

EXHIBIT 9



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TO: The Honorable Mike Coffman
Colorado Secretary of State

FROM: Maurice G. Knaizer *mgk*
Deputy Attorney General
State Services Section

RE: Removal of Duplicate Signatures on the Registration Rolls within Ninety Days of the Election

I write in response to your request for an informal opinion. This memorandum contains only my opinion and is not an official opinion of the Attorney General.

QUESTION PRESENTED AND CONCLUSION.

May the State remove duplicate names from the computerized voter registration list within ninety days prior to the date of a primary or general election for Federal office?

Yes. The National Voter Registration Act and the Help America Vote Act permit the Secretary to remove duplicate names from the voter registration list. The Secretary may not remove names that are not duplicates except as provided in 42 U.S.C. 1973gg-6 (a) (3) (A) or (B) or (4) (A) and (B).

ANALYSIS

In 1993, Congress enacted the National Voter Registration Act of 1993 ("NVRA"). Congress, through the NVRA, sought to increase voter registration, enhance participation of eligible citizens, protect the integrity of the electoral process and guarantee accurate, updated voter registration rolls. Each State must "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of -(A) the death of the registrant; or (B) a change in the residence of the registrant in accordance with (b), (c), and (d) of this section." 42 U.S.C. § 1973gg-6 (a) (4). Pursuant to 42 U.S.C. § 1973gg-6 (b) (1), a State program or activity created for "the maintenance of an accurate and current voter registration roll" must be "uniform, non-discriminatory and in

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compliance with the Voting Rights Act of 1965." In addition, any such program or activity "shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for federal office by reason of the person's failure to vote" unless the person has not either notified the registrar or responded to certain notices sent by the applicable registrar and has not voted or appeared to vote in two or more consecutive general elections for Federal office. 42 U.S.C. § 1973gg-6 (b) (2). A State must "complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters." 42 U.S.C. § 1973gg-6 (c) (2) (A).

In 2002, Congress enacted the Help America Vote Act ("HAVA"). HAVA was intended, in part, to establish minimum election standards. As pertinent to this issue, HAVA requires the State to implement "a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State..." 42 U.S.C. § 15483 (a)(1)(A). The computerized list is the official voter registration list for all Federal elections. 42 U.S.C. § 15483(1) (A) (vii).

State and local officials must perform list maintenance in accordance with the applicable provisions of the NVRA. 42 U.S.C. § 15483 (2) (A). HAVA requires that this list maintenance must be conducted in a manner that ensures the name of each registered voters appears on the computerized list, non-registered or ineligible voters are removed from the computerized list and "duplicate names are eliminated from the computerized list." 42 U.S.C. § 15483 (2) (B).

Colorado activated its statewide computer registration system in 2008. The system can detect multiple or duplicate registrations. It collects the social security number, the date of birth, the last name, the first name, and initials (if necessary) and analyzes various combinations of this information. If the program discerns some duplication, it notifies the appropriate county clerk. The county clerk then examines the records and determines whether a person has multiple registrations. If the clerk determines that a person has more than one registration entry, the clerk removes all entries but the most recent one.

Removal from a voter registration list of the name of a voter who may be ineligible is different from deletion of duplicate registrations. A person whose name is removed from the registration list cannot vote. The prohibition in 42 U.S.C. 1973gg-6 (c) (2) (A) precludes the State from "systematically remov[ing] the names of ineligible voters" within 90 days of a primary or general election for Federal Office. This provision is designed to prevent the State from removing a person who is listed as an ineligible voter but who in fact may be eligible, thereby practically depriving the voter of an opportunity to establish his or her qualifications.

The voter with duplicate registrations is in a different category. The deletion of all but the most recent registration does not prevent the voter from voting. The removal merely ensures that the voter will not receive or cast multiple ballots. Since the voter with duplicate registrations is

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still eligible to vote, the removal of all but the most recent registration is permitted within 90 days of the primary or general election.

CONCLUSION

The State can remove within 90 days of a primary or general election for a Federal office all but the most recent registration of a person who has registered more than once.

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