

To: Colorado State Title Board
From: Patrick Dillon and Caryn Ann Harlos, Colorado Registered Electors,
represented by Linda Templin

Re: Initial hearings 2023-2024 #307-313 Concerning the Conduct of Elections

A. Potential Single Subject Violations

Measure contains multiple subjects: Blanket Primaries and Ranked Choice Voting (RCV)

RCV is the “shiny object” attached to blanket primaries, without which the changes to Colorado primaries would be unlikely to pass. Connecting the two things in one measure violates single-subject because there is no “proper” connection between changes to the primaries and changes to the voting method for the general election. It is noted that attorneys for the proponents no longer put forth that connecting an all-candidate plurality primary to RCV in the general election “is the only way it works,” which is patently false. (The state of Maine uses RCV in both their primaries and general elections. (<https://www.maine.gov/sos/cec/elec/results/index.html>))

The fact remains that the two measures have contradictory purposes.

- 1) Denying meaningful enfranchisement to entire blocks of voters in the general election by denying partisan ballot access.

The measures further restrict access to the general election in a way that disadvantages mid-dollar candidates with good ideas. Plurality elections have features that unfairly advantage well-funded special interests in that they routinely run “spoiler” or “clone” candidates to split support away from the targeted rival.

- 2) RCV general elections act to include more candidates without allowing the majority to be split. They are known as “instant runoffs” because they use the very same ballots to find the will of a majority when there are more than two candidates.

The RCV general election acts to level the playing field between candidates in a way that means money matters less. These are contradictory purposes.

There are two competing models of RCV: Alaska and Maine. If voters prefer to have only four or fewer candidates in the general election, they should get to say so by voting for Alaska Blanket Primary. If the voters prefer to have the same number or more

viewpoints on the ballot, like Maine does, then they should have the option to vote for RCV on its own. There is no proper connection between RCV and a bottleneck, all-candidate primary and it does not serve the voters of Colorado to be denied the power to choose to make no changes, adopt Alaska-style elections, or Maine-style elections.

B. Clear Language in Title

If the measures follow Rule 26, it should be called “Ranked Ballots also known as Instant Runoff Voting”

-or-

the words “Rank” or “Ranked” should not be used in the title.

“Rank” and “Ranked” are exciting words for voters because they tire of being scolded about having to vote for the “lesser of two evils.” RCV is the umbrella term for the tally method known as “Instant Runoff Voting” when used in single-winner races and “Single Transferable Vote” when used in multi-winner races.

From the text of the measures, it is unclear what tally method proponents would make law because it used the words “Instant Runoff Voting” and also sets forth definitions and rules that are different from the current rules. The current rules for “Ranked Voting Method” popularly known by the voter-centered name “Ranked Choice Voting” is located in 8CCR1505-1 Rule 26

https://www.coloradosos.gov/pubs/rule_making/CurrentRules/8CCR1505-1/Rule26.pdf

These rules were instituted under a Republican administration and made permanent by a Democratic administration.

Measures #307-313 creates definitions and substitutes the wording “highest ranked” for current rule 26 language “first-choice”. In the context of the tally, it could reasonably be interpreted to mean the candidate with the most first-choice votes from all of the ballots.

Measures #307-313 goes on to describe the tally that “each ballot shall count for the highest ranked on the ballot.” Given the definition of the highest ranked candidate, this could mean that an individual voter’s ballot could be counted for the candidate with the most first-choice votes in the race, instead of the individual voter’s first-choice ranking.

Ranked Choice Voting is well defined around the nation.

An “Instant Runoff” using a ranked ballot is a very specific method understood around the United States and around the world as being only one tally system. Beyond Colorado’s rule 26:

Six states use RCV ballots / IRV tally for military and overseas (UOCAVA) voters. Their federal and state elections require a majority winner, so they have runoff elections. The

UOCAVA voters use the ranked ballots to identify their preferences so that in the event of a runoff election their votes are still counted even when there is not enough time to get an overseas ballot out to remote locations on the globe and back stateside. These states are Alabama, Arkansas¹, Georgia, Louisiana, Mississippi, and South Carolina².

Roberts' Rules of Order identifies that the best means of reaching a majority consensus is to have multiple rounds of debate, balloting, and eliminations. If that is not feasible, Robert's Rules identifies Ranked Ballots with an Instant Runoff Tally as the next best means of identifying a winner. Since at least the early 1900's, Robert Rules has recommended this method, but called it by the European name "preferential voting".

Other Tally Methods

Other methods of tally that use a ranked ballot use a different moniker - such as Bucklin Voting. Bucklin Voting used a tally method that fails one-person-one vote legal challenges (Brown v Smallwood 1915). The tally being proposed in measures 307-313 is not clear in either the text for the title. Proponent's attorney said that it is "different from the municipal version" but failed to explain how the tally works. There is no vagary in regard to what IRV is and it is inaccurate to call it "municipal".

The purpose of the proposed variations from the tally rules is not clear. As such, changes to the tally should not be permitted to bear any variant of the moniker "Ranked Choice Voting" as it would be a substantive bait-and-switch.

- A) If measures 307-313 intends to institute RCV/IRV, then the title should clearly say so to avoid public confusion by using the word "ranked" or "rank" in connection with the word "runoff".
- B) If measures 307-313 intends to institute a different tally method, then the title should clearly say so to avoid public confusion by NOT using the word "ranked" or "rank" but instead describe their novel voting method. The words "ranked" and "rank" are shiny objects to 80% voters who tire of having to vote for the "lesser of two evils" instead of freely voting their values. Use of that word would manipulate a strong majority of voters into voting for the measure thinking that it is the proven and reliable voting method used in US government elections since 1915.

¹ <http://www.arkleg.state.ar.us/assembly/2005/R/Pages/BillInformation.aspx?measureno=HB1770>

² http://www.scstatehouse.gov/sess116_2005-2006/bills/3720.doc