

Andrea Gyger

From: Harvie Branscomb <harvie@media.mit.edu>
Sent: Monday, July 23, 2012 12:24 AM
To: Andrea Gyger
Cc: Suzanne Staiert; Scott Gessler; Judd Choate; Wayne Munster; Dana Williams
Subject: Suggestions for Election Rulemaking July 23
Attachments: Branscomb_annotated_20120718_Election_RevisedDraftRules_Watermark.pdf;
Branscomb_Draft_Rules_8_26_41.pdf

Andrea

I attach two documents- one is my critique of portions of the proposed rule changes and the other is my own original suggested Draft of Proposed Election Rules 8.6, 26.13, 41.

I wish to be as constructive as possible- so I have argued with the existing proposal as well as presented an alternative. I hope this is helpful. I'm fearful that too many of the canvass board members who were interviewed prior to suggesting these changes were canvass board members who were also serving as Clerk and Recorder.

Thanks for your consideration of my work.

Harvie Branscomb



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Harvie Branscomb harvie@media.mit.edu

Revised Draft of Proposed Rules
annotated by Harvie Branscomb
Office of the Colorado Secretary of State
Election Rules
8 CCR 1505-1

July 18, 2012

Disclaimer:

The proposed draft rules have changed. This draft supersedes the Preliminary Draft that was issued with the Notice of Proposed Rulemaking on June 15, 2012. These revised proposed rules will be considered at **the July 23, 2012 rulemaking hearing.**

Branscomb annotations look like this:

[(2PM-5PM, Monday, Secretary of State Office, 3rd Floor, Aspen Room, 1700 Broadway Denver, or on internet audio here: <mms://pub.sos.state.co.us/AspenRoom>]

In accordance with the State Administrative Procedure Act, this revised copy of the proposed rules is made available to the public and posted on the Department of State's website.¹

Proposed additions to the current rules are reflected in SMALL CAPS.

Proposed deletions from current rules are shown in ~~stricken type~~.

Shading indicates revisions from the previous draft.

(Annotations) may be included.

1 Amendments to Rule 2.7.4:

2 2.7.4 ~~If an applicant for voter registration fails to provide his or her gender the application shall~~
3 ~~be treated as "incomplete; however, if the applicant submits a photocopy of his/her~~
4 ~~driver's license or other approved form of ID which includes the applicant's gender, then~~
5 ~~the county may enter "male" or "female" as reflected on the card into the applicant's~~
6 ~~record and consider the application "complete".~~ REPEALED.

7 New Rule 2.7.5:

8 2.7.5 IF THE COUNTY CLERK AND RECORDER NOTIFIES AN APPLICANT THAT HIS OR HER
9 APPLICATION IS INCOMPLETE, AND THE APPLICANT DOES NOT PROVIDE THE ADDITIONAL
10 INFORMATION NECESSARY TO COMPLETE THE APPLICATION WITHIN 24 MONTHS AFTER
11 THE COUNTY CLERK SENT THE NOTIFICATION, THE APPLICANT MUST REAPPLY IN ORDER
12 TO REGISTER TO VOTE. (SECTION 1-2-509(2), C.R.S.)

13 Amendments to Rule 2.11:

14 2.11 CHANGES TO AN ELECTOR'S VOTER REGISTRATION STATUS.

15 2.11.1 ~~For the purposes of section 1-2-605(4)(a), C.R.S., an~~ AN ELECTOR MAY update to a

¹ Section 24-4-103(4)(a), C.R.S. (2011). "[A]ny proposed rule or revised proposed rule by an agency which is to be considered at the public hearing...shall be made available to any person at least five days prior to said hearing."

1 ~~voter's HIS OR HER INACTIVE registration information to change the voter's STATUS TO~~
2 ~~ACTIVE status from inactive to active must be provided BY SUBMITTING to the county~~
3 ~~clerk and recorder by any of the following ways:~~

4 (a-) ~~A signed written request, delivered in person or by U.S. mail, fax, or PDF~~
5 ~~attachment to an email; or~~

6 (b-) ~~AN ONLINE VOTER REGISTRATION APPLICATION; OR~~

7 (c) ~~AN Oral-IN-PERSON request in person when voter presents WITH identification.~~

8 [SECTION 1-2-605(4)(A), C.R.S.]

9 2.11.12 ~~In the case of the applicant's~~ IF AN ELECTOR IS UNABLE to sign, ANOTHER PERSON MUST
10 WITNESS the elector's mark ~~shall be witnessed by another person.~~ An elector may use a
11 signature stamp because of age, disability, or other need, ~~which shall be.~~ THE STAMP IS
12 treated as a signature and does not require a witness.

13 Amendments to Rule 2.19.1:

14 2.19.1 "Confirmation card" means a FORWARDABLE, POSTAGE PREPAID mailing USING THE FORM
15 PRESCRIBED BY THE SECRETARY OF STATE ~~by forwardable mail that includes a registration form~~
16 ~~so that the voter may update his or her registration or request a mail in ballot. The mailing shall~~
17 ~~be postage prepaid and have a returnable portion that is preaddressed to the sending county clerk~~
18 ~~and recorder.~~

19 Amendments to Rule 8.6:

20 8.6 WATCHERS ARE SUBJECT TO THE PROVISIONS OF SECTION 1-5-503, C.R.S.

21 **[C.R.S. 1-5-503. Arrangement of equipment or voting booths and ballot boxes**

22
23 **The voting equipment or voting booths and the ballot box shall be situated in the polling place**
24 **so as to be in plain view of the election officials and watchers. No person other than the**
25 **election officials and those admitted for the purpose of voting shall be permitted within the**
26 **immediate voting area, which shall be considered as within six feet of the voting equipment or**
27 **voting booths and the ballot box, except by authority of the election judges or the designated**
28 **election official, and then only when necessary to keep order and enforce the law.]**

29
30
31 8.6.1 THE "IMMEDIATE VOTING AREA" IS THE AREA THAT IS WITHIN SIX FEET OF THE VOTING
32 EQUIPMENT, VOTING BOOTHS, AND THE BALLOT BOX.

33 **[Note that CRS 1-5-503 pertains to the polling place and to no other portion or place of the**
34 **election process].**

35 8.6.2 THE DESIGNATED ELECTION OFFICIAL MUST POSITION THE VOTING EQUIPMENT, VOTING
36 BOOTHS, AND THE BALLOT BOX SO THAT THEY ARE IN PLAIN VIEW OF THE ELECTION
37 OFFICIALS AND WATCHERS.

38 8.6.3 WATCHERS ARE PERMITTED TO VIEW THE CONDUCT OF ELECTIONS DESCRIBED IN
39 ARTICLE I, SECTION 7 FROM A DISTANCE OF SIX FEET UNLESS THE SIZE OR

1 CONFIGURATION OF THE ROOM DOES NOT ALLOW.

2 **[There is no "Article I, Section 7." There is Title I, Article 7 Conduct of Elections. If the latter**
3 **is intended here, this is a gross misapplication of polling place privacy provisions to the**
4 **entire election process and tramples upon C.R.S. 1-7-108**

5 8.6.4 THE DESIGNATED ELECTION OFFICIAL MAY, WITHIN HIS OR HER DISCRETION, ALLOW
6 WATCHERS WITHIN SIX FEET OF OTHER ACTIVITIES DESCRIBED IN ARTICLE I, SECTION 7
7 THAT ARE OUTSIDE THE IMMEDIATE VOTING AREA, INCLUDING BALLOT PROCESSING AND
8 COUNTING.

9 **[This is contrary to C.R.S. 1-7-108 (3) Each **watcher** shall have the right to maintain a list of**
10 **eligible electors who have voted, to witness and verify each step in the conduct of the**
11 **election from prior to the opening of the polls through the completion of the count and**
12 **announcement of the results, to challenge ineligible electors, and to assist in the**
13 **correction of discrepancies. These statutory watcher rights were recently re-confirmed**
14 **by HB 1036 in new law at CRS 24-72-205.5.**
15
16

17 Amendments to Rule 9.1:

18 **Rule 9. Rules Concerning VOTING Assistance to Disabled Voters FOR ELECTORS WITH DISABILITIES**

19 9.1 ~~A-THE COUNTY CLERK AND RECORDER MUST POST A sign AT THE POLLING PLACE/VOTE CENTER,~~
20 ~~providing substantially as follows shall be posted at the polling place/vote center THAT~~
21 ~~SUBSTANTIALLY STATES:~~

22 *NOTICE*
23 *VOTING ASSISTANCE FOR ELECTORS WITH DISABILITIES*

24 ~~Colorado law provides that a voter has~~ PROTECTS a VOTER'S legal right to assistance ~~in voting if~~
25 ~~assistance is needed because of blindness, INABILITY TO READ OR WRITE, or other physical~~
26 ~~disability. or inability to read or write. The following procedures apply:~~

- 27 1. ~~The voter must~~ IF YOU REQUIRE ASSISTANCE, PLEASE inform AN ELECTION JUDGE. ~~one of~~
28 ~~the election judges that he or she needs assistance.~~
- 29 2. ~~The voter may be assisted by any ANY election judge or by any eligible elector PERSON~~
30 ~~selected by the voter MAY ASSIST YOU.~~
- 31 3. ~~The person selected~~IF YOU SELECT A PERSON OTHER THAN AN ELECTION JUDGE, HE OR SHE
32 ~~must complete a 'voter assistance/disabled voter self-affirmation form' if all of the~~
33 ~~following apply THAT STATES:~~

- 34 ● ~~The person selected is not an election judge; and~~
- 35 ● ~~The person selected is not the spouse, parent, grandparent, sibling or child~~
36 ~~eighteen years of age or older, of the voter requesting assistance; and~~
- 37 ● ~~The person selected has assisted any other voter at the same election in the same~~
38 ~~precinct. Section 1-7-111(1)(b), C.R.S.~~

1 ● ~~The self affirmation form states, 'I,, certify that I am the individual~~
2 ~~chosen by the disabled elector to assist the disabled elector in casting a ballot.'~~

3 4. The person ~~selected~~ YOU SELECT may provide any assistance ~~needed by the voter~~ YOU
4 NEED, including entering the voting booth, ~~and~~ preparing the ballot, or operating the
5 voting machine.

6 5. The person ~~providing assistance shall~~ ASSISTING YOU MAY not seek to persuade YOU or
7 induce ~~the voter~~ YOU to vote in a particular manner.

8 6. The election ~~judges~~ JUDGE ~~shall~~ MUST record the name of each ~~eligible elector assisted~~
9 VOTER WHO RECEIVES ASSISTANCE and the name of ~~each~~ THE person ~~assisting~~ WHO
10 PROVIDED ASSISTANCE ~~by making an entry in the pollbook or list of eligible electors (or by~~
11 ~~making an entry on the signature card when~~ IF preprinted signature cards are used in the
12 place of a pollbook and list of eligible electors).

13 Amendments to Rule 10.6:

14 10.6 PRINTING PRIMARY ELECTION BALLOTS.

15 10.6.1 IF A MAJOR POLITICAL PARTY, AS DEFINED IN SECTION 1-1-104(22.5), C.R.S., **HAS**
16 **NOMINATES** MORE THAN ONE CANDIDATE FOR ANY OFFICE, THE COUNTY CLERK AND
17 RECORDER MUST CONDUCT THE PRIMARY ELECTION FOR ALL MAJOR POLITICAL PARTIES.

18 (A) THE COUNTY CLERK MUST INCLUDE ON THE BALLOT ALL OFFICES TO WHICH
19 CANDIDATES MAY BE NOMINATED IN THE PRIMARY ELECTION.

20 (B) IF THERE ARE NO CANDIDATES FOR ANY PARTICULAR OFFICE, THE COUNTY
21 CLERK MUST PRINT ON THE BALLOT "THERE ARE NO CANDIDATES FOR THIS
22 OFFICE".

23 [SECTIONS 1-4-101 AND 1-4-104.5, C.R.S.; ELECTION RULE 10.3]

24 10.6.2 IF A MINOR POLITICAL PARTY, AS DEFINED IN SECTION 1-1-104(23), C.R.S., HAS MORE
25 THAN ONE CANDIDATE FOR ANY OFFICE, THE COUNTY CLERK AND RECORDER MAY
26 CONDUCT THE PRIMARY ELECTION FOR THAT PARTY ONLY.

27 (A) THE COUNTY CLERK MUST INCLUDE ON THE BALLOT ONLY THE OFFICES FOR
28 WHICH THERE IS MORE THAN ONE CANDIDATE DESIGNATED.

29 (B) IF THERE IS ONLY ONE MINOR PARTY CANDIDATE DESIGNATED FOR ANY OFFICE,
30 THE CANDIDATE WILL BE CERTIFIED TO THE GENERAL ELECTION BALLOT.

31 [SECTIONS 1-4-101, 1-4-104.5(3), AND 1-4-1304, C.R.S.]

32 **New Rule 10.7**

33 **10.7 VOIDING BALLOTS DUE TO TIMELY CHANGES IN ADDRESS OR AFFILIATION.**

34 **10.7.1 IF AN ELECTOR SUBMITS A TIMELY ADDRESS OR AFFILIATION CHANGE AFTER THE**
35 **COUNTY SENDS THE VOTER FILE TO THE VENDOR OR MAILS BALLOTS, THE COUNTY MUST**
36 **VOID THE FIRST BALLOT AND GENERATE A SECOND BALLOT.**

1 (A) IF THE COUNTY PROCESSES THE CHANGE TO THE ELECTOR'S RECORD AFTER IT
2 SENDS THE VOTER FILE TO THE VENDOR BUT BEFORE IT PRINTS BALLOTS, THE
3 COUNTY MUST PROVIDE THE VENDOR A VOIDED BALLOT FILE TO PREVENT THE
4 VENDOR FROM PRINTING AND PREPARING VOIDED BALLOTS FOR MAILING.

5 (B) IF THE COUNTY PROCESSES THE CHANGE TO THE ELECTOR'S RECORD AFTER IT
6 SENDS THE VOIDED BALLOT FILE TO THE VENDOR BUT BEFORE IT MAILES
7 BALLOTS, THE COUNTY MUST WORK WITH THE VENDOR TO MAKE EVERY
8 REASONABLE EFFORT TO PULL VOIDED BALLOTS BEFORE THEY ENTER THE MAIL
9 STREAM.

10 10.7.3 IF THE COUNTY MAILES ITS OWN BALLOTS, THE COUNTY CLERK MUST PULL ALL VOIDED
11 BALLOTS BEFORE MAILING.

12 10.7.4 IF THE COUNTY PROCESSES THE CHANGE TO THE ELECTOR'S RECORD AFTER IT MAILES
13 BALLOTS, THE COUNTY MUST COUNT THE FIRST BALLOT RETURNED BY THE ELECTOR
14 EXCEPT AS FOLLOWS:

15 (A) IN THE CASE OF AN AFFILIATION CHANGE, THE COUNTY MUST COUNT THE
16 BALLOT ISSUED FOR THE NEW PARTY AFFILIATION.

17 (B) IN THE CASE OF AN ADDRESS CHANGE THAT RESULTS IN A CHANGE OF PRECINCT,
18 THE COUNTY MUST COUNT THE BALLOT ISSUED FOR THE ELECTOR'S NEW
19 ADDRESS.

20 Amendments to Rule 12.4.1(a):

21 12.4 Mail Ballot Plans

22 12.4.1 Coordinated and non-partisan elections.

23 (a) Written plan. ~~As soon as possible, but~~ THE DESIGNATED ELECTION OFFICIAL MUST
24 SUBMIT A MAIL BALLOT PLAN TO THE SECRETARY OF STATE no later than 55 days
25 ~~prior to~~ BEFORE any other election, not including NONPARTISAN ELECTION, AND 90
26 DAYS BEFORE ANY ELECTION THAT IS COORDINATED WITH OR CONDUCTED BY THE
27 COUNTY CLERK AND RECORDER., ~~a Primary Election, a written plan~~ THE
28 DESIGNATED ELECTION OFFICIAL must ~~be submitted to the Secretary of State which~~
29 USE THE APPROVED MAIL BALLOT PLAN TEMPLATE THAT includes the following:

30 Amendments to Rule 12.4.1(b)(2):

31 (2) Recall election. If a non-partisan recall election ~~is to~~ WILL be held as a mail
32 ballot election, ~~the governing body~~ THE DESIGNATED ELECTION OFFICIAL
33 ~~shall~~ MUST submit a written plan to the Secretary of State within ~~three~~
34 ~~business~~-FIVE CALENDAR days ~~of~~-AFTER calling the election. The Secretary
35 of State WILL ~~shall~~ notify the governing body of the approval or
36 ~~disapproval~~-APPROVE OR DISAPPROVE of the plan within ~~two business~~-FIVE
37 CALENDAR days OF RECEIPT IN ACCORDANCE WITH SECTION 1-12-111.5,
38 C.R.S.

39 New Rule 12.4.1(d):

1 (D) REQUEST FOR BALLOT BY INACTIVE – FAILED TO VOTE ELECTOR. IN A
2 COORDINATED OR NONPARTISAN ELECTION, THE DESIGNATED ELECTION OFFICIAL
3 MAY NOT MAIL A BALLOT TO AN ELECTOR WHOSE REGISTRATION RECORD IS
4 MARKED INACTIVE – FAILED TO VOTE UNTIL THE ELECTOR SUBMITS A
5 REGISTRATION UPDATE OR A REQUEST FOR A BALLOT UNDER SECTION 1-7.5-
6 107(3), C.R.S., AND RULE 12.11.

7 Amendments to Rule 12.4.2(a):

8 12.4.2 Primary Elections conducted as a mail ballot election.

9 (a) Written plan. Pursuant to Article 7.5 of Title 1, C.R.S., no later than 120 days prior
10 to the election the county clerk and recorder must submit a written MAIL BALLOT
11 plan to the Secretary of State NO LATER THAN 90 DAYS BEFORE THE ELECTION. THE
12 COUNTY CLERK MUST USE THE APPROVED MAIL BALLOT PLAN TEMPLATE that
13 includes the following:

14 Amendments to Rule 12.11:

15 12.11 Request for a replacement ballot by an active elector and request for a ballot by an inactive
16 elector

17 12.11.1 ~~Requests may be made~~ AN ELECTOR MAY REQUEST A REPLACEMENT BALLOT in-person
18 beginning on the twenty-second day before the election and ~~until~~ ENDING AT 7:00 p.m.,
19 MT on election day. If the elector ~~wishes~~ REQUESTS to receive the ballot by mail, the
20 HE OR SHE MUST MAKE THE request ~~must be received~~ no later than the close of business
21 on the seventh day before the election.

22 (a) ~~An active elector may request a replacement ballot in person, by mail, fax, email,~~
23 ~~or telephone.~~

24 (i) ~~The elector shall complete a self affidavit, as required by section 1-7.5-~~
25 ~~107(3)(d)(I), C.R.S., on a form provided by the designated election official.~~

26 (ii) ~~If the elector requests that the replacement ballot be mailed, the self-~~
27 ~~affidavit may be included in the ballot packet, and must be completed and~~
28 ~~received by the designated election official on or before 7:00 p.m. MT on~~
29 ~~election day.~~

30 (iii) ~~The outside of the return envelope shall indicate that the self affidavit~~
31 ~~required by this Rule must be returned with the voted ballot. No~~
32 ~~replacement ballot shall be counted until it has been determined that an~~
33 ~~affidavit has been completed and returned by the deadline.~~

34 (b) ~~Except as otherwise provided in section 1-7.5-107(3)(e), C.R.S., an inactive elector~~
35 ~~may make a written request for a ballot in person, by mail, fax, or email. The~~
36 ~~request must include the elector's name, date of birth, residence address, and~~
37 ~~signature, and must be received by the designated election official before the ballot~~
38 ~~is issued. At the time the request is received the elector's record will be marked~~
39 ~~active.~~

1 12.11.2 If an elector moved at least 30 days before the election, he or she may include the
2 address change with the ballot request.

3 12.11.3 REQUEST FOR A REPLACEMENT BALLOT BY AN ACTIVE ELECTOR. AN ACTIVE ELECTOR
4 MAY REQUEST A REPLACEMENT BALLOT IN PERSON, BY MAIL, FAX, EMAIL, OR
5 TELEPHONE.

6 (A) THE ELECTOR MUST COMPLETE THE SELF-AFFIDAVIT ON THE APPROVED FORM.

7 (B) IF THE ELECTOR REQUESTS TO RECEIVE THE REPLACEMENT BALLOT BY MAIL,
8 THE DESIGNATED ELECTION OFFICIAL MAY INCLUDE THE SELF-AFFIDAVIT IN THE
9 MAIL BALLOT PACKET. THE ELECTOR MUST COMPLETE AND RETURN THE SELF-
10 AFFIDAVIT NO LATER THAN 7:00 P.M. ON ELECTION DAY.

11 (C) THE DESIGNATED ELECTION OFFICIAL MUST INDICATE ON THE OUTSIDE OF THE
12 RETURN ENVELOPE THAT THE ELECTOR MUST COMPLETE AND RETURN THE SELF-
13 AFFIDAVIT. (D) THE DESIGNATED ELECTION OFFICIAL MAY NOT COUNT A
14 REPLACEMENT BALLOT UNLESS THE ELECTOR COMPLETED AND RETURNED THE
15 SELF-AFFIDAVIT BY THE DEADLINE.

16 12.11.4 ~~REQUEST FOR A BALLOT BY AN AN~~ INACTIVE ELECTOR IN A NONPARTISAN MAIL
17 BALLOT ELECTION WILL BE ISSUED A BALLOT IF THE ELECTOR SUBMITS A
18 REGISTRATION UPDATE OR A BALLOT REQUEST.

19 (A) THE INACTIVE ELECTOR MUST SUBMIT A REGISTRATION UPDATE OR A WRITTEN
20 REQUEST FOR A BALLOT BEFORE THE DESIGNATED ELECTION OFFICIAL MAY
21 MARK THE ELECTOR'S RECORD ACTIVE AND ISSUE THE BALLOT.

22 (B) THE ELECTOR MAY SUBMIT A REGISTRATION UPDATE OR ~~THE~~ WRITTEN REQUEST
23 FORM IN PERSON, BY MAIL, FAX, OR EMAIL.

24 (C) THE WRITTEN REQUEST FORM MUST INCLUDE THE ELECTOR'S NAME, DATE OF
25 BIRTH, RESIDENCE ADDRESS, AND SIGNATURE.

26 12.11.5 IF A COUNTY CLERK AND RECORDER CONDUCTS A PRIMARY ELECTION BY MAIL
27 BALLOT, HE OR SHE MUST MAIL A BALLOT TO AN ELECTOR WHOSE RECORD IS MARKED
28 INACTIVE – FAILED TO VOTE IN ACCORDANCE WITH SECTION 1-7.5-107(3)(A)(II)(A),
29 C.R.S.

30 New Rule 13.19:

31 13.19 FOR ANY ELECTION THAT IS NOT A PRIMARY MAIL BALLOT ELECTION, THE DESIGNATED
32 ELECTION OFFICIAL MAY NOT ISSUE A MAIL-IN BALLOT TO AN ELECTOR WHOSE RECORD IS
33 MARKED INACTIVE – FAILED TO VOTE UNTIL THE ELECTOR SUBMITS A TIMELY APPLICATION FOR
34 A MAIL-IN BALLOT.

35 Repeal and relocate Rule 26.1.6

36 26.1.6 ~~Voter Access to Provisional Ballot Information Required by section 1-8.5-111, C.R.S.~~

1 26.1.6.1 ~~The system shall be made available to the voter for no less than thirty (30) days~~
2 ~~following the date of the election.~~

3 26.1.6.2 ~~The system shall provide access to information at no cost to the voter, regardless~~
4 ~~of the voter's location, by toll free telephone call, internet website, or other~~
5 ~~suitable medium, pursuant to 1-8.5-111, C.R.S. REPEALED.~~

6 *[This rule is relocated to new Rule 26.13]*

7 Amendments to Rule 26.10:

8 26.10 Treatment of the provisional ballot affidavit as an application for, or a change to registration

9 26.10.1 If AN ELECTOR IS NOT REGISTERED TO VOTE AND HE OR SHE COMPLETES a provisional
10 ballot affidavit, ~~is treated as~~ THE COUNTY CLERK AND RECORDER MUST TREAT THE
11 AFFIDAVIT AS an application for registration for future elections. ~~in accordance with~~
12 ~~section 1-8.5-103(2), C.R.S., such~~ THE application ~~shall be~~ IS subject to the requirements
13 ~~for~~ OF any other voter registration application.

14 26.10.2 ~~In the case of an~~ IF A REGISTERED elector ~~who is registered, if the~~ COMPLETES A
15 provisional ballot affidavit THAT contains changes to the elector's registration, ~~his or her~~
16 ~~record shall be updated~~ THE COUNTY CLERK AND RECORDER MUST UPDATE THE
17 ELECTOR'S REGISTRATION RECORD accordingly BEFORE MARKING THE PROVISIONAL
18 BALLOT AS ACCEPTED OR REJECTED IN THE STATEWIDE VOTER REGISTRATION DATABASE
19 AND BEFORE LINKING IT TO THE ELECTOR'S RECORD.

20 26.10.3 If THE COUNTY CLERK AND RECORDER COUNTS a provisional ballot ~~is counted~~ because it
21 ~~was determined that an~~ THE elector was cancelled or consolidated in error, THE CLERK
22 MUST REINSTATE OR UNCONSOLIDATE AND UPDATE the elector's record ~~shall be~~
23 ~~reinstated or unconsolidated and updated~~ accordingly BEFORE MARKING THE
24 PROVISIONAL BALLOT AS ACCEPTED OR REJECTED IN THE STATEWIDE VOTER
25 REGISTRATION DATABASE AND BEFORE LINKING IT TO THE ELECTOR'S RECORD.

26 New Rule 26.11:

27 26.11 PROCESSING PROVISIONAL BALLOT AFFIDAVITS IN THE STATEWIDE VOTER REGISTRATION
28 DATABASE. BEFORE CLOSING AN ELECTION, THE COUNTY CLERK AND RECORDER MUST:

29 26.11.1 ENTER ALL PROVISIONAL BALLOT AFFIDAVITS INTO THE PROVISIONAL MODULE OF THE
30 STATEWIDE VOTER REGISTRATION DATABASE.

31 26.11.2 LINK ALL PROVISIONAL BALLOT AFFIDAVITS TO THE APPROPRIATE ELECTOR'S RECORD.

32 New Rule 26.12:

33 26.12 THE COUNTY CLERK AND RECORDER MUST PROCESS ALL POLLBOOKS OR SIGNATURE CARDS IN
34 THE STATEWIDE VOTER REGISTRATION DATABASE BEFORE TABULATING PROVISIONAL BALLOTS.

35 New Rule 26.13:

36 26.13 VOTER ACCESS TO PROVISIONAL BALLOT INFORMATION

1 26.13.1 THE SECRETARY OF STATE WILL PROVIDE A PROVISIONAL BALLOT LOOKUP ON THE
2 SECRETARY'S WEBSITE.

3 **[Not only provisional voters, but other voters whose ballots are diverted for delayed**
4 **determination and counting because of signature or ID check deserve to know if their**
5 **voter intent was included in the election and to what extent.]**

6 26.13.2 THE COUNTY CLERK AND RECORDER MUST NUMBER THE PROVISIONAL BALLOT STOCK
7 USING THE STANDARD NUMBERING CONVENTION APPROVED BY THE SECRETARY OF
8 STATE.

9 **[Numbering ballot stock, other than on the required stub, is a huge mistake and potentially in**
10 **violation of the Colorado constitution. There is no reason why a ballot to be voted**
11 **provisionally should be marked any differently than any other ballot to be voted upon,**
12 **and to do so does create a problem for "Secrecy in voting" and "revealing how the**
13 **elector voted" through recognition of the special markings on the ballot. Of course a**
14 **special envelope is required and not by necessarily a problem for privacy]**

15 26.13.3 AN ELECTOR MAY ACCESS THE SYSTEM DURING THE 30 DAYS FOLLOWING THE ELECTION.

16 [SECTION 1-8.5-111, C.R.S.]

17 Amendments to Rule 29.1.1:

18 29.1.1 ~~When the election judge reviews the~~ IF A mail, MAIL-IN, OR PROVISIONAL ballot return
19 envelope pursuant to section 1-7.5-107.3, C.R.S., or mail in ballot return envelope
20 pursuant to section 1-8-114.5, C.R.S., or the provisional ballot return envelope pursuant
21 to section 1-8.5-105(3)(a), C.R.S., and notices that the envelope lacks a signature, the
22 election judge shall MUST contact the eligible elector in writing no later than two calendar
23 days after election day. THE DESIGNATED ELECTION OFFICIAL MUST USE THE LETTER AND
24 FORM PRESCRIBED BY THE SECRETARY OF STATE AND KEEP A COPY OF THE WRITTEN
25 notification shall be kept in an official file, which shall become AS part of the official
26 election record. Nothing in this rule shall be construed to prohibits the designated
27 election official from calling the elector; however, BUT a phone call shall MAY not
28 substitute for notification to the elector in writing THE WRITTEN CONTACT.

29 [this section deserves to have oversight by the canvass board]

30 [SECTIONS 1-7.5-107.3, 1-8-114.5, AND 1-8.5-105(3)(A), C.R.S.]

31 Amendments to Rules 29.1.3 and 29.1.4:

32 29.1.3 The letter AND MISSING SIGNATURE AFFIDAVIT FORM sent by the election official shall
33 DOES not constitute a violation of VIOLATE section 1-13-801, C.R.S.

34 29.1.4 The LETTER OR MISSING SIGNATURE AFFIDAVIT form shall MUST include the following
35 language:

36 "Any person who knowingly violates any of the provisions of the election code relative to
37 the casting of ballots or who aids or abets fraud in connection with any vote cast, or to be
38 cast, or attempted to be cast shall be punished by a fine of not more than five thousand

1 dollars or by imprisonment in the county jail for not more than eighteen months, or by
2 both such fine and imprisonment. Section 1-13-803, C.R.S.”

3 Amendments to Rule 29.8:

4 29.8 The ELECTION OFFICIAL MUST USE THE ~~form of the letter as well as~~ AND the SIGNATURE
5 VERIFICATION form ~~sent to the elector shall be~~ approved by the Secretary of State. ~~pursuant to~~
6 ~~section 1-1-109, C.R.S.~~

7 29.9 The letter AND SIGNATURE VERIFICATION FORM ~~sent by the election official shall~~ DOES not
8 ~~constitute a violation of~~ VIOLATE section 1-13-801 C.R.S.

9 Amendments to Rule 30.1.6(a):

10 30.1.6 “ID” as used in these rules ~~shall~~ means A COPY OF ANY OF THE FOLLOWING identification
11 as defined in ~~compliance with~~ section 1-1-104(19.5), C.R.S., ~~as a copy of one of the~~
12 ~~following:~~

- 13 (a) A valid Colorado driver’s license;
- 14 (b) A valid identification card issued by the Department of Revenue in accordance
15 with the requirements of Part 3 of Article 2 of Title 42, C.R.S.;
- 16 (c) A valid U.S. passport;
- 17 (d) A valid employee identification card with a photograph of the eligible elector
18 issued by any branch, department, agency, or entity of the United States
19 government or of this state, or by any county, municipality, board, authority, or
20 other political subdivision of this state;
- 21 (e) A valid pilot’s license issued by the federal aviation administration or other
22 authorized agency of the United States;
- 23 (f) A valid U.S. military identification card with a photograph of the eligible elector;
- 24 (g) A copy of a current utility bill, bank statement, government check, paycheck, or
25 other government document that shows the name and address of the elector. For
26 example:
- 27 ~~(I)~~ A cable bill or telephone bill;
- 28 ~~(II)~~ Documentation from a public institution of higher education in Colorado
29 containing at least the name, date of birth, and legal residence address of
30 the student elector;
- 31 ~~(III)~~ A paycheck from a government institution or private company; OR
- 32 ~~(IV)~~ A Certificate of Degree of Indian or Alaskan Native Blood.; ~~or~~
- 33 ~~(V)~~ A valid identification card issued by a federally recognized tribal
34 government certifying tribal membership.

- 1 (h) A valid Medicare or Medicaid card issued by the Centers for Medicare and
2 Medicaid Services (formerly the United States Health Care Financing
3 Administration);
- 4 (i) A certified copy of a U.S. birth certificate for the elector issued in the United
5 States;
- 6 (j) Certified documentation of naturalization; ~~or~~
- 7 (k) A valid student identification card with a photograph of the eligible elector issued
8 by an institute of higher education in Colorado, as defined in section
9 23-3.1-102(5), C.R.S.;
- 10 (L) A VALID VETERAN IDENTIFICATION CARD ISSUED BY THE UNITED STATES
11 DEPARTMENT OF VETERANS AFFAIRS VETERANS HEALTH ADMINISTRATION WITH
12 A PHOTOGRAPH OF THE ELIGIBLE ELECTOR; OR
- 13 (M) A VALID IDENTIFICATION CARD ISSUED BY A FEDERALLY RECOGNIZED TRIBAL
14 GOVERNMENT CERTIFYING TRIBAL MEMBERSHIP.

15 Repeal and renumber Rules 32.1, 32.2, 32.3, and 32.4:

- 16 32.1 ~~In any recall election of a partisan office, the successor nominee's party affiliation shall be listed~~
17 ~~with his or her name on the ballot. REPEALED.~~
- 18 32.23 ~~Petition sufficiency occurs when upon review, it is established that the petition contains the~~
19 ~~required number of valid signatures. REPEALED.~~
- 20 32.34 ~~When a protest is filed, petition sufficiency is sustained upon conclusion of the protest when the~~
21 ~~designated election official or the district judge maintains that there are sufficient valid~~
22 ~~signatures. REPEALED.~~
- 23 32.45 ~~When an officer subject to being recalled resigns within the five days after the sufficiency of the~~
24 ~~recall petition has been sustained, the recall election does not go forward, and the position is~~
25 ~~declared vacant and filled according to statute. REPEALED.~~

26 Amendments to Rule 41:

27 **Rule 41. Rules Concerning Canvassing**

28 41.1 Definitions

- 29 (a)41.1.1 ~~“Canvass” shall mean the audit function of the election and the process of~~
30 ~~ACCOUNTING AND BALANCING OF THE ELECTION, AND THE CERTIFICATION OF THE~~
31 ~~OFFICIAL ABSTRACT OF VOTES. CANVASS INCLUDES reconciling the number of ballots~~
32 ~~counted to the number of BALLOTS CAST, AND RECONCILING THE NUMBER OF BALLOTS~~
33 ~~CAST TO THE NUMBER OF voters who voted. The canvass also includes the process of~~
34 ~~BY REVIEWING THE reconciling RECONCILED detailed ballot logs and Statement of~~
35 ~~Ballots Forms. (SECTION 1-10-101.5, C.R.S.)~~

36 ***[This minimal and weak definition sets the stage for what is to come: a watering down of the***
37 ***statutory role of the canvass board. Later on this paragraph is pointed to as the***

1 **entirety of the role of the canvass board, despite multiple references to the role in**
2 **statute in a variety of areas. Note the effect of substituting "reviewing" for**
3 **"reconciling."]**

4 41.1.2 "CANVASS BOARD" MEANS A COMMITTEE COMPOSED OF THE COUNTY CLERK AND
5 RECORDER AND THE REGISTERED ELECTORS **APPOINTED BY THE COUNTY CLERK** AND
6 RECORDER THAT RECONCILES THE STATEMENT OF BALLOTS FORMS AND CERTIFIES
7 THE ABSTRACT OF VOTES CAST.

8 **[The canvass board is not "appointed by the county clerk." This is a major departure from**
9 **statutory requirement. The role described here is a shadow of the statutory role.]**

10 ~~(b)~~41.1.3 "Canvass workers" ~~shall~~ means workers appointed or hired by the designated election
11 official to assist in the preparation and conduct of the canvass.

12 ~~(e)~~41.1.4 "DETAILED BALLOT LOG" MEANS A LOG THAT ACCOUNTS FOR EVERY BALLOT
13 RECEIVED AND DISTRIBUTED, INCLUDING THE BALLOT STYLE, POLLING LOCATION, AND
14 PRECINCT NUMBER.

15 **[This definition has forgotten to concern itself with dates and times that one would expect to**
16 **see on a log. It seems intended to limit the accountability of the production delivery**
17 **and return of ballots- the designing, printing, processing, addressing and storing -**
18 **various stages of the delivery of ballots to the electors and return from them are not**
19 **enumerated here as important to the log. The function of stubs should be mentioned**
20 **here.]**

21 41.1.5 "Statement of Ballots Forms" ~~shall~~ means the form used at the polling location
22 pursuant to sections 1-7-505(2) and 1-7-601(2), C.R.S., that accounts for all ballots at
23 that location AND INCLUDES ALL INFORMATION REQUIRED BY THIS RULE. ~~The form~~
24 ~~includes information required by this rule.~~

25 **[Here is a potentially meaningless circular reference to "all information required by this rule."**
26 **Note that this appears limited to precinct polling places and inapplicable to mail-in**
27 **ballots and UOCAVA. A "statement of ballots" form must exist to include every**
28 **ballot printed, whether or not received or tabulated, not just those "used" at polling**
29 **locations. Apparently a list of required information should exist here.]**

30 41.2 APPOINTMENT TO THE CANVASS BOARD

31 41.2.1 FOR A PARTISAN ELECTION, EACH MAJOR PARTY MAY HAVE NO MORE THAN TWO
32 REPRESENTATIVES ON THE CANVASS BOARD. THE BOARD MUST INCLUDE AN EQUAL
33 NUMBER OF REPRESENTATIVES FROM EACH MAJOR PARTY, UNLESS A MAJOR PARTY
34 FAILS TO CERTIFY REPRESENTATIVES FOR APPOINTMENT.

35 **[This proposed requirement that is advancing new restrictions above the statutory requirement.**
36 **There is no explanation why minor parties are not limited in number of members nor**
37 **why major party failure to "certify" would lead to either less or more members.]**

38 41.2.2 THE COUNTY CLERK AND RECORDER MAY ACCEPT APPLICATIONS FROM, AND
39 SUBSEQUENTLY APPOINT, ADDITIONAL REPRESENTATIVES FROM AMONG MINOR PARTY
40 AND UNAFFILIATED ELECTORS.

1 **[This gives too much power to the clerk to stack the canvass board with less than independent**
2 **members, and by this means to guarantee that the board will agree with the clerk.]**

3 41.2.3 EACH MAJOR AND MINOR PARTY REPRESENTATIVE ON THE CANVASS BOARD MUST BE
4 REGISTERED TO VOTE IN THE COUNTY WHERE THE REPRESENTATIVE WILL SERVE AND
5 AFFILIATED WITH THE PARTY HE OR SHE REPRESENTS.

6 **[This is far from the existing statutory requirement but not unreasonable.]**

7 41.2.4 EACH UNAFFILIATED REPRESENTATIVE ON THE CANVASS BOARD MUST BE REGISTERED
8 TO VOTE IN THE COUNTY WHERE THE REPRESENTATIVE WILL SERVE.

9 **[Making up a representative for unaffiliated voters is far from the existing statutory**
10 **requirement. There is no statutory requirement or mechanism for appointment of**
11 **canvass board members to represent unaffiliated voters. Appointment by the clerk is**
12 **counterproductive and objectionable.]**

13 41.2.5 IN A CANVASS OF A NON-PARTISAN ELECTION, THE COUNTY CLERK AND RECORDER
14 MUST ACCEPT THE APPOINTMENT OF ONE REGISTERED ELECTOR APPOINTED BY ANY
15 PARTICIPATING JURISDICTION, UNLESS THE JURISDICTION FAILS TO SUBMIT A
16 REPRESENTATIVE FOR APPOINTMENT.

17 **[Unfortunately, the definition of a non-partisan election is unclear- does this include non-**
18 **partisan contests included in coordinated partisan elections?]**

19 41.2.6 A CANDIDATE FOR OFFICE AND MEMBERS OF THE CANDIDATE'S IMMEDIATE FAMILY
20 MAY NOT SERVE ON THE CANVASS BOARD.

21 **[The first rule that seems both acceptable and consistent with law.]**

22 41.2.7 IN ALL CASES, THE CANVASS BOARD MUST CONSIST OF AN ODD NUMBER OF MEMBERS,
23 AND EACH MEMBER HAS EQUAL VOTING RIGHTS.

24 **[There no statutory support for this rule but it is very reasonable.]**

25 41.3 DUTIES OF THE CANVASS BOARD

26 41.3.1 THE CANVASS BOARD'S SOLE DUTY IS TO CONDUCT THE CANVASS AS DEFINED IN RULE
27 41.1.1.

28 **[Outrageous and patently contrary to CRS. 41.1.1 is utterly insufficient to describe the**
29 **statutory role of the canvass board. This statement could be seen as a power grab**
30 **against the statutory functions (in recount and audit, for example) and utility for**
31 **oversight of the canvass board.]**

32 41.3.2 THE CANVASS BOARD MUST CONFIRM THAT THE NUMBER OF BALLOTS CAST IS LESS
33 THAN OR EQUAL TO THE NUMBER OF PEOPLE WHO ACTUALLY VOTED IN THE ELECTION
34 BY REVIEWING AND VERIFYING THE JUDGES RECONCILIATION.

35 **["must confirm" is odd language. What if the number of ballots is more than the number of**
36 **people?]**

1 **41.3.4** IF THE BOARD IDENTIFIES A DISCREPANCY IN THE STATEMENT OF BALLOTS, THE
2 BOARD MAY REVIEW THE PARTICULAR BALLOTS AT ISSUE TO IDENTIFY, CORRECT, AND
3 ACCOUNT FOR THE ERROR.

4 **[This extra description of the means of performing the role seems to suggest limited access to**
5 **election information, and is therefore antithetical to effective canvass board**
6 **functionality. Why may review only "the particular ballots?" Is this intended to build**
7 **an obstacle preventing the canvass board from accessing ballots to determine if the**
8 **election is ready for certification for any other reason than a discrepancy in the**
9 **statement of ballots? Among many other reasons that need not be specified in rule,**
10 **the audit and recount are both different reasons why the canvass board would**
11 **reasonably expect to have access to ballots.]**

12 41.3.4 THE CANVASS BOARD MUST CERTIFY AND TRANSMIT THE RESULTS TO THE SECRETARY
13 OF STATE REGARDLESS OF WHETHER THE BOARD IS ABLE TO RESOLVE ERRORS OR
14 INACCURACIES IN THE STATEMENT OF BALLOTS FORMS OR DETAILED BALLOT LOGS.

15 **[This text seeks to diminish the effectiveness of the canvass board and transfer its role to the**
16 **secretary of state. This absurd situation has been motivated by new law but here in**
17 **rule it is made even more absurd. "Must certify" means that certification is**
18 **meaningless, and hence the function of the canvass board is meaningless. CRS does**
19 **not say "must certify." It would be better if citations to statute were included in rules**
20 **at every step so their legality could be more easily confirmed. CRS 1-10-104 says**
21 **"returns shall nevertheless be canvassed" CRS 1-10-101.5 (c) says: "(c) Certify the**
22 **abstract of votes cast in any election and transmit the certification to the secretary of state. A**
23 **majority of canvass board members' signatures shall be sufficient to certify the abstract of**
24 **votes cast in any election. When unable to certify the abstract of votes by the majority of the**
25 **board for any reason, the canvass board shall transmit the noncertified abstract of votes**
26 **to the secretary of state along with a written report detailing the reason for noncertification.]**

27 41.3.5 THE CANVASS BOARD MAY NOT PERFORM DUTIES TYPICALLY RESERVED FOR ELECTION
28 JUDGES, INCLUDING DETERMINING VOTER INTENT, EVALUATING VOTER ELIGIBILITY,
29 AND REVIEWING LOGS OR REPORTS THAT WERE NOT GENERATED WHILE CONDUCTING
30 THE ELECTION.

31 **[This is an outrageous proposed restriction that among other effects, prevents the performance**
32 **of or even the effective supervision of a post election audit. Current Colorado**
33 **election practices have placed election judges into a submissive employee-employer**
34 **role to the clerk, and this text seeks to place canvass boards into a diminutive role**
35 **with respect to the election judges.]**

36 41.24 Detailed Ballot Log

37 41.24.1 The designated election official ~~shall~~ MUST keep a detailed BALLOT log ~~of all ballots.~~
38 ~~The designated election official shall begin~~NING the log as soon as WHEN ballots are
39 ordered and received. ~~The log shall include the polling location and/or precinct~~
40 ~~number(s), ballot style(s), and account for every ballot that is received and distributed.~~
41 THE ELECTION JUDGES MUST RECONCILE THE ~~detailed ballot log shall be reconciled~~ at
42 the conclusion of each workday.

43 **[Not just election judges, but election staff and clerk are involved in maintaining this log that**
44 **exists for every kind of election and must account for every voting method, although**

1 ***this is left unclear.***

2 41.24.2 The designated election official ~~shall~~-MUST keep and reconcile daily logs of mail-in,
3 mail, and early voting ballots.

4 ***[The list of voting methods is incomplete and here, election judges also play a role.]***

5 41.24.3 The designated election official ~~shall~~-MUST indicate in the detailed log the number of
6 paper ballots that are sent to each polling location for use on election day.

7 ***[Not just election day- not just polling locations, but to mail ballot, mail-in ballot,***
8 ***UOCAVA, emergency, confidential, etc. electors also.]***

9 41.24.4 THE DESIGNATED ELECTION OFFICIAL MAY KEEP ~~All~~-required logs ~~may be kept either~~
10 ~~by~~-IN electronic or manual ~~means~~-FORMAT.

11 ***[This rule existed before and was better phrased than the new version. However this freedom***
12 ***of format is a dangerous concept. Logs should represent actual actions by judges,***
13 ***staff and clerk with proof of their personal involvement (initialed entries, etc.).***
14 ***Manual entry into the log must be maintained to allow full accountability and***
15 ***representation of exceptions, and to allow for redundancy in case of logging***
16 ***equipment failure. Logs should be possible to enter manually and optionally***
17 ***electronically. Completed logs should be stored efficiently including electronically,***
18 ***but must be accessible as public records.]***

19 *[The details of what the log must include in Rule 41.4.1 are relocated to New Rule 41.1.5 in the*
20 *definitions]*

21 ***[41.1.5 does not contain the list, but instead has a circular reference to requirements in this***
22 ***rule."]***

23 41.35 Election Day Tracking Process

24 41.35.1 The designated election official ~~shall~~-MUST supply each polling location with a
25 Statement of Ballots Form. -Combined precincts may use one form. -The form MUST
26 include a place for the judges to account for the following information:

- 27 (a) The name or number(s) of the precinct or vote center;
- 28 (b) The number of ballots provided to the polling location;
- 29 (c) The number of ballots cast;
- 30 (d) The number of unvoted ballots;
- 31 (e) The number of damaged or spoiled ballots; and
- 32 (f) The number of voted provisional ballots.

33 ***[Each of these items must be reported by precinct or precinct split (ballot style) if applicable***
34 ***and by voting method if more than one method is being handled (e.g. sometimes mail-in***
35 ***ballots are received at polling locations). (g) The number of ballot on demand ballots***

1 **produced at the polling location. All must total to the total number of ballots produced by**
2 **whatever method. Likewise the stubs should be accounted for.]**

3 41.35.2 The ELECTION JUDGE MUST RECONCILE THE total number of voted ballots ~~should be~~
4 ~~reconciled to~~ WITH the number of voters who voted.

5 **[Note the mistaken use of singular "JUDGE" here throughout these sections. Obviously all**
6 **functions of "election judge" should be done at least in pairs. Voted ballots are**
7 **accounted for by counting the stubs that are removed when or after the ballot is cast.]**

8 41.35.3 The ELECTION JUDGE MUST VERIFY THAT THE total number of voted ballots, spoiled or
9 damaged ballots, provisional ballots, and unvoted ballots ~~should be reconciled to be the~~
10 ~~same as~~ IS THE SAME AS the number of total ballots ~~received at~~ SUPPLIED TO the polling
11 location ~~before voting begins~~.

12 **[ballot on demand has not been considered here.]**

13 41.35.4 The designated election official ~~shall~~ MUST ensure that the total of RECONCILE the
14 number of people who signed the pollbook is ~~reconciled to~~ the total of the number of
15 ballots cast.

16 **[Why DEO here and not election judges? This occurs in the precinct polling place and usually**
17 **also in early voting and service center voting. This reconciliation must be per ballot**
18 **style, not per polling place, and should account for stubs collected at the polling**
19 **place as well as any sign in forms or lists that are used in relation to poll book and**
20 **watcher functions.]**

21 41.35.5 If there is a discrepancy in the numbers on the Statement of Ballots form, the judge
22 ~~shall~~ MUST EXPLAIN THE DISCREPANCY IN WRITING. ~~make written notation explaining~~
23 ~~why the numbers do not balance~~ (for example, THE voter signed in but left the polling
24 place without voting, etc.).

25 **["explain EACH discrepancy in writing." The canvass board should be performing a**
26 **secondary investigation and reconciliation to try to correct for errors made by**
27 **election judges. It seems to be the intention of this new rule proposal to take this role**
28 **away from the canvass board. Remember this is the rule for canvass boards, not**
29 **election judges.]**

30 41.35.6 The ~~judges~~ JUDGE ~~shall~~ MUST return the completed Statement of Ballots form to the
31 designated election official with the other precinct supplies and mail a duplicate copy
32 pursuant to section 1-7-505, C.R.S. TO THE DESIGNATED ELECTION OFFICIAL'S OFFICE.

33 **["Judges" deliberately changes to "judge." Why? These election functions are intended to be**
34 **performed by opposing major party representatives and not a single judge or staff**
35 **member. Integrity of the process demands at least pairs of judges performing these**
36 **roles, just as there should be partisan balance on the canvass board.]**

37 41.46 Designated Election Official's Disposition of Forms

38 41.46.1 The designated election official ~~shall~~ MUST review the Statement of Ballots form ~~and~~
39 ~~ensure that it is complete and correct~~ FOR COMPLETION AND ACCURACY.

1 **[The way this is written allows the DEO to have already legally "cleaned the books" before the**
2 **canvass board ever sees them. This role should be done by the canvass board, with**
3 **the DEO as a facilitating member.]**

4 41.46.2 If the designated election official or the canvass board discovers a problem with the
5 Statement of Ballots form that cannot be easily resolved, he or she shall have the right
6 to ~~to~~MAY contact the election judges and ensure that FOR AN EXPLANATION OR
7 CORRECTION the discrepancy is explained or corrected.

8 **[This is a limitation of a responsibility of the canvass board- transferred back to "election**
9 **judges". This will increase cost of elections when the election judges are to be**
10 **brought into the canvass process to make "corrections." Note that the current**
11 **language fails to strike-out the last 5 words.]**

12 41.57 Procedures for the Day of the Canvass

13 **[Why "day" instead of role? - this too in a subtle way circumscribes the role of canvass board and**
14 **suggests that its role can or should be completed in a day.]**

15 41.57.1 ~~In order for the canvass board established pursuant to section 1-10-101, C.R.S., to~~
16 ~~perform its duties, pursuant to section 1-10-101.5, C.R.S.,~~ THE designated election
17 official shall MUST provide the following information TO THE CANVASS BOARD:

18 (a) The name of each candidate receiving votes, the office, and the total number of
19 votes received;

20 **[and undervotes/overvotes so that in each contest the board can check that the votes**
21 **cast balance to the number of ballots used in the contest.]**

22 (b) The number/letter of each ballot issue or question and the votes received;

23 **[and undervotes/overvotes subdivided by precinct and voting method as above]**

24 (c) The number of voters who voted early;

25 (d) The number of mail-in or mail ballots cast, including the number accepted and
26 rejected; AND

27 (e) The number of provisional ballots counted, **[or yet to be counted]**

28 **[and the voting method, status, and number of votes tabulated not included above**
29 **(e.g. UOCAVA, confidential, emergency, etc.) and of those that have not been**
30 **tabulated yet and for what reason.]**

31 ~~41.5.2 The canvass board shall confirm that the number of ballots cast is less than or equal to~~
32 ~~the number of people who actually voted in each precinct or vote center.~~

33 ~~41.5.3 The designated election official shall use a canvass form that is approved by the~~
34 ~~Secretary of State.~~

35 41.57.4.2 Any written documentation regarding official numbers shall be IS included as part of
36 the canvass. **[and shall be a public record kept for use by the public for at least 25 months.]**

1 ***["official" as well as "unofficial"- the latter being better defined. Any report of an***
2 ***investigation or written evidence of exceptions and failures to reconcile should be***
3 ***included as part of the canvass (as opposed to the abstract).]***

4 41.68 Official Abstract

5 41.68.1 The designated election official ~~shall~~ **MUST ensure that** INCLUDE the number of active
6 ELIGIBLE voters on election day pursuant to section 1-10-105(5)(e), C.R.S., is the
7 number used on the official abstract.

8 41.68.2 The CANVASS BOARD MUST CERTIFY THE official abstract ~~shall be compiled on~~ IN a
9 format approved by the Secretary of State.

10 ***["Must certify" is contrary to statute. Any certification of the official abstract shall me made in***
11 ***a format approved by the SOS.]***

12 41.68.3 The official abstract ~~shall~~ **MUST** include, by precinct/ballot style or vote center, where
13 applicable:

14 ***["and voting method or location e.g. vote center" not "or vote center".]***

15 (a) The statement of votes counted by race and ballot question or issue; ***[including***
16 ***under and over votes]***

17 (b) The total active registered electors in the precinct and the total for the jurisdiction
18 holding the election;

19 ***[in "each" precinct, not in "the" precinct.]***

20 (c) The total number of electors voting in each precinct; and the total for the
21 jurisdiction holding the election;

22 (d) The number of voters who voted early;

23 ***[and the number who voted in vote-centers and service-centers]***

24 (e) The number of emergency registrations;

25 (f) The number of mail-in or mail ballots counted and the number rejected;

26 (g) The number of provisional ballots counted and the number rejected listed by each
27 rejection code pursuant to Rule 26.5.4; and

28 (h) The number of damaged and spoiled ballots.

29 ***[and duplicated ballots and a report of the reason/resolution of each category of***
30 ***spoiled/damaged and duplicated ballot. (i) the number of voters who voted by***
31 ***UOCAVA, emergency and confidential methods of voting and any others not included***
32 ***in the above categories.]***

33 41.79 The Abstract ~~shall be~~ IS the Official, Permanent Record.

1 41.79.1 The designated election official ~~shall~~MUST keep all official canvass reports and forms
2 as part of the official permanent election record.

3 **[permanent means kept beyond the 25 month retention period.]**

4 41.9.2 ONCE THE CANVASS BOARD CERTIFIES THE ABSTRACT **[IT- missing word]** MAY NOT
5 WITHDRAW THE CERTIFICATION. IN THE EVENT OF A RECOUNT, THE CANVASS BOARD
6 MAY ONLY AFFIRM OR AMEND THE ABSTRACT.

7 **[This is a further limitation of the range of action of the CB. In place of this language we need**
8 **a requirement that the CB be fully made aware of its role in advance of election day**
9 **and prior to the first tabulation of any votes, and that it be made aware of and invited**
10 **to watch all processes of the election, and that it be called to its first meeting within 3**
11 **days of election day to ensure enough time to complete the role.]**

12 41.810 Appointment of Canvass Workers. 41.10.1—The designated election official may ~~utilize~~
13 APPOINT canvass workers to ~~assist in the preparation~~HELP PREPARE and conduct of the
14 canvass.

15 **[These workers should be working for the canvass board, not for the DEO.]**

16 41.911 Voter History

17 41.911.1 After the canvass ~~process is completed~~, the designated election official ~~shall~~MUST give
18 credit to each voter who votes by mail, at an early voting site, or at a polling location.

19 **[This is not a complete list of voting methods. Electors who were not found to be eligible to**
20 **vote having been required to use a provisional envelope or required to perform a**
21 **signature verification or provide ID should at this point be informed by mail about**
22 **which portions if any of the ballot they marked were not counted and that their**
23 **eligibility has been established for voting in the following election and that a mail**
24 **ballot will be sent to them in the future if properly requested. The canvass board**
25 **should have oversight over the DEO decisions whether to count the provisional and**
26 **delayed counting ballots or not, and how much of the ballot to count.]**

27 41.911.2 If the voter history records do not match the number of voters who voted at that
28 election, the designated election official ~~shall~~MUST ensure the following:

29 (a) Each voter ~~was given~~RECEIVED credit for voting; and

30 **[each person who established eligibility to vote who attempted to vote is shown as a**
31 **registered, active elector.]**

32 (b) All pollbooks and signature cards are accounted for.

33 **[The canvass board has good reason to observe this as part of its role.]**

34 41.911.3 All research concerning discrepancies ~~shall~~MUST be explained and documented.

35 **[and must become part of the accessible public record of the election as part of the record of**
36 **the canvass 41.7.2]]**

1 41.1012 Written Complaints. ~~In accordance with section 1-7-514(2)(b), C.R.S., the~~ THE designated
2 election official ~~shall~~ MUST provide to the canvass board WITH any written complaint about a
3 voting device submitted by a registered elector, and, if resolved, how it was resolved and if
4 pending, a proposal for how the issue will be resolved.

5 ***[Are these complaints to be limited to "voting device?" What about other complaints about the voting***
6 ***system in general?]***

7 41.13 ROLE OF WATCHERS. THE CANVASS BOARD MUST GRANT WATCHERS A REASONABLE
8 OPPORTUNITY TO OBSERVE THE BOARD WHILE IT PERFORMS ITS DUTIES, SUBJECT TO RULE 8.

9 41.14 ROLE OF THE SECRETARY OF STATE

10 41.14.1 THE COUNTY CLERK AND RECORDER OR A MAJORITY OF THE APPOINTED CANVASS
11 BOARD MEMBERS MAY REQUEST THAT THE SECRETARY OF STATE PROVIDE GUIDANCE
12 AND SUPPORT TO THE CANVASS BOARD IN THE EXERCISE OF THE BOARD'S DUTIES.

13 ***[The fact that the clerk may act separate from or in opposition to the canvass board in asking***
14 ***for SOS guidance is a potential problem here. Functions of the canvass board should***
15 ***be performed by the board and not by individual members such as the clerk alone.]***

16 41.14.2 IF, IN THE COURSE OF ASSISTING A CANVASS BOARD, THE SECRETARY OF STATE
17 DISCOVERS AN ERROR OR ABNORMALITY THAT THE SECRETARY BELIEVES MAY AFFECT
18 THE CONDUCT OF OTHER CANVASS BOARDS, THE SECRETARY MAY PROVIDE NOTICE TO
19 OTHER COUNTIES REGARDING THE NATURE OF THE ERROR OR ABNORMALITY.

20 ***[MUST everywhere else, but when the SOS is involved only MAY? This should be must. Also***
21 ***the notice must be made a document that is an identifiable public record, requestable***
22 ***under CORA by name.]***

23 41.14.3 INVESTIGATION OF CANVASS BOARD'S CERTIFICATION OF IMPERFECT RETURNS BEFORE
24 STATEWIDE CERTIFICATION.

25 (A) IMPERFECT RETURNS WITH NO POTENTIAL TO AFFECT RESULT. IF THE CANVASS
26 BOARD CERTIFIES IMPERFECT RETURNS THAT DO NOT HAVE THE POTENTIAL TO
27 CHANGE THE OUTCOME OF ANY RACE OR BALLOT MEASURE, THE SECRETARY OF
28 STATE AND COUNTY CLERK MUST CERTIFY THE ELECTION AND ORDER
29 RECOUNTS, IF ANY.

30 ***[This rule suggests that errors in tabulation will be entrenched in the permanent***
31 ***record rather than corrected. this may have a damaging effect on the accuracy***
32 ***of future elections. This rule also leaves ambiguous if the incorrect or correct***
33 ***results as determined by the canvass board will be used to determine if a***
34 ***recount is to be ordered. in reality it should be ordered if either count produces***
35 ***the threshold for a recount.]***

36 (B) IMPERFECT RETURNS WITH POTENTIAL TO AFFECT RESULT. IF THE CANVASS
37 BOARD CERTIFIES IMPERFECT RETURNS THAT HAVE THE POTENTIAL TO CHANGE
38 THE OUTCOME OF ANY RACE OR BALLOT MEASURE, THE SECRETARY OF STATE
39 WILL CONDUCT AN INVESTIGATION TO IDENTIFY THE NATURE OF, AND ADVISE
40 THE COUNTY CLERK AND RECORDER IN CORRECTING, THE INACCURACY.

[There is no criterion specified for determination of "potential to affect result." This rule takes from the canvass board the responsibility for correcting discrepancies and gives it to a combination of county clerk and secretary of state. This is contrary to statute and destroys the opportunity for independent oversight and remedy that the canvass board was intended to provide.]

6 Amendments to Rule 42.2:

7 42.2 “Electronic Transfer” shall ~~mean~~ the use of facsimile and shall not include the use of FAX OR e-
8 mail ~~under~~ (section 1-8-115, C.-R.-S.).

9 Amendments to Rule 42.6:

10 42.6 The transmission shall ~~also~~ MUST also include a mail-in ballot self-affirmation pursuant to 1-8-114 (1)
11 C. R. S.

12 Amendments to Rule 42.11.2:

13 42.11.2 If the designated election official is unable to provide a mail-in ballot to an elector by any
14 other means, the designated election official may ~~seek authority from the Secretary of~~
15 ~~State to provide a~~ SEND AN EMERGENCY mail-in ballot to the elector ~~under section~~
16 ~~1-8-115(4), C.R.S., and this Rule.~~

17 Repeal Rules 42.11.3, 42.11.4, 42.11.5, 42.11.6, and 42.11.7:

18 42.11.3 ~~No later than 21 days prior to the election, the Secretary of State will post on its website~~
19 ~~and email counties a designated point of contact for each election for Emergency~~
20 ~~Electronic Transfer Requests. REPEALED.~~

21 42.11.4 ~~A request to send a ballot by electronic transfer must be submitted to the designated point~~
22 ~~of contact via email using the approved Emergency Electronic Transfer form posted on~~
23 ~~the Secretary of State website. If possible, the designated election official should attempt~~
24 ~~to consolidate requests to the Secretary of State. REPEALED.~~

25 42.11.5 ~~At a minimum, a request for an emergency electronic transfer shall include:~~

26 (a) ~~Contact information, including name, address, phone number, fax number, and e-~~
27 ~~mail address for the designated election official or their designee;~~

28 (b) ~~Date and time of request sent by designated election official;~~

29 (c) ~~Confirmation e-mail to designated election official by Secretary of State upon~~
30 ~~receipt of request~~

31 (d) ~~Justification as to why the ballot(s) need to be sent by fax, which includes the~~
32 ~~following required information:~~

33 (i) ~~The elector’s name;~~

34 (ii) ~~When the elector applied for the mail in ballot;~~

35 (iii) ~~The date when the designated election official sent the mail in ballot to~~

- 1 ~~the elector (if applicable);~~
- 2 ~~(iv) — The date the elector contacted the designated election official with~~
3 ~~information regarding failure to receive the ballot;~~
- 4 ~~(v) — A suggested timeframe for the Secretary of State to respond;~~
- 5 ~~(vi) — The quantity of ballots to be sent by fax; and~~
- 6 ~~(vii) — Approval or disapproval by the Secretary of State; if denied, reason for~~
7 ~~the denial.~~
- 8 ~~(e) — Confirmation e-mail from the designated election official to Secretary of State~~
9 ~~upon receipt of approval or disapproval. REPEALED.~~
- 10 ~~42.11.6 The Secretary of State shall respond in writing to the designated election official as soon~~
11 ~~as possible, but no later than eight business hours after receipt of the request. REPEALED.~~
- 12 ~~42.11.7 The Secretary of State shall have the ability to issue a blanket approval by electronic~~
13 ~~transfer. REPEALED.~~

DRAFT

Harvie Branscomb's Draft of Proposed Election Rules 8.6, 26.13, 41

July 22, 2012

Rules meeting:

[(2PM-5PM, Monday, Secretary of State Office, 3rd Floor, Aspen Room, 1700 Broadway Denver, or on internet audio here: <mms://pub.sos.state.co.us/AspenRoom>]

Proposed additions to the current rules are reflected in SMALL CAPS. Some are from the original SOS version July 18, some are added by Harvie Branscomb

[Annotation] may be included.

1 Amendments to Rule 8.6:

2 8.6 WATCHERS ARE SUBJECT TO THE PROVISIONS OF SECTION 1-5-503, C.R.S.

3 **[C.R.S.1-5-503. Arrangement of equipment or voting booths and ballot boxes**

4
5 The voting equipment or voting booths and the ballot box shall be situated in the polling place
6 so as to be in plain view of the election officials and watchers. No person other than the
7 election officials and those admitted for the purpose of voting shall be permitted within the
8 immediate voting area, which shall be considered as within six feet of the voting equipment or
9 voting booths and the ballot box, except by authority of the election judges or the designated
10 election official, and then only when necessary to keep order and enforce the law.]

11
12

13 8.6.1 THE "IMMEDIATE VOTING AREA" IS THE AREA THAT IS WITHIN SIX FEET OF THE VOTING
14 EQUIPMENT, VOTING BOOTHS, AND THE BALLOT BOX WHILE LOCATED AT THE POLLING
15 PLACE AND WHEN ELECTORS ARE PRESENT AND IN THE PROCESS OF VOTING.

16 **[Note that CRS 1-5-503 pertains to the polling place and to no other portion or place of the**
17 **election process].**

18 8.6.2 THE DESIGNATED ELECTION OFFICIAL MUST POSITION THE VOTING EQUIPMENT, VOTING
19 BOOTHS, AND THE BALLOT BOX SO THAT THEY ARE IN PLAIN VIEW OF THE ELECTION
20 OFFICIALS AND WATCHERS.

21 8.6.3 WATCHERS ARE PERMITTED TO VIEW THE ACTIVITIES TAKING PLACE WITHIN THE
22 IMMEDIATE VOTING AREA FROM A DISTANCE OF AT LEAST SIX FEET UNLESS THE SIZE OR
23 CONFIGURATION OF THE ROOM DOES NOT ALLOW.

24 **[Watchers have historically performed a valuable by catching errors and reminding election**
25 **judges, staff and other officials about rules and statutes.]**

26 8.6.4 THE DESIGNATED ELECTION OFFICIAL SHALL ALLOW WATCHERS WITHIN SIX FEET OF ALL

1 ACTIVITIES DESCRIBED IN TITLE I, ARTICLE 7 THAT ARE NOT TAKING PLACE IN THE
2 IMMEDIATE VOTING AREA TO THE EXTENT POSSIBLE WITHOUT INTERFERING WITH THOSE
3 ACTIVITIES. THE DESIGNATED ELECTION OFFICIAL SHALL ALSO ALLOW WATCHERS TO
4 WITNESS AND VERIFY EACH STEP IN THE CONDUCT OF THE ELECTION FROM PRIOR TO THE
5 OPENING OF POLLS THROUGH THE COMPLETION OF THE COUNT AND ANNOUNCEMENT OF
6 THE RESULTS, TO CHALLENGE INELIGIBLE ELECTORS AND TO ASSIST IN THE CORRECTION
7 OF DISCREPANCIES.

8
9
10 [\[C.R.S. 1-7-108\]](#) 1-7-108. Requirements of watchers

11
12
13
14
15 (1) Watchers shall take an oath administered by one of the election judges that they are eligible electors, that their name has
16 been submitted to the designated election official as a watcher for this election, and that they will not in any manner make known
17 to anyone the result of counting votes until the polls have closed.

18 (2) Neither candidates nor members of their immediate families by blood or marriage to the second degree may be poll watchers
19 for that candidate.

20 (3) Each watcher shall have the right to maintain a list of eligible electors who have voted, to witness and verify each step in the
21 conduct of the election from prior to the opening of the polls through the completion of the count and announcement of the
22 results, to challenge ineligible electors, and to assist in the correction of discrepancies.]
23

24
25 ***[During semi-private discussions at the Capitol Hilary Rudy specifically argued against***
26 ***repeating this text (CRS 1-7-108 (3)) in the new law 24-72-205.5 because it "might***
27 ***change." The sense that this very important language is considered almost temporary***
28 ***at the CDOS is all the more reason why it must be copied in full into the rules, as it***
29 ***does have the force of existing statute.]***
30
31

32 New Rule 26.13:

33 26.13 VOTER ACCESS TO PROVISIONAL BALLOT INFORMATION

34 26.13.1 THE SECRETARY OF STATE WILL PROVIDE A FUNCTION ON THE SECRETARY'S WEBSITE
35 THAT SERVES TO INFORM VOTERS OF THE STATUS OF ANY BALLOT MARKED BY THEM
36 THAT HAS BEEN DETERMINED TO BE PROVISIONAL, OR SUBJECT TO ANY ALTERNATE
37 DELAY IN COUNTING FOR REASON OF ID DEFICIENCY, SIGNATURE CURE, OR ANY OTHER
38 REASON. VOTERS WHO ARE SUBJECT TO COUNTING FEDERAL CONTESTS ONLY SHALL
39 ALSO BE NOTIFIED OF THIS CONDITION.

40 ***[Not only provisional voters, but other voters whose ballots are diverted for delayed***
41 ***determination and counting because of signature or ID check deserve to know if their***
42 ***voter intent was included in the election and to what extent.]***

43 26.13.2 THE COUNTY CLERK AND RECORDER MUST NUMBER THE STUB OF ANY BALLOT
44 DETERMINED TO BE PROVISIONAL USING A STANDARD NUMBERING CONVENTION
45 APPROVED BY THE SECRETARY OF STATE. AFTER THE STUB IS REMOVED, THE FACE OF
46 ANY BALLOT DETERMINED TO BE PROVISIONAL SHALL BE INDISTINGUISHABLE FROM ANY
47 OTHER BALLOT OF SAME BALLOT STYLE.

48 ***[Numbering ballot stock, other than on the required stub, is a huge mistake and potentially in***
49 ***violation of the Colorado constitution. There is no reason why a ballot to be voted***
50 ***provisionally should be marked any differently than any other ballot to be voted upon,***

1 *and to do so does create a problem for "Secrecy in voting" and "revealing how the*
2 *elector voted" through recognition of the special markings on the ballot. Of course a*
3 *special envelope is required and not by necessarily a problem for privacy]*

4 26.13.3 AN ELECTOR MAY ACCESS THE SYSTEM DURING THE 30 DAYS FOLLOWING THE ELECTION.

5 Amendments to Rule 41:

6 **Rule 41. Rules Concerning Canvassing**

7 41.1 Definitions

8 41.1.1 "Canvass" means the ACCOUNTING, AUDITING AND BALANCING OF AND CORRECTION
9 OF ERRORS IN THE ELECTION, AND THE CERTIFICATION OF THE OFFICIAL ABSTRACT OF
10 VOTES. CANVASS OR THE PROCESS OF CANVASSING IS CONDUCTED BY THE CANVASS
11 BOARD IN EACH COUNTY. THE ROLE INCLUDES reconciling the number of ballots
12 counted to the number of BALLOTS CAST, AND RECONCILING THE NUMBER OF BALLOTS
13 CAST TO THE NUMBER OF voters who voted AS PART OF A REVIEW THAT LEADS TO
14 CERTIFICATION OF THE RESULTS OF THE ELECTION IN THE FORM OF AN ABSTRACT OF
15 VOTES TRANSMITTED BY THE BOARD TO THE SECRETARY OF STATE. (SECTION 1-10-
16 101.5, C.R.S.) Detailed ballot logs, Statement of Ballots Forms, LAT RECORDS,
17 POLLBOOKS, BALLOTS BOTH VOTED AND UNVOTED, AND OTHER DOCUMENTS CREATED
18 IN THE COURSE OF THE ELECTION ARE SUBJECT TO REVIEW BY THE CANVASS BOARD.
19 THE CANVASS BOARD ALSO PERFORMS RECOUNTS IF ANY (C.R.S.1-10-102 AND
20 RANDOM AUDIT (C.R.S.1-7-514).

21 41.1.2 "CANVASS BOARD" MEANS A COMMITTEE COMPOSED OF THE COUNTY CLERK AND
22 RECORDER AND THE REGISTERED ELECTORS APPOINTED BY MAJOR PARTY CHAIRS
23 THAT CONDUCTS THE CANVASS AND PERFORMS OTHER ACTIVITIES AS REQUIRED BY
24 C.R.S. TITLE 1.

25 41.1.3 "Canvass workers" means workers appointed or hired by the designated election
26 official AT THE REQUEST OF THE CANVASS BOARD to assist in the preparation and
27 conduct of the canvass.

28 41.1.4 "DETAILED BALLOT LOG" MEANS A LOG THAT ACCOUNTS FOR EVERY ENVELOPE AND
29 BALLOT AND BALLOT STUB EITHER PRINTED, DISTRIBUTED, RETURNED, TABULATED,
30 AUDITED, RECOUNTED OR STORED WITH ACCOUNTING DETAILED BY DATE, VOTING
31 METHOD, POLLING LOCATION, PRECINCT NUMBER AND BALLOT STYLE. AFTER
32 SEPARATION OF THE STUB, THE DETAILED BALLOT LOG MAY ACCOUNT FOR STUBS IN
33 PLACE OF BALLOTS IN ORDER TO MAINTAIN PRIVACY OF EACH VOTER'S INTENT WHEN
34 CAST BALLOTS ARE MIXED FOR PURPOSES OF ACHIEVING ANONYMITY.

35 41.1.5 "Statement of Ballots Forms" means the form used at the polling location, INCLUDING
36 ANY EARLY, VOTE-CENTER AND SERVICE-CENTER LOCATIONS that accounts for all
37 ballots, STUBS, ARRIVING ELECTORS AND ELECTORS WHO HAVE SUCCESSFULLY VOTED
38 at that location AND INCLUDES AT A MINIMUM THE FOLLOWING INFORMATION:

39 (A) TBD

40 (B) TBD

1 ...

2 41.2 APPOINTMENT TO THE CANVASS BOARD

3 41.2.1 IN A PARTISAN OR COORDINATED ELECTION THE BOARD MUST INCLUDE AN EQUAL
4 NUMBER OF REPRESENTATIVES FROM EACH MAJOR PARTY, UNLESS A MAJOR PARTY
5 FAILS TO CERTIFY REPRESENTATIVES FOR APPOINTMENT IN WHICH CASE THAT PARTY
6 MAY HAVE LESS REPRESENTATION. THIS CALCULATION DOES NOT INCLUDE THE CLERK
7 AND RECORDER IF THE CLERK AND RECORDER VOLUNTARILY SERVES IN A NON-VOTING
8 ROLE ON THE CANVASS BOARD.

9 41.2.2 ~~THE COUNTY CLERK AND RECORDER MAY ACCEPT APPLICATIONS FROM, AND~~
10 ~~SUBSEQUENTLY APPOINT, ADDITIONAL REPRESENTATIVES FROM AMONG MINOR PARTY~~
11 ~~AND UNAFFILIATED ELECTORS.~~

12 ***[This gives too much power to the clerk to stack the canvass board with less than independent***
13 ***members, and by this means to guarantee that the board will agree with the clerk.***
14 ***New law is required to specify how if at all unaffiliated voters are to be represented***
15 ***on the canvass board.]***

16 41.2.3 EACH MAJOR PARTY REPRESENTATIVE ON THE CANVASS BOARD IN A PARTISAN OR
17 COORDINATED ELECTION MUST BE REGISTERED TO VOTE IN THE COUNTY WHERE THE
18 REPRESENTATIVE WILL SERVE AND AFFILIATED WITH THE PARTY HE OR SHE
19 REPRESENTS OR BE UNAFFILIATED.

20 41.2.4 ~~EACH UNAFFILIATED REPRESENTATIVE ON THE CANVASS BOARD MUST BE REGISTERED~~
21 ~~TO VOTE IN THE COUNTY WHERE THE REPRESENTATIVE WILL SERVE.~~

22 41.2.5 IN A CANVASS OF A NON-PARTISAN NON-COORDINATED ELECTION, THE COUNTY CLERK
23 AND RECORDER MUST ACCEPT THE APPOINTMENT OF ONE REGISTERED ELECTOR
24 APPOINTED BY ANY PARTICIPATING JURISDICTION AND EACH PRO AND CON ISSUE
25 COMMITTEE UNLESS SUCH AN ENTITY FAILS TO SUBMIT A REPRESENTATIVE FOR
26 APPOINTMENT. MAJOR PARTIES DO NOT HAVE CANVASS BOARD REPRESENTATION IN A
27 NON PARTISAN NON-COORDINATED ELECTION.

28 41.2.6 A CANDIDATE FOR OFFICE AND MEMBERS OF THE CANDIDATE'S IMMEDIATE FAMILY
29 MAY NOT SERVE ON THE CANVASS BOARD.

30 41.2.7 IF THE CLERK AND RECORDER IS ACTING VOLUNTARILY IN A NON-VOTING CAPACITY
31 (41.2.1) AND THEREFORE THE CANVASS BOARD CONSISTS OF AN EVEN NUMBER OF
32 VOTING MEMBERS, IN CASE OF A TIE, THE CLERK AND RECORDER SHALL CAST THE
33 DECIDING VOTE.

34 41.2.8 THE COUNTY CLERK AND RECORDER SHALL ENCOURAGE THE APPOINTMENT OF THE
35 CANVASS BOARD MEMBERS BY THE MAJOR PARTY CHAIRS PRIOR TO ANY DELIVERY OF
36 BALLOTS IN THE ELECTION, AND SHALL INFORM THE MEMBERS AS SOON AS THEY ARE
37 APPOINTED OF THESE RULES, THE APPLICABLE STATUTES, AND THE INTENDED
38 SCHEDULE AND LOCATION FOR ELECTION ACTIVITIES APPLICABLE TO OVERSIGHT
39 INCLUDING RECEIPT OF MAIL BALLOTS, SIGNATURE CHECKING, EARLY BALLOT
40 TABULATION, ELECTION DAY ACTIVITIES, PLANS FOR CANVASS BOARD MEETINGS, ETC.
41 CANVASS BOARD MEMBERS SHALL BE MADE AWARE UPON APPOINTMENT THAT THEY

1 ARE ELECTION OFFICIALS AND AS SUCH ARE WELCOME TO ATTEND ANY OF THE
2 ELECTION PROCESSES.

3 41.2.9 THE COUNTY CLERK AND RECORDER SHALL ADMINISTRATE THE OATH FOR CANVASS
4 BOARD MEMBERS AND INCLUDE A COPY OF THE SIGNED OATH AS PART OF THE
5 CANVASS RECORDS. IDENTITIES OF CANVASS BOARD MEMBERS SHALL BE A MATTER
6 OF PUBLIC RECORD.

7 41.2.10 THE FIRST MEETING OF THE CANVASS BOARD MUST OCCUR AT THE LATEST BY THREE
8 DAYS AFTER ELECTION DAY IN ORDER TO BE SURE THERE IS SUFFICIENT TIME FOR THE
9 BOARD TO CONDUCT ITS WORK PRIOR TO THE DEADLINE FOR CERTIFICATION. THE
10 MEETING WILL BE CALLED BY THE CLERK AND RECORDER PROVIDING ONE WEEK
11 ADVANCE NOTICE TO ALL MEMBERS.

12 41.2.11 AT THE FIRST MEETING THE CANVASS BOARD SHALL ELECT A CHAIRPERSON WHO WILL
13 BE RESPONSIBLE FOR PLANNING FUTURE MEETINGS, ADMINISTERING VOTES AND
14 INTERACTING WITH ELECTION OFFICIALS TO OBTAIN NECESSARY RECORDS.

15

16 41.3 DUTIES OF THE CANVASS BOARD

17 41.3.1 THE CANVASS BOARD'S DUTY IS TO CONDUCT THE CANVASS AS DEFINED IN RULE
18 41.1.1 AND ALL OTHER FUNCTIONS DESCRIBED FOR IT IN C.R.S. TITLE 1 INCLUDING
19 PERFORMING INVESTIGATIONS AND RECOUNTS AND SUPERVISING AUDITS.

20 41.3.2 THE CANVASS BOARD SHALL ATTEMPT TO CONFIRM THAT THE NUMBER OF BALLOTS
21 CAST IS LESS THAN OR EQUAL TO THE NUMBER OF PEOPLE WHO ACTUALLY VOTED IN
22 THE ELECTION BY REVIEWING AND VERIFYING AND IF NECESSARY CORRECTING
23 ELECTION RECORDS INCLUDING THE JUDGES RECONCILIATION OF BALLOTS, STUBS,
24 POLLBOOKS, FORMS AND OTHER ELECTION RECORDS.

25 41.3.3 IF THE BOARD IDENTIFIES A DISCREPANCY IN THE RECORDS, THE BOARD MAY REVIEW
26 BALLOTS, POLLBOOKS AND OTHER ELECTION RECORDS TO IDENTIFY, CORRECT, AND
27 ACCOUNT FOR ANY ERROR.

28 41.3.4 THE CANVASS BOARD MAY CERTIFY AND MUST TRANSMIT THE RESULTS TO THE
29 SECRETARY OF STATE REGARDLESS OF WHETHER THE BOARD IS ABLE TO RESOLVE
30 ERRORS OR INACCURACIES IN THE RECORDS OF THE ELECTION.

31 41.3.5 ~~THE CANVASS BOARD MAY NOT PERFORM DUTIES TYPICALLY RESERVED FOR ELECTION~~
32 ~~JUDGES, INCLUDING DETERMINING VOTER INTENT, EVALUATING VOTER ELIGIBILITY,~~
33 ~~AND REVIEWING LOGS OR REPORTS THAT WERE NOT GENERATED WHILE CONDUCTING~~
34 ~~THE ELECTION.~~

35 ***[This is an outrageous proposed restriction that among other effects, prevents the performance***
36 ***of or even the effective supervision of a post election audit. Current Colorado***
37 ***election practices have placed election judges into a submissive employee-employer***
38 ***role to the clerk, and this text seeks to place canvass boards into a diminutive role***
39 ***with respect to the election judges.]***

1 41.4 Detailed Ballot Log

2 41.1 The designated election official MUST keep a detailed BALLOT LOG STARTING WHEN
3 ballots are ordered. The ELECTION JUDGES AND WHEN APPLICABLE, ELECTION STAFF,
4 MUST RECONCILE THE log at the conclusion of each workday.

5 41..2 The ELECTION JUDGES AND WHEN APPLICABLE, ELECTION STAFF MUST keep and
6 reconcile daily logs of INCOMING AND OUTGOING mail-in, mail, AND early voting
7 ballots AND BALLOTS ASSOCIATED WITH ALL OTHER VOTING METHODS SUCH AS
8 UOCAVA, EMERGENCY, CONFIDENTIAL, ETC. FOR PURPOSES OF ACHIEVING ANONYMITY
9 OF THE BALLOT FACE, STUBS MAY BE ACCOUNTED FOR IN PLACE OF BALLOTS ONCE
10 THEY ARE SEPARATED.

11 41.3 The designated election official MUST indicate in the detailed log the number of paper
12 ballots that are sent to OR PRINTED AT each polling location for use on EACH
13 APPLICABLE day.

14 41.4 THE DESIGNATED ELECTION OFFICIAL MAY KEEP required logs AND FORMS IN
15 electronic OR PAPER FORMAT BUT ALL ENTRIES SHOULD BE CAPABLE OF BEING
16 ENTERED MANUALLY ON PAPER. LOGS AND FORMS SHALL BE ACCESSIBLE AS OPEN
17 RECORDS REGARDLESS OF FORMAT AND IDENTIFIABLE BY A STANDARD WELL KNOWN
18 NAME AND DATE.

19 *[The details of what the log must include in Rule 41.4.1 are relocated to New Rule 41.1.5 in the*
20 *definitions]*

21 41.5 Election Day Tracking Process

22 41.5.1 The designated election official MUST supply each polling location with a Statement of
23 Ballots Form. -Combined precincts may use one form BUT MUST ACCOUNT FOR EACH
24 PRECINCT, BALLOT STYLE AND VOTING METHOD IF APPLICABLE SEPARATELY. The form
25 MUST include a place for the judges to account for the following information:

- 26 (a) The name(s) or number(s) of the precinct(S) or vote center;
- 27 (b) The number of ballots provided to OR PRINTED AT the polling location;
- 28 (c) The number of ballots cast;
- 29 (d) The number of unvoted ballots;
- 30 (e) The number of damaged or spoiled ballots; and
- 31 (f) The number of voted provisional ballots.

32 41.5.2 ELECTION JUDGES OF DIFFERING MAJOR PARTIES MUST RECONCILE THE total number of
33 voted ballots WITH the number of voters who voted. STUBS MAY BE USED TO PROVIDE
34 PHYSICAL ACCOUNTING OF POTENTIALLY IDENTIFIABLE SUBSETS OF VOTERS AFTER
35 BALLOTS HAVE BEEN REMOVED, TO ALLOW IMMEDIATE MIXING OF BALLOTS TO
36 PROTECT THE PRIVACY OF THE VOTER.

- 1 41.5.3 ELECTION JUDGES OF DIFFERING MAJOR PARTIES MUST VERIFY THAT THE total number
2 of voted ballots, spoiled or damaged ballots, provisional ballots, and unvoted ballots IS
3 THE SAME AS the number of total ballots SUPPLIED TO PLUS PRINTED AT the polling
4 location.
- 5 41.5.4 ELECTION JUDGES OF DIFFERING MAJOR PARTIES MUST RECONCILE the number of
6 people who signed the pollbook BY PRECINCT to the total of the number of ballots cast
7 BY COUNTING THE STUBS ACCORDING TO SEPARATE BALLOT STYLES.
- 8 41.5.5 If there is a discrepancy in the numbers on the Statement of Ballots form, the judges
9 MUST EXPLAIN THE DISCREPANCY IN WRITING (for example, THE voter signed in but left
10 the polling place without voting, etc.).
- 11 41.5.6 Judges MUST return the completed Statement of Ballots form to the designated election
12 official with the other precinct supplies and mail a duplicate copy TO THE DESIGNATED
13 ELECTION OFFICIAL'S OFFICE.
- 14 41.6 Canvass Board's Disposition of Forms
- 15 41.6.1 The CANVASS BOARD MUST review the Statement of Ballots form AS RECEIVED FROM
16 ELECTION JUDGES FOR COMPLETION AND ACCURACY.
- 17 41.6.2 If the Canvass Board discovers a problem with the Statement of Ballots form that
18 cannot be easily resolved ANY MEMBER MAY contact the election judges FOR AN
19 EXPLANATION. THE CANVASS BOARD SHALL USE BEST EFFORTS WITH ALL AVAILABLE
20 INFORMATION SOURCES UNTIL THE discrepancy is explained or corrected. THE CLERK
21 AND RECORDER SHALL PROVIDE SUCH RECORDS AS ARE REQUESTED BY THE CANVASS
22 BOARD IN PURSUIT OF ITS ROLE OF TRANSMITTING AN ACCURATE ABSTRACT OF THE
23 VOTE TO THE SECRETARY OF STATE.
- 24 41.7 Procedures for Canvass
- 25 41.7.1 THE designated election official MUST provide the following information TO THE
26 CANVASS BOARD:
- 27 (a) The name of each candidate, office, votes received AND COUNTS OF UNDER AND
28 OVER VOTES SUFFICIENT TO BALANCE EACH CONTEST AGAINST THE BALLOTS
29 CAST;
- 30 (b) The number/letter of each ballot issue or question and votes received AND COUNTS
31 OF UNDER AND OVER VOTES SUFFICIENT TO BALANCE EACH CONTEST AGAINST THE
32 BALLOTS CAST;
- 33 (c) The number of voters who voted BY EACH VOTING METHOD INCLUDING EARLY,
34 MAIL OR MAIL-IN, UOCAVA, EMERGENCY, ETC. INCLUDING NUMBERS OF MAIL
35 BALLOT ENVELOPES ACCEPTED AND REJECTED, AND NUMBER OF MAIL OR MAIL-IN
36 BALLOTS CAST, EACH GROUP ACCOUNTED FOR BY PRECINCT AND BY DAY OF
37 RECEIPT;
- 38 (d) THE NUMBER OF VOTERS WHOSE BALLOTS HAVE NOT BEEN COUNTED DUE TO
39 DELAYS FOR SIGNATURE CHECKING, ID COMPLIANCE OR OTHER REASONS;

- 1 (e) The number of provisional ballots counted OR YET TO BE COUNTED
- 2 41.7.2 Any written documentation INCLUDING ANY REPORT OF AN INVESTIGATION OR
3 WRITTEN EVIDENCE OF EXCEPTIONS AND FAILURES TO RECONCILE ARE included as part
4 of the canvass AND SHALL BE KEPT FOR AT LEAST 25 MONTHS AND NON-EXEMPTED PORTIONS
5 ARE SUBJECT TO PUBLIC INSPECTION UNDER CORA.
- 6 41.8 Official Abstract
- 7 41.68.1 The designated election official MUST INCLUDE the number of ELIGIBLE voters on
8 election day on the official abstract.
- 9 41.68.2 The CANVASS BOARD MAY CERTIFY THE official abstract ONLY IN a format approved by
10 the Secretary of State.
- 11 41.68.3 The official abstract MUST include, SEPARATED by precinct/ballot style AND VOTING
12 METHOD OR LOCATION, E.G. VOTE-center, where applicable:
- 13 (a) The statement of votes counted by race and ballot question or issue; INCLUDING
14 UNDER AND OVER VOTES;
- 15 (b) The total active registered electors in the precinct and the total for the jurisdiction
16 holding the election;
- 17 (c) The total number of electors voting in EACH precinct; and the total for the
18 jurisdiction holding the election;
- 19 (d) The number of voters who voted early AND THE NUMBER WHO VOTED IN VOTE-
20 CENTERS AND SERVICE-CENTERS;
- 21 (e) The number of emergency registrations;
- 22 (f) The number of mail-in or mail ballots counted and the number rejected;
- 23 (g) The number of provisional ballots counted and the number rejected listed by each
24 rejection code; and
- 25 (h) The number of damaged, spoiled ballots AND DUPLICATED BALLOTS AND A REPORT
26 OF THE REASON/RESOLUTION FOR EACH CATEGORY OF SPOILED/DAMAGED AND
27 DUPLICATED BALLOTS.
- 28 (i) THE NUMBER OF VOTERS WHO VOTED BY UOCAVA, EMERGENCY AND
29 CONFIDENTIAL METHODS OF VOTING AND ANY OTHERS NOT INCLUDED IN THE ABOVE
30 CATEGORIES.
- 31 41.9 The Abstract IS the Official Permanent Record.
- 32 41.9.1 The designated election official MUST keep all official canvass reports and forms as
33 part of the official permanent election record THAT IS NOT SUBJECT TO RETENTION
34 LIMITATIONS.
- 35 41.9.2 ONCE THE CANVASS BOARD CERTIFIES THE ABSTRACT IT MAY NOT WITHDRAW THE

1 CERTIFICATION. IN THE EVENT OF A RECOUNT, OR FAILURE TO CERTIFY, THE CANVASS
2 BOARD MAY ONLY AFFIRM OR AMEND THE ABSTRACT AND MAY SUBSEQUENTLY
3 CERTIFY. EACH MEMBER OF THE CANVASS BOARD SHALL BE MADE AWARE OF THIS
4 RULE UPON SIGNING THE REQUIRED OATH.

5 41.10 Appointment of Canvass Workers. The designated election official may APPOINT ON BEHALF OF
6 THE CANVASS BOARD canvass workers to HELP PREPARE and conduct the canvass. THESE
7 WORKERS SHALL WORK FOR THE CANVASS BOARD.

8 41.911 Voter History

9 41.911.1 After the canvass the designated election official MUST give credit to each voter who
10 votes by mail, at an early voting site, or at a polling location OR BY ANY OTHER LEGAL
11 VOTING METHOD.

12 41.911.2 If the voter history records do not match the number of voters who voted at that
13 election, the designated election official MUST ensure AND THE CANVASS BOARD MUST
14 REVIEW COMPLIANCE WITH the following:

15 (a) Each voter RECEIVED credit for voting; and EACH PERSON WHO ESTABLISHED
16 ELIGIBILITY TO VOTE WHO ATTEMPTED TO VOTE IS SHOWN AS A REGISTERED,
17 ACTIVE ELECTOR;

18 (b) All pollbook ENTRIES and signature cards are accounted for.

19
20 41.11.3 All research concerning discrepancies MUST be explained and documented AND MUST
21 BECOME PART OF THE ACCESSIBLE PUBLIC RECORD OF THE ELECTION AS PART OF THE CANVASS
22 RECORD (41.7.2)

23 41.12 Written Complaints. THE designated election official MUST provide the canvass board WITH any
24 written complaint submitted by a registered elector OR ELECTION OFFICIAL, and, if ALREADY
25 resolved, how it was resolved and if pending, a proposal for how the issue COULD be resolved IF
26 APPLICABLE.

27 41.13 ROLE OF WATCHERS. THE CANVASS BOARD MUST GRANT WATCHERS A REASONABLE
28 OPPORTUNITY TO OBSERVE THE BOARD WHILE IT PERFORMS ITS DUTIES, SUBJECT TO RULE 8.

29 41.14 ROLE OF THE SECRETARY OF STATE

30 41.14.1 A MAJORITY OF THE APPOINTED CANVASS BOARD MEMBERS MAY REQUEST THAT THE
31 SECRETARY OF STATE PROVIDE GUIDANCE AND SUPPORT TO THE CANVASS BOARD IN
32 THE EXERCISE OF THE BOARD'S DUTIES.

33 41.14.2 IF, IN THE COURSE OF ASSISTING A CANVASS BOARD, THE SECRETARY OF STATE
34 DISCOVERS AN ERROR OR ABNORMALITY THAT THE SECRETARY BELIEVES MAY AFFECT
35 THE CONDUCT OF OTHER CANVASS BOARDS, THE SECRETARY SHALL PROVIDE NOTICE
36 TO OTHER COUNTIES' BOARDS REGARDING THE NATURE OF THE ERROR OR
37 ABNORMALITY AND THAT NOTICE SHALL BECOME A PUBLIC RECORD ACCESSIBLE
38 UNDER CORA.

- 1 41.14.3 INVESTIGATION OF CANVASS BOARD’S TRANSMISSION OF IMPERFECT RETURNS.
- 2 (A) CERTIFIED BUT IMPERFECT RETURNS: IF THE CANVASS BOARD CERTIFIES AND
- 3 TRANSMITS IMPERFECT RETURNS THE SECRETARY OF STATE MAY CERTIFY THE
- 4 ELECTION AND ORDER RECOUNTS, IF ANY, AND SHALL SHARE THE INFORMATION
- 5 ABOUT THE DEFECTS IN THE ELECTION WITH OTHER CANVASS BOARDS AND THE
- 6 PUBLIC. IF THE SECRETARY OF STATE HAS BEEN MADE AWARE OF MORE THAN
- 7 ONE SET OF ARGUABLY CORRECT VOTE COUNTS IN A CONTEST, EACH SHALL BE
- 8 SEPARATELY APPLIED TO DETERMINE IF A RECOUNT IS REQUIRED AND ANY ONE
- 9 SHALL BE DEEMED SUFFICIENT.
- 10 (B) FAILURE TO CERTIFY ANY CONTEST WITH IMPERFECT RETURNS. IF THE CANVASS
- 11 BOARD FAILS TO CERTIFY AND TRANSMITS IMPERFECT RETURNS THE SECRETARY
- 12 OF STATE WILL CONDUCT ITS OWN INVESTIGATION TO IDENTIFY THE NATURE OF,
- 13 AND ADVISE THE CANVASS BOARD FOR THE PURPOSE OF CORRECTING ANY
- 14 INACCURACY AND THEN CERTIFYING ANY UNCERTIFIED CONTEST OR AMENDING
- 15 ONE OR MORE EXISTING CERTIFICATIONS OF THE ELECTION. IN THIS CASE, IF
- 16 THERE ARE MULTIPLE ARGUABLY CORRECT VOTE COUNTS KNOWN TO THE
- 17 SECRETARY OF STATE, FOR EXAMPLE ORIGINAL UNOFFICIAL AND CORRECTED
- 18 VOTE COUNTS, ALL SHALL BE SEPARATELY APPLIED TO DETERMINE IF A
- 19 RECOUNT IS REQUIRED AND ANY ONE SHALL BE DEEMED SUFFICIENT AND THE
- 20 THRESHOLD FOR A RECOUNT SHALL BE EXPANDED TO ONE PERCENT OF THE
- 21 VOTERS WHO CAST BALLOTS IN THE CONTEST.

22