

Andrea Gyger

From: Merlin Klotz <mklotz@douglas.co.us>
Sent: Tuesday, December 08, 2015 12:19 PM
To: SoS Rulemaking
Subject: Comments in response to December 1, 2015 memo
Attachments: Watcher Best Practices Response - Douglas County.pdf

Attached please find my objections submitted with regard to September 1 directive regarding so called "Best Practices".

As those objections were largely ignored in the December 1, memo of rules cleanup from the Secretary of State office, I reiterate my position that these proposed rules pander to Watchers demands without regard to statute that clearly establishes Judges as the sole adjudicator of ballots.

In addition, I make the following points to the December 1 memo:

8.10.2 Watchers must be permitted access that would allow them to "**attest**" to the accuracy of election related activities.....

If the role of Watchers is to "**Attest** to the accuracy of election related activities", that implies that Watchers approval is required for each, signature or resolved ballot. In fact the role of the Watchers can only be to **disprove or dispute** " the accuracy of election related activities" otherwise the role is in direct conflict with statute. (§ 1-7.5-107.3(1)(a), CRS) and (§1-13.5-602, CRS).

Full Definition of *attest*

1. transitive verb
2. *I a* : to affirm to be true or genuine; *specifically* : to authenticate by signing as a witness *b* : to authenticate officially
3. *2* : to establish or verify the usage of

8.10.2....."proximity to read document, writings or electronic screens and reasonable proximity to "**hear**" election-related discussion....."

While visual access that does not interfere with the statutory work of Judges, may be provided with secondary monitors, the practicality of requiring accommodation for every Watchers personal hearing condition is absurd! I personally was a resolution judge on a recount election where a Watcher repeatedly had to be physically removed from between myself and the computer screen where she kept planting herself to hear our conversation.

Rules requiring watcher's ability to hear judges conversations is application of theory over practicality. From this logic it follows that on screen ballot resolution must be also be provided in brail!

6.4

"A County with more than 5,000 active electors....."

We are seeing growing interest from the 300+ Special Districts we have in the county to conduct their elections. In these cases it is absurd to limit in anyway the ability of trained staff to perform functions. If it is ok for trained staff to verify signatures in less than 5,000 counties what logic, statute or authority disqualifies them from performing verification in larger than 5,000 counties . This section (6.4) is unjustified overreach.

Merlin Klotz

September 30, 2015

Dear Judd,

Several concerns have been raised regarding the “2015 Watchers Best Practices Guide” released by the Colorado Secretary of State’s Office. Several of these new guidelines, should they become formal rules, appear to be clearly unwarranted abuses of the Secretary’s discretion and in some cases to contradict existing election law. Douglas County will not be implementing these new guidelines until concerns about them have been adequately addressed.

Of greatest concern is the authority that the new guidelines give Watchers to directly intervene in the conduct of the election and personally verify mail in ballot signatures. Watcher interference in the conduct of the election (such as stopping the process to resolve a concern) is in clear violation of the Local Government Election Code regarding allowable Watcher conduct (§1-13.5-602, CRS), and statute only permits Election Judges to verify signatures of mail in ballots (§ 1-7.5-107.3(1)(a), CRS). What are the legal grounds to extend these abilities to Watchers? Current rules for the conduct of an election only authorize Judges to verify signatures, but Watcher rules inexplicably contradict that exclusiveness (compare Secretary of State rules (8 CCR 1505-1) 7.4.6, 7.5.7, 7.8.1, and 8.4.2(a)(2)). The existing Watcher rule and certainly the new guidelines seem to directly conflict with the statutory restriction on the inspection of such Election Records by anyone other than Election Judges and staff that need to see such documents (§ 24-72-204(8), CRS). The law very clearly defines specific roles as belonging to Election Judges, but the new guidelines appear to be an attempt to expand some of them to Watchers.

There are clear and specific differences between Election Judges and Watchers in statutes and there are public policy reasons for those differences. Though Watchers and Election Judges share some qualification criteria, only Judges are required to reside in the jurisdiction holding the election, to be trained on how to perform their duties during the election, and cannot have ever been convicted of any election offense or fraud (compare § 1-6-101 and § 1-7-108, CRS, see also § 24-72-305.6, CRS giving Clerk and Records authority to access criminal records of Election Judges). These qualifications make Election Judges substantially safer to involve in the election process. In fact, misconduct by Election Judges is grounds for contesting the results of an election (§ 1-11-201(1), CRS). These laws all exist to help protect the integrity of the election system from unwarranted interference by Election Judges. None of these same protections exist for those serving as Watchers.

The Secretary’s new guidelines appear to ignore these important differences and some of their other proposed changes would allow Watchers even greater influence over the actual conduct of an election. Of additional concern are: no clear means for clerks to independently verify validity of certifications of Watcher appointments, requiring accommodation of minimum numbers of watchers, and preventing election staff from putting any limitation on Watcher movements to protect the space for Election Judges and staff to perform their duties. Though the new guidelines say a Clerk and Recorder “should” confirm Watcher eligibility, they offer no means or tools for accomplishing that goal.

If a person shows up on Election Day with a Secretary of State Watcher certification form, is the Clerk to try and track down the entity and confirm that appointment? What if no contact with the entity is possible? How can the staff ensure the entity itself is even authorized to appoint a Watcher? Since the number of Watchers that can be appointed is entirely dependent on the number of candidates and issue committees (each of which may only appoint ONE Watcher - §1-7-106, 107 & 1-7.5-114, CRS) and that space and building codes limitations determine how many people may be added to areas used beyond the needed staff and Election Judges, what is the purpose of setting a minimum number of Watchers that MUST be accommodated? Finally, if there are no “artificial barriers” allowed nor can there be a limit to how close Watchers may be to Election Judges and staff doing their work – how can any Clerk and Recorder prevent Watcher interference in the conduct of the election?

These proposed future rules for Watchers do not clarify any issues but do raise more problems and concerns. Instead of filling in gaps in the law, in some cases these guidelines even appear to directly contradict the law. Until the Secretary of State has addressed these concerns the Douglas County Clerk and Recorder cannot implement these new guidelines.

Sincerely,

Merlin Klotz,
Douglas County Clerk and Recorder