

**STATE OF COLORADO**

**Department of State**

1700 Broadway  
Suite 200  
Denver, CO 80290



**Scott Gessler**

Secretary of State

**William A. Hobbs**

Deputy Secretary of State

**NOTICE OF PROPOSED RULEMAKING**

**Office of the Secretary of State**

**Election Rules**

**8 CCR 1505-1**

**February 28, 2011**

Pursuant to the requirements of section 24-4-103(3)(a), C.R.S., (2010), notice of proposed rulemaking is hereby given by the Secretary of State. A rulemaking hearing will be held on **March 31<sup>st</sup>, 2011 from 1:00pm to 4:00pm** in the Blue Spruce Conference Room on the second floor of the Office of the Secretary of State at 1700 Broadway, Denver, Colorado 80290. All interested persons will be afforded an opportunity to be heard on the subject of revisions and amendments to the "Election Rules" of the Colorado Secretary of State, 8 C.C.R. 1505-1.

**Subject of the Proposed Rulemaking**

Amendments and revisions to the Colorado Secretary of State Election Rules as may be necessary or appropriate to improve the administration of elections in Colorado. The revisions and amendments to be considered include rules concerning ballot placement of referred or initiated measures, definitions and circulator affidavit requirements for statewide initiative petition circulation, and technical corrections and clarifications. Additionally, the Secretary of State shall consider rules necessary to implement amendments to the election laws made during the 2011 first regular session of the 68<sup>th</sup> General Assembly and such other rule amendments as may be necessary to answer questions arising under Title 1 of the Colorado Revised Statutes. The Secretary of State has also received a petition for issuance of rules, submitted in accordance with section 24-4-103(7), C.R.S., that requests that this office engage in rulemaking with respect to definitions related to statewide initiative petitions. This petition is attached and incorporated by reference.

**Authority for Proposed Rulemaking**

Revisions and amendments to the "Election Rules" of the Colorado Secretary of State, 8 C.C.R. 1505-1, are proposed pursuant to the following statutes:

1. Section 1-1-107(2)(a), C.R.S., (2010), which authorizes the Secretary of State "[t]o promulgate, publish and distribute...such rules as the secretary finds necessary for the proper administration and enforcement of the election laws."
2. Section 1-1.5-104(1)(e), C.R.S., (2010), which authorizes the Secretary of State to "[p]romulgate rules in accordance with article 4 of title 24, C.R.S., as the secretary finds

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necessary for proper administration and implementation of [the "Help America Vote Act of 2002", 42 U.S.C. 15301-15545]."

Paper or editable electronic copies of the initial draft of the proposed rules may be obtained from the office of the Secretary of State at 1700 Broadway, Suite 200, Denver, Colorado, 80290, or by calling (303) 894-2200, extension 6329. The proposed rules are also posted on the Secretary of State website at [www.sos.state.co.us](http://www.sos.state.co.us).

A final copy of the proposed rules for consideration at the public rulemaking hearing will be posted on the Secretary of State website and made available to the public no later than March 25<sup>th</sup>, 2011 in accordance with section 24-4-103(4)(a), C.R.S., (2010), which states that "[a]ny proposed rule or revised proposed rule by an agency which is to be considered at the public hearing . . . shall be made available to any person at least five days prior to said hearing."

The rulemaking hearing on March 31<sup>st</sup>, 2011 will be held in accordance with section 24-4-103, C.R.S., (2010). Written and oral data, comments, and arguments will be received from all interested parties. Written submissions must be filed at or before the commencement of the hearing on March 31<sup>st</sup>, at 1:00pm in order to be considered. Oral testimony may be limited in order to allow the proceedings to go forward with reasonable promptness and efficiency. The hearing will be audio recorded and broadcast over the Internet. The broadcast may be accessed through the Secretary of State website at [www.sos.state.co.us](http://www.sos.state.co.us) on the "Information Center" page under "Broadcast and Recorded Meetings." For additional information, please contact Andrea Gyger, Elections Division at [andrea.gyger@sos.state.co.us](mailto:andrea.gyger@sos.state.co.us) or (303) 894-2200 ext. 6329.

Dated this 28<sup>th</sup> Day of February, 2011.



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William A. Hobbs  
Deputy Secretary of State

For

Scott Gessler  
Colorado Secretary of State



## **Proposed Statement of Basis, Purpose, and Specific Statutory Authority**

### **Office of the Secretary of State Election Rules**

**February 28, 2011**

#### **I. Basis and Purpose**

This proposed statement pertains to the amendments to the Colorado Secretary of State Election Rules for the administration of Colorado State Constitution Article VII, and Title 1 of the Colorado Revised Statutes. The amendments are proposed to achieve the uniform and proper administration and enforcement of the election laws of the State of Colorado, including the requirements of the federal Help America Vote Act of 2002 ("HAVA"), P.L. No. 107-252. See sections 1-1.5-101 *et seq.*, C.R.S. (2010).

The proposed amendments to these rules are necessary for the implementation of Article VII of the Colorado Constitution and Title 1 of the Colorado Revised Statutes. Such proposed revisions are necessary to improve the administration of elections in Colorado, to increase the transparency and security of the election process, and to answer questions arising under Title 1 of the Colorado Revised Statutes.

The Secretary of State finds that the proposed amendments and revisions to specific rules are necessary as follows:

- The Amendment to Rule 6.5.2(f)(1) is needed to clarify how a referred or initiated measure containing both a proposed constitutional and statutory change should be ordered on the ballot. The proposed amendment would require that such a measure be ordered on the ballot as a constitutional amendment.
- Amendments to Rules 15.2, 15.3, and 17.2.3(b) are necessary to conform to the ruling of the United States Court of Appeals for the Tenth Circuit in *Yes on Term Limits, Inc. v. Savage*, 550 F.3d 1023 (10th Cir. 2008). The amendments to rules would clarify residence information required to complete a circulator affidavit and have it notarized. Specifically, the rules require that a petition circulator who is not a Colorado resident must provide both his or her permanent residence address and the address in Colorado where he or she is staying while circulating the petition. The amendments would also clarify the type of identification a petition circulator must present when the circulator affidavit is notarized.

## **II. Statutory Authority**

Amendments to the Colorado Secretary of State Election Rules are adopted pursuant to the following statutory provisions:

1. Section 1-1-107(2)(a), C.R.S., (2010), which authorizes the Secretary of State “[t]o promulgate, publish and distribute...such rules as the secretary finds necessary for the proper administration and enforcement of the election laws.”
2. Section 1-1.5-104(1)(e), C.R.S., (2010), which authorizes the Secretary of State to “[p]romulgate rules in accordance with article 4 of title 24, C.R.S., as the secretary finds necessary for proper administration and implementation of [the “Help America Vote Act of 2002”, 42 U.S.C. 15301-15545].”

# COLORADO SECRETARY OF STATE

## 8 CCR 1505-1

### ELECTION RULES

#### Preliminary Draft of Proposed Rules

February 28, 2011

***Disclaimer:** This draft is not necessarily final. The proposed changes to be considered at the public rulemaking hearing may be different than the proposed changes in this draft. This draft is submitted to the Department of Regulatory Agencies for the purpose of complying with section 24-4-103(2.5), C.R.S., which requires that a draft be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.*

*A revised copy of the proposed rule changes will be available to the public no later than **March 25, 2011**, and a copy will be posted on the Department of State's web site, in compliance with the requirement of section 24-4-103(4)(a), C.R.S., that "[a]ny proposed rule or revised proposed rule by an agency which is to be considered at the public hearing . . . shall be made available to any person at least five days prior to said hearing."*

*Proposed additions to the current rules are reflected in SMALL CAPS. Proposed deletions from current rules are shown in ~~stricken type~~. Annotations may be included.*

1 Rule 6.5.2(f)(1) would be amended as follows:

2 (f) Ballot issues from the various political subdivisions shall be ordered on the ballot  
3 as provided in section 1-5-407(5), C.R.S:

4 1. Each category of referred and initiated state amendments and propositions  
5 shall be numbered and listed on the ballot in the following series:

A-Z	State Referred Constitutional Amendments
01-99	State Initiated Constitutional Amendments
AA-ZZ	State Referred Statutory Propositions
101-199	State Initiated Statutory Propositions

1 IF A REFERRED OR INITIATED MEASURE CONTAINS BOTH A PROPOSED  
2 CONSTITUTIONAL AND STATUTORY CHANGE, THE MEASURE SHALL BE  
3 ORDERED ON THE BALLOT AS A CONSTITUTIONAL AMENDMENT.

4 Rule 15.2 would be amended as follows:

5 15.2 PETITION REPRESENTATIVES

6 15.2.1 No petition shall be accepted which lists proponents other than the two identified as  
7 petition representatives pursuant to section 1-40-104, C.R.S.

8 15.2.2 FOR THE PURPOSES OF SECTION 1-40-118(2.5)(A), C.R.S., THE “PERSON  
9 RESPONSIBLE” INCLUDES ANY PERSON OR ENTITY WHO CIRCULATES, OR CAUSES A  
10 PETITION TO BE CIRCULATED, AND WHO COMMITS, AUTHORIZES, OR KNOWINGLY  
11 PERMITS FRAUD AS DEFINED IN RULE 15.3.4 RESULTING IN THE COLLECTION OF  
12 INVALID SIGNATURES OR PETITION SECTIONS.

13 Rule 15.3 would be amended as follows:

14 15.3 PETITION CIRCULATION

15 15.3.1 Proponents may begin circulating a petition for signatures at any time after the  
16 final decision of the title board, including disposition of any motion for rehearing  
17 or the expiration of the time for filing a motion for rehearing, and after the  
18 Secretary of State has approved the format of the petition as provided in section 1-  
19 40-113-(1), C.R.S., whether or not an appeal is filed with the Supreme Court  
20 pursuant to section 1-40-107-(2). If an appeal is filed with the Supreme Court, the  
21 six-month period specified in section 1-40-108-(1) shall begin on the date that the  
22 first signature is affixed to the petition or on the date that the decision of the  
23 Supreme Court becomes final, whichever date occurs first. Signatures shall be  
24 counted only if affixed to the petition during the period provided in this rule.

25 15.3.2 THE PETITION CIRCULATOR SHALL PROVIDE HIS OR HER PERMANENT RESIDENCE  
26 ADDRESS ON THE CIRCULATOR AFFIDAVIT. IF THE CIRCULATOR IS NOT A RESIDENT  
27 OF COLORADO AS DESCRIBED IN SECTION 1-2-102, C.R.S., THE CIRCULATOR SHALL  
28 ALSO PROVIDE THE ADDRESS IN COLORADO WHERE HE OR SHE TEMPORARILY  
29 RESIDES.

30 15.3.3 WHEN THE CIRCULATOR AFFIDAVIT IS NOTARIZED, THE CIRCULATOR SHALL PRESENT  
31 IDENTIFICATION IN ACCORDANCE WITH COLORADO NOTARY LAW, (SECTION 12-55-  
32 110(4)(B), C.R.S.).

33 15.3.4 FOR THE PURPOSES OF ARTICLE 40, TITLE 1, C.R.S., FRAUD SHALL INCLUDE, BUT IS  
34 NOT NECESSARILY NOT LIMITED TO THE FOLLOWING:

35 A. FORGERY OF A REGISTERED ELECTOR'S SIGNATURE;

- 1 B. CIRCULATION OF A PETITION SECTION, IN WHOLE OR PART, BY ANYONE  
2 OTHER THAN THE PERSON WHO SIGNS THE AFFIDAVIT ATTACHED TO THE  
3 PETITION SECTION;
- 4 C. INTENTIONAL USE OF A FALSE CIRCULATOR NAME OR ADDRESS IN THE  
5 AFFIDAVIT;
- 6 D. PAYMENT OF MONEY OR OTHER THINGS OF VALUE TO ANY PERSON FOR THE  
7 PURPOSE OF INDUCING THE PERSON TO EITHER SIGN THE PETITION OR  
8 REMOVE HIS OR HER NAME FROM THE PETITION; OR
- 9 E. MAKING FALSE OR MISLEADING STATEMENTS RELATING TO A PETITION WITH  
10 THE INTENT TO DECEIVE.

11 Rule 17.2.3(b) would be amended as follows:

12 17.2.3 The circulator's affidavit shall be checked to assure it has been completed in  
13 accordance with the statutory requirements listed below. If the affidavit was not  
14 completed in accordance with the requirements listed below, all entries in the  
15 section shall be rejected.

- 16 a. For candidate petitions, the circulator's affidavit shall be completed in  
17 accordance with section 1-4-905(1) and (2), C.R.S.
- 18 b. For initiative petitions, the circulator's affidavit shall be completed in  
19 accordance with section 1-40-111(2), C.R.S., AND NOTARIZED IN  
20 COMPLIANCE WITH COLORADO NOTARY LAW (SECTION 12-55-110(4)(B),  
21 C.R.S.). NO PETITION SECTION MAY BE REJECTED BECAUSE THE CIRCULATOR  
22 PRESENTED IDENTIFICATION ISSUED BY ANOTHER STATE AT THE TIME OF  
23 NOTARIZATION.



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February 4, 2011

**Received by**

**FEB 04 2011**

**Secretary of State**

The Honorable Scott Gessler  
Colorado Secretary of State  
1700 Broadway, Suite 250  
Denver, CO 80290

Re: Petition for Issuance of Rules Pursuant to C.R.S. § 24-4-103(7)

Dear Secretary Gessler:

On behalf of the Interested Persons listed below ("Petitioners") this letter is submitted to serve as a Petition for Issuance of Rules pursuant to C.R.S. § 24-4-103(7) to define the following:

1. "The address at which he or she resides, including the street name and number, the city or town, the county" as contained in C.R.S. § 1-40-111(2)(a).
2. "Resident" as contained in C.R.S. § 1-40-111(2)(a).
3. "False circulator name or address" as contained in C.R.S. § 1-40-111(3)(a)(III).
4. "Person responsible for such invalid signatures or petition sections" as contained in C.R.S. § 1-40-118(2.5)(a).
5. "Circulator fraud" as contained in C.R.S. § 1-40-111(2)(a).

With respect to the referenced definitions, Petitioners also request that the Rules address the time period for which the definition is applicable. For example, in defining "resident" or "address" is the determination tied to the time when a circulator executes the Circulator Affidavit?

Petitioners believe that the Secretary must engage in rule making with respect to these matters to provide full and fair guidance to citizens and others involved in the initiative process constitutionally reserved to the people by the Constitution of the State of Colorado.

It is anticipated that some or all of the listed Petitioners will participate directly in the rule making process or through separate counsel. Accordingly, any response to the Petition should be directed to all listed Petitioners as well as to the undersigned.





Petitioners:

Ballot Initiative Access  
Albie Hurst  
3716 S. Mission Parkway  
Aurora, CO 80013

Independence Institute  
Jon Caldara  
13952 Denver West Parkway, Suite 400  
Golden, CO 80401

Citizens In Charge  
Paul Jacob  
2050 Old Bridge Road, Suite 103  
Lake Ridge, VA 22192

Kennedy Enterprises L.L.C.  
Dan Kennedy  
538 Garden Of The Gods Road, Suite 200  
Colorado Springs, CO 80907

Colorado Public Interest Research Group  
Danny Katz  
1536 Wynkoop Street, Suite 100  
Denver, CO 80202

Lamm Consulting  
Scott Lamm  
P.O. Box 6713  
Denver, CO 80206

Colorado Union of Taxpayers  
Marty Neilson  
P.O. Box 24594  
Denver, CO 80224

Thaddeus J. Tecza, Ph.D.  
Senior Instructor Emeritus  
c/o Department of Political Science  
University of Colorado at Boulder  
Campus Box 333  
Boulder, CO 80309-0333

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, reading 'Shayne M. Madsen'.

Shayne M. Madsen

SMM/sak

cc: Ballot Initiative Access  
Citizens In Charge  
Colorado Public Interest Research Group  
Colorado Union of Taxpayers  
Independence Institute  
Kennedy Enterprises L.L.C.  
Lamm Consulting  
University of Colorado at Boulder, Department of Political Science  
William A. Hobbs, Deputy Secretary of State  
Maurice G. Knaizer, Esq., Deputy Attorney General

**MAILED** (RS)

**RECEIVED**

**JACKSON K KELLY**  
ATTORNEYS AT LAW PLLC

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FEB 14 2011

ELÉCTIONS  
SECRETARY OF STATE

Direct Line: 303-390-0012  
[smadsen@jacksonkelly.com](mailto:smadsen@jacksonkelly.com)

February 10, 2011

The Honorable Scott Gessler  
Colorado Secretary of State  
1700 Broadway, Suite 250  
Denver, CO 80290

Re: Petition for Issuance of Rules Pursuant to C.R.S. § 24-4-103(7)

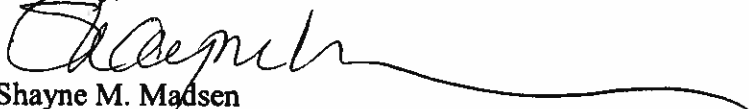
Dear Secretary Gessler:

I have been authorized to add the following party to the list of Petitioners identified in correspondence to you dated February 4, 2011, requesting the issuance of rules:

Colorado Family Action  
Jessica Haverkate  
P.O. Box 558  
Castle Rock, CO 80104

Thank you for your attention to this matter.

Sincerely,

  
Shayne M. Madsen

SMM/sak

cc: Ballot Initiative Access  
Citizens In Charge  
Colorado Public Interest Research Group  
Colorado Union of Taxpayers  
Independence Institute  
Kennedy Enterprises L.L.C.  
Lamm Consulting  
Thaddeus J. Tecza, Ph.D.  
Colorado Family Action  
William A. Hobbs, Deputy Secretary of State ✓  
Maurice G. Knaizer, Esq., Deputy Attorney General