

Andrea Gyger

From: Jessie Ulibarri <senator.ulibarri@gmail.com>
Sent: Thursday, August 14, 2014 10:57 AM
To: SoS Rulemaking
Subject: RE: Rule making pertaining to Colorado mail ballots
Attachments: 079_01.pdf

August 14, 2014

To the Honorable Secretary of State Scott Gessler,

I am writing in connection with your pending rule making proceeding on issues relating to election regulation in state and local elections. I apologize that I cannot attend the public comment session this afternoon, but I hope that my written comments be entered into the official record on this issue.

Specifically, I notice that in Proposed Regulation 9.2 and its subparts 9.2.1, 9.2.2, and 9.2.3, you are proposing a rule that rewrites the existing law for challenging mail ballots, and allows for rejecting votes in the event of a challenge without notifying the voter in certain circumstances.

Perhaps you are unaware that in the 2014 Colorado legislative session, the Legislature rejected SB 14-79, a bill containing almost identical language to your proposed Regulation 9.2. I've attached a copy of SB 14-79 hereto for your reference. The Bill sought to repeal the existing law allowing for mail ballot challenges at section 1-9-207, C.R.S., and replace it with the process outlined in Proposed Regulation 9.2. During the 2014 legislative session, I chaired the Senate Committee on State, Veterans, & Military Affairs. SB 14-79 came before the Committee on January 27, 2014, and we heard testimony regarding how the proposed changes to existing statute contained in SB 14-79 would allow a voter's ballot to be challenged and rejected without notifying the voter, and without providing the voter an opportunity to respond to any challenge to his/her eligibility. The Senate Committee on State, Veterans, & Military Affairs promptly rejected the policy changes proposed by SB 14-79, and postponed the bill indefinitely. Your rule is clearly an attempt to change via rule what the Legislature declined to change by statute – a wholesale rewrite of the current law on challenges to mail ballots. This you cannot do. You have authority to pass rules that are geared to the administration or enforcement of existing statutes and constitutional provisions.

I strongly urge you to retract proposed rules 9.2, 9.2.1, 9.2.2, 9.2.3, because their adoption would exceed your rulemaking authority and they are contrary to Colorado law.

Proposed Rule 2.13.2(a)(2) should not be adopted because it directly conflicts with CRS §1-2-302.5. While this is an existing rule, and the proposed changes are ministerial, the rule itself is in conflict with changes to the statute adopted by SB 14-161, for which I was a sponsor. Specifically, new CRS §1-2-302.5 requires the Secretary to conduct a monthly national change of address search using the NCOA database, and if the search indicates an elector has permanently moved, the county clerk shall update the elector's record (if the elector moved within the county). CRS §1-2-302.5(5) also allows a county clerk to conduct a national change of address search using the NCOA database as frequently as he or she sees fit. Proposed rule 2.13.2(a)(2) exceeds the rulemaking authority of the Secretary because it directly conflicts with existing statutes.

Respectfully,
Senator Jessie Ulibarri
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Chair Senate Committee on State, Veteran and Military Affairs

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Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 14-0610.01 Bob Lackner x4350

SENATE BILL 14-079

SENATE SPONSORSHIP

Harvey,

HOUSE SPONSORSHIP

(None),

Senate Committees
State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

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

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/billsummaries>.)

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.

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.