

January 7, 2010

Mr. Bernie Buescher
Colorado Secretary of State
Colorado Department of State
1700 Broadway
Denver, CO 80290

RE: Draft Rule 45.

Dear Secretary Buescher:

We and our colleagues are quite concerned about the misguided process being used to weaken an already dangerously inadequate Rule 45. The proposed revisions and resultant work-product appear to benefit the Department of State, the voting equipment suppliers, and perhaps even the out of state vendor who is rewriting the Rule and may be offering to supply testing services to implement the Rule.

- Few if any proposed changes to the Rule add strength or in any other way benefit Colorado's electors and contestants other than perhaps to lower the cost of providing the certification. The problems identified in *Conroy v Dennis* are not resolved in the proposed rule. In some ways these problems are aggravated by removing specifications for tests.
- Professionally, we consider the proposed Rule to be inadequate. It does not reflect an understanding of what constitutes quality in an election system. It doesn't reflect best practices of system quality control. If adopted, the Rule will surely result in future problems and a lack of accountability.
- As you may recall, CDOS formed a committee to study this rule before this revision was drafted. Two of our Trustees were invited to be members of this committee. After one meeting, the chair called no more meetings. Our participation was quietly side-tracked.
- An unpublished (to the best of our knowledge) contract was awarded to an out of state firm. We believe this firm does not know Colorado elections from first-hand experience and is inaccessible to the Colorado public. Their work was done in secret -- out of state. Their work product does not serve Colorado well.
- You personally invited the public to submit ideas and discuss the Rule drafted in secret by the consultants before it was published prior to undergoing the Rules process. Our October 14th submission, included for the record below, was apparently ignored. The public meeting which may have been intended to compensate for the termination of the Rule 43 45 Commission, ran out of time and skipped over many issues. Our public input was not responded to and seems to have had little or no effect on the proposed Rule.

I urge you to re-evaluate the process and the proposed Rule to demand professional excellence and accountability. We would like to see a rule that first serves the interests of the electors and contestants and only secondarily the specific interests of election officials and vendors.

To us it appears to be ineffective to submit additional detailed comments. Mr. Branscomb has nevertheless done so with an additional 5 hours of preparation under separate cover. In the first place, minor corrections cannot address the fundamental flaws with this Rule. In the second place, detailed corrections that we have offered have been ignored. Mr. Branscomb and I have provided written and oral testimony: (1) at the first and only committee meeting, (2) the Public Meeting, and (3) the Public Hearing associated with the adoption of the currently adopted version of the Rule.

We ask that our previous oral and written testimony be included in the record of this public hearing.

We further ask that you please reconsider the problems with this Rule. Our state deserves a Rule that experienced professionals with a systems testing background would consider to be a satisfactory statement of requirements or criteria for compliance testing. We feel that the proposed rule unequivocally fails to meet that most fundamental standard.

Please reconsider the October 14th testimony, below.

Al Kolwicz and Harvie Branscomb

For the Trustees

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Attachments: Colorado Voter Group to SOS Buescher - October 14, 2009

October 14, 2009

Mr. Bernie Buescher
Colorado Secretary of State
Colorado Department of State
1700 Broadway
Denver, CO 80290

RE: Draft Rule 45.

Dear Secretary Buescher:

Draft rule 45 and the process used to develop it are a great disappointment. We ask you to adopt the following six requests. Within these requests, and the supporting documentation, we identify many specific problems and recommendations that are not and must be addressed by the rules. We appreciate your willingness to engage the public early in the drafting process. We hope that you will take our criticisms as they are intended, to identify problems and to recommend solutions in behalf of a more perfect election system.

- 1. Redefine the election rule-drafting process.** CDOS and County Clerk personnel are sometimes burdened with a conflict of interest that encourages them to reject problems and proposals that they consider difficult to implement, or that would allow more transparency and/or independent verification than would be comfortable to them.

Election officials must not be in a position to dominate control of the rule-drafting and rule-making processes. Decision-making related to rules-drafting must be formalized and control over these decisions must be biased toward technically knowledgeable members of the community, the state political party organizations, and the legislature. Members of the public, who are independent of election officials and who volunteer to participate in the rule-drafting process must have an equal or stronger voice than the people responsible for implementing the rule. Vendors must have no vote in the rule-drafting process, although they should be encouraged to contribute their knowledge.

Rule-drafting must be a transparent process. The process can benefit from an open online collaborative environment. Election rule-drafting must be transformed into a continuous process – at times collecting data, at times analyzing data, and at times designing solutions to improve the rule and the system. Rulemaking requires access to data and records regarding election system performance and problems in all jurisdictions across the state. It requires access to measurements of compliance to quantified standards and requirements, and knowledge regarding the effectiveness of the existing election rules.

- 2. Define a process for election rule compliance measurement and enforcement.** CDOS is not in a position to fairly judge and enforce election rule compliance, because it is CDOS itself that is being judged. Independent oversight, consisting of a small number of technically competent electors must be authorized to monitor rules compliance, and make judgments regarding any deviation from the rules. A standard for “substantial compliance” with rules must be rigorously defined and enforced.

3. **Replace the Voting Equipment Certification Program Manager.** This job requires a technically qualified systems professional who: (a) has actively participated in Colorado’s logic and accuracy testing, post-election-auditing, and election canvassing, (b) has designed and/or developed complex systems, (c) has designed and preferably conducted complex systems testing and certification (outside of the flawed certification activity associated with election systems), and (d) has in-depth knowledge of the problems that have been identified with Colorado’s election system. Although the statute does not establish a minimum level of training or experience, it is our belief that the current manager does not have the appropriate level of expertise. We ask that you recruit an experienced systems professional.

As Judge Manzanares, regarding *Conroy v Dennis*, said, “The Court certainly agrees that it would have been preferable for the Secretary to appoint a person with sufficient computer science skills to vigorously test the DREs for potential flaws and vulnerabilities. However, the statute affords the Secretary broad discretion. The statute does not establish a minimum level of training or experience.”

4. **Terminate the contract with Freeman, Craft, McGregor Group.** (a) The contract’s scope of work is insufficient, and reflects the lack of experience of those who created it. The contract does not address key definitional issues, such as “precisely what is included in the election system to be certified”, “precisely what are the minimum standards and how are they to be measured”, and “precisely what are the functional requirements of each and every major component of the election system”? In the draft rule, there is no attempt to create measurable requirements including specific thresholds that must be achieved in order to pass. Standards to ensure transparency and create the opportunity for independent verification are missing. The contract fails to address hundreds of issues reported to the SOS.

Judge Manzanares found, “Despite the arguments to the contrary -- and we've talked about the language of the rule and so forth -- I think I have to agree with Plaintiffs, that a fairly read and -- well, a fair reading of the rule with respect to security leads to the conclusion that there simply are no minimum standards. And therefore, the Court finds that the Secretary of State did not comply with the statute that requires the Secretary of State to adopt minimum standards.”

(b) The contractor appears to lack direct experience with Colorado’s election system and its problems, even though they were responsible for an “audit” of the 2007 recertification process. Colorado experts were not given the opportunity to bid on the current contract or even review the contract before it was procured. In fact, a group selected by the Secretary to review the rules was not even informed that a contractor was being considered. (c) The contractor appears to have failed in its recent attempt to address Colorado election equipment certification issues. For example, there were major breakdowns with vote counting, trusted build and canvassing in Boulder County. (The certified Trusted Build process failed during the November 2008 election. Consultant and SOS have acknowledged that they have not even considered this failure in its redraft effort. Through an active CORA request, we intend to inspect and analyze the data regarding this failure. We have been notified, sadly, that details will be redacted from the records)

We have been informed that this contractor was in some way responsible for Colorado's most recent voting system certification.

Thursday, July 17, 2008 RE: Voting System Certification

Claudia Kuhns, "Since John Gardner has left CDOS, who is in charge of voting system certification?"

Rich Coolidge, "The Department of State has entered into a contract with Freeman, Craft, McGregor Group to oversee the current testing process."

In addition, (d) the contractor's draft rule 45 indicates that the contractor's philosophy toward certification is not consistent with best practices or professional knowledge. In general, the draft rule would weaken an already weak certification rule. The draft rule does not contain measurable standards/requirements, inadequate pass/fail criteria, it does not address the system as a whole, it does not address the problems of transparency, independent verification, and record-keeping encountered in prior certifications.

Judge Manzares ordered that "they review their rule; that they enact rules that have minimum standards; and that they then put machines through the process again to determine compliance with the rules once they've established minimum standards."

Judge Manzares found, "I agree with the Plaintiffs that measured by any scientific method, the Secretary of State has done an abysmal job of documenting their tests or of logging their procedures and their tests. Having said that, the "log" is a term used in the rules under Rule 45. It's not defined. And I don't know that I can say that there's been a failure to comply simply because they have not used good practice or followed scientific methods. I would certainly like to see them do that, and if they could do it in such a way that would allow others to replicate it and so forth, that would be a very good idea."

And, (e) the draft rule does not prohibit the use of proprietary materials during the certification process, and it must. The contractor testified that they envision having the vendor present during testing to work around defects in the system or the documentation but did not describe how contamination of the test will be prevented. The contractor has failed to advise Colorado that it is highly unlikely that any other state uses an identical system to that used in Colorado. While components of the system might be used in other states, Colorado's systems are unique.

- 5. Cancel the proposed draft Rule 45.** By a striking absence in the contractual agreement, the draft rule is not intended to address Colorado's need for robust election system certification. Yet it is precisely this need for a more robust system certification that motivates the need for a revised rule 45. The process that developed the draft rule has not yet addressed the many system and certification problems and recommendations submitted before, during and after Conroy v. Dennis. Instead, the contract calls for: "suggested edits", "changes that will make the testing process more efficient", and "specific requirements for functions required for the conduct of elections in Colorado".

A partial set of reported problems and recommendations can be found on the following web pages and the documents and pages located using the tabs and links on each of these pages. Most, if not all, of these problems and recommendations have been ignored in the draft rule 45. . Much more information can be obtained from local election officials, canvass board members, candidates, and other interested members of the public. The discovery and work-product of Colorado's Election Reform Commission is another source of specific problems and recommendations.

- http://alkolwicz.net/cdos_certification.aspx
- http://alkolwicz.net/certification_correspondence.aspx
- <http://alkolwicz.net/november2008.aspx>
- <http://alkolwicz.net/equipment.aspx>

While helpful, the current public process, which this letter is directed towards, will not fulfill the need for data collection from those who ought to be involved. Very simply, the draft rule does not meet Colorado's needs and would make things worse, not better.

- 6. Develop a plan to achieve the five recommendations above.** Colorado needs a well-conceived plan for reform of its election system certification process. The above five recommendations are key components of the plan. This plan needs to be developed by systems experts and not controlled by vendors and/or election officials.

We reiterate our hope that you will take our criticisms as they are intended, to identify problems and to recommend solutions in behalf of a more perfect election system. We hope that you will adopt our recommendations.

Al Kolwicz and Harvie Branscomb

For the Trustees
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Attachments: the four pages identified by the links above.

Colorado Voting Equipment Certification

[Mission](#)

[SCORE](#)

[Security](#)

[Certification](#)

[-- Correspondence](#)

[Elections](#)

[Requirements](#)

[Statutes](#)

[Rules](#)

Colorado Voting Equipment Certification

Colorado's court-ordered certification of voting systems is in default.

Department of State personnel have failed to comply with their own [Voting System State Certification Program](#).

To cover up, management has erected a wall of secrecy surrounding the process and refused to answer valid public inquiries.

It is well documented that the voting systems undergoing certification testing are severely defective. To minimize the negative impact of these defective systems on the 2007 and 2008 elections the department must stop dilly-dallying around, now!

It appears that staff and independent testers have failed to detect proven defects. Is the department withholding information to cover up testing and system inadequacies?

Is the Colorado Department of State working in the best interests of Colorado voters? Or are they working in behalf of election officials and voting equipment suppliers?

Who is accountable for this travesty and what will be done about it? More importantly, when will Colorado Secretary of State, Mike Coffman, publicly acknowledge the facts about the certification problems and consult with members of the Colorado Voter Group?

There is a workable solution that will minimize the potential damage by the untrustworthy voting equipment. California has adopted a variation of this solution.

Who's accountable? What is Colorado doing about California-reported vulnerabilities? Will Colorado rely on the discredited work of a test vendor?

More "sham" meetings scheduled for March 6 and 7.

The SOS will conduct hearings regarding the conditions placed on clerks and vendors. None of the issues raised by the public will be addressed.

SOS ignores public concerns. Conditionally certifies more HART equipment.

February 28 - Secretary of State Mike Coffman announced that Hart's optical scanners, the eScan, central count scanner and BallotNow software, are conditionally certified for use in Colorado.

Certification Results, Feb 25, 2008

- [Certification results - ES&S - 02/25/08](#)
- [Certification results - Sequoia - 02/25/08](#)

Public testimony - Feb 21, 2008 certification hearing
[Harvie Branscomb - Combined Supplemental submission](#)
[Al Kolwicz - Planned Testimony](#)
[Al Kolwicz - HART Supplemental submission](#)
[Al Kolwicz - General Supplemental submission](#)
[Wheeler, Trigg, Kennedy LLP - Combined submission](#)

Retest reports:

- [ES&S Major Deficiencies Report \(retest\)](#)
 - [Amended Project Overview rev. A.3 - ES&S](#)
 - [Sequoia Major Deficiencies Report \(retest\)](#)
 - [Amended Project Overview rev. A.3 - Sequoia](#)
 - [Hart Major Deficiencies Report \(retest\)](#)
 - (No associated overview binder.)
 - [Stray marks data HART system 6.0 \(78MB\)](#)
 - [Stray marks data HART system 6.2.1\(13MB\)](#)
- [HB08-1155](#) Signed by Governor

CRS 1-5-622 Assigns extraordinary powers to the Secretary of State to permit use of decertified voting equipment. THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2009.

We are very thankful that the legislature included language that sunsets the bill in 2009. This will limit the potential damage done by this bill. It is sad to see a bill designed to override Colorado law and professional judgment. We hope that the Secretary of State will include the public, including our Colorado Voter Group experts, in the extraordinary process authorized by this bill.

Feb. 12, 2006 - The Rocky Mountain News reported, "Coffman said he expects to announce by Feb. 22 the results of new testing and reviews of electronic voting equipment that he decertified in December because of security and accuracy flaws. "

Colorado Voter Group filed a series of [questions and a request](#) to participate in Feb. 22 effort.

SOS publishes "sham" [hearing procedure](#) and [schedule](#). Plans to silence and ignore the public. Testing has already been completed. 2 hour hearing Thursday will be dominated by state presentation.

Click to read [Certification Correspondence](#)

Preliminary county by county [impact assessment](#) of voting equipment decertification.
Colorado has decertified:

- HART Optical Scan
- Sequoia DREs
- ES&S Optical Scan and DREs

Testing was limited. No tests for transparency, verifiability, auditability. More than half of installed machine types (4,600 units) were not tested.

See extensive [certification results by vendor](#) on the Colorado SOS website.

Colorado Voting System Certification Communications

[December 10, 2007 -- JBC - appeal for reconsideration of denial](#)
[December 9, 2007 -- JBC - denial of request to be heard](#)
[December 7, 2007 -- PRESS - Certification results due December 17, 2007](#)
[December 7, 2007 -- JBC - request to be heard](#)
[December 7, 2007 -- Senator Gordon - request to be heard](#)
[December 7, 2007 -- Certification results will be announced on Dec 17, 2007](#)
[November 16, 2007 -- My client does not believe a meeting would be productive.](#)
[November 14, 2007 -- Can we meet Thursday or Friday?](#)
[November 14, 2007 -- Set a date for review of the records.](#)
[November 13, 2007 -- Restatement of urgency](#)
[November 13, 2007 -- Waiting for permission from client.](#)
[November 12, 2007 -- Request to meet.](#)
[November 12, 2007 -- Request face-to-face meeting](#)
[October 19, 2007 -- Need time to tighten requirements and responses](#)
[October 16, 2007 -- Attorney General response](#)
[October 9, 2007 -- Attempt to interpret Attorney General Response](#)
[October 9, 2007 -- CORA Work TABLE with interpreted responses](#)
[October 5, 2007 -- Attorney General responds to clarification](#)
[October 2, 2007 -- Clarification of CORA](#)
[October 2, 2007 -- CORA Work TABLE](#)
[September 24, 2007 -- Attorney General wants pre-payment to see records](#)
[September 20, 2007 -- Open Records Request September 20, 2007 -- Certification](#)
[September 20, 2007 -- Open Records Request September 20, 2007 -- Wroksheet - Certification](#)
[September 11, 2007 - Colorado computer voting machines are not certified](#)
[September 9, 2007 -- Coffman says vote-machine solution on way](#)
[September 6, 2007 -- Violation of law and abuse of power](#)
[September 5, 2007 -- Appeals to reverse November 2007 equipment use](#)
[August 31, 2007 -- What Colorado's in for if state fails to certify](#)
[August 30, 2007 -- *Daily Sentinel*, *Rocky* omitted former GOP secretary of state's failure to certify voting machines](#)
[August 30, 2007 -- Sec. of state cautions voting machine firms](#)
[August 30, 2007 -- Secretary of state, counties work to certify vote machines](#)
[August 30, 2007 -- Voting vendors ordered to comply](#)
[August 29, 2007 -- Open meeting appeal for reconsideration.](#)
[August 29, 2007 -- Open meeting request is denied](#)
[August 29, 2007 -- Montrose County going back to paper ballots](#)
[August 24, 2007 -- Open meeting request](#)
[August 23, 2007 -- Voting systems' approval delayed](#)
[August 22, 2007 -- "Voting System Certification FAQs" found lacking.](#)
[August 18, 2007 -- Officials fear voting plans will be tardy](#)
[August 15, 2007 -- SOS Coffman cautions against equipment purchases](#)
[August 6, 2007 -- Voting Equipment certification challenged](#)
[August 4, 2007 -- Do not purchase uncertified equipment](#)
[August 3, 2007 -- Isn't Colorado certification in default?](#)
[August 1, 2007 -- Has Colorado detected Florida defects?](#)
[August 1, 2007 -- Please decertify California's unfit voting equipment](#)
[July 28, 2007 -- Has Colorado detected California defects?](#)
[May 25, 2007 - Certification questions and concerns](#)
[May 3, 2007 -- HART demonstration was deficient](#)

[May 3, 2007 – Complaints re: certification and HART](#)
[April 26, 2007 – Certification process questions](#)
[April 25, 2007 – Non-anonymous voting questions](#)
[April 25, 2007 – Request to oversee entire certification](#)
[April 18, 2007 - SOS Response](#)
[April 11, 2007 – Request to oversee certification](#)
[March 28, 2007 – Request to oversee certification](#)
[January 12, 2007 – Certification rulemaking](#)

Colorado 2008 Election Plan

[2008 Contacts](#)

[Legislative Update](#)

[Requirements](#)

[Eligibility](#)

[Framework](#)

[- Polling place](#)

[- Unsolicited mail](#)

[- Electronic ballot](#)

[Acceptance Test](#)

[Hardware Test](#)

[Logic Test](#)

[Random Audit](#)

Colorado 2008 Election Plan

Play the "turnout" game. [Click here.](#)

Election Forum - January 3, 2008

PRESENTATIONS

- [Presentation and exhibits materials - Kolwicz \(PDF\)](#)
- [Going beyond security in election reform - Branscomb \(PDF\)](#)
- [Elections should be *transparent, verifiable, accurate, accessible, secure, accountable and ballots secret.* - Kuhns \(PDF\)](#)
- [Legislative Task Force - Voting System Testimony - Dr. Charles Corry \(PDF\)](#)

DATA & REPORTS

- [Voting System Phases vs Requirements](#)
- [Colorado Election Types by County \(PDF\)](#)
- [Colorado voting equipment certification status by product \(PDF\).](#)
- [Colorado voting equipment certification status by county \(PDF\).](#)

Election System Legislative Task Force

[Legislators](#)

- Sen. Ken Gordon
- Rep. David Balmer
- Rep. Alice Borodkin
- Rep. Rosemary Marshall
- Rep. John Kefelas
- Rep. Kent Lambert
- [Department of State](#)
 - SOS Mike Coffman

- [County Clerks](#)
 - Hillary Hall - Boulder County
 - Stephanie O'Malley - Denver County
 - Pam Anderson - Jefferson County
 - Jack Arrowsmith - Douglas County
 - [Canvass Boards](#) - Not represented
 - Contestants - Not represented
 - [Voters](#) - Not represented
 - Private suppliers - not represented
 - Federal Government - not represented
 - Judicial system - not represented
-

11-15-2007

Colorado Joint Budget Committee meets with Secretary of State
SOS Coffman presents [answers to JBC questions](#) regarding voting equipment certification.

11-19-2007

Colorado Voter Group wants polling place elections with a few adjustments.
Group concerned that back room deals will trade accuracy for convenience.

County clerks have been pushing Colorado legislators to adopt all-mail elections for the 2008 elections. There is a superior alternative.

Please see the [press release](#) and the [framework](#).

11-20-2007

[Clerk challenges the 2008 election framework](#)

A leader of the secretive Colorado County Clerks Association, Arapahoe County Clerk Nancy Doty, challenges the 2008 election framework.

Colorado Voter Group responds to clerk's challenge

Click to read [Colorado Voter Group responds](#) to county clerk's challenge to the 2008 election framework.

11-27-2007

Colorado Voter Group [pursues response](#) to its criticism of clerk's challenge.

December 3, 2007

SOS Mike Coffman testifies before Legislative Audit committee.

Voter Registration, Help America vote Act, Department of State Performance Audit.

- [Performance audit - Voter Registration - Help America Vote Act.](#)

Visit the committee site at [Legislative Audit Committee](#).

Election System

[Overview](#)

[Architecture](#)

[Components](#)

[Requirements](#)

[X-Secure](#)

[X-Accurate](#)

[X-Verified](#)

[X-Transparent](#)

[X-Accountable](#)

[X-Accessible](#)

[X-Anonymous](#)

Election System

System Requirements

1. Establish election system requirements.
2. Establish criteria for measuring compliance with requirements.
3. Establish acceptable performance ranges.
4. Establish actions for unacceptable performance.

An election system must verifiably ensure that:

- every eligible contest is given access to the ballot
- every eligible voter is given the opportunity to vote once and only once (and no ineligible voter is permitted to vote at all), and
- every eligible vote is counted once and only once as the voter intended (and no ineligible vote is counted at all), and
- every vote is anonymous (from the voter as well as to everybody else including insiders).

System Governance

- [Colorado Constitution](#)
- [Colorado Revised Statutes](#)
- [Colorado Election Rules](#)
- [Colorado Jurisdictions](#)

System Architecture

- [Overview](#)
- [Architecture](#)
- Components
- Requirements
- Specifications

Equipment

- [CDOS Voting Equipment Inventory](#)
- [Post election audit](#)