

Comments on the Jan. 31 2023 Rulemaking for elections by Harvie Branscomb

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*Amendments to Rule 10.5.1:*

10.5.1 The designated election official must provide the following information to the canvass board:

[ Note that the accessibility by the canvass board does not enable access by the public. The rules should provide for adequate transparency to the public for this more complex voting method.]

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

[The ballot image report should also be included here and it should be renamed “cast vote record” when appearing in these rules and distanced from the confusing statutory usage of “ballot image”.]

*Amendments to Rule 11.3.2(c)*

[General comments: I mostly agree with the comments by Boulder/Broomfield but I do not think the rule should allow the same ballot card to contain both the non-ranked and ranked voting contests. The LAT card should of course match the active ballot, and be subject to the same processes (including whatever handling is needed for multiple rounds). To me it is clear that the ranked voting ballot card should by rule be separated from the card containing any other non-ranked contest. Particularly so if coordination with contests that will create rare styles is likely. ]

[Title 1 must soon address the rare style issue. Election rules could lead in a constructive direction. The preferable way is to use multiple cards when rare styles will be caused by coordination. There are other good reasons to separate ranked voting methods onto a separate card in order to clarify and separate the very different instructions to the voter. The ranked voting card should be capable of being disassociated from any card for which rare styles (district or precinct) exist. Election statute and rules must address the prevention and handling of rare styles and not let the topic be left up to open records law (24-72-205.5). If the ballot contains both ranked and limited/confined voting method contests, the LAT of course must also follow suit as recommended by Boulder/Broomfield. The LAT must also produce its own ballot image report (properly labeled as the cast vote record) that can be compared to the pattern for voting the test ballots]

(C)(1)(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.

[This use of the word “plurality” here is incorrect and misleading. Plurality is defined neither in CRS nor in Election Rules. It is rarely used in both (and only once in Title 1). Colorado should not start using “plurality” in regulations as a new term for voting methods that are not rank voting. Such conventional elections can be either plurality or threshold to win. I suggest using the term “limited choice” or “confined voting” or something similar. Whatever the phrase, please define it in rules, for example:]

“**Confined Voting:** a voting method where a voter may vote only for as many candidates as could win election.”

[Note that “vote for one” is also insufficient, as is “vote for N” because rank voting may, unfortunately, also limit the number of candidates for whom one may vote.]

**plurality system** according to britannica.com: “electoral process in which the candidate who polls more votes than any other candidate is elected.”

[“Plurality” the phrase does also apply at times to ranked choice, since ranked choice process often reduces the field of candidates to only two as part of its instant runoff. The fact of majority or plurality or any other threshold to determine a win is not the defining distinction that separates the more generally used method from ranked voting.]

*Amendments to Rule 26.8, regarding results reporting for a ranked voting election:*

#### 26.8.1

The designated election official must ensure anonymity of a voter’s rankings in the ballot image report required by section 1-7-1003 (7)(a)(II), C.R.S. In precincts with ten or fewer voters, the ballot image reports must be combined with another precinct.

[ This anonymity topic is extremely important since ballots and ballot images and cast vote records are public records in CO and mistakenly treated alike by open records law. This above text is inadequate to produce the desired anonymity. What does it mean to “combine the ballot image reports” since these are digital data that represent all or most of the marks that are detected on each sheet of the paper ballot? With ranked voting you cannot meaningfully just sum the votes – counts of candidate ranks. The best way to produce anonymity for cast vote records from ranked contests is to isolate the contents onto a separate reporting unit that is not characterized by a rare style (such as less than 10 instances in the election). This is done by avoiding any coordination onto a paper ballot sheet that thereby contains either a rare precinct style or a rare district style. Note that in CO, thanks to mistakes made in redistricting, we have Congressional District styles for which there are less than 10 registered voters in a county. Combining precincts will not protect the anonymity of the ballots voted by these voters. ]

[The rule should require or at minimum promote the separation of the ranked voting contests onto a separate sheet (and of course as well use a separate sheet for the LAT). Precinct coding should be removed when precinct coding produces styles of 9 or fewer returned sheets. This rule might also want to protect election officials from claims of violation of privacy based on pattern voting where the opportunity to create a rare pattern is much more available once you provide the much more complex set of choices available for ranked marking.]

#### 26.8.2

FOR ANY RANKED VOTING ELECTION COORDINATED WITH A COUNTY CLERK, THE COORDINATED ELECTION OFFICIAL MUST PUBLISH PRELIMINARY AND FINAL RESULT REPORTS OF A RANKED VOTING ELECTION ON A WEBSITE.

[It is great that the results reports are specifically required to be published on a web site but disappointing the cast vote records that are also made public record by statute are not treated with operational details for publication that also should appear here in this rule. ]

*Amendments to Rule 26.9, regarding audits for a ranked voting election, including the repeal of Rules 26.9.1 to 26.9.6:*

26.9 Auditing a ranked voting election or race. The designated election official must audit each ranked voting race in accordance with this Rule before the canvass board certifies official election results.

[The lack of specification for this audit is disappointing. This rule could specify “publicly accessible” and “conforming to principles found in this document:

[Principles and Best Practices for Post-Election Tabulation Audits – Verified Voting](#)

### **Comments in response to other comments posted since the hearing:**

Several respondents are arguing against the use of ranked voting altogether. I do not agree. Ranking provides advantages in flexibility for expression of voter intent when it allows votes for more than one candidate in a single winner contest. I do agree that there are problems with the multi-round instant runoff tabulation that cause great concern.

The RCVRC group identified one of the pitfalls of that flexibility when they pointed out that some voters might hope to vote against a candidate by purposefully ranking last. This behavior is an anomaly that should never be corrected for by ignoring ranks past two arbitrarily chosen missing ranks. Clearly the better solution is to inform the voter about the effect of ranking any candidate, namely that such a mark will eventually in some case help that candidate be elected. Thus I disagree with the notion that instructions to the voter for the ranked voting contests should be simplified to save space.

One of the defects of ranked marking is an obvious complexity in the ballot format that inevitably leads to additional voter error. Another defect is that the instant runoff may have final round candidates in competition for whom the voter never expressed rank. This causes these voters to be unable to participate in the runoff that produces what is only opportunistically (and arguably incorrectly) described as a majority. Such a majority may only represent voters who have not eliminated themselves from the election by failing to rank all the viable candidates.

Celeste Landry has made many excellent comments. I do agree that “plurality” is not the appropriate term but do not support her proposal to substitute “summative” for “plurality”. The unique characteristic of ranked voting per se isn’t the summation method as much as are the extra choices available to the voter while marking the ballot. Therefore I recommend “limited choice voting” as a preferable alternative, but it must be defined in regulation as suggested above.

The CCCA comments include a request to remove the ballot image report from the data accessible to the canvass board prior to certification. The fact that anonymization of the CVR is also planned for later in the process really isn’t relevant to the function of the canvass board. And also I believe the ranked voting contests should be placed on a separate card, and hence separate CVR. In any case, the CVR for the ranked voting contests must be made accessible to the canvass board, given the documented cases for problems in tabulation of ranked voting and the need for extra integrity and verifiability.

Proposed 11.3.2(c)(1)(C) & (D): Whether or not the automatic test deck is compliant with the rule does not affect the benefit to be provided by the test of unmarked ranks and write-in. There is plenty of justification for creating LAT ballots by hand.

Proposed 11.3.2(c)(2): Agree that separate test decks for each IRV contest is unnecessary and probably impinges on the accuracy of the LAT. Ranked voting complexity begs for extra LAT detail, but not unnecessarily so.

Proposed 11.3.2(c)(6): Some specification is needed to instruct the board hand marking the test ballots (and even if there is no written instruction in rule, some verbal instructions will likely be given that may or may not produce the important test cases that ought to be tested. So I support the use of instructions for the test board as long as they are not unnecessarily prescriptive about vote patterns above and beyond the need for testing the many edge cases.

Contrary to the effect of the proposed CCCA substitute language, a separate test deck for IRV should not be prepared unless the ballot to be voted in the election uses a similar separate card (as it preferably will). The LAT ballot format should (must to be effective) match the election.

Because the operational path of the tabulation depends upon all test ballots rather than each one separately, there must be coordination of the vote patterns to achieve the desired test conditions such as that the test election does not end without a second round. Preferably the test election will go to several rounds and test various conditions of duplicate ranking and missing ranks. Therefore, instructions must be provided to the testing board that leads to testing these conditions.

I see that CCCA has chosen to adopt the moniker “plurality” for non-ranked voting methods. I do not think this was a good idea and will lead to future confusion when non ranked elections require a threshold to win.

I include for the record some published records of problems with ranked choice voting. One set of such problems occurred here in Colorado in an Aspen municipal election. That election and its aftermath is well documented with dozens of stories in the press that are linked on a website I created specifically for the purpose. Aspen chose to remove ranked voting from their charter shortly after it was first used in an election:

<http://aspenelectionreview.blogspot.com>

A more recent problem with IRV occurred in Alameda County and stories on that problem are located here:

<https://abc7news.com/alameda-county-election-error-ranked-choice-voting-oakland-school-board/12629305/>

<https://www.sfchronicle.com/bayarea/article/Alameda-County-admits-tallying-error-in-17682520.php>

Here is a “Survey of Instant Runoff Voting (IRV) pathologies” for the record:

<https://rangevoting.org/lrvPathologySurvey.html>

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