

**From:** [Donna S. Kelley](#)  
**To:** [Public Elections](#); [olls.ga@state.co.us](mailto:olls.ga@state.co.us); [SoS Rulemaking](#); [Steve Hurlbert](#)  
**Subject:** [EXTERNAL] Petition  
**Date:** Wednesday, July 28, 2021 1:31:41 PM

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**PETITION TO CONTEST LEGALITY AND/OR CONSTITUTIONALITY OF TEMPORARY/EMERGENCY RULE AMENDMENTS TO RULE 20.5.4 INCLUDING NEW RULES 20.5.4(a) AND 20.5.4 (e); AMENDMENTS TO RULE 21.7.3 INCLUDING A PORTION OF FORMER RULE 21.7.3 WHICH HAS BEEN RE-CODIFIED AS NEW RULE 21.7.3 (a); and ADOPTION OF NEW RULES 21.7.3 (b-e) and 21.7.4 (“Petition”)**

Petitioner, Donna S. Kelley, a Colorado citizen and interested person (“Petitioner”), submits this Petition to contest the legality and/or constitutionality of temporary/rule amendments to Rule 20.5.4 including New Rules 20.5.4(a) and 20.5.4(e), amendments to rule 21.7.3 including a portion of former Rule 21.7.3 which has been re-codified as New rule 21.7.3 (a) and adoption of New Rules 21.7.3 (b-e) and 21.7.4 (hereafter collectively referred to as the “June 17, 2021 SOS Emergency Rules”).

**APPLICABLE LAW**

On June 17, 2021, the Colorado Office of the Secretary of State (“SOS”) adopted the June 17, 2021 SOS Emergency Rules.

Pursuant to Section 24-4-103 (6)(a) “a temporary or emergency rule may be adopted without compliance with the procedures prescribed in subsection (4) of this section and with less than the twenty days’ notice prescribed in subsection (3) of this section, or where circumstances imperatively require, without notice, *only if the agency finds that immediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with the requirements of this section would be contrary to the public interest and makes such finding on the record.* Such findings and a statement of the reasons for the action shall be published with the rule.” ( *Emphasis added*).

**LACK OF FINDING ON THE RECORD**

The “Statement of Justification and Reasons for Adoption of Temporary Rules” (the “Statement”) provides “Adoption of these new and amended rules on a temporary basis is necessary given the public concern regarding rapidly increasing instances of purported “forensic audits” conducted by unknown and unverified third parties nationwide. These rules are necessary to ensure the continued security and integrity of, and public confidence in, Colorado’s voting systems and its elections. These rules also ensure uniform conduct of the quickly approaching November coordinated election.”

In support of this Petition, Petitioner alleges SOS’ failure to:

1. Provide a nexus between noncompliance with a state and/or federal law and how such alleged noncompliance renders the June 17, 2021 SOS Emergency Rules “imperatively necessary”;
2. Provide a finding on the record of a “public concern” that is contrary to the public interest;
3. Provide a finding on the record of a “rapidly increasing” public concern that is contrary to public interest;
4. Provide a finding on the record of “forensic audits.” The SOS acknowledges

- such “forensic audits” are purported and may not have occurred;
5. Provide a finding on the record of “unknown and unverified third parties” which by the SOS’ own description indicates a lack of finding about such parties; and
  6. Provide a finding on the record of any specific concern for Colorado citizens. Rather, the SOS relies upon a “nationwide” concern which in turn is used to adopt a Colorado emergency rule.
  7. Provide a finding on the record on why it is “imperatively necessary” to adopt temporary/emergency rules given a November election (5 months away).

Petitioner alleges that the SOS lacks any finding on the record which demonstrates that the adoption of the June 17, 2021 SOS Emergency Rules is “imperatively necessary”.

WHEREFORE, based on the foregoing Accordingly, Petitioner submits this petition to render the June 17, 2021 SOS Emergency Rules void, *ab initio*.

Should the SOS not render the June 17, 2021 SOS Emergency Rules void, *ab initio*, Petitioner requests a public hearing on the matter.

Petitioner:

Signed: Donna S. Kelley                      Date: July 28, 2021

Donna S. Kelley

**Please respond to this petition at:** [REDACTED]