



August 16, 2013

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

Re: Proposed Recall Election Rules

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 rules for the recall elections in El Paso and Pueblo counties. Some of our comments below reference the comments submitted by Common Cause and other partners for the public meeting held on August 15, 2013; please include those comments as part of this rulemaking as well.

Rule 32.7.3

32.7.3 (B): We support the intent of this rule and appreciate the Secretary of State's intent to set a deadline for processing voter registration applications that will reduce the demand for voter registration at voter service and polling centers. During the public meeting held on August 15, 2013, there was significant discussion about how to make this rule clearer. We propose adding a sentence to the end of the draft rule that states "If an elector's voter registration application has not been processed, the elector may register to vote at a county clerk's office or voter service and polling center".

32.7.3 (D) (II): As noted in our comments on recall procedures dated August 15, 2013, we had concerns that the language in Secretary of State Order 13-002 could create confusion about the identification requirements for voters who register to vote and vote at a voter service and polling center ("VSPC"). Thank you for clarifying this rule. We believe the language in this draft rule is clearer, but recommend the following additions:

A PERSON WHO WANTS TO BOTH REGISTER AND VOTE AT A POLLING LOCATION MUST, IF AVAILABLE, PROVIDE A DRIVER'S LICENSE OR STATE IDENTIFICATION NUMBER THAT CAN BE VERIFIED IN SCORE. IF THE APPLICANT IS UNABLE TO DO SO, HE OR SHE MUST PROVIDE THE LAST FOUR DIGITS OF HIS OR HER SOCIAL SECURITY NUMBER, IF THE APPLICANT HAS ONE, OR BE ASSIGNED A UNIQUE IDENTIFIER. FOR THOSE APPLICANTS, THE APPROPRIATE EMPLOYEE MUST MARK THE

APPLICANT'S REGISTRATION RECORD "ID-REQUIRED" IN SCORE. THE ELECTOR MUST PRESENT IDENTIFICATION AS DESCRIBED IN SECTION 1-1-104(19.5), C.R.S., TO CAST A BALLOT.

32.7.3 (D) (III): We propose that the language in this rule be modified (page 2, line 40) to read: "the elector has resided and intends to continue to reside...". We believe this language more accurately reflects the standard of present intent required by Section 1-2-102, C.R.S.

32.7.3 (D) (IV): Common Cause urges the Department of State to modify this rule. As drafted, this rule is in conflict with Rule 2.9.1, which allows homeless voters to identify a location within a precinct that the voter considers to be his or her home base. That rule reads that: "a home base may include a homeless shelter, a homeless provider, a park, a campground, a vacant lot, a business address, or any other physical location." Common Cause believes that Rule 2.9.1 is important to ensure that homeless voters are able to vote, and that new rules should not be adopted that would undercut the current protections in place.

Rule 32.7.5

32.7.5 (B): Common Cause does not believe that the formulas for determining the minimum number of VSPCs outlined in Section 1-7.5-107(4.5) will provide adequate opportunities for voters to cast their ballots. We recognize that both Pueblo and El Paso counties intend to establish more VSPCs than the minimum required. Nonetheless, the rule should establish minimum standards that will ensure that voters are able to vote. Please see our comments submitted on August 15, 2013 for a more complete discussion of this analysis.

Regardless of the minimum formula established in the final rule 32.7.5 (B), we urge the Secretary of State to include a deadline in the rule for the counties to finalize and publicly announce their VSPC locations. If the locations are not adequate to meet community needs, an early deadline will allow time for additional VSPCs to be set.

32.7.5 (C): This rule requires counties to open the minimum number of polling locations beginning on September 5, 2013. To the extent that a county has valid ballots available prior to September 5, 2013, either because no additional successor candidates need to be added to the ballot, because the vendor producing the ballots is able to deliver ballots earlier, or for any other reason, the counties should be permitted to open the voter service and polling centers prior to September 5, 2013. Prior to the current circumstances, the counties were planning to have their VSPCs open beginning September 2, 2013. To the extent that additional voting days can be achieved by opening prior to September 5, the counties should be permitted and encouraged to do so. We recognize that a moving date for opening may create difficulty in terms of securing locations, hiring judges, and notifying the voters. However, to the extent that a county can make appropriate arrangements to do so, nothing in the rule should limit their ability to open prior to September 5.

As noted in our previous comments, we believe that all voter service and polling centers must offer expanded hours for voting to ensure voters the opportunity to participate. While we recognize that, historically, some voters may have chosen to vote by mail for convenience, there are also voters who chose mail balloting due to scheduling issues that made in-person voting difficult. Draft rule 32.7.5 (C) should be modified to require that the voter service and polling

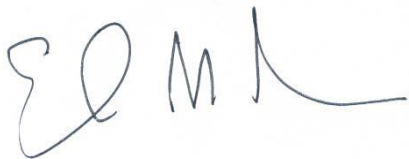
centers be open from 7 A.M. to 7 P.M. each day that they are open for voting. Voters for whom voting during regular business hours is inconvenient must be given sufficient opportunity to cast a ballot.

Rule 32.7.7

32.7.7 (B): Common Cause believes that, as drafted, this rule is in conflict with C.R.S. 1-5-102.9(3.5), which states that a voter is offered a provisional ballot only if “there are technical problems accessing the centralized statewide voter registration system... and his or her eligibility cannot be verified by a Voter Service and Polling Center Election Judge after the judge contacts the county clerk and recorder by telephone or electronic mail, if practicable...”. We urge the Department of State to modify this rule to require election judges to attempt to verify an elector’s eligibility using telephone or email communications with the county clerk and recorder’s office before issuing a provisional ballot.

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,

A handwritten signature in dark ink, appearing to read 'E Nunez', with a stylized flourish at the end.

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