

Election Complaint – September 23, 2014

1. The Colorado Department of State is violating Election Rule 13.1.3.

On August 12, 2014, I submitted an Election Complaint to the Department.

As of today, September 23rd, the Department has not performed its duty as specified in Rule 13.

See below: [CORA Request Correspondence](#), and [Election Complaint Correspondence](#).

2. Rule 13 is defective.

Rule 13 is missing accountability and enforcement provisions.

Al Kolwicz

Colorado Voter Group

2867 Tincup Circle

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ATTACHMENT – ELECTION COMPLAINT CORRESPONDENCE

From: Al Kolwicz
Sent: Tuesday, August 26, 2014 9:39 AM
To: 'Suzanne Staiert'
Cc: Dwight Shellman; Scott Gessler; Stefanie Mann; Colorado Voter Group (ColoradoVoter@googlegroups.com)
Subject: RE: Election Complaint

Good morning Suzanne,

For a successful 2014 General Election, the rules need to address many the issues we raised in our August 12th complaint, and certain system changes are needed. The problems are real.

We trust you when you say that the Department's rule makers are "looking at them." However, as you know, "looking at them" is a far cry from "solving them".

Our report is intended to serve as the beginning of a discussion. With no discussion, and nothing documenting the department's point by point analysis, we are left not knowing if we have successfully communicated our concerns.

For example, the present system fails to capture evidence that is needed to detect stuffing, replacing, or losing ballots – even after they are "received" into the custody of the designated election official (DSO).

1. "Somebody" can release a ballot return envelope into the custody of the DSO. There are many locations and many containers involved.
 - a. There is no record of the critical "release of custody" transaction for each item.
 - b. There is no record of the critical "receipt of custody" transaction for each item.
2. Later in time, each collection of ballot return envelopes *appears* in the DSO receiving area.
 - a. There is no record of the time-of-receipt (into the receiving area) of individual ballot return envelopes.

- b. There is no record of where individual ballot return envelopes come from (location, container).

It seems like there needs to be a way to capture, for each “received ballot return envelope” the necessary chain of custody data.

The lack of transparency in the rulemaking process is eroding public confidence. We are left to assume that those with influence, possibly county clerks and government employees, are engaged in the process, while “we the people” are excluded.

Will we have a chance to review the rule before it is published?

Al

From: Suzanne Staiert [<mailto:Suzanne.Staiert@SOS.STATE.CO.US>]
Sent: Monday, August 25, 2014 1:10 PM
To: Al Kolwicz
Cc: Dwight Shellman; Scott Gessler; Stefanie Mann; Colorado Voter Group (ColoradoVoter@googlegroups.com)
Subject: RE: Election Complaint

Al,

We are looking at the issues in your complaint as we consider rule-making. It’s not as though we ignoring the issues, but you likely won’t receive a formal response until after September 10th.

Suzanne

From: Al Kolwicz [<mailto:Al@alkolwicz.net>]
Sent: Thursday, August 21, 2014 2:49 PM
To: Suzanne Staiert
Cc: Dwight Shellman; Scott Gessler; Stefanie Mann; Colorado Voter Group (ColoradoVoter@googlegroups.com)
Subject: RE: Election Complaint

Hello Suzanne,

We have problems if you defer processing of our August 12th complaint until after the rules are adopted.

1. Rule 13 prescribes a process that does not authorize such a deferral.

2. Many of the issues described in the complaint must be repaired in time to be implemented in the November 2014 General Election. Some require software changes. The current draft rule could be the last chance to address these issues for the November election, so it is vital that solutions to the issues identified in the complaint be addressed before the rule is adopted.
3. We fear that CDOS will make uninformed decisions. The rulemaking process offers no opportunity for two-way discussions between CDOS and the public. Consequently, rules decisions can be made by CDOS that do not repair the issues brought forth in the complaint. For example, the draft rule 10.1 PRECANVASS ACCOUNTING says, “10.1.1 FOR PURPOSES OF ARTICLE 10 OF TITLE 1, “BALLOTS CAST IN AN ELECTION” OR “BALLOTS CAST IN EACH PRECINCT” **MEANS** PAPER OR DRE BALLOTS VOTED IN PERSON BY ELECTORS AT A VOTER SERVICE AND POLLING CENTER **AND VOTED MAIL BALLOTS RECEIVED** FOR PROCESSING BY THE COUNTY CLERK.”

This is not an acceptable solution. It is cynical. Some might consider it to be fraudulent. The proposal covers up the problem – it does not solve the problem.

Ballots cast is not at all similar to ballots received. It would be totally inappropriate to intermix their counts. (Apples and airplanes.) Word games have no place in this legal document. The only purpose I can see for suggesting this definition is to trick the public into a false sense of confidence regarding voting by mail ballot.

An acceptable solution might be to define two terms – ballots cast, and ballots received. Instruct canvass boards to report that they are unable to verify the number of mail ballots cast (which is true). Print their statement on all reports so that the public can be informed, rather than being tricked into a false sense of confidence. In addition, submit to the legislature a detailed proposal to address the canvass.

We hope that you will reconsider your plan, and address the complaint first.

Al Kolwicz

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From: Suzanne Staiert [<mailto:Suzanne.Staiert@SOS.STATE.CO.US>]

Sent: Wednesday, August 20, 2014 2:25 PM

To: Al Kolwicz

Cc: Dwight Shellman; Scott Gessler; Stefanie Mann

Subject: RE: Election Complaint

Al,

We have consolidated your complaint into a complaint and rule comment. I anticipate rule modifications as a result of your comments. The complaint will be handled by Dwight Shellman after the adoption of the rules. Thank you for taking the time to submit these issues.

Suzanne

From: Al Kolwicz [<mailto:Al@alkolwicz.net>]

Sent: Tuesday, August 19, 2014 10:19 AM

To: State Election Division

Cc: Dwight Shellman; Suzanne Staiert; Scott Gessler; Colorado Voter Group (ColoradoVoter@googlegroups.com)

Subject: RE: Election Complaint

Will you please tell us the status of this election complaint?

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From: Al Kolwicz
Sent: Tuesday, August 12, 2014 3:42 PM
To: 'state.electiondivision@sos.state.co.us'
Cc: 'Dwight Shellman'; Suzanne Staiert (Suzanne.Staiert@SOS.STATE.CO.US); SOS Scott Gessler (Scott.Gessler@SOS.STATE.CO.US); Colorado Voter Group (ColoradoVoter@googlegroups.com)
Subject: RE: Election Complaint

August 12, 2014

TO: Colorado Department of State, Elections Division
RE: Election Complaint

The attached PDF contains an election complaint which is described in the included report, Colorado Canvass Board Defects and Requirements. The complaint identifies some of the many problems with Colorado's election system including canvass board problems. The report has been submitted to the Department as input to the rulemaking process, see included cover letter to rulemaking.

As noted in the cover letter to rulemaking, the current rules draft, 8 CCR 1505-1 August 7, 2014, fails to correct most of the defects identified in the report. We can demonstrate tangible illustrations of the problems.

The report provides an outline of canvass board requirements that are generally unmet. It is vital that these requirements be understood and formalized by the Colorado Department of State. With the trend to mail ballot elections and same day registration, the existing rules no longer work.

It would be a mistake for Colorado Department of State and County election officials to dismiss this report, or to exclude experienced canvass board members from collaborative analysis of the problems and the selection of remedies.

Ignoring, minimizing, or dismissing these issues will not make them go away.

We are available to engage with CDOS experts in a fair and honest professional discussion and debate of these problems and their solutions.

Al Kolwicz

Colorado Voter Group
2867 Tincup Circle
Boulder, CO 80305
303-499-9527
Al@AlKolwicz.net

ATTACHMENT – CORA REQUEST CORRESPONDENCE

From: Al Kolwicz
Sent: Monday, September 22, 2014 1:30 PM
To: Suzanne Staiert (Suzanne.Staiert@SOS.STATE.CO.US)
Cc: Colorado Voter Group (ColoradoVoter@googlegroups.com)
Subject: FW: CORA Request

Hello Ms. Staiert.

Will you please investigate and report back to me what is happening with our August 12th election complaint. The matter is urgent. As I understand it, from the CORA responses below, the Department is delinquent.

Thank you.

Al Kolwicz

Colorado Voter Group
2867 Tincup Circle
Boulder, CO 80305
303-499-9527
Al@AlKolwicz.net

From: Richard Coolidge [<mailto:richard.coolidge@sos.state.co.us>]
Sent: Monday, September 22, 2014 11:49 AM
To: Al Kolwicz
Subject: RE: CORA Request

Al,

No records exist as part of this request. Thanks.

Rich

From: Al Kolwicz [<mailto:Al@alkolwicz.net>]
Sent: Wednesday, September 17, 2014 5:36 PM
To: Richard Coolidge
Subject: CORA Request

Dear Rich,

Will you please email me copies of any records created to date regarding our August 12th Election Complaint.

We had correspondence on this earlier (see below).

Thank you.

Al

Al Kolwicz

Colorado Voter Group

2867 Tincup Circle
Boulder, CO 80305
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Al@AlKolwicz.net

From: Al Kolwicz
Sent: Monday, August 25, 2014 10:07 AM
To: 'Richard Coolidge'
Subject: RE: CORA Request

Thank you very much.

I believe that Rule 13 requires that records should have been created by now.

Al

From: Richard Coolidge [<mailto:richard.coolidge@sos.state.co.us>]
Sent: Monday, August 25, 2014 10:05 AM
To: Al Kolwicz
Subject: RE: CORA Request

Apologies for the delay. We did not identify any records responsive to your request. Thanks.

Rich

From: Al Kolwicz [<mailto:Al@alkolwicz.net>]
Sent: Monday, August 25, 2014 7:11 AM
To: Richard Coolidge
Subject: FW: CORA Request

Hi Rich. Did our 8/19 CORA request get lost in the shuffle?

Al

From: Al Kolwicz
Sent: Tuesday, August 19, 2014 4:39 PM
To: Richard Coolidge (richard.coolidge@sos.state.co.us)
Cc: 'Dwight Shellman'; Suzanne Staiert (Suzanne.Staiert@SOS.STATE.CO.US); SOS Scott Gessler (Scott.Gessler@SOS.STATE.CO.US); Colorado Voter Group (ColoradoVoter@googlegroups.com); 'state.electiondivision@sos.state.co.us'
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