

COLORADO CANVASS BOARD DEFECTS AND REQUIREMENTS

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SUMMARY

CANVASS BOARD OBJECTIVE

The canvass board is the public's vehicle to protect elections from incorrectly awarded contests. Wrong outcomes can result from internal or external error and/or internal or external fraud.

The goal of the canvass board is to determine, on the basis of the maximum level of detail, whether the election can verifiably be certified as having produced the correct outcomes.

Steps the board must take to achieve this goal:

1. Seat members and elect canvass board officers
2. Adopt a canvassing plan
3. Inspect and locate any inconsistencies within the election record by the following method:
 - Assemble raw, signed data. (Unaltered; showing chain of custody.)
 - Identify inconsistencies. (Numbers of Ballots, Electors, Votes.)
 - Reconcile (that is, classify and explain) inconsistencies.
4. Audit the accuracy and security of the vote-counting.
5. Assess the significance of differences.
6. Conduct recounts as needed.
7. Identify risks outside the election record.
8. Make the certification decision.

Additional tasks, not included above but necessary to the certification process, can result in a change of election outcomes:

- Audit the accuracy and security of the ballot packet/ballot acceptance apparatus.
- Audit voter identity verification.
- Audit voter eligibility verification.
- Audit vote interpretation.
- Audit ballot packet/ballot chain of custody.
- Audit ballot/vote duplication.
- Audit ballot packet/ballot rejects and cures.

To protect the public's interests, it is vital that the canvass board be selected and empowered to function independently of the officials who conduct the election. It

is also vital that the county officials and their staff give the board timely access to all election records and create new records as requested, and that the Secretary of State's office provide timely guidance if requested.

BACKGROUND

Boulder County's 2014 Primary Election has demonstrated, again, the urgent need to repair major defects in Colorado's election system and election certification process. The canvass board voted to not certify the election results because of specific problems with the election record. Government officials arbitrarily, and without consulting the canvass board, overrode the canvass board's decision. No discussion ensued; no new or contradictory evidence was produced. The board's decision had no meaning.

Adding to the problem, government officials have failed to revise election rules, data, reports, and procedures to accommodate new risk associated with the shift away from "in-person voting in precincts" to "off-premises voting." The election and canvassing procedures specified in statutes and rules insufficiently address the canvassing objective. They are now completely inappropriate to the needs of canvassing the results of off-premise voting.

Without repair, it is likely that the November 2014 general election will suffer the same canvassing problems as the 2012 general and 2014 primary elections. In a close contest, especially if it is not a recounted contest, it is likely that the public will distrust the November election outcome. And when the procedures are widely reviewed in the press, the public will have good reason to suspect flawed results. Colorado could be the center of a national crisis in voter confidence.

George Leing, U.S. 2nd Congressional District candidate, has officially requested the Secretary to "issue a set of rules and guidelines for the proper operation and administration of canvass boards." This must be done promptly.

To ensure availability of the information that canvass boards need to verify election outcomes, it is vital that a remedy be implemented now.

So that the canvass board may achieve its goal, six critical areas of concern now lack clearly stated requirements, which must be defined and fulfilled. These areas of concern are

1. mission,
2. governance,
3. glossary,
4. election records,
5. evidence, and
6. policy.

CRITICAL REQUIREMENTS

The first step is to debate and adopt a uniform set of requirements. The following paragraphs illustrate one way that the six critical areas of concern might be addressed. The public, not the government, must control the adopted “solution.”

Mission – The election system must transparently and verifiably ensure—and the canvass board must independently verify—evidence documenting that

- No eligible elector was denied the opportunity to vote.
- No ineligible person was permitted to vote.
- Every eligible vote was counted as the voter intended.
- No ineligible vote was counted.
- Nobody, including election officials, can learn the votes of a specific voter.

Governance – The public, not the government, must be in charge of the canvass of elections.

1. Board members must be appointed through a statutory mechanism designed to pick independent and competent members.
2. The board must elect a chairman and secretary from among its members.
3. The Clerk and election department personnel must serve as staff to the board and must not be voting members of the board. (The Clerk is always a partisan, sometimes a candidate, often has a vested interest in an election outcome, always has a vested interest in the appearance of election quality, and may be the subject of an embarrassing board vote. There is a conflict of interest here. Usually the board consists of 2 or 4 members plus the Clerk. Giving the Clerk a vote is akin to giving the Clerk’s political party an extra vote.)
4. The statutes and rules must specify a government-independent method for resolving tie votes.
5. The government may seek to override the canvass board by appealing to a new government-independent body.
6. The board, and individual board members, may appoint assistants as they wish. Board assistants need not meet any eligibility requirements; they must accept and sign the canvass board member oath.
7. Except when the board meets in executive session, all board meetings must be public meetings, timely announced on the Clerk’s website, open to the public, and open to the media.

Glossary – Terminology used in Colorado statutes, rules, procedures, forms, reports, and data must be sufficient, unambiguous, and precise.

1. The election landscape must be carefully categorized, and a rigorous definition of each needed term is mandatory.
2. The statutes and rules must reflect the needs for canvassing off-premise voting. (The proposed rule change does not meet these requirements.)
3. A new glossary must be created and adopted. The new terminology must be applied during the November 2014 general election.

The new glossary must resolve conflicts between the need for verification and the means of achieving verification. For example, canvass boards are required to know the number of ballots cast by voters, but since ballots may be lost or stolen when voting occurs remotely, fulfilling this requirement is not possible.

Election Records – Canvass boards, to achieve their goal, must have unfiltered access to the detail data, process forms, processed data, and reports. The principal categories of election records are

1. elector,
2. ballot packet,
3. ballot,
4. ballot image,
5. cast vote record,
6. vote,* and
7. audit log.

*NOTE: For votes, the total number of votes is the sum of the contestant votes plus the over votes plus the under votes. The counts of over and under votes must be reported where applicable. Without these counts, it is not possible to identify differences between the number of contest votes counted and the number of contest ballots counted (i.e. cast vote records counted).

Within each category, category-specific data must be identified and recorded. The record must include the detail transactions at each process. Also, items removed from the work flow must be tracked, including those that are eventually “cured.”

All data must be associated with its contest-precinct-style. This requirement is needed to locate compensating differences. As stated in the Objective, the goal of the canvass board is to determine, on the basis of the maximum level of detail, whether the election can be certified as having produced the correct outcomes.

To significantly improve the quality and efficiency of the canvass in each county and the state, specification and implementation of standardized formats for the election records are mandatory.

Evidence – Every election must produce and retain election records. Gross, aggregated data is not sufficiently compliant.

1. An election rule must identify and specify the mandatory records, the mandatory fields, and the mandatory form of each record.
2. Contest data must include lists of eligible registrants, voters, ballots, and votes (including contestant, under, and over votes).
3. Electronic files must provide for convenient assembly and comparison of contest data by precinct and style.
4. A standardized set of final election records must be delivered to the board at least three full days before the certification due date.

Policy – A rule must be adopted to require the reconciliation of every difference between detailed canvass-board-derived results (i.e., expected) and actual results. This rule must include accountable standards.

1. Unreconciled differences between expected and actual results must be interpreted as a broken system; the magnitude of differences cannot be trusted.
2. The Secretary of State must make Rule 8 (Watchers) conform to statute and remove all impediments to effective watching so that canvass boards may rely more on watcher reports.
3. The Secretary of State must require the training of election judges to include an explanation of the vital election integrity work of watchers.
4. The Secretary of State must offer all watchers the opportunity to sign and print their names, date, and time on transaction forms in use during the time of their watching.
5. A Rule must be created to unambiguously define the requirements for use of Executive Sessions.
6. The use of private and media recording equipment in nonexecutive sessions must be permitted.
7. Nonexecutive sessions must be recorded and recordings made public.
8. Ballot packets and Ballot Return Envelopes are not anonymous and may be photographed with the possible exception of an exposed signature. Confidential voter processes must be redesigned. Voted secrecy sleeves are anonymous and may be photographed. Ballots are anonymous and may be photographed.

ILLUSTRATIVE DEFECTS

Following is a brief summary of a few of the Boulder County 2014 Primary Election canvass issues. There is no process for fairly recording, tracking, and resolving such issues.

Interference by government officials – Government officials interfered with the canvass board’s independent operation. For example, they

1. refused to accept the canvass board’s chairman and secretary appointees,
2. refused (initially) to accept the American Constitution Party appointee to the canvass board,
3. refused entry to the press and the public,
4. subverted canvass board meetings by “running out the clock,” and
5. scheduled staff meetings to displace board meetings. At these meetings officials and staff orally delivered complex information and data, without providing copies of the presentation and materials to the board until after the meetings. Most, if not all, of the information in these meetings could have been presented weeks in advance of Election Day.

Noncompliance – Government officials repeatedly violated election law and rules:

1. Government officials interfered with the independent appointment of an American Constitution Party canvass board member.
 - CRS 1-10-101 – “Appointment of one or more registered electors”
 - CRS 1-13-701 – Interference with election official
2. Government officials did not comply with the requirement to disclose and report the detailed status of problems to the board.
 - Rule 10.11 – Written Complaints
 - Kolwicz to Gessler 6/4/14 – Not Canvass Ready
 - Kolwicz to Staiert 6/25/14 – Possible defect in election system
3. Government officials refused to timely provide the board with the records required by law.
 - Rule 10.7.2 – The official county abstract must include, by precinct or ballot style,

4. Government officials withheld records until there was no time for the board to inspect and analyze them.
 - The election records, on compact disks 3 and 4, were not provided until after the canvass board had adopted its noncertification report and adjourned the certification meeting.
5. Government officials exhibited disrespect for the board's authority.
 - "I decide what you need" attitude.
 - "I am not required to give you that data."
6. Government officials were nonresponsive to board requests for records and documents.
 - 20140610 Pre-Election Overview: 2014 Primary Special Election – June 10 at 5 p.m.
 - 20140613 Canvass Board Emergency Rule – Proposed Structure
 - 20140613 Background – polling place election canvass
 - 20140625 CANVASS – Proposed agenda item collection for Friday June 27th meeting
 - 20140630 List of Data to be provided to canvass board
7. Government officials misrepresented the board's decisions in official documents:
 - 20140707 SOS_Certification_Form_070714
 - 20140709 Dwight Shellman – Boulder County Primary and State Plan for November canvass boards
 - 20140709 PRESS RELEASE Jul 9 2014 Boulder County Clerk Defies canvass board
8. Government officials did not even exhibit the common decency to discuss their decision-making rationale with the board. The public's voice was silenced.

Use of imprecise and ambiguous terminology – It is nearly impossible to use the data and reports provided to the canvass board. Key terms are not defined or are defined ambiguously. For example,

- Voter is used when elector is intended.
- Ballot is used when cast vote record is intended.
- Count of ballots is identified in reports as count of voters.

- Ballot packet is used interchangeably with ballot.
- Voters cast ballots, but it is not possible to know whether or not a remote voter cast their ballot.
- Signature verification is often used when identity verification is meant.

Terms do not reflect the context in which they are used:

- For example, the term registered electors identifies a unique set of electors for each contest. Reports, however, often show the county-wide count rather than the contest count. Laws and rules have entirely different meanings without the distinction. Perhaps the term needed is contest-eligible electors.

Inadequate election records

Analysis of the data provided by the county is made unnecessarily difficult because it is not provided in a useable form. For example,

- A PDF file is supplied when an EXCEL or ACCESS file is needed.
- Reports are not designed to be used for auditing.
- Counts of what appears to be the same material differ from report to report and cannot be reconciled.
- Small differences between reports are misleading: usually they are net values that do not expose the number and magnitude of individual differences. *Because the differences are not detected by the process, there is no valid justification for trusting that the underlying numbers are correct.*

Data needed to achieve the objective is not collected or not reported.

- There is no transactional report of items that undergo each reject/cure process—only what is asserted to be the net result.
- There is no chain-of-custody record. There is no way to determine if the number of Ballot Return Envelopes returned in a container from a specific collection point actually made it through the process.
- Totally undetected and unreported is any error and/or fraud that occurs outside of the supervision of election officials. Election officials and, indeed, the Legislature, have recklessly chosen to ignore these threats.

Contaminated election record examples

Boulder County's election records are contaminated. This contamination was not detected/reported by state or county control processes. The types and extent of

the contamination are unknown. Since not all risk categories are monitored, some contamination and therefore evidence of error or fraud go undetected. The following are symptoms of this contamination.

1. **CDOS online election results.** The data presented in the Department of State's online election results is inexcusably defective. It is as though the software was never tested or the input to the application was never verified. Whoever is responsible must be held accountable and removed from this responsibility. If no one is accountable, the Secretary should personally take responsibility for the failure in management.

The summary report, for example, reports the number of "registered voters" and the number of "ballots cast" for U.S. Senator – Republican Party. Both are wrong by thousands. *The counts reported for the Republican primary contest are actually the counts for the Democratic contest.* Also, although columns are provided to account for the numbers for over votes and under votes, they are not reported, making it impossible to detect certain errors. For example, it is impossible to answer such canvass-mandatory questions as "were all of the votes counted?" and "were more votes counted than ballots cast?"

2. **Inconsistencies between reports and files.** Data between reports and files is not consistent. For example, the number of ballots received as reported in the "ballot processing 2nd floor" report does not match the number of ballots received as reported in the BoxTracker report. And neither count matches the count of ballots received when the "detail records in EX002, EV002, and E032" are inspected and counted. The data in the BP-006 and BP-009 reports cannot even be aligned so that they can be compared.

3. **Inconsistencies within reports.** Data within individual reports is conflicting and/or incomplete; some suggests illegal ballot collection. Examples:

- The BoxTracker reports that there were no DRE, email, fax, Internet, or provisional ballots cast in the election.
- BoxTracker reports thousands of ballots originating from locations that are not approved and monitored sources of ballots.
- The color-coded containers are used inconsistently without explanation.

It is vital that the source(s) of all contamination be located and stopped before the November election. The solution must include transparent and verifiable means to detect, classify, report, and prevent contamination.

SUMMARY

The canvass is Colorado's principal vehicle for detecting election integrity failures and assessing the risk of awarding an incorrect result.

Boulder County's 2014 Primary Election provides sufficient evidence that Colorado's canvassing process contains major problems that must be repaired before the 2014 General Election.

Canvass boards must be selected and function independently of government officials. However, the Clerk, the Clerk's staff, and the Secretary of State's office must assist the canvass board with timely data and legal and other input.

In order for the canvass board to effectively and efficiently perform canvassing duties,

1. Election records must be designed with a standardized format to be audited and canvassed.
2. Terminology must be standardized and approved by the public.
3. Any process that is not transparent and verifiable must be replaced by a process that is transparent and verifiable.
4. All data used in reports must be exported to EXCEL workbooks or ACCESS tables.
5. The rows and columns in reports must be subtotaled and totaled.

Running an election involves four processes. In each of these processes, the election is exposed to error and fraud. Watchers must have the opportunity to witness and verify every step in the conduct of the election, and canvass boards must determine, on the basis of the maximum level of detail, whether or not the election can verifiably be certified as having produced the correct outcomes.

1. The election preparation process must be validated and verified
 - o to ensure the eligibility of registered electors, contests, and contestants,
 - o to secure the ballot inventory, and
 - o to verify the readiness of the election infrastructure (equipment, procedures, personnel, etc.).

Colorado's effort is insufficient. CRS 1-7-509, 1-7-514, 1-7-515.

2. The voting process (checking identity and eligibility, issuing correct ballot, privately marking ballot, casting anonymous ballot) must be validated and verified to determine whether
 - voters are free from intimidation,
 - every cast ballot is anonymous,
 - every eligible ballot cast by an eligible elector is accepted for counting, and
 - no ineligible ballots are accepted.

Colorado's test is unachievable, ambiguous, and superficial. The test disregards the most likely sources of error and fraud. CRS 1-10-101.5.

3. The vote counting process must be validated and verified to determine whether
 - every vote on every ballot accepted is interpreted and counted as the voter intended and
 - no vote on an unaccepted ballot is counted.

Colorado's tests are superficial and disregard the most likely sources of error and fraud. CRS 1-7-509, 1-7-514, 1-7-515.

4. The election wrap-up processes must be validated and verified to ensure that
 - the record is complete, secure, and accurate;
 - all anomalies are explained;
 - recounts have been conducted if needed;
 - all election contests are certified, or not certified, as secure and accurate; and
 - all election records have been archived.