

Steven Ward

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Subject: doc for delivery to Elections Watcher Panel
Attachments: Branscomb note to SOS Watcher Pane June 26.pdf

To CO SOS Election Watcher Advisory Panel for 6/26/2015 meeting

It seems appropriate at this point for me to forward my own writing published in the Colorado Statesman after I returned from Selma, Alabama, this year to witness the testimony concerning Representative Windholz's election watcher bill that was PI'ed . Several House State Affairs Committee members at the time referred to the importance of this SOS election watcher panel in making their decision to postpone indefinitely.

<http://coloradostatesman.com/content/995489-following-election-integrity-footsteps-selma>

The same arguments I refer to in the article are indeed being made in our panel meetings. These arguments focus on imaginary abuse of watcher opportunities and appear to me to severely exaggerate the effect of watchers on elections as if election judges might become obsolete by being replaced by watchers. If election judges become obsolete, it will not be because election watchers have taken over. It will be because in some instances election staff have taken over from party-appointed temporary citizen judges.

It is possible to run a government without the possibility of citizen oversight, and it is easy to run an election without citizen oversight. In fact, it happens all the time. We in the Colorado should consider ourselves lucky that we have laws that permit citizen involvement and in particular independent, minimally regulated oversight of what must be essentially a public process. When elections are not actually being conducted by the public, it is even more important that they be overseen by the public.

There is no question that within the past ten years, a transition has taken place in which employees of elected election officials have replaced temporary citizen roles in conducting elections. Centralization and mechanization and creeping complication of voting methods have caused this transition. Opportunities for election oversight have not been adjusted to make up for drastic changes in methods. Thus far it appears this panel has not been able to recommend

sufficient changes that will allow and encourage watchers to witness and verify all steps in the conduct of an election and assist in the correction of discrepancies. "Discrepancies" may be thought of as errors or omissions or other anomalies.

This committee ought to be concerned about an obvious and remarkable lack of election oversight in many of Colorado's counties, most of the time. Can we be confident that elections are being performed correctly and outcomes determined accurately when oversight is lacking and questions are not being asked, or are being asked and not answered?

Instead, we seem to be principally concerned with the imagined possibility of excess watching—something that has rarely occurred. When it does occur, it is usually due to inadequate physical space or other less than stellar facilitation of watching. Standards must be established for adequate minimum space for watching within the boundaries of economic practicality.

In the June 12 meeting, I heard Martha Tierney say (1:54 on the recording) "I think setting up some kind of separate terminal where watchers get to conduct their own signature verification is in my view completely against the statute. It is not the role of the watcher and would be unlawful. (...) Because that is not the watcher's role. The watcher is supposed to witness and verify the conduct of the election. They are not supposed to conduct the election. They are supposed to watch the election judges do their job and verify, not do it for them... [to Marilyn Marks, who quoted from statute, "assist in the correction of discrepancies"] ... that is not you doing it. You don't get to do it. They are not supposed to go to a separate terminal and look at ballots [obviously she meant envelopes]. That is you doing it. Why is that not the watcher taking over the election?"

Martha is in my opinion simply not acknowledging that such a separate facility for watchers to verify election judges' decisions could be done after the fact of the judges' decision with a read-only function on a terminal that would provide no facility for the watcher to change the election judges' decision, other than through a separated methodical challenge process that would be under election judge control. The proposed rejection of such a facility for watchers will unquestionably leave watchers unable to even in principle verify each election judge decision in a large county. Without adding a time delayed (almost real time) technical watching mechanism the existing time and space currently provided will simply not permit effective witnessing and verification and correction of discrepancies to take place. A formula for watchers per judge such as one per four could be used as a minimum to make sure that minimal standards for time and space for real-time watching exist- but the delayed almost real time mechanism is what will make watching of signature verification and adjudication of ballot marks realistic in a large

county. Technology is already beginning to provide an opportunity for that benefit in some counties.

Amber McReynolds appears to argue that additional facilitation of watching might result in voter disenfranchisement. What is more correct is to say that limitations on watching such as are in place today will prevent and probably are preventing watchers from correctly challenging ineligible voters and inaccurate vote interpretations (if any). Her argument seems based on the presumption that watcher challenges are probably incorrect and that the challenges would produce the effect of incorrectly denying access to vote. I hear her argue that excessive challenging of voters will result not just in delays but in denial of service of counting the vote. I fail to see how this catastrophic DOS result would not be prevented through existing safeguards against interference by watchers.

We are talking in this context about central processing of previously signed affidavits of eligibility and previously captured voter intent. Voters are not interfered with by the process of election challenge at central count. Remember also if watchers are challenging the **rejection** of signatures, then “additional watching” might result in “excess enfranchisement” as well if it is simply the fact that the watcher’s adequate access to challenge is resulting in the additional enfranchisement. Watchers must be able to redirect a potentially faulty decision back to judges for a reconsideration, but not change the decision.

The compromise that I think we reached in the June 12 meeting—watchers would use visible cards or stickers to indicate as many as ten signature-decision challenges per hour—is reasonable if it results in an escalation process that investigates both the judges and the watcher in question to determine which of the two need remedial training or, in a severe case, removal.

Note (perhaps for another advisory group) that the watcher must be able to challenge both an acceptance of a signature as well as a rejection of a signature. Likewise other election judge decisions ought to be subject to some form of simple visible challenge or complaint procedure.

I am concerned that the chair of our panel has suggested that we not discuss panel business by email. This seems to me to be a way to control the panel beyond the bounds of fairness. Clearly we need the extra bandwidth of communications outside of the meetings in person to be able to provide examples and good arguments, especially with such a large committee. Also I am becoming concerned that the SOS-controlled agenda may be the only agenda allowed at our panel. An exception seems to be the one motion that Marilyn Marks has introduced—one that appears to simply confirm a reasonable interpretation of the statutory requirement for watching.

Another concern of mine is that I have heard that the meeting after this June 26 meeting will be the last. If so, then we must prepare our items for an agenda for that meeting now. Here are some of mine:

1. officials blocking physical access of watchers (requiring escort by lone DEO, off-limits areas, locked doors on weekends, no public announcement of election step, etc.)
2. access to watchers for instances of steps in conduct of the election not performed by election judges
3. accountability for delegation and appointment of roles (deputy clerk, judge, etc.)
4. watcher questions properly directed that are never answered or answered via CORA obstacles
5. create a mechanism for judges to alert watchers to exceptions
6. provide list of public records including those that are in use and how they may be accessed – also make sure no record is deliberately rendered unique so that it requires special protection (other than for reason of PII)

In preparation for the next meeting about postelection watching here are some notes of issues that ought to be discussed:

- watching of officials debriefing the election – this may be the most informative opportunity for watchers but it likely does not involve election judges yet it ought to be considered a step in the conduct of election
- post election relaxation of the gag on communications and use of recording media – e.g. watchers should be allowed to communicate in and record canvass board meetings
- numerous instances of election steps that are not conducted by election judges (accounting, records preparation, provisional ballot determination, etc.)
- access to election results data at a detail level
- access to the process of creating the canvass report (by officials prior to delivery to canvass board)

Harvie Branscomb