

Last week I challenged Denver County’s decision to mail ballots to inactive voters, which directly conflicts with state law. My office worked with Denver prior to the lawsuit and I warned the clerk that she was running afoul of the law and was jeopardizing the uniformity of the upcoming statewide election. I knew the traditional crowd of political opponents would leverage my decision for partisan gain – and they’re entitled to their opinions – but not to the facts. I decided to challenge Denver in court to ensure fair elections in Colorado, where everyone is treated the same and we have protections against fraud.

### **Legislature discussed mailing to inactive voters**

It’s the legislature’s job to provide the framework for conducting fair and uniform elections across the state. County clerks derive their direct authority from state election laws. Without this uniformity in applying the law, voters would be treated differently depending on where they live in the state.

In 2008, the legislature required counties to mail to both active and inactive voters. HB08-1329 specifically states, “In connection with any mail ballot election to be conducted in November 2009, a mail ballot shall be mailed to all registered electors whose registration record has been marked as ‘Inactive-failed to vote.’” This law was subsequently repealed on July 1, 2011.

Inactive voters are those who failed to vote in an even-year election and failed to respond to any subsequent mailings from their county clerk. According to the bill’s sponsor, Senator Ken Gordon (D-Denver), who spoke on the Senate floor, “This embodies an agreement I made with the clerks about mail in ballots. The deal was, in 2009 they’re going to mail ballots (if they do that in their county) to people who did not vote in 2008. In 2006, there were problems with voting and people became inactive.” This statement along with the sunset provision helps illustrate that this was a temporary solution.

### **Fraud concerns at the capitol**

The opponents of the bill expressed concern about fraud. During the debate on the Senate floor, Senator Nancy Spence (R-Centennial) said, “I still have concerns. I am concerned about mailing a ballot to inactive voters. That means they will receive a ballot that could be used in a fraudulent manner. I think we need to be concerned about fraud when we give ballots [to those] who did not ask for them.” These fraud concerns were enough to convince 14 senators to vote against the legislation.

### **Counties concerned about mailing costs**

During the legislative discussions, the county clerks expressed concern about the costs of mailing to these inactive voters. It is hugely expensive to mail ballots to inactive voters, and these voters have responded with only single digit response rates—sometimes as low as one percent,

depending on the election. The clerks agreed to mail ballots to inactive voters in 2009 only. This was specifically in response to long lines at the polls in 2006 in Denver and Douglas counties.

The county clerks' concerns were correct. At \$2 to \$7 per ballot, costs to mail to inactive voters can add up quickly for county taxpayers, who are already seeing services eroded. During the 2009 election, clerks mailed 236,944 ballots to inactive voters and only 3% of those ballots were voted. Statewide, counties spent close to \$1 million dollars mailing to these inactive voters or \$130 for each voted ballot.

The law is clear. My role as chief election officer is to enforce the law and preserve uniformity for all Colorado voters. I recognize there are those attempting to assign a motive for my decision for partisan gain, but regardless of county location or makeup, voters can expect my office to hold all counties accountable under the law.

I've attached a copy of the complaint filed against Denver so you can review the facts yourself. I also encourage you to contact your county clerk and recorder or visit [GoVoteColorado.com](http://GoVoteColorado.com) to review and update your voter record. There is still time for inactive voters to become active prior to the election, ensuring they will receive a ballot. And inactive voters can still vote in the election by going into the clerk's office or visiting a service center and requesting a ballot. Our office will continue to enforce the law fairly and uniformly so that Coloradans can have faith in their elections.