

MESA COUNTY CLERK & RECORDER

Sheila Reiner

Tuesday, August 12, 2014

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

RE: Mesa County Clerk and Recorder Public Comment on Proposed Rule Making

Proposed Rule 7.2.6, Page 19 *“EFFECTIVE JANUARY 1, 2015, IN ADDITION TO THE AFFIRMATION REQUIRED BY SECTION 1-7.5-107(3), C.R.S., EACH MAIL BALLOT RETURN ENVELOPE MUST INCLUDE THE FOLLOWING AFFIRMATION: “FOR THIRD PARTY DELIVERY: I AM VOLUNTARILY GIVING MY BALLOT TO (BLANK) FOR DELIVERY. I HAVE MARKED AND SEALED MY BALLOT IN PRIVATE AND HAVE NOT ALLOWED ANY PERSON TO OBSERVE THE MARKING OF THE BALLOT, EXCEPT FOR THOSE AUTHORIZED TO ASSIST VOTERS UNDER STATE OR FEDERAL LAW.”*

Note: Mesa County appreciates the 2015 effective date as a change this late in the cycle would constitute a complete reprint of the mail ballot envelopes.

Suggestion: We suggest to strike *“FOR THIRD PARTY DELIVERY: I AM VOLUNTARILY GIVING MY BALLOT TO (BLANK) FOR DELIVERY.* This secondary affidavit would cause voter confusion on whether the voter signs it if they return their own ballot and if they are required to have a different person other than themselves deliver their ballot. Also, a name written on the provided line could not be verified as to who actually delivered the ballot to a ballot box (some of which are available 24 hours) rendering it unenforceable.

The security process on mail ballots has been charted out legislatively. The voter’s signature on the reply envelope is compared against the previously captured scanned images of the voter’s signature from voter registrations and Colorado Department of Revenue (Driver’s License). Using this verification, it is confirmed that the ballot inside the sealed envelope was voted by the correct voter. Each ballot envelope has the voter’s name printed on it and are checked into the voter registration system to ensure only one ballot is accepted. Another person delivering the voter’s ballot doesn’t affect this security system.

Proposed Rule 8.6.8 AND 8.6.9 Page 23 *“ATTEMPT TO DETERMINE HOW ANY ELECTOR VOTED OR OBTAIN CONFIDENTIAL VOTER INFORMATION”. “DISCLOSE OR RECORD ANY CONFIDENTIAL VOTER INFORMATION THAT HE OR SHE MAY OBSERVE.”*

Suggestion: Clarification. The proposed rules could be interpreted that watchers have access to voter’s confidential information which could include date of birth, social security number, and driver’s license number information. Voters rightly expect this information to be accessed solely by trained, sworn election officials. Improved clarification should clearly delineate that a watcher’s exposure to confidential voter information should be inadvertent and not as an authorized watcher function.

Proposed Rule 9.2 & 9.2.1 Page 24 *“IF AN INDIVIDUAL CHALLENGES A MAIL BALLOT UNDER SECTION 1-9-201, C.R.S., THE ELECTION JUDGE MUST FORWARD THE BALLOT TO TWO OTHER ELECTION JUDGES OF DIFFERING POLITICAL PARTY AFFILIATIONS WHO MUST REVIEW THE ELECTOR’S ELIGIBILITY TO VOTE.”*

“IF BOTH ELECTION JUDGES DETERMINE THE ELECTOR IS NOT ELIGIBLE TO VOTE ON A PARTICULAR BALLOT ISSUE, BALLOT QUESTION, OR RACE, THE JUDGES MUST COUNT ONLY THOSE BALLOT ISSUES, BALLOT QUESTIONS, OR RACEDS FOR WHICH THE ELECTOR IS ELIGIBLE.”

Suggestion: Remove. This proposed Rule attempts to broaden challenges of Mail Ballot voters to include Residency, Citizenship and Age under 1-9-201 but does not afford the voter the rights found in 1-9-203 and 1-9-204 which allows the voter to respond to the challenge and affirm their eligibility. The proposed rule conflicts with 1-9-207 which specifies, “Challenged ballots except those rejected for an incomplete or incorrect affidavit by an elector on the returned mail ballot envelope, forgery of a deceased person’s signature on a mail ballot affidavit, or submission of multiple ballots, shall be counted. “

Election judges at the Voter Service & Polling Centers who receive challenges. for In Person voters do not research and determine a voter’s eligibility. They ask the questions found in 1-9-203 and provide the voter an opportunity to respond. If the voter affirms their eligibility (regarding whether they were challenged on age, residence or citizenship) by satisfactorily answering the challenge questions and signing the affidavit pursuant to 1-9-204, then they vote a regular ballot. The proposed rule gives In Person voters more protections than Mail Ballot voters.

The proposed rule also is misaligned with 1-9-101 which allows a voter’s registration to be challenged. The voter is notified and given opportunity to respond with the decision made after the County Clerk conducts research and holds a hearing. We suggest not requiring election judges to try to meet this level of ruling over the eligibility of voters and what ballot choices will be counted. We are aware of many election judges who would refuse to make these decisions without the voter being given the opportunity to respond. The scenario of election judges disagreeing about voter eligibility or whether the signature matches with the SCORE signature is not addressed.