

To the Honorable Wayne Williams, Colorado Secretary of State

3/9/2018

RE: election rulemaking for the public hearing of March 2, 2018

We are writing to stress the importance of using voter-verified paper ballots in any auditing or recount procedure and to provide information regarding the number of paper ballots that would need to be hand counted in statewide ballot-level comparison audits. The current proposed Rule 10.9.2 allows for the possibility of not using paper ballots in a recount procedure. Paper ballots should always be used in recount procedures as they are the only way to ensure that the voter's marking was not changed (intentionally or unintentionally) by a machine scan or tabulation. Even retabulation during recounts that happen after a comparison audit should refer to paper ballots.

We want to stress that it is rare for a comparison audit to lead to a full hand count of paper ballots. Therefore, recount procedures need to assume that not all paper ballots have been hand counted. For example, in the 2016 Senate race 2,743,029 ballots were cast. The leading candidates were Bennet with 49.97% and Glenn with 44.31%. Even a statewide ballot-level comparison audit with risk limit of 5% would require that initially just over 100 ballots be selected statewide in this contest. (We note that 4 counties and less than 2% of the votes currently do not have access to comparison audits but we provide these examples as CO moves to statewide comparison audits.) In the 2014 Governor's race, 2,075,837 ballots were cast with Hickenlooper at 48.46% and Beauprez at 45.20%. Here the same auditing procedure would require only around 200 ballots be selected initially for audit. While these small initial ballot samples can confirm the results of an election within the predetermined risk limit, they don't necessarily lead to full hand tabulations. Therefore, even recount procedures occurring after an audit should return to the original voter marked ballots.

In a contest-wide comparison RLA, a full manual tally results only if no sample size--short of a full manual tabulation--provides adequate evidence that the outcome is correct. That can occur if the margin is so small that even a large sample that finds no discrepancies will not suffice, or if the audit finds a rate of "overstatement" errors that remains comparable to the margin as the sample size grows. We estimate that it will be faster and easier to perform a full manual tally if the audit would require looking at more than 5-10% of the total number of ballots cast. In order for the initial sample size to be more than 5% of 2.5 million ballots cast statewide, the race would have to be extremely close, with a margin of 0.0056% or less. It is in precisely these extremely close elections that voter confidence depends on using the most reliable sources of voter intent, the voter-marked paper ballot, both in auditing and recount procedures.

We therefore recommend the following alternative to the proposed language of Rule 10.9.2

10.9.2 IN ALL RECOUNTS, EVIDENCE OF VOTER INTENT FOR ALL BALLOTS MUST BE OBTAINED SOLELY THROUGH HUMAN INTERPRETATION OF THE VOTES ON ORIGINAL VOTER-HAND-MARKED PAPER RECORDS OR OTHER VOTER-VERIFIED PAPER RECORDS, EXCEPT IN CASE OF VOTERS ELIGIBLE FOR ELECTRONIC

RETURN PURSUANT TO [C.R.S. 1-7.5-115](#) (4) AND COVERED VOTERS PURSUANT TO [C.R.S. 1-8.3-102](#) (2) WHO HAVE SIGNED THE DECLARATION REQUIRED BY [C.R.S. 1-8.3-114](#), FOR WHOM ELECTRONIC RECORDS ARE THE ONLY AVAILABLE EVIDENCE OF VOTER INTENT. IF A FULL HAND COUNT OF A CONTEST HAS BEEN SUCCESSFULLY COMPLETED PURSUANT TO A COMPARISON RISK LIMITING AUDIT, A RECOUNT OF THE SAME CONTEST MAY USE VOTE COUNT RESULTS OBTAINED FROM THE AUDIT IN LIEU OF RETABULATION OF THE IDENTICAL PAPER RECORDS.

One clear advantage of RLAs is that they strategically allocate resources, and avoid checking large numbers of ballots unnecessarily. This frees up resources for contests with extremely narrow margins where recounts may be required in addition to audits. While using paper ballots in recount procedures creates some additional work, the time and effort required are well worth voter confidence in the election process.

Sincerely,

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