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July 10, 2015

VIA EMAIL

The Honorable Wayne Williams, Secretary of State
Colorado Department of State
1700 Broadway
Denver, CO 80290
SOS.Rulemaking@sos.state.co.us

Re: Election Rules – 8 CCR 1505-1

Dear Secretary Williams:

I am writing on behalf of the Colorado Democratic Party to comment on the proposed rules concerning Elections noticed on May 28, 2015, and revised on July 1, 2015. The Colorado Democratic Party takes this opportunity to comment on two of the proposed rules.

Proposed Rule 7.2.6 – Mail Ballot Return Envelope

Proposed Rule 7.2.6 is contrary to Colorado statute and exceeds the SOS' rulemaking authority for several reasons. First, requiring a voter to put the name of a person to whom they give their ballot for delivery is not required by law and is likely to cause confusion for voters. The law limits the number of ballots to ten that any one person may receive for mailing or delivery in any election. CRS §1-7.5-107(4)(b)(I)(B). The law does not place any burden to enforce the ten ballot limit on a voter who gives her ballot to another person for delivery. Mandating voters to include the name of a person the voter has chosen to deliver her ballot on the outside of the ballot is contrary to law and is likely to chill participation for those who would choose to give their ballot to another person for mailing or delivery.

Proposed Rule 7.2.6 will also lead to voter confusion, election administration uncertainty, and implementation chaos. What is the intended result if the line is left blank? Neither the Secretary nor the county clerks have any authority to reject a ballot that does not contain the name of the person who delivered it on the outside. Furthermore, how will the county clerks determine if the person whose name is written on the envelope is the person delivering the ballot? Does the Secretary envision that county clerks will staff all drop off locations and request identification

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from each person who delivers more than one ballot? What will happen to ballots delivered by someone who delivers more than 10 ballots? Some County Clerks may interpret the rule to require such actions which creates the prospect of disparate treatment and violations of equal protection. Additionally, there is a risk that this proposed rule may be manipulated by persons (the voter or someone other than the voter) writing the name and address of a person on the ballot who actually did not receive the ballot for delivery, which may result in confusion or misinformation for a county clerk or district attorney.

The above-described rule appears to exceed the rulemaking authority of the Secretary because it directly conflicts with existing statutory provisions and is not based on a reasonable interpretation of Colorado law.

Proposed Rules 16.2.1(c) – Electronic Transmission for Military and Overseas Electors

The proposed amendments to Rule 16.2.1(c) appear to strike the right balance and should be adopted. Eligible Colorado voters have a fundamental right to vote and the options for exercising the voting franchise should be broad and accessible. It is the elector who should determine whether returning the ballot by mail is feasible or not and whether to elect electronic transmission to ensure timely ballot delivery.

Thank you for the opportunity to comment. Please do not hesitate to contact me should you desire additional information or wish to discuss these positions further.

Sincerely,

TIERNEY PAUL LAWRENCE LLP

A handwritten signature in blue ink that reads "Martha M. Tierney". The signature is written in a cursive style with a large initial "M".

By: Martha M. Tierney