

## Andrea Gyger

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**From:** Sheila Reiner <Sheila.Reiner@mesacounty.us>  
**Sent:** Wednesday, August 03, 2011 10:20 AM  
**To:** Andrea Gyger  
**Cc:** Nancy Amick  
**Subject:** Testimony Regarding Rules Hearing Held on August 2, 2011

Dear Secretary Gessler:

On behalf of the Election Statute Review Committee (ESRC) we submit strong support for the proposed rules. We solicited comments during our meeting on July 20, 2011. No objections were voiced, but support for one section in particular has been brought to our attention.

This e-mail is written with the intent of providing written testimony regarding the proposed Secretary of State Election Rules, to be entered into the record during the Rulemaking Hearing of August 2, 2011. Specifically, this testimony is written in support of the proposed change to SOS Election Rule 27 regarding the counting of write-in votes. We agree with the proposed changes to this rule and ask that the proposed amendments be promulgated as drafted upon the conclusion of this hearing.

The currently promulgated version of rule 27 conflicts with Colorado Revised Statute 1-7-503, which requires that an elector, “*clearly mark or stamp in the appropriate square or place a cross mark (X) opposite the name of the candidate or the names of the joint candidates of the elector's choice for each office to be filled.*” The existing rule contradicts this statute in suggesting that an improperly marked write-in vote may be counted in an initial count or recount. This sets a dangerous precedent in affording write-in candidates a hand-review of undervotes that no other candidate or issue is given, thus treating write-in candidates differently from other candidates or issues on the ballot.

Further, such review is nearly impossible in counties with high voter participation for practical reasons. Many Colorado counties use optical or digital scanners to quickly count paper ballots. These scanners are accurate and efficient, but they are simple devices as well. Plainly put, if a voter does not fill in the target area, which could be an oval, rectangle or connected arrow depending on the system, the scanners will not see that a vote has been cast for that particular race. The scanner looks in the target areas to determine whether a valid vote has been cast or determine if an overvote or undervote is present. If the target area is not filled in, the scanners conclude that race to be undervoted. In a large county, searching through hundreds of thousands of ballots to conduct a hand review of write-in races is simply impractical, and would result in the severe delay in counting properly marked ballots and releasing election results.

C.R.S. 1-5-407(2) anticipates that the designated election official will provide instructions to the voter as to how to properly mark a ballot, and that the voter will indicate his/her voting choice by following those instructions. “*The ballots shall be printed so as to give to each eligible elector a clear opportunity to designate his or her choice of candidates, joint candidates, ballot issues, and ballot questions by a mark as instructed.*” (Emphasis added). All counties are required to print instructions on the top of each ballot that explain to the voter in clear language how to properly mark the ballot. These instructions may vary slightly depending on the voting system used in each county, but all instructions inform the voter that the target area must be marked properly in order for the voter’s vote on any particular race to be counted.

The current version of Rules 27.4.2(f)(2) and 27.7.4.3 require us to provide a hand-review for write-in races that is not afforded to any other race. This gives preferential treatment to individual races and individual candidates while severely delaying the count of properly marked ballots in an election. We support the proposed changes to these rules and request that they be promulgated as drafted.

Respectfully,

Nancy Amik, ESRC Co-chair

Sheila Reiner, ESRC Co-chair