



July 10, 2017

Secretary Wayne W. Williams
Department of State
1700 Broadway
Suite 200
Denver, CO 80290

Re: Comments on Elections Rulemaking, dated July 6, 2017

Dear Secretary Williams:

Common Cause is a nonpartisan, nonprofit organization that is dedicated to restoring the core values of American democracy, reinventing an open, honest and accountable government that serves the public interest, and empowering people to make their voices heard in the political process.

We appreciate the opportunity to comment on the proposed Election Rules that were issued by your office on July 6, 2017. Our comments are as follows:

Rule 2.5.4. We believe that county clerks should be required to process affiliation requests even after ballots have been mailed. Just as replacement ballots and changes of address are processed in general and coordinated elections, affiliation declarations by unaffiliated voters in primary elections could be similarly processed. The ballots previously mailed (for both primaries) would be cancelled in SCORE, a new ballot for the party the voter has chosen to affiliate with would be mailed to the voter (up until 8 days prior to the Primary Election), and the same rule of “first ballot to be returned” would apply in terms of counting that voter’s ballot. Rule 7.2.12 seems to contemplate this process, and is perhaps in conflict with proposed Rule 2.5.4. Under proposed Rule 7.2.12, an unaffiliated voter can get a replacement mail ballot packet in a primary election that includes only the ballot for which they have expressed a preference. This presupposes that a declaration of affiliation has been made by the voter and yet under proposed Rule 2.5.4, there would be no obligation to process that request.

Rule 7.2.10. While we support using a means to identify, before opening the mail ballot envelope, which party’s primary election the elector voted in, we believe that counties should not be allowed to use a checkbox or other external voter-made marking requirement on the return envelope. If a voter were to incorrectly mark the outside of the envelope and it did not match the

ballot enclosed, or if the voter did not make any marking on the outside of the ballot, we are concerned this could create a question with regard to voter intent, and that it would cause problems in being able to accurately account for all ballots by party. Counties should be required to have some marking on the ballot itself, visible from the outside of the envelope by an envelope window or otherwise, that would indicate which party's primary ballot is enclosed.

Rule 7.2.12. We support this proposed rule. See comments regarding proposed Rule 2.5.4 above.

Rule 7.9.9. As we stated in our comments on the earlier request for comments, we fully support the requirement for the measuring and recording of wait times at VSPCs in the larger counties. We would like to see the requirement applicable to counties with 25,000 active electors, as originally proposed, rather than the 50,000 active elector standard now included in the proposed rule. In addition, we note that this is only a data collection requirement. While data is useful, a requirement that the wait times be posted in real-time, making it available to voters to help them in the voting process, would be better. The point of the data should be to inform voters so that they can make choices as to which VSPC to go to, and/or plan their time accordingly. As written, it is simply collecting data with no plan for real time usage.

Rule 7.16. This proposed rule is in direct conflict with statutory requirements and we strongly oppose any attempt by the Secretary of State to rewrite the provisions of Sections 1-5-102.9 and 1-7.5-107, C.R.S. as they relate to the minimum number of VSPCs that counties must establish. The proposed Rule 7.16 modifies the legal obligations of counties under the above provisions of the Colorado Elections Code without authority.

If the shared VSPCs were in addition to the minimum number of VSPCs otherwise statutorily required of each county, we would support the concept of a pilot project on shared VSPCs. As part of an ongoing need to address the expansion of services to voters and the efficiency of the VSPC process, looking at shared VSPCs could provide useful information.

Rule 8.15.8. This proposed rule is overbroad and unnecessary. The current rules already prohibit a watcher from using a mobile phone or other electronic device to make or receive a call, or to take or record pictures, video, or audio in any polling location or other place election activities are conducted (Rules 8.15.6 and 8.15.7). Together with the other prohibitions on the activities of watchers that are already in the rules, this proposed rule seems excessive. The effect will be to make it impossible for watchers to do their jobs. At any point that they might see activity that they want to report to their designating authority, they will have no readily available means of communication. As difficult as it may be to know if a cell phone is being "misused" by a watcher, it is equally difficult to identify the particular locations where personally identifiable information may be within view at any VSPC or central count facility. This is likely to lead to wholesale outlawing of cell phones and other electronic devices, thus thwarting the usefulness of watchers.

Rule 25. We commend the Secretary and the risk-limiting audit working group for this important work. We strongly support adoption of risk-limiting audits for Colorado elections and the change from the flat post-election audit procedure – which spot checks machine function but

does not provide strong evidence that election outcomes are correct. The risk-limiting audit law and new rules will improve Colorado's election procedures by shifting the focus from auditing the machines to auditing the election outcomes. Moreover, the new risk-limiting audit procedure will not only audit the outcome, but provide high assurance of correcting wrong outcomes attributable to tabulation errors.

We support the comments and suggestions submitted over the past few months by Mark Lindeman on behalf of the group of risk-limiting audit experts and advocates. Additionally, we encourage the new rules to require that the risk-limit be no larger than 5%.

Thank you for the opportunity to comment on these proposed rules. Please feel free to contact me if there are any questions about these comments.

Sincerely,

A handwritten signature in blue ink that reads "Elizabeth Steele". The signature is written in a cursive, flowing style.

Elizabeth Steele
Elections Director
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