



August 29, 2012

Scott Gessler, Secretary of State
Colorado Department of State
1700 Broadway
Denver, Colorado 80290

Dear Secretary Gessler:

It is our understanding that you sent a letter to approximately 4000 registered voters who you believe may not be citizens, questioning their citizenship, and asking them to take affirmative steps to remain on the voter rolls. We object to your actions because (1) the methodology used by your office to identify the individuals on the list is flawed and over-broad and (2) because you did not follow the procedure mandated by Colorado statutes in challenging these voters' registrations.

First, your hastily and improperly compiled list likely includes the names of numerous citizens who are unquestionably eligible to vote. We understand that you created the list by identifying individuals who obtained a Colorado driver's license by using a non-citizen document, such as a green card or visa, who are now on the voter rolls. But, you failed to take into account the fact that many of these individuals have likely become naturalized citizens. In Colorado alone, thousands of persons are naturalized each year. But because Colorado driver's licenses are only renewed every five years, the DMV's citizenship information is instantly out of date.

Year	Number of Colorado Residents Naturalized ¹
2010	7,916
2011	8,485
2012 (YTD to May)	6,147

Despite this glaring flaw in your data, you have declined to utilize a method available to you that would result in an accurate list. The Department of Homeland Security ("DHS") has agreed to provide your office access to the Systematic Alien

¹ U.S. Citizenship and Immigration Services Field Offices Form N-400 Applications for Naturalization Receipts, Completions and Pending Fiscal Years: 2010 through 2012 (May).

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Verification for Entitlements ("SAVE") database once a Memorandum of Agreement is signed by both your office and DHS. Although you may find that the safeguards required by DHS before you can have access to the SAVE database are tedious and cumbersome, using unreliable data in a rushed manner less than 40 days before ballots are sent is irresponsible. Because you have not waited to run these 4000 names through the SAVE database or instituted similar safeguards to protect lawful voters, we believe your list is unreliable and should never have been used to send letters forcing people to prove they are citizens.

Second, Colorado statutes provide a process to challenge an illegal or fraudulent voter registration. COLO. REV. STAT. §1-9-101, *et seq.* First and foremost, any challenge of illegal or fraudulent registration should be handled by the county clerk and recorder, not the Secretary of State. COLO. REV. STAT. §1-9-101(1)(a). Second, the registrant is to be given notice of the challenge and a hearing is to be held in which the challenged registrant shall have the opportunity to appear. COLO. REV. STAT. § 1-9-101(1)(a).

Importantly, the person challenging the registration (i.e. your office) bears the burden of proof of the allegations in the challenge. *Id.* The letter sent requires that the *challenged* voter prove eligibility rather than the Office of Secretary of State proving ineligibility. Suffice to say that the letter you sent and your instructions to the individual about withdrawing are inconsistent with these statutory requirements. COLO. REV. STAT. § 1-9-101, *et seq.*

Everyone agrees that only eligible citizens should be registered to vote. But any removal of voters from the rolls demands careful adherence to the law and transparency, neither of which is evident here. Instead, you are using unreliable data to make serious accusations against voters, and you are doing so in a manner contrary to Colorado law. We, therefore, ask that you stop all efforts to purge the voter rolls in this haphazard manner. Specifically, we request that you (1) send a second letter to the 4000 voters retracting your instructions and wait until you have reliable data and (2) follow the challenge process already prescribed in statute for any future voter registration challenges.

Sincerely,

Cynthia Mares, President
Colorado Hispanic Bar Association