

What do we want?

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and
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Friday, July 20, 2012, 3:06 PM

Perhaps the right title for this paper should be what I, Ralph Shnelvar, want for the next batch of SoS rules as well as long-term legislative reform.

Main recommendation

In order to maintain stability for the 2012 general election, no changes to the rules regarding canvass boards or watchers should be made.

My recommendations are based on

- Discussions with some Colorado State Party Chairs
- Canvass board members
- Watchers
- Other interested persons
- My assessment of what is politically possible

**The conclusions and recommendations contained herein are mine alone,
and other state chairs and interested parties may disagree with these
recommendations and conclusions.**

I urge interested parties to read

http://www.sos.state.co.us/pubs/rule_making/written_comments/2012/20120619_Hugenberg.pdf

I (Ralph Shnelvar) have read this and have found it a great summation of our concerns regarding the Secretary of State's proposed new rules. I suggest that the State Chairs adopt the arguments (but, perhaps, not the stridency) presented by William C. Hugenberg Jr., J.D., in the PDF above.

Acknowledgments

Many of the comments below were made by the invaluable Mary Eberle who was a tireless watcher at the Boulder Canvass board. Thank you so much, Mary.

In the 006 version of this document, Russ Boehm added many comments.

Harvie Branscomb <harvie@media.mit.edu> made a CORA request and pulled some documents that pretty clearly indicate that the proposed rules would make the canvass board nothing more than a rubber stamp to the county clerks' count of the election. If anyone wants the documents, I will be happy to provide them.

What we want for the July 23, 2012, proposed SoS rules

By unanimous agreement, under no circumstances should the county clerks be allowed to appoint members to the canvass board.

What we want as legislation

To reiterate: under no circumstances should the county clerks be allowed to appoint members to the canvass board.

Party chairs should be allowed to pick anyone as their representative to the canvass boards. The auditing and canvassing of votes are highly technical procedures, and there are not a lot of people either able or willing to perform this drudgery. If a party Chair is willing to trust someone to represent the party's interest, then that should explicitly be allowed.

There should always be a mechanism for the clerk and the clerk's party to be outvoted on the canvass board in order for the election not to be certified. Ideally, the clerk should not be a member of the canvass board but should report to the canvass board. This is probably politically impossible. If there are zero canvass board members selected by any and all county and/or state chairs, then the clerk becomes the canvass board and the charade that an independent canvass board be created is eliminated.

No seat at the table for unaffiliated voters. Marilyn Marks suggests that unaffiliated voters are the 3rd largest voting bloc in Colorado and, as such, should have a seat on the canvass board. This was met with total disdain by the Democratic and Republican Party canvass board members. If this is indicative of the body politic, then this is likely to be politically infeasible. Further, because unaffiliated voters are not organized, there is no existing mechanism to choose members of the canvass board by this group. However, unaffiliated voters should be able to represent major (or, as proposed, minor) parties if those parties so choose.

The size of the canvass board should be limited to no more than nine members. There were only four active members on the canvass board in Boulder County, and even with only four, the clerk and her staff had to answer many questions.

We recommend that the canvass board consist of

- One (or two) members representing each of the major parties.
- One (or two) members representing one minor party with ballot access, such party to be selected randomly for each county.
- Since the minor party seat(s) would be selected for each county, there would be a good mix of minor parties sprinkled across the 64 Colorado counties.
- Every effort should be made by the parties to secure some, if not all, canvass board members who are experienced in the process.
- Canvass Board members with the following qualifications can especially benefit the election-verification process: Accounting, Database Skills, Election Law, Statistics, not to mention a Calm Demeanor, Diligence, and a Sense of Humor.

Example 1

Assume the major parties are the Democrats, Republicans, and the American Constitution Party, and the minor parties with ballot access are the Libertarian Party and the Green Party.

The Clerk would get one vote.

The Republicans, Democrats, and ACN would get two seats (votes) each.

The Libertarians or Greens, as determined by lot, would get two seats.

In this scenario there would be nine canvass board members.

Example 2

Assume the major parties are the Democrats and Republicans. The minor parties with ballot access are the Libertarian Party, the Green Party, and the American Constitution Party.

The Clerk would get one vote.

The Republicans and Democrats would get two seats each.

One of the minor parties (the American Constitution Party, Libertarians, or Greens), as determined by lot, would get two seats.

In this scenario there would be seven canvass board members.

The powers of the canvass board.

While the Canvass Board must respect the schedule and the budget limitations of the Clerk's office, the board cannot be limited by the Clerk's preferences or lack thereof in supplying information and data. Since the Canvass Board is appointed its tasks based on state statutes, and since the state reserves to itself all authority not specifically denied it as part of its constitutional authority, then the state's endeavor to certify the election and prove the health of the process must supersede the county official's desire to control the scope, method, and means of certification.

However, according to Rule 45.5.2.1.7, election data must be able to be generated on an "on-demand" basis, so the clerk should be able to support the canvass board with any data the board deems is needed to assist the certification process.

45.5.2.1.7 The voting system application shall provide authorized users with the capability to produce electronic files including election results in either ASCII (both comma-delimited and fixed-width) or webbased format that shall contain (a) all data or (b) any user selected data elements from the database. The software shall provide

authorized users with the ability to generate these files on an “on-demand” basis. After creating such files, the authorized users shall, at their discretion, have the capability to copy the files to diskette, tape, CD-ROM or to transmit the files to another information system.

The canvass board should be empowered by statute to directly and closely observe any and all aspects of the vote counting process.

Watchers

There are many shareholders in the canvass process. These shareholders are properly watchers and not canvass board members.

Watchers should be able to closely observe any part of the vote counting process but must not interfere with staff or the canvass board. Nevertheless, watchers shall explicitly be allowed to be close enough to observe signature verification and make objections to an assigned staff member if the watcher disagrees with the worker verifying signatures or has other concerns about any processes or actions. Similarly, watchers shall explicitly be allowed to view ballots as part of the audit. Any handouts to canvass board members shall also be supplied to watchers. Watchers cannot be kept at any distance from the canvass board members or election staff. No glass wall or other partition may separate watchers from any part of the vote counting process.

Watchers shall have the authority to remain in so-called “secure” areas where ballots are stored.

Watchers shall have the authority to closely observe ballot intake.

Watchers shall be allowed to be close enough to any computer screen to be able to comfortably observe those screens with the sole exception that no watcher or canvass board member shall be able to see the names and/or addresses of “protected” individuals (e.g., those confidential voters in safe houses or witness protection programs).

The Canvass Board is not the “boss” of the watchers. The boss of the watchers is the person or party they are watching for. In practice, it is really the watcher’s conscience that guides him or her to insist or not insist on seeing everything.

Miscellaneous

Deliberately bogus signatures

Obviously forged signatures should be randomly injected into the signature verification process to determine how effective the clerk’s staff is in detecting forged signatures.