

Part 3 of 3 about NEXT WEEK's PUBLIC HEARINGS on NEW RULES THAT WILL GOVERN BALLOT QUESTIONS

[This is Article #12 in a series—provided by the ELECTION INTEGRITY PROJECT, a Task Force of The New Mexico Justice Project]

THE SECRETARY of STATE's PLAN

The proposed administrative rule from the Secretary of State's office would create a new power for the Secretary of State with regard to how she creates the ballot. (This is a power which the actual statutes do not authorize her to have.)

With regard to ballot questions presented to New Mexico voters, this new power would permit the SOS to create a "condensed text" of the question — as opposed to the "full text."

In other words, the voters would not have the full text of a proposed ballot question in front of them as they prepare to vote.

This proposed "new rule" would appear to be an attempt to override the Albuquerque City Code (and also override the State District Court ruling that upheld the plain language of the City Code) that requires publication of the entire proposed ballot question, not a "summary" or "condensed text".

THE SOS's CLAIMED JUSTIFICATION

As to her legal authority to create a new power and the right to keep information from voters, the Secretary of State cites the "uniform guidelines" in Section 1-6-7 of the New Mexico Election Code. She claims that section grants her the power to alter the content of questions certified by local governments such as the City of Albuquerque.

1-6-7 reads:

"the secretary of state shall by rule prescribe uniform guidelines for a state or local ballot question to appear on the ballot."

But this has always been seen as a ministerial power having to do with HOW the ballot is arranged. It does not grant authority to invoke substantive changes regarding WHAT appears on the ballot. Those decisions are left to voters, to local commissions, and to the legislature.

Trying to squeeze substantive power out of this administrative authority seems to raise many of the same assertions that were rejected soundly by the state supreme court when Secretary Toulouse-Oliver attempted to implement straight-ticket voting.

After all, if that section of the Election Code actually does give the SOS power to decide what is ON the ballot as opposed to how it is arranged, why not say she can personally decide that voters can have a straight-ticket option? Even if it's not in the law.

Well, keep in mind that the Supreme Court responded with a loud "No" to that notion.

THE NEW PROPOSED RULE

The proposed new rule says that "condensed text" means "a summary of a ballot question that is concise and states, in clear and unambiguous language, the purpose of the ballot question without argument or prejudice."

Next, the proposed rule says:

1.10.16.8 TEXT OF THE BALLOT QUESTION:

A. In the interest of convenience and consistency, a ballot need not contain the full text of the proposed ballot question. A condensed text can be used as prepared or approved by the secretary of state. 1.10.16 NMAC 2

B. The secretary of state shall approve the condensed text of any ballot question to be placed on a ballot.

C. The ballot question must be written in the form of a question, which must be answerable with a "For" or "Against". The ballot question must be styled in such a manner that a "For" vote will indicate approval of the question and an "Against" vote will indicate rejection.

D. The appropriate election official may submit a proposed form of the condensed text for a ballot question to the secretary of state. The proposed form of the condensed text shall properly describe the ballot question and include the required information in Subsection G of 1.10.16.8 NMAC. The proposed form of the condensed text need not contain any legally inoperable language. If an election official submits a proposed form of the condensed text to the secretary of state, an election official must also submit the full text of the ballot question simultaneously.

PROBLEMS WITH THE PROPOSED RULE

This new rule doesn't seem to fit the statute that requires the certified ballot question to be presented to the voters. By creating a "full text" ballot question and a "condensed text" (or summary) ballot question, Secretary Oliver seems to be not only attempting to exceed her statutory authority, but again, seems to be attempting to make an end run around Judge Malott's 2016 ruling, holding that the Albuquerque charter requires the full text of proposed ordinances.

Section 1-16-2 acknowledges that local ballot questions are governed by local city charters and local laws. But the Secretary of State may be relying on a new provision contained in Section 1-22-3.2 of the Local Election Act that says "Election provisions or procedures in an ordinance or charter of a municipality that conflict with the Election Code or other applicable state or federal law are not operable and shall not be enforced."

The Secretary may argue that if she adopts a state administrative rule that provides for two different versions of a ballot question, including a "condensed text" version to actually be presented to the voters, it will overcome Judge Malott's ruling and the Albuquerque city charter.

But as we noted above, § 1-22-10 of the Local Election Act refers to one ballot question to be certified and presented to the voters, and the Secretary certainly cannot overcome state statute by adoption of administrative rule “for convenience.”

Her authority is limited to the establishment of “uniform guidelines” that meet the requirements of the state law.

The provisions of the Election Code also say that if a municipality has a ballot question that would cause the ballot to extend to two pages, then the municipality can pay the additional costs to include the question. So that means it is not an issue of ballot space.

The legislature made adequate provisions for a city such as Albuquerque to include and pay for a long ballot question if it wishes to have the voters adopted a seven-or-eight-page ordinance.

We do not read the new statutes to authorize the Secretary of State to “condense” a ballot question, or to divine the “purpose” of a proposed ballot question.

There’s no authority for a Secretary to provide a truncated summary that will exclude critical details, particularly where a city charter requires the full text.

AGAIN THE DATES OF THE RULES HEARINGS

Monday, July 29

Santa Fe

State Capitol

Room 322

9:00 AM to Noon

Tuesday, July 30

Albuquerque

ABQ/Bernalillo County Government Center

Vincent E. Griego Chambers

9:00 AM to Noon

Wednesday, July 31

Las Cruces

Doña Ana County Commission Chambers

845 N. Motel Blvd

1:00 PM to 4:00 PM