

Andrea Gyger

From: Andrea Gyger
Sent: Tuesday, July 28, 2015 12:34 PM
To: SoS Rulemaking
Subject: FW: suggested language for rule 16.2.1(c)

From: William Woods [REDACTED]
Sent: Friday, July 24, 2015 9:15 AM
To: [REDACTED]; Wayne Williams, [REDACTED]
Subject: suggested language for rule 16.2.1(c)

Good morning!

After our long and many conversations yesterday regarding this proposed rule change, Charles and I agreed to work on the definition of "feasible" overnight, and we were to talk this morning at 10 with Wayne.

I'm going to submit the language we came up with, in two forms, one where we try to define feasible, and one option that doesn't focus on the definition.

I realize this proposed language is now moot, based on a call I received last evening about 5:30 CA time from Wayne, in which he revealed to me that his office is, in fact, publishing the "final rule" today on 16.2.1(c).

If I understood correctly, Wayne (and please correct me if I didn't), you are publishing the final rule on 16.2.1(c), and you're publishing an additional series of changes to other rules. While public comment will be allowed on the additional series of changes, the public comment on 16.2.1(c) is officially closed.

You also said that you've changed 16.2.1(c) based on public comments received, and while you couldn't tell me what the changes were, you said we might like the changes, or perhaps we'll feel that you still didn't go far enough in the direction of protecting these military votes.

Senator Lundberg and I will be satisfied with the changes made by your office IF the changes result in 5% of our military and overseas voters now voting by internet methods as opposed to the current 50% of our military and overseas voters voting by internet methods, as reported by you.

The clear legislative intent of this rule was to make an option available in the rare circumstances where postal mail wasn't available, and if we've got 50% of these voters using what was to be a rare exception, the rule needs to be tightened up in order to protect the voters.

All of the experts report that internet voting puts those votes in jeopardy, as well as putting the personal information of the voter in jeopardy. We are trying to protect the military members' votes and the military's voting system.

So I'll submit herein the proposed new language to 16.2.1(c) knowing that your office has already decided what you're going to publish, and after we see the publication, then we'll decide whether or not, and in what form, to submit an article to the Statesman about this rule.

PROPOSED LANGUAGE IF WE DEFINE FEASIBLE---

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 AVAILABLE OR FEASIBLE” refers to circumstances where voting in person or by regular or expedited mail is impossible because a covered military voter is out of the state, or a covered overseas voter is out of the country, and expedited or postal mail is unavailable to the covered voter for mail ballot return in time for the ballot to reach the clerk by the close of business on the eighth day after election day, as measured from the first date that the voter has access to a ballot.

Rule 16.2.3

The self-affirmation must include the standard oath required by the Uniformed and 11 Overseas Citizen Voting Act (42 U.S.C sec. 1973ff(b)(7) and 1(a)(5)), the elector’s name, 12 date of birth, signature, and the following statement: I also understand that by returning 13 my voted ballot by electronic transmission, I am voluntarily waiving my right to a secret ballot AND THAT I HAVE NOT HAD ACCESS TO MY BALLOT IN ORDER TO TRANSMIT IT BY POSTAL MAIL OR TELEPHONIC FAX IN TIME TO REASONABLY ANTICIPATE RECEIPT IN THE ELECTION OFFICIAL’S OFFICE WITHIN 8 DAYS AFTER ELECTION DAY. ~~COLORADO LAW REQUIRES THAT I RETURN THIS BALLOT BY A MORE 15 SECURE METHOD, SUCH AS MAIL, IF AVAILABLE AND FEASIBLE.~~ (Section SECTIONS 1-8.3-16 113 AND 1-8.3-114, C.R.S.)

PROPOSED LANGUAGE FOCUSED ON A DIFFERENT CONCEPT—

In accordance with section 1-8.3-113(1), C.R.S., A VOTER 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 IN THE CASE OF MILITARY VOTERS, THE MILITARY VOTING ASSISTANCE OFFICER DETERMINES THAT A MORE SECURE METHOD, SUCH AS RETURNING THE BALLOT BY MAIL, HAS NOT BEEN AVAILABLE OR FEASIBLE TO THE VOTER . AND IN THE CASE OF CIVILIAN OVERSEAS VOTERS, THE VOTER AFFIRMS THAT HE/SHE HAS NOT HAD ACCESS TO HIS/HER BALLOT IN ORDER TO TRANSMIT IT BY POSTAL MAIL OR TELEPHONIC FAX IN TIME TO REASONABLY ANTICIPATE TIMELY RECEIPT IN THE ELECTION OFFICIAL’S OFFICE, AND RECORDS THE LOCATION FROM WHICH THEY ARE VOTING.

Thank you for your consideration.

Sincerely,
Laura