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From: [REDACTED]
Sent: Tuesday, July 07, 2015 9:53 AM
To: SoS Rulemaking
Cc: [REDACTED]
Subject: Written comments - election rulemaking hearing 7/7/2015
Attachments: Rule16_comments_Branscomb(1).pdf

My comments for today's Colorado election rule making are attached. Note that I have proposed to go to Mexico in September to get an electronically delivered ballot to test the unnecessary leniency of proposed integrity protections related to UOCAVA voters.

Harvie Branscomb

Harvie Branscomb's comments on election rulemaking 7/7/2015.

1.1.3 "Ballot image" means a digitally captured image of a paper ballot or a representation in electronic form of the marks or vote positions of a cast ballot on a DRE.

My comments are in bold green font. Note for future rulemaking: the above definition conflates ballot scans with cast vote records and will be a problem with new voting systems.

Amendments to Rules 7.2.5 through 7.2.7:

7.2.5 Effective January 1, ~~2015~~2016, ~~EACH~~ mail ballot return envelope and mail ballot instruction must include a statement informing voters that it is a violation of law to ~~drop off more than ten ballots~~ RECEIVE MORE THAN TEN BALLOTS FOR MAILING OR DELIVERY **in any election.**

~~7.2.6 Effective January 1, 2015, each mail ballot return envelope must include the following: "For third party delivery: I am voluntarily giving my ballot to (name and address) for delivery. I have marked and sealed my ballot in private and have not allowed any person to observe the marking of the ballot, except for those authorized to assist voters under state or federal law."~~

7.2.6 EFFECTIVE JANUARY 1, 2016, EACH MAIL BALLOT RETURN ENVELOPE MUST INCLUDE THE FOLLOWING: "I AM VOLUNTARILY GIVING MY BALLOT TO (NAME AND ADDRESS) FOR DELIVERY ON MY BEHALF."

7.2.7 A COUNTY MUST ISSUE A MAIL BALLOT TO ANY ELIGIBLE ELECTOR WHO REQUESTS ONE IN PERSON AT THE COUNTY CLERK'S OFFICE BEGINNING 32 DAYS BEFORE AN ELECTION. [SECTION 1-7.5-107(2.7), C.R.S.]

I support the above change to provide accountability for the statutory 10 envelope maximum receipt requirement.

The affidavit should also include the second statement in the original now stricken 7.2.6. Affirmation that "I marked the ballot and sealed the envelope" is crucial to mail ballot integrity.

Rule 16. Military and Overseas Voters (UOCAVA)

16.1 General Rules concerning voting by military and overseas electors

16.1.1 For the purposes of this Rule 16, elector means a covered voter as defined in section 1-8.3-102(2), C.R.S.

- 16.1.2 In accordance with the Help America Vote Act of 2002 and this Rule 16, each county clerk's office must have a dedicated fax machine for the purpose of fax ballot transmission.
- 16.1.3 The county clerk must mail or electronically transmit a ballot to all active eligible electors. An elector who requests covered-voter status must submit an application affirming his or her eligibility to do so in accordance with section 1-8.3-102(2), C.R.S.
- 16.1.4 If an unregistered elector submits a Federal Write-in Absentee Ballot (FWAB) by the deadline set forth in sections 1-8.3-111 and 1-8.3-113, C.R.S., the FWAB is a timely application for registration and ballot request.

Current Rule 16.1.5, concerning voting by military and overseas electors, is repealed and subsequent rules are renumbered as follows:

~~16.1.5 In accordance with sections 1-8.3-111 and 1-8.3-113, C.R.S., all ballots cast must be voted and mailed or electronically transmitted no later than 7:00 p.m. MT on election day, and received by the county clerk or the Secretary of State no later than the close of business on the eighth day after election day.~~

16.1.6 16.1.5 Ballots received by the Secretary of State

[The remainder of New Rule 16.1.5, formerly Rule 16.1.6, is retained unaltered]

- (a) If the Secretary of State timely receives a ballot under section 1-8.3-113, C.R.S., and Rule 16, the Secretary of State will immediately notify the appropriate county clerk and forward the ballot by the most efficient means available no later than the next business day.
- (b) To ensure voter secrecy, any county notified that the Secretary of State has received a ballot must retain a minimum of ten voted ballots **of the same ballot style** to be counted with the ballot received by the State.

~~16.1.7~~16.1.6 The county clerk must send a minimum of one correspondence no later than 60 days before the Primary Election to each elector whose record is marked "Inactive." The correspondence may be sent by email or mail and, at a minimum, must notify the electors of:

[The remainder of New Rule 16.1.6, formerly Rule 16.1.7, is retained unaltered]

- (a) The status of the elector's record and ballot request;
- (b) The upcoming federal elections;
- (c) How to update the elector's mailing information and request a ballot; and
- (d) Any other information the county clerk deems appropriate.

~~16.1.8~~16.1.7 No later than 45 days before an election, the county clerk must report to the Secretary of State the number ballots transmitted to military and overseas electors by the 45-day deadline.

~~16.1.9~~16.1.8 Failure to meet the 45-day ballot transmission deadline in section 1-8.3-110, C.R.S.

[The remainder of New Rule 16.1.8, formerly Rule 16.1.9, is retained unaltered]

- (a) If a county fails to meet the 45-day ballot transmission deadline provided for any state or federal election, the county clerk must immediately report the failure and reason for the failure to the Secretary of State.
- (b) The county clerk must provide a plan to the Secretary of State for complying with the deadline in the next state or federal election.
 - (1) The county must submit the plan to the Secretary of State no later than 60 days before the transmission deadline.
 - (2) The county must provide a weekly progress report on implementing the plan to the Secretary of State beginning 50 days before the transmission deadline.
 - (3) The county clerk must provide a daily progress report to the Secretary of State beginning five days before the transmission deadline.

16.2 Electronic transmission

16.2.1 In accordance with sections 1-8.3-110 and 1-8.3-113, C.R.S., an elector may request to receive and return his or her ballot by electronic transmission.

- (a) An elector who requests fax transmission must provide a fax number, including the international country code and local area, province, or city code, if applicable, where the ballot is to be faxed.
- (b) An elector who requests email transmission must provide a complete email address where the ballot is to be transmitted. In accordance with section 1-8.3-115, C.R.S., no election official may disclose the email address to the public.

Amendments to Rule 16.2.1(c), concerning electronic transmission for military and overseas

electors:

- (c) In accordance with section 1-8.3-113(1), C.R.S., an elector who chooses to receive his or her unvoted ballot by ~~online ballot delivery~~ ELECTRONIC TRANSMISSION may return his or her ballot by fax or email ONLY IF THE ELECTOR DETERMINES THAT A MORE SECURE METHOD, SUCH AS RETURNING THE BALLOT BY MAIL, IS NOT AVAILABLE OR FEASIBLE. "NOT FEASIBLE" MEANS CIRCUMSTANCES WHERE THE ELECTOR BELIEVES THE TIMELY RETURN OF HIS OR HER BALLOT BY MAIL IS NOT CERTAIN.

"Not certain" isn't a synonym for or an interpretation of "not feasible". Any infinitesimal doubt in the mind of a voter about return of a ballot by mail would lead to a legal choice of email or fax return under the proposed rule contrary to the intention of statute.

"Timely return" is unnecessarily vague when rule should be providing specificity with the actual return deadline. To be clear this language would simply say "not feasible means that locally available postal services will not deliver the ballot to the election official before 8 days after election day." The current language instead clearly has the effect to dilute the intention of a statute intended to prevent electronic return except in difficult circumstances.

- (d) To return a voted ballot and self-affirmation by email, the elector must scan and return the documents as an email attachment.

- (e) If an elector requests to receive ~~his or her~~ **A** ballot by electronic transmission, the county clerk must transmit the ~~elector's~~ ballot electronically for all covered elections until the elector requests otherwise or the elector's electronic transmission method becomes undeliverable **OR THE ELECTOR BECOMES INELIGIBLE FOR BENEFITS PROVIDED BY THIS SECTION.**

Here we see another integrity flaw that apparently improperly extends temporary use of the UOCAVA benefit. Any temporarily overseas voter, military or otherwise once authorized to vote UOCAVA simply stays authorized? Neither law nor rule currently provides for a reliable practical way for UOCAVA electors to lose eligibility.

To test this language if it remains in effect I plan to fly overseas (over the Gulf of Mexico) to Cancun in late September 2015 and will request a UOCAVA ballot by email. Upon returning to Colorado I will wait until election day and return my ballot by email from my home as I am uncertain about the feasibility of mail from there. First I will ZIP and encrypt my pdf of the ballot and affidavit so I know that what the officials receive is exactly what I sent. I will have to telephone the encryption key to an official whom I recognize and trust them to keep it secure until election judges decrypt, duplicate and anonymize onto a flat paper copy.

According to this rule language can I then expect to get every ballot by email for future elections? If I can return my ballot 40 days before election day by email in the future I may be able to avoid all political mailers and followup calls from the parties.

16.2.2 The electronic transmission must include:

- (a) The county clerk's contact information including mailing address, email address, phone, and fax number;
- (b) A notice that the ballot may not be duplicated for any other elector;
- (c) Instructions for completing and returning the ballot;
- (d) A notice regarding the ballot return deadline;
- (e) Information regarding how the elector may verify that his or her ballot has been received by the county clerk; and
- (f) Any other information deemed necessary by the Secretary of State or the county clerk.
- (g) The ballot packet, which must be in text format on 8 ½" x 11" white paper and must include:
 - (1) An electronic transmission coversheet to protect voter privacy;
 - (2) The unvoted ballot;
 - (3) The electronic transmission ballot instructions; and
 - (4) The self-affirmation required by section 1-8.3-114, C.R.S.,

and Rule 16.2.3.

Amendments to Rule 16.2.3:

- 16.2.3 The self-affirmation must include the standard oath required by the Uniformed and Overseas Citizen Voting Act (42 U.S.C sec. 1973ff(b)(7) and 1(a)(5)), the elector's name, date of birth, signature, and the following statement: I also understand that by returning my voted ballot by electronic transmission, I am voluntarily waiving my right to a secret ballot AND THAT COLORADO LAW REQUIRES THAT I RETURN THIS BALLOT BY A MORE SECURE METHOD, SUCH AS MAIL, IF AVAILABLE AND FEASIBLE. (~~Section~~ SECTIONS 1-8.3-113 AND 1-8.3-114, C.R.S.)
- 16.2.4 If the county clerk transmits a ballot packet to an elector by fax and the transmission is unsuccessful, the county clerk must attempt to fax the ballot at least two more times.
- 16.2.5 The county clerk must maintain a log of each ballot sent by electronic transmission. The county clerk must maintain the log as an election record along with any other email or fax records. The log must include:
- (a) The name of the elector;
 - (b) The fax number or email address to which the ballot packet was transmitted (as applicable);
 - (c) The date the ballot packet was transmitted; and
 - (d) The initials of the election official transmitting the ballot.

- 16.2.6 Upon receipt of a voted ballot sent by electronic transmission, the county clerk must verify the elector's signature in accordance with Rule 7.8. After the affidavit has been verified, a bipartisan team of judges must duplicate the ballot. Duplicating judges must not reveal how the elector voted.
- 16.2.7 A military or overseas elector whose registration record is inactive may download an application and ballot using the electronic ballot delivery system.
- (a) The elector must submit the ballot and application in accordance with the deadlines in section 1-8.3-111 and 1-8.3.113, C.R.S., for the ballot to be counted.
 - (b) Every county must use the approved electronic delivery system to implement this Rule, except that a county may obtain a waiver. The Secretary will consider the following factors in approving or denying a request for waiver:
 - (1) Number of military or overseas electors registered to vote in the county;
 - (2) Historical data regarding the number of military and overseas electors who have registered and voted in the county; and
 - (3) Staff or other resource limitations.

New Rule 16.2.8:

16.2.8 NOTHING IN THIS RULE 16.2 PERMITS INTERNET VOTING. THIS IS A HIGH INTEGRITY BEGINNING CONSIDERING THAT MANY IF NOT MOST EXPERTS ON ELECTION INTEGRITY HAVE CONCLUDED THAT THE INTERNET IS AT PRESENT TOO MUCH SUSCEPTIBLE TO INTERFERENCE AND POTENTIAL FRAUD AND FAILURE TO BE USED FOR PUBLIC ELECTIONS. UNFORTUNATELY THE DEFINITION THAT FOLLOWS FALLS FLAT ON ITS FACE BY AVOIDING ESSENTIAL ELEMENTS OF INTERNET VOTING AND DEFLECTS ATTENTION TOWARD ELECTION OFFICIALS AND MECHANISMS OF TABULATION RATHER THAN THE WEAKNESSES INHERENT IN THE MEDIUM.

INTERNET VOTING MEANS A SYSTEM THAT INCLUDES REMOTE ACCESS, A VOTE THAT IS CAST DIRECTLY INTO A CENTRAL VOTE SERVER THAT TALLIES THE VOTES, AND DOES NOT REQUIRE THE SUPERVISION OF ELECTION OFFICIALS.

This is inadequate and misleading in several ways. Remote access is not a necessary component of Internet voting. Local vote capture on a DRE that sends data to a local server using TC/IP over the internet is Internet voting (IV.)

Tallying the votes by a server is not necessary for IV. When votes are online voted, captured or delivered over the Internet regardless if how they are tabulated IVus in use. If the Internet is used to deliver vote patterns to a server from which they are printed and tabulated by scanning paper Internet voting is being used. One hundred sixteen Denver voters used such a method in a recent municipal election under home rule authority.

Supervision by election officials cannot possibly be an antidote to IV or automatically resolve its inherent issues. This proposed definition is useless to protect voters or the election itself from IV sources of error and fraud. The word "cast" too has been rendered meaningless since methods of voting by marking on paper and depositing in a ballot box ceased to be the only way we vote.

I am personally interested to see a definition of safe electronic return such as this: "Use of an accessible packet network such as the Internet to carry voter intent is not permitted except when email or another more secure SOS tested and certified mechanism is used in unavoidable instances of hardship for return of a scan or facsimile of a voter verified paper ballot with a wet signed affidavit of eligibility and acceptance of potential lack of privacy. The voter must have verified a human readable printed record of his or her voter intent and affidavit and returned it such that the voter can verify that the replica of that record is identical to what the voter verified and that same replica is the ballot of record to be tabulated."

The proposed definition on the other hand allows much broader electronic return as if it isn't susceptible to the known weaknesses of Internet voting.

The language in 16.2.8 does little or nothing for the integrity of Colorado elections and distracts from the key issues of concern. My proposal above coincides with the current statutes.

23.1.3 MEETINGS

- (A) THE COMMISSION MUST MEET NO FEWER THAN THREE TIMES ANNUALLY.
- (B) THE MEETINGS WILL BE HELD AT THE OFFICE OF THE SECRETARY OF STATE OR REGIONAL LOCATIONS THROUGHOUT THE STATE AS THE COMMISSION DETERMINES APPROPRIATE.
- (C) MEETINGS MUST COMPLY WITH COLORADO OPEN MEETINGS LAW AND WILL PERMIT AN OPPORTUNITY FOR PUBLIC COMMENT.
- (D) NOTICES, RECORDS OF MEETINGS, WRITTEN COMMENTS, AND DOCUMENTS SUBMITTED TO THE COMMISSION WILL BE PUBLISHED ON THE OFFICIAL WEBSITE OF THE SECRETARY OF STATE. DOCUMENTS THAT ARE OTHERWISE PUBLICLY AVAILABLE NEED NOT BE POSTED. ANY SUBMISSION CONTAINING INFLAMMATORY OR OTHERWISE INAPPROPRIATE

CONTENT WILL NOT BE POSTED, INCLUDING ANY MATERIAL THAT IS DEFAMATORY, IRRELEVANT, DUPLICATIVE, OR OBSCENE.

I have been serving on the Election Watcher Advisory Panel also chaired by a SOS designee. Experience on that panel suggests that this Rule 23 panel may need a rule to permit it to add elements by majority vote to its agenda in addition to any SOS determined agenda. The chair ought not vote - and a rotating or alternating chairmanship would be better.

The recently active Pilot Election Review Committee has begun responding to select public comments in the public record. This is very beneficial.