



To: Colorado Department of State
From: Chris Hughes, Director of Policy, Ranked Choice Voting Resource Center
Re: Proposed Rules included in the January 31, 2023 Notice of Proposed Rulemaking
Date: 3/7/2023

I am submitting these comments on behalf of a coalition of organizations with ranked choice voting expertise.

The Ranked Choice Voting Resource Center (RCVRC) is a nonpartisan, nonprofit organization providing information, research, and tools to teach the public about ranked choice voting (RCV). We have extensive experience with RCV implementation and administration. We have assisted efforts to implement RCV across the United States, from Alaska to Maine to New York City.

FairVote Action is a national nonpartisan organization that educates and advocates for electoral system reforms that improve our elections. We are seen as a leading national resource on ranked choice voting. (RCV)

RepresentUs is a nonpartisan advocacy organization dedicated to the idea that the government should be representative of and accountable to the people. It advocates for policies to strengthen our democracy and provides activists with the resources and training to bring meaningful change. RepresentUs has supported RCV campaigns and implementation across the United States.

We appreciate the opportunity to submit comments on proposed amendments to the Colorado Department of State Election Rules. RCVRC staff are available to discuss any of these comments and to provide support to the Department of State as it works on these regulations.

Broomfield County and Boulder County submitted a comment with suggested changes to the proposed rules on February 24, 2023. Members of this coalition have reviewed these comments and agree with many of the suggestions made by Broomfield and Boulder. The proposed changes will simplify the administration of RCV elections by:

- Aligning them, as much as possible, with pre-existing practices for plurality elections;
- Implementing an efficient and reliable logic and accuracy testing process for RCV contests;
- Simplifying RCV ballot instructions; and
- Clarifying tabulation rules for single-winner RCV contests.
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We suggest a few other changes, as well. Boulder and Broomfield recommend removing requirements 26.3.1(c)–(f) from Rule 26. We agree with removing these from the voter instructions section in order to keep RCV ballots a manageable length, but many of these

sections should still appear in the RCV rule to ensure voters receive robust information about RCV. We suggest moving 26.3.1(c)–(e) to either a new part of the rule or placing them under 26.2.

Rule 26.7.2 requires ballots to become inactive if a single skipped ranking is encountered. 26.7.2 is the strictest skipped ranking rule in the country and will needlessly inactivate ballots where voters accidentally skip a ranking. All other RCV jurisdictions follow one of two rules:

- 1) If voters skip two or more rankings in a row, the ballot will inactivate if those skipped rankings are encountered when transferring a ballot; or,
- 2) Voters can skip any number of rankings.

Inactivating ballots after two or more consecutive skipped rankings works because voters sometimes skip multiple rankings in order to rank a disfavored candidate last. This expressive use of a ranking indicates that the voter does not support the ranked candidate and is instead giving them a low ranking on the ballot as a show of disapproval. Inactivating a ballot after two consecutive skipped rankings ensures voters can engage in this expressive ranking without the risk that a disfavored candidate may receive their vote.

Permitting voters to skip any number of rankings is more forgiving and lends itself to simple voter education. Any ranking a voter makes could be counted, so be sure to only rank candidates you prefer. This same instruction could be given to voters when they receive RCV ballots.

To bring Colorado in line with standard practice, two revisions to 26.7.2 are possible:

- 1) ~~26.7.2 A skipped ranking and any lower ranking must be ignored~~ **Two or more consecutive skipped rankings and any lower ranking must be ignored; or,**
- 2) Strike 26.7.2 entirely and renumber 26.7.3 to 26.7.2.

Revision one will inactivate a ballot if a voter skips multiple rankings in a row which is discussed above. Revision two permits voters to skip as many rankings as they wish without inactivating any ballots.

We also suggest revising 21.11.4(G), which currently says: “The voting system must allow the user to decide if a vote for a non-certified write-in will exhaust the ballot or be resolved as a skipped ranking.”



No other RCV jurisdiction in the U.S. inactivates a ballot if a voter ranks a non-certified write-in. The text as-is also permits treating a write-in as a skipped ranking which, under current Rule 26.7.2, would also inactivate the ballot. We advise against inactivating a ballot just because it ranks a non-certified write-in. As-is, RCV tabulation software ignores rankings for non-certified write-in candidates, counting up totals for uncertified write-ins in the first round then immediately transferring those ballots in the next round. Systems do not inactivate these ballots or treat any uncertified write-in ranking itself as a skipped ranking.

21.11.4(G) should be revised to read: "The voting system must allow the user ~~to decide if a vote to treat a ranking~~ for a non-certified ~~write-in~~ **write-in will exhaust the ballot or be resolved as a skipped ranking as a ranking to be ignored.**"

Thank you very much for your consideration of our comments. We are available to answer questions and provide the Department of State with additional information.

Sincerely,

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