo and Boulder. I did substantial watching of election practices in Arapahoe and Jefferson counties. The Colorado election processes that need to be watched last for several weeks, both before and after election deadline day. Election day watching for GOTV purposes are no longer relevant in a COVAM election. But election watching for integrity purposes are more necessary than ever before. Recent changes to rules have significantly facilitated watcher access. This year I devoted full time to the watcher function (witness, verify, assist in correcting discrepancies) starting 16 days before voting deadline and continuing until certification deadline and beyond. This report is one of the results of my watching experience.

I presented at several COVAMEC meetings last year my proposal for collection of data from the 2014 elections. I was hoping to prepare the commission to fulfill the above statutory requirement (annotated in bold) and to help the legislature and public to understand the range of practices involved in a Colorado election so that more appropriate laws and rules could be written and more universal adherence to these laws and rules achieved.

I don't know why the legislature chose to evaluate the “use of technology” as opposed to all the procedural side effects of eliminating citizen run precinct polling places, ending the use of paper poll books and in many counties taking away some of the tangible benefits of in-person voting. The limitation is reminiscent of the statutory specification that canvass boards must consider complaints about the “voting device” but not necessarily about the election process. Even so, use of technology is a large part of the change effected by the 1303 bill. Suddenly SCORE became the universal substitute for a poll book. And SCORE became the record keeper for information about eligibility determination.
I learned that one of the hidden changes brought about by the 1303 bill is the loss of the familiar poll book at the canvass process. Pre-1303 we had canvass boards compare and reconcile the number of electors registered 30 days in advance to cast ballots accounted for in the precinct poll book. Canvass boards also compared cast ballots to the number of ballots counted in the election looking for discrepancies. In this post-1303 election we modernized away the ability to know the number of registered electors on election day and the ability to know how many ballots are cast (not the same as counted). Under 1303 the number of registered electors is changing until the last VSPC stops processing on election night. Apparently it is necessary to download the data from SCORE at that time to have the numbers stored and available for canvass.

Of the several canvass board meetings I attended or learned about only Boulder succeeded to obtain the number of electors on election day by precinct and compare these to the ballots cast by precinct from SCORE. Turns out SCORE doesn't have a convenient report for officials that provides data necessary for the statutory role of the canvass board. Pueblo attempted to obtain numbers of cast ballots for 5 precincts from SCORE during a canvass board meeting. After a difficult process of repurposing SCORE reports and finding a small discrepancy in the first precinct looked at, county officials apparently lost confidence that SCORE could provide reliable cast ballot data. The election ended up certified without that statutory requirement fulfilled and with minimal if any original election records made available to the canvass board.

The disappearance of the poll book for purposes of canvass should raise a red flag about the modernized election. Maybe there are problematic side effects the legislature or this COVAME Commission should have considered. Perhaps there is still time to do so.

My proposals for data collection from counties were apparently passed over by COVAMEC and also the UVS project on which I served. The Business Practices Subcommittee (BPS) developed its own survey to obtain information from some counties. This was presumably designed not to duplicate the EAC survey that I had used as a model for my proposal. I have not seen any output from the relevant EAC survey for the 2014 elections but hope that this commission will be able to locate the data from that survey and publish it before the COVAMEC report is written.

I attended the Business Practices Subcommittee meeting last week and later was able to find a copy of the clerk's survey on the SOS website as well as an informative daily log of ballots cast by mail, DRE and paper in person from SCORE.

Here is my conclusion from listening to that BPS meeting and reading the BPS survey. The BPS has limited the scope of discovery of effects of use of technology and other impacts of implementation of the COVAME Act to the extent that the Commission may be unable to fulfill the legislative intent of the Act. As a result it may be the Commission will find only positives in the transition from precinct polling to a statewide electronic poll book and central tabulation of ballots that are almost all returned in sealed but identifiable mail ballot envelopes.

What I have found is that there are significant downsides to be revealed, considered and remedied.

The transition in 1303 was not always abrupt from the perspective of those counties who had previously experienced vote centers and who were already doing central tabulation of precinct collected ballots. All counties had been doing some limited “early voting” that requires electronic poll book. As I have often heard, many of the components of 1303 had in some ways been tested in previous elections somewhere. But the mechanisms for oversight and transparency were never updated
to match these new mechanisms. Old laws and rules that pertain to precinct polling places where natural oversight occurs are inadequate to provide oversight of very centralized election processes that are also running at top speeds and controlled by staff in difficult to access locations and happening at unannounced times.

**The transition from the perspective of election verification was more dramatic.**

At the BPS meeting I heard that everything about the election was “fine” except for well acknowledged failures and slowdowns of SCORE. I heard that lines were primarily caused by SCORE slowdowns. I heard that 24 hour drop boxes were popular but their profusion has been limited by the requirement to provide video monitoring. I heard Boulder County clerk say that she might not continue to sort envelopes by ballot style in the future. I heard that Pueblo “outstacked” more than the usual number of ballots.

I did not hear about anything else I experienced in Pueblo or Boulder. I did not hear about controversies over election judge selection and watcher treatment in Boulder. I did not hear about canvass boards and what they experienced.

I did not hear about the rough edges of the election that I experienced while watching. In particular I heard nothing about signature verification except that it would be of interest to some members of the Commission. I heard nothing about Adams County even though it was the locus of much controversy and now subject of a law suit over a hidden violation of constitution and SOS Rule 4.8.5.

The Adams story alone is one that when told could advise Colorado about defects in law, rule and practice. Just as the Broomfield story in 2013 could have advised Colorado through this Commission and was not allowed to do so.

Colorado's past 20 years of election modernization has left in place safeguards that might not have been quite sufficient for now abandoned precinct polling place elections. Adams' printer error could have happened with precinct polling place elections, except that no clerk would have trusted the printer to deliver the correct ballots directly to each precinct as Adams' clerk trusted the printer to deliver the correct ballots to each voter. With modernized mail elections, we are still far from a provably well tested and verifiable election. For example no opportunity for oversight has been created to allow watchers to make sure ballot printing is correctly done and anonymity provided for. Some officials are apparently not providing adequate oversight either.

Adams County demonstrated a cavalier and patronizing interference with the public's right to know about violations of constitutionally protected voter privacy. The clerk failed to implement adequate internal integrity safeguards. The county blocked external oversight that could have defended the public's right to know about the failure. Perhaps unanswered watcher requests and obstacles to access permitted other mistakes or violations to occur undetected. In my case I specifically asked for a voided copy of a ballot the same as delivered by mail to voters. Had I received one I might have detected the privacy weakness. I did receive voided ballots from two other print sources. I was told that the county had no such copies of ballots that were all mailed to voters. If so, it is likely that insufficient testing was done. Would digital printing qualify for “use of technology” for the purposes of a COVAMEC report to the legislature? I would hope so.

**Proposed up voter confidence and consequential high turnout does not make a quality election.**

- The Colorado public deserves closer attention to a modernized but heavily centralized and mechanized
election run by a few officials behind mostly closed doors. A rush to certification has outpaced needed verification. Modernization has allowed new single points of failure to have potentially disastrous consequences where similar failures in the past affected only one precinct.

It is time for the legislature to recognize that election quality matters to the public. Comforting statements about election quality based on lack of complaint are simply insufficient measures of quality.

When Colorado modernized its elections it became more susceptible to undiscovered or deliberately hidden error. Less natural citizen oversight means there is an inevitable increase in the potential for insider fraud with widespread effect – even if none is expected or detected. When we took away control of elections from precinct-based election judges, almost all discretion went to hired expert election staff managed by officials who run for re-election every four years. The extent to which election judges roles are being performed by full time county employees needs to be studied and mediated to restore needed independence of those making judgment calls that affect outcomes.

At one time our election was guided by the principle that all decisions that affect outcome (mostly eligibility decisions) were made by judges prior to 7PM. Shortly thereafter election results become available. Then and only then results are aggregated and reported.

Now under Colorado law we might open envelopes weeks ahead and start scanning up to 15 days prior to that 7PM deadline. Now with 1303 we see an increase in the time it takes to produce definitive unofficial results as a huge percentage of mail ballots are returned on election deadline day prior to 7PM. This means that election judgment calls are being made for a significant percentage of ballots after a time when election results can be known to election judges. Signature verification using SCORE with in many cases potential access to the political party of the voter is being done after the election judges can guess what affect their judgment call will make on outcomes. Election judges and watchers take an oath not to reveal confidential info but they cannot guarantee that their decisions are not affected by the knowledge they inadvertently obtain from the screen in front of them.

Signature verification is largely uncharted territory and it merits substantial concern and will require significant attention in order to ensure that it is effective and uniform in application. I observed great dissimilarity among counties in the process of signature verification. I noted that the watcher role in signature verification is in many counties simply ineffective. Not so much because of distance from the process but because of lack of time for the watcher to understand the judge’s decision and obtain the exact name of the voter necessary to challenge.

A SOS rule prevents watchers from interacting with judges. This rule prevents any effective challenge in a county with an automated envelope sorter. Few of these counties have a process that would allow effective challenge of a “sigver” decision. Even so while the “watcher per area” is far better than the previous “watcher per location” rule, it still does not account for counties that have 18 stations of signature verification operating simultaneously. The current rule allows one watcher per party for all 18 stations in the “area”.

Technically the structure of the signature verification process may also be defective over the long term. When signatures that are not those of the named voter are mistakenly approved to allow counting, the sample of the incorrect approved signature becomes the standard signature for verification in the next election. Thus the system itself may gradually degrade each time election judges make a judgment call that incorrectly reflects reality.
These are just a few of the areas that I see require attention. I will briefly list a few others in the form of questions that deserve answers below- information that the Commission or the legislature might want to obtain before it presumes that the COVAME Act is serving the public well.

How many voters who return mail ballots and then move before election day render themselves ineligible for some contests on the ballot?

How many of those appear at a VSPC and are not allowed to vote on the correct ballot style and leave or choose to vote provisional?

How many returned undeliverable envelopes trigger research into the address that leads to a new ballot packet being sent out?

How many new registrants register in person without an ID (legal) and then vote without an ID (not)?

How many new registrants are showing their utility bill on a cell phone to the election judge?

How many new registrants give addresses for which new voter cards sent are returned undeliverable?

How many signatures are deemed by software to be adequately matched to confirm eligibility?

How many signatures deemed discrepant and challenged by a first tier are approved for counting by only one election judge on second tier?

How many signatures deemed discrepant by a first pass on second tier are approved for counting by one member of a second team on second tier?

What constitutes “confidential information” on SCORE for signature verification and why can election judges see it when in some counties watchers may not? Does CORA define what constitutes confidential information for election processing? Are watcher requests also only CORA requests?

How can a signature verification team confirm the name or challenge decision of a signature that was shown on the screen minutes before after a supervisor judge is summoned by a watcher for a challenge? How many “gobacks” does the sigver system allow to return to a previous signature?

Who appoints election judges serving on signature verification and duplication/resolution teams? How many are county employees?

How is duplication done and in what circumstances? Onto DRE? On a E1C website hosted elsewhere? Automatic printing from a QR code with Simulo? Manually? In pencil? Are duplicate ballots marked to match them to originals? Monitored or crosschecked by a separate bipartisan team? Are duplicate ballots kept in separate batches so that in a recount originals could be counted instead? (Hand counting of ballots that do not tabulate is probably less error prone than hand duplication - reading by one judge and writing by another - followed by machine tabulation. In a recount you really need that extra accuracy.)

How many counties provided voters in-person or replacement ballot styles designed not to be tabulated rather than regular precinct styles expecting the ballots to be rejected from tabulation equipment and
necessarily duplicated onto a precinct style? The precinct style to use for duplication is indicated by a hand mark on the ballot written by an election judge. (This is done to reduce the physical inventory needed at VSPCs when BOD is not depended upon.)

How many counties used Ballot on Demand (BOD) printers for in-person ballots? How many used BOD for replacement ballots? How many used BOD for duplicated ballots? How many used no BOD at all or planned to use it only in an emergency? How many have no room to operate the BOD printer?

How is voter identity kept separated from voter intent during envelope opening? Is all voter identity on one side of the envelope and out of view of the judges? Are judges reading a list of voters names to match to envelopes in a batch before opening?

How many counties allowed “flat” ballots to be cast (into a ballot box without an identifying envelope)? How many arranged for the “flat” ballot to be folded so that it would be indistinguishable from mail ballots? How many arranged for a secrecy sleeve or envelope to enclose the in-person ballot? How many issued a “COUNTER” envelope mail ballot packet after verifying the ID of the voter in person then skipped the signature verification check upon envelope return?

Of course there are more questions like these. I am available for consultation.

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