



May 15, 2012
Via hand delivery, email, and fax

The Honorable John Hickenlooper
Governor of Colorado
136 State Capitol
Denver, CO 80203-1792

RE: Request for Veto of HB12-1036

Dear Governor Hickenlooper:

HB12-1036 deserves a veto to prevent municipal and county clerks from obtaining special exemptions from open records law that make those clerks less accountable to the public in their crucial role as handlers of the public's most critical records of decision-making. The clerks are heavily lobbying for the contents of HB12-1036 though it would come at a great cost to the public interest. Legislators are uncomfortable speaking truth back to those who have considerable control over elections. As a result, almost no meaningful debate has been held over the details and side effects of this legislation. But it has numerous flaws, each of which alone merits the veto. Please consider these and do not allow the bill to become law.

CORA is a vital law that protects citizens from having their government operate in a nontransparent way. Undercutting CORA is a very serious measure and is not necessary for maintaining election transparency or ballot integrity or voter privacy.

1. **There is no evidence HB12-1036 is necessary.** Few records requests for anonymous voted ballots and other election records have been made and by only a handful of election-integrity advocates. The requests were mostly for purposes of gathering information about election and transparency policies that could not be obtained through simply asking questions. No request was time intensive. Some requests have been successfully and uneventfully completed; other requests were delayed or rejected and the requesters taken to court by the clerks, as allowed by existing CORA.
2. **Title One statutes and existing CORA limitations already protect clerks from interference with their operations, protect voters from loss of their privacy, and protect ballots from being accessed before**

they are tabulated. People who are inspecting voted ballots under CORA do not see traceable or never-tabulated ballots unless the clerks have failed to follow the constitution on anonymity, the statutory requirements to protect voter intent, and the recent interpretation of the Colorado Court of Appeals that requires custodians to withhold specific identifiable ballots.

3. **Citizens deserve an unfettered CORA law because we cannot predict when and how CORA will be needed to understand how election officials have treated our elections.** Clerks are the ones being overseen. It is odd that we would give them a driving role in defining the contents of HB12-1036 that limit how much oversight we can have and when.
4. **Existing oversight via canvass boards and watcher rules does not necessarily give the public, including campaigns, adequate access to be able to protect the election from fraud as well as error.** Some clerks do not voluntarily provide credentialed officials and watchers from the campaigns adequate access to ballots so that they could recognize and repair or even report on fraud or error in eligibility and tabulation.
5. **HB12-1036 eliminates the ability to verify election results from past elections for vast periods of time.** An uncooperative county clerk could blackout a total of 74 days per election:
 - the 45 blackout days before election day from HB12-1036 plus
 - the possible CORA-provided delays (3 business days for record gathering plus 7 business days if there are extenuating circumstances),
 - plus at least 14 (primary) or 17 (general election) days after election day.

A very small municipal election triggers the same excessively long HB12-1036 blackout of all ballots from all elections, so **the CORA blackout rolls around the year in some counties.**

6. **For public records purposes, HB12-1036 defines “ballots” as not only paper ballots but also digital images and electronic representations of votes cast.** However, many digital images and electronic representations are immune from risk of interference, aging, or degradation. Electronic versions of ballots are far more valuable and safe for use as public records, yet they are tied by HB12-1036 to that bill’s restriction of the traditional paper form. This is a step backward into the past.

7. **The bill blocks all access to “internal batch reports” generated for the purpose of auditing ballots.** These internal batch reports constitute a record that **must be timely and publicly available** in order to make the audit meaningful to the community at large **without requiring additional trust of officials performing the audit.**
8. **HB12-1036 actually aggravates lack of clarity and inconsistency** in the way ballots will be handled in counties by requiring each clerk to make a separate policy decision defining “groups of discrete individuals” and classes of marks that may be considered to create traceability of ballots.
9. **Unfairly and contrary to the basic principles of CORA, HB12-1036 defines “interested parties” who will enjoy much better access to public records than the general public or press.**
10. **Clerks would like to claim special privileged exemptions from CORA.** Given how much power and discretion they exert over a crucial function of democracy, **it is arguable that they should experience more oversight than other public servants, not less.** In Saguache, Pitkin, Boulder, and Eagle counties, citizen oversight of clerks and extra citizen participation—much of these efforts dependent upon CORA—have clearly led to improved election practices in those counties. Clerks with good practices have, under CORA, assisted citizens with understanding those practices, for example, the Gilpin County Clerk and Recorder.

Please also consider the faulty and egregious path that HB12-1036’s legislative intent followed on its way to your desk at the Governor’s Office. Standard deliberative process was violated numerous times. Much of the resistance to the bill has arisen only in the final days of the first session when other avenues for discussion were cut off. **A Governor’s veto represents the public’s best hope to see the short-sighted agenda of county and city election officials resisted and the public interest in election verification fully served.**

Please veto HB12-1036.

Thank you,

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