

## Andrea Gyger

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**From:** Al Kolwicz [REDACTED]  
**Sent:** Saturday, June 07, 2014 9:32 AM  
**To:** SoS Rulemaking; Suzanne Staiert  
**Cc:** Harvie Branscomb [REDACTED]; Colorado Voter Group (ColoradoVoter@googlegroups.com)  
**Subject:** Rulemaking comments- conditions for use  
**Attachments:** Branscomb to rulemakers June 6 2014.pdf; SOS Gessler and DSOS Staiert - Not Canvass-Ready.pdf

Thank you for your invitation to make know our thoughts regarding your work on a possible rule 20 change draft.

1. Colorado Vote Group strongly endorses Mr. Branscomb's comments, see attached. Mr. Branscomb has unique first-hand experience with this topic. It is vital that he be recruited to actively participate in the development of this rule. He would fill a missing perspective on the team.
2. In a June 4<sup>th</sup> letter to Deputy Secretary Staiert, attached, we outline some key issues that must be satisfactorily addressed before proceeding with drafting of rule 20 changes. It is difficult to understand how a rule 20 draft might be completed without first precisely defining the terminology, documenting verifiable requirements, and extending the scope of the effort to address the entire election system.

*Al Kolwicz*

**Colorado Voter Group**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[www.ColoradoVoterGroup.org](http://www.ColoradoVoterGroup.org)  
<http://coloradovoter.blogspot.com>

**Subject:**One general comment as a post script to the rulemaking public comment opportunity

**Date:**Fri, 06 Jun 2014 17:19:11 -0600

**From:**Harvie Branscomb [REDACTED]

**Reply-To:**[REDACTED]

**To:**SoS Rulemaking <[SoS.Rulemaking@sos.state.co.us](mailto:SoS.Rulemaking@sos.state.co.us)>

**CC:**[REDACTED]

To the Rulemakers at SOS:

In my ten years of watching Colorado elections very closely I have seen our 4 vendors' systems put to the certification test by the SOS and all of them substantially fail. At that point the legislature over a two year process grandfathered in all of the systems in use in 2008 regardless of whether they were included in the certification test at all or whether they failed substantial portions of the tests (e.g. 30%).

The saving grace and hoped for remedy from blanket acceptance that ended the story of the Conroy v. Dennis case was embedded in the conditions for use that were quietly patched together and released without public comment. Among them were some guidelines for conducting audits that were not well thought out and some workarounds for physical problems.

Unfortunately the current rules that we are told replace these conditions for use are insufficient to provide technical credibility to our current election systems in front of a technically aware audience.

As much as one might wish it were true, the conduct of an election without complaint is not verification of accuracy.

The conduct of an election with substantial complaint also seems to provide nothing to resist the urge to claim credibility and manufacture confidence that is not based on verified facts and rational accountability. Broomfield 2013 is the most recent example.

Colorado continues to brag about its election system but the systems in place are not set up to reveal their flaws, and recognized flaws are quietly (and exasperatingly) worked around in the field, usually with a very compliant and agreeable set of friendly election judges around a very overworked DEO of whom none are likely to spread complaints or share their stories outside a very small and friendly club.

So very few of us know most of what is known to be wrong with our election systems. Perhaps even fewer understand how little the law and rules help us achieve accurate, reliable, secure, accessible, transparent, accountable elections. But there are some who do.

Broomfield proves that Colorado's system for sharing information about elections is defective. There is a chance that Broomfield's contractor with instructions from Broomfield will share a fraction of what was learned there, but history suggests that we will learn little or nothing from Broomfield even as it provided a great deal of information about flaws in election equipment, election procedure, election rules and election law.

The format of the pdf provided with this pre-rulemaking discovery was very difficult to respond to. I hope that it will be easier to handle in the future. I regret the loss of the conditions for use in principle, but the fact of the conditions were such that they were either insufficient or ignored.

Harvie Branscomb 6/6/2014

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Harvie Branscomb

<http://www.electionquality.com>

[REDACTED]

[REDACTED]

Branscomb to Rulemakers June 6, 2014

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**Subject:**rulemaking comments- conditions for use

**Date:**Fri, 06 Jun 2014 16:50:15 -0600

**From:**Harvie Branscomb [REDACTED]

**Reply-To:**[REDACTED]

**To:**SoS Rulemaking <[SoS.Rulemaking@sos.state.co.us](mailto:SoS.Rulemaking@sos.state.co.us)>

**CC:**[REDACTED]

*Amendments to Rule 20.5.2, regarding internal controls for the Voting System: 6*

20.5.2 In addition to the access controls discussed in Rule 20.4,

Add after section (H). No one may transfer any portion of the election database or election related code to or from the developer or any other party during the course of the election including by transfer through flash memory, CD or DVD or any other media. This does not include reports and logs. [Yes this has happened for the purpose of unlocking integrity locks built into the system]

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*Amendments to Rule 20.11.2: 17*

20.11.2 Anonymity. The designated election official must implement measures to 18 protect the anonymity of voters choosing to vote on DREs. 19

(a) Measures to protect anonymity include: 20

(1) The county may not MAKE [not keep] any record indicating the order in which 21 people voted on the DRE, or which VVPAT record is associated 22 with the voter.

[Note that these rules will help prevent problems I have encountered with anonymity violations but are not nearly sufficient to solve the anonymity problems.

There are many other solutions that need to be applied. For example, the holding back of about 10 ballots from each ballot style until all other ballots have arrived (8 days post) will insure that incremental vote counts will not expose personal voter intent.

Duplication can also be a source of anonymity violation. The requirement to match originals with duplicates by numbering them is a source of a violation if the duplication was done to remove identifying material. In this case the duplicate should not be numbered.

Another case is when a certain ballot style is duplicated to remove some contest votes. In this case the best way to prevent the duplicate from being identifiable is to create a secondary ballot that contains vote marks to be subtracted from the vote totals. These special subtraction ballots need not be done in an identifiable way, but must be kept separate and whether or not counted by machine, subtracted from the vote totals rather than added. This way the original ballot can be included with the remaining ballots and remain anonymous.

SOS should provide rules to ensure that ballots are sorted and shuffled as soon as possible after the identifying attributes are removed. In fact sorting can be done while the envelopes are in place.

Sorting makes sure that any batch will not contain unique ballot styles that would interfere with anonymity. Counties with envelope sorters should be required or encouraged to sort by ballot style before batching. Some do.

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### 20.17.3 ACCESS LOGS.

Logs of all kinds must be enabled- access, audit, system and all other logs. Often these logs are not activated and ignored. Electronic logs should be printed or otherwise made available so that any exceptions on them are noticed.

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### 20.17.6 OPTICAL SCANNERS AS DEFINED IN RULE 21.1.13: 24

#### (A) WHEN ISSUING BALLOTS, THE COUNTY MUST PROVIDE...

Secrecy sleeves must be used for the purpose intended. Envelopes must be removed from secrecy sleeves at a location or at a point in time that is substantially removed from the location or time that the ballot is removed from the secrecy sleeve. Two different teams of at least two election judges should be used for the two separate actions and these teams must not be in direct communication. Ballot envelopes should be in substantial batches (at least 10) when envelope opening is performed and likewise for secrecy sleeve opening. Preferably the batches are recreated and shuffled while the ballot is in the secrecy sleeve.

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#### (E) THE COUNTY MUST PROGRAM EACH OPTICAL SCANNER TO REQUIRE AN OVERRIDE KEY FOR BALLOTS THAT ARE REJECTED BY THE SCANNER.

It is unwise to use an override function because one does not know how many errors are going to be affected or what mistakes will be made during the override condition- the judges assume there is one error but there may be others unrecognized. The override turns off the sensitivity to all conditions that would have led to a rejection regardless of whether the election judges are aware of them or not .

There are much safer ways to handle this- such as (best) hand counting the rejected ballots, or (next best) put rejected ballots into Hart Ballot now or similar where all defects are potentially revealed to the operators by showing images of the ballot or (less best) duplication of rejected ballots before scanning again. Override is a very poor policy and it definitely leads to mistakes.

Requiring all scanners to have the override function is of course even worse. Please delete and rework this requirement so that errors do not creep into our election results unawares.

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“Provisional ballots must be processed separately from non-conditional ballots - system subcomponents are unable to functionally differentiate and correctly process to Colorado specific requirements”

[This should say provisional envelopes must be kept separate. Once provisional ballots are released for counting they should be mixed in and not identifiable as such, else an anonymity violation usually occurs.]

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(this portion from ESS but applies to all vendors sections:]

*Software Condition 1(c) is deleted as unnecessary and redundant. The security and audit concerns addressed by this condition are currently covered by Section 1-7-514, C.R.S., and Election Rules 11.3-11.5, and 11.8, and proposed Election Rules 20.2-20.5, 20.7, 20.9, 20.11, and 20.13.*

If this means that election night methods to create sub-tallies for each memory card are to be dispensed with, this is an outrageous misunderstanding of 1-7-514. The law requires and the audit technically to be meaningful requires a comparison of hand counts during the audit to the election night sub-tallies that are demonstrably added together to reach the published totals and match the outcomes. All of this must be checked, but in the relatively new rules the election night comparison is dispensed with, unfortunately. The good thing is that responsible counties ignore these rules and do the right thing with an audit of election night tally.

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Sorry I ran out of time for comments at this point. The audit rules need serious reconsideration in light of best practices that are now well agreed to and published. CEIMN has published best practices for audits that Colorado would do well to examine and follow- even before the 2017 expected risk limiting audit.

Harvie Branscomb 6/6/2014

Harvie Branscomb  
<http://www.electionquality.com>

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NOTE: AMMENDED FOR FORMATING AND SPELLING.

June 4, 2014

Dear Secretary Gessler and Deputy Secretary Staiert:

It has been a while since we last spoke. We need your advice.

As a 2014 Canvass Board member, I am deeply concerned that not enough has been done to prevent a repeat of the failed 2012 election. As you will recall, the Boulder County canvass board withheld certification of the election.

Last week I "observed" the start of Boulder County's LAT. I stayed long enough to observe that the process cannot rightfully be labeled a "test". It is a tightly scripted, superficial demonstration of some, but not all, election system components.

Test board members are prohibited from deviating from the script that is written by the county clerk. As a consequence, major threats to election integrity are ignored, by design.

Boulder County's LAT does not verify that its election process is secure, accurate, transparent and verifiable, and that the voters of individual ballots will be anonymous.

The results of the LAT are used to deceive the public and the courts into trusting election outcomes.

We call upon you because the election rules are a major contributor to the problem.

As we have previously discussed, the LAT fails, by design, to address massive threats to election integrity.

Examples of when unaddressed threats to election integrity occur at the system level:

1. before a ballot is received by the voter.
2. before the voter relinquishes control of the voted ballot.
3. before the clerk receives the ballot return envelopes.
4. during ballot reception, ballot duplication, and ballot acceptance.
5. during ballot scanning, vote interpretation, and resolution.
6. during vote counting and contest reporting.
7. during post-election audit, canvass, recount, and archive.
8. between processes, places, and times.

Examples of unaddressed threats in the components that were used during the LAT:

1. Ballots containing unusual marks were not tested. (Not every unusual ballot will be caught during pre-scanning screening, and not every duplicated ballot will be correctly interpreted.)
2. Folded ballots were not tested.
3. Provisional ballots and electronic ballots were not tested.
4. Ballot anonymity was not tested.
5. There was no attempt to verify that output-data satisfy the requirements for canvass, recount, contest, official returns, and abstract of votes cast.

The “results” from Boulder County’s LAT are seriously defective. Why were they approved? The following examples of defects are based on the LAT reports located at [http://www.bouldercounty.org/doc/clerk/2014p\\_lat\\_cumulative\\_web\\_final.pdf](http://www.bouldercounty.org/doc/clerk/2014p_lat_cumulative_web_final.pdf)

1. Three (3) separate elections were tested, yet results are commingled. This approach hides any offsetting errors. For example, if 500 Democratic voters cast 1000 ballots, and 1000 Republican voters cast 500 ballots, the commingled number of voters is 1,500 and the commingled number of ballots is 1,500. (This is a problem.)
2. The report indicates that there were 1,739 “voters”. Where did this number come from? Rather than the number of voters, it appears to represent the number of ballots counted. And the number is commingled across elections. The number of voters is required.
3. The report indicates that no “in-person” (Early or Election Day) ballots were counted. This we know to be false. There were DRE ballots; these are commingled with absentee ballots.
4. The report indicates the number of “cast votes” by contest. Where did this number come from? And how does it differ from the number of “votes counted”. Cast votes should reflect what the voter did; votes counted should reflect what the system did.
5. For some, but not all, of the contests, the report includes a summary block showing precincts and voters. Why for only some of the contests?
6. The summary block indicates that zero (0) precincts were counted. And there is no report showing detailed precinct/style accumulations by contest.
7. The summary block reports “ballots” under “voters”. Should this not be the number of voters? And should not the block title “voters” be “electors”? There is a difference.
8. The published results do not include any of the intermediate reports, so it is assumed that these were not “tested” by the LAT. Yet, these electronic and manual reports will be relied upon by any canvass, recount, and challenge actions.
9. Etc.

We recommend that you do not accept the results of the LAT as evidence of trustworthiness, and we request that you get answers to the following questions:

1. What has been done to correct the problems leading to Boulder County’s 2012 uncertified election?
2. Key terms such as “cast ballot” and “voter” are still undefined. Who casts and when is a ballot counted as cast? When does an elector become counted as a voter?
3. Why is there no test of SCORE’s massive interactions with the election?
4. Why is there no test of enforcement against illegal ballot harvesting?
5. Why is there no test of enforcement of voter privacy and ballot anonymity?
6. Why has the signature verification process not been certified? (Commitments made by CDOS and Boulder County in response to our HAVA complaint have not been fulfilled.)
7. Etc.

Boulder County’s election system is not production ready, so please don’t use it in a live election.

My question to you is this: “What do you want us to do about these claims of election system defects and threats?”

Al Kolwicz, Trustee, Colorado Voter Group, [REDACTED]