

July 12, 2017

Via E-Mail

The Honorable Wayne Williams, Secretary of State
Colorado Department of State
1700 Broadway
Denver, CO 80290
SOS.Rulemaking@sos.state.co.us

Re: Election Rules – 8 CCR 1505-1 –
Proposed Rules Dated May 31, 2017 and Revised July 6, 2017 for Consideration at
the July 11, 2017 Rulemaking Hearing

Dear Secretary Williams:

I am writing on behalf of the Colorado Democratic Party to comment on the
Proposed Rules Dated May 31, 2017 and Revised July 6, 2017.

Proposed Rule 2.5.4

It is unclear why the affiliation change must be deferred under this proposed rule. The associational rights afforded to political parties require that eligible electors choosing to affiliate should not have to wait to do so. The CDP would like to see the affiliation processed at the time it is received.

Proposed Rule 7.9.9

The CDP is supportive of the requirement for measuring and recording wait times but would like to see a requirement for the top ten most populous counties to post that information in real time (or increments of time throughout the voting period – two-three times per day during early vote until the final Monday and then hourly on the final Monday and Tuesday?) so that voters and political parties and campaigns can use that information to help voters select a suitable VSPC.

Proposed Rule 8.15.8

The CDP is concerned that this rule, as drafted, could prohibit watchers from having devices while watching at VSPCs, which would severely limit the function of watchers and their ability to contact their appointing authority while at VSPCs. While personally identifiable information is not readily available at VSPCs, the CDP is concerned that some election judges or county clerks will construe this rule to prohibit electronic devices in VSPCs because some judges will be accessing SCORE while processing voters and watchers might be in proximity to this activity. The rule as drafted could require election judges at VSPCs to demand that watchers either surrender their device to the election judge for safekeeping inside the VSPC, or place it in a vehicle, which may be a substantial distance away from the VSPC.

A more appropriate approach to protecting personally identifiable information would be to draft a rule that states that no watcher may capture or record any personally identifiable information with any device (this is already in Rule 8.15.10 which could be revised/strengthened). Similarly, if the goal of the rule is to protect information in ballot processing or signature verification areas, then the rule could be limited to those locations, or the rule could exempt VSPCs from its scope. As written, the rule is likely to inadvertently and negatively impact the ability of watchers to perform their statutorily authorized functions at VSPCs.

Proposed Rule 7.2.10 and Proposed Rule 7.5.13

While the CDP is in favor of requiring the envelopes to provide a means for the county to determine, before opening the envelope, which party's primary election the elector voted in, it is not in favor of using a voter designated method for making this determination. As drafted, Proposed Rule 7.2.10 would allow for a county to require a voter designation on the envelope, such as requiring the voter to check a box on the outside of the envelope or write down which party's ballot the voter voted. This type of voter designated method would invite spoilage and the CDP does not support a system that would place ballots into a cure status for failure to include this manual information.

Rather, the CDP favors a color stripe or bar code on the ballot that could be read from a window on the envelope, and thereby maintain voter anonymity. The CDP is not necessarily opposed to the fallback option within Proposed Rule 7.5.13 in the event that counties cannot have a non-voter designated method for determining which party's ballot the unaffiliated voter voted, however, it will be important to measure and guard against differing spoilage rates between the two methods, which could create an equal protection problem for multi-county districts if adjacent counties use differing methods.

Proposed Rule 7.1.6 and subparts

The CDP favors increasing creative ways to allow voters to vote in convenient locations, which may include voting in a neighboring county. The CDP is strongly opposed to

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allowing such arrangements to give counties the option to reduce the VSPC offerings in their own counties.

Thank you for the opportunity to comment on these proposed rules. If you have any questions arising from these comments, please do not hesitate to contact me.

Sincerely,

TIERNEY LAWRENCE LLC

A handwritten signature in black ink, appearing to read "Martha M. Tierney". The signature is written in a cursive style with a large, prominent initial "M".

By: Martha M. Tierney

cc: Morgan Carroll