

STEVE FENBERG
State Senator

State, Veterans, and Military Affairs
Committee

Agriculture, Natural Resources, and
Energy Committee



Colorado State Capitol
200 East Colfax Avenue, Room 346
Denver, Colorado 80203

303-866-4872
steve@stevafenberg.org

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JUL 12 2017

ELECTIONS
SECRETARY OF STATE

July 5, 2017

The Honorable Wayne Williams, Secretary of State
Colorado Department of State
1700 Broadway
Denver, CO 80290
SOS.Rulemaking@sos.state.co.us

Re: Election Rules – 8 CCR 1505-1 – Proposed Rules Issued May 31, 2017

Dear Secretary Williams:

As two of the prime sponsors of SB 17-305, the Primary Election Clean-Up bill, we are writing in connection with your pending rule-making proceeding on revisions to the Election Rules. We appreciated the close working relationship we were able to have with your office during the discussions on SB 17-305 and send these comments in the spirit of furthering that collaborative approach to election policymaking. Our concerns on the proposed rulemaking are in regards to part of the implementation for SB 17-305 that we believe may lead to unnecessarily spoiled ballots and voter confusion.

Rule 7.2.10

SB 17-305 requires county clerks to “record which political party’s ballot the [unaffiliated] elector cast.” Proposed Rule 7.2.10 states:

MAIL BALLOT RETURN ENVELOPES FOR UNAFFILIATED VOTERS IN A PRIMARY ELECTION MAY PROVIDE A MEANS FOR THE COUNTY TO DETERMINE, BEFORE OPENING THE ENVELOPE, WHICH PARTY’S PRIMARY ELECTION THE ELECTOR VOTED IN. IF THE MAIL BALLOT RETURN ENVELOPE DOES NOT PROVIDE SUCH A MEANS, THE COUNTY MUST FOLLOW THE PROCESS OUTLINED IN RULE 7.5.13.

Our concern is that this language leaves open the option for a county clerk to require the voter to signify which party’s primary election the elector voted in on the outside of the mail ballot return envelope, for example by checking a box. This could lead to voter confusion and/or incorrect record-keeping by the county clerk’s office if the voter checks the wrong box. Further, the rule is

silent about what happens to a ballot if a voter omits such information. One option that the legislature rejected during the legislative session was to place any such ballots lacking this information in a cure status, requiring voters to cure the omission in order for ballots to count. This could result in unnecessarily spoiled ballots and deprive voters the right to vote.

Instead, the rule should require that counties capture this information without requiring any further action by the voter. For example, counties could format the envelope in a manner to allow a barcode or color stripe on the ballot returned to show through in a window, which would allow the information to be accurately captured without requiring the voter to check a box or write the information on the envelope. If the county is unable to capture the information this way, then they could follow the process outlined in proposed Rule 7.5.13.

Thank you for considering our feedback on this proposed rulemaking and openness to modifying the rules to address these concerns.

Sincerely,



Senator Steve Fenberg



Representative Mike Foote