

Report on the Mail In Election Held April 1, 2003 in Colorado Springs, Colorado

The following report was made with the help of Al Kolwicz of Citizens for Accurate Mail Ballot Election Results (CAMBER) of Boulder and Mrs. Carol Pfeffer, who heads up the CAMBER chapter in El Paso County. Mrs. Pfeffer acted as a poll watcher during the election and the attached documents and election data cited here were collected by her.

Summary

- Claims that mail in elections increase voter turnout are based on bogus arithmetic or phony statistics.
- The total of ballots issued is 142,194 on an April 8, 2003, memorandum from the Canvass Board and 148,609, or more likely 148,625 on the Election Verification Totals report though there were 222,691 registered voters in Colorado Springs at the time of the election.
- All potential cost savings of the mail in election were the result of not mailing some 81,000 ballots to eligible, registered voters.
- Current state law and practice disenfranchised more than one-third of the registered voters in Colorado Springs during the April 1, 2003 election.
- Ballot secrecy was compromised by opening ballot envelopes and examining ballots by two election judges at each table.
- Any challenged ballot was not counted. In a mail in election a citizen has no recourse when their ballot is challenged and no adequate way to know if their vote was counted or not.
- At least 53,254 ballots simply disappeared, though the Election Verification Totals report states the number as 59,730. One is left guessing as to the fate of thousands of ballots.
- Even the simplest election arithmetic contains inexplicable errors.
- A pre-election press demonstration revealed a serious programming error by Diebold, yet no provisions or checks were apparently made for other possible computer errors.

Background

Mail in elections were devised on the assumption that they would improve voter turnout and participation in elections. They were implemented in Colorado circa 1990 for local elections at an election district's discretion when candidates for federal offices were not on the ballot. It has also been claimed that mail in elections are less expensive than precinct voting and no more subject to fraud.

The claims and assumptions of proponents for mail in elections are clearly repudiated by the Colorado Springs April 1, 2003 election.

From the beginning, the premise that voter apathy was a function of having to go to a polling place and vote. That assumption is simply wrong. Typically, older, active voters look forward to voting at their local precinct as a civic duty.

Voter apathy can be shown, however, to be associated with:

- **Lackluster candidates** whose sole goal is to be elected and control public funds and citizen activities.
- **Elected officials who ignore ballot box results**, e.g., voters turn down a tax increase to expand a jail yet within weeks the county commissioners vote to build the jail anyway and also build a new, unneeded courthouse. Or voters turn down an amendment to make mail in elections mandatory throughout the state and the city then holds a mail in election such as the one in question.
- **Too many elections.** Rather than combining elections, such as for municipal officials, with general elections for federal and state offices, election districts hold special elections at odd times for minor offices and issues, during which the voter turnout is predictably low. Often local elections are less closely monitored than national elections, contributing to the potential for fraud.

So voter apathy and low turnout in many elections is primarily a problem created by governmental units who benefit from low turnout and a more easily manipulated electorate. As shown in Table 1 voter turnout is primarily dependent on the type of election. In general, presidential elections have a greater turnout than congressional ones, and congressional elections have a larger turnout than county ballots.

Table 1: Voter turnout in El Paso County for the years 1997 through 2002.

Year	Registered Voters	Number Who Voted	Percent Turnout	Type of Election	Where Held
Nov. 1997	280,784	54,238	19.32%	County	Precincts
Nov. 1998	298,664	144,234	48.29%	Congressional	
Nov. 1999	314,804	83,404	26.49%	County	
Nov. 2000	339,525	201,662	59.39%	Presidential	
Nov. 2001	318,799	100,325	31.47%	County	Mail In
Nov. 2002	337,004	154,754	45.92%	Congressional	Precincts
April 2003	222,691*	81,709	36.69%	Municipal	Mail In

* Only includes registered voters in the City of Colorado Springs, which comprises roughly two thirds of the residents of El Paso County.

Secondly, no significant and consistent increase in voter participation has ever been demonstrated for mail in elections. In the November 2001 mail in election held in El Paso County a turnout of 31% of all registered voters was claimed against an average 27%. The ballot in the 2001 election was the longest in El Paso County’s history, and voter interest was high, but the mail in election did not significantly increase voter participation. In the April 2003 municipal election presently at issue the voter turnout was 37% of registered voters, a recent but not historically high turnout. Again, voter interest in the city election was high because a new mayor, and virtually the entire city council were being elected, and a tax issue was on the ballot as well.

The controversy surrounding the use of a mail in election so soon after voters had rejected the idea in the November 2002 election and the finding that 81,000 registered voters were effectively disenfranchised no doubt contributed to voter interest as well.

Attachments

There are three attachments to this report produced by the City Clerk. These are the documents referred to in this report with regard to arithmetic and other errors.

1. **Election Verification Totals (EVT) report** — Lists the official values for accepted, challenged, and denied ballot totals; the number of undeliverable and unreturned ballots; and the total scanned and processed ballots.
2. **Canvass Board Memorandum (CBM)** — The official election results for each candidate and the tax issue on two pages signed by the election canvass board, Mayor Mary Lou Makepeace and City Clerk Kathryn Young.
3. **Ballot Daily Totals (BDT)** — A tabulation of ballots scanned, pulled, and counted for March 17 through April 2, 2003.

April 1, 2003 City of Colorado Springs mail in election

In November 2002 citizens of El Paso County rejected by a resounding 63% the proposed Amendment 28 put on the ballot by Bighorn Center that would have mandated all elections in Colorado be held by mail. However, based on false claims of economy¹ the city council of Colorado Springs was persuaded soon thereafter to conduct the mayoral and city council election of April 1, 2003, by a mail in election and, despite resistance by both council members and citizens, that was done. Problems with the conduct of the April 1, 2003, election by the Colorado Springs City Clerk have multiplied and few answers have been provided.

Cost savings and who got ballots

A principal benefit of mail in elections have been claims of cost savings. That claim was made as a justification for the November 2001 mail in election conducted by El Paso County. Those savings did not materialize due to “unanticipated expenses.”

Undeterred, the Colorado Springs City Clerk claimed that a mail in election would save some \$100,000 in the April 1, 2003 election. To date, however, the city clerk has not produced actual costs.

It became evident during the election that the method by which the city clerk reduced costs was to not send ballots to approximately 81,000 registered voters in the City of Colorado Springs. That is permitted under state law but that fact was not presented to city council during their consideration, and reconsideration of a mail in election. If ballots had been sent to all registered voters it is a virtual certainty that city election costs would have exceeded the costs quoted by county officials to conduct the election for the city by the traditional precinct method.

1. Virtually the entire cost could have been saved by combining the city election with the national election in November 2002. The voter turnout **at the polls** in that election was 62%, much higher than for the mail in election of April 1, 2003.

State law permits the official conducting a mail in election to not send ballots to inactive voters, in this case electors in the City of Colorado Springs who did not vote in the November 2002 general election. That in itself raised a number of questions yet unanswered.

A check with the county clerk's office gave 222,691 registered voters in Colorado Springs as of March 3, 2003, the registration cutoff date. Of these 84,218 did not vote in the November 2002 election and were thus considered "inactive." That left 138,473 "active" voters in Colorado Springs who did vote in the general election. Having worked in the past with the county clerk's election officials I have faith in their honesty and integrity.

Of these values, only the number of registered voters given by the county clerk is approximately equal to the numbers provided by the city clerk, who stated there were 222,651 registered voters. During the course of the election ultimately either 142,194 (CBM) or 148,625 (EVT) ballots were issued. As of March 24th we were told by the city clerk that there were 141,484 active voters, who were mailed ballots, and 81,167 inactive voters, who were not. Why 3,011 (141,625 city clerk – 138,473 county clerk) voters were considered "active" by the city clerk but not the county clerk, who these voters are, and why they were mailed ballots when others were not remains undetermined.

It seems a clear advantage in a mail in election to have ballots mailed to selected voters and not others, e.g., such ballots may have only gone to Republicans, or only to voters in Rivera's strongholds. Examples of just such activities in a mail in election have previously been found in Castle Rock.

When it was published that over 81,000 voters were not sent ballots, considerable citizen outrage was generated. The publicity did, however, apparently help or motivate more than 7,000 citizens to pick up ballots from the city clerk if the Election Verification Totals tabulation is correct, or less than 580 if the Canvass Board Memorandum is correct.

Measuring voter turnout

Traditionally voter turnout is measured as the ratio of number of ballots cast divided by the number of *registered* voters in the election. In attempting to justify motor voter registration, mail in elections, and other governmental "fixes" for low voter turnout in elections, there have been some who have said that the number of ballots cast should be divided by the number of eligible voters, a more vague demographic but a much larger number, thus a lower apparent turnout. By the traditional method the voter turnout in the April 1, 2003 city election was 37% (81,709 ballots accepted and counted divided by 222,691 registered voters), not a particularly high percentage (Table 1).

As a result, additional tricks were used to justify the choice of a mail in election by the city clerk. In several press statements voter turnout was measured by dividing the number of ballots returned by the number of ballots issued. As initially only 141,000 ballots were mailed and some 82,479 were returned (EVT), one was led to believe that voter "turnout" was ~58%. So if one-third of eligible voters are disenfranchised by not being sent a ballot, and a clerk only counts those who voted in the last election, the claim can be made that mail in elections increase voter turnout. In the next election, of course, only 81,709 voters would be considered "active," of whom most could be expected to vote. So apparent "voter turnout" might increase even further using this calculus. These deceptive numbers, yet increasingly disenfranchised electorate, would be used again as further propaganda as to why mail in elections are so "successful."

When the city clerk's bogus arithmetic was publicly debunked another method was attempted to claim a "record" turnout for the mail in election. In an article in the April 10-16, 2003, issue of the Independent, well-paid lobbyist Dan Njegomir of the Bighorn Center, who for years have been trying to foist mail in elections on Colorado, claimed that the "...82,000 ballots that arrived by Election Day represented the largest number of votes ever cast in a municipal election in the Springs as well as the highest percentage of registered voters to weigh in on a city race since 1991." Note that Njegomir ignores the incredible population increase in our area over the past decade. I only have data for El Paso County back to 1997, but there were only 280,784 registered voters in that year, compared with 337,004 registered in November 2002 (Table 1). With that kind of increase in the number of registered voters one naturally expects the total number of voters in any election to increase irrespective of the use of a mail in election. Correlation does not imply causation, a fundamental theorem of statistics demonstrated once again. Note that Njegomir admits that only a decade ago voters had turned out to the polls in a higher percentage than they did in this election. As mail in elections were initiated in Colorado in 1990, if one ignores the fact that correlation does not imply causation as Njegomir does, it would be simple to claim that mail in elections are the cause of poor voter turnout since 1991.

Clearly, all claims that mail in elections increase voter turnout have been based on bogus arithmetic or phony statistics. Conversely, current state law, which the city clerk obeyed, effectively disenfranchised more than one-third of the registered voters in Colorado Springs during this election. And all potential, and yet unsubstantiated, cost savings of the mail in election were the result of not mailing some 81,000 ballots to eligible voters.

Poll watchers

Election fraud and ballot box stuffing have been a consistent feature of American elections since our founding. One method of controlling election fraud has been to allow each candidate and party to nominate poll watchers who are allowed to observe and record all actions at precincts and election headquarters, and who are given free access to election records after the election. That precept is apparently foreign to the Colorado Springs City Clerk.

Poll watchers were restricted to a nine square foot area, marked out by red tape on the floor, in a doorway to the ballot processing room where ballots were opened, sent to duplication, or presented for machine tabulation. Ballot duplication was not visible at all to the poll watchers from this point. Passage into or out of the room required the poll watchers to move out of the other person's way.

At the entrance to the room where voter signatures were allegedly verified at the city offices poll watchers were also restricted to a nine square foot area again marked out by red tape on the floor. Yellow police tape was used to block entry into the clerk's business offices next to the verification room. In stark contrast, at the county offices poll watchers have been given full access to the signature verification and all other election processes.

Poll watchers were generally **not** allowed to ask questions of the election judges. Two employees were to take questions and then obtain answers from the city clerk. The designated city employees were not readily available. There were no city employees at the signature verification area located in the county offices.

Poll watchers were also prohibited from verifying computer operations. One result is that many questions go unanswered to this day and the one programming error found was detected by the merest accident.

To ensure that each eligible citizen has one, and only one vote it is essential to verify that a ballot is cast only by the eligible voter. In Colorado mail-in elections the ballot is returned in an envelope which is signed, together with the voter's birthday, on the outside of the envelope, a feature which has resulted in considerable voter opposition in itself. More critical is the fact that there is no known means of verifying that the envelope was indeed personally signed by the eligible voter. The El Paso County Clerk has improvised a method with absentee ballots using Votec software that was used in the city election as well, but there is no certified, automated way of verifying a voter's signature, and a great many methods of forging signatures are known. Thus, this is an area that should be subject to the closest inspection, but one poll watcher was denied any opportunity to see how the city clerk was attempting to verify voter signatures. Various problems with signature identification have been reported but without a close inspection of the method(s) used it is impossible to have any confidence in their procedures. Therefore, the means and accuracy of signature verification used to identify voters must be regarded as unknown in this election.

Citizen verification of election results demands that election records be made publicly available and it is impossible for poll watchers to complete their monitoring without such records. However, Colorado Springs is currently quoting a price of \$2,226.91 for an electronic copy of the pollbook on a CD-ROM, which could be copied from the city's computer at virtually no cost. For a copy of the voter registration computer file the county wants \$353. Such costs are beyond the reach of most citizen groups and serve to discourage and deny citizen verification of election results.

Ballot tracking

A fundamental requirement for stuffing a ballot box is to have a ballot. As a consequence election officials have long had established practices for tracking *every* ballot from the time it was printed until a specified period, usually at least twenty-two months, after an election.

A mail in election makes ballot tracking impossible and from the Election Verification Totals report we learn that 59,730 ballots were mailed that were not returned. So tens of thousands of ballots simply disappeared. But there remains the problem that the Canvass Board states on their memorandum of April 8th that only a total of 142, 194 ballots were issued. Since it is claimed that 6,416 ballots were returned by the US Post Office as undeliverable (at a cost of \$0.57 each), and 82,479 ballots were counted, challenged, or denied, then perhaps only 53,254 ballots disappeared? Therefore, should the 59,730 figure on the EVT for unreturned ballots include 6,476 (assume that 6,416 is a typo) ballots that the post office returned?

It is also reasonable to question whether these 59,730 unreturned ballots were discarded by the voter or whoever received them? Did the voter never receive them, and if so why? Were any of these ballots voted and subsequently lost in the mail? Were any ballots intentionally intercepted? If they were intentionally intercepted, where and when: (a) before they were placed in the mail, (b) during their time in custody of the US Post Office, (c) after they were delivered to the City but before they were entered into the pollbook? I am deeply concerned about what evidence is available to prove what happened to these missing ballots?

In the end one is left guessing as to the fate of thousands of ballots! And we are supposed to believe that no election fraud is possible with such sloppy bookkeeping?

Further, no information is presently available on the total number of ballots printed, how many were not issued, how many replacement ballots were issued (though it is noted on the CBM that some were), or how many ballots were “duplicated” by election judges,

Not a secret ballot

One poll watcher observed election judges opening outer envelopes with the voter identification on them, the inner envelope, and extracting and examining the ballot all in one location. The city clerk instructed election judges to look, while information identifying the voter was available, for any writing or markings on the ballots before submitting them to be counted.

Citizens had been instructed in the newspaper and in calls to the clerk’s office that mis-marked ballots should be remarked, and that the voter could write their intention on the ballot. The city clerk instructed the election judges to pull and send these ballots for duplication so the tabulation of ballots would not be delayed by the machines rejecting ballots. Improperly marked ballots were then taken to another area of the processing room for “duplication” before tabulating the vote, a process the poll watchers could not observe. What criteria election judges used in “interpreting” voter intent to “duplicate” their ballot is unknown.

Election fraud or incompetence?

Even the simplest arithmetic presented on election documents contains inexplicable errors. For example, on a memorandum from the Canvass Board to city council from Mayor Makepeace and City Clerk Kathryn Young, dated April 8, 2003, it is clearly stated that 142,194 ballots were issued. Yet on the Election Verification Totals report it is clear that either 148,609 or 148,625 ballots had to have been issued.

There is a difference of 16 ballots in the figures on the Election Verification Totals report that poses another unsettling question. On the report there are 81,709 accepted ballots, 668 challenged ballots, and 102 denied ballots, for a total of 82,479. Yet the total scanned ballots are given as 82,463. Therefore, 16 more ballots were either counted, challenged, or denied, than were scanned according to this report. And on the same report it appears that all challenged ballots were not counted. Surely at least some ballots were challenged by election judges and then subsequently counted? In a mail in election a citizen has no recourse when his ballot is challenged and apparently these votes were automatically denied in this election according to the data presented on the Election Verification Totals report.

Arithmetic errors abound. On the ballot totals sheet, a total of 97,620 is given for scanned ballots. Apparently 15,911 ballots failed ($97,620 - 81,709$), or were “pulled” during scanning, whatever process that was because the poll watchers were not allowed to witness this, and no audit trail is available. Yet again we find an arithmetic error because the Pull Total is given as 15,929, a difference of 18 ballots. In addition (no pun intended) there are at least three errors in the Daily portion of this report: (1) On March 24th there was one less ballot counted than available. (2) On March 25th there were 18 more ballots counted than available. (3) On March 26th there was one more ballot counted than available. The first and third errors were compensating but may well be reflective of a more widespread inaccuracy in the election results.

And shouldn't the 81,709 Count Totals on the ballot totals sheet actually be the 82,479 figure that is derived from the Election Verification Totals Report of accepted, challenged, and denied ballots? One assumes the challenged and denied ballots were scanned as well and should be included in the count.

The press has made much of 14 ballots left in a tray and not found for two weeks after the election. But one hears nothing of the 15,911 ballots that were scanned, then pulled, and then what happened? Or should we only be trying to account for 15,141 ballots (97,620 scanned – 82,479 accepted, challenged, or denied)?

Given the pervasive arithmetic errors, on what number are we to hang our hat? Supposedly 81,709 ballots were counted at the end of the election but how does a voter know if their vote was counted? And, if counted, counted correctly? Or given the unfamiliarity of the election officials with the computer tabulating equipment, perhaps some ballots were counted twice?

Such errors, or possible fraud, illustrate another point. Many citizens have a deep distrust of using computers in elections, and rightfully so. A mail in election uses the same computers as a precinct election but now the citizens and poll watchers are completely and totally isolated from the computers and the vote counting process. In such circumstances corruption, fraud, and incompetence flourish. For example, can voters trust an election official, whose reports contain numerous simple arithmetic errors, to have detected a computer programming error? Or to have enforced certification standards and version checks on computer voting equipment run by a vendor? In fact, during the press demonstration it was found that the Diebold representative had omitted the tax question from the Accu-Vote tabulator instructions so that votes on that question were not counted. The city clerk's only comment was that it will be fixed, though how she might have recognized or corrected any other programming errors is an open question? One thing is certain: Poll watchers had no means, except by mere accident, of detecting computer errors, and that is another grave consequence of mail in elections.

The programming error by the Diebold representative raises the question of just what did that company do during the election? Reportedly they were to be paid \$500,000 for running the election but El Paso County equipment was used for signature verification and provided the voter database. A poll watcher only observed one Diebold representative for most of the election cycle and one other for one half-day. Typically the clerk's office generates the ballot using the GEMS software in the Diebold Accu-Vote system. Where did the taxpayer's money go and for what?

An independent Canvass Board is supposed to catch the errors tabulated above, which obviously did not happen. As the City Clerk and the Mayor served as the Canvass Board it is reasonable to question both the ethics and competency of these officials to serve in such a position. That question is particularly acute with regard to the Colorado Springs City Clerk.

Recommendations

1. Forward this report to the Colorado Springs City Council and ask for corrections of the Canvass Board and Election Verification Totals reports.
2. Make formal request of City Council to provide electronic copies of the voter registration file and pollbook so that a complete check of the election results can be done.
3. Request an accurate accounting of the election costs.
4. Request the City Council pass an ordinance or other action prohibiting the use of mail in elections at any future date in any election.

5. Support state legislation repealing mail in elections similar to this years HB 03-1258.
6. Request that the ACLU be represented on the Colorado Secretary of State's Help America Vote Act (HAVA) committee. Bighorn Center has four seats on this committee.
7. Work with the County Clerk Bob Balink and his staff to sort out the apparent errors in the city election and ask his support for legislation to repeal mail in elections.
8. Forward this report to Ed Sealover at the Gazette, and other newspapers, asking for publication of pertinent parts.
9. Request a chance to rebut Dan Njegomir's Your Turn column in the April 10-16, 2003, issue of the Independent.

*Charles E. Corry, Ph.D., F.G.S.A.
President, Equal Justice Foundation
Colorado Springs, Colorado
June 10, 2003*