

<http://electionquality.com> updated 12/12/2020

In Colorado several conditions have changed in the last twenty years that merit consideration and accommodation in election methods through substantive improvements – 1) the precinct polling place has been eliminated, thus separating the citizen voter from ability to observe the election process, and 2) the voter is no longer present when his/her eligibility is determined and 3) the ballots are no longer sorted by precinct and this has impinged on ballot anonymity. Finally, 4) voting systems now provide the possibility for interested citizens to access copies of the election records through images and cast vote records. The age of the **evidence-based public election** has begun and Colorado is leading the way.

On the way to a publicly verifiable evidence-based tabulation we are well into implementing the **Risk Limiting Audit**. This audit once completely implemented and supported by public access to election records will likely end concern about election outcomes that are wrong for reasons involving tabulation. This will have been a remarkable achievement. We are not quite there yet. At present our Secretary of State is choosing what to audit, our statewide contests aren't fully auditable, our cast vote records are being summed by software for the audit but the cast vote records are not available to be checked. And our ballots, images and cast vote records are not entirely anonymous, even though the Colorado constitution requires this.

My suggestions below are motivated by the desire to credibly achieve the evidence-based public election that enables a public audit of election outcomes:

To achieve substantive ballot anonymity

Pay closer attention to the necessary clear separation between the identifiable-voter **eligibility phase** and the anonymous-ballot **tabulation phase** – this is a general guiding principle. Particular attention must be paid to the places where these phases overlap, if at all. For example, the deconstruction of envelopes containing two ballots from U voters in primaries where the voter did not affiliate or state a preference is an overlap situation that requires attention. Counties have invented several different methods to maintain a verifiable separation of the identity from the anonymity phase.

End the identifiability of approved/tabulated **provisional ballot** sheets by making them identical in form and style to regular ballot sheets – no special marking indicating the formerly provisional status. This can only waste time and money, create special inventory and most importantly, risk voter privacy.

Set a legal standard for a threshold of **substantive self-identification** on a ballot sheet that requires duplication or redaction – set guidelines for how that redaction would be done such that it can be done by bipartisan election judges at the time of opening and in a manner that is reversible under court order. For example, using pressure sensitive redaction paper. This will help protect counties from law suits.

The 2017/18 cleanup bill called for **rulemaking to protect voter privacy** – meaning anonymity of ballots (in the section that ended the requirement for the secrecy sleeve). I hope to see discussion of what those rules might look like – e.g. use Opex, camo pattern printed in envelope, all voter ID on one side of envelope, more effective disassociation of envelope batches from ballot sheet batches, combine and mix ballots from multiple vote centers to prevent rare styles, reduce rare styles during redistricting and re-precincting, choose coordinated contests designed to protect voter privacy, define substantive self-identification of ballots (mentioned earlier), etc.

To achieve more verifiable accuracy in eligibility determination and the act of casting the ballot:

Improve **signature verification** - enable SCORE to prioritize signatures based on provenance and age of signature. (e.g. recently signed in-person by pen on paper in presence of an official would be prioritized first) – collect timestamps on sigver decisions to allow review of quickest or slowest decisions and decision reversals that took a lot of time – simplify uploading of undeliverable images – standardize SCORE interfaces for sigver with better human factors and less observable PII for election judges, supervisors and watchers. Stored reference signatures should age out and require replacement by the voter who otherwise risks a cure process.

Build **UOCAVA** privacy, oversight and accountability. Require testing of new technical methods for securing and reporting ballot delivery and return for UOCAVA - mindful of encroaching risks of internet voting. SB-19-202 requires a very cautious implementation.

Enhance **drop box oversight** and accountability - votes are lost due to naked ballot drop-off – return to a definition of "cast" that involves a voter action – look toward automated binking, reporting and rejection of improper envelopes at 24 hour drop boxes.

To achieve better contact and mutual familiarity of voters with the election system:

Encourage voters about to drop a signed ballot packet into a drop box at the door of an open VSPC to **return mail ballots in-person** inside the center and even better - avoid the need for subsequent central count signature verification and opening processes - e.g. deposit home marked paper into an election judge monitored VSPC ballot box after a simplified check-in and style check and signature confirmation in front of an official. I have seen this service provided to voters in a Colorado County.

To implement practical access to election records by interested parties:

Implement statutory **positive and timely public access** to voted ballots, ballot images and cast vote records in Title 1 as a deliberate route to build public confidence – Alternatively, adjust CORA so it does allow access to voted ballot data early enough so the public can either participate in or verify the audit in time for a decision to recount. Public access shouldn't treat all instances of CVRs, images and paper ballots alike – they have very different technical specifications and risks and defenses regarding ballot anonymity. The conflation of all three types of records, and the arbitrary requirement to use CORA to obtain access is an obstacle to election transparency and specifically the functionality of the new RLA. The best solution is to add election transparency into Title1 as a normal public benefit administered by the SOS.

To complete the implementation of the RLA and integrate it with recounts and (?) the National Popular Vote Compact:

RLA implementation details: Provide for the RLA to be conducted in public with reports written by counties to include descriptions of exceptional expressions of voter intent, to be published by SOS as in the previous audit law. Also provide for independence selection of contests, transparency of audited records, regulator advice on the proper way to describe, etc.

Rationalize the **recount law** to match other states formulas (1/2 percent of all ballots accepted containing the contest in the election) and to accommodate it to make sense with the existing RLA (this has only partially been done in Rule).

Encourage realistic voter verification of voter intent on **machine-marked paper** ballots – improve layout and process at VSPC to motivate actual check of the contents of the paper before depositing paper in ballot box. Eliminate use of QR coded voter intent.

The **National Popular Vote Compact** (NPVC) has passed into CO law. Colorado ought to play an important national role to explain the potential impact of recounts and audits that vary state by state on the NPVC. Options by states to recount will make it difficult to obtain a static final national election result by a deadline. Colorado may be best prepared to suggest enhancements that could be enacted by modification to the compact, or introduced as federal law to implement a national risk limiting audit that could stand in for a national recount in case of a narrow margin election.

To simplify styles and balancing of voters to ballot sheets, and to make process more efficient and realistic

Allow optional independent ballot styles for individual ballot sheets within multiple sheet ballots. Allow counties to **paginate** contests onto multiple sheet ballots intelligently – to place statutory districts on one sheet and coordinated districts on a different sheet and tabulate and account for them as independent styles. Existing multi-sheet elections using this method will see improvements in anonymity/voter privacy especially when **ending precinct reporting** for special, school and municipal contests. Districts with borders that ignore precinct borders create precinct splits. When these special, muni and school districts are no longer precinct reported, precinct splits will go away, much simplifying the election for many benefits protecting voters and officials.

Allow counties to report and canvass boards to **balance elections by comparison** of 1) style-specific SCORE reports of voters getting credit for voting with 2) a count of sheets tabulated by style using cast vote records as the source (no need to have voter intent shown in no-voter-intent-CVRs). Eventually voting systems will no longer attempt to report “ballots cast” but rather “sheets tabulated” by style, where each voter may have received two or more styles.

Clarify the use of words such as "cast," "ballot," "image" and the like in CO law to assist the EAC **VVSG** to be suitable for remote voting, central count and RLA. Colorado has much to contribute to that discussion that would bring VVSG 2.0 into the future rather than focused on the past. I hope to see more CO involvement in VVSG discussions before they are put to bed. Colorado's existing innovations are not yet be adequately included.

Check electionquality.com for further information or email to Harvie at electionquality.com.