

Dear Secretary Williams:

Please accept these comments in response to opportunity to comment on revised proposed Rule 16.2.1 (c).

The proposed rule below creates too much uncertainty and ambiguity for voters and election officials. Almost all voters could claim that postal mail is “not certain” to reach its destination in a timely manner. This ambiguous language invites manipulation in the method of highest risk remote voting. Voters can purposely hold their ballot until election day, and then claim that they do not believe that 8 days is not long enough for postal mail to reach the destination with certainty.

I have previously offered comments as part of the rule-making process for this rule to suggest that in the case of military voters, the voting assistance officer determine whether it was feasible for the voter to submit his ballot for timely delivery by postal mail or telephonic fax after the voter received the email or paper ballot. In the case of civilian overseas voters, the voter should be required to identify their location and state that postal mail and telephonic fax were not reasonably available to them after they received their ballot in time to expect timely delivery of postal mail. Those two requirements would presumably discourage unnecessary convenience use of email voting.

Telephonic fax should be encouraged as a “more secure” means than email transmission. Please refer back to 2006 legislation when email was to be allowed only when mail and fax were unavailable. It is clearly more secure than email and should be encouraged before the last resort of email.

As previously discussed in prior submissions, the legislative intent in 2006 and 2011 was clear that the Secretary not expand email voting to those voters who could use postal mail or telephonic fax. The Secretary is exceeding his authority in ignoring the clear intent expressed in the legislative sessions on email voting in 2006 and 2011. Secretary Gessler testified that voted ballots would not be accepted by email in adopting the online ballot delivery system.

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~~ **A COVERED 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 THE **ELECTOR COVERED VOTER** 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 COVERED VOTER** REASONABLY BELIEVES **THAT PAPER BALLOT** THE TIMELY RETURN OF HIS OR HER BALLOT BY MAIL IS NOT CERTAIN TO REACH THE CLERK BY THE CLOSE OF BUSINESS ON THE EIGHTH DAY AFTER AN ELECTION.

It is important that any use of email ballot delivery or preparation not permit on-line ballot marking. Facilitating the use of on-line ballot marking in which a voter shares his ballot choices with a vendor is a violation of election offenses that carry criminal penalties. There is no justification of this privacy invasion. Voters should be required to print or save ballots outside the vendor's system prior to marking them. Although the voter has waived his right to a secret ballot IF he submits his ballot online, he has NOT waived his right to privacy with respect to the commercial vendor, or when he simply marks his ballot on line for later printing and mailing. The current process of online ballot marking violates the constitution and the statute. Please discontinue this improper and unnecessary process through rule as you address email voting and electronic transmission.

CRS 1-8.3-114 and CRS 1-8.3-104 requires that UOCAVA voters sign the affidavit required on the Federal Absentee Write-In Ballot, and that the SOS make modifications to be consistent with Article 8.3. The language is (emphasis provided):

• I am a member of the Uniformed Services or Merchant Marine on active duty or an eligible spouse or dependent of such a member, or a U.S. citizen temporarily residing outside the U.S., or other U.S. citizen residing outside the U.S. . and • I am a U.S. citizen, at least 18 years of age (or will be by the day of the election), eligible to vote in the requested jurisdiction, and • I have not been convicted of a felony or other disqualifying offense or been adjudicated mentally incompetent, or if so, my voting rights have been reinstated, and • I am not registering, requesting a ballot, or voting in any other jurisdiction in the U.S. . and • My application for a regular absentee ballot was mailed in time to be received by the local election official 30 days prior to this election, or the State deadline, whichever is later, and • I have not received the requested ballot, and • I understand that if my regular absentee ballot is received by the local election official in time to be counted, that ballot will be counted and this write-in ballot will be voided, and • I have voted and sealed this ballot in private and have not allowed any person to observe the marking of this ballot, except for those authorized to assist voters under State or Federal law and I have not been influenced, and • I am a Uniformed Services member, or dependent, who is absent from my voting jurisdiction, or I am an overseas citizen and have submitted this ballot from outside the U.S., or my State has made special provisions to allow me to mail this ballot inside the U.S., and • My signature and date herein indicate when I completed this document, and • The information on this form is true and complete to the best of my knowledge. I understand that a material misstatement of act in completion of this document may constitute grounds for conviction of perjury

Neither Article 8.3 nor the Federal Write in Ballot language required permits the disclosure of personal identifying data for ballot delivery or permits voter selections to be disclosed to a commercial third party. Such application must be halted in the use of electronic transmission of voted and unvoted UOCAVA ballots. Online ballot marking applications should be disabled. The online ballot delivery service is not “authorized to assist voters” and therefore permitted to observe the marking of the ballot or its facsimile.

The affidavit signed by the voter should include affirmative statements that they meet the requirements of a UOCAVA email voter, including the fact that voting their ballot by postal mail after their received it was not feasible to reasonably expect timely delivery to the clerk.

Please incorporate my previous comments on email voting in this rule-making cycle to continue to apply to this iteration of rule-making. Thank you for this extended opportunity to comment on the proposed rule.



Marilyn Marks

