



August 14, 2013

The Honorable Scott Gessler
Secretary of State
Department of State
1700 Broadway
Denver, CO 80209

Re: Proposed Temporary Election Rule Concerning Voter Registration Residency Requirements

Dear Secretary Gessler:

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 ordinary people to make their voices heard in the political process. We appreciate the opportunity to comment on the proposed temporary rule concerning voter registration residency requirements.

General Comments

Section 1-2-102, C.R.S. sets forth detailed rules to be used to determine the residence of a person intending to register or to vote. The only recent change to Colorado law that impacts the determination of “residency” was the change made by HB 13-1303 which shortened the state residency requirement from 29 days to 22 days and removed a minimum durational requirement for precinct residency. Common Cause does not believe that these changes impact the existing statutory guidance regarding how to determine residency, but supports the goal of clear guidance provided by the draft proposed rule 2.10.4. There are portions of proposed rule 2.10.4 that appear to shorthand the existing statutory provisions, and in so doing, create conflict and uncertainty as to what the applicable rules are for determining residency. In our line by line comments below, we flag areas where additional language is required.

Colorado Common Cause does not believe that parts (A), (B), and (C) of draft proposed rule 2.10.4 provide clarity, and in fact, we believe these sections create ambiguity, confusion, and conflict with the statute. We respectfully urge the Secretary of State to adopt a modified version of rule 2.10.4 without parts (A), (B), and (C).

Line by Line Comments

Rule 2.10.4

Page 1, Line 2: “An elector must establish a residence...”: Common Cause believes that the phrase “a residence” should be “residency”, as the implication from the remainder of the proposed rule is that

“a residence” is a physical structure. According to Election Rule 2.9 a homeless person can have a residence that is not a physical building, provided that they have a mailing address other than a post office box or general delivery at a post office. Conforming changes should be made in the proposed rule in light of this change.

Page 1, Line 5: “...has the present intent of returning.” : This is an example of the Department of State shorthanding what is more precisely contained in Section 1-2-102, C.R.S. In the statute, there is language following the end of the above phrase which states “after a departure or absence, regardless of the duration of the absence”. Is there a different meaning or interpretation intended by the rule as a consequence of the deletion of this statutory language? This practice throughout the proposed rule introduces conflict and room for inconsistent interpretation. Common Cause believes the proper approach would be to track the statute.

Page 1, Lines 9-10: “And neither a business nor a temporary hotel room is a valid residence.”: This language is clearly in conflict with Section 1-2-102, C.R.S. and should not be included in any rule that is adopted. Under the statute, a residence is “a permanent building or part of a building and may include a house, condominium, apartment, room in a house, or mobile home.” To exclude a “temporary hotel room” from the definition of a valid residence is in direct violation of the statute. It cannot be said that all people who are living in a temporary hotel room do not have residency in Colorado. Individuals who have moved to Colorado, but not yet secured permanent housing, may live in a hotel room temporarily. They are in fact Colorado residents if they satisfy the other factors relating to residency, which might include employment, intent to return after an absence, motor vehicle registration or any of the other indicia of residency outlined in Section 1-2-102, C.R.S.

Rule 2.10.4 (A) (Page 1, Line 14)

Common Cause urges the Department of State to strike Part (A) from the temporary election rule that is adopted as there is no need to adopt a rule that repeats the factors listed in statute.

If the Department of State is going to restate the factors that should be considered in determining residency, then all of the factors presently included in Section 1-2-102(1)(b)-(d) should be included in the rule. To not do so, creates confusion and the potential for conflict between the rules and the statute. In order to accomplish this congruity, the following factors should be added: income sources, age, marital status, leaseholds and situs of personal and real property.

With regard to the factors that are currently included in the draft rule section (A), the factor listed in section (A)(3) of whether the elector is registered to vote in another state is not a permissible factor under Section 1-2-102. Voting in more than one state would be illegal, but it is not uncommon for a citizen to move from state to state without cancelling his or her old registration. Depending upon the list maintenance procedures applicable in other states, it is entirely possible that an individual could reside in Colorado for 22 days, be a resident under the factors detailed in Section 1-2-102, C.R.S. and yet still be registered in another state. It should not be a disqualifying factor, and is not one authorized by statute.

With regard to the factor listed in (A)(4), it should be revised to comport with the language in Section 1-2-102(1)(b) (i.e. “residence of parents, spouse or civil union partner, and children, if any”) which is broader and more relevant to the determination of residency than whether an individual shares his or her Colorado address with family members.

With regard to the factor in (A)(6), the proposed rule should be amended to track the full language of the statute. As currently written, the proposed rule ignores the qualifying concept of the amount of time spent at any residence.

Rule 2.10.4 (B) and (C) (Page 2, Lines 2-18)

Common Cause opposes the adoption of sections (B) and (C) of proposed rule 2.10.4. The measure of residency set forth in these sections is in conflict with Colorado law. If adopted, the draft proposed rule would impose additional measures of residency for a subset of voters: voters who are members of the military, family members of military members, or students.

C.R.S. 1-2-102(1)(a)(I) states that a person's residence is their principal or primary home or place of abode, and that such principal or primary home or place of abode is "that home or place in which a person's habitation is fixed and to which that person, whenever absent, has the present intention of returning, after a departure or absence, regardless of the duration of the absence." The measure is whether there is a present intent to declare Colorado residency. No other voter is asked to affirm, in addition to their eligibility as a resident of the state, whether or not they have plans to leave the state at some unknown point in the future. Any rule that would ask military and college students to do so is inappropriate. This rule is not only inconsistent with the law, but singles out military members, military families and college students for inappropriate scrutiny.

If the Department of State chooses to move forward with the adoption of part B, we would recommend that the clause "after completing military service" be struck from subsection (1) and the clause "after completing school" be struck from subsection (2). These amendments would make part B consistent with the requirement in statute that a voter has a present intent to be a resident of the state.

If the Department of State chooses to move forward with the adoption of part C, we would recommend that the clause "has no intent to make Colorado his or her permanent home" be struck from subsection (2) and replaced with the language "maintains a permanent residence in another state".

Thank you for the opportunity to provide feedback on these rules. Please let me know if you would like additional information or would like to discuss any of the above comments.

Sincerely,



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