Proposal for Improvements to the RLA

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The focus on these recommendations is to improve and strengthen the audit process and results. We believe the changes suggested here are within the rule-making authority of the Secretary of State and do not require legislative action. The main goal is to have an audit that has two primary objectives – 1) to provide the information necessary for the Canvass Board (**CB**) members to certify the elections and 2) in turn provide the voting public with increased assurance that the election was conducted fairly and has named the proper winner of each race.

It is understood that Colorado uses a Risk Limiting Audit (**RLA**) and has pioneered its use. This is commendable. However, it seems that there is some confusion by some regarding the term "Risk Limiting". The audit profession has used statical methods of sampling for many decades and setting risk levels when determining the number of samples to be audited. We have spoken to statistical experts, including those who have pioneered the **RLA** concept, and have confidence that this methodology is valid *if* used properly. Only one of our recommendations (item #5 below) takes issue with the "risk limiting" portion of the **RLA**.

Instead, we would like to focus on the "A" in **RLA**. *Any audit* - whether the samples are selected using a statical methodology *or* if a 100% inspection is used – that uses the word "audit" in its title should make sure that certain conditions are met. The audit should be done by someone independent of the subject process/results being audited, the auditors need to have access to the necessary source documents, the auditors need to inspect the chain of custody for the processing of the ballots, and the auditors need to have access to the final results (in this case the **CVR**, which after all is what they are auditing). There is no attempt to create full blown election audit standards with this memo (although such an effort may make sense in the long term), but it is clear a few basic changes are needed. The good news is with such changes to the **RLA** the two objectives mentioned above would be met. The **CB** would have the information to enable them to meet their statutory duties and the voting public would have the assurances to increase their trust in elections.

It is also understood that there is currently an Audit Board (**AB)** in addition to the **CB**. In this case, these recommendations would apply to the **RLA,** and the work done by the **AB** under election Rule 25. The **CB** members should have access to the improved **RLA** and ideally would be required to observe or participate in the **RLA** process.

Suggested Audit Improvements

The first three suggestions below are intended to address the duties required by the Colorado Revised Statute (**CRS**) of the Canvass Board (**CB**) members. **The current audit process does not give the CB members access to the information necessary to perform their statutory duties in a timely manner.** Three solutions to solve this problem are provided. In addition, there are two other recommended changes that are aimed at improving the audit processes. The overall goal of

<u>the entire process is to increase voter confidence in elections and reduce the likelihood that the losing party will decline to certify county elections.</u>

In early discussions with the Secretary of State's (**SOS**) office, when presenting the suggested improvements, they expressed a concern that the **AB** would not be able to see the Cast Vote Record (**CVR**) until the file was redacted to meet requirements imposed on members of the public by Title 24. If true, the **AB** would not have access to the records necessary until a proper redaction of records was done to protect the privacy of precincts casting fewer than 10 ballots in an election. This raises a concern that delays caused by these redactions would not allow sufficient time to perform the audit according to mandated deadlines. Upon doing some research it seems clear that **CB** and **AB** members are "election officials" as designated in CRS § 18-9-313.5. Therefore, they would not be subject to the freedom of information requirements of Title 24. Regardless of that fact, protections can easily be put in place to assure the privacy of these ballots remains intact and this should not be a valid reason to not implement our suggested changes.

The items suggested for change include the following which are discussed in greater detail in the paragraphs below:

1. reconciliation of ballot accounting,
2. verification that ballots voted do not exceed precinct registrations,
3. certification that final vote counts agrees with original voter ballots,
4. selection of races selected for audit and samples should be statistically valid, and
5. implementation of a process to better control undeliverable ballots from the USPS.

In order to fulfill this duty, the **AB** must have access to key election records – from the beginning of the election through to the end. This means comparing the paper ballots (the **AB** currently has access to them) to the official ballots voted in the form of the **CVR**, and every step a ballot takes in the logbook used in the process.

1. Reconciliation of Ballot Accounting Required by CRS § 1-10-101.5 (a) - The statute requires that the **CB** *shall* **"reconcile the ballots cast in an election to confirm that the number of ballots counted in that election does not exceed the number of ballots cast in that election".**

Each county has a system of recording the number of ballots as they move through the process. These movements include the receipt of ballots, the removal of ballots that are initially denied due to signature verification issues, the inclusion of ballots that have been cured of signature verification irregularities, those that end up being approved for casting, and are scanned for inclusion in the final vote record. These movements are recorded in the county system under the watchful eyes of bi-partisan election teams to make sure they comply with rules to protect the "chain of custody" for the ballots. The **AB** members need to have access to these records and audit the processing in order to reconcile the ballots to the **CVR**. Right now, the **CB** is handed a report in a meeting and expected to certify information they have not verified. The only reason people sign this form is because they are taking the word of the county election official that all is good. That is not the way an audit is supposed to work. The lack of performance of these tasks

should cause concern with the voting public, who are expecting that this statute is being complied with. With this change the **CB** could rely on the reconciliation done during the **RLA,** which they have observed, and sign the certification. We are not suggesting the auditors duplicate a process the county clerks are already doing but they must have access to the work of the county clerks and have an opportunity to test the records to be confident the work was done correctly.

We understand that these steps will create a little more work because this process has not been observed and tested by the **AB** in the past. However, consider that this work can be done long before the **CB** meeting. A good approach would be to do this in two steps:

- The first testing should happen with a week to go in the election and would review the ballot accounting from start of the election and ending on the week before the election, and
- The second testing period would happen as soon as the **CVR** is available and would cover the period from the first test and through the last ballot cast.

This process should be completed before beginning the ballot comparison portion of the **RLA**.

2. Verification of Voter Ballots as Required by CRS §1-10-101.5 (b) – The statute requires that the **CB** *shall* **"<u>reconcile the ballots cast in each precinct in the county to confirm that the number of ballots cast does not exceed the number of registered electors in the precinct</u>."** This should require minimal effort on the part of the election staff.

We understand that these steps will create a little more work than in the past. However, we suggest that this work can be done long before the **CB** meeting. This process would be done in one step as soon as the **CVR** file is available.

- Obtain the number of "Active" registered voters by precinct from the SCORE database. Load the data into Excel and order by precinct number.
- Obtain a copy of the **CVR** and import it into Excel. Make sure the individual ballots are in precinct number order and create sub-totals for the precincts. Compare the precinct sub-totals from the **CVR** to the totals from SCORE and make sure the number of votes cast are not in excess of the number of "Active" registered voters in each precinct.

This process should be completed before the beginning of the **RLA**.

3. Certification of Correct Vote Counts as Required by CRS §1-10-101.5 (c) – The statute requires that the Canvass Board *shall* **"certify the abstract of votes cast in any election and transmit the certification to the Secretary of State."** This is the "meat" of what most people think of as a post-election audit. This certification cannot be done by the **CB** unless the **AB** provides them with the results of a thorough audit. The **AB** cannot do a thorough audit unless they have access to the **CVR**. It is also important that this process starts as soon as possible to minimize last-minute pressures on the election staff brought on by the election certification timeline.

In addition, the current process does not provide enough certainty that the paper ballots agree with the votes recorded in the **CVR**. While there is value in doing a "blind audit," currently the **AB** receives little assurance that the documents are in agreement with each other. The **AB** are indeed "blind" to the process. After all ballots are re-entered into another computer and that computer does the comparison. If the audit is being done because of a lack of trust in computer #1, why would there be a trust in computer #2?

Instead of relying on software the auditors don't understand or control, we recommend that the **AB** access the **CVR** data through the use of Excel, or a similar commercially available off-the-shelf program. That way the **AB** or someone they trust can write a query to verify the votes cast against the paper ballots that they observed. This will allow the **AB** to better control the audit process, and yet keep the process moving quickly.

It is suggested that a meeting with the **SOS's** office, representatives from interested county clerks, and audit experts be held to find more efficient and more effective ways to perform this important verification of the ballot comparison process.

4. <u>Audit Processes to Improve Statistical Validity</u> - Here are the recommended changes to improve the statistical validity and transparency of the election audit:

- <u>Selection of Races</u> - The method of selection of the races to be audited is seen as a weakness in the current audit process. This has been verified by Professor Philp Stark, who helped design the original **RLA** process. Instead, it is proposed that the race selected for each section (statewide and local) should be a competitive one rather than a lopsided one.
- <u>Selection of Ballots to be Sampled</u> – There is not a specific process to recommend here but further discussions with the **SOS**, and other interested parties are warranted, to find a method that is more transparent and inclusive of the **AB** members. It is not a good practice (actually a bad practice) to have the county clerk involved in the race selection when it is their work product that is the subject of the audit. The selection of the race to be audited should be done by auditors along with the Secretary of State's office.

5. <u>Better Control of Undeliverable Ballots from the USPS</u> – Considerable time was spent evaluating a dozen counties trying to reconcile the county records of ballots returned as undeliverable to the same information shown on invoices from the USPS. This work included meetings with county election staff discussing this issue. In most (not all) of these counties there is a significant difference between what the counties show vs what the USPS shows for undeliverable ballots. Our concern is over the chain of custody of the ballots. Any undeliverable ballots that come back to the post office need to be controlled to prevent them from being illegally voted in a fraudulent manner.

- A solution here starts by establishing the facts. A system of delivery/receiving documents should be instituted. Once that is done the parties can begin to investigate

where the missing ballots disappeared. These receipts would be signed off by both the county staff and USPS staff, recorded and kept for auditors to review.

- There should also be a conversation with the USPS to see if the use of the Intelligent Bar Code for undeliverable ballots may be used for this purpose. It would require having the USPS scan the ballots when they are returned as "undeliverable." This may be a bridge too far for the USPS, but it is worth a conversation.

<u>Summary</u>

Most importantly, it is essential that the CB (and the AB) receive earlier access to the CVR to meet their statutorily mandated legal duties. If it is possible to have a meeting with the staff of the **SOS's** office to resolve any questions, we would be happy to participate. Thank you for the opportunity to provide input to the election rules. We are confident that the changes proposed will help us all reach the goals stated in the initial paragraph above.