



Please find below proposed edits from Broomfield County and Boulder County for consideration to SOS Rules relating to Rank Choice Voting. These comments address the proposed rules as published by the SOS on January 31, 2023, as well as other Rank Choice Voting rules that both Broomfield and Boulder County are expecting to utilize in the 2023 Coordinated Election.

Proposed Edits

Current SOS rules are in black standard font, SOS proposed rule changes are in **BLACK CAPITAL LETTERS**, proposed changes from Broomfield and Boulder are in **RED CAPITAL LETTERS**:

Rule 10.5.1

(I) IF APPLICABLE, THE RANKED VOTING RESULTS REPORT REQUIRED BY SECTION 1-7-10 1003 (7)(A)(I) **AND (III)**, C.R.S.

Reasons for proposed change

- We are concerned over the requirement to provide the report outlined in 1-7-1003(7)(a)(II) during canvass for Ranked Voting results, which differs from the requirement for plurality voting results.
- We understand this report to be the cast vote record per SOS Rule 21.11.1(b). To comply with current practice for plurality voting as well as SOS Rule 26.8.1, the cast vote record needs to be redacted prior to providing publicly.
- Under plurality voting, the deadline to complete this is after canvass (SOS Rule 25.2.4).
- Furthermore, as rule allows for ranked choice voting contests to be on the same card as plurality voting, we are concerned that setting a different standard for these contests might not be possible to meet.
- We request changing the canvass requirement to include the reports required in 1-7-1003(7)(A)(I) and (III) as this aligned with plurality voting requirements.

Rule 11.3.2(c) Preparing for the Logic and Accuracy Test

(1) A COUNTY THAT IS CONDUCTING AN ELECTION WITH AT LEAST ONE PLURALITY VOTING CONTEST MUST PREPARE A TEST DECK OF BALLOTS THAT:

(A) INCLUDES EVERY BALLOT STYLE AND, WHERE APPLICABLE, PRECINCT;

(B) INCLUDES A SUFFICIENT NUMBER OF BALLOTS TO MARK EVERY VOTE POSITION FOR EVERY CONTEST, INCLUDING WRITE-IN CANDIDATES, CONTESTS THAT PERMIT AN ELECTOR TO VOTE FOR TWO OR MORE POSITIONS, AND OVERVOTES AND UNDERVOTES FOR EACH CONTEST;

(C) INCLUDES AT LEAST ONE WRITE-IN VOTE FOR EACH QUALIFIED WRITE-IN CANDIDATE SO THAT ALL QUALIFIED WRITE-IN CANDIDATE NAMES WILL APPEAR IN THE LAT RESULT UPLOADED TO ENR AS REQUIRED BY RULE 11.9.3; AND

(D) LEAVES UNMARKED THE INSTANT RUNOFF VOTING CONTESTS IN THE PLURALITY VOTING COUNTY TEST DECK, IF THE BALLOTS COMPRISING THE COUNTY TEST DECK INCLUDE BOTH PLURALITY AND INSTANT RUNOFF VOTING CONTESTS **ONLY IF THE COUNTY IS ELECTING TO UTILIZE A SEPARATE TEST DECK PURSUANT TO 11.3.2(C)(2).**

(2) A COUNTY THAT IS CONDUCTING AN ELECTION WITH AT LEAST ONE INSTANT RUNOFF VOTING CONTEST **MAY, AT THEIR DISCRETION, ELECT TO UTILIZE A SEPARATE TEST DECK FOR INSTANT RUN OFF VOTING CONTESTS.**

(A) IF A SINGULAR TEST DESK IS UTILIZED FOR INSTANT RUNOFF VOTING CONTESTS, IN ADDITION TO THE REQUIREMENTS IN 11.3.2(C)(1), THE COUNTY TEST DECK MUST ALSO: ~~MUST PREPARE A SEPARATE COUNTY TEST DECK OF BALLOTS FOR EACH INSTANT RUNOFF VOTING CONTEST THAT IS BEING CONDUCTED. EACH TEST DECK MUST:~~

(AI) INCLUDE A SUFFICIENT NUMBER OF BALLOTS TO MARK A VOTE POSITION FOR EVERY CANDIDATE IN THE CONTEST IN THE FIRST ROUND OF TABULATION, INCLUDING WRITE-IN CANDIDATES;

(BII) INCLUDE AT LEAST ONE OVERVOTE, AT LEAST ONE SKIPPED RANKING, AND AT LEAST ONE DUPLICATE RANKING;

(CIII) BE MARKED IN SUCH A MANNER SO THAT NO CANDIDATE RECEIVES A MAJORITY OF THE FIRST RANKING VOTES IN THE FIRST ROUND; **AND**

(DIV) NOT BE MARKED IN A WAY THAT WILL REQUIRE A WINNING CANDIDATE OR LOSING CANDIDATE TO BE DETERMINED BY LOT.; **AND**

(B) IF A SEPARATE TEST DECK IS UTILIZED FOR INSTANT RUNOFF VOTING CONTESTS, IN ADDITION TO THE REQUIREMENTS IN 11.3.2(C)(1) AND (2), THE COUNTY TEST DECK MUST ALSO:

(IE) LEAVE UNMARKED THE PLURALITY CONTESTS ~~AND ANY ADDITIONAL INSTANT RUNOFF VOTING CONTESTS IN EACH INSTANT RUNOFF VOTING COUNTY TEST DECK,~~ IF THE BALLOTS COMPRISING THE COUNTY TEST DECK INCLUDE BOTH PLURALITY AND INSTANT RUNOFF VOTING CONTESTS.

(5) The county must provide at least 25 ballots that are clearly marked as test ballots to each Testing Board member. **A COUNTY CONDUCTING AN INSTANT RUNOFF VOTING ELECTION MUST ENSURE THAT INSTANT RUNOFF VOTING CONTESTS ARE INCLUDED ON THE TEST BALLOTS. A COUNTY CONDUCTING AN INSTANT RUNOFF VOTING ELECTION AND UTILIZING A SEPARATE TEST DECK FOR INSTANT RUNOFF VOTING CONTESTS MUST PROVIDE AT LEAST 10 ADDITIONAL BALLOTS ~~PER~~ CONTAINING AT LEAST ONE INSTANT RUNOFF VOTING CONTEST TO EACH TESTING BOARD MEMBER TO MARK FOR ~~EACH THE~~ INSTANT RUNOFF VOTING CONTESTS.**

Reasons for proposed change

- The separate test deck for instant runoff voting should be optional
- We do not currently see any procedural reason to require our LAT test decks to be separate nor do we see a reason to require our test board members to mark a separate deck for instant runoff voting contests.
- As rule allows for IRV contests to be on the same ballot and/or card, we find the requirement for a separate deck to be overly prescriptive and without cause
- We also do not see a reason to require a separate test deck for every IRV contest and believe that testing can be accomplished without this as a requirement
 - As proposed, this could create an excessive number of ballots added to each testing board member's deck. Broomfield could have 6 IRV elections, so this could add 60 ballots to each person's deck.
 - The requirement in (2)(A)(I) (as proposed for edits) ensures that all contests are in the county test deck and tested
- We also acknowledge that as this will be our first implementation of instant runoff voting, we may find, contrary to our current understanding, that a separate test deck is required and therefore, the optionality is proposed.
- In addition, we believe that LAT should mirror the process of an election and if the contests are on the same card, in the election they will be scanned and tabulated on the same card and not separately. We believe this requirement of separate test decks moves us away from the benefits of LAT as currently prescribed.

Rule 11.3.2(c) Preparing for the Logic and Accuracy Test

(6) Testing Board members must mark their test ballots following the instructions printed on the ballots and retain a record of the tally. ~~TESTING BOARD MEMBERS MUST MARK INSTANT RUNOFF VOTING CONTESTS IN SUCH A MANNER SO THAT NO CANDIDATE WILL RECEIVE A MAJORITY OF VOTES IN THE FIRST ROUND OF TABULATION.~~ A COUNTY CLERK MAY REMOVE A MEMBER OF THE TESTING BOARD FROM THEIR DUTIES IF THAT MEMBER REFUSES TO MARK THEIR BALLOT ACCORDING TO THE INSTRUCTIONS PRINTED ON THE BALLOT OR AS REQUIRED BY THIS RULE.

Reasons for proposed change

- Rule 11.3.2(c)(2)(C) already requires that the county test deck be marked in such a way that no IRV election is won in the first round of tabulation so the system's ability to test the instant runoff mechanism already exists.
- If this clause were to remain, it removes the randomness of the testing board member's ballots. Instead of just letting the testing board member randomly choose how to fill out each ballot, the county will have to dictate how each testing board member fills out each ballot to ensure that the test election goes to an instant runoff.
- While we will educate our testing board, we believe we would need to provide significant support and direction to testing board members to ensure this outcome and that assistance

may be perceived as the county dictating or mandating test board members to mark ballots in a certain way

Rule 11.3.2(d)(4)(A)(iii)

(iii) The Testing Board must count the board and county’s PLURALITY AND INSTANT RUNOFF VOTING test ballot batches separately **IF UTILIZING A SEPARATE TEST DECK FOR INSTANT RUNOFF VOTING AND** generate reports to verify that the machine count is identical to the predetermined tally.

Reasons for proposed change

- Change is suggested to carry through the idea of a separate test deck not being required for instant runoff voting

Rule 11.3.2(d)(4)(B)(iii)

(iii) **IF UTILIZING A SEPARATE TEST DECK** FOR INSTANT RUNOFF VOTING CONTESTS, THE TESTING BOARD MUST USE THE SELECTED BMD TO MARK AND PRINT AT LEAST 10 BALLOTS IN THE SAME MANNER THAT THE TESTING BOARD MEMBER MANUALLY MARKED THEIR TEST BALLOTS. AT LEAST TWO MEMBERS OF THE TESTING BOARD MUST MARK AT LEAST ONE OF THEIR TEST BALLOTS USING THE AUDIO BALLOT PLAYBACK AND ACCESSIBLE INPUT DEVICES.

Reasons for proposed change

- Change is suggested to carry through the idea of a separate test deck not being required for instant runoff voting

Rule 26.3.1 The voter instructions must include, at a minimum:

- a) A brief explanation of ranked voting;
- b) Instructions on how to properly mark a ballot;
- ~~c) A description of how ballots will be counted;~~
- ~~d) An example of a properly marked paper ballot;~~
- ~~e) For instructions that will be posted at a polling location, an example of how to properly vote an in-person ballot; and~~
- ~~f) Contact information for the designated election official of the election.~~

Reasons for proposed change

- All requirements for voting instructions still apply if a ranked choice contest is on the ballot and we suggest removing references to duplicative requirements
- C – This is not required in plurality voting and the ranked choice contests are counted by the scanners the same way. There are additional tabulation steps for ranked choice contests, however we don’t think tabulation descriptions should be on the instructions.

- D – We support providing several examples, however not on the instructions. The ballot and the instructions will already have instructions on what to do and we are concerned that providing a single example would suggest that that example is the only way to mark the ballot. We prefer to provide several examples which we don't think would be feasible to consolidate to a size that will fit on instructions.
- E – This is in the wrong section. If the requirement is to post signage at a Vote Center, it should not be embedded within the voter instructions requirements but its own rule
- F – already on instructions. Duplicative and not needed to be called out for rank choice

Rule 26.5.2

During the first round of tabulation, the designated election official must tabulate the first-choice ranks on each ballot.

- a) A candidate who receives over 50 percent of the first-choice ranks **FOR A CONTEST ACROSS ALL BALLOTS TABULATED ~~on each ballot~~** is the winning candidate and no further rounds of tabulation will take place.
- b) If no candidate receives over 50 percent of the first-choice ranks **FOR A CONTEST ACROSS ALL BALLOTS TABULATED ~~on each ballot~~**, the designated election official must continue to the next round of tabulation.

Reasons for proposed change

- As currently written, the rule states that a candidate could receive over 50 percent of first-choice ranks on each ballot. Technically, a candidate would receive 0 or 100 percent of the first-choice ranks on each ballot. We believe the intent here is across all ballots and we are suggesting changes to clarify.
- If accepting, we also suggest the same change to 21.11.4(b), (b)(1) and (b)(2) for consistency

Rule 26.5.3

~~During~~**AT THE BEGINNING OF** the next round of tabulation, the candidate with the fewest first-choice ranks in the ~~first~~ **PRIOR** round is eliminated and the eliminated candidate's votes are transferred to each ballot's next-ranked continuing candidate **AND TABULATED**.

Reasons for proposed change

- Clarifying language to reflect the order of events as they will occur and have the language work for all future rounds (not just round 2)

Rule 26.5.4 & 26.5.5

26.5.4 **AFTER ROUND 1**, If the combined votes of two or more candidates with the lowest vote totals in the current round are less than the number of votes for the continuing candidate with the next-highest number of votes, then the candidates in the lowest-vote group are eliminated.

26.5.5 ~~In any round~~ **AFTER ROUND 1**, if two or more candidates tie for the lowest number of votes, the eliminated candidate must be chosen by lot, unless the candidates may be eliminated simultaneously under Rule 26.5.4.

Reasons for proposed change

- Clarifying that 26.5.4 and 26.5.5 only apply after Round 1 as they cannot apply in Round 1 as Round 1 starts with the initial tabulation and there is no transfer of votes in Round 1.

Rule 26.9

We support the removal of duplicative requirements that are already outlined for the audit board elsewhere in rule and the flexibility this rule now allows regarding tooling and methodology for conducting the audit.