

August 27, 2020

Transmitted Via E-mail

Dylan Lange
Director of Legislative and Executive Affairs
The Office of the New Mexico Secretary of State
325 Don Gaspar, Suite 300
Santa Fe, NM 87501
Dylan.Lange@state.nm.us

Re: In Support of Proposed Rule Part 1.10.15.8

Dear Mr. Lange,

Thank you for the opportunity to comment on Proposed Rule 1.10.15.8 NMAC, relating to the processing of mailed ballots and the procedures to be followed before a ballot is, or is not, counted. We write in support of the rule as currently drafted.

The Brennan Center for Justice is a non-partisan law and policy institute striving to uphold the values of democracy in Texas and throughout the United States. We encourage broad citizen participation in our democracy, and work with elections officials to support the fair and effective administration of elections. We have long supported uniform, pro-voter ballot counting procedures, including notice and the opportunity to fix errors and omissions on ballot envelopes so that every qualified voter's ballot is counted.

All voters have due process rights to notice and an adequate opportunity to remedy ballot deficiencies.¹ Proposed Rule 1.10.15.8 NMAC is an important step toward ensuring uniform processes for mailed ballot verification, notice of ballot defects, and cure methods. In particular, we are pleased to see requirements that election officials use a variety of methods for contacting voters, attempt to reach voters at least twice, and offer voters multiple options for curing ballot errors or omissions.

There are two items worth noting, although not critical to include in the rule itself. First, as previously noted in an email to Secretary Toulouse Oliver, it is important to remind counties that they are required, under Section 203 of the Voting Rights Act, to provide notice and any cure affidavits and instructions in a voter's preferred language. Second, counties should utilize

¹ See *Florida Democratic Party v. Detzner*, No. 4:16cv607-MW/CAS, 2016 WL 6090943 (N.D. Fla. Oct. 16, 2016); *Raetzl v. Parks/Bellemont Absentee Elec. Bd.*, 762 F. Supp. 1354, 1358 (D. Ariz. 1990).

BRENNAN CENTER FOR JUSTICE

best practices when implementing any email cure option, and we are happy to provide further details on the best practices to ensure the secure receipt of email submissions from voters.

For the reasons stated above, the Brennan Center for Justice supports Proposed Rule 1.10.15.8 NMAC. Please do not hesitate to reach out if you have any questions or if we can be of further assistance.

Sincerely,



Lori Shellenberger
Advisor, Voting Rights & Election Program
Brennan Center for Justice
shellenbergerl@brennan.law.nyu.edu