

STATE OF NEW MEXICO
OFFICE OF THE SECRETARY OF STATE

ZOOM VIDEOCONFERENCING PUBLIC COMMENT HEARING
PROPOSED RULE PART 1.10.15 NMAC
ALTERNATIVE AND ELECTION DAY VOTING ADMINISTRATION
FRIDAY AUGUST 28, 2020

HEARING OFFICER: DYLAN LANGE, ESQ.

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1 IN ATTENDANCE: See Exhibit 7 Attendance Sheet

2 ACTIVE PARTICIPANTS: Dylan Lange

3 Hearing Officer

4 Sharon Pino

5 Deputy Secretary of State

6 Mandy Vigil

7 Elections Bureau Director

8 David Tofsted

9 Donna Tilman

 Blair Dunn

 Paul McDonough.

 Todd Hathorne

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1 (Time noted: 9:00 a.m.)

2 HEARING OFFICER: My name is Dylan Lange. I'll
3 be the hearing officer today. It is 9:00 o'clock. I said
4 we would start at 9:00. If no one minds I'll wait five
5 minutes, actually start at 9:05, just to make sure that
6 everyone has an opportunity to log in. It seems like
7 everyone has done so, but if you would like to speak, just
8 let us know in the chat box for public comment and we'll
9 make sure that we include you.

10 So thank you. We will get started in about
11 five minutes.

12 (Note: In recess from 9:00 a.m. to 9:05 a.m.)

13 HEARING OFFICER: Good morning. Today is
14 Friday, August 28th, 2020. The time is 9:06 a.m. and
15 we're broadcasting from the Secretary of State's office on
16 Zoom and on a teleconference platform in response to the
17 concerns surrounding the Covid-19 pandemic and in
18 accordance with all Public Health Emergency Orders issued
19 by the New Mexico Department of Health to limit mass
20 gatherings due to Covid-19.

21 My name is Dylan Lange. I'm the general
22 counsel for the New Mexico office of the Secretary of
23 State. I've been designated by the Secretary as the
24 hearing officer to conduct today's Public Comment Rule
25 Hearing.

1 I would like to introduce the Deputy
2 Secretary of State Sharon Pino for a welcoming greeting.

3 MS. PINO: Good morning everyone.

4 As Dylan mentioned I'm Deputy Secretary of
5 State Sharon Pino. Thank you all for joining us this
6 morning for this public rule hearing. We will be
7 receiving public comment on this proposed administrative
8 rule.

9 The proposed rule we are here about today
10 is for Alternative and Election Day Voting Administration,
11 and it will be codified as 1.10.15 NMAC.

12 This rule is proposed because of the
13 legislature's passage of Senate Bill 4 during the 2020
14 Special Session, and its purpose is to provide uniformity
15 in the application of alternative and election day voting
16 procedures.

17 This public hearing today allows members of
18 the public an opportunity to submit data, testimony and
19 arguments on the proposed rule changes. On behalf of
20 Secretary Toulouse-Oliver, I would like to thank those
21 members of the public who submitted written public comment
22 in advance of this hearing, along with everyone who is
23 participating in the process today. I know it's under
24 unusual circumstances, so thank you all for your
25 participation.

1 The comments that were previously submitted
2 along with all those given today will be included in the
3 overall record of public comment for these rules.

4 The hearing officer, as he introduced
5 himself today, is Dylan Lange, our General Counsel of the
6 Office of the Secretary of State, and I believe we also
7 have Mandy Vigil, our elections director here with us
8 today.

9 So again thank you all for being here, and
10 I will turn it over to Dylan to get us started.

11 HEARING OFFICER: Thank you, Deputy Pino.

12 As was stated, we are proposing this new
13 rule in accordance with NMSA 1978, Section 1-2-1 and
14 Section 1-12-72 of the Election Code, which authorizes the
15 SOS to adopt or promulgate rules and regulations that are
16 necessary to carry out the purposes of the election.

17 In addition, this hearing format will
18 comply with the State Rules Act.

19 The purpose of this hearing is for the SOS
20 to receive public comment, views, argument and testimony
21 on the proposed rules for members of the public.

22 Public notice of this hearing was provided
23 to the public and published in the New Mexico Register on
24 July 28, 2020. Copies of the rules have been available at
25 the SOS office and posted on its website since Notice

1 was -- since July 28th, 2020.

2 Additionally, during this rule hearing an
3 agency receptacle has been placed outside of our main
4 office location to receive any written public comments on
5 the proposed rule.

6 The hearing officer does not make any
7 recommendations as to whether this rule should be adopted
8 by the Secretary. This public hearing is intended to
9 provide the public an opportunity to voice opinions on the
10 proposed rule. My role is simply to give everyone who
11 wishes to comment an opportunity to do so and to prepare a
12 statement to the Secretary summarizing the oral and
13 written comments received.

14 Also, if you have not done so, please sign
15 the attendance sheet by placing your first and last name
16 and email address in the comment section of this meeting.
17 By placing your name in the comment or chat section you
18 have signed the attendance sheet which will later be
19 entered as an exhibit into the record.

20 In addition, if you would like to speak
21 during this comment hearing please indicate so in the chat
22 section so we can call on you.

23 Let the record reflect that the following
24 SOS staff is present: Deputy Secretary of State Sharon
25 Pino; Elections Bureau Director Mandy Vigil; Director of

1 Communications Alex Curtas; Director of Legislative and
2 Executive Affairs Kari Fresquez; Deputy Elections Director
3 Alicia Romero; and Executive Assistant to the SOS Theresa
4 Chavez-Romero.

5 This is a formal proceeding and a court
6 reporter has been designated to transcribe the
7 proceedings. The transcript from the hearing will become
8 a part of a rule hearing record, therefore persons
9 recognized to testify or offer comments are asked to
10 identify yourself each time by a first and last name, who
11 you represent, or your relevant affiliation every time you
12 address the hearing officer. Remember to speak loudly and
13 clearly so the court reporter can pick up your comments.

14 This hearing will be conducted in the
15 following manner and in accordance with 1.24.25.13 NMAC.
16 First the SOS staff will present exhibits. I'll rule on
17 the admissibility of the exhibits offered. The exhibits
18 will then be admitted into evidence and are available to
19 be reviewed by members of the public.

20 After staff offers exhibits and their
21 admission has been ruled upon, I will open the hearing for
22 testimony.

23 The SOS does not follow the rules of
24 evidence for this hearing. The hearing officer may, in
25 the interest of efficiency, exclude or limit comment or

1 questions deemed irrelevant, redundant, or unduly
2 repetitious. The decision as to whether such exhibits,
3 testimony, commentary or other evidence is irrelevant or
4 unduly repetitious shall be made by me as the hearing
5 officer.

6 Again, it's important to note if you do
7 intend to testify, please let us know in the chat box so
8 we can call you and you can unmute yourself.

9 After a person has testified or offered
10 comment, any member of the audience wishing to question
11 that person may do so after being recognized by the
12 hearing officer. Each person recognized to speak shall
13 identify himself for the record. Questions will of course
14 be limited to only clarifying questions of the person who
15 is providing testimony.

16 In asking clarifying questions, please be
17 mindful of the time. This hearing is scheduled for three
18 hours. A public hearing is limited to provide the public
19 with an opportunity to voice opinions on the proposed
20 rule.

21 This public hearing is now open.

22 Secretary of State's office, do you have
23 any exhibits you would like to introduce at this time?

24 DIRECTOR VIGIL: Thank you, Hearing Officer.

25 Yes, the Secretary of State has the following exhibits to

1 enter into evidence.

2 Exhibit 1: Notice of Proposed Rulemaking
3 published in the New Mexico Register, dated July 28, 2020.

4 Exhibit 2: Proposed Rule Part 1.10.15
5 NMAC, Alternative and Election Day Voting Administration.

6 Exhibit 3: Electronic correspondence
7 regarding the posting of Notice of Rulemaking on the New
8 Mexico Sunshine Portal dated July 28, 2020.

9 Exhibit 4: Electronic correspondence sent
10 to the New Mexico Legislative Counsel regarding the Notice
11 of Rulemaking dated July 28, 2020.

12 Exhibit 5: Regarding the Notice of
13 Rulemaking dated July 28, 2020.

14 Exhibit 6 is all written public comment
15 that has been received.

16 And Exhibit 7 is the attendance sheet for
17 today's August 28, 2020 public hearing.

18 HEARING OFFICER: Thank you, Director Vigil.

19 These proposed exhibits, except for the
20 attendance sheet have been available for inspection on our
21 website today, and therefore Exhibits 1 through 6 are
22 hereby admitted into the record. We'll move the
23 attendance sheet after the hearing, but this is a good
24 time to remind everybody that please ensure that we have
25 your first and last name, and an email if you would like

1 to have future correspondence regarding this rule in the
2 chat box so we can understand who's here. So if you are
3 just a telephone number or if you've just put your first
4 name, please ensure that you put your first and last name
5 in the chat box.

6 So we have a new number from 463-7632.
7 Please let us know what your name is, first and last.

8 We have a gentleman named Todd just join.
9 Todd, please ensure that we have your last name for the
10 attendance.

11 And then also if anyone intends to speak,
12 the court reporter will need your first and last name.

13 Again, although those exhibits were just
14 admitted, if any person wishes to submit additional
15 written comment, they may do so today, and I will rule on
16 the admissibility of those documents as necessary.

17 So at this point the proposed rules have
18 been introduced into the record. I'll now open the floor
19 to the audience for testimony on the proposed rules.

20 The audience, of course, may ask clarifying
21 questions to each person after they provide their public
22 comment.

23 We will now accept public comment on the
24 entire rule. The proposed Rule 1.10.15 is not very long,
25 so what we will do is just ask for general comments on any

1 section. So if you would like to speak on any section of
2 the proposed rule, then you're free to do so.

3 I'll make sure before I call the first
4 person to give public testimony that everybody has
5 provided their first and last name and has indicated
6 whether they would like to speak so I can call on you.

7 It is important, too, to remain muted
8 unless you're giving public comment. Once you're
9 recognized by myself to speak, give public comment, you
10 may unmute yourself and give public comment.

11 So I'll just do a quick look if we have
12 everybody's name, and then we'll get started.

13 (Note: Pause.)

14 A member of the SOS staff may also just ask
15 you or direct -- message you through the chat box. Please
16 just respond to them, just providing your name, and email.

17 So I'm going through the chat list just to
18 see who would like to speak first.

19 I don't see anybody in the chat box who has
20 requested to speak, so what I'll do is I'll just -- if you
21 want to raise your hand there's a little icon to raise
22 your hand. If you raise your hand we can ask you to speak
23 first, even though you haven't indicated you wanted to
24 speak in the chat box.

25 So is there any public comment on today's

1 rule at this particular time? (Note: Pause.)

2 I don't see anyone raising their hand so
3 what I would ask is that if you would like to provide
4 public comment please at this point unmute yourself and
5 state your name and your affiliation and provide your
6 public comment. (Note: Pause.)

7 So I'll ask you again if anybody would like
8 to provide public comment on today's Rule 1.10.15, please
9 do so.

10 Now, I know that we've received nine pieces
11 of written comment. If you would like to provide any
12 comments orally about the rule, please do so now. (Note:
13 Pause.)

14 MS. ROMERO: Excuse me. Dylan?

15 HEARING OFFICER: Yes.

16 MS. ROMERO: I have a -- (Note: Feedback.)

17 (Note: Reporter interruption.)

18 HEARING OFFICER So there is someone who called
19 in at phone number (505) 463-7632.

20 (Note: Feedback. Reporter interruption.)

21 Could you give your last name. (Note:
22 Pause.)

23 HEARING OFFICER: I see Mr. Tofsted has his hand
24 up. Would you like to unmute yourself and provide public
25 comment.

1 MR. TOFSTED: I had -- yes. Dave Tofsted here.

2 So I had written testimony. I don't know
3 if I spelled testimony right, but I just -- I had
4 raised --

5 Oh, that's the feedback all right.

6 I had raised four issues, and I'd like to
7 get comments or response to those issues.

8 HEARING OFFICER: Well, Mr. Tofsted, this is
9 what I propose: I know we didn't receive written comments
10 but entered into the record. If you would like to provide
11 comment about those questions then that's fine, or about
12 your comments generally, but today's hearing is really
13 about you providing, uhm, any oral testimony regarding the
14 rule generally. And then you're free to do so, if you
15 wish.

16 MR. TOFSTED: I guess I'll wait until I hear any
17 other issues raised, but I did have four issues that I
18 raised in the questions.

19 I was talking to someone yesterday so this
20 isn't exactly my issue but...

21 So it's more of a question.

22 Well, I was on the absentee voter board in
23 Las Cruces in 2019's election, and we were told that the
24 only thing we would be checking would be the signature of
25 the voter and not the required voter information. In

1 terms of this rule it looks like for absentee voter ballot
2 packets that come in to the County Clerk, they're supposed
3 to check for the last four digits of the voter's Social
4 Security number.

5 So the question would be: Are they really
6 going to check those numbers versus the actual number, and
7 are they going to set aside those ballots based on what
8 the legislation actually says, and are they going to check
9 those, and if they can't get a response from the voter
10 will they set those aside?

11 And my concern is that in the process who
12 is going to be overlooking -- are they going to have
13 challengers be able to access that process? And also
14 since it says in the legislation that there's "The County
15 Clerk shall" do this checking, underneath the privacy
16 flaps, is it a guarantee that there will be a challenger
17 present during, or allowed to be present; and who does the
18 challenger turn in their credentials to, since it says the
19 County Clerk, it doesn't say the Absentee Voter Board.
20 And so there is no presiding judge if it's just the County
21 Clerk's staff.

22 HEARING OFFICER: I appreciate your comment. Is
23 there anything else you would like to bring up?

24 MR. TOFSTED: Not at this time.

25 HEARING OFFICER: Would anyone like to ask a

1 question regarding the testimony just received?

2 (Note: Pause.)

3 Seeing none, I'll move on to the next person who
4 has their hand raised.

5 Mr. Paul McDonough -- Donahoe? Do you see
6 your...

7 MR. McDONOUGH: It's McDonough. Yeah, but --

8 HEARING OFFICER: McDonough, sorry.

9 MR. McDONOUGH: I will be honest with you. I
10 just found out about this morning. I have not had a
11 chance to look at the legislation. And for those of us
12 who are latecomers, can you give us a brief of what is in
13 the legislation?

14 HEARING OFFICER: So what I can tell you is this
15 is a public rule hearing on administrative rules that have
16 been proposed by the Secretary of State's office, and we
17 are trying to get public comment what these rules
18 basically have done. And I don't know if you heard Deputy
19 Pino's opening remarks, but basically these are proposed
20 rules to help administer the 2020 general election
21 regarding -- I guess there's another three particular
22 sections. One is to curing a deficient absentee ballot,
23 and one is about imposing challenges during the election.

24 So those are the covered areas.

25 MR. McDONOUGH: My first thing I have a

1 question about is securing the absentee ballot. I have
2 been going to the Secretary of State's site and I have a
3 printout for a request for an absentee ballot.

4 Am I given to understand that on September
5 14th they're supposed to send out Request for Absentee
6 Ballots to all registered voters?

7 HEARING OFFICER: What I can tell you is that we
8 can -- you can definitely contact our office with any
9 general questions that you have about the upcoming
10 election. Today's hearing is really about providing
11 testimony on the proposed rule that is in front of you.

12 MR. McDONOUGH: Okay. Well, I have more
13 specifics than just this rule, so I will thank you for
14 your time, and say good day.

15 HEARING OFFICER: The next person with their
16 hand raised is Todd Hathorne. Will you unmute yourself,
17 please.

18 MR. HATHORNE: Yes. Can you hear me?

19 HEARING OFFICER: Yes, sir.

20 MR. HATHORNE: Okay. Mr. Lange, first of all I
21 want to thank you for allowing the public to enter and
22 discussing what's required by law, but it is an important
23 part of the process.

24 I, too, found out about this yesterday
25 afternoon. The first comment that I would make is that

1 I'm actually surprised. SB 4 mentions challengers exactly
2 one time in 15 pages of text, and from that the necessity,
3 the dreaded air quotes, of raising an issue for rule
4 promulgation, especially given the short period of time, I
5 am surprised that there seems to be a need to restrict
6 what challengers can do or cannot do. I am specific to --
7 what caught my attention was the fact that there are a
8 list of permitted and prohibited activities. And those
9 come directly from statute.

10 The information that I received from the
11 Deputy, Alicia Romero, yesterday misstated some of the
12 activities that are prohibited, and I want to be clear
13 about what the legislature has already laid out.

14 In 1-2-23, Section B, a challenger for the
15 purposes of interposing a challenge may:

16 1: View the signature roster or precinct
17 voter list for the purposes of determining the challenger
18 desire to interpose a challenge when a signature roster or
19 the precinct voter list is used.

20 2: View the Application to Vote Form
21 before the voter receives a ballot for the purposes of
22 determining whether a challenger desires to interpose a
23 challenge when an Application to Vote Form is used.

24 3: View the signature roster or checklist
25 of the voters to determine whether the entries are being

1 made in accordance with the election code.

2 4: View each voting machine before the
3 polls are open to ensure that the public counter is at
4 zero, that the tape results contain no votes, and that
5 there are no voted ballots in the voting machine bins.

6 And 5: Make in any polling place and
7 preserve for future reference written memoranda of any
8 action or omission on the part of any member of the
9 precinct board -- and in brackets (election board).

10 That is Section 1-2-23 B. Those are the
11 permitted activities.

12 It is silent on the issue of recording
13 devices.

14 I will also go to Challengers Prohibited
15 Activities and State Statute 1-2-25.

16 A. Challengers, watchers, canvass
17 observers shall not be permitted to perform the duty of
18 any election board member.

19 2. Not handle the ballot, signature
20 rosters, checklists of the voters or voting machines, or
21 taking any part in the counting, tallying of ballots or of
22 county canvass.

23 3: Not be allowed to view a voter's full
24 date of birth or any portion of the voter's Social
25 Security number.

1 4: Not interfere in the orderly conduct of
2 the election, the counting or tallying of ballots or the
3 county canvass.

4 5: Be allowed in a room in which the
5 voting is being conducted at a polling location. Provide
6 at any given time, each political party and
7 candidate-election-related organization shall have no more
8 than one person present.

9 And 6: Be allowed in the room in which an
10 absentee election board and recount election board, or
11 election board for special election conducts its business,
12 or, in the case of the county canvass, observers in which
13 the county canvass is conducted.

14 And it continues to list a breakdown there.

15 Section B: Challengers are Prohibited.

16 Subject to permission granted by the county
17 clerk, in addition challengers may be present in the room
18 which may be -- which an absentee voter election board, a
19 recount election board, election board for special
20 election conducts its business in partisan elections,
21 provided that the number of additional challengers allowed
22 pursuant to the subsection is identical for each political
23 party participating in the election.

24 I wanted to lay those out because in the
25 rulemaking instructions that I was made aware of there was

1 a discussion about recording devices, and this is
2 something that is not listed in statute. So my position,
3 my opinion is that recording devices are going be to in a
4 polling location no matter what you do. Unless you are
5 going to confiscate people's phones there will be
6 recording devices in those locations, and arguing that a
7 poll challenger be prohibited on the basis of this
8 rulemaking, first of all again I'll state, it is a single
9 reference in 15 pages of text to interposing challenges,
10 and deciding that that single reference somehow gives
11 authority to the Secretary of State to be able to create
12 new law, this is something that the legislature has not
13 taken up and I -- not that there hasn't been an enormous
14 amount change in the election, some of it to which I'm
15 opposed, and Mr. DeSoto in particular knows of my
16 opposition. And in specific SB-4, we tried to participate
17 in the crafting of this particular bill, and due to
18 technological issues, and I think deception and deceit by
19 Mr. Egolf in his presentation of the ability to have
20 access to that process. It angers me, it is truly a
21 frustrating position as a poll challenger. I've been
22 doing poll challenger work for ten years, since 2010. The
23 position for us -- and before. The position for me is
24 what is happening is a continued concentration of power.
25 This rulemaking process, this particular addressing of the

1 rules on further restricting what a poll challenger is
2 allowed to do is evidence of the lack of transparency that
3 the Secretary of State would like.

4 I've tried to address this with her before
5 and have been unable to do so. I think that it's
6 important that we get in the record that there be full
7 access to every aspect of the election for poll
8 challengers.

9 And the interesting part about this is poll
10 challengers are not specific to one party. If there is a
11 question or concern, the poll challenger position is one
12 where there is an opportunity to redress questions where a
13 poll challenger can and cannot be.

14 In particular I am concerned about the
15 changes -- moving on to the next area -- of where a poll
16 challenger is allowed to be. It seems to me that there is
17 an effort to move more of the voter verification process
18 away from the election board itself, and specifically I
19 would point to 1-2-23 that lays out when and where you can
20 be.

21 1-2-23 says, A: A challenger upon
22 presentation of written appointment to the precinct board,
23 election board be permitted to be present at any time from
24 the time the precinct board, and in brackets, (election
25 board), convenes at the polling place until the completion

1 of the precinct board, again in brackets (election board)
2 duties after the polls have closed.

3 Those duties are -- a part of that is to
4 identify who is an eligible voter, who is a qualified
5 elector, to use specific language. And I am concerned
6 that more and more of the absentee ballot process and now
7 language as laid out in SB-4, that being specific to
8 what's being called mail-in ballots, and it appears to be
9 an effort by the legislature, in particular certain
10 members of the Legislature, to confuse the language and to
11 remove more and of the process away from the full view.

12 I am concerned about this rule dealing
13 specifically with those issues. There are other issues
14 with SB-4 but nothing that's being addressed by this rule,
15 so I'll confine my comments to those today.

16 HEARING OFFICER: Thank you, Mr. Hathorne.

17 Is there anybody who would like to ask Mr.
18 Hathorne a question about his -- a clarifying question
19 regarding his comment? (Note: Pause.)

20 If you do, please unmute yourself.

21 If not, I'll call for -- I'll say thank
22 you, Mr. Hathorne, and ask if there's any other members of
23 the public wishing to give public comment.

24 I don't see any other hands raised, but if
25 you would like to give public comment please unmute

1 yourself and state your name and affiliation and provide
2 your testimony.

3 MS. TILMAN: Can you hear me?

4 HEARING OFFICER: Yes, ma'am. Please state your
5 name, your first and last name and your party affiliation.
6 I mean -- your affiliation why you're here. Not your
7 party affiliation.

8 MS. TILMAN: My name is Donna Tilman. I'm a
9 voter, and I'm very concerned about the effort of De Joy
10 to destroy the US Post Office. And I'm suggesting that
11 what the Secretary of State do is to put drop boxes in all
12 the Walmarts where they will be protected, can't be
13 stolen, and can't be interfered with.

14 Could you hear that?

15 HEARING OFFICER: I did. Thank you, Ms.
16 Tilman.

17 Is there any other comment you would like
18 to provide?

19 MS. TILMAN: Well, I'm very concerned about the
20 security of this election. There's no question about it.

21 HEARING OFFICER: Thank you, Donna.

22 Is there any members in attendance that
23 would like to ask Donna a question?

24 Seeing none, I'll ask for -- say thank you,
25 Donna, and ask if there's any further questions or

1 testimony that someone would like to give regarding the
2 proposed rule that the SOS is proposing to adopt.

3 MR. TOFSTED: Yes, I'd like -- David Tofsted
4 here. I'd like to make an additional comment.

5 HEARING OFFICER: Please go ahead.

6 MR. TOFSTED: According to the proposed
7 1.10.15.9 paragraph H, it says: If two challengers are
8 representing a political party group or organization in
9 the precinct, only one of the challengers may hold the
10 authority to challenge at any given time.

11 Let me go to the next page. Hold on a
12 second.

13 (Reading) The challengers may alternate the
14 authority of the challenge at their discretion. The
15 challengers must advise the precinct/board each time the
16 authority is alternated.

17 So essentially this rule makes it such that
18 there's only effectively one challenger at any one time,
19 and the other challengers in the polling precinct are --
20 would be -- would have the authority of basically only
21 watchers. And yet according to, and I don't know the
22 paragraph in the election code, it requires that if -- or
23 it states that if a county has more than 50,000 registered
24 voters then the political party is allowed to have up to
25 four challengers in the polling place at any -- in the

1 absentee voter board at any given time.

2 So therefore this rule, paragraph H,
3 effectively demotes challengers to mere watchers. Because
4 what is the role of A challenger? A challenger is there
5 to be able to challenge, but if a challenger can't
6 challenge, then you're effectively taking away their power
7 to be able to challenge.

8 So this paragraph H seems to be out of
9 place or effectively taking away the capability of
10 challengers to do their job.

11 I also want to point out that at this point
12 today we are within 63 days of the actions of challengers
13 potentially violating this ordinance here, because the
14 absentee voter board can open as early as two weeks before
15 election day, and so we are within 63 days of that, and
16 according to Section 121 of the election handbook, no rule
17 can be implemented or imposed prior to 63 days before an
18 election.

19 Now, it doesn't say election day. It says
20 merely "an election," but the election in Dona Ana County
21 begins on October 6th, which is the first day of early
22 voting. So effectively we are already within that 63
23 days, and this rule should not be implemented, at least
24 the parts of this rule that are going to be in effect,
25 before 63 days from today.

1 Thank you.

2 HEARING OFFICER: Thank you, Mr. Tofsted.

3 Members of the public who would like to ask
4 a clarifying question?

5 MR. HATHORNE: Yes. Mr. Lange?

6 HEARING OFFICER: Yes. Go ahead.

7 Please state your name and the clarifying
8 question you would like to ask Mr. Tofsted.

9 MR. HATHORNE: Thank you very much. Actually
10 it's series of questions I would like to ask Mr. Tofsted.

11 In the absentee ballot warehouse in Dona
12 Ana County, did you ever have more than one poll
13 challenger in the building at any different time?

14 MR. TOFSTED: Yes, we did. We had up to the
15 four challengers for the spring primary in 20 --

16 MR. HATHORNE: And were there circumstances
17 during that time in which more than a singular activity
18 was taking place with a singular ballot?

19 MR. TOFSTED: There were instances where we had
20 multiple challengers. They had the -- the absentee voter
21 board was comprised of 10 people, and so they were working
22 in teams of two at a time to review the information on the
23 back of the ballot packets. So there were four teams, or
24 perhaps -- at least three, because once you remove the
25 presiding judge and the two election judges, there had to

1 be at least six people engaged in that process, which
2 would require three challengers to watch over that
3 process.

4 So yes, there would have been instances
5 where there were more than one challenger, and the
6 capability of having more than one.

7 MR. HATHORNE: Wouldn't that also put you in a
8 position of having multiple opportunities for decisions to
9 being made about ballots away from, if this rule were
10 "implemented" for lack of a better word, the head
11 challenger or the challenger in charge?

12 MR. TOFSTED: I believe so, unless you had some
13 sort of system to alert the main challenger, and that main
14 challenger would be in direct contact with the presiding
15 judge.

16 MR. HATHORNE: And if you did that, if this
17 fictitious or speculative system were actually put into
18 place, wouldn't that slow down the process of the ballots
19 being counted?

20 MR. TOFSTED: Well, Perhaps it would, but
21 the other concern is that in the spring primary there were
22 probably only a quarter of the voters who were actually
23 involved in that primary, and they had 10 people on the
24 absentee voter board.

25 If the number of absentee votes that are

1 being considered, we could end up with potentially 30- to
2 40,000 absentee votes to be processed.

3 MR. HATHORNE: Could you imagine what that
4 system would look like with a single person being the
5 challenger in Bernalillo County, with say 150,000 ballots?

6 MR. TOFSTED: Since I'm not in Bernalillo County
7 and don't know how that works, I couldn't imagine.

8 But we've a --

9 MR. HATHORNE: Well --

10 MR. TOFSTED -- secure processing building, and
11 it's perhaps 100 by 30 feet in area, and I can't
12 comprehend how they are going to be putting all these
13 ballots on tables and having the physical capability of
14 handling all these votes. It's gonna be very difficult.

15 MR. HATHORNE: Well, I'm not -- I wouldn't the
16 challenge that, I do think it's an issue.

17 But if the system, as you understand it
18 now, is that anybody who has the correct credentials that
19 are presented to the precinct board, to the presiding
20 judge, and those credentials have been accepted, they have
21 all of the authority to challenge, and that process would
22 work with the election judges and the presiding judge each
23 time that a challenge was interposed. Isn't that true?

24 MR. TOFSTED: True.

25 MR. HATHORNE: And so the current system allows

1 for multiple challengers to be able to interact with
2 election judges. All three of the people that I have just
3 listed presiding judge, election judge, and poll
4 challenger are election officials.

5 MR. TOFSTED: Is that a question?

6 MR. HATHORNE: Yes. Left as a question.

7 MR. TOFSTED: Yes, you're correct.

8 MR. HATHORNE: So if they're election officials
9 I would think it would be incumbent upon the Secretary of
10 State to describe the way that this would create
11 efficiencies and would still support the position of --
12 the whole goal of having challengers is to keep
13 nonqualified electors from casting ballots. Doesn't that
14 seem like the same goal that the presiding judge should
15 have and the election judges should have when a challenge
16 is interposed?

17 Don't you think that's true, David?

18 (Note: Pause.)

19 I don't know if David can hear me.

20 MR. DUNN: This is Blair. I can hear you.
21 Maybe David's mic is muted.

22 MR. TOFSTED: Ah, maybe I'm doing the...

23 I heard you but I'm not sure I understood
24 what I was asked to agree to.

25 MR. HATHORNE: So let me try again.

1 Isn't the goal of everybody in the election
2 process to make sure that every qualified elector is able
3 to cast a ballot?

4 MR. TOFSTED: That's true. Right.

5 MR. HATHORNE: And if that's true, when a
6 challenger interposes a challenge, it's in order to
7 support that goal.

8 MR. TOFSTED: Right.

9 MR. HATHORNE: And in an arrangement where, uh,
10 in this case there's been a reduction in the amount of
11 influence that county chairmen or state chairmen of
12 partisan parties are able to participate, based on what
13 has happened in previous pieces of legislation, do you see
14 this rule change as a way to further restrict poll
15 challengers' ability to support that goal?

16 MR. TOFSTED: Yes, I see it. And it's related
17 to your question or your comment about the ability to
18 bring in recording devices, which is not covered in
19 current legislation.

20 MR. HATHORNE: It's not covered in statute.

21 So if those goals are the same, do you
22 think that a county chairman of the Democrat or Republican
23 or parties, do you think their appointment is focused on
24 somehow restricting access to the ballot for qualified
25 electors?

1 MR. TOFSTED: It does seem to be, yes.

2 MR. HATHORNE: So you think that their goal is
3 to restrict access, as opposed to make sure that every
4 qualified elector has the ability to cast a ballot.

5 MR. TOFSTED: It certainly seems to be affecting
6 the ability of the challengers to perform their duties as
7 previously indicated, and I agree that this legisla- --
8 this rule doesn't seem to follow from either 121 or 112-72
9 which are indicated as the authority under which the rule
10 changes were proposed.

11 MR. HATHORNE: From your testimony from before
12 about the number of people that are in the election -- in
13 the absentee ballot pool in specific, do you think that
14 there are adequate number of challengers to support the
15 proposition that the election results are accepted by the
16 electorate? Do you think there's enough challengers to be
17 able to say, "No, listen. We saw what happened inside
18 that room, and x, y, z candidate truly did win or truly
19 did lose.

20 So, in other words, talking about the
21 confidence in the election results, do you think this rule
22 enhances or -- or declines the confidence in the election
23 results?

24 MR. TOFSTED: I think it declines it, but I also
25 believe that the rules as they exist in the current

1 election handbook, which requires counties with 50,000 or
2 more voters to be able to place four challengers in the
3 absentee voter board, and I believe it goes up to 10 for
4 counties with over 150,000 registered voters, which would
5 be basically only Bernalillo County, if we're talking
6 about 100,000 or more absentee ballots coming into
7 Bernalillo County, I don't see how 10 poll challengers are
8 going to be able to properly monitor that process, given
9 the number of the fraction of the overall votes that are
10 going to be cast by absentee ballot.

11 MR. HATHORNE: So in your situation, how many
12 people did you propose that the clerk appoint to, uhm, the
13 positions of election judge, presiding judge, or election
14 clerk?

15 MR. TOFSTED: We don't have any control over
16 that issue. That's the --

17 MR. HATHORNE: Oh, you don't. And so you -- in
18 fact the only area of partisan, of partisan influence,
19 ability to actually see what's happening is the poll
20 challenger; isn't that true?

21 MR. TOFSTED: That's true.

22 MR. HATHORNE: In fact your deputy clerk in Dona
23 Ana County rejected Republicans who offered to work in the
24 polling locations; isn't that true?

25 MR. TOFSTED: That's true.

1 MR. HATHORNE: And in fact your presiding judge
2 in the absentee board during the primary violated state
3 law by actually counting ballots where a unique identifier
4 was not provided by the voter. Isn't that also true?

5 MR. TOFSTED: That's true. They voted to allow
6 those ballots to go through. As I understand it, the
7 county clerk had instructed the board to check for the
8 signature, and -- well, they also checked for the year of
9 birth, but then they chose to allow all those ballots that
10 were missing the year of birth to be counted. And that's
11 the same action that happened in November of 2019.

12 And of course the year of birth is probably
13 the only real check, because you essentially -- you copied
14 your printed name and the address is the same as on the
15 return envelope from the voter, so it's essentially a
16 copying operation. Only the year of birth is actually
17 even minimally required.

18 So this new requirement for the last four
19 of the Social Security number is an improvement on what
20 was there before, but only if it's actually implemented.

21 MR. HATHORNE: And since your county clerk made
22 that decision, the rule impacts you -- this is -- I want
23 to tie it back to the rule in specifics.

24 This rule would impact the ability of the
25 Republican party, in your case, and the Democrat party, if

1 they were to participate in the same way, to be able to
2 say, "We don't know whether or not the election results
3 were valid or not."

4 MR. TOFSTED: I'm not going to go to that level,
5 but it's -- that could be -- that case could be made.

6 MR. HATHORNE: And isn't it -- in fact if
7 there's a limitation on the verification process, which
8 this rule also contemplates by having staff clear
9 ballots -- and I'm not sure I understand if the rule, and
10 I'd like to ask for clarification from the hearing officer
11 as to whether or not poll challengers under this rule
12 would be allowed to witness the qualification or
13 disqualification by staff of the individual absentee
14 ballots.

15 And also same the question posed for the
16 mail-in ballots coming from federal electors.

17 MR. TOFSTED: That was one of my comments, but
18 the other factor is that because as absentee ballots come
19 in the process is usually back-end heavy so that there may
20 not be the capability of the county clerk to actually
21 examine, under the security flaps of every one of these
22 packets. As election day approaches it may be easier to
23 simply send them directly to the absentee voter board,
24 which would be a better process, because then at least
25 there would be challengers present as these ballots are

1 opened.

2 And you could make a case that under the
3 statute, when it says "The county clerk shall," perhaps
4 it's interpreted as the county clerk as part of the
5 absentee voter board, that's what their role would be.

6 MR. HATHORNE: That's all my questions. Thank
7 you, Mr. Hearing Officer.

8 HEARING OFFICER: Thank you. I appreciate that.

9 If everyone could stay focused on the
10 comments on the rule, I think that would be helpful. I
11 think that I appreciate Mr. Tofsted's public comment, and
12 I'll move forward with any further testimony regarding the
13 rule specifically.

14 Please let's see if anyone has raised their
15 hand at this particular time.

16 Seeing none, if you would like to provide
17 public comment on the rule itself, please unmute yourself
18 and identify yourself, first and last name and if you are
19 affiliated with any organization.

20 MR. DUNN: Mr. Hearing Officer, this is Blair
21 Dunn:

22 HEARING OFFICER: Go ahead, Mr. Dunn.

23 MR. DUNN: Uhm, perhaps if somebody is from
24 staff or SOS going to discuss something. The questions
25 that were posed by Mr. Hathorne at the end of his

1 discussion or questioning of Mr. Hofsted (sic), if there's
2 somebody that could answer those questions, I think that's
3 something that could be clarified and would be helpful to
4 be clarified for the record.

5 HEARING OFFICER: Fair enough.

6 Do you have any public comment you would
7 like to provide?

8 MR. DUNN: No. I really would like to hear some
9 clarification of that on the record, because that
10 would satisfy the comments that I would have.

11 I don't know the answer to the question,
12 otherwise.

13 If that -- if it is -- let me go ahead and
14 put this on the record. If it is such that there's not
15 going to be the availability of poll watchers or poll
16 challengers to be able to view the disqualification or
17 qualification of the absentee ballots or the mail-in
18 elector ballots as Mr. Hathorne said, I think that that's
19 probably going to create a series of problems and severely
20 damage the public's trust in the integrity of the
21 election.

22 That's all I have.

23 HEARING OFFICER: Thank you, Mr. Dunn.

24 Does anyone have any questions for Mr.
25 Dunn? (Note: Pause.)

1 Thank you, Mr. Dunn.

2 Are there any further people who would like
3 to give comment?

4 And I guess just I don't -- what I would
5 say is Senate Bill 4 did pass. It's in Section 1-12-72.
6 In that section it did allow for an opportunity to cure
7 the absentee ballot. Ultimately if you read that section,
8 the decision of the county clerk is subject to the
9 absentee precinct board review. And so I believe that
10 should answer the clarifying question.

11 The point of this public hearing generally,
12 though, is for the SOS staff to receive public comment and
13 adjust its rule accordingly. So we intend to take all
14 public comment received today.

15 But that's what we have. That's why we are
16 having this rule hearing generally.

17 I'll see if anybody else has their hand
18 raised. (Note: Pause.)

19 Seeing none, if someone would like to
20 provide public comment, please unmute themselves and
21 provide comment on the proposed rule. (Note: Pause.)

22 Again I'll make a request that if you have
23 called in and you've just provided 350-7674, please
24 provide us your name, first and last. If you would like
25 to receive any email communication regarding this rule,

1 please provide us your email.

2 And then there's a (505) 463-7632. Make
3 sure that we have your name.

4 MR. HATHORNE: Mr. Lange? The 350 number
5 belongs to me, Todd Hathorne. And you have my email.
6 It's toddhathorne@gmail.com.

7 HEARING OFFICER: Thank you.

8 DIRECTOR VIGIL: Mr. Lange, this is Mandy, the
9 election director, and I just wanted to say thank you for
10 all the public comment that we have received, and I just
11 wanted to provide a couple of clarifying items based on
12 the comment that we heard.

13 Just to be clear, state law does require
14 that the county clerk and/or their staff do a review to
15 ensure that there is an appropriate completion of the
16 ballot. So it does require the last four of a Social
17 Security number and the voter signature.

18 So that is a requirement.

19 And secondly, that decision and a
20 determination made upon that review is subject to
21 challenge by state law. So there is an opportunity to
22 make a determination on what the clerk's review provided
23 for.

24 So I just wanted to add those couple of
25 items to make sure we are all on the same page.

1 HEARING OFFICER: Thank you, Director Vigil.

2 One last comment, or one last call for
3 public comment. No one has raised their hand. Please
4 unmute yourself if you would like to make a public comment
5 on the Proposed Rule 1.10.15.

6 MR. TOFSTED: David Tofsted.

7 I did have a question for Mandy Vigil,
8 though, so that would be -- can you hear me? David
9 Tofsted here.

10 Mandy, so if the county clerk is unsealing
11 the security flaps on the back of the outer envelope, what
12 is the procedure then that would enable a challenger to be
13 present at the time when those security flaps are
14 unsealed? Because in the statute it says that a
15 challenger shall provide their credentials to the
16 presiding judge, but it doesn't... (Note: Poor
17 connection.)

18 DIRECTOR VIGIL: Mr. Tofsted, you're breaking up
19 there, so if you'd like --

20 MR. TOFSTED: But the flaps ... (Note: Poor
21 connection.)

22 DIRECTOR VIGIL: -- to provide me with your
23 number, I'm happy to give you a call and we can discuss
24 this in detail. I can't hear you anymore.

25 (Note: Pause.)

1 MR. TOFSTED: It's saying that my connection is
2 unstable. Can you hear me now?

3 HEARING OFFICER: Yes.

4 DIRECTOR VIGIL: We can hear you now, and I
5 think the process you are describing is not directly
6 related to the topic we're discussing, but I'm more than
7 happy to go over it with you. If you would like to reach
8 out, I can take your number.

9 MR. TOFSTED: Well, but according to -- when
10 they passed the legislation, Representative Nibert was
11 talking to Representative Trujillo in the
12 question-and-answer period prior to the passage of the
13 legislation in The House, and he specifically asked her,
14 "Will challengers be able to monitor the entire process of
15 the absentee voter packets," and she indicated yes.

16 And so this is part of the process of
17 examining the information underneath the security -- or
18 the flaps on the back of the absentee voter ballot packet,
19 right?

20 DIRECTOR VIGIL: Understood. And as mentioned,
21 we don't have a specific process outlined in this rule,
22 and I'm more than happy to take that under advisement and
23 we can have a further discussion on the matter.

24 MR. TOFSTED: I will send you my email address.

25 DIRECTOR VIGIL: Okay. Thank you.

1 HEARING OFFICER: All right. I'll call for one
2 last call for any more public comment before we close
3 today's hearing.

4 MR. DUNN: Mr. Hearing Officer, this is Blair
5 Dunn. Just a quick request that when that discussion is
6 had with Mr. Hofsted (sic) that my email also be part of
7 that discussion.

8 HEARING OFFICER: Yes, sir. All right.

9 So it is important that everyone puts their
10 name in the chat box, because we are now closing the
11 hearing for public comment and we are going to enter the
12 attendance sheet as Exhibit 7. And so it's important that
13 everyone has put their first and last name and email if
14 they would like further communication at this time.

15 Does anyone have any questions about the
16 attendance sheet? If not, we'll move it into the record
17 as Exhibit 7.

18 The rule hearing record is now closed and
19 there will be no further oral testimony or written
20 comments accepted, except for we will wait until 12:00
21 o'clock. If anyone would like to provide written public
22 comment to this rule outside of our office, or email, then
23 you may do so.

24 Again the arguments/testimonies that were
25 submitted during this rule hearing will be duly considered

1 by the Secretary of State's office. Any rules adopted by
2 the SOS will be filed at the State Records and Archives
3 Center in accordance with the State Rules Act and the New
4 Mexico Register of Publications deadlines.

5 Any Rules or Amendments not adopted may be
6 postponed for future discussion at a definite time in the
7 future or may be postponed indefinitely.

8 I'd like to thank all members of the public
9 present for their participation and attendance today. Let
10 the record reflect that this hearing was adjourned at
11 10:14 a.m. on August 28, 2020. Thank you all very, very
12 much.

13 I think we'll leave this hearing open for a
14 little bit just if anyone wanted to come in and sign in
15 their sign-in sheets. So please take five minutes to put
16 your name down if you haven't already and we will close
17 the meeting in five minutes. But thank you very much. We
18 will receive no further oral testimony at this time.
19 Thank you very much.

20 (Note: Proceedings concluded at 10:14 a.m.)

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1 STATE OF NEW MEXICO)

2 : SS

3 COUNTY OF TAOS)

4 REPORTER'S CERTIFICATE

5 I, Mary Therese Macfarlane, do hereby certify
6 that I am a duly licensed Certified Court Reporter for the
7 State of New Mexico.

8 I further certify that I reported
9 stenographically to the best of my ability the Zoom
10 Conferencing Public Hearing on Proposed Rule Part 1.10.15
11 NMAC, held on August 28, 2020, and that the foregoing
12 transcript pages numbered 4 through 43 is a full, true and
13 correct transcription of my stenographic notes so taken.

14 Dated at Taos, New Mexico this 8th day of
15 September, 2020.

16 _____
17 Mary Therese Macfarlane
18 NM CCR No. 122
19 License Expires: 12/31/2020
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NOTICE OF PROPOSED RULEMAKING

The Office of the New Mexico Secretary of State (“Office”) hereby gives notice that the Office will conduct a public hearing on the described rule below.

The purpose of this hearing is to obtain public input on the new Alternative and Election Day Voting Administration Rule to be codified as Part 1.10.15 NMAC.

A public hearing will be held on the proposed rule on Friday August 28, 2020, from 9:00 am to 12:00 pm, through a livestreaming and teleconferencing platform in response to concerns surrounding the COVID-19 pandemic and in accordance with all Public Health Emergency Orders issued by the New Mexico Department of Health to limit mass gatherings due to COVID-19. The public hearing will be accessible at the following website and phone number:

<https://us02web.zoom.us/j/84117495538?pwd=c0ZML2JrUHKwbIRFdkJxTWR6eVNRZz09>

Meeting ID: 841 1749 5538. Password: 496806. Interested parties may also call into the hearing by calling the following telephone numbers: 1-669-900-6833 or 1-346-248-7799. Information regarding the livestream, will also be available on the SOS website.

All public testimony during the public hearing will be limited to oral participation by members of the public to those comments and discussion through audiovisual means. All comments will be recorded by a court reporter.

Authority: NMSA 1978, Section 1-2-1, and new Section 1-12-72 of the Election Code, authorize the Office to adopt and promulgate rules and regulations that are necessary to carry out the purposes of the Election Code.

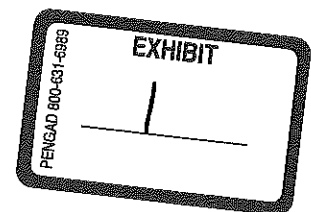
1.10.15 NMAC Alternative and Election Day Voting Administration

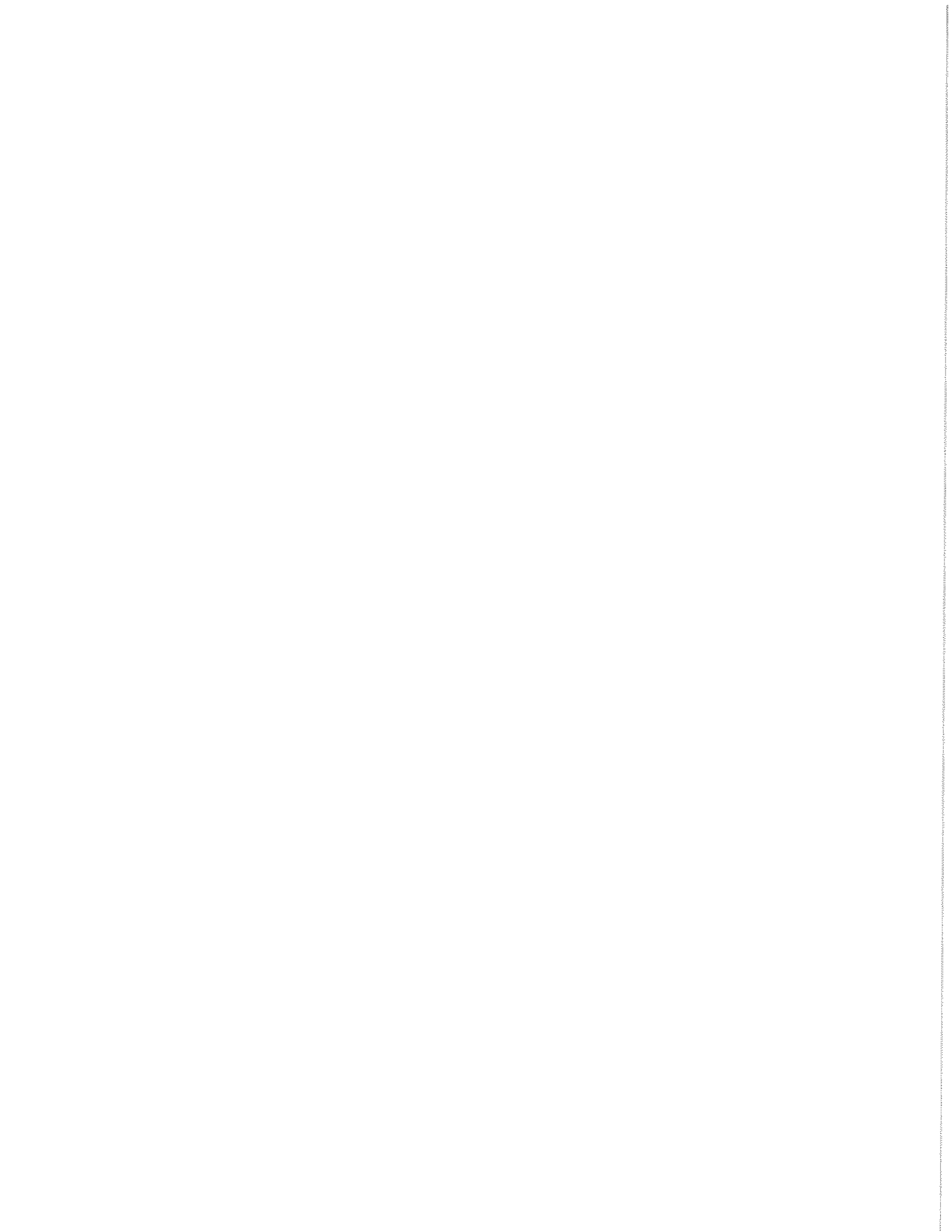
Purpose: The purpose for this rule is to provide uniformity in the application, operation, and interpretation of Alternative and Election Day Voting Procedures. This rule is proposed due to the Legislature’s passing of Senate Bill 4 in the 2020 Special Session.

Summary of Full Text: Section 1.10.15.7 NMAC defines key terms like “mailable voter,” and other words used in the proposed rule. Section 1.10.15.8 NMAC provides procedures for how a county clerk must reject a mailed ballot, how a county clerk must notify a voter if a voter’s ballot is rejected, and procedures for how a voter may cure a rejected mailed ballot. Section 1.10.15.9 NMAC addresses how election challengers may interpose challenges and conduct themselves pursuant to the Election Code. Section 1.10.15.10 NMAC provides the procedure for how election challenges are handled by the absent voter election board and provides a procedure for a voter to cure a rejected mailed ballot.

Details for Obtaining a Copy of Rule and Submitting Oral or Written Comments: Copies of the proposed rule are available on the Office’s website at www.sos.state.nm.us or can be obtained from the Bureau of Elections by calling (505) 827-3600 or emailing sos.rules@state.nm.us. The proposed rule is also available on the New Mexico Sunshine Portal. Interested individuals may provide comments at the public hearing. Before the public hearing oral or written comments may be sent to Dylan Lange, Director of Legislative and Executive Affairs, via email at sos.rules@state.nm.us, or Dylan.Lange@state.nm.us, fax (505) 827-8403, or by regular mail at Attn: Dylan Lange – proposed rule, The Office of the New Mexico Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87501. Comments may also be given by calling the Bureau of Elections at 505-827-3600. All written public comments will be posted on the website throughout the written comment period at: www.sos.state.nm.us. Additionally, on August 28, 2020, between 9:00am and 12pm, an agency representative will be outside our main office location listed above to receive written comments on the proposed rule.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 827-3600 or email Dylan.Lange@state.nm.us (5) business days prior to the hearing.





**TITLE 1
CHAPTER 10
PART 15**

**GENERAL GOVERNMENT ADMINISTRATION
ELECTIONS AND ELECTED OFFICIALS
ALTERNATIVE AND ELECTION DAY VOTING ADMINISTRATION**

1.10.15.1 ISSUING AGENCY: Office of the New Mexico Secretary of State
[N, XX/XX/2020]

1.10.15.2 SCOPE: This rule applies to the administration of all elections conducted pursuant to the Election Code.
[N, XX/XX/2020]

1.10.15.3 STATUTORY AUTHORITY: This rule is authorized by Sections 1-2-1 and 1-12-72, NMSA 1978 of the Election Code.
[N, XX/XX/2020]

1.10.15.4 DURATION: Permanent.
[N, XX/XX/2020]

1.10.15.5 EFFECTIVE DATE: September 29, 2020, unless a later date is cited at the end of a section.
[N, XX/XX/2020]

1.10.15.6 OBJECTIVE: The purpose of this rule is to provide a uniform system of conducting a general election based on legislative changes in the Election Code.
[N, XX/XX/2020]

1.10.15.7 DEFINITIONS

A. "mailable voter" means the same as defined in Section 1-12-72(D), NMSA 1978.
[N, XX/XX/2020]

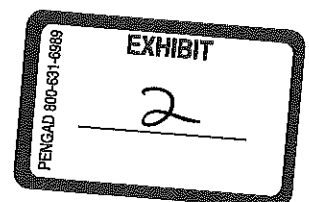
1.10.15.8 COUNTY CLERK MAILED BALLOT REJECTION OF QUALIFICATION

A. 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 to 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.

B. If either the voter's signature is missing or the last four digits of the voter's social security number are not provided or do not match, the county clerk shall reject the mailed ballot and make the appropriate notation in the absentee ballot register and shall transfer the ballot to the special deputy for mailed ballots for delivery to the absent voter election board.

C. If the mailed ballot is rejected, the county clerk shall within one working day send the voter a notice of rejection, along with information regarding how the voter may cure the reason for the rejection.

D. If the last four digits of the voter's social security number are either missing or does not match, the county clerk shall send a notice via electronic mail, or regular mail if no email address is on file, to the voter instructing them on how to cure the discrepancy.



E. If the signature is missing, the county clerk shall send notice via electronic mail instructing them to sign an affidavit and return it via email to the county clerk's office. This affidavit of cured mailed ballot should contain a space for the voter to provide the voter's signature and attest that this constitutes the required voter identification to cure the rejected mailed ballot. If the voter does not have an email address, the county clerk shall send a notice containing a signature form and a prepaid envelope for the voter to return and must indicate that the voter may also appear in person at the county clerk's office to cure the rejected mailed ballot.

F. The county clerk has a duty to attempt to contact any voter twice whose mailed ballot was rejected by either telephone, electronic mail, or mailed notice within one working day of rejection. If attempting to call by telephone the county clerk shall leave a message if there is an ability to do so.

G. If the voter cures the violation either electronically, by mail or in person the county clerk shall mark "cured" in the absentee ballot register and shall transfer the ballot and any document that evidences the cured mailed ballot to the special deputy for mailed ballots for delivery to the absent voter election board.

H. The determination of the county clerk to accept or reject a mailed ballot is subject to a later challenge before the absent voter election board.

[N, XX/XX/2020]

1.10.15.9 INTERPOSING ELECTION CHALLENGES

A. A properly appointed challenger or member of the election board may interpose challenges only for the specific reasons outlined in Sections 1-12-20 and 1-6-14(C), NMSA 1978.

B. For the purposes of interposing challenges, a challenger's permitted activities are those listed in Section 1-2-23, NMSA 1978. No other written information will be provided to challengers by election board members. A challenger will not be allowed to view a voter's full date of birth or any portion of the voter social security number except as provided on the official mailing envelope pursuant to 1-6-14(C), NMSA 1978.

C. The election board must allow a challenger to view the application to vote form, signature roster, precinct voter list, and the voting machine. A challenger may view a voting machine only before the polls are opened to ensure that the public counter is at zero, that the results tape contains no votes and that there are no voted ballots in the voting machine bins.

D. Challengers must conduct themselves in an orderly manner at all times. A challenger can be expelled from the precinct for unnecessarily obstructing or delaying the work of the election inspectors; touching ballots, election materials or voting equipment; campaigning; or acting in a disorderly manner.

E. Challenges may not be made indiscriminately or without good cause. Doing so constitutes disrupting a polling place.

F. Challengers do not have the authority to approach voters or talk to voters for any reason.

G. Challengers do not have the right to use video cameras or recording devices in the polling place.

H. If two challengers are representing a political party, group or organization in the precinct, only one of the challengers may hold the authority to challenge at any given time. The

challengers may alternate the authority to challenge at their discretion. The challengers must advise the precinct board each time the authority is alternated.

1.10.15.10 ABSENT VOTER ELECTION BOARD; CHALLENGES; DISPOSITION

A. Challenges are handled in accordance with Section 1-12-22, NMSA 1978.

B. If a challenge is made in front of the absent voter election board, a designated election board member may notate the challenge but the absent voter election board does not have to rule on the challenge at that time, and may do so when it is otherwise convenient.

C. If the challenge is unanimously affirmed by the absentee voter election board, an election board member shall mark "affirmed" on the ballot envelope and indicate this in the absentee voter record. A unanimously affirmed challenged ballot shall not be opened but placed in a container provided for challenged ballots.

D. Any unanimously affirmed challenged ballots shall be given to the special deputy for mailed ballots for delivery to the County Clerk. Once received, the county clerk must comply with Subsection (C) – (G) of Part 1.10.15.8 NMAC, to attempt to have the voter cure the reason the challenge was affirmed.

E. If the reason for the challenge is satisfied by the voter before the conclusion of the county canvass or as part of an appeal, the official mailing envelope shall be opened and the vote counted by the county canvass board. If the ballot is hand tallied it shall be recorded in the absentee by-mail hand tally counting group. If the ballot is tabulated by a voting tabulator, it shall be recorded in the absentee by-mail machine counting group.

F. If the voter cures the reason for the challenge, the voter's record on the absentee ballot register shall be changed to "accepted", and the notation "challenged-affirmed" on the mailed ballot envelope shall be crossed out, signed and dated by either the presiding judge of the absentee precinct board or a member of the county canvassing board, dependent upon when the voter satisfies the reason for the not affirmed challenge.

From: [Lange, Dylan, SOS](#)
To: [Portal, Sunshine, DoIT](#)
Subject: New Rulemaking for posting on the Sunshine Portal
Date: Tuesday, July 28, 2020 7:47:00 AM
Attachments: [2020-07-28 Alternative and Election Day Voting Administration \[Draft\].pdf](#)
[2020-07-28 SOSnotice xxxi14.pdf](#)

Dear Ms. Oldis:

Pursuant to NMSA 1978, Section 14-4-2(E)(2), the Office of the New Mexico Secretary of State is providing the attached [Notice of Rulemaking and Draft Rule](#) for posting on the Sunshine Portal website.

Thank you for your support in positing this notice.

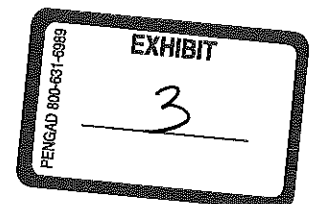
Warm Regards,



STATE OF NEW MEXICO
MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

Dylan K. Lange | General Counsel
New Mexico Office of the Secretary of State
325 Don Gaspar, Ste. 300 | Santa Fe NM 87501
Cell: (505) 231-9473 | Desk: (505) 827-3629
dylan.lange@state.nm.us

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From: [Lange, Dylan, SOS](#)
To: ics@nmlegis.gov; senate@nmlegis.gov; house@nmlegis.gov
Subject: NMSOS Notice of Rulemaking
Date: Tuesday, July 28, 2020 8:21:00 AM
Attachments: [2020-07-28 Alternative and Election Day Voting Administration \[Draft\].pdf](#)
[2020-07-28 SOSnotice_xxxi14.pdf](#)

Dear Legislative Council Service:

Please find attached the Secretary of State's Notice of Rulemaking for distribution to the appropriate interim and standing legislative committees. We are providing this information pursuant to NMSA 1978, Section 14-4-2(E)(7), and 14-4-5.2(A) of the State Rules Act. If you have any questions, comments, or need clarification, please do not hesitate to contact me.

Warm Regards,

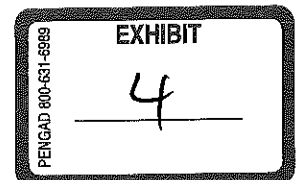


STATE OF NEW MEXICO
MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

Dylan K. Lange | General Counsel

New Mexico Office of the Secretary of State
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dylan.lange@state.nm.us

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From: Curtas, Alex, SOS
To: Curtas, Alex, SOS
Subject: RELEASE: Sec. of State Maggie Toulouse Oliver Announces Notice of Proposed Rulemaking
Date: Tuesday, July 28, 2020 4:24:52 PM

FOR IMMEDIATE RELEASE

28 July 2020

Contact:

Alex Curtas, Director of Communications
New Mexico Secretary of State's Office
505-469-2783
alex.curtas@state.nm.us

Secretary of State Maggie Toulouse Oliver Announces Notice of Proposed Rulemaking

Public hearing on the Alternative and Election Day Voting Administration Rule to be held on August 28, 2020

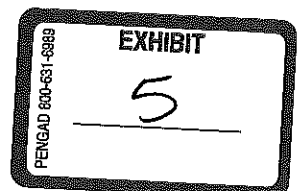
SANTA FE – Secretary of State Maggie Toulouse Oliver announced today that her Office will conduct a public hearing on August 28, 2020 to obtain public input on the new *Alternative and Election Day Voting Administration Rule* to be codified as Part 1.10.15 NMAC.

The draft rule, Notice of Proposed Rulemaking, and other information can be found on the Secretary of State's website [here](#).

In accordance with all Public Health Emergency Orders issued by the New Mexico Department of Health to limit mass gatherings due to COVID-19, a public hearing will be held on the proposed rule using a live streaming and teleconferencing platform on Friday, August 28, 2020 from 9:00am to 12:00pm.

The public hearing will be accessible at the following website and phone number:

[https://us02web.zoom.us/j/84117495538?
pwd=c0ZML2JrUHkwblRFdkJxTWR6eVNRZz09](https://us02web.zoom.us/j/84117495538?pwd=c0ZML2JrUHkwblRFdkJxTWR6eVNRZz09)



Meeting ID: 841 1749 5538. Password: 496806.

Interested parties may also call into the hearing by calling 1-669-900-6833 or 1-346-248-7799.

The public is encouraged to provide public comment on the draft rule. All public testimony during the public hearing will be limited to oral participation by members of the public to those comments and discussion through audiovisual means. All comments will be recorded by a court reporter.

Before the public hearing oral or written comments may be sent to Dylan Lange, Director of Legislative and Executive Affairs, via email at sos.rules@state.nm.us, or Dylan.Lange@state.nm.us, fax (505) 827-8403, or by regular mail at Attn: Dylan Lange – proposed rule, The Office of the New Mexico Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87501.

Comments may also be given by calling the Bureau of Elections at 505-827-3600.

All written public comments will be posted on the website throughout the written comment period at www.sos.state.nm.us. Additionally, on August 28, 2020, between 9:00am and 12:00pm, an agency representative will be outside our main office location at 325 Don Gaspar, Suite 300, Santa Fe, NM 87501 to receive written comments on the proposed rule.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 827-3600 or email Dylan.Lange@state.nm.us (5) business days prior to the hearing.

####

Alex Curtas | Communications Director

New Mexico Secretary of State Maggie Toulouse Oliver

325 Don Gaspar, Ste. 300 | Santa Fe, NM 87501
Cell: 505.469.2783 | Desk: 505.827.3613
alex.curtas@state.nm.us

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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

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.

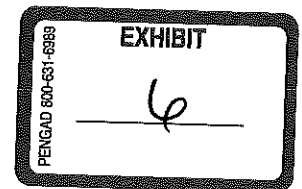
I have attempted to re-write C using the information in the draft C and F. If this were used, F could be deleted.
new version of C. If the mailed ballot is rejected, the county clerk has a duty to attempt to contact the voter within one working day of the rejection by either telephone, electronic mail, 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: jimhayhoe3@msn.com
To: [rules, sos, SOS](#)
Subject: [EXT] Proposed Rule
Date: Thursday, July 30, 2020 7:13:32 AM

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

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

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: 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>; Curtas, Alex, SOS <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
Advisor, Voting Rights & Elections Program
Brennan Center for Justice at NYU School of Law
120 Broadway, Suite 1750
New York, New York 10271
917.226.0514 (m)
shellenbergerl@brennan.law.nyu.edu

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From: David Tofted
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

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: [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

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

BRENNAN CENTER FOR JUSTICE

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.¹ 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

¹ 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

From: 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

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
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

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

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

August 28, 2020 Administrative Rule Hearing
**Proposed Rule 1.10.15 NMAC Alternative and Election Day
Voting Administration**

NM Secretary of State, Maggie Toulouse Oliver



First Name	Last Name	Title	Public Comment
Ada	Espinosa Lujan		
Alex	Curtas		
Alicia	Romero		
Amanda	Lopez Askin		
Andy	Perez		
Blair	Dunn		Public comment
Carrisa	Tashiro		
Clifford	Rees		
Colline	Miller		
Mary	Macfarlane	Court Reporter	
Danielle	Sedillo-Molina		
David	TOsted		Public comment
Donna	Jones		
Donna	Tilman		
Doreen	Calzada		
Dylan	Lange	Hearing Officer	
Grant	Price		
John	Kreienkamp		
*Joyce		iphone	
Kari	Fresquez		
Kelly	Davis		
LeighAnn	Melancon		
Lindsey	Bachman		
Lisa	F. Parrott		
Mandy	Vigil		
Mario	Jimenez III		
Megan	Bott		
Minnie	Montoya		
Miriam	Diemer		
Morgan	Lee		
Naomi	Maestas		
Natalia	Sanchez Downey		
Nick	Voges		
Niesha	Esene		
Paul	McDonough		Public comment
Sharon	Pino		
Todd	Hathorne	505-350-7674	Public comment
Todd	Wilham		
Will	Shirk		
Thomas	Day	Disability Right NM	505-463-7632

*Note – did not provide their first and last names