

**Flores, James, SOS**

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**From:** sos-nmcc@googlegroups.com on behalf of Gonzalez, Gerald, SOS  
[Gerald.Gonzalez@state.nm.us]  
**Sent:** Wednesday, October 29, 2008 12:19 PM  
**To:** sos-nmcc@googlegroups.com  
**Cc:** zshandler@nmag.gov; SFuqua@nmag.gov; Herrera, Mary E, SOS; dft@TaosNet.com;  
Fulgenzi, Kelli, SOS; Dominguez, Larry, SOS  
**Subject:** Additional Guidance Regarding Replacement of Mail-In Absentee Ballots at Early Voting Sites

Good afternoon,

It has been called to our attention that additional guidance is needed regarding voters who requested and were mailed an absentee ballot and having never received it, wish to vote at an early voting site.

We view the goal of the Election Code as being to enfranchise voters, and as such, conclude that a voter should be allowed to ask for a replacement absentee ballot during a flexible time period and at any authorized voting location. The additional guidance for this purpose is as follows:

Voters who have applied for an absentee ballot and to whom an absentee ballot has been mailed but who have not yet received it, shall be allowed to vote at any early voting site in the following manner:

- The voter must execute, in the County Clerk's office, or at the alternate voting site, an affidavit stating the voter has not received nor voted the voter's mail-in absentee ballot.
- The County Clerk or designee verifies with the absentee ballot registry at the time the affidavit is submitted that the voter was sent an absentee ballot and that it has not been received by the County Clerk's office.

- A poll official shall then invalidate the original mailed ballot on the I Power system by reflecting it as spoiled.
- The voter will then be treated as an early voter. An absentee ballot application will be given to the voter to complete, followed by a “replacement absentee ballot” which for this purpose will be an early voting ballot like that issued to any other early voter. Once the voter has completed the ballot it will be fed through the tabulator like all other early voters’ ballots.
- The entry previously made in I Power to spoil the original mail-in ballot will assure that a voter will not be able to vote more than once through this process. If the lost mail-in ballot is subsequently received by the County Clerk, the I Power system will reveal that the voter has already voted early in person. This mail-in ballot shall not be counted and shall be handled by the County Clerk in accordance with the federal election retention schedule – i.e., retained for 22 months.
- All affidavits shall also be retained by the County Clerk in accordance with the federal election retention schedule.

Gerald Gonzalez  
Bureau of Elections Director  
Secretary of State’s Office

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**Flores, James, SOS**

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**From:** Gonzalez, Gerald, SOS  
**Sent:** Saturday, October 25, 2008 2:12 PM  
**To:** sos-nmcc@googlegroups.com  
**Cc:** brian@roblesrael.com; C. Shannon Bacon; Carter Bundy (Business Fax); Col. Allen Weh (aweh@gopnm.org); Hull, Cynthia; dft@TaosNet.com; campaignlaw@gmail.com; Josh Geise (josh@nmdemocrats.org); Fulgenzi, Kelli, SOS; mjarmie@jarmielaw.com; Herrera, Mary E, SOS; Mark Kennicott (mkennicott@gopnm.org); Nina Martinez (nmartinez@gopnm.org); Templeton, Paula, SOS; paul@kienzlelaw.com; Scott Fuqua (SFuqua@nmag.gov); Travis Junion (travis@nmvictory08.org); Shandler, Zachary, Civil NMAGO; rjbarody@earthlink.net; trumpetnm@msn.com; jayvandersloot@yahoo.com; sallen@commoncause.org; peace\_owl1@yahoo.com; mudd\_pi@mac.com  
**Subject:** Reminder Regarding Appointment of Certain Watchers

FOR WATCHERS OF CANDIDATES AND ELECTION-RELATED ORGANIZATIONS WHO ARE REQUIRED TO SUBMIT TO THE SECRETARY OF STATE THEIR LISTS SPECIFYING “THE POLLING PLACE TO BE WATCHED AND THE NAME OF THE QUALIFIED APPOINTEE,” THE 10-DAY DEADLINE IS TODAY, OCTOBER 25, 2008 ACCORDING TO SECTION 1-2-27 OF THE ELECTION CODE. HOWEVER, SECTION 1-1-22 PROVIDES THAT “TIME PERIODS OF LESS THAN ELEVEN DAYS SHALL BE COMPUTED AS CALENDAR DAYS; PROVIDED, HOWEVER THAN IF AN ACTUAL DEADLINE FALLS ON A WEEKEND . . . THE NEXT BUSINESS DAY SHALL BE THE DEADLINE.”

THIS MEANS THAT LISTS OF WATCHERS FROM CANDIDATES AND ELECTION-RELATED ORGANIZATIONS MUST BE PROVIDED TO THE SECRETARY OF STATE NO LATER THAN MONDAY, OCTOBER 27, 2008. THIS IS SO THAT COUNTY CLERKS CAN BE PROVIDED WITH THE LISTS FIVE DAYS BEFORE THE ELECTION, WHICH IS BY THURSDAY, OCTOBER 30, 2008.

FOR THOSE WHO MAY HAVE MISSED THE EARLIER INFORMATION WE PROVIDED REGARDING CHALLENGER AND WATCHER APPOINTMENT REQUIREMENTS, I AM REPEATING THE INFORMATION BELOW:

■ Challengers:

- Must be voters in a precinct in the county where they are appointed to be challengers.
- Can be appointed by the county chair of each party represented on the ballot or else by the precinct chair of that party; if neither chair makes an appointment, voters present belonging to that party may make the appointment.
- One challenger and one alternate can be appointed for each precinct.
- Challengers are to wear identification badges designating them as authorized challengers of their political party – but no other form of identification or campaign-related material.
- The appointment must be in writing and presented to the precinct board **but does not have to be made ahead of time.**
- See 1-2-21, 1-2-23 and 1-2-24.

■ Watchers:

- Must be voters in a precinct in the county where they are appointed to be watchers.
- Two watchers can be appointed for a given precinct by the chair of a political party represented on the ballot or else by the precinct chair of that party; if neither chair makes an appointment, voters present belonging to that party may make the appointment; the appointment must be in writing and

presented to the precinct board **but does not have to be made ahead of time.**

- One watcher per polling place can also be appointed by a candidate for office or an election-related organization provided the written request is made to the Secretary of State **at least 10 days prior to the election**; the Secretary of State is to notify the County Clerk of the qualified appointees **five days prior to the election**; the request must specify the polling places to be watched and name the corresponding watcher.
- See 1-2-27, 1-2-28 and 1-2-29.

## Flores, James, SOS

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**From:** sos-nmcc@googlegroups.com on behalf of Gonzalez, Gerald, SOS  
[Gerald.Gonzalez@state.nm.us]  
**Sent:** Tuesday, October 21, 2008 7:53 PM  
**To:** sos-nmcc@googlegroups.com  
**Cc:** Herrera, Mary E, SOS; dft@TaosNet.com; Fulgenzi, Kelli, SOS; Shandler, Zachary, Civil  
NMAGO  
**Subject:** Challenger and Watcher Appointment Clarification  
**Categories:** Red Category

Hopefully this will help clear up some confusion regarding the appointment of challengers and watchers.

### ■ Challengers:

- Must be voters in a precinct in the county where they are appointed to be challengers.
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- One challenger and one alternate can be appointed for each precinct.
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- The appointment must be in writing and presented to the precinct board **but does not have to be made ahead of time.**
- See 1-2-21, 1-2-23 and 1-2-24.

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- One watcher per polling place can also be appointed by a candidate for office or an election-related organization provided the written request is made to the Secretary of State **at least 10 days prior to the election;** the Secretary of State is to notify the County Clerk of the qualified appointees **five days prior to the election;** the request must specify the polling places to be watched and name the corresponding watcher.
- See 1-2-27, 1-2-28 and 1-2-29.

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## **Flores, James, SOS**

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**From:** Gonzalez, Gerald, SOS  
**Sent:** Tuesday, October 14, 2008 5:53 PM  
**To:** sos-nmcc@googlegroups.com  
**Cc:** Trujillo, DonFco, SOS; Herrera, Mary E, SOS; Fulgenzi, Kelli, SOS; Flores, James, SOS  
**Subject:** Early voting site hours

On behalf of Madame Secretary Mary Herrera, and for the purpose of bringing some uniformity and clarity to a number of the e-mails I received today, the following is my reading of the applicable provisions regarding the hours for operating early voting sites. Someone suggesting a press release in order to get the information out (a good idea) and I will meet with our PIO tomorrow to discuss that. If there are still individual questions, I would be glad to visit with you about them:

- Alternate voting sites are to be open from noon to 8 p.m. on Tuesdays through Fridays and from 10:00 a.m. to 6:00 p.m. on the Saturday through Saturday immediately preceding the election – as provided in 1-6-5.7.A of the Elections Code.
- Alternate voting sites are defined in Rule 1.10.12.7.D. as “a site located outside the office of the county clerk, where a voter may cast an absentee ballot and includes mobile alternate voting locations.”
- Extrapolating, early voting sites should be open from noon to 8 p.m. on October 14 through 17, October 21 through 24, and October 28 through 31. They should also be open from 10 a.m to 6:00 p.m. on October 18, 25 and November 1.
- Early voting sites located in the County Clerk’s office are governed by 1-6-5.F., which provides the hours are to be the regular hours of business as well as 10:00 a.m. to 6 p.m. on the Saturday immediately prior to the election. This would be regular business hours (presumably 8:00 a.m. to 5:00 p.m) on October 14 through 17, October 20 through 24, and October

27 through 31. They should also be open from 10:00 a.m. to 6 p.m. on November 1.

- Some County Clerks have apparently inquired about operating an early voting site at the County Clerk's office on Saturdays. If this early voting site is located "outside of the office of the county clerk" (whether in the same building or not), then it can be open from 10:00 a.m. to 6:00 p.m. on October 18, 25 and November 1.

## **Flores, James, SOS**

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**From:** Flores, James, SOS  
**Sent:** Monday, November 03, 2008 2:59 PM  
**To:** Herrera, Mary E, SOS  
**Subject:** FW: Direction Concerning Voting by Certain Felons

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**From:** Gonzalez, Gerald, SOS  
**Sent:** Thursday, October 30, 2008 7:35 PM  
**To:** sos-nmcc@googlegroups.com  
**Cc:** zshandler@nmag.gov; SFuqua@nmag.gov; Herrera, Mary E, SOS; 'dft@TaosNet.com'; Fulgenzi, Kelli, SOS  
**Subject:** Direction Concerning Voting by Certain Felons

Section 31-13-1 N.M.S.A. 1978 as amended in 2005 and Section 1-4-27.1 of the Election Code provide that a convicted felon can vote if that person has:

- Completed the terms of their suspended or deferred sentence; or
- Was unconditionally or conditionally discharged from a State correctional facility or unconditionally discharged from a federal correctional facility and completed all conditions of probation and parole; or
- Was granted a pardon or certificate by the Governor restoring their full rights of citizenship.

The Secretary of State is to notify all County Clerks when a convicted felon is eligible to register as a voter when:

- A State District Court notifies the Secretary of State that a person has completed the terms of that person's suspended or deferred sentence; or
- The New Mexico Corrections Department or the corrections department of another state or a federal corrections agency issues the persons a certificate of completion.

To ensure compliance with the provisions of State law cited above,  
County Clerks are directed to:

- Permit anyone who states they have completed the terms of their sentence but who appears to be ineligible to vote because of a felony conviction to vote on a provisional ballot;
- Advise anyone who has received a letter of rejection – in writing if possible -- that they can vote on a provisional ballot;
- Provide the Secretary of State with a list of all persons who have been sent a rejection letter or were not permitted to vote based on a felony conviction.

## Flores, James, SOS

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**From:** sos-nmcc@googlegroups.com on behalf of Gonzalez, Gerald, SOS  
[Gerald.Gonzalez@state.nm.us]  
**Sent:** Monday, November 03, 2008 11:03 AM  
**To:** sos-nmcc@googlegroups.com  
**Cc:** Herrera, Mary E, SOS; dft@TaosNet.com; Fulgenzi, Kelli, SOS; Templeton, Paula, SOS; Fuqua, Scott, Litigation NMAGO; Shandler, Zachary, Civil NMAGO  
**Subject:** Determining Voter Intent  
**Attachments:** NM Sup Ct Writ of Mandamus.pdf

I am attaching a copy of the State Supreme Court's "Writ of Mandamus" issues late last Wednesday concerning the determination of voter intent when hand tallying ballots. As you can see from reading the Writ, the Supreme Court indicated that the determination of what counts as a valid vote includes applying the standards contained in 1-9-4.2A and Paragraphs (1) through (4) of Subsection B. This means that the Presiding and election judges can determine the voter's intent by unanimous decision.

The Secretary of State's Office is in the process of preparing emergency rules that will be filed today complying with the Supreme Court's decision. The decision not only affects 1.10.23.7.X and 1.10.23.9.C in Rule 1.10.23, but also effects Rule 1.10.12.15.C and 1.10.22.9.K – so all of these rules will be refilled to conform to the Supreme Court's decision. We anticipate that the new emergency Rule 1.10.23 will incorporate the examples of what counts as a vote that were presented to the Supreme Court. These are the same examples as were contained in Secretary of State's Instruction 2008-10. We will send out Instruction 2008-10 again once the new rules have been filed so that you can have a 'handier' form of document to share with the precinct. Workers. We anticipate that the new rules will be filed by mid-day today. If anyone has any questions, please feel free to contact this office.

Gerald Gonzalez  
Bureau of Elections Director  
Secretary of State's Office

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