

2011-2012 #85
Appointment of State Nonpartisan
Election Administrator

Original and
Final

Be it Enacted by the People of Colorado:

Article VII of the Colorado Constitution is amended BY THE ADDITION OF THE by the addition of the following subsection:

SECTION 13. STATE NONPARTISAN ELECTION ADMINISTRATOR.

(1) LEGISLATIVE DECLARATION. NOTHING IS MORE IMPORTANT TO OUR SYSTEM OF DEMOCRACY AND THE CONFIDENCE OF THE GOVERNED IN THEIR REPRESENTATIVE GOVERNMENT THAN THE FAIRNESS AND INTEGRITY OF ELECTIONS. UNDER EXISTING LAW, THE SECRETARY OF STATE HAS BEEN ELECTED THROUGH A PARTISAN PROCESS OF NOMINATION AND ELECTION. FURTHER, THAT INDIVIDUAL HAS OFTEN PARTICIPATED IN EVENTS THAT ADVANCE THE INTERESTS OF ONE POLITICAL PARTY OVER ANOTHER OR PROMOTED OR ENDORSED CANDIDATES AFFILIATED WITH HIS OR HER POLITICAL PARTY. THE ROLE OF PREPARING FOR AND CONDUCTING EVEN-HANDED ELECTIONS IS SO ESSENTIAL TO THE PERCEIVED AND ACTUAL LEGITIMACY OF GOVERNMENT THAT IT CAN BEST BE PERFORMED BY A NONPARTISAN ELECTION ADMINISTRATOR WHO OWES NO POLITICAL FAVORS TO ANY POLITICAL PARTY AND HAS NO RECENT PARTISAN RECORD OR POLITICAL OBLIGATIONS. THEREFORE, IT IS THE WILL OF THE VOTERS OF THE STATE OF COLORADO THAT THE ROLE OF THE SECRETARY OF STATE BE LIMITED TO THOSE TASKS IN WHICH PARTISAN PREFERENCES FOR FEDERAL AND STATE OFFICE ARE NOT IMPLICATED. FURTHER, THE VOTERS OF COLORADO SEEK TO HAVE ELECTIONS SUPERVISED BY A WELL-QUALIFIED, POLITICALLY NEUTRAL INDIVIDUAL WHO IS ABLE TO COMPETENTLY AND FAIRLY OVERSEE THE STATE'S ELECTIONS AND CAMPAIGN FINANCE ENFORCEMENT SYSTEM AND IS COMMITTED TO TRANSPARENT ELECTION SUPERVISION.

(2) (a) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, BEGINNING OCTOBER 1, 2013, ALL DUTIES AND POWERS OF THE SECRETARY OF STATE CONCERNING ELECTIONS, INCLUDING BUT NOT LIMITED TO VOTER QUALIFICATION, VOTING LIST MAINTENANCE, PARTICIPATING ON THE STATE TITLE SETTING BOARD, PETITION REVIEW FOR BALLOT QUESTIONS AND BALLOT ISSUES, BALLOT CERTIFICATION, OVERSIGHT OF COORDINATED ELECTIONS, AND ELECTION RESULTS COUNTING AND RECOUNT PROCEDURES, AS WELL AS CAMPAIGN FINANCE ADMINISTRATION, SHALL BE TRANSFERRED TO THE STATE NONPARTISAN ELECTIONS ADMINISTRATOR WHO SHALL HAVE AUTHORITY TO SUPERINTEND ALL STATE ELECTIONS. IN ALL RESPECTS, THE STATE NONPARTISAN ELECTION ADMINISTRATOR AND HIS OFFICE SHALL BE INDEPENDENT OF THE SECRETARY OF STATE.

(b) THE NONPARTISAN ELECTION ADMINISTRATOR SHALL ASSUME THE ROLES OF THE SECRETARY OF STATE AS SPECIFIED IN THE FOLLOWING PROVISIONS OF THIS CONSTITUTION: ARTICLE IV, SECTION 3; ARTICLE V, SECTIONS 1(6), (7) AND 48(1)(E); ARTICLE VI, SECTION 25; ARTICLE XVIII, SECTION 12a (1) AND (2); AND ARTICLE XXVIII, SECTIONS 2(3), 3(13), 4(1), (3), (7), 5(1), 6(1), 8, 9(1)(c), (1)(e), (2)(a), and 10(2)(a), (2)(b)(I), (II), (2)(c). EFFECTIVE OCTOBER 1, 2013, THESE PROVISIONS WILL BE AMENDED BY SUBSTITUTING "STATE NONPARTISAN ELECTION ADMINISTRATOR" FOR "SECRETARY OF STATE."

(c) THE STATE NONPARTISAN ELECTION ADMINISTRATOR SHALL ADOPT RULES AND REGULATIONS WITHIN THE SPECIFIC GRANTS OF AUTHORITY IN THE COLORADO CONSTITUTION AND STATUTE RELATING TO ELECTIONS AND CAMPAIGN FINANCE BUT SHALL NOT EXCEED THAT DELEGATED AUTHORITY.

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ELECTIONS/LICENSING
SECRETARY OF STATE

S. WARD

2:30 P.M.

(d) THE STATE NONPARTISAN ELECTION ADMINISTRATOR SHALL BE EMPOWERED TO EMPLOY PERSONNEL NECESSARY TO EXECUTE THE OBLIGATIONS OF HIS OFFICE, INCLUDING A DEPUTY ELECTION ADMINISTRATOR, AND SHALL BE AUTHORIZED TO HIRE THE CURRENT EMPLOYEES OF THE SECRETARY OF STATE WHO PERFORM THOSE TASKS.

(e) THE STATE NONPARTISAN ELECTION ADMINISTRATOR SHALL BE A NEUTRAL ARBITER IN THE POLITICAL PROCESS AND SHALL NOT UNDERTAKE ANY OFFICIAL ACTION FOR THE PURPOSE OF PROVIDING PARTISAN ELECTORAL ADVANTAGE TO ANY POLITICAL PARTY, OFFICE HOLDER, CANDIDATE FOR OFFICE, OR COMMITTEE. ANY SUCH ACT TAKEN FOR THAT PURPOSE, AS ESTABLISHED IN AN ACTION FILED IN DENVER DISTRICT COURT AND PROVEN BY CLEAR AND CONVINCING EVIDENCE, IS VOID.

(f) THE STATE NONPARTISAN ELECTION ADMINISTRATOR SHALL PROTECT THE CONSTITUTIONAL RIGHT OF EVERY COLORADO REGISTERED VOTER TO CAST HIS OR HER BALLOT.

(3) AS A CONDITION TO APPOINTMENT, THE STATE NONPARTISAN ELECTION ADMINISTRATOR SHALL:

(a) HAVE AT LEAST FIVE YEARS OF EXPERIENCE IN ELECTION ADMINISTRATION;

(b) NOT HAVE PROFESSIONALLY REPRESENTED, BEEN AN OFFICER OF, OR OTHERWISE BEEN EMPLOYED BY A MAJOR POLITICAL PARTY FOR AT LEAST THREE YEARS PRIOR TO NOMINATION; AND

(c) BE A REGISTERED VOTER IN COLORADO PRIOR TO APPOINTMENT.

(4) AFTER APPOINTMENT AND WHILE IN OFFICE, THE STATE NONPARTISAN ELECTION ADMINISTRATOR SHALL NOT:

(a) SERVE AS AN OFFICER OF ANY POLITICAL PARTY;

(b) PUBLICLY SUPPORT OR OPPOSE ANY PARTISAN CANDIDATE FOR FEDERAL, STATE, OR LOCAL OFFICE;

(c) ENGAGE IN PARTISAN POLITICAL ACTIVITY EXCEPT TO REGISTER TO VOTE AND CAST VOTES AT ANY ELECTION; OR

(d) MAKE ANY MONETARY OR IN-KIND CONTRIBUTION TO, OR SOLICIT CONTRIBUTIONS ON BEHALF OF, ANY PARTISAN CANDIDATE FOR ANY FEDERAL, STATE, OR LOCAL OFFICE, OR ANY POLITICAL PARTY.

(5) (a) THE GOVERNOR SHALL APPOINT A STATE NONPARTISAN ELECTION ADMINISTRATOR FROM A LIST OF FOUR NOMINEES, ONE EACH BY THE PRESIDENT OF THE SENATE, THE MINORITY LEADER OF THE SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, AND THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES. EACH PERSON MAKING A NOMINATION FOR THE OFFICE OF STATE NONPARTISAN ELECTION ADMINISTRATOR SHALL HAVE FORTY-FIVE DAYS TO MAKE SUCH NOMINATION FROM THE DAY THAT THE GOVERNOR ANNOUNCES THAT A VACANCY EXISTS IN THAT OFFICE. ANY PERSON AUTHORIZED TO NOMINATE A CANDIDATE FOR THIS OFFICE UNDER THIS SUBSECTION WHO DOES NOT TRANSMIT A WRITTEN NOMINATION LETTER TO THE GOVERNOR'S OFFICE WITHIN THE TIME PERIOD SPECIFIED HEREIN FORFEITS THE RIGHT TO DO SO FOR THAT APPOINTMENT.

(b) THE GOVERNOR SHALL SELECT A NOMINEE WHO MEETS THE QUALIFICATIONS IN SECTION 3 OF THIS ARTICLE WITHIN FIFTEEN DAYS AFTER HE RECEIVES THE LAST OF THE FOUR NOMINATIONS.

(c) THE STATE NONPARTISAN ELECTION ADMINISTRATOR SHALL TAKE THE OATH OF OFFICE UPON CONFIRMATION BY THREE-FIFTHS OF EACH HOUSE OF THE GENERAL ASSEMBLY. BOTH HOUSES SHALL ACT WITHIN THIRTY DAYS AFTER A STATE NONPARTISAN ELECTION ADMINISTRATOR IS APPOINTED BY THE GOVERNOR.

(d) IF THE GOVERNOR FAILS TO APPOINT A STATE NONPARTISAN ELECTIONS ADMINISTRATOR OR IF ONE HOUSE FAILS TO CONFIRM AN APPOINTEE NAMED WITHIN THE TIME PERIODS PROVIDED IN THIS SUBSECTION, THE CHIEF JUSTICE OF THE COLORADO SUPREME COURT SHALL MAKE AN APPOINTMENT FROM AMONG THE NOMINATED CANDIDATES AND SHALL DO SO WITHIN FIFTEEN DAYS AFTER THE GOVERNOR OR THE GENERAL ASSEMBLY FAILS TO SO ACT. THE GENERAL ASSEMBLY SHALL NOT REVIEW, FOR PURPOSES OF CONFIRMATION, AN APPOINTEE NAMED BY THE CHIEF JUSTICE. AN APPOINTMENT UNDER THIS SUBSECTION (D) SHALL NOT REQUIRE RECUSAL BY THE CHIEF JUSTICE IN ANY JUDICIAL APPEAL IN WHICH THE STATE NONPARTISAN ELECTION ADMINISTRATOR IS A PARTY OR OTHERWISE PARTICIPATES IN A PROCEEDING BEFORE THE SUPREME COURT.

(6) (a) THE STATE NONPARTISAN ELECTION ADMINISTRATOR SHALL SERVE A TERM OF FOUR YEARS.

(b) A STATE NONPARTISAN ELECTION ADMINISTRATOR MAY SERVE NO MORE THAN TWO CONSECUTIVE FOUR YEAR TERMS. IN THE EVENT OF A DEATH OR RESIGNATION FROM OFFICE OR A VACANCY THAT IS DECLARED FOR ANY OTHER REASON, THE PERSON WHO IS APPOINTED TO SERVE THE REMAINDER OF THAT TERM SHALL BE DEEMED TO HAVE SERVED A FULL TERM FOR PURPOSES OF THIS SUBSECTION.

(7) (a) THE GENERAL ASSEMBLY SHALL ENACT SUCH LEGISLATION AS IS REQUIRED TO CONFORM THE COLORADO REVISED STATUTES WITH THIS ARTICLE AND MAY ADOPT SUCH ADDITIONAL LEGISLATION AS WILL FACILITATE THE ACHIEVEMENT OF THE PURPOSES OF THIS SECTION.

(b) THE GENERAL ASSEMBLY, OR SUCH JOINT LEGISLATIVE COMMITTEE TO WHICH IT DELEGATES THIS RESPONSIBILITY, SHALL REVIEW ALL ELECTION-RELATED REGULATIONS ADOPTED BY THE STATE NONPARTISAN ELECTION ADMINISTRATOR WITHIN FIFTEEN DAYS OF ADOPTION TO DETERMINE WHETHER THEY COMPLY WITH SUBSECTION (3) OF SECTION 2 OF THIS ARTICLE. REGULATIONS DEEMED TO HAVE EXCEEDED THE STATE NONPARTISAN ELECTION ADMINISTRATOR'S AUTHORITY BY THE GENERAL ASSEMBLY OR ITS DESIGNATED JOINT COMMITTEE ARE VOID UNTIL THEY ARE:

(I) READOPTED IN A FORM THAT IS WITHIN DELEGATED CONSTITUTIONAL OR STATUTORY AUTHORITY; OR

(II) DECLARED TO BE WITHIN SUCH DELEGATED AUTHORITY IN A JUDICIAL REVIEW PROCESS COMMENCED BY THE STATE NONPARTISAN ELECTION ADMINISTRATOR OR ANY PARTY AFFECTED BY THE PROPOSED RULE.

(c) THE GENERAL ASSEMBLY SHALL ESTABLISH AND FUND A SALARY FOR THE STATE NONPARTISAN ELECTION ADMINISTRATORS AS IS COMMENSURATE WITH THE BUDGETARY CAPACITY OF THE STATE AND THE QUALIFICATIONS SET FORTH IN SUBSECTION (A) OF SECTION 3 OF THIS ARTICLE AND MAY USE SUCH STATE

OR NATIONAL DATA AS WOULD INDICATE AN APPROPRIATE SALARY LEVEL. HOWEVER, THE GENERAL ASSEMBLY SHALL NOT REDUCE THE SALARY OF A STATE NONPARTISAN ELECTION ADMINISTRATOR WHO IS CURRENTLY SERVING IN OFFICE.

(d) THE GENERAL ASSEMBLY SHALL ESTABLISH A BIPARTISAN ADVISORY BOARD OF UP TO SEVEN RETIRED STATE OR FEDERAL JUDGES WITH WHOM THE STATE NONPARTISAN ELECTION ADMINISTRATOR MAY CONSULT ON ALL MATTERS OF PROPOSED AND ADOPTED RULES, REGULATIONS, AND POLICIES DEALING WITH ELECTIONS AND CAMPAIGN FINANCE. JUDGES AFFILIATED WITH A PARTICULAR POLITICAL PARTY SHALL NOT CONSTITUTE A MAJORITY OF THE ADVISORY BOARD. THE ADVISORY BOARD MEMBERS SHOULD BE CAPABLE OF PROVIDING LEGAL EXPERTISE ON MATTERS BEFORE THE STATE NONPARTISAN ELECTION ADMINISTRATOR AND SERVE AS ADVOCATES FOR TRANSPARENCY AND ACCOUNTABILITY IN THE CONDUCT OF ELECTIONS. THE PURPOSE OF SUCH BOARD IS TO PROVIDE AN ADDITIONAL PERSPECTIVE TO THE STATE NONPARTISAN ELECTION ADMINISTRATOR WHO HAS FINAL DECISION MAKING AUTHORITY AS PROVIDED BY THIS SECTION. IN ALL MATTERS REQUIRING LEGAL COUNSEL, HOWEVER, THE STATE NONPARTISAN ELECTION ADMINISTRATOR SHALL BE REPRESENTED BY THE ATTORNEY GENERAL. THE PROCEEDINGS OF THE BOARD SHALL BE SUBJECT TO THE OPEN MEETINGS AND OPEN RECORDS LAWS OF THE STATE.

(8) THE STATE NONPARTISAN ELECTION ADMINISTRATOR MAY BE IMPEACHED AS PROVIDED BY SECTION 2, ARTICLE XIII OF THE CONSTITUTION.

(9) THIS ARTICLE SHALL BE EFFECTIVE UPON PROCLAMATION OF THE VOTE OF THE 2012 GENERAL ELECTION BY THE GOVERNOR.

(10) ANY JUDICIAL DECLARATION THAT A PROVISION IN THIS ARTICLE IS INVALID SHALL NOT AFFECT THE OTHER PROVISIONS OR APPLICATIONS OF THIS ARTICLE WHICH CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION. AS A RESULT, THE PROVISIONS OF THIS ARTICLE ARE DEEMED SEVERABLE.