electionquality.com 8/10/2023

Harvie Branscomb's comments respectfully submitted to the Colorado Secretary of State for consideration in the promulgation of Election Rules for which the hearing took place August 3, 2023:

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[Each numbered rule section subject to my comment starts with a snippet from the proposed rule for context followed by a comment in *italic Times New Roman font* and sometimes followed by a yellow highlighted text that is a suggested alternative for the rule. **Bold font** is to highlight text that is discussed in the comment. At the end of the document I have comments on the process and on some other comments to this rulemaking that have been posted.]

Rulemaking page is located here: Elections Rulemaking Hearing 8/03/2023 (coloradosos.gov)

2.5.5 A COVERED VOTER, AS DEFINED IN SECTION 1-8.3-102(2), C.R.S., WHO PROVIDES AN ADDRESS CHANGE TO THE DEPARTMENT OF REVENUE WHICH INDICATES THE VOTER IS NO LONGER OVERSEAS OR SERVING IN THE MILITARY OUT OF STATE MAY NOT HAVE THEIR STATUS AS A COVERED VOTER REMOVED DUE TO THE CHANGE. THE CLERK MUST INSTEAD SEND A NOTIFICATION VIA MAIL AND EMAIL, IF AVAILABLE, TO THE ELECTOR NOTIFYING THEM THAT A CHANGE OF ADDRESS WAS RECEIVED AND ASKING THE VOTER TO CONFIRM THAT THEY ARE NO LONGER A COVERED VOTER. IF NO RESPONSE IS RECEIVED, THE CLERK MAY NOT MAKE REMOVE THE ELECTOR'S COVERED VOTER STATUS.

The UOCAVA special opportunities to vote are associated with inevitable reduced integrity and therefore should be limited to those eligible. It makes no sense to make it so easy for voters to remain in this special group as a result of their intention (if and when contrary to the intent of the law) or as a result of negligence or carelessness. 2.5.5 should not be adopted, instead county clerk and recorders should be given the requirement to determine if the voter should be removed from UOCAVA status through a standard procedure described in rule. For example the following substitute rule:

Suggested replacement:

> 2.5.5 A COVERED VOTER, AS DEFINED IN SECTION 1-8.3-102(2), C.R.S., WHO PROVIDES AN ADDRESS CHANGE TO THE DEPARTMENT OF REVENUE WHICH INDICATES THE VOTER IS NO LONGER OVERSEAS OR SERVING IN THE MILITARY OUT OF STATE MAY HAVE THEIR STATUS AS A COVERED VOTER REMOVED DUE TO THE CHANGE. THE CLERK MUST REMOVE THE UOCAVA STATUS SEND A NOTIFICATION VIA MAIL AND EMAIL, IF AVAILABLE, TO THE ELECTOR NOTIFYING THEM THAT A CHANGE OF STATUS WAS MADE AND ASKING THE VOTER TO RESPOND IF THEY DISAGREE.

4.5.1 Each political subdivision must prepare the list of candidates and the ballot title and text for ballot issues and ballot questions, as required by law. [Not shown: no changes to section (a).] (b) Political subdivisions may only require the coordinated election official to print the entire text of a ballot issue or ballot question on the ballot if the political subdivision pays for any additional cost associated with printing ~~and if sufficient space is on the voting equipment to print the entire text given the other issues, questions, and candidates on the ballot. The coordinated election official must tell the political~~

~~subdivision how much space is available for text for each position on the ballot. If the required ballot title and text is too long for the voting equipment, the coordinated election official may choose to conduct the election with a different form of ballot.~~

This deletion is very supportable. The CEO should not be required to include ballot text of any length without changing the form of ballot such as by addition of an extra sheet that the political subdivision pays for. The pressure to force all contests into a single sheet is harmful to ballot readability when font sizes are reduced, text is packed into small space and harmful to ballot anonymity when rare styles result from coordination onto a joint ballot style instead of using two sheets and two styles.

~~6.2.2 PRIOR TO ASSIGNING AN ELECTION JUDGE TO PERFORM SIGNATURE VERIFICATION, THE COUNTY CLERK MUST REVIEW ANY DATA AVAILABLE FROM THAT JUDGE'S SIGNATURE VERIFICATION WORK IN A PREVIOUS ELECTION. IF THE JUDGE HAD AN UNEXPLAINED, IRREGULAR ACCEPTANCE OR REJECTION RATE THE CLERK MAY NOT ASSIGN THAT JUDGE TO CONDUCT SIGNATURE VERIFICATION.~~

There is a concern with this rule. We do not have consistent standards for "unexplained, irregular acceptance rate or rejection rate". In fact, it may not be possible to establish statewide quantitative thresholds for acceptable rates because voters may not sign ballots with similar clarity across different regions of Colorado using different affidavit styles. This rule does perhaps recognize and support the data being collected through a pilot project implemented by clerks to audit the signature verification, but directs attention only to the quality of judge decisions. Those decisions are not the only risk for error in eligibility check. Other sources of error are in the software implementation that manages human signature verification and communicates with SCORE designed separately by Runbeck and BlueCrest. Rules will need to be promulgated in future to deal with errors or omissions as a result of bugs or interference in the vendor code that runs in these large and uncertified systems once we have in place an adequate means to detect such errors.

~~7.2.167.~~2.14 The county clerk must issue a replacement mail ballot packet THAT CONTAINS BALLOTS OF ALL PARTICIPATING MAJOR POLITICAL PARTIES to an unaffiliated elector WHO REQUIRES OR IS ELIGIBLE FOR A REPLACEMENT BALLOT. IF AN UNAFFILIATED VOTER REQUESTS A BALLOT FOR A MINOR POLITICAL PARTY THAT IS PARTICIPATING IN THE PRIMARY ELECTION AND ALLOWS UNAFFILIATED VOTERS TO VOTE, THE UNAFFILIATED ELECTOR MUST BE ISSUED A REPLACEMENT BALLOT WITH ONLY THAT PARTY'S BALLOT INCLUDED~~. in a primary election as follows:~~

This rule seems odd and perhaps it is the statute that is inconsistent. Apparently this rule will obstruct access to ballots for minor parties with primary elections (a rare occurrence) by U voters. It seems more reasonable and consistent with treatment of major parties that such unaffiliated voters would receive a minor party ballot as well as the major party ballots to choose from.

7.4.1 The county clerk must adequately light all drop box locations and use a DROP BOX video ~~security surveillance~~ recording system ~~as defined in Rule 1.1.61~~ to monitor each location.

(e) ~~Video security surveillance~~ DROP BOX VIDEO RECORDINGS must be retained by the county clerk through ~~60~~120 days following the deadline to certify the election, or until the conclusion of any election

contest, whichever is later; except that if the county clerk knows or reasonably should know that there is a potential violation of law where the surveillance could be used as evidence, it must be retained through the applicable statute of limitations or the conclusion of any judicial proceeding related to the election, whichever is later.

120 is better than 60 but these drop box recordings are not effective and are not worth it. What would be more valuable would be cameras or detectors in the boxes that count and check envelope IDs and prevent improper casting of wrong or no envelope ballots or excessive bulk drops. I hope CO remembers that two county clerks have experimented with smart drop boxes, as has at least one CA county (Orange).

7.4.11->7.4.10 (A) (5) BEGINNING THE DAY BEFORE ELECTION DAY, SEND, BY SECURE ELECTRONIC TRANSMISSION, A SCANNED IMAGE OF THE OUTSIDE OF THE MAIL BALLOT ENVELOPE, INCLUDING THE SIGNATURE, TO THE COUNTY WHERE THE BALLOT WILL BE SENT. A COUNTY THAT PHYSICALLY DELIVERS BALLOTS TO ANOTHER COUNTY NO LATER THAN THE NEXT BUSINESS DAY, OR IMMEDIATELY TRANSMITS THEM BY NEXT-DAY DELIVERY, IS NOT REQUIRED TO SCAN THE ENVELOPE. THE COUNTY RECEIVING THE IMAGE MAY PERFORM SIGNATURE VERIFICATION UPON RECEIPT OF THE IMAGE

Note that signature verification done from a remote county scanned image will be different from that performed by the usual methods. Especially in smaller counties without envelope scanners. In larger counties also this remotely produced image will probably not fit with the standard sigver protocols unless both counties are using the same Agilis hardware and both use it to collect the image to be sent to the destination county, so these signatures arriving as ballot envelope photos may be handled quite differently from the bulk of signatures. Fortunately, rarity of medium in the eligibility portion of the election process is not harmful as it is in the tabulation portion where anonymity may be sacrificed.

7.7.1 When reviewing signatures through the use of signature verification judges~~, a single election judge must conduct the first level of signature verification.~~ THE COUNTY CLERK MUST FOLLOW THE REQUIREMENTS OF SECTION 1-7.5-107.3 (2), C.R.S., FOR THE INITIAL AND SECOND LEVEL REVIEW OF SIGNATURES, INCLUDING:

(A) THE REQUIREMENT THAT **A SINGLE ELECTION JUDGE CONDUCT THE FIRST LEVEL OF SIGNATURE VERIFICATION**; AND

(B) THE REQUIREMENT THAT A BI-PARTISAN TEAM OF ELECTION JUDGES REVIEW A REJECTED SIGNATURE. THAT BI-PARTISAN TEAM **MAY NOT INCLUDE THE ELECTION JUDGE WHO MADE THE FIRST DECISION TO REJECT A SIGNATURE**.

This provision (and the underlying law) is contrary to best practices of election integrity. And there is substantial flouting of this unfortunate statutory requirement that a single partisan election judge can always force a ballot to be counted in Colorado. The idea that the first human decision about eligibility of an identified voter is potentially partisan biased is almost obviously dangerous. Thanks to Prowers County CCR Jana Coen for pointing out this issue and taking a position on the statute that ought to be revised.. Some small counties prefer to have bipartisan teams take care of all eligibility issues and are in my opinion justified in taking that stance. At a minimum any county should be allowed to perform eligibility checks in a more bipartisan manner that shines of transparency, oversight and fairness.

The requirement that the two phases of verification performed in case of a rejection be made by different individuals is strong for integrity and should be implemented universally. The fact that the automated processes involved in signature verification management (SCORE, Runbeck and BlueCrest) cannot yet provide data to support this rule only suggests that the rule implementation should be delayed to give them time to implement. Meanwhile, counties can make sure that first tier judges do not serve as second tier, and this will be inefficient but effective.

7.7.3 An election judge conducting signature verification must compare the signature on the self-affirmation on each ballot return envelope with the elector's signature in SCORE in accordance with the Secretary of State's Signature Verification Guide. A SIGNATURE ON A MAIL BALLOT ENVELOPE THAT IS CONSISTENT WITH THE SIGNATURES FOR THE VOTER IN SCORE IS ONE THAT IS **MORE LIKELY THAN NOT TO BE THE SIGNATURE OF THE VOTER**. A SIGNATURE THAT IS CONSISTENT MUST BE ACCEPTED AS A MATCH.

The text "more likely than not" is enlightening and sobering. It accurately and painfully sheds light on the weakness of CO's sigver protocol. Here is a brief description of that protocol: CO's collection of reference signatures increments by an additional signature in each election any portion of any one of which no matter how unusual can be used by exactly one partisan election judge to approve the ballot for counting after which the matching envelope signature becomes the master reference for the next election). Almost all of the functions and steps of the sigver protocol are intended to err in the direction of acceptance, based upon the "more than likely" principal. While this is often described as the system serving in the "voter's favor" in fact the system depends on the assumption that the person signing has the identity that is printed on the envelope. At some point CO will need to clean the increasingly ungainly database of signatures and it is time to design how to do this. I suggest that CO voters be required to periodically sign a new wet signature in front of an official at any convenient time and not necessarily during an election. Voters who appear on cure lists once or more than once might be requested to provide this new signature prior to the next election. I also suggest that the signature verification software running in Agilis and BlueCrest hardware be used between elections to check for matches across different voter IDs in the database in order to quantify the presence of multiple ballots being voted by a single person. Larger counties with the equipment could perform this function on behalf of counties that do not have the equipment. At present there is no mechanism other than serendipity for detecting multiple ballot envelopes signed by the same person.. Much can be done to improve signature verification and its use for eligibility confirmation in CO. I do not see evidence of movement in that direction in the above rule, but I do see it in the following Rule 7.7.8:

7.7.8 SIGNATURE VERIFICATION JUDGE MONITORING

(A) THE COUNTY CLERK MUST KEEP REAL-TIME RECORDS OF EACH SIGNATURE VERIFICATION TRANSACTION, INCLUDING:

My understanding is that here "real time" means that time stamps will be collected thus allowing later analysis (but sometimes imperfect) of the approximate time taken for each decision to be made. This is a very desirable improvement that like others will take time to implement- probably a year.

(1) EACH DECISION MADE BY AN ELECTION JUDGE AT TIER 1 TO ACCEPT OR REJECT A SIGNATURE; AND

(2) EACH DECISION MADE BY AN ELECTION JUDGE TEAM AT TIER 2 TO ACCEPT OR REJECT A SIGNATURE;

Note that this requires each decision by each judge to be recorded (preferably in a manner that is not subject to outside interference into any code that manages the sigver). This is the correct way to record info that will support later review and audit. From the info about each judge's decision it will be possible to ascertain if both judges were participating in the decision. This is an excellent proposal for data collection and it will take time for this protocol to be adopted for the various use cases of sigver in CO. The time of each judges decision, to the extent it is made on electronic hardware should also be recorded for analysis purposes.

(3) THE SIGNATURES ASSOCIATED WITH EACH DECISION MADE BY AN ELECTION JUDGE AT TIER 1 OR TIER 2;

Each specific signature instance that is used as the basis for the decision, sometimes among the increasingly many signatures reviewed at tier 2, should be identified for later research and audit. In addition, the time required to make the tier one or tier two decision should be recorded to the extent made possible by the technology and an impetus to have the technology facilitate such recording should be placed in the Rule.

This is an extremely interesting requirement that will provide much data for the clerks' project leading to a signature verification audit, if the requirement records the precise reference signature or signatures that were used for the match and particularly if the time consumed during the decision is logged. This will also be of great benefit when the state gets around to cleaning the reference signatures. The most interesting cases to audit among signature decisions are those that took a long time in first tier and then were reversed in second tier, or vice versa.

Suggested text: (3) THE SPECIFIC REFERENCE SIGNATURE IMAGES ASSOCIATED WITH EACH DECISION MADE BY AN ELECTION JUDGE AT TIER 1 OR TIER 2;

(4) AGGREGATE ACCEPTANCE AND REJECTION RATE DATA FOR EACH TIER 1 ELECTION JUDGE; AND

(5) SIGNATURES REJECTED BY AN ELECTION JUDGE TEAM AT TIER 2 WHICH ARE LATER CURED BY THE VOTER.

Data from this report will be very helpful to analyze in a statewide signature verification audit process that could result from current work by various county clerks in the form of a pilot.

(B) THE RECORDS CREATED BY THIS RULE ARE AN ELECTION RECORD WHICH MUST BE MADE AVAILABLE TO THE SECRETARY OF STATE UPON REQUEST.

(C) USING THE DATA COLLECTED IN RULE 7.7.8, EACH DAY SIGNATURE VERIFICATION IS CONDUCTED, THE The county clerk must ~~periodically audit~~ TRACK THE ACCEPTANCE AND REJECTION RATE OF signature verification judges. If a judge or team of judges has an unexplained, irregular acceptance, ~~or~~ rejection, OR OVERTURN rate, the county clerk must retrain or remove that judge or team of judges from conducting signature verification.

See comments for 6.2.2 The Deputy Secretary asked questions of Wayne Williams if Agilis signature verification, meaning automated software supported verification, is treated as Tier One or prior to Tier One. My clear understanding is that the review conducted by software is neither Tier One nor Tier Two and that the rule therefore might not even address the automated eligibility determinations that occur prior to Tier One. In addition, both vendors Runbeck and BlueCrest provide software that manage and report on the human verification processes that take place at Tier One. Most but not all counties wityh the sorters use vendor provided software to manage Tier Two. In addition, all counties rely upon SCORE for management and reporting of signature verification. There are therefore four possible sources for the records of Tier One and Tier Two referred to in this Rule 7.7.8: 1)Runbeck Agilis, 2) BlueCrest; 3) SCORE and 4)manual entry at the counties. There is a strong need for additional recordkeeping of signature verification that this rule mandates. Sufficient time must be given for implementation of mechanisms for all four of these cases.

7.7.10 If the county uses a ballot sorting and signature capture device, the county clerk must test the device before using it in an election to ensure that it properly sorts envelopes, and accurately and clearly captures the signature on the envelope for comparison to the correct voter record. BEGINNING ON JANUARY 1, 2024, THE DEVICE MUST ALSO CAPTURE AN IMAGE OF THE FULL BACK OF THE MAIL BALLOT ENVELOPE.

As Wayne Williams testified, it is not clear what the back of the mail ballot envelope consists of. Some counties design the envelope so that no voter specific information is located on one side of the envelope, and all is located on the opposite side. This is a best practice to preserve anonymity of the ballot envelope during opening. Other counties allow voter information to be showing on both sides and I have seen signature verifiers use both sides of the envelope to achieve a match to the reference signatures. The rule ought to specify that any side that contains voter specific information should be captured.

In future a rule ought to be promulgated to require all voter specific information to be on only one side of the envelope. The voter specific data that is sometimes found on the non-signature side is the optional return address. I have seen signature verifiers use the printed (and sometimes cursive) return address for comparison to the signature, and that is why the device must capture both sides of the envelope when such voter data is present. The best practice alternative that I have been advocating for many years is to print the county mailing address in place of the return address. There is no instance where the voter would benefit from having the envelope return to their address.

Suggested rule text:

> BEGINNING ON JANUARY 1, 2024, THE DEVICE MUST ALSO CAPTURE AN IMAGE OF ANY SIDE OF THE MAIL BALLOT ENVELOPE THAT CONTAINS VOTER IDENTIFYING INFORMATION.

7.8.2 ~~Voter service and polling center materials include sufficient computer stations for SCORE access, HAVA information, signature cards, paper ballots, voting booths and a ballot box.~~

WHEN DETERMINING WHERE IN A COUNTY A VOTER SERVICE AND POLLING CENTER OR DROP BOX SHOULD BE PLACED IN A GENERAL ELECTION, A COUNTY CLERK MUST TAKE INTO CONSIDERATION THE RECOMMENDATIONS GIVEN BY THE VOTER CENTER SITING TOOL. THE TOOL WILL BE PROVIDED FOR USE BY THE DEPARTMENT OF STATE.

Here is another instance where oversight and participation by citizens may be reduced through the use of a software tool created and deployed by the SOS the election office that most lacks transparency to the public. I hope that the protocol implemented by this tool will avoid placing drop boxes outside the entry doors to vote centers. This practice is convenient for those emptying the ballot drop box but does not particularly serve the interests of the voters nor the system as a whole. The voters will be better served by a drop box in a remote location far from the already staffed VSPC. The system will be better served when the voter who brings the ballot envelope all the way to the door of the VSPC isn't turning away at the door and the drop of the ballot is seen by officials and other voters within the VSPC. More importantly, the voter is able to see the election system in operation within the VSPC. In some future better designed election, voters will be able to have the return envelope signature verified in their presence within the VSPC, thus avoiding any need for a surprise cure letter. I have seen this practice implemented in at least one county.

7.17.2 BALLOT STYLE NAMES:

(A) IF A COUNTY REPORTS RESULTS FOR ANY ELECTION BY PRECINCT, THE COUNTY MUST RENAME ITS BALLOT STYLES IN SCORE ACCORDING TO THE CONVENTION OF XXX-Y OR XXX-YY, WHERE XXX IS THE FINAL THREE DIGITS OF THE TEN-DIGIT PRECINCT NUMBER, AND Y OR YY IS THE ONE- OR TWO-DIGIT DISTRICT STYLE NUMBER. BY WAY OF EXAMPLE, IF SCORE GENERATES A SINGLE DISTRICT STYLE AND THE COUNTY HAS 3 PRECINCTS, THE COUNTY MUST NAME THE PRECINCT STYLES AS 001-1, 002-1, AND 003-1.

(B) IF THE COUNTY REPORTS RESULTS OF AN ELECTION BY BALLOT STYLE, THE COUNTY MUST NAME THE BALLOT STYLE WITH THE BALLOT STYLE NUMBER GENERATED BY SCORE. BY WAY OF EXAMPLE, IF SCORE GENERATES THREE DIFFERENT DISTRICT STYLES FOR AN ELECTION OTHER THAN A GENERAL ELECTION, THE COUNTY MUST NAME THE BALLOTSTYLES 1, 2, AND 3. IF SCORE GENERATES MORE THAN NINE DISTRICT STYLES FOR AN ELECTION, THE COUNTY MUST NAME THEM WITH A TWO-DIGIT NUMBER, SUCH AS 01 THROUGH 09, 10, 11, ETC.

This arbitrary convention for naming ballot styles (that are then printed onto the paper ballot sheets. The association of a single ballot style to all sheets within a ballot prevents separation of styles by sheet - something that can used as a solution to degraded ballot anonymity caused by rare styles that result from coordinating elections for which the districts are arbitrarily overlapping for very small numbers of voters. When precinct ignorant districts such as school, municipal and special are coordinated with precinct based districts, the rare style situation arises. Ideally there will be at least two ballot styles associated with each ballot – one for the precinct based district elections and another (again ideally on a separate sheet) for the three district types that do not conform to precinct boundaries.

8.10.2 (d)

THE COUNTY CLERK MUST ALLOW A WATCHER TO POSSESS A PHONE TO SEND OR RECEIVE TEXT MESSAGES WHILE WATCHING ELECTION ACTIVITIES AS LONG AS THE WATCHER IS NOT LOCATED WHERE PERSONALLY IDENTIFIABLE INFORMATION IS WITHIN VIEW AS REQUIRED BY SECTION 1-7-108(4), C.R.S.

This rule nuance on use of cell phones will improve the watcher experience and effectiveness and is desirable, thank you.

~~10.3.2 (c) In coordination with the county clerk, investigate and report discrepancies found in the audit under section 1-7-514(2), C.R.S.; and~~

(C)(~~d)~~ Conduct any recount in accordance with section 1-10.5-107, C.R.S., and this Rule.

~~The canvass board's role in conducting a recount includes selecting ballots for the~~

~~random test, observing the recounting of ballots, and certifying the results.~~

Statute and rule have been curtailing the role of the canvass board for years. The removal of responsibility for investigation of discrepancies from the audit is regrettable and relies entirely upon SOS staff who are apparently not subject to the direct citizen oversight that local officials are. SOS management of the RLA behind closed doors is a mistake. The investigation of discrepancies is the most important part of the process of audit and must be subject to easy citizen oversight. Will the SOS establish watcher access for its staff working in the SOS offices? There was a good reason for the canvass board to be involved in investigating discrepancies in the old audit and the same motivation exists with the new. Instead I would change the rule to substitute the same requirement to investigate and report on discrepancies found in the RLA audit, in parallel with whatever the SOS staff choose to do for the Audit Center.

Suggested revised text:

> 10.3.2 (c) In coordination with the county clerk, investigate and report discrepancies found in the audit under section **1-7-515** ~~1-7-514(2)~~, C.R.S.; and

~~10.5.3 Written Complaints~~

~~(a) The designated election official must provide the canvass board with any written~~

~~complaint submitted by a registered elector about a voting device.~~

~~(b) If the complaint is resolved, the designated election official must provide the details of the resolution.(c) If the complaint is pending resolution when the board meets to conduct the canvass, the designated election official must provide a proposal for how the issue will be resolved.~~

The rule statement notes that "voting devices" are no longer used in CO. This might just be a syntactical nuance being used to negate another of the dwindling roles for the canvass board. Voting devices are not defined in CRS or Election Rules but voting equipment and systems are. Apparently, rule drafters are assuming that BMD that are in use are not voting devices, and perhaps by someone's interpretation there are no voting devices in use. Nevertheless, some ballots are voted upon and marks are printed on paper ballots and every ballot is processed by voting devices that are scanners and the EMS. Is CO going dark on all complaints about voting devices other than those handled by the SOS? I hope not if CO wishes to somehow continue to justify the gold standard claims. I hope not if CO wants its less confident citizens to somehow trust the system. Please restore the opportunity for the canvass board to receive and address

complaints and increase the scope of concerns to include the voting system. See some statutory definitions and uses of "voting device" in statute here;

> **1-1-104, CRS (50.7)** "Voting equipment" means electronic or electromechanical voting systems, electronic voting devices, and electronic vote-tabulating equipment, as well as materials, parts, or other equipment necessary for the operation and maintenance of such systems, devices, and equipment.
>
> **1-1-104, CRS (50.8)** "Voting system" means a process of casting, recording, and tabulating votes using electromechanical or electronic devices or ballot cards and includes, but is not limited to, the procedures for casting and processing votes and the operating manuals, hardware, firmware, printouts, and software necessary to operate the voting system.

And here, in CRS 1-10.5-105(3)(a) is proof that use of "voting device" in CRS includes the scanner equipment and EMS that is used by the recount:

> **(a)** Prior to any recount, the canvass board shall choose at random and test **voting devices** used in the candidate race, ballot issue, or ballot question that is the subject of the recount. The board shall use the **voting devices** it has selected to conduct a comparison of the machine count of the ballots counted on each such **voting device** for the candidate race, ballot issue, or ballot question to the corresponding manual count of the voter-verified paper records.

Suggested improvement to Rule 10.5.3 Written Complaints

(a) The designated election official must provide the canvass board with any written complaint submitted by a registered elector about THE voting SYSTEM.

(b) If the complaint is resolved, the designated election official must provide the details of the resolution.

(c) If the complaint is pending resolution when the board meets to conduct the canvass, the designated election official must provide a proposal for how the issue will be resolved.

10.6.3

(a long paragraph about actions to take in case canvass board fails to certify is deleted and replaced by:)

A COUNTY MUST NOTIFY THE SECRETARY OF STATE IMMEDIATELY AFTER THE MEETING OF THE CANVASS BOARD IF:

(A) THE CANVASS BOARD VOTES NOT TO CERTIFY THE ABSTRACT OF VOTES CAST;

(B) THE CANVASS BOARD OTHERWISE FAILS TO TAKE ACTION TO CERTIFY THE ABSTRACT OF VOTES CAST; OR

(C) IN A PARTISAN ELECTION, THE COMPOSITION OF THE CANVASS BOARD DID NOT CONSIST OF:

(1) AN EQUAL NUMBER OF BOARD MEMBERS APPOINTED FROM EACH OF THE OPPOSING MAJOR PARTIES; AND

(2) THE COUNTY CLERK OR DEPUTY CLERK.

While making adjustments in this arena of canvass board certification, why doesn't the rule clarify that all canvass board meetings are public meetings and specific required records subject to purview by the canvass board are public records, instead of simply requiring private notification to the SOS? Note that the arranged (and valuable) bipartisanship of the canvass board as shown in (C)(1) is then broken by (C)(2) by adding the partisan clerk or deputy clerk. Many clerks have realized that their participation in the canvass board is inappropriate and find an appropriately independent replacement, yet here the rule requires deliberate partisan unbalance on the board (except perhaps for Broomfield with its clerk and recorder not elected in a partisan election).

~~10.9.6 If all losing candidates who received enough votes to trigger a mandatory recount submit letters of withdrawal to the DEO in accordance with section 1-4-1001, C.R.S., the DEO must immediately notify the county clerk and the county clerk need not conduct the recount.~~

In many ways, CO recount law is weak or defective or much needing improvement, but by removing 10.9.6 it actually gains some strength. No losing candidate should have the right or imagined responsibility to prevent the recount that presumably protects the citizens from poorly tabulated elections. Ideally the recount would go further to address poorly eligibility checked elections but recent interpretations of statute have obstructed attempts to address eligibility. Recounts using the same devices as used for original recounts, whether by readjudication of existing scans or by rescans will not provide adequate extra accuracy that CO's very tight margin to trigger a recount necessitates. That already deceptively tight threshold is made only tighter and the recount less likely when there are multiple candidates gaining votes and there are an unusual number of undervotes.

10.10.2 Requested recounts

Apparently the cost of the recount is not dependent upon what method is used (scan or no scan) since the deadline to specify is the date the payment is made, that presumes that the cost does not change subject to the decision.10.10.2(b) is obviously in contradiction to that assumption. (counties must distinguish the cost of scan or not scan). The rule ought to remove this contradiction.

Repeal of Rule 10.12.2 because it is duplicative to statute with the passage of SB23-276:

Repeal of Rule 10.13.1 because it is duplicative to statute with the passage of SB23-276:

Is it possible that the detail removed from these two rules is replaced in statute? I don't have the stomach to go look up and find the relevant passages in the large bill that included them, but I doubt it.

10.14.1 Totals of recounted ballots must be reported AS ~~in summary form as follows~~:

Note that recounts are NOT to be reported in subsets other than aggregate totals. Does this mean no precinct reporting or by voting method? Am I seeing that the recount report is less informative than even

the original reports? Surely not.Please make sure the recount is more informative than the original count, not just a pro-forma waste of time.

Amendments to Rule 16.1.6 concerning county communication with UOCAVA electors:

16.1.6 The county clerk must send a minimum of one correspondence no later than 60 days before…

It would make sense for this rule to include a requirement to advise the UOCAVA listed voter of the requirements for inclusion and offer an easy way to return to normal voter status.

18.4.1 A resolution board must duplicate a voter's choices or selections on a damaged ballot onto a blank ballot of the same ballot style in accordance with Rule 18.4. (…)

During ballot duplication, two election judges must observe or review the work of each resolution board. In a partisan election, the observing election judges must be representatives of each major political party

The new text above isn't specific enough to be as good as what it replaces. The review required above must involve both the duplicated ballot and the original voter marked ballot. Also ballot duplication should be accessible to be overseen by watchers. Also this process deserves the same kind of error reporting and efficiency analysis as the signature verification will get thanks to these new rules. There is a lot of error made in ballot duplication in some counties, and often I see no apparent attempt to record the frequency of errors made by individual teams. The accuracy and efficiency of ballot sheet duplication must be much improved.

18.4.6 A COUNTY CLERK MUST BATCH DUPLICATED BALLOTS SEPARATELY FROM ALL OTHER BALLOTS.

It isn't clear why this rule is introduced. Is it needed. Will this lead to less ballot anonymity?

20.6.2 Attendance at trusted build

(a) The only individuals who may be present at a trusted build in a county include:

(1) Secretary of State staff, designees of the Secretary of State, or other individuals approved by the Secretary of State;

(2) Voting system vendor staff for the voting system for which trusted build is being installed. AT LEAST ONE INDIVIDUAL LISTED IN RULE 20.6.2(A)(2) MUST BE PRESENT DURING THE TRUSTED BUILD, UNLESS EXEMPTED BY THE DEPARTMENT OF STATE; and

Why isn't the trusted build process (not just the delivery to the county) an election process that can be overseen by members of the public? Does "trust" here mean the public is expected or required to trust the build and the process that installs it without any evidence to support that trust? It is incredible that county officials and staff are not included among the people allowed to be present. It is surprising or perhaps scary that the vendor is required to be present. Must local officials also trust the SOS personnel and the vendor to do the correct thing? This rule text is disturbing.

Perhaps it is a demonstration of lack of trust by SOS staff of anyone who might otherwise be watching them. I suggest that county officials and previous canvass board be allowed to attend the trusted build. I also suggest that all trusted build events be recorded and streamed to the public in order to promote "trust".

Suggested language: 20.6.2 Attendance at trusted build

(a) The only individuals who may be present at a trusted build in a county include:

(1) Secretary of State staff, designees of the Secretary of State, county clerk and recorder and staff, the previously established canvass board from the most recent election;

(2) Voting system vendor staff for the voting system for which trusted build is being installed if requested by SOS or county staff.

(3) AT LEAST ONE INDIVIDUAL OF EACH TYPE LISTED IN RULE 20.6.2(A)(1) MUST BE PRESENT DURING THE TRUSTED BUILD, UNLESS EXEMPTED BY THE DEPARTMENT OF STATE;

(4) THE BUILD PROCESS SHALL BE RECORDED ON VIDEO AS A PUBLIC RECORD WITH ADEQUATE PROTECTION FOR SECURITY PROTOCOLS; and

25.2.2 Preparing for the audit

[Not shown: no changes to sections (a) through (i).]

(j) Selection of target contests. …

The selection of contests to drive the RLA is defective in Colorado. The use of portions of multi county elections including only portions of statewide where the other counties votes are not audited is nothing more than an almost pointless demonstration of ability to move through the steps of the audit without reaching a meaningful conclusion. It is nothing less than embarrassing that in some cases the audit actually works in reverse where a discrepancy might confirm an aggregate outcome rather than cause further question of it through escalation into another round. CO voters deserve more from the effort made in all the counties to perform the audit.

Counties deserve more independence in the choice of additional contests and better transparency from SOS staff who are operating the audit from what amounts to a secret dashboard. At a minimum the selection of contests should be made in public, with public input accepted including of course from election officials. Ideally the RLA would be driven by all competitive contests (of which there are a decreasing number as parties succeed in maintaining control over the number of candidates.) The selection of contests by the SOS was needed only in the earliest stages of RLA development when its future was uncertain. Now it is long past time to bring in the rest of the best principles of election audits so that CO can be proud of its should be best in class audit.

The audit needs to be made visibly independent of the those who officiated over the original count. The best method to do this with responsibility and accuracy is to enable auditors to come from tabulation teams from other counties. This will also have the beneficial effect of bringing consistency to the various practices that differentiate the counties, in some cases for no good reason. The audit really serves no purpose if the audience for it is the officials themselves. The

audit therefore must attract participation from citizens. The current obstacles to learning where and when the audit takes place must be overcome.

***Comments on recent comments posted at the SOS website from other sources**:*

General comments about rulemaking process: The timeliness of posting of comments in this round is excellent and does facilitate more interaction with other commenters than has been the case in the past. In another respect, some previous rulemaking instances have been yet more interactive. Under previous Dept of State administrations an initial preview of the rules was provided on the SOS website and public comments were received and published prior to the onset of statutory rulemaking. This allowed a much more interactive approach and I think better process for consideration of rules. The current administration has chosen to return to the absolute minimum required by law that deliberately prevenst interaction between SOS staff and interested parties, experts and stakeholders during the statutory rulemaking period. Please consider returning to the better practice of your predecessors and keep up the rapid posting of comments, thanks..

It is also notable that a large number of comments have been received that appear to superficially support rule changes without any specification. These seem to largely come from Montezuma County plus a few others. Some of these authors may be assuming that the SOS staff are using the rulemaking as a plebiscite on the rules as if some higher authority is in play other than the SOS staff authors. I believe that is far from the truth. - Presumably no one at SOS will say that since a majority of commenters supported the rules as changed this implies that no changes need to be made. It is these kinds of statements that coincide with appellations like "gold standard." Its just a golden color that doesn't stand up to scrutiny without an evidence-base. Audits that find no problem with elections are not sensitive enough. The same can be said for comments about rules.

Common Cause comments: "We encourage the Secretary to take measures to prevent any perceived tightening of standards on the signature verification process." Is this a pitch for loose standards, and consequent low integrity? Our signature based eligibility protocol requires better standards and better data collection. The current rule changes are a step in the correct direction to motivate additional record keeping that can eventually become a meaningful audit process.

Boulder County comments: Many of the Boulder County suggestions make practical sense and I support most of them. However one suggested change that I am particularly concerned about is their recommended version of Rule 7.7.3 changing "signatures" to "a signature":

"A SIGNATURE ON A MAIL BALLOT ENVELOPE THAT IS CONSISTENT WITH ~~THE~~ A SIGNATURE~~S~~ FOR THE VOTER IN SCORE IS ONE THAT IS MORE LIKELY THAN NOT TO BE THE SIGNATURE OF THE VOTER. A SIGNATURE THAT IS CONSISTENT MUST BE ACCEPTED AS A MATCH. " This change may reflect the common practice and perhaps the correct interpretation of the law, but it does expose the weakness of the CO protocol for eligibility accuracy when it suggests that the single signature even if obviously different from all other collected signatures for the named voter is "more likely than not to be the voter's signature". This strikes me as even by common sense standards, false. An exceptional instance of a signature is less likely to be the voter signature than one that is similar to most or all other signatures in the record. If Rule wants to delve into the nuances of signature verification, it would be wise to be correct and not misleading. I would stick with signatures. I disagree with Boulder's approach to Rule 7.7.8 although I agree that the motivation for the Rule changes may not have been made

clear. I support the changes to Rule 7.7.8 in that they presumably require improvements in documentation of the sigver process so that constructive evaluation and auditing can take place, far better than what is in place. I do agree that work must be done to achieve these changes and time must be given to vendors and SCORE development to achieve these, as well as good protocols for small counties using manual verification techniques. I can understand why the record of sigver should point to the signature or signature that has been selected as the matching reference. This information will allow constructive cleaning of the signature database in future when that inevitable process finally begins. I note in my comments above that "real-time" implies that a time stamp is obtained. Since Boulder reads this differently, perhaps the rule should be made more clear, and once again, time given to vendors and SCORE to make time stamps possible. I do not see any problem with using the term "overturn" for a reversal of a tier one rejection into a tier 2 approval. Yes more signatures are accessed, but the disposition is in fact overturned.

Celeste Landry comments: I am impressed to see the unique and extremely valuable comments submitted by Celeste Landry who has an excellent understanding of nuances of alternative voting methods now on the rise in CO. I hope these comments are carefully read and considered if not implemented.

I support the comments of the Colorado Institute for Fair Elections.

---end of comments by Harvie Branscomb harvie@electionquality.com--