HAVA Complaint Hearing
55-12-003
Reconsideration

Lisa Cyriacks

Marilyn Marks, Citizen Center

September 25, 2013

Why We Were Here

- **Lisa Cyriacks' vote for U.S. Congressional candidate was not counted. NOT corrected.**
- **300 of her neighbors in Precinct 5 also had their votes stolen by flawed, non-compliant system.**
- **Official results were in error because system did not meet HAVA or Colorado Certification standards.**
- **To achieve remedy to avoid continued use of uncertified and flawed system.**

Why We Are Back

- Seek reconsideration of findings.
- Findings in error.
- Findings lack practical remedy to address 2013 elections.
- Remedy Saguache HAVA-funded voting system controversy that has been ongoing since 2010.

Marks Has Standing for HAVA Complaint

- Court of Appeals No. 12CA0549
- Federal law controls -- “any person” has standing for filing a HAVA complaint.

Saguache –History of Non-Compliance

- **2010 Problems with M650, improperly used as stand-alone system.**
  - **Led to re-tabulation and then unverifiable official recount.**
  - **Loss of public confidence.**
  - **Led to recall of clerk.**
  - **Commitment of SOS to oversee the 2012 election. Commitment not honored.**

Saguache Problems- 2012

- **Public and Citizen Center objected to M100 use for 2012 primary.**
  - **System not certified for stand alone M100 units.**
  - **Clerk staff was untrained on the equipment.**
  - **Decision was made to use M100 only for unofficial count. Hand count was official.**
  - **Premier DRE used with ES&S M100.**
  - **SOS approved untethered components over considerable objections.**
  - **Stand alone components do not meet certification purposes as defined by Rule 45.2.1.1.**

SOS Agrees that Combination is not “Voting System”

10. the combination ofES&S M100 voting machines and the Premier Accu Vote TSX voting machines are not "voting systems,“ but rather components of voting systems.

Saguache Problems-2012

- **SOS permitted two ES&S M100's and Premier DRE's to be used for November election.**
  - **DRE tapes must be manually read causing loss of secret ballot.**
  - **M100 output must be manually tallied.**
  - **No unified system audit log can be created.**
  - **No consolidated results are created in the system.**

Inaccurate Tabulation Resulted-- 2012

- **Significant tabulation errors made in combining the machine counts resulting in erroneous results being reported.**
- **Post-election audit did not reveal problem.**
- **Canvass Board did not notice the inaccuracies.**
- **Discovery came through citizen oversight and analysis.**
- **HAVA complaint was filed as a result.**

Under HAVA
System should be unified/certified

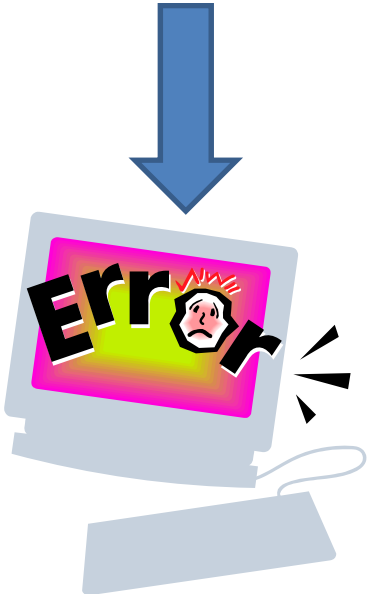
Tested

Tested

Election Management/Reporting

Configuration of Saguache system

Saguache system resulted in errors



Home grown interfaces cannot satisfy HAVA or Colo. Law

Configuration of Saguache system

Home-grown consolidation report. Outside the system.
No audit trail.
No audit log of operator activities.
Cannot meet basic standards.

301 votes missed in one race

HS CD 3	Nov 12 Certified Results	1/4/2013 Revised Results		
Sal Pace	1301	1602	+301	
Scott Tipton	1020	1020		
Gregory Gilman (LIB)	106	106		
Tisha Casida (UAF)	111	111		
Write In Morgan West (UAF)	0	0		
Write In Jaime McMillan (UAF)	0	0		
	2538	2839		

More errors

	Nov 12 Certified Results	1/4/2013 Revised Results		
PRESIDENT	TOTAL			
Virgil Goode/Jim Clymer (ACP)	10	10		
Barack Obama/Biden (Dem)	1864	1865	+1	
Mitt Romney/Paul Ryan (rep)	964	964		
Gary Johnson/James Gray (Lib)	52	52		
Jill Stein/Cheri Honkala (Grn)	18	18		
Stewart Alexander/<emdpza (soc)	1	1		
Ross Amderspm/Luis Rodiguez (Jus)	6	4	-2	
Roseanne Barr/Sheehan (P&F)	6	8	+2	
James Harris/Kennedy (SW)	0	0		
Tom Hoefling/Ellis (Amer)	0	0		
Gloria La Riva	0	0		
Merlin Miller	1	0	-1	
Jill Reed/Tom Cary (UAF)	7	8	+1	
Thomas Stevens Alden Link	0	0		
Sheila Tittle/Turner (WTP)	1	2	+1	
Jerry White/Phyllis Sherrer	0	0		
Write In	0	0		

HAVA Requires Audit Capacity

- *From Section 301*
- *(2) AUDIT CAPACITY.—*

(A) IN GENERAL.—The voting system shall produce a record with an audit capacity for such system.

EAC Defined "Audit Capacity"

- Letter Advisory 7.20.2005

Section 301(a)(2):

The requirements of Section 301(a)(2) of HAVA are met if the voting system conforms and complies with Sections 2.2.5.2.1 and 2.5.3.1 of the 2002 Voting System Standards.

VVSG 2002 Requirements

Produce a consolidated printed report of the results for each contest of all votes cast (including the count of ballots from other sources supported by the system as specified by the vendor) that includes the votes cast for each selection, the count of undervotes, and the count of overvotes;

Be capable of producing a consolidated printed report of the combination of overvotes for any contest that is selected by an authorized official (e.g.; the number of overvotes in a given contest combining candidate A and candidate B, combining candidate A and candidate C, etc.);

Produce all system audit information required in Section 4.5 in the form of printed reports, or in electronic memory for printing centrally; and

Prevent data from being altered or destroyed by report generation, or by the transmission of results over telecommunications lines.

Colorado Statutes Require VVSG2002

1-5-601.5. Compliance with federal requirements. *All voting systems and voting equipment offered for sale on or after May 28, 2004,* ***shall meet the voting systems standards that were promulgated in 2002 by the federal election commission****. At his or her discretion, the secretary of state may require by rule that voting systems and voting equipment satisfy voting systems standards promulgated after January 1, 2008, by the federal election assistance commission as long as such standards meet or exceed those promulgated in 2002 by the federal election commission.*

SOS Rules Require Full System

SOS Agrees

- **45.2.1 Definition of voting system for certification purposes**

45.2.1.1 The definition of a voting system for the purposes of this rule shall be as the

term is defined in HAVA Section 301(b). For Colorado purposes, no single component of a voting system, or device, meets the definition of a voting system except that nothing in this rule shall be interpreted to require the testing of an entire modified system if the Secretary of State determines.

SOS Determination—HAVA voting system standards do not apply

- **"5. The audit capacity requirements in Title III of HAVA do not apply.**

Section 301(a)(2)of Title III of HAVA requires a voting system to produce a permanent paper record with a manual audit capacity that will be available as an official record for any recount. The M1OOsand DREs produced tapes showing the results of each race, which is a permanent paper record that is available as an official record for any recount. As such, the audit capacity requirements in Title III of HAVA do not apply." WHY?

SOS Elections Divisions Permitted Saguache Untethered System

- We filed complaints in 2010.
- Commitment by CDOS to ensure compliance with the Conditions of Use of Unity Software in November 2011 statewide election were not honored
- Filed informal complaints in May 2012.
- Warned of problem in fall, 2012.
- Wayne Munster approved and facilitated Saguache's system for all three elections.

Requested resolution:

- CDOS to investigate to investigate reported errors and to determine through audit whether or not similar errors exist and the cause of such errors. **Partially complete**
- CDOS to require that all future elections in Saguache use a certified system in compliance with Rule 45. **Our current goal.**
- CDOS to stop the use of stand-alone DRE's due to violations of voter privacy requirements of HAVA, Title 1 and the Colorado constitution. **Current goal.**
- CDOS to consider the importance of the role of the canvass board which should be able to compare these numbers to supporting documents for accuracy and investigating issues such as the above obvious anomalies.

ALJ's initial finding – May 22, 2013

The complainants have established that the voting system used by Saguache County in the November 2012 election was not in compliance with Title III of HAVA, Colorado election laws or the Secretary of State's rules governing voting system standards in that it was:

(a) NOT operating as a single system or a unit

AND

(b) NOT capable of producing an audit record as defined by HAVA.

ALJ findings cont'd.

- It is the jurisdiction of the Secretary of State to provide an appropriate remedy to violations of HAVA Title III

Complainants' Objections to SOS Determination

- Components used in Saguache County were not capable of producing HAVA-required consolidated reports.
- Voting system shall be capable of producing electronic and printed audit logs of system operation and system operators' actions to allow operations and input commands to be audited. (Rule 45.2.5.1)
- Voting system shall ensure that all tabulated results are captured and reported accurately (Rule 45.5.2.1.11.)
- CDOS claims that the audit capacity requirements of HAVA do not apply. WHY not? HAVA funds expended.
- Ballot secrecy (V-VPAT system shall be designed to ensure secrecy of votes BEFORE and AFTER votes are cast. It should not be possible to determine which voter cast which record. (Rule 45.5.2.9.11.)

SOS Determination that Privacy not protected after casting ballot

"6. The privacy requirements of Title III of HAVA do not apply.

The complaint alleges that HAVA privacy requirements were violated because Saguache County reviews the voter-verified paper trail from the DREs in order to count the votes placed on those machines. Title III of HAVA outlines several privacy requirements including permitting the voter to privately verify the votes and the opportunity to privately change the ballot or correct any error before the ballot is cast. Each of the privacy requirements outlined in HAVA refer to the privacy of the voter while casting a ballot. Because the privacy concerns raised in the complaint do not reference the process of casting a ballot, Title III of HAVA does not apply." An absurd result!

No compliant system after 3 years of complaints to SOS

- Complaints began in 2010 Primary.
- Continued through 2010 General, 2011 Coordinated, 2012 Primary, 2012 General, 2013 Coordinated.
- SOS has deferred HAVA-compliant response.
- Why no resolution?

NEW remedies requested (time constraints for Nov.)

- Not a certified system, -- use is prohibited.

- Manually count November 2013 election for official results
  - Small election.
  - Ease of counting.