

Mesa County's Comments to Colorado Secretary of State's Proposed Rules
Thursday, July 3rd, 2014

Proposed Rule 2.3.4 (Page 9) *"DOCUMENTS OBTAINED IN ACCORDANCE WITH 42-2-505 ARE NOT ACCEPTABLE FORMS OF IDENTIFICATION FOR ANY PURPOSE UNDER TITLE 1, C.R.S."*

Suggestion: A passport and Military ID are listed under 42-2-505(I) and (III) which are acceptable IDs for voting under Title 1. For clarification, add (1) which discusses an identification document that may be issued to an individual who is not lawfully present.

Proposed Rule 2.13.2(C) (Page 10) *"IF AN ELECTOR WHOSE ADDRESS WAS UPDATED UNDER SECTION 1-2-302.5(2)(B)(I)(B), C.R.S., RETURNS THE VOTED BALLOT THAT WAS MAILED TO THE ELECTOR'S PREVIOUS ADDRESS, THE VOTED BALLOT SERVES AS NOTIFICATION UNDER SECTION 1-2-302.5(2)(B)(I)(B), C.R.S. AND THE COUNTY MUST CORRECT THE ELECTOR'S RECORD UNDER SECTION 1-2-302.5(2)(B)(I)(B), C.R.S."*

Suggestion: Remove.

SECTION 1-2-302.5(2)(B)(I)(C)(c), C.R.S. specifies that address corrections are made "upon receiving additional information from the elector." The address on the envelope of the voted ballot shouldn't be considered information from the elector. It's possible for an elector to receive a ballot for both addresses and unintentionally return the wrong envelope.

Proposed Rule 2.13.4 (Page 11) *"THE COUNTY MUST PROCESS ALL RECORDS DESIGNATED FOR CANCELLATION BY THE SECRETARY WITHIN SEVEN BUSINESS DAYS OF RECEIPT."*

Suggestion: Edit. *"THE COUNTY MUST PROCESS ALL RECORDS DESIGNATED FOR CANCELLATION BY THE SECRETARY OF STATE WITHIN SEVEN BUSINESS DAYS OF RECEIPT. IF RESEARCH IS NECESSARY TO CONFIRM WHICH RECORDS DESIGNATED BY THE SECRETARY ARE ELIGIBLE FOR CANCELLATION, THE COUNTY MUST PROCESS WITHIN 14 BUSINESS DAYS OF RECEIPT. THE SECRETARY MUST NOTIFY COUNTIES 48 HOURS IN ADVANCE."*

Counties should be given adequate time to recruit and train staff and, if necessary, temporary workers to process cancellation records accurately. Research on whether a voter record is eligible to be cancelled or can be lengthy and complex, requiring several parameters and SCORE screens to be examined. If processing cancellations needs to occur in a shorter time frame, then adequate notice and processing time dependent on whether the County must research each record or not, would help facilitate the desired outcome.

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Proposed Rule 4.1.3 (Page 12) *"THE DESIGNATED ELECTION OFFICIAL OF EACH PARTICIPATING POLITICAL SUBDIVISION MUST CERTIFY THE COMPLETENESS AND ACCURACY OF THE ADDRESS WITH THE DISTRICT NO LATER THAN THE 70TH BEFORE ELECTION DAY."*

Suggestion: Add DAY after 70th. Good addition to the Rules.

Proposed Rule 5.4.1(B) (Page 16) *"A COMPLETE LIST OF REGISTERED ELECTORS AS OF THE **SIXTH** DAY BEFORE THE ELECTION."*

Proposed Rule 5.5.2 (Page 17) *"THE COUNTY CLERK MUST PROVIDE THE MUNICIPALITY WITH A REGISTRATION LIST NO LATER THAN THE **FIFTH** DAY BEFORE ELECTION."*

Question: Should these two be the same day before Election Day?

Proposed Rule 5.4.1 (Page 16) *"NO LATER THAN THE 40TH DAY BEFORE A SPECIAL DISTRICT ELECTION THE **DESIGNATED ELECTION OFFICIAL MUST ORDER** ONE OF THE FOLLOWING FROM THE COUNTY:"*

Proposed Rule 5.5.2 (Page 17) *"THE **COUNTY CLERK MUST PROVIDE THE MUNICIPALITY** WITH A REGISTRATION LIST.."*

Suggestion: Change Proposed Rule 5.5.2 to the same language as 5.4.1.

Proposed Rule 5.4.4 (Page 17) *"FOR EVERY REGISTRATION LIST SENT TO THE SPECIAL DISTRICT, THE COUNTY CLERK MUST INFORM THE DESIGNATED ELECTION OFFICIAL OF THE PROPER PROCEDURES OF FOR HANDLING PROTECTED OR CONFIDENTIAL ELECTOR INFORMATION."*

Suggestion: "...THE PROPER PROCEDURES OF FOR HANDLING PROTECTED..."

Proposed Rule 6.5 (B) (Page 18) *"APERSON CONFICTED OF AN ELECTION OFFENSE OR AN OFFENSE CONTAINNG AN ELEMENT OF FRAUD MAY NOT:"*

Suggestion: Add a space between A and PERSON. Good clarification.

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Proposed Rule 7.2.5 (Page 18) *"EACH MAIL BALLOT RETURN ENVELOPE AND MAIL BALLOT INSTRUCTION MUST INCLUDE A STATEMENT INFORMING VOTERS THAT IT A VIOLATION OF LAW TO DROP OFF MORE THAN TEN BALLOTS IN ANY ELECTION."*

Suggestion: Remove "MAIL BALLOT RETURN ENVELOPE". The return envelope already has 67 words worth of instructions on the back flap and a 60 word oath beneath it, along with space to sign and date. Space is limited on this piece as it has to fall in line with USPS mailing standards. Also, this warning is not applicable for the majority of voters who drop off one to two mail ballots. Adding this warning to the instructions where more details are available, such as ID Required information, makes sense.

Proposed Rule 7.2.6 (Page 18) *"EACH MAIL BALLOT RETURN ENVELOPE MUST INCLUDE THE FOLLOWING AFFIRMATION: "TO VOTE, I HAVE MARKED AND SEALED MY BALLOT IN PRIVATE AND HAVE NOT ALLOWED ANY PERSON TO OBSERVE THE MARKING OF THE BALLOT, EXCEPT FOR THOSE AUTHORIZED TO ASSIST VOTERS UNDER STATE OR FEDERAL LAW. I HAVE NOT BEEN INFLUENCED."*

Suggestion: Remove.

The affirmations of election officials, judges and voters are typically established in Title 1, not in Colorado Secretary of State Rule. The current affirmation for mail ballot envelopes is found at C.R.S. 1-8-114.

The proposed affirmation's founding in Title 1 is tenuous and sets up a litigious environment as 1-13-712(3), is not specific enough to confidently interpret that a voter may not voluntarily give up their right to a secrecy when voting outside the polling place. The proposed rule doesn't address a voter using a different avenue other than showing their marked ballot to reveal their voting choices to others, such as verbally or by writing them down.

The final sentence is concerning because it is vague and could apply to multitudes of information such as TV ads, discussions, candidate debates, etc. Finally, currently the oaths used for In Person voters and Mail Ballot voters are the same except a few words regarding signature cards and envelopes. The additions to the mail ballot oath would enforce different requirements to one group of voters and not the other.

Space for Non-USPS related information is limited on a piece that must be meet USPS mailing standards and changes like these need to be vetted thoroughly with them to ensure ballots can be mailed. Envelope design work is due in July to vendors to ensure the creation of envelopes for the 2014 General election. Also, many counties buy these envelopes in bulk for an entire year in order to receive

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economies of scale on a larger order. Changing the envelope between elections during a calendar year can negatively impact local government budgets.

Proposed Rules 8.6.1 through 8.6.10 (Page 22)

Suggestion: Retain. Good clarification.

Proposed Rule 9.1 & 9.2 (Page 23) *"IF AN INDIVIDUAL CHALLENGES A MAIL BALLOT UNDER SECTION 1-9-201, C.R.S., THE ELECTION JUDGE MUST FORWARD THE BALLOT TO TWO OTHER ELECTION JUDGES OF DIFFERENT POLITICAL PARTY AFFILIATIONS WHO MUST REVIEW THE ELECTOR'S ELIGIBILITY TO VOTE."*

"IF BOTH ELECTION JUDGES DETERMINE THE ELECTOR IS NOT ELIGIBLE TO VOTE ON A PARTICULAR BALLOT ISSUE, BALLOT QUESTION, OR RACE, THE JUDGES MUST COUNT ONLY THOSE BALLOT ISSUES, BALLOT QUESTIONS, OR RACEDS FOR WHICH THE ELECTOR IS ELIGIBLE."

Suggestion: Remove. This proposed Rule attempts to broaden challenges of Mail Ballot voters to include Residency, Citizenship and Age under 1-9-201 but does not afford the voter the rights found in 1-9-203 and 1-9-204 which allows the voter to respond to the challenge and affirm their eligibility.

The proposed rule conflicts with 1-9-207 which specifies, "Challenged ballots except those rejected for an incomplete or incorrect affidavit by an elector on the returned mail ballot envelope, forgery of a deceased person's signature on a mail ballot affidavit, or submission of multiple ballots, shall be counted. "

Election judges at the Voter Service & Polling Centers who receive challenges for In Person voters do not research and determine a voter's eligibility. They ask the questions found in 1-9-203 and provide the voter an opportunity to respond. If the voter affirms their eligibility (regarding whether they were challenged on age, residence or citizenship) by satisfactorily answering the challenge questions and signing the affidavit pursuant to 1-9-204, then they vote a regular ballot. The proposed rule gives In Person voters more protections than Mail Ballot voters.

The proposed rule also is misaligned with 1-9-101 which allows a voter's registration to be challenged. The voter is notified and given opportunity to respond with the decision made after the County Clerk conducts research and holds a hearing. We suggest not requiring election judges to try to meet this level of ruling over the eligibility of voters and what ballot choices will be counted. We are aware of

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many election judges who would refuse to make these decisions without the voter being given the opportunity to respond.

The scenario of election judges disagreeing about voter eligibility or whether the signature matches with the SCORE signature is not addressed.

Proposed Rule 10.1.1 (Page 24) *"FOR PURPOSES OF ARTICLE 10 OF TITLE 1, "BALLOTS CAST IN AN ELECTION." OR "BALLOTS CAST IN EACH PRECINCT" MEANS PAPER BALLOTS CAST BY ELECTORS IN A VOTER SERVICE AND POLLING CENTER AND MAIL BALLOTS RECEIVED OR PROCESSING BY THE COUNTY CLERK."*

Suggestion: Add "AND DRE BALLOTS" to "CAST BY ELECTORS IN A VOTER SERVICE AND POLLING CENTER."

Proposed Rule 10.1.4 (e) (Page 25) *"AFTER THE VOTER SERVICE AND POLLING CENTER CLOSES ON ELECTION NIGHT, THE ELECTION JUDGE MUST RETURN THE COMPLETED STATEMENT OF BALLOTS FORM FOR EACH DAY THE LOCATION WAS OPEN ALONG WITH ALL VOTED, UNVOTED, SPOILED AND PROVISIONAL BALLOTS TO ONE OF THE ELECTION OFFICES DESIGNATED IN THE MAIL BALLOT PLAN."*

Suggestion: Remove. Creating and returning a Statement of Ballot for each day the Voter Service and Polling Center is open is unnecessary as any issues in balancing will show on the final statement. Rule 10.1.2 covers this with requirement to reconcile the Detailed Ballot Log at the end of each day. Creating redundant paperwork at the Voter Service and Polling Center is inefficient, especially considering the small quantities of In Person ballots received by this method.

Proposed Rule 10.5.1 (Page 28)

Suggestion: Add 10.5.2 - *"THE TOTAL NUMBER OF ACTIVE REGISTERED ELECTORS ON ELECTION DAY AND THE TOTAL NUMBER OF REGISTERED ELECTORS (ACTIVE AND INACTIVE) ON ELECTION DAY MUST BE PROVIDED TO THE COUNTY CLERK BY THE SECRETARY OF STATE BY 12:00 PM ON ELECTION DAY. FOR A GENERAL ELECTION, THESE TOTALS SHALL BE PROVIDED BY PRECINCT."*

In order to use these numbers consistently on our result reports that are released on Election night and then later in Canvass, counties need to enter them into our elections reporting software before 7:00 pm, Election night.

Issue: The proposed rule conflicts with proposed Rule 11.3.2(E)(4) *"THE COUNTY CLERK MAY NOT CHANGE THE ELECTION DATABASE OR THE PROGRAMMING OF ANY VOTING DEVICE AFTER*

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COMPLETING THE LOGIC AND ACCURACY TEST FOR THE ELECTION."

Counties would need to change the database by importing voter registration totals given by the Secretary of State but would not have these totals until Election Day, well after the Logic & Accuracy test.

Proposed Rule 11.3.2(E)(Page36) *"THE COUNTY CLERK MAY NOT CHANGE THE ELECTION DATABASE OR THE PROGRAMMING OF THE VOTING DEVICE AFTER COMPLETING THE LOGIC AND ACCURACY TEST FOR AN ELECTION."*

Suggestion: Provide an instance where the County Clerk under the guidance of the Secretary of State's office, could make an adjustment in the event a programming issue was found after the Logic & Accuracy test was completed but before voting commenced. The testing board could be reconvened for a second Logic & Accuracy test.
