

Honorable Scott Gessler
Secretary of State
State of Colorado

Dear Mr. Secretary:

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| The undersigned feel strongly that section 41 should be stricken in its entirety. |
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If the Secretary decides not to strike 41 in its entirety, then we address each item and our objections and/or recommended change.

Proposed rule 41.2.2 states:

41.2.2 THE COUNTY CLERK AND RECORDER MAY ACCEPT APPLICATIONS FROM, AND SUBSEQUENTLY APPOINT ADDITIONAL CANVASS BOARD MEMBERS FROM AMONG MINOR PARTY AND UNAFFILIATED ELECTORS.

It is clear from this language that the Clerk will be choosing a representative for the minor political party as a member of the canvass board. We ask the Secretary to consider that there is no statutory authority for such seats and this is a violation of the First Amendment

In *California Democratic Party, et al. v. Jones* 530 U.S. 567 (2000), the SCOTUS ruled

Unsurprisingly, our cases vigorously affirm the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party “select[s] a standard bearer who best represents the party’s ideologies and preferences.” *Eu, supra*, at 224 (internal quotation marks omitted). The moment of choosing the party’s nominee, we have said, is “the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community.” *Tashjian*, 479 U. S., at 216; see also *id.*, at 235–236 (SCALIA, J., dissenting) (“The ability of the members of the Republican Party to select their own candidate . . . unquestionably implicates an associational freedom”); *Timmons*, 520 U. S., at 359 (“[T]he New Party, and not someone else, has the right to select the New Party’s standard bearer” (internal quotation marks omitted)); *id.*, at 371 (STEVENS, J., dissenting) (“The members of a recognized political party unquestionably have a constitutional right to select their nominees for public office”).

We ask the Secretary to strike 41.2.2.

Replace

~~41.2.3 EACH MAJOR AND MINOR PARTY REPRESENTATIVE ON THE CANVASS BOARD MUST BE REGISTERED TO VOTE IN THE COUNTY WHERE THE REPRESENTATIVE WILL SERVE AND AFFILIATED WITH THE PARTY HE OR SHE REPRESENTS.~~

with

41.2.3 EACH CANVASS BOARD MEMBER MUST BE AN ELECTOR IN COLORADO.

What is the harm in letting the state chairs select whomever they wish to the canvass board? Let them select those best able to serve the needs of the state, county, and party. Let the state chairs evaluate the particular skills set needs in each election and appoint the most capable person..

A party may not have adequate availability from which to choose in a field limited only to those members from within a single county's boundary, but the need might be capably filled by someone from a nearby county or otherwise well-known or recommended to the party's county chair, but not a registered member of the party.

Please strike 41.2.4.

~~41.2.4 EACH UNAFFILIATED REPRESENTATIVE ON THE CANVASS BOARD MUST BE REGISTERED TO VOTE IN THE COUNTY WHERE THE REPRESENTATIVE WILL SERVE.~~

Please do not give the county clerks the ability to stack the canvass board with the clerk's friends and neighbors.

As above, we believe that the most qualified person who is a Colorado elector should be eligible for appointment to the canvass board, regardless of party affiliation or county residency.

Please strike

~~41.2.5 IN A CANVASS OF A NON PARTISAN ELECTION, THE COUNTY CLERK AND RECORDER MUST ACCEPT THE APPOINTMENT OF ONE REGISTERED ELECTOR APPOINTED BY ANY PARTICIPATING JURISDICTION, UNLESS THE JURISDICTION FAILS TO SUBMIT A REPRESENTATIVE FOR APPOINTMENT.~~

This could create a canvass board of many people. I, Ralph Shnelvar, have been on a canvass board of seven people and at that size the board was becoming unwieldy.

Also, there is no representation of those opposed to the positions of “participating jurisdictions.”

Please replace

~~41.2.7 IN ALL CASES, THE CANVASS BOARD MUST CONSIST OF AN ODD NUMBER OF MEMBERS, AND EACH MEMBER HAS EQUAL VOTING RIGHTS.~~

with

41.2.7 IN ALL CASES, A MAJORITY OF THE CANVASS BOARD IS DEFINED AS THE NEXT INTEGER GREATER THAN THE NUMBER OF MEMBERS OF THE CANVASS BOARD DIVIDED BY TWO

I would like to suggest that the CURRENT statutory rights of the minor party to have watchers on the canvass board be expanded to provide that any “executive session” of the canvass board must include any minor party authorized watcher desiring to attend.

Rule 8.6 is acceptable without the subsections, but wholly unacceptable with the subsections, all of which serve to attempt to restrict the statutory rights of authorized watchers. That is, as it read before April 2, 2012. Thus it should merely read

8.6 WATCHERS SHALL BE SUBJECT TO THE PROVISIONS OF SECTION 1-5-503, C.R.S.

~~8.6.1 THE "IMMEDIATE VOTING AREA" IS THE AREA THAT IS WITHIN SIX FEET OF THE VOTING EQUIPMENT, VOTING BOOTHS, AND THE BALLOT BOX.~~

~~8.6.2 THE DESIGNATED ELECTION OFFICIAL MUST POSITION THE VOTING EQUIPMENT, VOTING BOOTHS, AND THE BALLOT BOX SO THAT THEY ARE IN PLAIN VIEW OF THE ELECTION OFFICIALS AND WATCHERS.~~

~~8.6.3 WATCHERS ARE PERMITTED TO VIEW THE CONDUCT OF ELECTIONS DESCRIBED ARTICLE I, SECTION 7 FROM A DISTANCE OF SIX FEET UNLESS THE SIZE CONFIGURATION OF THE ROOM DOES NOT ALLOW.~~

~~8.6.4 THE DESIGNATED ELECTION OFFICIAL MAY, WITHIN HIS OR HER DISCRETION, ALLOW WATCHERS WITHIN SIX FEET OF OTHER ACTIVITIES DESCRIBED IN ARTICLE I, SECTION 7 THAT ARE OUTSIDE THE IMMEDIATE VOTING AREA, INCLUDING BALLOT PROCESSING AND COUNTING.~~

Proposed rules 8.6.1 and 8.6.2 have nothing to do with watchers and are taken exactly from section 1-5-503, C.R.S., so should be omitted from Rule 8: Rules Concerning Watchers. These two paragraphs could be recast to clarify that watchers and others (election judges and other voters) should not be able to view the voting machine screen when voters are present in the polling place or overhear conversations between the voter and a voting assistant. If recast, they should be placed in Rule 7.7 (Polling Place Accessibility).

Proposed rules 8.6.3 and 8.6.4 should be entirely struck for all the reasons many testified to in the hearing. We are pleased that no one testified in favor of these two proposed rules.

The context of section 1-5-503, C.R.S., is "PART 5: POLLING PLACE SUPPLIES AND EQUIPMENT"; this context makes clear that the mention of six feet regarding voting equipment, voting booths, and ballot boxes refers to the time when the voter is present in the part of the polling place where the voter is voting the ballot.

Section 1-5-503, C.R.S., does not mention other parts of the polling place, such as where a line of prospective voters may form or where the table with the sign-in slips, pollbook, sample ballots, security sleeves, and ballots is set up. These latter parts of the polling place are where the voter is not in contact with the ballot. The specificity about the polling place in the Part title makes it clear that section 1-5-503, C.R.S., is concerned solely with protecting the voter's privacy in the parts of the polling place where the voter is in contact with the ballot.

Doug Campbell
State Chair, American Constitution Party

Jeff Orrok
State Chair, Libertarian Party of Colorado

Ralph Shnelvar
County Chair, Libertarian Party of Boulder County