

# Colorado County Clerks Association

Contact:  
Mike Beasley, 5280 Strategies  
Phone: 303-916-0579  
E-Mail: mike@5280strategies.com

To: Senator Rollie Heath  
From: Colorado County Clerks Association  
Date: January 12, 2012  
Re: Voted Ballots and CORA

## Memo

The following is CCCA Draft Language regarding Voted Ballots and Public Access.

### Definition of ballot

- Colorado has many different types of ballot issued in different media. However, there is no legal definition of voted ballot that is inclusive of paper, digital, etc. Suggested language: Voted ballots include voted paper ballots, paper representations of a cast ballot, and VVPAT ballots.

### Public Inspection of Ballots

- ✓ Legislation is required to address the constitutional and statutory conflicts in Colorado to balance transparency in election outcomes and privacy/anonymity of individual voters.  
Elections are transparent through poll watchers, public Canvass Boards, statutes that address security and chain of custody, reporting, audits, recounts and legal contests. The level of reporting required (precincts, vote method, etc.) has the potential to parse individual voters into very small groups that can erode anonymity depending on coordination and participation and the consolidation of certain election records. An increase in requests for review of ballots under the Colorado Open Records Act has resulted in the need to develop legal clarity and certainty to how ballots are publicly inspected under CORA that protects the integrity of the election during the legal process and permit an inspection of ballots while protecting voter anonymity.

## **PROCESS FOR INSPECTION OF BALLOTS UNDER CORA DURING THE PUBLIC INSPECTION PERIOD**

### Ballot Inspection Period

- ✓ Elections have complex processes, voluminous records, and tight statutory timelines. CORA specifies a timeline of 3 or an additional 7 days to meet the request, which provides for statutory conflict in meeting the duties and obligations of the election. The public access points during the election include poll watchers, election judges, canvass board, observers and media.
- ✓ The CCCA supports legislation that will specify requirements and limitations for public inspection of ballots. The ballot inspection period under the Colorado Open Records Act should be excluded from ballot certification until the end of the custodial period. This will preserve the context of the election for the legal record.
- ✓ Ballot inspection during the custodial period would be permitted by court order. Requests for review should be submitted no later than 30 days prior to the end of the custodial period.
- ✓ The following process for inspection is required to maintain the integrity and security of the records:

### Preparation of Ballots for Public Inspection

- ✓ The Clerk and Recorder or their designee will in good faith prepare the ballots requested in a manner that protects voter privacy.

- ✓ Due to the complexity of elections and reporting, the clerk and recorder with due diligence and in good faith should not be liable for any inadvertent disclosure or violation of voter secrecy that may occur as a result of fulfilling a ballot inspection request under CORA.
- ✓ Pursuant to Rule 43.8.1(D), only deputized clerks, canvass board members or election officials may handle original ballots.
- ✓ Requestor shall not be present for preparation of the ballots.
- ✓ The Clerk and Recorder shall deny inspection of certain election records to protect the integrity of the election and the privacy of the voter. The election official must deny the following records for inspection:
  - Tracking reports, logs, accounting forms or voter participation records by method.
  - Provisional ballots, regardless of disposition in the election (Section 1-8.5-111, C.R.S)
  - Rejected mail/mail-in ballots that remain sealed in their envelopes. (Sections 1-7.5-107.3 (2)(B) and 1-8-114.5(2)(B), C.R.S)
  - Original ballots cast by military and overseas electors that were returned by fax or email.
  - Ballots with a write-in candidate or any marking or messages on the ballot that may identify the elector who cast the ballot. If, however, the county has the technology to electronically redact the markings, the county shall make reasonable efforts to redact and make the ballot images available. Any marking or message includes but may not be limited to any stray marks or odd colorings of the ovals, arrows or boxes present on the ballot face.
  - Ballots from a precinct or split precinct in which fewer than ten ballots are cast by a particular method (i.e., early voting, mail, polling place, or vote center), any precinct or split precinct when vote cast is unanimous, or voted ballots in a polling location, batch or date in a number less than ten.
  - Serial numbered ballots.
  - Election definition files, raw data or any record in an editable format.
  - Original VVPAT records are not subject to inspection, however, the county clerk and recorder may produce copies of the VVPAT records available. Due to the sensitivity of the records to heat and light, counties may produce copies from the memory card, if applicable, to preserve the integrity of the record.
- ✓ Public Inspection Process
  - Scheduling of Inspection
    - Prior to review of the ballots, the Clerk and Recorder shall advise the requestor of the following:
      - Date and hours, upon completion of the ballot review, in which the inspection during reasonable business hours is permitted.
      - The number of county staff that will be present.
      - Process for inspection and process for requestor to obtain copies of the ballots.
    - Requestor will submit the number of inspectors for the review.
  - Marking or writing on ballots during inspection is prohibited.
  - Requesting parties may make personal notes using a marking utensil approved by the election official.
  - Media devices including, but not limited to, cameras, scanners, laptops or cell phones are not permitted within inspection area.
  - Counties may require video surveillance of the ballot review and inspection area.
- ✓ Fees: The clerk and recorder may adopt a reasonable fee schedule and policy to recapture full cost of the review and inspection, not to exceed actual cost for processing requests for public inspection of ballots. (Section 24-72-203 (1) C.R.S.)
- ✓ The retention and destruction schedule will be completed once the CORA requests submitted prior to the end of the custodial period are fulfilled.

### **Canvass Board Reform**

- In discussion with stakeholders, including the Secretary of State, counties and elections advocates, the CCCA is participating on potential changes for statutes /rules in canvass board participation and process.

The CCCA supports codifying best practices in canvass that promotes stakeholder participation while preserving the integrity of the elections process.

