

September 30, 2013

The Honorable Scott Gessler
Secretary of State
State of Colorado
17 Broadway
Denver, CO 80290

Dear Secretary Gessler:

I am writing in connection with your pending rule-making proceeding on revisions to the Election Rules. I was one of the primary House sponsors of HB 13-1303, the Colorado Voter Access and Modernized Elections Act. I write to alert you to certain of your proposed rules that appear to conflict with both explicit provisions and the legislative intent of HB 13-1303, so that you may revise these rules prior to their formal adoption.

Rule 1.1.22

Rule 1.1.22 defines “Inactive Status” in an overly broad manner that may result in voters becoming “inactive” based on a safeguard we intentionally included in HB 13-1303, to ensure that when a County Clerk updates a voter’s address pursuant to the National Change of Address database (“NCOA”), any such address update is accurate. Pursuant to C.R.S. Section 1-2-302.5(2)(b)(I)(A), when a voter moves within a Colorado county and an NCOA check alerts the County Clerk to the address change, the Clerk “shall update the elector’s registration record with the new address” and “send a confirmation card” to the “elector’s old address.”

The intent of this provision was to ensure that the County Clerks had the ability to clean their voter rolls by updating voter’s addresses after a move, while providing a safeguard with the confirmation card that would ensure that the NCOA was correct and the voter was not still at the old address. A literal reading of Rule 1.1.22 might result in voters being marked “inactive” if confirmation cards sent to the voter’s old address pursuant to C.R.S. Section 1-2-302.5(2)(b)(I)(A) are returned as undeliverable. To comply with statute, this Rule 1.1.22 should be modified to specifically exempt confirmation cards sent pursuant to C.R.S. Section 1-2-302.5(2)(B)(I)(A), if an NCOA search reveals that the voter has moved to a new address within the county.

Rule 17.1.2

Rule 17.1.2 mandates that in the event a voter service and polling center loses connectivity to SCORE, the election judges must issue provisional ballots until the county restores connectivity. This rule conflicts directly with the provision we included in HB 13-1303, codified at C.R.S. 1-5-102.9(3.5), that states that in the event of a loss of connectivity, an election judge is to attempt to verify a voter’s eligibility by “contact[ing] the county clerk and recorder by telephone or

electronic mail, if practicable,” before offering the voter a provisional ballot. The intent of the HB 13-1303 provision was to give election judges the opportunity first to verify a voter’s eligibility over the phone or the internet, and if successful, allowing the voter to vote a regular ballot, before the election judge defaults to giving provisional ballots to all voters. This rule should be modified to add the language of C.R.S. Section 1-5-102.9(3.5) as set forth above.

I strongly urge you to modify or retract these proposed rules that are contrary to Colorado law.

Sincerely,

Dickey Lee Hullinghorst
House Majority Leader & co-prime sponsor, HB 13-1303