
Subject: Colorado Republican Party Comments on Draft Rules

Date: Friday, May 15, 2015 at 4:21:00 PM Mountain Daylight Time

From: Marilyn Marks

To: Andrea Gyger, SOS.Rulemaking@sos.state.co.us

CC: Steve House, Anne O'Donnell

Andrea,

Please find attached the comments submitted by the Colorado Republican Party for the draft proposed rules.

Thank you for this opportunity to comment early in the rule-making process.

Marilyn Marks



Working Draft of Proposed Rules

Office of the Colorado Secretary of State Election Rules 8 CCR 1505-1

May 8, 2015

Disclaimer:

The following is a working draft concerning the Election Rules. The Secretary values your input and is seeking feedback about the proposed revisions before a formal notice of rulemaking.

Please send your feedback by May 15, 2015. Please reference the specific page and line number in your comments. We will consider all comments submitted by this date for inclusion in the official rulemaking draft.

Please note the following formatting key:

Font effect	Meaning
Sentence case	Retained/modified current rule language
SMALL CAPS	New language
Strikethrough	Deletions
<i>Italic blue font text</i>	Annotations

1 *Amendments to 8 CCR 1505-1 follow:*

2 *Amendments to Rule 1.1.46(a):*

3 1.1.46 “Watcher” has the same meaning as in section 1-1-104(51), C.R.S.

4 (a) A watcher may be appointed for a recall election in the same manner as in
5 a primary election. A RECALL ISSUE COMMITTEE MAY ALSO APPOINT A
6 WATCHER.

7 *[The remainder of Rule 1.1.46 is retained unaltered]*

8 *Amendments to Rule 2.3 through 2.5:*

9 2.3 When an elector registers to vote, the elector must provide a verifiable driver’s license or
10 state identification card number, or last four digits of his or her social security number. If
11 THE ELECTOR PROVIDES A NUMBER THAT DOES NOT VERIFY OR the elector states that he or
12 she does not have a driver’s license, state identification card number, or social security

does this mean "cannot be verified?"

1 number, the county clerk must register the elector and mark the registration record "ID
2 required".

3 2.3.1 A COUNTY MUST PROCESS THE HELP AMERICA VOTE VERIFICATION FILE ON A
4 MONTHLY BASIS FOR VERIFYING SOCIAL SECURITY NUMBERS AND REMOVE THE "ID
5 REQUIRED" FLAG FOR THOSE NUMBERS THAT ARE VERIFIED.

6 ~~2.3.1~~2.3.2 As used in section 1-1-104(19.5), C.R.S., government document means a
7 document issued by a city, county, state or federal government.

8 *[The remainder of New Rule 2.3.2, formerly Rule 2.3.1, is retained unaltered]*

9 ~~2.3.2~~2.3.3 As used in section 1-1-104(19.5)(a)(VII), C.R.S., current means that the
10 date of the document is within 60 days of the date submitted for identification
11 purposes unless the document states a longer billing cycle.

12 ~~2.3.3~~2.3.4 Documents issued under section 42-2-505, C.R.S., are not acceptable forms
13 of identification for any purpose under the Uniform Election Code of 1992 and
14 these rules.

15 2.4 Treatment of NEW REGISTRATION applications where the elector fails to provide required
16 information

17 *[The remainder of Rule 2.4 is retained unaltered]*

18 2.5 Changes to an elector's EXISTING voter registration record

19 2.5.1 If an elector submits a change to his or her voter registration record and fails to
include the information required by sections 1-2-216 or 1-2-219, C.R.S., the county
clerk ~~must~~ MAY not make the requested change unless the county clerk can
~~confidentially identify the voter~~ ESTABLISH MINIMUM MATCHING CRITERIA. ~~The~~ IF THE
county clerk CANNOT ESTABLISH MINIMUM MATCHING CRITERIA, THE COUNTY
CLERK MAY NOT CHANGE THE ELECTOR'S STATUS AND must notify the voter of the
additional information that is required to process the request.

This seems to deal with
ESTABLISHING CRITERIA,
not verifying the identity or
meeting the criteria. Shouldn't
this paragraph deal with
failure to MEET matching
criteria?

26 *[The remainder of Rule 2.5 is retained unaltered]*

27 *Amendments to Rule 2.7.1:*

28 2.7 Minimum matching criteria

29 2.7.1 Except as provided in section 1-2-302.5, C.R.S., the county clerk must not transfer,
30 consolidate, or cancel a voter registration record unless the APPLICABLE minimum
31 matching criteria as set forth in sections 1-2-603 ~~and~~ OR 1-2-604, C.R.S., are met.
32 If the minimum matching criteria are not met the county clerk must send a letter to
33 the voter requesting confirmation of the missing or non-matching information in
34 order to transfer, consolidate, or cancel the record.

35 *[The remainder of Rule 2.7 is retained unaltered]*

1 *Amendments to Rule 2.10:*

2 2.10 ~~20-day applicants~~ NEW VOTER NOTIFICATION under section 1-2-509(3), C.R.S.

3 2.10.1 When a county clerk deems an applicant "not registered" upon receipt of an
4 undeliverable new voter notification in accordance with section 1-2-509(3), C.R.S.,
5 the county clerk must mail a confirmation card. The confirmation card must meet
6 the requirements of section 1-1-104(2.8), C.R.S.

7 2.10.2 If the applicant returns the signed confirmation card within 90 days the county clerk
8 must register the applicant using the date of the original application.

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

13 ~~2.12.1~~ 2.10.4 ~~When~~ IF AFTER THE 20-DAY PERIOD OUTLINED IN SECTION 1-2-509(3),
14 C.R.S, EXPIRES the United States Postal Service returns a new voter notification ~~or~~
15 ~~confirmation card~~ to the county clerk as undeliverable, or provides the clerk with a
16 postcard notice of mail forwarding, the county clerk must mark the voter's record
17 "Inactive – returned mail" and mail a confirmation card. ~~Where a confirmation card~~
18 ~~sent under this Rule is returned as undeliverable, the county is not required to mail~~
19 ~~another card.~~

20 *[Current Rule 2.12.1 is amended and recodified as New Rule 2.10.4]*

21 *Amendments to Rules 2.12 and 2.13:*

22 2.12 List Maintenance under section 8 of the National Voter Registration Act of 1993

23 ~~2.12.1~~ ~~When the United States Postal Service returns a new voter notification or~~
24 ~~confirmation card to the county clerk as undeliverable, or provides the clerk with a~~
25 ~~postcard notice of mail forwarding, the county clerk must mark the voter's record~~
26 ~~"Inactive – returned mail" and mail a confirmation card. Where a confirmation card~~
27 ~~sent under this Rule is returned as undeliverable, the county is not required to mail~~
28 ~~another card.~~

29 *[Current Rule 2.12.1 is amended and recodified as New Rule 2.10.4; subsequent rules are*
30 *renumbered as follows:]*

31 ~~2.12.2~~ 2.12.1 The Secretary of State will provide monthly National Change of Address
32 (NCOA) data under section 1-2-302.5, C.R.S., to the county clerk by the fifth of
33 each month.

34 *[The remainder of New Rule 2.12.1, formerly Rule 2.12.2, is retained unaltered]*

1 ~~2.12.3~~2.12.2 In accordance with section 1-2-605(7), C.R.S., no later than 90 days
2 following a General Election, the county clerk in each county must cancel the
3 registrations of electors:

4 *[The remainder of New Rule 2.12.2, formerly Rule 2.12.3, is retained unaltered]*

5 ~~2.12.4~~2.12.3 The county must process all records designated for cancelation by the
6 Secretary of State within 21 days of receipt.

7 ~~2.12.5~~2.12.4 The county must process and mail all confirmation cards using SCORE so
8 that the elector's voter registration record audit log shows the date on which the
9 county printed or extracted the confirmation card.

10 ~~2.12.6~~2.12.5 To the extent a county has records of confirmation cards it has generated
11 and sent outside of SCORE, the county must retain those records as election records
12 under section 1-7-802, C.R.S.

13 2.13 Voter registration at a voter service and polling center

14 2.13.1 A person registering voters or updating voter registration information in a voter
15 service and polling center must:

16 (a) Be a permanent or temporary county employee, state employee, or
17 temporary staff hired by the county clerk;

18 ~~(b) Successfully pass the criminal background check described in Rule 6.5; and~~

19 ~~(c)-(B)~~ (B) Complete a training course provided by the Secretary of State.

20 *[Current Rule 2.13.2 is retained unaltered]*

21 *Amendments to Rule 6.4 and repeal of Rule 6.5:*

22 6.4 A supervisor judge in a voter service and polling center must:

23 ~~6.4.1 Successfully pass the criminal background check described in Rule 6.5. Any person~~
24 ~~who has been convicted of an election offense or an offense with an element of~~
25 ~~fraud is prohibited from handling voter registration applications or conducting voter~~
26 ~~registration and list maintenance activities.~~

27 ~~6.4.2 Complete COMPLETE a training course provided by OR APPROVED BY the Secretary~~
28 ~~of State.~~

29 ~~6.5 The county clerk must arrange for a criminal background check on a supervisor judge and~~
30 ~~each staff member conducting voter registration activities.~~

31 ~~(a) The criminal background check must be conducted by or through the Colorado~~
32 ~~Bureau of Investigation, the county sheriff's department in accordance with section~~
33 ~~24-72-305.6(3), C.R.S., or similar state or federal agency.~~

1 (b) ~~A person convicted of an election offense or an offense containing an element of~~
2 ~~fraud may not:~~

3 (1) ~~Handle voter registration applications or conduct voter registration and list~~
4 ~~maintenance activities; or~~

5 (2) ~~Have access to a code, combination, password, or encryption key for the~~
6 ~~voting equipment, ballot storage area, counting room, or tabulation~~
7 ~~workstation.~~

8 *Repeal of Rule 7.2.3(c) concerning ballots and ballot packets:*

9 (c) ~~In coordinated elections, the county clerk must mail ballots to all active~~
10 ~~eligible electors of each political subdivision.~~

The prohibition is against RECEIVING more than 10 ballots, not dropping off more than 10 ballots. Mail ballot envelope should be consistent with statute.

11 *Amendments to Rules 7.2.5 through 7.2.7:*

"except that no person other than a duly authorized agent of the county clerk and recorder or designated election official may RECEIVE more than ten mail ballots in any election for mailing or delivery;"

12 7.2.5 ~~Effective January 1, 2015, each~~ EACH mail ballot return envelope and mail ballot instruction ~~must include a statement informing voters that it is a violation of law to~~
13 ~~drop off more than ten~~ ballots in any election.

14 7.2.6 ~~Effective January 1, 2015~~ JANUARY 1, 2016, each mail ballot return envelope must include the following: "~~For third party delivery: I am voluntarily giving my ballot~~
15 ~~to (name and address) for delivery ON MY BEHALF. I have marked and sealed my~~
16 ~~ballot in private and have not allowed any person to observe the marking of the~~
17 ~~ballot, except for those authorized to assist voters under state or federal law."~~

Restore this language that mirrors the federal absentee ballot language.

18 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 1-5-403(1), C.R.S., WHEN THE VENDOR HAS PREPARED ~~THE~~ BALLOTS FOR MAILING.

What is the definition of having "prepared the ballots for mailing?"

23 *Amendments to Rule 7.5.1:*

24 7.5 Receipt and processing of ballots

25 7.5.1 ~~ALL~~ THE COUNTY CLERK MUST ADEQUATELY LIGHT ALL drop-off locations ~~must be~~
26 ~~monitored by~~ AND USE EITHER an election official or A video security surveillance
27 recording system, as defined in Rule ~~20~~ 1.1.42 TO MONITOR EACH LOCATION.

28 *[The remainder of Rule 7.5.1 and Rules 7.5.2 through 7.5.4 are retained unaltered]*

29 *Amendments to Rule 7.5.5:*

30 7.5.5 Election officials must record the number of ballot packets returned as
31 undeliverable AND RECEIVE THE BALLOT PACKETS IN SCORE upon receipt.

32 *Amendments to Rule 7.7:*

record?

33 7.7 Missing signature.

1 7.7.1—If a mail or provisional ballot return envelope lacks a signature, ~~the election official~~
2 ~~must contact the elector in writing no later than two calendar days after election~~
3 ~~day.~~ THE ELECTION OFFICIAL MUST FOLLOW THE PROCEDURES FOR DISCREPANT
4 SIGNATURES OUTLINED IN SECTION 1-7.5-107.3(2)(A), C.R.S. The designated
5 election official must use the letter and form prescribed by the Secretary of State
6 and keep a copy as part of the official election record. Nothing in this Rule prohibits
7 the designated election official from calling the elector, but a phone call may not
8 substitute for written contact. If the designated election official calls any elector he
9 or she must call all electors whose affidavits are unsigned.

10 [Sections 1-7.5-107.3 and 1-8.5-105(3)(a), C.R.S.]

11 7.7.2—~~The letter must inform the elector that the elector must sign the affidavit and return~~
12 ~~the form in person or by mail, fax, or email, and that the county must receive the~~
13 ~~form no later than eight calendar days after the election.~~

14 7.7.3—~~The election official must use the letter and the signature verification form~~
15 ~~approved by the Secretary of State. The letter and missing signature affidavit form~~
16 ~~does not violate section 1-13-801, C.R.S.~~

17 *Amendments to Rule 7.9.3:*

18 7.9.3 ~~Voter check-in at the voter service and polling center~~

19 (a) —~~Each voter service and polling center must include an adequately staffed~~
20 ~~designated voter check-in table or area.~~

21 (b) —~~The check-in judge must verify each elector's registration information,~~
22 ~~including address.~~

23 (c) —~~If an elector has moved or is not registered, the check-in judge must direct~~
24 ~~the elector to the registration area. If the elector is registered and has no~~
25 ~~updates, the check-in judge must direct the elector to the voting table.~~

26 Space
27 accommodations
28 should be also
29 planned for
30 watchers.

26 COUNTY CLERKS MUST CONFIGURE VOTER SERVICE AND POLLING CENTERS,
27 AND PROVIDE SUFFICIENT ELECTION JUDGES, SCORE WORK STATIONS,
28 VOTING EQUIPMENT, BALLOTS, AND OTHER SUPPLIES, IN ORDER TO ASSIST
29 REGISTRANTS AND ELECTORS EFFICIENTLY.

30 *Amendments to Rule 7.11:*

31 7.11 Voter service and polling center connectivity

32 7.11.1 The county must have real-time access to SCORE AND WEBScore at every voter
33 service and polling center designated by the county clerk.

34 7.11.2 THE COUNTY CLERK MUST INSTRUCT **ELECTION JUDGES** AND, IF APPROPRIATE,
35 ELECTION STAFF, TO:



2.13.1 (a) above seems to prohibit
election judges from registering voters.

1 (A) USE WEBScore TO REGISTER VOTERS; UPDATE EXISTING VOTER
2 REGISTRATIONS; ISSUE AND REPLACE MAIL BALLOTS; AND ISSUE, SPOIL, AND
3 REPLACE IN-PERSON BALLOTS.

4 (B) OFFER AN IN-PERSON VOTER THE OPPORTUNITY TO OBTAIN A REPLACEMENT
5 MAIL BALLOT RATHER THAN A PROVISIONAL BALLOT IN THE EVENT THE
6 VOTER SERVICE AND POLLING CENTER LOSES CONNECTIVITY TO WEBScore
7 BUT RETAINS CONNECTIVITY TO SCORE.

8 ~~7.11.2~~ 7.11.3 At no time may an election official open SIMULTANEOUS SESSIONS OF both
9 the SCORE voter registration screen and the voting module WEBScore on a
10 single workstation.

11 ~~7.11.3~~ 7.11.4 Every voter service and polling center designated by the county clerk must
12 meet the minimum security procedures for transmitting voter registration data as
13 outlined in section 1-5-102.9, C.R.S., and Rule 2.16.

14 *Amendments to Rule 11.1.3 concerning voting system access:*

15 11.1.3 In accordance with section 24-72-305.6, C.R.S., all permanent and temporary
16 county staff and all vendor staff who have access to the voting system or any voting
17 or counting equipment must pass ~~the~~ A criminal background check ~~described in~~
18 ~~Rule 6.5~~. A PERSON CONVICTED OF AN ELECTION OFFENSE OR AN OFFENSE
19 CONTAINING AN ELEMENT OF FRAUD MAY NOT HAVE ACCESS TO A CODE,
20 COMBINATION, PASSWORD, OR ENCRYPTION KEY FOR THE VOTING EQUIPMENT,
21 BALLOT STORAGE AREA, COUNTING ROOM, OR TABULATION WORKSTATION.

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

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

28 ~~16.1.6~~ 16.1.5 Ballots received by the Secretary of State

29 *[The remainder of New Rule 16.1.5, formerly Rule 16.1.6, is retained unaltered]*

30 ~~16.1.7~~ 16.1.6 The county clerk must send a minimum of one correspondence no later than
31 60 days before the Primary Election to each elector whose record is marked
32 "Inactive." The correspondence may be sent by email or mail and, at a minimum,
33 must notify the electors of:

34 *[The remainder of New Rule 16.1.6, formerly Rule 16.1.7, is retained unaltered]*

35 ~~16.1.8~~ 16.1.7 No later than 45 days before an election, the county clerk must report to the
36 Secretary of State the number ballots transmitted to military and overseas electors
37 by the 45-day deadline.

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

3 *[The remainder of New Rule 16.1.8, formerly Rule 16.1.9, is retained unaltered]*

4 *Amendments to Rule 16.2.1(c), concerning electronic transmission:*

see separate memo
attached

5 (c) In accordance with section 1-8.3-113(1), C.R.S., an elector who chooses to
receive his or her unvoted ballot by ~~online ballot delivery~~ ELECTRONIC
TRANSMISSION may return his or her 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 WHERE THE ELECTOR BELIEVES THE TIMELY RETURN
OF HIS OR HE BALLOT BY MAIL IS NOT CERTAIN.

11
12 *Amendments to Rule 16.2.3:*

See separate
memo attached.

13 16.2.3 The self-affirmation must include the standard oath required by the Uniformed and
Overseas Citizen Voting Act (42 U.S.C sec. 1973ff(b)(7) and 1(a)(5)), the elector’s
name, date of birth, signature, and the following statement: I also understand that
by returning my voted ballot by electronic transmission, I am voluntarily waiving
my right to a secret ballot AND THAT COLORADO LAW REQUIRES THAT I RETURN THIS
BALLOT BY A MORE SECURE METHOD, SUCH AS MAIL, IF AVAILABLE AND FEASIBLE.
19 (~~Section~~ SECTIONS 1-8.3-113 AND 1-8.3-114, C.R.S.)

20 *Amendments to Rule 20.4:*

21 20.4 Individuals with access to keys, door codes, and vault combinations

22 20.4.1 For employees with access to areas addressed in Rule 20.4.3, the county must state
23 in the security plan each employee’s title and the date of the criminal background
24 check WAS performed ~~under Rule 6.5~~. [Section 24-72-305.6, C.R.S.]

25 *[Current Rule 2.4.2 is retained unaltered]*

26 20.4.3 Employee access. The county may grant employees access to the codes,
27 combinations, passwords, and encryption keys described in this Rule in accordance
28 with the following limitations:

29 (a) Access to the code, combination, password, or encryption key for the voting
30 equipment, ballot storage areas, counting room, or tabulation workstations
31 is restricted to employees who have successfully passed ~~the~~ A criminal
32 background check ~~described in Rule 6.5~~. Any person who has been
33 convicted of an election offense or an offense with an element of fraud is
34 prohibited from having access to a code, combination, password, or
35 encryption key for the voting equipment, ballot storage areas, counting
36 room, or tabulation workstations.

37 *[Current Rules 20.4.3(b), 20.4.3(c), and Rule 20.4.5 are retained unaltered]*

1 *Amendments to Rule 20.5.2(f), concerning internal controls for the Voting System:*

Define under what conditions the SOS would need to approve. Consider leaving prohibition in place.

(f) If any component of the voting system is equipped with Wi-Fi capability or a wireless device, the county must disable the wireless capability or device UNLESS OTHERWISE APPROVED BY THE SECRETARY OF STATE.

5 *Amendments to Rule 20.9.1(c), concerning transportation of equipment, memory cards, ballot*
6 *boxes, and ballots:*

A definition of the criminal background check should remain for reference.

7 (c) Transportation by contract. If a county contracts for the delivery of
equipment to remote voting locations, each individual delivering equipment
must successfully pass ~~the~~ A criminal background check ~~described in Rule~~
6.5. Any person who has been convicted of an election offense or an offense
with an element of fraud is prohibited from handling or delivering voting
equipment. Two election officials must verify, sign, and date the chain-of-
custody log upon release of the equipment to the individual(s) delivering
the equipment.

14

15 *New Rule 23:*

16 **RULE 23. COMMISSIONS**

17 23.1 BIPARTISAN ELECTION ADVISORY COMMISSION

18 23.1.1 THE SECRETARY OF STATE RECOGNIZES THAT OPEN DISCUSSION ABOUT THE
19 ADMINISTRATION AND CONDUCT OF ELECTIONS IN COLORADO IS NECESSARY TO
20 ENSURE THAT EVERY ELIGIBLE CITIZEN HAS THE OPPORTUNITY TO PARTICIPATE IN
21 FAIR, ACCESSIBLE, AND IMPARTIAL ELECTIONS, AND HAS THE ASSURANCE THAT
22 ELECTIONS ARE CONDUCTED WITH INTEGRITY AND HIS OR HER VOTE WILL COUNT. IN
23 LIGHT OF THE COLORADO GENERAL ASSEMBLY SUNSETTING THE COLORADO VOTER
24 ACCESS AND MODERNIZED ELECTION COMMISSION, THE SECRETARY OF STATE WILL
25 ESTABLISH A BIPARTISAN ELECTION ADVISORY COMMISSION (THE COMMISSION) TO
26 IDENTIFY PROCESSES FOR IMPROVEMENT AND WORK TO OBTAIN BIPARTISAN
27 SUPPORT IN THE ADMINISTRATION OF ELECTIONS. THE COMMISSION WILL MAKE
28 RECOMMENDATIONS TO THE SECRETARY OF STATE REGARDING THE DEVELOPMENT
29 AND ADOPTION OF BEST PRACTICES, ADMINISTRATIVE RULES AND LEGISLATIVE
30 CHANGES.

31 23.1.2 MEMBERSHIP OF THE COMMISSION

32 (A) THE SECRETARY OF STATE WILL APPOINT AT LEAST 13 MEMBERS TO THE
33 COMMISSION. THE COMMISSION MAY INCLUDE:

34 (1) A REPRESENTATIVE OF AN ORGANIZATION THAT ADVOCATES ON
35 BEHALF OF PEOPLE WITH DISABILITIES;

36 (2) A MEMBER OF THE EXECUTIVE BRANCH AND AT LEAST ONE
37 LEGISLATOR FROM EACH PARTY;

Suggest that Legislative caucuses of each party appoint.

1 (3) TWO COUNTY CLERK AND RECORDERS REPRESENTING THE
2 COLORADO COUNTY CLERKS ASSOCIATION PRESIDENTIAL LINE OF
3 LEADERSHIP;

4 (4) IF BOTH CLERKS IN (3) ARE FROM THE SAME PARTY OR IF NOT ALL
5 COUNTIES ARE MEMBERS OF THE CCCA, ADDITIONAL CLERKS MAY
6 BE APPOINTED;

7 (5) TWO REPRESENTATIVES OF ORGANIZATIONS THAT ADVOCATE ON
8 BEHALF OF LOCAL GOVERNMENTS, INCLUDING COUNTIES,
9 MUNICIPALITIES, AND SPECIAL DISTRICTS;

Consider allowing Party to choose their
representative without restriction.

(6) CHAIR, PARTY OFFICER, OR LEGAL COUNSEL FOR EACH MAJOR
POLITICAL PARTY; AND

12 (7) TWO MEMBERS WITH EXPERTISE ON VOTING RIGHTS AND/OR
13 ELECTION INTEGRITY.

14 (B) THE SECRETARY OF STATE OR HIS OR HER DESIGNEE, WILL BE A MEMBER AND
15 SERVE AS CHAIR THE COMMISSION.

16 (C) THE SECRETARY OF STATE'S OFFICE WILL PROVIDE STAFF SUPPORT TO THE
17 COMMISSION AS MAY BE DIRECTED BY THE SECRETARY OF STATE.

18 23.1.3 MEETINGS

19 (A) THE COMMISSION WILL MEET NO FEWER THAN THREE TIMES ANNUALLY.

20 (B) THE MEETINGS WILL BE HELD AT THE OFFICE OF THE SECRETARY OF STATE
21 OR REGIONAL LOCATIONS THROUGHOUT THE STATE AS THE COMMISSION
22 DEEMS APPROPRIATE.

23 (C) MEETINGS WILL COMPLY WITH COLORADO OPEN MEETINGS LAW AND WILL
24 PERMIT AN OPPORTUNITY FOR PUBLIC COMMENT.

25 (D) NOTICES, RECORDS OF MEETINGS, WRITTEN COMMENTS, AND DOCUMENTS
26 SUBMITTED TO THE COMMISSION WILL BE PUBLISHED ON THE OFFICIAL
27 WEBSITE OF THE SECRETARY OF STATE. HOWEVER, DOCUMENTS THAT ARE
28 OTHERWISE PUBLICLY AVAILABLE NEED NOT BE POSTED. ANY SUBMISSION
29 CONTAINING INFLAMMATORY OR OTHERWISE INAPPROPRIATE CONTENT WILL
30 NOT BE POSTED, INCLUDING ANY MATERIAL THAT IS DEFAMATORY,
31 IRRELEVANT, DUPLICATIVE, OR OBSCENE.

Colorado Republican Party
**Comments on Draft Rule 16.2 regarding electronic transmission of
voted ballots**

Reference--Draft rules as proposed:

Amendments to Rule 16.2.1(c), concerning electronic transmission: 4

(c) In accordance with section 1-8.3-113(1), C.R.S., an elector who chooses to 5 receive his or her unvoted ballot by ~~online ballot delivery~~ ELECTRONIC 6 TRANSMISSION may return his or her ballot by fax or email ONLY IF THE 7 ELECTOR DETERMINES THAT A MORE SECURE METHOD, SUCH AS RETURNING 8 THE BALLOT BY MAIL, IS NOT AVAILABLE OR FEASIBLE. "NOT FEASIBLE" 9 MEANS CIRCUMSTANCES WHERE THE ELECTOR BELIEVES THE TIMELY RETURN 10 OF HIS OR HE BALLOT BY MAIL IS NOT CERTAIN. 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 by 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.)

Applicable statute:

1-8.3-113. Transmission and receipt of ballot. (1) A covered voter who requested and received ballot materials by electronic transmission may also return the ballot by electronic transmission:

(a) In circumstances where another more secure method, such as returning the ballot by mail, is not available or feasible, as specified in rules promulgated by the secretary of state;

Comment --Rule 16.2.1 (c) electronic transmission of voted ballots

Legislative Intent

We have reviewed the records of the House State, Veterans, and Military Affairs Committee hearing on SBO6-062, and we have spoken with some members of that committee about the legislative intent expressed during the hearing. The purpose and scope of SBO6-062 were discussed by Bill Compton speaking for the Secretary of State's Office. He testified that the email option for casting a ballot would apply only to a "small universe of people" who have no access to mail or (telephonic) fax. The Office testified that "we are not ready for Internet voting" because of "concerns about ballot security on [in] email." We agree and note that since 2006 no evidence has been presented that the Internet has become secure enough to reasonably consider risking voters' ballot choices to the Internet except in rare cases where there is genuinely no other choice for voting.

We encourage the Department to review the testimony and supporting files for SBO6-062 and draft an election rule that complies with the stated intent to allow use of email only in rare circumstances when no postal mail or telephonic fax is available to the overseas voter or out-of-state military voter.

Email transmission of voted ballots

Email transmission of voted ballots should be needed in only rare circumstances, and even less than in 2006 when initially permitted. In 2010 Congress mandated that ballots be sent to military and overseas voters 45 days before Election Day with an additional 8 days after Election Day for receipt. In addition, email issuance of blank ballots is permitted beginning 45 days before the election, if requested by the voter. This schedule gives covered voters 53 days to print, mark, and return their ballot by postal mail. Military voters may return ballots by free expedited postal mail, which on average arrives at the clerk's office in 5.2 days.

Ballots returned via the military mail system should be considered "secure," and not subject to voters' personal determination of relative security compared to email. Election security decisions that can impact the entire election cannot be relegated to voters' personal preferences between email and military mail.

Please draft the proposed rule to reflect the recognition that covered voters may obtain ballots by email beginning 45 days before the election and then print and mail them for receipt by 8 days after Election Day. We suggest that the rule state that "not feasible" for purposes of mailing a ballot be determined by whether

expedited or postal mail would reasonably be expected to be received in the period beginning five days after the earlier of the emailed blank ballot receipt or the mailed paper blank ballot receipt and ending with the eighth day after Election Day. We would expect that circumstances that require more than 48 days for postal mail would reasonably qualify for email or fax return of the voted ballot.

An additional safeguard could be added to require that any email voter also return his mail ballot, even if it is not timely received, and the email ballot is counted. The paper ballot would be available for auditing, recounts, or challenges if there are questions concerning the fidelity of the email ballot.

Declaration rule (16.2.3)

We believe that the statute 1-8.3-104(5) requires that the Secretary create the voter declaration to include all eligibility requirements and status as a covered voter. Therefore, the affidavit should include the declaration that at the time of voting, the voter is either overseas (i.e., an out-of-country civilian) or out of the state in the case of military voters.

On-Line Ballot Marking

It is our understanding that the method of electronic transmission of blank ballots via email is a method that utilizes a third-party vendor's server where the voter, after entering personally identifying information, is encouraged to mark his ballot form on-line using the vendor's application. We believe that such an application unnecessarily compromises the voter's privacy, violates his right to a secret ballot, and increases the risk of voter intimidation.

We suggest that the on-line ballot delivery system not permit on-line ballot marking but merely the printing of the blank ballot for pen-on-paper marking and subsequent postal mailing of the ballot.