

Attachment One: Propositions 107 and 108

Passed in 2016, Propositions 107 and 108, among other things, extend the right to vote in all Colorado primary elections to unaffiliated voters. Senate Bill 17-305, which passed in 2017, implements 107 and 108, and includes the following provisions:

- County clerks must send all unaffiliated electors separate ballots for each major political party participating in the primary election.
- Each unaffiliated elector is entitled to vote in only one party's primary election.
- County clerks must record in the State's statewide voter registration system (SCORE), the political party's election that each unaffiliated elector voted in.
- The state must reimburse counties from the state general fund for the actual, direct costs incurred in conducting a presidential primary election.

The Secretary of State's office has drafted proposed rules to ensure uniform processes across counties. While drafting these rules, we considered the following:

- The constitutional requirements that counties protect the secrecy of each elector's vote and maintain the integrity of elections.
- The need to minimize the spoilage of returned ballots.

The following is a list of the proposed rules that will facilitate the new law. Under the "Ballot Separation" heading, we've included three different options for considerations and comment.

GENERAL RULES

➤ Deferral of Affiliation

2.5.4 IF AN UNAFFILIATED ELECTOR WHO HAS ALREADY BEEN MAILED A PRIMARY ELECTION BALLOT SUBMITS AN AFFILIATION DECLARATION, THE COUNTY CLERK MUST DEFER PROCESSING THE AFFILIATION CHANGE UNTIL AFTER THE PRIMARY ELECTION; EXCEPT THAT AN UNAFFILIATED ELECTOR WHO APPEARS IN PERSON TO VOTE MAY AFFILIATE AND VOTE A PARTY BALLOT IF THE COUNTY CLERK HAS NOT RECEIVED THE ELECTOR'S VOTED MAIL BALLOT.

➤ Cancellation

4.8.3(a) If a major political party, as defined in section 1-1-104(22.5), C.R.S., nominates more than one candidate for any office, the county clerk must conduct the primary election for all major political parties UNLESS THE PARTY CHOOSES TO NOMINATE CANDIDATES IN ACCORDANCE WITH SECTION 1-4-702, C.R.S.

➤ In-person voting

7.9.6 AN UNAFFILIATED ELECTOR VOTING IN PERSON AT A VOTER SERVICE AND POLLING CENTER IN A PRIMARY ELECTION MUST STATE WHICH PARTY'S ELECTION HE OR SHE CHOOSES TO VOTE IN, AND THE COUNTY CLERK MUST INDICATE THE VOTER'S SELECTION IN SCORE AND PROVIDE THE VOTER WITH THAT PARTY'S BALLOT.

BALLOT SEPARATION OPTIONS

➤ Ballot identification through window on mail ballot return envelope

Option 1: Unaffiliated voter receives all major party ballots in one mail ballot packet; mail ballot return envelope provides a method for the county to determine which party's ballot has been cast (*e.g.* color stripe/border on ballot, envelope window); election judge records selection in SCORE at time of receipt in accordance with new section 1-7.5-106.5, C.R.S. Voting more than one party's ballot voids all ballots.

7.2.10 MAIL BALLOT RETURN ENVELOPES FOR UNAFFILIATED VOTERS IN PRIMARY ELECTIONS MUST PROVIDE A MEANS FOR THE COUNTY TO DETERMINE, BEFORE OPENING THE ENVELOPE, WHICH PARTY'S PRIMARY ELECTION THE ELECTOR VOTED IN.

➤ Election judge manual review and determination

Option 2: Unaffiliated voter receives all major party ballots in one mail ballot packet, but the mail ballot return envelope does not indicate, on its face, which party's election the elector voted in. Upon receipt, the county conducts signature verification; a team of three election judges separates the ballot from the envelope while maintaining the secrecy of the voter's ballot, as follows: (1) an election judge removes the ballot from the return envelope and passes it to a bipartisan team of election judges; (2) the bipartisan team reviews the ballot, and audibly reports to the first judge which party's election the elector voted in; (3) the first judge records the selection in SCORE or marks the elector's ballot envelope for later recording. Voting more than one party's ballot voids all ballots.

7.5.13 UNAFFILIATED VOTERS IN PRIMARY ELECTIONS. FOLLOWING VERIFICATION OF THE ELECTOR'S SIGNATURE, THE COUNTY MUST SEPARATE THE ELECTOR'S BALLOT FROM THE ENVELOPE IN THE FOLLOWING MANNER:

- (A) AN ELECTION JUDGE MUST REMOVE THE BALLOT, ENCLOSED IN ITS SECRECY SLEEVE, FROM THE MAIL BALLOT RETURN ENVELOPE AND PASS IT TO A BIPARTISAN TEAM OF ELECTION JUDGES WITHOUT ALLOWING THE TEAM OF JUDGES TO DETERMINE THE IDENTITY OF THE ELECTOR.
- (B) THE BIPARTISAN TEAM OF ELECTION JUDGES MUST REMOVE THE BALLOT FROM THE SECRECY SLEEVE, REVIEW THE BALLOT, AND AUDIBLY REPORT TO THE FIRST ELECTION JUDGE WHICH POLITICAL PARTY'S ELECTION THE ELECTOR VOTED IN.
- (C) THE FIRST ELECTION JUDGE MUST RECORD IN SCORE WHICH POLITICAL PARTY'S ELECTION THE ELECTOR VOTED IN, OR MARK THE MAIL BALLOT RETURN ENVELOPE WITH THE PROPER PARTY INFORMATION FOR LATER RECORDING IN SCORE.

➤ County determines separation and recording method

Option 3: Unaffiliated voter receives all major party ballots in one mail ballot packet. County clerk chooses method (from Options 1 and 2 above) to determine which party's election the voter voted in, while preserving voter anonymity. An election judge records selection in voter's record in SCORE. Voting more than one party's ballot voids all ballots.

7.2.10 MAIL BALLOT RETURN ENVELOPES FOR UNAFFILIATED VOTERS IN PRIMARY ELECTIONS MAY PROVIDE A MEANS FOR THE COUNTY TO DETERMINE, BEFORE OPENING THE ENVELOPE, WHICH PARTY'S PRIMARY ELECTION THE ELECTOR VOTED IN. IF THE MAIL BALLOT RETURN ENVELOPE

DOES NOT PROVIDE A MEANS FOR THE COUNTY TO DETERMINE THE ELECTION THE ELECTOR VOTED IN ON ITS FACE, THE COUNTY MUST FOLLOW THE PROCESS OUTLINED IN RULE 7.5.13.

7.5.13 UNAFFILIATED VOTERS IN PRIMARY ELECTIONS. IF THE COUNTY'S MAIL BALLOT ENVELOPE DOES NOT PROVIDE A MEANS TO DETERMINE, BEFORE OPENING THE ENVELOPE, WHICH PARTY'S ELECTION THE ELECTOR VOTED IN, THE COUNTY MUST SEPARATE THE ELECTOR'S BALLOT FROM THE ENVELOPE IN THE FOLLOWING MANNER:

- (A) AN ELECTION JUDGE MUST REMOVE THE BALLOT, ENCLOSED IN ITS SECRECY SLEEVE, FROM THE MAIL BALLOT RETURN ENVELOPE AND PASS IT TO A BIPARTISAN TEAM OF ELECTION JUDGES WITHOUT ALLOWING THE TEAM OF JUDGES TO DETERMINE THE IDENTITY OF THE ELECTOR.
- (B) THE BIPARTISAN TEAM OF ELECTION JUDGES MUST REMOVE THE BALLOT FROM THE SECRECY SLEEVE, REVIEW THE BALLOT, AND AUDIBLY REPORT TO THE FIRST ELECTION JUDGE WHICH POLITICAL PARTY'S ELECTION THE ELECTOR VOTED IN.
- (C) THE FIRST ELECTION JUDGE MUST RECORD IN SCORE WHICH POLITICAL PARTY'S ELECTION THE ELECTOR VOTED IN, OR MARK THE MAIL BALLOT RETURN ENVELOPE WITH THE PROPER PARTY INFORMATION FOR LATER RECORDING IN SCORE.