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To: [SoS Rulemaking](#)
Cc: harvie@electionquality.com
Subject: Branscomb to Williams concerning discretion over choice of contests to audit
Date: Friday, February 23, 2018 3:06:15 PM

Dear Secretary Williams, concerning Rule 25.

Thank you for taking time to speak with me at the Colorado County Clerks Association meeting in January. I mentioned at that time the potential disadvantage of having the Secretary of State (SOS) personally decide how to audit the election, and in particular to choose what contest or contests to audit.

Because the March 2 rulemaking does pertain to Rule 25- the risk limiting tabulation audit rule- and the language there gives to you, the SOS, the responsibility for making the selection of targeted contests, this comment must be timely and appropriate.

An impression has been circulating that the Secretary might choose contests that would not lead to a full hand count thus leading to an easier and faster process. Easier, faster to audit contests are the ones that have wider victory margins more likely to be correct. But it is the tight margin contests the public is most concerned about. The final criterion in the list of suggested criteria for selection by the SOS in Rule 25 is the one that raises this fear:

The ability of the county clerks to complete the audit before the canvass deadline.

Colorado voters want their now-famous audit (RLA) to be effective and to apply to the contests that most need auditing- namely the hotly contested and competitive contests. That includes narrow victory margin contests that might require a full hand count under the RLA theory and under Rule 25. Colorado must be ready and willing to conduct the risk limiting audit as it is designed. This means to extend to a full hand count when the rule requires. And that includes narrow victory margin contests that must not be excluded from those to be selected for audit.

As an aside, the rule currently avoids specification of how and when the full hand count is to be performed. This is an omission that deserves correction.

The audit will enhance confidence in the election if and only if it actually provides both the transparency to the public and the independence of control from officials whose work is being audited. And it ought to be independent of influence that can be exerted by candidates. As Secretary of State, you are one of the candidates affected by the 2018 election. County clerks are also, every four years, candidates for election.

I know you have said that the public has an effective recourse over any bad decision that the SOS might make. That recourse is provided by the opportunity to re-elect or not. Your own decision to audit or how to audit that contest (or not) might actually make that recourse a bit less effective if it in any way denied public access to an accurate outcome and the evidence that substantiates it. The optics of a candidate deciding what to audit are not good.

I doubt that you want a controversy to rise over your discretion regarding an audit of the SOS contest, or any other key contest in 2018. I suggest that you define by rule what contests will be targeted for audit or use a formula fixed in rule for selection of contests - minimum diluted

margin being one of the elements of that formula that leads to targeting.

Colorado is setting a nationwide precedent for how a RLA should be conducted. Independence of audit from decisions by elections officials and functional transparency with access to audit records and process must be foremost criteria for excellence as we set the example.

I recommend that you move to promulgate rules for 2018 that at least target all statewide contests, and after 2018, all statewide and all federal contests and important county wide contests in addition to whatever other contests appear to be important to audit such as state legislative contests. All contests could and should be audited by risk measurement if not by selection as a target once the process is in place and tested.

Thanks very much for your attention.

Harvie Branscomb

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