

Andrea Gyger

Subject: FW: URGENT concern regarding November local government elections ---message to Local Government Committee members

From: Marilyn Marks [<mailto:marilyn@aspenoffice.com>]

Sent: Thursday, October 03, 2013 11:25 AM

To: rhonda.fields.house@state.co.us; [REDACTED]; 'tim.dore.house@state.co.us'; tony.exum.house@state.co.us; 'joann.ginal.house@state.co.us'; Chris Holbert for Senate; 'bob.rankin.house@state.co.us'; ed.vigil.house@state.co.us; Steve Lebsock; 'jared.wright.house@state.co.us'; 'clarice.navarro.house@state.co.us'; 'leroy.garcia.house@state.co.us'; bob.gardner.house@state.co.us; jeanne.nicholson.senate@state.co.us; 'david.balmer.senate@state.co.us'; Vicki Marble [REDACTED]; [REDACTED]; 'john.kefalas.senate@state.co.us'

Cc: jeanette.chapman@state.co.us; david.beaujon@state.co.us; Suzanne Staiert; Scott Gessler; Dana Williams; Jesse Mallory; [REDACTED]; Bill.skewes@state.co.us

Subject: URGENT concern regarding November local government elections ---message to Local Government Committee members

Senators and Representatives of the Local Government Committees:

There is an urgent problem that that threatens to disrupt the November elections for many special districts, municipalities, and school districts and invites protracted and contentious litigation in close elections. **In summary, many election officials will be ignoring the statutory protections of local minimum duration residency requirements in conducting the coordinated elections.** This is a result of the flawed HB1303 legislative impacts on local jurisdictions that sponsors and State Affairs Committee failed to address when citizens pleaded back in April and May that this flaw not be allowed to go unaddressed in the bill. Many of us asked that the issue be raised with your respective committees, given the potentially harmful impacts on local governments. However, we were unsuccessful in our request to have this matter brought to your committees' attention.

We had anticipated that local governments would work with their county clerks to insist that the minimum residency requirements of the Municipal Code, the Education Code and the Special District Code be honored in allowing voters to vote on local races in November. We at Citizen Center have been disappointed to learn that many clerks are relying on Intergovernmental contracts to attempt to avoid compliance with the statutes on minimum residency. We are aware of no provision in the Colorado statutes or constitution that would permit an intergovernmental contract to supersede the residency requirements of the statutes. Obviously, the local residents would wish to protect the purity of their local elections, and not allow a "busload of transients" to suddenly take control of their jurisdiction's government by having instant residency.

Please contact Secretary Gessler regarding on-going rule-making to urgently address this, and please contact your county clerks to ask that they comply with all residency requirements of the local governments in this upcoming election.

Please see the following message to the Secretary's office concerning their rule-making efforts on residency.

Thank you for your service to local governments and the state's citizens. Feel free to contact me if you have questions regarding our view on this matter.

Marilyn Marks

Citizen Center

www.TheCitizenCenter.org

[REDACTED]

From: Marilyn Marks

Sent: Thursday, October 3, 2013 10:43 AM

To: Suzanne Staiert; Andrea Gyger (Andrea.Gyger@SOS.STATE.CO.US); 'SOS.Rulemaking@sos.state.co.us'

Cc: [REDACTED]; Al Kolwicz; [REDACTED]; Geoff Wilson; [REDACTED]; Lisa Cyriacks; 'bob.rankin.house@state.co.us'; 'debra.johnson@denvergov.org'; 'Janice Vos'; 'william.mast@co.pitkin.co.us'

Subject: Pending SOS Rule on School District, Special District, Municipality Residency---non-compliance in November 2013 election --URGENT

Deputy Secretary Staiert,

Please consider this comment for immediate rule-making efforts. Please address the **entire issue of residency requirements** that should be in place for the upcoming election, including what indicia of residency are required to demonstrate length and place of residency for both new registrants and change of address activities.

The variety of local elections in the coordinated elections this year points out the compelling need for clear and consistent application of rules as to who is entitled to vote in which local and state elections.

Rule 2.3 below and the related practices of the county clerks in the upcoming coordinated election serves to violate the intent of numerous statutes controlling residency determination for local jurisdictions.

Citizen Center has surveyed most of the clerks in Colorado counties and have learned the disturbing news that many clerks are planning to use this proposed rule along with IGA's to circumvent the minimum durational residency requirements of their local school districts, special districts and municipalities. Obviously, **a jurisdiction cannot contract away their voters' statutory protections with a resolution or IGA.**

As I wrote in my letter on rule-making, an immediate rule should be issued to require that clerks honor the statutory residency requirements of Title 22, Title 32, and Title 31. While some Municipalities reference the statutory ability for a municipality to elect to operate elections under Title 1, this does not solve the residency issue because 1-8-105 still requires a 30 day residency for municipal mail ballot voters.

I am concerned that electors or candidates will have considerable opportunity to challenge the results of the local elections if ineligible electors are allowed to vote in the upcoming local elections. In small local elections it is not unusual for a handful of votes to determine the outcome. A lack of compliance with local residency requirements will invite considerable legal challenges in contentious close elections. Again, clerks cannot rely on IGA's to wipe away the statutory rights of local citizens to control the purity of their local elections through requiring minimum periods of residency.

Mary Eberle of Citizen Center has received confirmation from Judd Choate that the following residency periods are reflected in the Colorado Revised Statutes.

State questions 22 days

County questions 22 days

School Tax question 22 days

School Director 25 days

Municipal (statutory towns and cities) 30 days

Special District 30 days

Please note that the rule below does not require obtaining adequate information for determination of eligibility to vote. Please quickly address this issue with Designated Election officials.

21 2.3 FOR THE PURPOSES OF PRECINCT CAUCUS LISTS AND **REGISTRATION LISTS FOR MUNICIPAL 22 OR SPECIAL DISTRICT ELECTIONS**, THE RESIDENCY REQUIREMENT IS BASED UPON THE DATE

23 PROVIDED BY THE ELECTOR ON HIS OR HER APPLICATION.

24 2.3.1 THE COUNTY CLERK AND RECORDER MUST ENTER THE DATE PROVIDED BY THE
25 ELECTOR IN THE REGISTRATION RECORD MAINTAINED IN THE STATEWIDE VOTER
26 REGISTRATION SYSTEM. [SECTIONS 1-3-101 AND 31-10-201, C.R.S.]

27 2.3.2 IF THE ELECTOR SUBMITS AN APPLICATION AND DOES NOT INCLUDE THE DATE HE OR
28 SHE MOVED, THE COUNTY CLERK MUST ENTER THE DATE THE APPLICATION IS
29 RECEIVED OR POSTMARKED, WHICHEVER IS EARLIER, AS THE DATE MOVED. BUT IF
30 THE ELECTOR SUBMITS THE APPLICATION DURING THE 22 DAYS BEFORE AN
31 ELECTION AND DOES NOT PROVIDE THE DATE HE OR SHE MOVED, THE COUNTY
32 CLERK MUST ENTER THE DATE MOVED AS THE 22ND DAY BEFORE THE ELECTION
33 BASED UPON THE AFFIDAVIT.

(I am copying Clerk Johnson and Clerk Vos Caudill because I have personally discussed this issue with them. I am not suggesting that their systems are non-compliant.)

Marilyn Marks
Citizen Center