PUEBLO COUNTY

P.O. BOX 878
PUEBLO, COLORADO 81002-0878

GILBERT ORTIZ
COUNTY CLERK
AND RECORDER
(719) 583-6507
FAX (719) 583-4894

July 27, 2012

Honorable Scott Gessler
Secretary of State
1700 Broadway, Suite 250
Denver, CO 80290

Re: Proposed Election Rules, 8 CCR 1505-1

Dear Secretary Gessler:

I hereby respectfully submit the following written comments concerning proposed Rules 12.4.1(d), 12.11, and 13.19.

Proposed Rule 12.11.4 unfairly restricts the procedures by which inactive voters may update their status to active. In contrast to proposed Rule 12.11.3, which permits active voters to obtain replacement ballots by telephone, Rule 12.11.4 does not allow inactive electors to change their status by telephone. The same procedures for obtaining replacement ballots should be made available to inactive electors seeking to change their voter registration status to active.

Section 1-7.5-107(3)(a)(I), C.R.S. establishes the following procedures to issue ballots in mail-ballot elections:

Not sooner than twenty-two days before an election, and no later than eighteen days before an election, except as provided in subparagraph (II) of this paragraph (a), the designated election official shall mail to each active registered elector, at the last mailing address appearing in the registration records and in accordance with United States postal service regulations, a mail ballot packet, which shall be marked "DO NOT FORWARD. ADDRESS CORRECTION REQUESTED.", or any other similar statement that is in accordance with United States postal service regulations. Nothing in this subsection (3) shall affect any provision of this code governing the delivery of mail ballots to an absent uniformed services elector, nonresident overseas elector, or resident overseas elector covered by the federal "Uniformed and Overseas Citizens Absentee Voting Act," 42 U.S.C. § 1973ff et seq.

The purported purpose of new rules 12.4.1(d) and 13.19, and the proposed amendments to Rule 12.11 is clear - county clerks may send ballots only to active electors in a coordinated election.   The proposed new rules are based upon a misreading of C.R.S. 1-7.5-107(3)(a)(I). That section, by its express terms, simply provides for the mailing of ballots to "active" voters within the designated time frame, marked as nonforwardable mail, and in accordance with U.S. postal regulations. The proposed new Rules 12.4.1(d) and 13.19 and the proposed amendments

to Rule 12.11 create new restrictions concerning a totally different group of voters - inactive failed to vote electors. There is simply no prohibition in Section 1-7.5-107(3)(a)(I) or elsewhere in the Colorado election code that limits the mailing of ballots in a coordinated mail ballot election to <u>only</u> active electors. In addition, there is no evidence that the General Assembly intended to prohibit the mailing of ballots to inactive failed to vote electors. Had the state legislature intended that result, it would have expressly said so. Proposed rules 12.4.1(d), 13.19, Rule 12.11 add new restrictions to mail ballot procedures which do not otherwise exist in statute.

The proposed rule changes also raise serious UOCAVA concerns. Proposed rules 12.4.1(d), 13.19, Rule 12.11 are in direct conflict with the express language of the last sentence of Section 1-7.5-107(3)(a)(I) which states:

> Nothing in this subsection (3) shall affect any provision of this code governing the delivery of mail ballots to an absent uniformed services elector, nonresident overseas elector, or resident overseas elector covered by the federal "Uniformed and Overseas Citizens Absentee Voting Act", 42 U.S.C. sec. 1973ff et seq.

"Covered voters" are defined in C.R.S. 1-8.3-102(2)(a)-(d) to include both overseas voters and uniformed service members who are absent by reason of active duty. "Covered voters" are both active and inactive electors. Under Section 1-8.3-110(1), county clerks are required to send ballots to UOCAVA active and inactive failed to vote voters. Under the proposed rules, inactive failed to vote UOCAVA voters will be prevented from receiving ballots.

Sincerely,

Gilbert Ortiz
Pueblo County Clerk and Recorder