

1 **From:** Judd Choate [mailto:Judd.Choate@SOS.STATE.CO.US]  
2 **Sent:** Wednesday, November 23, 2011 12:52 PM  
3 **To:** Harvie Branscomb; Marilyn R Marks; Al Kolwicz; 'Mary Eberle'; joseph richy  
4 **Cc:** Scott Gessler; Richard Coolidge; Bill Hobbs; Gary Zimmerman  
5 **Subject:** CORA for Voted Ballots  
6

7 Hi all.  
8

9 Please find the attached document. This is a **staff draft** of what could evolve into a proposed rule  
10 concerning open records requests for voted ballots. The Secretary is also considering a  
11 legislative option, in addition to rulemaking. The document attached here would serve as the  
12 fundamental building blocks for whichever option the Secretary chooses.  
13

14 The Secretary values your opinion, which is why he has asked that I send you this early draft.  
15 Please look it over and get back to me with your thoughts. The more constructive the comment,  
16 the more likely it will be useful.  
17

18 Thank you.  
19

20 Judd  
21

22 Judd Choate, Ph.D., J.D.  
23 State Election Director  
24 Colorado Department of State  
25 1700 Broadway Suite 200  
26 Denver, CO 80290  
27 Office - 303-894-2200  
28 [judd.choate@sos.state.co.us](mailto:judd.choate@sos.state.co.us)  
29

1 **52. PUBLIC INSPECTION OF BALLOTS**

2 52.1 IN ACCORDANCE WITH THE COLORADO OPEN RECORDS ACT, PART 2 OF ARTICLE 72 OF  
3 TITLE 24, C.R.S., (CORA), VOTED BALLOTS AND TRACKING REPORTS ARE PUBLIC RECORDS  
4 THAT ARE OPEN FOR INSPECTION BY ANY PERSON DURING REASONABLE OFFICE HOURS,  
5 EXCEPT AS OTHERWISE PROVIDED IN CORA OR THIS RULE.

6 52.1.1 THE PURPOSE OF THIS RULE IS TO OUTLINE REQUIREMENTS AND LIMITATIONS FOR  
7 PUBLIC INSPECTION OF BALLOTS AND TRACKING REPORTS UNDER CORA.

8 52.1.2 THIS RULE DOES NOT LIMIT OR OTHERWISE AFFECT ANY EXISTING LAW GOVERNING  
9 THE ALLOWANCE OR DENIAL OF INSPECTION OF RECORDS OTHER THAN BALLOTS  
10 AND TRACKING REPORTS.

11 52.2 DEFINITIONS FOR THE PURPOSES OF THIS RULE.

12 52.2.1 "VOTED BALLOT" INCLUDES ALL VOTED PAPER BALLOTS, DIGITAL IMAGES OF  
13 VOTED BALLOTS, AND VVPAT RECORDS.

14 52.2.2 "TRACKING REPORT" MEANS ANY DOCUMENT, REPORT, OR LOG PRODUCED AND  
15 USED FOR MANAGING THE BALLOT TABULATION PROCESS. THESE REPORTS INCLUDE  
16 BUT ARE NOT NECESSARILY LIMITED TO:

17 (A) BALLOT PROCESSING REPORTS AND AUDIT LOGS, REPORTS, OR OTHER  
18 DOCUMENTS PRODUCED BY THE TABULATION EQUIPMENT OR PREPARED  
19 UNDER THIS RULE;

20 (B) BALLOT BATCHING OR PROCESSING REPORTS AND AUDIT LOGS FROM THE  
21 STATEWIDE VOTER REGISTRATION DATABASE; AND

22 (C) ALL OTHER BALLOT PROCESSING REPORTS AND AUDIT LOGS, INCLUDING  
23 BATCH SHEETS.

24 52.3 BALLOT INSPECTION PERIOD.

25 52.3.1 TO PREVENT DISRUPTION TO THE COUNTY ELECTIONS OFFICES AND ENSURE THE  
26 INTEGRITY OF THE CONDUCT OF STATE AND FEDERAL ELECTIONS, INSPECTION OF  
27 BALLOTS AND TRACKING REPORTS IS NOT AVAILABLE DURING THE PERIOD  
28 BEGINNING ON THE DEADLINE TO CERTIFY BALLOT CONTENT THROUGH DEADLINE  
29 TO FILE A CONTEST, OR THE CONCLUSION OF ANY CONTEST FOR RACES OR ISSUES ON  
30 THE BALLOTS SUBJECT TO THE REQUEST, WHICHEVER IS LATER. (SECTION 1-5-203  
31 AND PART 2 OF ARTICLE 11 OF TITLE 1, C.R.S.)

32 52.3.2 IF, HOWEVER, A COUNTY CLERK AND RECORDER IS ABLE TO ACCOMMODATE A  
33 REQUEST TO INSPECT BALLOTS AND TRACKING REPORTS FROM A PREVIOUS  
34 ELECTION DURING THE PERIOD DESCRIBED IN RULE 52.3.1 WITHOUT AFFECTING THE

1 COUNTY'S ABILITY TO CONDUCT THE CURRENT ELECTION, THE CLERK MAY ALLOW  
2 THE REVIEW.

3 52.4 IN ADDITION TO THE REASONS SPECIFIED IN SECTION 24-72-204, C.R.S., THE COUNTY  
4 CLERK AND RECORDER MUST DENY INSPECTION OF SPECIFIC BALLOTS AND TRACKING  
5 REPORTS TO PROTECT THE INTEGRITY OF THE ELECTION RECORDS AND VOTER SECRECY.

6 52.4.1 COUNTIES MUST NOT RELEASE THE FOLLOWING TYPES OF BALLOTS FOR  
7 INSPECTION:

8 (A) PROVISIONAL BALLOTS, REGARDLESS OF WHETHER THEY WERE COUNTED.  
9 (SECTION 1-8.5-111, C.R.S.)

10 (B) REJECTED MAIL/MAIL-IN BALLOTS, UNDELIVERABLE BALLOTS, AND ANY  
11 OTHER BALLOTS THAT MUST REMAIN SEALED IN THEIR ENVELOPES.  
12 (SECTIONS 1-7.5-107.3(2)(B) AND 1-8-114.5(2)(B), C.R.S.)

13 (C) ORIGINAL BALLOTS CAST BY MILITARY AND OVERSEAS ELECTORS THAT  
14 WERE RETURNED BY FAX OR EMAIL; HOWEVER, THE DUPLICATE BALLOTS  
15 ARE AVAILABLE FOR INSPECTION.

16 (D) BALLOTS WITH A WRITE-IN CANDIDATE OR ANY MARKING OR MESSAGES ON  
17 THE BALLOT THAT MAY IDENTIFY THE ELECTOR WHO CAST THE BALLOT. IF,  
18 HOWEVER, THE COUNTY HAS THE TECHNOLOGY TO ELECTRONICALLY  
19 REDACT THE MARKINGS, THE COUNTY SHALL MAKE REASONABLE EFFORTS  
20 TO REDACT AND MAKE THE BALLOT IMAGES AVAILABLE.

21 (E) BALLOTS FROM A PRECINCT OR SPLIT IN WHICH FEWER THAN TEN BALLOTS  
22 ARE CAST BY A PARTICULAR METHOD (I.E. EARLY, MAIL, POLLING PLACE, OR  
23 VOTE CENTER).

24 (F) ORIGINAL BALLOTS THAT WERE DUPLICATED; HOWEVER, THE DUPLICATE  
25 BALLOTS ARE AVAILABLE FOR INSPECTION.

26 52.4.2 ORIGINAL VVPAT RECORDS ARE NOT SUBJECT TO INSPECTION, HOWEVER, THE  
27 COUNTY CLERK AND RECORDER SHALL MAKE COPIES OF THE VVPAT RECORDS  
28 AVAILABLE. BECAUSE THE VVPAT RECORDS ARE HEAT AND LIGHT SENSITIVE,  
29 COUNTIES MAY PRODUCE THE COPIES FROM THE MEMORY CARD TO PRESERVE THE  
30 INTEGRITY OF THE ORIGINAL VVPAT RECORD.

31 52.4.3 TO PRESERVE VOTER SECRECY, TRACKING REPORTS THAT TRACK OR IDENTIFY THE  
32 SPECIFIC BATCH, BUNDLE, BIN, TUB, BOX, OR TRAY LOCATION OF ANY SPECIFIC  
33 BALLOT ARE NOT SUBJECT TO INSPECTION. (ARTICLE VII, SECTION 8 OF THE  
34 COLORADO CONSTITUTION; SECTIONS 1-6-114 AND 1-13-712, C.R.S.)

35 52.5 PROCESS FOR PREPARING BALLOTS FOR PUBLIC INSPECTION.

1 52.5.1 THE COUNTY CLERK AND RECORDER OR DESIGNEE(S) SHALL REVIEW EACH BALLOT  
2 AND DETERMINE WHETHER THE BALLOT MAY BE RELEASED UNDER THIS RULE 52.

3 52.5.2 PRIOR TO RELEASING BALLOTS FOR INSPECTION, THE COUNTY CLERK AND  
4 RECORDER SHALL ENSURE THAT NO BALLOT CAN BE TRACKED TO THE SPECIFIC  
5 VOTER WHO CAST IT BY REMOVING ANY BATCH SHEETS OR TRACKING REPORTS  
6 FROM THE BALLOT BATCHES OR BUNDLES, OR BY REDACTING THE ORIGINAL BATCH  
7 NUMBERS AND RE-CODING THE BATCHES.

8 52.6 MARKING OR WRITING ON BALLOTS DURING INSPECTION IS PROHIBITED.

9 52.6.1 TO ENSURE NO MARKS ARE MADE ON ANY BALLOT, REQUESTING PARTIES MAY  
10 MAKE PERSONAL NOTES USING A LAPTOP OR OTHER ELECTRONIC DEVICE.

11 52.6.2 IF A REQUESTING PARTY IS UNABLE OR DOES NOT WISH TO USE A LAPTOP OR OTHER  
12 ELECTRONIC DEVICE, HE OR SHE MAY MAKE NOTES USING A MEDIUM APPROVED BY  
13 THE COUNTY CLERK AND RECORDER.

14 52.7 REQUESTING PARTIES MAY OBTAIN COPIES OF BALLOTS.

15 52.7.1 THE COUNTY CLERK MAY PROVIDE THE REQUESTING PARTY WITH COPIES OR MAY  
16 ALLOW THE REQUESTING PARTY TO SCAN THE BALLOTS USING HIS OR HER  
17 PERSONAL EQUIPMENT.

18 52.7.2 IF COPIES ARE PROVIDED BY THE COUNTY, IT IS WITHIN THE COUNTY CLERK AND  
19 RECORDER'S DISCRETION WHETHER TO PROVIDE COPIES IN SCANNED OR PAPER  
20 FORMAT.

21 52.8 SCHEDULING AND OVERSEEING THE PUBLIC INSPECTION.

22 52.8.1 PRIOR TO THE REVIEW, THE COUNTY CLERK AND RECORDER SHALL ADVISE A  
23 REQUESTING PARTY OF THE PROCESS FOR REVIEWING BALLOTS INCLUDING, AT A  
24 MINIMUM:

25 (A) THE HOURS DURING WHICH THE REVIEW MAY BE CONDUCTED;

26 (B) THE NUMBER OF COUNTY STAFF THAT WILL BE PRESENT; AND

27 (C) THE PROCESS FOR THE REQUESTER TO SCAN OR OBTAIN COPIES OF THE  
28 BALLOTS.

29 52.8.2 COUNTIES MAY MAINTAIN VIDEO SURVEILLANCE OF THE BALLOT INSPECTION AREA.

30 52.9 FEES. THE COUNTY CLERK AND RECORDER MAY ADOPT A REASONABLE FEE SCHEDULE AND  
31 POLICY FOR PROCESSING REQUESTS FOR PUBLIC INSPECTION OF BALLOTS. (SECTION  
32 24-72-203(1), C.R.S.)