January 11, 2010

The Honorable Bernie Buescher
Secretary of State
State of Colorado Department of State
1700 Broadway, Suite 250
Denver, CO 80290

Dear Secretary Buescher:

We appreciate your granting an extension to the public comment period that afforded Coloradans for Voting Integrity the opportunity to submit the following.

We hope that your office will be able to assuage the concerns with the proposed Rule Changes you have submitted for review before they are approved and implemented.

We believe that your willingness to respond to concerns of public interest groups will build voter confidence and improve Colorado's voting process.

We have grown wary of electoral reforms that favor private sector interests more than the public interest.

How might the process of amending Rules 43 and 45 favor private sector interests more than the public interest? For instance, by tying Colorado election equipment to 2002 certification standards in 2010 in order to accommodate vendors' existing equipment and in so doing, replacing a full test regimen. This demonstrates how these Rule Changes and the Colorado Legislature lower the integrity bar.

Given the recommendations of 2009's Election Reform Commission, we wonder why the current proposed Rule Changes miss the opportunity to encourage improvements aimed at more effective and efficient auditing of our elections.

In spite of the electronic poll book debacle of 2006, electronic poll books are not subject to certification rules, even though their mission is critical and the devices are failure prone.

We are concerned that Rule 41.1.14 surrenders the Secretary of State's responsibility and places an incommensurate amount of accountability on employees, contractors, and volunteers.

Voters who choose to register to vote on-line also need to know the risks involved in doing so. Therefore we urge you to add the disclaimer that the Department of Defense uses for electronic

Coloradoans For Voting Integrity (CFVI) is a collection of concerned Colorado citizens dedicated to fair, accessible, and verifiable and verified voting on the state and national level. Board Members: Mary Eberle, President and Acting Treasurer; Joe Richey, Vice President; Margit Johansson, Corporate Secretary; Harvie Branscomb, Web Master; Dave Larson; Angie Layton; Ivan Meek

voting systems deployed for UOCAVA. See “A Threat Analysis on UOCAVA Voting Systems,” Regenscheid and Hastings, NISTIR 7551, December 2008.

Rule 25.2.4: “I also understand that by transmitting my voted ballot by electronic mail, I am voluntarily waiving my right to an anonymous ballot.” [From page 57, Rule 25 of Election Rules of the Colorado Secretary of State As Amended July 11, 2008]

Re: Testing of Election Systems

There is no practical test of the election system in a true election context with meaningful record keeping of all glitches, inconveniences, and necessary workarounds encountered. Such a final test should be performed in a county election office, preferably during a real election. The SOS or VSTL tests provided for in the Rule Changes submitted are partial and incomplete tests done out of proper context. Election officials of average knowledge and experience should be conducting the tests, and not expert election officials who have a vested interest in the passage of the test, observed by the election vendor. The shift to extra participation by vendors is of concern, as their recommendations during the test may produce test conditions that are unlike the typical county election condition.

New voting methodologies such as IRV are not treated in this rule.

New techniques such as making available ballot photographic images as was done successfully in Humboldt County, California, or ballot interpretations (as now required for IRV elections) are not envisioned in these proposed changes.

Public oversight in the proposed certification process is minimal. It is provided in the form of the “public demonstration.” But from previous experience, CFVI recognizes such demonstrations as thin gruel, as are the statutory requirements that VSTL test data be made public because of the inaccessibility of the image-based data.

Given the lack of a proper vehicle for public input into the test process, Rule 45.9.2 needs to add (i) “or substantive evidence presented by representatives or members of the electorate.”

The proposed Rules Changes miss the chance to clarify important definitions, e.g., definitions for ballot image record and ballot interpretation record should be crafted and should not be limited to DRE equipment. Currently, the definition is misleading (see Rule 45.1.3). Failure to improve this definition hinders future single ballot auditing or public verification of election records, which require differentiation between an interpretation and an image.

Also in Rule 45.5.1.3.2, “appropriate engineering standards” are left undefined or referenced.

We also wonder why hand counting in Colorado includes the use of a bar code because such use would be inappropriate.

We wonder what Rule 45.6.2.1.7 means when it says that, “All equipment shall be hardened using the voting system provider’s procedures and specifications.”

Re: Rule 45.6.2.1.1: If this means that vendor-specific decisions will be made throughout the creation of the test plan, then more oversight is required and none is provided; instead, we see a notable lack of provisions for public participation in the certification process.

Rather than be deleted, Rule 45.6.2.2.4 ought to be retained: “All operating steps, the identity and quantity of simulated ballots, annotations of output reports, any applicable error messages, and observations of performance shall be recorded.”

Rule 45.6.2.2.45, which allows for deviating from the test plan so long as a description and reason from the deviation is noted, needs to stipulate that Public Notice of the deviation, its description, and reason be made.

We urge you to review these concerns. The public oversight from organizations like CFVI could provide invaluable recommendations to election officials that would help mitigate threats and mistakes made during our electoral process.

We look forward to follow-up discussions of these and other emerging needs for improving how we vote in Colorado.

Respectfully submitted,

The Board of Directors
Coloradans for Voting Integrity