

August 11, 2014

Dear Secretary Gessler:

**I am writing to oppose the proposed election rule 9.2.** I am a voter in Denver County, and have had experience since 2012 as a poll monitor and sometimes watcher in mail ballot processing facilities in many Colorado counties. Government accountability in elections administration means not only providing security and integrity in the voting and ballot counting processes, but not disenfranchising eligible voters whose voices should be heard and counted. Election Day is the one day when we are all equal and we vote with the belief in a system that will fairly count our votes – that is why we as a society agree to abide by the results even when our favored candidate or position loses the election.

Proposed election rule 9.2 attempts to implement by administrative regulation an idea which failed as legislation. (Legislative materials attached and submitted for the rulemaking record). SB14-079 was introduced in the 2014 General Assembly and supported by the Secretary's office. At a Senate State, Veterans and Military Affairs Committee hearing on January 27, 2014 many individuals and representatives (including myself) testified regarding the proposed legislation – which is almost identical in wording as proposed election rule 9.2. Those testifying in favor of bill cited signature discrepancies and ballot duplication problems in a 2013 Broomfield election. However, the proposed process for mail ballot challenges in SB14-079 – and now proposed rule 9.2 – do not actually address that problem.

Rule 9.2 proposes a new vague challenge process for mail ballots that creates the likely possibility that an eligible Colorado voter will be disenfranchised without any chance to comment or refute the allegations. Indeed it appears challenged voters would not even be notified that their vote was not counted. The risks of such a proposal clearly outweigh any flaws in our current challenge process for mail ballots.

Currently, under C.R.S. § 1-9-207, mail ballots can be challenged using the challenge form for a variety of reasons. Before any decision is made, the challenged voter has a chance to provide an affidavit regarding the allegations. Some challenged mail ballots are not counted after review of the voter's affidavit, but others are verified and counted. However, all materials for all challenged ballots are forwarded to clerk for further review after election, and possible prosecution if warranted.

In contrast, the proposed rule allows any person to challenge a mail ballot on the basis that the voter is not eligible to vote on one or more ballot issues/candidates, but does not require these challenges have a factual basis or include facts supporting this challenge. Plus, the process takes away the ability of the voter to be notified or respond to the challenge to their eligibility. A challenge would take place in the mail ballot processing center, outside the challenged voter's presence, and is resolved without contacting that voter. Instead, after a vague "review" process, that voter's ballot could be not counted based merely on one-sided allegations. Indeed, it is

unclear from the rule whether the voter would even be notified that the ballot was not counted – they might just continue on under the misguided assumption that their vote counted.

The process is unclear and confusing in a number of ways:

(1) What facts, evidence or information will the election judge team have access to for review of eligibility questions based on residency, citizenship, or age? My experience in mail ballot processing facilities is that election judges have appropriate limited resources available for signature verification, but do not have residency, citizenship and other personal data for every voter at their disposal. For voter privacy reasons, the same election judges who review signatures do not have access to the ballot itself – which would be needed to review eligibility for residency on certain ballot questions.

(2) What happens if there is a disagreement in the bipartisan team who is “reviewing” eligibility? The proposed rule only contemplates that election judges will agree on the eligibility determination and does not state what must happen for a “split” vote. Will the vote be counted?

(3) Is there any recourse for an eligible voter who is disenfranchised by this process that resulted in not counting their vote without notice or ability to respond?

Our current process is secure and includes highly trained election judges who conduct signature verification in teams. I’ve witnessed the process which has many safeguards and numerous checks on signatures and dispute resolution teams already built into the process. The proposed rule would add unlimited challenges with unclear additional steps which will slow down the process of mail ballot processing without adding any additional expertise or insight into mail ballot processing.

These concerns and others resulted in the legislation not advancing in the General Assembly. Without legislative change to C.R.S. §1-9-207, it is doubtful whether the proposed rule procedure can be adopted by the Secretary as it appears to contradict the statute. For these reasons, I urge the Secretary to reject proposed rule **9.2**.

Thank you for your consideration.

Sincerely,

Peg Perl

Second Regular Session  
Sixty-ninth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 14-0610.01 Bob Lackner x4350

SENATE BILL 14-079

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SENATE SPONSORSHIP

Harvey,

HOUSE SPONSORSHIP

(None),

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Senate Committees  
State, Veterans, & Military Affairs

House Committees

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A BILL FOR AN ACT

101 CONCERNING THE OPPORTUNITY TO CHALLENGE A BALLOT TO BE CAST  
102 BY MAIL.

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Bill Summary

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills summaries>.)*

The bill allows any individual, including an individual performing the function of a watcher, to challenge a mail or mail-in ballot that has been provided to an elector. A challenge brought under the bill may address, among other matters:

! The elector's eligibility to vote on one or more ballot issues,

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

ballot questions, or candidate races on the ballot; and

! The signature on the mail or mail-in ballot return envelope.

If an individual challenges a mail or mail-in ballot, the election judge is required to forward the challenged ballot to 2 other election judges of different political party affiliations who are required to review either the elector's eligibility to vote on the ballot issues, ballot questions, or candidate races on the ballot that is the subject of the challenge or the elector's signature in the statewide voter registration database (database), as applicable.

The bill specifies certain consequences depending upon the review of the challenge. Specifically:

! If both other election judges determine the elector should not have been able to vote on a particular ballot issue, ballot question, or candidate race that is the subject of the challenge, the judges are required to count only those ballot issues, ballot questions, or candidate races on which the elector cast a vote for which he or she was legally eligible to vote. If both other election judges determine the elector was not eligible to vote for any ballot issues, ballot questions or candidate races that are on the ballot, the judges shall not count the elector's ballot in its entirety.

! If both other election judges determine the signature on the election ballot does not match the elector's signature in the database, the judges are required to follow existing statutory procedures for verifying a signature.

! If both other election judges determine the elector is eligible to cast a mail or mail-in ballot in the case of a challenge to his or her eligibility or that the elector's signature is valid in the case of a challenge to the elector's signature, the judges are required to count the elector's mail or mail-in ballot.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **repeal and reenact,**  
3 **with amendments,** 1-9-207 as follows:

4 **1-9-207. Challenges to mail or mail-in ballots.** (1) ANY  
5 INDIVIDUAL, INCLUDING AN INDIVIDUAL PERFORMING THE FUNCTION OF A  
6 WATCHER AS DESCRIBED IN SECTIONS 1-7-105 AND 1-7-106, MAY  
7 CHALLENGE A MAIL OR MAIL-IN BALLOT THAT HAS BEEN PROVIDED TO AN

1 ELECTOR. A CHALLENGE BROUGHT UNDER THIS SECTION MAY ADDRESS,  
2 AMONG OTHER MATTERS:

3 (a) THE ELECTOR'S ELIGIBILITY TO VOTE ON ONE OR MORE BALLOT  
4 ISSUES, BALLOT QUESTIONS, OR CANDIDATE RACES ON THE BALLOT; AND

5 (b) THE SIGNATURE ON THE MAIL OR MAIL-IN BALLOT RETURN  
6 ENVELOPE.

7 (2) (a) IF AN INDIVIDUAL CHALLENGES A MAIL OR MAIL-IN BALLOT  
8 IN ACCORDANCE WITH SUBSECTION (1) OF THIS SECTION, THE ELECTION  
9 JUDGE SHALL FORWARD THE CHALLENGED BALLOT TO TWO OTHER  
10 ELECTION JUDGES OF DIFFERENT POLITICAL PARTY AFFILIATIONS WHO  
11 SHALL REVIEW EITHER THE ELECTOR'S ELIGIBILITY TO VOTE ON THE  
12 BALLOT ISSUES, BALLOT QUESTIONS, OR CANDIDATE RACES ON THE  
13 BALLOT THAT IS THE SUBJECT OF THE CHALLENGE OR THE ELECTOR'S  
14 SIGNATURE IN THE STATEWIDE VOTER REGISTRATION DATABASE, AS  
15 APPLICABLE.

16 (b) IF, UPON THE REVIEW REQUIRED BY PARAGRAPH (a) OF THIS  
17 SUBSECTION (2), BOTH OTHER ELECTION JUDGES DETERMINE THE ELECTOR  
18 IS NOT ELIGIBLE TO VOTE ON A PARTICULAR BALLOT ISSUE, BALLOT  
19 QUESTION, OR CANDIDATE RACE THAT IS THE SUBJECT OF THE CHALLENGE,  
20 THE JUDGES SHALL COUNT ONLY THOSE BALLOT ISSUES, BALLOT  
21 QUESTIONS, OR CANDIDATE RACES ON WHICH THE ELECTOR CAST A VOTE  
22 FOR WHICH HE OR SHE IS LEGALLY ELIGIBLE TO VOTE. IF BOTH OTHER  
23 ELECTION JUDGES DETERMINE THE ELECTOR IS NOT ELIGIBLE TO VOTE FOR  
24 ANY OF THE BALLOT ISSUES, BALLOT QUESTIONS OR CANDIDATE RACES  
25 THAT ARE ON THE BALLOT, THE JUDGES SHALL NOT COUNT THE ELECTOR'S  
26 BALLOT IN ITS ENTIRETY.

27 (c) IF, UPON THE REVIEW REQUIRED BY PARAGRAPH (a) OF THIS

1       SUBSECTION (2), BOTH OTHER ELECTION JUDGES DETERMINE THE  
2       SIGNATURE ON THE ELECTION BALLOT DOES NOT MATCH THE ELECTOR'S  
3       SIGNATURE IN THE STATEWIDE VOTER REGISTRATION DATABASE, THE  
4       JUDGES SHALL UNDERTAKE THE SIGNATURE VERIFICATION PROCEDURES  
5       DESCRIBED IN SECTION 1-7.5-107.3 (2).

6               (d) IF, UPON THE REVIEW REQUIRED BY PARAGRAPH (a) OF THIS  
7       SUBSECTION (2), BOTH OTHER ELECTION JUDGES DETERMINE THE ELECTOR  
8       IS ELIGIBLE TO CAST A MAIL OR MAIL-IN BALLOT IN THE CASE OF A  
9       CHALLENGE TO HIS OR HER ELIGIBILITY OR THAT THE ELECTOR'S  
10       SIGNATURE IS VALID IN THE CASE OF A CHALLENGE TO THE ELECTOR'S  
11       SIGNATURE, THE JUDGES SHALL COUNT THE ELECTOR'S MAIL OR MAIL-IN  
12       BALLOT.

13               **SECTION 2. Applicability.** This act applies to elections  
14       conducted on or after the effective date of this act.

15               **SECTION 3. Safety clause.** The general assembly hereby finds,  
16       determines, and declares that this act is necessary for the immediate  
17       preservation of the public peace, health, and safety.

Date: 01/27/2014

## Final

### BILL SUMMARY for SB14-079

#### SENATE COMMITTEE ON STATE, VETERANS, & MILITARY AFFAIRS

Votes: <b>View--&gt;</b>	Action Taken:
Postpone Senate Bill 14-079 indefinitely using a r Refer Senate Bill 14-079 to the Committee of the W	PASS FAIL

#### **04:15 PM -- SB14-079**

Senator Harvey, sponsor, presented Senate Bill 14-079 to the committee. The bill would allow any individual, including an individual certified as a watcher under election law, to challenge a mail-in ballot that has been cast. A challenge may be brought concerning an elector's ability to vote on ballot measures or candidate races, and verification of the signature on the mail or mail-in ballot return envelope. Senator Harvey explained that under current law, only in-person ballots can be challenged, while the bill would allow mail ballots to be challenged as well. Senator Jones and Senator Harvey discussed the process by which a mail ballot could be challenged under the bill. Senator Aguilar and Senator Harvey discussed the possibility of disagreement between the two reviewers of a challenge.

**04:20 PM --** Peg Perl, representing Colorado Ethics Watch, testified against the bill. She described her organization's work and discussed her experience as a poll watcher. She explained that the process proposed under the bill is vague and could disenfranchise voters. Ms. Perl added that the existing challenge process does apply to mail ballots. She described that process, and she explained her concern that the bill's challenge process may not notify a voter when his or her ballot is challenged. She continued to discuss the lack of specifics in the bill and raise potential problems. Senator Herpin and Ms. Perl discussed the bill's method for addressing signature

problems.

**04:28 PM** -- Denise Maes, representing the ACLU of Colorado, testified against the bill. She discussed the ACLU's work. She noted that there is already a process to verify mail ballots, and so the bill addresses a problem that does not exist. She then discussed problems that the bill might create, specifically regarding due process.

**04:32 PM** -- Harvie Branscomb, representing himself, testified in support of the bill. He described his work on election issues and as an election watcher. He told the committee about a signature discrepancy issue in the 2013 Broomfield election. He explained there is no process for a secondary check once an election judge rules on a ballot. He suggested that the bill would improve checks and balances on discrepant ballots. Mr. Branscomb noted that there should be a way to challenge the decisions of election judges. In response to a question from the committee, Mr. Branscomb discussed the steps that must be taken when ballots are processed. Discussion continued on the issue of anonymity during the process of ballot tabulation. Mr. Branscomb shared his opinion that it is not difficult for people to vote with ballots that do not belong to them.

**04:52 PM** -- Suzanne Staiert, Deputy Secretary of State, testified in support of the bill. Ms. Staiert described an instance in a recent election in Broomfield in which ballots were duplicated without certain voters' knowledge and the votes were not counted. Ms. Staiert responded to a question about page 2, line 4 of the bill. Discussion continued on this topic. Ms. Staiert responded to a question about what happens if the two election judges do not reach an agreement over a disputed ballot, explaining that the language matches existing law regarding the dispute reconciliation process. She also responded to a question about whether the style of a ballot can determine who has cast a ballot, thus compromising privacy. Senator Harvey discussed page 4, line 5 of the bill, regarding the cure period, with Ms. Staiert.

**05:07 PM** -- Al Kolwicz, representing the Colorado Voter Group, testified in support of the bill. Mr. Kolwicz discussed the advantages of voting at neighborhood polling places in terms of voter verification. He shared his experience as an election watcher when he saw signatures verified that may not have been valid. He suggested that poll watchers should be given as many resources as possible to verify voters.

**05:13 PM** -- Amber McReynolds, representing the Denver Clerk and Recorder and the Colorado Clerks' Association, testified on the bill. She explained that the clerks have not formally taken a position on the bill, but have reviewed its technical aspects



and fiscal impact. She described the existing process for reviewing signature discrepancies. She detailed the clerks' concerns about the bill. Senator Herpin and Ms. McReynolds discussed the challenge process under current law.

### **05:20 PM**

Senator Harvey and Ms. McReynolds discussed the background of election judges and the confidential nature of signatures. Ms. McReynolds responded to further concerns regarding review of rejected ballots. Senator Ulibarri and Ms. McReynolds discussed poll watchers and their distinction from election judges.

**05:26 PM --** Wayne Williams, El Paso County Clerk and Recorder, testified on the bill. He explained that he is neutral on the bill, but he addressed prior questions about poll watchers and existing challenge provisions. He suggested that challengers be required to sign an affirmation, and that challenged voters have the opportunity to respond to challenges. He noted that voters were disenfranchised in Broomfield, and that is a problem that needs to be addressed.

### **05:32 PM**

Senator Harvey explained the benefits of the bill, particularly after the adoption of House Bill 13-1303. He suggested that the bill could be amended to address issues raised in testimony.

### **05:36 PM**

Committee members discussed the bill. Mr. Williams returned to the table to address questions about frivolous claims under the bill.

<b>BILL:</b>	<b>SB14-079</b>	
<b>TIME:</b>	<b>05:43:03 PM</b>	
<b>MOVED:</b>	Harvey	
<b>MOTION:</b>	Refer Senate Bill 14-079 to the Committee of the Whole. The motion failed on a vote of 2-3.	
<b>SECONDED:</b>		

		<b>VOTE</b>
	Aguilar	No
	Harvey	Yes
	Herpin	Yes
	Jones	No
	Ulibarri	No
<b>YES: 2 NO: 3 EXC: 0 ABS: 0 FINAL ACTION: FAIL</b>		

<b>BILL:</b>	<b>SB14-079</b>	
<b>TIME:</b>	<b>05:44:29 PM</b>	
<b>MOVED:</b>	Jones	
<b>MOTION:</b>	Postpone Senate Bill 14-079 indefinitely using a reversal of the previous roll call. There was no objection to the use of the reverse roll call, therefore, the motion passed on a vote of 3-2.	
<b>SECONDED:</b>		
		<b>VOTE</b>
	Aguilar	Yes
	Harvey	No
	Herpin	No
	Jones	Yes
	Ulibarri	Yes
<b>Final YES: 3 NO: 2 EXC: 0 ABS: 0 FINAL ACTION: PASS</b>		

**05:45 PM**

The committee recessed.