



Help Shape Colorado's Election Rules

Topic: Use of Serial Numbers on Ballots

February 1, 2013

What is this about?

On August 20, 2012, Secretary of State Scott Gessler temporarily adopted a new election rule concerning the use of serial numbers on ballots. Temporary New Rule 10.8 expired on December 18, 2012. Because there is a need for a permanent rule to address the use of serial numbers on ballots, our office intends to commence with formal rulemaking as early as the end of February. We invite you to share your thoughts and recommendations as we develop a preliminary draft rule.

Why was Temporary Rule 10.8 necessary?

Secretary Gessler received credible evidence that a unique number or barcode containing a unique serial number printed on the face of a ballot can be used to trace the ballot to the voter who cast it. Considering the approaching Presidential election, the Secretary adopted Temporary Rule 10.8 to ensure that no ballot was printed with a number that could be used for this purpose.

Why does the Secretary need my help?

Secretary Gessler is considering whether to propose permanent adoption of the exact language of Temporary Rule 10.8. The Secretary values your feedback and we would very much like to hear your thoughts. We need your help to identify necessary revisions or additional guidance in order to propose a constructive and comprehensive draft rule for consideration during the rulemaking proceedings. Overall, your opinions and recommendations are invited to help shape Colorado's Election Rules.

Where can I find a copy of the expired Temporary Rule 10.8?

A copy of the August 20, 2012 Notice of Temporary Adoption is attached. Additionally, you will find a copy on the Secretary of State's website at:

www.sos.state.co.us/pubs/rule_making/files/2012/20120820_Election_NoticeTempAdoption.pdf

How do I submit my comments?

You may email your comments to SOS.Rulemaking@sos.state.co.us.

What is the deadline to submit comments?

To ensure consideration of your comments before the proposed draft is issued, we must receive your comments by February 18, 2012.

Will my comments become part of the official record for the anticipated rulemaking?

Yes, we will incorporate your comments into the official record when we commence with formal rulemaking. Our office will identify your comments as information received in anticipation of

rulemaking to support the development of the proposed draft rule. Please note that you will have an additional opportunity to provide testimony and/or written comments regarding the proposed rule during the rulemaking proceeding.

To promote transparency and to help generate discussion, our office will post a copy of your comments on the Secretary of State's website. We appreciate privacy concerns and will redact personal contact information that may appear in your comments prior to posting (including home address, personal email address, and telephone number). To view the comments that we receive, please visit: www.sos.state.co.us/pubs/rule_making/ruleComments.html



Notice of Temporary Adoption

Office of the Secretary of State Election Rules 8 CCR 1505-1

August 20, 2012

I. Adopted Rule Amendments

As authorized by Colorado Elections Law¹ and the State Administrative Procedure Act², the Colorado Secretary of State gives notice that the following amendments to the Election Rules³ are adopted on a temporary basis and immediately effective.

(Additions to the current rules are reflected in SMALL CAPS and deletions from current rules are shown in ~~stricken type~~. Annotations may be included):

New Rule 10.8 is adopted as follows:

10.8 USE OF SERIAL NUMBERS ON BALLOTS.

10.8.1 EXCEPT FOR BALLOTS SENT TO MILITARY OR OVERSEAS ELECTORS BY ELECTRONIC TRANSMISSION UNDER RULE 25.2.7, NO COUNTY MAY PRINT A BALLOT FOR USE IN A STATE OR FEDERAL ELECTION THAT HAS EITHER A UNIQUE OR SEQUENTIAL NUMBER, OR A BARCODE CONTAINING A UNIQUE OR SEQUENTIAL NUMBER, EXCEPT ON THE REMOVABLE STUB.

10.8.2 AFTER ELECTION JUDGES HAVE DISASSOCIATED A VOTED BALLOT FROM ITS ENVELOPE AND THE STUB IS REMOVED, THE COUNTY MAY WRITE OR PRINT UNIQUE OR SEQUENTIAL NUMBERS ON THE VOTED BALLOT FOR AUDITING AND ACCOUNTING PURPOSES, INCLUDING DUPLICATION OF DAMAGED BALLOTS AND RISK LIMITING AUDITS.

10.8.3 FOR ANY ELECTION HELD ON OR BEFORE AUGUST 20, 2012, THE COUNTY MUST REDACT ANY UNIQUE OR SEQUENTIAL NUMBERS, OR BARCODES CONTAINING UNIQUE OR SEQUENTIAL NUMBERS, BEFORE PROVIDING BALLOTS IN RESPONSE TO A REQUEST FOR INSPECTION UNDER CORA (SECTION 24-72-205.5(4)(B)(II), C.R.S.).

¹ Sections 1-1-107(2)(a) and 1-1.5-104(1)(e), C.R.S. (2011).

² Section 24-4-103, C.R.S. (2011).

³ 8 CCR 1505-1.

II. Basis, Purpose, and Specific Statutory Authority

A Statement of Basis, Purpose, and Specific Statutory Authority follows this notice and is incorporated by reference.

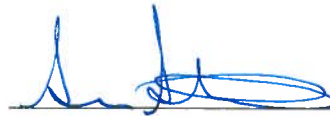
III. Statement of Justification and Reasons for Adoption of Temporary Rules

A statement of the Secretary of State's findings to justify the immediate adoption of these new rules on a temporary basis follows this notice and is incorporated by reference.⁴

IV. Effective Date of Adopted Rules

These new rules are immediately effective on a temporary basis.

Dated this 20th day of August, 2012,



Suzanne Staiert
Deputy Secretary of State

For

Scott Gessler
Colorado Secretary of State

⁴ Section 24-4-103(6), C.R.S. (2011).



Statement of Basis, Purpose, and Specific Statutory Authority

Office of the Secretary of State Election Rules 8 CCR 1505-1

August 20, 2012

I. Basis and Purpose

This statement explains amendments to the Colorado Secretary of State Election Rules. The amendments are intended to ensure uniform and proper administration, implementation, and enforcement of Federal and Colorado election laws.¹ The revisions are also intended to improve elections administration in Colorado and to increase the transparency and security of the election process.

The Secretary has received credible evidence that a unique number or bar code containing a unique serial number, printed on the face of a ballot can be used to trace the ballot to the voter who cast it. The purpose of this rule is to ensure that no ballot is printed with a number that can be used for this purpose. While there may be technological means of randomizing the numbers, it is essential that all Colorado voters have confidence in the processes and procedures for the upcoming Presidential election.

After voted ballots have been separated from return envelopes and the ballot stubs are removed, unique numbers may be used for accounting and auditing purposes, including risk limited auditing and duplication of damaged ballots. The rule also requires that counties redact unique numbers or barcodes containing unique numbers from any ballots printed before the adoption of the rule that are provided in response to a request under the Colorado Open Records Act.

II. Rulemaking Authority

The statutory and constitutional authority is as follows:

1. Section 1-1-107(2)(a), C.R.S., (2011), which authorizes the Secretary of State “[t]o promulgate, publish and distribute...such rules as the secretary finds necessary for the proper administration and enforcement of the election laws.”

¹ Article VII of the Colorado Constitution, Title I of the Colorado Revised Statutes, and the Help America Vote Act of 2002 (“HAVA”), P.L. No. 107-252.

2. Section 1-1.5-104(1)(e), C.R.S., (2011), which authorizes the Secretary of State to “[p]romulgate rules in accordance with article 4 of title 24, C.R.S., as the secretary finds necessary for proper administration and implementation of [the “Help America Vote Act of 2002”, 42 U.S.C. 15301-15545].”
3. Section 1-5-407(7), C.R.S. (2011), which states that “[n]o printing or distinguishing marks shall be on the ballot except as specifically provided by [the Uniform Election Code].



Statement of Justification and Reasons for Adoption of Temporary Rules

Office of the Secretary of State
Election Rules
8 CCR 1505-1

August 20, 2012

New Rule 10.8

In accordance with Colorado election law,¹ the Secretary of State finds that certain amendments to the existing election rules must be adopted and effective immediately to ensure the uniform and proper administration and enforcement of Colorado election laws during the 2012 election cycle. Temporary adoption is necessary both to comply with law and to preserve the public welfare generally.

The Secretary of State anticipates commencement of formal rulemaking in accordance with the State Administrative Procedure Act² in the near future to consider adoption of these amended and new rules on a permanent basis. Adoption of the rules on a temporary basis, however, is necessary to provide clear guidance to county clerks given the close proximity of the 2012 General Election.

For these reasons, and in accordance with the State Administrative Procedure Act, the Secretary of State finds that adoption and immediate effect of the amendments to existing election rules is imperatively necessary to comply with state and federal law and to promote public interests.³

¹ Sections 1-1-107(1)(c), 1-1-107(2)(a), 1-1.5-104(1)(e), C.R.S. (2011). The Secretary of State has the power “[t]o promulgate, publish, and distribute...such rules as [the Secretary] finds necessary for the proper administration and enforcement of the election laws” and “...[the “Help America Vote Act of 2002”, 42 U.S.C. 15301-15545]....”

² Section 24-4-103(3)(a), C.R.S. (2011).

³ Section 24-4-103(3)(6), C.R.S. (2011).