

PROPOSED AMENDMENTS TO RULE 15.1

15.1.3. Determinations regarding the denial of an application or revocation of a license will be made, or the resolution of alleged violations involving petition entities shall be addressed, in accordance with the requirements of section 1-40-135, C.R.S.

15.1.4 At the time the petition is filed, the proponents shall file with the Secretary of State a copy of the list of circulators and a cope of the list of notaries required by section 1-40-111(4), C.R.S., as well as the information relating to paid circulators' dates of circulation, the total hours each such circulator spent circulating petitions for pay, and the gross wages paid for such hours, as required by section 1-40-121(1), C.R.S.

Andrea Gyger

From: Hall, Hillary [hhall@bouldercounty.org]
Sent: Monday, August 03, 2009 3:51 PM
To: Andrea Gyger
Subject: Rule making August 3rd

Boulder County has just one comment on the proposed rules for today.

Comments on Rule Making:

30.1.6 The ID requirements for a public institution of higher education exceed what is required for other forms of ID by requiring the ID to include a birth date. DOB is used to determine eligibility and would be included in the voter registration record and is therefore excessive in the ID requirements. Would also strike the term student as faculty of the higher education also have this type of ID.

Thank you,
Hillary Hall
Boulder County Clerk and Recorder



August 3, 2009

The Honorable Bernie Buescher, Secretary of State
Department of State
1700 Broadway
Denver, CO 80290

Re: Comments regarding August 3, 2009 rulemaking hearing

Colorado Common Cause is a nonpartisan, nonprofit organization that works for open, honest, and accountable government and seeks to strengthen public participation. We appreciate the opportunity to comment on the proposed rules.

Rule 2.7 We support this rule as it clarifies that counties may utilize necessary information that is available to them to register voters when information may have been inadvertently left off the registrant's application.

Rule 11.5.4.1 The proposed rule changes the time when the devices to be audited will be sent to the counties from 24 hours to 48 hours. We would like clarification of why this change is being proposed. We strongly support post election audits. One benefit to having the notice go out quickly is that it provides counties time to prepare for their audit and notify the public of when the audit will take place so they can observe.

Rule 12.7.2 and Rule 13.8.1 These rules address the requirement that a voter be sent a letter if they failed to provide a copy of their identification as required with some mail ballots. We supported this statutory change and recommend that the rule include the language from the current Rule 29.1.1 which states "nothing in this rule shall be construed to prohibit the designated election official from calling [or emailing] the elector; however, a phone call shall not substitute for notification to the elector in writing."

Rule 13.12.2 We seek clarification on this rule to understand what is meant by "the mail in ballot must be voided prior to issuing the early voting ballot." Does the Secretary mean that the voter would need to 'surrender' their ballot as referenced in current Rule 12.11 or would the election judge 'void' the ballot in an electronic poll book or through some other notation? We do not support this rule if a voter is required to physically surrender his or her ballot to vote.

Rule 13.13.2 This rule requires voters to file a separate mail in ballot request if they wish to have a mail ballot sent to an address that is not their address of record. We recommend that the

designated election official be required to send notice to voters about the elections that they will receive ballots, and that there may be elections where they would need to notify their local officials in order to participate by mail.

Rule 15.1.1 We are concerned that proposed rule does not properly target the entities that are required to register as petition entities with the Secretary of State's office. We agree that any person (including proponents and issue committees) who intends to hire circulators directly needs to register as petition entities and complete the training and other requirements mandated by 1-40-135.

However, it is a common practice for issue committees to contract with a third-party petition firm, who then hires the circulators to gather petition signatures. In this instance, we believe that it is important that the rules clarify that the rule applies only to the person that will hire, pay and oversee the circulators (whether it be the proponent, the ballot issue committee, or, where applicable, the third-party circulation company), and that person is responsible for registering as a petition entity and complying with the requirements.

We recommend amending the proposed rules as follows (changes underlined in language below):

Rule 15.1 would be amended as follows:

15.1 Each petition shall be verified according to the procedures set forth in Rule 17.1.

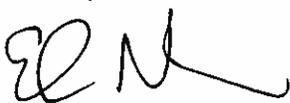
REGISTRATION, LICENSE, AND FILING PROCEDURES.

15.1.1 IN ACCORDANCE WITH SECTION 1-40-135, C.R.S., ANY PERSON PETITION PROPONENT OR ISSUE COMMITTEE THAT INTENDS TO COMPENSATE PETITION CIRCULATORS MUST REGISTER WITH, AND OBTAIN A PETITION ENTITY LICENSE FROM THE SECRETARY OF STATE PRIOR TO COMPENSATING ANY CIRCULATOR.

IF A PROPONENT OR ISSUE COMMITTEE CONTRACTS WITH A THIRD-PARTY TO HIRE CIRCULATORS TO COLLECT SIGNATURES, THAT THIRD-PARTY IS RESPONSIBLE FOR REGISTERING AS A PETITION ENTITY AND MEETING THE REQUIREMENTS ESTABLISHED IN 1-40-135.

Thank you for the opportunity to comment. Please contact us if you have questions.

Thank you,



Elena Nunez
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THE VOTE BY MAIL PROJECT
625 NW EVERETT #229 PORTLAND, OR 97209
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The Honorable Bernie Buescher, Secretary of State
1700 Broadway, Suite 250
Denver, CO 80290

August 3, 2009

Dear Secretary Buescher,

The Vote By Mail Project (VBM Project) is thankful for the opportunity to submit the following comments on the proposed amendments and revisions to the Colorado Secretary of State Election Rules dated June 30, 2009. We also look forward to participating in the rulemaking hearing scheduled August 3, 2009 to provide additional comments on this matter.

The Vote By Mail Project (501c3) and the Vote By Mail Advocacy Project (501c4) provide an institutional home for education and advocacy around the entire continuum of Vote By Mail options. We believe that fair, efficient, and highly participatory elections make our democracy stronger, and we are committed to assisting citizens and public officials nationwide to move their states along the continuum towards fair, efficient Vote By Mail elections. We assisted with the passage of HB 09-1015, HB 09-1186, HB 09-1336, and HB 09-1337 in Colorado's 2009 Legislative Session.

Our comments are listed below by rule number and our suggestions are italicized.

Rule 12.5

Changing the way mail-in voters are treated in an all-mail election will provide some consistency and clarity to the process, for both the elector and the election administrator. However, voters who are absent from the state in an all-mail election should still be afforded the extended timelines for all-mail voters.

We recommend that the Rule 2.5.1 should reference that the mailing of the mail-in ballot must follow the time-lines established in 1-8-111 or specifically state that the requested ballot must be mailed within seventy-two hours after the receipt of the mail-in ballot application.

We also believe that voters be informed either annually, or before an election, which elections they will be receiving a ballot and which they will not in order to provide some additional information and consistency for voters as we increase the number of all-mail elections.

Rule 13.12

Being unable to locate 1-8-113(1)E C.R.S. it is difficult to adequately comment on this rule change. However, we believe that a voter should not have to surrender their ballot in order to vote a regular ballot in an early vote location.

*We suggest that the early vote ballot should be treated as a replacement ballot according to 1-8-111(3) C.R.S. in this environment. This rule should also be clear in **Rule 13.12.2** that voters have the option to vote a provisional ballot in an early vote location according to 1-8.5-101 C.R.S. without having to surrender their ballot or have it voided.*

The Vote By Mail Project thanks the Secretary of State for this opportunity of comment. We welcome any comments or thoughts you may have in our request.

Respectfully submitted this 3rd day of August, 2009.

_____/signed/_____

Adam J. Smith, Executive Director
The Vote By Mail Project
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Portland, OR 97209
(503) 917-9066
ajsmith@votebymailproject.org

Andrea Gyger

Subject: FW: (On mail-in ballots, etc) Watch out for colorful characters & 5-year plans near you

From: Margit Johansson [mailto:margitjo@gmail.com]

Sent: Wednesday, August 05, 2009 4:19 AM

To: Wayne Munster

Cc: Colorado Secretary of State

Subject: Fwd: (On mail-in ballots, etc) Watch out for colorful characters & 5-year plans near you

Dear Mr. Munster,

Here is some very interesting information on mail-in ballots and other matters from Blackbox Voting.

Please pass this on to Mr. Hobbs, for whom there was no email address listed online.

Thanks.

In my testimony at the Rules hearing, when I mistakenly thought an affidavit was being dispensed with, I supported keeping the affidavit provision because of a concern that mail ballots need all the safeguards against misuse possible, because their chain of custody is so weak. Bev Harris's latest research reinforces my concern. We in Colorado should not be going along with the mail ballot push as we are; we should not be going along with the internet voting push for overseas voters as we are. The insecurity of the votes in these systems is not being acknowledged by those with a stake in their promulgation.

At the Civic Summit (held in conjunction with the recent NASS meetings in Minneapolis), there was a session on mail ballots run by the head of the Vote by Mail Project. A supporting organization was the League of Rural Voters, which apparently sponsors or houses the Vote by Mail Project. I spoke to a representative of that organization (it might have been Neil Ritchie --- brother of the MN Sec. of State?), saying that good research was needed on mail ballots. He was dismissive, saying simply that mail ballots were a "done deal". There were no opponents of mail ballots presenting.

But back to my testimony at the Rules hearing: I may have strayed from topic when mentioning the legislation that requires that the first vote cast under a name be counted, but it is a problem, as voting in other people's name does happen in Colorado. I know someone in Teller County who has testified about citizens being informed they had already voted, in a legislative hearing for the public a few years back. There was never any follow-up on this information, as far as I heard.

Bev Harris has done a great deal for the cause of election integrity; she is one of the few election activists who doesn't fall over herself to avoid pointing out possible wrongdoing in our elections, as opposed to focusing on weaknesses in the system. But, as one of my graduate professors pointed out when discussing technology, all technological systems are designed or tolerated by people. I say those responsible for the use of flawed systems should be held accountable if these systems don't serve the public good.

Sincerely,

Margit Johansson, CFVI

----- Forwarded message -----

From: **Bev Harris** <bev@blackboxvoting.org>

Date: Tue, Aug 4, 2009 at 5:33 PM

Subject: Watch out for colorful characters & 5-year plans near you

To: margitjo@gmail.com

Wisconsin is set to ratify a '5-year plan' which will advocate looking into forced mail-in voting, Etch-a-Sketch-style electronic voter registration tablets which eliminate the physical signature, and Internet voting. The combination of mail-in voting and physical signature removal pulls the wheels right off of mail-in voting checks and balances -- and safeguards for mail-in voting are already inadequate.

By the way, the primary architect of current mail-in vote authentication software is Jeffrey Dean, perhaps the most colorful character ever to hit the election scene; at one point he worked for the man who headed the White House Plumbers unit from the Watergate scandal. Jeff Dean has been to prison twice in the last 15 years, once on multiple counts of computer fraud used for embezzlement.

* * * *

Black Box Voting is one of the ONLY voting rights organizations doing tough-minded research into the new vote-by-mail craze. If you believe our work is important, please consider support with a donation: <http://www.blackboxvoting.org/donate.html> or mail to:

Black Box Voting
330 SW 43rd St Suite K - PMB 547
Renton WA 98057

* * * *

Wisconsin's new 5-year plan echoes new proposals and changes in many states (New York-failed this time, will be brought up again; Florida, part-way there; Indiana, part-way there, California, most of the way there, Arizona, most of the way there, Colorado, most of the way there...).

Wisconsin's plan, touted by Kevin Kennedy, director of the Government Accountability Board, would cost \$17 million to make all the changes. Claims that mail-in voting increases participation, or is less expensive, are now being questioned by many researchers. Some data indicates that mail-in voting actually produces LOWER participation, and the high costs associated with authentication software hint that it may actually be more expensive than polling place voting.

The runaway vote-by-mail train requires that I bring this up, whether it's politically correct or not:

If you're concerned about bogus voters being entered onto the voter registration rolls by groups like ACORN, take a deep breath. With mail-in voting, an even bigger concern is dumping REAL voters who are UNLIKELY TO VOTE onto the rolls.

Black Box Voting research into the software used to authenticate votes indicates that people unlikely to vote can be targeted to have an insider vote for them. Traditionally non-mainstream populations like prisoners, the homeless, and low income may participate in elections at lower than average rates -- there is not enough data yet to know. We really don't have any adequate authentication mechanisms to determine whether the mail-in ballots submitted are real, from real voters, or counterfeit, cast en masse by insiders for specific target groups deemed less likely to vote. If insiders counterfeit votes for real people who didn't vote, it will be almost impossible to detect.

VOTE-BY-MAIL SOFTWARE APPEARS TO BE SET UP FOR JUST SUCH A SCENARIO

Black Box Voting has obtained this court testimony, by programmer Brian Clubb, pertaining to a software programming revision ordered by Jeffrey Dean:

"...if this voter showed up in the subsequent upload, then I need to find where he appeared in the first upload, tell them what envelope number, what ballot number he was assigned so they can pull it back out. "

One implication of the above programming change: It allows an insider cast votes for a selection of voters deemed unlikely to vote. If a voter actually does vote, it enables you to pull the bogus vote back out of the system. (see pp. 1-20 for more background on above quote; full transcript: <http://www.blackboxvoting.org/1-10-06-04kim-v-dean.pdf> - 1,007 KB)

By eliminating physical signatures, maximizing mail-in votes, and pushing real people who are less likely to vote onto the rolls, you set the stage for wholesale inside "VoteR" fraud which will be very difficult to detect.

INTERNET AND MAIL-IN VOTING = CONCEALING KEY COMPONENTS OF THE ELECTION

Internet and mail-in voting conceal the counting of the vote, conceal who showed up to vote (and Internet voting eliminates the physical record for who voted). Both systems open the gate for removal of political privacy. Internet voting removes the hard copy evidence of the vote, just as the new Internet voter registration systems remove physical evidence of the signature. Both Internet and mail-in voting remove neighborhood polling places, a key battleground for restoring public right to know and public controls over elections. Once removed, it's difficult to restore them.

While well intended, many local officials are buying into a sales plan cooked up by think tanks and vendors. The evidence does not support the sales pitch that these tactics increase voter turnout or that it saves money. Here is the progression we are seeing nationwide:

THE THINK TANK PLAN

1. Implement "no-excuse" absentee voting
2. Authorize Internet voter registration and "voter registration modernization" (have voters sign Etch-a-Sketch style electronic tablets instead of physical signatures on registration cards).
3. Authorize opt-in "permanent absentee voting" (further increases percentage of mailed-in votes)
4. Send press releases about the high percentage of mail-in voting, citing this as justification for moving to all-mail-in voting (forced mail-in).
5. Convert to forced mail-in voting for small elections; then convert state to mail-in voting.
6. Experiment with Internet voting.

Note that each step involves removal of physical evidence and concealment of more election processes from the public. These steps are being pushed all over the United States in cookie-cutter legislation. Local officials believe they are implementing just one step, but a review of national actions shows that once one step is achieved the next one is proposed. The steps are almost identical from state to state.

Signature matching is one of the key "checks and balances" cited to tell us mail-in voting is secure. Really? A dog's paw-print made it through signature checks in Washington State for two elections in a row. Yes, a dog named Duncan was registered to vote, using his pawprint for a signature. Most people do not realize that the physical signatures are not examined -- only the scanned computer image.

Using computers, one scanned signature can be stretched and colors changed. Scanned images can be imported and exported from the incoming absentee envelopes into the database containing scans of the voter registration signatures. Note that with Internet voter registration and electronic tablet registration, there is no physical copy of the signature on the voter card.

WHO IS JEFFREY DEAN?

Well, you just can't make this stuff up. He developed VoteRemote, one of the most widely used signature authentication software programs. Jeffrey Dean's prison documents are posted on the Black Box Voting Web site - Here's the link: <http://www.bbvdocs.org/dean/dean-criminal-docs.pdf>

Jeff Dean was sentenced to four years in prison on 23 counts of embezzlement, achieved by modifying a computer accounting program. He returned to prison in 2004 for contempt of court, and has been back in court since on civil litigation. Black Box Voting has examined over 900 pages of testimony from his various courtroom adventures, and we have learned that he personally ordered several modifications in the mail-in voting software which disable some of the checks and balances. His court transcripts are posted on our Web site.

You really can't make this up: Before his prison stint, Jeffrey Dean worked for the law firm where Egil "Bud" Krogh was a partner. Egil Krogh went to jail after being in charge of Nixon's White House "Plumber's" unit, the source of the Watergate scandal which led to the downfall of Nixon's presidency.

While still in prison, on work release, Jeffrey Dean was given a contract working for King County, Washington (together with his brother, Neil Dean), to develop mail-in voting software. Public records obtained by Black Box Voting show that Jeffrey Dean was given a key to, and 24-hour access to, the King County voter registration database, mail-in ballot program, ballot printing system and vote tabulation software. Jeff Dean sold his "Vote Remote" mail-in software to Diebold Election Systems (Now called Premier); his brother Neil Dean sold his company to Pitney Bowes. The other large mail-in software system is now made by Pitney Bowes.

Mail-in voting software is unregulated and uncertified, and under control of the handful of insiders who run the databases. Black Box Voting is one of the only voting rights groups investigating this.

CASTING MULTIPLE VOTES WITH INTERNET VOTING

If you like the idea of a neighbor rounding up access codes of the disinterested to multi-vote himself, you'll love Internet voting. The Internet voting mechanism used in Hawaii -- voting at home with a four-digit pin code mailed to voters -- was an open invitation to vote selling, coercion, and contamination by insiders. Some people voted more than once.

TERRIBLE PARTICIPATION

Only 6.3 percent of Hawaii's eligible voters cast votes on the new Internet system (as compared with 28 percent in a previous similar election), a record low. Vendor's response: "Our systems aren't really about turnout. They're more about accessibility to participation." Huh? The election commission leaped off the democracy boat altogether with this: "The technology side, it works."

Your self-cleaning oven probably works too, but it's not a democracy. For democratic elections to work, you need public controls, you can't have concealment of key processes, and you need participation.

Important steps -- I know, it's swimming against the current if you are a Democrat. But mail-in voting is just as concealed and undemocratic as paperless touch-screen voting.

Block mail-in and Internet voting efforts: Internet and mail-in voting systems violate your inalienable rights because they transfer control to insiders and conceal essential election processes. Help to kill these proposals.

This message was sent by: Black Box Voting, Inc., 330 SW 43rd St Suite K - PMB 547, Renton, WA 98057

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August 6, 2009

Secretary of State Bernie Buescher
Colorado Department of State
1700 Broadway, Suite 250
Denver, Colorado 80290

Dear Secretary Buescher:

We appreciate the opportunity to comment on the proposed changes in election rules. Below are contributions from Coloradans for Voting Integrity (CFVI) board members and other members.

Rule 2.7: We applaud this amendment and any rule change that affords the voter and the county clerk's office the leeway and time to remedy incomplete voter registration forms and expand the franchise to include more eligible voters.

Rule 2.13: The destruction of the paper registration forms immediately after digitally capturing the data might be regretted on some occasions. Saving the paper forms for six months or a year would be a more cautious approach to avoid loss of voter data through human mistakes and electronic accidents.

Rule 11.5.4.1: As stated by Neal McBurnett, at a minimum, to avoid ambiguity, the words "close of polls" should be replaced with "after publication of the vote count tabulations by device, batch, or other audit unit." This phrasing will ensure that the selection of precincts for audit is truly random.

The rules should note the importance for auditing purposes of publishing those tabulations quickly and in a convenient format for people to make copies of.

Rule 12.5.6-2: Establishment of polling place for early voting shall not be required for a mail ballot election; ; HOWEVER, the location for walk-in balloting ON ELECTION DAY shall be maintained.

Rule 13.2: We suggest deletion of " , to the extent possible," in that with the relaxation of the rules for people to deliver others' ballots, some additional safeguards must be supplied by the clerk and recorder.

THE COUNTY CLERK AND RECORDER SHALL KEEP A LIST, ~~to the extent possible,~~ OF
THE NAMES AND MAILING ADDRESSES OF ALL INDIVIDUALS WHO DELIVER MORE

THAN TEN (10) VOTED MAIL-IN BALLOTS TO THE DESIGNATED OR COORDINATED ELECTION OFFICIAL'S OFFICE OR THE DESIGNATED DROP SITE FOR MAIL BALLOTS.

Rule 13.12.2: We are concerned about the method of “voiding” a turned-in ballot. If the voter has marked the turned-in ballot, will those marks be visible to the person(s) doing the voiding? If the ballot will not be visible, how will the person doing the voiding assure that what is being voided is indeed a ballot?

Rule 13.13.1 (B): We suggest inserting “and specify” before the word “what” for better clarity.

IF THE COUNTY CLERK AND RECORDER IS UNABLE TO CONFIDENTLY IDENTIFY THE ELECTOR, THE COUNTY CLERK SHALL PROMPTLY NOTIFY THE ELECTOR AND SPECIFY WHAT ADDITIONAL INFORMATION IS REQUIRED.

Rule 15.1.2 (D): We think this requirement will assist in maintaining the integrity of the petition process, and we applaud its inclusion.

Rule 25.2.1: This rule may be meant to cover both applications and voted ballots. Clarification of the syntax seems to be needed. Perhaps just deleting the comma and “or” so that the sentence reads “may receive and return an application for a mail-in ballot” will make the situation clear, if the intent is to refer only to the application and not a ballot.

Rule 25.3.7: Is it legal under the Colorado Constitution to apply a unique identification number to a ballot for tracking and auditing purposes, if such identification would destroy the anonymity of the voter? If a voter will not be able to vote anonymously, will the voter sign an agreement, as per Rule 25.2.4 [“I also understand that by transmitting my voted ballot by electronic mail, I am voluntarily waiving my right to a secret ballot.”] in which he/she gives up that right? In any case, a voter needs to be advised of, and agree to, the lack of anonymity required by this method of voting, which should be used only in the most difficult situations. As one of our members opined, it does seem that there are times when it is in the voter's interest to have such ballot identification and tracking of voting data, and sometimes when it is not.

Rule 25.3.9: We suggest that the ballots received by fax, mail, and email be reported in separate categories to allow analysis of voting methods.

A few typos were noted: *imitated* instead of *initiated* on p. 4, line 24; *requests* instead of *request* on p. 5, line 18; a missing space between *entity* and *license* on p. 8, line 27. Rule 12.9.3 seems to be out of place in the listing.

Thank you again for this opportunity to present our views and to request clarifications.

Yours truly,

The Board of Directors, Coloradans for Voting Integrity (CFVI)