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Protecting ballots a legislative imperative

By The Daily Sentinel

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Word is the Colorado Legislature will probably see a bill regarding public access to voted ballots early next month. If so, lawmakers will be under considerable pressure to act, but also to preserve voter anonymity.

This ballot battle has been brewing for the past several years in Colorado. And Mesa County Clerk Sheila Reiner has been at the forefront of that battle because last year she rejected a request from Aspen activist Marilyn Marks to be allowed to examine ballots after they were cast in this county.

Reiner and other county clerks in Colorado argue that the ballots are not public documents that can be viewed by the public because of state constitutional requirements that prohibit election officials from revealing how an individual voted.

Of course, voters' names are not attached to their ballots once the ballots have been cast and counted.

But, as Reiner demonstrated to The Daily Sentinel last fall, it is not difficult to determine how most individuals voted if a researcher has access to the ballots and a variety of other public information. That information includes the precinct or vote center in which a ballot was cast, the date it was cast, the batch with which it was counted or — for mail-in ballots — the batch of mail it arrived with.

Despite these legitimate concerns, ballots that have been cast may eventually be determined to be public records in Colorado. Marks demanded to see ballots from an Aspen municipal election, and last September the Colorado Court of Appeals upheld her request, ruling that the ballots were public records and therefore subject to public inspection under the Colorado Open Records Act.

Even if the Colorado Supreme Court overturns or stays that decision, there will still be pressure on the Legislature to change Colorado law with respect to ballots, and to do so this session. That's because, as Marks and others have noted, Colorado could very well end up at the center of a contested national election, much as Florida was in 2000 and Minnesota was in 2008 with its disputed U.S. Senate race.

If the media or political party representatives demand a public recount — instead of the carefully monitored, but closed recounts that now occur in Colorado — it could spark a barrage of legal filings that would delay both state and national election results.

We hope that doesn't occur, but it is not outside the realm of possibility. And that's why it's important for the Legislature to act this year.

As we said last November, we don't believe legislation that declares voted ballots are exempt from Colorado's Open Records Act — as many county clerks want — is the best solution. A better plan would be for lawmakers to craft solid legal firewalls between those ballots and the other types of information that the clerks say could allow ballots to be tracked back to individual voters.

Such a measure would allow public inspection of ballots and, more importantly, preserve the secrecy of the ballot.