

**Citizen Center**

1520 Homestake Drive  
Aspen, CO 81611  
970-319-5659  
TheCitizenCenter.org

May 13, 2012

The Honorable John Hickenlooper  
Governor's Office  
136 State Capitol  
Denver, CO 80203 (via fax and email)

Re: Request Veto of HB12-1036 (CORA/Elections),  
Support of Ute Mountain Ute Tribe Letter

Dear Governor Hickenlooper:

As governor, with your veto, you alone have the last opportunity to prevent adoption of archaic 19<sup>th</sup>-century election concepts that on May 9 at 11:15 P.M. became part of HB12-1036—institutionalizing voter intimidation, diluting election transparency, and blocking citizens' oversight of their elections.

Citizen Center respectfully requests that you veto HB12-1036. This bill

- degrades Colorado's already substandard election transparency,
- allows political insiders to intimidate voters,
- strips ordinary citizens of their rights to verify elections, while creating a special insider status for partisan and special interests,
- undermines voters' constitutional rights to a secret ballot, and
- was passed in an illegitimate nonpublic process that intentionally obstructed the expression of citizens' objections.

HB12-1036 must not be allowed to become law. We are not aware of another state with legislation that has, in the last decade, degraded election transparency such as Colorado is prepared to enact in HB12-1036.

SB12-155 (CORA and Elections) had been held up by the Senate for months. Its rush through the House in the last two days of the session prevented exposure to legislative sunshine. On May 9, the Senate resurrected the regressive, anti-transparency SB12-155 inside the unrelated HB12-1036. Even today, Colorado citizens have almost no way to learn the contents of HB12-1036 in order to exercise their rights to ask for your veto, as the General Assembly's website does not reflect the actual language or status of this illicitly amended bill.

Please give the people the voice they were denied in the aborted legislative process. Please veto this egregiously bad public policy, which otherwise will surely draw embarrassing national attention to Colorado in November.

### Ute Mountain Ute Tribe speaks for fellow Coloradans

Chairman Hayes of the Ute Mountain Ute Tribe detailed in his letter to you the greatly disappointing abusive process apparently employed to prevent knowledgeable opponents and legal experts from explaining the bill's problems to the House Committee. Committee members were heavily lobbied by election officials and their six lobbyists, funded by the Colorado County Clerks Association using substantial payments from the voting system manufacturers, which oppose transparency. Committee members had no opportunity to hear and consider the significant legal and ethical issues in this bill and the likelihood that Colorado's new anti-transparency practices will be ridiculed in the upcoming election.

Chairman Hayes writes in his letter to you, "Specifically, if SB 12-155 is enacted, the Tribe would be unable to protect its own members, in the event of a state or local election challenge, because the Tribe is not within the special class (political parties) with access to voting information. Both the Tribe and its members individually would experience the evisceration of their CORA rights with respect to election information if SB 12-155 is enacted."

Chairman Hayes speaks not only for the Tribe, but also for all ordinary citizens who are not government insiders or "interested parties" as this new specially privileged class is defined in HB12-1036.

### Bill concepts are unethical and undemocratic and institutionalize voter intimidation

There are other morally reprehensible components in this bill. First is the implicit but inexcusable acceptance that ballots can legally be connected back to their voter, although this practice violates our constitutional rights to a secret ballot. Through this bill, officials seek the General Assembly's and your tacit approval for this undemocratic concept, made illegal in Colorado in 1891. Equally egregious are the provisions requiring that copies of such traceable ballots (which should never exist) must be given to numerous "interested parties" and can be made public.

The legislation creates “transparency for sale” for those who have the financial wherewithal. Groups with sufficient funding may become insider “interested parties” by creating Issue Committees for ballot measures if they exceed Campaign Finance spending thresholds. HB12-1036 would allow well-funded groups to buy multiple placeholders during the election to ensure that they will have transparency access and access to illicit traceable ballot data, which is sure to intimidate voters. However, most small grassroots community groups and candidates would be shut out of legitimate transparency access because their spending is modest.

### Your VETO will help re-establish lawful process

Almost irrespective of HB12-1036’s merits or lack thereof, the flawed public-be-damned process controlled by special interests should alone be enough reason for your veto. The SB12-155 and HB12-1036 bill titles are incongruent. Putting these bills’ components together insults the very concept of the prohibition on merging unrelated legislation under one tortured bill title.

If you as Governor allow this style of lawmaking, it would set a new, unimaginably low bar that only encourages future sessions to force all legislation out of public sight by waiting until the last three days of the session and merging bills without respecting a lawful and open process.

SB-155, now HB-1036, has been in drafting since October 2011 and was considered for introduction in mid-January. Proponents of this bill skillfully worked the system to avoid having hearings and debates that would have allowed the Ute Mountain Ute Tribe, the Lawyers Committee, and knowledgeable election experts meaningful opportunity to testify and expose the bill’s problems before the House Committee. Secretary Gessler proposed needed amendments that the bill sponsors refused to discuss in the House Committee.

Without a message from the Governor opposing such undemocratic tactics, citizens will give up on the process and lose faith in the legitimacy of the government.

### Provisions conflict with Constitution and current law

Various provisions of this bill conflict with current law, including the guaranteed constitutional right to a secret ballot. The bill also requires that custodians (mainly county clerks) disclose traceable ballots to “interested parties,” although such disclosure is a criminal offense.

Your office has been sent a separate memo on the specific legal conflicts.

Colorado's transparency standards are unacceptable

In the recent national State Integrity Investigation, Colorado just received a well-deserved grade of "F" for citizens' access to the records of Colorado government. HB12-1036 appears to ensure that Colorado's "F" will remain well earned.

Colorado's election transparency standards would not pass muster in many third-world democracies, given the decentralized local controls with no statewide enforcement activity and citizens' inability to demand compliance. This bill makes a difficult environment worse for any citizen or candidate attempting to verify election outcomes.

Colorado is in the 2012 national election spotlight. If there are election questions, the bill on your desk will prohibit the kind of media scrutiny for Colorado that Florida welcomed in Bush/Gore, that Minnesota easily accommodated in Franken/Coleman, and that Alaska permitted in Murkowski/Miller. Instead, Colorado will, under your leadership, move backward in transparency to draw black curtains around the public's election process and possibly in the face of the national press. The national press and all Americans will look to you as Governor to explain why Colorado no longer guarantees secret ballots, independent oversight of elections, and an open legislative process.

Please veto HB12-1036 to protect the rights of citizens to vote a secret ballot and to have transparent, verifiable elections in Colorado.

Of course, we welcome any questions you or your staff may have. Thank you for your consideration and your service to all Coloradans.

Sincerely,



Marilyn Marks  
Founder, Citizen Center