

Dwight Shellman

From: Margit Johansson [REDACTED]
Sent: Wednesday, October 09, 2013 3:48 AM
To: Dwight Shellman
Subject: Fwd: Suggestions for Rule 16 on UOCAVA
Attachments: SUGGESTIONS FOR ELECTION RULES 10-1-13.docx

Dear Dwight,

I meant to check your email address before sending this, and then sent it out by mistake, before I finished editing the letter. Oddly, your email address didn't bounce, but I am resending the letter to you.

My apologies for getting your name wrong.

Sincerely,

Margit Johansson

----- Forwarded message -----

From: Margit Johansson [REDACTED]
Date: Tue, Oct 8, 2013 at 4:45 PM
Subject: Fwd: Suggestions for Rule 16 on UOCAVA
To: Scott Gessler <Scott.Gessler@sos.state.co.us>, Suzanne Staiert <Suzanne.Staiert@sos.state.co.us>, Dana Williams <dana.williams@sos.state.co.us>, "hilary.rudy@sos.state.co.us" <hilary.rudy@sos.state.co.us>, Andrea Gyger <andrea.gyger@sos.state.co.us>, Judd Choate <judd.choate@sos.state.co.us>, Richard Coolidge <richard.coolidge@sos.state.co.us>, wayne.shellman@sos.state.co.us

Dear Secretary Gessler et al,

Please see the attached suggestions for Election Rule 16.

Thank you.

Sincerely,

Margit Johansson

Boulder, Colorado

SUGGESTIONS FOR REVISED ELECTION RULE 16 OF SEPTEMBER 26
Margit Johansson
Coloradans for Voting Integrity (CFVI)
October 8, 2013

Rule 16. MILITARY AND OVERSEAS VOTERS (UOCAVA)

NOTE: The following suggestions for Rule 16 are based on the acceptance of the “inconvenient truth” that Internet voting (defined here as including return of voted ballots by email or fax) is 1) a less secure means of remote voting than mail; 2) does not provide a secret ballot; and 3) cannot be reliably audited.¹

Colorado’s Constitution directs the legislature to ensure honest elections² and a secret ballot³. The Federal MOVE Act of 2009, by requiring that blank ballots be sent to UOCAVA voters 45 days before an election, has made possible the timely return of voted ballots by mail. Colorado law in CRS 1-8.3-113 acknowledges that mail is a more secure means of returning voted ballots than electronic mail, and directs that mail be used whenever possible. It is unconscionable to leave this part of the law out of Rules. Increasing the use of electronic return of remotely voted UOCAVA ballots unduly risks the security of these ballots.

We encourage the Secretary of State through Rules for UOCAVA voters to begin supporting the full intent of 1-8.3-113 by stressing ways to avoid electronic return of voted ballots, and hence advancing the Constitution-mandated goals to “secure the purity of elections and to guard against the abuses of the elective franchise”, and to honor the requirement for secret ballots.

16.1.7. Ballots received by the Secretary of State

Under (a), this rule suggests the SOS forward a ballot received “**BY THE MOST EFFICIENT MEANS AVAILABLE no later than the next business day.**” One must ask, most efficient for what purpose? Timeliness? Expense? Ballot security? Ballot secrecy? Colorado’s Constitution does not weigh timeliness or expense against honest elections or a secret ballot. Rules should maximize the chance that there will be time and opportunity for UOCAVA voters to return voted ballots by mail.

Substitute (a)...and forward the ballot... no later than the next business day **BY NON-ELECTRONIC MAIL IF DELIVERY IN TIME TO BE COUNTED CAN BE REASONABLY EXPECTED.**

¹ See <https://www.verifiedvoting.org/resources/internet-voting/>. Also, the recent revelations that the National Security Agency has information on all our emails should strengthen our resolve to avoid the use of electronic return of ballots.

² Article VII, Section 11. “Purity of elections. The general assembly shall pass laws to secure the purity of elections and guard against abuses of the elective franchise.”

³ Article VII, Section 8. “Elections by ballot or voting machine. ... no ballots shall be marked in any way whereby the ballot can be identified as the ballot of the person casting it.”

16.1.8.

If possible, it would be better to send a notice to “inactive voters“ **at least 45 days**” before a Primary Election. In this way, the voter will have a better chance to receive a ballot in time to comply with the MOVE Act’s provision that blank ballots be sent to eligible voters at least 45 days before an election. (This Rule applies to Primary elections; presumably the same Rule would apply to other elections as well.)

Add **AT LEAST 45 DAYS** BEFORE the Primary Election...

16.1.8 A??

An additional Rule should precede (but not replace) the present Rules 16.1.9 and 16.1.10. Rather than wait until a clerk has missed the 45-day deadline, he or she should be reminded before the 45-day deadline (60 days before the election?) of the federal requirement of the 45-day deadline.

ADD RULE: AT LEAST 60 DAYS BEFORE AN ELECTION, THE SECRETARY OF STATE WILL REMIND THE CLERKS THAT UOCAVA BLANK BALLOTS SHOULD BE SENT OUT 45 DAYS BEFORE THE ELECTION.

16.1.10 FAILURE TO MEET THE 45-DAY BALLOT TRANSMISSION DEADLINE IN SECTION 1-8.3-110, CRS.

16.1.10. If a Clerk misses the 45-day deadline, send blank ballots by email, but rather than allow for the electronic return of **voted** ballots, the Rule could specify that Clerks stress the need for an immediate return of voted ballots by non-electronic mail, and as a last resort, at least for overseas military and their families, provide for prepaid express mail (to be paid by the Clerks who missed their deadline).

This has elements of a federal bill announced (but not yet introduced) by sponsors Senator Charles Schumer (D, NY) and Senator Cornyn (R, TX): send blank ballots to overseas military electors by express mail and, if time is getting short, return voted ballots by express mail. ⁴

16.2 Election transmission

As I have mentioned to the Secretary of State’s staffers more than once, what are now Rules 16.2.1 and 16.2.1 (C) make no mention of the qualifier in CRS 1-8.3-113 about returning voted ballots by email or fax. The qualifier is that an elector may return a voted ballot electronically “in circumstances where another more secure method, such as returning the ballot by mail, is not available or feasible.”

⁴ The proposed bill is called “The Safeguarding Elections for our Nation’s Troops through Reforms and Improvements Act”, or “SENTRI Act”. (The bill applies only to overseas military and their families, not all overseas voters. It will also repeal the provision of the 2009 MOVE Act allowing states to waive the 45-day requirement.)

Given the basic insecurity of using the Internet for voting, this qualifier is too important not to be included in the Rule.

Why the deafening silence about the legislative priority for the relative security of mail over electronic mail?

And if voters are being given the option of electronic return of their voted ballots, why are they not also being informed of the considerable risks that their ballots run with such a choice, in addition to mention of the loss of secrecy? Whose interests are being served by silence about ballot insecurity? Not the voters'. The UOCAVO voters in the over thirty states now allowing some form of electronic return of voted ballots would have been better served by the DOD's Federal Assistance Voting Program (FVAP) if it had not been silent about the insecurity of Internet voting in its long-running "Legislative Initiatives" campaign for the states to adopt Internet voting. And have vendors such as Everyone Counts been open about the inherent security risks of Internet voting (including ballot return by email or fax)?

Add to 16.2 and 16.2(C): **BUT BECAUSE OF THE INSECURITY OF ELECTRONIC RETURNS OF VOTED BALLOTS, MAIL BALLOT RETURNS SHOULD BE USED WHEREVER POSSIBLE.**