

Steven Ward

From: Harvie Branscomb [REDACTED]
Sent: Thursday, July 09, 2015 2:01 PM
To: Steven Ward
Cc: Suzanne Staiert; Benjamin Schler
Subject: Comments for Election Watcher Panel for July 10 meeting

Steven

I will not be attending the Friday meeting in person. I will use the phone from California.

Please forward this to the watcher panel and post to the public record.

Harvie Branscomb

To CO SOS Election Watcher Advisory Panel

It is my understanding that the July 10 meeting may be our final meeting, and it is already set to be a short meeting before lunch. In the worst case this might be my last written message to the panel. It is my hope that those members who may decide to disagree with the panel's conclusions or who feel that other topics should be added to this discussion will have a chance to express that sentiment in the public record of the panel. To that end I request that an opportunity be made for those of us who wish to express a dissenting opinion. I wish to be allowed to do so in the permanent record of the panel, and preferably as an addendum to any resulting report. It isn't yet clear to me if the panel will be encouraged or allowed to create a report. So please accept my formal request for an opportunity to provide comments preferably to be attached to the report, or at least published in the public record of the committee on the SOS website. The window for expressing those comments must permit at least a week after the consensus report is finalized.

It concerns me that even today, 24 hours before the final meeting begins, I do not have access to the SOS created materials that will guide the decisions made at the final meeting. So I am obviously not making comments on that material.

What I can say is that the panel has been closely guided towards particular SOS proposed mechanisms for solving some recognized needs for watching. I agree that most of these needs exist and that the proposed solutions may be helpful: watcher training, background checks, tiered access to privacy protected information, clarification of scope of watching, mechanism for verifying/assisting in correcting discrepancies in signature verification and digital ballot adjudication.

Unfortunately though, watchers are far more challenged and disempowered in practice than our discussion has recognized. Watchers frequently encounter obstacles created by election officials (including election judges). This may range from a county requirement for every watcher to be physically accompanied by the DEO to requirements to conform to the timelines and costs built into CORA.

The panel has discussed the possibility of constraining watching to the activities and the instances during which election judges are actively working. That would be a severe (and disastrous) departure from the stated statutory intention: to witness and verify every step in the conduct of the election and to assist in the correction of

discrepancies. There are times and places where watchers if present could assist (unsolicited) in preventing errors that result in disenfranchising eligible voters. In some of these instances election judges are not present. Also the distinction between election judges and DEO/staff has been blurred in many counties.

Successful watching must not depend on trust and approval of election officials. Successful watching must have - when sought - the effect of verifying the quality of election official as well as election judge decisions and actions. Watchers and non-DEO canvass board members and official observers are the only independent sources of this kind of verification and while this verification is not always going to result in improvements there are times when it is needed and if watchers are well intentioned and well prepared and listened to a constructive correction will be the result. Since we cannot predict when these conditions are present the watcher statutes and rules must act as if beneficial conditions are present until proven otherwise. Innocent until proven guilty.

Election judges are treated differently in various counties. In Adams county election judges were ushered out of the room where the election materials were exposed at times when signature verification or deconstruction, etc. had temporarily ceased. But staff and vendors remained with the records. If watching takes place only when judges are working, there will be many instances where the election materials are left both unsealed and unwatched. It should be the case that when watchers are concerned about the integrity of records, it should be legal for the integrity of the records to be verified by watchers.

There are several different conditions under which watcher statutes and rules must function adequately. One is to make sure that there is a minimum facility for adequate watching. In some counties we may need some time to conform to new minimum requirements. Another function for watcher regulations is to make sure that when there is great interest in watching such as during a close election, that potential watchers are fairly given access even though there is inadequate facility for all. Another need for regulation is to prevent abuse of the watcher facility when abuse means destructive interference. There exists already substantial statutory and rule support for a DEO authority to remove credentials from watchers and deny them access. Fourth, the statute and rule must facilitate a responsible feedback channel from the watchers to officials so that constructive input can be made without interfering with or substituting for the function of election judges. The conversation within this panel has made it clear that even among regulators and policy makers there is a confusion about the difference between watcher and election judge roles. It seems to be a top priority to correct this confusion.

The second highest priority is to make it clear that watching pertains to more than merely observing the actions and information accesses of election judges in real time. In order to verify anything about elections (eligibility, chain of custody, tabulation accuracy, results and outcome confirmation, audit effectiveness, etc.) documentary evidence will have to be accessible- not only when election judges are accessing it. CORA is not the correct facility for gaining this access. Rules must ensure a reasonable and non-obstructive access to election records that are also in use by election judges and other officials.

The third highest priority is to create a new managerial oversight of the watcher function short of the local DEO or the district court. I have experienced while watching too many instances of denied access to

steps in the conduct, failure to receive answers to questions including written questions, and failure to gain access to written or electronic documents that are public records. Watchers have no effective authority to resort to when the DEO has denied access. If watching is going to have a constructive effect Colorado will need a means to review and overrule DEO decisions that obstruct watcher access.

I hope that either this panel or a future group will address these points. Legislators should take note that this SOS panel, as useful as it may turn out to have been, has not addressed all the existing concerns about watching. The panel was not asked to input items for addition to the agenda. I have autonomously listed items that could be addressed on each of my posted public messages to the panel.

Harvie Branscomb

P.S. Three minutes ago the draft proposed recommendations were delivered by email just after I finished this email.