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August 12, 2014

Colorado Department of State
Judd Choate
Elections Division
1700 Broadway, Ste 200
Denver, CO 80290

VIA EMAIL

Mr. Choate,

Jefferson County submits the following comments in response to the Proposed Election Rules issued August 7, 2014. I appreciate the opportunity to comment and hope that you find my remarks helpful.

First, Jefferson County agrees with and supports the comments submitted by the County Clerks' Election Statute Review Committee. In addition, I offer the following.

Proposed rule 7.2.6 requires voters to sign an additional affirmation on the back of the ballot return envelope if they are giving their ballot to a third party for delivery. The person's name must also be provided. The current effective date is listed as January 1, 2015.

Jefferson County appreciates your consideration of a delayed effective date given the fiscal impact of any requirement to alter current return envelope design. As a practical matter, at this point envelope designs have been approved by USPS and

the order submitted to our printer. Assuming a late-August adoption date, implementation in 2014 would mean a complete reprint of envelopes and it is uncertain whether it is even possible to have USPS approve a new design in time print envelopes and mail ballots by the UOCAVA deadline of September 20, 2014.

Aside from the practical matter, the rule as proposed is unenforceable and the policy goal unclear. Jefferson County has not received any voter complaints alleging either intimidation or that a third party collected a ballot and did not deliver it by the deadline through ballot trace technology provided to voters on the SOS website and our county website. If we were to receive such a voter complaint, it would be appropriately forwarded to the District Attorney for investigation under the applicable elections offenses statutes.

Nonetheless, if the policy goal is to protect voters from such activities, Jefferson County recommends and supports achieving this through other methods such as ballot collector regulation and training similar to the programs currently established for Voter Registration Drives. This would more appropriately place the regulatory burden on political groups that wish to conduct get-out-the-vote activities allowable under the statute, rather than the voter who may just be utilizing their independent and individual choice.

The ballot return envelope is not an appropriate place to regulate third party ballot delivery. Implementation as currently proposed would create unnecessary voter confusion regarding affidavits and the potential for unintended consequences. This is for an SOS regulation that has no legal application for the disposition of the voter's ballot. We would anticipate increased contact from voters confused or concerned that their ballot may not be counted, and that is simply not a legal requirement nor is it necessary or likely effective for security purposes.

I urge the Secretary of State work with election officials and the General Assembly to develop a more effective program for ballot collection oversight in the statute than this rule as proposed.

For the reasons listed above, I urge the Secretary not adopt Rule 7.2.6.

Proposed Rule 8.6.8 states that watchers may not attempt to determine how any elector voted or “obtain” confidential information. Proposed Rule 8.6.9 then provides that the watcher cannot disclose or record any confidential information he or she may observe. The issue is that the use of the term “obtain” creates ambiguity as to what a watcher may observe. The definition of “obtain” is *to come into possession of; get, acquire, or procure, as through an effort or by a request*. Does obtain mean visually observe but not record or does the proposed rule prohibit visual access of confidential information?

Given that proposed Rule 8.6.9 states a watcher cannot disclose whatever confidential information they observe, reading the rules together Jefferson County assumes the Secretary of State is proposing to establish a policy whereby watchers who are not required to attend any training, pass criminal background checks will be allowed to view voter’s confidential information such as driver’s licenses, social security numbers, and dates of birth. This is in direct contrast to the requirements under statute and the SOS policies and rules for election officials regarding security and access. This creates a security risk that the state has increasingly diminished for voter’s personally identifiable information maintained under the law. If you provide access to confidential information to non-election officials the standard for security should be the same as certified and trained election officials. In discussions with county local parties, they do not have a desire for access to confidential information for voters, just validation that the process is being completed—which can be done with the reports and exports currently provided.

If the Secretary’s intent is to allow watchers to view voter’s confidential information, I urge the Secretary not adopt Rules 8.6.8 and 8.6.9. In either case, the rules should be clarified so that the policy is clear.

Again, thank you for the opportunity to comment on the proposed rules. If you have questions, please feel free to contact me directly.

Sincerely,

A handwritten signature in black ink, appearing to read "Pam Anderson", written over a light blue horizontal line.

Pam Anderson
Clerk and Recorder