



# LINCOLN COUNTY CLERK

Rhonda B. Burrows, County Clerk Whitney E. Whittaker, Chief Deputy Clerk



March 14, 2018

The Honorable Maggie Toulouse Oliver  
Office of the Secretary of State  
491 Old Santa Fe Trail, Room 321  
Santa Fe, New Mexico 87501

TRANSMITTED VIA EMAIL ONLY TO:  
sos.rules@state.nm.us

Re: Repeal and Replace of Absentee Rule 1.10.12 NMAC

Dear Madam Secretary:

I respectfully submit the following comments in opposition to the adoption of the proposed Repeal and Replace of Absentee Rule 1.10.12 NMAC for consideration. These comments are specific to Section 1.10.12.15 (5).

Section 1.10.12.15 (5) creates a process whereby an Absentee Ballot requested and returned by a voter, submitted to the Absentee Board for review and found not to contain the required signature of the voter is subject to the interposition of a challenge by a duly appointed challenger as referenced in one instance of the Election Code 1-6-14 NMSA 1978.

It is my contention the process defined in this section of the rule:

- 1) is inconsistent with the rule making authority provided to the Secretary of State;
- 2) codifies a process referenced in a minor 2011 Amendment to New Mexico State Statute which is inconsistent with multiple other State Statutes;
- 3) defines a process which is inconsistent with the statutory and legal intent of the absentee voter process and
- 4) creates authority for political parties to intervene in a manner disruptive to the nonpartisan administration of elections.

**Rule Making Authority:** 1.10.12.3 titled Statutory Authority cites 1.2-1 NMSA 1978 as providing authority through the following language "The secretary of state shall 1) obtain and maintain uniformity in the application, operation and interpretation of the Election Code". The amended rule as presented is contrary to this statement by focusing strictly on 1-6-14 (C) NMSA 1978 not taking into consideration all of the statutes relevant to the processing of absentee and provisional ballots.

**Inconsistent with other State Statutes:** In 2011 a massive election code "clean up" bill was introduced and passed by the NM State Legislature. While this bill contained many needed revisions to promote uniformity the insertion of language in 1-6-14 C (2) to provide the opportunity for a lawfully appointed challenger (*appointed by a political party*) present in attendance during the processing of ballots by the absentee board the option to interpose a challenge if "the official mailing envelope does not contain a signature" directly *conflicts with other election statutes*. 1-12-20 NMSA 1978 Conduct of election, interposing challenges contains no reference to the imposition of challenge under these circumstances

1-6-14 D further states "if the challenge is upheld by the presiding judge and election judges.... the official mailing envelope shall be placed in an envelope provided for challenged ballots". 1-6-14 (D) further provides if the reason for the challenge is satisfied by the voter before the conclusion of the county canvass, the official mailing envelope shall be opened and the vote counted". The presumption of providing the voter a cure prior to the conclusion of the canvass is the challenged ballots will be treated as Provisional Ballots for purposes of notification to the voter and determination of validity by the County Clerk. 1-12-22 Conduct of elections, challenges; disposition states "if a challenge is unanimously affirmed....the person shall be furnished a provisional ballot."; and 1-12-25.4 (B) Provisional paper ballots: disposition states "A provisional paper ballot shall not be counted if the registered voter did not sign either the signature roster or the ballot's envelope"; and 1-6-16 Casting ballot in person prohibited states "No person who has been issued an absentee ballot shall vote in person other than on a replacement absentee ballot". *These references are not inclusive of all of the inconsistencies which occur in statute which are contrary to the enactment of this rule but are provided here as examples to illustrate the problematic nature of the process defined by the proposed rule.*

**Inconsistent with the intent of the Absentee Voter Process:** As the election process has matured over the last years three distinct processes to vote have emerged Absentee by Mail, Absentee in person more commonly known as Early Vote; and Election Day voting. The commonly accepted definition of absentee voting is defined as a vote cast by someone who is unable or unwilling to attend the official polling station to which the voter is normally allocated. New Mexico State Statutes further support this definition by defining the method of obtaining an absentee ballot by application by mail, the issuance of the absentee ballot by mail, and providing the voter with a return by mail envelope the format of which is defined in statute including the requirement for signature on the return envelope. *The process defined in the proposed rule is essentially creating an opportunity for a voter to cure a signature deficiency but by choosing to vote absentee the voter has indicated they are unable to come in person to the polling place and or by extension the County Clerk's office to cure the deficiency.*

**Authority for political parties to intervene in a manner disruptive to the nonpartisan administration of elections:** The process defined in this rule is dependent upon: 1) the presence of a political party appointed challenger to be present during the processing of absentee ballots by the absentee precinct board; 2) notification to the voter by the political party of the process for the voter to cure a signature deficiency and 3) the "transformation" of a ballot issued as an absentee ballot to a provisional ballot. *The process defined in this rule amendment is rife with opportunities to disenfranchise voters who are unable to travel to the County Clerk's office by virtue of illness or absence; voters who are not represented by a particular political party challenger; and voters who do not have challengers present at absentee boards in every county. To allow political parties to interpose a "partisan" challenge creates an infringement on the rights of all voters.*

Comments respectfully submitted by:



Rhonda B. Burrows

Lincoln County Clerk