

SUGGESTIONS FOR ELECTION RULES
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Rule 13. Rules Concerning Mail-In Voting

1. Suggestion for Rule regarding the following part of CRS 1-8-113(1)(a):

“... Alternatively, an elector may deliver the ballot to any person of the elector’s own choice ... for mailing or personal delivery to the designated election official: except that no one person other than a duly authorized agent of the designated election official may receive more than ten mail-in ballots in any election for mailing or delivery to the designated election official....”

Comment on statute:

This section of CRS 1-8-113(1)(a) increased allowance of the number of ballots to be delivered by someone other than the voter from five to ten ballots per election. This law could very well be illegal under the state constitution, as **it facilitates violation of a secret ballot, vote-buying and creation of false votes.** The state constitution designates the secret ballot as a top priority, because it makes elections more secure, hence more accurate.

Colorado has abandoned the parts of our law that once helped protect votes from fraud enabled by the weak chain of custody characterizing mail/absentee ballots. Now that HB13-1303 requires all-mail elections, there will probably be more mail ballots that do not get voted by legitimate electors, which could increase the opportunities for fraudulent misuse.

The present Rule 13.2 requires a county clerk and recorder to keep a list *when possible* of who delivers more than ten votes per election; this Rule could be made somewhat stronger.

Improved Rule:

If a deliverer of others’ ballots uses the mails to get these ballots to officials, as is currently allowed in law, enforcement is a problem. But as long as drop-off locations always have an election official in attendance, a deliverer of others’ ballots could be required to check in and submit a form. **A Rule could require a form with deliverer’s name, address and signature, along with number of ballots dropped off, and the names of persons whose voted ballots are being delivered.**

For persons *mailing* multiple ballots, a Rule could require such a form to be downloaded from a county election office site, or picked up in person. But it is hard to envision enforcement of such a requirement.

A sign-in procedure for multiple-ballot deliveries existed in earlier years, and the practice reintroduced could deter fraud. (There is still such a sign-in requirement in municipal law, although I’ve heard it is not always observed by clerks.) The title of HB1303 notwithstanding, the widespread use of mail ballots, and the current CRS 1-8-113(1)(a) allowing a person to give voted ballots to others for delivery, has taken Colorado elections backwards in the security of our elections

Rule 8. Rules Concerning Watchers

When most ballots were counted in a polling place in one day, watchers were able to observe this process more easily than today. Now, with more voting taking place remotely, and over a longer period of time, there is more work to prepare votes for counting (such as checking signatures and removing ballots from envelopes) and a longer counting period.

New Rules are needed to help restore the positive oversight function of watchers. Such Rules might include:

1. Election officials are required to post easily-accessible and timely schedules of when various election processes are to take place.
2. Since the number of polling places is drastically reduced, there should be a surfeit of video surveillance equipment available for redeployment. Perhaps technological expertise could be sought to devise a system of online webcasting of the surveillance. This would doubtless reduce the use of dependence on medications for treating insomnia, while curtailing the likelihood of unrecorded "insider" interference with legitimate election functioning.
3. Prohibit election official and/or a political party from limiting watchers' oversight function. For example, if a political party declines to appoint watchers, this slot should be opened up for citizen watchers representing the public at large.
4. An election official should not interfere with watchers' legitimate duties without disciplinary consequences.

NOTE: Numbers 3 and 4 were written with an actual occurrence in mind.

Rule 25. Rules Concerning UOCAVA

1. Suggestion for Rule concerning the following part of CRS 1-8.3-113:
"Transmission and receipt of ballot. (1) A covered voter who requested and received ballot materials by electronic transmission may also return the ballot by electronic transmission **in circumstances where another more secure method, such as returning the ballot by mail, is not available or feasible**, as specified in rules promulgated by the secretary of state."

Unfortunately the existing Rule 25.2.2(a) fails to specify the circumstances when a more secure mail ballot is not available or feasible, saying only "...an elector may request to receive and return his or her ballot by electronic transmission." Since electronic return of ballots is, as the legislation states, less secure than mail ballots, failure to make this clear misleads county clerks, and by not warning voters about Internet voting insecurity, sabotages the chances a UOCAVA voter's ballot will be counted as the voter intended.

When this qualification of conditions for returning ballots by email first became part of statute a number of years ago, conscientious computer security scientists were very clear that electronic delivery of voted ballots could not be done securely. Then hacking of the Internet was less well-known. Even so, legislators

wisely restricted email returns to a relatively small part of the UOCAVA population, in contrast to the current UMOVA legislation.

There is less excuse today for relying on Internet voting (including use of email), given 1. the frequent media reports of hacking organizations like Google and the Department of Defense, and 2. the direction of the MOVE Act, which requires improvements in and use of the non-electronic means of remote voted ballot return, i.e. mail ballots; it does not suggest use of the Internet for any phase of the voting process except registration. And recent revelations that the NSA (National Security Agency) has the content of all our emails, should bring the point home that the Internet is intrinsically vulnerable to hacking, and hence a voter does not have a secret or secure ballot.

However, the campaigns for use of voting on the Internet (which includes risky email returns) by the Federal Voting Assistance Program and vendors continue, using avoidance of the truth about Internet flaws to convince legislators and election officials that use of the Internet for voting is a worthy goal, when it is not.

1. Rule 25.2.2(a) should reinforce the part of the law that restricts the use of electronic returns, not just the part that permits it.

2. In the past, it has been required that UOCAVA voters consent to give up their right to a secret ballot when sending voted ballots electronically. Is this even legal under the Colorado constitution?

Instead, UOCAVA voters **should be informed** of the relatively greater insecurity of the Internet when compared with mail ballot --- hence the greater risk that their ballot's integrity will be violated.

3. A Rule should require that UOCAVA voters send their completed ballots by mail to county clerks so as to maximize the chances that their ballots arrive in time to be counted.