

To: Election Reform Commission

From: Colorado Election Advocacy Organizations including: Colorado Common Cause, League of Women Voters of Colorado, The Legal Center for Older People and People with Disabilities, Colorado Progressive Coalition, and People for the American Way

Re: Election Reform Commission subcommittee recommendations

Date: February 16, 2009

Thank you for your consideration of our comments on the proposed recommendations. Our organizations' position statements are listed below. Please contact Jenny Flanagan, Colorado Common Cause at jflanagan@commoncause.org or 303-292-2163 with any questions.

**Election Reform Commission – Registration/SCORE Database Sub Committee
Recommendations**

Item #1: SCORE System

Commission Recommendation:

The Commission encourages and supports the efforts of the Secretary of State and the county clerk and recorders to continue making improvements to the system in the following areas: a. Improve reporting capabilities; b. Refinement/development of additional modules; and c. Resolution of technical issues.

Coalition Position:

We support this recommendation

Item #2: Coordinate SCORE and Social Security Administration Database

Commission Recommendation:

The SCORE system should be expanded to allow for verification of social security numbers. Specifically, the system should affirm voter ID information through coordination of SCORE and the Social Security Administration database, similar to what is currently done with the Department of Revenue's driver's license database.

Coalition Position:

As has been discussed by the Commission, there are significant problems with the Social Security Administration database. It is unreliable and not frequently updated. Because the information is unreliable, we oppose its use as a mechanism to affirm voter ID information.

Item #3: Emergency Registration

Commission Recommendation:

Remove following text from C.R.S. 1-2-217.5 (2)(c) – “or to provide the location of the voter registration drive and the approximate date of registration...”

Coalition Position:

We oppose removing this important safeguard from the Emergency Registration statute. For eligible electors who register to vote with a voter registration drive but for whatever reason do not appear on the voter registration list, the emergency registration law provides an important safety valve to ensure that these electors are able to participate.

From our analysis of the use of provisional ballots during the 2008 general election, there is no indication that the emergency registration statute is being abused or used as a backdoor approach to Election Day Voter Registration. Indeed only 68 of the 52,109 provisional ballots cast were in this category.

Our election laws should be inclusive and seek to encourage eligible electors to participate in the political process. This recommendation is a step in the wrong direction and will disenfranchise voters who attempted to register to vote but who do not appear on the rolls.

Item #4: Proof of Citizenship

Commission Recommendation:

The Commission recommends legislation to require voters to provide proof of citizenship when registering to vote.

Coalition Position:

We oppose this recommendation. Proof of citizenship requirements for voter registration will result in the disenfranchisement of eligible voters, especially elderly, poor, and minority voters.

Legislation mirroring this recommendation has already been rejected by the Colorado legislature this year.

Item #5: Photo ID

Commission Recommendation:

The Commission recommends legislation to require voters to present photo identification when registering to vote.

Coalition Position:

We oppose this recommendation. Photo identification requirements create onerous barriers to the voting process, particularly for elderly, youth, disabled, minority, and low-income voters who are eligible but cannot afford or do not have the means to obtain photo identification.

Legislation mirroring this recommendation has already been rejected by the Colorado legislature this year.

Item #6: Voter Registration Form (specifically the Check Box Issue)

Commission Recommendation:

The Commission recommends that the Secretary of State and the Colorado County Clerk's Association work to redesign the Colorado voter registration form (a) to clarify "check box" requirements, and (b) to use separate form for administrative changes.

Coalition Position:

The Legislature should change state law in order to eliminate the requirement that the registrant must affirmatively state (through a checkbox or any other mechanism) that he lacks either a driver's license or a social security number. Most states (with the exception of Colorado, Texas and Wyoming) have workable statutes to solve this problem.

Alternatively, election administrators should accept registration forms if sufficient information is provided. If a voter fails to provide his/her driver's license number, state issued ID or his/her social security number, and fails to check the box, the county clerk or Secretary of State can search existing databases and if the correct information can be found shall register the voter; or accept the registration and mark as ID deficient and allow the voter to provide ID at a later date up to and including on election day.

Item #7: Assisted Living Facilities

Commission Recommendation:

The Commission recommends legislation to exempt persons living in assisted living or nursing care facilities from identification requirements for voting. In addition, the Commission recommends the use of Secretary of State's rules to ensure consistent application of regulations.

Coalition Position:

We support this recommendation, but further recommend that the commission relieve all voters from onerous ID requirements. Identification requirements create barriers to the voting process, particularly for elderly, youth, disabled, minority, and low-income voters who are eligible but cannot afford or do not have the means to obtain identification.

Item #8: Voter Registration Drives

Commission Recommendation:

The Commission recommends the following amendments to the statutes governing voter registration drives (sections 1-2-701 et seq.): (a) Require every circulator who participates in a voter registration drive to go through training; (b) Increase the penalties for voter registration drive organizers in order to hold those that conduct drives improperly to a higher level of accountability.

Coalition Position:

We oppose the recommendation to make the voter registration drive training process more onerous. While training and oversight are important, the current process works effectively. Requiring individual voter registration drive circulators to complete training by the Secretary of State's office will be a significant burden to both the Secretary of State's office and the voter registration drive organizations.

Item #9: Verification Period for UOCAVA and ID-deficient voters

Commission Recommendation:

The Commission recommends expanding the current eight-day post-election signature verification period to allow for continued receipt of UOCAVA ballots, and for providing identification to voters who are identification-deficient.

Coalition Position:

We support this recommendation.

Item #10: National Voter Registration Database

Commission Recommendation:

The Commission recommends participating in the implementation of a national voter registration database.

Coalition Position:

There is a national movement toward universal/automatic registration. Under this model, a voter registers once, and from that point forward, registration follows with the National Change of Address form. Any registration reform must ensure that the greatest number of eligible voters can participate in our elections.

Item #11: Governing Board for SCORE

Commission Recommendation:

The Commission recommends legislation to establish a board of directors to provide oversight to the operations and direction of SCORE. (a) The board will consist of the Secretary of State and a specified number of county clerk and recorders, who will serve specified terms. (b) The board will be chaired by the Secretary of State. (c) Board members and the chair will have equal voting weight. (d) The chair will have veto authority over any vote taken. (e) The board will meet no less than four times annually.

Coalition Position:

We support the concept of providing oversight for the direction of the SCORE database but believe that the board of directors needs to include representation from other stakeholders in addition to the election administrators referenced in the recommendation. The board of directors should also include voting rights advocates and technology experts.

Election Reform Commission – Technology and Audit Subcommittee Recommendations

Item #12: Voting System Certification

a. HB 08-1155. Extend the interim emergency certifications provided for in House Bill 08- 1155 through the 2013 election cycle.

Coalition Position:

We recognize the cost of recertification and the need to continue using these systems. We support the committee's recommendation re: the grandfathering so long as the committee requires the state to report on the issues identified during the previous certification process that resulted in decertification. In order to ensure confidence in the current voting system, voters need to know that problems identified have been remedied before the machines' continued use.

b. VVPATs. Repeal the requirement that all DRE voting equipment have voter-verified audit trails (VVPATs) by 2010.

Coalition Position:

We oppose continuing to exempt Jefferson and Arapahoe counties from the voter verified audit trail requirement that was approved by the Legislature in 2005. Everyone in the state has a right to a verifiable and auditable vote. Voters in Jefferson and Arapahoe counties should not be treated as second class voters. Additionally, the retrofit of voter verified audit trail should be fully accessible for people with disabilities. If the counties do not want to retrofit their DREs,

then they should use paper ballots.

c. Paper ballot/optical scan-based EVS. For all elections after 2013 election cycle, and for all new electronic voting systems purchased and utilized before the 2013 election cycle, require all counties to utilize a paper ballot/optical scan-based electronic voting system that has been certified under the revised procedures recommended below.

Coalition Position:

Whatever system Colorado adopts, it must be secure, accurate, reliable, auditable, and fully accessible. Provided that the system meets these principles, we have no position on the decision to conduct elections with a paper-based versus electronic voting machine system.

Regardless of the system adopted, it must provide voters with disabilities the opportunity to vote in the same manner as all other voters. In a paper ballot election, that would require a ballot marking device. Additionally, we must maintain precinct level reporting, so a paper based system must accommodate that requirement as well.

d. Certification of paper ballot/optical scan-based system and modification of EVS whose certifications have been extended (applies to all new EVS and modifications to certified EVS).

I. Repeal requirement that all EVS must be tested and certified as meeting current federal standards.

II. Allow EVS whose certifications are extended through the 2012 general election [2013 election cycle?] to be modified subject to testing and certification by the Secretary of State that the systems, as modified, meet all Colorado testing and certification requirements.

III. Change the testing and certification completion requirement in Section 1-5-617 (1)(c), C.R.S., from 90 days to 180 days.

IV. Allow the Secretary of State to utilize and rely upon testing done by another state's secretary of state or chief election official, or by a federally certified testing lab, provided that the Colorado secretary of state has complete access to all test documentation, test data, and test reports, and provided that the Colorado Secretary of State make written findings and certify (A) that he or she has reviewed the test documentation, data, and reports and finds that the testing has been conducted in accordance with state-of-the-art engineering standards and 1 practices and (B) that the testing met each applicable Colorado requirement.

Coalition Position:

We do not support eliminating the EAC testing requirements. The EAC may have been slow to start but there is a benefit to federal certification and the process reflects significant work to develop it. Colorado should continue to require federal certification before the state allows a new system or modifications to existing systems. The state should consider participating in a unified multi-state testing initiative, but only after specific clearly defined standards are reviewed with the opportunity for public comment. Such a state review should be used to supplement the federal tests and Colorado's own testing procedures, but not to replace those procedures. Until such time, Colorado should maintain its own testing procedures.

Item #13: Post-Election Audits

Commission Recommendation:

The Commission recommends legislation to revise the statutory requirements for post-election audits in section 1-7-514, C.R.S., to require a risk-based audit methodology instead of the current fixed-percent audit. All aspects of each election (mail-in voting, early voting, election day voting, other) should be subject to the same audit requirements. In addition, the Commission recommends the following: a. Require all voting systems to report votes in auditable batches. b. Define the confidence level required, e.g. 90 percent or some lesser confidence level. c. Require audit units to be randomly selected. d. Require that the audit process to be transparent. e. Require audit processes to be developed for each voting system in Colorado and accomplished in a way that is easily understood by public officials charged with completing the work. f. Set out in statute the general requirements, standards, and procedures for a risk-based audit. g. Require the Secretary of State to implement risk-based election audits by notice and comment rule-making, resulting in a new election rule giving guidance to the counties as to the specific requirements, standards, and procedures to be followed.

Coalition Position:

We support this recommendation and want to see the audit provision strengthened.

Election Reform Commission—Uniformity and Simplicity Sub Committee Recommendations

Item #14: Mail Ballot Elections:

Commission Recommendations:

Option to conduct primary and general by mail. Guidelines regarding: minimum thresholds; service centers; public comment; election preparation; voter eligibility; unaffiliated voters; issuing/counting ballots; return of ballots; postage; homeless voters; healthcare facilities.

Coalition Position:

We oppose the recommendation to allow counties the option to conduct elections exclusively by mail. We recognize VBM is popular with many Colorado voters, but don't believe that the state is ready for general elections to be conducted exclusively by mail. Currently, voters can choose to vote by mail, vote early, or vote on Election Day. These options provide for the greatest flexibility and ensure that all Colorado voters are able to participate. Giving counties the option to conduct elections entirely by mail could eliminate these options for voters. Even in elections where every voter is mailed a ballot, counties need to preserve options for returning ballots by mail or at drop boxes, voting early in-person, and voting on election day in-person.

The Legislature is currently considering giving counties the options to conduct primary elections exclusively by mail; if that legislation advances we believe the recommendations with regard to safeguards offered by the committee are on the right track but not comprehensive. In addition to the safeguards included in the committee's recommendations, we believe that the state needs to adopt Election Day voter registration, address ID requirements for first time voters, and ensure that list maintenance efforts are adequate.

Regarding the committee's comments regarding voter eligibility, our coalition believes that any legislation authorizing exclusive vote by mail elections must also require that ballots be sent to both active voters and inactive eligible voters (we would accept limiting to inactive voters who are made inactive for failure to vote in 1 election).

Issue #15: Healthcare Facilities

Commission Recommendation:

The Commission recommends that the term "health care facilities" be defined in statute.

Coalition Position:

No comment

Issue #16: Training

Commission Recommendation:

Base Line SOS Training - The Secretary of State's office should produce an Elections Manual addressing Election Officials' application of the Election laws and rules.

Distribution to Election Officials – Prior to publication, it is recommended that each designated election official send County specific rules to be included in a separate section of the Election Manual. The complete Election Manual, including County specific rules, will be distributed to Election Officials for each County.

Distribution to Polling Locations – In the interest of uniformity, the committee recommends that sections of the Election Manual relating to Election Day laws and rules be distributed to each polling location/service center. Poll workers should be trained to consult sections of the Election Manual regarding any disputes prior to consulting local rules in any Primary or General Election.

Video Training – The committee strongly recommends that the Secretary of State contract for the professional production of video instruction consistent with the contents of the Official Election Manual. The video shall be free and publicly available, online, and in a downloadable and viewable format and shall be used in conjunction with any training provided at the local level.

Coalition Position:

We support the subcommittee's recommendations on training. These recommendations set out good principles and will serve the goals of increased uniformity and will lead to greater consistency.

Issue #17: Forms

Commission Recommendation:

The committee recommends that each of these forms be developed in a manner that minimizes voter confusion, maximizes ease with which to understand and use, and that the Secretary of State's office dedicate resources to obtain professional guidance to develop these documents. The committee additionally recommends that rules be established related to what constitutes an approved and acceptable form certified for use and acceptance by eligible voters, campaigns, voter registration drives, and designated election officials. It is further recommended that uniformity be established with regard to how forms are used inside of polling locations, particularly provisional ballot forms and envelopes managed by election judges and personnel.

Coalition Position:

We support the subcommittee's recommendations on forms. These recommendations set out good principles and will serve the goals of increased uniformity and will lead to greater consistency.

Issue #18: Primary Elections

Commission Recommendation:

The Commission did not offer a recommendation, but noted several options to deal with primaries.

Coalition Position:

No comment

Issue #19: Canvassing Board Procedures

Commission Recommendation:

The Commission did not offer a recommendation, but noted several options to deal with these procedures.

Coalition Position:

No comment

Issue #20: Online Voter Registration

Commission Recommendation:

The Commission recommends that legislation be adopted to allow on-line voter registration.

Coalition Position:

We support this recommendation.

Issue #21: Future SCORE Funding

Commission Recommendation:

The Commission recommends that legislation be adopted to provide a source of funding to maintain the SCORE system after the existing fund source is exhausted. Such legislation should address whether counties should uniformly be required to contribute funding to support SCORE.

Coalition Position:

No Comment

Issue #22: Overhaul Active/Inactive Statute

Commission Recommendation:

The Commission recommends that legislation be adopted to make a major re-haul of Colorado's active/inactive statute.

Coalition Position:

We support changing the statute that requires that voters be made inactive after not voting in a single general election. This is more punitive than many other states and disenfranchises voters.

Issue #23: Overhaul Title I in its Entirety

Commission Recommendation:

The Commission recommends that the Secretary of State form an ongoing working group to engage in serious work to re-haul Title 1 and that the Secretary of State, along with the legislature, will continue to advocate for significant revisions guided toward bringing uniformity and simplicity to the

elections environment in the State of Colorado.

Coalition Position:

We support continuing the important work of identifying problems and reforming our election code, provided that the working group includes citizen advocacy groups and elections experts of varying perspectives.

Issue #24: Extension of Commission

Commission Recommendation:

The Commission recommends the creation of a permanent Election Reform Commission. [any changes name of commission, scope of duties, etc.?)

Coalition Position:

We support extending the term of the Commission, provided that its membership be expanded to include citizen advocacy groups and elections experts of varying perspectives.

Additional Coalition Recommendations:

We encourage the Commission to propose changes to the law regarding assistance for voters. Currently under Section 1-7-112 (1) (a) of Colorado law, an election judge, a person designated by an election official, or a person of the voter's choice can provide assistance to a voter needing it so long as the judge or person can speak both English and the language understood by the voter. However, this same section states that no one other than an election judge or a person designated by election officials can assist more than one voter unless the person assisting is a member of the voter's family. This limitation prohibiting volunteers from assisting more than one person should be eliminated and thus this sentence of section 1-7-112 (1)(a) should be removed.

This section is unnecessarily restrictive to prohibit a person unrelated to a voter from assisting more than one voter. Since the Election Code prohibits influencing voters and requires the names of persons who assist voters to be recorded, limiting assistance to one person is excessive and can reduce flexibility. Precincts with a high proportion of language minority voters but no bilingual election judges or election materials could allow civic participation groups or even bystanders to provide assistance as necessary. This measure is critical for preventing disenfranchisement of monolingual Spanish speakers in counties that are not federally mandated by the Voting Rights Act to provide election and voting materials.