

Andrea Gyger

From: Robin Marlow <rmarlow@casb.org>
Sent: Wednesday, August 13, 2014 11:44 AM
To: SoS Rulemaking
Cc: Beth Friel
Subject: Comments to help shape Colorado's Election Rules
Attachments: SOS Rulemaking Comments--Elections.pdf

Hon. Secretary of State Gessler:

Attached for your consideration prior to tomorrow's hearing, please find the comments of the Colorado Association of School Boards on proposed election rule revisions. We appreciate this opportunity to provide input to this rule-making process. Thank you.

Sincerely,

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August 13, 2014

Via Email: SoS.Rulemaking@sos.state.co.us

Hon. Scott Gessler
Secretary of State
Colorado Department of State
1700 Broadway
Denver, CO 80290

Re: Comments Concerning Possible Permanent Rulemaking Related to Election Rules

Dear Secretary Gessler:

The Colorado Association of School Boards submits the following written comments regarding the August 7, 2014 draft version of the Colorado Department of State's proposed election rules. Our members are 175 of the 178 locally elected school boards in Colorado, and we appreciate the opportunity to make these comments on behalf of our members as to three aspects of the proposed rules: A) certifying residence addresses; B) verifying petitions; and C) curing petitions.

A) Certifying residence addresses

Proposed Rule 4.1.3 THE DESIGNATED ELECTION OFFICIAL OF EACH PARTICIPATING POLITICAL SUBDIVISION MUST CERTIFY THE COMPLETENESS AND ACCURACY OF THE RESIDENCE ADDRESSES WITHIN THE DISTRICT NO LATER THAN THE 70TH DAY BEFORE ELECTION DAY.

Concern: School district designated election officials (District DEOs) are almost without exception school superintendents or their administrative assistants, whose expertise lies in furthering the public education functions of the local school district. They lack the training, documentation, and expertise to “certify the completeness and accuracy of the residence addresses within the district.”

Because school employees serve no role in voter registration, recording real estate transactions, or creating and maintaining plat records, they—at best—could do no more than review records prepared, maintained, and shared by county or municipal entities. This reality is compounded for school districts whose boundaries cross county borders. For example, St. Vrain Valley School District covers portions of Boulder, Broomfield, Larimer, and Weld Counties and serves

ten municipalities and several unincorporated areas. There is no reason to believe school employees' "certification" of other jurisdictions' records could provide meaningful assurance to the Secretary of State regarding the accuracy and completeness of the data in the statewide voter registration database.

On the other hand, a school district does create and maintain records related to the school district's geographic boundaries and, where applicable, its director districts. These records include only a description of the relevant boundaries, not a comprehensive list of the street addresses within those boundaries.

Any election official charged with verifying the addresses to ensure they lie within a school district's boundaries is justly entitled to accurate, timely information regarding the district's boundaries. However, district and director district boundaries do not change frequently, so requiring annual or other regularly scheduled updates would be unnecessary. Instead, the local district and coordinated election officials, who are best-positioned to address the local need for updating boundary information, should discuss any such need during their negotiation of the parties' intergovernmental agreement.

Recommendation: The ultimate duty of certifying the completeness and accuracy of residence addresses should rest with the Coordinated Election Official; nevertheless, CASB supports empowering these election officials to work with District DEOs to ensure the Coordinated Election Official has accurate information regarding the local district's boundaries, as described in the following suggested revision to Proposed Rule 4.1.3:

~~The designated election official of each participating political subdivision~~
COORDINATED ELECTION OFFICIAL must certify the completeness and accuracy of the residence addresses within the district OF EACH PARTICIPATING POLITICAL SUBDIVISION'S BOUNDARIES no later than the 70th day before election day. EACH PARTICIPATING POLITICAL SUBDIVISION SHALL PROVIDE ITS DISTRICT BOUNDARIES TO THE COORDINATED ELECTION OFFICIAL PURSUANT TO THE PARTIES' INTERGOVERNMENTAL AGREEMENT.

B) Verifying petitions

Proposed Rule 15.1.3(D) Secretary of State OR COUNTY staff will reject the entry if:

...

- (12) For a candidate petition where an elector may sign only one petition for the same office, the entry is a duplicate of a previously accepted entry on ~~another petition~~ A PREVIOUSLY FILED PETITION for the same office.

Concern: This rule is a significant departure from common practice and the rules in effect during the 2013 regular biennial school election in two notable respects: 1) it presumes the county, not the District DEO, will verify candidate petitions for school director; 2) it fails to explain what to do when verifying entries on candidate petitions where electors may sign more than one petition for the same office, a question answered by former Rule 17.3.12(b):

Where an elector may sign more than one petition for the same office, the first valid entries verified on the first petitions submitted to the designated election official, up to the maximum allowed, shall be counted, and all other entries shall be rejected.

Recommendations:

1. State law requires school director candidates to submit petitions to school district officials. Colo. Rev. Stat. § 22-31-107(2). Consequently, if petitions were to be reviewed by the county instead of the district DEOs, many difficulties could arise as the two offices transmit petition documents back and forth. For this reason, it seems most sensible to maintain the current flexibility the parties have to assign petition verification duties pursuant to the intergovernmental agreement. To that end, CASB recommends amending the first line of Proposed Rule 15.1.3(D)(12) and similar wording throughout Proposed Rule 15 to state: “Secretary of State or County staff OR THE DESIGNATED ELECTION OFFICIAL will reject the entry if: ...”
2. To ensure consistency across jurisdictions with regard to determining petition sufficiency, insert an updated version of Former Rule 17.3.12(b) that aligns with the language used in Proposed Rule 15.1.3(D)(12) such that the final rule would read as follows:
 - (12)(i) For a candidate petition where an elector may sign only one petition for the same office, the entry is a duplicate of a previously accepted entry on a previously filed petition for the same office.
 - (12)(ii) FOR A CANDIDATE PETITION WHERE AN ELECTOR MAY SIGN MORE THAN ONE PETITION FOR THE SAME OFFICE, THE ENTRY IS A DUPLICATE OF PREVIOUSLY ACCEPTED ENTRIES ON PREVIOUSLY FILED PETITIONS SUCH THAT THE MAXIMUM PETITION SIGNATURES ALLOWED FOR THE ELECTOR HAVE ALREADY BEEN COUNTED.

C) Curing petitions

Proposed Rule 15.1.1 The Secretary of State OR COUNTY will not accept or count additional signatures after proponents file the original petition or addendum.

Proposed Rule 15.4.3 Proponents may file a petition or addendum only once, and may not supplement additional signatures after filing the petition or addendum, even if the additional signatures are offered before the deadline to submit the original petition or addendum.

Proposed Rule 15.7 Curing insufficient STATEWIDE INITIATIVE petitions
(Full text omitted here for efficiency, but the rule, in effect, describes the method of curing statewide initiative petitions)

Concern: Proposed Rules 15.1.1, 15.4.3, and 15.7 together prescribe the limits and method of curing statewide initiative petitions but are unclear as to whether and how the concept of cure would apply to local candidate petitions. As drafted, no rule exists prescribing a method of curing local nonpartisan election petitions; consequently, three concerns arise: 1) confusion may occur as to whether “petition” and “addendum” are single documents or single filings of bundles of separate documents; 2) absent any definition, addenda may take different forms in different jurisdictions; and 3) District DEOs may mistakenly and in good faith improperly grant or deny candidates’ requests to submit an addendum under the text’s current language.

As to point 1, while it seems natural that a candidate submitting a collection of petition packets circulated by different individuals would be submitting a single petition for purposes of Rule 15, using the singular “petition” or “addendum” in the text of the rule may cause confusion to those working to implement it. CASB recommends the terms “petition filing” and “addendum petition filing” to indicate the complete collection of petition documents permissibly submitted by candidates for verification.

As to point 2, CASB understands an addendum to be identical in form to an original petition filing, except that an addendum is filed after an original petition filing has been declared insufficient. In other words, for a local school board election, an addendum filing would consist of one or more newly-filed petition packets, with each packet including the petition, circulator’s affidavit, and acceptance of nomination form. CASB reflects this understanding, below, by suggesting the phrase “addendum petition filing” in lieu of “addendum.” If it is not the case that the Secretary intends the addendum petition filing to be essentially identical in form to the original petition filing, then CASB advises including additional explanatory language to help avoid disputes during the crucial petition verification window.

Finally, as to point 3, for school board director elections, candidates must submit 25 signatures, unless their district serves over 1,000 students, in which case the signature requirement rises to

50 signatures. With so few signatures required, the remedy for insufficiency provided by an addendum petition filing alluded to in Proposed Rule 15.1.1 would be easily implemented and extremely supportive of local elections' vitality. Any step taken to crystalize this option for local elections will ease the struggles that predictably arise in the local petition verification context.

Recommendations:

1. To clarify that addenda are acceptable for petitions other than statewide initiative petitions, and to shed light on what addenda might include, merge Proposed Rule 15.4.3 into Proposed Rule 15.1.1, such that the final Rule would read as follows:

15.1.1 Proponents or candidates may submit a petition filing, and, if the petition filing is deemed insufficient, an addendum petition filing, only once before the submission deadline. The Secretary of State or Designated Election Official may not accept or count additional signatures to either filing after its submission, even if the additional signatures are signatures offered before the submission deadline.

2. To guide the application of the addendum process, include language mirroring the relevant language in Proposed Rule 15.7 in a new Final Rule 15.9 as follows:

15.9 Curing other insufficient petitions

15.9.1 If petition proponents or candidates submit additional signatures via an addendum petition filing before the submission deadline, the designated election official will verify the additional signatures in accordance with this Rule 15. *See, for comparison, Proposed Rule 15.7.1.*

15.9.2 The designated election official will add the number of additional valid signatures from the addendum petition filing to the number of valid signatures in the original petition filing in order to determine sufficiency. *See, for comparison, Proposed Rule 15.7.3.*

15.9.3 If any other candidate petitions for the same office were determined sufficient in the intervening time between the original petition filing and the addendum petition filing verification, the designated election official will re-verify the original petition filing to ensure the final number of valid signatures complies with Rule 15.1.3(D)(12).

15.9.4 The designated election official will issue a new statement of sufficiency or insufficiency that reports the total number of valid signatures submitted. *See, for comparison, Proposed Rule 15.7.4.*

Hon. Scott Gessler
Colorado Secretary of State
August 13, 2014
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CASB greatly appreciates the opportunity to participate in this rulemaking process and is more than willing to provide additional information in response to any follow-up questions you may have.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth C. Friel".

Elizabeth Friel
Staff Attorney