



July 26, 2012

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

Dear Secretary Gessler,

Please accept the following as the Jefferson County Clerk and Recorder's written comments regarding the Proposed Secretary of State (SOS) Election Rules scheduled for the hearing on July 23. Jefferson County appreciates the opportunity to submit comments and testimony regarding the proposed rules and is hopeful that the comments will be carefully considered by your office for the final promulgated rules.

Generally, we feel that there are improvements in this draft over the existing rules and they provide important direction in clarifying certain aspects of the statute. Specific comments follow:

Rule 8.6: It is in the best interest of the public process to permit as much accessibility for watchers as possible. Due to the complexity of elections administration, the election officials in the polling places and other election administration areas need the discretion to operate and perform their duties and provide a flexible watching environment while maintaining the integrity of the process. We believe the rule amendment is reflective of that balance.

Rule 13.19: We believe that this clarification accurately represents the legislative history and administrative practice of technical status of voters who receive a ballot in a mail ballot election. This rule does not impact the 2012 Election. Jefferson County has never interpreted the statute either prior to the 2007 statutory change or after 2011 legislative sunset to be discretionary.

Jefferson County leads the state in participation of its citizens in mail and mail-in ballot elections and will continue to support Colorado's model of mail ballot delivery for all elections and understand why the public interest lies in mail ballot delivery to eligible voters. We would support legislation that would support updating statutes to accurately reflect outmoded registration maintenance with the transition to a statewide registration system, maintain a high participation rate in permanent mail ballot registration, and support consistency in ballot delivery for all mail ballot elections across county lines.

Rule 41.1.2: Suggested change to: "CANVASS BOARD" MEANS A COMMITTEE COMPOSED OF THE COUNTY CLERK AND RECORDER AND THE REGISTERED ELECTORS IN ACCORDANCE WITH C.R.S. 1-10-101 THAT RECONCILES THE STATEMENT OF BALLOT FORMS AND CERTIFIES THE ABSTRACT OF VOTES CAST.

Rule 41.2: We support this rule to provide more equitability in appointment of the Canvass Board. The Clerk and Recorder should implement that equitable make-up and we support the inclusion of minor party representatives, unaffiliated members and representatives of coordinating entities in partisan and non-partisan elections. We would suggest an addition of the following: "THE COUNTY CLERK AND RECORDER SHALL ACCEPT THE APPOINTMENT OF THE DESIGNATED ELECTION OFFICIAL OR THEIR DESIGNEE OF AN ENTITY COORDINATING IN A PARTISAN ELECTION UNLESS THE JURISDICTION FAILS TO APPOINT."

**Pam Anderson**  
CLERK AND RECORDER

**Lori Webb**  
CHIEF DEPUTY

**Joshua B. Liss**  
DEPUTY OF ELECTIONS

**Teri Schmaedecke**  
CLERK TO THE BOARD

**Susie Swain**  
DIRECTOR OF RECORDING

**Sharon Carnefix**  
DIRECTOR OF MOTOR VEHICLE

Rules 41.3 through 41.7: We support the clarifications in the proposed rules on the role and responsibility of the Canvass Board, election judges and the designated election official for the certification and transmission of the official abstract. The Canvass Board accounts and reconciles the election process and reports in the certification. This is a separate and distinct legal process from an election contest under the law.

Rule 41.13: Role of Watchers: The proposed rule requires the Canvass Board to grant watchers a “reasonable opportunity” to observe the Board while it performs its duties. A broad term such as “reasonable opportunity” may be met with a wide variety of interpretations and we believe the lack of specificity could lead to more misunderstandings or misinterpretations.

Rule 41.14.1: The Secretary of State by law serves an important role in elections and we agree that at the request of the Clerk and Recorder or majority of the Canvass Board it would be appropriate to provide guidance on the rules for canvass. The Canvass Board is a function of the local election process, however, and should be independent from the state.

Rule 41.14.2: We support broader and improved communication between the Secretary of State and the counties.

With respect to the proposed Rule 41.14.3, in line with statute we urge consideration of the following substitute language:

“ 41.14.3 INSPECTION AND REVIEW OF CANVASS BOARD CERTIFICATION OF IMPERFECT RETURNS PRIOR TO STATEWIDE CERTIFICATION.

(A) AT THE REQUEST OF THE CLERK & RECORDER, THE SECRETARY OF STATE MAY INSPECT AND REVIEW THE COUNTY CERTIFICATION AND OFFICIAL ABSTRACT OF AN ELECTION SUBMITTED WITH IMPERFECT RETURNS THAT MAY HAVE THE POTENTIAL TO AFFECT THE RESULTING OUTCOME OF THE ELECTION. THE SECRETARY OF STATE SHALL ADVISE THE CLERK & RECORDER OF ANY POSSIBLE RESOLUTION OF IMPERFECT RETURNS PRIOR TO STATE CERTIFICATION.

(B) UPON COMPLETION OF THE REVIEW, THE SECRETARY OF STATE WILL PUBLISH A PUBLIC REPORT OF THE REVIEW AND RESOLUTION PRIOR TO STATE CERTIFICATION.”

The suggested language more suitably reflects the statute and the nature of elections administration. Elections are a fundamentally human process and may result in what the statute describes as imperfect returns. It is not unusual for the election official to contact the Secretary of State for advice on the canvass and certification. The Canvass Board certification and abstract is a public accounting of the election. We support that in elections with statewide contests, the Secretary of State may find it appropriate in this specific circumstance to review the election in the event imperfect returns or accounting may impact the outcome of the election. Due to the complexity of statewide system reports and administration and in the event that further resolution prior to statewide certification can be done, it is in the public interest to publish the most accurate accounting of the events and resolution as possible. As the Secretary of State and the counties share administrative responsibilities with the SCORE system, this rule clarification most accurately reflects Colorado’s transition to the statewide system.

The current proposed language suggests an action with no “what might come next”. Our suggestion clarifies that the state-level report may expand transparency in a review of an election prior to the deadline for an automatic or requested recount or in the possible event an elector wishes to exercise a legal contest of the election. However, we believe it is important to maintain a clear distinction between the accounting of canvass, reporting, certification and legal contest under the rules that does not blur the lines of these independent functions and parties responsible for each role under the law. We believe our suggestion more accurately makes those distinctions.

Rule 42.11.2: We support the proposed rule allowing counties to send an emergency mail-in ballot to a voter without seeking, and waiting for, approval from the Secretary of State. These ballots are issued in emergency situations that are sometimes extremely time-sensitive so it is a positive change in removing a potentially time-consuming bureaucratic step that could possibly prevent an eligible voter from timely voting in an election.

Again, we appreciate the opportunity to submit written comments regarding these proposed rules. The draft rules represent improvement, and we are hopeful that our comments will do the same. Our office would be happy to discuss these suggestions with you or your staff should questions arise.

Sincerely,

A handwritten signature in black ink, appearing to read "Pam Anderson", with a long horizontal flourish extending to the right.

Pam Anderson  
Clerk and Recorder  
Jefferson County