

Election Reform Commission
Uniformity and Simplicity Sub-Committee Recommendations
Submitted by
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January 28, 2009

The overarching consensus among members of the Uniformity and Simplicity Sub-Committee of the Election Reform Commission is that identified areas within the elections environment are primed for uniform and consistent practices. While the members of the committee recognize the need for designated election officials to have flexibility in deciding how best to deliver elections in their respective counties, need exist to have consistent practices where there is opportunity to curtail voter confusion, to enhance training for election judges and poll workers, educate and inform the public, poll watchers, and other interested parties, and to adhere to enhanced uniform procedures that assure votes cast are counted and accounted for adequately. With the overarching consensus in mind, the committee makes the following recommendation and/or observations:

Mail Ballot Elections

Colorado counties should have option to conduct primary and general elections by mail (Commissioner Martinez dissents on this recommendation); however, no county should be forced to conduct its elections by mail. Any legislation that affords an option to counties to conduct a primary or general election by mail should at the very minimum be uniform and consistent with regard to:

Minimum Thresholds – Before an all mail ballot election is allowed to be held, the number of absentee voters in a county in the previous Presidential or Gubernatorial election shall exceed 50% of all active voters.

Service Centers - Any legislation affording opportunity to conduct an election by mail shall include a mandate that the election include a sufficient number of service centers. Legislation should include a formula by which Designated Election Officials must adhere to determine how many service centers are “sufficient”. Recommendations on how to establish the formula include determining the requisite number of sites based on the population of active registered voters and determining the requisite number of sites based on area considerations. The committee recommends that legislation require that each service center provide consistent services to the voting public and that each be required to have secured computer access, be ADA compliant, include a sufficient number of DRE's, include a sufficient number of voting booths, have ability to distribute second original ballots, have ability to distribute replacement ballots, serve as ballot drop off locations, and provide ability to register in an emergency manner. Any proposed legislation should address hours of operation and mandate a minimum number of days open prior to

Election Day. It should include considerations for whether such service centers must be available during the early voting phase of elections.

Public Comment – The designated election official shall determine the number, location, and manner of operation of service centers, including poll watching activities at service centers, in consultation with the chairpersons of the county central committees of the major political parties and representative of the county organization of any minor political party and after a public comment period of no less than fifteen days and a public hearing held in accordance with the rules adopted by the Secretary of State.

Election Preparation – The committee recommends that any legislation related to an option to conduct an election by mail require that the designated election official meet with an election vendor to determine whether the vendor has capability and capacity to provide a sufficient number of mail ballots in a timely manner. The committee additionally recommends that legislation require that the designated election official meet with the United States Postal Service to coordinate mailing, receiving, and tracking of mail ballots.

Voter Eligibility – The committee recommends that legislation related to an option to conduct an election by mail include language specifically mandating who shall receive mail ballots. The language shall include direction to the designated election official that he or she shall mail to all registered voters, or direction that he or she shall mail to all active voters, or direction that the county maintains discretion as to whether to provide a mail ballot to active **or** inactive eligible voters or to active **and** inactive eligible voters. The committee recommends that a companion piece of legislation be considered that re-tools the manner by which the State of Colorado currently approaches its “active/inactive” voter registration designations. New legislation should take into consideration the existence of SCORE, its functionality, and its ability to aid in list maintenance and national change of address tracking.

Unaffiliated Voters – Legislation related to an option to conduct an election by mail should include considerations for managing unaffiliated voters in a Primary Election. Should there be a deadline for affiliating with a party? If so, should the deadline be on Election Day, congruent with the time the voter makes application for a mail ballot, or should a deadline to affiliate be congruent with the voter registration deadline.

Issuing/Counting Ballots – The committee recommends that any legislation related to conducting an election by mail include opportunity for the designated election official to send ballots as early as 30 days prior to election day and that the law allow a designated election official to send bulk mailing no later than 21 days prior to an election. Any law should include specific language as to how a voter may make a request to obtain a replacement ballot, i.e., by phone, internet, email, or fax. The legislation should additionally allow the designated official to begin counting ballots as soon as received or at least 22 days prior to Election Day.

Return of Ballots – The committee recommends that any legislation provide language that will provide uniformity related to methods of returning ballots. At minimum, legislation should require that every polling location/service center have a secure receptacle for voters to cast or drop off their mail ballot. The security of the receptacle shall be consistent with the security of paper or provisional ballots that is already described in statute or SOS rule. Other considerations to think about include whether the State should provide stand alone return boxes (Oregon engages in this practice) and whether it would be in the best interest of the state by law or rule to develop a certification program for ballot collection drives.

Postage – The committee recommends that legislation related to an optional mail ballot election require the county to pay the cost of postage for mail ballots or that counties have the option to pay the cost of postage. If counties are required to pay, legislation should require the state to reimburse counties for postage.

Homeless Voters – Legislation regarding an option to conduct an election by mail should include considerations for servicing homeless voters. Oregon law provides opportunity for homeless voters to list the county clerk's office as the voter's mailing residence for the sole purpose of obtaining a mail ballot. Colorado law should mirror this consideration.

Healthcare Facilities – The committee recommends that the term health care facilities be specifically defined in legislation. Counties define this word differently across the state, thus the treatment of eligible voters in these venues varies state wide.

Training

The approach to elections related training across the state is varied and leads to varying application of election related procedures and practices. In an effort to bring some uniformity to training, the committee recommends the following:

Base Line SOS Training - The Secretary of State's office should produce an Elections Manual addressing Election Officials' application of the Election laws and rules. The Elections Manual should, at least, contain instructions on all pre-Election Day matters and voter registration issues. The Manual should include instruction on all Election Day issues such as voter ID requirements, treatment of spoiled ballots and poll watcher requirements. Finally, the Manual should include instructions regarding proper ballot counting for each approved voting module/system, including the hand-counting method used in some Colorado counties. The committee recommends that Election Manual be free and publicly available, online, and in a downloadable and searchable format.

Distribution to Election Officials – Prior to publication, it is recommended that each designated election official send County specific rules to be included in a separate section of the Election Manual. The complete Election Manual, including County specific rules, will be distributed to Election Officials for each County. The committee recommends that a SOS rule be promulgated to require that when disputes regarding Elections exist,

the designated election official or its agent shall consult the SOS Election Manual prior to consulting local rules in any Primary or General election. (Commissioner O'Malley dissents with this specific recommendation.) The committee recommends that the Election Manual be bound and the Seal of the State of Colorado be affixed on the cover along with the words "Official Election Manual."

Distribution to Polling Locations – In the interest of uniformity, the committee recommends that sections of the Election Manual relating to Election Day laws and rules be distributed to each polling location/service center. Poll workers should be trained to consult sections of the Election Manual regarding any disputes prior to consulting local rules in any Primary or General Election. (Commissioner O'Malley dissents with this recommendation). The committee recommends that the portion of the Election Manual sent to poll workers be bound and the Seal of the State of Colorado be affixed on the cover along with the words "Official Election Manual for Poll Workers."

Video Training – The committee strongly recommends that the Secretary of State contract for the professional production of video instruction consistent with the contents of the Official Election Manual. The video shall be free and publicly available, online, and in a downloadable and viewable format and shall be used in conjunction with any training provided at the local level.

Forms

Forms used prior to and during the 2008 election cycle were very confusing to voters and in some instances caused voters to be disenfranchised. Several forms, including voter registration, application for mail ballots, combination forms, provisional ballots forms, and provisional ballot envelopes varied across the state. The committee recommends that each of these forms be developed in a manner that minimizes voter confusion, maximizes ease with which to understand and use, and that the Secretary of State's office dedicate resources to obtain professional guidance to develop these documents. The committee additionally recommends that rules be established related to what constitutes an approved and acceptable form certified for use and acceptance by eligible voters, campaigns, voter registration drives, and designated election officials. It is further recommended that uniformity be established with regard to how forms used inside of polling locations, particularly provisional ballot forms and envelopes are managed by election judges and personnel.

Primary Elections

The committee agrees that Colorado law related to conducting Primary Elections is antiquated and that there is need for major legislative revisions in this area. The problems and possible solutions are discussed below. While the committee did not come to any consensus as to recommendations in this area, considerations for discussion are presented below.

Primary Elections - Currently, county clerk and recorders must hold primary elections, even if there is no contested race in the primary. This is a waste of resources and money. Accordingly, in instances where a county clerk and recorder has no contested primary election, it is recommended that the clerk and recorder be allowed to designate the winner of a primary election without conducting the election. This change will require statutory modification. There are several ways to accomplish this.

First, it is recommended that law empower the clerk to cancel the primary election. But this approach includes several challenges. First, it would require rewrite of multiple, interlocking statutes; major party candidates go through the assembly or petition process to gain access to the primary ballot, and the only way in which a major party candidate can run in a general election is by first winning the primary. Second, multiple deadlines are based on primary elections, such as the time line for petitions or the campaign finance definition of electioneering communications. Third, cancelling a primary election would also reduce a candidate's ability to received contributions for that primary election, thus giving candidates and parties a strong incentive to ensure contested primaries. Arguably, this is easy to do, because a person can easily ensure a primary simply by registering as a write in candidate.

A second approach is to hold a primary in a legal sense, but allow the clerk and recorder to dispense with collecting or tabulating votes. This avoids major statutory changes and it also avoids unintended consequences of actually cancelling a primary, and it eliminates any incentive by a candidate or party to manipulate a primary for campaign finance purposes. On the other hand, it creates a legal fiction that a primary election took place, even though no one cast any votes for the primary. Despite this legal fiction, arguably this is probably the cleanest solution.

Third, a clerk and recorder could still conduct a primary, but limit all votes to a single polling location, thus creating a single polling vote center. Conceivably some clerks already have this capability under C.R.S. § 1-5-102.7, although in some instances it may require Secretary of State approval. This approach would also require the fewest statutory changes – perhaps just a few sentences to section 1-5-102.7. This would still require the clerks to conduct a primary election, but it would vastly reduce the size and complexity of that election. Overall, the second option seems most viable. It maintains the current statutory framework, avoids incentives to artificially create an election, and maximizes the savings for county clerk and recorders.

Canvass Board Procedures

Canvass board procedures for partisan elections are very poorly defined, and the committee agrees that uniformity and simplicity are needed in this area of discussion. The law in this area is in need of a major rewrite. The problems and possible solutions follow.

Composition of Canvass Board. Currently, the major party chairpersons are required to appoint one or more members and certify their appointment “in the manner prescribed by the clerk and recorder.” Current law allows each party chairperson to appoint as many

canvass board members as he or she sees fit. In practice (including the personal experience of Commissioner Gessler) the number of appointees and procedures vary considerably, and in some instances there are too few canvass board members to meaningfully complete the work in the allotted time. Any legislation should explicitly require the clerk to tell the county chairs the number of canvass board members necessary to complete the work, and the county chairs should be required to each appoint the same number of members.

Decision-making Procedures. The law is silent on how the canvass board reaches decisions. Currently, the board consists of members appointed by the chair, plus the clerk and recorder. Thus, if the canvass board operates by majority vote, then the clerk and recorder can easily and consistently be outvoted. In some instances, canvass boards treat all Republicans as one vote, all Democrats as one vote, and the clerk and recorder as one vote. In other instances, certification may require unanimity. Colorado law should specify the proper procedure and provide uniform application of how members are counted.

Duties of Canvass Board. Currently, the canvass board has two duties – reconciling the ballots to confirm that the number counted does not exceed the number case, and certifying the abstract. In light of controversies in other states, there should be one additional, common sense duty – to ensure that the number cast in each precinct does not exceed the number of eligible voters in any precinct. This seems to be a basic safeguard against fraud that has likely been overlooked for years. (Recognizing that human error in elections is common, Commissioner O'Malley believes that the more appropriate action is for legislation to provide for flexibility for the canvass board to inspect and investigate where number of votes cast fail to align with the number of eligible voters.)

Remedies for Improper Certification. Currently minor party and unaffiliated candidates may appoint observers to the canvass board process, but the law is silent if they have an objection. Assumably, a minor party candidate may bring a district court complaint under C.R.S. § 1-1-113, or a person may wait until certification and contest the election results. but it seems appropriate to allow an intermediate, regulatory remedy rather than requiring a full-blown district court hearing or election contest. Accordingly, one should be able to bring an objection to the Secretary of State, who can then quickly investigate and resolve any procedural problems early in the process. This should allow a quick regulatory remedy, rather than require a full-blown district court hearing or election contest.

Remedies for Failure to Certify. The law is also silent if a canvass board refuses to certify the returns. Under section 1-10-104, the law directs that if the results do not conform to law, the canvassing board will still canvass the returns if they are explicit enough in showing the number of votes cast. But this section nonetheless leaves unanswered whether a canvass board must certify defective returns, or what the Secretary of State's remedies are if the canvass board refuses to certify. The best remedy seems to be to require the canvass board either to certify the results or to transmit non-certified results, with an explanation for the non-certification. This should be explicitly included in statute.

Miscellaneous Considerations

The committee agrees that other areas of discussion related to election reform and uniformity and simplicity are important and in need of attention. These areas include on-line voter registration, SCORE funding (funding for SCORE will sunset in 2010. There is no discussion about replacing this funding or whether counties should uniformly be made to pay funding to continue to support SCORE), Colorado's Active/Inactive statute needs a major re-haul, and Title I in its entirety needs serious revision. It is the hope of the committee that the Secretary of State form an ongoing working group to engage in serious work to re-haul Title I and along with the legislature will continue to advocate for significant revisions guided toward bringing uniformity and simplicity to the elections environment in the state of Colorado.

