

**COLORADO INSTITUTE FOR FAIR ELECTIONS**  
9457 S. University Blvd, #957; Highlands Ranch, CO 80126  
[www.cofairelections.org](http://www.cofairelections.org)

August 10, 2023

The Honorable Jena Griswold  
Colorado Secretary of State  
1700 Broadway, Suite 550  
Denver, CO 80290

Via Email to: [sos.rulemaking@sos.state.co.us](mailto:sos.rulemaking@sos.state.co.us)

Dear Secretary Griswold:

The Colorado Institute for Fair Elections respectfully submits comments regarding the draft of proposed election rule changes issued on June 30, 2023. Michael Raisch, one of our directors, attended the rulemaking hearing on August 3, 2023, and as he stated at that time, our organization is providing written comments on items which we believe require change as listed below.

Covered Voters as Defined in Section 1-8-3-102(2) (Rule 2.5.5)

The proposed rules take the position that once a person becomes a “covered voter” under UOCAVA and provides a change of address to the Department of Revenue showing they are back in the United States, their voting status is not immediately changed back to “normal” in the Colorado voter rolls. When people move into Colorado, we add them to voter rolls based on information provided to the Department of Revenue when obtaining a Colorado driver’s license. Why should we not use the same information from that same source (Department of Revenue) when people return home from foreign assignments. We should be consistent in this process and let the knife cut both ways. We suggest the following changes to the language of the proposed rule.

~~2.5.5 A COVERED VOTER, AS DEFINED IN SECTION 1-8.3-102(2), C.R.S., WHO PROVIDES AN ADDRESS CHANGE TO THE DEPARTMENT OF REVENUE WHICH INDICATES THE VOTER IS NO LONGER OVERSEAS OR SERVING IN THE MILITARY OUT OF STATE MAY NOT~~ **WILL** HAVE THEIR STATUS AS A COVERED VOTER REMOVED DUE TO THE CHANGE. THE CLERK MUST ~~INSTEAD~~ SEND A NOTIFICATION VIA MAIL AND EMAIL, IF AVAILABLE, TO THE ELECTOR NOTIFIING THEM THAT A CHANGE OF ADDRESS WAS RECEIVED, ~~AND ASKING THE VOTER TO CONFIRM THAT THEY ARE NO LONGER A COVERD VOTER.~~ **NOTIFYING THEM THAT A CHANGE OF STATUS WAS MADE**, AND ASKING THE VOTER TO ~~CONFIRM THAT THEY ARE NO LONGER A COVER VOTER~~ **RESPOND IF THEY DISAGREE**. ~~IF NO RESPONSE IS RECEIVED, THE CLERK MAY NOT MAKE REMOVE THE ELECTOR’S COVERED VOTER STATUS.~~

Voter Registration Records and Data (Rule 2.13)

In an effort to make the election process more transparent to the voters, all levels of government must make the necessary information more available to voters and any effort to increase costs to voters above the government's direct and indirect cost is counter to that principle.

We strongly recommend not deleting this change and leaving the current rule as is.

Appointment of Election Judges (Rule 6.1.3)

We are concerned that the balance of election judges between main political parties may be lost. To lessen the chance that the vast majority of election judges represent one major political party, and do not achieve a bi-partisan split, in counties with registrations tilted heavily in either major party's favor, we strongly recommend adopting the following proposed new language:

[Proposed: 6.1.3. THE COUNTY CLERK MUST REASONABLY ATTEMPT TO EXHAUST THE PRECINCT CAUCUS AND UPDATED LIST PROVIDED BY THE MAJOR PARTIES BY THE 60TH DAY BEFORE AN ELECTION, **WITH THE OBJECTIVE TO ACHIEVE EQUAL OR NEAR EQUAL REPRESENTATION IN NUMBER OF ELECTION JUDGES BY THE MAJOR PARTIES** . IF, BY THE 60TH DAY BEFORE AN ELECTION, A MAJOR POLITICAL PARTY FAILS TO PROVIDE A SUFFICIENT LIST OF ELECTION JUDGES WHO ARE AVAILABLE FOR THE COUNTY TO STAFF ALL OF THE ELECTION JUDGE POSITIONS, DATES AND TIMES NEEDED BY THE COUNTY FOR THAT ELECTION, THE COUNTY CLERK **SHOULD ASK FOR AND SHOULD** CONSIDER A SUPPLEMENTAL LIST FROM THAT MAJOR POLITICAL PARTY, **IF PROVIDED**. IF THAT SUPPLEMENTAL LIST IS STILL NOT SUFFICIENT, THE CLERK MAY SUPPLEMENT, **FIRST WITH ADDITIONAL MINOR PARTY OR UNAFFILIATED JUDGES UNTIL THOSE LISTS ARE EXHAUSTED, AND THEN, AS A LAST RESORT, WITH ADDITIONAL MAJOR PARTY JUDGES.**

Dismissal of Election Judge from Duties in Signature Verification (Rule 6.2.2)

We are not opposed to dismissal of election judges but are opposed to having an undefined standard, such as "irregular acceptance or rejection rate" as the cause. While we don't have a better suggestion at this time, we are happy to collaborate with representatives of your office and other stakeholders to work out a better solution.

We strongly recommend leaving the current language as is until a working group can be formed to find a better solution.

Surveillance of Drop Box Locations (Rule 7.4.1(e))

Many regulated businesses are required to transact business under surveillance cameras. In those cases, the companies transact business daily and the size of the backup files can grow to an excessive amount. The burden on these businesses can be excessive. However, in the case of elections the growth of the file size ends with the conclusion of the election. Once that point is reached the file size of the backup is fixed. There is no need to delete these files in fear of running out of disk space. Under normal conditions these files should remain available and protected until the next election is ready to begin. We also believe there should be some indication as to who, when and how access to these records is made available. We strongly recommend the following changes to the language of the proposed rule.

7.4.1(e) ~~Video security surveillance~~ DROP BOX VIDEO RECORDINGS must be retained by the county clerk through ~~60-120 days~~ **FOR 25 MONTHS** following the deadline to certify the election, or following the conclusion of any election contest, whichever is later; except that if the county clerk knows or reasonably should know that there is a potential violation of law where the surveillance could be used as evidence, it must be retained through the applicable statute of limitations or the conclusion of any judicial proceeding related to the election, whichever is later.

#### Signature Verification Procedures (Rule 7.7.3)

The proposed addition to the current rule adds an instruction that a signature which is “more likely than not to be the signature of the voter” should automatically qualify the ballot. The term is not well defined in the rule. We are not sure that the average election judge is capable of making such a determination, given the number of potential signatures for a given voter that could exist in the SCORE database. More broadly we are concerned that the entire signature verification process needs significant improvement. It is the weakest link in the election process and is the key step in determining the validity of the ballot. We believe this issue merits the forming of a working group - involving your office, the voting public, and election integrity groups - to deal with this issue. If you were able to form such a group, we would be happy to bring a non-partisan view to help resolve the problem.

We strongly recommend leaving the current language as is until a working group can be formed to find a better solution.

#### Canvass Board Duties (Rule 10.3.2 (c) and (d))

We share the concern of the Secretary (as she recently posted on Twitter) that distrust of elections is not good for a democracy (paraphrasing). We also believe that the solution to cure such feelings is to provide *more* transparency in the process, *not less*. Therefore, we would urge you not to remove the involvement of the Canvass Board in this rule.

We strongly recommend deleting this change and leaving the current language as is.

#### Official Abstract and Reporting to the Secretary of State (Rule 10.6.3)

This proposal would create a new rule in cases where the Canvass Board does not certify the votes cast or otherwise fails to take action to certify the abstract of votes cast. The proposed rule calls for a notice to be given to the Secretary of State. Rather than taking the approach, we would strongly recommend the following.

All meetings of the Canvass Board should be designated as public meetings and produce published reports. This would make the information available to the Secretary, the county clerks, and the voting public.

#### Communication to UOCAVA Voters in Advance of Coming Election (Rule 16.1.6)

This rule lists four items (a through d) that should be communicated to the Covered Voters at least 60 days prior to an upcoming election.

We strongly suggest that a fifth item (item e) be added to that list, which would provide instructions to the Covered Voter on how to return themselves back to normal voter status.

### Attendance at Trusted Build (Rule 20.6.2)

The proposed rule allows only the Secretary, or other individuals she may approve, to attend the demonstration of the “trusted build” of the software system. The rule requires the vendor to be present - something that raises questions about what the trusted build means. If the goal is to build confidence in the election system, doing this crucial process in the dark is not the right approach. We don’t believe it is the case, but it gives the impression that someone has something to hide.

We strongly recommend allowing members of the Canvass Board, the Bipartisan Election Commission, county officials, and staff from other counties to attend. In addition, the trusted build process could be streamed to the public without causing any harm (assuming that passwords are adequately protected).

### Preparing for the Audit (Rule 25)

**Background** - Of all the changes we are recommending, **this single rule can have more impact than any other single item in terms of improving transparency in elections.** Our country and our state are bitterly divided along political lines. A significant percentage of people are concerned about the integrity of our elections, including a broad segment in the middle who do not belong to either party (47% in Colorado). Some (not all) of the concern expressed comes from the party that is out of favor, which will change over time (remember 2016 and Hillary Clinton). Some of the distrust is seen as unfounded and there is a temptation to just disregard it.

The best way to assure the public can be confident of the good work being done by the Office of the Secretary of State is for you to be more transparent. You have already done so in Rule 25.2.2 (i) and we recommend such an approach be extended to items (j) and (k) as well. Keeping information from the voters only increases distrust. Only *transparency* can increase trust. From our work we have come to understand that there are two specific items that are the biggest problems in this area, one of which is subject to your proposed rule change which we have commented on below. The other item is one we would ask that you consider adding to your list of changes.

The two areas of main concern are - the statistical validity of the audit sample size and the selection of the races/ballots to be verified in the audit. In addition, we would recommend that the Secretary of State cause the entire Cast Vote Records (CVR) publish, **before** the certification of the election in csv and pdf format. We have many other ideas that could improve the election process, but since such a list is beyond the scope of your request for comments, we will leave those for another time. We recommend the following language for this rule.

The State already has an entity formed to provide the appropriate input and advice to the Secretary. It is the Bipartisan Election Advisory Committee. We recommend greater involvement of that entity in the election process, including working with your office to find ways to educate the voting public on the newly available information.

We **urge** the proposed sentence below be added.

25.2.2 (j) Preparing for the audit - Selection of target contests. No later than 5:00 p.m. MT on the ~~Friday~~ **TUESDAY** after election day, the Secretary of State will select the target contests in an open meeting. In a general or coordinated election, the Secretary of State will select at least one statewide contest, and for each county at least one other contest. The Secretary of State will select other ballot contests for audit if in any particular election there is no statewide contest. In a primary election, the Secretary of State will select at least one ~~countywide~~ contest of each major

political party in each county. **IN ADDITION, THE SECRETARY WILL CONSULT AND COLLABORATE WITH THE BIPARTISAN ELECTION ADVISORY COMMITTEE ON THIS SUBJECT AND WILL MAKE INFORMATION AVAILABLE TO THE COMMITTEE THAT WILL SUPPORT THE SECRETARY OF STATE'S CONCLUSIONS INCLUDING DATA AND STATISTICAL CALCULATIONS.** The Secretary of State will publish a complete list of all target contests on the Audit Center. The Secretary of State will consider at least the following factors in the selection of the target contests.

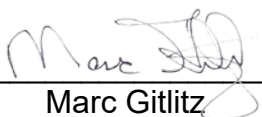
We *urge* that the proposed sentence below be added.

25.2.2(k) Number of ballot cards to audit. The Secretary of State will determine the number of ballot cards to audit to satisfy the risk limit for the target contests based on the ballot manifests submitted by the counties. **THIS PROCESS, INCLUDING THE ROLLING OF THE DICE FOR THE RANDOM SEED, MUST NOT BE DONE UNTIL AFTER THE BALLOT MANIFESTS ARE PUBLISHED TO THE PUBLIC.** The number of ballot cards to audit will be determined according to the formulas and protocols published by Mark Lindeman and Philip B. Stark in *A Gentle Introduction to Risk-limiting Audits*, as applied in Philip Stark's *Tools for Comparison Risk-Limiting Election Audits*, and *Tools for Ballot-Polling Risk-Limiting Election Audits*. The publications cited in this Rule are incorporated by reference in the election rules and do not include later amendments or editions of the incorporated material. **IN ADDITION, THE SECRETARY WILL CONSULT AND COLLABORATE WITH THE BIPARTISAN ELECTION ADVISORY COMMITTEE ON THIS SUBJECT, WILL MAKE INFORMATION AVAILABLE TO THE COMMITTEE, AND THE GENERAL PUBLIC THAT WILL SUPPORT THE SECRETARY OF STATE'S CONCLUSIONS INCLUDING RELEVANT DATA & STATISTICAL CALCULATIONS.** The following materials incorporated by reference are posted on the Secretary of State website and available for review by the public during regular business hours at the Colorado Secretary of State's office:

Thank you for the opportunity to comment on the proposed election rule changes and we look forward to being of further assistance to you and your office.

**Colorado Institute for Fair Elections**

Directors

  
\_\_\_\_\_  
Marc Gitlitz

  
\_\_\_\_\_  
Michael L. Raisch

  
\_\_\_\_\_  
John Murino