

Branscomb comments for 5/15/2015 preliminary rulemaking inquiry regarding SOS Election Rules: Changes I propose are highlighted in yellow.

2.10.3 During the 22 days before an election, the county clerk must defer processing 9 undeliverable 20-day NEW VOTER notifications. After the election is closed, the 10 clerk must deem an applicant "not registered" under section 1-2-509(3), C.R.S., 11 only if the applicant did not vote in the election.

This rule is too confusing, as is the statutory reference. It would appear that voting in the election solves any issue related to an undeliverable notification?

7.2.6 Effective ~~January 1, 2015~~ JANUARY 1, 2016, each mail ballot return envelope must 15 include the following: ~~“For third party delivery:~~ **(TO BE FILLED IN IF NOT PERSONALLY DELIVERING THE BALLOT):** I am voluntarily giving my **THIS SEALED** ballot **ENVELOPE CONTAINING THE BALLOT I MARKED** 16 to **(BLANK RESERVED FOR** name and address) for delivery ON MY BEHALF. ~~I have marked and sealed my~~ 17 ~~ballot in private and have not allowed any person to observe the marking of the~~ 18 ~~ballot, except for those authorized to assist voters under state or federal law.”~~

I am supportive of the above change but it requires modification to affirm that the envelope was not given to a third party in unsealed or unmarked condition. And the ballot need not be referred to as a possession of the voter. It is a public record.

7.2.7 A COUNTY CLERK WHO USES A THIRD PARTY VENDOR TO MAIL BALLOTS IS CONSIDERED TO BE IN POSSESSION OF THE BALLOTS FOR PURPOSES OF SECTION 1-5-21 403(1), C.R.S., WHEN THE VENDOR HAS PREPARED THE BALLOTS FOR MAILING.

Note that the above new rule seems intended to legitimize some counties current practice of totally remote production and handling of ballot packages without insuring that necessary opportunities for oversight are extended to the remote location that is under control of a vendor. This situation or reliance upon a remote vendor has, in Adams County, led to a delayed detection of a serious violation because oversight by the county and by watchers was not present. I think it is unwise to allow the above extra consideration in rule to justify current practices without arranging for the rest of the requirements for expected integrity.

Current Rule 16.1.5, concerning voting by military and overseas electors, is repealed and 22 subsequent rules are renumbered as follows:

I do not see the reason for elimination of this rule. Current law in Article 8.3 literally requires all UOCAVA ballots returned after election day to be counted, but this rule clarifies that ballots returned after the 8th day will not be counted, as actually intended. I do not know under what circumstances the SOS would be receiving ballots on the close of business on the eighth day. Will the SOS be a catchall address for UOCAVA voting? The word “cast” has no meaning here, so it is eliminated. Please restore and reframe the rule as follows:

16.1.5 In accordance with sections 1-8.3-111 and 1-8.3-113, C.R.S., **TO BE COUNTED** all **OTHERWISE ELIGIBLE** ballots ~~east~~ must
24 be voted and mailed or electronically transmitted no later than 7:00 p.m. MT on
25 election day, and received by the county clerk ~~or the Secretary of State~~ no later than
26 the close of business on the eighth day after election day.

16.1.9 16.1.8 Failure to meet the 45-day ballot transmission deadline in section 1-8.3-110, 1 C.R.S.

The proposed change “not feasible means believes not certain” is too weak to reflect the legislative intent of CRS 1-8.3-113(1). It will lead to widespread misuse of the email/fax option and that will produce more risk of interference with the purity of the election.

Any elector in any circumstance such as delivering a ballot to the mail too close to election day could believe “the timely return of the ballot is not certain” even if prudent use of mail would be feasible. Also the phrase “his or her ballot” implies private ownership of something that is a public record.

Therefore I suggest the following:

In accordance with section 1-8.3-113(1), C.R.S., an elector who chooses to receive **AN** unvoted ballot by ELECTRONIC

TRANSMISSION may return **THE** ballot by fax or email ONLY IF THE

ELECTOR DETERMINES THAT A MORE SECURE METHOD, SUCH AS RETURNING

THE BALLOT BY MAIL, IS NOT AVAILABLE OR FEASIBLE. “NOT FEASIBLE”

MEANS CIRCUMSTANCES **PREVENT THE ELECTOR FROM RETURNING THE BALLOT AND AFFIRMATION BY A MAIL SERVICE THAT WILL DELIVER BEFORE 7 DAYS AFTER ELECTION DAY.**

The following rule then should replace “electronic transmission” with “fax or email” to be consistent and to properly inform the voter of the correct interpretation of the law:

11 *Amendments to Rule 16.2.3:*

12 16.2.3 The self-affirmation must include the standard oath required by the Uniformed and

13 Overseas Citizen Voting Act (42 U.S.C sec. 1973ff(b)(7) and 1(a)(5)), the elector’s

14 name, date of birth, signature, and the following statement: I also understand that

15 by returning my voted ballot AND THIS AFFIRMATION by **FAX OR EMAIL electronic transmission.** I am voluntarily waiving

16 my right to a secret ballot AND THAT COLORADO LAW REQUIRES THAT I RETURN THIS

17 BALLOT BY A MORE SECURE METHOD, SUCH AS MAIL, IF AVAILABLE AND FEASIBLE.

18 (Section SECTIONS 1-8.3-113 AND 1-8.3-114, C.R.S.)

19

Andrea Gyger

From: [REDACTED]
Sent: Friday, May 15, 2015 6:05 PM
To: SoS Rulemaking
Cc: harvie@electionquality.com
Subject: Re: Comments for rulemaking inquiry 5/15/2015 addendum

Please accept an addendum to my previous pdf that I provide only in this email with an improvement on my substitute language for the definition of "feasible":

In accordance with section 1-8.3-113(1), C.R.S., an elector who chooses to receive AN unvoted ballot by ELECTRONIC TRANSMISSION may return THE ballot by fax or email ONLY IF THE ELECTOR DETERMINES THAT A MORE SECURE METHOD, SUCH AS RETURNING THE BALLOT BY MAIL, IS NOT AVAILABLE OR FEASIBLE. "NOT FEASIBLE" MEANS CIRCUMSTANCES BEYOND THE ELECTOR'S CONTROL PREVENT HIM OR HER FROM RETURNING THE BALLOT AND AFFIRMATION BY A MAIL SERVICE THAT WILL DELIVER BEFORE 8 DAYS AFTER ELECTION DAY.

Sent from my android device.

-----Original Message-----

From: Harvie Branscomb [REDACTED]
To: SoS Rulemaking <SoS.Rulemaking@sos.state.co.us>
Cc: harvie@electionquality.com
Sent: Fri, 15 May 2015 4:38 PM
Subject: Comments for rulemaking inquiry 5/15/2015

To SOS rulemaking officials:

Attached please find my pdf of comments on the Elections Rules inquiry that has a deadline of 5PM today.

Thank you for starting these processes early. I look forward to any conversations that may take place pursuant to my suggestions.

Harvie Branscomb