



August 7, 2013

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

**Re: Working Draft of Election Rules Recodification**

Dear Secretary Gessler:

Common Cause is a nonpartisan, nonprofit organization that is dedicated to restoring the core values of American democracy, reinventing an open, honest and accountable government that serves the public interest, and empowering ordinary people to make their voices heard in the political process. We appreciate the opportunity to comment on the preliminary working draft of the recodification of the election rules.

We recognize the significant effort by the staff of the Elections Division in drafting this recodification. Our initial comments highlight sections where we believe the intent of the draft rule is not entirely clear or appears to be in conflict with statute, recognizing that the draft published on July 26, 2013 is preliminary and revisions are ongoing.

**Rules Regarding Election Complaints (page 3, line 14; pages 88-90)**

Common Cause would encourage the redrafting of proposed rules 1.1.12 and 13.1 to make clear that definition of election complaint does not include campaign finance complaints filed under Article 45 of Title 1.

We would also urge that the rules published for formal rulemaking do not include 13.2.1, as it is conflict with the appellate court ruling in *Marks v. Gessler* regarding standing to file HAVA complaints.

**Rules Regarding Identification for Voter Registration (p 8, line 34)**

Please provide additional information about the intent of rules 2.3.1 and 2.3.1 (A). Is the word 'verifiable' only in reference to "driver's license" or is it intended that a process to verify social security numbers would be adopted? What is the definition of 'verifiable'? Is it the intent of this rule that the verification of driver license numbers would happen through the interaction between SCORE and the Department of Revenue databases or is some other verification process contemplated?

For rule 2.3.1 (A), in addition to the questions posed above regarding the use of “verifiable”, we would request that the phrase “when registering to vote” be stricken from the rule. The requirement to show identification if not provided when registering to vote is limited to voting, not applicable to registration.

**Rules Regarding List Maintenance and the National Voter Registration Act (p 14, line 26)**

Common Cause would encourage the Department of State to strike the phrase “or PROVIDES THE CLERK WITH a postcard notice of mail forwarding.” House Bill 13-1303 establishes a process for how National Change of Address information can be used to update a voter’s record. According to that process, the only time NCOA data would be used to mark a voter’s record as Inactive is if the data indicated that the voter had moved out of state. Otherwise, the voter would remain active and be sent the appropriate notice depending on if the address had been updated (for moves within the county) or not (for moves out of county within the state).

For 2.13.2 (A), please provide additional context about the use of the “inactive- NCOA” code versus the “inactive- returned mail” code. Is the intent of the rule that “inactive- NCOA” would be used for those voters who moved out of state according to the NCOA data?

**Reasonable Business Hours at Voter Service & Polling Centers (p 45, line 14)**

For consistency and maximum opportunity for voter participation, we urge the Secretary of State to define reasonable business hours in rule 7.7.1 (A) as a minimum of eight hours per day for every day that a Voter Service & Polling Center is open, rather than establishing shorter minimum hours for Saturday voting. We support the rule establishing a minimum and allowing counties to increase their hours as is required to meet the needs of their voters.

**Voter Check-In at Voter Service & Polling Centers (p 45, line 34)**

We would encourage the Department of State to incorporate the work of the Business Practice Subgroup of the Colorado Voter Access & Modernized Elections Commission in establishing the check-in process in rule 7.7.3. That group has spent significant time thinking about how to establish a process at Voter Service & Polling Centers that creates consistency in voter treatment throughout the state while allowing counties of different sizes the flexibility to implement the Voter Service & Polling Center model effectively.

**Voter Service & Polling Center Connectivity (p 47, line 21)**

The proposed rule 7.9.1 appears to be in conflict with the provision of C.R.S. 1-5-102.9(3)(f), which gives counties with between ten-thousand and twenty-five thousand active electors the ability to request a waiver of the connectivity requirements upon demonstration of hardship and Secretary of State approval of a plan to conduct real-time verification of voter eligibility.

If “realtime access” in 7.9.1 is intended to include the process for waivers contemplated in statute, we would encourage the State to make the clear. If that was not the intent, we would encourage the State to incorporate that process.

**Provisional Balloting (p 113, line 4)**

Proposed rule 17.1.2 appears to be in conflict with C.R.S. 1-5-102.9(3.5), which states that a voter is offered a provisional ballot only if “there are technical problems accessing the centralized statewide voter registration system... and his or her eligibility cannot be verified by a Voter Service and Polling Center Election Judge after the judge contacts the county clerk and recorder by telephone or electronic mail, if practicable...”.

Thank you for the opportunity to provide feedback on the preliminary rules. Please let me know if you would like additional information about any of the comments above.

Sincerely,

A handwritten signature in black ink, appearing to read 'E Nunez', with a long horizontal flourish extending to the right.

Elena Nunez  
Executive Director  
Colorado Common Cause  
1536 Wynkoop St., Suite 302  
Denver, CO 80202  
(303) 292-2163 w | (720) 339-3273 c  
[enunez@commoncause.org](mailto:enunez@commoncause.org)