

**29-250 DEPARTMENT OF THE SECRETARY OF STATE
BUREAU OF CORPORATIONS, ELECTIONS AND COMMISSIONS
DIVISION OF ELECTIONS**

**Chapter 535: RULES GOVERNING THE ADMINISTRATION OF ELECTIONS DETERMINED BY
RANKED-CHOICE VOTING**

SUMMARY: This rule sets forth the procedures for the administration of elections determined by ranked-choice voting, including collection, security and handling of ballots and memory devices between the municipal offices and the central counting facility; aggregating and counting the cast vote records; administering the rounds of ranked-choice counting to achieve a majority result; and reporting the results.

Recommendation

1. "... ranked-choice counting to achieve a winning candidate majority result; and reporting the results."

Rationale

The statute specifies that RCV counting rounds continue until only two candidates remain, at which point one of the two is defeated, and one is the winning candidate. Both because it's specified in statute and because it's better for winning candidates to be able to demonstrate the extent of their mandate, we recommend running the counting utility to the final round where all candidates have been defeated but one. The counting utility will make this easy to do. Other RCV jurisdictions are adopting this practice. See further discussion below.

SECTION L Applicability of Ranked-choice Voting.

Elections for an office defined in 21-A M.R.S.A. §1, sub-§27-C will be determined by the ranked-choice voting process described in these rules when there are three or more candidates who have qualified to be listed on the ballot for that office or when there is a combination of at least two candidates who have qualified to be listed on the ballot for that office plus at least one declared write-in candidate,

SECTION 2. Definitions.

1. “Continuing ballot”, as defined in 21-A M.R.S.A. § 723-A, sub-§ 1, paragraph B, means a ballot that is not an exhausted ballot,
2. “Continuing candidate,” as defined in 21-A M.R.S.A. § 723-A, sub-§ 1, paragraph C, means a candidate who has not been defeated.
3. “Election results reporting program” means the software program that is compatible with the current tabulation system used by the state and is capable of processing and aggregating the results and cast vote records created by scanning the ballots.
4. “Ranking,” as defined in 21-A M.R.S.A. § 723-A, sub-§ 1, paragraph I, means the number or the numeric position assigned on a ballot by a voter to a candidate to express the voter’s preference for that candidate. Ranking number one is the highest ranking, ranking number two is the next-highest ranking and so on.
5. “RCV count” means the ranked-choice counting process defined in these rules.
6. “RCV counting facility” means a facility in the Augusta area selected by the Secretary of State and the room or rooms in that facility in which one or more RCV counts will take place.
7. “RCV counting utility” means a specialty software program or utility that incorporates the ranked-choice vote counting requirements defined in Section 4, subsection 2 of these rules, and electronically completes the rounds of the RCV count.
8. “Skipped ranking,” as defined in 21-A M.R.S.A. § 723-A, sub-§ I, paragraph K, means a circumstance in which a voter has left a ranking blank and ranks a candidate at a subsequent ranking.
9. “UOCAVA election officials” means the officials who centrally process and count the absentee ballots received by the Secretary of State from Maine uniformed service and overseas voters pursuant to Chapter 525, Rules for Administering the Central Issuance and Processing of UOCAVA Absentee Ballots.

Recommendation

1. Incorporate the statutory definitions from 723-A into the rules for completeness, consistency, and ease of understanding.
2. Add a new definition for “winning candidate.”
“Winning candidate” means that candidate who is the continuing candidate after all other candidates have been defeated.

Rationale

Already covered.

SECTION 3. Ballot Design.

1. Authority of Secretary of State. The Secretary of State has the sole authority to determine the design of ballots containing ranked-choice voting contests, including whether to place ranked-choice contests and non-ranked-choice contests on the same or separate ballot pages.

This determination will be made after the candidate filing deadline has passed, when the number of contests subject to ranked-choice voting and the number of candidates who have qualified for those contests is known. Ranked-choice contests will be grouped together and presented either on a separate ballot page from the non-ranked-choice contests, or on one side of a combined ranked-choice and non-ranked-choice ballot page. Ballot heading information and specific instructions will be presented above or next to the first contest of each type (i.e., ranked-choice contest, non-ranked-choice contest or referendum contest). Each ballot page or grouping of contests will adhere to the ballot order and layout requirements, as near as practicable, of 21-A M.R.S.A. §601, §604-A, §723-A. The final design will be based on the space and design limitations of the ballot design software, while following the best practices for ballot design to the greatest extent possible.

2. Ranked-choice layout. The ballot will be designed in a manner that allows voters to rank as many candidates as they wish, up to and including all listed candidates and one declared write-in candidate, in order of choice. If there is no declared write-in candidate who has qualified in accordance with 21-A M.R.S.A. §722-A for a ranked-choice voting contest, then the Secretary of State may eliminate the write-in space for the contest so that the voter will have the ability to rank only the candidates listed on the ballot.

Recommendation

We hope that best practice can be accommodated in the ballot design to the greatest extent possible, with one column for a list of candidates in alphabetic order and enough ranking columns to the right so that each candidate can be ranked, with each ranking in its own separate column on the ballot, we recommend no change. We understand that best practice is to put the numbers in the ovals in the ranking columns, not just showing them as column headings.

SECTION 4. Vote Counting Procedures.

1. Municipal vote counting and reporting. After the polls close on election day, election officials in each municipality will tally the ballots either by hand-count or by using an approved tabulation system as authorized by the Secretary of State and will record the first choice votes cast for all ranked-choice voting contests in the same manner as for contests determined by plurality pursuant to 21-A M.R.S.A. §695. Each municipality will prepare an election return and will submit an attested copy of the election return to the Secretary of State within 3 business days after election day as provided in 21-A M.R.S.A. §§711 and 712.

2. Ranked-choice vote counting.

A. **General procedures.** If no candidate has a majority of first choice votes based on the election returns provided by municipalities under subsection 1 of this section, the RCV count must be conducted under the supervision of the Secretary of State in successive rounds, as further described in Section 6 of these rules. In each round, the number of votes for each continuing candidate must be counted. Each continuing ballot counts as one vote for its highest-ranked continuing candidate for that round. Exhausted ballots are not counted for any continuing candidate. At the end of each round, if no candidate receives a majority of the votes cast in that round, the last-place candidate is eliminated, and the next- highest-ranked continuing candidate on the defeated candidate’s ballots is transferred and added to the totals for the continuing candidate for the next round.

Recommendation

1. “If no candidate has ~~the a-first choice vote on more than 50% of the a-majority of first choice votes~~ ballots that were cast for the contest based on the election returns provided by municipalities under subsection 1 of this section, the RCV count must be conducted under the supervision of the Secretary of State in successive rounds, as further described in Section 6 of these rules.”
2. “At the end of each round, if ~~there are more than 2 continuing candidates, the last place candidate is defeated, no candidate receives a majority of the votes cast in that round, the last place candidate is eliminated,~~ and the vote for the next- highest-ranked continuing candidate on the defeated candidate’s ballots is transferred and added to the totals for the continuing candidate for the next round. Batch elimination may defeat multiple candidates in a single round. If there are 2 or fewer continuing candidates, the candidate with the most votes in the final round is the winning candidate.”

Rationale

“Majority” is not a defined term, except in the paragraph below, where the definition is problematical.

The statute specifies that RCV counting rounds continue until only two candidates remain, at which point one of the two is defeated, and one is the winning candidate. Both because it’s specified in statute and because it’s

better for winning candidates to be able to demonstrate the extent of their mandate, we recommend running the counting utility to the final round where all candidates have been defeated but one. The counting utility will make this easy to do. Other RCV jurisdictions are adopting this practice. See further discussion below.

Finally, the statute talks about “defeating” candidates, while the rules talk about “eliminating” candidates. Beginning here and continuing below, we recommend using the statutory term where appropriate.

B, **Threshold for majority.** A majority is considered to be achieved when a candidate receives 1 vote more than 50% of the total votes for all continuing candidates cast in the specified round, excluding overvotes, undervotes (i.e., skipped or blank votes) and exhausted ballots.

Recommendation

Eliminate this paragraph.

Rationale

Substitute what’s here for a definition of “winning candidate” as outlined above and throughout. The definition proposed here has an arithmetic problem. To appreciate why this definition of a majority threshold is defective, consider the small case of just five continuing votes. Fifty percent of five votes is two and a half votes. This definition would require a candidate get at least three and a half votes to have a majority -- that is, four votes, instead of three. (If this paragraph stays, note that “undervote” is not a defined term in statute or in Section 2.)

C. **Handling of certain ballot rankings.** As provided in 21-A M.R.S.A §723-A, sub-§1, and these rules, the following ballot ranking situations will be counted as follows:

Recommendation

We recommend that the tabulator scanners be programmed to recognize these ballot conditions and return the ballot to the voter to be corrected before the ballot is cast.

- (1) **Overvote.** An overvote occurs when a voter marks more than one candidate for the same ranking (i.e., in the same ranking column). Upon the first instance of encountering an overvote during the RCV count the ballot is deemed exhausted for that contest, and no subsequent candidate rankings marked on that ballot are counted.

Recommendation

Suggest rewording paragraph (1) as follows:

- (1) **Overvote.** An overvote occurs when a voter marks more than one candidate for the same ranking (i.e., in the same ranking column). An overvote invalidates the overvoted rankings and all subsequent rankings marked for that contest on that ballot. Candidates ranked higher than the overvote are counted as long as they are continuing candidates. ~~Upon the first instance of encountering an overvote during the RCV count, the ballot is deemed exhausted for that contest, and no subsequent candidate rankings marked on that ballot are counted.~~

Rationale

The original language: "Upon the first instance of encountering an overvote during the RCV count the ballot is deemed exhausted for that contest" is confusing. it implies that the first instance of an overvote on one ballot could have consequences for the entire RCV count.

- (2) **Single skipped ranking.** A single skipped ranking occurs when a voter does not mark (i.e., skips or leaves blank) a ranking but marks the subsequent ranking for a candidate. The single skipped ranking is ignored, and the subsequent ranking is counted in the current round, as long as that ranking is for a continuing candidate. For example, if the voter did not mark any candidate for the first ranking, but marked a continuing candidate for the second ranking, then the second ranked choice is counted in the first round of the RCV count.
- (3) **Two consecutive skipped rankings.** When a voter does not mark (i.e., skips or leaves blank) two or more consecutive rankings, then the ballot is deemed exhausted for that contest, and no subsequent candidate rankings marked on that ballot are counted.
- (4) **Duplicate ranking for the same candidate.** A duplicate ranking occurs when a voter marks more than one ranking column for the same candidate. If a voter marks a duplicate ranking for one candidate and ranks no other candidates, then the ballot will be counted for the highest ranking of that candidate. If the candidate with the duplicate ranking is eliminated, the ballot is deemed exhausted for that contest, and no subsequent candidate rankings marked on that ballot are counted. If a voter marks a duplicate ranking for one candidate but also ranks other candidates, if the candidate with the duplicate ranking is eliminated, then the next continuing candidate who is ranked will be counted in the next round.

Recommendation

Reword this section as follows:

- (4) **Duplicate ranking for the same candidate.** A duplicate ranking occurs when a voter marks more than one ranking column for the same candidate.
 - (i) If a voter marks a duplicate ranking for one candidate and ranks no other candidates, then the ballot will be counted for the highest ranking of that candidate. If the candidate with the duplicate ranking is ~~defeated~~**eliminated**, the ballot is deemed exhausted for that contest, ~~and no subsequent candidate rankings marked on that ballot are counted.~~
 - (ii) If a voter marks a duplicate ranking for one candidate but also ranks other candidates, if the candidate with the duplicate ranking is ~~defeated~~**eliminated**, then the next continuing candidate who is ranked will be counted in the next round.

- (5) **No ranking for a continuing candidate.** In any round, if a voter has not ranked any continuing candidate, the ballot is deemed exhausted for that contest, and no subsequent candidate rankings marked on that ballot are counted.

- (6) **Ties.** A tie between candidates for the most votes in the final round must be decided by lot and the candidate chosen by lot is defeated. A tie between last-place candidates in any other round must be decided by lot and the candidate chosen by lot is defeated, except that tied candidates who are mathematically impossible to be elected as defined in 21-A M.R.S.A. §723-A, sub-§1, paragraph G, may be ~~defeated~~**eliminated** by batch elimination, as defined in 21-A M.R.S.A. §723-A, sub-§1, paragraph A. The result of the tie resolution must be recorded and relied upon in the event of a recount.

- (7) **Batch elimination.** Batch elimination means the simultaneous defeat of multiple candidates for whom it is mathematically impossible to be elected, as defined in 21-A M.R.S.A. §723-A, sub-§1, paragraph G.

SECTION 5, Preparation for Ranked-choice counting.

1. Central location for ranked-choice count. The Secretary of State will select a suitable facility in the Augusta area, in which to securely store the election materials and conduct the RCV count. The space used for storage of ballots and memory devices that contain cast vote records must be secured against access by unauthorized personnel and all access must be logged. The Secretary of State is responsible for security of the storage and counting space.

2. Retrieval of election materials. Once the Secretary of State determines that an RCV count is needed for one or more ranked-choice contests, the Secretary of State will notify the Department of Public Safety (DPS) and the affected municipalities that election materials will be retrieved. DPS is responsible for coordinating and supervising the retrieval of the ballots and/or memory devices, as applicable, from the affected municipalities; transportation of these materials to the RCV counting facility; and ensuring the security of these materials while in DPS custody. The Secretary of State will provide transmittal forms to document the chain of custody from the municipality to DPS personnel. Secretary of State personnel at the RCV counting facility will accept and log the materials upon receipt from DPS. Municipalities that used the digital scan tabulators to tabulate their ballots will provide the DPS with all memory devices containing results and cast vote records for the election. The Secretary of State will provide transmittal packaging and tamper-evident seals to be used for memory device transmittal. If any ballots were not scanned by a tabulator, the municipality must seal these ballots in a separate tamperproof container from the fully scanned and counted ballots, and must provide the container of unscanned ballots to DPS along with the memory devices. Municipalities that hand-counted their absentee and election day ballots must provide DPS with all tamper-proof containers used to seal the hand-counted ballots cast in the election.

Recommendation

Reword this section as follows:

Retrieval of election materials. ~~Once the Secretary of State determines that an RCV count is needed for one or more ranked-choice contests, t~~The Secretary of State will notify the Department of Public Safety (DPS) in advance of Election Day that retrieval will commence statewide on the Wednesday after the election. Depending on unofficial results available overnight after the election, and the list of affected municipalities may be reduced. that ~~election materials will be retrieved.~~ SOS will direct DPS to coordinate and supervise is ~~responsible for coordinating and supervising~~ the retrieval of the ballots and/or memory devices, as applicable, from the affected municipalities; transportation of these materials to the RCV counting facility; and ensuring the security of these materials while in DPS custody.

Rationale

Elapsed time from Election Day to the time when preliminary results are available to the public is one of the most critical elements affecting public perception of the success of ranked choice voting. The “plan to retrieve” should be the default, not requiring a specific determination by the Secretary of State. In the June primary, retrieval on some scale will be required unless there is a majority winner in EVERY ranked choice contest. We suggest reframing this rule so that the plan goes into effect automatically unless affirmatively canceled by the SOS. DPS should be prepared to begin retrieval the day after the election.

Recommendation

In a perfect world, we would like to see the scanner towns retain a duplicate memory stick containing the results and the cast vote records for the election: one sent to the RCV counting facility; one stored with the paper ballots.

Rationale

The rule states that

“Municipalities that used the digital scan tabulators to tabulate their ballots will provide the DPS with all memory devices containing results and cast vote records for the election.” [Emphasis added.]

We are wondering if provision has been or could be made for the scanner towns to retain duplicate memory sticks. Will results be written on the stick that carried the programming? Do they write over the programming? Do procedures require the town’s to keep a redundant stick, or are they using the DS200 itself as the redundant memory. If they are doing the latter, there could be an issue for towns that intend to count municipal elections after counting the state elections. Would this erase the results and cast vote records in the memory of the DS200?

3. Ranked-choice counting personnel. The following personnel may participate in the ranked-choice counting process.

A. Supervisor of ranked-choice voting count. The ranked-choice counting rounds will be conducted under the supervision of the Secretary of State, or his or her designee, who is called the RCV Supervisor. The RCV Supervisor will direct and oversee the conduct of the RCV count according to all applicable laws, rules and procedures.

B. Ranked-choice voting assistants. The Secretary of State or RCV Supervisor will designate the necessary number of Department staff to act as RCV Assistants. If additional personnel are needed, the Secretary of State may designate municipal election officials or UOCAVA election officials to act as RCV Assistants.

C. Security personnel. The Secretary of State may use law enforcement personnel from

the Department's Office of Investigations to receive the election materials from the DPS personnel and secure the materials at the RCV counting facility.

D. Vendor support staff. The Secretary of State may authorize support staff from the voting system vendor to be present during the ranked-choice voting count to assist ranked-choice counting personnel with using the software and hardware necessary to complete the count,

E. Additional staff. The Secretary of State and the Department's legal counsel may assist with the RCV count as needed,

4. Notice of public proceeding. The RCV count is a public proceeding, and members of the media and the general public may attend, to the extent the space allows, The Secretary of State will provide notice to the public regarding the RCV count for each contest, including information about scheduling. Depending on the number of municipalities in the district for the particular contest that is subject to an RCV count, the RCV count will not be scheduled to begin until the memory devices and ballots from the majority of municipalities in the district have been delivered to the RCV counting facility, so that the RCV count can proceed in an orderly and efficient manner. A municipality's memory devices or hand-count ballots will not be processed until the Secretary of State has received the municipality's election return, which includes the first-place choices for all ranked-choice and non-ranked-choice contests, and the total ballots cast for the municipality,

Recommendation

Reword this section as follows:

Notice of public proceeding. The RCV count is a public proceeding, and members of the media and the general public may attend, to the extent the space allows,⁷ The RCV count will begin no later than the Monday after the election. The Secretary of State will provide notice to the public regarding the RCV count for each contest, including information about scheduling of the contests, on the Wednesday after the election. ~~Depending on the number of municipalities in the district for the particular contest that is subject to an RCV count, the RCV count will not be scheduled to begin until the memory devices and ballots from the majority of municipalities in the district have been delivered to the RCV counting facility, so that the RCV count can proceed in an orderly and efficient manner.~~ A municipality's memory devices or hand-count ballots will not be processed until the Secretary of State has received the municipality's election return, which includes the first-place choices for all ranked-choice and non-ranked-choice contests, and the total ballots cast for the municipality,

Rationale

Waiting for a majority of municipalities to report before even scheduling the RCV count is an extremely high threshold to meet before starting. Since a large number of municipalities comprise only a small percentage of the total ballots, we may find ourselves held up a long time for no more than 2 or 3% of the ballots. If this part of the rule is retained, we strongly suggest using an estimated percentage of ballots as

the trigger, instead of what is presented here.

However, the sequential organization of this plan, we believe, creates unnecessary delay in providing information to the public about the outcome of the election.

This is needlessly protracted. Experience from other jurisdictions provides clear evidence that, while there is a public interest benefit to providing an authoritative official result, that benefit has a trade-off against waiting too long to provide something. We seek a rule here that allows for an orderly and efficient process, while at the same time, providing the public with a sense of forward progress. We suggest beginning the RCV count on the Friday or Monday after Election Day without reference to how many towns or what percentage of ballots have been retrieved.

SECTION 6. Process for Ranked-choice counting.

1. Security of the ranked-choice counting area. There will be a guardrail enclosure set up to separate the ranked-choice counting area from the public viewing area at the RCV counting facility. Only the ranked-choice counting personnel designated in Section 5 of this rule will be allowed inside the guardrail enclosure. All persons allowed inside the guardrail must sign in each day, on a form provided by the Secretary of State. Candidates, media and members of the general public must remain outside the guardrail area. Only limited conversation will be permitted in the RCV counting facility. Cell phones must be silenced during the count and may be used within the guardrail area only by the ranked-choice counting personnel as needed to conduct the process. Any person who causes a disruption of the RCV count may be removed from the room, at the discretion of the RCV Supervisor.

2. Inspection of Materials. Prior to opening tamper-proof containers of ballots that were hand-counted on election night, or sealed packages containing memory devices for ballots that were machine tabulated on election night, the ranked-choice counting personnel will inspect each container or package to document whether it was properly sealed. As each container or package is opened and ballots or memory devices are removed and processed, personnel will complete a tracking log. After processing is complete, the materials will be resealed in the containers or delivery packages and stored until after any recount period has passed. Ballots will be returned to the municipality of origin, while memory devices will be delivered to the Elections Division for coding the next election.

3. Processing of ballots and memory devices. The following activities may be conducted simultaneously or consecutively, depending on the number of ranked-choice counting personnel available.

- A. **Hand-counted ballots.** Tamper-proof containers of ballots that were hand-counted on election night will be unsealed and scanned through a tabulating device in order to obtain electronic results and cast vote records. RCV Assistants will be assigned to unseal the tamper-proof containers of hand-counted ballots, remove the ballots related to the ranked-choice contest(s) to be counted, and prepare them for scanning. This will be done on a municipality-by-municipality basis, and an RCV assistant will record the date and time when each municipality's ballots were scanned. Once the ballots have been scanned, the ballots will be resealed in the tamper-proof containers from that municipality and stored until after any recount period has passed. On a periodic basis, the memory devices from the hand-count ballot scanning will be uploaded into the election results reporting program,
- B. **Machine-tabulated ballots.** Packages containing memory devices from municipalities whose ballots were machine-tabulated on election night will be unsealed and the contents uploaded into the election results reporting program. RCV Assistants will be assigned to perform this task. This will be done on a municipality-by-municipality basis, and an RCV assistant will record the date and time when the memory devices for each municipality were uploaded. Once all memory devices for a municipality have been uploaded into the election results reporting program, the memory devices will be resealed in the delivery packages from that municipality and stored until after any recount period has passed.

Recommendation

An additional rule should specify the method for tabulating results obtained from ballots that, for whatever reason, could not be included in the machine tabulation and/or count using the voter-marked original ballot.

Rationale

We are wondering about the proposed handling for those few loose ballots from machine-count towns that could not be scanned by the municipality. These ballots will be transported to the central location for the RCV count.

- C. **Hardware and software.** The Secretary of State will use hardware and software compatible with the current tabulating system for performing the RCV count. Precinct tabulators or high-speed tabulators used for scanning the hand-counted ballots will be non-networked devices and will not be connected to the internet or employ any wireless technology. The computers used for the election results reporting program will be a self-contained, single-purpose, hard-wired network and will not be connected to the internet or employ any wireless technology. The Secretary of State will procure a software utility or algorithm that incorporates the ranked-choice vote counting requirements as described in Section 4, subsection 2 of these rules. The RCV counting utility will utilize the cast vote records and apply the ranked choice counting requirements to complete the rounds of the RCV count and reach a majority winner.

Recommendation

1. the cast vote records and apply the ranked choice counting requirements to complete the rounds of the RCV count and reach a winning candidate result~~majority winner~~.

Rationale

As previously stated.

D. Quality control reports. As each municipality's results are uploaded into the election results reporting program, the RCV Supervisor or an RCV Assistant will generate a report of the total ballots cast to compare with the total ballots cast figure reported by the municipality based on the election night count. This comparison will be used to verify that all results from election night for each municipality have been uploaded or all hand-count ballots have been scanned and results uploaded.

Recommendation

Quality control reports should be made public at the end of each day during the RCV count and should be posted online at the Secretary of State's web site. The report would show:

- the number of towns that have returned attested copies and their ballot total
- the number of towns that have returned memory sticks or ballots
- the towns and ballots that have been loaded per contest
- the towns and ballots that are outstanding

4. **Ranked-choice vote reporting.** After all the results from each ranked-choice voting election are uploaded and verified in the election results reporting program, the RCV Supervisor will initiate the RCV counting utility. Reports will be generated to document the round-by-round results as well as the final majority winner. The Secretary of State will report the statewide ranked-choice result to the Governor and will publish the results on the Department's public website, as soon as possible after completing the RCV count.

Recommendation

Reword this section as follows:

1. As soon as approximately half of the ballots for any contest have been ~~After all the results from each ranked-choice voting election are~~ uploaded and verified in the election results reporting program, but no later than Monday after Election Day, the RCV Supervisor will initiate the RCV counting utility. Preliminary R reports will be generated daily to document the round-by-round results based on partial returns. ~~After all the results from each ranked choice voting election are uploaded and verified, the RCV Supervisor will run the counting utility one last time, generating and publishing round-by-round results~~ as well as the winning candidate results in the final round ~~final majority winner~~. The Secretary of State will report the statewide ranked-choice result to the Governor and will publish the results on the Department's public website, as soon as possible after completing the RCV count.
2. Add: At the same time that final results are posted on the Department's public website, the aggregated cast vote record by contest will also be posted as an accessible digital file on the Department's public website

Rationale

Best practice and experience from other jurisdictions tell us that waiting until results are complete and official before running the counting utility undermines voter confidence and trust in the process. The elapsed time between Election Day and providing some results is one of the critical factors to maintaining voter engagement and trust in the process.

Especially since it will not be time-consuming to run the counting utility and post the round-by-round results based on partial data, we strongly recommend that this practice be adopted. Beginning this practice on Friday after Election Day would be ideal, but perhaps aspirational for this first outing.

Furthermore, we believe that providing a digital file of the complete cast vote record for each contest once the results are official is a crucial element of transparency. It allows campaigns and interested citizens to check the round-by-round results using public-domain counting utilities, and it is essential to candidates contemplating a recount request.

We are aware that some have argued that release of the cast vote record is forbidden by law because the ballots are not public records, and we would concur if the cast vote record were a physical photographic or facsimile image of the paper ballot. However, that is not the case: it is digitized data, not recognizable to the voter or anyone else.