

**August 7, 2018**

Secretary of State Wayne Williams  
Department of State  
1700 Broadway  
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Denver, CO 80290

## **FairVote’s Comments on Colorado’s Proposed Ranked Choice Voting Regulations**

FairVote appreciates this opportunity to offer feedback on the Colorado Secretary of State’s proposed rulemaking. As a national leader in issues related to ranked choice voting, FairVote supports the Secretary of State’s efforts to create a regulatory scheme that would assist local governments that wish to implement this important reform. To that end, FairVote offers the following comments on the proposed amendments to Colorado’s Rules Concerning Elections (8 CCR 1505-1).

**R.26.1:** To prevent confusion about terms that may be new to many Coloradans, FairVote suggests adding definitions of “ranked voting,” “instant-runoff,” and “single-transferable-voting” at the outset to clarify that “instant-runoff” and “single-transferable-voting” are forms of ranked voting, and not distinct voting methods from it. For example (using updated section numbers to reflect the added definitions):

26.1.3 “INSTANT-RUNOFF” MEANS A FORM OF RANKED VOTING WHERE ONLY ONE CANDIDATE IS ELECTED TO AN OFFICE.

...

26.6.6 “RANKED VOTING” MEANS ANY METHOD OF VOTING WHERE VOTERS RANK CANDIDATES IN ORDER OF PREFERENCE. INSTANT-RUNOFF-ELECTIONS AND SINGLE-TRANSFERABLE-VOTING ARE BOTH FORMS OF RANKED VOTING.

...

26.1.8 “SINGLE-TRANSFERABLE-VOTE” MEANS A FORM OF RANKED VOTING WHERE MORE THAN ONE CANDIDATE IS ELECTED TO AN OFFICE.

**R. 26.6.3:** This section is written as if there will only be two rounds of counting and it is the second round, which creates ambiguity when it needs to be iterated more than once. It can instead be stated generically, so that it can be followed irrespective of how many rounds must occur. Consider changing the beginning of this section to read as follows: “During an additional round of tabulation, each candidate has a number of votes equal to the number of ballots on

which they are the highest ranked continuing candidate. The continuing candidate with the smallest number of votes is eliminated and the eliminated candidate's votes are transferred to each ballot's next-ranked continuing candidate." Then, in subsection 26.6.2 (B), change the words "next round" to "additional round."

**R. 26.6.4:** The wording of this rule, if taken literally, would allow for simultaneous elimination of candidates in second and third place if they collectively had fewer votes than the candidate in first place, even if there were additional candidates in fourth place and later. Consider changing the section to read as follows: "In any round, two or more candidates may be eliminated simultaneously if those candidates' combined votes in that round plus the combined votes of all candidates with fewer votes, if any, are less than the number of votes for the candidate with the next-highest number of votes."

**R. 26.6.7:** Nine days is a very long time to wait to start tabulation of the second and later rounds and this delay in identifying and announcing winners could undermine public trust in the process. No jurisdiction using ranked voting delays results, and most release preliminary tabulations as ballots come in on Election Night. FairVote recommends removing or changing this provision to encourage election administrators to release election results sooner.

**R. 26.7.2 (B):** As with 26.6.2 (B) above, this rule should not assume only a second round of tabulation. Consider changing "the designated election official must continue to the next round," to instead state that "the designated election must conduct additional rounds of tabulation."

**R. 26.7.3:** As with 26.6.3 above, this section reads as if there will be only two rounds, when it should be written generically. In a single-transferable-vote election, there are two kinds of additional rounds - those in which surplus votes are transferred and those in which a candidate is eliminated. Only one of those things should occur in each round. Accordingly, consider changing this section to break out these two kinds of rounds and specify when to conduct each kind, as in the following example:

"26.7.3 DURING AN ADDITIONAL ROUND OF TABULATION, EACH CONTINUING CANDIDATE HAS A NUMBER OF VOTES EQUAL TO THE SUM OF THE FIRST-CHOICE RANKS FOR THAT CANDIDATE PLUS ALL VOTES TRANSFERRED TO IT IN ANY PRIOR ROUND. IF THERE IS ANY WINNING CANDIDATE THAT HAS NOT YET TRANSFERRED SURPLUS VOTES, CONDUCT A SURPLUS TRANSFER ROUND; IF THERE ARE NOT ANY WINNING CANDIDATES THAT HAVE NOT YET TRANSFERRED SURPLUS VOTES, CONDUCT AN ELIMINATION ROUND.

(A) IN A SURPLUS TRANSFER ROUND, THE DESIGNATED ELECTION OFFICIAL MUST CALCULATE EACH WINNING CANDIDATE'S SURPLUS VOTES, AS DESCRIBED IN RULE 26.7.4, AND TRANSFER THOSE VOTES PROPORTIONATELY TO ANY CONTINUING CANDIDATES. AFTER THESE VOTES HAVE BEEN TRANSFERRED, IF THE NUMBER OF WINNING CANDIDATES IS EQUAL TO THE NUMBER OF SEATS TO BE FILLED, NO FURTHER ROUNDS WILL TAKE PLACE. OTHERWISE, THE DESIGNATED ELECTION OFFICIAL MUST CONDUCT ADDITIONAL ROUNDS OF TABULATION.

(B) IN AN ELIMINATION ROUND, THE CONTINUING CANDIDATE WITH THE SMALLEST NUMBER OF VOTES IS ELIMINATED AND THE ELIMINATED CANDIDATE'S VOTES ARE TRANSFERRED TO EACH BALLOT'S NEXT-RANKED CONTINUING CANDIDATE. AFTER THESE VOTES HAVE BEEN TRANSFERRED, IF THE NUMBER OF WINNING CANDIDATES IS EQUAL TO THE NUMBER OF SEATS TO BE FILLED, NO FURTHER ROUNDS WILL TAKE PLACE. OTHERWISE, THE DESIGNATED ELECTION OFFICIAL MUST CONDUCT ADDITIONAL ROUNDS OF TABULATION.”

If there is any ambiguity in the process described above, please refer to FairVote's detailed example of a single-transferable-vote election, available at [http://www.fairvote.org/multi\\_winner\\_rcv\\_example](http://www.fairvote.org/multi_winner_rcv_example).

**R. 26.7.6:** We reiterate our concern about the nine-day delay expressed in our comment on R. 26.6.7 and note that while the delay in that provision was discretionary (“need not”), this delay appears to be mandatory (“may not”). Delays run a very serious risk of undermining public confidence in the conduct of elections, and so election officials should be encouraged to generate results as quickly as is feasible.

Ranked choice voting is a powerful tool to strengthen voters' voices and provide more options. We applaud the Secretary of State's proactive approach to this issue and believe that these regulations, combined with the suggestions contained our comments, represent a significant and positive development for democracy in Colorado.

Sincerely,

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