

It is impossible to imagine that watchers can accomplish the witnessing and verification of each step in the conduct of the election if they cannot see the details. In other walks of life, when one witnesses something, it is usually on paper that must be read carefully, and then one signs one's name. It is a close inspection, not a fly-by from a distance. Election witnessing and verifying are just as important as signing a legal document, maybe more so. Transparency and verification are hallmarks of a quality election that has integrity. Please do not reduce these attributes of our election as we approach November.

In conclusion regarding Rule 8.6, please return the rule to purely the single sentence that existed before April 2, 2012:

8.6 WATCHERS SHALL BE SUBJECT TO THE PROVISIONS OF SECTION 1-5-503, C.R.S.

The four suggested additional paragraphs are inappropriate. The first two (8.6.1 and 8.6.2) can be reworded and moved to Rule 7.7 to accommodate the concerns of Faith Gross, which I agree with. The second two paragraphs (8.6.3 and 8.6.4) need to be deleted and not further considered. They would wrongly continue the decrease in citizen oversight of election processes that has endangered our elections since we changed to the current systems and then, encouraged by the clerks, moved to doing most voting by mail.

According to statute (C.R.S. 1-7-108(3)), watchers have the right to witness and verify everything from the ballot design, printing, and assembly through the storing away of the ballots for 25 months. This time frame obviously includes watching the canvass board. The only restriction on the rights of watchers should be when the voter is present with the ballot in the polling place.

12.11.1: Typo (remove "the"): If the elector ~~wishes~~ REQUESTS to receive the ballot by mail, ~~the~~ HE OR SHE MUST MAKE THE request ~~must be received~~ no later than the close of business on the seventh day before the election.

12.11.3: Typo (make (D) into a separate item).

Rule 41: Many people who have more canvass board experience than I do (I have watched two canvass boards) vigorously appealed to you to delete the set of rule changes proposed under Rule 41.

I am not sure why many of the changes are suggested, so I am posing questions about them. I also have strong impressions that many of the changes proposed are heading in a direction exactly opposite to transparency and citizens' ability to oversee their (not the government's) elections.

41.1.1 seems to omit some important tasks of the canvass board. What about overseeing and approving the audit? What about running a recount if one is required or requested? What about the ability of the canvass board members to request substantiating data from the clerk

to support the numbers that are to be certified? Others more familiar with canvass board processes and prerogatives have even more concerns.

41.1.2 destroys the independence of the canvass board and should absolutely not be adopted. In no case should the county clerk appoint a member of the canvass board or have any direct or indirect influence over who is appointed by the parties.

41.2.2 similarly should not be adopted. The clerk should have nothing to do with applications to serve on canvass boards; that duty resides with the parties. Minor parties may be added to canvass boards in several beneficial ways, but not through clerk appointment. One useful suggestion, probably not timely for the 2012 General Election, is to allow one of the minor parties to appoint a member or two members to the canvass board in each election cycle (two years). The minor parties can rotate their canvass board duties or be assigned them by lot. It is a dreadful notion that the citizens who support the minor parties would be represented on the canvass board by someone appointed not by those citizen's party but by the clerk. Should any canvass board member be appointed by the clerk, that person would be beholden to the clerk and would not be able to objectively provide oversight to the clerk's work. Unaffiliated electors, on the other hand, should be able to be appointed by any of the parties that supply members to the canvass board. In fact, it would be a good thing to include unaffiliated electors; they just should not be appointed by the clerk.

41.2.3 indicates that canvass board members must be affiliated with the party he or she represents. That requirement, as you may glean from the comment on 41.2.2, seems unnecessary when so many electors are unaffiliated. The kind of person needed on the canvass board is not necessarily a party member. He or she is rather a dedicated and, may I say, either patriotic or politically cynical individual with particular talents (as an accountant, lawyer, computer programmer, database manager, or systems analyst, for example) to bring to the task. Such people are often unaffiliated.

41.3 and 41.4: Many people have written and testified that these proposed rules violate current statute and should therefore be abandoned.

41.3.1 has an odd ring to it. What is its purpose? Perhaps a canvass board will have a bad feeling about an election or some part of an election and want to delve deeper to achieve clarity and confidence that all is well or determine what went wrong. Why should there be a limitation on the board's duty that might keep diligent individuals from uncovering a problem, even one that might lead to a change in the election outcome?

41.3.2 harks from the time that we all voted in precinct polling places and has no usefulness in today's elections with their unfortunate heavy use of mail ballots. I realize that statute is driving this requirement, and I urge you and your staff to work with the legislature to improve the numeric criteria by which the canvass board certifies the election. In my county's recent primary, only some 30 percent of the mail ballots were returned. The

numbers game is not worth playing. We need to look beneath the gross numbers to see if voter's intent was honored and if machines counted real ballots (not just test ballots) properly. We need to verify that the audit was conducted with due statistical sufficiency (I've been warned not to say "robustness") and that ballot accounting, beginning with ballot reception and finishing when the ballots are stored away, was accurate. The canvass board needs to check all phases of the election. (An apostrophe is needed: THE JUDGES' RECONCILIATION.)

41.3.3 has been attached to 41.3.2 and misnumbered.

41.3.4 should have more information to assist the canvass board that finds itself with questions or problems and wishes to document them. In such an eventuality, there needs to be a formal approach for a canvas board to take. The "must certify" requirement is not in concert with the complete wording of C.R.S. 1-10-101.5 and should be revised if this rule is retained.

41.3.5 too severely limits the canvass board. They are the last bastion of strength for the citizens who depend on engaged people to check that the election was handled correctly. This rule should not be approved.

41.57 is really misnamed. The Boulder County canvass board worked for ten days (not continuously) on the canvass tasks. As Colorado moves to each county having a risk-limiting audit in 2014, the time commitment of the canvass board will rise.

41.57.1 needs to allow the canvass board to inspect UOCAVA ballots and confidential-voter ballots that are part of the count. The clerk needs to have a process in which a collection of ballots of each style are held until the end so that such ballots plus late signature-cure ballots and late-accepted provisional ballots, etc., can be mixed in with ballots accepted but not counted by election night, to preserve secrecy in voting.

41.68.3 should also include an item for primary elections that lists the number of votes cast in each precinct by race and party.

41.9.2 could be better stated, perhaps "ONCE THE CANVASS BOARD CERTIFIES THE ABSTRACT, THE CANVASS BOARD MAY NOT WITHDRAW THE CERTIFICATION. But why not? A later-surfacing reason might indicate that the canvass board should withdraw certification.

41.13 is not useful if 8.6 is not maintained in its form from prior to April 2, 2012, and prior to Secretary of State Bernie Buescher's misreading of the locations and time frames where the six-foot rule properly applies, i.e., when the voter is present with his or her ballot. As a watcher for the Boulder County canvass board for the 2012 primary, my usefulness to the board members representing the party I also represented was seriously impaired, and I

would not spend time in that fashion again or recommend that others do so. It seems that there is pressure within the Secretary of State's office, probably coming from the county clerks and their supporters, to remove citizen oversight and replace it with highly regulated and restricted canvass board members. Such a change will not lead to increased confidence in elections or their outcomes or to increased turnout. Our democracy is thus tattered further, when instead we could be mending the small rips here and there.

As you review the testimony you have received on the rules under consideration, please give much weight to comments and suggestions by election-integrity experts Al Kolwicz, Marilyn Marks, and Harvie Branscomb. They have much hands-on experience to draw from.

In my testimony on July 23, 2012, I spoke of the difference between "independence" such as we celebrate on Independence Day and "freedom." Much freedom stands to be lost if watchers lose the rights to witness and verify each step in the conduct of the election and canvass boards are not independent of the clerk and not empowered to investigate any part of the election before certification. If those opportunities to guard our freedom to elect—and to know we actually elected—our government are lost, voters will have to just believe the clerks' pronouncements on election outcomes. That is not what a democracy demands.

In summary, please hear the plea of this citizen, this long-time election-integrity advocate, who dares to speak for those many good Colorado citizens who depend on you to guide our elections along a transparent and verifiable path, but who cannot spare the time and energy to look closely at the issues discussed herein. I also join with those who have asked you to expand your rulemaking development efforts to a larger group and to improve the dynamics of the rulemaking process.

Please do not adopt the proposed changes to Rule 8 (i.e., use rule as written prior to April 2012) or Rule 41. Thank you for the opportunity to comment.

Sincerely,

Mary C. Eberle
(delivered by email)