August 14, 2013

State of Colorado Department of State
1700 Broadway Suite 200
Denver, CO 80290

Re: Comments: Proposed Temporary Election Rule 2.10.4

Proposed Rule 2.10.4 is completely unnecessary and based on a false premise. The Secretary of State claims that it is needed because it "clarifies that an elector must have more than a mere intent to move to establish a new residence." However, this was never ambiguous. Colorado law clearly establishes what constitutes residency for the purposes of voting. C.R.S.A. § 1-2-102.

The Secretary of State points to the passage of House Bill 13-1303 as necessitating this new rule. The Secretary states that, "Before the amendments, when an elector moved from one county or precinct in the state to another with the intention of establishing a new residence, after 30 days the elector lost residence in the former county. House Bill 13-1303, however, removed the 30 day language." While this is true, the changed statutory language was related to abandoning a previous residence or domicile.

In contrast, the proposed rule is related to the establishment of a new residence or domicile. On that issue, the law is completely unambiguous. The law simply says, "If a person moves from one county or precinct in this state to another with the intention of making the new county or precinct a permanent residence, the person is considered to have residence in the county or precinct to which the person moved." C.R.S.A. § 1-2-102 (II)(f).

The local election officials of Colorado are more than capable of understanding this law, without new regulations. Certainly, this language gives no impression that a "mere intent to move" could be sufficient to establish a new residency. The law plainly states that the standard is "if a person moves" with the intent to stay.

In addition to being an unnecessary addition to Colorado's election regulations, proposed rule 2.10.4 may cause confusion about the right of citizens in the military and students to vote in Colorado. This is apparent from some of the misinformed comments made in support of this rule that seem to indicate that students should not be allowed to vote. To the contrary, long-established U.S. Supreme Court precedent protects the college students against just this type of discrimination.

The U.S. Supreme Court ruled in 1979 that election officials cannot target college students seeking to register in their college community by creating a stricter residency

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burden that applies only to those students. In *Symm v. United States*, the local election official in Waller County, Texas required only students attending Prairie View A&M University, which is located in the county, to complete an additional questionnaire about their residency after they submitted a voter registration application. In a decision affirmed without comment by the U.S. Supreme Court, the District Court held that the election official's targeting of student applicants was an unconstitutional violation of the students' voting rights.

In addition to being unnecessary because C.R.S.A. § 1-2-102 already clearly defines the criteria for determining residency, proposed rule 2.10.4 provides a road map for confusion about the constitutional rights of Coloradans.

By pointing only to military personnel and students, the proposed rule incorrectly implies that residency standards for both groups have changed and that members of both groups should be subjected to greater scrutiny. County officials may reasonably conclude that the Secretary of State's office promulgated the rule to require them to change the manner in which they process voter registration applications. By pointing to certain categories of military personnel and college students as "likely not a resident," the proposed rule strongly suggests that the appropriate method for changing the application process is to scrutinize all military personnel and college students more closely or subject them to stricter requirements. Such scrutiny or hurdles would directly mirror the behavior in *Symm v. United States* that the Supreme Court held unconstitutional 34 years ago.

Proposed rule 2.10.4 should not be adopted. The law on residency is clear to citizens and local election officials alike. For this reason alone, proposed rule 2.10.4 is unnecessary. Additionally, the proposed rule's examples as it relates to students and some members of the military improperly implies that those two classes of residents, unlike all others, need to declare that their intent to stay is permanent. Finally, the Secretary of State's justification for this rule is without merit and will likely only waste state resources, lead to confusion and, potentially, jeopardize the voting rights of students and members of the military.

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