

Andrea Gyger

From: Harvie Branscomb <harvie@electionquality.com>
Sent: Friday, July 29, 2016 4:53 PM
To: SoS Rulemaking
Cc: harvie@electionquality.com; 'Colorado Voter Group'
Subject: new revision of my rulemaking comments July 25 rulemaking
Attachments: Branscomb_revG_June25_2016_ElectionRulemaking.doc

Andrea

I have substantially enhanced my commentary concerning the rulemaking. I note that the ESRC has opined against Rule 1.1.13 (c) and in favor of its deletion. I do hope that the rule will encourage redaction or duplication of ballots that violate the constitution during processing if it does not require that protection to be in place.

I otherwise am in agreement with several other ESRC comments.

Harvie

Branscomb comments on July 25 revision E 2016 Election Rulemaking

Harvie at electionquality dot com 7/29/2016 4:30PM

Rules in italics, changes in capitals and ~~strikeout~~. I have not edited the proposed rules but have commented on them in separate bold font and separate paragraphs.

1.1.8 “BALLOTS CAST” MEANS THE TOTAL NUMBER OF BALLOTS RECEIVED BY THE COUNTY CLERK IN AN ELECTION. “BALLOTS CAST” DOES NOT INCLUDE MAIL BALLOT ENVELOPES RETURNED TO THE COUNTY CLERK BY THE U.S. POSTAL SERVICE AS UNDELIVERABLE.

This is an unworkable definition that seeks to hide the fact that we no longer have chain of custody over the ballots (or in reality the envelopes that actually offer the opportunity to vote.) The act of casting a ballot is something done by a voter, not by a county clerk. Ballots that are received by county mailrooms and drop boxes include ballots that belong in other counties, other elections and conceivably other states as well. County clerk is certainly not the correct description of the recipient of the ballot envelopes either. This rule change should not be made prior to a statutory revision that understands the need for accountability of a primarily mail and drop-off ballot election. This is a destructive reinterpretation of the basis for accountability in the election.

~~1.1.12~~ 1.1.13 “Damaged ballot” means a ballot that is torn, bent, or otherwise mutilated or rendered unreadable, so that it cannot be processed by the ~~optical scanner ballot reader~~ BALLOT SCANNER. Damaged ballots include:

- (a) All ballots that contain a foreign substance that could interfere with the ~~optical~~ BALLOT scanner (e.g. food, drink, etc.).
- (b) Ballots that are marked in a medium or manner ~~other than indicated in the ballot instructions~~ THAT CANNOT BE DETECTED BY A BALLOT SCANNER.
- ~~(c) Ballots that the elector marked in a way that would disclose his or her identity.~~

(c) above is a good thing to have in rule because it encourages election judges opening envelopes to sequester and duplicate ballots with identifiable markings. This protects the privacy of the voter. This is our best attempt to comply with the constitution. If redaction is accomplished by duplication as a damaged ballot then everything scanned can be anonymous and no further privacy violations will occur in the normal election process. No redaction will be required later when the ballots are requested under CORA. Note also the relevance of the subsequent rules requiring duplication. Ballots marked in a way that would disclose identity will be duplicated. Also of course ballots that are deemed by judges to be unlikely to scan correctly or to be correctly interpreted by machine will also be duplicated prior to scanning. This is necessary for accuracy, UVS or not. In the case of non-UVS systems such as that used in El Paso County, the manual pre-check of ballots is essential to accuracy.

This rule must be written to apply to both UVS and non-UVS counties. In both cases, however, it is necessary to check the ballot content prior to scanning to determine if the pre-programmed algorithm for determining selection for adjudication/resolution/rejection will work correctly. Part (c) is important because it provides for maximum privacy of the voter intent. If ballots that are in violation of the Colorado constitution by being marked in a manner that identifies the voter are allowed to be scanned and adjudicated and stored with the offending identifying marks, voter privacy is not sufficiently protected and the constitution is not conformed to. Of the 18 counties now using UVS, many are now checking for identifying marks and duplicating where necessary. In Eagle County, one ballot was duplicated for reason of an initialed overvote. In Chaffee County 14 ballots were duplicated for reasons of “stray marks or writing.” In Arapahoe County, 27 ballots were duplicated because they were signed or had stray writing on them. Counties that follow this rule -- that this revised rulemaking is about to delete -- are also prepared to offer ballots to the public and campaigns under CORA without further redaction. This also means that the paper ballots can be examined as well as the ballot scans, and delays that will harm the benefits of transparency can be avoided. The risk-limiting audit can also be performed on all paper records because the privacy of the vote has already been

assured. An alternative means to accomplish the redaction would be a pressure-sensitive label that covers the identifiable portion of the ballot prior to scanning. If ballots are segregated due to identifiable marks and then scanned together it is possible to be careful about the use of removable stickers on the ballot that obstructs the visibility of the mark that causes harm, but also allows for viewing of the mark under a court order. Both alternative methods should be offered to the election official.

1.1.44 "VOTES CAST" MEANS THE TOTAL NUMBER OF BALLOTS COUNTED BY THE COUNTY CLERK IN AN ELECTION.

This definition of "votes cast" as written here is simply a pseudonym for the phrase "ballots cast" and is equally defective. Votes aren't "cast" --- but ballots are. Is there intended to be a meaningful distinction between the number received and the number counted? Or is this definition supposed to discriminate between ballots that contain voter intent that is included in the election as opposed to being rejected for some reason? It is patently obvious that almost no thought has gone into this last-minute change that reworks the heart of Colorado's statutes that are supposed to provide crucial accountability. These (less than a week old) changes must not be made at this late moment and with this little preparation and vetting. The rule subsequently replaces "ballots cast" with "votes cast" thus only adding confusion and distance from the statute. These substitutions must not be made.

9.2 CHALLENGING A MAIL BALLOT VOTER

9.2.1 If an individual challenges a mail ballot under section 1-9-207, C.R.S., the election judge must forward the ballot to two other election judges of different political party affiliations who must review the elector's eligibility to vote.

9.2.1 (A) If both election judges determine the elector is not eligible under section 1-9-207, C.R.S., the judges must follow the procedures in section 1-7.5-107.3(2), C.R.S.

9.2.2- **1** (B) If both election judges determine the elector is eligible and that elector's signature is valid, the election judges must count the elector's ballot.

9.2.2 THE CLERK MUST NOTIFY A VOTER WHOSE BALLOT WAS CHALLENGED. THE NOTIFICATION MUST INCLUDE A COPY OF THE CHALLENGE FORM, THE DISPOSITION OF THE BALLOT, AND UNLESS THE CHALLENGE WAS WITHDRAWN, A STATEMENT THAT THE MATTER WILL BE REFERRED TO THE DISTRICT ATTORNEY UNDER SECTION 1-9-209, C.R.S.

Here is another last-minute rule change that would slip in without sufficient discussion. This is written in a manner to maximally obstruct the functionality of challenges to eligibility in remote voting. Colorado is just learning how accountability of the eligibility check for what is now the overwhelming majority of ballots might be accomplished. I believe that precisely one challenge to a remote voter has been accomplished in the primary election. It seems premature to write this rule prior to examining the relevance of the content of the quite inappropriate voter challenge form and the protocol for handling it. We need a protocol for collecting the information that the form requires as well as for executing the further review called for in the rule (ie., in the presence of the challenger) and a protocol for withdrawing a challenge. In particular, the importance of information flow to the challenger is utterly ignored in this rule. I have been denied access to the information of a challenge I have filed.

Proposed edit: **9.2.2 UNLESS THE CHALLENGE WAS WITHDRAWN, THE CLERK MUST NOTIFY A VOTER WHOSE BALLOT WAS CHALLENGED. THE NOTIFICATION MUST INCLUDE A COPY OF THE CHALLENGE FORM, THE DISPOSITION OF THE BALLOT, AND A STATEMENT THAT THE MATTER WILL BE REFERRED TO THE DISTRICT ATTORNEY UNDER SECTION 1-9-209, C.R.S.**

Proposed additional rule: **9.2.3 THE CHALLENGER SHALL BE PROVIDED A COPY OF THE CHALLENGE FORM AND OFFERED THE OPPORTUNITY TO BE PRESENT AT THE FURTHER REVIEW PURSUANT TO 9.2.1 AND INFORMED OF THE OUTCOME OF SAME AND SHALL BE OFFERED THE OPPORTUNITY TO REVIEW THE EVIDENCE REGARDING ELIGIBILITY PRIOR TO BEING GIVEN THE OPPORTUNITY TO WITHDRAW THE CHALLENGE.**

18.3.2 Central Count Optical Scan Procedures FOR COUNTING PAPER BALLOTS ON BALLOT
27 SCANNERS AT CENTRAL COUNT LOCATIONS

**28 (a) DUPLICATION OF DAMAGED BALLOTS. BEFORE TABULATION, A RESOLUTION
29 BOARD MUST DUPLICATE DAMAGED BALLOTS IN ACCORDANCE WITH RULE 18.4.
30 Judges ELECTION JUDGES may complete a visual inspection of every ballot for
31 the limited purpose of separating SEGREGATING damaged ballots into a unique
32 batch FOR DUPLICATION.**

**33 (b) Judges must resolve, and where applicable, duplicate, every damaged ballot and
34 all ballots sorted by the optical scan machine in accordance with this Rule.**

**35 SEGREGATION OF BALLOTS REQUIRING RESOLUTION. A COUNTY MUST SORT
36 BALLOTS THAT REQUIRE RESOLUTION ACCORDING TO THE CAPABILITIES OF ITS
37 VOTING SYSTEM.**

Note this is being updated to account for electronic resolution or adjudication.

**18.3.2 (c) A resolution board, consisting of a bipartisan team of two election judges for
15 partisan elections or two qualified election judges for nonpartisan elections, must
16 resolve all ballots sorted by the central count optical scan equipment.
17 RESOLUTION BOARD. A RESOLUTION BOARD MUST DUPLICATE DAMAGED
18 BALLOTS AND RESOLVE BALLOTS SORTED OR REJECTED FOR RESOLUTION.**

Note that all damaged (including for reasons of identifiable marks) ballots are to be duplicated. Both ballots that are rejected by machine and those that are already sorted out for resolution before they are scanned. Both reasons for resolution/duplication are valid. The special case of segregation for electronic adjudication (18.5.1) is handled separately from duplication.

2.14.1 Notwithstanding the retention timelines specified in section 1-2-227, C.R.S., the county clerk may destroy paper voter registration records as soon as they have been digitally recorded in SCORE. The SCORE system must retain digital images of voter registration applications in perpetuity in accordance with section 1-5-301, C.R.S.

Paper registration forms are no longer destroyed as soon as scanned. This is as it should be. That SCORE must retain digital images in perpetuity is also a good thing- this is only the digital data. I see from other comments some uncertainty as to the retention period of the paper records. It should be clear that it is the 25 months of all election records.

Proposed additional text: 2.14.1 PAPER VOTER REGISTRATION RECORDS ARE ELECTION RECORDS AND SUBJECT TO RETENTION.

**6.9.1 THE CRIMINAL BACKGROUND CHECK MUST BE CONDUCTED BY OR THROUGH THE
24 COLORADO BUREAU OF INVESTIGATION, THE COUNTY SHERIFF'S DEPARTMENT IN
25 ACCORDANCE WITH SECTION 24-72-305.6(3), C.R.S., OR SIMILAR STATE OR FEDERAL
26 AGENCY.**

**27 6.9.2 A PERSON CONVICTED OF AN ELECTION OFFENSE OR AN OFFENSE CONTAINING AN
28 ELEMENT OF FRAUD MAY NOT HANDLE VOTER REGISTRATION APPLICATIONS OR
29 CONDUCT VOTER REGISTRATION AND LIST MAINTENANCE ACTIVITIES.**

If the second statement is the entirety of the criterion for rejection as a result of the background check, then this is an acceptable and welcome rule. It should be made clear that the criteria are specific and not left up to the official.

**Proposed text: 6.9.1 THE CRIMINAL BACKGROUND CHECK BY OR THROUGH THE
COLORADO BUREAU OF INVESTIGATION, THE COUNTY SHERIFF'S DEPARTMENT IN
ACCORDANCE WITH SECTION 24-72-305.6(3), C.R.S., OR SIMILAR STATE OR FEDERAL
AGENCY. SHALL BE USED TO VERIFY THAT THERE HAS NOT BEEN A CONVICTION OF AN ELECTION OFFENSE OR AN
OFFENSE CONTAINING AN ELEMENT OF FRAUD.**

**7.5.1 The county clerk must adequately light all stand-alone drop-off locations and use either
32 an election official or a video security surveillance recording system as defined in Rule**

33 1.1.42 to monitor each location.

34 (a) Freestanding drop-off locations must be monitored ~~at all times~~ WHEN THEY ARE OPEN TO RECEIVE BALLOTS.

(b) If the drop-off location utilizes a drop-slot into a building, the ballots must be collected in a locked container, and both the drop-slot and container must be monitored ~~at all times~~.

(c) Signage at each drop-off location must inform voters that it is a violation of law for any person to collect more than ten ballots for mailing or delivery in any election, and that electioneering is prohibited within 100 feet of any drop-box.

(d) The minimum number of drop-off locations must be open during reasonable business hours as defined in Rule 7.9.1(a) and from 7:00 a.m. through 7:00 p.m. on election day.

(E) VIDEO SECURITY SURVEILLANCE IS AN ELECTION RECORD UNDER SECTION 1-1-11 104(11), C.R.S. AND MUST BE RETAINED BY THE COUNTY CLERK IN ACCORDANCE WITH SECTION 1-7-802, C.R.S.

(E) is a welcome improvement because it makes the video available to officials and CORA requestors. Note that the requirement to monitor the "slot" will arguably not be satisfied by a video camera at 50 yards and certainly not one that does not have a view of the side of the box with the slot. There are many cases of boxes inadequately "monitored" by video and some perhaps not monitored at all.

Proposed text: 34 (a) Freestanding drop-off locations must be monitored ~~at all times~~ WHEN THEY ARE OPEN TO RECEIVE BALLOTS **OR CONTAIN BALLOTS.**

8.1.5 A watcher must complete a training provided by or approved by the Secretary of State before observing election activities where confidential or personally identifiable information may be within view. TO VERIFY COMPLETION OF THE TRAINING, A WATCHER MUST PROVIDE HIS OR HER TRAINING CERTIFICATE OF COMPLETION WITH THE CERTIFICATE OF APPOINTMENT.

This training course is available on the SOS website. It takes 30 minutes. The certificate is downloadable and printable from the website, and this is acceptable.

8.15.8 HAVE IN HIS OR HER POSSESSION A MOBILE PHONE OR OTHER ELECTRONIC DEVICE WHILE WATCHING ELECTION ACTIVITIES IN AREAS WHERE CONFIDENTIAL OR PERSONALLY IDENTIFIABLE INFORMATION MAY BE WITHIN VIEW.

This requirement to prevent use of electronic devices where PII "may be within view" is too loose. This rule may come from my using a smart phone to time the decisions of election judges in Jefferson County. That kind of use ought not be prevented by such a rule. I understand that photos may not be taken in this situation, but there is a blanket rule against photos and recordings taken by watchers. So I think this rule is simply not necessary and may be obstructive. What does "in possession" mean? Could this lead to searches of watchers for cell phones in a pocket? This rule portion ought to be deleted.

11.3.3(a) (1) No later than 48 hours after the close of polls on election night, the Secretary of State must notify the designated election official ~~which~~ OF THE voting devices and ~~which race or races on the ballots will be audited~~ RANDOMLY SELECTED FOR AUDIT, based on the submitted hardware inventory list referred to in Rule 11.2. 15

This change seems to remove the provision for all contests to be audited. The rule should be more specific about what random means.

(B) APPOINTMENT OF AUDIT BOARD. THE DESIGNATED ELECTION OFFICIAL MUST APPOINT AN AUDIT BOARD TO CONDUCT THE POST-ELECTION AUDIT, IN ACCORDANCE WITH SECTION 1-7-509(1)(B), C.R.S. At least two canvass board members must observe the random audit. The designated election official, MEMBERS OF HIS OR HER STAFF, AND OTHER DULY APPOINTED ELECTION JUDGES, may assist with the audit.

This selection of the audit board by the official whose work is to be audited is not in accordance with best audit practice for reasons of lack of independence. The inclusion of the staff goes further in a direction that lacks independence. At a minimum the canvass board should be managing the audit, but the canvass board too lacks independence. Please delete the phrase

Proposed edit: At least two canvass board members must observe the random audit. ~~The designated election official, MEMBERS OF HIS OR HER STAFF, AND OTHER~~ **CANVASS BOARD MEMBERS AND** DULY APPOINTED ELECTION JUDGES, may assist with **PERFORM** the audit.

**11.10.1 (3) FOR JUDICIAL RETENTION QUESTIONS, THE CONTEST NAME MUST
15 INCLUDE THE COURT AND THE TITLE AND LAST NAME OF THE JUSTICE OR
16 JUDGE STANDING FOR RETENTION (E.G., “SUPREME COURT – JUSTICE
17 ERICKSON,” “COURT OF APPEALS – JUDGE JONES,” “1ST JUDICIAL
18 DISTRICT– JUDGE SMITH,” “ADAMS COUNTY COURT – JUDGE DOE,”).**

Election Night Reporting requirements to include identifying information for each contest are good. The same requirements should apply to the voter choice ballot format that is created by the ballot marking devices of the uniform voting system. In previous experience with VVPAT from DRE the contest title might not include enough information to identify the subject of the contest such as a judge name. Existing systems prior to UVS do not enforce a requirement that the contest be sufficiently recognizable. This will help.

Rule 18. Uniform Ballot Counting Standards FOR PAPER BALLOTS

**18.2.1 In accordance with section 1-7-309, C.R.S., and Rule ~~18.6~~18.5, judges counting ballots
36 on election day must consider the intent of the voter.**

This recognition of the spread of time for tabulation is a big improvement and it is important to remember that we are a voter intent state. The question is when do the judges actually get access to ballots to consider the intent of the voter. With UVS it is only when the ballot is damaged and duplicated or when an overvote is detected or the mark density is within the two thresholds that trigger adjudication or when there are marks in a write-in area.

During a recount under previous rules “undervote rejection” is turned off. These rules must also specify how the Dominion device is to be set for a recount- presumably the lower threshold for ambiguous mark would be set to zero. It would be a terrible mistake to remove the extra adjudication that takes place with a recount- either a full hand count should be done or a much more accurate retabulation of the paper that does check for eligibility concerns and chain of custody. During a recount the system must account for other sources of error in machine interpretation of voter intent such as out-of-target written messages, write-ins without filled targets, and very light or marks otherwise invisible to the scanner. In order to verify accuracy of resolution, the original ballots (that were originally duplicated as “damaged ballots”) must be hand tabulated during a recount rather than duplicates machine-retabulated. Rules should be modified to be sure these integrity steps are undertaken in case of a recount.

**18.3.2 (c) (1) ~~The board must be observed by two additional election judges, who in
20 any partisan election must be representatives of each major political
21 party.~~ IN PARTISAN ELECTIONS, A RESOLUTION BOARD MUST CONSIST OF**

**22 AT LEAST TWO ELECTION JUDGES AFFILIATED WITH DIFFERENT MAJOR
23 POLITICAL PARTIES.**

This new language is intended to reduce the need for election judges in adjudication from four to two. Resolution is the term used in the Hart world; adjudication in the Dominion world. The thought is that four might be too many hovering around a computer screen. Some counties project the resolution process onto a large screen to accommodate 4 judges plus a staff operator and watchers so the option to go with more judges is appreciated.

But written this way this language also reduces the number of judges required for duplication and that is a mistake. For duplication either four judges with two monitoring the process or a requirement to crosscheck duplication of ballots by an additional and different pair of judges is needed. It is not sufficient to ask the same pair of judges to cross check their own work.

The work effort is the same in both cases but the elapsed time required is longer if separate checking is used. Even if Runbeck Simulo is used for duplication arguably two judges are needed to enter the data but two different judges are surely required for confirmation checking. When two judges are involved in duplication (one reading, one writing) either of them can introduce an error that will not be discovered until separate judges check them, either at the time of the first copy or later. When two judges are working together to check the quality, they should both make a visual or auditory indication of acceptance so that a watcher can confirm that the two judges are satisfied before moving on. The same kind of watchable indication of intention is needed during voter intent adjudication (resolution) by two judges.

(3) IN COUNTIES WITH A VOTING SYSTEM THAT DOES NOT SUPPORT DIGITAL RESOLUTION, THE COUNTY MUST HAVE A SINGLE RESOLUTION BOARD. IN COUNTIES WITH A VOTING SYSTEM THAT SUPPORTS DIGITAL RESOLUTION, A RESOLUTION BOARD MUST WORK AT EACH RESOLUTION WORKSTATION.

This paragraph says that multiple resolution teams may only be used in counties with electronic adjudication. Why? If consistency is the reason then something else will need to be done to provide for consistency in the case of multiple teams for electronic adjudication, and in the case where multiple teams might want to be used in non-electronic adjudication counties such as El Paso and Jeffco. There is a new policy for auditing the electronic adjudication in case only two member teams are used. This audit process should be scheduled so that it can be watched.

Proposed replacement of first sentence: **EVERY COUNTY MUST HAVE AT MINIMUM TWO RESOLUTION BOARDS EACH OF TWO JUDGES OF OPPOSING PARTIES OR AT LEAST ONE RESOLUTION BOARD OF FOUR JUDGES EQUALLY REPRESENTING OPPOSING PARTIES.**

18.4.1 A DAMAGED BALLOT WILL REQUIRE RESOLUTION IF IT IS A BLANK BALLOT OR CONTAINS OVERVOTES, WRITE-IN VOTES, OR OTHER AMBIGUOUS MARKINGS. THE VOTER'S MARKINGS FROM THE DAMAGED BALLOT, AS RESOLVED BY THE RESOLUTION BOARD, MUST THEN BE MARKED ON THE DUPLICATED BALLOT DURING THE DUPLICATION PROCESS.

The sentence above is written as if the only definition of a damaged ballot is one that is rejected by the scanner for adjudication. That case is covered in 18.5.1 and need not be repeated here. Here is where actions related to reasons for duplication instead of resolution need to be listed. The 1.1.12 definition clearly contains reasons for duplication beyond what would cause a voting system to reject or send ballots to adjudication. Counties using non UVS equipment regularly duplicate ballots for reason that the scanner is not expected to tabulate the ballot correctly. That case must be included here. It would be preferable if the term duplication instead of resolution were used to distinguish from electronic adjudication for cases where duplication is needed prior to scanning. In the definition of damaged ballot 1.1.12, the case of a ballot with identifying marks is included. Appropriate replacement sentences for the above could be: **A BALLOT THAT IS REJECTED BY THE SCANNER WILL REQUIRE RESOLUTION IF IT IS A**

BLANK BALLOT OR CONTAINS OVERVOTES, WRITE-IN VOTES OR OTHER AMBIGUOUS MARKINGS PER 18.5.1. A DAMAGED BALLOT CHARACTERIZED AS SUCH FOR REASON OF IDENTIFYING MARKS MUST BE DUPLICATED OR REDACTED PRIOR TO SCANNING TO REMOVE THE IDENTIFYING MARKS. A DAMAGED BALLOT CHARACTERIZED AS SUCH FOR REASON THAT IT MAY FAIL TO BE CORRECTLY INTERPRETED BY THE SCANNER MUST BE DUPLICATED.

The above language will substantiate existing practices in non-electronic-adjudication counties and also provide for minimal cost and delay for access to ballots as public records pursuant to CORA. It will also best protect the privacy of the voters who accidentally mark ballots with their initials, names or signatures by minimizing the exposure of the record to other officials. This practice best conforms to the constitutional requirement of anonymity of the ballot while allowing the ballot to be counted.

18.4.2 A RESOLUTION BOARD MUST REVIEW THE ORIGINAL BALLOT AND THE DUPLICATED 38 BALLOT, AND CONSULT THE VOTER INTENT GUIDE IF NECESSARY, TO ENSURE THAT 39 EACH DAMAGED BALLOT HAS BEEN PROPERLY AND ACCURATELY DUPLICATED AND, TO 40 THE EXTENT APPLICABLE, RESOLVED.

Here we have a requirement to cross check but the original resolution team might be doing the cross check. This check should be done by a different team to achieve best accuracy. For this reason it is better to have at least two resolution teams rather than only one. (See 18.3.2 c (3) above)

Solution **"A SEPARATE RESOLUTION BOARD MUST..."**

18.4.6 THE RESOLUTION BOARD MUST DEPOSIT ALL DAMAGED BALLOTS THAT HAVE BEEN 19 DUPLICATED AND THE DUPLICATION LOGS IN A SEALABLE CONTAINER THAT IS CLEARLY 20 MARKED TO IDENTIFY ITS CONTENTS (E.G., "DAMAGED BALLOTS"). THE COUNTY MUST 21 MAINTAIN CHAIN-OF-CUSTODY AND SEAL LOGS FOR THE DAMAGED BALLOT CONTAINER 22 AT ALL TIMES DURING THE STATUTORY ELECTION RECORDS RETENTION PERIOD.

This requirement appears to require sealing the duplicate ballot log with the duplicate ballots. The log need not be sealed but does require retention. It should not be necessary to obtain election judges to sign off on broken seals in order to get access to these logs. Note that in general there should be a stated rule regarding the policy about location and retention of seal logs. Seal logs that are contained within the sealed container may not be examined without breaking the seal and creating a question for chain of custody. This is an impediment to verification of chain of custody. Seal logs would ideally be sealed in a transparent envelope that is visible on the exterior of the container to be sealed.

Propose delete **"AND THE DUPLICATION LOGS".**

(B) If a voter uses a consistent alternate ballot marking method that deviates 13 from the method specified by the voting instructions (such as circling or placing 14 a check mark behind a candidate's name or ballot response) and does not place 15 an "X", check or other appropriate mark in the ANY target area, the voter will be 16 considered to have voted for the appropriate candidates and or ballot responses 17 and the ballot must be duplicated. But THE RESOLUTION BOARD MUST RESOLVE 18 THE BALLOT IN ACCORDANCE WITH THE VOTER'S INTENT BY COUNTING THE 19 VOTES INDICATED BY THE ALTERNATE BALLOT MARKING METHOD. THIS RULE 20 DOES NOT APPLY if a-THE voter marks any of his or her choices by placing an 21 "X", check or other appropriate mark in any target area on the voter's ballot, IN 22 WHICH EVENT only those choices where the target area is marked may be 23 counted.

It is incorrect to include "X" or "check" along with the phrase "appropriate mark" considering that neither X nor check is an appropriate mark according to instructions on ballots in Colorado. The language that appears in both sentences should refer only to the absence of an appropriate mark that in Colorado is a fully filled in target. The rule as written literally says that if the voter uses one appropriate mark (including X or check) then the alternate marking method cannot be counted. The reality is the alternate marking method is usually either X or checkmark and it isn't always fully consistent. I and many election judges seem to agree that this rule as written will produce incorrect interpretation of voter intent. And both sentences produce the same misinterpretation of voter intent. I do not agree that the presence of one appropriate mark is sufficient to invalidate a number of alternate voter marks that are clear in voter intent. This rule should be corrected to make the result conform better to voter intent. This rule as written has produced too many discussions among election judges who ought to be the final arbiters of voter intent. These two sentences seem to be written to match the inability of the voting machines to correctly capture voter intent rather than enabling the much needed human factor in determining voter intent when the machine fails to be accurate. Propose deletion of " "X", check or other". What I have proposed here will far better honor the statute that requires voter intent to be recognized.

Proposed text:

If a voter uses a **SUBSTANTIALLY** consistent alternate ballot marking method that deviates from the method specified by the voting instructions (such as circling or placing a check mark **OR X NEAR** behind a candidate's name or **ASSOCIATED** ballot **TARGET** response) and does not place an "X", check or other appropriate mark in the **ANY ALL** target areaS, the voter will be considered to have voted for the appropriate candidates and or ballot responses and the ballot must be duplicated. ~~But~~ **THE RESOLUTION BOARD MUST RESOLVE THE BALLOT IN ACCORDANCE WITH THE VOTER'S INTENT BY COUNTING THE VOTES INDICATED BY THE ALTERNATE BALLOT MARKING METHOD AS WELL AS THE INSTRUCTED MARKING METHOD THAT DESERVES PRECEDENCE.** ~~THIS RULE DOES NOT APPLY~~ if a ~~THE~~ voter marks any of his or her choices by placing an "X", check or other appropriate mark in any target area on the voter's ballot, ~~IN WHICH EVENT only those choices where the target area is marked may be counted.~~ **THE RESOLUTION BOARD MUST ALSO INTERPRET VOTER CORRECTIONS SUCH AS STRIKEOUT AND USE OF X AS AN INDICATION OF AN ERROR INSTEAD OF AN ALTERNATE MARKING METHOD WHEN CIRCUMSTANCES MERIT.**

18.3.2 (f) Recount Procedures for Optical Scan

~~14 (1) Optical scan equipment must be set to consistent sensitivity standards for
15 each system type, must be tested before the recount, and must be
16 programmed to sort undervotes for the individual race(s) or ballot
17 measure(s) being recounted.~~

Apparently the settings of the voting system scanner for recount has not been updated for the UVS type equipment. Instead the paragraph in the original rules has simply been deleted. Furthermore, the treatment of duplicated ballots in a recount has not been specified. Clearly the original ballots that were once duplicated should be examined by hand for voter intent and hand tabulated during a recount and included in the count. Duplicates should not be recounted by machine. This will produce a much more accurate Colorado election in case of narrow victory margins that are subject to recount. This language must be revisited and reinserted in the rule with provision for Dominion such as **"SET THE LOWER THRESHOLD FOR ADJUDICATION OF AMBIGUOUS MARKS TO ZERO"**.

18.5.3 RESOLUTION OF WRITE-IN votes

(a) If a voter designates a vote for a named candidate on the ballot and writes in the name of the same candidate in the write-in area, the vote ~~FOR THE NAMED~~ CANDIDATE must be counted.

This case might not be exemplified in the voter intent guide and should be.

21.4.14 Ballot-level Cast Vote Records and Exports. All voting systems certified by the Secretary 3 of State for use in Colorado on or after January 1, 2016 must meet the following

4 requirements for ballot-level cast vote records and exports on or before December 31, 5 2016:

6 (a) The voting system must capture a ballot-level cast vote record (CVR) consisting 7 of a single record for each ballot tabulated, showing the manner in which the 8 voting system interpreted and tabulated the voter's markings on the ballot, as 9 adjudicated and resolved by election judges, if applicable.

10 (b) The voting system must be able to aggregate in a single file and export all CVRs 11 in comma-separated value (CSV) text format.

12 (c) The CVR export must contain the following fields, with values or data populated 13 by the voting system:

14 (1) CVR Number. A sequential number from one to the number of CVRs in 15 the export file. This can be used as an alternate method to identify each 16 CVR.

17 (2) Batch ID. Identifies the batch in which the paper ballot corresponding to 18 the CVR is located.

19 (3) Ballot Position. Identifies the position of the paper ballot corresponding 20 to the CVR within the batch. Target cards scanned to identify the batch 21 must not be included in this count.

22 (4) Imprinted ID. If the scanner model supports imprinting a unique 23 character string on the ballot during the scanning process, the voting 24 system must populate this field with the unique character string.

25 (5) Ballot Style. Indicates the ballot style of the paper ballot corresponding 26 to the CVR.

27 (6) Device ID. Identifies the scanning device by model, serial number, 28 and/or scanning station identifier.

29 (7) Contest and Choice Names. Each contest and choice on any ballot in the 30 election must have its own field so that voters' choices in all contests can 31 be easily and independently tabulated after the CVR export is imported 32 into a spreadsheet application.

33 (a) (D) The header or field names in the CVR export must unambiguously correspond to 34 names of the contests and choices on the paper ballots. The use of choice ID and 35 contest ID to identify each choice must be avoided because they require cross36 referencing to other sources to determine the choice and contest names.

37 (b) (E) The contests and choices must be listed in the same order as they appear on the 38 ballots.

(c) (F) A vote for a choice must be indicated by 1 a "1". No vote for a choice or an 2 overvoted condition must be indicated by a "0". Choices that are not applicable 3 to the CVR must be left blank.

The definition of a cast vote record report is reiterated in this rule process even though there are no significant changes to it. It isn't as good as it could be in that it does not specify the location of detected overvotes as separate from undervotes. We need to see the under and over votes reported in the cast vote record. Here, as written, the cast vote record report will conflate undervotes and overvotes - and this will produce a contrast to what is on the paper where they are represented very differently. This CVR also does not provide room for optional data such as the mark density as detected by the voting system.

21.4.14.(d) (5) ~~Ballots Cast~~ VOTES CAST. The number of ~~ballots cast of~~ VOTES CAST FOR each unique ballot style, or in each precinct or precinct split, as applicable.

This is a sad example of how confusing this change is from ballots to votes. Ballots are cast, ballots are counted and much differently, and with central count substantially later, votes on ballots are counted. Votes aren't cast. Votes differentiate into under, over and votes for and against candidates and ballot issues. The sum of all these subsets of votes should be the number of ballots processed containing the contest. That number should resemble the number of

voters attempting to cast a ballot containing the contest. The voting system producing this report knows about the subdivisions of votes counted. It knows nothing about ballots cast (or registered voters) and cannot be a source for that information. If information has been transferred to it from a source that does know how many ballots were cast, this is secondary information and subject to verification against the source of the information. What is likely to be reported here is an old out of date number of registered voters (as this number changes even after 7PM on election night) and “ballots scanned” assuming that all ballots that are to be reported here are actually represented on paper and scanned (DREs are different). This report must be honest about its sources and their inherent inaccuracy.

----- document continues -----

Voter Intent Examples – ballot scans from the 2016 Primary

Below we see consistent use of checkmarks (alternate marking system) including overvoting. Possibly there is an erasure on the Lontine vote and three contests are overvoted. This ballot cannot be adequately adjudicated from the image because of the Lontine vote at a minimum. Denver adjudicated all of these marks as votes. Presumably the system later interpreted the overvotes correctly.

Federal Offices Oficinas Federales	State Offices Oficinas de Escuelas	State Offices Oficinas de Escuelas
United States Senator Senador de los Estados Unidos (Vote for One / Vote por Uno)	Regent of the University of Colorado - At Large Regente de la Universidad de Colorado - Genérico (Vote for One / Vote por Uno)	State Representative - District 1 Representante Estatal - Distrito 1 (Vote for One / Vote por Uno)
Michael Bennet ✓	Alice Madden ✓	Susan Lontine ✓
Representative to the 115th United States Congress - District 1 Representante para el 115to Congreso de los Estados unidos - Distrito 1 (Vote for One / Vote por Uno)	Regent of the University of Colorado - Congressional District 1 Regente de la Universidad de Colorado - Congreso de Distrito 1 (Vote for One / Vote por Uno)	District Attorney - 2nd Judicial District Procurador de Distrito - 2do Distrito Judicial (Vote for One / Vote por Uno)
Diana DeGette ✓	Lucky Vidmar ✓	Michael Carrigan ✓
Charles H. "Chuck" Norris ✓	Jack Kroll ✓	Beth McCann ✓
		Kenneth Boyd ✓

Below we see consistent alternate marking with checks and portions of checks including very few pixels for Bennet Lontine and Boyd. This ballot requires adjudication from the original paper because of the very light marks for those three candidates. Notice that there is a range of size of the marks- size is not consistent. Denver judges adjudicated this one as votes for DeGette, Madden and Vidmar. No votes found for Bennet, Lontine or Boyd where I can see marks.

Federal Offices Oficinas Federales	State Offices Oficinas de Escuelas	State Offices Oficinas de Escuelas
United States Senator Senador de los Estados Unidos (Vote for One / Vote por Uno)	Regent of the University of Colorado - At Large Regente de la Universidad de Colorado - Genérico (Vote for One / Vote por Uno)	State Representative - District 1 Representante Estatal - Distrito 1 (Vote for One / Vote por Uno)
Michael Bennet ✓	Alice Madden ✓	Susan Lontine ✓
Representative to the 115th United States Congress - District 1 Representante para el 115to Congreso de los Estados unidos - Distrito 1 (Vote for One / Vote por Uno)	Regent of the University of Colorado - Congressional District 1 Regente de la Universidad de Colorado - Congreso de Distrito 1 (Vote for One / Vote por Uno)	District Attorney - 2nd Judicial District Procurador de Distrito - 2do Distrito Judicial (Vote for One / Vote por Uno)
Diana DeGette ✓	Lucky Vidmar ✓	Michael Carrigan
Charles H. "Chuck" Norris	Jack Kroll	Beth McCann
		Kenneth Boyd

This is an example of perfect marking of a ballot including a three-way overvote. The system interpreted an overvote for District Attorney and the Denver judges did not change the machine interpretation.

Federal Offices Oficinas Federales	State Offices Oficinas de Escuelas	State Offices Oficinas de Escuelas
United States Senator Senador de los Estados Unidos (Vote for One / Vote por Uno)	Regent of the University of Colorado - At Large Regente de la Universidad de Colorado - Genérico (Vote for One / Vote por Uno)	State Senator - District 31 Senador Estatal - Distrito 31 (Vote for One / Vote por Uno)
Michael Bennet ●	Alice Madden ●	Steve Sherick
Representative to the 115th United States Congress - District 1 Representante para el 115to Congreso de los Estados Unidos - Distrito 1 (Vote for One / Vote por Uno)	Regent of the University of Colorado - Congressional District 1 Regente de la Universidad de Colorado - Congreso de Distrito 1 (Vote for One / Vote por Uno)	Lois Court
Diana DeGette	Lucky Vidmar	Erin Bennett ●
Charles H. "Chuck" Norris ●	Jack Kroll ●	State Representative - District 2 Representante Estatal - Distrito 2 (Vote for One / Vote por Uno)
		Alec Garnett ●
		District Attorney - 2nd Judicial District Procurador de Distrito - 2do Distrito Judicial (Vote for One / Vote por Uno)
		Michael Carrigan ●
		Beth McCann ●
		Kenneth Boyd ●

Here is an example of perfect marking with an additional partial vote that causes an overvote if the mark for Kroll is intended. Denver judges left that Kroll mark as "ambiguous" and therefore the Vidmar vote counts.

Federal Offices Oficinas Federales	State Offices Oficinas de Escuelas	State Offices Oficinas de Escuelas
United States Senator Senador de los Estados Unidos (Vote for One / Vote por Uno)	Regent of the University of Colorado - At Large Regente de la Universidad de Colorado - Genérico (Vote for One / Vote por Uno)	State Senator - District 31 Senador Estatal - Distrito 31 (Vote for One / Vote por Uno)
Michael Bennet ●	Alice Madden ●	Steve Sherick ●
Representative to the 115th United States Congress - District 1 Representante para el 115to Congreso de los Estados Unidos - Distrito 1 (Vote for One / Vote por Uno)	Regent of the University of Colorado - Congressional District 1 Regente de la Universidad de Colorado - Congreso de Distrito 1 (Vote for One / Vote por Uno)	Lois Court
Diana DeGette ●	Lucky Vidmar ●	Erin Bennett
Charles H. "Chuck" Norris	Jack Kroll /	State Representative - District 9 Representante Estatal - Distrito 9 (Vote for One / Vote por Uno)
		Paul Rosenthal ●
		District Attorney - 2nd Judicial District Procurador de Distrito - 2do Distrito Judicial (Vote for One / Vote por Uno)
		Michael Carrigan ●
		Beth McCann
		Kenneth Boyd

Here is a case where the voting system sees a three-way overvote and the human judge sees a vote with a scratch-out that indicates no voter intent. Here the system determination of overvote was overruled by Denver judges who adjudicated the three marked targets in the vicinity of the District Attorney contest as non-votes instead of an overvote.

Federal Offices Oficinas Federales	State Offices Oficinas de Escuelas	State Offices Oficinas de Escuelas
United States Senator Senador de los Estados Unidos (Vote for One / Vote por Uno)	Regent of the University of Colorado - At Large Regente de la Universidad de Colorado - Genérico (Vote for One / Vote por Uno)	State Senator - District 31 Senador Estatal - Distrito 31 (Vote for One / Vote por Uno)
Michael Bennet	Alice Madden	Steve Sherick
Representative to the 115th United States Congress - District 1 Representante para el 115to Congreso de los Estados Unidos - Distrito 1 (Vote for One / Vote por Uno)	Regent of the University of Colorado - Congressional District 1 Regente de la Universidad de Colorado - Congreso de Distrito 1 (Vote for One / Vote por Uno)	Lois Court
Diana DeGette	Lucky Vidmar	Erin Bennett
Charles H. "Chuck" Norris	Jack Kroll	State Representative - District 6 Representante Estatal - Distrito 6 (Vote for One / Vote por Uno)
		Jeff Hart
		Chris Hansen
		District Attorney - 2nd Judicial District Procurador de Distrito - 2do Distrito Judicial (Vote for One / Vote por Uno)
		Michael Carrigan
		Beth McCann
		Kenneth Boyd

Here is a well marked ballot with some foreign material that has been detected by the voting system in the region of candidate Goldhamer. Denver judges left the marks near Goldhaber as "ambiguous." No overvote.

Federal Offices Oficinas Federales	State Offices Oficinas de Escuelas	State Offices Oficinas de Escuelas
United States Senator Senador de los Estados Unidos (Vote for One / Vote por Uno)	Regent of the University of Colorado - At Large Regente de la Universidad de Colorado - Genérico (Vote for One / Vote por Uno)	State Senator - District 33 Senador Estatal - Distrito 33 (Vote for One / Vote por Uno)
Michael Bennet	Alice Madden	Angela Williams
Representative to the 115th United States Congress - District 1 Representante para el 115to Congreso de los Estados Unidos - Distrito 1 (Vote for One / Vote por Uno)	Regent of the University of Colorado - Congressional District 1 Regente de la Universidad de Colorado - Congreso de Distrito 1 (Vote for One / Vote por Uno)	Jon Biggerstaff
Diana DeGette	Lucky Vidmar	State Representative - District 8 Representante Estatal - Distrito 8 (Vote for One / Vote por Uno)
Charles H. "Chuck" Norris	Jack Kroll	Aaron D. Goldhamer
		Leslie Herod
		District Attorney - 2nd Judicial District Procurador de Distrito - 2do Distrito Judicial (Vote for One / Vote por Uno)
		Michael Carrigan
		Beth McCann
		Kenneth Boyd

Here is an almost perfectly marked ballots according to instructions except that the Bennet vote is too high to cover the target. So it requires adjudication. It receives adjudication because enough pixels overlapped with the Bennet target. The system saw a blank contest for Senate and Denver judges overruled that with a vote for Bennet. The DeGette target was 42% filled in and did not require adjudication.

Federal Offices Oficinas Federales	State Offices Oficinas de Escuelas	State Offices Oficinas de Escuelas
United States Senator Senador de los Estados Unidos (Vote for One / Vote por Uno) Michael Bennet	Regent of the University of Colorado - At Large Regente de la Universidad de Colorado - Genérico (Vote for One / Vote por Uno) Alice Madden	State Representative - District 2 Representante Estatal - Distrito 2 (Vote for One / Vote por Uno) Alec Garnett
Representative to the 115th United States Congress - District 1 Representante para el 115to Congreso de los Estados unidos - Distrito 1 (Vote for One / Vote por Uno) Diana DeGette	Regent of the University of Colorado - Congressional District 1 Regente de la Universidad de Colorado - Congreso de Distrito 1 (Vote for One / Vote por Uno) Lucky Vidmar	District Attorney - 2nd Judicial District Procurador de Distrito - 2do Distrito Judicial (Vote for One / Vote por Uno) Michael Carrigan
Charles H. "Chuck" Norris	Jack Kroll	Beth McCann Kenneth Boyd

Here are poor marks that are consistent and according to instructions but one has spread into the target off another candidate. I would have interpreted here a vote for Vidmar. In Denver the system saw a blank CD1 Regent contest and the election judges did see this in adjudication but did not change the system interpretation. Apparently the Dominion system saw less than 26% pixel density in both targets- Vidmar and Kroll. This is I think an error in interpretation.

Federal Offices Oficinas Federales	State Offices Oficinas de Escuelas	State Offices Oficinas de Escuelas
United States Senator Senador de los Estados Unidos (Vote for One / Vote por Uno) Michael Bennet	Regent of the University of Colorado - At Large Regente de la Universidad de Colorado - Genérico (Vote for One / Vote por Uno) Alice Madden	State Representative - District 1 Representante Estatal - Distrito 1 (Vote for One / Vote por Uno) Susan Lontine
Representative to the 115th United States Congress - District 1 Representante para el 115to Congreso de los Estados unidos - Distrito 1 (Vote for One / Vote por Uno) Diana DeGette	Regent of the University of Colorado - Congressional District 1 Regente de la Universidad de Colorado - Congreso de Distrito 1 (Vote for One / Vote por Uno) Lucky Vidmar	District Attorney - 2nd Judicial District Procurador de Distrito - 2do Distrito Judicial (Vote for One / Vote por Uno) Michael Carrigan
Charles H. "Chuck" Norris	Jack Kroll	Beth McCann Kenneth Boyd

Here is a ballot marked according to instructions with one extra X mark. In this case it doesn't matter if X means a vote or not a vote, as the result is the same because the X also creates an overvote. In Denver the Coleman X was seen as ambiguous by the system and left that way by the judges – no overvote. I think this is an error in adjudication under the rules.

Federal Offices Oficinas Federales	State Offices Oficinas de Escuelas	State Offices Oficinas de Escuelas
United States Senator Senador de los Estados Unidos (Vote for One / Vote por Uno) Michael Bennet ●	Regent of the University of Colorado - At Large Regente de la Universidad de Colorado - Genérico (Vote for One / Vote por Uno) Alice Madden	State Senator - District 33 Senador Estatal - Distrito 33 (Vote for One / Vote por Uno) Angela Williams ●
Representative to the 115th United States Congress - District 1 Representante para el 115to Congreso de los Estados Unidos - Distrito 1 (Vote for One / Vote por Uno) Diana DeGette ●	Regent of the University of Colorado - Congressional District 1 Regente de la Universidad de Colorado - Congreso de Distrito 1 (Vote for One / Vote por Uno) Lucky Vidmar ●	State Representative - District 7 Representante Estatal - Distrito 7 (Vote for One / Vote por Uno) Elet Valentine
Charles H. "Chuck" Norris	Jack Kroll	Michele Wheeler ● James Rashad Coleman X
		District Attorney - 2nd Judicial District Procurador de Distrito - 2do Distrito Judicial (Vote for One / Vote por Uno) Michael Carrigan ● Beth McCann Kenneth Boyd

Here we see two marking methods- according to instructions and also X marks. According to any source and the existing rule, this is a vote for Bennet, DeGette, Pabon and McCann. If the X is treated as a vote, it is counted for Kroll and Madden. If the X is interpreted as a cross-out then it is not counted for Kroll and Madden. According to existing rule the X's are an alternative marking method in combination with at least one correct mark and are not considered. However election judges may be inclined to either count the vote for Madden and Kroll or remove the vote for Kroll. Under my rule both the filled targets and the X'd targets are counted as votes. Denver election judges agreed with Dominion's interpretation: Madden's X is blank and the Kroll X plus filled in target is a vote. A third rule was applied.

Federal Offices Oficinas Federales	State Offices Oficinas de Escuelas	State Offices Oficinas de Escuelas
United States Senator Senador de los Estados Unidos (Vote for One / Vote por Uno) Michael Bennet ●	Regent of the University of Colorado - At Large Regente de la Universidad de Colorado - Genérico (Vote for One / Vote por Uno) Alice Madden X	State Representative - District 4 Representante Estatal - Distrito 4 (Vote for One / Vote por Uno) Dan Pabón ●
Representative to the 115th United States Congress - District 1 Representante para el 115to Congreso de los Estados Unidos - Distrito 1 (Vote for One / Vote por Uno) Diana DeGette ●	Regent of the University of Colorado - Congressional District 1 Regente de la Universidad de Colorado - Congreso de Distrito 1 (Vote for One / Vote por Uno) Lucky Vidmar	District Attorney - 2nd Judicial District Procurador de Distrito - 2do Distrito Judicial (Vote for One / Vote por Uno) Michael Carrigan
Charles H. "Chuck" Norris	Jack Kroll X	Beth McCann ● Kenneth Boyd

Here is another case where both the instructed and an alternate marking method are used. The Bennet vote is according to instructions but an alternate mark is also used. According to existing rules including as modified in this rulemaking only Bennet gets the vote here. Wouldn't any election judge agree that all circled candidates deserve the votes? Thus the need for the change of rule. But Denver judges followed the rule and found only a vote for Bennet here.

Federal Offices Oficinas Federales	State Offices Oficinas de Escuelas	State Offices Oficinas de Escuelas
United States Senator Senador de los Estados Unidos (Vote for One / Vote por Uno) Michael Bennet ●	Regent of the University of Colorado - At Large Regente de la Universidad de Colorado - Genérico (Vote for One / Vote por Uno) Alice Madden	State Senator - District 33 Senador Estatal - Distrito 33 (Vote for One / Vote por Uno) Angela Williams
Representative to the 115th United States Congress - District 1 Representante para el 115to Congreso de los Estados Unidos - Distrito 1 (Vote for One / Vote por Uno) Diana DeGette	Regent of the University of Colorado - Congressional District 1 Regente de la Universidad de Colorado - Congreso de Distrito 1 (Vote for One / Vote por Uno) Lucky Vidmar	State Representative - District 8 Representante Estatal - Distrito 8 (Vote for One / Vote por Uno) Aaron D. Goldhamer
Charles H. "Chuck" Norris	Jack Kroll	Leslie Herod
		District Attorney - 2nd Judicial District Procurador de Distrito - 2do Distrito Judicial (Vote for One / Vote por Uno) Michael Carrigan
		Beth McCann
		Kenneth Boyd

Here is another case of two marking systems. According to existing rule this is a vote for Bennet, Madden and Bennett. By my updated rule this would be also a vote for DeGette and Sherick. Would you disagree? Denver judges saw the DeGette X as a blank contest and Sherick as "ambiguous" so a vote for Erin Bennett. That is following existing rule.

Federal Offices Oficinas Federales	State Offices Oficinas de Escuelas	State Offices Oficinas de Escuelas
United States Senator Senador de los Estados Unidos (Vote for One / Vote por Uno) Michael Bennet ●	Regent of the University of Colorado - At Large Regente de la Universidad de Colorado - Genérico (Vote for One / Vote por Uno) Alice Madden ●	State Senator - District 31 Senador Estatal - Distrito 31 (Vote for One / Vote por Uno) Steve Sherick ✕
Representative to the 115th United States Congress - District 1 Representante para el 115to Congreso de los Estados Unidos - Distrito 1 (Vote for One / Vote por Uno) Diana DeGette ✕	Regent of the University of Colorado - Congressional District 1 Regente de la Universidad de Colorado - Congreso de Distrito 1 (Vote for One / Vote por Uno) Lucky Vidmar	Lois Court
Charles H. "Chuck" Norris	Jack Kroll	Erin Bennett ●
		State Representative - District 6 Representante Estatal - Distrito 6 (Vote for One / Vote por Uno) Jeff Hart ●
		Chris Hansen
		District Attorney - 2nd Judicial District Procurador de Distrito - 2do Distrito Judicial (Vote for One / Vote por Uno) Michael Carrigan ●
		Beth McCann
		Kenneth Boyd







Here is another example of two vote marking systems. Three contests marked per instructions, three with an alternative scheme. Note that the Bennet target is not marked, so it is not correct to say that the voter used X's as placeholders where he/she was not voting. Even if X is counted as a vote, two of the three contests are overvoted. What is the excuse for not counting the vote for Madden? According to existing rule it is not counted. And Denver counted that way.

Federal Offices Oficinas Federales	State Offices Oficinas de Escuelas	State Offices Oficinas de Escuelas
United States Senator Senador de los Estados Unidos (Vote for One / Vote por Uno)	Regent of the University of Colorado - At Large Regente de la Universidad de Colorado - Genérico (Vote for One / Vote por Uno)	State Senator - District 33 Senador Estatal - Distrito 33 (Vote for One / Vote por Uno)
Michael Bennet	Alice Madden X	Angela Williams ●
Representative to the 115th United States Congress - District 1 Representante para el 115to Congreso de los Estados Unidos - Distrito 1 (Vote for One / Vote por Uno)	Regent of the University of Colorado - Congressional District 1 Regente de la Universidad de Colorado - Congreso de Distrito 1 (Vote for One / Vote por Uno)	State Representative - District 8 Representante Estatal - Distrito 8 (Vote for One / Vote por Uno)
Diana DeGette	Lucky Vidmar X	Aaron D. Goldhamer X
Charles H. "Chuck" Norris ●	Jack Kroll X	Leslie Herod X
		District Attorney - 2nd Judicial District Procurador de Distrito - 2do Distrito Judicial (Vote for One / Vote por Uno)
		Michael Carrigan ●
		Beth McCann
		Kenneth Boyd










But here we could assume that the X's are indicative of non votes- every target other than the ones marked as votes is marked with an X. Should we interpret the X as a vote and thereby remove properly indicated votes for Norris, Vidmar and McCann? If the judges are allowed to determine voter intent they will count the marks that are according to instructions here. This is why consistency is important but not absolutely necessary. Yes, this is complicated. Denver left all the X's as "ambiguous" and they did not generate overvotes. Here the existing rule does correctly interpret intent.

Federal Offices Oficinas Federales	State Offices Oficinas de Escuelas	State Offices Oficinas de Escuelas
United States Senator Senador de los Estados Unidos (Vote for One / Vote por Uno)	Regent of the University of Colorado - At Large Regente de la Universidad de Colorado - Genérico (Vote for One / Vote por Uno)	State Representative - District 4 Representante Estatal - Distrito 4 (Vote for One / Vote por Uno)
Michael Bennet ●	Alice Madden ●	Dan Pabón ●
Representative to the 115th United States Congress - District 1 Representante para el 115to Congreso de los Estados Unidos - Distrito 1 (Vote for One / Vote por Uno)	Regent of the University of Colorado - Congressional District 1 Regente de la Universidad de Colorado - Congreso de Distrito 1 (Vote for One / Vote por Uno)	District Attorney - 2nd Judicial District Procurador de Distrito - 2do Distrito Judicial (Vote for One / Vote por Uno)
Diana DeGette X	Lucky Vidmar ●	Michael Carrigan X
Charles H. "Chuck" Norris ●	Jack Kroll X	Beth McCann ●
		Kenneth Boyd X

Here is another one. The instructed mark is used on four contests and the alternate on those four plus two more. According to the existing rule the votes for Pabon and Carrigan are not counted. According to my update they are. According to Denver election judges they are counted.

Federal Offices Oficinas Federales	State Offices Oficinas de Escuelas	State Offices Oficinas de Escuelas
United States Senator Senador de los Estados Unidos (Vote for One / Vote por Uno) Michael Bennet 	Regent of the University of Colorado - At Large Regente de la Universidad de Colorado - Genérico (Vote for One / Vote por Uno) Alice Madden 	State Representative - District 4 Representante Estatal - Distrito 4 (Vote for One / Vote por Uno) Dan Pabón 
Representative to the 115th United States Congress - District 1 Representante para el 115to Congreso de los Estados Unidos - Distrito 1 (Vote for One / Vote por Uno) Diana DeGette 	Regent of the University of Colorado - Congressional District 1 Regente de la Universidad de Colorado - Congreso de Distrito 1 (Vote for One / Vote por Uno) Lucky Vidmar 	District Attorney - 2nd Judicial District Procurador de Distrito - 2do Distrito Judicial (Vote for One / Vote por Uno) Michael Carrigan 
Charles H. "Chuck" Norris	Jack Kroll	Beth McCann Kenneth Boyd

Here are two marking systems and also a light mark for Bennet. Once again we see X marks in places that look like non-votes but not in all contests. Norris is not marked with an X as a non-vote. Therefore I see all these Xs as votes and Vidmar/Kroll as well as Carrigan/McCann/Boyd are overvoted. Madden and Lontine should count. Dominion saw only votes for DeGette and McCann. Denver judges added a vote for Bennet. No vote for Madden or Lontine.

Federal Offices Oficinas Federales	State Offices Oficinas de Escuelas	State Offices Oficinas de Escuelas
United States Senator Senador de los Estados Unidos (Vote for One / Vote por Uno) Michael Bennet 	Regent of the University of Colorado - At Large Regente de la Universidad de Colorado - Genérico (Vote for One / Vote por Uno) Alice Madden 	State Representative - District 1 Representante Estatal - Distrito 1 (Vote for One / Vote por Uno) Susan Lontine 
Representative to the 115th United States Congress - District 1 Representante para el 115to Congreso de los Estados Unidos - Distrito 1 (Vote for One / Vote por Uno) Diana DeGette 	Regent of the University of Colorado - Congressional District 1 Regente de la Universidad de Colorado - Congreso de Distrito 1 (Vote for One / Vote por Uno) Lucky Vidmar 	District Attorney - 2nd Judicial District Procurador de Distrito - 2do Distrito Judicial (Vote for One / Vote por Uno) Michael Carrigan 
Charles H. "Chuck" Norris	Jack Kroll 	Beth McCann  Kenneth Boyd 

Here is one more example of why a fixed rule will not properly honor the statutory requirement to interpret voter intent. (The precise reason why election judges are known as "judges.") The light marks for Senate must be overvoted. But what about the X mark for Linton and the X mark on Ganahi that is also crossed out. Here I think we have to interpret the Linton X as a vote and the cross out on Ganahi as a non vote. And that is what Denver did.

Federal Offices Oficinas Federales	State Offices Oficinas de Escuelas	State Offices Oficinas de Escuelas
United States Senator Senador de los Estados Unidos (Vote for One / Vote por Uno)	Regent of the University of Colorado - At Large Regente de la Universidad de Colorado - Genérico (Vote for One / Vote por Uno)	State Representative - District 2 Representante Estatal - Distrito 2 (Vote for One / Vote por Uno)
Darryl Glenn	Heidi Ganahi	Paul A. Linton
Ryan L. Frazier	Regent of the University of Colorado - Congressional District 1 Regente de la Universidad de Colorado - Congreso de Distrito 1	District Attorney - 2nd Judicial District Procurador de Distrito - 2do Distrito Judicial
Robert Blaha	There are no candidates for this office. No hay candidatos para esta oficina.	There are no candidates for this office. No hay candidatos para esta oficina.
Jack Graham	There are no candidates for this office. No hay candidatos para esta oficina.	
Jon Keyser <small>(Signed declaration to limit service to no more than 2 terms)</small> <small>(Declaración firmada para limitar el servicio a no más de 2 términos)</small>		
(Write-In / Por escrito) Michael Berg		
Representative to the 115th United States Congress - District 1 Representante para el 115to Congreso de los Estados Unidos - Distrito 1 (Vote for One / Vote por Uno)		
Charles "Casper" Stockham		

In the past, voting systems have enforced a mechanical determination of what constitutes an overvote via the sensitivity of their read head. With the Dominion UVS system this sensitivity is programmable and it includes a range within which a mark is seen as "ambiguous." When a mark is ambiguous, its participation in the elimination of a vote as part of an overvote is also ambiguous and subject to determination by judges. Here are two examples. Denver removed the vote for Carrigan and left a vote for McCann.

Federal Offices Oficinas Federales	State Offices Oficinas de Escuelas	State Offices Oficinas de Escuelas
United States Senator Senador de los Estados Unidos (Vote for One / Vote por Uno) Michael Bennet ●	Regent of the University of Colorado - At Large Regente de la Universidad de Colorado - Genérico (Vote for One / Vote por Uno) Alice Madden	State Representative - District 5 Representante Estatal - Distrito 5 (Vote for One / Vote por Uno) Crisanta Duran
Representative to the 115th United States Congress - District 1 Representante para el 115to Congreso de los Estados Unidos - Distrito 1 (Vote for One / Vote por Uno) Diana DeGette ●	Regent of the University of Colorado - Congressional District 1 Regente de la Universidad de Colorado - Congreso de Distrito 1 (Vote for One / Vote por Uno) Lucky Vidmar	District Attorney - 2nd Judicial District Procurador de Distrito - 2do Distrito Judicial (Vote for One / Vote por Uno) Michael Carrigan ☹
Charles H. "Chuck" Norris	Jack Kroll	Beth McCann ●
		Kenneth Boyd

In the one below, Denver judges left the Norris vote as "ambiguous" and that leaves the DeGette vote counted.

Federal Offices Oficinas Federales	State Offices Oficinas de Escuelas	State Offices Oficinas de Escuelas
United States Senator Senador de los Estados Unidos (Vote for One / Vote por Uno) Michael Bennet ●	Regent of the University of Colorado - At Large Regente de la Universidad de Colorado - Genérico (Vote for One / Vote por Uno) Alice Madden ●	State Senator - District 33 Senador Estatal - Distrito 33 (Vote for One / Vote por Uno) Angela Williams ●
Representative to the 115th United States Congress - District 1 Representante para el 115to Congreso de los Estados Unidos - Distrito 1 (Vote for One / Vote por Uno) Diana DeGette ●	Regent of the University of Colorado - Congressional District 1 Regente de la Universidad de Colorado - Congreso de Distrito 1 (Vote for One / Vote por Uno) Lucky Vidmar ●	State Representative - District 8 Representante Estatal - Distrito 8 (Vote for One / Vote por Uno) Aaron D. Goldhamer
Charles H. "Chuck" Norris ☹	Jack Kroll	Leslie Herod ●
		District Attorney - 2nd Judicial District Procurador de Distrito - 2do Distrito Judicial (Vote for One / Vote por Uno) Michael Carrigan
		Beth McCann ●
		Kenneth Boyd

But here we see a deliberate attempt to cross out an overvote, but Denver adjudicators agreed with the system that this is an overvote. They did not delete the second mark. In this case, the X seems to indicate a cross-out instead of a vote, and our adjudication system did not see it that way. The vote for McCann did not count.

Federal Offices Oficinas Federales	State Offices Oficinas de Escuelas	State Offices Oficinas de Escuelas
United States Senator Senador de los Estados Unidos (Vote for One / Vote por Uno)	Regent of the University of Colorado - At Large Regente de la Universidad de Colorado - Genérico (Vote for One / Vote por Uno)	State Senator - District 31 Senador Estatal - Distrito 31 (Vote for One / Vote por Uno)
Michael Bennet ●	Alice Madden	Steve Sherick ●
Representative to the 115th United States Congress - District 1 Representante para el 115to Congreso de los Estados unidos - Distrito 1 (Vote for One / Vote por Uno)	Regent of the University of Colorado - Congressional District 1 Regente de la Universidad de Colorado - Congreso de Distrito 1 (Vote for One / Vote por Uno)	State Representative - District 6 Representante Estatal - Distrito 6 (Vote for One / Vote por Uno)
Diana DeGette ●	Lucky Vidmar ●	Jeff Hart ●
Charles H. "Chuck" Norris	Jack Kroll	Chris Hansen
		District Attorney - 2nd Judicial District Procurador de Distrito - 2do Distrito Judicial (Vote for One / Vote por Uno)
		Michael Carrigan ●
		Beth McCann ●
		Kenneth Boyd

Finally what we have been seeing is the Denver ballot design. Here is one that is more typical of many other counties. The target is on the left and not on the right. Note the lack of enclosing borders around the contests. Note that in all Dominion ballots printed with red targets (according to instructions by the SOS) the target does not appear in the ballot image. This ballot was autointerpreted with votes for Glenn, Morse, Ganahi, Cacioppo, Carey, Dunahay, Beveridge and Renzelman. The system did not show this image to election judges.

Federal Offices	State Offices	County Offices
United States Senator	Regent of the University of Colorado - At Large	County Commissioner District 2
(Vote for One)	(Vote for One)	(Vote for One)
<input checked="" type="radio"/> Darryl Glenn	<input checked="" type="radio"/> Heidi Ganahl	<input checked="" type="radio"/> Rick Beveridge
Ryan L. Frazier	State Representative - District 26	County Treasurer
Robert Blaha	(Vote for One)	(Vote for One)
Jack Graham	<input checked="" type="radio"/> Michael Cacioppo	<input checked="" type="radio"/> Mari J. Renzelman
Jon Keyser	District Offices	
(Signed declaration to limit service to no more than 2 terms)	District Attorney - 5th Judicial District	
Write-In:	(Vote for One)	
Representative to the 115th United States Congress - District 2	<input checked="" type="radio"/> Bruce Carey	
(Vote for One)	County Offices	
<input checked="" type="radio"/> Nicholas Morse	County Commissioner District 1	
	(Vote for One)	
	<input checked="" type="radio"/> Michael Dunahay	

----- end of examples -----