



May 23, 2022

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Submitted via email to SoS.Rulemaking@coloradosos.gov

Dear Secretary Griswold:

The Elections Division of the Arapahoe County Clerk and Recorder's office is submitting these comments to the Notice of Proposed Rulemaking issued by the Department of State on April 15, 2022 (revised May 18, 2022). In general, our office supports the points raised in the comments submitted by the Colorado County Clerks Association and we offer these additional comments to highlight some particular issues from our perspective in administering elections to over 415,000 active registered Coloradans in the Denver metro area.

Definitions and Terminology Use

Given the precise detail of the proposed rules and the various security requirements for different types of equipment and storage areas, it is paramount that the Election Rules have precise definitions and consistently use defined terms instead of general undefined phrases. There are a number of places in the proposed rules where we suggest definitions and terminology used should be adjusted to clarify rules, roles and responsibilities for all counties and individuals implementing the rules. For example:

- **Definitions of "secure ballot area" and "secure equipment area" in new rules 1.1.47 & 1.1.48** – both of these proposed definitions should include an explicit statement that the terms do not include ballot storage (1.1.47(A)(4)) or storage of voting system components (1.1.48(A)(6)) during deployment and operation at VSPC sites. This would adjust these definitions and the security rules in Rule 20 tied to these definitions to match current rules and the recently passed Colorado Election Security Act – both of which focus on security at ballot processing or equipment storage facilities, not during VSPC operation in temporary locations for 8-15 days. It would also be a logistical hardship to adhere to the stricter access controls, video, and log requirements imposed by proposed revised Rule 20 if these definitions applied to temporary spaces used for VSPCs (which is a much broader application than recent statutory amendments).
- **Notifications to Secretary of vendor agreements in new rule 11.2.4** - This proposed rule uses the undefined phrase "voting system equipment" as the scope for when a county must notify the Secretary that items will no longer be used. We suggest this be amended to use the defined term "voting system components" so that it is clear which items are covered in the notification rule by reference to the definition in Rule 1.1.45. The term "voting system components" is used multiple times in the current Election Rules, but "voting system equipment" is not used once.
- **Retention of Voting Equipment in revised rule 20.5.6** – This revised rule mixes the undefined term "voting system equipment" (which was not used before this proposed rulemaking) with the defined and more consistently used "voting system components" term. For clarity and to avoid confusion, this proposed rule should be revised to make all references consistent to "component(s)."

- **Use of equipment by other jurisdictions in new rule 20.5.7** – This proposed new rule uses the broad term of “voting equipment” under Title 1 in the title, but the undefined term “election equipment” in the provisions of the rule. It appears that this proposed new rule would prohibit counties from lending ICX ballot marking tablets or tabulators to local jurisdictions conducting independent elections, yet also bar loaning out empty metal ballot boxes or plastic collapsible voting booths. This type of partnership with local jurisdictions is common across the state and it is unclear the security risk of allowing local jurisdictions to borrow such types of physical voting equipment which are not connected to the voting system. Current Election Rule 20.17 allows counties to lease/loan/rent “election equipment” to local jurisdictions, but has specific requirements for any “certified” equipment. We suggest the proposed new rule adjust the terms used in each subsection to cover only “voting system components” or other specific listed items that may be of security concern but not within that definition (such as mobile ballot printers) instead of a complete prohibition on everything that falls under the broader Title 1 term. This is more in keeping with the spirit of the proposed rule to expand the prior rule on “certified election equipment” to a ban, but would continue to allow local jurisdictions to use other non-sensitive voting-related equipment.

Voter Registration Information – Proposed Revised Rule 2.15.5

Our office has some concerns with the breadth of the proposed revisions to this rule and how it could decrease transparency of public information and increase needless administrative work in our offices. It appears the target of the revisions to this rule are requests for specific voter record information about a targeted individual, however, the wording of the proposed revisions are much broader. For example, would the proposed changes to Rule 2.15.5(b) requiring a county to redirect a requestor of information for voter record(s) outside the county apply to DEOs requesting statewide UOCAVA lists from the county? More troubling however, are the proposed new restrictions in Rule 2.15.5(c) stating that a county may NOT provide any “voter record information out of SCORE” unless a specific request under CORA was received or the county is otherwise required by law to provide the information. As a large metro county, Arapahoe County has worked for years to increase transparency and public access to information through our website so that voters, candidates and other individuals are not required to spend the time – and expense – specifically contacting our office during business hours to get public information through formal CORA requests. For example, we include public versions of our basic voter list, voter list with districts and history, active ballot status list, and cure lists on our website: <https://www.arapahoevotes.gov/voter-lists>. This is a more efficient use of our employee time than having to respond and send by email numerous requests for these same items of voter information pursuant to CORA.

This proposed rule would appear to prohibit the posting of these lists which constitute “voter record information out of SCORE” because our county is not obligated under law to post them online and there is no specific CORA request pending. Such a prohibition would decrease public transparency with no purpose as all these online lists already remove personally identifying information and confidential voters. In addition, we often receive public records requests that do not formally cite specific code provisions and we process them to provide publicly available information. This rule appears to require the county to insist that a requestor formally declare a request under CORA’s particular sections, or else reject the request as improperly submitted. Such formalistic requirements would erect useless bureaucratic barriers to public transparency. (To that end, we believe proposed Rule 2.15.5(c)(1) should read “Part 2” instead of “Part 21” to refer to CORA in Title 24).

Candidate Nicknames – Proposed Revised Rule 4.8.2

This newly added proposed rule raises many questions for counties who will often be the DEO subject to legal action based on implementation of the rule. The rule requires a county to reject a nickname that includes a “political slogan” or “other political speech” but does not define these terms. What is the standard that the County should be using

to implement this mandatory rule? If the decision of whether or not something fits within those terms is solely up to the discretion of the DEO, than the rule should explicitly say so. It should be noted that these are different terms than “campaign slogan” which is used in the Title 1 provision prohibiting electioneering. Before subjecting DEOs to liability for a rule that moves beyond the Title 1 provisions regarding nicknames, the rule should clearly define the terms that should be applied.

Multilingual Hotline at VSPCs – New Rule 7.8.12

For the last four elections, Arapahoe County has been operating a live interpretation hotline at our VSPCs to provide language assistance in dozens of languages. This hotline is used by VSPC election judges and the interpreter on the line helps translate between the election judge and the voter in order to complete the voter registration and similar activities needed so a ballot can be issued. During that time, the county has used a phone at the VSPC Supervisor Judge station to complete the call and registration work. The voter then would vote privately and securely in a voting booth alone. Based on VSPC layout, there would not be a location where the voter could simultaneously use the phone provided by the VSPC supervisor judge and also privately mark a ballot. Because the new multilingual hotline must also be available for voters to call themselves from home while reviewing their mail ballot, it seems that the new hotline will be designed to be used as direct communication between the voter and the interpreter on the phone and will not need a three-way call with a VSPC judge also on the line. Therefore, we recommend that the rules only require a telephone provided by the VSPC as a last resort if the voter using the hotline does not have their own mobile phone. In general, the rule should allow voters to use their own phones to call the multilingual hotline while voting privately from a voting booth.

Watchers at Drop Boxes – Revised Rules 8.8 and 8.10

In the November 2020 Election, Arapahoe County had a number of incidents where individuals were “watching” 24-hr drop boxes as voters deposited ballots and our ballot security teams retrieved them. Many of these individuals never interacted with voters, but stayed in a car outside the 100 foot electioneering zone taking notes. One group caused a more confrontational incident with voters and staff at a drop box outside our County Administration building (which was also a VSPC) and law enforcement was called. So, we agree that the application of rules of conduct, a certification and vetting process, and generally bringing 24-hr drop boxes into the area of election activities subject to watcher regulation under Rule 8 would have some benefits at this point. However, because these drop boxes are often unmanned and not subject to the same staffing and logistics as VSPCs and ballot processing facilities, the pre-existing watcher rules and regulations cannot just simply be extended to these locations the way the proposed rules purport to do. For example, how does a watcher present their certificate of appointment at a drop box that is not staffed (Rule 8.4) and who would serve as the primary contact for watchers at that location (Rule 8.7.2)? Is placing a ballot in a drop box considered “voting” for the 6-foot rule in Rule 8.7.4 or does a watcher need to stay outside the 100 foot zone of a drop box? Are the prohibitions on use of audio/video recording and communications applicable to drop boxes (Rules 8.14.6 and 8.15.7)? We suggest not adopting the proposed rules’ approach of just adding drop boxes to the list and instead waiting until the Department of State hosts a working group or larger conversation to create a tailored unique watcher rule that applies only to those circumstances at a 24-hr drop box.

Notification of Network Breaches – Proposed Revised Rule 20.9.1(B)(3)

After discussions with our County IT and cybersecurity professionals, we believe the proposed revisions to this rule places an unrealistic notification burden on County Clerk offices. The revised language expands the responsibility to report to the Secretary of State not only specific actual breaches or attacks on a county network, but any “potential attack” anywhere on the county network that the county in general “otherwise knows of.” This could include a (failed) phishing attempt in the Public Works department that the County IT department that monitors phishing alerts has logged, but no one in the Clerk’s office has any knowledge of because there is no risk to those systems. We believe this rule should be

tailored to when a County Clerk’s office is aware (directly or notified by County IT due to potential risk) of an actual or potential attack on the network, SCORE or other infrastructure in the Clerk’s office.

Storage of Ballot Printers – Revised Rule 20.9.2

Although the April 15, 2022 Notice of Proposed Rulemaking stated that New Rule 20.9.2 was a “re-adoption, without changes, of Current Rules 20.18.2 and 20.18.3,” there is a significant change in the language of the proposed new rule. Prior Rule 20.18.2(d) only required the laptop & ballot paper to be stored in locked storage area, however this new proposed Rule 20.9.2(A)(4) states that counties must also store the printer itself in locked storage area. These printers are commercial off-the-shelf products that are not certified with trusted build or similar high security items. Arapahoe County owns dozens of these printers and does not have large enough locked storage areas to fit them all. This rule also would become effective almost a year before the new statutory requirements of the Colorado Election Security Act which allows counties until June 2023 to build new secure storage spaces (and provides a grant program to offset these capital costs). Therefore, this rule would require immediate construction without such support. We suggest this rule be amended to remove the printers and remain as the current rule requiring locked storage of the laptops and ballot paper only. In addition, the rule should clarify whether “when the printer is not in use” means the time a printer is stored between active elections or also includes the “down time” while the printer is deployed to a VSPC but not actively being used by an election judge. One option would be to include a clear exemption in this rule for when printers are deployed for printing ballots in an active election at a VSPC or county office.

Thank you for this opportunity to provide feedback on the proposed Election Rules. I’m happy to answer further questions during testimony at the public hearing.

Respectfully Submitted,



Peg Perl

Deputy Director of Elections