

Complaint filed with Election Commission

Issues in Aspen's May 2009 Municipal Election

Background

Aspen conducted a municipal election for the offices of Mayor, two City Council seats, and one ballot question on a land sale to the Aspen Art Museum. The elected offices were subject to an Instant Runoff Voting (IRV) Election as required by a City Charter change in November 2007. This was Aspen's first IRV election. IRV complexity directly and indirectly created and exacerbated legal and administrative problems occurring in many areas of the election. But IRV is a necessary pre-requisite or context to only a few of the irregularities found.

It should be noted that there were some positive qualities to the May 2009 election. Voter turnout was very good. While I do not favor, IRV, it does have the benefit of allowing a voter a range of expression of choices. The data mining and cross-tabling of the information contained in the required cast vote records creates valuable information for the government and candidates. The original commitments to transparency and verifiability made when IRV was adopted were excellent and should be re-established. Unfortunately the most important of the commitments on verifiability were not honored. I particularly want to encourage the EC to require that single ballot audit-ability become embedded in our local election process. The publication of cast vote records is important in having best practices in transparency and verifiability. The use of IRV and the debate caused more citizens to think about the importance of election integrity, and become engaged in the dialogue.

Aspen's 2009 election suffered from a variety of administrative, legal and process problems. This complaint includes an array of violations of applicable state and local law as well as significant administrative issues.

Rationale for Election Commission to Address These Complaints

The Election Commission is the only citizen driven body with the mission and focus to insure the purity of Aspen's municipal elections. Aspen voters need access to remedies and to be able to express concerns without expensive litigation or going to the District Attorney as set forth in Title 31. It is because of the previous inability of the EC to deal with my concerns that I have pending issues before the State District Court and the District Attorney. Had there been a functioning, independent Election Commission with resources to address issues, it is likely that neither of these formal courses of action would have been necessary. The Election Commission can use its considerable authority, co-equal with that of the City Council, to deal with most election process complaints and legal violations. I urge you to accept all of my following complaints as well as those of other citizens in that light.

I personally do not see the role of the EC to be defined as a body to determine the motives or intent of the responsible parties, but instead to analyze the facts and propose remedies. I was concerned in the first "hearing" (May 5) to see the question turn to motive and intent rather than

the facts, result and remedy for the issues. I am submitting these issues trusting that the facts will be heard in an objective manner without an attempt to judge the writer's motivations.

Because of Aspen's unique 2009 IRV election, it will become the focal point for an IRV report the Secretary of State is required to submit to the Colorado General Assembly next February. Much of the work of the Election Commission will no doubt become part of the record that participants in that project will review. Therefore, this work is important not only to Aspen voters but to Colorado legislators as well, as well as the nationwide election integrity community which will be using data in the Colorado SOS IRV Report, as other cities consider IRV. Despite the views of some that only Aspenites count in participation in the dialogue or result, I submit that the EC has the opportunity to provide very valuable information for other municipalities in Colorado and in the U.S. I therefore request that the EC consider methods to officially publish comprehensive recordings or the written and meeting communications.

Previously Submitted Audit Proposal

On May 7, I submitted to the independent Commissioners a Re-Scan Re-Tabulation Audit proposal which may go a long way in substituting for shortcomings in the May 2009 election and forming the database of information which the EC will likely need to adequately analyze many of the complaints it will receive. The audit proposal may be found at <http://www.glassballotbox.org/journal/2010/5/9/proposal-to-election-commission-for-re-scanningre-tabulation.html>

Organization of this Complaint

This report attempts to provide documentation of the major issues, focused primarily on the state and local legal issues involved. I believe that the most serious issues are:

- Failure to Follow Fundamental System Process Controls (Issue #4)
- Unconstitutional Non-Anonymous Ballot Election (Election violation issue #13-#18)
- Uncertified Voting System (Issue #2)
- Election contractor not legally authorized to process election. (Issue #5)

It should be noted that no comprehensive review of the election has been completed. The minimal audit steps required by Aspen Municipal Code have not been undertaken. There was no city-initiated significant review undertaken. Efforts at a private citizen review were resisted by the City, including the denial of crucial public records, which became the subject to civil litigation seeking compliance with CORA and is currently expected to enter an appeal process. I am the plaintiff in Marks vs. Koch Case: 2009CV294 in State District Court, 9th Judicial District. I will be happy to provide any of the documents in that litigation. Public access to the ballot image files was denied by the City in response to a series of CORA requests beginning June 1, 2009. On March 10, 2010 the Court dismissed the case. A motion for reconsideration has been filed. If

denied, the decision will be appealed. It should be emphasized that the case is focused solely on an Open Records Request and not election irregularities that are the subject of this complaint. (However, several documents generated in that case are relevant to this complaint and will be referenced.)

The City's decision to withhold the public election records kept from the public a critical key to transparency in this election, because virtually all other legally required controls were disabled or dysfunctional in this election. The improper disabling of almost all legally required election controls is the foundational basis of this complaint.

Exhibits are attached as electronic documents, and delivered in a ZIP file. This document and attachments will also be posted to www.GlassBallotBox.org

Aspen's Election Law

Aspen operates according to a Home Rule Charter. The Charter may be found at

<http://www.aspenpitkin.com/Departments/Clerk/Municipal-Code/>

The Election sections only are excerpted in Exhibit AA. Section 2.1 adopts by incorporation the Municipal Election Code from the Colorado Revised Statutes (Title 31, Article 10). The adopted state Municipal Election Code has specified intersections and applicable statutes taken from C.R.S Title 1 on Elections.

On March 9 2009, Ordinance #3 Series 2009 was adopted shortly before the May 5 election which included Instant Runoff Voting procedures and other more general election processes. (Exhibit A.) The final adopted IRV procedure manual was slightly modified. (Exhibit B)

Ordinance #3 contains an important provision (Code Sec 2.26.030) which incorporated the latest version of the Election Rules of the Secretary of State. (Exhibit C)

During public meetings, the public was assured that the Secretary of State Rules were being adopted. This assurance created some comfort that standard election controls would be applied to the novel IRV election, and that the voters could rely on the state's well documented procedures to assure that their election security would be adequate and votes were properly registered.

Some of the most disturbing loss of standard election process controls were associated with the non-compliance with the SOS rules, --the public's only assurance that reasonable controls would be in place.

Non-Compliance with Aspen-Adopted Secretary of State Rules:

1. Voter Identification Requirements Ignored –Rule 30.11 requires voter identification at the polls. This requirement was ignored at all polling places.

The seriousness of this violation, and related opportunities for fraud do not need further explanation.

Proposed Action: Train election judges and put I.D. requirements in judges' manual.

2. Voting System not Certified or adequately tested. Rule 45 promulgates the requirements for hardware and software in a voting system. Aspen defied the ordinance they had adopted in March and used an uncertified system which never was documented in a reasonable manner, or submitted to the SOS for review. The system was provided by True Ballot Inc..of Bethesda, Maryland (<http://www.trueballot.com/trueballot.aspx>).

Despite numerous documented requests from the public, the True Ballot system software and hardware was not subjected to any meaningful testing, much less Secretary of State (SOS) certification as required.

The City Clerk and the Mayor during public meetings assured the public that the system would be certified and subjected to SOS methodologies for certification. (March 9.09) Clerk Koch assured Council that she would certify the system with the same methodology as the SOS rules. (Exhibit D) No such certification effort was made.

The TrueBallot Inc ("TBI") software was significantly lacking in documentation, and readiness for an election. In violation of the system requirements in Rule 45, the software configuration was changed at least twice on the evening of May 4, once in public view, and once without the knowledge of the public or press. (The erroneous change hours before the polls opened was not disclosed until after the deadline for recount had passed.) (Exhibit E describes some of the details of the last minute undisclosed software configuration change. Unauthorized changes obviously violate voting systems rules, and Code Section 2.26.030, as adopted in Ordinance #3)

The failure to attempt to certify the system or even adequately test for compliance with the SOS criteria for compliance or proceed with processing controls guaranteed by election law created a serious lack of verifiability and weakened the basis for trust in the use of the system.

Proposed Action:

1. EC to determine the breakdown in the internal process that could cause the use of such a system and the misrepresentation of it as a certified, approved, tested system.
2. EC to insist that statements made to public and CC concerning the certification and compliance of voting systems be true and accurate and not misrepresent the status of such systems.

3. EC to insist that no voting system be used that is not certified by SOS. EC must formally approve the use of any voting system and determine that it has SOS approval and certification.

3. Pre-election Logic and Accuracy Test Not Performed as Required

Prior to the novel IRV election citizens repeatedly came to public meetings to request that any new software to be written for the Aspen election be thoroughly and publicly tested. The City declined this request, stating instead a preference to rely on the Logic and Accuracy tests required by the Secretary of State, although only non-compliant and insufficient Logic and Accuracy tests were partially implemented, ignoring most SOS regulations.

SOS rule 11.5 requires considerable testing which the City of Aspen failed to even attempt to comply with. Public Logic and Accuracy Testing with “pre-audited ballots.” is required, but was not complied with. The City of Aspen claims to have received input from the Secretary of State on the Logic and Accuracy tests required and chose not to fulfill most requirements of testing contained in those specified tests, including the use of pre-audited ballots. (See Exhibit I) No documentation can be produced according to the City and SOS office of such input by the SOS office. The City ignored the most fundamental requirements of the Secretary of States’ written rules for the Logic and Accuracy Tests.

As a result of the failure to follow established standards for pre and post-election testing as required, at least one software related error affecting tabulations remained undiscovered until after the election result was certified.

In a particularly troublesome violation of established regulations, election officials requested TBI to change the software program the evening before election day, after the participants had left the public Logic and Accuracy Test. This information was not disclosed to the test participants, candidates, public or press, who would have likely demanded more testing and a post-election recount. Additionally it is possible that if that information had not been withheld, a member of the public or a candidate may have requested an injunction against proceeding with the election tabulation with unauthorized and last minute changing of software.

Proposed Actions:

1. Conduct the recommended Re-Scan and Re-tabulation audit as a remedial check on the system.
2. EC should require strict compliance with standard LAT in future elections, and personally attend and participate in them. EC should name election judges to participate in LAT.
3. EC should approve the test procedures and checklist prior to LAT.

4. Failure to Meet Requirements of Voting Systems

SOS Rule 11 requires a variety of controls of the voting systems, including Hardware Diagnostic Test, Logic and Accuracy Test, and Post Election Audit, as well as performance bonds posted by the vendor, and a variety of software systems and basic process controls. Despite the adoption of SOS Rules as part of Ordinance #3 and public assurances by the Clerk and City attorneys of fully tested and compliant systems, the City violated almost every provision of extensive Rule 11. Rule 11 is intended to give the public a basis for confidence in automated voting systems. All required testing procedures were virtually ignored.

I wrote several emails and asked several times in February and March whether the system would be certified and the rules met. No answers were forthcoming, but the public was assured in City Council meetings that the system would be certified and meet the requirements of the Secretary of State.

I also stated objections to the LAT performed, but was ignored. (Exhibit I)

Violation of Rule 11 controls are quite serious issues in that Rule 11 is the heart of many of the election process controls.

Recommended Action:

1. Undertake the proposed Re-Scan Re-Tabulation Audit to mitigate for pre- and post-election testing that was not performed.
2. EC to review SOS requirements with Clerk and city staff in advance of future elections to determine compliance with rules. Require clerk to create checklist for review with EC.
3. Consider requesting assistance of the Pitkin County Clerk to assist in reviewing SOS rules and Aspen procedures in advance of the next election.

5. Election Administrator (TBI) not qualified to administer election

TBI is a contractor whose system is not certified, (Issue #2), and whose representatives were not electors in Colorado (31-10-401), and had not been subjected to required criminal background checks. (SOS rules 11.2.4, and 43.8.9), nor sworn judges (31-10-407) nor deputized to handle ballots, (SOS Rules 27.4.2) In short, TBI was not legally qualified to have been engaged to process the election. TBI was allowed and instructed by the clerk to perform numerous tasks which are prohibited by law except by authorized individuals.

Colorado elections are grounded in philosophy and law that requires them to be conducted by Colorado citizens with significant citizen oversight. The clerk turned this election into a government controlled election and disabled almost all citizen oversight controls. As a result of

the lack of transparency created from this uncertified, unauthorized outsourcing of the election processing, almost all elements of the tabulation become unverifiable.

- a. In addition to the lack of authorization to process elections, TBI was not technically competent to process Aspen's election. TBI has very few public election clients. (Based on their website, one or two remaining public clients including Aspen.) It appears that the scanning/ interpretation software had not been adequately tested in public elections, other than possibly in the case of 2007 in Takoma Park, Maryland. The software and hardware systems were not adequately documented, certified or adequately tested. The City of Aspen staff did not perform any meaningful due diligence on the system before entering a contract for TBI administration of the election.
- b. TBI created the ballot images (tiff files) on their laptop computers, and created a copy (of unknown quality) for delivery to the city. TBI executives retained and took with them the original tiff files on at least two laptop computers. These are the files which are needed to verify the election. While the files should be public documents under Colorado's Sunshine Laws, the City has taken the position that they are the equivalent of ballots and all copies must be locked inside the ballot box with no access by the public. Yet, TBI, (legally not authorized to conduct the election, or to handle ballots, or sworn to election duty), has total unfettered access to this data, without any confidentiality agreement. The City gave TBI control over data which they have withheld from the public and voters in Aspen. **The number of copies made and distributed by TBI is unknown, and the whereabouts of the original files is unknown, while the City withholds the tiff file information from the public.** (This is the subject of the Marks v. Koch litigation.)

Recommended Action:

1. Determine the reasons that the laws were ignored and the apparent warnings of the SOS office were ignored in turning over election processing to a corporation, in violation of the principles of citizen-run elections.
 2. Set clear policy that Aspen's elections are to be operated by authorized election officials and sworn election judges with appropriate citizen input and oversight.
 3. EC required to review any contracts for election services or election equipment in the future.
 4. Interview Clerk as to why the records were given to an outside contractor and withheld from the public. Determine the whereabouts of the original tiff files.
6. Failure to Evaluate Voter Intent Instructions and Write In Candidates

Voter Intent is required to be assessed by Colorado Voter Intent rules incorporated in Ordinance # 3 (Exhibit A, page 35). SOS Rules require that votes for any names of listed candidates which are written-in are to be counted. Also voters' consistent and clear written instructions on their ballots are to be considered. Because Colorado rules were ignored, and the True Ballot system was not programmed to detect written instructions or rankings on lines outside of defined target areas (ovals), it appears that numerous instances of expression of voter intent were not reviewed. For example, 149 votes were detected by filling the target oval identified with the write-in candidate lines, but no names of candidates voted for were recorded on the TBI system. Some of these votes may have been votes for qualified, listed candidates, written in by the voter confused by the elaborate matrices of ovals on the ballot (4x5 and 9x11). (Exhibit F)

Because the affected ballots were not all inspected by humans or a scanning program that would detect such hand written instructions, the voter intent reflected on those ballots was apparently arbitrarily ignored. For a close race like the Frisch/Johnson finalist cutoff , or the Behrendt/Torre final round, ignored votes could have made a difference in the outcome.

Recommended Actions:

1. Conduct Re-Scan Re-Tabulation Audit to capture information on ignored voter intent and include it in re-tabulation.
2. If IRV is retained in future elections, required human review of ballots to capture qualified write ins and voter written instructions on the ballot.

7. Failure to Determine Voter Intent on Partially Spoiled Rankings

This issue addresses why Aspen's voter intent rules should be changed. The rule on spoiled rankings appears to have been followed, but was not in the spirit of the voter intent law, and failed to fully capture voter intent, which is a key feature of IRV.

The rule works to disregard any ranking after an over-vote. Assume for example:

A voter had the following ranking on the Council race: Kasabach, Speck, Wampler=Lasser (over-vote), Frisch, Torre, Johnson, Johnson, Behrendt. His vote counted for Kasabach and Speck, and then ceased to count because of the over-vote in ranking 3. His vote was therefore not counted at all for any of the finalists, yet he had expressed clear preferences among all the four finalists. Why was the rule written to disregard his clear preferences and have his vote not considered at all? He was considered a "no show" at the polls despite his clear preference rankings.

There were approximately 21 CC race votes voided, according to the rules, because of over-votes in the **first ranking**. This would indicate a voter voting for their top two

choices as equal rankings. The rules were created to disregard these votes. It would have been fairer to give each of the top two one vote each for determining the four finalists and then disregarding the equal rankings (and ballot) for determining the ultimate winner, since no distinction could be made between #1 and #2.

I believe that the voters were expressing either confusion or frustration at having to rank (#1 or #2) two EQUAL seats. Candidate Frisch had 8 such disallowed “tie first place votes,” which were disallowed. Frisch only missed beating Jack Johnson in the finalist cut off by 22 votes. That would have narrowed the margin to 14 votes. That close call brings up two other issues:

Voters Intent to Vote “Against”

Some voters (approximately 45 in the CC race), apparently intended to vote “against” some candidates by ranking their first choices, then skipping middle place rankings, and voting for some candidates with last place rankings. An example:

A

A5010031.TIF	4,3,,	4, 3, 0, 0	1,5,4,,,,,7	1, 5, 4, 0, 0, 0, 0, 0, 7	1	0
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The last rank choice was “moved up” to the fourth ranking for tabulation of the determination of the finalists, in clear violation of the voter’s intent. Therefore the voter ended up casting votes FOR a candidate he intended to vote “against.”

There are 12 or more such “vote against” rankings (skipping middle rankings) against Jack Johnson. Recall that he beat candidate Frisch to the finalist count by 22 votes. There were 8 votes (noted above) which Frisch likely should have gotten, and some number more of votes which counted FOR Jack that were intended to count against him. With such a close race into the finalists, a more careful analysis of voter intent could have changed the finalist race.

Additionally, the **recount rules are unfair** since they do not apply to the “finalist cut” as they would in a traditional election. Frisch came within 22 votes of being in the finalist, with a possible narrowing of that to 14 or fewer votes. No recount is provided for even a one vote margin in determining the four finalists.

(I have not analyzed whether adding Frisch to the finalist race and removing J Johnson could have changed the result.)

Recommended Action:

1. Conduct Audit as previously recommended.
2. If IRV is retained, rework voter intent section of the procedures to better capture range of voter intent.

While the EC may not plan to address such IRV procedural issues, it should be noted that solving such problems will take considerable time if IRV is retained. New procedures need to be

proposed by early February for adoption for the May election. November to February gives little time for staff or a task force to debate and solve the long list of such procedural issues.

8. Failure to Reconcile number of ballots with ballot scans and Accu-Vote machines

Rules 27 and 41 requires reconciliation of ballot counts with poll books at the precincts. Numerous areas of unreconciled counts exist at various polling places and between the polling place Accu-Vote machines and the central count by TBI machines and services. (more votes were recorded by the central count TBI machines than recorded at the polling places by the Accu-Vote machines (Exh G---as one example.)

The number of voters and number of ballots were not properly reconciled as the law requires at the precincts. See Exhibit P where the reconciliation sheet shows the inaccurate number of ballots used. This demonstrates that the superficial review of poll books and vote counts as stated in Exhibit G above is inadequate.

The Accu-Vote machine total for early voting walk-ins (which was closed on May1) read 801 on May 5 election day. However, True Ballot has a scanned ballot count of 803 for this precinct 5A.

Recommended Actions:

1. Conduct proposed Re-Scan and Re-Tabulation Audit to determine whether ballots appear to be erroneously duplicated.
2. Require clerk to perform and publish a detailed and accurate reconciliation of the Accuvote counts versus the TBI counts on each race in each precinct.
3. Require clerk to investigate reasons for the discrepancies and document those reasons. If the Accuvote machines appear to be in error, had appropriate maintenance performed on those machines.
4. Require that such reconciliations be performed in all future elections and submitted to the EC for review.

Ballot Security

9. The ballot box for walk-In early voting remained unlocked

(Violation of C.R.S 31-10-901, and 604)

803 voters of the 2544 total voters used a walk-in absentee “early voting” opportunity between April 10 and May 1. The ballot box was in City Hall, in the clerk’s office. It should be noted that “Early Voting” itself is not permitted under Aspen’s Municipal Code. (see Issue #24 below.)

The keys apparently remained in the Accu-Vote machine for long periods of time. Several individuals reportedly observed the ballot box (containing 800+ ballots) unlocked on May 5th. (Exhibit H, Picture May 5th 12:54 p.m attached.) I personally observed this condition and took the attached picture. I understand that it was frequently left in the same condition throughout the early voting period.

Recommended Actions:

1. Require that Clerk adhere to strict regulatory requirements on ballot security and chain of custody.
2. Conduct Re-Scan and Re-Tabulation Audit as proposed with particular attention on the 803 ballots in the early voting group for any signs of impropriety. This would increase voter confidence in the results of that precinct's results.

Instant Runoff Voting Procedures Violated City and State Law

Background

Instant Runoff Voting was approved as a Charter amendment by Aspen voters in November 2007. The Charter language (Article II section 2.7 Exhibit AA) was quite general, as was the supporting Ordinance for the Charter change. No definition of IRV, or of related terminology was included in the ballot text, and the procedures were left completely to City Council discretion. The definitions and procedures were adopted by Ordinance #3 in March 2009 (Exhibit A attached.) The failure to define the voting methods and definitions at the time that IRV was adopted created an opportunity for considerable leeway to violate basic election principles. The Ordinance adopted by City Council conflicted with various aspects of Aspen's Charter and Colorado Election laws. Three of the five Council members adopting the Ordinance specifying the voting procedures in March were candidates in the May election.

10. IRV Procedures (Ordinance #3) Violated the Aspen Charter Section 3.2 Requiring Majority Vote to Win

For the City Council race, the Charter requirements are specified in Section 3.2.

Terms of office:

At all municipal elections thereafter, the two (2) candidates receiving the highest number of votes shall be elected for a four year term, provided that the candidate receives fifty percent (50%) plus one vote or more of the votes cast..

The two council races failed to produce winners with a majority of votes.

False Majority Problem:

In order to always arrive at a "majority" winner, Aspen's method of voting in the "final round" disregarded any ballot which did not have a ranking for at least one of the two finalists in each race. (The ballot allowed 11 rankings for Council and 5 rankings for Mayor.) Voters' whose ballots contained no ranking for one of the two finalists were

ignored in the denominator of the calculation to produce the required 50% plus one cast votes.

Example: 2510 voters cast ballots in the council race. In the simulated “run off “ during the final round between candidates Torre and Behrendt, 407 voters’ rankings did not include a ranking for either candidate. Therefore only 2103 ballots were counted to produce Torre’s victory over Behrendt of a forced 51%. (1073 Torre to 1030 Behrendt is 42.7% of the actual 2510 ballots cast in the City Council race.)

The Johnson/Johnson council race was decided with 1233 of the 2510 votes cast, or 49% of votes cast.

Voters were told repeatedly by election officials that they could rank as many or few choices as they wanted, without being informed that in ranking less than the full ballot they were risking having their ballot completely disregarded as a “vote not cast” in determining the winner. (Exhibit F—ballot instruction b). Those voters, likely unknowingly, were not part of the denominator purportedly representing “votes cast.” **Essentially, those voters, perhaps unwittingly, helped elect Torre, as they made it easier for him to achieve 50%+1 of the reduced denominator.** While the same would have been true for “no shows” at the polls in a run-off, presumably these voters did not know they were being counted as “no shows.” The participation rate in the final CC vote was far less than in traditional runoff—although the voters were standing in the voting booth.

In short, neither council race could have declared winners based on the Charter requirement to reach a majority of “votes cast.” The Ordinance allowing this violation of the Charter majority requirement was adopted in March 2009 by City Council in the face of resistance from voters in public hearings, noting the violation of the Charter. The tabulation method and result for both Council races clearly violated the charter language adopted in November 2007 to require a majority of votes cast to win a seat. (It should be noted that other cities that have adopted IRV have modified their Charter language to recognize that IRV frequently arrives at a plurality winner, and in those cases, NOT a majority winner, as required by Aspen’s Charter.)

In the Mayor’s race, the voter was given the instruction to make up to 5 potential marks for that race. (Four choices for named mayoral candidates, and 1 write in candidate allowed.) 11 rankings were allowed for the City Council race. Depending on how many rankings the voter chose to complete, different voters could have differing numbers of valid marks on the ballots. Aspen’s Charter dictates that the election system requires a majority (50% +1) of voters’ support for the winning candidate. That does not imply the majority of eligible marks on a ballot, but the majority of voters casting ballots.

The IRV results failed to produce two winning City Council candidates based on the Charter requirement to achieve a threshold of 50%+1 of the **votes cast**.

Recommended Action:

1. Create policy that no future voting methods be proposed by City as ballot measures or procedures defined without the input of the EC.

2. EC to recommend that all voting methodology task forces be comprised of independent citizens, not city staff or officials.
3. If IRV is not repealed this issue will require immediate work to avoid maintaining an illegal, and easily challenged, method of determining a majority.

11. Council Race Violated Standard Definition of Instant Run Off Voting Required by Charter

(Violates Aspen Charter Article II Section 2.7)

Charter calls for (undefined) Instant Run Off voting in Aspen's two seat council race. (Article II Section 2.7-- Exhibit AA) Instant Runoff Voting is a term used in the election community and other municipalities to refer to one seat elections, such as our mayor's race. Standard definitions of Instant Runoff Voting do not allow multi-seat races such as conducted in the Council race, because of the difficulties in creating fair algorithm. Voters approving the 2007 Charter amendment had no way of knowing that a different method than Instant Runoff Voting rules and definitions would be used for the Council race.

Proposed Actions: (see above at #10)

12. Mathematical Anomalies and Issues Present in Aspen's System Violate State Law

(Violates C.R.S. 1-7-1003, incorporated by 31.10-617)

CRS 1-7-1003 controlling IRV methods in Colorado states: "The ballots shall be counted in rounds, with surplus votes transferred from winning candidates and candidates with the fewest votes eliminated according to the methodology established by the secretary of state by rule, until the number of candidates remaining equals the number of seats to be filled. A local government may also conduct an election pursuant to this subsection (4) using the principles of instant runoff voting specified in subsection (3) of this section to ensure that each elector has equal voting power and that an elector's lower ranking of a candidate does not count against the candidate to whom the elector gave the highest rank."

Aspen's method for Council IRV race did allow voters to hurt their candidate to whom they gave the highest rank, contrary to assurances given by City officials. By voters making two ranked choices for two seats which were supposed to be equivalent, the second rankings for some candidates may cause their first ranked candidate to miss the cut off in the first round. Aspen's IRV method violated this provision of Colorado Election Law.

- a. Non-monotonicity

In mathematics, a “monotonic function” is one which preserves a given order.

In IRV methods increasing a vote for a candidate does not always increase that candidate’s chances to win, and decreasing one’s ranking does not always hurt the candidate. (Exhibit K)

It can be demonstrated that this mathematical anomaly occurred hurting council candidate Behrendt. If approximately 75 of Behrendt’s supporters had ranked him #2 to Council candidate Jack Johnson, rather than demonstrating their true desire for him to be their #1 choice, Behrendt would have defeated candidate Torre, who won the race. (See Exhibit L for documentation.) While non-monotonicity is a difficult mathematical concept to understand, the fact that it impacts IRV elections is not disputed. Prior to the election, the City of Aspen assured voters that this non-monotonic issue was not a possibility with Aspen’s form of IRV, despite being presented with contrary evidence in public meetings.

Voters were misled by the City, causing them not to contemplate this concern when they were determining their voting choices. After this effect was demonstrated in the May election, City officials no longer deny the anomaly.

b. Lower Ranking Counts Against Highest Ranking

As noted above the statute prohibits lower rankings “counting against” highest rankings, which is exactly what happens in the two seat Council race when a voter ranks his two favorites #1 and #2, which are supposed to be equal rankings and equal seats. Massachusetts based election integrity activist Mike LaBonte has demonstrated the clear violation of this law in his documentation at <http://aspenelectionreview.blogspot.com/2010/01/how-aspen-violated-colorado-ranked.html>

In fact the City Council and staff were warned of this violation prior to adopting Ordinance #3.

Recommended Action:

1. Seek near term independent outside technical and legal expertise on the mathematical anomalies and unexpected complexities to verify my claims.
2. Use expert input for use with recommendations for May 2011 elections if IRV is not repealed. Waiting until November’s outcome will be very late to get expert input and create solutions in time for February deadline for new IRV procedures.
3. If IRV is retained require that an independent diverse citizen task force, preferably reporting to EC, be charged with developing the concepts for IRV. The task force should not be made up primarily of city staff insiders as was the case in the last IRV task force.

13. Failures in Required Reporting Reduce Transparency

- a. The Ordinance adopting procedures and C.R.S. 1-7-1003 III requires a report by precinct reporting of IRV race results by precinct. Despite the City's statements to the contrary, the City has not prepared or released this report. This report can be informative to the various precincts and the better understanding of the election in general. It is also an intended ballot security citizen oversight measure to compare total votes counted at the precincts to total votes counted in the central counting location. Also, this would allow a test for reasonableness of result that was otherwise unavailable.
- b. The City promised on numerous occasions that all election data would be released so that "any one could test the ballots on their computers at home." The commitments were to require total verifiability and comprehensive publicly available auditable data. The key component of that tabulation data---the electronic ballot images ---were not released. This is the subject of my CORA litigation. I include this particular paragraph only for context in demonstrating that the lack of prior systems approval and testing, combined with the lack of post-election auditing, combined with inadequate report generation, and topped off by the City's refusal to release ballot images work together to create a total black box, devoid of almost any real transparency.

Recommended Actions:

1. Re-Scan and Re-Tabulate ballots in Audit as previously suggested.
2. Prepare precinct reports upon completion of the re-tabulation.

Unconstitutional Non-Anonymous Ballot Election

The Colorado Constitution Article VII, Section 8 requires all elections to be by anonymous ballots, where the identity of the voter is not associated with his ballot, voted in private. Aspen violated this fundamental constitutional principle in at least two ways known ways. But even more concerning is the lack of voter anonymity frequently referenced by the City, but to date, unexplained as to the specific cause of the City-acknowledged non-anonymous ballot.

14. City's Statements that Ballots are NOT Anonymous

The City has repeatedly made formal statements strongly suggesting that the ballots are not inherently anonymous and a non-secret ballot election was indeed conducted in May. City officials appear to believe that an inspection of the ballots or ballot images would reveal voter identity, which is in direct violation of the Colorado Constitution. The City appears to repeatedly take the unconstitutional position that the City may solely create and maintain

such illicit ballot information through which they alone can determine voter identity, so long as it is not disclosed to the public.

During the May 5 meeting of the Election Commission, Assistant City Attorney Jim True indicated that a “release of the ballots themselves” may compromise voter anonymity. See comments at time stamp 50:00 minutes <http://www.grassrootstv.org/Show.aspx?ShowID=9062>. **The City has failed to answer the question as to why the release of ballot images or ballots would compromise ballot anonymity.**

Given the grave nature and potential consequences of such a violation, it has the greatest priority in my list of concerns. It has long been established throughout the United States that abuses are common when a voter’s ballot choices can be identified. Hence the stringent laws on voter privacy and anonymous ballots, laws with Aspen has not taken seriously.

The City has denied a CORA access a copy of the TIFF (scan) file of the ballot images, requested in order to test the ballot interpretation software. The City has made a number of unexplained formal public statements about the basis of their decision to deny the access to ballot images as public documents. Additionally, portions of the City’s pleadings in Marks v. Koch (District Court, Pitkin County Case Number 2009CV294 Exhibit AN attached.) make it clear that the city does not believe that the ballots are universally anonymous. Non-anonymous ballots clearly violate the Colorado Constitution, and may invalidate an election as noted in paragraph 1 Exh. AL)

The CORA case was dismissed on March 10, 2010 , with Rule 59 motions still pending. This case is limited to issue of CORA compliance on the release of the ballot images. Marks vs. Koch does not seek relief related to the potential violations of non-anonymous nature of the election.

The repeated, but troubling theme of the City’s stated position is “the ballots are anonymous only so long as they are locked away.” City officials have refused to engage in discussions of the Constitutional requirement to have ballot anonymity from the moment the ballot is cast. City officials have repeatedly refused to explain what identifying information may be on the ballots to substantiate their position.

A summary of City comments concerning ballot anonymity is attached at Exhibit M . Each has been documented with specific official documents or statements to the press.

There have been a number of pleadings in the above referenced case addressing the lack of voter anonymity, although remedy is not sought in the CORA case. If access to the litigation files is needed, it is available through electronic records in the 9th District Court, or I will be happy to provide as requested.

Recommended Action:

1. It is imperative that the EC, along with a sworn election expert, personally inspect the paper ballots to determine the possible existence and nature of the potentially illegal markings which the City continues to reference. The solution is obviously dependent on the findings.

15. Sequenced Ballot Data Matches Poll List of Voters, Disclosing Voter Identity.

Colorado IRV law requires the publication of a “ballot image report list” (sometimes called cast vote records) detailing each numerical ranking on each ballot. (CRS 1-7-1003). The City released that data, with batches in generally the same sequences that the poll list of voters names was created. The City failed to shuffle or randomize the ballots before the scanning operation, or randomize the image numbers assigned to the ballot images. (City has acknowledged this deficiency.) Comparing the sequenced ballot by ballot data in the released ballot image report with the poll books creates the opportunity to disclose many specific voters’ ballot data. Some voters’ votes are more easily identified than others, which makes the problem no less important.

The City attorney acknowledged the fact of corresponding ballot image sequences and corresponding poll book sequences in a public meeting on July 21, 2009. The assistant City Attorney confirmed this problem to the press on August 24. (Exhibit M). As referenced above, on May 5 Jim True repeated his indications that ballot anonymity can be compromised by the viewing of the ballots. (Start at minute 50: <http://www.grassrootstv.org/Show.aspx?ShowID=9062>)

a. Finding One’s Own Ballot Data and Data of Voters in Same Sequence.

Because of the number of candidates and possible permutations and combinations, over 90% of the ballots in each precinct are unique. A voter can locate his ballot data (“string”) in the sequenced list of their precinct’s ballot image report, by looking for a set of rankings that matches theirs. They can gain further assurance identifying their ballot string by noting where they were listed in the sequence of the day’s voting on the poll list, and comparing to the sequenced ballot data report. (sample ballot data strings listings—Exhibit N [also called “cast vote record.”])

Once a voter find his data string, he can generally tell the voting choices of voters he saw in the voting queue (or in the poll book) in front him, behind him, etc. Some candidates keep detailed logs of the order in which people exit the polling places, which is almost exactly the order in which they voted. With sequenced ballot data, they can determine with reasonable likelihood how some voters voted.

When voters can determine the likely voting choices of the voters in sequence before and after one’s own casting of one’s ballot, it is a very disturbing violation of the sanctity of the constitutionally guaranteed right to an anonymous ballot.

b. Finding Another Voter's Data String (Sequence + Pattern Process of elimination)

Using the sequenced poll books and published data strings referenced above and any lists of how voters exited the polling places, there is a reasonable possibility of finding the votes of voters. It is particularly likely to identify voters who voted early or late in the day, near the top or bottom of the voter list. Or those who voted at times when the polls were not busy. Given the small number of voters (2544) and small size of our community, other information makes it possible to increase the probability that one has identified the voter's vote. For example, we know the neighbors who had certain candidates' yard signs, or worked for a certain candidate. Those can be used as confirming clues. While no one can prove with 100% certainty that they have identified another's ballot, the fact that there are numerous data points to point to reliable clues, is in itself dangerous and damaging that there is a good possibility of determining many voters' votes.

The reckless creation of non-randomized data string (cast vote record reports) in fact, when compared with corresponding poll books, can disclose many voters' votes. The City attorney and the assistant city attorney have both confirmed this problem as noted above.

16. Early Early Voter Data Sequencing Information Discloses Identity.

Seven voters were allowed to vote on photocopy ballot proofs before ballots were printed, and before absentee voting could begin, which itself is a violation of law. (As early as April 10.) On election day these photocopied ballots were duplicated onto actual ballots by election judges. (Ballot numbers 1117-1123.) There is a voter name associated with each of the duplications. In a proper process, the name of the voter would not be known to an election judge duplicating a proper ballot. For these seven voters, their votes are virtually assuredly known to any one carefully reviewing the public record. This is an example of both the careless nature with which this election was conducted throughout, but also of the lack of concern for the fundamentals of a anonymous ballot election.

17. Possible Sequencing of Husband/Wife Pairs Helps Identify Voters' Mail-In Ballots

It also appears likely that some of the 239 absentee mail in ballots may have been organized by the election judges to place husband and wife envelopes in sequence before processing their envelopes and votes. Because of the possibly purposeful ordering of the ballots and the matching order of the poll book, combined with the failure to shuffle processed ballots, the election judges' action caused an even higher degree of probability of matching some absentee voters' identities and their ballots. See Exhibit O. Given that approximately 92% of the ballots cast were unique, the likelihood that

identical ballots are side by side in the mail system is extremely remote. (In fact, looking at ballots where 4 or more rankings were made for CC, only 33 ballots are identical in the entire election.) Something other than coincidence accounts for the side by side nature of the identical votes in the mail in ballot group. The poll book has also been organized with many couples paired together. This makes the determination of the likely identity of the voter more probable.

Recommended Actions:

1. EC should interview election judges who handled these ballots to determine how and why these ballots were placed in order rather than randomly put through the AV-OS machine.
2. Upon determination of the answer, reinforce adherence to election rules that do not allow sequencing of ballots, and force shuffling, if that is the issue which created this problem.

18. Potentially Illegally Marked Ballots Should Not Have Been Counted

Since public meetings in the summer the Mayor, both City Attorneys, the Clerk, and the City Community Relations Director have stated that the city cannot release ballot images or ballots because illegal markings may compromise voter identity. (note Jim True's remarks in the May 5 meeting.). I have inquired, as have others, a number of times as to how illegally marked ballots could have been processed at all. It is against Colorado law (CRS 31-10-1517) to mark ballots in a way for them to be identifiable. Why is the City taking the position that it must protect such ballots, rather than locate them and disqualify them?

Recommended Action:

1. It is imperative that the EC, along with an election expert, personally inspect the paper ballots to determine the possible existence and nature of the potentially illegal markings which the City continues to reference. The solution is obviously dependent on the findings.

EC Responsibilities Regarding Non-Anonymous Ballot Issues (#13 -#17)

The practical negative implications for abuse are clear if officials, employers, landlords, authorities, and even spouses know how electors voted. The practical solution is less clear. It appears such a case (Taylor v. Pile -- Exhibit Q attached) resulted in a voiding of the election by the Colorado Supreme Court.

The statements made at the May 5 EC meeting were disappointing. The Commission cut off the debate on the facts. The conclusion was that the city did not “intend” to release voter data. The focus of the commission was on intent, rather than result, and avoiding “admonishing” the city rather than leaning the facts of how much risk is prevalent and how it was generated.

There was no attention given to how to mitigate any potential damage from this information.

The public is generally not aware of this issue and therefore unaware of the continuing potential abuse of their voting information. **The City has resisted efforts to acknowledge this problem and citizen requests that the City attempt to create, at a minimum, an appropriate level of information for citizens who may be at risk of having their voter information abused.**

Important Process and Procedural Violations

19. City Issues False Statements Concerning Audits and Count Verifications

On May 28 six days after the legal deadline for a candidate to contest the election, the City issued a press release (Exhibit E--attached) disclosing a software error which had been reported by the third party vendor in their own internal control work on or before May 19. The City withheld this information from the defeated candidates until the deadline for election contest had past. The apparent intent of the City was to deprive defeated candidates of this important information undercutting their rights to request recounts or make challenges.

Additionally, the City claimed in that press release that it had conducted a “City staff audit of the IRV process.” Any audit of election matters should be public information and is generally required to take place in public or with canvass board members or Election commissioners present to observe. A CORA request was submitted to access the details of this unannounced audit purportedly conducted outside any public oversight. As a result of that CORA request, it was learned that no such staff IRV process audit had been performed. This was likely merely a public relations fabrication.

The City also claimed in this press release that “all rankings” and tallies had been “manually verified” The City can produce no evidence of this claim. It too, appears to be a fabrication to substitute for the promises of hand counts which were not performed.

Recommended Action:

1. EC should interview those involved in the development and release of the public information to learn ascertain why such misinformation was released. Appropriate action should be taken based on the findings.
2. A revised press release correcting the misinformation should be issued by the EC.
3. A policy should be adopted that all substantive election information press releases should be reviewed and approved by the independent Election Commissioners.

20. Candidate Denied Recount

Council candidate Behrendt lost to Candidate Torre by 43 of 2510 votes or 1.7%. City Council had established a more generous threshold for determining the requirement for a recount, and told voters that any contests which were within 3% would be manually recounted. (The 3% was implied to be calculated on the total votes, per assistant City Attorney's statements on 3.09.09 video of the City Council meeting adopting the IRV ordinances. See

http://aspenpitkin.granicus.com/MediaPlayer.php?view_id=3&clip_id=48) (Time stamp of approximate 1:38:00 Comments by Jim True.) Mr. True used the example of 2500 votes as the population of voters. Most citizens would interpret that the 3% hurdle would be calculated based on the total number of ballots cast, or roughly 2500, as Mr. True predicted.

However, despite the implied intent, Council failed to adopt language which would have that implied result. The flawed language that was adopted (IRV Procedures 8.4.1—Exhibit B—attached) would effectively never technically require a recount, no matter how small the margin. When questioned about Michael Behrendt's right to an automatic recount, the city took the position that no recount was required.

Given the failure to report known software problems, and the known issues with potential duplicate votes, the failure to fully capture voter intent, and the mathematical impacts of non-monotonicity on candidate Behrendt, fairness and reason would have dictated a manual recount of that race, despite the technical loophole created by the flawed language adopted in the City Ordinance.

Also note the problem of inadequacy of recount language for recounting close races in determining finalists (see notes in Issue #7 above) and in elimination rounds.

Recommended Action:

- 1) EC should conduct a re-scan, re-tabulation audit as previously proposed. While the result would not change the outcome, important information would be revealed in the audit results.
- 2) Recount rules for Aspen should be modified to reflect the small size of the elections. If IRV is to be retained, revamping of the recount rules considering elimination rounds, and finalist rounds, and size of ballot population needs to be undertaken well in advance of the next election.
- 3) To increase voter confidence for the next election, pre-announce that a recount, or 100% audit will be performed, regardless of the outcomes.

21. City Refused to Perform Promised and Required Post-Election Audits

During many public meetings and most particularly during the public hearing adopting the IRV procedures and SOS Rules on March 9, 2009 the City Clerk made the commitment to hand count 10% of the ballots and test the computerized tabulations. NO hand count was performed that tested the tabulations. (See time stamp 1:48:00 http://aspenpitkin.granicus.com/MediaPlayer.php?view_id=3&clip_id=48)

The only test performed post-election was a limited, non-random test of the scanning equipment (<http://www.aspentimes.com/article/20090508/NEWS/905089992>) of an invalid sample. No tabulation test was performed. The published procedures for the post-election audit (Exh AM) were not followed.

The tabulation on the sole ballot issue (regarding Aspen Art Museum) was not audited or tested in any manner, and excluded from the May 7 audit step.

The refusal to follow such procedures after committing to them further suggests the City's attempt to reduce public oversight of and cover up known violations of election laws and standard required procedures.

Recommended Action:

- 1) EC should conduct the previously suggested Re-Scanning and Re-Tabulation audit to address deficiencies in the May 2009 election testing.
- 2) Art Museum tallies should be included in the audit above and reported on.
- 3) Clear policies should be put in place to require public audits and the clerk's adherence to SOS standard audit requirements. Independent EC members should be required to take part in all future post-election audits.

22. No Voter Privacy at Absentee Walk-in Polling Location.

State regulations require that voters be allowed to vote in privacy without interference. **(CRS. 31-10-607)** There are numerous complaints of voters having no privacy while voting in the 800+ voter precinct of early voting in the clerk's office. There are additional complaints of candidates frequently visiting this office and observing voters as they voted, and intimidating voters. (violation of **C.R.S. 31-10-1521**)

Recommended Action:

Require privacy screens as mandated. EC members to inspect polling places to

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ascertain that such measures are being following.

23. Some ballots cast on photocopies prior to ballots being printed

In a laudable effort to ensure that all voters could vote despite travel plans and other personal circumstances, the clerk issued photocopies of ballot proofs to be used as ballots before printed ballots were delivered, and run through the ballot duplication process on election day.

Some voters (7) were allowed to vote on photocopies of a printer's proof of the ballot as early as April 10th, 25 days before the election, and prior to the final deadline for withdrawal by candidates.

The two problems represented here are the lack of ballot control and the lack of adherence to rules on when ballots may be cast.

Additionally, these ballots became identifiable as to the voter because of the failure to shuffle ballots. (See issue #16)

Recommended Action:

Do not permit voting prior to time allowed by law.

24. "Early voting" not allowed in Municipal Election. Absentee voter rules not followed.

The importance of the "early voting/walk in absentee" voting in this election is indicated by the fact that over 31% of Aspen's voters voted in the clerk's office between April 10 and May 1, under a set of unwritten, flexible procedures with few standard election controls and norms.

The "early voting" was permitted as "no-excuse absentee voting," but the requirements and controls for absentee voting were not utilized. The clerk apparently used the provisions of CRS 31-10-1005 to allow early voting, by considering it no-excuse absentee voting on electronic voting system. The unwritten procedures varied from day to day and voter to voter, causing lack of process controls and conflicting instructions to voters and candidates.

Walk in (absentee) voting was allowed as early as April 10th, although the period for absentee walk in voting was prohibited by 31-10-1005 prior to April 23. Based on the poll book it appears that roughly 125 voters voted prior to April 23 in this polling place. 125 votes could have possibly changed the outcome of one council seat.

Some candidates were told that there would be no “early voting,” only “absentee voting,” causing confusion as to the practical length of the campaigning time available. This was unfair to candidates and their supporters, when favored candidates got preferential information. Candidates should be able to rely on the written regulations consistently applied. (The last candidates entered the race on April 3, only to find voting beginning one week later, two weeks earlier than the earliest expected legal date.)

Had there been a legal challenge to the voting process because of the violations of the very specific absentee rules, it is possible that the 803 “early votes” cast at that polling place may have been excluded from the vote tabulations.

Recommended Action:

1. Require adherence to the walk in absentee voting rules, or create legislation to allow legitimate “early voting” using the provisions of Title 1 “early voting.”
2. EC to conduct observation and inquiry at the next election to ascertain that improper “early voting” is not taking place.

False and Misleading Claims by Election Contractor TrueBallot Inc., aided by City of Aspen

In an apparent effort to reduce criticism of their efforts, reduce their potential legal liability for improper election processing TBI as agents of the city, through their executives made significant numbers of false and misleading claims.

25. September 17 2009 Aspen Times Editorial

Public support for election quality is needed for effectiveness of the EC or citizen activists’ efforts. The City of Aspen staff has instead attempted to mislead the public to build “voter confidence” while disparaging the activities of voter integrity activists, and attempting to discredit their issues.

Mr. Caleb Kleppner, an executive of TBI, after conferring the Kathryn Koch on September 2, submitted the attached editorial for publication in the Aspen Times. (Exh AH). As noted in the footnotes which I have added in that exhibit, there are numerous fictitious, false claims apparently intended to deflect and discourage claims of irregularities, reduce support for citizen oversight of elections, and enhance the trade reputation of TBI through misleading trade claims.

I formally requested of both the City of Aspen and Mr, Kleppner that they correct their statements. They did not respond. Harvie Branscomb also requested a public correction from Mr. Kleppner, to no avail.

More details are available at : <http://aspenelectionreview.blogspot.com/2010/04/criticism-of-caleb-kleppner-quest.html>

Recommended Action:

- 1) EC should interview the Clerk and the Community Relations Director to inquire as to why such statements were allowed to be submitted and to stand uncorrected.
- 2) EC should request that TBI, as the city's agent to retract and correct their publication.
- 2) EC should issue a correcting press release to address all of the inaccuracies in the public statements made in this column, ostensibly approved by the Clerk.

26. TrueBallot Certification of the Aspen Election

The TrueBallot contract requires a certification by TBI that the tabulation was "fair and accurate" (Exh.J page2). This contractual provision and its execution appears to be an obvious attempt to mislead the public and deflect any claims of improper election procedures.

In response to a CORA request, the required certification was issued April 12, 2010. (<http://aspenelectionreview.blogspot.com/2010/04/trueballot-certifies-aspen-may-5-2009.html>) .

Given the serious violations of law and legal tabulation methods detailed in this complaint, certifying the tabulation as "fair and accurate" is a fraudulent claim. The public should not be misled in this manner.

Recommended Actions:

1. EC to determine what caused this kind of non-standard certification to be requested or issued.
2. EC should require that TBI recall or restate their certification to reflect only accurate statements.

Overall Recommendations:

1. Conduct the previously suggested Re-Scan/Re-Tabulation Audit previously suggested which will address many material deficiencies in the May election. (correspondence of May 7, 2009, to EC and at <http://www.glassballotbox.org/journal/2010/5/9/proposal-to-election-commission-for-re-scanningre-tabulation.html>)
2. Immediately consider recommending the use of Title 1 election code for Aspen. Consider proposing for November ballot issue to affect 2011 elections.
3. Request the assistant of the Secretary of State's office in reviewing the planning and execution of the next two municipal elections. See the Secretary of State's Watch List Policy for Counties (<http://www.elections.colorado.gov/Content/Documents/Election%20Resources/Watch%20List%20Policy%20for%20Counties.pdf>)

[20List/County%20Watch%20List%20Policy%20FINAL.pdf](#)) Request that SOS assist in probationary-like measures for Aspen municipal elections.

4. Develop rapid response plan in the event that IRV is upheld in November. Many of the current procedures and laws cannot be applied legally or fairly in future IRV elections. The modification of these laws and procedures will be exceptionally time consuming to legally run IRV in Aspen's City Council race.
5. EC should consider a request of funds for independent external assistance. Administrative and legal assistance will be required to organize, assess, develop remedial procedures and monitor progress.
6. As EC deliberates on complaints, require that City responses to all complaints be written and publicly available for review.

Additional Subject

Ward Hauenstein recently asked the public to report instances of retaliation and reprisals by City officials, presumably related to election matters. I have not included my planned response in this report. I assume that there is no deadline on that request. I will prepare that for later submission.

Thank you for your commitment to transparent and accurate elections. Please let me know what additional information or assistance I can offer to assist in your efforts.

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