



November 10, 2009

The Honorable Bernie Buescher, Secretary of State  
Department of State  
1700 Broadway  
Denver, CO 80290

**Re: Written Testimony of Colorado Common Cause, Mi Familia Vota, and SEIU**

On behalf of Colorado Common Cause, Mi Familia Vota and Service Employees International Union, I thank the Office of the Secretary of State for providing the opportunity to submit testimony regarding the rules proposed by the Secretary.

Our groups have engaged in a number of projects and programs to increase electoral participation, including filing a lawsuit in the fall of 2008 against the Secretary for improperly and illegally purging voters from the registration lists. Some of the issues involved in our lawsuit are related to some of the proposed rules.

Our comments focus on recommendations for improving the proposed regulations. Generally speaking, the improvements needed pertain to: (1) adequacy of notice to the voter and sufficiency of opportunities to correct any errors; (2) access to information about elections.

**Proposed Rules**

**Rule 2.18.2:** While this rule is an improvement, it does not go far enough in providing the voter notice and sufficient opportunity to correct any erroneous information provided to the Secretary of State. Specifically, the voter should be given the opportunity to confirm where she lives and an explanation of the impact of the failure to do so. The most effective method to accomplish this consists of three components: (1) asking the voter to confirm her address of record if she presents herself to vote at the precinct associated with her address of record, and (2) modifying the confirmation card to make clear that the voter will continue to remain registered at the address of record unless the voter confirms a move to the NCOA-indicated address and (3) sending that confirmation card by forwardable mail. This method covers all bases. If the Secretary has received erroneous information that a voter has moved, the voter can correct that information at the polls. Voters who have indeed moved to the NCOA-indicated address will receive notice that they need to update their record. If a voter moved to the NCOA-indicated address, but moved again and left a forwarding address, the voter will receive information that the address of record needs to be updated when the card is forwarded to the new address.

Obviously, as technology advances and election legislation catches up to this technology, the way we provide notices to voters can be revisited.

We propose the following language:

*2.18.2 (b) Upon receipt of information that a voter may have moved within the county, the voter's record shall be marked "Inactive – NCOA in county" and the new address shall be entered, if provided by NCOA, into the forwarding address field in SCORE. The voter's record (at the pre-NCOA address) shall likewise be marked "Confirm Address" on the precinct list. In accordance with section 1-2-216.5(1), C.R.S., a confirmation card shall be mailed by forwardable mail to the voter at the address provided by NCOA, along with a postage prepaid pre-addressed return form by which the voter may verify or correct the NCOA-indicated address information. The confirmation card shall specifically advise the voter that his or her polling place and precinct assignments will not be updated to reflect the new address as provided by NCOA unless and until the voter confirms the new address information.*

*2.18.2 (c) Upon receipt of information that a voter may have moved out of the county, the record shall be marked "Inactive – NCOA out of county" and the new address shall be entered, if provided by NCOA, into the forwarding address field in score. The voter's record (at the pre-NCOA address) shall likewise be marked "confirm address" on the precinct list. In accordance with section 1 2 216.5(2), c.r.s., a confirmation card shall be mailed by forwardable mail to the voter at the address provided by NCOA, along with a postage prepaid pre-addressed return form preaddressed to the appropriate county clerk and recorder in the new county by which the registrant may transfer his or her voter registration. The confirmation card shall specifically advise the voter of the following: unless and until the voter completes the card and returns it to the clerk and recorder in the new county or otherwise submits a new voter registration form with the new/NCOA address, he or she will remain registered in the county associated with the pre-NCOA address; his or her registration will not be transferred to the county covering the new address as provided by NCOA; and his/her registration in the county associated with pre-NCOA address may be cancelled if the voter does not confirm his or her pre-NCOA address or otherwise appear to vote in the pre-NCOA county within two federal general elections following the date of the confirmation card.*

**Rule 2.19.2:** We fully support the testing of the text and design of the confirmation card to improve the card's usability and minimize voter confusion. That testing should include methods to maximize the card's accessibility to voters who are older, disabled, and/or limited English proficient. Usability testing and redesign, however, should not be a cause for delay because it can occur quickly when election officials are committed to the process. For example, in September of 2009, Minnesota election officials worked with a usability professional association and the Brennan Center for Justice at NYU School of Law to redesign the Minnesota absentee ballot envelope in accordance with usability principles. The process of testing and redesigning the ballot only took a few weeks and changes were made to the ballot envelope that the experts believe greatly improved the ballot envelope's usability to voters. Here we are in November, and the Minnesota election officials are currently preparing that envelope for public comment.

**Rule 2.20:** Changes to both 2.20.1 and 2.20.2 further define the recently created designations: Inactive –NCOA status. This newly created designation occurs when a registered elector fails to vote, and then because the elector failed to vote, the county clerk and recorder compares the address from the elector’s registration record with the United States Postal Service National Change of Address service based on what is sent by the Secretary of State. We support the creation of these two separate designations, and the accompanying change to Rule 2.18.3 that would allow county clerk and recorders to only cancel inactive voters with NCOA out of county status, requiring that inactive voters with NCOA in county status stay registered to vote at their original address unless further information is provided.

We are opposed however to the aspects of Rule 2.20.2, which deprive these inactive voters, whether Inactive - NCOA IN COUNTY status or Inactive - NCOA OUT OF COUNTY of election notices.

First, the Proposed Rule conflicts with existing Colorado law. Section 1-5-206.1(a) of the Colorado Election Code requires that election notices be sent to all inactive electors except if previous communications from the county clerk and recorder were returned as undeliverable. The statute creates no exception for inactive voters whose addresses might be put into doubt by NCOA data, and, therefore, the law clearly requires that all electors in inactive NCOA status receive these notices. The Proposed Rule would create an exception to the policy that all electors should receive election notices that is not found within the statute. We urge the Secretary of State to follow the clear intention of the existing statute that all inactive voters receive election notices except under circumstances where there is already proof that such notices will not even be received by the voter (namely when an earlier mailing has been returned).

Second, it is good public policy to send these electors election notices. Under existing technology, notices are one of the most effective ways to inform and educate the voting public. The Secretary of State has made the policy determination that NCOA information is too unreliable to update the address of record per that data without further confirmation from the electors, while at the same time, inconsistently taking the position that using the existence of that data to justify withholding the mailing of a notice to the address of record.

Finally, per section 1-5-206.1(a), election notices are sent to Inactive voters by nonforwardable mail, so they only provide the election information, including precinct assignment and location, per the elector’s original address. If the elector has not moved, in other words, there is some typo or other error with the NCOA data, then this information is correct and will be received by the elector at their original and correct address. This means that sending election notices to all inactive voters in NCOA status would not provide electors any confusion regarding an elector’s precinct assignment. Those electors that have in fact moved will not receive these notices per the mailing by nonforwardable mail. This is an important safeguard if the NCOA data proves to be wrong.

We recommend changing proposed rule 2.20 to allow the delivery of election notices to inactive-NOCA in county, and Inactive-NCOA out of county.

**Rule 2.22:** We recommend that the rules distinguish between multiple and identical records, for example, a voter who has registered more than once at the address of record because the voter forgot she was registered, and registration records may belong to the same individual, but are not, by definition, duplicates because they are not identical. Accordingly, we propose the following language:

*Rule 2.22 Effective January 1, 2012, no county may consolidate or cancel records as "duplicate" registrations that appear to be the same person at more than one address based upon the list of potential "duplicates" that may be generated through the statewide voter registration database known as "SCORE" within the period beginning ninety (90) days prior to a federal election.*

Common Cause, Mi Familia Vota and SEIU are eager to work with the Secretary on these issues and others. Thank you for this opportunity to testify and hope that these proposals will be swiftly adopted.