

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 and the Vote By Mail Project

Colorado Common Cause is a non-profit organization fighting for open, honest and accountable government. A central mission of Common Cause is to ensure that every eligible voter has the right to vote and the opportunity to exercise that right. Common Cause is committed to strengthening public participation and ensuring that government and the political process serve the public interest.

The Vote By Mail Project provides an institutional home for education and advocacy around the entire continuum of Vote By Mail options. Central to the mission is the belief that fair, efficient, and highly participatory elections make our democracy stronger. The Vote By Mail Project is dedicated to assisting citizens and public officials nationwide to move their states along the continuum towards fair, efficient Vote By Mail elections.

Thank you for the opportunity to provide and for your attention to these comments.

Proposed Rules

Mail Balloting:

Rule 12.4.5 (d) and 12.4.6: Treatment of Inactive- NCOA in county and Inactive – NCOA out of county.

In recent years, the state legislature has taken steps to ensure inactive-fail to vote voters are included in vote by mail elections', recognizing that vote by mail is increasingly becoming the principal way that counties run elections when given the choice. In 2007, the Legislature adopted a law that required counties to mail ballots to all inactive-fail to vote voters in the 2009 election. (CRS 1-7.5-108.5 2b) (I) In connection with any mail ballot election to be conducted in November 2009, a mail ballot shall be mailed to all registered electors whose registration record has been marked as "Inactive – failed to

vote.”) Based on our preliminary analysis, over 2% of the votes cast during the 2009 election were by inactive voters. That’s close to 13,000 votes that might not have otherwise been cast.

When the option for counties to conduct primary election by mail was adopted in 2009, the protection for inactive –fail to vote voters was a prominent part of the debate. HB-09 1015 clearly provided special consideration for inactive-fail to vote voters. During a primary, inactive-fail to vote unaffiliated voters will receive notice of the election by forwardable mail (1-7.5-107 2.3 a) and all inactive– fail to vote voters who are affiliated will be sent a mail ballot packet (1-7.5-107 3 (a) II(a)).

Our concern with these proposed rules is that voters will not receive the special protection the Legislature intended. At the time HB 09-1015 was passed, the newly adopted NCOA status of inactive voters had not been adopted. This new structure now prohibits these same voters from receiving both notice of and mail ballots in these elections.

We recommend changing the rules with respect to these NCOA inactive voters to ensure that they continue, at minimum, to receive election notices about upcoming elections by forwardable mail. We believe that the best policy would be to mail ballot packets to voters at their NCOA updated addresses. We urge the Secretary to work with us, the County Clerks, and other interested parties to find an appropriate resolution to this challenge. We believe we can find a resolution to ensure that eligible voters also receive ballots in an all mail election.

Rule 12.3.4 (B) – Because public comment is such an important component to the decision to conduct an election by mail, we urge the Secretary to extend the public comment period to 10 business days. See also Rule 7.5 regarding notice and comment for when the decision to use Vote Centers are contemplated.

Rules 12.4. Mail Ballot Plans: We appreciate the details laid out currently, and recognize that some of our recommendations may be addressed in other rules, but believe the mail ballot plans that will be reviewed by the Secretary of State should be comprehensive. To that end, we recommend adding the following requirements to mail ballot plans for coordinated and non-partisan elections, special district elections, as well as for coordinated and non-partisan elections.

- If the mailing will be conducted in-house or by a vendor. Because the vendor plays such a significant role in the mail ballot process, we believe this issue should be addressed in the plan.
- Identify the type of voting system and ballot format to be utilized
- Process for counting ballots, timeline, and personnel plan (ie. paid staff, volunteers)
- Timeline for when lists get pulled for mailing & plan for tracking and sorting changes and duplicate ballots. Detail the date the original mailing list will be created and the process for automatically sending ballots to voters who changed their address after the original mailing list was created and before the registration deadline.
- Plan for transferring return ballot envelopes belonging to other counties.
- Plan for signature verification, in accordance with Rule 29, including who will be involved (paid staff, volunteers) and timeline
- Plan for picking up voted ballots
- Available methods of dropping-off ballots

Proposed new Rules:

Vote By Mail Best Practices Manual: As is done in Oregon, and as required by CRS 1-7.5-105, we recommend that the Secretary of State produce a manual or standard plan for conducting elections by mail. As more and more elections are conducted by mail in Colorado, we should establish best practices for counties to follow.

See Oregon's manual of procedures for conducting an election by mail.

http://oregonvotes.org/vbm/vbm_manual.pdf

Coordination with US Postal Service: Require state and counties officials to work with local USPS to establish timelines and best practices for handling of ballots. plans and best practices . This is a common practice in both Oregon and Washington and should be part of the standard plan required in CRS 1-7.5-105.

Inactive Status: The registration of an elector shall not be moved to inactive during the 60-day period before an election, unless the voter updates their voter registration, notifies election officials that they have moved out of state, or specifically requests a change in status.

Elections personnel and volunteers involved in the counting of ballots: The Secretary should adopt a rule to require that personnel and election volunteers involved in the

processing or counting of ballots are not relatives, defined as a spouse, child, son-in-law, daughter-in-law, parent, mother-in-law, father-in-law, sibling, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, stepparent or stepchild, of a candidate on the ballot at the particular election. Language taken from Oregon rules for the conduct of mail ballot elections and suggested as a best practice.

Voting in person in a mail ballot election

Mail ballot voters who appear in person at a voting location shall be permitted to cast a ballot in accordance with the following provisions:

- Voters who have been issued a mail ballot who appear at a voting location may surrender their mail ballot and vote a regular ballot. The mail ballot must be voided prior to issuing the regular ballot.
- Voters who have been issued a mail ballot, who appear at the polling location shall be permitted to cast a provisional ballot in accordance with section 1-8.5-101(3), C.R.S., if they do not surrender their mail ballot.
- Unaffiliated voters who have not been issued a mail ballot, who appear at their correct polling place in a primary election may affiliate and be issued a regular ballot in accordance with sections 1-7-201 and 1-8.5-101(5), C.R.S.

ID requirements:

Rule 30.1.6 g V – The proposed definition of tribal ID is a welcome change and we support efforts to clarify ID requirements for tribal members.

Clerk Training

Rules 40.3.1; 40.4.1 – We are concerned that SCORE functional training is being moved from a core curriculum to an elective. We are glad to see voter registration issues elevated, but still believe the SCORE functionality, particular because the system is constantly changing or being updated, is critical for election administrators.