

December 31, 2012

Dear Deputy Secretary Staiert:

RE: SOS-HAVA-07-12-0001

I hope that the attached Demonstration/Testing Plan - Bell and Howell Mail Ballot Sorter, dated December 14th, is not considered part of the Department's investigation of my HAVA complaint.

1. The plan falsely suggests, by using the terms "test" and "testing", that it describes a test, but in no way describes anything like a test.
2. The demonstration described is woefully inadequate, even if successfully implemented, because it does not address most of the critical functions of the Mail Ballot Component.
3. The demonstration described in the plan will not provide the Department with any evidence that would directly address, confirm, or refute the charges raised in SOS-HAVA-07-12-0001.

Test vs. Demonstration

This plan is not in any way a plan for a "test", in the generally accepted meaning of the term.

The **purpose of a test** is to find errors. In order to find errors, one must first develop and document a set of test cases, each test case specifying its input data and the expected results of the test case.

Testing is the process of finding errors. A good test case has a high probability of detecting an undiscovered error. A successful test case is one that detects an undiscovered error.

The **purpose of a demonstration** is to provide observers a sense of what a system can or might do. It is by no means comprehensive. It is designed for a completely different purpose than a test. Typically a demo is carefully **scripted** to achieve a specific communication objective, and thoroughly **rehearsed** in advance to ensure that it will not encounter any undiscovered errors.

A successful demonstration is a flawless performance of the script. An unsuccessful demonstration is one that encounters an unscripted error.

I encourage you to direct staff to correct the misuse of the term "test" -- not only because it is incorrect, but also because it misrepresents to the public what is actually being planned.

Unnecessary and Inadequate Demonstration

The plan postulates an unnecessary and alarmingly inadequate demonstration of the Mail Ballot Component; see Kolwicz Testimony, December 26, 2012, pages 9 and 10, and Boulder County Voting System, November 15, 2012, pages 11-13.

The Mail Ballot Component is that set of facilities needed to implement, for the mail ballot voting method, the requirements of multiple statutes, rules, and orders including:

- HAVA.
- Colorado Title 1, Articles 1, 1.5, 2, 5, 7, 7.5, 8, 8.3, 9, 10, 10.5, 11, 12, and 13.
- Colorado Title 24 Articles 37.5, and 72.
- Election Rules 1, 2, 5, 6, 8, 10, 11, 12, 13, 14, 25, 26, 29, 30, 36, 37, 40, 41, 42, 43, and 45.
- Orders such as Conroy v. Dennis, No. 06CV6072 (Denver Dist. Ct.).

The December 14th plan contemplates a trivial demonstration of the **mail ballot envelope sorter**. This is only one part of one part of one part of the multi-part **Mail Ballot Component**.

The term “sorter” or “mail ballot envelope sorter” does not appear anywhere in the statutes, election rules, or orders. There is no specification of requirements for such a device.

A barely adequate demonstration of the Mail Ballot Component, the subject of SOS-HAVA-07-12-0001, requires that at least those issues raised in various watcher reports and election complaints be included in the demonstration.

A satisfactory demonstration of the Mail Ballot Component requires that all documents and files, including those requested in the attachment to Kolwicz, December 10, 2012, be made available to the public before the demonstration, so that the public can formulate meaningful questions to consider during the demonstration.

No relevant evidence demonstrated

The assertions and charges in SOS-HAVA-07-12-0001 are a matter of law, and nothing described in the demonstration plan is related to these specific charges.

Meaningful evidence would confirm or refute one or more of the following assertions:

- All voting systems and all individual parts of voting systems must pass certification criteria.
- The Mail Ballot Component, including any devices, is an individual part of a voting system -- i.e. a “voting system component”.
- Boulder County’s conditionally certified voting system has been modified to include a new Mail Ballot Component.
- A political subdivision may not adopt any modification of the system until the modification is certified or approved.
- CDOS has neglected to comply with the statutes and rules identified in the evidence.
- Boulder County has neglected to comply with the statutes and rules identified in the evidence.

Conclusion

I encourage you to direct staff to withdraw this unhelpful demonstration plan from the context of this complaint. In addition to the misnaming and the fundamental inadequacies, relating this demonstration to this complaint would be a disservice to the public since the plan and demonstration would misdirect the public’s attention away from the issues raised in the complaint.

Independent of this complaint, it might be appropriate to script and rehearse a satisfactory demonstration, but after the determination of this complaint finds whether or not Boulder County has modified its mail ballot component and whether or not the modified voting system must be certified.

Yours,

Al Kolwicz