



January 14, 2016

The Honorable Wayne Williams
Secretary of State
Department of State
1700 Broadway
Denver, Colorado 80290

Re: Comments on Proposed Revisions to Elections Rules, 8 CCR 1505-1

Dear Secretary Williams:

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.

The following comments and questions are in response to the Notice of Proposed Rulemaking dated December 15, 2015.

Rule 6.2.1: We oppose the adoption of a rule that would allow political parties to designate which election judges are to be assigned as signature verification judges. Signature verification should be treated in the same way as all other election processes, with appointments made on the basis of the judge's skills. There is no statutory authority for the major political parties to make these appointments instead of the county clerk, and county clerks should be able to appoint qualified minor party and unaffiliated voters to serve as signature verification judges.

Rule 6.4.1 and 6.4.2: We oppose the adoption of these rules, which would allow county political party chairs to determine if staff could serve as election judges to conduct signature verification. If it is necessary to limit the instances when staff can conduct signature verification, the rules should specify those circumstances rather than granting approval authority to the political party chairs.

Rule 7.2.6: This rule is void and cannot be amended.

Kate Meyer, Office of Legislative Legal Services, in the Memorandum to the Committee on Legal Services, dated December 8, 2015 (full memo available at: http://tornado.state.co.us/gov_dir/leg_dir/olls/PDF/agenda20151215webrevised.pdf)

notes that:

The APA prohibits repromulgation of a rule that has expired pursuant to the rule review process, and declares void any rules so repromulgated. Section 24-4-103 (8) (d), C.R.S., states, in pertinent part:

24-4-103. Rule-making - procedure - definitions - repeal. (8) (d) ... Only that portion of any rule specifically disapproved by bill shall no longer be effective, and that portion of the rule which remains after deletion of a portion thereof shall retain its character as an administrative rule. Each agency shall revise its rules to conform with the action taken by the general assembly. **A rule which has been allowed to expire by action of the general assembly** pursuant to the provisions of paragraph (c) of this subsection (8) because such rule, in the opinion of the general assembly, is not authorized by the state constitution or statute **shall not be repromulgated** by an agency unless the authority to promulgate such rule has been granted to such agency by a statutory amendment or by the state constitution or by a judicial determination that statutory or constitutional authority exists. **Any rule so repromulgated shall be void. ... (emphases added)**

The General Assembly explicitly disapproved Rule 7.2.6 by allowing it to expire via the "Rule Review Bill". In this case, the above-cited APA provision requires the Secretary "to revise [his] rules to conform with" that action. Instead, by essentially restoring one of the two prongs of the expired rule, the Secretary has not acted consonant with the APA but has repromulgated, in substantial part, a previously disapproved rule.

Because the 2015 rule revives a significant portion of its expired predecessor rule (absent authority to do so being granted to the Secretary by statutory amendment, by the state constitution, or by a judicial determination that statutory or constitutional authority exists), Rule 7.2.6 of the 2015 elections rules of the Secretary is void.

Rule 8.9: We support the adoption of this rule to ensure that voters at group residential facilities can cast their ballots in private, and would support additional language clarifying that, if a voter is receiving assistance, the watcher must be far enough away that they cannot hear the conversation between the voter and the person providing assistance.

Rule 8.13: We oppose the adoption of this rule, which would create new authority for watchers to escalate signatures for secondary review that is not authorized in statute. This rule and proposed escalation process do not track the mail ballot challenge process in statute.

Thank you for the opportunity to comment.

Elena Nunez
Executive Director
Colorado Common Cause
1536 Wynkoop St., Suite 300
Denver, CO 80202
(303) 292-2163 w | (720) 339-3273 c
enunez@commoncause.org