

Marilyn Marks



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July 14, 2015

The Honorable Wayne W. Williams
Secretary of State
State of Colorado
Department of State
1700 Broadway
Suite 200
Denver, Colorado 80290

Dear Secretary Williams:

Thank you for the opportunity to comment as a follow up to the rules hearing of July 7, 2015 regarding proposed Election Rules. Please accept these comments as comments in addition to those I offered in oral testimony on the record in the rules hearing July 7, 2015.

Email/Internet voting.

As I covered in the July 7 oral testimony, a thorough review of the committee hearings and subsequent legislation amendments of the 2006 and 2011 UOCAVA legislation make it clear that the legislative intent regarding electronic transmission of voted ballots was to be restricted to truly unusual hardship cases where no postal mail was available on a timely basis to reasonably and timely return a voted ballot. In both 2006 and 2011 either the Secretary of the Secretary's spokesman attended all hearings and assured lawmakers that no expansion of electronic transmission of ballots beyond unusual and extreme hardship cases would be permitted. In fact Secretary Gessler personally testified that voted ballots by email would not be accepted, as only unvoted ballots were to be delivered electronically in the system being contracted. (Everyone Counts system.) Please review all available audio recordings of the legislative deliberations on

this bill. Such an exercise will demonstrate the legislature's clear intent to greatly restrict the use of email voting to only extenuating hardship circumstances.

The email voting expansion that has occurred over the past several years, now being addressed in tardy rule-making, is clearly outside the authority of your office given the clear legislative intent to limit email voting to locations with no mail service. The statute clearly presumes that all postal mail service is more secure than email voting:

(CRS 1-8.3-113 (1)(a) 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;)

Therefore voters should not be asked to determine whether email or postal mail is more or less "secure," as that determination has been made by statute. The voter should only need to determine whether it is reasonable and feasible to mail a ballot for timely delivery for receipt 8 days after election day.

During the hearing, you questioned speakers on the topic of who should determine "feasibility" of mailing a ballot for timely delivery. Given the opportunity to receive a ballot by email up to 53 days before it is due in the clerk's office, there should be very few voters who do not have timely access to ballots for postal mailing. It will generally not be a close question. However, in those unusual hardship situations where mail service is not available, I would suggest, as I did at the hearing, that the military voting assistance officer sign a statement affirming that in his opinion, timely return of a mail ballot was not reasonable or feasible, given the military voters' duty conditions.

For those limited civilian overseas locations where mail is not available, I would suggest that the voters' location be required information, along with a signed statement that timely mail service has not been available since the time that the voter had access to his/her ballot.

By requiring either a voting officer to sign, or in the case of a civilian overseas voter reporting their location, voters will take this special opportunity more seriously, and not vote by email for mere convenience.

As I mentioned in the hearing, inviting email voting for convenience or voter-rationalization of whether email or mail is more secure is sure to invite equal protection claims from civilian voters physically in the United States.

I oppose Rule 16.2.8 and its definition of Internet voting. Please reference the comments of July 10, 2015 submitted by Verified Voting and Common Cause on this definition. I oppose for the same reasons, and refer you to the resource materials referenced in their letter.

The affirmation of the voter affirmation required in 16.2.3 should require that the voter state that no timely mail service was available to reach the clerk by eight days after the election, not merely that the voter knows what the law is---but that they are complying with the law.

Third Party Delivery of Ballots

Rules 7.2.5 and 7.2.6 should retain effective dates of 1/1/15. Retaining the effective date of 1/1/15 will permit any difficulties that may be encountered to be resolved by the 2016 election.

The ballot privacy language in the original rule 7.2.6 is taken from the Federal Write-In Absentee Ballot and is a very legitimate reminder to the voter that it is a criminal offense in Colorado to show one's voted ballot to another person. The language should stay in the rule. This will also discourage heavy-handed tactics from third party ballot collectors.

7.2.6 is a reasonable method of discouraging violation of the 10 ballot collection limit. Critics of this documentation of third party delivery do not acknowledge that documentation of the in-person ballot deliverer has long been required in municipal election absentee ballots (CRS 31-10-1004(2)).

Although Clerks argue that there is no provision for follow up on their part if such a signature is missing, a rule could remedy that by merely sending a notification to the voter that his/her ballot was delivered via third party deliverer without their signature, and request (not require) a reply if they did not permit someone to deliver their ballot. The language is also a helpful reminder to voters that they should not release their voted ballots to someone they do not know. Again, this is primarily for voter awareness and discouraging the more casual ballot collector. It can also provide documentation for law enforcer when violations are suspected.

Other Comments:

Please reference the attached comments submitted on the draft rules by the Colorado Republican Party and incorporate those into these comments for those that have not been remedied in the July 1 version of the proposed rules. Please also incorporate the attached comments of the Centennial State Action Advocates regarding UOCAVA voting and on line ballot marking.

Thank you for this opportunity to comment on proposed rules.



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and Marilyn Marks for Centennial State Action Advocates

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May 23, 2015

The Honorable Wayne W. Williams, Secretary of State
State of Colorado Department of State
1700 Broadway, Suite 200
Denver, Colorado 80290

Dear Secretary Williams:

These comments are in response to both the proposed draft rule 16.2.1(c) on electronic transmission for voted ballot return and the ongoing pilot voting systems work.

Please note the full text of CRS 1-5.5-101 below describing the uniformed services pilot Internet voting system. It is a relevant reference of the legislative intent regarding voters casting votes via the Internet. In short, the statute lays out a list of requirements that are still unachievable with the current design of the Internet. I have noted some of those within the statute by providing **bold font** emphasis.

Given the impossibility of meeting the fundamental criteria laid out by the legislature for casting votes via the Internet, ballots should not be permitted to be electronically returned by voters except in extreme hardship circumstances as specified in the law where mailing the ballot is not available or feasible. (This hardship standard was put into the law in SB06-062 and reinforced in HB11-1219. Secretary Gessler reiterated in his testimony on HB11-1219 that officials would not be accepting return of ballots by electronic transmission.)

The criteria for casting votes via the Internet established in this pilot program are fundamental criteria and apply to electronic transmission of voted ballots over the Internet whether the term "Internet voting" is used or "email voting." In fact, Internet (email) voting is considered by experts to be considerably more at risk for hacking and diversion than the already high-risk Internet (web-based application online) ballot marking and submission.

The efforts to permit any UOCAVA voter to return the voted ballot electronically should be curtailed and the rules drafted to reflect the extremely limited hardship circumstances permitted by statute for email voting.

It simply cannot be true that the legislature created the following requirements for Internet voting systems and yet intended to permit widely spread Internet email voting methods.

1-5.5-101. Pilot program - internet voting system - absent uniformed services elector - secretary of state - fund - rules

(1) The secretary of state, in coordination with the county clerk and recorders, shall develop an internet-based voting pilot program to facilitate voting by absent uniformed services electors serving outside the United States commencing with the general election held in 2012. The secretary of state shall select one or more political subdivisions to participate in the pilot program. The internet-based voting system developed for use by political subdivisions that participate in the pilot program shall:

- (a) Transmit encrypted information over a **secure network**;
- (b) Provide for **secure identification** and authentication of:
 - (I) **Any information transmitted** on the system; and
 - (II) Each designated or coordinated election official of a county or political subdivision and the servers of such officials and all other related electronic equipment being used by the secretary of state and each official in the conduct of elections via the internet;
- (c) Protect the **privacy, anonymity, and integrity** of each elector's ballot;
- (d) Prevent the casting of multiple ballots via the internet in an election by each elector;
- (e) Provide protection against abuse, including tampering, fraudulent use, and illegal manipulation by electors, election officials, or any other individual or group; and
- (f) Provide uninterrupted and **reliable internet availability** for the purpose of casting votes via the internet by the electors.

(2) The secretary of state shall implement the internet-based voting system so that each designated or coordinated election official of a county or other political subdivision participating in the pilot program shall:

- (a) **Assure** that each absent uniformed services elector serving outside the United States who logs in to vote via the internet **is eligible and registered** to vote;
- (b) **Verify that each elector** who logs in to vote via the internet **is the same person who is registered and qualified** to vote; *(impossible)*
- (c) Verify that the votes of the electors transmitted to the election officials via the internet are **private and secure and have not been viewed or altered by sites** that lie between the voting location and the vote-counting destination;
- (d) Verify that all votes cast via the internet by electors were cast by 7 p.m. mountain standard time on the day of the election; and
- (e) **Verify that all votes cast** via the internet by electors were indeed counted and **attributed correctly to the elector** who cast the vote. *(attributed to voter)*

is problematic.)

(3) The secretary of state may by rule promulgated in accordance with article 4 of title 24, C.R.S., establish procedures necessary to implement this article.

(4) There is hereby created in the state treasury the internet-based voting pilot program fund to provide for the direct and indirect costs associated with implementing this article. The fund consists of any moneys appropriated by the general assembly to the fund and any gifts, grants, and donations to the fund from private or public sources for the purposes of this article. All private and public funds received through gifts, grants, and donations shall be transmitted to the state treasurer, who shall credit the same to the fund. Moneys in the fund shall be subject to annual appropriation by the general assembly to the department of state for the purposes specified in this article. Any unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year shall remain in the fund and shall not be transferred to the general fund or any other fund.

(5) Repealed.

HISTORY: Source: L. 2009: Entire article added, [\(HB 09-1205\), ch. 383, p. 2078, § 2](#), effective August 5. L. 2012: IP(1) and (4) amended and (5) repealed, [\(SB 12-062\), ch. 97, p. 326, § 2](#), effective April 12.

The return of voted ballots via email or Internet application violates Colorado's requirement to acquire and use only paper-based voting systems and components. Using the Everyone Counts system to record votes in an on-line application is a violation of the requirement that the votes be recorded "solely on a paper ballot." The use of the Everyone Counts system frustrates the general assembly's clear intent to have voters' choices recorded only paper ballots in any newly purchased system. Please recall the inclusion of rental and leasing of equipment in CRS 1-1-104 (34.2) ["Purchase" means to enter into a contract for the purchase, lease, rental, or other acquisition of voting equipment.] The use of the system that captures voters' ballot choices on line does not comply with the legislative intent regardless of whether this system is technically contracted for by the state or counties under rental or services arrangement.

The use of the online ballot delivery system should be limited to just that, with on-line ballot marking disabled. Additionally, the paper ballot generated by printing the online delivered ballot should be marked and returned by postal mail except in the rare circumstances when postal mail is unavailable.

1-5-623. Special rules applicable to use, modification, or purchase of electronic voting devices or systems and related components prior to 2014 - legislative declaration - rules

(1) (a) The general assembly hereby finds and declares that, over the past decade, voting technology used in the state has undergone dramatic changes, creating confusion and difficulties for election administrators, state government, and the voting public. Efforts to address this confusion have been complicated by the timing of periodic substantial investments in voting technology by county governments necessitated by changes in federal and state law.

(b) Now, therefore, by enacting this section, the general assembly intends that:

(I) Between May 15, 2009, and the 2014 general election, any voting system purchased by a political subdivision **shall be a paper-based voting system as defined in [section 1-1-104 \(23.5\)](#)**;

[(23.5) "Paper-based voting system" means an electromechanical voting system in which the elector's vote is recorded solely on a paper ballot.]

(II) The acquisition of electronic voting systems be suspended in order to assess existing and emerging voting technologies; and

(III) Substantial investment by political subdivisions before the 2014 general election in alternate technologies that will frustrate the intent of the general assembly as specified in paragraph (a) of this subsection (1) is discouraged and disfavored.

(2) Notwithstanding any other provision of this part 6, any existing electronic voting device or any related component of the device that was used by a political subdivision in conducting the 2008 general election may continue to be used by the political subdivision on and after May 15, 2009, as long as the device or component is used in accordance with either the conditions of use under which the device or component was originally certified for the 2008 general election or in accordance with alternate conditions of use established by the secretary of state.

(3) (a) Notwithstanding any other provision of law, on and after May 15, 2009, no political subdivision may purchase a new electronic voting device or system or any related component of such device or system without obtaining the prior approval of the secretary of state for such purchase in accordance with the requirements of this subsection (3).

(b) Subject to the requirements of paragraph (a) of this subsection (3), if a political subdivision desires to purchase a new electronic voting device or system or any related component of such device or system, the political subdivision shall submit a written application to the secretary of state for approval of the purchase. The application shall be made by means of any forms or procedures established by the secretary. Within three business days of receiving the application, the secretary shall grant or deny the application. In reviewing the application, the secretary shall consider, among other relevant factors, the total effect of the purchase at issue in light of other purchases by the political subdivision on voting systems or components of such systems on or after May 15, 2009, and the needs of the political subdivision. In making the determination, **the secretary shall prevent political subdivisions from making substantial investments in alternate technologies that will frustrate the intent of the general assembly** as specified in subsection (1) of this section and shall consider, among other relevant factors:

(I) Whether the purchase is intended to replace damaged or defective equipment or to accommodate an increase in population in the political subdivision;

(II) Whether the purchase requires a new contract or agreement that would be entered into by the political subdivision and one or more vendors; and

(III) A comparison of the purchase under review with the average capital expenditures by the political subdivision on the administration of elections on an annual basis for the four consecutive years prior to the year in which the application is submitted in order to discourage an investment in

technology with a limited useful life in accordance with the intent of the general assembly as specified in subsection (1) of this section.

(4) The secretary of state shall promulgate rules in accordance with article 4 of title 24, C.R.S., as may be necessary to administer and enforce any requirement of this section, including any rules necessary to specify permissible conditions of use governing electronic voting devices or systems or related components of such devices or systems in accordance with the requirements of this part 6.

HISTORY: Source: L. 2009: Entire section added, ([HB 09-1335](#)), [ch. 260](#), [p. 1192](#), [§ 8](#), effective May 15.

The electronic transmission of the voted ballot (except in the limited hardship cases where mail is not available), is prohibited by the requirements of CRS 1-5-802 requiring that the voter have access to a paper record to verify the ballot that was cast. Because of the many Internet security risks of ballot manipulation and email misdirection, the voted electronic ballots attached to the voters' email to the clerk do not comply with this requirement.

1-5-802. Use of voting systems - voter-verified paper record

(1) In addition to the other requirements of this article, the voting system used in each primary, general, coordinated, or congressional district vacancy election held in the state on and **after January 1, 2010, shall have the capability to produce a voter-verifiable paper record of each elector's vote.** Before an elector's vote is cast, the elector shall have the opportunity, in private and without assistance, to inspect and verify that the voter-verified paper record correctly reflects the elector's choices. Any political subdivision that has not complied with the provisions of this section on or before January 1, 2009, shall comply with such provisions by January 1, 2014.

(2) The requirements of subsection (1) of this section shall apply to each primary, general, coordinated, or congressional district vacancy election conducted by a county clerk and recorder on and after January 1, 2008, if the governing body of the county determines that:

(a) The technology necessary to comply with the requirements of subsection (1) of this section is available; and

(b) (I) Sufficient federal or state funds are available to acquire or retrofit voting devices that comply with the requirements of subsection (1) of this section; or

(II) It is otherwise financially feasible for the county to comply with the requirements of subsection (1) of this section.

(3) Upon satisfaction by a county of the requirements of this section, the voter-verified paper record of each eligible elector's vote, whether filled out by hand or produced by a voting machine or ballot marking device, shall be preserved as an election record pursuant to [section 1-7-802](#) and shall constitute an official record of the election.

(4) *No voting device shall be remotely accessed or remotely accessible until after the close of voting* and a results total tape has been printed, as applicable

HISTORY: Source: L. 2005: Entire part added, p. 1403, § 22, effective June 6; entire part added, p. 1438, § 22, effective June 6. L. 2009: (1) amended, ([HB 09-1335](#)), [ch. 260](#), [p. 1194](#), [§ 10](#), effective May 15.

In summary, the current method of electronic transmission return of ballots by UOCAVA voters not in hardship situations (that is, where mail is not available) does not comply with numerous statutes and clear legislative intent. Additionally on-line ballot marking practice conflicts with the statutory requirement that the voter markings be recorded solely on paper. Both practices require immediate review and curtailment.

Pilot Voting System Use

Regarding the use of uncertified voting systems in the pilot voting systems program, we are concerned about the lack of compliance with statute requiring certification prior to use in an election. It is our understanding that some of the voting systems and components planned for pilot program use in November 2015 have not been tested or certified in accordance with Part 6 of Title 1, Article 5 of the Uniform Election Code. Such certification requires meeting the provisions of VVSG2002. Temporary certification may only be conveyed for equipment that has successfully undergone testing for the requirements with supporting documentation provided.

1-5-619. Temporary use of electronic and electromechanical voting systems

(1) **After** an electronic or electromechanical voting system has been tested in accordance with [section 1-5-608.5](#) but has not yet been certified by the secretary of state, a voting system provider or designated election official may apply to the secretary of state for temporary approval of the system.

Please ask the Pilot Election Review Committee to immediately take into account that the full testing under Part 6 must have been successfully completed prior to any temporary certification. The adoption of the committee's methodologies for determination of which systems to recommend for certification must take into account the status of the testing using VVSG2002 standards.

Please forward these comments to the members of the staff working on draft rules as well as the members of the pilot voting systems committee.

Thank you for your consideration.



Marilyn Marks
Centennial State Action Advocates
CentennialStateAction@gmail.com

Centennial State Action Advocates is a citizen-driven organization that advocates for election quality, voter privacy, and transparent government

Subject: Colorado Republican Party Comments on Draft Rules

Date: Friday, May 15, 2015 at 4:21:00 PM Mountain Daylight Time

From: Marilyn Marks

To: Andrea Gyger, SOS.Rulemaking@sos.state.co.us

CC: Steve House, Anne O'Donnell

Andrea,

Please find attached the comments submitted by the Colorado Republican Party for the draft proposed rules.

Thank you for this opportunity to comment early in the rule-making process.

Marilyn Marks

970 404 2225

Working Draft of Proposed Rules

Office of the Colorado Secretary of State Election Rules 8 CCR 1505-1

May 8, 2015

Disclaimer:

The following is a working draft concerning the Election Rules. The Secretary values your input and is seeking feedback about the proposed revisions before a formal notice of rulemaking.

Please send your feedback by May 15, 2015. Please reference the specific page and line number in your comments. We will consider all comments submitted by this date for inclusion in the official rulemaking draft.

Please note the following formatting key:

Font effect	Meaning
Sentence case	Retained/modified current rule language
SMALL CAPS	New language
Strikethrough	Deletions
<i>Italic blue font text</i>	Annotations

1 *Amendments to 8 CCR 1505-1 follow:*

2 *Amendments to Rule 1.1.46(a):*

3 1.1.46 “Watcher” has the same meaning as in section 1-1-104(51), C.R.S.

4 (a) A watcher may be appointed for a recall election in the same manner as in
5 a primary election. A RECALL ISSUE COMMITTEE MAY ALSO APPOINT A
6 WATCHER.

7 *[The remainder of Rule 1.1.46 is retained unaltered]*

8 *Amendments to Rule 2.3 through 2.5:*

9 2.3 When an elector registers to vote, the elector must provide a verifiable driver’s license or
10 state identification card number, or last four digits of his or her social security number. If
11 THE ELECTOR PROVIDES A NUMBER THAT DOES NOT VERIFY OR the elector states that he or
12 she does not have a driver’s license, state identification card number, or social security

does this mean "cannot be verified?"

1 number, the county clerk must register the elector and mark the registration record "ID
2 required".

3 2.3.1 A COUNTY MUST PROCESS THE HELP AMERICA VOTE VERIFICATION FILE ON A
4 MONTHLY BASIS FOR VERIFYING SOCIAL SECURITY NUMBERS AND REMOVE THE "ID
5 REQUIRED" FLAG FOR THOSE NUMBERS THAT ARE VERIFIED.

6 ~~2.3.1~~2.3.2 As used in section 1-1-104(19.5), C.R.S., government document means a
7 document issued by a city, county, state or federal government.

8 *[The remainder of New Rule 2.3.2, formerly Rule 2.3.1, is retained unaltered]*

9 ~~2.3.2~~2.3.3 As used in section 1-1-104(19.5)(a)(VII), C.R.S., current means that the
10 date of the document is within 60 days of the date submitted for identification
11 purposes unless the document states a longer billing cycle.

12 ~~2.3.3~~2.3.4 Documents issued under section 42-2-505, C.R.S., are not acceptable forms
13 of identification for any purpose under the Uniform Election Code of 1992 and
14 these rules.

15 2.4 Treatment of NEW REGISTRATION applications where the elector fails to provide required
16 information

17 *[The remainder of Rule 2.4 is retained unaltered]*

18 2.5 Changes to an elector's EXISTING voter registration record

19 2.5.1 If an elector submits a change to his or her voter registration record and fails to
include the information required by sections 1-2-216 or 1-2-219, C.R.S., the county
clerk ~~must~~ MAY not make the requested change unless the county clerk can
~~confidentially identify the voter~~ ESTABLISH MINIMUM MATCHING CRITERIA. ~~The~~ IF THE
county clerk CANNOT ESTABLISH MINIMUM MATCHING CRITERIA, THE COUNTY
CLERK MAY NOT CHANGE THE ELECTOR'S STATUS AND must notify the voter of the
additional information that is required to process the request.

This seems to deal with
ESTABLISHING CRITERIA,
not verifying the identity or
meeting the criteria. Shouldn't
this paragraph deal with
failure to MEET matching
criteria?

26 *[The remainder of Rule 2.5 is retained unaltered]*

27 *Amendments to Rule 2.7.1:*

28 2.7 Minimum matching criteria

29 2.7.1 Except as provided in section 1-2-302.5, C.R.S., the county clerk must not transfer,
30 consolidate, or cancel a voter registration record unless the APPLICABLE minimum
31 matching criteria as set forth in sections 1-2-603 ~~and~~ OR 1-2-604, C.R.S., are met.
32 If the minimum matching criteria are not met the county clerk must send a letter to
33 the voter requesting confirmation of the missing or non-matching information in
34 order to transfer, consolidate, or cancel the record.

35 *[The remainder of Rule 2.7 is retained unaltered]*

1 *Amendments to Rule 2.10:*

2 2.10 ~~20-day applicants~~ NEW VOTER NOTIFICATION under section 1-2-509(3), C.R.S.

3 2.10.1 When a county clerk deems an applicant "not registered" upon receipt of an
4 undeliverable new voter notification in accordance with section 1-2-509(3), C.R.S.,
5 the county clerk must mail a confirmation card. The confirmation card must meet
6 the requirements of section 1-1-104(2.8), C.R.S.

7 2.10.2 If the applicant returns the signed confirmation card within 90 days the county clerk
8 must register the applicant using the date of the original application.

9 2.10.3 During the 22 days before an election, the county clerk must defer processing
10 undeliverable ~~20-day~~ NEW VOTER notifications. After the election is closed, the
11 clerk must deem an applicant "not registered" under section 1-2-509(3), C.R.S.,
12 only if the applicant did not vote in the election.

13 ~~2.12.1~~ 2.10.4 ~~When~~ IF AFTER THE 20-DAY PERIOD OUTLINED IN SECTION 1-2-509(3),
14 C.R.S, EXPIRES the United States Postal Service returns a new voter notification ~~or~~
15 ~~confirmation card~~ to the county clerk as undeliverable, or provides the clerk with a
16 postcard notice of mail forwarding, the county clerk must mark the voter's record
17 "Inactive – returned mail" and mail a confirmation card. ~~Where a confirmation card~~
18 ~~sent under this Rule is returned as undeliverable, the county is not required to mail~~
19 ~~another card.~~

20 *[Current Rule 2.12.1 is amended and recodified as New Rule 2.10.4]*

21 *Amendments to Rules 2.12 and 2.13:*

22 2.12 List Maintenance under section 8 of the National Voter Registration Act of 1993

23 ~~2.12.1~~ ~~When the United States Postal Service returns a new voter notification or~~
24 ~~confirmation card to the county clerk as undeliverable, or provides the clerk with a~~
25 ~~postcard notice of mail forwarding, the county clerk must mark the voter's record~~
26 ~~"Inactive – returned mail" and mail a confirmation card. Where a confirmation card~~
27 ~~sent under this Rule is returned as undeliverable, the county is not required to mail~~
28 ~~another card.~~

29 *[Current Rule 2.12.1 is amended and recodified as New Rule 2.10.4; subsequent rules are*
30 *renumbered as follows:]*

31 ~~2.12.2~~ 2.12.1 The Secretary of State will provide monthly National Change of Address
32 (NCOA) data under section 1-2-302.5, C.R.S., to the county clerk by the fifth of
33 each month.

34 *[The remainder of New Rule 2.12.1, formerly Rule 2.12.2, is retained unaltered]*

1 ~~2.12.3~~2.12.2 In accordance with section 1-2-605(7), C.R.S., no later than 90 days
2 following a General Election, the county clerk in each county must cancel the
3 registrations of electors:

4 *[The remainder of New Rule 2.12.2, formerly Rule 2.12.3, is retained unaltered]*

5 ~~2.12.4~~2.12.3 The county must process all records designated for cancelation by the
6 Secretary of State within 21 days of receipt.

7 ~~2.12.5~~2.12.4 The county must process and mail all confirmation cards using SCORE so
8 that the elector's voter registration record audit log shows the date on which the
9 county printed or extracted the confirmation card.

10 ~~2.12.6~~2.12.5 To the extent a county has records of confirmation cards it has generated
11 and sent outside of SCORE, the county must retain those records as election records
12 under section 1-7-802, C.R.S.

13 2.13 Voter registration at a voter service and polling center

14 2.13.1 A person registering voters or updating voter registration information in a voter
15 service and polling center must:

16 (a) Be a permanent or temporary county employee, state employee, or
17 temporary staff hired by the county clerk;

18 ~~(b) Successfully pass the criminal background check described in Rule 6.5; and~~

19 ~~(c)-(B)~~ (B) Complete a training course provided by the Secretary of State.

20 *[Current Rule 2.13.2 is retained unaltered]*

21 *Amendments to Rule 6.4 and repeal of Rule 6.5:*

22 6.4 A supervisor judge in a voter service and polling center must:

23 ~~6.4.1 Successfully pass the criminal background check described in Rule 6.5. Any person~~
24 ~~who has been convicted of an election offense or an offense with an element of~~
25 ~~fraud is prohibited from handling voter registration applications or conducting voter~~
26 ~~registration and list maintenance activities.~~

27 ~~6.4.2 Complete COMPLETE a training course provided by OR APPROVED BY the Secretary~~
28 ~~of State.~~

29 ~~6.5 The county clerk must arrange for a criminal background check on a supervisor judge and~~
30 ~~each staff member conducting voter registration activities.~~

31 ~~(a) The criminal background check must be conducted by or through the Colorado~~
32 ~~Bureau of Investigation, the county sheriff's department in accordance with section~~
33 ~~24-72-305.6(3), C.R.S., or similar state or federal agency.~~

1 (b) ~~A person convicted of an election offense or an offense containing an element of~~
2 ~~fraud may not:~~

3 (1) ~~Handle voter registration applications or conduct voter registration and list~~
4 ~~maintenance activities; or~~

5 (2) ~~Have access to a code, combination, password, or encryption key for the~~
6 ~~voting equipment, ballot storage area, counting room, or tabulation~~
7 ~~workstation.~~

8 *Repeal of Rule 7.2.3(c) concerning ballots and ballot packets:*

9 (c) ~~In coordinated elections, the county clerk must mail ballots to all active~~
10 ~~eligible electors of each political subdivision.~~

The prohibition is against RECEIVING more than 10 ballots, not dropping off more than 10 ballots. Mail ballot envelope should be consistent with statute.

11 *Amendments to Rules 7.2.5 through 7.2.7:*

"except that no person other than a duly authorized agent of the county clerk and recorder or designated election official may RECEIVE more than ten mail ballots in any election for mailing or delivery;"

12 7.2.5 ~~Effective January 1, 2015, each~~ EACH mail ballot return envelope and mail ballot instruction ~~must include a statement informing voters that it is a violation of law to~~
13 ~~drop off more than ten~~ ballots in any election.

14 7.2.6 Effective ~~January 1, 2015~~ JANUARY 1, 2016, each mail ballot return envelope must include the following: ~~"For third party delivery: I am voluntarily giving my ballot~~
15 ~~to (name and address) for delivery ON MY BEHALF. I have marked and sealed my ballot in private and have not allowed any person to observe the marking of the ballot, except for those authorized to assist voters under state or federal law."~~

Restore this language that mirrors the federal absentee ballot language.

16 7.2.7 A COUNTY CLERK WHO USES A THIRD PARTY VENDOR TO MAIL BALLOTS IS CONSIDERED TO BE IN POSSESSION OF THE BALLOTS FOR PURPOSES OF SECTION 1-5-403(1), C.R.S., WHEN THE VENDOR HAS PREPARED ~~THE~~ BALLOTS FOR MAILING.

What is the definition of having "prepared the ballots for mailing?"

23 *Amendments to Rule 7.5.1:*

24 7.5 Receipt and processing of ballots

25 7.5.1 ~~ALL~~ THE COUNTY CLERK MUST ADEQUATELY LIGHT ALL drop-off locations ~~must be~~
26 ~~monitored by~~ AND USE EITHER an election official or A video security surveillance
27 recording system, as defined in Rule ~~20~~ 1.1.42 TO MONITOR EACH LOCATION.

28 *[The remainder of Rule 7.5.1 and Rules 7.5.2 through 7.5.4 are retained unaltered]*

29 *Amendments to Rule 7.5.5:*

30 7.5.5 Election officials must record the number of ballot packets returned as
31 undeliverable AND RECEIVE THE BALLOT PACKETS IN SCORE upon receipt.

32 *Amendments to Rule 7.7:*

record?

33 7.7 Missing signature.

1 7.7.1—If a mail or provisional ballot return envelope lacks a signature, ~~the election official~~
2 ~~must contact the elector in writing no later than two calendar days after election~~
3 ~~day.~~ THE ELECTION OFFICIAL MUST FOLLOW THE PROCEDURES FOR DISCREPANT
4 SIGNATURES OUTLINED IN SECTION 1-7.5-107.3(2)(A), C.R.S. The designated
5 election official must use the letter and form prescribed by the Secretary of State
6 and keep a copy as part of the official election record. Nothing in this Rule prohibits
7 the designated election official from calling the elector, but a phone call may not
8 substitute for written contact. If the designated election official calls any elector he
9 or she must call all electors whose affidavits are unsigned.

10 [Sections 1-7.5-107.3 and 1-8.5-105(3)(a), C.R.S.]

11 7.7.2—~~The letter must inform the elector that the elector must sign the affidavit and return~~
12 ~~the form in person or by mail, fax, or email, and that the county must receive the~~
13 ~~form no later than eight calendar days after the election.~~

14 7.7.3—~~The election official must use the letter and the signature verification form~~
15 ~~approved by the Secretary of State. The letter and missing signature affidavit form~~
16 ~~does not violate section 1-13-801, C.R.S.~~

17 *Amendments to Rule 7.9.3:*

18 7.9.3 ~~Voter check in at the voter service and polling center~~

19 (a) —~~Each voter service and polling center must include an adequately staffed~~
20 ~~designated voter check in table or area.~~

21 (b) —~~The check in judge must verify each elector's registration information,~~
22 ~~including address.~~

23 (c) —~~If an elector has moved or is not registered, the check in judge must direct~~
24 ~~the elector to the registration area. If the elector is registered and has no~~
25 ~~updates, the check in judge must direct the elector to the voting table.~~

26 COUNTY CLERKS MUST CONFIGURE VOTER SERVICE AND POLLING CENTERS,
27 AND PROVIDE SUFFICIENT ELECTION JUDGES, SCORE WORK STATIONS,
28 VOTING EQUIPMENT, BALLOTS, AND OTHER SUPPLIES, IN ORDER TO ASSIST
29 REGISTRANTS AND ELECTORS EFFICIENTLY.

Space accommodations should be also planned for watchers.

30 *Amendments to Rule 7.11:*

31 7.11 Voter service and polling center connectivity

32 7.11.1 The county must have real-time access to SCORE AND WEBScore at every voter
33 service and polling center designated by the county clerk.

34 7.11.2 THE COUNTY CLERK MUST INSTRUCT ELECTION JUDGES AND, IF APPROPRIATE,
35 ELECTION STAFF, TO:



2.13.1 (a) above seems to prohibit
election judges from registering voters.

1 (A) USE WEBScore TO REGISTER VOTERS; UPDATE EXISTING VOTER
2 REGISTRATIONS; ISSUE AND REPLACE MAIL BALLOTS; AND ISSUE, SPOIL, AND
3 REPLACE IN-PERSON BALLOTS.

4 (B) OFFER AN IN-PERSON VOTER THE OPPORTUNITY TO OBTAIN A REPLACEMENT
5 MAIL BALLOT RATHER THAN A PROVISIONAL BALLOT IN THE EVENT THE
6 VOTER SERVICE AND POLLING CENTER LOSES CONNECTIVITY TO WEBScore
7 BUT RETAINS CONNECTIVITY TO SCORE.

8 ~~7.11.2~~ 7.11.3 At no time may an election official open SIMULTANEOUS SESSIONS OF both
9 the SCORE voter registration screen and the voting module WEBScore on a
10 single workstation.

11 ~~7.11.3~~ 7.11.4 Every voter service and polling center designated by the county clerk must
12 meet the minimum security procedures for transmitting voter registration data as
13 outlined in section 1-5-102.9, C.R.S., and Rule 2.16.

14 *Amendments to Rule 11.1.3 concerning voting system access:*

15 11.1.3 In accordance with section 24-72-305.6, C.R.S., all permanent and temporary
16 county staff and all vendor staff who have access to the voting system or any voting
17 or counting equipment must pass ~~the~~ A criminal background check ~~described in~~
18 ~~Rule 6.5~~. A PERSON CONVICTED OF AN ELECTION OFFENSE OR AN OFFENSE
19 CONTAINING AN ELEMENT OF FRAUD MAY NOT HAVE ACCESS TO A CODE,
20 COMBINATION, PASSWORD, OR ENCRYPTION KEY FOR THE VOTING EQUIPMENT,
21 BALLOT STORAGE AREA, COUNTING ROOM, OR TABULATION WORKSTATION.

22 *Current Rule 16.1.5, concerning voting by military and overseas electors, is repealed and*
23 *subsequent rules are renumbered as follows:*

24 ~~16.1.5~~ In accordance with sections ~~1-8.3-111~~ and ~~1-8.3-113~~, C.R.S., all ballots cast must
25 be voted and mailed or electronically transmitted no later than 7:00 p.m. MT on
26 election day, and received by the county clerk or the Secretary of State no later than
27 the close of business on the eighth day after election day.

28 ~~16.1.6~~ 16.1.5 Ballots received by the Secretary of State

29 *[The remainder of New Rule 16.1.5, formerly Rule 16.1.6, is retained unaltered]*

30 ~~16.1.7~~ 16.1.6 The county clerk must send a minimum of one correspondence no later than
31 60 days before the Primary Election to each elector whose record is marked
32 "Inactive." The correspondence may be sent by email or mail and, at a minimum,
33 must notify the electors of:

34 *[The remainder of New Rule 16.1.6, formerly Rule 16.1.7, is retained unaltered]*

35 ~~16.1.8~~ 16.1.7 No later than 45 days before an election, the county clerk must report to the
36 Secretary of State the number ballots transmitted to military and overseas electors
37 by the 45-day deadline.

1 ~~16.1.9~~ 16.1.8 Failure to meet the 45-day ballot transmission deadline in section 1-8.3-110,
2 C.R.S.

3 *[The remainder of New Rule 16.1.8, formerly Rule 16.1.9, is retained unaltered]*

4 *Amendments to Rule 16.2.1(c), concerning electronic transmission:*

see separate memo
attached

5 (c) In accordance with section 1-8.3-113(1), C.R.S., an elector who chooses to
receive his or her unvoted ballot by ~~online ballot delivery~~ ELECTRONIC
TRANSMISSION may return his or her ballot by fax or email ONLY IF THE
ELECTOR DETERMINES THAT A MORE SECURE METHOD, SUCH AS RETURNING
THE BALLOT BY MAIL, IS NOT AVAILABLE OR FEASIBLE. “NOT FEASIBLE”
MEANS CIRCUMSTANCES WHERE THE ELECTOR BELIEVES THE TIMELY RETURN
OF HIS OR HE BALLOT BY MAIL IS NOT CERTAIN.

12 *Amendments to Rule 16.2.3:*

See separate
memo attached.

13 16.2.3 The self-affirmation must include the standard oath required by the Uniformed and
Overseas Citizen Voting Act (42 U.S.C sec. 1973ff(b)(7) and 1(a)(5)), the elector’s
name, date of birth, signature, and the following statement: I also understand that
by returning my voted ballot by electronic transmission, I am voluntarily waiving
my right to a secret ballot AND THAT COLORADO LAW REQUIRES THAT I RETURN THIS
BALLOT BY A MORE SECURE METHOD, SUCH AS MAIL, IF AVAILABLE AND FEASIBLE.
(~~Section~~ SECTIONS 1-8.3-113 AND 1-8.3-114, C.R.S.)

20 *Amendments to Rule 20.4:*

21 20.4 Individuals with access to keys, door codes, and vault combinations

22 20.4.1 For employees with access to areas addressed in Rule 20.4.3, the county must state
23 in the security plan each employee’s title and the date of the criminal background
24 check WAS performed ~~under Rule 6.5~~. [Section 24-72-305.6, C.R.S.]

25 *[Current Rule 2.4.2 is retained unaltered]*

26 20.4.3 Employee access. The county may grant employees access to the codes,
27 combinations, passwords, and encryption keys described in this Rule in accordance
28 with the following limitations:

29 (a) Access to the code, combination, password, or encryption key for the voting
30 equipment, ballot storage areas, counting room, or tabulation workstations
31 is restricted to employees who have successfully passed ~~the~~ A criminal
32 background check ~~described in Rule 6.5~~. Any person who has been
33 convicted of an election offense or an offense with an element of fraud is
34 prohibited from having access to a code, combination, password, or
35 encryption key for the voting equipment, ballot storage areas, counting
36 room, or tabulation workstations.

37 *[Current Rules 20.4.3(b), 20.4.3(c), and Rule 20.4.5 are retained unaltered]*

1 *Amendments to Rule 20.5.2(f), concerning internal controls for the Voting System:*

Define under what conditions the SOS would need to approve. Consider leaving prohibition in place.

(f) If any component of the voting system is equipped with Wi-Fi capability or a wireless device, the county must disable the wireless capability or device UNLESS OTHERWISE APPROVED BY THE SECRETARY OF STATE.

5 *Amendments to Rule 20.9.1(c), concerning transportation of equipment, memory cards, ballot*
6 *boxes, and ballots:*

A definition of the criminal background check should remain for reference.

7 (c) Transportation by contract. If a county contracts for the delivery of
equipment to remote voting locations, each individual delivering equipment
must successfully pass ~~the~~ A criminal background check ~~described in Rule~~
6.5. Any person who has been convicted of an election offense or an offense
with an element of fraud is prohibited from handling or delivering voting
equipment. Two election officials must verify, sign, and date the chain-of-
custody log upon release of the equipment to the individual(s) delivering
the equipment.

14

15 *New Rule 23:*

16 **RULE 23. COMMISSIONS**

17 23.1 BIPARTISAN ELECTION ADVISORY COMMISSION

18 23.1.1 THE SECRETARY OF STATE RECOGNIZES THAT OPEN DISCUSSION ABOUT THE
19 ADMINISTRATION AND CONDUCT OF ELECTIONS IN COLORADO IS NECESSARY TO
20 ENSURE THAT EVERY ELIGIBLE CITIZEN HAS THE OPPORTUNITY TO PARTICIPATE IN
21 FAIR, ACCESSIBLE, AND IMPARTIAL ELECTIONS, AND HAS THE ASSURANCE THAT
22 ELECTIONS ARE CONDUCTED WITH INTEGRITY AND HIS OR HER VOTE WILL COUNT. IN
23 LIGHT OF THE COLORADO GENERAL ASSEMBLY SUNSETTING THE COLORADO VOTER
24 ACCESS AND MODERNIZED ELECTION COMMISSION, THE SECRETARY OF STATE WILL
25 ESTABLISH A BIPARTISAN ELECTION ADVISORY COMMISSION (THE COMMISSION) TO
26 IDENTIFY PROCESSES FOR IMPROVEMENT AND WORK TO OBTAIN BIPARTISAN
27 SUPPORT IN THE ADMINISTRATION OF ELECTIONS. THE COMMISSION WILL MAKE
28 RECOMMENDATIONS TO THE SECRETARY OF STATE REGARDING THE DEVELOPMENT
29 AND ADOPTION OF BEST PRACTICES, ADMINISTRATIVE RULES AND LEGISLATIVE
30 CHANGES.

31 23.1.2 MEMBERSHIP OF THE COMMISSION

32 (A) THE SECRETARY OF STATE WILL APPOINT AT LEAST 13 MEMBERS TO THE
33 COMMISSION. THE COMMISSION MAY INCLUDE:

34 (1) A REPRESENTATIVE OF AN ORGANIZATION THAT ADVOCATES ON
35 BEHALF OF PEOPLE WITH DISABILITIES;

36 (2) A MEMBER OF THE EXECUTIVE BRANCH AND AT LEAST ONE
37 LEGISLATOR FROM EACH PARTY;

Suggest that Legislative caucuses of each party appoint.

1 (3) TWO COUNTY CLERK AND RECORDERS REPRESENTING THE
2 COLORADO COUNTY CLERKS ASSOCIATION PRESIDENTIAL LINE OF
3 LEADERSHIP;

4 (4) IF BOTH CLERKS IN (3) ARE FROM THE SAME PARTY OR IF NOT ALL
5 COUNTIES ARE MEMBERS OF THE CCCA, ADDITIONAL CLERKS MAY
6 BE APPOINTED;

7 (5) TWO REPRESENTATIVES OF ORGANIZATIONS THAT ADVOCATE ON
8 BEHALF OF LOCAL GOVERNMENTS, INCLUDING COUNTIES,
9 MUNICIPALITIES, AND SPECIAL DISTRICTS;

Consider allowing Party to choose their
representative without restriction.

(6) CHAIR, PARTY OFFICER, OR LEGAL COUNSEL FOR EACH MAJOR
POLITICAL PARTY; AND

12 (7) TWO MEMBERS WITH EXPERTISE ON VOTING RIGHTS AND/OR
13 ELECTION INTEGRITY.

14 (B) THE SECRETARY OF STATE OR HIS OR HER DESIGNEE, WILL BE A MEMBER AND
15 SERVE AS CHAIR THE COMMISSION.

16 (C) THE SECRETARY OF STATE'S OFFICE WILL PROVIDE STAFF SUPPORT TO THE
17 COMMISSION AS MAY BE DIRECTED BY THE SECRETARY OF STATE.

18 23.1.3 MEETINGS

19 (A) THE COMMISSION WILL MEET NO FEWER THAN THREE TIMES ANNUALLY.

20 (B) THE MEETINGS WILL BE HELD AT THE OFFICE OF THE SECRETARY OF STATE
21 OR REGIONAL LOCATIONS THROUGHOUT THE STATE AS THE COMMISSION
22 DEEMS APPROPRIATE.

23 (C) MEETINGS WILL COMPLY WITH COLORADO OPEN MEETINGS LAW AND WILL
24 PERMIT AN OPPORTUNITY FOR PUBLIC COMMENT.

25 (D) NOTICES, RECORDS OF MEETINGS, WRITTEN COMMENTS, AND DOCUMENTS
26 SUBMITTED TO THE COMMISSION WILL BE PUBLISHED ON THE OFFICIAL
27 WEBSITE OF THE SECRETARY OF STATE. HOWEVER, DOCUMENTS THAT ARE
28 OTHERWISE PUBLICLY AVAILABLE NEED NOT BE POSTED. ANY SUBMISSION
29 CONTAINING INFLAMMATORY OR OTHERWISE INAPPROPRIATE CONTENT WILL
30 NOT BE POSTED, INCLUDING ANY MATERIAL THAT IS DEFAMATORY,
31 IRRELEVANT, DUPLICATIVE, OR OBSCENE.

Colorado Republican Party
**Comments on Draft Rule 16.2 regarding electronic transmission of
voted ballots**

Reference--Draft rules as proposed:

Amendments to Rule 16.2.1(c), concerning electronic transmission: 4

(c) In accordance with section 1-8.3-113(1), C.R.S., an elector who chooses to 5
receive his or her unvoted ballot by ~~online ballot delivery~~ ELECTRONIC 6
TRANSMISSION may return his or her ballot by fax or email ONLY IF THE 7
ELECTOR DETERMINES THAT A MORE SECURE METHOD, SUCH AS RETURNING 8
THE BALLOT BY MAIL, IS NOT AVAILABLE OR FEASIBLE. "NOT FEASIBLE" 9 MEANS
CIRCUMSTANCES WHERE THE ELECTOR BELIEVES THE TIMELY RETURN 10 OF HIS
OR HE BALLOT BY MAIL IS NOT CERTAIN. 11

Amendments to Rule 16.2.3: 12

16.2.3 The self-affirmation must include the standard oath required by the
Uniformed and 13 Overseas Citizen Voting Act (42 U.S.C sec. 1973ff(b)(7) and
1(a)(5)), the elector's 14 name, date of birth, signature, and the following
statement: I also understand that 15 by returning my voted ballot by
electronic transmission, I am voluntarily waiving 16 my right to a secret ballot
AND THAT COLORADO LAW REQUIRES THAT I RETURN THIS 17 BALLOT BY A MORE
SECURE METHOD, SUCH AS MAIL, IF AVAILABLE AND FEASIBLE. 18 (Section
SECTIONS 1-8.3-113 AND 1-8.3-114, C.R.S.)

Applicable statute:

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:

(a) 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;

Comment --Rule 16.2.1 (c) electronic transmission of voted ballots

Legislative Intent

We have reviewed the records of the House State, Veterans, and Military Affairs Committee hearing on SBO6-062, and we have spoken with some members of that committee about the legislative intent expressed during the hearing. The purpose and scope of SBO6-062 were discussed by Bill Compton speaking for the Secretary of State's Office. He testified that the email option for casting a ballot would apply only to a "small universe of people" who have no access to mail or (telephonic) fax. The Office testified that "we are not ready for Internet voting" because of "concerns about ballot security on [in] email." We agree and note that since 2006 no evidence has been presented that the Internet has become secure enough to reasonably consider risking voters' ballot choices to the Internet except in rare cases where there is genuinely no other choice for voting.

We encourage the Department to review the testimony and supporting files for SBO6-062 and draft an election rule that complies with the stated intent to allow use of email only in rare circumstances when no postal mail or telephonic fax is available to the overseas voter or out-of-state military voter.

Email transmission of voted ballots

Email transmission of voted ballots should be needed in only rare circumstances, and even less than in 2006 when initially permitted. In 2010 Congress mandated that ballots be sent to military and overseas voters 45 days before Election Day with an additional 8 days after Election Day for receipt. In addition, email issuance of blank ballots is permitted beginning 45 days before the election, if requested by the voter. This schedule gives covered voters 53 days to print, mark, and return their ballot by postal mail. Military voters may return ballots by free expedited postal mail, which on average arrives at the clerk's office in 5.2 days.

Ballots returned via the military mail system should be considered "secure," and not subject to voters' personal determination of relative security compared to email. Election security decisions that can impact the entire election cannot be relegated to voters' personal preferences between email and military mail.

Please draft the proposed rule to reflect the recognition that covered voters may obtain ballots by email beginning 45 days before the election and then print and mail them for receipt by 8 days after Election Day. We suggest that the rule state that "not feasible" for purposes of mailing a ballot be determined by whether

expedited or postal mail would reasonably be expected to be received in the period beginning five days after the earlier of the emailed blank ballot receipt or the mailed paper blank ballot receipt and ending with the eighth day after Election Day. We would expect that circumstances that require more than 48 days for postal mail would reasonably qualify for email or fax return of the voted ballot.

An additional safeguard could be added to require that any email voter also return his mail ballot, even if it is not timely received, and the email ballot is counted. The paper ballot would be available for auditing, recounts, or challenges if there are questions concerning the fidelity of the email ballot.

Declaration rule (16.2.3)

We believe that the statute 1-8.3-104(5) requires that the Secretary create the voter declaration to include all eligibility requirements and status as a covered voter. Therefore, the affidavit should include the declaration that at the time of voting, the voter is either overseas (i.e., an out-of-country civilian) or out of the state in the case of military voters.

On-Line Ballot Marking

It is our understanding that the method of electronic transmission of blank ballots via email is a method that utilizes a third-party vendor's server where the voter, after entering personally identifying information, is encouraged to mark his ballot form on-line using the vendor's application. We believe that such an application unnecessarily compromises the voter's privacy, violates his right to a secret ballot, and increases the risk of voter intimidation.

We suggest that the on-line ballot delivery system not permit on-line ballot marking but merely the printing of the blank ballot for pen-on-paper marking and subsequent postal mailing of the ballot.