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EXECUTIVE ORDER

Ordering the Temporary Suspension of Certain Regulatory Statutes Concerning Signature Collection for Unaffiliated and Independent Candidates and Authorizing the Secretary of State to Create Temporary Rules for Registered Electors To Receive and Return Candidate Petitions Over Mail and Email Due to the Presence of COVID-19

Pursuant to the authority vested in the Governor of the State of Colorado and, in particular, pursuant to Article IV, Section 2 of the Colorado Constitution and the relevant portions of the Colorado Disaster Emergency Act, C.R.S. § 24-33.5-701 *et seq.*, I, Jared Polis, Governor of the State of Colorado, hereby issue this Executive Order ordering the temporary suspension of certain regulatory statutes concerning signature collection for unaffiliated and independent candidates who are required to file petition with the Secretary of State under Title 1 and authorizing the Secretary of State to create temporary rules to allow for mail and email signature collection due to the presence of coronavirus disease 2019 (COVID-19) in Colorado.

I. Background and Purpose

On March 5, 2020, the Colorado Department of Public Health and Environment's (CDPHE) public health laboratory confirmed the first presumptive positive COVID-19 test result in Colorado. Since then, the number of confirmed cases has continued to climb, and we have evidence of widespread community spread throughout the State. I verbally declared a disaster emergency on March 10, 2020, and on March 11, 2020, I issued the corresponding Executive Order D 2020 003, as amended by Executive Orders D 2020 018, D 2020 032, and D 2020 058. On March 25, 2020, I requested that the President of the United States declare a Major Disaster for the State of Colorado, pursuant to the Stafford Act. The President approved that request on March 28, 2020.

My administration, along with other State, local, and federal authorities, has taken a wide array of actions to mitigate the effects of the pandemic, prevent further spread, and protect against overwhelming our health care resources.

We must take action to minimize the duration of this epidemic and the disruption to our daily lives. The virus that causes COVID-19 is spread primarily by close contact between people and through respiratory droplets when an infected person coughs or sneezes. Public health experts recommend we practice "social distancing," or maintaining a physical distance of six (6) feet or more from other people, as a way to slow the spread of COVID-19. On April 26, 2020, I issued Executive Order D 2020 044, Safer at Home, limiting in person activities, which imposes a significant hurdle for unaffiliated and independent candidates and duly designated circulators,

who play an essential role in our democratic republic and have significant and determinative barriers due to state and local public health orders that prevent them from the normal statutory conduct of in-person signature gathering.

This Executive Order, in order to preserve our constitutional principle of ballot access, temporarily suspends statutory provisions that in ordinary times are consistent with a constitutional process for ballot access, but are currently, due to the crisis, inconsistent with the constitutional principle of ballot access, including those requiring registered electors to sign petitions for unaffiliated and independent candidates in the presence of a petition circulator. This Executive Order also authorizes the Secretary of State to issue rules that allow for signature collection in a manner that protects public health while the COVID-19 disaster emergency declaration is in place.

A. I temporarily suspend the requirements of C.R.S. § 1-4-901 designating the format of petitions for unaffiliated and independent candidates filed with the Secretary of State's Office.

B. I temporarily suspend the requirements of C.R.S. § 1-4-905(2)(a) that a circulator for unaffiliated or independent candidates must provide an affidavit stating that the circular was in the presence of the person who signed the petition and that the affidavit is signed in the physical presence of a notary public for petitions filed with the Secretary of State

C. I temporarily suspend the requirements of C.R.S. § 1-4-905.5(2)(c)(V) that the Secretary of State shall revoke a petition entity's license if the notarization of a circulator affidavit, filed with the Secretary of State, occurs outside the physical presence of the circulator.

D. I temporarily suspend the requirements of C.R.S. § 1-4-905(3) requiring the Secretary of State to reject any section of an unaffiliated or independent candidate petition filed with the Secretary of State's Office that does not have a notarized circulator affidavit attached.

E. I temporarily suspend the requirements of C.R.S §§ 1-4-908(1.5) and (3) requiring the Secretary of State to compare signatures on an unaffiliated or independent candidate petition with signatures found in the statewide voter registration database and requiring the Secretary of State to provide notification of sufficiency or insufficiency no later than ninety-six days before the general election.

F. I direct CDPHE to work collaboratively with the Secretary of State to develop guidelines to be issued by the Secretary of State that allow for safe circulation of petitions in-person following state public health orders and state and local social distancing guidelines;

G. I authorize the Secretary of State to promulgate and issue temporary emergency rules that allow campaigns for unaffiliated and independent candidates who are required to file petitions with the Secretary of State to continue collecting signatures in a way that protects public health. The ability to collect petitions for unaffiliated and independent candidates is limited to candidates and their third party designees. These temporary emergency rules must include, but not limited to, rules that:

   a. Authorize registered electors to sign petitions by a means that does not require a petition circulator, including but not limited to providing electronic mail and mail-in options;

   b. Establish a process by which a candidate would receive petitions from the Secretary of State, transmit petitions to registered electors, receive signed petitions from registered electors by regular mail, receive signed and scanned petitions by electronic mail, transcribe the information from the completed forms, submit completed information, including the transcribed forms and signature documentation to the Secretary of State before the deadline for submission, validate the signed petitions received by the methods set forth in this paragraph, and any other process that the Secretary of State needs in order to collect signatures for unaffiliated and independent candidates including the process to cure a petition;

   c. Establish a process for notarization of petition affidavits attesting to the validity of petition signatures, which may include, but is not limited to the procedures established by the Secretary of State's Office under Executive Order D 2020 019 or as amended.

   d. Require affidavits attached to petitions to be signed by the circulator who received the petition from the registered electors;

   e. Establish a form and requirement for an affidavit;

   f. Require all circulators, candidates, and designated representatives provide registered electors with information about the candidate that would ordinarily be printed on the signature petition;

   g. Ensure that registered electors are able to feasibly complete the process from their homes; and

   h. Prevent fraud and abuse.

H. Nothing in this Executive Order relieves circulators, candidates, or designated representatives collecting signatures for a candidate of the burden to ensure that the signatures on the petitions are valid to the best of their knowledge.

I. Nothing in this Executive Order changes the requirements that a registered elector must provide their signature, their name, their address, and the date of signing under C.R.S. § 1-4-904(3).

J. Nothing in this Executive Order shall extend the cure period for candidates that have already submitted signatures to the Secretary of State for a sufficiency review.

III. Duration

This Executive Order shall expire thirty (30) days from May 15, 2020, unless extended further by Executive Order.

GIVEN under my hand and the Executive Seal of the State of Colorado, this fifteenth day of May, 2020

Jared Polis
Governor