

To: State of Colorado, Department of State

Re: Public Commentary for July 25, 2016 Hearing, Proposed Rulemaking concerning elections

Hart InterCivic respectfully submits the following comments regarding the proposed changes to Election Rules, 8 CCR 1505-1.

PROPOSED CHANGES

1. We recommend that the proposed changes to 11.10, be changed to the following:

Election Night Reporting. The county must use the Secretary of State’s Election Night Reporting (ENR) System to report results for all primary, general, coordinated, and recall elections in accordance with this rule. These requirements apply only to systems purchased after January 1, 2016.

The addition of the last sentence allows counties who are currently using voting systems purchased prior to January 1, 2016 that may not meet this requirement to continue using their current voting systems.

2. We recommend that the proposed changes to 11.10.1, be changed to the following:

A data entry county must upload a results data file to ENR containing the election results on the dates and times specified in Rules 11.10.3 through 11.10.5. The County must program its election database so that the results file for import to the ENR is formatted in accordance with the following requirements.

The current wording binds the voting system vendor to have to constantly change software as the ENR requirements change. This can be costly and is shortsighted. It doesn’t matter what the voting system export is, only what that the data for import is in the correct format.

3. We recommend that the proposed changes to 18.3.1, sub-section (A) be changed to the following:

To the extent permitted by its voting system, the County must program ballot scanners to sort ballots with write-in votes to a segregated bin of the ballot box or digital media to initially reject blank ballots and ballots with overvotes.

The addition of “or digital media” accommodates voting systems that allow the electronic adjudication of write-in votes.

4. We recommend that the proposed language of 18.3.2.(b) (1) be changed to:

Digital Ballot Resolution. If a county’s voting system supports digital ballot resolution, the county must program the voting system to digitally queue for resolution blank ballots, ballots with write-in votes, and ballots with overvotes. Ballots with marginal or ambiguous markings shall be managed according to the system provider’s specifications, or, if different, the applicable conditions of use issued by the Secretary of State. Digitally queued ballots must be resolved by election judges in accordance with Rule 18.5

We believe that the proposed wording above allows the jurisdiction to use systems that have different ways of handling ballots with marginal or ambiguous markings. As currently worded, the proposed wording is prescriptive of a single vendor’s voting system.

5. We recommend that the proposed language of 18.5.1 be changed to:

A resolution board must resolve all blank ballots and ballots with overvotes, write-in votes and ambiguous markings in accordance with the system provider’s specifications and Secretary of State’s Voter Intent Guide.

We believe that the proposed wording above allows the jurisdiction to use systems that have different ways of handling ballots with marginal or ambiguous markings. As currently worded, the proposed wording is prescriptive of a single vendor’s voting system.

6. We recommend that the proposed language of 21.4.14, sub-section (a) be changed to:

The voting system must capture a ballot-level cast vote record (CVR) consisting of a record for each ballot tabulated, showing the manner in which the voting system interpreted and tabulated the voter’s markings on the ballot, as adjudicated and resolved by election judges, if applicable.

Our proposed wording eliminates the word “single,” which is prescriptive of a single vendor’s voting system as it is currently worded.

7. We recommend that the proposed language of 21.4.14, sub-section (b) be changed to:

The voting system must be able to export all CVRs in comma-separated value (CSV) text format.

Our proposed wording removes the words “aggregate in a single file and,” as this phrase describes how a single vendor’s voting system currently works and is defining a voting system behavior, not a process or an appropriate rule.

8. We recommend that the proposed language of 21.4.14, sub-section (c) be changed to:

The CVR export must contain the following fields:

Our proposed wording removes the words “with values or data populated by the voting system,” as the phrase defines a voting system, not a process or appropriate rule.

9. *(Added 7/22/2016 in response to revised proposed rules released 7/20/2016)*

We recommend that the proposed language of 21.4.12(d)(5) be changed to:

Print and store paper record copies of at least 75 voted ballots without requiring the paper supply source, ink or toner supply, or any other consumable supply to be changed, assuming a fully printed double sided 18 inch ballot with a minimum of 20 contests. This requirement applies only to systems purchased after January 1, 2016.

The addition of the last sentence allows counties who are currently using voting systems purchased prior to January 1, 2016 that may not meet this requirement to continue using their current voting systems.