

.....**from the desk of Ken Gordon, Chairman, Election Reform Commission**

February 27, 2009

Dear Members of the State, Veterans, and Military Affairs Committees:

Senate Bill 08-243 established the Election Reform Commission (ERC) with members chosen by the Speaker of the House, the President of the Senate, the Minority Leaders in the House and the Senate, the Secretary of State, and the Governor. The members of the ERC served without compensation or reimbursement for expenses. The legislation required that this report be presented to the House and Senate State Affairs Committees by March 1, 2009.

One could point to a number of events that led to the creation of the Election Reform Commission, but a logical starting point is to go back to the case of *Conroy v. Dennis* that went to trial in Denver District Court shortly before the 2006 election.

The plaintiffs in that case alleged that Secretary of State Gigi Dennis had not followed Colorado law in testing and certifying direct record electronic (DRE) voting machines. The Court found that the plaintiff's case had merit but was unwilling to decertify machines that Colorado's county clerks were relying on shortly before a general election. However, Judge Manzanara ordered the new Secretary of State, who turned out to be Mike Coffman, to establish standards and retest the machines following the 2006 election.

Pursuant to the new standards and testing, Secretary of State Coffman announced on December 17, 2007, that he was decertifying three of the four electronic voting systems used in Colorado, a decision that left over 50 Colorado counties without voting systems that they could use in the 2008 presidential election.

Multiple solutions to this predicament were proposed and debated during the 2008 legislative session. These included running a state-wide mail ballot election, using paper ballots, and giving the Secretary of State interim authority to certify the electronic voting machines for the 2008 general election.

Primarily because the county clerks maintained that they could not implement any other solution in the time frame required, the legislature passed House Bill 08-1155, which gave the Secretary of State interim discretionary authority which he used to recertify the decertified equipment. Since HB 08-1155 was a stop-gap solution to allow Colorado to be able to run a 2008 general election that was expected to, and in fact did, have the highest number of votes cast in Colorado's history, the legislation only allowed the electronic voting systems which had been decertified on December 17, 2007, to be used in the 2008 election. The bill sunsets on June 30, 2009. Therefore, over 50 Colorado counties are again facing elections without certified electronic voting machines and the Secretary of State is facing a number of legal and regulatory problems in dealing with certification of the systems that his predecessor had decertified in December of 2007, and which will again lose their certified status on July 1, 2009.

Since trying to pass election reform legislation during a general election year had proved problematic, the ERC was created to meet following the 2008 election in order to recommend changes in election laws and practices to be considered by the 2009 General Assembly.

In doing our work, the Commission divided itself into three subcommittees, Technology and Auditing, Uniformity and Simplification, and Registration and Database. Our recommendations therefore fall into these three categories.

Probably the most significant recommendation, and the one likely to receive the most attention, was our solution to the problem of electronic voting machine certification posed by the sunset of HB 08-1155. The recommendation by the Technology and Auditing Subcommittee reflected a balancing of interests. Greater detail is included within the body of this report, but the essence of the recommendation is that Colorado's counties will be allowed to use the electronic voting machines that they own through the year 2013. Following the year 2013, elections in Colorado will be conducted primarily on paper ballots counted by optical scan devices.

Paper ballots will provide an accessible, transparent, and verifiable method of conducting an election and the existence of the ballots will allow for reliable audits. It was not lost on the majority of the ERC that if nothing was done, these decertified, recertified machines could not be used after June 30, 2009, and if our recommendation is followed, Colorado's counties will have the best part of five years to implement a new election method.

It is also worthy of note that in the 2008 election, at least 70 percent of Coloradans voted on paper ballots either by mail or at polling places.

Commissioners Balink, Baisley, and Gessler dissented from this recommendation.

Extremely useful work was done by the Uniformity and Simplification and Registration and Database subcommittees as well.

The Registration and Database Subcommittee addressed issues relating to the Statewide Colorado Registration and Election System (SCORE), recommended clarifying the form used for voter registration, and recommended citizens present photo identification when registering to vote.

Significant recommendations by the Uniformity and Simplification Subcommittee included allowing counties to conduct primaries by mail, if certain conditions are met, and dispensing with the necessity of counting and tabulating votes in uncontested primaries. The subcommittee also addressed canvassing board procedures and recommended the legislature consider the issue of online voter registration and overhauling the active/inactive statute.

The full recommendations of all of the subcommittees are contained in complete detail in the body of this report.

As chair of the Election Reform Commission, I would like to personally thank the other Commissioners for their diligence and the quality of their work. Some of the Commission members had to travel long distances and be away from their homes and work for long periods of time.

Respectfully Submitted,

Ken Gordon