

Comments in red italics by Harvie Branscomb 7/9/2015

Election Watcher Advisory Panel

Eligibility, Appointment, & Oath- May 15, 2015

Recommendations Based on Consensus or Majority Votes:

1. Establish mandatory Secretary of State-authorized watcher training; and allow appointing entities to incorporate approved material into their existing training, where applicable.

Proof of completion must be portable and not require intervention by DEO or judges

2. Establish a process by which a watcher may provide his or her voter registration record with the certificate of appointment to bypass an eligibility check by the county clerk. This process would be optional, not mandatory. If the watcher does not provide the voter registration record, the county clerk will confirm his or her eligibility in SCORE.

Also proof of establishment of political committee if applicable

3. The county clerk has the authority to confirm a watcher's eligibility prior to allowing the watcher to watch election activities.

No, disagree. Clerk must not be able to delay or obstruct access of watcher until removal procedure.

Panel Discussion:

- Panel members discussed a statutory change to give the state party chair or "other authorized official" appointing authority in the absence of county party governing structure. Note: may also require change to political party bylaws.

Yes

- Panel members discussed a statutory change to expand or require earlier notification of appointments to county clerk (currently "to the extent possible" on the Friday before the election).

No, this may be ok for conventional watching pre-election day but will not serve watching for close elections post election.

- There was general agreement that a watcher information page on the Secretary of State website would be helpful.

Yes

- Panel members discussed that interested appointing entities should have the opportunity to collaborate on watcher training course content.

The content of the training is of great concern. Parties should not be the only participants in this collaboration since there are several different reasons to regulate watching.

- Panel members discussed the following changes to the certificate of appointment form:
 - Add year of birth so county clerks can more easily confirm eligibility;
 - Enhance the form to allow users to select election type from a drop-down menu;
 - Enhance the form to provide a fillable information box, allowing counties to provide location-specific information.

In particular it should be easy to specify all watcher locations and should not be necessary to know the exact nomenclature for the location to succeed in the appointment.

- Panel members discussed a statutory requirement that an issue committee's registered agent be the authorized representative to appoint.
 - Require that the certificate of appointment allow space for the name of the issue committee so the county clerk can look up the committee in TRACER and confirm its authority to appoint.
 - Allow watchers to provide a TRACER print-out of registration information with certificate of appointment in lieu of county clerk confirmation of eligibility.

Yes.

Accommodation – May 29, 2015

Recommendations Based on Consensus or Majority Votes:

1. Election Rule 8.4.2: For purposes of watchers, “election activity” generally means the time when electors are voting and/or when election judges (including sworn-in staff members) are present and doing something. “Election activity” also includes post-election activities, such as canvass.

Disagree. Many steps and conditions that are eligible to be watched are not associated with election judges. Election judges are not the only source of error and discrepancy in elections. Every step in the conduct of the election includes the appointment and training of election judges, the design and printing of ballots, the delivery of ballots, the in-person voting process, the transportation of election records, the eligibility check of voters in-person and by mail, the mail ballot intake, preparation and tabulation processes, the reporting of results, the cleanup after election day, the audit and canvass process and of course the lead-up to and completion of the recount.

2. Healthcare facilities: Watchers should be required to arrange watching at healthcare facilities beforehand at the Clerk’s office;

Although this was a unanimous vote, this is somewhat problematic. If the DEO knows that watchers are coming, it is likely the voting process will be handled differently.

watchers should be required to maintain adequate distance from the elector so that the elector is able to mark his or her ballot in private.

This may be very difficult to accomplish as some voters will speak their voter intent and some will not. It may mean that effective watching cannot take place in HCF.

3. Watcher to Election Judge ratio (per appointing entity): a. Central Count

- i. 1 watcher per Central Count process *for up to 10 election judges per process*

- ii. 1 *additional* watcher for every 10 *additional* election judges *or portion of thereof*

- b. Signature Verification

- i. 1 watcher for every 4 election judges *or portion thereof*

- c. VSPC

- i. 1 watcher per VSPC; or

- ii. 1 watcher per VSPC process *if done by separate judges*

- d. Watcher accommodation is subject to space considerations (as outlined in required Watcher Accommodation Plan—explained below). *Minimum standards should be set and achieved over time.*

- e. Best Practice: The county clerk should allow as many watchers as can be accommodated, with consideration given to equal representation *when a ~~where no~~ cap is imposed for lack of space.*

4. Election Rule 8.6.7: Video recording rule should remain the same *except when the meeting is a public meeting.*

Panel Discussion:

- Panel discussion on categories of election activities – “processes”: *These are not an exhaustive list of “steps in the conduct of the election” but instead activities within a physical room or facility for central count or a VSPC that deserve specific attention by at least one watcher per each activity per appointing entity:*

- Central Count
 - Signature verification / *eligibility challenge*
 - *Missing/discrepant signature cure*
 - *Ballot intake*
 - UOCAVA
 - *Provisional determination*
 - *Envelope intake*
 - Envelope *capture*/ sorting
 - *Envelope deconstruction*
 - Duplication
 - Scanning
 - Resolution / *Adjudication*
 - Tabulation / *Reporting*

- VSPC
 - Registration /*ballot replacement*
 - Check-in
 - Ballot drop-off
 - *Ballot storage/transfer*

- Panel discussion regarding proximity to election activities:

- The six foot limit applies only to voting (e.g.: Six feet from voting booth).

Yes

- Watchers should have sufficient access to “witness and verify.”

Yes, both in time and in space and opportunity to enter the space if practical

- Best Practice: Counties should not place tape on the floor or other artificial barriers; the Secretary of State should establish a set standard for the room/process for the Watcher Accommodation Plan.

Yes

- Panel discussion on SCORE reports:

- Timely delivery of available SCORE reports is a problem – if watchers could get reports on their own (e.g., if the SOS provided reports), it would help both watchers and county clerks.

Yes, such as daily publication of lists of registered electors, voters, cast ballots, signature challenges and cures.

- Additional report information, such as rejected ballots, status of ballot, and undeliverable ballots would be useful.

Yes

- Panel discussion on CORA (Colorado Open Records Act):

- Watchers are looking for more time-sensitive information, and should be given election-related information outside of the CORA process.

Yes

- There should be an exception that allows watchers access to any records produced in the ordinary course of the election.

Yes

- Panel discussion on video recording by watchers:

- Panel members expressed voter and judge intimidation concerns.

Panel member expresses need for documentation of election process for challenge/complaint/contest

- Panel members expressed confidential voter information exposure concerns.

Panel seemed to concluded this could be ameliorated with a back ground check requirement.

Signature Verification – June 12, 2015

Recommendations Based on Consensus or Majority Votes:

1. Promulgate a rule that the county clerk must provide at least one primary or *preferably one or more* alternate contacts for watchers at each location/process when watchers are present. *Not necessarily only the supervisor judge.*
2. First Tier Escalation: Promulgate a rule requiring a method (e.g., cards) for the watcher to request automatic escalation (outside the statutory challenge process) of ballot-envelope signatures to a bipartisan team of election judges for review. a. Limit the number of escalations allowed to 10 per hour per election judge; ~~at that point, the watcher should address the issue with a supervisor judge as a potential process issue.~~

I would have characterized this differently. If 10 cards are used by a watcher or given to a judge within an hour, a supervisory escalation should take place that interrupts the process of the election judges collecting the 10 watcher cards or interrupts the watcher using the 10

cards and determines if additional training or in a severe case removal of either the watcher or the judge or judges is justified.

Panel Discussion:

- Panel members discussed that the role of the watcher is to protect the appointing candidate, party, or issue committee; not to protect overall integrity of process.

Panel members argued that the role of the watcher is also to protect the overall integrity and public awareness of the process and to build trust when the election processes are verified and the discrepancies are resolved. In addition the overall result of competing watchers protecting their candidate is to protect the overall integrity of the process.

- Panel members discussed the following interpretation of “assist in the correction of discrepancies”: To help or support election judges; no authority for watchers to make corrections.

Partially correct- no authority to make corrections, but the word “assist” means to provide information that leads to corrections, not to “help or support election judges” when asked to do so.

- If a watcher sees a discrepancy, he or she has right to make contact with the supervisor judge or watcher contact and ask that the discrepancy be corrected.

If a watcher detects a discrepancy – not only “sees.” Detecting a discrepancy could likely involve comparing witnessed facts to contents of accessed election records.

- If the supervisor judge reviews and disagrees, the watcher's remedy is to inform his or her appointing entity of discrepancy.

Or inform another designated contact, the DEO or the public at large. It's not necessarily the supervisor judge who "reviews" and agrees or disagrees. It may be the DEO is the party who disagrees. Should be in most cases election judges in pairs (not a supervisor) are reviewing the watcher input, or in some cases the DEO depending on the statutory context topic in question.

- The ~~appointing entity then~~ *watcher* may contact the county clerk or Secretary of State to resolve the issue; file an action under section 1-1-113, C.R.S.; or take other actions it deems appropriate.

We did not have this discussion to my recollection. The watcher obviously may contact the SOS or a court or the public. There isn't any authority for rules to require watchers to communicate through the appointing entity.

- The panel generally agreed that a Watcher Accommodation Plan would be beneficial.

Yes

- The plan should require the county to confirm that it has designated **at least one** judge at each location/process to be the point of contact for watchers.

Yes

- This may require amendment to Election Rule 8.6.5.

- Disputed decisions (or discrepancies) should be held until the watcher has had an opportunity to alert the watcher contact person.

This practice requires that adequate information be readily available to inform the contact person of the exact event.

- Best practice: The county should post who the contact person(s) is at each location/process daily; that person should wear a nametag identifying him or her as the watcher contact; additional contacts should be available if conditions require them.

Yes

- Panel members discussed whether off-line review of signatures by watchers could be beneficial.

- The Secretary of State could provide report with last SCORE signature or do future SCORE development to provide public module with this information; county clerk could provide scanned envelope signature or actual envelope for comparative review outside of election judge signature verification process.

Yes

Post-Election Activities (and Signature Verification, cont'd.) – June 26, 2015

Recommendations Based on Consensus or Majority Votes:

1. Title 1 should be amended to allow watchers access to signatures during election activities outside the normal CORA process.
Yes, and preferably other PII also, under requirement of background check and watcher training and improved oath.
2. §1-7-108, C.R.S.: The phrase "witness and verify" applies to times when election activities are occurring (as defined in Rule 8.4.2) and judges are present and should extend through canvass and the conclusion of any recount. a. Vote count:
 - (11) Yes: Staiert, Wilson, Goldman, McReynolds, Tierney, Weston, Alberico, Candelarie, Sen. Ulibarri, Nunez, Wilseck
 - (6) No: Marks, Branscomb, Cyriacks, Sen. Woods, Madsen, Brown

This is a crucial point that justifies and requires a minority report to the Secretary.

b. Based on this decision, Rule 8.4.2 should be modified to include canvass and recount as “election activities.”

Yes

Panel Discussion:

- Panel members discussed that the public would be more comfortable if everyone with access to confidential information was background checked.

Yes, but my understanding was that the background check was not for “comfort” but to provide a basis for expectation that the watcher would honor the oath and protect the confidential information to be accessed. Background check must be easily accessible and possible to complete within minutes not days.

- The appointing authority should have financial responsibility for the check.

No objection but only if the cost of the background check is less than \$10.

○ Background checks for watchers would require a statutory change and a specific provision that the Colorado Bureau of Investigation would provide the information.

?

• Panel members discussed whether a background check requirement could hinder efforts to get watchers access late in the election. ○ Only require background checks for watchers who will have access to confidential information. ▪ Create a color-coded badge system.

Yes

○ *Create way for watchers to provide a recent background check to the clerk.*

To the election judges in charge, not the clerk.

○ Watchers would need to consent to the background check.

• Election Rules 8.4.4 and 10.3.5 should also be changed from “observe” to “witness and verify.”

Yes

• Panel members discussed whether the Certificate of Appointment oath should be amended to require watchers to affirm that they have not been convicted of an election offense or an offense with an element of fraud.

Is this a substitute for or in addition to a background check? Anyway no objection.

As I stated in my comments in email, I think there are constructive improvements here. The attempt to curtail watching to election judge activities in real time is a disastrous re-write of the statutory access for (limited by appointment but not by scope) public access to steps in the conduct of elections. I will work to stop any changes to statute or rule that have the above effect.

In my postings to the panel I have provided other topics and suggestions worthy of discussion and inclusion. Please refer to other postings on the CO SOS watcher panel site:

<http://www.sos.state.co.us/pubs/elections/watcherPanel/index.html>

I am concerned that regulators now in positions of authority would not have written the law we have today. Now when we recognize that we have made major changes to the relationship of the Colorado public to their election by limiting the number of locations and spreading out the time of the various process as well as using complex equipment that require expertise in factory-like contexts is not the time to limit the scope of the watching function. It is time to revisit it with an intention to make sure that all parts of the election are practically accessible to a responsible group of citizens who have been appointed by interested parties.

Harvie Branscomb