

CALL FOR ACTION September 25, 2006

Colorado must specify security standards and recertify voting equipment

CAMBER recommends that both SOS candidates, Coffman and Gordon, start today.

CAMBER hopes that both candidates for Colorado Secretary of State, Mike Coffman and Ken Gordon, are thoughtfully considering their plans to meet the spirit of Judge Manzanares' order regarding voting system standards and certification. The remaining months between today and the swearing-in ceremony might mean the difference between compliance and non-compliance with the judge's order.

In order to actually affect the quality of the 2008 elections, certain tasks must commence immediately. CAMBER strongly recommends that Coffman and Gordon immediately, cooperatively or individually, develop a detailed plan for on-time implementation of the judge's order. The plan must be prepared now, by the candidates' hand-picked experts, with the full cooperation of the Secretary of State's office. At a minimum the major to-do items must be identified and critical dates established. Planning for compliance will be complex and time consuming. It requires interaction with the election equipment vendors, the federal Election Assistance Commission, the Colorado legislature, the county election officials in 64 counties (in the midst of an election), and various Independent Testing Authorities. It will require recruiting of volunteer public sector experts to ensure a high quality plan and final work-product. And development of the plan must include time for public participation and for supplemental funding authorization.

Scope of the effort

The system problems alleged during the trial, and acknowledged by Judge Manzanares, began long before Gigi Dennis took office. Since taking office, however, Dennis has failed to acknowledge and address the problems. Just this year, Dennis had an opportunity to address certification problems that were documented in a formal HAVA Complaint. Instead, she defended herself and staff. Dennis might prepare a document to minimally meet the letter of the court order, but that fails to solve the security and certification problems. This is because the court did not order that the standard must be effective, only that it meet the very low, self-imposed, criteria of the administration's amateurs. More importantly, what the court identified as "inadequate standards and certification" is actually only a symptom of more fundamental problems. Production of a security plan (even a good one) will not address the root causes of the more fundamental problems which include:

Lack of accountability

Experience has demonstrated that election officials are not the best people to perform the duties that they are assigned to oversee. In the first place, almost none of Colorado's election officials are knowledgeable in the areas of computer security, systems validation and verification, and statistical methods. (Yet many pretend that they are.) Tasks requiring these specialties are better outsourced to competent private sector experts. Even well-meaning amateurs place our entire system of representative government at risk.

Conflict of interest

Secondly, election officials have demonstrated that their interests in the election system conflicts with the public interest. The public expects and deserves verifiably secure, accurate, anonymous, and transparent voting systems with strong accountability. Officials want to avoid embarrassment. They and equipment vendors are threatened by verifiability and transparency. Officials have twisted election laws and rules to serve the interests of themselves and vendors, rather than the interests of candidates and voters.

Unchecked power

Officials have inappropriately used their power to block public demands for verifiably secure, accurate, anonymous, and transparent voting systems with strong accountability. They disregard and even attack knowledgeable public sector experts. When officials conduct public hearings, they do not respond to public input and refuse to participate in needed debate. They refuse to subject their work to critical review. To prevent oversight, they don't collect data needed for independent oversight; when they do collect it they refuse to disclose it; and when they must disclose it they charge exorbitant fees.

Further, officials unfairly influence the development of election laws and rules by misrepresenting their own expertise and, occasionally, by misrepresenting the facts. The Secretary of State acts as defendant, judge and jury. The Attorney General represents the administration, not the people. Judicial remedies are severely limited because of time limitations, inadequate performance standards, and separation of powers. There is pressure to not disrupt an upcoming election; election laws protect officials from accountability by distributing responsibility and require only "substantial compliance"; and, the court's power is to enforce, not to create, laws and standards.

Evidence

During the trial, attorneys and the judge referred to [HB04-1227](#). In 2004, when this bill was considered by the legislature, election officials used their unchecked power to brush aside the warnings and recommendations of public sector experts. And they misrepresented facts to force adoption of the faulty regulation. The paragraphs below capture key phrases from illustrative documents.

March 7, 2004 -- CAMBER to Representative Dave Schultheis RE HB04-1227

- "...the bill grants to the Secretary of State new powers that are not restricted and are not subject to checks and balances. Take for example the topics of testing and certification. There are no criteria, other than a passing reference to the FEC 2002 standards (p12, 14-22). This standard has not gained professional support, and computer professionals consider this standard to be entirely inadequate. It is unfair perhaps to say this, but it appears that people who have little technical understanding are attempting to impose their power and their bad judgment upon the public."

April 20, 2004 – CAMBER et al to Senators RE HB04-1227 – "The certification standards proposed in 1-5-615 are inadequate and must be repaired before voting equipment is certified and purchased against this standard.

- They are not quantitative.
- They do not separate the components of a voting system in a way that can be tested.
- They do not ensure that poll watchers have access to the data needed to do their job.
- There are no requirements for privacy, audit, transparency, verifiability, accuracy, security, or reliability.
- They are not precise – for example 1-5-615 (c) implies that the voter can verify their votes before they cast their ballot, but the actual bill does not require this. With electronic votes there is no way for voters to verify their votes.
- Letter (l) prohibits modern vote marking equipment, since this equipment does not count votes.
- Letter (p) is deceptive since the "record" is not a ballot, but rather a summary of what the machine recorded and not necessarily what the voter intended. A recount under this system recounts the incorrect votes. This serves no useful purpose in a recount."

April 28, 2004 – CAMBER to Senators RE HB04-1227 – “Two days ago, the SOS persuaded the Senate’s State Affairs committee to reject amendments that would help protect voters’ rights. SOS did this by testifying that HAVA funding would be lost if the amendments were adopted. Some Senate committee members said, before they voted, that this threatened loss of HAVA funding was crucial to their voting decision.”

And, “HB 1227’s language is ambiguous and confusing. It is bad legislation that will likely end up in court.”

May 5, 2004 – CAMBER to Governor Owens RE HB04-1227 - “HB 04-1227 should be vetoed.”

Summary

The problems acknowledged by the court were well understood and documented in 2004 – before they happened. Election officials used their power to silence the experts.

In order to actually affect the quality of the 2008 elections, certain tasks must commence immediately. We recommend:

1. Candidates Coffman and Gordon should immediately, collectively or independently, develop a detailed plan for on-time implementation of the judge’s order.
2. The plan should address (a) the standards and certification issues identified in the order, and (b) the reforms needed to make the Secretary of State’s office accountable and subject to independent oversight.

Because of the complexity of the effort, the fact that the Secretary of State is leaving office, and the long lead-times involved, we strongly recommend that the candidates immediately begin the planning effort. One of them will be our next Secretary of State and responsible for adopting and executing the plan.

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CAMBER is a dedicated group of volunteers who are working to ensure that every voter gets to vote once, every vote is counted once, and that every ballot is secure and anonymous.