



July 3, 2014

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

**Re: Solicitation of Comments Concerning Possible Permanent Rulemaking Related to Election Rules**

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 possible permanent rules relating to the conduct of elections in Colorado.

We have the following comments on the Working Draft of Proposed Rules issued on June 26, 2014:

**Rule 4.1.3:** Insert the word “day” after the “70<sup>th</sup>” on line 10.

**Rule 7.2.6:** We have concerns about adding certain election offenses for inclusion as part of the affirmation signed by the voter on the mail ballot envelope. If the Secretary of State believes that the requirements of C.R.S. 1-13-712 and 1-13-713 need to be highlighted in some way, we believe ballot instructions that notify voters not to show their marked ballot to another person and inform them that intimidation is unlawful would be more appropriate ways to convey this information. In addition, this rule as drafted is overly broad in that it can be read to require that voters are not allowed to cast a ballot unless they are alone, which is not what the statute requires and would be a violation of citizens’ association rights.

**Rule 9.2.:** We have a number of problems with this rule. First, it proposes to use Section 1-9-201 C.R.S., which clearly contemplates in-person challenges at a polling location, as a basis for challenging mail ballots. The result is that significant due process rights are denied any voter whose ballot is challenged.

Second, apart from a challenge based on signature verification, there is no delineation of the possible bases for a challenge or the process for making such a challenge to a mail ballot. By referring to Section 1-9-201, C.R.S., there is an implication that challenges could be made on the

basis of age, residency or citizenship. However, unlike the situation contemplated by that section, there is no voter present to answer questions or to affirm his or her qualifications to vote. This denial of due process, even if done by two election judges of different party affiliations, is impermissible.

Third, parts of this proposed rule speak specifically to signature matching issues and other parts speak to unspecified challenges. The process for dealing with signature matching and voter affirmation of their ballot is covered already in statute. By combining them, there is confusion created about what the permissible bases are for challenging a mail ballot.

Finally, Section 1-9-207, C.R.S. addresses challenges to ballots cast by mail, and already provides a basis for processing such challenges. If the Secretary of State's office believes that this statute is not adequate, it should work with the General Assembly to modify the mail ballot challenge statute. It is not appropriate for the Secretary of State to legislate via rulemaking to create a mail ballot challenge process that is not supported by the law.

**Rule 13.2.7:** Under Section 1-1.5-105(2)(j), resolution through alternative dispute resolution of a complaint that is unresolved after 90 days is to take place within 60 days. The proposed rule contemplates an unknown number of days before resolution, as the only requirement is that the Secretary issue a ruling within 60 days of receiving the report from the alternative dispute resolution agency. This is not what is contemplated by the statute and only serves to delay resolution of important election complaints.

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

Sincerely,

Elena Nunez  
Executive Director  
Colorado Common Cause  
1536 Wynkoop St., Suite 300  
Denver, CO 80202  
(303) 292-2163 w | (720) 339-3273 c  
[enunez@commoncause.org](mailto:enunez@commoncause.org)