

OFFICE OF THE CLERK AND RECORDER
ELECTIONS DIVISION

Amber F. McReynolds, Director



Debra Johnson
Clerk and Recorder
Public Trustee

July 25, 2012

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

Re: Notice of Proposed Rulemaking, Election Rules, 8 CCR 1505-1, June 15, 2012;
Revised Draft of Proposed Rules and Revised Statement of Basis, July 18, 2012

Dear Secretary Gessler:

In accordance with the above-referenced proposed rules, I hereby submit the following written comments concerning proposed Rules 10.7, 12.4.1(d), 12.11, 13.19, 26.12 and 26.13.

First, we believe that proposed new Rule 26.12 does not go far enough in ensuring that the election is accurate, secure, and efficient. We recommend that the counties process and reconcile all poll books (electronic and paper), all early voting signature cards, and mail in ballots received to date prior to processing provisional ballots. The new rule proposes that counties process poll books or signature cards before **'tabulating'** provisional ballots, however, we believe this requirement should be modified and require counties to process all poll books and signature cards before any provisional decision codes are entered into the SCORE system.

In Colorado, Denver is the largest county in terms of total registration and historically we have had one of the highest number of provisional ballots to process. Challenges are created when other counties have not reconciled and processed their poll books before processing their provisional ballots or when they start to enter provisional decision codes into the SCORE system before other counties have adequately reconciled their poll books. This creates significant efficiency and operational issues. The rule as proposed will allow counties to begin processing provisional ballots at any time and this has the potential to allow a provisional ballot to be accepted incorrectly in one county and require another county to go back and pull that ballot before it is counted. The number of errors that can occur while administering the process outlined in this proposed rule are significant and we urge the Secretary of State to reconsider this proposed rule so that it complies with best practices established in the field of election administration. We propose the following modifications:

26.12 THE COUNTY CLERK AND RECORDER MUST PROCESS ALL POLLBOOKS (*ELECTRONIC OR PAPER*) OR SIGNATURE CARDS ~~IN THE STATEWIDE VOTER REGISTRATION DATABASE BEFORE TABULATING ENTERING ANY PROVISIONAL BALLOTS- DECISION CODES INTO THE STATEWIDE VOTER REGISTRATION SYSTEM.~~

Furthermore, we believe that proposed new Rule 26.13.2 should be clarified and the word 'envelope' be inserted on line 17 after the word 'ballot.' Also, 26.13.3 indicates that the online system will be available for 30 days after the election, however, when you factor in processing and counting which must be completed fourteen days after election day, it seems that additional clarification is needed to determine if the 30 days starts after the fourteen day requirement or on the day after election day.

Second, we support new Rule 10.7 and it is consistent with our own internal processes that have been in place for years. We consider this to be a best practice and support the process outlined in Rule 10.7.

Third, the amendments to Rule 12.11 create inconsistencies for voters who are active as compared to voters who are inactive. An active voter can request a replacement ballot over the telephone, however, the proposed rule limits that ability for an inactive voter. To ensure consistency, inactive voters should be afforded the same opportunity as active voters have to request a replacement ballot over the telephone.

Finally, we believe that new Rule 12.4.1(d) and new Rule 13.19 are contrary to Colorado Revised Statutes and exceed the Secretary's rule-making authority. We also believe that these particular rules are unreasonable and unnecessary to achieve the Secretary's objective of administering and enforcing existing election laws. There is no statutory support for these rules and the Secretary is attempting to make new law which is clearly the responsibility of the General Assembly. In fact, there is statutory authority to support the opposite interpretation. C.R.S. 1-7.5-107(3)(a)(II)(A) actually requires that ballots be sent to Inactive-Failed to Vote Voters in a Primary Election conducted by mail ballot. Thus, we believe the Secretary, as required in C.R.S. 1-1-103, should construe the requirements set forth in the election code liberally so that all eligible electors may be permitted to vote. We are also concerned about the impact that these rules have on UOCAVA (Unformed and Oversees Citizens Voting Act) voters whose only option is to vote by mail or utilize one of the options provided in lieu of using the mail system.

In addition, our data indicates that many voters are Presidential only electors. We currently have just over 37,000 IFTV voters and of those, 18,539 voted in the 2008 Presidential election. This means that 50% of these voters participated in 2008 and not 2010. This data is a very powerful reason to support a change in the state's current inactive statute. The truth is very simple – turnout is higher in Presidential elections and thus it is unfair to the eligible electors in Colorado for their status, active and PMIV, to be removed for missing one general election. Furthermore, the assumption that IFTV voters

are not there or do not vote is misguided. In Denver in 2011, approximately 12,000 IFTV (or approximately 16% of all IFTV Denver voters) voted in one of the three mail ballot elections conducted that year.

In conclusion, the state's inactive statutory scheme is outdated, inefficient, and very expensive to administer. We hope to see the General Assembly consider a change to the Colorado Revised Statutes next spring, which is the appropriate venue for this issue to be examined and resolved.

I respectfully submit these comments to be entered into the official record for the hearing on July 23, 2012 and hope that the Secretary of State will consider these comments prior to enacting the rules as proposed.

Respectfully submitted,



Amber McReynolds
Director of Elections
Denver Clerk and Recorder's Office