



January 13, 2016

Honorable Wayne W. Williams
Secretary of State of Colorado
1700 Broadway, Suite 250
Denver, CO 80290

VIA EMAIL TO: SoS.Rulemaking@sos.state.co.us

Re: Comments on Proposed Revisions to the Election Rules for January 14, 2016 hearing

Dear Secretary Williams:

Colorado Ethics Watch (“Ethics Watch”) is a nonpartisan, nonprofit watchdog group dedicated to ethics, transparency, and clean elections at the state and local level in Colorado. Ethics Watch respectfully submits these comments on the *December 15, 2015 Notice of Proposed Rulemaking* regarding proposed revisions to the Secretary of State Election Rules.

I. Election Judges and Watchers in the Signature Verification Process

We are concerned that the combined effect of a number of proposed changes affecting the signature verification process during mail ballot processing will introduce a harmful level of partisanship into the county election administration process. Specifically, **Proposed Rule 6.2.1** would authorize political parties to dictate which election judges on a list provided to the clerk are assigned to signature verification in that county. In addition, **Proposed Rule 8.13** allows watchers to “escalate” at least 10 signatures per hour. Together these proposed rules make the signature verification step in any county ballot processing facility a target for partisan mischief.

First, both these proposed rules move beyond the Secretary’s authority by contradicting the relevant statutes. C.R.S. § 1-6-103(2) gives the power to the county clerk and recorder to select election judges from the lists of potential judges submitted by the political parties. It is the clerk’s discretion to select and assign election judges to positions. **Proposed Rule 6.2.1** contravenes this statutory provision by stating that political parties pick specific individuals on the list given to the clerks who *will* be appointed to signature verification positions. This removes the clerks’ discretion in selecting and assigning judges authorized by statute. Similarly, C.R.S. § 1-9-207 governs any challenges that may be made by watchers – or any elector – during all stages of mail ballot processing. That statute requires a signed “challenge form” and certain notice procedures to the voter. **Proposed Rule 8.13** creates a new level of involvement for watchers that only applies to the signature verification step of ballot processing (an “escalation”) that is not governed by these statutory procedures. It is unclear the Secretary has authority to create this intermediary step or to authorize a certain number of escalations per watcher per hour.

In addition to the problem of statutory authority, the combined practical effect of these proposals escalates partisan conflict within the signature verification room of each county. If

political parties can dictate their own hand-picked partisans as signature verification election judges and partisan watchers can interrupt and “escalate” at least 10 signatures an hour, it is likely this step can make mail ballot processing grind to a halt. That is not an acceptable result in a Presidential election year with the vast majority of votes expected to be cast via mail ballot. Colorado’s election rules should be striving to minimize partisanship in election administration, not encouraging it.

We urge the Secretary not to adopt either of these proposed rules.

II. Electioneering within 100 feet of a 24-hour Ballot Drop Box

We have similar concerns about the lack of authority for the Secretary to enact **Proposed Changes to Rule 7.5.1(c)**. C.R.S. § 1-13-714 prohibits electioneering within any “polling location” or any public street or area within 100 feet of any building in which a “polling location” is located. “Polling location” is defined in C.R.S. § 1-1-104(27.5) as a polling place or voter service and polling center, and does not include unmanned drop-boxes for mail ballots. Therefore, the electioneering prohibitions do not necessarily apply to any unmanned drop-boxes which are not located inside of, or within 100 feet of, a polling location. However, **Proposed Changes to Rule 7.5.1(c)** require signs stating that electioneering within 100 feet of any drop-box is prohibited.

In addition, there is a practical concern raised by this proposed expansion of the electioneering prohibition to all drop-boxes. In a commendable effort to facilitate voter use, some counties have placed unmanned drop-boxes in public spaces that have no other connection to voting or elections. For example, Denver has such a drop-box at the I-25/Broadway light rail station. Creating a no-electioneering zone (with violations subject to criminal fines and jail time) for the entire period of early voting in such a public space raises First Amendment concerns. Patrons of the light rail station wearing a candidate’s logo on a baseball hat could violate this rule while simply waiting for the train to work. This creates the potential for entrapment by political opponents who could stake out a drop-box in such a public area and capture images of that individual for an election complaint.

There is not the same concern surrounding electioneering at a polling location swaying a voter’s decision in this situation because a free-standing drop-box in that type of location will only be used by a voter who has already completed their ballot and is merely placing it in the box. Any fears of harassment of voters dropping off ballots would be addressed by C.R.S. § 1-13-112 which prohibits “unduly influence[.]” on mail ballot voters to vote in a particular way or to refrain from dropping that ballot in the box.

We understand that the General Assembly will be considering legislation this year regarding the drop-box provisions. Given the lack of clarity in the statutory electioneering prohibition and the complexity of the issues surrounding prohibiting free speech in a public non-election related location, the legislative process is a better way to address the question of electioneering at drop-boxes. We urge the Secretary to reject these **Proposed Changes to Rule 7.5.1(c)**.

We appreciate this opportunity to comment.

Sincerely,

A handwritten signature in blue ink that reads "Peg Perl". The signature is written in a cursive, flowing style.

Peg Perl
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