

7/11/17

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Quick Summary of Relevant Proposed Election Rule Changes

7.8.17

- * **Intent of Amended Rule 2.5.4:** The SOS states that the purpose of amending this rule is to comport with the new requirements of Propositions 107¹ & 108² and SB 17-305 (otherwise known as the Primary Election Cleanup bill)³ and to ensure that a voter who *is* affiliated with one party does not cast a ballot in another party's primary election.

- * **Potential Issues with Proposed Amendment:** Two different concerns have been raised regarding this rule. One argument advanced by the Denver County Clerk and Recorder's Office, explains that the amended rule may contravene current statutory law. Electors should be permitted, under C.R.S. 1-2-218.5(2), to change their party affiliation any time up to and including election day (same as registering to vote). The new rule would not permit any changes after the 29th day prior to the election. The reasoning for this appears to be tied to the date counties mail their ballots in. However, not all counties have the same mail in deadlines. Meaning, having different mail in ballots deadlines in each county will create confusion for voters. The second issue is that the language of the proposed rule is ambiguous as to the status of the unaffiliated voter post-primary election. For example, if an elector decides to affiliate with the Democratic Party, let's say for one primary election, do they automatically revert back to unaffiliated status post-primary? Must the voter take affirmative action to change their status once more? This seems like excess work for the elector who will likely grow tired of changing back and forth every 4 years, that is if they remember to do so.

- * **Intent of Amended Rule 2.13.1-** the SOS states this rule is being amended to establish uniformity in the administration of the current law.

- * **Potential Issues with Proposed Amendment:** Something seems off here. Why have we omitted so many individuals from registering new electors or updating

¹ Proposition 107 established presidential primaries and allowed unaffiliated voters to vote in them. The primaries will be held at a date set by the Colorado Governor and held before the third Tuesday in March. They will be conducted as a mail-in ballot election.

² Proposition 108 allowed unaffiliated electors to vote in the primary elections of major political parties without declaring an affiliation with the party. The measure provided that unaffiliated voters receive a combined ballot with primary candidates separated by political party and chose which one party's primary to vote in. The proposition allowed a political party, with three-fourths votes of the party's state central committee, to select candidates by assembly or convention limited to party-affiliated voters rather than a primary election. The initiative permitted minor parties to exclude unaffiliated voters from participating in their primaries.

³ <https://leg.colorado.gov/bills/sb17-305>

elector information at voter service and polling centers? Only election judges are permitted to register new individuals and update registries? That seems oddly burdensome for the county. Election judges are paid a fee, albeit a low one, but that is the point. The counties cannot afford exorbitant costs for hiring election judges. Usually there are 1-2 per precinct, per election day. Rural precincts face additional difficulties in that they rely on election judges who usually volunteer with the county but wish to work in the metropolitan areas. In other words, these areas already have problems finding election judges. With one election judge on site, it would be challenging to ask that individual to update registries, register new individuals, and oversee the elections in the facility. This may discourage election judges from volunteering again in the future. The second amendment to this section only adds to the confusion of trying to determine the true purpose of this amendment.

- ***Intent of Amended Rule 2.13.2-*** same as above
- ***Potential Issues with Proposed Amendment:*** Here the amendment seeks to remove a provision related to information that is provided to election watchers. Under the amended rule, the election judge would no longer need to maintain a log of new registered voters or of any changes made by register electors nor confirm any information verbally with the election watcher. Why? The function of a poll watcher is primarily to ensure the integrity of honest and fair elections. Why would the SOS seek to limit the information that a watcher has access to? This makes no sense.
- ***Intent of Amended Rule 8-*** the SOS states this is to establish uniformity.
- ***Potential Issues with Proposed Amendment:*** In addition to requiring training which must be completed every year in order to obtain certification to simply observe the election activities, watchers may not have in their possession any electronic device or mobile phone where the voter's personally identifiable or confidential information may be within view. As pointed out by the attorney for the Colorado Democratic Party, a watcher without a device to communicate any potential violations to a superior is hardly a watcher at all. A judge could decide that watchers who are simply in the area while an election judge is accessing the SCORE system⁴ would be subject to the rule. It might end with a judge ruling that watchers must leave their phones in a secure area like their vehicle or inside of a controlled area within the voting center. This would create serious challenges for watchers.

These are just several of the proposed amendments that could have dramatic impacts on how Colorado votes. Some of the rules, if changed, would create significant hardships for the county election officials. I advise everyone to visit the submitted comments section of the proposed amended rules to take a look at the comments provided by the various counties for a more in-depth understanding of what their take is on the matter.

⁴ SCORE stands for the Statewide Colorado Voter Registration System.

In addition, several commentators have expressed deep concern over the way in which the SOS appears to be inviting spoilage of ballots by forcing electors to disclose their voting designation on the outside of previously secret ballot so that officials know before opening which political party an elector designated.

Finally, the SOS has suggested creating a mechanism for allowing cross-county voting. This would essentially mean that if your county touches another county, you can vote there instead of in your county. This seems like a good idea on its face, however, one concern raised by this rule is that it would encourage some counties to reduce the number of voting centers within their own jurisdictions if they believe individuals can just vote in another location.

Here is a link to the comments section of the proposed rules changes: http://www.sos.state.co.us/pubs/rule_making/ruleComments.htm

This is the link to the revised proposed rules changes: http://www.sos.state.co.us/pubs/rule_making/files/2017/20170706ElectionsRevisedDraftRules.pdf