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Department of State

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Hon. Kris W. Kobach, Vice Chair
Presidential Advisory Commission on Election Integrity
ElectionIntegrityStaff@ovp.eop.gov

Re: Colorado's response to your request for information

Dear Secretary Kobach:

I received your request for input and information on behalf of the Presidential Advisory Commission on Election Integrity. This letter responds to your questions, details some of the processes Colorado election officials follow to ensure election integrity, and explains what publicly available voter registration data I can provide under Colorado law.

Background

Elections are working well in Colorado. By every relevant metric, our state ranks as a leader in election administration. Thanks to sound policy and the hard work of our 64 county clerks and recorders, Colorado is often ranked first and always ranked in the top five in the nation in both voter turnout[1] and percentage of eligible Coloradans who are registered to vote.[2] Our election model gives voters unmatched choice in how they vote—whether by mail ballot (returned through the mail or dropped off in secure drop-boxes) or in person (by paper ballot or electronic voting or ballot marking device with paper record). And we continue to innovate by rolling out new technology, including a real-time statewide electronic poll book and a modern voting system with paper ballot records that's been adopted by most of our counties. This year Colorado will implement a scientific risk limiting audit to further assure voters that their votes are counted and reported accurately.

As our election processes become more complex and dependent on technology, we remain vigilant in our commitment to the security of our election systems and our statewide voter registration database. And our counties conduct regular list maintenance in accordance with state and federal law to ensure the accuracy of our voter rolls. Colorado also participates in two key

[1] U.S. Election Assistance Comm'n, *The Election Administration and Voting Survey, 2016 Comprehensive Report*, at 5 fig. 2 (2017), *available at* https://www.eac.gov/assets/1/6/2016_EAVS_Comprehensive_Report.pdf [hereinafter EAVS Report].
[2] EAVS Report, *supra* note 1, at 56 tbl. 1.; *See also* The PEW Charitable Trusts, *Elections Performance Index, Indicators: Voter Registration Rate* (Aug. 9, 2016), http://www.pewtrusts.org/en/multimedia/data-visualizations/2014/elections-performance-index#indicatorProfile-VR (showing that Colorado had the nation's highest voter registration rate through the 2014 election cycle).

interstate data-sharing compacts, the Electronic Registration Information Center (ERIC) and the Interstate Crosscheck, with implementation guided by strong matching criteria.

While I'm proud of the work we're doing in Colorado, there is always room for improvement. Below I provide my views and recommendations along with some more-detailed explanations of Colorado's work to maintain election integrity.

Answers to your questions

1. *What changes, if any, to federal election laws would you recommend to enhance the integrity of federal elections?*

Recent concerns about the security and integrity of elections emphasize the importance of the voluntary voting systems guidelines and other programs established by the Elections Assistance Commission ("EAC") with the assistance and support of state and local governments across the country. It therefore continues to be my position that these guidelines and other support assistance from the EAC provides a strong basis for the continued existence of this effective agency as an assistive commission.

I also would strongly encourage that the federal government shift resources to incentivize states' participation in the Election Registration and Information Center (ERIC) which is discussed further below. ERIC's programs provide the most accurate and complete method to maximize participation and ensure that voter rolls are accurate.

Federal election laws should apply equally across the states. And if exemptions to provisions in those laws exist, exemption eligibility should be based on states' current policies and laws rather than what those laws and policies were at the time the federal law was adopted. For example, the National Voter Registration Act of 1993 (NVRA) exempted the states that had same-day registration at the time of the law's adoption.[3] Because the NVRA doesn't extend the exemption to states like Colorado that later adopt same-day registration, it discourages states from adopting policies streamlining and increasing voter registration. The Commission should consider whether the exemption provision in the law should be applied to all states whose laws meet the original threshold requirements which would encourage other states to make it easy for citizens to participate.

There is also an opportunity to reform the burdensome auditing requirements for older voting equipment that was purchased with funds provided under the Help America Vote Act (HAVA). There remain 10 counties in Colorado with legacy voting systems that were purchased with HAVA funds. Despite the fact that each voting system and its components are fully depreciated, a directive from the federal Office of Management and Budget requires onsite audits of this generally worthless equipment.[4] In a geographically dispersed state like Colorado, this exercise is not a constructive use of resources. The Commission should review the audit policy for fully depreciated HAVA-funded equipment.

2. *How can the Commission support state and local election administrators with regard to information technology security and vulnerabilities?*

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[3] 52 U.S.C. § 20504 (a) (1).

[4] OMB. Circular A-87 (15) (h), *Cost Principles for State, Local, and Indian Tribal Governments* (May 10, 2004).

My office has implemented a rigorous security program that includes real-time network monitoring between the voter registration system and multiple county networks; communication with upstream internet service providers to detect and mitigate attacks; working with counties and state agencies to create a "fusion center" for real-time monitoring and response capability; and requiring our cybersecurity awareness training of all state and county users of vote tabulation equipment and the voter registration system.

Security vulnerabilities are best identified and contained when state information security experts have the information they need to protect critical systems. I recently sent a letter to Secretary of Homeland Security Kelly voicing my displeasure that the federal government, which identified vulnerabilities in local jurisdictions during the 2016 election, failed to inform states' chief election officials, like myself. Because states have the information technology experts and resources to identify issues and coordinate with local jurisdictions, it's imperative that the federal government inform me and other state chief election officials when potential threats arise.

For these reasons, I asked Secretary Kelly to establish a process for immediately notifying state election officials of any actual or potential security threats as they arise. This will allow us to take necessary actions to maintain system integrity and communicate with local election officials across our states.

I recommend that the Commission work with DHS and other relevant federal agencies to understand the universe of cyber threats and determine how to best disseminate timely information to state election officials.

3. *What laws, policies, or other issues hinder your ability to ensure the integrity of elections you administer?*

It's crucial in a mail ballot state like Colorado to have the most up-to-date address for each voter. We work closely with the Colorado Department of Revenue (the agency responsible for driver's licenses) to encourage people to update their voter registration information when they get or renew a driver's license. And we've developed a secure electronic transmission process between our two agencies so we're able to receive all new voter registrations and updates on a nightly basis. But there are other address libraries we would like to take advantage of. For example, the federal jury wheel—the list of potential jurors for federal trials—contains useful address information that we'd like to have. This information would enable our state to update voter registration information to ensure that Coloradans receive the correct ballot on a timely basis. To date, my office's attempts to get this list have been rebuffed. The Commission should study the feasibility of a secure exchange between the federal courts and state election officials.

My office also uses all available tools to ensure that only U.S. citizens are registered to vote in Colorado. For example, we conduct a bi-weekly (daily during election periods) crosscheck between the statewide voter registration database (SCORE) and the Department of Revenue's driver's license database to identify non-citizens based on the documentation they provided when getting a license. When we identify someone who is registered to vote but who provided non-citizen documents when getting a driver's license, we conduct further research and, if necessary, send correspondence asking the registrant to confirm that he or she is eligible to vote.

We would like to take advantage of existing federal databases to more accurately determine current citizenship status. I've already mentioned the federal jury wheel, which also would have useful citizenship information. In addition, the U.S. Citizenship and Immigration Service has willingly provided my office with access to its SAVE database so we can attempt to confirm the

citizenship status of those we identify as potential non-citizens. Unfortunately, SAVE does not allow dynamic searches and rarely returns the person's most recent citizenship status. SAVE was not designed to search for people who are not available to provide their most recent documentation. SAVE administrators have expressed willingness to work on enhancing the database to make it a more effective tool. The Commission should investigate this option.

4. *What evidence or information do you have regarding instances of voter fraud or registration fraud in your state?*

There have been a few cases of voter and registration fraud in Colorado, but it's rare because our laws and policies are designed to prevent it. Each month (and sometimes weekly or daily, depending on the task) our counties conduct the following list maintenance:

- Canceling due to death: Each month the Colorado Department of Public Health and Environment (CDPHE) provides my office with a list of Colorado residents who have died in the previous month. We import this list into SCORE and make the full list of deceased individuals available and searchable for the counties. In addition, SCORE has a function that automatically identifies and flags records for each county that appear to have a matching record in the current month's list. Counties review the information to determine whether minimum matching criteria[5] are met and cancel registration records accordingly.[6]

  In addition to the information provided by CDPHE, my office now has access to the national Social Security Death Index. We search this index monthly and provide relevant potential matches to each county for review and cancelation as necessary. Furthermore, counties cancel registration records of deceased electors when they receive written confirmation of death from electors' families.[7]

- Canceling convicted felons: Each month the Colorado Department of Corrections (CDOC) provides my office with a list of individuals currently serving a sentence of incarceration or parole for a felony conviction. The monthly list is available and searchable in SCORE. The system also identifies and flags potential matching records for each county. Counties review the information to determine whether minimum matching criteria are met and cancel registration records accordingly.

  In addition to the information provided by CDOC, the Colorado U.S. Attorney's office sends quarterly notices of individuals who have been convicted of a felony. Other U.S. Attorney's offices also send lists on a regular basis. The Secretary forwards these lists to the appropriate counties for review. The counties determine whether minimum matching criteria are met and cancel registration records for electors who are currently serving a sentence of incarceration or supervised release for a felony conviction. [8]

- Change-of-address processes: Colorado counties proactively update registration information or send correspondence to electors based on information in the National

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[5] Sections 1-2-603 and 1-2-604, C.R.S.; Election Rule 2.5.1 (Defining minimum matching criteria as the elector's name, date of birth, and any one of the following: 1) Colorado driver's license number; 2) last four digits of the Social Security Number; or 3) residential address).

[6] 52 U.S.C. § 20507 (a) (4) (A); Section 1-2-302 (3.5) (a), C.R.S.

[7] Section 1-2-602 (4), C.R.S.

[8] 52 U.S.C. § 20507 (g); Sections 1-2-302 (3.5) (b) and 1-2-606, C.R.S.; Election Rule 2.9.

Change of Address database (NCOA).[9] On a monthly basis our office compares voter registration data for eligible records with NCOA data to identify electors who have moved. Counties use the monthly data to update records for active electors who have moved within the county and to send notifications to other electors who have moved to another county or out of state.[10]

Colorado is also a member the Election Registration and Information Center (ERIC), which allows states to better interact with electors by sharing elections, motor vehicle, death, felon, and other records maintained by state agencies. By aggregating multi-state information, the organization allows participating states to track an individual's residency and send appropriate elections-specific information. For example, if a person moves to Colorado from another participating state and obtains a Colorado driver's license, the system will notify the other state's elections department that they need to correspond with the person to determine if he or she is still a resident of that state. While ERIC is relatively new, with 20 member states to date, it will continue to grow as a resource in the state's efforts to maintain accurate voter rolls.

- Other list maintenance: Counties regularly cancel or update registration records based on voter-initiated activities, including driver's license address changes.[11] If an elector withdraws his or her registration, the county will cancel the record.[12] Withdrawal is available on Colorado's online voter registration system at www.GoVoteColorado.com. Additionally, if a county receives a notification from another state that the elector has moved and registered in the new state, the county will cancel the registration after determining that minimum matching criteria are met.[13] Furthermore, because SCORE is a real-time statewide database, it ensures that an elector only has a single registration record in Colorado, even if the elector moves. If the elector submits an application in a new county to change his or her address, the new county will transfer the elector's record in SCORE.

In addition to keeping the voter rolls clean, Colorado also protects its in-person and mail-ballot voting processes. When a voter goes to any voter service and polling center in his or her county to vote in person, the county clerk uses a real-time electronic poll book that's connected to SCORE to register the voter (if necessary), issue the proper ballot style, and give the voter credit for voting in the system. Once the voter receives credit, he or she is unable to vote at another location in the county and would be stopped from attempting to register in another county.

If a voter chooses to vote his or her mail ballot (in 2016 about 93 percent of all voters returned a mail ballot rather than voting in person), the counties use signature verification to confirm that the returned ballot belongs to the person entitled to vote it.[14] Under this process, once the county receives the ballot in the return envelope, election judges compare the signature on the envelope's return affidavit with the signature on file for that voter in SCORE. A bipartisan

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[9] Section 1-2-302.5, C.R.S.
[10] *Id.*
[11] Section 1-2-213 (6), C.R.S.
[12] Section 1-2-601, C.R.S.
[13] Section 1-2-603 (2), C.R.S.
[14] Section 1-7.5-107.3 (1) (a), C.R.S.

team of election judges reviews any questionable signatures and will reject a signature if both judges agree that it doesn't match the one in the voter's record. In that case—or if the voter forgot to sign the affidavit—the clerk promptly notifies the voter who has until eight days after the election to cure the issue.[15]

In the 2016 election, thousands of mail ballots were rejected for signature discrepancies, missing signatures, or missing identification (which certain first-time voters must provide when returning a mail ballot[16]). Many people whose ballots were rejected took the opportunity to cure and eventually had their votes counted; but some did not. All told, Colorado counties rejected and did not count 16,209 ballots because of signature discrepancies, 2,606 ballots that were never signed, and 2,593 ballots that were missing identification. In accordance with Colorado law,[17] the 16,209 uncured signature discrepancies have been turned over to the district attorneys for investigation. In many cases, they will discover that the voter submitted an errant signature which they chose not to cure. In other cases they will discover that another family member or resident signed the ballot but that the intent was not sufficiently malicious to initiate prosecution. In other cases, they will be unable to discover who submitted the ballot.

Despite these safeguards that prevent most attempts at voter fraud, a few cheaters have been successful. For example, a local news organization[18]—using the same public voter data that the Commission requested—identified a handful of people who appeared to have forged signatures on ballot-return envelopes for ballots they were not entitled to vote. One person, who appeared in court in this week, has been charged with forging the signatures of her deceased parents and voting their ballots in multiple state elections.

My office is also currently cooperating with the Arizona Attorney General's office, which is prosecuting a husband and wife who have been charged with voting in both Colorado and Arizona during the 2012 general election. And there will be more cases like this. Through our partnerships in ERIC and the Interstate Crosscheck, we have investigations underway into instances of double-voting (both for voting twice in Colorado and for voting in Colorado and another state). When we complete our investigation and make our findings known to law enforcement, we'll provide more detail to the Commission.

5. *What convictions for election-related crimes have occurred in your state since the November 2000 federal election?*

Although there will likely be more after my office's 2016 investigation, I'm aware of the following convictions and pending cases:

- In 2005, Ajmal Shah was convicted of voter fraud for attempting to register by providing false information regarding U.S. citizenship;
- In 2011, David Harold Shackley was convicted of voting in more than one Colorado county in the 2008 and 2009 elections;
- In 2011, Rodney Paul Jones was convicted in Arizona of double voting in Arizona and Colorado in the 2008 general election;

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[15] Section 1-7.5-107.3 (2) (a), C.R.S.
[16] Section 1-2-201 (5) (a), C.R.S.; Section 1-7.5-107 (3.5).
[17] Section 1-7.5-107.3 (2) (a), C.R.S.
[18] *See* Brian Maass and Mark Ackerman, *CBS4 Investigation Finds Dead Voters Casting Ballots in Colorado*, CBS DENVER (Sept. 22, 2016), http://denver.cbslocal.com/2016/09/22/cbs4-investigation-finds-dead-voters-casting-ballots-in-colorado/.

- In 2011, John Marotta was convicted in Arizona of attempted illegal voting for casting ballots in both Arizona and Colorado in the same election;
- In 2014, Carol Hannah was convicted of voter fraud for voting in both Arizona and Colorado in the 2010 election;
- In 2015, Vitaliy B. Grabchenko pleaded guilty in Arapahoe County for procuring a false voter registration in 2013;
- In 2015, Bruce Rickey was charged with voting twice in the 2015 coordinated election;
- In 2016, Maureen Moss pleaded guilty to forging signatures on a petition to qualify a U.S. Senate candidate to the Republican Party primary election ballot;
- In 2016, Elsadig Saeed Merghani pleaded guilty to forging signatures on a petition to qualify a ballot initiative on the 2016 general ballot;
- In 2016, James Criswell pleaded guilty in Kansas to double voting in Colorado and Kansas in the 2016 general election;
- In 2016, Sharon Farris pleaded guilty in Kansas to double voting in Colorado and Kansas in the 2016 general election;
- In 2016, Ron R. Weems pleaded guilty in Kansas to voting in both Kansas and Colorado in the 2012 and 2014 general elections;
- In 2016, Lincoln Wilson pleaded guilty in Kansas to voting in both Kansas and Colorado in elections in 2010, 2012, and 2014;
- In 2016, Randall Killian pleaded guilty in Kansas to voting in Colorado and Kansas in the 2012 general election;
- In 2017, Angelo Felix Abad pleaded guilty to forging signatures on a petition to qualify a ballot initiative on the 2016 general election ballot;
- In 2017, Toni Lee Newbill pleaded guilty to voting twice using her deceased father's name in the 2013 general election and in the 2016 primary election;
- In 2017, Steven Curtis was charged with fraudulently signing and returning his ex-wife's ballot; and
- In 2017, Sarilu Sosa-Sanchez was charged with forging her deceased parents' signatures and voting their ballots in multiple elections.

In another case in Larimer County, Colorado, potential vote fraud was detected and referred to the local district attorney. There, a vote was cast in the name of a deceased voter, Irvin Mniszewski. However, the case could not be prosecuted because the suspected forgers had since also died.

6. What recommendations do you have for preventing voter intimidation or disenfranchisement?

Basic laws that prevent voter intimidation and electioneering at or near polling locations are certainly necessary.[19] But it's also important to give voters confidence in the state's election system through open processes. In Colorado each county clerk and recorder uses bipartisan judges appointed by the parties, assuring fairness at each stage of the process.[20] Election

[19] *See* sections 1-13-713, C.R.S. (prohibiting intimidation) and 1-13-714, C.R.S. (prohibiting electioneering).
[20] Section 1-6-101, C.R.S.

watchers also have significant access to all election-related activities,[21] and they play a key role in ensuring the integrity of elections at the local level. The public also has access to counties' election plans (detailing where polling locations will be and what services the county will provide) and watcher plans (detailing how each county will accommodate watchers at all locations where election activities will happen). The counties submit these plans to my office for approval and we make them available to anyone who requests them.

Because Colorado voters primarily vote by mail, my office also works closely with the U.S. Postal Service to ensure that all election mail is treated uniformly and handled efficiently. And we communicate regularly with voters on timelines for returning ballots by mail, including when it's too late to put a ballot in the mail stream to ensure it will be received by the county in time. In addition to working with the post office, I initiated a grant program for counties to receive matching funds from my office for new or additional 24/7 secure drop-boxes which provide a secure and convenient method to return a ballot for urban and rural voters alike.

Historically voting took place only in pristine polling locations in which voters were protected from intimidation or disenfranchisement. As individuals move to voting from home and other locations, we need to examine how to protect the secret ballot and how to protect voters from inappropriate attempts to influence their votes or to disclose their votes to others. Laws and regulations prohibiting vote trading or intimidation in any manner are still critical to protecting a voter's right to cast his or her own ballot as he or she chooses.

7. What other issues do you believe the Commission should consider?

Colorado is a member of the Election Registration and Information Center (ERIC), which allows states to better interact with electors by sharing elections, motor vehicle, death, felon, and other records maintained by member-states' agencies. By aggregating multi-state information, the organization allows participating states to track an individual's residency and send appropriate elections-specific information. For example, if a person moves to Colorado from another participating state and obtains a Colorado driver's license, the system will notify the other state's elections department that they need to correspond with the person to determine if he or she is still a resident of that state. While ERIC is relatively new, with 20 member states to date, it will continue to grow as a resource in the state's efforts to maintain accurate voter rolls.

Because states election officials are the experts at maintaining clean voter rolls, and ERIC is a powerful tool to facilitate this, the Commission should reach out to ERIC to better understand its processes and security protocols. The Commission has requested states' public voter roll data. While this data may serve a purpose, a single request for data that lacks the non-public data necessary to accurately match voters across states can't be used to effectively assess the accuracy of voter rolls. ERIC states enter into agreements that allow them to securely share sensitive data and to ensure that, when the data is compared, it's the most up-to-date and in a uniform, consumable format.

The Commission also should encourage states' voter registration processes to solicit the prior address at which an individual was registered to vote so that the jurisdiction can be notified.

Request for voter roll data

You requested publicly available voter roll data. Under Colorado law, limited voter

[21] Section 1-7-106, C.R.S.; Election Rule 8.

registration data is publicly available.[22] But the law also prohibits my office from releasing certain confidential data.[23] In accordance with these laws, my office can provide the following public data:

- Full first, middle, and last names;
- Residential and mailing addresses;
- Year of birth;
- Political party affiliation;
- Vote history (meaning elections in which the voter participated);
- Voter status (active or inactive); and
- Whether the voter is designated as a military or overseas voter.

My office will not provide the following confidential voter data:

- Last four digits of social security number; and
- Month and day of birth.

The Commission has also requested "information regarding any felony convictions," and "information regarding voter registration in another state." Information of this kind exists only in canceled voter records, which we are not able to provide without extensive redaction of confidential voter data.

In light of the Commission's request that we delay providing data, we'll await further communication. Once you've determined to make a new request, please contact my office at (303) 894-2200 x6389 for instructions on obtaining the public data in a secure manner.

As with any requestor, my office is not enabled by Colorado law to restrict your usage of the publicly available data after it is provided. Please accept, however, my input that all data you receive should be secured.

Please also note that the official voter rolls of Colorado remain in our control and custody. Neither the federal government nor any other entity can make any change in Colorado's voter rolls.

Thank you for the opportunity to provide input and recommendations.

Regards,

Wayne W. Williams

[22] Section 1-2-227 (1) (a), C.R.S.
[23] Section 24-72-204 (8) (a), C.R.S.