



COLORADO LAWYERS COMMITTEE

February 10, 2009

Senator Ken Gordon, Chairman
Members of the Colorado Election Reform Commission
Colorado State Capitol
200 East Colfax Avenue
Denver, CO 80203

Re: Bipartisan Recommendations for Improvements to Colorado's Election System

Dear Senator Gordon and other members of the Colorado Election Reform Commission:

On behalf of the Colorado Lawyers Committee Election Task Force (see list below) we appreciate the opportunity to offer testimony before the Commission.

As a diverse and bipartisan group, the members of the Task Force have numerous recommendations regarding elections in Colorado and improvements for the future. Attached is a working paper that outlines some of these recommendations.

We welcome the chance to discuss these with you.

Martha M. Tierney
Co-Chair, Election Task Force

Richard A. Westfall
Co-Chair, Election Task Force

cc: Secretary of State Bernie Buescher

Colorado Lawyers Committee Election Task Force

| | | | |
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| Lori R. Baker | Attorney in private practice | David Ratner | Replin & Rhoades, LLC |
| Andy Bardwell | Bardwell Consulting | Spencer Ross | Colorado Democratic Party |
| Adrienne Benavidez | Colo. Hispanic Bar Association | David Scott | Attorney in private practice |
| Genevieve M. Bernal | Attorney in private practice | Byeongsook Seo | Isaacson Rosenbaum P.C.; Asian Pacific American Bar Assoc. of Colo. |
| Ryan Call | Colorado Republican Party | Daniel A. Sweetser | The Sweetser Law Firm, P.C. |
| Terrance D. Carroll | Greenberg Traurig, LLP | Chantell L Taylor | Colorado Ethics Watch |
| Michael Delcour | | Martha Tierney | Kelly Garnsey Hubbell + Lass LLC |
| Jenny Rose Flanagan | Colorado Common Cause | Carol Tone | League of Women Voters |
| Tamir I. Goldstein | Sherman & Howard L.L.C. | Peggy Walker | The Harris Law Firm P.C. |
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**Testimony for the Elections Task Force of the Colorado Lawyers Committee
Presented to the Colorado Election Reform Commission
February 10, 2009**

Introduction

This written testimony is respectfully submitted to the Colorado Election Reform Commission by the Colorado Lawyers Committee's Election Task Force. The Election Task Force is a bipartisan working group of individuals and organizations in the legal community which reviews and monitors election and voting rights issues. Our common goal for the last five years has been to maximize the right of all Colorado citizens to cast and have their ballots counted without regard to factors such as race, disability, or income. The Task Force includes representatives of the Lawyers Committee, both major political parties, the Colorado Hispanic Bar Association, the Sam Cary Bar Association, the Colorado Indian Bar Association, the Asian Pacific American Bar Association, Colorado Common Cause, the League of Women Voters, and the Legal Center for People with Disabilities and Older People. A complete list of the members is included in the cover letter to which this document is attached.

Overview of Testimony

Colorado has every reason to be proud of its elections and the access it has provided to enable individuals to exercise the right to vote. Particularly in the 2008 election, voters who wanted to cast their ballots had an important array of choices and were able to vote without significant problems or delays. At the same time, there is room for improvement.

The right of a Colorado citizen to vote is precious. Moreover, this right and the quality of the elections should not be different depending on where the voter resides: Someone voting in Adams County should have the same rights as an individual voting in Jefferson County. For this reason, the Elections Task Force believes there is a compelling need to have greater uniformity in the manner in which elections in Colorado are conducted. We recommend that election reform in Colorado move in the direction of assuring predictability for all voters by standardizing many of the aspects of elections that are now inconsistent across counties.

What follows is a list, by way of example, of areas that would greatly benefit from increased uniformity and standardization regarding general elections. (We recognize that there may be other factors to consider regarding non-general elections, including odd-year elections.) In places, we recommend specific statutory or regulatory changes. In other areas, we make suggestions of how to pursue increased uniformity and standardization.

Many legal scholars have recognized that rights are defined by the manner in which they are enforced. The rules and regulations of the election process do indeed define the contours of the right to vote for Colorado citizens. The Elections Task Force believes that the scope of that right can no longer be defined differently based simply upon where that citizen lives. We respectfully urge that the Elections Reform Commission pursue uniformity and standardization, starting with the examples we list below.

Maintenance And/Or Enhancement Of Uniformity And Standardization

1. Maintenance of Voting Options

Presently, voters in Colorado in general elections can vote one of three ways: (1) by mail; (2) early voting; and (3) polling place on election day (either by precinct, combined precincts or vote center). All three options should be preserved in each county of the State to provide the voter with maximum opportunity to choose the option that best serves the voter's confidence level, schedule, and voting methodology preference.

2. Increase Standardization and Uniformity re Voter Registration

a. Fix the “Check Box” Issue

Voter registration is covered under Article 2 of Title 1 of the Colorado Revised Statutes. The statutory sections in this Article, specifically C.R.S. § 1-2-204, provide a hierarchy of information that may be required of an individual in order for that individual’s elector eligibility to be confirmed. One issue that arose in 2008 involved the manner in which identifying information was gathered to confirm a voter’s eligibility.

In C.R.S. § 1-2-204(f.5), the General Assembly set forth that before providing a social security number or the last four digits thereof, the registering individual “shall” answer a Clerk and Recorder’s request for a driver’s license number or a Colorado identification number with a statement that he or she does not have a driver’s license or a Colorado identification card. Likewise, if the registering individual does not have a social security number, he or she “shall” answer a Clerk and Recorder’s request for such number with a statement he or she does not have a social security number. In 2008, the “failure” of a voter to provide answers to questions posed on the Secretary of State’s form led to voters being deemed as having “incomplete” registrations. A problem then arose when there were significant disparities among some clerks on how to cure the deficiencies in completion of the registration forms.

While it is certainly desirable to have the best identification possible when registering to vote, individuals should not be prohibited or even discouraged from registering so long as adequate information is obtained from the registering individual so that a Clerk and Recorder and, ultimately, the Secretary of State, can determine the fundamental eligibility requirements set forth in statute (e.g., citizen of the United States, resident of Colorado, at least 18 years of age on or before the day of the election, etc.). In this regard, the requirements of § 1-2-204(f.5) should be scaled back to remove the mandatory criteria attached to the provision of driver’s license or Colorado State identification information, and the Clerks should enforce these scaled-back requirements in a uniform matter. In a similar vein, acceptable forms of identification listed in § 1-2-204(f.5), and indeed for all voting purposes, should be expanded to include any tribal identification card issued by a federally-recognized Indian tribe certifying that the eligible elector is a member of the tribe, as well as any Certificate of Degree of Indian Blood (“CDIB”) Card issued by the United States Bureau of Indian Affairs certifying that the eligible elector possesses Indian blood of a federally-recognized Indian tribe. These forms of identification may often be the only forms of identification that Native American eligible electors may have and are at least equally as reliable as State forms of identification.

b. Have Uniform Requirements on Notice and Cure of Deficiencies

Beyond the “check box” issue described above, there are other procedural issues related to deficiencies that need to be addressed including but not limited to: (1) which deficiencies can be cured and which ones are fatal to a registration; (2) how a voter is notified of a deficiency; and (3) which deficiencies can be cured by the Clerks, including through the use of the SCORE system, and which ones require action by the voter.

3. Increase Standardization and Uniformity in the Use of Mail Ballots

There are differences in the manner in which mail ballots are used that should be addressed. Examples include:

- a. Consistent with our comments above on voter registration, there should be uniformity on how voters are informed that there are deficiencies in their mail ballots and how these deficiencies are cured.
- b. There should be uniformity in the manner in which voters are informed that identification is required to be included with mail ballots.
- c. There should be uniformity in what types of locations are suitable for dropping off mail ballots on election day.

4. Standardize Election Judge Training By Formal Rulemaking

Poll worker training and materials vary widely in scope, efficacy and clarity. Uniform election judge training and materials would increase the overall quality of work of poll workers and greatly enhance uniform protection of the voting franchise in this State.

We recommend that the Secretary of State, through the use of formal notice and comment rulemaking under the Colorado Administrative Procedures Act, create a statewide election judge manual. Counties would, of course, be allowed to addend the statewide election judge manual with county-specific materials and address county-specific matters, such as the mechanics of using a particular voting machine; however, all counties would have to follow the basic procedures in the manual. A uniform training manual would allow for standardization of such issues as:

- Statewide training of poll workers;
- Types of identification permitted at the polling place (e.g., tribal identification);
- Understanding the purpose of the identification requirement (no address match, no photo);
- What to do when a voter does not appear on the rolls (when to contact county, when to offer provisional ballot);
- How to assist a voter with a disability;
- Poll watchers (what can a poll watcher do, not do, how proximate to voting process).

The use of a formal rulemaking process to create the election manual will allow all interested groups, particularly county clerks, to participate in a process which will result in one, statewide, set of standards for managing the election. This “playbook” will, in turn, allow the political parties and interest groups committed to protecting the voting franchise to help insure that the voting franchise in Colorado is in fact universally protected.

5. Precinct Level Reporting

Precinct level reporting is critically important for insuring that the State of Colorado complies with the Voting Rights Act. We strongly recommend that any changes to the election process in Colorado preserve the precinct level reporting requirement.

Additional Comments Regarding Persons with Disabilities

Before concluding, we would like to offer a few remarks about ensuring that the rights of persons with disabilities are protected.

- Every polling place in Colorado must meet at least the minimum requirements for ADA accessibility compliance. County election administrators should consult with people with disabilities living in their counties when planning projects for removing polling place barriers. Paid consultation with disability advocates and accessibility experts using HAVA funds should be an allowable use of the accessibility grant funds.
- Every polling place must have at least one functioning, accessible voting system and election judges must be trained to demonstrate their use, particularly the accessible devices.
- Poll worker training must include information on serving and communicating with voters with all types of disabilities. This information is available from the Secretary of State’s Office and should be further addressed in the election-manual rulemaking process discussed above. The seven-minute “Democracy for All” training video is an effective tool that already exists today.
- Every polling place in Colorado must meet at least the minimum requirements for ADA accessibility compliance. County election administrators should consult with people with disabilities living in their counties when planning projects for removing polling places.

Conclusion

We thank the Commission for its consideration and its time.