

October 1, 2013

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

**Re: Proposed Rulemaking Relating to Election Rules Recodification**

Dear Secretary Gessler:

The following comments are presented on behalf of the organizations identified below. We appreciate the opportunity to comment on the proposed recodification of the election rules.

We recognize the significant effort by the staff of the Elections Division in drafting this recodification. Our comments relate to particular provisions of the proposed rules about which we have a substantive concern, and in some instances, restate concerns earlier expressed by Colorado Common Cause with regard to the preliminary draft of the rules issued on July 26, 2013. We also have included an addendum at the end that lists instances where we believe there are or may be incorrect cross references to rules or statutes, as well as some minor editing issues. The referenced rule numbers relate to the proposed rules as amended on September 26, 2013.

**Rule 1. Definitions**

With regard to **rule 1.1.21** defining “Inactive Status”, we believe the definition is overbroad. While some mail ballots and confirmation cards may be returned as undeliverable, resulting in the voter being marked as Inactive, there is a clear exception to this process. Under the Colorado Voter Access and Modernized Election Act (“COVAME”), a voter’s record should not be marked inactive if it appears from an NCOA search that they have moved between counties in the State of Colorado, and that is the reason that a mail ballot or confirmation card has been returned as “undeliverable”. See C.R.S. Section 1-2-302.5. Their record is only marked as “Inactive” if they have moved outside the state of Colorado.

**Rule 2. Voter Registration**

With regard to **rule 2.3, on line 26**, we believe a reference to a state identification card should be inserted after the word “license”.

With regard to **rule 2.3.1(B)**, we believe this provision is inconsistent with C.R.S. Section 1-1-104(19.5)(a)(VII). The statute provides that any “government document that shows the name and address of the elector” is a valid form of identification for voting purposes. The Secretary does not have the authority to pick and choose which government documents, that otherwise meet these requirements and are current, will be accepted as valid identification for voting purposes.

We urge the Secretary to list the items in rules 2.3.1(A)(1), (2) and (3) as separate forms of identification, unrelated to the provisions of C.R.S. Section 1-1-104(19.5)(VII).

With regard to **rule 2.4.4**, we believe that the current rule allowing a voter to use a suspended driver’s license as a valid form of identification for voting should not be struck.

With regard to **rule 2.13.2(A)(2)**, we believe the words “county or” should be stricken from the first sentence of this rule. This proposed rule is not consistent with the provisions of C.R.S. Section 1-2-302.5.

With regard to **rule 2.14.2**, we believe the requirement to “verbally confirm each elector’s name and residential address” could constitute a violation of the voter’s privacy. There should not be a requirement of an announcement. If the intent is to have the voter confirm that their information is correct as entered, then that can be done without an announcement or “verbal confirmation”.

### **Rule 7. Elections Conducted by the County Clerk and Recorder**

With regard to **rule 7.5.4**, we believe that it would be best to require county clerks to monitor all ballot drop off locations regularly and to take action to ensure that such drop off boxes do not overflow by emptying and collecting ballots and entering them into SCORE. This approach will eliminate specific standards that in any particular county at any particular time during the early vote and Election Day window might be too frequent or not frequent enough.

With regard to **rule 7.8.1**, we believe that, for consistency and maximum opportunity for voter participation, the Secretary of State should define reasonable business hours 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.

With regard to **rule 7.8.3**, we would encourage the Department of State to incorporate the work of the Business Practice Subgroup of the COVAME Commission in establishing the check-in process in rule 7.8.3. 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.

With regard to **rule 7.10.1**, the proposed rule appears to be in conflict with the provisions 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” as used in rule 7.10.1 is intended to include the process for waivers contemplated in statute, we would encourage the Department of State to make that clear. If that was not the intent, we would encourage the Secretary to incorporate that process.

### **Rule 14.Voter Registration Drives**

With regard to **rule 14.2.2**, we believe that this rule is in excess of the Secretary’s authority. Under Section 1-2-701, C.R.S., the Secretary has the authority to require training of voter registration drive organizers, not circulators. The new training requirements for circulators are beyond the scope of the Secretary’s authority and if implemented, will significantly burden and obstruct the ability of voter registration drive organizers to carry out their mission and impede the registration of eligible citizens to vote.

### **Rule 17. Provisional Voting**

With regard to **rule 17.1.2**, we believe the proposed rule is 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 proposed rules. Please let me know if you would like additional information about any of the comments above.

Sincerely,



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**Addendum**  
**Based on September 26, 2013 Draft of Proposed Rules**

<b>Rule</b>	<b>Comment</b>
2.9.2	The rule referenced in the section should be Rule 2.7, not Rule 2.5
2.13.4	The reference in the second line of the rule to Rule 2.11.2 is incorrect.
6.4	The second “A” in the second line should be deleted.
7.5.8	The reference to Section 1-7.5-107(4)(B) should be Section 1-7.5-107(4)(b)(I)(B).
7.8.1(C)	The reference to Section 1-2-509 is incorrect. It should be Section 1-5-102.9
7.9.1	The Section referenced in brackets at the end of the proposed rule is incorrect.
9.1	The reference to Section 1-9-203(3)(a)-(e) should simply be a reference to Section 1-9-203 as the current reference only covers residency challenges.
16.1.9	Insert the word “of” between “number” and “ballots”
20.4.3(C)	The reference to Rule 20.5.3 is incorrect. There is no Rule 20.5.3.
20.7.1	The word “the” is duplicated in the first sentence after the word “enters”.
20.10.1	The reference to Rule 21 is incorrect.
20.16.3	The reference to Rules 20.4 and 20.5 is incorrect.