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December 8, 2015

VIA EMAIL

The Honorable Wayne Williams, Secretary of State
Colorado Department of State
1700 Broadway
Denver, CO 80290
SOS.Rulemaking@sos.state.co.us

Re: Election Rules – 8 CCR 1505-1 - Help Shape Colorado's Election Rules

Dear Secretary Williams:

I am writing on behalf of the Colorado Democratic Party to comment on the proposed rules concerning Elections noticed on December 1, 2015. The Colorado Democratic Party takes this opportunity to comment on three of the proposed rules in an effort to help shape Colorado's election rules.

Proposed Rule 6.2.2(C)

Proposed Rule 6.2.2(C) creates a standard for removing an election judge that is subjective without further definition and should not be adopted as written. Proposed Rule 6.2.2(C) states that an election judge may be removed for “an **irregular** acceptance or rejection rate, as determined by the County Clerk or his or her designee.” In the absence of a definition of “irregular” in this context, this rule is ripe for abuse. Note also that Proposed Rule 6.2.2(C) appears to directly conflict with Proposed Rule 6.3, which does not allow a county clerk to conduct signature verification. It is unclear how a clerk that cannot conduct signature verification can determine if an election judge has an “irregular acceptance or rejection rate.”

Proposed Rule 8.13

Proposed Rule 8.13 is contrary to Colorado statute, exceeds the SOS' rulemaking authority for several reasons, and should not be adopted. First, CRS §1-7.5-107.3 specifically requires that it is the election judge, not the watcher, who compares the signature on the self-affirmation on each return envelope with the signature of the eligible elector stored in SCORE. Second, while CRS

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§1-7-108 allows watchers to “witness and verify each step in the conduct of the election,” proposed Rule 8.13 effectively creates a new challenge process for challenging mail ballots that violates CRS §1-9-207, which sets forth the steps a challenger must perform in order to challenge a mail ballot. Third, Rule 8.13 directly conflicts with the last sentence of existing Rule 8.10.2 and the proposed Rule 8.10.2(b), which makes clear that “witness and verify means to personally observe actions of election officials in each step of the conduct of an election.” Witness and verify does not give watchers the right to audit an election step separate from observing the work of the election judges. Finally, there is no statutory authority anywhere in Title 1 for “escalating” up to 10 ballot envelope signatures per hour to a secondary review.

Proposed Rule 8.15.5

Proposed Rule 8.15.5 appears to create an ambiguity as to who the watcher is to interact with while watching. By including the language “except as permitted in Rule 8,” Rule 8.15.5 creates an exception that may swallow the Rule. What are the exceptions in Rule 8 that you intend would apply here? To the extent that the exception is the “escalation” contemplated in proposed Rule 8.13, I suggest you delete both proposed Rule 8.13 and the “except as permitted in Rule 8” language of Rule 8.15.5.

Thank you for the opportunity to comment. Please do not hesitate to contact me should you desire additional information or wish to discuss these positions further.

Sincerely,

TIERNEY PAUL LAWRENCE LLP



By: Martha M. Tierney

cc: Rick Palacio