July 19, 2013

RE: PUBLIC COMMENTS REGARDING PROPOSED RULES FOR VOTER IDENTIFICATION AND RULES ON POLL WATCHERS, VOTE CHALLENGERS AND PROVISIONAL VOTING

Dear State Board of Election Commissioners Staff:

The Republican Party of Arkansas has concerns regarding the following sections of the proposed rules.

Definitions

1) Section 800 (c) Documentation from the Administrator
   This proposed rule definition is inconsistent with the Rules promulgated by the Secretary of State (See Secretary of State Proposed Rules 3.0 Definitions section 3.03).

Voter Identification

1) Section 801 Proof of Identity required when voting at the polls
   There needs to be a section addressing absentee voting for voters who live in long-term or residential care facilities. They may be voting absentee instead of early or on Election Day. They could be visiting family or in the hospital or want to vote absentee because they would be out of the precinct during the election for any number of reasons.

   Was it the intent of the Author of the implementing legislation to leave absentee voters out of this section? That should be clarified.

2) Section 802 (5)

   If the voter’s name is different than the name in the precinct voter registration list there is a specific procedure to follow in Section 7-5-321 of the Act. If these rules do not follow and include that procedure they are outside the Scope of the enabling legislation.
3) **Section 803** Federal law must be followed for this section and it appears that it has been but this should be confirmed.

4) **Section 810** Identification required when voting absentee

Should address absentee voters from nursing homes and add letter from administrator of nursing home as a form of identification.

This section should include clarification to address what procedure will be followed should voters send in original identification documents such as Drivers license or student identification. Will those documents be returned and by whom and in what time frame. How will the submitted information be protected?

The last two paragraphs of this proposed rule should be eliminated as they go beyond the authority of the State Board of Election Commissioners.

Arkansas ballot applications and voter statements are currently governed by the Arkansas Code (Arkansas Code Annotated sections 7-5-404, 7-5-409 and 7-5-410). Those code sections provide specific details concerning what should be included in both documents. The State Board of Election Commissioners may not add to what is specifically required by the Code, in our opinion. A rule or regulation may not go beyond the scope of the Arkansas Code. We do not find any language in the implementing legislation authorizing your agency to implement either the section on absentee ballot applications or voter statements.

The Legislature has clearly claimed this area and provided specific information as to what should be included. The State Board is not allowed to add to the requirements provided by the Legislature.

Arkansas Code provides that a voter or group may create their own absentee ballot application and states that the application will be accepted IF the application includes the information provided in statute.

It will be very confusing for voters, clerks and third party organizations that create their own absentee ballot applications if the requirements are "added" by Rule. This is especially true because the Legislature did not specifically authorize the State Board of Election Commissioners to promulgate rules concerning either of these areas. It provides the potential for litigation because there is no statutory authority for creating rules in these areas.

We also believe it is important to note that the 2013 Legislature considered a bill that would have changed the requirements on what should be included on a voter statement (See HB 2068). While this bill did pass the House, it did not pass in the Senate. The Legislature considered making a change here but chose not to act. The State Board of Election Commissioners certainly should not have the authority to take action the Legislature chose not to take.

The general rule-making authority granted to the State Board of Election Commissioners does not allow the Board to propose rules in substantive areas where the Legislature has provided specific detail as to how that substantive area of law should be handled.
The State Board of Election Commissioners has traditionally promulgated rules concerning election-day procedures, poll workers counting of votes, election monitors, filing fees for nonpartisan positions, election expenses and how counties may be reimbursed for their election expenses. For the Board to now attempt to expand its rules to govern new areas like absentee ballot applications and voter statements could look to some like an effort to assume roles granted to other areas of our government.

Rules on Poll Watchers, Vote Challenges and Provisional Voting

Section 900(8)

This section is apparently inconsistent with the Secretary of State Rule 16.01 and 16.02 and therefore should be changed to conform by deleting "dated no earlier than one day before early voting begins".

Most significantly this language, highlighted above, is beyond the scope of the statute and should be stricken. See A.C.A. section 7-5-201(g).

This concludes comments on the proposed rules.

Respectfully,

Doyle Webb
Chairman