



D 2020 065

EXECUTIVE ORDER

Ordering the Temporary Suspension of Certain Regulatory Statutes Concerning Signature Collection for Ballot Issues and Authorizing the Secretary of State to Create Temporary Rules for Registered Electors To Receive and Return Issue 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 ballot issues 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 ballot petition 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 ballot issue petitions in the presence of a petition circulator and 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. This Executive Order protects Coloradans' constitutional right to shape their government through the initiative and referendum processes without risking their health or the health of others.

II. Directives

- A. I temporarily suspend the requirements in C.R.S. §§ 1-40-102(6), 1-40-110, 1-40-105.5(4), and 1-40-113 that govern the form of a ballot issue, how a ballot issue petition must be compiled, and the specific information that must be printed on the ballot issue petition.
- B. I temporarily suspend the requirements in C.R.S. § 1-40-108(1) that a ballot issue petition must be filed with the Secretary of State within six (6) months from the date that the titles and submissions clause have been fixed and determined provided however that all ballot issue petitions must be filed with the Secretary of State at least three months before the general election at which they are to be voted on.
- C. I temporarily suspend the requirements in C.R.S. § 1-40-111 that a petition circulator be in the physical presence of the registered electors signing the petition, that the petition circulator be in the physical presence of a notary, and that the Secretary reject any section of a petition that does not have a notarized circulator affidavit attached. Additionally, I temporarily suspend the requirements in C.R.S. § 1-40-135(2)(c)(VI) that the Secretary must revoke a petition entity's license if the entity authorizes or knowingly permits a notary public's notarization of a petition section outside the presence of the circulator.
- D. I temporarily suspend the requirements in C.R.S. § 1-40-116 that a circulator's affidavit be attached to each section of the ballot issue petition and that the Secretary assure that the information required by C.R.S. § 1-40-111(2) is complete. Nothing in this subsection prohibits the Secretary of State from verifying the validity of signatures on a petition as required by C.R.S. § 1-40-116, including by conducting a random sample and, if necessary, a line by line review of signatures as required by subsection (4) of that section.
- E. I temporarily suspend C.R.S. §§ 1-40-130(1)(k), which makes it unlawful for a petition to be signed outside the presence of a circulator, 1-40-130(1)(e), but only to the extent that it requires an affidavit to a ballot petition be signed in the physical presence of the person certifying the affidavit, and 1-40-130(1)(l), which makes it

unlawful for any person to circulate in whole or in part a petition section, unless such person is the circulator who signs the affidavit attached to the petition section.

- 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 ballot issues that have titles set or pending before the Colorado Supreme Court as of the effective date of this order to continue collecting signatures in a way that protects public health consistent with the Constitutional requirement that some registered elector must attest to the validity of signatures on the petition. The ability to collect petitions for ballot issues is limited to proponents 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 proponents of ballot measures would receive petitions from the Secretary of State, transmit petitions to registered electors, 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 for ballot measures including the process to cure a petition; the full text of the ballot issue must accompany the petition for signature;
 - c. Require all circulators, proponents, and designated representatives for ballot issues to provide registered electors with information about the ballot issue that would ordinarily be printed on the signature petition;
 - d. 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.
 - e. Require affidavits attached to petitions to be signed by the circulator who received the petition from the register electors;
 - f. Establish a form and requirement for an affidavit;

- 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 or designated representatives collecting signatures for a ballot issue 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. § 1-40-111(1).
- J. Except as expressly provided above, nothing in this Executive Order suspends the other provisions of C.R.S. § 1-40-130, which define the unlawful signature gathering actions and their penalties.
- K. Nothing in this Executive Order shall extend the cure period for a ballot measure that has 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

A handwritten signature in blue ink that reads "Jared Polis". The signature is written in a cursive, flowing style.

Jared Polis
Governor