

**From:** [Alamogordo Will](#)  
**To:** [Lange, Dylan, SOS](#)  
**Subject:** [EXT] COUNTY CLERK MAILED BALLOT REJECTION OF QUALIFICATION  
**Date:** Friday, August 28, 2020 9:21:31 AM

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First I want to thank you all for taking the time to hear public comments and taking on the task of improving voting for all US residents in New Mexico, especially during our current national crisis.

I'm extremely proud of the progress that my state has made on 'dark money', automatic and online voter registration, early voting, no-excuse absentee voting, and the National Popular Vote compact. I hope that our state will continue to increase accessibility for all of us when it comes to participation in our government. I believe that there is still room for improvement in the way of statewide Ranked Choice Voting, open primary voting, and also with keeping felon voting rights.

#### [1.10.15.8](#) COUNTY CLERK MAILED BALLOT REJECTION OF QUALIFICATION

I am most concerned about the lack of a required mailed notice in the case of a rejected ballot. I understand that a phone call or electronic mail would be a great first attempt at contact and could save time and money if you are able to confirm contact with the voter by these methods. However, some voters may use shared phones and shared email addresses. Also, while providing an email address is a requirement of using the online vehicle registration system, some may use shared or temporary email addresses and if this information is used during automatic voter registration or gets merged at a later date, it could lead to someone missing their notification of a rejected ballot.

While it's a felony crime of mail theft for intentionally opening, hiding, or intercepting someone else's mail, the same safeguards of the law are not applied to phone messages nor electronic mail.

For the reasons above, I believe that a mailed notification should be required for notification of a rejected ballot.

It may be beneficial to have the notification/contact be in the voters preferred language. Might also benefit voters if you could clarify who is allowed to drop off or mail the cure for a rejected ballot.

Bill Shirk  
Alamogordo, NM

**From:** [rick@verde-environmental.com](mailto:rick@verde-environmental.com)  
**To:** [rules\\_sos\\_SOS](#)  
**Cc:** "[Hathorne Todd](#)"; "[David Tofsted](#)"  
**Subject:** [EXT] Election Rules Public Comment Input  
**Date:** Thursday, August 27, 2020 5:26:41 PM

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Dear SoS: I am writing to you with disturbing news about the June 03, 2020 primary election in Dona Ana County. The election was not conducted according to New Mexico Election Code. Absentee Vote Ballots were again accepted WITHOUT the required 3 forms of ID. The Acting Clerk Ms. Bachman admitted to County Commissioner Solis "we only rejected them if they were missing a signature", during the June 11, 2020 Dona Ana County Canvassing meeting. Ms. Bachman's statement is not in question, I have the video which I did not attach, but here's the link: <https://commonsenseorganizer.blogspot.com/2020/07/absentee-voting-laws-not-followed-by.html>.

For background, here is how the SoS Office justifies advising County Clerks/Absentee Boards to not follow the law (this statement in response to GOP lawsuit on this same issue, November 2019): ***The Secretary of State's Office had not seen the lawsuit either, but spokesman Alex Curtas said, "We have provided statewide guidance to all county clerks which complies with the letter and intent of the law while not disenfranchising voters who have already verified that they are eligible to vote."*** The problem is that the SoS determination clearly does not comply with the letter nor intent of the law. Three forms of ID are a guarantee of voter accuracy, which the SoS Office dismisses. The SoS office is using the reasoning "while not disenfranchising voters" who have already verified, but that is a separate issue from the clear acceptance criteria of mailed-in absentee vote ballots in the NM Election Code.

Unless you have found a lawyer who can convince you that "shall" does not mean "shall", the guidance from the NM SoS office is clearly deficient to many election observers in southern NM.

REQUESTS:

1. Incoming absentee ballot (vote) packets: Based on the 2020 primary election experience, I am requesting that the Secretary of State Office definitively issue their Absentee Vote acceptance criteria BEFORE the election. I am concerned that the current requirement (last 4 digits of SSN) will be dismissed at the Absentee board level on NM SoS advice; because requirements were also dismissed in the June 03, 2020 Primary Election (and Nov 2019).
2. Monitoring of mailed-in Absentee Voter Ballots: Election monitors (poll workers) MUST have access to monitor the physical movements and more importantly the Verification of the 4-digit SSN process wherever it occurs at the County Clerk Office/Absentee Board. Missing SSN's can easily be "filled-in" by potentially unscrupulous county clerk employees because the complete Voters SSN list is necessarily accessible during the verification process.

Thank you for your consideration,  
Richard Reynaud  
Citizen, Las Cruces, NM

**From:** [walkerb@fastmail.com](mailto:walkerb@fastmail.com)  
**To:** [rules\\_sos\\_SOS](#)  
**Cc:** [Lange\\_Dylan\\_SOS](#)  
**Subject:** [EXT] Comments on 1.10.15 NMAC Alternative and Election Day Voting Administration  
**Date:** Monday, August 24, 2020 12:36:50 PM

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Dear Mr. Lange:

I read the Secretary of State's proposed rules governing mailed ballots and voter challenges with interest. My interest comes from two areas of experience. First, as the State Ethics Commission's general counsel, I wanted to see how an established state agency proposes and adopts rules; I hope to use what I have reviewed to improve the State Ethics Commission's future rulemaking efforts.

Second, I served as a presiding judge at a voter convenience center in Bernalillo County in the primary election, and have been selected to serve again for the upcoming general election. So I have been working to familiarize myself with the election code and in particular those provisions that might bear on presiding judges. It is interesting and exciting to see the Secretary of State's efforts to clarify and refine this important (and personally relevant) area of election law.

These two interests inform my comments:

1. [1.10.15.3](#) & [1.10.15.4](#) The proposed rules are permanent in duration, but are authorized (at least in part) by a temporary statute. See House Bill 4, Section 3. I suggest amending the rules to state either that they are authorized by NMSA 1978, Section 1-2-1 only, or if authorized also by Section 1-2-72, that the rules' duration be limited to the duration of Section 1-2-72.
2. 1.10.15.7(A): The proposed rule defines "mailable voter," and the notice of proposed rules states that "mailable voter" is a "key term . . . used in the proposed rule." But the term does not appear anywhere else in the rule. I suggest either eliminating the defined term or using it in the rule such that inclusion of an explicit definition makes sense. If the intent is to define the use of the term "voter" in the rules to mean a "mailable voter" as defined in Section 1-2-72(D), I suggest amending the definition to state that "voter" means "mailable voter" as defined by Section 1-2-72(D).
3. [1.10.15.9](#) procedures for handling challenges are much-needed, and I applaud the Secretary of State for undertaking this effort. But in my limited experience as a presiding judge, I was not provided with any training on the presiding judge's authorities under the election code with respect to challengers. I suggest that the proposed rule be amended to include a provision requiring county clerks to train presiding judges about the election code and these rules as they concern challengers.

Thank you for your attention, and best of luck with this week's rulemaking hearing.

Sincerely,

Walker Boyd

**From:** [Dominique Jones](#)  
**To:** [rules\\_sos\\_SOS](#)  
**Subject:** [EXT] Comments on proposed voting administration for November 2020  
**Date:** Sunday, August 16, 2020 2:58:32 PM

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Thank you for the opportunity to provide public comment on voting in the November 2020 election. Would it be possible to lessen the risk of transmitting the novel corona virus by voting from our cars? Could we:

- a) drop off our pre-filled absentee ballots without needing to get out of our cars (I'm a person with ambulatory disabilities so in any case this would support me a heck of a lot) or,
- b) have Poll Workers verify our identities and give us ballots as well as collect our ballots while we drive through wearing masks in our cars?

If there were one or more locations on voting day such as this it may lessen exposure while providing opportunities for voter participation.

Also, it would be nice to have security services to support poll workers so they don't need to play the enforcer roll of making sure people comply with wearing masks and keeping patient in the line—Covid Compliance Officers.

Setting the environmental tone will help it all go smoothly.

Other thoughts are:

1. I know not everybody has an automobile but a lot of people do.
2. There can also be tents set up for those without cars, like restaurants are doing, and a folding chair if there is a line because people like me can't stand in lines. Also that will mean people are more likely to stay spacially distanced from one another if they sit down.
3. If voting were done outdoors, for example at community center parking lots, there may be infrastructure needs for things such as electricity that a solar company or PNM could support with generators. (This would make them heroes for and within our community.)

Thank you very much. If I could hug you all at the state administration level, I would. You have saved multitudes of New Mexico lives with your logical and evidence-based approaches and decisions so far. Keep up the great work. We appreciate all of you.

Sincerely,  
Dominique Jones  
11623 Terra Bella Lane SE  
Albuquerque, NM 87123  
505-977-8827

**From:** [David Tofsted](#)  
**To:** [Lange, Dylan, SOS; rules, sos, SOS](#)  
**Subject:** [EXT] Comments Regarding Newly Proposed SoS Rule Changes to Elections Code  
**Date:** Wednesday, August 26, 2020 1:27:28 PM

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To Whom It May Concern,

With regards to the upcoming meeting on Election Code changes, several issues should be clarified prior to publication or implementation of said proposed rules (1.10.15) changes.

1. First, with regard to the proposed rules of 1.10.15, the statutory authority listed in [1.10.15.3](#) indicates these proposed changes are based on Sections 1-2-1 and 1-12-72 of the Election Code.

Section 1-2-1 does indeed provide the authority for the Secretary of State (hereafter SoS) to "make rules pursuant to the provisions of, and necessary to carry out the purposes of, the Election Code." This provides the **rationale** for the proposed rules changes. Then, it is reference to 1-12-72 that provides the **substance** or **basis** that justifies the proposed changes.

Yet a search of the new legislation (SB 004) passed in the 2020 special legislative session does not include the word "challenger" at all. But if this word is missing from the proposed language of SB 004, and thereby of the new Section 1-12-72, there is no justification for the newly proposed sub-Sections [1.10.15.9](#) and [1.10.15.10](#), which are entitled "Interposing Election Challenges" and "Absent Voter Election Board; Challenges; Disposition," respectively.

Perhaps these new sections were simply rewordings or (effectively) consolidations of previous portions of the code, but such reworked or reworded sections have then not been properly cited in the statutory authorization statement. This would need to be revised.

Conversely, if these new sections add new restrictions or rights to poll challengers that are outside the bounds of the current code, then they have no basis of justification provided by the legislature and must not be implemented since the SoS is an executive branch position and not permitted to enact legislation. This is the job and obligation of the legislature alone.

2. Secondly, according to paragraph B. (2) of the cited Section 1-2-1 of the Election Code, no proposed rule change may be "adopted or amended within ... sixty-three days before a primary or a general election."

I argue that we are currently well within 63 days of the beginning of the next general election. While Friday the 28th of August (the date of the hearing) is still 67 days from Election Day, that is not what the statute says. It says from the "general election." In person voting in the election begins on the 6th of October in Dona Ana County at our county building. That is 39 days from Friday's hearing date.

According to the code, the county clerk may begin mailing out absentee ballots as early as the 6th of October, and begin receiving those ballot envelopes back within a few days. Yet the procedures detailed in subSection [1.10.15.8](#) are related to the actions of the county clerk's staff upon receiving returned absentee ballot packets, and these activities would surely begin to occur sooner than 63 days from Friday. In fact, they would likely begin occurring within the next 47 days, not 63 days.

Since the number of absentee voters is expected to be on the order of 25% of all votes cast (or more), it is to be expected that the procedures allowing county clerks to initiate their absentee voter boards (AVBs) two weeks before election day the activities described in subSections [1.10.15.9](#) and [1.10.15.10](#) could begin as early as the 20th of October, which is 53 days from this Friday's hearing date. So, again, the procedures described in these two subsections would again need to be implemented prior to the 63 day margin described in the Election Code.

Here is a second reason for it being illegal to adopt these rules prior to this election.

3. According to subSection [1.10.15.2](#) the scope of these proposed rules changes would make these rules applicable to all future elections. Also, according to subSection [1.10.15.4](#) the duration of these proposed rules is indicated to be permanent. Further, according to subSection [1.10.15.3](#), the justification for these rules changes is indicated to be 1-12-72 of the Elections Code. Yet according to paragraph 1-12-72.A this section of the code is ONLY applicable to the 2020 general election. Therefore, both the language used in the scope and the duration subSections of 1.10.15 appear to be illegally attempting to expand the application of the rules of 1-12-72 beyond the scope of the related legislation that is the very justification of these proposed rules changes.

4. However, these proposed rules changes could have addressed a clear gap in the new Section 1-12-72. That gap appears in the form of coverage of the duties of the poll challengers with respect to the tasks assigned to the county clerk's agents in Section [1.10.15.8](#) in the proposed rules and as a similar charge appears in paragraph 1-12-72.J of the SB 004 legislation.

To wit - 1-12-72.J "Upon receipt of a mailed ballot, the county clerk shall remove the privacy flap to verify that the voter signed the official mailing envelope and confirm that the last four digits of the social security number provided by the voter matches the information on the voter's certificate of registration. Etc."

Formerly this process was performed by the Absentee Voter Board, but they are not mentioned in this legislation.

Now, in oral debate prior to the passage of SB 004 in the NM House, Rep. Greg Nibert specifically asked the legislation spokeswoman Rep. Linda Trujillo whether poll challengers would have access to all activities related to the handling of the incoming absentee ballot packets. Rep. Trujillo indicated that this would, indeed, be a transparent process. That poll challengers would have full access.

Clearly, the act of removing the privacy flaps on the backs of the returning ballot packet outer envelopes is a critical component of the voter verification process. If anything, the new requirement that the voter supply the last 4 digits of their social security number is a marked improvement on the old method of merely supplying a Year-of-Birth, since that information could be gleaned from the voter rolls.

In a perfect world we would not need voter boards at all, or poll challengers. We would simply return our ballots and no checking would be necessary. In a perfect world the actions of the county clerk or their employees in examining what information was contained underneath these privacy flaps would not be problematic without oversight by poll challengers. But this is not a perfect world.

Since the county clerk's agents in charge of inspecting the information beneath the privacy flaps would need to be able to KNOW whether a proper 4-digit SSN had been provided, therefore they must be SUPPLIED with this information by the clerk's office itself. And therefore there is a potential problem where if this information is missing or incorrect an unscrupulous clerk's employee might simply fill in the missing information.

Therefore, it is imperative, based on the criticality of this task, that poll challengers have access to this process.

Yet while the methods and means of getting challengers in to the workings of this process was left completely out of the SB 004 legislation, we have Rep. Trujillo's promise that something would be done to ensure this is a possibility.

Therefore, any implementation paragraph (such as [1.10.15.8](#)) should include the means of access for poll challengers.

In particular, (1) since this activity is conducted separately from the Absentee Voter Board, there is no "presiding judge" for the challenger to present their credential to. (2) Also, because there is no AVB present, the hours of operation when these procedures would occur are not specified, or the place. (3) And since there is no AVB there is no presiding judge to raise a challenge to, or quorum of judges to vote, or (4) a procedure to follow should the clerk's agent ignore the stated requirements of [1.10.15.8](#).

This, along with the late date of these proposed rules changes, suggests the SoS must issue ad hoc guidance for handling these incoming absentee ballot packets, or to simply read paragraph J as referring to the AVB itself to implement these checks beneath the privacy flaps.

Sincerely,  
David H. Tofsted, Ph.D.  
Chairman, Dona Ana Republican Party

Office: (575) 523-8683  
Cell #: (575) 202-7069

**From:** [Barbara Calef](#)  
**To:** [rules\\_sos\\_SOS](#)  
**Subject:** [EXT] Draft Rules for Alternative and Election Day Voting Administration  
**Date:** Thursday, July 30, 2020 10:32:46 AM

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Mr. Lange,

I have read the draft rules. In [1.10.15.8](#), C, D, E, F are confusing because each of them has slightly different pieces of information concerning a rejected ballot. C and F refer to contacting the voter by telephone as one option. D and E do not mention the telephone.

I have attempted to re-write C using the information in the draft C and F. If this were used, F could be deleted.

new version of C. If the mailed ballot is rejected, the county clerk has a duty to attempt to contact the voter within one working day of the rejection by either telephone, electronic mail, or mailed notice, conveying the notice of rejection, along with information regarding how the voter may cure the reason for the rejection. If attempting to call by telephone, the county clerk shall leave a message if there is an ability to do so. If the first attempt to contact the voter is unsuccessful, the county clerk must make a second attempt.

I suggest that D and E be amended so the direction is consistent with that in C. Could D and E be combined?

I hope this is helpful. I know the county clerks have an enormous task ahead of them.

Sincerely,

Barbara Calef



**From:** [toddhathorne@gmail.com](mailto:toddhathorne@gmail.com)  
**To:** [rules\\_sos\\_SOS](mailto:rules_sos_SOS)  
**Subject:** [EXT] FW: Comments regarding proposed changes to election rules Title 1 Chapter 10 Part 15  
**Date:** Friday, August 28, 2020 10:25:44 AM

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Please add these comments to the written portion of the public comment accepted today.

Todd R. Hathorne

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**From:** William L. Lutz <[wlutz@qwestoffice.net](mailto:wlutz@qwestoffice.net)>  
**Sent:** Thursday, August 27, 2020 2:17 PM  
**To:** [toddhathorne@gmail.com](mailto:toddhathorne@gmail.com); 'David Tofsted' <[dtofsted@gmail.com](mailto:dtofsted@gmail.com)>; 'Lisa Parrott' <[lisaparrott1@gmail.com](mailto:lisaparrott1@gmail.com)>; 'Kelly O'Connell' <[info@kellyolaw.com](mailto:info@kellyolaw.com)>; 'Greg Nibert' <[greg.nibert@nmlegis.gov](mailto:greg.nibert@nmlegis.gov)>; 'David Gallegos' <[david.rsi@hotmail.com](mailto:david.rsi@hotmail.com)>; 'Carter B. Harrison' <[carter@harrisonhartlaw.com](mailto:carter@harrisonhartlaw.com)>; 'Janice Arnold-Jones' <[jeanoldjones70@gmail.com](mailto:jeanoldjones70@gmail.com)>  
**Subject:** Re: Comments regarding proposed changes to election rules Title 1 Chapter 10 Part 15

On the proposed regulation it needs to have the following changes:

1.10.15.4—DURATION: ~~Permanent~~ Repealed effective December 31,2020.

**Comment:** Section 1-12-72 is repealed effective this date. The regulation would have no statutory authority after that date.

1.10.15.9Bb The first sentence should be amended to state “ For the purposes of interposing challenges, a challenger's permitted activities are those listed in Sections 1-2-23 and 1-12-72J NMSA 1978.

**Comment:** The right to challenge the information on the ballot flap was added by 1-12-72J. It is not contained in Section 1-2-23 NMSA 1978. Therefore, the proposed regulation is inconsistent with Section 1-2-72J.

You might want to also forward this e mail to [sos.rules@state.nm.us](mailto:sos.rules@state.nm.us).

William L. Lutz  
P. O. Drawer 1837  
Las Cruces, NM 88004  
575-526-2449  
FAX575-526-0946

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**From:** [toddhathorne@gmail.com](mailto:toddhathorne@gmail.com)  
**Sent:** Thursday, August 27, 2020 1:33 PM  
**To:** 'David Tofsted' ; 'Lisa Parrott' ; 'Bill Lutz' ; 'Kelly O'Connell' ; 'Greg Nibert' ; 'David Gallegos' ; 'Carter B. Harrison' ; 'Janice Arnold-Jones'  
**Subject:** RE: Comments regarding proposed changes to election rules Title 1 Chapter 10 Part 15

This process is flawed rule making. We need to document very carefully here. IPRA anyone?

Todd

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**From:** David Tofsted <[dtofsted@gmail.com](mailto:dtofsted@gmail.com)>

**Sent:** Thursday, August 27, 2020 12:39 PM

**To:** Lisa Parrott <[lisaparrott1@gmail.com](mailto:lisaparrott1@gmail.com)>; Todd Hathorne <[toddhathorne@gmail.com](mailto:toddhathorne@gmail.com)>; Bill Lutz <[wlutz@qwestoffice.net](mailto:wlutz@qwestoffice.net)>; Kelly O'Connell <[info@kellyolaw.com](mailto:info@kellyolaw.com)>; Greg Nibert <[greg.nibert@nmlegis.gov](mailto:greg.nibert@nmlegis.gov)>; David Gallegos <[david.rsi@hotmail.com](mailto:david.rsi@hotmail.com)>; Carter B. Harrison <[carter@harrisonhartlaw.com](mailto:carter@harrisonhartlaw.com)>; Janice Arnold-Jones <[jeanoldjones70@gmail.com](mailto:jeanoldjones70@gmail.com)>

**Subject:** Re: Comments regarding proposed changes to election rules Title 1 Chapter 10 Part 15

Lisa,

With regard to your last point, perhaps we need to examine what the regulation says about bringing in additional people that we designate as mere "watchers". These folks could then act as liaisons between the challengers and could also be employed to help the challengers act in concert with one another.

I think you make a very valid point. Why should we call each of these people challengers if, in fact, they are not each permitted to act in their challenging roles?

It should also be mentioned that according to the regulations the presiding judge and the two elections judges are supposed to be the ones, in concert with one another, who are responsible for examining ALL of the ballot outer envelopes to determine eligibility of those ballot packets. But in my experience, the county clerk's representative has illegally designated AVB clerks to the task of determining for themselves whether these are qualified or not. So this task has been delegated away from the judges in the interest of time and expediency.

Or am I missing something?

Dave T.

On Thu, Aug 27, 2020 at 10:16 AM Lisa Parrott <[lisaparrott1@gmail.com](mailto:lisaparrott1@gmail.com)> wrote:

Dear Mr. Lange:

Please make these comments a part of the record in **tomorrow's** Zoom Public Meeting.

To my understanding **1.10.15** is currently labeled "Vacant," so I am puzzled by the proposed change to **1.10.15.4 "DURATION: Permanent."** What is the wording or phrase being changed to "permanent?"

In **1.10.15.9 Interposing Election Challenges:**

**Section D** is written broadly. Who defines the term "**orderly?**" Would it be the same people the

challengers are there to observe?

**Section E.** Who defines the term "**indiscriminately or without good cause?**" Would it be the same people whose actions you are challenging?

**Section F.** Challengers must have the authority to approach voters or talk to voters to possibly determine a voter's intent, especially during in-person voting situations which are being challenged.

**Section G.** Does the term "video cameras or recording devices" include taking pictures with a cell phone? In some instances, this may be the only way a challenger can obtain the evidence necessary to support his or her challenge.

**Section H.** Especially in the situation of "mail-in ballots" where various groups are processing ballots at the same time in different areas of the room, if only one challenger may interpose a challenge at a time, the challenger who observes the situation he or she is concerned about must leave their post and then go to the one person in the room who is allowed to voice the challenge, explain the situation to the "lead" challenger. While this is occurring both of those challengers' areas are being unsupervised. **The person who witnesses the infraction of the election code must be able to interpose the challenge. Too much time and information can be lost otherwise.**

Sincerely,

Lisa F. Parrott

2494 Cherokee Circle

Las Cruces, NM 88011-9024

(575) 496-5983

**From:** [jimhayhoe3@msn.com](mailto:jimhayhoe3@msn.com)  
**To:** [rules\\_sos\\_SOS](#)  
**Subject:** [EXT] Proposed Rule  
**Date:** Thursday, July 30, 2020 7:13:32 AM

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Thank you for this opportunity to comment. I am a disabled veteran yet have voted in every Presidential election since 1964.

I am totally against mail-in ballots, except perhaps seniors over 75 and those medically certified unable to vote in person.

I am also very against same-day/election-day registration to vote.

I also believe that proof of identification should be provided prior to getting a ballot.

I also am of the opinion that more Precincts should be established and that Precinct volunteers should be paid at a higher rate.

Jim Hayhoe

Sent from myMail for iOS

August 27, 2020

*Transmitted Via E-mail*

Dylan Lange  
Director of Legislative and Executive Affairs  
The Office of the New Mexico Secretary of State  
325 Don Gaspar, Suite 300  
Santa Fe, NM 87501  
Dylan.Lange@state.nm.us

**Re: In Support of Proposed Rule Part 1.10.15.8**

Dear Mr. Lange,

Thank you for the opportunity to comment on Proposed Rule 1.10.15.8 NMAC, relating to the processing of mailed ballots and the procedures to be followed before a ballot is, or is not, counted. We write in support of the rule as currently drafted.

The Brennan Center for Justice is a non-partisan law and policy institute striving to uphold the values of democracy in Texas and throughout the United States. We encourage broad citizen participation in our democracy, and work with elections officials to support the fair and effective administration of elections. We have long supported uniform, pro-voter ballot counting procedures, including notice and the opportunity to fix errors and omissions on ballot envelopes so that every qualified voter's ballot is counted.

All voters have due process rights to notice and an adequate opportunity to remedy ballot deficiencies.<sup>1</sup> Proposed Rule 1.10.15.8 NMAC is an important step toward ensuring uniform processes for mailed ballot verification, notice of ballot defects, and cure methods. In particular, we are pleased to see requirements that election officials use a variety of methods for contacting voters, attempt to reach voters at least twice, and offer voters multiple options for curing ballot errors or omissions.

There are two items worth noting, although not critical to include in the rule itself. First, as previously noted in an email to Secretary Toulouse Oliver, it is important to remind counties that they are required, under Section 203 of the Voting Rights Act, to provide notice and any cure affidavits and instructions in a voter's preferred language. Second, counties should utilize

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<sup>1</sup> See *Florida Democratic Party v. Detzner*, No. 4:16cv607-MW/CAS, 2016 WL 6090943 (N.D. Fla. Oct. 16, 2016); *Raetzl v. Parks/Bellemont Absentee Elec. Bd.*, 762 F. Supp. 1354, 1358 (D. Ariz. 1990).

# BRENNAN CENTER FOR JUSTICE

best practices when implementing any email cure option, and we are happy to provide further details on the best practices to ensure the secure receipt of email submissions from voters.

For the reasons stated above, the Brennan Center for Justice supports Proposed Rule 1.10.15.8 NMAC. Please do not hesitate to reach out if you have any questions or if we can be of further assistance.

Sincerely,



Lori Shellenberger  
Advisor, Voting Rights & Election Program  
Brennan Center for Justice  
[shellenbergerl@brennan.law.nyu.edu](mailto:shellenbergerl@brennan.law.nyu.edu)

**From:** Lori Shellenberger [<mailto:shellenbergerl@brennan.law.nyu.edu>]  
**Sent:** Tuesday, August 11, 2020 8:05 PM  
**To:** ToulouseOliver, Maggie, SOS <[Maggie.TOliver@state.nm.us](mailto:Maggie.TOliver@state.nm.us)>; Curtas, Alex, SOS <[Alex.Curtas@state.nm.us](mailto:Alex.Curtas@state.nm.us)>  
**Subject:** [EXT] Proposed rule re notice and cure of absentee ballot defects

Hi Secretary and Alex,

It was great to speak with – and see – both of you last week. I was trying to look at your proposed rule regarding the absentee ballot notice and cure process, and noticed the link was down. If for some reason you are making any edits and re-posting, I did have a few suggestions:

- 1) It would be good to specify that notice should be given in the voter's preferred language;
- 2) You may want to specify the deadline for curing (which I read as being until the Friday before the state canvas board meets); and
- 3) You may want to require that one contact be a mailed notice – it's counterintuitive, but this [Stanford study of 2018 California mail ballot cure data](#) showed, on p. 39, that cure letters are the most effective tool for getting voters to cure:

*Finding: Follow-up cure letters are the single most effective tool for improving cure rates, far greater than using other forms of notification like email and phone. We received 2018 challenge and remedy numbers from twelve counties: Amador, Contra Costa, Humboldt, Kern, Los Angeles, Marin, Napa, Sacramento, San Francisco, Santa Clara, Santa Cruz, and Sonoma, comprising 45% of the state population and ranging from the 21st percentile of county size to the 100th percentile. Counties did not collect this data prior to the EVCA, limiting our observations solely to the 2018 election cycle. Six of the twelve counties practice multiple forms of remedy notification (email, mail, phone), while the other six only use USPS mail. Of the mail-only counties, Marin and Santa Clara also follow up a second time by letter with voters who do not respond to the first notification. Based on the summary statistics alone, mail-only notification is more effective than using multiple forms of notification, and is augmented by sending a second follow-up letter. Counties that used multiple forms had a mean remedy rate of 35% versus a 44% mean for mail-only counties. If we exclude the follow-up-letter counties, the mail-only counties are nearly even with multiple-form counties, 36% remedy versus 35%.*

Let me know if you have any questions, and thanks again for your time last week!

Lori  
**Lori Shellenberger**  
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**From:** [Lisa Parrott](#)  
**To:** [Lange, Dylan, SOS](#)  
**Subject:** [EXT] Comments regarding proposed changes to election rules Title 1 Chapter 10 Part 15  
**Date:** Thursday, August 27, 2020 10:16:51 AM

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Dear Mr. Lange:

Please make these comments a part of the record in **tomorrow's** Zoom Public Meeting.

To my understanding **1.10.15** is currently labeled "Vacant," so I am puzzled by the proposed change to **1.10.15.4 "DURATION: Permanent."** What is the wording or phrase being changed to "permanent?"

In **1.10.15.9 Interposing Election Challenges:**

**Section D** is written broadly. Who defines the term "**orderly?**" Would it be the same people the challengers are there to observe?

**Section E.** Who defines the term "**indiscriminately or without good cause?**" Would it be the same people whose actions you are challenging?

**Section F.** Challengers must have the authority to approach voters or talk to voters to possibly determine a voter's intent, especially during in-person voting situations which are being challenged.

**Section G.** Does the term "video cameras or recording devices" include taking pictures with a cell phone? In some instances, this may be the only way a challenger can obtain the evidence necessary to support his or her challenge.

**Section H.** Especially in the situation of "mail-in ballots" where various groups are processing ballots at the same time in different areas of the room, if only one challenger may interpose a challenge at a time, the challenger who observes the situation he or she is concerned about must leave their post and then go to the one person in the room who is allowed to voice the challenge, explain the situation to the "lead" challenger. While this is occurring both of those challengers' areas are being unsupervised. **The person who witnesses the infraction of the election code must be able to interpose the challenge. Too much time and information can be lost otherwise.**

Sincerely,  
Lisa F. Parrott  
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