

August 10, 2007

Hilary R. Rudy
Colorado Department of State
Elections Division
1700 Broadway, Suite 270
Denver, CO 80290

RE: Proposed Rules Change – August 2, 2007

Dear Ms. Rudy,

We have reviewed the proposed rule change dated August 2, 2007 and recommend that it be withdrawn in order to address numerous major defects.

We have carefully avoided commenting on content that was not changed in this proposed revision. However, we do reiterate our position that it is unwise to restrict public comment to the exact text changes, since changes do in fact ripple through a document, and since other portions of a changed rule can be defective.

Limiting our comments to the exact changes:

1. The Rule 2 changes weaken voter eligibility integrity. 2.8 permits FAX registration, but this rule and subsequent rules do not require documentation identical to mail registration.
2. The new Rule 6.2 establishes “controlling counties” but fails to define the protocols for conducting canvassing, poll watching, testing, recount, and development of plans (such as mail ballot plan). We could find no basis in law for this rule. As proposed, there is no way that one can prove that this rule would work. As canvass board members, we believe that this rule will introduce additional uncertainty and risk and should be withdrawn. We cannot even determine what the rule means regarding multiple split districts in the same election.
3. The new Rule 12.3.5 is incomplete. It does not address the issues that were reported regarding the February 27, 2007 City of Lafayette Mail Ballot Election.
4. The change of terminology “absentee” to “mail in” has created a document that is ambiguous and confusing. It matters that we be able to know what we are talking about, and the way that the rules have been modified will prevent this. Examples include the distinction between “FAX” and MAIL IN, and the distinction between “absentee” and “non-absentee” ballots for a mail ballot election.
5. New Rule 13.16.3 permits Clerks to establish drop-off sites, but fails to set controls over those sites. We reported problems with Denver’s use of grocery store polling locations in the past. Controls must be established to prevent electioneering, guarantee access to poll watchers, and provide for verifiable security.

6. New Rule 13.7 must be amended to include access to information that lets each voter know whether or not the votes on their ballot were counted.
7. It is shameful to re-publish Rules 14.5, 14.6, 14.7 with its massive known defects.
8. Rule 38 changes are insufficient and incorrect. There are no functional requirements defined.
 - a. There are not metrics defined for evaluating compliance with the requirements.
 - b. 38.3.4(A) is missing: "Exported file in CSV or Fixed Field format."
 - c. There are no provisions for canvassing
 - d. There are no provisions for independent oversight, including poll watching
 - e. 38.5.1(A) is reckless. There are no criteria in the rule for making such an outlandish decision.
 - f. How does this rule interact with the rules regarding "controlling counties"?
9. Rule 45 changes regarding the "March 31, 2008 date" suggest inexcusable and unacceptable permission for vendors to compromise Colorado's elections. If ours is a correct interpretation, the change means that:
 - a. The SCORE II project is not required to comply with these requirements
 - b. The voting equipment currently undergoing certification testing is not required to comply with these requirements.

It is our recommendation that the proposed rule be withdrawn until its numerous defects are repaired.

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