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Deputy Secretary for Elections

**OFFICE OF THE
SECRETARY OF STATE**

December 18, 2019

Via Hand Delivery

Brenda Erdoes, Legislative Counsel
Legislative Counsel Bureau
401 S. Carson Street
Carson City, NV 89701

RE: Adopted Regulation Informational Statement; NRS 233B.066 – LCB File No. R052-19

Dear Ms. Erdoes,

On December 6, 2019 the Secretary of State adopted regulation R052-19 during a public hearing. Accordingly, the following informational statement is being submitted to you pursuant to NRS 233B.066.

Explanation of the Need for the Adopted Regulation

The voters of Nevada approved the Automatic Voter Registration (AVR) Initiative, also known as Question 5, at the 2018 general election. Among other provisions, the AVR Initiative requires certain customers of the Department of Motor Vehicles (DMV) to be automatically registered to vote unless the customer affirmatively declines in writing to register to vote. Because the AVR Initiative changed the voter registration process at the DMV from an opt-in process to an opt-out process, safeguards need to be built into the process to prevent the automatic registration of DMV customers who are ineligible to register to vote under Nevada law. The adopted regulation requires the DMV to exclude customers from the AVR process who document ineligibly to register to vote, thereby ensuring the integrity of the automatic voter registration process at the DMV.

How Public Comment Was Solicited, and a Summary of the Public Response

Public comment was solicited at a workshop held on October 30, 2019. Public comment was also solicited at a regulation adoption hearing held on December 6, 2019. Both the workshop and the adoption hearing were noticed according to applicable state law, with notices being posted at the following locations:

- Nevada Legislature Building
- Grant Sawyer State Office Building
- Nevada State Library and Archives
- Nevada State Capitol Building
- State of Nevada Website (www.nv.gov)
- Nevada Secretary of State Website (www.nvsos.gov)

In addition to the locations listed above, the public notice of the adoption hearing was posted at the county library in all Nevada counties where the Secretary of State does not maintain a physical office (which is all counties except Clark and Carson City). Lastly, notices of the workshop and adoption hearing were sent directly to the election official in all 17 counties, as well as advocacy groups that had previously

NEVADA STATE CAPITOL
101 N. Carson Street, Suite 3
Carson City, Nevada 89701-3714

MEYERS ANNEX
COMMERCIAL RECORDINGS
202 N. Carson Street
Carson City, Nevada 89701-4201

LAS VEGAS OFFICE
2250 Las Vegas Blvd North, Suite 400
North Las Vegas, Nevada 89030-5873

expressed interest in helping the state craft its AVR process. These advocacy groups include the American Civil Liberties Union or ACLU (both the Nevada and national chapters), Brennan Center for Justice, Demos, and the Center for Secure and Modern Elections.

The Secretary of State received public response in the form of written comments from the Brennan Center for Justice, as well as a joint letter from the ACLU, Demos, and Mi Familia Vota. At the workshop public, comments was provided by the Center for Secure and Modern Elections and Mi Familia Vota. No public comment was given at the adoption hearing.

The written comment from the Brennan Center for Justice was in support of the proposed regulation. The public statement at the workshop by the Center for Secure and Modern Elections was also in support of the proposed regulation. Both comments emphasized the importance of protecting ineligible voters from the consequences of accidentally registering to vote, which can include criminal penalties and, in the case of non-citizens, deportation. The written statement from the ACLU, Demos, and Mi Familia Vota encouraged the Secretary of State to amend the proposed regulation to make it clear that DMV customers who are excluded from the AVR process will be given an alternative affirmative opportunity to register to vote. The written statement also suggests an amendment to the proposed regulation so that it is clear that DMV customers who do not have to show identification documents (such as driver's license renewal applicants) or interact with the DMV remotely (such as online or via mail) will go through the AVR process. The public comment from Mi Familia at the workshop was largely a summary of the written comment previously provided by the group.

Interested individuals may obtain a copy of all written comments by contacting the Secretary of State's Elections Division at (775) 684-5720 or nvelect@sos.nv.gov. Likewise, interested individuals can obtain a copy of the meeting minutes from the workshop and adoption hearing by contacting the Secretary of State's Elections Division.

Attendees and Comments at Public Hearings

As previously mentioned, the Secretary of State held two public hearings in conjunction with the adopted regulation: a workshop on October 31, 2019 and an adoption hearing on December 6, 2019. A total of 20 individuals attended the workshop, while 10 individuals attended the adoption hearing. At the workshop, two individuals testified. There was no testimony provided at the adoption hearing. Finally, the Secretary of State received two written comments in conjunction with the regulation adoption process.

The following individuals testified at the workshop:

- Sam Oliker-Friedland, Chief Counsel
Center for Secure and Modern Elections
(414) 736-0959
sam@modernelections.org
- Cecilia Alvarado, State Director
Mi Familia Vota
(702) 371-8831
730 N. Eastern Avenue #120
Las Vegas, NV 89101
cecias@mifamilia.org

The following individual submitted a written statement to the Secretary of State:

- Sean Morales-Doyle, Senior Counsel
Brennan Center for Justice at New York University School of Law
Voting Rights & Elections Program
(646) 292-8363
120 Broadway, Suite 1750
New York, NY 10271
morales-doyles@brennan.law.nyu.edu

The following individuals and groups submitted a joint written statement to the Secretary of State:

- Sarah Brannon, Managing Attorney
American Civil Liberties Union
Voting Rights Project
(202) 675-2337
915 15th Street, NW
Washington, DC 20005
sbrannon@aclu.org
- Demos
(212) 633-1405
80 Broad Street, 4th Floor
New York, NY 10004
- Mi Familia Vota
(702) 776-8205
730 N. Eastern #120
Las Vegas, NV 89101

How Comment Was Solicited from Affected Businesses, and a Summary of the Response

The regulation adopted by the Secretary of State has no effect on businesses. Accordingly, the Secretary of State did not solicit comment from affected businesses.

Reasons for Adopting the Regulation without Change

The regulation was adopted by the Secretary of State without any change, but changes were suggested by the ACLU, Demos, and Mi Familia Vota. These groups did not see a reason for Driver's Authorization Card (DAC) applicants to be excluded from the AVR process. However, in order to ensure the integrity of the AVR process, the Secretary of State believes DAC applicants should be excluded from the AVR process. The three groups also suggested that language be added to the regulation to: (1) make it clear individuals involved in remote transactions with the DMV don't have to provide identification documents in order to go through the AVR process; and (2) make it clear that DMV customers who are excluded from the AVR process will be given an alternative affirmative opportunity to register to vote. These two suggested changes were not included in the regulation adopted by the Secretary of State because state law (Question 5) and federal law (the National Voter Registration Act) already cover the described scenarios.

Estimated Economic Effect of the Regulation on Business and the Public

The adopted regulation does not have an economic effect on business or the public.

Estimated Cost to Enforce the Regulation

There is no cost to the Secretary of State to enforce the adopted regulation.

Description of Other Regulations that the Regulation Overlaps or Duplicates

The regulation adopted by the Secretary of State is complementary to proposed regulation R028-19 by the DMV. The regulation proposed by the DMV is scheduled for an adoption hearing on January 10, 2020.

Should you or any members of the Legislative Commission have questions about the contents of this letter or the regulation adopted by the Secretary of State, please contact Wayne Thorley, Deputy Secretary of State for Elections, at (775) 684-5705 or nvelect@sos.nv.gov.

Respectfully,

Scott W. Anderson
Chief Deputy Secretary of State