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The Honorable Wayne W. Williams, Secretary of State
State of Colorado Department of State
1700 Broadway, Suite 200
Denver, Colorado 80290

Dear Secretary Williams:

These comments are in response to both the proposed draft rule 16.2.1(c) on electronic transmission for voted ballot return and the ongoing pilot voting systems work.

Please note the full text of CRS 1-5.5-101 below describing the uniformed services pilot Internet voting system. It is a relevant reference of the legislative intent regarding voters casting votes via the Internet. In short, the statute lays out a list of requirements that are still unachievable with the current design of the Internet. I have noted some of those within the statute by providing **bold font** emphasis.

Given the impossibility of meeting the fundamental criteria laid out by the legislature for casting votes via the Internet, ballots should not be permitted to be electronically returned by voters except in extreme hardship circumstances as specified in the law where mailing the ballot is not available or feasible. (This hardship standard was put into the law in SB06-062 and reinforced in HB11-1219. Secretary Gessler reiterated in his testimony on HB11-1219 that officials would not be accepting return of ballots by electronic transmission.)

The criteria for casting votes via the Internet established in this pilot program are fundamental criteria and apply to electronic transmission of voted ballots over the Internet whether the term "Internet voting" is used or "email voting." In fact, Internet (email) voting is considered by experts to be considerably more at risk for hacking and diversion than the already high-risk Internet (web-based application online) ballot marking and submission.

The efforts to permit any UOCAVA voter to return the voted ballot electronically should be curtailed and the rules drafted to reflect the extremely limited hardship circumstances permitted by statute for email voting.

It simply cannot be true that the legislature created the following requirements for Internet voting systems and yet intended to permit widely spread Internet email voting methods.

1-5.5-101. Pilot program - internet voting system - absent uniformed services elector - secretary of state - fund - rules

(1) The secretary of state, in coordination with the county clerk and recorders, shall develop an internet-based voting pilot program to facilitate voting by absent uniformed services electors serving outside the United States commencing with the general election held in 2012. The secretary of state shall select one or more political subdivisions to participate in the pilot program. The internet-based voting system developed for use by political subdivisions that participate in the pilot program shall:

- (a) Transmit encrypted information over a **secure network**;
- (b) Provide for **secure identification** and authentication of:
 - (I) **Any information transmitted** on the system; and
 - (II) Each designated or coordinated election official of a county or political subdivision and the servers of such officials and all other related electronic equipment being used by the secretary of state and each official in the conduct of elections via the internet;
- (c) Protect the **privacy, anonymity, and integrity** of each elector's ballot;
- (d) Prevent the casting of multiple ballots via the internet in an election by each elector;
- (e) Provide protection against abuse, including tampering, fraudulent use, and illegal manipulation by electors, election officials, or any other individual or group; and
- (f) Provide uninterrupted and **reliable internet availability** for the purpose of casting votes via the internet by the electors.

(2) The secretary of state shall implement the internet-based voting system so that each designated or coordinated election official of a county or other political subdivision participating in the pilot program shall:

- (a) **Assure** that each absent uniformed services elector serving outside the United States who logs in to vote via the internet **is eligible and registered** to vote;
- (b) **Verify that each elector** who logs in to vote via the internet **is the same person who is registered and qualified** to vote; *(impossible)*
- (c) Verify that the votes of the electors transmitted to the election officials via the internet are **private and secure and have not been viewed or altered by sites** that lie between the voting location and the vote-counting destination;
- (d) Verify that all votes cast via the internet by electors were cast by 7 p.m. mountain standard time on the day of the election; and
- (e) **Verify that all votes cast** via the internet by electors were indeed counted and **attributed correctly to the elector** who cast the vote. *(attributed to voter)*

is problematic.)

(3) The secretary of state may by rule promulgated in accordance with article 4 of title 24, C.R.S., establish procedures necessary to implement this article.

(4) There is hereby created in the state treasury the internet-based voting pilot program fund to provide for the direct and indirect costs associated with implementing this article. The fund consists of any moneys appropriated by the general assembly to the fund and any gifts, grants, and donations to the fund from private or public sources for the purposes of this article. All private and public funds received through gifts, grants, and donations shall be transmitted to the state treasurer, who shall credit the same to the fund. Moneys in the fund shall be subject to annual appropriation by the general assembly to the department of state for the purposes specified in this article. Any unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year shall remain in the fund and shall not be transferred to the general fund or any other fund.

(5) Repealed.

HISTORY: Source: L. 2009: Entire article added, [\(HB 09-1205\), ch. 383, p. 2078, § 2](#), effective August 5. L. 2012: IP(1) and (4) amended and (5) repealed, [\(SB 12-062\), ch. 97, p. 326, § 2](#), effective April 12.

The return of voted ballots via email or Internet application violates Colorado's requirement to acquire and use only paper-based voting systems and components. Using the Everyone Counts system to record votes in an on-line application is a violation of the requirement that the votes be recorded "solely on a paper ballot." The use of the Everyone Counts system frustrates the general assembly's clear intent to have voters' choices recorded only paper ballots in any newly purchased system. Please recall the inclusion of rental and leasing of equipment in CRS 1-1-104 (34.2) ["Purchase" means to enter into a contract for the purchase, lease, rental, or other acquisition of voting equipment.] The use of the system that captures voters' ballot choices on line does not comply with the legislative intent regardless of whether this system is technically contracted for by the state or counties under rental or services arrangement.

The use of the online ballot delivery system should be limited to just that, with on-line ballot marking disabled. Additionally, the paper ballot generated by printing the online delivered ballot should be marked and returned by postal mail except in the rare circumstances when postal mail is unavailable.

1-5-623. Special rules applicable to use, modification, or purchase of electronic voting devices or systems and related components prior to 2014 - legislative declaration - rules

(1) (a) The general assembly hereby finds and declares that, over the past decade, voting technology used in the state has undergone dramatic changes, creating confusion and difficulties for election administrators, state government, and the voting public. Efforts to address this confusion have been complicated by the timing of periodic substantial investments in voting technology by county governments necessitated by changes in federal and state law.

(b) Now, therefore, by enacting this section, the general assembly intends that:

(I) Between May 15, 2009, and the 2014 general election, any voting system purchased by a political subdivision **shall be a paper-based voting system as defined in [section 1-1-104 \(23.5\)](#)**;

[(23.5) "Paper-based voting system" means an electromechanical voting system in which the elector's vote is recorded solely on a paper ballot.]

(II) The acquisition of electronic voting systems be suspended in order to assess existing and emerging voting technologies; and

(III) Substantial investment by political subdivisions before the 2014 general election in alternate technologies that will frustrate the intent of the general assembly as specified in paragraph (a) of this subsection (1) is discouraged and disfavored.

(2) Notwithstanding any other provision of this part 6, any existing electronic voting device or any related component of the device that was used by a political subdivision in conducting the 2008 general election may continue to be used by the political subdivision on and after May 15, 2009, as long as the device or component is used in accordance with either the conditions of use under which the device or component was originally certified for the 2008 general election or in accordance with alternate conditions of use established by the secretary of state.

(3) (a) Notwithstanding any other provision of law, on and after May 15, 2009, no political subdivision may purchase a new electronic voting device or system or any related component of such device or system without obtaining the prior approval of the secretary of state for such purchase in accordance with the requirements of this subsection (3).

(b) Subject to the requirements of paragraph (a) of this subsection (3), if a political subdivision desires to purchase a new electronic voting device or system or any related component of such device or system, the political subdivision shall submit a written application to the secretary of state for approval of the purchase. The application shall be made by means of any forms or procedures established by the secretary. Within three business days of receiving the application, the secretary shall grant or deny the application. In reviewing the application, the secretary shall consider, among other relevant factors, the total effect of the purchase at issue in light of other purchases by the political subdivision on voting systems or components of such systems on or after May 15, 2009, and the needs of the political subdivision. In making the determination, **the secretary shall prevent political subdivisions from making substantial investments in alternate technologies that will frustrate the intent of the general assembly** as specified in subsection (1) of this section and shall consider, among other relevant factors:

(I) Whether the purchase is intended to replace damaged or defective equipment or to accommodate an increase in population in the political subdivision;

(II) Whether the purchase requires a new contract or agreement that would be entered into by the political subdivision and one or more vendors; and

(III) A comparison of the purchase under review with the average capital expenditures by the political subdivision on the administration of elections on an annual basis for the four consecutive years prior to the year in which the application is submitted in order to discourage an investment in

technology with a limited useful life in accordance with the intent of the general assembly as specified in subsection (1) of this section.

(4) The secretary of state shall promulgate rules in accordance with article 4 of title 24, C.R.S., as may be necessary to administer and enforce any requirement of this section, including any rules necessary to specify permissible conditions of use governing electronic voting devices or systems or related components of such devices or systems in accordance with the requirements of this part 6.

HISTORY: Source: L. 2009: Entire section added, ([HB 09-1335](#)), [ch. 260](#), [p. 1192](#), [§ 8](#), effective May 15.

The electronic transmission of the voted ballot (except in the limited hardship cases where mail is not available), is prohibited by the requirements of CRS 1-5-802 requiring that the voter have access to a paper record to verify the ballot that was cast. Because of the many Internet security risks of ballot manipulation and email misdirection, the voted electronic ballots attached to the voters' email to the clerk do not comply with this requirement.

1-5-802. Use of voting systems - voter-verified paper record

(1) In addition to the other requirements of this article, the voting system used in each primary, general, coordinated, or congressional district vacancy election held in the state on and **after January 1, 2010, shall have the capability to produce a voter-verifiable paper record of each elector's vote.** Before an elector's vote is cast, the elector shall have the opportunity, in private and without assistance, to inspect and verify that the voter-verified paper record correctly reflects the elector's choices. Any political subdivision that has not complied with the provisions of this section on or before January 1, 2009, shall comply with such provisions by January 1, 2014.

(2) The requirements of subsection (1) of this section shall apply to each primary, general, coordinated, or congressional district vacancy election conducted by a county clerk and recorder on and after January 1, 2008, if the governing body of the county determines that:

(a) The technology necessary to comply with the requirements of subsection (1) of this section is available; and

(b) (I) Sufficient federal or state funds are available to acquire or retrofit voting devices that comply with the requirements of subsection (1) of this section; or

(II) It is otherwise financially feasible for the county to comply with the requirements of subsection (1) of this section.

(3) Upon satisfaction by a county of the requirements of this section, the voter-verified paper record of each eligible elector's vote, whether filled out by hand or produced by a voting machine or ballot marking device, shall be preserved as an election record pursuant to [section 1-7-802](#) and shall constitute an official record of the election.

(4) *No voting device shall be remotely accessed or remotely accessible until after the close of voting* and a results total tape has been printed, as applicable

HISTORY: Source: L. 2005: Entire part added, p. 1403, § 22, effective June 6; entire part added, p. 1438, § 22, effective June 6. L. 2009: (1) amended, ([HB 09-1335](#)), [ch. 260](#), [p. 1194](#), [§ 10](#), effective May 15.

In summary, the current method of electronic transmission return of ballots by UOCAVA voters not in hardship situations (that is, where mail is not available) does not comply with numerous statutes and clear legislative intent. Additionally on-line ballot marking practice conflicts with the statutory requirement that the voter markings be recorded solely on paper. Both practices require immediate review and curtailment.

Pilot Voting System Use

Regarding the use of uncertified voting systems in the pilot voting systems program, we are concerned about the lack of compliance with statute requiring certification prior to use in an election. It is our understanding that some of the voting systems and components planned for pilot program use in November 2015 have not been tested or certified in accordance with Part 6 of Title 1, Article 5 of the Uniform Election Code. Such certification requires meeting the provisions of VVSG2002. Temporary certification may only be conveyed for equipment that has successfully undergone testing for the requirements with supporting documentation provided.

1-5-619. Temporary use of electronic and electromechanical voting systems

(1) **After** an electronic or electromechanical voting system has been tested in accordance with [section 1-5-608.5](#) but has not yet been certified by the secretary of state, a voting system provider or designated election official may apply to the secretary of state for temporary approval of the system.

Please ask the Pilot Election Review Committee to immediately take into account that the full testing under Part 6 must have been successfully completed prior to any temporary certification. The adoption of the committee's methodologies for determination of which systems to recommend for certification must take into account the status of the testing using VVSG2002 standards.

Please forward these comments to the members of the staff working on draft rules as well as the members of the pilot voting systems committee.

Thank you for your consideration.



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Centennial State Action Advocates is a citizen-driven organization that advocates for election quality, voter privacy, and transparent government