

Election Reform Commission
Uniformity and Simplification Subcommittee
Wellington E. Webb Municipal Office Building
Room 1 B 6
Friday, January 16, 2009
9:00 a.m.

Minutes

ATTENDEES: Commissioner Stephanie Y. O'Malley, Denver Clerk & Recorder
Commissioner Scott Gessler, Hackstaff Gessler LLC
Commissioner Scott Martinez, Holland & Hart LLP

GUESTS: Michael Scarpello, Director, Denver Elections Division
Nancy P. Greeley, Denver Elections Division
Martha Tierney, Counsel, Colorado Democratic Party
Margit Johansson, Coloradoans for Voting Integrity
Mary Eberle, Coloradoans for Voting Integrity

I. CALL TO ORDER

Commissioner Stephanie O'Malley called the meeting to order at 9:07 a.m.
Commissioners O'Malley, Gessler and Martinez (via teleconference) were present.

II. DISCUSSION OF ISSUES/SUBJECTS FOR FURTHER SUBCOMMITTEE
DISCUSSION

Commissioner O'Malley stated that the Subcommittee members had a number of items to work on from the last Subcommittee meeting. The Subcommittee has been requested to provide written recommendations to the Election Reform Commission staff for distribution and review by the members of the Commission. Commissioner Gessler stated that he would be able to provide his portion of the materials by January 19th and Commissioner Martinez stated that he would be able to provide his materials after his January 22nd return from Washington, D.C. Commissioner Gessler stated his belief that

the Subcommittee needed to review all of the materials, confer on the content and make recommendations to the full Commission. Commissioner O'Malley noted that she is requesting written reports from each member of the Subcommittee. Commissioner O'Malley reviewed the agenda for the meeting.

Commissioner O'Malley requested Ms. Greeley review the materials that she had assembled. Ms. Greeley reviewed the contents of the research provided to the Subcommittee members in the following areas: research memorandum on the treatment of active/inactive voters in Colorado; statewide provisional ballot acceptance rates; nationwide synopsis of 2008 legislative measures introduced regarding all mail ballot elections and voter identification; case law on voter identification; exemplars of voter registration forms produced by third parties and received by the Denver Elections Division in 2008; and, samples of Denver Elections Division and Colorado Secretary of State provisional ballot affidavits with instructional material provided to City and County of Denver polling place supervisors.

Discussion was held regarding legislative treatment of active and inactive voters in Colorado and the potential effect pending registration legislation may have.

Commissioner O'Malley discussed her concerns regarding the different voting models used throughout the state and the effect this may have on voter registration treatment. Commissioner Martinez questioned whether HAVA has any effect on active/inactive voter status. Commissioner O'Malley stated HAVA does not affect active/inactive voter status. Mr. Scarpello stated that the federal "motor voter" law provides that a voter will go inactive if they fail to vote in two election cycles. There is wide variation among the states regarding the disposition of a voter's registration once on inactive status.

Commissioner O'Malley stated that she had had an opportunity to review the research regarding the status of all mail ballot elections legislation introduced nationwide in 2008 and observed that most of the legislative efforts to impose this type of voting system had failed. Ms. Greeley discussed, generally, Oregon's statutory scheme for all mail ballot elections.

Commissioner Martinez raised the issue of whether the state should reimburse the counties for incurring postage costs when the counties pay for ballots returned with insufficient postage. Commissioner O'Malley stated that the City and County of Denver pays the difference when a ballot is returned with insufficient postage. She stated that there was no way the counties could pay postage across the board unless there was a realization of cost savings in another area. Commissioner Martinez stated that the issue should be looked at from the perspective of the voter should mail ballot elections become mandatory. While he is not in favor of such a voting model, if all mail ballot elections are required then the counties should pay all postage costs. If voters are required to pay postage in an all mail ballot election, the payment of postage would operate as a poll tax. Commissioner O'Malley noted that the postage issue would be problematic as there is a very short timeline between ordering ballot envelopes and the finalization of the ballot and determining postage would be difficult. Ms. Eberle asked whether there was the possibility that business reply envelopes could be used and postage charged by weight. Mr. Scarpello responded this was possible if the size of the ballot could be determined early enough but under current statutes the county clerks are prohibited from paying return postage. Commissioner Martinez recommended that there be uniformity on the treatment of return postage regardless of whether all mail ballot elections are adopted and that the voter should not bear this burden. Commissioner O'Malley noted that Commissioner Martinez was raising budgetary issues but she agreed that this recommendation should be made.

Commissioner O'Malley stated that legislation has been introduced in this legislative session by Rep. Miklosi that would allow people to register to vote through a statewide registration system, via a secure network, straight into SCORE. The legislation would still require registrants to meet existing registration requirements. Commissioner Gessler asked how it could be verified that a registrant met registration requirements. Mr. Scarpello stated that registration information could be verified through the voter confirmation card process. Commissioner O'Malley stated the Subcommittee needed to address this legislation and make a recommendation. She stated that the Subcommittee members needed to review the research provided by Ms. Greeley, complete outstanding

assignments of each member, and submit written recommendations via email to Commissioner O'Malley. The recommendations of each member would be circulated among the Subcommittee members for further discussion. Commissioner Martinez stated that the Subcommittee needed to make specific recommendations. Commissioner Gessler agreed and stated that the Subcommittee also needed to make process recommendations. At 9:50 a.m., Commissioner Gessler, with the assent of the Chair, left the meeting.

Commissioner O'Malley solicited input from the attendees. Ms. Johansson stated that she had security concerns about online voter registration and that she felt that these security concerns were being laughed off for the naïve reason of convenience. Mr. Scarpello responded that the motivation for moving to online registration would be the cost savings as it took, in the City and County of Denver, 52 people to conduct voter registration data entry in October/November 2008. He believes that there would be fewer data entry errors if registrants filled out their own forms online. It was Ms. Johansson's concern that cash strapped counties could be manipulated on this issue. Commissioner O'Malley said she could not speak to the technology but she was sure this would be addressed in Rep. Miklosi's legislation. She said that she has been asked why people cannot register online when many people conduct financial transactions online. Ms. Johansson responded that the National Institute of Standards and Technology had released a report finding that online registration was not a secure practice. Commissioner Martinez observed that such legislation would have to address certain security thresholds. Ms. Johansson responded that she does not have any faith that such security would be adequate.

Commissioner O'Malley invited Martha M. Tierney, Counsel, Colorado Democratic Party, to share her thoughts and concerns. (A representative of the Colorado Republican Party had been invited to attend). Ms. Tierney stated that elections in Colorado would benefit from adopting "best practices" as the experiences of 64 counties could be drawn upon. She stated that she recognized that such a long term vision was broader than the scope of the Subcommittee's mission. She believed that the subcommittee could look at the following:

1. Training manuals – the Secretary of State’s Office should create improved and uniform statewide training manuals that the counties could add to meet their specific needs.
2. Mail ballot elections – Ms. Tierney was not in favor of all mail ballot elections and that the public should be afforded a menu of voting options. While more people are voting by mail, there would be a portion of the populace that would be disenfranchised and less likely to vote if existing voting options were removed. Commissioner O’Malley asked what her recommendation would be if, in 2009, there was only one initiative on the ballot. Ms. Tierney stated that she felt less strongly about a full option election under that scenario but that there should be at least one polling place in each county. In even year elections, she believed the focus should be on full option elections. Ms. Johansson stated that it was her belief that the major parties and the clerks were pushing all mail ballot elections. Ms. Tierney denied that the Colorado Democratic Party was pushing this election model.
3. Additional training for assisting voters with disabilities – Ms. Tierney stated that assistance to voters with disabilities varied statewide.
4. Poll Watchers – Ms. Tierney stated treatment of poll watchers in polling places differed statewide. Commissioner Martinez stated that there should be uniformity of training on this issue. He believes the Secretary of State should provide this training or issue a directive to the counties that existing rules be enforced. He observed that directives do not always work and the same training materials should be used statewide to ensure consistency. Mr. Scarpello agreed in theory, but, in practice, this will not happen with different voting schemes. If there is an effort for uniformity on this issue, it was his opinion there will be pushback. He believes that this is an enforcement issue by the Secretary of State’s Office. Commissioner O’Malley agreed that this is an item that should be uniformly handled along with other issues, such as assistance to disabled voters and address matching. Ms. Tierney observed that she hoped that Denver would aggressively participate to have “best practices” adopted. Commissioner Martinez felt that this was an area that needed improvement. He stated that Colorado should consider

following the practice in Georgia which requires that election officials must complete training provided by the Secretary of State that would cover the above topics with a required minimum hours of training. Mr. Scarpello responded that such training is required in Colorado and that the training must be completed within two years to obtain certification as an election official. Commissioner Martinez observed that the training was not working.

5. Provisional ballots – Ms. Tierney noted that in some counties the poll worker contacts the clerk if someone is not in a poll book while in other counties the voter votes provisionally.
6. Voting equipment – In Ms. Tierney’s long term view, the state should move toward a ten year goal to use the same machines statewide with one vendor contract. Such a plan would allow for better contract terms, ease of training, sharing of equipment and technical support. Commissioner O’Malley agreed that this would be desirable because it is difficult to have that kind of dialogue due to the lack of control of variables at the federal level. Mr. Scarpello stated the Subcommittee should consider a contingent recommendation, if money were made available, that the counties should use the same vendor. Those states that made the commitment early on to use one vendor have been more successful in conducting elections.
7. Defective registrations – Ms. Tierney stated that there needs to be uniformity of treatment in the handling of defective registrations.
8. Defective provisional ballot affidavits – consistent treatment of how defective provisional ballot affidavits are handled needs to be addressed.
9. Drop off locations for mail ballots – Commissioner O’Malley said this was a low hanging fruit item as a lot of clerks think this should be allowed. Those clerks that had been opposed to drop off locations for mail ballots have changed their position. In Denver, approximately 92,000 voters dropped off their mail ballots. In her estimation, this speaks to voter distrust of the U.S. Postal Service or to convenience.

Commissioner O’Malley stated that there was not much dissension among the members of the Subcommittee although Commissioner Gessler had some concerns regarding mail

ballot drop off and canvas procedures. Ms. Eberle stated that she hoped that the Election Reform Commission would hold meetings statewide as promised. Commissioner O'Malley noted a meeting had been scheduled in Grand Junction but it was cancelled due to bad weather and a meeting was held in Pueblo in conjunction with the Clerk's Conference. Ms. Eberle indicated that she would be appearing before the Election Reform Commission's next meeting to raise the issue of hand vote counting. She also noted that Boulder County, in the last election, used retired teachers to conduct poll worker training. Commissioner O'Malley noted that it was difficult enough to recruit people with the skill set to be trainers/supervisors to limit training to retired teachers. Ms. Tierney said, as a member of the Bar Association's Election Task Force, she would be requesting an opportunity to make a presentation to the Election Reform Commission.

Commissioner Martinez moved that the Minutes from the December 15, 2008 meeting be added to the Agenda and be approved. By unanimous vote of the Subcommittee members present, the Minutes were added to the Agenda and were approved without amendment. Commissioner O'Malley adjourned the Subcommittee meeting at 10:40 am.