



August 14, 2014

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

Re: Proposed Revisions to Election Rules

Dear Secretary Gessler:

Colorado Common Cause (CCC) is a nonpartisan, nonprofit organization that is dedicated to restoring the core values of American democracy, reinventing an open, honest and accountable government, and empowering ordinary people to make their voices heard in the political process. Thank you for the opportunity to comment on the proposed rulemaking relating to election rules.

We have the following comments on the revised proposed rules issued on August 7, 2014.

Rule 2.13.2(a)(2). CCC believes rule 2.13.2(a)(2) should be deleted in its entirety as it conflicts with the obligation of monthly processing of address changes using National Change of Address information as required by Section 1-2-302.5, C.R.S.

Rule 2.13.5. CCC opposes the deletion of rule 2.13.5. The National Voter Registration Act (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 2.13.5 does not change Colorado's legal obligations to adhere to the NVRA. However, maintaining rule 2.13.5 makes clear that it is impermissible to consolidate or cancel duplicate records within the 90 day period before a primary or general election.

Rule 7.2.6. CCC opposes the adoption of this rule. Rule 7.2.6 imposes a requirement on voters to complete an affidavit specifically stating the name of the person to whom they have given their ballot if they have asked a third party to return their ballot for them. There is no statutory basis for imposing such a rule and it puts an additional burden on voters who do not deliver their own ballots. In addition, there is no indication as to how this requirement would be tracked or enforced, which creates the prospect of random and unequal treatment of voters. This is not permissible.

In addition, the affirmation created by rule 7.2.6 is drafted so broadly 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 Colorado citizens' rights of association. If the

Secretary of State believes additional voter education is required, it would be more appropriate to modify the ballot instructions to inform a voter that that he or she is not to show the marked ballot to anyone else (Section 1-13-712 C.R.S.) and that intimidation is unlawful (Section 1-13-713 C.R.S.). There is no basis in law for the creation of an affirmation that places the burden on the voter to affirm that he or she voted in private and has not been ‘influenced’ during the election.

Rule 9.2. CCC opposes the adoption of rule 9.2 for several reasons. 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. Unlike an in-person challenge at a polling location, where the voter is able to respond to the challenge and upon affirming his or her eligibility, cast a regular ballot, there is no such mechanism for voter response in the mail ballot challenge rules proposed. 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. This rule is also silent on how a challenge will be handled if the two judges disagree on its resolution.

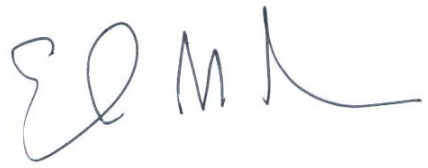
Fourth, Section 1-9-207 C.R.S. addresses challenges to ballots cast by mail, and already provides a basis for processing such challenges.

Finally, the Colorado General Assembly considered legislation this past session, SB 14-79, that would have implemented a process for challenging mail ballots that was very similar to what is proposed in rule 9.2. SB14-079 was postponed indefinitely after a full hearing by the Senate State, Veterans and Military Affairs Committee. 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 law, and that directly contradicts the expressed views of the state legislature.

Rule 13.2.7. Under Section 1-1.5-105(2)(j) C.R.S., 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 issues 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 comment on these proposed rules. If you have questions or would like additional information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'ENUNEZ', with a long horizontal flourish extending to the right.

Elena Nunez
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