

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</p> <p>1437 Bannock St. Denver, Colorado 80202</p> <hr/> <p>SCOTT GESSLER, in his official capacity as Secretary of State for the State of Colorado,</p> <p>Plaintiff,</p> <p>v.</p> <p>DEBRA JOHNSON, in her official capacity as the Clerk and Recorder for the City and County of Denver</p> <p>Defendant,</p> <p>COLORADO COMMON CAUSE and GILBERT ORTIZ, in his official capacity as the Clerk and Recorder for the County of Pueblo</p> <p>Intervenors-Defendants.</p>	<p>FILED Document CO Denver County District Court 2nd JD Filing Date: Sep 12 2012 12:08PM MDT Filing ID: 46397567 Review Clerk: Sara Bridges</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
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<p style="text-align: center;">SECRETARY’S RENEWED MOTION FOR JUDGMENT ON THE LAW PURSUANT TO C.R.C.P. 56(h)</p>	

Scott Gessler, in his official capacity as the Secretary of State for the State of Colorado
(hereinafter “the Secretary”) hereby submits this Motion for Judgment on the Law Pursuant to
C.R.C.P. 56(h)

STANDARD OF REVIEW

Rule 56(h) provides that, “[a]t any time after the last required pleading, with or without supporting affidavits, a party may move for determination of a question of law.” Under Rule 56(h), a court may enter an order deciding a question of law when there is no genuine issue of material fact necessary to determine the question. *Kisselman v. American Family Insurance Co.*, 2011 WL 6091708 *3 (Colo.App. December 8, 2011). The purpose of a Rule 56(h) motion is to “allow the court to address issues of law which are not dispositive of a claim (thus warranting summary judgment) but which nonetheless will have a significant impact upon the manner in which the litigation proceeds.” *Board of County Commissioners of County of Arapahoe v. United States*, 891 P.2d 952, 963, n. 14 (Colo. 1995) (quoting 5 Robert Hardaway & Sheila Hyatt, *Colorado Civil Rules Annotated*, § 56.9 (1985)). Early resolution of legal issues “will enhance the ability of the parties and the court to eliminate significant uncertainties on the basis of briefs and argument and to do so at a time when the determination is thought to be desirable by the parties.” *Id.*

QUESTIONS OF LAW PRESENTED FOR REVIEW

1. Must county election officials comply with an order or rule from the Secretary of State regarding implementation of election law even if they disagree with the order or rule?
2. Do county election officials retain the discretion to send mail ballots to voters who are deemed inactive because they failed to vote at the prior general election pursuant to § 1-7.5-107, C.R.S. (2012)?

3. May county election officials send a mail ballot to a covered voter under the Uniform Military and Overseas Voters Act without an application from the covered voter?

4. Are voters who are designated as “inactive-failed to vote” because they did not vote in the last general election and have not responded to notifications denied equal protection of the laws or rights under the First Amendment when election officials do not automatically send mail ballots to them even though the voters may cast ballots by other means?

BACKGROUND

Mail Ballot Elections

Colorado law permits counties to conduct mail ballot elections “under specified circumstances.” Section 1-7.5-102, C.R.S. (2012). A mail ballot election is “an election for which eligible electors may cast ballots by mail and in accordance with [the Election Code] in a primary election or an election that involves only nonpartisan candidates or ballot questions or ballot issues.” Section 1-7.5-103(4), C.R.S. (2012). Mail ballot elections are optional. Section 1-7.5-104(1), C.R.S. (2012). The election official responsible for conducting a mail ballot election must notify the Secretary no later than fifty-five days prior to election. Section 1-7.5-105(1), C.R.S. (2012). For primary elections conducted as mail ballot elections, the official must notify the Secretary no later than ninety days prior to the election. Section 1-7.5-105(1.5), C.R.S. (2012) The notification must include a proposed plan for conducting the mail ballot election. Sections 1-7.5-105(1), (1.5). The plan may be based on the standard plan adopted by the Secretary. *Id.* Political subdivisions that opt to conduct a mail ballot election must do so “under the supervision of the secretary of state” and “subject to rules which shall be promulgated by the secretary of state.” Sections 1-7.5-104(1) and -106(1)(c) C.R.S. (2012).

In a mail ballot election, the election official “shall mail a mail ballot packet to each *active* registered elector.” (Emphasis added) Section 1-7.5-107(3)(a)(I), C.R.S. (2012). If a primary election is conducted as a mail ballot election, ballots must be mailed to “active registered electors who are affiliated with a political party” and “to each registered elector who is affiliated with a political party and whose registration is marked as ‘Inactive-failed to vote’.” Section 1-7.5-107(3)(a)(II)(a), C.R.S. (2012).

Election officials must mail a voter information card to any registered elector whose registration is marked “Inactive-failed to vote” at least ninety days before the mail ballot election. Section 1-7.5-108.5(1), C.R.S. (2012). Subsequent to the preparation of ballots, each designated election official must “provide a mail ballot to a registered elector requesting the ballot at the designated official’s office or the office designated in the mail ballot plan filed with the secretary of state.” Section 1-7.5-108.5(2.7), C.R.S. (2012) Designated elections officials must provide mail ballots at the official’s office to those eligible electors who are not listed or are listed as “inactive.” Section 1-7.5-107(3)(c), C.R.S. (2012).

Voters Categorized as “Inactive-Failed to Vote”

An “inactive-failed to vote” elector is defined in Colorado statute as “a registered elector who is deemed ‘Active’ but who failed to vote in a general election in accordance with the provisions of section 1-2-605(2).” Section 1-7.5-108.5(1), C.R.S. (2012) an “inactive- failed to vote” elector is “eligible to vote in any election where registration is required [if] the elector meets all other requirements.” Section 1-2-605(3), C.R.S. (2012). The statutes and regulations mandate the following actions when an elector is designated as “inactive”:

- The county clerk and recorder must mail a confirmation card to all electors who fail to vote in the general election not later than 90 days after the general election. Section 1-2-605(6)(a), C.R.S. (2012). A confirmation card is a forwardable, postage paid mailing that is preaddressed to the sending county and that includes a voter registration form so the elector can update his or her voter registration record. Section 1-2-605(6)(b), C.R.S. (2012); Rule 2.19, 8 CCR 1505-1.
- No later than 90 days before a mail ballot election, the county clerk and recorder must mail a nonforwardable voter information card to all electors whose voter registration record is marked “Inactive-failed to vote”. Sections 1-2-605(11) and 1-7.5-108.5(1), C.R.S. (2012). A voter information card is a postcard mailing that advises an elector of the elector’s registration status, precinct number and polling location. It includes a returnable portion allowing the elector to update the elector’s voter registration record. Section 1-5-206(1)(b), C.R.S. (2012).
- An elector whose record is marked “Inactive-Failed to Vote” is registered and eligible to vote in an election. However, the election official does not automatically mail a ballot to such an elector, except in primary elections. Section 1-7.5-107(3), C.R.S. (2012); Rules 2.20.2.c and 12.11.4, 8 CCR 1505-1.
- An elector who is categorized as “Inactive-Failed to Vote” may vote at a mail ballot election. First, the elector may update the elector’s voter registration record prior to casting a ballot. Section 1-7.5-107(3); Rule 12.11 The elector may update the information by voting at the polls, by applying for a mail-in ballot, or completing a voter

information card. Section 1-2-605(4), C.R.S. (2012); Rule 12.11. The elector also may update the information in the voter registration record in person, on-line at the Secretary of State's website (govotecolorado.com) or by mail. Sections 1-2-605(4) and 1-7.5-107(3) (c), C.R.S. (2012); Rules 2.11 and 12.11.

- An elector who is designated as “Inactive-failed to vote” may vote at a mail ballot election even if the elector does not update his registration prior to the election. Election officials must make ballots available for electors who are designated as “Inactive-failed to vote” at the county elections office and at designated service centers or walk-in voting locations beginning 22 days before a mail ballot election. Section 1-7.5-107(3) (c), C.R.S. (2012).

Electors who are designated as “inactive failed to vote” become active if they timely respond to any of the aforementioned notices, take any action to update their registration, or vote. Electors retain their status as “inactive-failed to vote” because they did not vote in the prior general election and failed to heed repeated notifications of inactive status.

Electors who are designated as “inactive-failed to vote” can vote in a mail ballot election. They can receive a mail ballot if they timely update their registration or they can vote in person.

ARGUMENT

I. CLERKS MUST IMPLEMENT AND ABIDE BY THE SECRETARY'S INTERPRETATION OF THE ELECTION CODE.

The dispute between the Secretary and the Clerks centers on their respective roles and responsibilities in the implementation and enforcement of election laws. Denver contends that “[t]he Secretary's claims must be denied because the Secretary cannot make the Clerk obey

unenforceable and improperly issued orders or interpretations.” (Clerk Johnson’s Answer, Affirmative Defenses, ¶ 4) The Secretary contends that county clerks must obey the rules, interpretations and orders of the Secretary, even if the clerks deem them illegal or ill-advised.

The City and County of Denver is a home rule entity. Colo. Const. art. XX, § 1. As a home rule entity, it has:

Powers necessary, requisite or proper for the government and administration of its local and municipal matters, including the power to legislate upon, provide, regulate, conduct and control:

...

d. All matters pertaining to municipal elections in such city or town, and to electoral votes therein on measures submitted under the charter or ordinances thereof, including the calling or notice and the date of such election or vote, the registration of voters, nominations, nomination and election systems, judges and clerks of election, the form of ballots, balloting, challenging, canvassing, certifying the result, securing the purity of elections, guarding against abuses of the elective franchise, and tending to make such elections or electoral votes non-partisan in character.

Colo. Const. art. XX, § 6(d).

Denver’s officers are appointed or elected as provided in its charter. Colo. Const. art. XX, § 2. Although Denver may establish its own offices, it may not abandon its duties with regard to state responsibilities:

There is no warrant or authority in article 20 to the people of the city and county of Denver to alter, change or dispense with such acts or duties. They remain, as before, subject to the Constitution and general laws, and are exclusively under the control of the Legislature. The people of the city and county of Denver have not been given, and do not have, the power by charter to in any way change the duties of governmental officers, so far as they relate to state and county affairs, and there can be no ground for such contention if article 20 be properly read and understood.

People v. Curtice, 50 Colo. 503, 509, 117 P. 357, 359 (1911).

The power of home rule entities and their officers in election matters is limited to municipal elections. Elections involving state matters, including those concerning statewide ballot issues and state candidates, fall outside the authority of home rule entities. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #235(a)*, 3 P.3d 1219, 1225 (Colo. 2000). For purposes of elections on statewide ballots or candidates for offices other than Denver offices, the Clerk is an officer subordinate to the Secretary.

In 2007, Denver established the elected position of Clerk and Recorder, Denv. Mun. Code, § 8.1.1, and designated the Clerk and Recorder as the official responsible for implementing state elections within Denver. Denv. Mun. Code, § 8.1.2(A). The clerk and recorder is the designated election official and is the person who acts on behalf of the Secretary under state law. To the extent that the Clerk implements and enforces state laws, the Clerk is subject to those laws.

Prior to 1967, almost all responsibility for the day-to-day operation of elections rested with county officials. Under Colorado's territorial laws, primary responsibility for elections rested with county officials. When Colorado was a territory, the county sheriff and the county commissioners assumed primary roles in implementing and conducting elections. R.S. 1868, chap. XXVIII, §§ 10, 11, 12 (secretary of the territory must give notice of elections to county sheriff); § 13 (Sheriff shall order special elections for county officials, and the order shall be countersigned by board of county commissioners); § 15 (county commissioners establish

precincts); § 16 (county commissioners appoint election judges); § 29 (local constables responsible for ensuring order at polling places); § 30 (county clerks register electors); § 32 (county clerk opens returns); § 33 (county clerks make abstracts of votes).

In 1967, the General Assembly gave the Secretary supervisory responsibility for elections statewide elections. The Secretary was empowered to “supervise the conduct of primary, general and special elections,” to enforce the provisions of the Election Code, to inspect and review the practices of local election officials and to bring injunctive action to enforce the provisions of the Election Code. Section 49-1-11, C.R.S. (1967 Supp.) As an adjunct to these new powers, county clerks were required to consult with the Secretary when implementing the provisions of the Election Code. Section 49-1-7, C.R.S. (1967 Supp.).

These provisions presently are codified at § § 1-1-107 and -110, C.R.S. (2012). The Secretary has broad duties and powers under the Election Code. His duties include (1) supervision of the conduct of primary, general, congressional vacancy and statewide ballot issue elections; (2) enforcement of the Election Code, including mail ballot election conducted under title 1, article 7.5 of the Election Code; and (3) rendering uniform interpretations of the Election Code. Section 1-1-107(1)(a)-(c), C.R.S. (2012) His powers include (1) review of the practices and procedures of the county clerks and recorders; and (2) enforcement of the Election Code by seeking injunctive relief. Section 1-1-107(1)(2)(b)-(c). The county clerks and recorders, “in rendering decisions and interpretations under this code, *shall* consult with the secretary of state and *follow* the rules and orders promulgated by the secretary of state pursuant to this code.” (Emphasis added.) Section 1-1-110(1), C.R.S. (2012).

The language in the Mail Ballot Election Act reaffirms the subordinate role of the county clerks. The Secretary “supervise[s] the conduct of mail ballot elections...” Section 1-7.5-106(1)(c), C.R.S. (2012) The county clerks “shall conduct any election for the political subdivision by mail ballot *under the supervision of the secretary of state and shall be subject to rules which shall be promulgated by the secretary of state.*” Section 1-7.5-104(1), C.R.S. (2012) (Emphasis added.) Under the Colorado Election Code, county clerks and other election officials are subordinate to the Secretary.

The Election Code is denominated the “Uniform Election Code of 1992.” As the word “uniform” connotes, the election statutes must be implemented consistently throughout the state. The Code achieves this goal by giving the Secretary the power to supervise election practices. The word “supervise” means more than recommend or suggest. It means “to coordinate, direct and inspect continuously and at first hand the accomplishment of: oversee with the powers of direction and decision the implementation of one’s own or another’s intentions.” *Webster’s Third New International Dictionary (Unabridged)* 2296

As subordinate officials, county election officers cannot disobey or disregard a rule, order or interpretation of law proffered by the Secretary. “It is well established that as a general rule, neither a county officer nor a subordinate county agency has any standing or legal authority to question or obtain judicial review of an action taken by a superior state agency.” *Lamm v. Barber*, 192 Colo. 511, 519, 565 P.2d 538, 544 (1977). When a statute imposes upon a subordinate county officer a legal obligation to comply with a rule or order of a state official, the subordinate official must comply with the rule or order, even if the county officer believes that the order is unconstitutional or inconsistent with statute.

The *Lamm* case is dispositive. The State Board of Equalization (SBOE) sued three county assessors who refused to comply with an SBOE order. The orders were authorized by state statutes. One statute provided that the assessor “shall forthwith make the necessary changes in the abstract of assessment required to carry out such order” requiring a correction of assessment. Section 39-5-127, C.R.S. (1973). A second statute provided that assessors, upon receipt of an order from SBOE, “shall forthwith make the proper adjustment in each individual scheduled affected by such order so that the assessment roll of his county.” Section 39-9-107, C.R.S. (1973).

The assessors argued that they had the right to challenge the validity of the SBOE orders. The Court unequivocally rejected the assessors’ argument:

The respondents are incorrect. Their argument is a house of cards resting on the assumption that they have discretion to follow or disregard the State Board’s order. While it is true that they have discretion to determine the details of how they will implement the State Board ordered increases, they have no discretion to determine whether or not to implement them. Each respondent has a clear legal duty to carry out the State Board’s order by increasing the aggregate valuation of certain subclasses of property within his county. Absent evidence of State Board interference with how discretion is exercised, case law and sound public policy require issuance of a mandamus to compel the defendants to perform their statutory duties. We hold that the respondents have no standing to question the constitutionality of the statute or the State Board’s action in response to it.

Id. 192 Colo. at 520-21, 565 P.2d at 545. Otherwise stated, a subordinate public official must comply with the orders of the superior public official.

The Colorado Supreme Court reached the same conclusion when interpreting language similar to that in the Election Code. *Huddleston v. Grand County Board of Equalization*, 913

P.2d 15 (Colo. 1986). The legislature created the position of Property Tax Administrator to oversee the administration of the property tax valuation system. It enacted a statute that provided, “It is the duty of the property tax administrator...[t]o prepare and publish from time to time manuals...and to require their utilization by assessors in valuing and assessing taxable property.” The Court found that the term “to require” authorized the Property Tax Administrator to mandate the use of the manuals, and the counties could not disregard the instructions contained in the manuals. *Id.* at 18.

The Election Code does not give the clerk and recorders any discretion to ignore the orders of the Secretary. Section 1-1-110(1) states that the clerk “shall...follow...the orders promulgated by the secretary of state pursuant to this code.” The word “shall” has a mandatory connotation and “is the antithesis of discretion or choice.” *People v. Guenther*, 740 P.2d 971, 975 (Colo. 1987). Mail ballot elections are conducted “under the supervision of the secretary of state.” Section 1-7.5-104(1). County election officials cannot ignore the interpretation or the directives of the Secretary, even if they believe the Secretary’s interpretation or directive is incorrect as a matter of law.

For these reasons, the Court must conclude that the clerks for the City and County of Denver and the County of Pueblo must obey the orders of the Secretary regarding “inactive-failed to vote” electors, even if they believe that the Secretary’s orders or interpretations are incorrect as a matter of law. Thus, the Court cannot consider the affirmative defenses or the challenges raised by the Denver and Pueblo Clerks. The Secretary is entitled to an order that the Clerks must obey the orders, instructions and rules issued or promulgated by the Secretary.

II. THE MAIL BALLOT STATUTE DOES NOT PERMIT THE COUNTIES TO SEND MAIL BALLOTS TO VOTERS WHO ARE CATEGORIZED AS “INACTIVE-FAILED TO VOTE.”

A. The Statutory Language Supports the Conclusion that the Clerks May Not Send Mail Ballots Cannot To Electors Designated as “Inactive-failed to vote.”

Common Cause and the Denver Clerk contend that the counties may, in their discretion, mail ballots to voters who are categorized as “inactive-failed to vote.” (Clerk Johnson’s Answer, Affirmative Defense, ¶ 6; Clerk Johnson’s Response in Opposition to Motion for Preliminary Injunction, pp. 11-15; Common Cause Amended Answer and Counterclaim, ¶¶ 56-57) The Secretary contends that the counties may not send mail ballots to electors designated “inactive-failed to vote.”

When construing a statute, the courts “afford the words of the statute their ordinary and common meaning and construe the statutory provisions as a whole, giving effect to the entirety of the statute.” *Lombard v. Colorado Outdoor Education Center, Inc.*, 187 P.3d 565, 570 (Colo. 2008). If the language is ambiguous or unclear, the courts will “consider the statute’s legislative history, the state of the law prior to the enactment, the problem addressed and the statutory remedy.” *Id.* “When the legislature speaks with exactitude, [the court] must construe the statute to mean that the inclusion or specification of a particular set of conditions necessarily excludes others.” *Lunsford v. Western States Life Insurance*, 908 P. 2d 79, 84 (Colo. 1995).

Section 1-7.5-107(3)(a)(I) discusses the process by which mail ballots will be sent to registered electors. It provides:

Not sooner than twenty-two days before an election, and no later than eighteen days before an election, except as provided in subparagraph (II) of this paragraph (a), the designated election official shall mail to each *active* registered elector, at the last

mailing address appearing in the registration records, and in accordance with United States postal service regulations, a mail ballot packet...

(Emphasis added.) An active voter is a person who voted in the last general election, § 1-2-605(2). Conversely, a person is deemed “inactive-failed to vote” if the person has not voted in a general election. *Id.*

The adjective “active” is crucial. If the General Assembly intended to allow election officials to send packets to all registered electors, including those marked as “inactive”, it would not have used the word “active.” Instead, it would have required election officials to mail packets to “each registered elector.” Alternatively, the General Assembly could have included a reference to “inactive-failed to vote” electors, as it did for primary election mail ballot elections. Section 1-7.5-107(3)(a)(II), C.R.S. (2011). By using the word “active”, it intended to exclude “inactive” voters. “Straining the statute to read otherwise would ignore its plain language”, *In re Marriage of Chalat*, 112 P.3d 47, 57 (Colo. 2005) and expands the definition of the word “active” well beyond its generally accepted meaning.

The interpretation proffered by Common Cause and the clerks renders superfluous other sections of the statute. Section 1-7.5-107(3)(c) states that designated election officials must make mail ballots available “at the designated election official’s office, or the office designated in the mail ballot plan filed with the secretary of state, for eligible electors who are not listed or who are listed as ‘Inactive’ on the county voter registration records.” The county clerk and recorder must mail a voter information card to a registered elector who is categorized as “Inactive-failed to vote.” If the counties retain the discretion to mail ballots to such electors, there is no need to

make ballots available at designated locations twenty-two days before the election or to mail voter information cards ninety days before the election.

Consideration of prior versions of the law also confirms the Secretary's interpretation. In 2008, the General Assembly enacted H.B. 08-1329. (Exhibit A, attached hereto) This measure added section 1-7.5-108.5(2)(b), which provided:

(I) In connection with any mail ballot election to be conducted in November 2009, a mail ballot shall be mailed to all registered electors whose registration record has been marked as "inactive-failed to vote". Such mail ballots shall not be sent to registered electors whose registration has been marked as "inactive-undeliverable".

(II) This paragraph (b) is repealed, effective July 1, 2011.

The General Assembly required clerks to send mail ballots to persons who were inactive and failed to vote as well as to active voters. The intent of the measure was to reduce the number of persons who were designated as "inactive failed to vote" due to unique election problems in Denver and Douglas County in 2006. The authority to send mail ballots to electors who were inactive and failed to vote expired on July 1, 2011.

The General Assembly could have achieved the result advocated by the clerks and Common Cause merely by not including, or repealing, the sunset provision. Alternatively, it could have amended § 1-7.5-108.5(2)(b) to state that "a mail ballot may be mailed to all registered electors whose registration record has been marked as 'inactive-failed to vote' effective July 1, 2011." Instead, it chose to include the repeal in the bill and subsequently did not take any action to reinstate the requirement that mail ballot packets be sent to inactive voters who failed to vote after July 1, 2011.

The defendants' interpretation has significant implications for all of the Election Code. They apparently interpret the language in § 1-7.5-107(3)(a)(I) to give discretion to the clerks unless words like "only" or "solely" are used. If the court adopts the Clerk's interpretation, then all provisions within the Code which impose certain conditions and obligations upon clerks during the course of the election process could be modified by the clerks. For example, § 1-5-410, C.R.S. (2012) states that election judges receiving sealed ballot packages provide receipts, and that such "receipts shall be filed with the designated election official." The receiving election judges must deliver the packages "and, in the presence of all election judges, shall open the packages." *Id.* Under the defendants' interpretation, clerks will be permitted to specify that the receipts may be filed with a person other than the designated election official, because the statute does not say "only". Clerks would also have the discretion to permit the packages to be opened in the presence of persons other than election judges, because the statute does not use the term "only".

More significantly, defendants' interpretation could result in different means by which ballots are counted. Under § 1-7-307(1), C.R.S. (2012), "election judges shall first count the number of ballots in the box" and reconcile the number of ballots with the number of names entered on each of the pollbooks. If the court adopts defendants' theory, clerks could instruct election judge to follow different procedures. It is this type of disparity that lead to the problems and issues recited in *Bush v. Gore*, 531 U.S. 98 (2000). This court should adopt an interpretation that favors uniformity.

The defendants' interpretation runs counter to the history and purpose of the Election Code. The law is entitled the "Uniform Election Code of 1992" for a reason. As the recitation of

the history of election laws plainly discloses, the legislature consolidated supervision and enforcement of election laws under the Secretary in order to achieve uniformity throughout the state. The defendants' interpretation undermines the purpose of the consolidation.

B. The Demise of H.B. 12-1267 Supports the Secretary's Interpretation.

Recent activity in the Colorado General Assembly also confirms the Secretary's interpretation. In interpreting a statute, the court may look to the legislature's failure to amend an act in light of its knowledge of the interpretation of the law and its implementation. *Schlagel v. Hoelsken*, 162 Colo. 142, 425 P.2d 39, 42 (1967); see also, 2B, Singer & Singer, *Sutherland Statutory Construction* (2008), § 49.10 ("where contemporaneous interpretation has been called to the legislature's attention, there is more reason to regard the failure of the legislature to change the interpretation as presumptive evidence of its correctness")

In 2012, the Colorado General Assembly considered H.B. 12-1267 (Exhibit B, attached hereto). Section 1 of the bill added section 1-2-229:

(1) Notwithstanding any other provision of law, any registered elector whose registration has been marked as "Inactive-failed to vote" as of the effective date of this section shall from that date forward be deemed to hold the status of an active elector.

(2) By August 1, 2012, the Secretary of State shall update the statewide voter registration database to reflect the elimination of "Inactive-failed to vote" voter status pursuant to subsection (1) of this section and, as appropriate, restore permanent mail-in voter status to those electors who had previously selected such status but had subsequently been marked as "Inactive-failed to vote".

Section 2 of the bill repealed section 1-2-605(11) which governs actions involving "inactive voters" in mail ballot elections. Section 8 of the bill specifically repealed § 1-7.5-108.5, which distinguished between "active" and "inactive-failed to vote" in the mail ballot statute.

H.B. 12-1267 would have eliminated the status of “inactive-failed to vote.” The General Assembly killed the bill. By refusing to enact the bill, the General Assembly affirmed the existing interpretation of the statute.

C. The Court Must Consider the Secretary’s Recently-Promulgated Rules

Guidance can be obtained from the interpretation given to a statute by the implementing agency. *Colorado Mining Association v. Board of County Commissioners*, 199 P.3d 718, 731 (Colo. 2009) Courts will give significant weight to the agency’s guidance, rules and determinations if they are consistent with the governing constitutional and statutory provisions they implement. *Id.*

After the demise of H.B 12-1267, the Secretary adopted rules 12.4.1(d) and 13.19 and amended Rule 12.11. Rule 12.4.1(d) provides:

(D) Request for Ballot by Inactive-failed to vote elector. In a coordinated or nonpartisan election, the designated election official may not mail a ballot to an elector whose registration record is marked inactive-failed to vote until the elector submits a registration update or a request for a ballot under section 1-7.5-107(3), C.R.S., and Rule 12.11.

Rule 12.11.4 states, in pertinent part:

An inactive elector in a nonpartisan mail ballot election will be issued a ballot if the elector submits a registration update or a ballot request.

(A) The inactive elector must submit a registration update or a written request for a ballot before the designated election official may mark the elector’s record active and issue the ballot.

Rule 13.19 states, “For any election that is not a primary mail ballot election, the designated election official may not issue a mail-in ballot to an elector whose record is marked inactive-failed to vote until the elector submits a timely application for a mail-in ballot.” (Exhibit C, attached hereto)

The language of the rules is clear. The clerks may not issue ballots in mail ballot elections that are not primary elections until the inactive elector submits a registration update or a written request for a ballot.

For these reasons, the Secretary is entitled to an order that mail ballots may not be sent to voters who are designated as “inactive-failed to vote” and that the county election officials do not retain the discretion to mail ballots to such voters.

IV. THE SECRETARY’S INTERPRETATION DOES NOT CONTRADICT THE UNIFORM MILITARY AND OVERSEAS VOTERS ACT.

Gilbert Ortiz, the Pueblo County Clerk and Recorder, contends that the clerks must send ballots to all voters under the Uniform Military and Overseas Voters Act (UMOVA).) (Clerk Ortiz’s Answer, Counterclaim, ¶ 16) The Secretary contends that the clerks may send a ballot to a voter under UMOVA only when the voter applies for a ballot.

The Colorado General Assembly enacted UMOVA in 2011. Section 1-8.3-101, C.R.S. (2012) UMOVA has two purposes. First, it extends “to state elections the assistance and protections for military and overseas voters currently found in federal law, which covers only biennial federal elections.” Title 1, article 8.3, Prefatory Note. Second, it brings greater uniformity to the military and overseas voting processes.” *Id.*

UMOVA defines “covered voter” to mean:

(1) a uniformed-service voter “who is a Colorado resident but who is absent from the state by reason of active duty and who otherwise satisfies this state’s voter eligibility requirements”;

(2) an “overseas voter, who before leaving the United States, was last eligible to vote in this state, and except for a state residency requirement, otherwise satisfies this state’s voter eligibility requirements”;

(3) an “overseas voter, who before leaving the United States, would have been last eligible to vote in this state had the voter then been of voting age and, except for a state residency requirement, otherwise satisfies this state’s voter eligibility requirements”; or

(4) an overseas voter who was born outside the United States and, “except for a state residency requirement, otherwise satisfies this state’s voter eligibility requirements if the last place where a parent or legal guardian of the voter was, or under this article would have been, eligible to vote before leaving the United States is within this state.” Section 1-8.3-102(2), C.R.S. (2012).

A “covered voter” includes electors who are registered. Section 1-8.3-108(1), C.R.S. (2012). A person who is identified as “inactive-failed to vote” is a registered voter. A covered voter who is registered may receive a ballot if the voter applies for a ballot.

“To receive the benefits of [UMOVA] a covered voter *shall* inform the appropriate official that the voter is a covered voter.” Section 1-8.3-108(5), C.R.S. (2012). (Emphasis added.) Upon receipt of the application, the clerk removes the designation of “inactive-failed to vote.” The voter may then vote in a mail ballot election. Section 1-8.3-108(6), C.R.S. (2012). Thus, under UMOVA, all covered voters, including ones designated as “inactive-failed to vote”,

must first apply before he can receive a ballot. An application submitted by the covered voter is a condition precedent to receipt of the ballot.

The recently-enacted rules confirm this interpretation. Rules 12.11.5(A) and 13.20.1 provides that a military or overseas elector who is inactive must submit a ballot and application for the ballot to be counted.

For these reasons, the Secretary is entitled to an order that county election officials may not send ballots to covered voters, including those designated as “inactive-failed to vote”, without receiving an application.

V. THE STATUTE AND THE SECRETARY’S INTERPRETATION DO NOT VIOLATE THE EQUAL PROTECTION CLAUSE OR THE FIRST AMENDMENT.

A. The Distinction Between “Active” and “Inactive-Failed to Vote” Electors Does Not Violate the Equal Protection Clause or Impair the First Amendment Rights of Voters Designated as “Inactive-Failed to Vote”.

In its Second Claim for Relief, Common Cause asserts that the disparate treatment between eligible electors based upon whether they are designated “active” or “inactive failed to vote” violates the Equal Protection Clause and the First Amendment right to political expression of those designated as “Inactive-failed to Vote”. In particular, Common Cause states that the distinction interferes with the right to vote of persons designated as “inactive-failed to vote” and violates the right to equal protection of the laws by not granting them the same right to a mail ballot as those who are designated as “active.”

The Supreme Court rejected similar claims in *McDonald v. Board of Election Commissioners of Chicago*, 394 U.S. 802 (1969). In *McDonald*, inmates in a county jail brought an action to enjoin enforcement of statutes excluding them from the class of persons

entitled to receive absentee ballots. In particular, they argued that the absentee ballot provisions distinguished between persons who were medically incapacitated and those who were judicially incapacitated. They also contended that the law unconstitutionally distinguished between those persons who were imprisoned in other states or in other counties within the Illinois other than those of their own residence.

The Court applied a rational basis test. “The distinctions drawn by a challenged statute must bear some rational relationship to a legitimate state end and will be set aside as violative of the Equal Protection Clause only if based on reasons totally unrelated to the pursuit of that goal.” *Id.* at 809. “Legislatures are presumed to have acted constitutionally even if source materials normally resorted to for ascertaining their grounds for action are otherwise silent, and their statutory classifications will be set aside only if no grounds can be conceived to justify them.” *Id.* As long as Illinois provided pretrial detainees with reasonable alternatives such as special polling booths or facilities, transportation to polling places or temporary reductions in bail, its refusal to provide absentee ballots did not violate the detainees’ right to equal protection.

McDonald also rejected the argument that the failure to offer absentee ballots violates the First Amendment right to vote. As long as voters may cast ballots by means other than absentee ballots, the right to vote is not implicated. “It is not the right to vote that is at stake here but a claimed right to receive absentee ballots.” *Id.* at 808. A statutory scheme that denies certain persons the ability to receive absentee does not impact the right to vote as long as the individuals may cast a ballot in some other fashion. *Id.*

McDonald controls this case. Colorado has a strong basis for limiting mail ballots to those persons who are deemed active voters. Colorado may limit the possibility of fraud by

limiting the dissemination of ballots to persons who have recently voted, thereby reducing the possibility that ballots will fall in the hands of those who are not entitled to vote. In addition, both the State and the counties expend funds to mail ballots. The governments have an interest in limiting expenditures by not sending ballots to persons who are less likely to vote.

The right to cast a ballot by mail is not a fundamental right. Under Colorado law, electors do not have a right to cast ballots by mail. Electors may cast ballots by mail only if government officials authorize mail ballot elections and only in certain types of elections.

Any burden imposed on “inactive-failed to vote electors” is minimal. In *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), voters who did not have proper photo identification were required to cast provisional ballots. To do so, they were required to travel to the circuit court clerk’s office to execute an affidavit. The Supreme Court concluded that this requirement did not pose a constitutional problem. *Id.* at 200. *See also, American Civil Liberties Union of New Mexico v. Santillanes*, 546 F.3d 1313, 1324 (10th Cir. 2008) (a single additional trip to the city clerk’s office to present proper voter identification does not impose a constitutional burden)

In the case now before this court, the requirements placed upon an “inactive-failed to vote” elector are not onerous. A voter can update his voter registration or request a ballot. At most, the voter must travel to a voter center or a clerk’s office to vote to pick up a ballot. If traveling to a circuit court clerk’s office to pick up a provisional ballot is not a constitutional problem, then traveling to a vote center or a clerk’s office to pick up a mail ballot is not a constitutional problem.

B. The Allegation, Standing Alone, that Voting Laws Have a Disparate Impact on Racial or Ethnic Minorities Is Insufficient As a Matter of Law to State an Equal Protection Claim.

Common Cause also alleges that “[t]he policy of not sending mail ballots to ‘inactive-failed to vote’ electors especially burdens members of racial and ethnic minorities” (Amended Answer and Counterclaim, ¶ 60) and “imposes special burdens on members of racial and ethnic minorities.” (Amended Answer and Counterclaim, ¶ 61)

Common Cause’s allegation does not distinguish between a law that on its face discriminates and discriminatory action taken by an official. Common Cause’s claim must fail under either scenario.

A facially neutral law violates equal protection guarantees if it is adopted with the intent to discriminate against a racial or ethnic group. *Johnson v. Governor of the State of Florida*, 405 F.3d 1214, 1222 (11th Cir. 2005). The party alleging racial or ethnic discrimination based upon the language of the law must show that the legislative body selected a course of action because of, and not in spite of, its adverse effect upon an identifiable group. *Hayden v. Paterson*, 594 F.3d 150, 162 (2d Cir. 2010). Persons challenging the law first must show that race or ethnicity was a substantial or motivating factor behind the law. *Johnson v. Governor of the State of Florida*, 405 F.3d at 1223. If there is evidence that racial or ethnic discrimination was a motivating factor, then the court must ask whether the provision would have been enacted in the absence of a discriminatory motive. *Id.* Disparate impact by itself is insufficient.

To the extent Common Cause alleges that the law itself discriminates on the basis of race or ethnicity, Common Cause must allege and show that the Colorado General Assembly intended to discriminate against racial or ethnic minorities when it enacted the limits on sending ballots to

voters who are designated as “inactive-failed to vote.” Common Cause’s claim that the statute governing mailings to “inactive-failed to vote electors” violates equal protection because it has an adverse impact on racial or ethnic minorities must fail without a showing that the Colorado General Assembly intended to discriminate, even if Common Cause can show disparate impact. Common Cause’s complaint alleges only disparate impact (Complaint, ¶¶ 60, 61); therefore, it fails as a matter of law.

Common Cause’s Complaint also can be interpreted to claim that the Secretary’s implementation of the law discriminated against racial or ethnic minorities. Again, Common Cause faces a high barrier. An official action that may adversely affect racial or ethnic minorities does not deny equal protection unless plaintiffs can show intentional or purposeful discrimination. *Snowden v. Hughes*, 321 U.S. 1, 8, (1946). The mere showing that persons within an identified racial or ethnic group are more adversely affected by a statute is not enough. An equal protection claim must be based on *intentional* discrimination against a person because of his membership in a particular class. *Washington v. Davis*, 426 U.S. 229, 247-247, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976) A voter complaining “about a law’s effect on him has no valid equal-protection claim because, without proof of discriminatory intent, a generally applicable law with disparate impact is not unconstitutional.” *Crawford v. Marion County Election Board*, 553 U.S. at 207 (Scalia, J., concurring) The obligation to allege and prove intentional discrimination applies to allegations that the actions of the public officials are directed to racial or ethnic minorities. *Id.*

As with allegations that the statute itself discriminates against racial or ethnic minorities, Common Cause must allege and prove more than the actions of a public official have a disparate

impact because “[d]isparate impact... is not necessarily the same thing as discriminatory intent.” *Secsys, LLC v. Vigil*, 666 F.3d 678, 686 (10th Cir. 2012) A showing of discriminatory impact, by itself, is insufficient. A complaint alleging racial or ethnic discrimination also must allege purposeful intent. Failure to do so must result in judgment for the defendant. *Perry-Bey v. City of Norfolk*, 678 F.Supp.2d 348, 367-368 (E.D. Va. 2009); *Coronado v. Napolitano*, 2008 WL 4838707 *4 (D. Ariz, November 6, 2008) (Plaintiff must allege purposeful discrimination against racial minorities when enacting or implementing felon disenfranchisement law).

Common Cause’s allegations are insufficient as a matter of law. It contends only that the law “burdens” racial and ethnic minorities. It does not identify the racial or ethnic minorities that are burdened, how they are burdened, and that the discrimination was intentional or purposeful.

For these reasons, the Court must enter an order finding that Common Cause’s equal protection claims fail as a matter of law.

CONCLUSION

For the aforementioned reasons, the Court must enter an order holding that:

- (1) The Clerks must obey the rules, orders and directives of the Secretary, even if they believe them to be illegal or unconstitutional;
- (2) The Clerks do not have discretion to mail ballots under the Mail Ballot Act to voters who are designated as “inactive-failed to vote”;
- (3) The Clerks may send mail ballots to voters under UMOVA, including those who are designated as “inactive-failed to vote”, only upon receipt of an application from the voter;
- (4) The distinction between active voters and voters designated as “inactive-failed to vote” does not violate the Equal Protection Clause or the First Amendment.

(5) The allegations that the sending mail ballots only to voters designated as “inactive-failed to vote” discriminates against racial or ethnic minorities fail as a matter of law.

JOHN W. SUTHERS
Attorney General

/s/Maurice G. Knaizer

MAURICE G. KNAIZER, 05264*

Deputy Attorney General

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Public Officials

State Services Section

Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **SECRETARY'S RENEWED MOTION FOR JUDGMENT ON THE LAW PURSUANT TO C.R.C.P. 56(h)** upon all parties herein by LexisNexis File and Serve or by email this 12th day of September, 2012, as follows:

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/s/ Debbie Bendell, Paralegal

CHAPTER 374

ELECTIONS

HOUSE BILL 08-1329

BY REPRESENTATIVE(S) Marshall, Carroll T., Curry, Kefalas, Kerr A., Labuda, Madden, Middleton, Todd, Borodkin, and May M ;
also SENATOR(S) Gordon, Groff, and Tupa

AN ACT

CONCERNING PROCEDURES FOR UPDATING VOTER REGISTRATION LISTS AS APPLIED TO REGISTERED ELECTORS DEEMED INACTIVE IN CONNECTION WITH MAIL BALLOT ELECTIONS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 1-2-605 (2), Colorado Revised Statutes, is amended to read:

1-2-605. Canceling registration. (2) A registered elector who is deemed "Active" but who fails to vote in a general election shall have the elector's registration record marked "Inactive (insert date)" by the county clerk and recorder following the general election. IN THE CASE OF A REGISTERED ELECTOR TO WHOM THE COUNTY CLERK AND RECORDER MAILED A CONFIRMATION CARD PURSUANT TO PARAGRAPH (a) OF SUBSECTION (6) OF THIS SECTION NO LATER THAN NINETY DAYS AFTER THE 2008 GENERAL ELECTION AND WAS RETURNED BY THE UNITED STATES POSTAL SERVICE AS UNDELIVERABLE, THE COUNTY CLERK AND RECORDER SHALL MARK THE REGISTRATION RECORD OF THAT ELECTOR WITH THE WORDS "INACTIVE - UNDELIVERABLE".

SECTION 2. Article 7.5 of title 1, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

1-7.5-108.5. Voter information card - verification of active status - designation of inactive status - mailing of mail ballots - repeal. (1) NOT LESS THAN NINETY DAYS BEFORE A MAIL BALLOT ELECTION CONDUCTED PURSUANT TO THIS ARTICLE, THE COUNTY CLERK AND RECORDER SHALL MAIL A VOTER INFORMATION CARD TO ANY REGISTERED ELECTOR WHOSE REGISTRATION RECORD HAS BEEN MARKED INACTIVE - FAILED TO VOTE. FOR PURPOSES OF THIS SECTION, "INACTIVE - FAILED TO VOTE" SHALL MEAN A REGISTERED ELECTOR WHO IS DEEMED

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

"ACTIVE" BUT WHO FAILED TO VOTE IN A GENERAL ELECTION IN ACCORDANCE WITH THE PROVISIONS OF SECTION 1-2-605 (2); EXCEPT THAT THE TERM "INACTIVE - FAILED TO VOTE" SHALL NOT INCLUDE AN ELECTOR WHOSE PREVIOUS COMMUNICATION FROM THE COUNTY CLERK AND RECORDER WAS RETURNED BY THE UNITED STATES POSTAL SERVICE AS UNDELIVERABLE AND IS, ACCORDINGLY, REFERRED TO IN THE REGISTRATION RECORDS OF THE COUNTY AS "INACTIVE - UNDELIVERABLE" PURSUANT TO SECTION 1-2-605 (2). THE VOTER INFORMATION CARD REQUIRED BY THIS SECTION MAY BE SENT AS PART OF THE VOTER INFORMATION CARD REQUIRED TO BE MAILED PURSUANT TO SECTION 1-5-206 (1). THE VOTER INFORMATION CARD SHALL BE SENT TO THE ELECTOR'S ADDRESS OF RECORD UNLESS THE ELECTOR HAS REQUESTED THAT SUCH COMMUNICATION BE SENT TO HIS OR HER DELIVERABLE MAILING ADDRESS PURSUANT TO SECTION 1-2-204 (2) (k) AND SHALL BE MARKED "DO NOT FORWARD".

(2) (a) IF THE VOTER INFORMATION CARD REQUIRED TO BE SENT TO A REGISTERED ELECTOR WHOSE REGISTRATION RECORD HAS BEEN MARKED AS "INACTIVE - FAILED TO VOTE" PURSUANT TO SUBSECTION (1) OF THIS SECTION IS RETURNED BY THE UNITED STATES POSTAL SERVICE AS UNDELIVERABLE, THE COUNTY CLERK AND RECORDER SHALL MARK THE REGISTRATION RECORD OF THAT ELECTOR WITH THE WORDS "INACTIVE - UNDELIVERABLE".

(b) (I) IN CONNECTION WITH ANY MAIL BALLOT ELECTION TO BE CONDUCTED IN NOVEMBER 2009, A MAIL BALLOT SHALL BE MAILED TO ALL REGISTERED ELECTORS WHOSE REGISTRATION RECORD HAS BEEN MARKED AS "INACTIVE - FAILED TO VOTE". SUCH MAIL BALLOT SHALL NOT BE SENT TO REGISTERED ELECTORS WHOSE REGISTRATION RECORD HAS BEEN MARKED AS "INACTIVE - UNDELIVERABLE".

(II) THIS PARAGRAPH (b) IS REPEALED, EFFECTIVE JULY 1, 2011.

(c) IN ANY MAIL BALLOT ELECTION CONDUCTED ON OR AFTER JULY 1, 2008, IF A MAIL BALLOT SENT TO A REGISTERED ELECTOR IS RETURNED BY THE UNITED STATES POSTAL SERVICE AS UNDELIVERABLE, THE COUNTY CLERK AND RECORDER SHALL MARK THE REGISTRATION RECORD OF THAT ELECTOR WITH THE WORDS "INACTIVE - UNDELIVERABLE".

SECTION 3. 1-2-605, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

1-2-605. Canceling registration. (11) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, REQUIREMENTS PERTAINING TO THE VERIFICATION BY A COUNTY CLERK AND RECORDER OF THE STATUS OF A REGISTERED ELECTOR WHO HAS BEEN DEEMED "INACTIVE" IN PREPARATION FOR A MAIL BALLOT ELECTION SHALL BE GOVERNED BY THE PROVISIONS OF SECTION 1-7.5-108.5.

SECTION 4. 1-5-101 (5), Colorado Revised Statutes, is amended to read:

1-5-101. Establishing precincts and polling places for partisan elections. (5) NOTWITHSTANDING SECTION 1-5-103, AND EXCEPT AS OTHERWISE REQUIRED BY FEDERAL LAW, IN ORDER TO FACILITATE THE PREPARATION OF A COMPUTERIZED DATABASE FOR USE IN THE ~~reapportionment~~ REDISTRICTING process that will take place after the decennial census in ~~the year 2000~~ YEARS ENDING IN THE NUMBER ZERO, THE

PRECINCT BOUNDARIES ESTABLISHED BY the county clerk and recorder of each county, subject to approval by the board of county commissioners, ~~shall establish precinct boundaries which~~ THAT ARE USED IN THE GENERAL ELECTION IN YEARS ENDING IN THE NUMBER EIGHT shall remain in effect until after the general election in 2000 YEARS ENDING IN THE NUMBER ZERO; except that the precincts so established may be subdivided within the boundaries of the original precinct ~~Such precincts shall be established no later than twenty-nine days prior to the precinct caucus day in 1998; except that, in counties affected by the reapportionment plan required by Sanchez v. State of Colorado, 97 F.3d 1303 (10th Cir. 1996), such precincts shall be established within two weeks after the federal district court approves of such reapportionment plan~~ AND ADJACENT PRECINCTS MAY BE AGGREGATED FOR PURPOSES OF DATA COLLECTION. In establishing precinct boundaries pursuant to the provisions of this subsection (5), county clerk and recorders and boards of county commissioners shall, to the extent reasonably possible, utilize natural and man-made boundaries that meet the requirements for visible features adopted by the United States bureau of the census. IF THE PRECINCT BOUNDARIES USED IN THE GENERAL ELECTION IN YEARS ENDING IN THE NUMBER EIGHT ARE CHANGED PRIOR TO THE NEXT GENERAL ELECTION IN YEARS ENDING IN THE NUMBER ZERO PURSUANT TO FEDERAL LAW, THE COUNTY CLERK AND RECORDERS SHALL TIMELY SUBMIT IN WRITING TO THE DIRECTOR OF RESEARCH OF THE LEGISLATIVE COUNCIL A LIST SHOWING THE PRECINCTS FOR WHICH THE BOUNDARIES HAVE CHANGED.

SECTION 5. Effective date - applicability. This act shall take effect July 1, 2008, and shall apply to mail ballot elections conducted on or after said date.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 2, 2008

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

EFH ED Document
RECEIVED
CO Denver County District Court 2nd JD
Filing Date: Sep 12, 2012 12:08PM MDT
Adopted in the Second House
HOUSE BILL 12-1267
New Clerk: Sara Bridges

This Version Includes All Amendments

LLS NO. 12-0609.01 Kate Meyer x4348

HOUSE SPONSORSHIP

Coram,

SENATE SPONSORSHIP

Heath,

House Committees
State, Veterans, & Military Affairs

Senate Committees
State, Veterans & Military Affairs
Appropriations

A BILL FOR AN ACT

101 **CONCERNING THE SIMPLIFICATION OF CERTAIN PREELECTION**
102 **PROCEDURES IN ORDER TO REDUCE THE COST OF**
103 **ADMINISTERING ELECTIONS, AND, IN CONNECTION THEREWITH,**
104 **MAKING AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries.>)

The bill:

! Allows the secretary of state to waive the requirement that

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unam ended
May 7, 2012

SENATE
Am ended 2nd Reading
May 4, 2012

HOUSE
3rd Reading Unam ended
March 22, 2012

HOUSE
Am ended 2nd Reading
March 20, 2012

a political subdivision must use a vote center in an election other than a general election before establishing a vote center for a general election;

! Repeals the requirement that ballots sent by mail contain ballot stubs;

! Consolidates voter information card mailings, adds information that must be included on such mailings, and extends the deadline by which the mailings must be made for a primary election conducted as a mail ballot election; and

! Reduces, to 7 days prior to any election, the time allotted for early voting and specifies that, while a board of county commissioners has the discretion to extend early voting hours, it may not increase the period of time for early voting.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. In Colorado Revised Statutes, add 1-2-229 as**
3 **follows:**

4 **1-2-229. Change in status of electors deemed "Inactive - failed**
5 **to vote" - transfer to active status - repeal. (1) NOTWITHSTANDING ANY**
6 **OTHER PROVISION OF LAW, ANY REGISTERED ELECTOR WHOSE**
7 **REGISTRATION RECORD HAS BEEN MARKED AS "INACTIVE - FAILED TO**
8 **VOTE" AS OF THE EFFECTIVE DATE OF THIS SECTION SHALL FROM THAT**
9 **DATE FORWARD BE DEEMED TO HOLD THE STATUS OF AN ACTIVE ELECTOR.**

10 **(2) (a) BY AUGUST 1, 2012, THE SECRETARY OF STATE SHALL**
11 **UPDATE THE STATEWIDE VOTER REGISTRATION DATABASE TO REFLECT THE**
12 **ELIMINATION OF "INACTIVE - FAILED TO VOTE" VOTER STATUS PURSUANT**
13 **TO SUBSECTION (1) OF THIS SECTION AND, AS APPROPRIATE, RESTORE**
14 **PERMANENT MAIL-IN VOTER STATUS TO THOSE ELECTORS WHO HAD**
15 **PREVIOUSLY SELECTED SUCH STATUS BUT HAD SUBSEQUENTLY BEEN**
16 **MARKED AS "INACTIVE - FAILED TO VOTE".**

17 **(b) THIS SUBSECTION (2) IS REPEALED, EFFECTIVE JULY 1, 2013.**

1 **SECTION 2.** In Colorado Revised Statutes, 1-2-605, **amend** (1)
2 (a) (I), (1) (b), (3), (4) introductory portion, (6) (a), and (7); and **repeal**
3 (2), (5), and (11) as follows:

4 **1-2-605. Canceling registration - voter confirmation card.**

5 (1) (a) (I) Communication by mail from the county clerk and recorder to
6 the registered eligible electors of a county shall be in the form of a voter
7 information card, including but not limited to the elector's name and
8 address, precinct number, and polling place, which shall be mailed to the
9 elector's address of record unless the elector has requested that the card
10 be sent to his or her deliverable mailing address pursuant to section
11 1-2-204 (2) (k). The county clerk and recorder shall send a voter
12 information card by forwardable mail to each active registered eligible
13 elector of the county, as defined in section 1-1-104 (16), and by
14 nonforwardable mail to each inactive registered eligible elector, except
15 an elector whose previous communication from the county clerk and
16 recorder was returned by the United States postal service as undeliverable
17 or an elector whose registration record was marked "Inactive" by the
18 county clerk and recorder pursuant to subsection (2) of this section before
19 the general election of 2006.

20 (b) For all electors whose communication pursuant to paragraph
21 (a) of this subsection (1) is returned by the United States postal service as
22 undeliverable at the elector's voting address, the county clerk and recorder
23 may SHALL mark the registration record of that elector with the word
24 "Inactive" PHRASE "INACTIVE - RETURNED MAIL".

25 (2) A registered elector who is deemed "Active" but who fails to
26 vote in a general election shall have the elector's registration record
27 marked "Inactive (insert date)" by the county clerk and recorder following

1 the general election. In the case of a registered elector to whom the
2 county clerk and recorder mailed a confirmation card pursuant to
3 paragraph (a) of subsection (6) of this section no later than ninety days
4 after the 2008 general election and was returned by the United States
5 postal service as undeliverable, the county clerk and recorder shall mark
6 the registration record of that elector with the words "Inactive -
7 undeliverable".

8 (3) Any registered elector whose registration record has been
9 marked "Inactive" "INACTIVE - RETURNED MAIL" shall be eligible to vote
10 in any election where registration is required and the elector meets all
11 other requirements.

12 (4) Any "Inactive" "INACTIVE - RETURNED MAIL" elector shall be
13 deemed "Active" if:

14 (5) If a mail or mail-in ballot that was mailed pursuant to the
15 requirements of this article to an elector who has been deemed "Active"
16 is returned to the county clerk and recorder by the United States postal
17 service as undeliverable, the county clerk and recorder shall send to the
18 elector's address of record, unless the elector has requested that such
19 communication be sent to his or her deliverable mailing address pursuant
20 to section 1-2-204 (2) (k), a notice pursuant to section 1-2-509 by
21 forwardable mail and a postage prepaid, preaddressed form by which the
22 elector may verify or correct the address information. If the elector
23 verifies that he or she resides in a county other than the county mailing
24 the mail or mail-in ballot, the county clerk and recorder shall forward the
25 address information to the county clerk and recorder of the county in
26 which the voter resides. If the elector fails to respond, the county clerk
27 and recorder shall mark the registration record of that elector with the

1 word "Inactive".

2 (6) (a) No later than ninety days after any general election, any
3 registered elector whose registration record is marked "Inactive"
4 "INACTIVE - RETURNED MAIL" and who has not previously been mailed a
5 confirmation card shall be mailed a confirmation card by the county clerk
6 and recorder.

7 (7) If the county clerk and recorder receives no response to the
8 confirmation card and the elector has been designated "Inactive"
9 "INACTIVE - RETURNED MAIL" for two general elections since the
10 confirmation card was mailed pursuant to the requirements of this article,
11 the county clerk and recorder shall cancel the registration record of the
12 elector; except that, notwithstanding any other provision of law, no
13 elector's registration record shall be canceled solely for failure to vote.

14 (11) Notwithstanding any other provision of this section,
15 requirements pertaining to the verification by a county clerk and recorder
16 of the status of a registered elector who has been deemed "Inactive" in
17 preparation for a mail ballot election shall be governed by the provisions
18 of section 1-7.5-108.5.

19 **SECTION 3.** In Colorado Revised Statutes, 1-5-206, **amend** (1)
20 (a) as follows:

21 **1-5-206. Postcard notice - reimbursement of mailing cost.**

22 (1) (a) ~~No later than twenty-five~~ NOT LESS THAN SIXTY days before the
23 general election or a special legislative election, the county clerk and
24 recorder shall mail a voter information card concerning the general
25 election or special legislative election by forwardable mail ___ to each
26 active registered eligible elector of the county, as defined in section
27 1-1-104 (16). ~~and by nonforwardable mail to each inactive registered~~

1 eligible elector, except an elector whose previous communication from
2 the county clerk and recorder was returned by the United States postal
3 service as undeliverable or an elector whose registration record was
4 marked "Inactive" by the county clerk and recorder pursuant to section
5 1-2-605 (2) before the general election of 2006.

6 **SECTION 4.** In Colorado Revised Statutes, 1-5-102.7, **amend** (7)
7 as follows:

8 **1-5-102.7. Combining precincts and polling places - vote**
9 **centers.** (7) The designated election official of a political subdivision
10 shall not establish vote centers for a general election unless vote centers
11 were used in a previous election held by the political subdivision in an
12 odd-numbered year or in a primary election held on or after January 1,
13 2006; EXCEPT THAT THE SECRETARY OF STATE MAY WAIVE THIS
14 REQUIREMENT IF THE DESIGNATED ELECTION OFFICIAL TIMELY SUBMITS A
15 PLAN FOR IMPLEMENTATION THAT SATISFACTORILY DEMONSTRATES TO
16 THE SECRETARY OF STATE THAT THE POLITICAL SUBDIVISION IS CAPABLE
17 OF CONDUCTING A GENERAL ELECTION AT A VOTE CENTER.

18 **SECTION 5.** In Colorado Revised Statutes, 1-5-407, **amend** (1.5)
19 as follows:

20 **1-5-407. Form of ballots.** (1.5) A ~~duplicate~~ BALLOT stub is not
21 required for a ballot that is prepared for A MAIL-IN BALLOT OR a mail
22 ballot election pursuant to article 7.5 of this title.

23 **SECTION 6.** In Colorado Revised Statutes, 1-5-505.5, **amend** (3)
24 (a) and (3) (b) as follows:

25 **1-5-505.5. State reimbursement to counties for ballot measure**
26 **elections.** (3) For any other odd- or even-numbered year election in
27 which a state ballot issue or state ballot question is on the ballot of a

1 particular county, the state shall reimburse such county for the cost of the
2 duties performed by the county clerk and recorder that relate to
3 conducting the election on the ballot issue or ballot question; except that
4 the reimbursement shall be set at the following rates:

5 (a) For counties with ten thousand or fewer active registered
6 electors, ~~eighty cents~~ NINETY CENTS for each active registered elector as
7 of the time of the election;

8 (b) For counties with more than ten thousand active registered
9 electors, ~~seventy cents~~ EIGHTY CENTS for each active registered elector as
10 of the time of the election.

11 **SECTION 7.** In Colorado Revised Statutes, 1-7.5-107, **amend**
12 **(2.3) (a) and (3) (a) (II) (A) as follows:**

13 **1-7.5-107. Procedures for conducting mail ballot election -**
14 **primary elections - first-time voters casting a mail ballot after having**
15 **registered by mail to vote. (2.3) (a) Not less than ~~thirty days nor more~~**
16 **~~than forty-five~~ SIXTY days before a primary election that is conducted as**
17 **a mail ballot election pursuant to this article, the county clerk and**
18 **recorder shall mail a notice by forwardable mail to each unaffiliated**
19 **active registered eligible elector. and to each unaffiliated registered**
20 **eligible elector whose registration record has been marked as "Inactive -**
21 **failed to vote".**

22 **(3) (a) (II) (A) If a primary election is conducted as a mail ballot**
23 **election pursuant to this article, ~~in addition~~ A MAIL BALLOT PACKET SHALL**
24 **BE MAILED to active registered electors who are affiliated with a political**
25 **party. ~~the mail ballot packet shall be mailed to each registered elector who~~**
26 **is affiliated with a political party and whose registration record has been**
27 **marked as "Inactive - failed to vote".**

1 **SECTION 8.** In Colorado Revised Statutes, 1-7.5-108.5, amend
2 (2) (c); and **repeal** (1) and (2) (a); and **add** (3) as follows:

3 **1-7.5-108.5. Voter information card - verification of active**
4 **status - designation of inactive status - mailing of mail ballots.** (1) Not
5 less than ninety days before a mail ballot election conducted pursuant to
6 this article, the county clerk and recorder shall mail a voter information
7 card to any registered elector whose registration record has been marked
8 "Inactive - failed to vote". For purposes of this section, "Inactive - failed
9 to vote" shall mean a registered elector who is deemed "Active" but who
10 failed to vote in a general election in accordance with the provisions of
11 section 1-2-605 (2); except that the term "Inactive - failed to vote" shall
12 not include an elector whose previous communication from the county
13 clerk and recorder was returned by the United States postal service as
14 undeliverable and is, accordingly, referred to in the registration records
15 of the county as "Inactive - undeliverable" pursuant to section 1-2-605
16 (2). The voter information card required by this section may be sent as
17 part of the voter information card required to be mailed pursuant to
18 section 1-5-206 (1). The voter information card shall be sent to the
19 elector's address of record unless the elector has requested that such
20 communication be sent to his or her deliverable mailing address pursuant
21 to section 1-2-204 (2) (k) and shall be marked "DO NOT FORWARD".

22 (2) (a) If the voter information card required to be sent to a
23 registered elector whose registration record has been marked as "Inactive
24 - failed to vote" pursuant to subsection (1) of this section is returned by
25 the United States postal service as undeliverable, the county clerk and
26 recorder shall mark the registration record of that elector with the words
27 "Inactive - undeliverable".

1 (c) In any mail ballot election conducted on or after July 1, 2008,
2 if a mail ballot sent to a registered elector is returned by the United States
3 postal service as undeliverable, the county clerk and recorder shall mark
4 the registration record of that elector with the words "Inactive -
5 undeliverable" "INACTIVE - RETURNED MAIL". THE CLERK AND RECORDER
6 SHALL MAIL A VOTER CONFIRMATION CARD PURSUANT TO SECTION 1-2-605
7 (6) (b) TO ANY ELECTOR WHOSE BALLOT WAS RETURNED BY THE UNITED
8 STATES POSTAL SERVICE AS UNDELIVERABLE.

9 (3) A VOTER INFORMATION CARD ISSUED UNDER THIS SECTION
10 SHALL ADVISE THE ELECTOR OF HIS OR HER STATUS AS ACTIVE OR
11 INACTIVE, PARTY AFFILIATION, WHETHER HE OR SHE WILL RECEIVE A
12 BALLOT BY MAIL, AND, IF NOT, WHAT HE OR SHE MUST DO IN ORDER TO
13 RECEIVE A BALLOT. THE VOTER INFORMATION CARD SHALL ALSO INCLUDE
14 A RETURNABLE PORTION THAT THE ELECTOR MAY USE TO UPDATE HIS OR
15 HER REGISTRATION RECORD, AFFILIATE WITH A POLITICAL PARTY, AND
16 REQUEST A MAIL BALLOT.

17 SECTION 9. In Colorado Revised Statutes, 1-8-104.5, add (3)
18 and (4) as follows:

19 1-8-104.5. Application for permanent mail-in voter status -
20 legislative declaration. (3) (a) NOTWITHSTANDING ANY OTHER
21 PROVISION OF LAW, ANY ELIGIBLE ELECTOR WHOSE REGISTRATION RECORD
22 HAS BEEN MARKED AS "INACTIVE - FAILED TO VOTE", WHOSE STATUS HAS
23 BEEN CHANGED TO ACTIVE IN ACCORDANCE WITH SECTION 1-2-229, AND
24 WHO HAD PREVIOUSLY SELECTED PERMANENT MAIL-IN VOTER STATUS
25 PURSUANT TO THE REQUIREMENTS OF THIS SECTION SHALL HAVE THE
26 STATUS OF PERMANENT MAIL-IN VOTER RESTORED AS OF THE EFFECTIVE
27 DATE OF THIS SUBSECTION (3).

1 **(b) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND**
2 **DECLARES THAT THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION**
3 **(3) ARE NECESSARY TO CLARIFY EXISTING LAW AND TO ENSURE A UNIFORM**
4 **APPLICATION OF THE RECENT JUDICIAL DETERMINATION THAT AN**
5 **ELECTOR'S STATUS OF "INACTIVE - FAILED TO VOTE" DOES NOT OPERATE**
6 **TO INVALIDATE, TERMINATE, OR SUSPEND THAT ELECTOR'S REGISTRATION.**

7 **(4) IN CONNECTION WITH ANY ELECTION CONDUCTED ON OR AFTER**
8 **THE EFFECTIVE DATE OF THIS SUBSECTION (4), IF A MAIL-IN BALLOT SENT**
9 **TO A REGISTERED ELECTOR IS RETURNED BY THE UNITED STATES POSTAL**
10 **SERVICE AS UNDELIVERABLE, THE COUNTY CLERK AND RECORDER SHALL**
11 **MARK THE REGISTRATION RECORD OF THAT ELECTOR WITH THE WORDS**
12 **"INACTIVE - RETURNED MAIL". THE CLERK AND RECORDER SHALL MAIL A**
13 **VOTER CONFIRMATION CARD PURSUANT TO SECTION 1-2-605 (6) (b) TO**
14 **ANY ELECTOR WHOSE BALLOT WAS RETURNED BY THE UNITED STATES**
15 **POSTAL SERVICE AS UNDELIVERABLE.**

16
17 **SECTION 10. Appropriation.** (1) In addition to any other
18 **appropriation, there is hereby appropriated, out of any moneys in the**
19 **department of state cash fund created in section 24-21-104 (3) (b),**
20 **Colorado Revised Statutes, not otherwise appropriated, to the department**
21 **of state, for the fiscal year beginning July 1, 2012, the sum of \$642,286,**
22 **or so much thereof as may be necessary, to be allocated for the**
23 **implementation of this act as follows:**

24 **(a) \$615,646 for local election reimbursement; and**

25 **(b) \$26,640 for the information technology services division, for**
26 **reprogramming of the statewide Colorado voter registration and elections**
27 **system.**

1 **SECTION 11. Applicability.** The provisions of this act apply to
2 elections conducted on or after the effective date of this act.

3 **SECTION 12. Safety clause.** The general assembly hereby finds,
4 determines, and declares that this act is necessary for the immediate
5 preservation of the public peace, health, and safety.



Notice of Temporary and Permanent Adoption

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

August 15, 2012

I. Adopted Rule Amendments

As authorized by Colorado Elections Law¹ and the State Administrative Procedure Act², the Colorado Secretary of State gives notice that the following amendments to the Election Rules³ are adopted on a temporary and permanent basis.

The following rules were considered at the July 23, 2012 rulemaking hearing in accordance with the State Administrative Procedure Act⁴.

(Additions to the current rules are reflected in SMALL CAPS and deletions from current rules are shown in ~~stricken type~~. Annotations may be included):

Amendments to Rule 2.7.4:

- 2.7.4 ~~If an applicant for voter registration fails to provide his or her gender the application shall be treated as "incomplete; however, if the applicant submits a photocopy of his/her driver's license or other approved form of ID which includes the applicant's gender, then the county may enter "male" or "female" as reflected on the card into the applicant's record and consider the application "complete".~~ REPEALED.

New Rule 2.7.5:

- 2.7.5 IF THE COUNTY CLERK AND RECORDER NOTIFIES AN APPLICANT THAT HIS OR HER APPLICATION IS INCOMPLETE, AND THE APPLICANT DOES NOT PROVIDE THE ADDITIONAL INFORMATION NECESSARY TO COMPLETE THE APPLICATION WITHIN 24 MONTHS AFTER THE COUNTY CLERK SENT THE NOTIFICATION, THE APPLICANT MUST REAPPLY IN ORDER TO REGISTER TO VOTE. (SECTION 1-2-509(2), C.R.S.)

Amendments to Rule 2.11:

- 2.11 CHANGES TO AN ELECTOR'S VOTER REGISTRATION STATUS.

¹ Sections 1-1-107(2)(a) and 1-1.5-104(1)(e), C.R.S. (2011).

² Section 24-4-103(3)(a), C.R.S. (2011).

³ 8 CCR 1505-1.

⁴ Section 24-4-103(3)(a), C.R.S. (2011).

2.11.1 ~~For the purposes of section 1-2-605(4)(a), C.R.S., an~~ AN ELECTOR MAY update ~~to a voter's~~ HIS OR HER INACTIVE registration information ~~to change the voter's STATUS TO ACTIVE status from inactive to active must be provided BY SUBMITTING to the county clerk and recorder by any of the following ways:~~

- (a-) A signed written request, ~~delivered in person or by U.S. mail, fax, or PDF attachment to an email; or~~
- (b-) AN ONLINE VOTER REGISTRATION APPLICATION; OR
- (C) AN ~~Oral~~ IN-PERSON request ~~in person when voter presents~~ WITH identification.

[SECTION 1-2-605(4)(A), C.R.S.]

2.11.42 ~~In the case of the applicant's~~ If AN ELECTOR IS UNABLE to sign, ANOTHER PERSON MUST WITNESS the elector's mark ~~shall be witnessed by another person~~. An elector may use a signature stamp because of age, disability, or other need, ~~which shall be~~. THE STAMP IS treated as a signature and does not require a witness.

Amendments to Rule 2.19.1:

2.19.1 "Confirmation card" means a FORWARDABLE, POSTAGE PREPAID mailing USING THE FORM PRESCRIBED BY THE SECRETARY OF STATE ~~by forwardable mail that includes a registration form so that the voter may update his or her registration or request a mail in ballot. The mailing shall be postage prepaid and have a returnable portion that is preaddressed to the sending county clerk and recorder.~~

Amendments to Rules 8.6, 8.7, and 8.8:

8.6 Watchers ~~shall be~~ ARE subject to the provisions of section 1-5-503, C.R.S.

- 8.6.1 THE "IMMEDIATE VOTING AREA" IS THE AREA THAT IS WITHIN SIX FEET OF THE VOTING EQUIPMENT, VOTING BOOTHS, AND THE BALLOT BOX.
- 8.6.2 THE DESIGNATED ELECTION OFFICIAL MUST POSITION THE VOTING EQUIPMENT, VOTING BOOTHS, AND THE BALLOT BOX SO THAT THEY ARE IN PLAIN VIEW OF THE ELECTION OFFICIALS AND WATCHERS.
- 8.6.3 WATCHERS ARE PERMITTED TO WITNESS AND VERIFY THE CONDUCT OF ELECTIONS AND RECOUNT ACTIVITIES. WITNESS AND VERIFY MEANS TO PERSONALLY OBSERVE ACTIONS OF ELECTION JUDGES IN EACH STEP OF THE CONDUCT OF AN ELECTION.
 - (A) THE CONDUCT OF ELECTION INCLUDES POLLING PLACE AND EARLY VOTING, AND BALLOT PROCESSING AND COUNTING.
 - (B) WATCHERS MUST REMAIN OUTSIDE THE IMMEDIATE VOTING AREA.
 - (C) WATCHERS MAY BE PRESENT AT EACH STAGE OF THE CONDUCT OF THE ELECTION, INCLUDING THE RECEIVING AND BUNDLING OF THE BALLOTS RECEIVED BY THE DESIGNATED ELECTION OFFICIAL.
 - (D) WATCHERS MAY BE PRESENT DURING PROVISIONAL BALLOT PROCESSING BUT

MAY NOT HAVE ACCESS TO CONFIDENTIAL VOTER INFORMATION.

- (E) THE NUMBER OF WATCHERS PERMITTED IN ANY ROOM AT ONE TIME IS SUBJECT TO LOCAL SAFETY CODES.

8.6.4 WATCHERS MAY WITNESS AND VERIFY ACTIVITIES DESCRIBED IN ARTICLE I, SECTION 7 THAT ARE OUTSIDE THE IMMEDIATE VOTING AREA, INCLUDING BALLOT PROCESSING AND COUNTING.

8.6.5 WATCHERS APPOINTED UNDER SECTION 1-10.5-101(1)(A), C.R.S., MAY OBSERVE THE CANVASS BOARD WHILE IT PERFORMS ITS DUTIES.

8.6.6 WATCHERS MAY TRACK THE NAMES OF ELECTORS WHO HAVE CAST BALLOTS, CHALLENGE ELECTORS UNDER SECTION 1-9-203, C.R.S., AND RULE 48, AND SUBMIT WRITTEN COMPLAINTS IN ACCORDANCE WITH SECTION 1-1.5.105, C.R.S., AND RULE 31.

8.7 ~~What Watchers May Observe. Duly appointed Watchers may observe polling place voting, early voting and the processing and counting of precinct, provisional, mail, and mail in ballots. For mail-ballot elections, or mail in ballot processing, watchers may be present at each stage of the election including the receiving and bundling of the ballots received by the designated election official. Watchers may be present during provisional ballot processing but may not have access to confidential voter information.~~ WATCHER OATH. IN ADDITION TO THE OATH REQUIRED BY SECTION 1-7-108(1), C.R.S., A WATCHER MUST AFFIRM THAT HE OR SHE WILL NOT:

8.7.1 ATTEMPT TO DETERMINE HOW ANY ELECTOR VOTED OR REVIEW CONFIDENTIAL VOTER INFORMATION;

8.7.2 DISCLOSE ANY CONFIDENTIAL VOTER INFORMATION THAT HE OR SHE MAY OBSERVE; OR

8.7.3 DISCLOSE ANY RESULTS BEFORE THE POLLS ARE CLOSED AND THE DESIGNATED ELECTION OFFICIAL HAS FORMALLY ANNOUNCED RESULTS.

8.8 Limitations of Watchers. ~~Duly appointed Watchers may observe election judges but~~ may not:

8.8.1 ~~interrupt~~ INTERRUPT or disrupt the processing, verification and counting of any ballots or any other stage of the election.

8.8.2 ~~Watchers may track the names of electors who have cast ballots by utilizing their previously obtained lists, but may not write~~ WRITE down any ballot numbers or any other identifying information about the electors.

8.8.3 ~~Watchers may not handle~~ HANDLE the poll books, official signature cards, ballots, mail ballot envelopes, mail-in ballot envelopes, ~~or~~ provisional ballot envelopes, voting or counting machines, or machine components.

8.8.4 ~~Watchers shall not interfere~~ INTERFERE with the orderly process and conduct of any election PROCESS, including ISSUANCE OF ballots-issuance, receiving of ballots, AND voting or counting of the ballots.

8.8.5 ~~Watchers may not be allowed to interact~~ INTERACT with election officials or election judges AS DEFINED IN SECTION 1-1-104(10), C.R.S., ~~except that each~~ EXCEPT FOR THE INDIVIDUAL designated BY THE election official. ~~shall name at least one individual in each~~

~~precinct polling place or election location to whom Watchers may direct questions or from whom watchers may seek requested information.~~

Amendments to Rule 8.15

8.15 Removal of ~~watchers~~ WATCHERS.

8.15.1 A DESIGNATED ELECTION OFFICIAL MAY REMOVE A WATCHER UPON FINDING THAT THE WATCHER:

- (A) ~~Watchers who commit, encourage, or connive in any~~ COMMITS OR ENCOURAGES fraud in connection with ~~their~~ HIS OR HER duties;; ~~who violate any of the election laws, who~~
- (B) ~~Violates any of these~~ ANY OF THE LIMITATIONS OUTLINED IN Rules 8.8;; ~~who~~
- (C) ~~Violates their~~ HIS OR HER oath;; ~~or who hamper or interfere with the election process may be removed by the designated election official.~~ OR
- (D) IS ABUSIVE OR THREATENING TOWARD ELECTION OFFICIALS OR VOTERS.

8.15.42 ~~If a watcher is removed~~ UPON REMOVAL OF A WATCHER, the designated election official shall ~~immediately~~ MUST inform the political party, candidate, or committee who appointed the watcher ~~via telephone, email, and/or other means.~~

8.15.23 A removed watcher may be replaced by an alternate watcher duly designated ~~pursuant to~~ IN ACCORDANCE WITH sections 1-7-105, 1-7-106, or 1-7-107, C.R.S. Any designated election official who removes a watcher shall ~~shall~~ MUST, to the best of his/her ~~THE~~ OFFICIAL'S ability, expeditiously certify the appointment of ~~any duly appointed person to replace a removed watcher.~~

Amendments to Rule 9.1:

Rule 9. Rules Concerning VOTING Assistance to ~~Disabled Voters~~ FOR ELECTORS WITH DISABILITIES

9.1 ~~A~~ THE COUNTY CLERK AND RECORDER MUST POST A sign AT THE POLLING PLACE OR VOTE CENTER ~~providing substantially as follows shall be posted at the polling place/vote center~~ THAT STATES:

NOTICE VOTING ASSISTANCE FOR ELECTORS WITH DISABILITIES

Colorado law ~~provides that a voter has~~ PROTECTS a VOTER'S legal right to assistance in voting if assistance is needed because of blindness, or other physical A disability. or inability to read or write. The following procedures apply:

1. ~~The voter must~~ IF YOU REQUIRE ASSISTANCE, PLEASE inform AN ELECTION JUDGE. ~~one of the election judges that he or she needs assistance.~~
2. ~~The voter may be assisted by any~~ ANY PERSON, INCLUDING AN election judge or by any eligible elector selected by the voter MAY ASSIST YOU.
3. ~~The person selected~~ IF YOU SELECT A PERSON OTHER THAN AN ELECTION JUDGE, HE OR SHE

must complete a VOTER ASSISTANCE FORM, WHICH INCLUDES AN OATH ~~'voter assistance/disabled voter self-affirmation form'~~ if all of the following apply THAT STATES:

- ~~The person selected is not an election judge; and~~
 - ~~The person selected is not the spouse, parent, grandparent, sibling or child eighteen years of age or older, of the voter requesting assistance; and~~
 - ~~The person selected has assisted any other voter at the same election in the same precinct. Section 1-7-111(1)(b), C.R.S.~~
 - ~~The self-affirmation form states, 'I, , certify that I am the individual chosen by the disabled elector to assist the disabled elector in casting a ballot.'~~
4. ~~The person selected~~ YOU SELECT may provide any assistance ~~needed by the voter~~ YOU NEED, including entering the voting booth, ~~and~~ preparing the ballot, or operating the voting machine.
 5. ~~The person providing assistance shall~~ ASSISTING YOU MAY not seek to persuade YOU or induce ~~the voter~~ YOU to vote in a particular manner.
 6. ~~The election judges~~ JUDGE ~~shall~~ MUST record the name of each eligible elector ~~assisted~~ VOTER WHO RECEIVES ASSISTANCE and the name of ~~each~~ THE person assisting ~~who~~ PROVIDES ASSISTANCE ~~by making an entry in the pollbook or list of eligible electors (or by making an entry on the signature card when IF preprinted signature cards are used in the place of a pollbook and list of eligible electors).~~

Amendments to Rule 10.6:

10.6 Printing primary election ballots.

10.6.1 If ~~any~~ A major political party, as defined in section 1-1-104(22.5), C.R.S., ~~has nominated~~ NOMINATES more than one candidate for any office, ~~whether by assembly or petition,~~ THE COUNTY CLERK AND RECORDER MUST CONDUCT the primary election ~~must be conducted~~ for all major political parties.

- (a) The county clerk must ~~print the ballot to include~~ ON THE BALLOT all offices to which candidates may be nominated in the primary election.
- (b) If there are no candidates ~~on the ballot~~ for any particular office, the county clerk must print ON THE BALLOT "There are no candidates for this office".

[Sections 1-4-101 and 1-4-104.5, C.R.S.; Election Rule 10.3]

10.6.2 If ~~any~~ A minor political party, as defined in section 1-1-104(23), C.R.S., ~~has nominated~~ more than one candidate for any office, ~~whether by assembly or petition,~~ THE COUNTY CLERK AND RECORDER MAY CONDUCT the primary election ~~must be conducted~~ for that party only.

- (a) The county clerk must ~~print the ballot to include~~ ON THE BALLOT only the ~~races~~ OFFICES for which there is more than one candidate ~~nominated~~ DESIGNATED.

- (b) If there is ~~not more than~~ ONLY one minor party candidate ~~nominated~~ DESIGNATED for any ~~race~~ OFFICE, the candidate ~~is~~ WILL BE certified to the general election ballot.

[Sections 1-4-101, 1-4-104.5(3), and 1-4-1304, C.R.S.]

New Rule 10.7

10.7 VOIDING BALLOTS DUE TO TIMELY CHANGES IN ADDRESS OR AFFILIATION.

10.7.1 IF AN ELECTOR SUBMITS A TIMELY ADDRESS OR AFFILIATION CHANGE AFTER THE COUNTY MAILES BALLOTS OR SENDS THE VOTER FILE TO THE VENDOR, THE COUNTY MUST VOID THE FIRST BALLOT AND GENERATE A SECOND BALLOT.

- (A) IF THE COUNTY PROCESSES THE CHANGE TO THE ELECTOR'S RECORD AFTER IT SENDS THE VOTER FILE TO THE VENDOR BUT BEFORE THE VENDOR PRINTS BALLOTS, THE COUNTY MUST PROVIDE THE VENDOR A VOIDED BALLOT FILE TO PREVENT THE VENDOR FROM PRINTING AND PREPARING VOIDED BALLOTS FOR MAILING.
- (B) IF THE COUNTY PROCESSES THE CHANGE TO THE ELECTOR'S RECORD AFTER THE VENDOR HAS PRINTED BALLOTS BUT BEFORE THE VENDOR MAILES BALLOTS, THE COUNTY MUST WORK WITH THE VENDOR TO MAKE EVERY REASONABLE EFFORT TO REMOVE VOIDED BALLOTS BEFORE THEY ENTER THE MAIL STREAM.

10.7.3 IF THE COUNTY MAILES ITS OWN BALLOTS, THE COUNTY CLERK MUST REMOVE ALL VOIDED BALLOTS BEFORE MAILING.

10.7.4 IF THE COUNTY PROCESSES THE CHANGE TO THE ELECTOR'S RECORD AFTER IT MAILES BALLOTS, THE COUNTY MUST COUNT THE FIRST BALLOT RETURNED BY THE ELECTOR EXCEPT AS FOLLOWS:

- (A) IN THE CASE OF AN AFFILIATION CHANGE, THE COUNTY MUST COUNT THE BALLOT ISSUED FOR THE NEW PARTY AFFILIATION.
- (B) IN THE CASE OF AN ADDRESS CHANGE THAT RESULTS IN A CHANGE OF PRECINCT, THE COUNTY MUST COUNT THE BALLOT ISSUED FOR THE ELECTOR'S NEW ADDRESS.

Amendments to Rule 12.4.1(a):

12.4 Mail Ballot Plans

12.4.1 Coordinated and non-partisan elections.

- (a) Written plan. ~~As soon as possible, but~~ THE DESIGNATED ELECTION OFFICIAL MUST SUBMIT A MAIL BALLOT PLAN TO THE SECRETARY OF STATE no later than 55 days ~~prior to~~ BEFORE any other election, ~~not including~~ NONPARTISAN ELECTION, AND 90 DAYS BEFORE ANY ELECTION THAT IS COORDINATED WITH OR CONDUCTED BY THE COUNTY CLERK AND RECORDER. ~~a Primary Election, a written plan~~ THE DESIGNATED ELECTION OFFICIAL must be submitted to the Secretary of State which USE THE APPROVED MAIL BALLOT PLAN TEMPLATE THAT includes the following:

Amendments to Rule 12.4.1(b)(2):

- (2) Recall election. If a non-partisan recall election ~~is to~~ WILL be held as a mail ballot election, ~~the governing body~~ THE DESIGNATED ELECTION OFFICIAL ~~shall~~ MUST submit a written plan to the Secretary of State within ~~three business-FIVE CALENDAR days of~~ AFTER calling the election. The Secretary of State ~~WILL shall~~ notify the governing body of the approval or ~~disapproval~~ APPROVE OR DISAPPROVE of the plan within ~~two business-FIVE CALENDAR days OF RECEIPT IN ACCORDANCE WITH SECTION 1-12-111.5, C.R.S.~~

New Rule 12.4.1(d):

- (D) REQUEST FOR BALLOT BY INACTIVE – FAILED TO VOTE ELECTOR. IN A COORDINATED OR NONPARTISAN ELECTION, THE DESIGNATED ELECTION OFFICIAL MAY NOT MAIL A BALLOT TO AN ELECTOR WHOSE REGISTRATION RECORD IS MARKED INACTIVE – FAILED TO VOTE UNTIL THE ELECTOR SUBMITS A REGISTRATION UPDATE OR A REQUEST FOR A BALLOT UNDER SECTION 1-7.5-107(3), C.R.S., AND RULE 12.11.

Amendments to Rule 12.4.2(a):

12.4.2 Primary Elections conducted as a mail ballot election.

- (a) Written plan. ~~Pursuant to Article 7.5 of Title 1, C.R.S., no later than 120 days prior to the election~~ The county clerk and recorder must submit a ~~written~~ MAIL BALLOT plan to the Secretary of State NO LATER THAN 90 DAYS BEFORE THE ELECTION. THE COUNTY CLERK MUST USE THE APPROVED MAIL BALLOT PLAN TEMPLATE that includes the following:

Amendments to Rule 12.11:

12.11 Request for a replacement ballot by an active elector and request for a ballot by an inactive elector

12.11.1 ~~Requests may be made~~ AN ELECTOR MAY REQUEST A REPLACEMENT BALLOT in-person beginning on the twenty-second day before the election and ~~until~~ ENDING AT 7:00 p.m., MT on election day. If the elector ~~wishes~~ REQUESTS to receive the ballot by mail, ~~the~~ HE OR SHE MUST MAKE THE request ~~must be received~~ no later than the close of business on the seventh day before the election.

~~(a) An active elector may request a replacement ballot in person, by mail, fax, email, or telephone.~~

~~(i) The elector shall complete a self affidavit, as required by section 1-7.5-107(3)(d)(I), C.R.S., on a form provided by the designated election official.~~

~~(ii) If the elector requests that the replacement ballot be mailed, the self affidavit may be included in the ballot packet, and must be completed and received by the designated election official on or before 7:00 p.m. MT on election day.~~

- ~~(iii) The outside of the return envelope shall indicate that the self affidavit required by this Rule must be returned with the voted ballot. No replacement ballot shall be counted until it has been determined that an affidavit has been completed and returned by the deadline.~~
 - ~~(b) Except as otherwise provided in section 1-7.5-107(3)(c), C.R.S., an inactive elector may make a written request for a ballot in person, by mail, fax, or email. The request must include the elector's name, date of birth, residence address, and signature, and must be received by the designated election official before the ballot is issued. At the time the request is received the elector's record will be marked active.~~
- 12.11.2 If an elector moved at least 30 days before the election, he or she may include the address change with the ballot request.
- 12.11.3 REQUEST FOR A REPLACEMENT BALLOT BY AN ACTIVE ELECTOR. AN ACTIVE ELECTOR MAY REQUEST A REPLACEMENT BALLOT IN PERSON, BY MAIL, FAX, EMAIL, OR TELEPHONE.
 - (A) THE ELECTOR MUST COMPLETE THE SELF-AFFIDAVIT ON THE APPROVED FORM.
 - (B) IF THE ELECTOR REQUESTS TO RECEIVE THE REPLACEMENT BALLOT BY MAIL, THE DESIGNATED ELECTION OFFICIAL MAY INCLUDE THE SELF-AFFIDAVIT IN THE MAIL BALLOT PACKET. THE ELECTOR MUST COMPLETE AND RETURN THE SELF-AFFIDAVIT NO LATER THAN 7:00 P.M. MT ON ELECTION DAY.
 - (C) THE DESIGNATED ELECTION OFFICIAL MUST INDICATE ON THE OUTSIDE OF THE RETURN ENVELOPE THAT THE ELECTOR MUST COMPLETE AND RETURN THE SELF-AFFIDAVIT.
 - (D) THE DESIGNATED ELECTION OFFICIAL MAY NOT COUNT A REPLACEMENT BALLOT UNLESS THE ELECTOR COMPLETED AND RETURNED THE SELF-AFFIDAVIT BY THE DEADLINE.
- 12.11.4 AN INACTIVE ELECTOR IN A NONPARTISAN MAIL BALLOT ELECTION WILL BE ISSUED A BALLOT IF THE ELECTOR SUBMITS A REGISTRATION UPDATE OR A BALLOT REQUEST.
 - (A) THE INACTIVE ELECTOR MUST SUBMIT A REGISTRATION UPDATE OR A WRITTEN REQUEST FOR A BALLOT BEFORE THE DESIGNATED ELECTION OFFICIAL MAY MARK THE ELECTOR'S RECORD ACTIVE AND ISSUE THE BALLOT.
 - (B) THE ELECTOR MAY SUBMIT A REGISTRATION UPDATE OR WRITTEN REQUEST FORM ONLINE, IN PERSON, BY MAIL, FAX, OR EMAIL.
 - (C) THE WRITTEN REQUEST FORM MUST INCLUDE THE ELECTOR'S NAME, DATE OF BIRTH, RESIDENCE ADDRESS, AND SIGNATURE.
- 12.11.5 A MILITARY OR OVERSEAS ELECTOR WHOSE REGISTRATION RECORD IS INACTIVE OR WHOSE BALLOT REQUEST HAS LAPSED MAY DOWNLOAD AN APPLICATION AND BALLOT USING THE ELECTRONIC BALLOT DELIVERY SYSTEM.
 - (A) THE ELECTOR MUST SUBMIT THE BALLOT AND APPLICATION IN ACCORDANCE

WITH THE DEADLINES IN SECTION 1-8.3-111 AND 1-8.3.113, C.R.S., FOR THE BALLOT TO BE COUNTED.

(B) EVERY COUNTY MUST USE THE APPROVED ELECTRONIC DELIVERY SYSTEM TO IMPLEMENT THIS RULE, EXCEPT THAT A COUNTY MAY OBTAIN A WAIVER. THE SECRETARY WILL CONSIDER THE FOLLOWING FACTORS IN APPROVING OR DENYING A REQUEST FOR WAIVER:

- I. NUMBER OF MILITARY OR OVERSEAS ELECTORS REGISTERED TO VOTE IN THE COUNTY;
- II. HISTORICAL DATA REGARDING THE NUMBER OF MILITARY AND OVERSEAS ELECTORS WHO HAVE REGISTERED AND VOTED IN THE COUNTY; AND
- III. STAFF OR OTHER RESOURCE LIMITATIONS.

12.11.6 IF A COUNTY CLERK AND RECORDER CONDUCTS A PRIMARY ELECTION BY MAIL BALLOT, HE OR SHE MUST MAIL A BALLOT TO AN ELECTOR WHOSE RECORD IS MARKED INACTIVE – FAILED TO VOTE IN ACCORDANCE WITH SECTION 1-7.5-107(3)(A)(II)(A), C.R.S.

New Rules 13.19 and 13.20:

13.19 FOR ANY ELECTION THAT IS NOT A PRIMARY MAIL BALLOT ELECTION, THE DESIGNATED ELECTION OFFICIAL MAY NOT ISSUE A MAIL-IN BALLOT TO AN ELECTOR WHOSE RECORD IS MARKED INACTIVE – FAILED TO VOTE UNTIL THE ELECTOR SUBMITS A TIMELY APPLICATION FOR A MAIL-IN BALLOT.

13.20 A MILITARY OR OVERSEAS ELECTOR WHOSE REGISTRATION RECORD IS INACTIVE OR WHOSE BALLOT REQUEST HAS LAPSED MAY DOWNLOAD AN APPLICATION AND BALLOT USING THE ELECTRONIC BALLOT DELIVERY SYSTEM.

13.20.1 THE ELECTOR MUST SUBMIT THE BALLOT AND APPLICATION IN ACCORDANCE WITH THE DEADLINES IN SECTION 1-8.3-111 AND 1-8.3.113, C.R.S., FOR THE BALLOT TO BE COUNTED.

13.20.2 EVERY COUNTY MUST USE THE APPROVED ELECTRONIC DELIVERY SYSTEM TO IMPLEMENT THIS RULE, EXCEPT THAT A COUNTY MAY OBTAIN A WAIVER. THE SECRETARY WILL CONSIDER THE FOLLOWING FACTORS IN APPROVING OR DENYING A REQUEST FOR WAIVER:

- (A) NUMBER OF MILITARY OR OVERSEAS ELECTORS REGISTERED TO VOTE IN THE COUNTY;
- (B) HISTORICAL DATA REGARDING THE NUMBER OF MILITARY AND OVERSEAS ELECTORS WHO HAVE REGISTERED AND VOTED IN THE COUNTY; AND
- (C) STAFF OR OTHER RESOURCE LIMITATIONS.

Repeal and relocate Rule 26.1.6

26.1.6 ~~Voter Access to Provisional Ballot Information Required by section 1-8.5-111, C.R.S.~~

~~26.1.6.1 The system shall be made available to the voter for no less than thirty (30) days following the date of the election.~~

~~26.1.6.2 The system shall provide access to information at no cost to the voter, regardless of the voter's location, by toll free telephone call, internet website, or other suitable medium, pursuant to 1-8.5-111, C.R.S. REPEALED.~~

Amendments to Rule 26.10:

26.10 Treatment of the provisional ballot affidavit as an application for, or a change to registration

26.10.1 If AN ELECTOR IS NOT REGISTERED TO VOTE AND HE OR SHE COMPLETES a provisional ballot affidavit, ~~is treated as~~ THE COUNTY CLERK AND RECORDER MUST TREAT THE AFFIDAVIT AS an application for registration for future elections. ~~in accordance with section 1-8.5-103(2), C.R.S., such~~ THE application shall be IS subject to the requirements ~~for~~ OF any other voter registration application.

26.10.2 ~~In the case of an~~ IF A REGISTERED elector ~~who is registered, if the~~ COMPLETES A provisional ballot affidavit THAT contains changes to the elector's registration, ~~his or her record shall be updated~~ THE COUNTY CLERK AND RECORDER MUST UPDATE THE ELECTOR'S REGISTRATION RECORD accordingly BEFORE MARKING THE PROVISIONAL BALLOT AS ACCEPTED OR REJECTED IN THE STATEWIDE VOTER REGISTRATION DATABASE AND BEFORE LINKING IT TO THE ELECTOR'S RECORD.

26.10.3 If THE COUNTY CLERK AND RECORDER ~~a provisional ballot is counted because it was determined that an elector was~~ cancelled or consolidated AN ELECTOR'S RECORD in error, THE CLERK MUST REINSTATE OR UNCONSOLIDATE AND UPDATE the elector's record ~~shall be reinstated or unconsolidated and updated accordingly~~ BEFORE MARKING THE ELECTOR'S PROVISIONAL BALLOT AS ACCEPTED OR REJECTED IN THE STATEWIDE VOTER REGISTRATION DATABASE AND BEFORE LINKING IT TO THE ELECTOR'S RECORD.

New Rule 26.11:

26.11 PROCESSING PROVISIONAL BALLOT AFFIDAVITS IN THE STATEWIDE VOTER REGISTRATION DATABASE. BEFORE CLOSING AN ELECTION, THE COUNTY CLERK AND RECORDER MUST:

26.11.1 ENTER ALL PROVISIONAL BALLOT AFFIDAVITS INTO THE PROVISIONAL MODULE OF THE STATEWIDE VOTER REGISTRATION DATABASE.

26.11.2 LINK ALL PROVISIONAL BALLOT AFFIDAVITS TO THE APPROPRIATE ELECTOR'S RECORD.

New Rule 26.12:

26.12 THE COUNTY CLERK AND RECORDER MUST PROCESS ALL POLLBOOKS OR SIGNATURE CARDS IN THE STATEWIDE VOTER REGISTRATION DATABASE BEFORE PROCESSING PROVISIONAL BALLOTS.

New Rule 26.13:

26.13 VOTER ACCESS TO PROVISIONAL BALLOT INFORMATION

26.13.1 THE SECRETARY OF STATE WILL PROVIDE A PROVISIONAL BALLOT LOOKUP ON THE SECRETARY'S WEBSITE.

26.13.2 THE COUNTY CLERK AND RECORDER MUST NUMBER THE PROVISIONAL BALLOT ENVELOPE OR AFFIDAVIT STOCK USING THE STANDARD NUMBERING CONVENTION APPROVED BY THE SECRETARY OF STATE.

26.13.3 AN ELECTOR MAY ACCESS THE SYSTEM DURING THE 45 DAYS FOLLOWING THE ELECTION.

[SECTION 1-8.5-111, C.R.S.]

Amendments to Rule 29.1.1:

29.1.1 ~~When the election judge reviews the~~ If A mail, MAIL-IN, OR PROVISIONAL ballot return envelope pursuant to ~~section 1-7.5-107.3, C.R.S., or mail-in ballot return envelope pursuant to section 1-8-114.5, C.R.S., or the provisional ballot return envelope pursuant to section 1-8.5-105(3)(a), C.R.S., and notices that the envelope lacks a signature, the~~ election judge shall MUST contact the eligible elector in writing no later than two calendar days after election day. THE DESIGNATED ELECTION OFFICIAL MUST USE THE LETTER AND FORM PRESCRIBED BY THE SECRETARY OF STATE AND KEEP A COPY OF THE WRITTEN notification shall be kept in an official file, which shall become AS part of the official election record. Nothing in this rule shall be construed to prohibits the designated election official from calling the elector; however, BUT a phone call shall MAY not substitute for notification to the elector in writing WRITTEN CONTACT. IF THE DESIGNATED ELECTION OFFICIAL CALLS ANY ELECTOR HE OR SHE MUST CALL ALL ELECTORS WHOSE AFFIDAVITS ARE UNSIGNED.

[SECTIONS 1-7.5-107.3, 1-8-114.5, AND 1-8.5-105(3)(A), C.R.S.]

Amendments to Rules 29.1.3 and 29.1.4:

29.1.3 The letter AND MISSING SIGNATURE AFFIDAVIT FORM ~~sent by the election official shall~~ DOES not constitute a violation of VIOLATE section 1-13-801, C.R.S.

29.1.4 The LETTER OR MISSING SIGNATURE AFFIDAVIT form shall MUST include the following language:

“Any person who knowingly violates any of the provisions of the election code relative to the casting of ballots or who aids or abets fraud in connection with any vote cast, or to be cast, or attempted to be cast shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment. Section 1-13-803, C.R.S.”

Amendments to Rule 29.8:

29.8 The ELECTION OFFICIAL MUST USE THE ~~form of the letter as well as~~ AND the SIGNATURE VERIFICATION form ~~sent to the elector shall be approved by the Secretary of State. pursuant to section 1-1-109, C.R.S.~~

29.9 The letter AND SIGNATURE VERIFICATION FORM ~~sent by the election official shall~~ DOES not constitute a violation of VIOLATE section 1-13-801 C.R.S.

Amendments to Rule 30.1.6(a):

30.1.6 "ID" as used in these rules ~~shall mean~~ A COPY OF ANY OF THE FOLLOWING identification as defined in ~~compliance with~~ section 1-1-104(19.5), C.R.S., ~~as a copy of one of the following:~~

- (a) A valid Colorado driver's license;
- (b) A valid identification card issued by the Department of Revenue in accordance with the requirements of Part 3 of Article 2 of Title 42, C.R.S.;
- (c) A valid U.S. passport;
- (d) A valid employee identification card with a photograph of the eligible elector issued by any branch, department, agency, or entity of the United States government or of this state, or by any county, municipality, board, authority, or other political subdivision of this state;
- (e) A valid pilot's license issued by the federal aviation administration or other authorized agency of the United States;
- (f) A valid U.S. military identification card with a photograph of the eligible elector;
- (g) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector. For example:
 - (I) A cable bill or telephone bill;
 - ~~(II) Documentation from a public institution of higher education in Colorado containing at least the name, date of birth, and legal residence address of the student elector;~~
 - ~~(III) A paycheck from a government institution or private company; OR~~
 - ~~(IV-III) A Certificate of Degree of Indian or Alaskan Native Blood; or~~
 - ~~(V) A valid identification card issued by a federally recognized tribal government certifying tribal membership.~~
- (h) A valid Medicare or Medicaid card issued by the Centers for Medicare and Medicaid Services (formerly the United States Health Care Financing Administration);
- (i) A certified copy of a U.S. birth certificate for the elector issued in the United States;
- (j) Certified documentation of naturalization; or
- (k) A valid student identification card with a photograph of the eligible elector issued by an institute of higher education in Colorado, as defined in section 23-3.1-102(5), C.R.S.;

- (L) A VALID VETERAN IDENTIFICATION CARD ISSUED BY THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS VETERANS HEALTH ADMINISTRATION WITH A PHOTOGRAPH OF THE ELIGIBLE ELECTOR; OR
- (M) A VALID IDENTIFICATION CARD ISSUED BY A FEDERALLY RECOGNIZED TRIBAL GOVERNMENT CERTIFYING TRIBAL MEMBERSHIP.

Repeal and renumber Rules 32.1, 32.2, 32.3, and 32.4:

- 32.1 ~~In any recall election of a partisan office, the successor nominee's party affiliation shall be listed with his or her name on the ballot.~~ REPEALED.
- 32.23 ~~Petition sufficiency occurs when upon review, it is established that the petition contains the required number of valid signatures.~~ REPEALED.
- 32.34 ~~When a protest is filed, petition sufficiency is sustained upon conclusion of the protest when the designated election official or the district judge maintains that there are sufficient valid signatures.~~ REPEALED.
- 32.45 ~~When an officer subject to being recalled resigns within the five days after the sufficiency of the recall petition has been sustained, the recall election does not go forward, and the position is declared vacant and filled according to statute.~~ REPEALED.

Amendments to Rule 41:

Rule 41. Rules Concerning Canvassing

41.1 Definitions

- (a) ~~"Canvass" shall means the audit function of the election and the process of reconciling the number of ballots counted to the number of voters who voted. The canvass also includes the process of reconciling detailed ballot logs and Statement of Ballots Forms.~~
- 41.1.1 "CANVASS BOARD" MEANS A COMMITTEE COMPOSED OF THE COUNTY CLERK AND RECORDER AND THE REGISTERED ELECTORS APPOINTED BY THE MAJOR PARTIES IN ACCORDANCE WITH SECTION 1-10-101, C.R.S.
- (b) 41.1.2 "Canvass workers" ~~shall~~ means workers appointed or hired by the designated election official to assist in the preparation and conduct of the canvass.
- 41.1.3 "Statement of Ballots Forms" ~~shall~~ means the form used at the polling location pursuant to sections 1-7-505(2) and 1-7-601(2), C.R.S., that accounts for all ballots at that location AND INCLUDES ALL INFORMATION REQUIRED BY THIS RULE. ~~The form includes information required by this rule.~~

41.2 APPOINTMENT TO THE CANVASS BOARD

- 41.2.1 IN ALL CASES, THE CANVASS BOARD MUST CONSIST OF AN ODD NUMBER OF MEMBERS, AND EACH MEMBER HAS EQUAL VOTING RIGHTS.
- 41.2.2 FOR A PARTISAN ELECTION, EACH MAJOR PARTY MAY HAVE NO MORE THAN TWO REPRESENTATIVES ON THE CANVASS BOARD. THE BOARD MUST INCLUDE AN EQUAL NUMBER OF REPRESENTATIVES FROM EACH MAJOR PARTY, UNLESS A MAJOR PARTY

FAILS TO CERTIFY REPRESENTATIVES FOR APPOINTMENT.

41.2.3 EACH MAJOR PARTY REPRESENTATIVE ON THE CANVASS BOARD MUST BE REGISTERED TO VOTE IN THE COUNTY WHERE THE REPRESENTATIVE WILL SERVE AND AFFILIATED WITH THE PARTY HE OR SHE REPRESENTS.

41.2.4 A CANDIDATE FOR OFFICE AND MEMBERS OF THE CANDIDATE'S IMMEDIATE FAMILY MAY NOT SERVE ON THE CANVASS BOARD.

41.3 DUTIES OF THE CANVASS BOARD

41.3.1 THE CANVASS BOARD MUST MAKE ITS DETERMINATIONS BY MAJORITY VOTE IN ACCORDANCE WITH SECTION 1-10-101.5(3), C.R.S.

41.3.2 THE CANVASS BOARD'S DUTIES ARE:

(A) CONDUCT THE CANVASS IN ACCORDANCE WITH SECTION 1-10.5-101, C.R.S., INCLUDING:

I. ACCOUNT AND BALANCE THE ELECTION AND CERTIFY THE OFFICIAL ABSTRACT OF VOTES;

II. RECONCILE THE NUMBER OF BALLOTS COUNTED TO THE NUMBER OF BALLOTS CAST; AND

III. RECONCILE THE NUMBER OF BALLOTS CAST TO THE NUMBER OF VOTERS WHO VOTED BY REVIEWING THE RECONCILED DETAILED BALLOT LOGS AND STATEMENT OF BALLOTS;

(B) OBSERVE THE POST-ELECTION AUDIT IN ACCORDANCE WITH SECTION 1-7-514(4), C.R.S., AND ELECTION RULE 11.5.4;

(C) IN COORDINATION WITH THE COUNTY CLERK AND RECORDER, INVESTIGATE AND REPORT DISCREPANCIES FOUND IN THE AUDIT UNDER SECTION 1-7-514(2), C.R.S.; AND

(D) CONDUCT ANY RECOUNT IN ACCORDANCE WITH SECTION 1-10.5-107, C.R.S., AND ELECTION RULE 14. THE CANVASS BOARD'S ROLE IN CONDUCTING A RECOUNT INCLUDES SELECTING BALLOTS FOR THE RANDOM TEST, OBSERVING THE RECOUNTING OF BALLOTS, AND CERTIFYING THE RESULTS.

41.3.3 IF THE BOARD IDENTIFIES A DISCREPANCY IN THE STATEMENT OF BALLOTS, THE BOARD MAY REVIEW THE PARTICULAR BALLOTS AT ISSUE TO IDENTIFY, CORRECT, AND ACCOUNT FOR THE ERROR.

41.3.4 THE CANVASS BOARD MAY NOT PERFORM DUTIES TYPICALLY RESERVED FOR ELECTION JUDGES, INCLUDING:

(A) DETERMINING VOTER INTENT;

(B) EVALUATING VOTER ELIGIBILITY; AND

- (C) REQUESTING NEW LOGS OR REPORTS THAT WERE NOT CREATED TO CONDUCT THE ELECTION.

41.24 Detailed Ballot Log

- 41.24.1 The designated election official ~~shall~~ MUST keep a detailed BALLOT log THAT ACCOUNTS FOR EVERY BALLOT ISSUED AND RECEIVED ~~of all ballots. The designated election official shall beginning the log as soon as~~ WHEN ballots are ordered and received. ~~The log shall include the polling location and/or precinct number(s), ballot style(s), and account for every ballot that is received and distributed.~~ The ELECTION JUDGES MUST RECONCILE THE ~~detailed ballot log shall be reconciled~~ at the conclusion of each workday.
- 41.24.2 The designated election official ~~shall~~ MUST keep and reconcile daily logs of mail-in, mail, and early voting ballots.
- 41.24.3 The designated election official ~~shall~~ MUST indicate in the detailed log the number of paper ballots that are sent to each polling location for use on election day.
- 41.24.4 THE DESIGNATED ELECTION OFFICIAL MUST KEEP All-required logs ~~may be kept either by~~ IN EITHER electronic or manual ~~means~~ FORMAT.

41.35 Election Day Tracking Process

- 41.35.1 The designated election official ~~shall~~ MUST supply each polling location with a Statement of Ballots Form. ~~Combined precincts may use one form. The form MUST include a place for the judges to account for the following information:~~
- (a) The name or number(s) of the precinct or vote center;
 - (b) The number of ballots provided to the polling location;
 - (c) The number of ballots cast;
 - (d) The number of unvoted ballots;
 - (e) The number of damaged or spoiled ballots; and
 - (f) The number of voted provisional ballots.
- 41.35.2 The ELECTION JUDGE MUST RECONCILE THE total number of voted ballots ~~should be reconciled to~~ WITH the number of voters who voted.
- 41.35.3 The ELECTION JUDGE MUST VERIFY THAT THE total number of voted ballots, spoiled or damaged ballots, provisional ballots, and unvoted ballots ~~should be reconciled to be the same as~~ IS THE SAME AS the number of total ballots ~~received at~~ SUPPLIED TO the polling location ~~before voting begins~~.
- 41.35.4 The ~~designated election official shall~~ ELECTION JUDGE MUST ~~ensure that the total of~~ RECONCILE the number of people who signed the pollbook ~~is reconciled to~~ the total of the number of ballots cast.

- 41.35.5 If there is a discrepancy in the numbers on the Statement of Ballots form, the judge ~~shall~~ MUST EXPLAIN THE DISCREPANCY IN WRITING ~~make written notation explaining why the numbers do not balance~~ (for example, THE voter signed in but left the polling place without voting, etc.).
- 41.35.6 The ~~judges~~ JUDGE ~~shall~~ MUST return the completed Statement of Ballots form to the designated election official with the other precinct supplies and mail a duplicate copy ~~pursuant to section 1-7-505, C.R.S.~~ TO THE DESIGNATED ELECTION OFFICIAL'S OFFICE.
- 41.46 Designated Election Official's Disposition of Forms
- 41.46.1 The designated election official ~~shall~~ MUST review the Statement of Ballots form and ~~ensure that it is complete and correct~~ FOR COMPLETION AND ACCURACY.
- 41.46.2 If the designated election official or the canvass board discovers a problem with the Statement of Ballots form that cannot be easily resolved, THEY ~~he or she shall have the right to~~ MAY contact the election judges and ~~ensure that~~ FOR AN EXPLANATION OR CORRECTION ~~the discrepancy is explained or corrected~~.
- 41.57 Procedures for the Day of the Canvass
- 41.57.1 ~~In order for the canvass board established pursuant to section 1-10-101, C.R.S., to perform its duties, pursuant to section 1-10-101.5, C.R.S.,~~ THE designated election official ~~shall~~ MUST provide the following information TO THE CANVASS BOARD:
- (a) The name of each candidate ~~receiving votes, the office, and the total number of~~ votes received;
 - (b) The number/letter of each ballot issue or question and ~~the~~ votes received;
 - (c) The number of voters who voted early;
 - (d) The number of mail-in or mail ballots cast, including the number accepted and rejected; AND
 - (e) The number of provisional ballots counted.
- ~~41.5.2 The canvass board shall confirm that the number of ballots cast is less than or equal to the number of people who actually voted in each precinct or vote center.~~
- ~~41.5.3 The designated election official shall use a canvass form that is approved by the Secretary of State.~~
- 41.57.4-2 Any written documentation regarding official numbers ~~shall be~~ IS included as part of the canvass.
- 41.68 Official Abstract
- 41.68.1 The designated election official ~~shall~~ MUST ~~ensure that~~ INCLUDE the number of active ELIGIBLE voters on election day ~~pursuant to section 1-10-105(5)(c), C.R.S., is the number used on the official abstract.~~

- 41.68.2 The CANVASS BOARD MUST USE THE official abstract ~~shall be compiled on~~ IN a format approved by the Secretary of State.
- 41.68.3 The official abstract ~~shall~~ MUST include, by precinct/ballot style or vote center, where applicable:
- (a) The statement of votes counted by race and ballot question or issue;
 - (b) The total active registered electors in the precinct and the total for the jurisdiction holding the election;
 - (c) The total number of electors voting in each precinct, and the total for the jurisdiction holding the election;
 - (d) The number of voters who voted early;
 - (e) The number of emergency registrations;
 - (f) The number of mail-in or mail ballots counted and the number rejected;
 - (g) The number of provisional ballots counted and the number rejected listed by each rejection code ~~pursuant to Rule 26.5.4~~; and
 - (h) The number of damaged and spoiled ballots.
- 41.79 The Abstract ~~shall be~~ IS the Official, Permanent Record.
- 41.79.1 The designated election official ~~shall~~ MUST keep all official canvass reports and forms as part of the official permanent election record.
- 41.9.2 ONCE THE CANVASS BOARD CERTIFIES THE ABSTRACT IT MAY NOT WITHDRAW THE CERTIFICATION. IN THE EVENT OF A RECOUNT, THE CANVASS BOARD MAY ONLY AFFIRM OR AMEND THE ABSTRACT.
- 41.810 Appointment of Canvass Workers. ~~41.10.1~~——The designated election official may ~~utilize~~ APPOINT canvass workers to ~~assist in the preparation~~ HELP PREPARE and conduct of the canvass.
- 41.911 Voter History
- 41.911.1 After the canvass ~~process is completed~~, the designated election official ~~shall~~ MUST give credit to each voter who votes by mail, at an early voting site, or at a polling location.
- 41.911.2 If the voter history records do not match the number of voters who voted at that election, the designated election official ~~shall~~ MUST ensure the following:
- (a) Each voter ~~was given~~ RECEIVED credit for voting; and
 - (b) All pollbooks and signature cards are accounted for.
- 41.911.3 All research concerning discrepancies ~~shall~~ MUST be explained and documented.

41.1012 Written Complaints. ~~In accordance with section 1-7-514(2)(b), C.R.S., the~~ THE designated election official ~~shall~~ MUST provide to the canvass board WITH any written complaint ~~about a voting device submitted by a registered elector ABOUT A VOTING DEVICE, and,~~

41.12.1 ~~if~~ IF THE COMPLAINT IS resolved, ~~how it was resolved and if~~ THE DESIGNATED ELECTION OFFICIAL MUST PROVIDE THE DETAILS OF THE RESOLUTION

41.12.2 IF THE COMPLAINT IS pending RESOLUTION WHEN THE BOARD MEETS TO CONDUCT THE CANVASS, THE DESIGNATED ELECTION OFFICIAL MUST PROVIDE a proposal for how the issue will be resolved.

41.13 ROLE OF WATCHERS. WATCHERS APPOINTED UNDER SECTION 1-10.5-101(1)(A), C.R.S., MAY OBSERVE THE BOARD WHILE IT PERFORMS ITS DUTIES, SUBJECT TO RULE 8.

41.14 ROLE OF THE SECRETARY OF STATE. AS PART OF THE SECRETARY'S DUTIES UNDER SECTION 1-1-107, C.R.S., THE SECRETARY MAY PROVIDE GUIDANCE AND INVESTIGATE IMPERFECTIONS AS OUTLINED BELOW.

41.14.1 THE COUNTY CLERK AND RECORDER OR THE CANVASS BOARD MAY REQUEST THAT THE SECRETARY OF STATE PROVIDE GUIDANCE AND SUPPORT TO THE CANVASS BOARD IN THE EXERCISE OF THE BOARD'S DUTIES.

41.14.2 IF, IN THE COURSE OF ASSISTING A CANVASS BOARD, THE SECRETARY OF STATE DISCOVERS AN IMPERFECTION THAT THE SECRETARY BELIEVES MAY AFFECT THE CONDUCT OF OTHER CANVASS BOARDS, THE SECRETARY MAY PROVIDE NOTICE TO OTHER COUNTIES REGARDING THE NATURE OF THE IMPERFECTION.

41.14.3 IMPERFECT RETURNS OR FAILURE TO CERTIFY.

(A) IF THE CANVASS BOARD FAILS TO CERTIFY OR CERTIFIES IMPERFECT RETURNS THAT HAVE NO REASONABLE POTENTIAL TO CHANGE THE OUTCOME OF ANY RACE OR BALLOT MEASURE, THE SECRETARY OF STATE AND COUNTY CLERK MUST CERTIFY THE ELECTION AND ORDER RECOUNTS, IF ANY, IN ACCORDANCE WITH PART 1, ARTICLE 11 OF TITLE 1, C.R.S.

(B) IF THE CANVASS BOARD FAILS TO CERTIFY OR CERTIFIES IMPERFECT RETURNS THAT HAVE A REASONABLE POTENTIAL TO CHANGE THE OUTCOME OF ANY RACE OR BALLOT MEASURE, THE SECRETARY OF STATE WILL CONDUCT AN INVESTIGATION TO IDENTIFY THE NATURE OF, AND ADVISE THE COUNTY CLERK AND RECORDER IN CORRECTING, THE INACCURACY.

Amendments to Rule 42.2:

42.2 "Electronic Transfer" ~~shall means the use of facsimile and shall not include the use of FAX OR e-mail under (section 1-8-115, C.R.-S.).~~

Amendments to Rule 42.6:

42.6 The transmission ~~shall~~ MUST also include a mail-in ballot self-affirmation ~~pursuant to 1-8-114 (1) C.R.S.~~

Amendments to Rule 42.11.2:

42.11.2 If the designated election official is unable to provide a mail-in ballot to an elector by any other means, the designated election official may ~~seek authority from the Secretary of State to provide a SEND AN EMERGENCY mail-in ballot to the elector under section 1-8-115(4), C.R.S., and this Rule.~~

Repeal Rules 42.11.3, 42.11.4, 42.11.5, 42.11.6, and 42.11.7:

42.11.3 ~~No later than 21 days prior to the election, the Secretary of State will post on its website and email counties a designated point of contact for each election for Emergency Electronic Transfer Requests. REPEALED.~~

42.11.4 ~~A request to send a ballot by electronic transfer must be submitted to the designated point of contact via email using the approved Emergency Electronic Transfer form posted on the Secretary of State website. If possible, the designated election official should attempt to consolidate requests to the Secretary of State. REPEALED.~~

42.11.5 ~~At a minimum, a request for an emergency electronic transfer shall include:~~

- ~~(a) — Contact information, including name, address, phone number, fax number, and e-mail address for the designated election official or their designee;~~
- ~~(b) — Date and time of request sent by designated election official;~~
- ~~(c) — Confirmation e-mail to designated election official by Secretary of State upon receipt of request~~
- ~~(d) — Justification as to why the ballot(s) need to be sent by fax, which includes the following required information:
 - ~~(i) — The elector's name;~~
 - ~~(ii) — When the elector applied for the mail-in ballot;~~
 - ~~(iii) — The date when the designated election official sent the mail-in ballot to the elector (if applicable);~~
 - ~~(iv) — The date the elector contacted the designated election official with information regarding failure to receive the ballot;~~
 - ~~(v) — A suggested timeframe for the Secretary of State to respond;~~
 - ~~(vi) — The quantity of ballots to be sent by fax; and~~
 - ~~(vii) — Approval or disapproval by the Secretary of State; if denied, reason for the denial.~~~~
- ~~(e) — Confirmation e-mail from the designated election official to Secretary of State upon receipt of approval or disapproval. REPEALED.~~

42.11.6 ~~The Secretary of State shall respond in writing to the designated election official as soon as possible, but no later than eight business hours after receipt of the request. REPEALED.~~

~~42.11.7 The Secretary of State shall have the ability to issue a blanket approval by electronic transfer. REPEALED.~~

II. Basis, Purpose, and Specific Statutory Authority

A Statement of Basis, Purpose, and Specific Statutory Authority follows this notice and is incorporated by reference.

III. Statement of Justification and Reasons for Adoption of Temporary Rules

A statement of the Secretary of State's findings to justify the immediate adoption of these new and amended rules on a temporary basis follows this notice and is incorporated by reference.⁵

IV. Effective Date of Adopted Rules

These new and amended rules are immediately effective on a temporary basis and will become permanently effective twenty days after publication in the Colorado Register.⁶

Dated this 15th day of August, 2012,



Suzanne Staiert
Deputy Secretary of State

For

Scott Gessler
Colorado Secretary of State

⁵ Section 24-4-103(6), C.R.S. (2011).

⁶ Section 24-4-103(5), C.R.S. (2011).



Statement of Basis, Purpose, and Specific Statutory Authority

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

August 15, 2012

I. Basis and Purpose

This statement is about amendments to the Colorado Secretary of State Election Rules. The amendments are intended to ensure uniform and proper administration, implementation, and enforcement of Federal and Colorado election laws.¹ The revisions are also intended to improve the administration of elections in Colorado, to increase the transparency and security of the election process, and to answer questions arising under State election laws as follows:

- Rule 2.7.4 is repealed in accordance with changes made by section 3 of House Bill 12-1292, which amended section 1-2-204(2)(d), C.R.S., to make gender an optional response for a person registering to vote.
- New Rule 2.7.5 is adopted to implement changes made by section 6 of House Bill 12-1292. In accordance with amendments to section 1-2-509, C.R.S., if a county notifies an applicant that his or her voter registration application is incomplete, and the applicant does not provide the additional information necessary to complete the application within 24 months after notification is sent, the applicant must reapply.
- Amendments to Rule 2.11 clarify that an elector may apply through the online voter registration portal to update his or her inactive voter registration record to active status.
- Amendments to Rule 2.19.1 implement changes made by section 7 of House Bill 12-1292. Amendments to section 1-2-605(6)(b), C.R.S., provide that a confirmation card only needs to include information necessary to update registration rather than a complete voter registration application.
- Rule 8.6, temporarily adopted on April 2, 2012, is permanently adopted with revisions to clarify that the role and limitations of watchers. Additional revisions to Rule 8 require watchers to affirm that they will not attempt to obtain or disclose results before official results are released, or confidential voter information at any time.
- Rule 9.1 is amended to implement changes made by section 26 of House Bill 12-1292. Amendments to section 1-7-111, C.R.S., provide that an elector may receive assistance

¹ Article VII of the Colorado Constitution, Title 1 of the Colorado Revised Statutes, and the Help America Vote Act of 2002 ("HAVA"), P.L. No. 107-252.

from an election judge or any other person the elector selects. Additionally, any person, other than an election judge, who assists an elector must first complete a voter assistance/disabled voter self-affirmation form. Amendments to the rule heading implement the people first language requirements of House Bill 10-1137.

- New Rule 10.6, temporarily adopted on April 2, 2012, is permanently adopted with revisions to clarify that the rule applies when a major political party nominates more than one candidate for any office.
- New Rule 10.7 establishes procedures for voiding the first and generating a new ballot when an elector submits a timely address or affiliation change after the county either sends the voter file to a print vendor, prints, or mails ballots. The rule also clarifies which ballot to count when the county processes the change to the elector's record after it mails ballots.
- Rules 12.4.1(a), 12.4.1(b)(2), and 12.4.2(a) are amended to implement changes made by section 32 of House Bill 12-1292 and section 10 of House Bill 12-1293. These changes harmonize mail ballot plan deadlines for elections conducted by the county clerk. The changes also adjust the deadline for a designated election official to submit a mail ballot plan for a nonpartisan recall election and for the Secretary of State to approve or disapprove the plan.
- New Rule 12.4.1(d), amendments to Rule 12.11, and new Rules 13.19 and 13.20 are adopted to clarify when a designated election official may mail ballots to an elector whose record is marked inactive – failed to vote. Specifically, the changes to Rules 12.4.1(d) and Rule 12.11 clarify that a county clerk may not mail a ballot in a coordinated mail ballot election to an inactive – failed to vote elector. New Rule 13.19 clarifies that, in order to receive a mail-in ballot in a polling place or vote center election, an inactive – failed to vote elector must make a timely ballot request and update his or her record to active. The rule changes further provide that a military or overseas elector whose record is inactive or whose ballot request has expired may make obtain an application and ballot using the statewide electronic ballot delivery system. Every county must use the approved system to make these applications and ballots available to military and overseas electors unless the county requests and receives a waiver.

The Colorado General Assembly passed the Mail Ballot Act in 1990, which provided for counties choosing to conduct a coordinated election to send ballots only to active registered electors. More recently, in 2008, the General Assembly passed House Bill 08-1329, which amended section 1-7.5-108.5(2)(b), C.R.S. The changes in House Bill 08-1329 were adopted to address concerns stemming from the 2006 general election. Election day 2006 saw unusually long lines throughout the day, leading to concerns that voters had simply given up, and become inactive – failed to vote as a result. The bill created a one-time exception requiring designated election officials to send mail ballots to all inactive – failed to vote electors for mail ballot elections conducted in November 2009. The bill also added section 1-7.5-108.5(2)(b), C.R.S., which stated that on July 1, 2011, this one-time exception was repealed.

Where the General Assembly intends for counties to mail ballots to inactive – failed to vote electors, the General Assembly specifically states that intent in the language of the statute. For example, section 1-7.5-107(3)(a)(II), C.R.S., requires mailing ballots to

inactive – failed to vote electors who are affiliated with a participating party in a primary mail ballot election. In the repealed section 1-7.5-108.5(2)(b), C.R.S., the General Assembly specifically stated that counties were to mail ballots to inactive – failed to vote electors in a coordinated election. But because the requirement was for a specific period of time and has expired, county clerks may now send ballots only to active electors in a coordinated election.

In 2011, the City and County of Denver determined that it would mail ballots to inactive – failed to vote electors in the coordinated election. The Secretary of State advised Denver that the statute contemplated mailing only to active electors in a coordinated election. Denver refused to comply, and the Secretary filed a complaint in Denver district court to enjoin Denver from mailing to inactive – failed to vote electors. Denver responded and asserted several defenses, including an allegation that the Secretary failed to comply with the rulemaking requirements of the Administrative Procedure Act (APA). The changes to Rules 12.4.1(d) and Rule 12.11 address Denver’s concern that the Secretary failed to comply with the APA.

- Amendments to Rule 26 clarify the procedures for processing provisional ballots in the statewide voter registration system to ensure uniformity and consistency in statewide elections. Specifically, the revisions to Rule 26.10 state that the county clerk must make updates to the appropriate voter registration records before coding the ballots and linking to the voter record. New Rule 26.11 provides that the county clerk must completely enter and code all provisional ballots in the statewide voter registration system before closing the election, and new Rule 26.12 requires the county clerk to process all pollbooks before processing provisional ballots. Repealed Rule 26.1.6 is amended and relocated to new Rule 26.13.
- Amendments to Rule 29 clarify that the designated election official must use the signature affidavit and signature verification letters and forms prescribed by the Secretary of State. These changes also clarify that if a clerk calls any elector regarding an unsigned affidavit, the clerk must call all electors whose affidavits are not signed.
- Rule 30.1.6(a) is amended to implement changes made by Senate Bill 12-062 and House Bill 12-1292. Specifically, amendments to the definition of identification in section 1-1-104(19.5)(a), C.R.S., list two additional forms of identification: (1) a valid veteran identification card issued by the United States department of veterans affairs veterans’ health administration with a photograph of the eligible elector; and (2) a valid identification card issued by a federally recognized tribal government certifying tribal membership.
- Rules 32.1, 32.2, 32.3, and 32.4 are repealed. House Bill 12-1293 re-codified Part 1 of Article 12 with respect to recall elections. As a result, the Rules are no longer necessary.
- Amendments to Rule 41 clarify the role and duties of canvass boards to ensure uniform appointment and operation of canvass boards in state and federal elections. Specifically, the amendments:
 - Clarify the makeup of and appointment to the canvass board. This rule clarifies that the board is a committee composed of the county clerk and recorder and the registered electors appointed by the major parties in accordance with section

1-10-101, C.R.S. Colorado presently has more than two major political parties. This rule affords each major party an equal number of representatives on the canvass board, provided that each party submits representatives. For purposes of efficient elections administration and fairness, this rule also limits the number of representatives from each major party to two and requires the canvass board to consist of an odd number of members. Additionally, the rule clarifies that a candidate for office and members of the candidate's immediate family may not serve on the canvass board.

- Clarify the canvass board's duties under section 1-10-101.5, C.R.S. In particular, the board is tasked with reviewing the election judges' reconciliation to account and balance the election returns. The rule clarifies that where the board identifies a discrepancy in the judges' reconciliation, it may review the ballots at issue only for the purpose of correcting and accounting for the error. Clarifies the process for the Secretary of State to provide assistance and guidance to the county clerk and canvass boards. Specifically, the rule outlines the Secretary's role in the event that the board fails to certify or certifies imperfect returns. The rule provides that where imperfect returns have a reasonable potential to affect the outcome of any race or ballot measure, the Secretary will investigate and assist the county clerk and board in resolving the imperfection before the state or county certifies the election results.
- Clarifies that watchers appointed under section 1-10.5-101(1)(a), C.R.S., may observe the board while it performs its duties, subject to Rule 8.
- Revisions to Rule 42 include technical corrections and conforms the rule to changes made by section 38 of House Bill 12-1292. Changes to Rule 42.2 clarify the definition of electronic transfer for emergency ballots. Additionally, Rules 42.11.3 through 42.11.7 are repealed in accordance with amendments to section 1-8-115, C.R.S., that eliminate the requirement that the designated election official seek authority from the Secretary of State before faxing an emergency mail-in ballot to an elector.

II. Rulemaking Authority

The statutory and constitutional authority is as follows:

1. Section 1-1-107(2)(a), C.R.S., (2011), which authorizes the Secretary of State "[t]o promulgate, publish and distribute...such rules as the secretary finds necessary for the proper administration and enforcement of the election laws."
2. Section 1-1.5-104(1)(e), C.R.S., (2011), which authorizes the Secretary of State to "[p]romulgate rules in accordance with article 4 of title 24, C.R.S., as the secretary finds necessary for proper administration and implementation of [the "Help America Vote Act of 2002", 42 U.S.C. 15301-15545]."
3. Section 1-7.5-106(2), C.R.S., (2011), which authorizes the Secretary of State to "adopt rules governing procedures and forms necessary to implement [Article 7.5 of Title 1, C.R.S.]."

4. Section 1-8-115(5)(d), C.R.S., (2011), which authorize the Secretary of State to “prescribe by rule any procedure or requirements as may be necessary to implement the provisions of [the emergency electronic transfer statute].”
5. Section 1-8.5-112, C.R.S., (2011), which requires the Secretary of State to promulgate all appropriate rules...for the purpose of ensuring the uniform application of [Article 8.5 of Title 1, C.R.S.].”
6. Section 1-10-104.5, C.R.S. (2011), which authorizes the Secretary of State to “promulgate rules...for the purpose of establishing equitable uniformity in the appointment and operation of canvass boards.”



Statement of Justification and Reasons for Adoption of Temporary Rules

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

August 15, 2012

Amended Rules: 2.7.4, 2.11, 2.19.1, 8.6, 8.7, 8.8, 8.15, 9.1, 10.6, 12.4.1(a), 12.4.1(b)(2), 12.4.2(a), 12.11, 26.10, 29.1.1, 29.1.3, 29.1.4, 29.8, 30.1.6(a), 41, 42.2, 42.6, and 42.11.2

New Rules: 2.7.5, 10.7, 12.4.1(d), 13.19, 13.20, 26.11, 26.12, and 26.13

Repealed Rules: 26.1.6 (relocated to new rule 26.13), 32.1, 32.2, 32.3, 32.4, 42.11.3, 42.11.4, 42.11.5, 42.11.6, and 42.11.7

In accordance with Colorado election law,¹ the Secretary of State finds that certain amendments to the existing election rules must be adopted and effective immediately to ensure the uniform and proper administration and enforcement of Colorado election laws during the 2012 general election. Temporary adoption is necessary both to comply with law and to preserve the public welfare generally.

A public Rulemaking hearing was conducted in accordance with the State Administrative Procedure Act² on July 23, 2012, to receive comment and testimony on the proposed rules. These rules implement the enactment of recommendations made by the Secretary of State, Elections Division staff, County Clerk and Recorders, and interested parties throughout the State of Colorado. Adoption of the rules on a temporary basis is necessary to provide clear guidance to county clerks given the close proximity of the September 10, 2012 ballot certification deadline and the November 2012 General Election.

For these reasons, and in accordance with the State Administrative Procedure Act, the Secretary of State finds that adoption and immediate effect of the amendments to existing election rules is imperatively necessary to comply with state and federal law and to promote public interests.³

¹ Sections 1-1-107(1)(c), 1-1-107(2)(a), 1-1.5-104(1)(e), C.R.S. (2011). The Secretary of State has the power "[t]o promulgate, publish, and distribute...such rules as [the Secretary] finds necessary for the proper administration and enforcement of the election laws" and "...[the "Help America Vote Act of 2002", 42 U.S.C. 15301-15545]...."

² Section 24-4-103(3)(a), C.R.S. (2011).

³ Section 24-4-103(3)(6), C.R.S. (2011).