

July 26, 2012

Dear Secretary Gessler:

RE: Proposed Election rule dated, July 18, 2012

Please consider the following comments and recommended changes to your proposed rules dated July 18, 2012. Also, please include this request in the July 23, 2012 hearing record.

Comment

We are very disappointed that the Department did not see fit to explore ways to improve the rulemaking process for this proposed rule. As described in our most recent suggestions for process improvements (Kolwicz to Ms. Staiert dated June 16 and June 21, 2012) the current rulemaking process lacks accountability, debate, and transparency. Consequently, the process is fatally flawed. We strongly recommend that you take steps to repair the process by injecting accountability, debate, and transparency. We suggest that you begin by "harmonizing expectations" as outlined in an earlier letter to you.

Recommended changes to Proposed Rules

Temporary Rule 8.6

This proposal should be dropped. In the first place, it is based on the faulty assumption that Watchers need more laws and rules to protect their ability to perform their duties. This assumption is wrong. Watchers are currently authorized by law to see and hear everything in every election process. This means every election process.

As evidence of this interference we have previously submitted to your office specific documents (2012 Primary Election Watcher reports for U.S. Congressional District 2 Candidate Kevin Lundberg, and for the Boulder County Republican Party.)

Why would the Secretary make a proposal to strip the public of its power to independently verify that elections are fair and accurate?

The problem that needs to be addressed is with the Secretary of State and with County Clerks who cooperatively interfere with watchers (prohibited by law) and disallow watchers from performing their duties. The solution is for the Secretary to ensure that every election plan includes details for how watchers are to be given access to see, hear and inspect records, and for the Secretary to enforce the current laws governing watchers.

Rule 41

This proposal should be dropped. We acknowledge that Colorado Canvass Boards suffer from major problems including non-uniformity and inadequate and ambiguous statutes and rules. However, the proposed rule does not solve these problems, and in fact would make things worse.

The proposed rule is not based on a solid foundation – even the fundamental questions of whether the canvass is to serve as an audit or an accounting function, and whether the Board is to be independent or a puppet of the Clerk has not been debated. To offer solutions before the problem is defined is folly.

After this proposed rule is withdrawn, and before a revised rule is offered, substantial public debate on the issues is mandatory. Since the Colorado Department of State operates as a partner (protector) of the county clerks, rather than a fair representative of the parties most interested in verifying that elections are secure, accurate, and publicly verifiable, and since the Attorney General represents the Secretary of State and not the People in these matters, and since District Attorneys do not enforce election rules, it is imperative that the governance and form of this debate must be established by mutual agreement with deference to the public.

My colleagues and I have substantial hands-on experience with Canvass Boards and Post Election Audits. The recommended public debate must include us. This proposal as written reflects a lack of expertise that is needed to propose a canvassing system that is worthy of public trust.

Rule 2.11.1(b)

The proposed rule provides no mechanism to protect the purity of the election, since it does not provide a way to verify that a change to an elector's voter registration status is made by the real person for whom the change is being made. This would enable others, even computers, to steal the identity of an inactive voter and use this registration to vote in the future. This would enable eligible votes to be cancelled by ineligible votes, disenfranchising eligible electors. Unless a trustworthy way to verify the identity of the person making an online application is established, such online method should be excluded from this proposal.

Rule 12.11.4

As above, the proposed rule provides no mechanism to protect the purity of the election, since it does not provide a way to verify that a change to an elector's voter registration status is made by the real person for whom the change is being made. This would enable others, even computers, to steal the identity of an inactive voter and use this registration to vote in the future. Unless a trustworthy way to verify the identity of the person making an online application is established, such online method should be excluded from this proposal and the written method with verifiable (and verified) identification required must be explicitly required.

Rule 12.4.1

This proposal does not include any provision for public participation in the development and adoption of the mail ballot plan, and must. County plans are based on a superficial model plan which does not address even the most fundamental needs of a mail ballot plan. For example, what "specific election records" will be created and archived during the election? What are names of the "specific election processes" and who is accountable for each? How will problems and complaints be recorded, published and resolved?

Rule 29.1.1

As phrased this rule would enable election officials to call favorites and not call others. The proposal says, "Nothing in this rule prohibits the designated election official from calling the elector ..." The rule must also say that if any elector is called, all electors must be called.

Rule 30.1.6

This proposal does not require that the name, date of birth, and residence address presented on the credentials must match those on the voter registration database. As written, "Joe" can present a valid ID belonging to "Mary" and meet "Joe's" identification requirement. Certainly this is not your intent.

Thank you for your consideration of these comments and recommendations.

Al Kolwicz

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