

August 7, 2007

Honorable Mike Coffman
Secretary of State
1700 Broadway, Suite 200
Denver, CO 80209

Re: Comments to the proposed revisions to the Proposed Election Rules, 8 CCR 1505-1.

Colorado Common Cause appreciates this opportunity to submit comments to the Secretary of State's Proposed Election Rules. Thank you for your thoughtful consideration of these comments.

Rule 2.10.1 Changes to an elector's voter registration record requires that the elector provide the date of birth and now makes optional the social security number. It is not clear why this new rule is required, though we are pleased to see the mandate of submitting the social security number is removed. We live in an era where identity theft is prevalent and many eligible voters are leery of providing excess information. What prompted this change? Is there a statutory reference?

Rule 2.10.4 Are electors able to make changes to registration via fax or do these provisions only apply for mail-in ballot registration? In rule 2.8 the elector can register via fax, why not also make changes to the voter registration record?

Rule 11.5.4.4 (and other sections that refer to random audit) Requires that the Secretary of State randomly select at least 2 races to be manually verified, but Senate Bill 07-83, Section 29, 1-7.514 (5) requires an audit of the voting on EACH OFFICE, BALLOT ISSUE, AND BALLOT QUESTION IN THE ELECTION.

We recommend that the rules be amended to reflect this statutory change to ensure that the audit accounts for all offices, issues and question in the election.

Rule 11.5.4.11 Regarding post election audit report

Subsection (E) appears to be an effort to amend the rules to reflect the changes to 1-7-514 CRS. We recommended making the rules reflect the statutory changes more clearly. The post election audit report now requires a description of the audit process undertaken, including any initial, interim and final results. The benefit of this new provision is to inform interested parties of the details of what happened during the audit.

Prior to this requirement, the audit results merely showed which races were audited, and the final results of the audit, leaving out important information about discrepancies that were found and resolved and why.

Rule 12.3.2 Requires a written plan be submitted to the Secretary of State which among other things requires information about walk-in balloting, and specifically requests the total number of walk-in ballot locations (h) and the length of time the machines will be available (k).

Colorado Common Cause supports rules requiring walk-in balloting locations. We recommend that the rule be revised to require all counties to have a minimum of 2 locations geographically distributed depending on the size of the jurisdiction. We also recommend that all walk-in balloting locations be treated as polling places. Because these walk-in balloting locations will be required to have accessible voting machines, and therefore election judges and other materials, they will in essence become polling places. This distinction is important to ensure that all voters would be allowed to access the services provided at the walk in balloting location. Importantly, by allowing any voter to cast a ballot on the machines, the votes cast by the disability community would be diluted.

Rule 12.3.2 (section H) How does the clerk determine the number of locations?

Rule 12.3.2 (section K) Requires that counties must disclose the length of time accessible voting machines will be available for walk-in voting. Does this refer to the number of hours or the number of days?

Rule 12.5.1 In this instance the change from absentee to 'mail-in' causes confusion.

“MAIL-IN BALLOT voting occurs in a mail ballot election ONLY when a registered, eligible elector requests that the ballot be mailed to a place other than the address of record, AND AN APPLICATION FOR A MAIL-IN BALLOT IS SUBMITTED FOR THAT ELECTION ONLY.”

- 1) Mail in balloting can occur during any mail or in-person election.
- 2) If the election is a mail only election, the voter is not required to request a ballot.
- 3) A voter may request a one-time mail-in ballot if they will be absent for any reason during an all mail or in-person election.
- 4) A voter may also request to vote by mail during an in-person election if they are in the state. (In this case the voter can make this request one time, or join the permanent list).

We encourage the Secretary to clarify this provision.

Rule 13.16.2 Early voting locations as mail-in drop-off locations on Election Day. 1-8-113 states that electors may drop off their mail-in ballot at early voting sites and that they be maintained as drop-off locations.

“delivered personally by the elector during the time early voting is made available pursuant to section 1-8-202 or on Election Day to an early voters' polling place in the county in which the elector is registered to vote.”

The compromise negotiated for this section intended that all early voting locations also be mail-in ballot drop-off locations and that those same locations remain as drop-off locations on Election Day. CCC recommends that the rule reflect this intended objective.

Rule 13.17.1 The goal of 1-8-307.5 was to enable the voter to know if their ballot had been received. Ideally the voter would be informed with enough time to cast a replacement ballot, if anything happened to their ballot during mail transmission. Rather than “timely manner” the voter should be able to have access to the information as soon as it is available. Our suggestion is that a timeline be created, with a response time of no more than two days from when the request is made. If the request is made on Election Day, the response should be given that day, so the voter has an opportunity to vote if the ballot was not received.

Additionally, voters should be made aware that they have access to this information.

Rule 16.6.3 This rule attempts to address the changes required by Senate Bill 83. It is unclear, however, how the rule would be implemented and what would constitute “sufficient evidence.” Does this rule require the Secretary of State to validate that each individual circulator is in compliance, or merely that the individual’s affidavit is complete?

Rule 20 repeal. Title 1 outlines a process for protesting sufficiency of petition signatures. SB 07–83 allows candidate petitioners to petition for review with the district court. How does the repeal of this rule impact the ability of petitioners including non candidate petitioners to protest?

Rule 26.1.2 A The necessity for this rule is unclear. If the provisional ballot envelope will be treated the same as any voter registration form, the registration of an individual who is prohibited from registering would still be rejected. This rule is unnecessary and intimidating for voters who may have a history of a felony conviction, yet are eligible to vote.

Rule 30.1.6 Colorado should adopt a rule clarifying that a government document that shows that name and address of the elector includes:

A certified letter of identification from a federal, state, county, or municipal government service organization, or a certificate of registration issued by a county Clerk and Recorder.

Because Coloradans are experiencing enormous hurdles to obtain state identification, and because voting is a right fundamental to our democracy, the Secretary should

ensure that all ELIGIBLE voters are able to fully participate in our elections. By including county documents in the list of approved voter ID, eligible voters who are elderly, low income and/or disabled will have a greater likelihood of voting with ease.

Rule 38.3.4 Vote center pollbook backup rule.

The intention of requiring the Secretary to create a rule for electronic poll book back-up was to ensure that a contingency would be in place if an electronic poll book failure occurs.

Rule 38.3.4 (B) allows several alternatives including having a 'sufficient number of computers per vote center to ensure that the check in continues efficiently'. This does not address the need for the voter file to be accessible without connection to the larger database.

Because this section does not provide a meaningful back-up, it should be deleted or rewritten.

Additionally, the rule does not address a procedure for recording the names of electors who voted during the time the back-up poll book was in use. While an affidavit may ensure voters do not vote twice, the counties will need to update their main database throughout the day.

Rule 38.4.2 and 38.4.3 These sections address the minimum electronic poll book requirements of 5 computers for every 10,000 voters, with enough bandwidth to handle the processing time based on a maximum of 1 minute per voter.

We strongly urge the Secretary to revisit this recommendation. Often a voter look up will take longer than 1 minute. For example, if there is a question about the voter's registration because of a name or address change, would easily bump that time up.

Finally, there are several areas that these rules do not address such as changes to the voter registration drive law, guidelines for vote centers (other than for electronic pollbooks). While we do not know why these areas were not addressed, we respectfully request that the Secretary take up these issues with key stakeholders such as county election administrators, community groups and political party leaders.

Thank you for your consideration of these comments.

Sincerely,

Jenny Rose Flanagan
Executive Director, Colorado Common Cause