

From the desk of:
Bill Bartlett
Co-Chair, Green Party of Colorado

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Scott Gessler
Suzanne Staiert
1700 Broadway, Suite 250
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Dear Secretary Gessler and Deputy Secretary Staiert,

Thank you for the opportunity to submit oral and written suggestions for the upcoming rule changes. I learned a lot Monday, particularly about the concerns and perspectives of the panel and the public on a subject that is important to all of us: open and fair elections.

Personally, I feel as though the changes being suggested are coming from a place of good intentions (open and fair elections) but are being done so under a particular interpretation of the laws as they exist now (especially concerning the roles and rights of canvass boards and watchers). If your office would indulge me, I believe that it is this interpretation that is the impetus for many of the rule changes regarding these roles.

It is in this context that I would like to emphasize the point that I made at the hearing on Monday, July 23, 2012. Under strict interpretation of the laws as they stand the canvass board already has the rights and authority necessary to ensure transparent elections. This is made clear by repeated references to their ability to ensure that the processed being used "conform to the requirements of law" (see CRS 1-10). The same can be said for the watchers, whose roles are also defined and protected under CRS 1-7-08(3). I readily admit that the public, and perhaps even the parties, may have lacked the skills and understanding necessary to ensure that they are an adequate balance to the authority and organization demonstrated by local clerks across the state.

It is for these reasons that I urge the office of the Secretary of State alter its interpretation of the rights and responsibilities of canvass boards and watchers. This new perspective should encourage the autonomy and authority of these citizens in accordance with the legislative intent provided in the Colorado Revised Statutes. I encourage the Secretary of State's office to shift its intent toward empowering these citizens and arming them with the skills and support necessary to become more effective auditors of the system. This change in perspective would align the Secretary of State's intentions with current statutes and with an eye toward future legislation to make the citizen oversight process more robust.

I conclude my written testimony by reaffirming our mutual desire for transparent and fair elections. The recommendations I have outlined below are a starting point. However, the Secretary of State's office has the power to defend and assist the canvass boards and the watchers without the rule changes that are being suggested. The current statutes already allow more than ample room for interpretation that supports and empowers the canvass board and watchers.

The following are my specific proposals for the rule changes. Thank you all for your time and your consideration.

Respectfully,

Bill Bartlett
Co-Chair, Green Party of Colorado

Recommendations

Strike 8.6 and 41.13 (Watchers' Rights)

Please refer to the CRS for watchers' rights and duties, namely CRS 1-7-08(3) which states "Each watcher shall have the right to maintain a list of eligible electors who have voted, to witness and verify each step in the conduct of the election from prior to the opening of the polls through the completion of the count and announcement of the results, to challenge ineligible electors, and to assist in the correction of discrepancies."

Strike 13.19 (Ballots to Inactive Electors)

Leave it up to counties whether or not to mail ballots; do not create a standard for NOT mailing ballots. If you must clarify this, use the following language:

"... THE DESIGNATED ELECTION OFFICIAL MAY CHOOSE NOT TO ISSUE BALLOTS TO ELECTORS WHOSE REGISTRATION RECORDS ARE MARKED INACTIVE - FAILED TO VOTE... "

These changes still allow counties to make their own decisions on inactive ballots, while also applying the rule to ALL electors instead of each elector, which could be interpreted to mean that some inactive electors might be treated differently.

Strike 41.1.1, 41.1.2, and 41.1.3 (Definitions of Canvass, Canvass Board, and Canvass Members)

Under CRS 1-7-514, the canvass board is required to be involved in the auditing process, and is there to support and balance the findings of the local clerk and recorder. The canvass board is also included in any audits made by the Secretary of State. The CRS continually refers to the canvass board as a full part of the election process.

I have left the definition of the "detailed ballot log" (41.1.4) and "statement of ballots forms" (41.1.5) as they are, since they serve an administrative function.

Strike 41.2 and 41.3 (Appointments to and duties of the Canvass Board)

As much as I would like to see minor parties have a seat as active members of canvass boards, I take issue with the office of the Secretary of State attempting to alter legislation in this way. CRS 1-10-101(1)(a) clearly defines the makeup of the canvass boards and the watchers. There is a difference between the two roles in their level of activity in the process of certifying the election process.

If changes were to be made to the rules I would adhere to the wording in the original CRS and go from there. Note my additions in boldface.

"At least fifteen days before any primary, general, congressional vacancy, or special legislative election, the county chairpersons of each of the **major and minor** political parties in each county shall certify to the county clerk and recorder, in the manner prescribed by such clerk and recorder, the appointment of one or more registered electors to serve as a member of the county canvass board. The appointees, together with the county clerk and recorder, constitute the county canvass board. **Each unaffiliated candidate** whose name is on the ballot in such election may designate, in the manner prescribed by such clerk and recorder, one watcher to observe the work of the county canvass board. "

Concerns about the above solution:

This could lead to other problems, such as even-numbered canvass boards and potential gridlock if not counterbalanced with additional rules to create a tie-breaking voting in cases where the canvass board's members are split on a decision. I am open to discussing a solution to this issue, and to supporting

legislative improvements to this area of the statutes, to ensure that the addition of minor parties to the canvass boards does not unbalance the integrity of the election process.

Strike 41.14 (Guidance and Support)

The Secretary of State can already lend support where necessary. Making a mandatory certification of any kind in the rules sets a bad precedent, and creating a rule that formalizes the involvement of the Secretary of State's office with the canvassing process before they have submitted their results could be problematic to that process. Informal support could be provided through the website and through individual outreach from canvass boards or clerks. I feel that this could set a bad precedent.