Please find below proposed edits from Boulder County for consideration to SOS Rules relating to election rules. These comments address the proposed rules as published by the SOS on July 15, 2024.

Proposed Edits

Current SOS rules are in black standard font, SOS proposed rule changes are in BLACK CAPITAL LETTERS (or ~~black strikethrough~~), proposed changes from Boulder are in RED CAPITAL LETTERS (or ~~red strikethrough~~):

Rule 7.7.14

Boulder is opposed to this rule as we are concerned:

1. that the deadline of 60 days (which is when we believe most counties would execute this mailing) is too close to an election and will generate confusion for voters too close to ballot mailing
2. over receiving a report from the Secretary of State's office to facilitate this process efficiently and effectively
3. if TXT2Sign if an option, the intended outcome of reducing signature deficiencies due to single reference signatures (many of which are electronic) may not even be achieved as we will gather another electronic signature that may still not be verified against a voter's pen signature on their mail ballot
4. if a voter received a signature discrepancy letter after responding to this letter, this will create more frustration for them than benefit

We do agree that more reference signatures better support the signature verification process, however we don't believe this is the path to achieve this.

Rule 7.16.4

THE COUNTY CLERK MUST ARRANGE VOTER SERVICE AND POLLING CENTERS IN A MANNER THAT PREVENTS A VIDEO SURVEILLANCE CAMERA FROM BEING ABLE TO RECORD, ~~OR APPEARING TO RECORD,~~ HOW A VOTER MARKS OR CASTS THEIR BALLOT.

Reasons for proposed change

-   We think the wording with the removal of "or appearing to record" is stronger and sufficient. Smaller vote centers may have cameras in close range however the voting booths and BMDs can be positioned to prevent the camera from being able to record how a voter marks their ballot.
-   We believe it is harder to prove to someone that a camera is "not appearing to record" than to prove that it's unable to record due to the angle or position.

Rule 7.17.3 Ballot style names:

(a) If a county reports results for any election by precinct, the county must rename its ballot styles in SCORE according to the convention of XXX-YY OR xxx-yYY ~~or xxx-yy~~, where xxx is the final three digits of the ten-digit precinct number, and YY OR yYY ~~or yy~~ is the ~~one- or two -digit~~ district style number. A county clerk may elect to use a two OR THREE-digit number for the district style component of the ballot style name even if in any election SCORE generates fewer than 10 district styles. By way of example, if SCORE generates a single district style and the county has 3 precincts, the county must name the precinct styles as ~~001-1, 002-1, and 003-1, or~~ 001-01, 002-01, and 003-01; OR 001-001, 002-002, 003-003.

Reasons for proposed change

- This appears to be a typo in the proposed edit. The edit suggests a two or three-digit district style however the earlier text stricken should remain to demonstrate the two-digit version and the examples in the last sentence with a one-digit district style should be removed as this is proposed to no longer be permitted.

Rule 8.2

Interested parties may appoint and certify watchers to observe recall elections held under Article 12, Title I, C.R.S., in accordance with sections 1-7-106 and 1-7-107, C.R.S. ~~ONLY AN INTERESTED PARTY TO A RECOUNT AS DEFINED BY SECTION 1-10.5-109(1), C.R.S. MAY APPOINT AND CERTIFY WATCHERS TO OBSERVE RECOUNT ACTIVITIES TO THAT RECOUNT.~~

Reasons for proposed change

- Boulder is opposed to limiting watchers for a recount to the definition per 1-10.5-109(1). We have had recounts in primary elections, and we believe this would prohibit one of the major parties from appointing watchers to the recount. We think this unnecessarily restricts watchers when increasing transparency is paramount.
- Boulder supports that any party who was eligible to appoint a watcher during the election should maintain their eligibility to appoint watchers during a recount. We believe this is already permissible under statute and therefore edits to rule for recounts is not needed.

Rule 8.9.2

Boulder supports allowing watchers for election activities inside a county jail. We appreciate this may add additional work for our office, the sheriff's office, and the watchers to coordinate, however we believe this transparency is important.

Rule 15.2.1

Boulder does not propose edits; however, we encourage the Secretary of State's office to look for ways to track who has completed the training they offer as to not require an individual to provide proof back to the Secretary of State's office they completed training hosted by the Secretary of State's office. This seems to add administrative burden that could be more efficient.

Rule 20.4.2(e)(2)(A)

THE COUNTY WILL REVIEW KEY CARD SYSTEM ACCESS LOGS AFTER THE SURVEILLANCE SYSTEM MAINTENANCE IS COMPLETE TO VERIFY THAT NO UNEXPLAINED OR UNAUTHORIZED ACCESS OCCURRED. IF THE COUNTY DISCOVERS UNEXPLAINED OR UNAUTHORIZED ACCESS OCCURRED DURING THE OUTAGE, THE COUNTY WILL NOTIFY THE DEPARTMENT OF STATE'S ELECTIONS SECURITY TEAM WITHIN ~~TWO~~ FIVE BUSINESS DAYS;

Reasons for proposed change

- Boulder would prefer to see the notification requirement be extended to 5 business days as 2 business days seems to present more risk of counties being unable to meet this rule due to staff absences (vacation, illness, etc.) of their staff or other staff within the county that have responsibilities for generating or accessing key card system reports.
- We believe it is an unreasonable standard to require all county clerks to have direct access to this information to meet the 2 business day reporting obligation.

Rule 20.4.2(e)(2)(C)

Boulder is opposed to the addition of this proposed rule that references implementing temporary video surveillance "when feasible." "When feasible" is a highly subjective standard and we are concerned how we and other counties can be held to such a subjective standard. We would like to see the proposed rule stay with only proposals (a) and (b).

Rule 20.4.5

Boulder is opposed to this mandate from the Secretary of State's office as it presumes that (1) all counties are ill-equipped to perform this assessment through means other than the federal agency named here and (2) that a re-assessment is needed after a significant alteration – even if such alteration was at the suggestion of the federal agency previously. This seems as if it could create frivolous requests to the federal agency that are unneeded.

Rule 20.5.2(a)(1)

Boulder supports this amendment for operational ease around year-end holidays in years when a presidential primary is occurring.

Rule 20.5.3 Connecting to the voting system

(b) External network connection forbidden
    (1) The county clerk must use the voting system only on a closed network or in a standalone fashion.
        (A) ANY NETWORK SWITCH USED WITHIN THE CLOSED NETWORK FOR THE VOTING SYSTEM MAY NOT ~~HAVE PREVIOUSLY BEEN USED FOR ANOTHER NETWORK~~ BE REFURBISHED OR A REPURPOSED SWITCH.

Reasons for proposed change

The definition originally provided is broad and could remove many switches configured via network interface prior to trusted build.

Rule 20.7.2 Voted Ballots

Boulder is opposed to this rule for the following reasons:

- Weather conditions in both summer and winter across Colorado will present temperatures where the adhesive may refuse to stick or stay stuck.
- Concerns that the seals will leave a void residue which will make the boxes appear to have been tampered with over time and potential inability to remove this residue.
- There are no provisions or guidance as to what a county is expected to do if they arrive at the box to find the seal damaged – which could have been caused by tampering or the weather. Depending on the timing, it could be possible to temporarily sequester the ballots, however this will have a direct negative impact on voters and requiring manual processing of these ballots for a large county is not feasible.
- 24-hour ballot drop boxes already have security features to prevent tampering and are under video surveillance when open. We see this as only creating more issues for counties and not providing greater security.

Boulder is not convinced additional requirements are needed in this area but would support exploring tracking of 24-hour ballot box key access over this proposal. If this were to be explored, we would like to see requirements that would allow for the usage of Key Watcher boxes whereby users check out keys using an authentication method and check in keys when their work is complete. These systems can produce a report of who checked out and returned keys with dates and times. They are configured for who can check out which key and can be configured to alarm if certain keys are removed.

Rule 20.10.3 RETENTION OF VOTED BALLOTS(G)

EXCEPT AS OTHERWISE REQUIRED DUE TO TABULATION, THE POST-ELECTION RISK-LIMITING AUDIT, A RECOUNT, AN ELECTION CONTEST, OR ANOTHER COURT ORDER, A COUNTY CLERK MAY NOT REMOVE BALLOTS FROM THEIR CONTAINERS UNTIL THE CONCLUSION OF THE CANVASS OR REQUESTED OR REQUIRED RECOUNT, WHICHEVER IS LATER.

Reasons for proposed change

- Technical edit – something seems to be off between the required reasons in (G) vs. (H). By our read, tabulation is missing from G. We are also not entirely sure what "An election contest" is meant to mean here in G
- There could be scenarios where during tabulation or reconciliation in preparation for canvass, ballots could need to be accessed from a sealed container and we'd like to ensure that is clearly permitted in this rule proposal

Rule 20.10.3 RETENTION OF VOTED BALLOTS(H)

Boulder is opposed to this proposed rule on:

1. the principle that ballots are county records and we are permitted to access our records when we, the record custodians, see fit,

2. the secretary of state's office does not take ownership or responsibility for our records, and it is overreach to suggest we are required to notify this office two weeks in advance of accessing our own records, and
3. this timeline would cause us to be non-compliant with a CORA request.

We do agree that they should be access in in the controlled manner as described in (A) – (G) are not opposed to these proposals.

Rule 20.11.1(f)

Boulder County already adheres to this new proposal however we do appreciate that smaller counties may have limitations that larger counties do not. We would support a tiering of this rule to align with when drop boxes are emptied (i.e., if a county picks up ballots on Sunday, they must check video).

Rule 20.12.2 Remedies

(a) Incident report

(1) If a county clerk discovers or determines that a violation of any provision of Rule 20 has occurred, they must file an incident report with the Department of State as soon as feasible, BUT NOT LATER THAN ~~TWO~~ THREE BUSINESS DAYS, following the DISCOVERY OF THE incident. The incident report must describe in detail the incident and the rule that may have been violated and any other information the Department may require. IF AN ISSUE ARISES THAT DOES NOT CONSTITUTE A VIOLATION OF RULE 20, BUT THE COUNTY CLERK ~~OR DEPARTMENT~~ BELIEVES AN INCIDENT REPORT SHOULD BE FILED, THE CLERK MUST FILE AN INCIDENT REPORT AS SOON AS FEASIBLE.

Reasons for proposed change

- Boulder would prefer to see a 5 business day reporting window as when things are busy, reporting incidents (particularly if they have already been resolved) to the Secretary of State is may not be the most pressing issue for a county. We appreciate 5 days is likely unacceptable and request 3 instead of 2.
- We also would like to see this specify that the business day reporting is from the discovery of the incident, not it's occurrence. There are may scenarios in which a violation of rule 20 might be discovered more than 2 days from its occurrence.
- We agree that if a clerk believes an incident should be filed, they should file one however, we don't understand how this rule would be used in practice when the SOS Department believes an incident report should be filed and therefore requires the county to complete an administrative task. In this case, the Department is already aware of the incident, so we are not clear what the filing is needed for.

Rule 25.2.2(c)(1)

Boulder supports the proposed edits disallowing the use of ballot resolution or adjudication judges during the RLA unless an exemption is approved.

Rule 26.5.4

Boulder is opposed to the proposed edit in this rule. This creates the opportunity for inconsistency amongst counties which will invite unnecessary debate, inaccurate information and distraction across counties while adopting a new election process. Batch elimination should either be mandatory or prohibited.

Rule 26.7.4

IF A VOTER MARKED THEIR BALLOT IN A WAY THAT CREATES MORE THAN ONE TYPE OF IMPROPER MARK AS LISTED IN RULES 26.7.1 TO 26.7.3, THE DESIGNATED ELECTION OFFICIAL MUST FIRST RESOLVE ~~SKIPPED RANKINGS, FOLLOWED BY~~ DUPLICATE RANKINGS BEFORE RESOLVING~~, AND LASTLY RESOLVE ANY REMAINING~~ OVERVOTES.

Reasons for proposed change

- From our experience implementing RCV, resolving a duplicate ranking can create a skip ranking and therefore, this rule will create confusion for counties.
- We believe the only order that matters is resolving duplicates before overvotes as a duplicate vote can be BOTH a duplicate and an overvote (or vice versa) so one must be resolved first to process the ballot.
- Since both skipped rankings and overvotes result in all lower rankings below the improper mark being ignored, we do not think the order needs to be prescribed. However, prescribing the order also would have no impact on the result and therefore if there is a belief that this would alleviate confusion, we can understand this – however we do propose that it's not necessary.

Additional Rule Suggestions

Rule 2.15.7

If a county receives information ~~from a jurisdiction outside of Colorado~~ indicating that a Colorado voter may have voted in more than one state in the same election, the county must send that information to the Secretary of State's office for potential investigation and prosecution.

Reasons for proposed change

- Expand to encompass all referrals, regardless of the source

Rule 9.1 Challenging A VOTER in-person ~~voter~~

9.1.1 Under Section 1-9-201, C.R.S., an election official, watcher, or eligible elector of the precinct may challenge an elector's right to vote. A person whose eligibility is challenged while voting in-person OR RECEIVING A MAIL BALLOT IN-PERSON, must be offered a regular ballot by an election judge if the person answers the applicable challenge questions confirming their eligibility as specified in section 1-9-203, C.R.S., and this Rule. If the person challenged refuses to answer the challenge questions or does not otherwise confirm their eligibility, an election judge must offer the person a provisional ballot.

Reasons for proposed change

- Currently, rule 9.1 is titled *Challenging an in-person voter* and does not include challenging voters who are receiving a mail ballot (new or replacement) in person.
- It is not currently clear that a mail ballot voter can be challenged, nor that the challenge form used should be the in-person challenge form, however we believe this to be true based on challenge rights in 1-9-201.

Rule 9.2 Challenging a ~~mail ballot voter~~ VOTED MAIL BALLOT

<u>Reasons for proposed change</u>

- Updating the title as the substance under Rule 9.2 and the Voter Challenge – Mail Ballot Voter form is speaking to voted mail ballots