

May 15, 2015

To: SOS.Rulemaking@sos.state.co.us

From: Wendy T. Warner on behalf of the Denver County Republican Party

Re: Election Rules 8CCR -1505-1 / draft of May 8, 2015

This comment concerns proposed Amendments to Rule 16.2.1(c), concerning electronic transmission of ballots which states:

“ 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 FEASIBLE” MEANS CIRCUMSTANCES WHERE THE ELECTOR BELIEVES THE TIMELY RETURN OF HIS OR HE BALLOT BY MAIL IS NOT CERTAIN.”

The Denver County Republican Party opposes the loose and ambiguous language of this rule which opens the door to wide-spread Internet Voting which is neither private and nor secure.

Denver Republicans have two major concerns:

1. **Internet Voting is neither secure nor secret and should not be encouraged or expanded in any way until there are technological advances to provide needed security.** Please refer to the well stated comments and attachments submitted by the Colorado Voting Group (Al Kolwicz) in response to this rule making, particularly the letter authored by Pamela Smith in which she states:

“There is a common misconception that returning voted ballots via email as PDF attachments and printing them for scanning at a central scanner is not Internet voting, and somehow does not introduce the security risks of “Internet voting.” This is misleading. Marked or “voted” ballots returned by electronic means (including but not limited to email in the form of PDF attachments) are vulnerable to tampering, manipulation, deletion, and eavesdropping as they travel the Internet, before they can be printed at the elections office. It is not merely the tabulation of votes that must be protected from the risks of the Internet, but the votes themselves even before they can arrive to be tabulated.

The National Institute of Standards and Technology (NIST) is the federal agency tasked with researching the security considerations of voting technology including for remote electronic UOCAVA voting. In examining the email return of voted ballots NIST found that voted ballots returned by email are vulnerable to privacy violations and malicious tampering at countless points as they travel over unsecured networks and email servers.

NIST also warned that voter’s computers may be infected with malicious code or “malware” that could modify ballots before they are emailed to the election official.

Malware could also infect the election computer system and modify ballots before they are printed. In either case, even if the malware was discovered before Election Day, election officials have no way to identify affected ballots.

This sort of attack, they warn, could be orchestrated by updating malware on already infected computers to recognize and attack ballots and therefore could have large-scale impact.

NIST also points out email ballot transmission is “significantly easier to intercept and modify in transit than other forms of communication.”

This is borne out by other experts: Brian Hancock of the U.S. Election Assistance Commission states: “Email is about the least secure method of ballot delivery.”

Earlier this year researchers at Galois, a defense contractor and computer security firm, published a technical paper detailing an example of an attack on ballots returned by email.

The solution is as a Federal Voting Assistance Program (FVAP) report to Congress states: “Electronic delivery of a blank ballot, when combined with the postal return of the voted ballot, remains the most responsible method for moving forward until such time applicable Federal security guidelines are adopted by the [U.S. Election Assistance Commission].” FVAP is responsible for assisting military and overseas voters to ensure their ability to participate effectively in elections.”

The Denver County Republican Party asserts that there will be both an ACTUAL risk and a common PERCEPTION among voters that the election has been compromised by use of Internet based voting.

2. **The loose language will encourage some County Clerks to take a very broad interpretation enabling ANY voter to return a ballot electronically.** Of course we all have concerns about our soldiers in battle but the way this rule is written, a business person who forgot to drop off his/her ballot and anticipates a long meeting on Election Day can determine that returning the ballot by mail is “not feasible”.

It is our experience in Denver County that rules ARE interpreted loosely: Before election day voter registration became the law, registration was supposed to be allowed in the last 22 days ONLY under extraordinary circumstances in which the voter tried to register and was unable to do so due to election division problems (e.g., the online registration system went down). However, in Denver, it was well known that ANYONE could register up through Election Day, sometimes not even being asked if there had been a legitimate problem in a previous attempt at registration. In the same way, it will be possible for Counties to interpret ANY request for voting via email as legitimate under the rule as stated.

For these reasons, the Denver County Republican Party opposes the current ambiguous wording of proposed rule 16.2.1(c). Internet voting should be highly discouraged and allowed only in the true hardship circumstances granted in 2006 by the General Assembly and then only where postal mail ballot return or telephone facsimile return is not available. Those hardship cases should be limited to circumstances in which the voter cannot expect the paper ballot to be received by the clerk within 8 days after Election Day if the voter returns his ballot by postal mail on the day he receives it, and there is no telephone facsimile return available.

Submitted on behalf of the Denver County Republican Party by

Wendy T Warner

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Immediate Past Chairman, Denver County Republican Party

Submitted with the approval of Denver County Republican Chairman Sue Moore.