



Office of the Clerk & Recorder

1750 33rd Street · Boulder, CO 80301 · www.BoulderCounty.org

Hillary Hall, Boulder County Clerk & Recorder

Honorable Wayne Williams
Secretary of State
1700 Broadway, Suite 250
Denver, CO 80209

Re: Proposed Election Rule Changes, 8 CCR 1505-1

Secretary Williams,

I hereby submit my written comments concerning proposed rule changes. I support the comments submitted by the Colorado County Clerk's Association election statute review committee (ESRC) and want to stress the following.

Proposed Rule 6.2.1 is contrary Colorado statutes that assign the authority to appoint election judges to elected county clerks or the designated election official. The proposed rule states, “[t]he county clerk may assign an election judge based upon appropriate skill level and interest, except that each major political party may designate which election judges from its list will be appointed as signature verification judges.” This proposed rule gives the chairs of major political parties—who are not elected by the majority or accountable to all voters—the power to directly appoint election judges to specific positions. Colorado Revised Statutes §§ 1-6-103 and 1-6-103.5 provide that the political parties *recommend* electors to serve as election judges, and Colo. Rev. Stat. § 1-6-104(1) states, “For each election coordinated by the county clerk and recorder, *the county clerk and recorder* shall appoint election judges for each precinct in the county.” Further, “election judge” is defined as “a registered elector *appointed by the county clerk and recorder* or designated elected official to perform the election duties *assigned by the county clerk and recorder* or designated election official.” Colo. Rev. Stat. § 1-6-101(1) (emphasis added). As these statutes make clear, the Legislature has determined that elected county clerks should serve in the important role of appointing and assigning elections judges. Not only is this rule sensible because county clerks are in the best position to know their specific needs for a particular election, but it also places accountability where it should be—with elected officials. Proposed Rule 6.2.1 purports to take away a clerk’s statutory authority to appoint election judges and assign their duties. Because the rule conflicts with several statutory provisions, it will be void if enacted and likely subject to legal challenges. *See* Colo. Rev. Stat. §§ 24-4-103(8)(a), 24-4-106(4.7). The Secretary could easily address this issue by eliminating the proposed rule change. Alternatively, just as major parties can recommend election judges, the new rule could provide for the parties making recommendations for signature verification judges while leaving the final decision to county clerks.

Proposed Rule 7.8.3 does not properly follow the required rulemaking process for the adoption of the “Signature Verification Guide.” The proposed rule provides that a signature verification judge “must compare the signature on the self-affirmation on each ballot return envelope with the elector’s signature in SCORE in accordance with the Secretary of State’s Signature Verification Guide.” Because this rule requires compliance with a yet-to-be-produced Signature Verification Guide, the guide itself will be a binding rule and must go through the rulemaking process. *See* Colo. Rev. Stat. § 24-4-103(1) (only interpretative rules or general statements of policy, which are not meant to be binding as rules,

Motor Vehicle Division
1750 33rd Street, Suite 100
Boulder, CO 80301-2534
303.413.7710

Elections Division
1750 33rd Street, Suite 200
Boulder, CO 80301-2546
303.413.7740

Recording Division
1750 33rd Street, Suite 201
Boulder, CO 80301-2549
303.413.7770

Longmont Branch Office
529 Coffman Street, Suite 110
Longmont, CO 80501-5450
303.413.7710

Lafayette Branch Office
1376 Miners Drive, Suite 105
Lafayette, CO 80026
303.413.7710

are exempted from the rulemaking requirements of Colo. Rev. Stat. § 24-4-103); *see also Hammond v. Pub. Employees' Ret. Ass'n of Colorado*, 219 P.3d 426, 428 (Colo. App. 2009) (comparing legislative versus interpretive rules). Additionally, Colo. Rev. Stat. § 1-7.5-107.3(b) states, "The county clerk and recorder shall provide training in the technique and standards of signature comparison to election judges who compare signatures pursuant to this section." Consequently, it is the clerk's responsibility to provide training for election judges on signature verification. Although further guidance from the SOS regarding signature verification could be a useful tool, mandatory use of such a tool should be properly vetted through the public rulemaking process.

Proposed Rule 8.13 creates a new process for signature verification by non-election judges that is contrary to the statutory process mandated by the Legislature. The proposed rule states, "Unless the County Clerk authorizes a greater number, during the initial signature review by an election judge, a watcher may escalate no more than ten ballot envelope signatures in an hour for second review by a bipartisan team of election judges." Colorado Revised Statute § 1-7.5-107.3 specifically requires that election judges—not watchers—perform signature verification. It states, "[i]f, upon comparing the signature of an eligible elector on the self-affirmation on the return envelope with the signature of the eligible elector stored in the statewide voter registration system, the *election judge* determines that the signatures do not match . . . , two other election judges of different political party affiliations shall simultaneously compare the signatures." Colo. Rev. Stat. § 1-7.5-107.3(2)(a). Thus, only elections judges may determine that signatures do not match and "escalate" a signature for review by a bipartisan team of election judges. While watchers may challenge a mail ballot using a challenge form (*see* Colo. Rev. Stat. § 1-9-207), they do not have any statutory authority to verify signatures or require bipartisan review of signatures they believe do not match. Watchers are not trained in signature verification and are not qualified to make such a determination. Intervening with signature verification by requiring escalation to a bipartisan team would be interfering with an election official in the discharge of his duties as contemplated under Colo. Rev. Stat. § 1-13-701 and would also constitute interfering with the orderly conduct of an election process in violation of current Rule 8.6/Proposed Rule 8.15.4.

In addition, if each watcher stopped the signature verification process ten times an hour to require additional review of a signature by a bipartisan team, that would substantially delay and unnecessarily hamper the processing of the election. Signature verification is conducted by trained judges who are capable of quickly reviewing signatures to determine whether they match. Allowing untrained watchers to interfere with this process is not only contrary to the statutory requirement that election judges verify signatures but would also substantially interfere with the election. The roles of election judges and watchers are intentionally different. Only election judges are required to reside in the jurisdiction holding the election, must be trained on how to perform their election duties, and cannot have ever been convicted of any election offense or fraud. *See* Colo. Rev. Stat. § 1-6-101(2), (5), (6). These same requirements, which are safeguards and help protect the integrity of the election process, do not apply to watchers. Because the rule conflicts with a specific statutory provision, it will be void if enacted and likely subject to legal challenges. *See* Colo. Rev. Stat. §§ 24-4-103(8)(a), 24-4-106(4.7). The Secretary should address this issue by eliminating the proposed rule change.

Thank you for your consideration an opportunity to participate in the rulemaking procedures.

Sincerely,



Hillary Hall
Boulder County Clerk and Recorder