

DELIVERED VIA EMAIL

July 3, 2014

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

Re: Rules Concerning Elections, 8 CCR 1505-1

Colorado Common Cause is a non partisan, 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.

New Era Colorado Foundation is a non partisan, nonprofit organization that was founded to engage, educate, and train the next generation of active citizens and leaders in Colorado through: 1) civic engagement (including voter education, registration, and turnout); 2) leadership development; and 3) issue advocacy.

Thank you for the opportunity to comment on the proposed rules. Colorado Common Cause has separately filed comments on certain rules. At this time, we jointly submit comments on the proposed changes to the rules identified below:

Regulation of Voter Registration Drives

Rule 2.1.6 When they are registering voters, Voter Registration Drives (VRDs) are engaging in activity protected by the First Amendment of the U.S. Constitution and Article II, Section 10 of the Colorado Constitution, and the National Voter Registration Act (NVRA), 42 U.S.C. § 1973gg-4(b). The Secretary would be incorrect in any belief that eliminating this rule provides a lawful basis for the prohibition of voter registration activity by voter registration drives within the 22 days before an election.

Rule 14.4.6 Colorado's statutes do not forbid VRDs from conducting voter registration activity within 22 days of an election, and indeed, could not be read that way because such a prohibition on, among other things, core political speech, expressive activity, and associational rights would be unconstitutional and a violation of the NVRA. The Secretary would be incorrect in any belief that adding this rule provides a lawful basis for the prohibition of voter registration activity by voter registration drives within the 22 days before an election.

List Maintenance Measures

Rule 2.13.3 The rule as written inaccurately represents the requirements of the NVRA. The relevant NVRA procedure affords voters two mechanisms to avoid removal after an NVRA confirmation card has been sent: (1) voting or appearing to vote within two federal elections, or (2) responding to the confirmation card. **Rule 2.13.3, subsection (b) should be revised to reflect accurately the NVRA's protections.**

Rule 2.13.5 The NVRA prohibits systematic removal from the statewide voter registration list within 90 days of a primary or general election for federal office. Rule 2.13.5 was consistent with that federal prohibition. Eliminating Rule 2.13.5 will, in no way, eliminate Colorado's legal obligations to adhere to the NVRA. **Rule 2.13.5 should not be deleted.**

Thank you for the opportunity to comment.

Please contact our lawyers Robert A. Atkins at Paul, Weiss, Rifkind, Wharton & Garrison LLP (ph: (212) 373-3183; email: ratkins@paulweiss.com), or Myrna Pérez at the Brennan Center for Justice at NYU School of Law (phone: (646) 292-8329; email: myrna.perez@nyu.edu) if you would like additional information.

Sincerely,

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