



September 27, 2018

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Dear Matt, Julie, and Melissa:

Thank you for the opportunity to comment on the election rules as revised for the November 2018 election. Overall, we find the rules to be timely and constructive.

Our comments cover a range in level of detail and critical importance, but our highest priority concerns are those we presented orally at the public hearing on September 10. We reiterate those issues below:

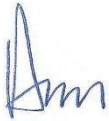
- Rule 535, Section 1: It probably should be noted here that a circumstance could arise where a candidate was defeated in a ranked choice voting contest under the 50% test in Rule 535 without an RCV count having been conducted and still be eligible to request a recount under this rule.
- Rule 535, Section 5.2 -- The Secretary of State should establish a default presumption that the ballots and memory sticks for an RCV count will be retrieved as soon as possible after Election Day. This is what was done in practice for the June election. For this November election, as was the case then, we would have to see a majority winner in ALL the major contests to obviate the need for this step. Let's stipulate that we will plan for and assume an RCV count unless Election Night results indicate that this is not necessary.
- Rule 535, Section 5.4 -- As regards the public proceeding, we still feel that the "majority of municipalities" rule is too high a threshold to use for triggering the public proceeding. If this rule were followed to the letter, it could delay processing even when as many as 97% of the actual ballots are ready and waiting to be processed. Ideally, we would like to see the public proceeding commence on the Thursday or Friday after the election, regardless of the number of municipalities whose material has been delivered to the counting facility. That is what was done in the primary, and it is likely what you are planning for this November, too.
- Rule 535, Section 6.3.C -- One aspect that surprised us during the RCV count in June was the number of ballots that could not be scanned, requiring your staff to manually create digital cast vote records. We aren't sure what procedures were employed to ensure the accuracy of these records, but since there were quite a few of them, perhaps there should be an opportunity for public inspection, or at least inspection by the candidates or their counsel, of those ballots and their corresponding digital records.

- Rule 535, Section 6.4 -- We were pleased to see the option for running early unofficial results once the preponderance of ballots has been processed. Once the RCV count is complete and final, and official results have been announced, we urge you to publish a digital copy of the complete cast vote record for each contest. This should be stipulated in rule. 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.
- Rule 536: One main point -- Limiting the recount opportunity to the top three candidates is contrary to statute. Candidate 4 could have a path to ultimate victory even while losing to Candidate 3 by a mere handful of votes and still have not standing to call for a recount. Still, considering the complexity and effort of an RCV recount beyond the top 3 finishers, we might not object to a statutory change limiting the recount candidates to the top 3 finishers AS LONG AS there was a mandatory audit protocol in place that could identify and remedy incorrect results, whether as a result of error or intent.
- Overall: We recommend adding language to each rule such that no individual will have access to the ballots or the ballot alone and that there be opportunity for the public to monitor all access to the ballots when the containers are open.
- Overall: We note some inconsistencies in substance and form between the recount rules rules that might be resolved at some point by consolidating the RCV and non-RCV material. Some examples include the "10 vote rule;" the rules for staged recounts; and the resolution process for disputed ballots. We leave that detail for a later review, once we have more experience with RCV counts.

We are attaching a few more detailed suggestions in the form of a mark-up to the proposed rules.

Thank you for the opportunity to work constructively with your office to achieve our mutual goals for elections conducted in the public interest.

Sincerely yours,



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