

Andrea Gyger

From: Larry Sarner [REDACTED]
Sent: Monday, July 13, 2015 2:42 PM
To: SoS Rulemaking
Subject: Comments on Proposed New Rule 16.2

Dear Secretary Williams,

I am writing to oppose some of the proposed rule changes as you published online at:
http://www.sos.state.co.us/pubs/rule_making/files/2015/20150701ElectionsRevisedDraftRules.pdf.

In particular, I oppose:

1. The proposed wording in Rule 16.2.1(c), as found on p. 9, lines 3-9, which unwisely allows an *elector* to decide the level of security that is acceptable (to the voter) for using “electronic transmission”. This is an improper delegation of your responsibilities under CRS 1-8.3-113(1)(a) which states that a "covered voter who requested and received ballot materials by electronic transmission may also return the ballot by electronic transmission...[i]n circumstances where another more secure method, such as returning the ballot by mail, is not available or feasible, as specified in rules promulgated by the secretary of state[.]” This statute clearly requires that *you* specify the particular circumstances wherein electronic transmission is allowed, and the voter must confirm, under penalty of perjury, that one of these circumstance actually exists.

As you must know, the problems with the security of email are legion, and avoiding these potential breaches of the integrity of the ballot, is the responsibility of election officials (e.g., county clerks) and not individual voters. Email should only be used as a last resort, and even then, for as small a sub-population of voters in any election. The proposed Rule 16.2.1(c) just does the opposite, and resultantly compromises the integrity of every election in which *any* emailed ballots are received. This cannot have been the intent of the legislature in adopting the statute, and therefore you should not adopt the proposed rule. And for the same reason, proposed Rule 16.2.3 also should not be adopted as written.

2. Proposed Rule 16.2.8 wisely tries to prohibit “Internet voting”, but unfortunately does so incompletely and incomprehensibly. The second sentence of the proposal, which attempts to define or describe “internet voting”, defies reasonable grammatical interpretation. Insofar as I can tease out a cogent intent, even then it apparently uses the wrong concept to reach its object. Therefore, I propose the following as more appropriate to the apparent purpose stated in the first sentence of the original wording:

16.2.8 Nothing in this Rule 16.2 permits any County Clerk to count, or allow to be counted, any ballot transmitted into the Clerk’s possession by means of a packet-switched electronic network, except as facsimile or email as explicitly provided herein.

Sincerely,
Larry W. Sarner
[REDACTED]
[REDACTED]