



July 7, 2017

The Honorable Wayne W. Williams
Colorado Secretary of State
1700 Broadway, Suite 200
Denver, CO 80290

Secretary Williams:

Thank you very much for the opportunity to comment on your proposed election rules. In response to your proposed rules, the Denver Elections Division would like to thank you and your team specifically for the language changes to proposed rules 2.15.1, 7.2.10, Rule 14, 18.5.3(b), and 20.17.3.

Next, while the Division agrees with the comments made by the Election Statute Review Committee, we would like to make the following additions or clarifications:

Rule 2.5.4:

The Denver Elections Division believes that this proposed rule, as written, contravenes the election code by conflicting with section 1-2-218.5(2), C.R.S. That section states that “any unaffiliated eligible elector may . . . declare his or her political party or political organization affiliation at any other time during which electors are permitted to register . . .” Electors may register to vote up to and including Election Day.

But your proposed rule instructs us to do the opposite: “. . . the county clerk must defer processing the affiliation change until after the primary election”. Our initial research cannot find where Proposition 107, Proposition 108, or Senate Bill 17-305 repealed section 1-2-218.5(2), C.R.S., therefore the Division believes unaffiliated voters must be permitted to declare an affiliation from the 29th day before Election Day through Election Day itself.

Regardless of this concern, tying the affiliation deadline to the date the county mails ballots will create varying deadlines throughout the state (depending on when each county mails within the 18-22-day window). And for primary elections, counties may mail the ballot packets on the Friday before the 22nd day if it falls on a Saturday, Sunday, or legal holiday. Thus, the window to mail ballots is even larger. Having a different deadline for each county depending on when it mailed ballots will confuse voters.

2.14.4:

Because the Secretary of State’s office is going to put a working group together this August, this rule puts the cart before the horse. Why not let that group meet first before adopting this rule? Then, this November can be a test run. If the office continues to feel strongly about this ban after November, then it can propose the rule in 2018. Alternatively, if the state would still like to adopt a rule this year, the rule could simply require the counties to follow the Reports Policy of the Secretary of State’s office.

2.17:

Considering our comments for Rule 2.5.4, we continue to have concerns about the business process and procedures for party preference. Is it the Secretary of State's intention that counties should also defer processing of party preference if an unaffiliated voter submits a preference after returning his or her ballot but before Election Day?

7.2.11:

Please consider allowing a county to choose whether to put this language on the return ballot envelope or the voter instructions. The return envelope seems to get more crowded with every round of rule changes and we will likely modify the envelope to comply with proposed Rule 7.2.10. This will also be a burden on bilingual counties. Additionally, our costs will increase for ballot production and printing with the use of inconsistent envelope design and artwork.

7.5.10:

The Division strongly agrees with ESRC's comments and would like the Secretary to keep the original timeline of performing this function "no later than the final certification of the abstract of votes cast."

7.5.11:

This rule, as written, would still require the Denver Elections Division to hire a dedicated election judge just to scan these images. We would appreciate it if the last new sentence said: "A county that physically delivers ballots to another county no later than the day after Election Day is not required to scan the envelope."

We also question the wisdom of allowing a county to perform signature verification before it physically receives the envelope because there are numerous potential pitfalls. For example, should other counties remove the flap that covers our voters' signatures? Or what happens if the Postal Service loses the envelope? Or if there are multiple ballots in the envelope?

7.5.14:

We think this proposed rule unnecessarily dictates procedure. Instead, a general rule would be better. Something along the lines of: "If an unaffiliated elector returns both ballots, two election judges of differing affiliations must determine how many of the ballots are voted. If the elector voted only one party's ballot, the county must count the voted ballot and retain the unvoted ballot. If the elector voted both ballots, or returned blank ballots, the county must reject them."

25.2.3(a):

We would like to see the second sentence have language that better contemplates different types of security seals and logs. Something like: "The audit board must ensure that the county maintained continuous chain-of-custody for the appropriate storage containers."

General language note:

In various locations throughout the proposed rules, the Secretary's office refers to a county determining "which political party's election the elector voted in" and or other substantially similar language. This

language expresses the idea that a primary election is really comprised of multiple primary elections, equal to the number of major political parties.

This proposed language again contradicts the plain meaning of state statute. Specifically, section 1-4-101, C.R.S., refers to “a primary election” and that “each political party . . . is entitled to participate in *the* primary election” (emphasis added). Therefore, when one major political party has a contested primary race, the clerk and recorder must mail ballots to voters of all major political parties. Each party just has a separate ballot for the primary election.

Thank you for your consideration,



Daniel Volkosh

Denver Elections Division