Voter Intent

Determination of Voter Intent for Colorado Elections

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CONTENTS

OVERVIEW

This guide outlines specific scenarios to aid election judges in determining voter intent in accordance with statute and rules and must be used in every situation requiring resolution of voter intent.

Bipartisan teams of election judges will review ballots for voter intent in the following situations:

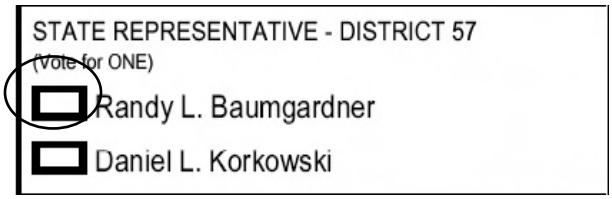
1. When a county is hand-counting paper ballots;
2. When a bipartisan team of election judges is resolving damaged ballots;
3. When a bipartisan team of election judges is resolving ballots that are unreadable by an ballot scan voting device;
4. When a bipartisan team of election judges is resolving ballots containing votes for write-in candidates.
5. When a bipartisan team of election judges is reviewing a ballot during a Risk Limiting Audit.
6. When reviewing multiple ballots returned by an unaffiliated voter during a primary.

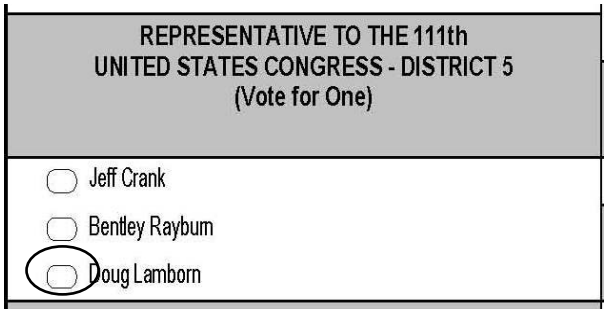
CHAPTER 1: THE TARGET AREA

The "target area" is the oval, square, or incomplete arrowadjacent to a candidate's name or ballot response. In counties whose digital adjudication application does not show the target area itself, judges should consider the area of the digital ballot image that corresponds to the target area printed on paper ballots as the "target area" for purposes of determining voter intent.

Example 1: Types of target areas

Examples of different types of target areas are circled below:

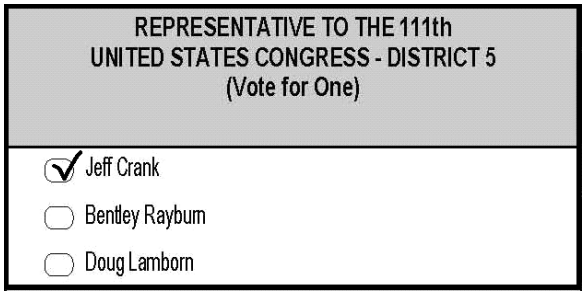


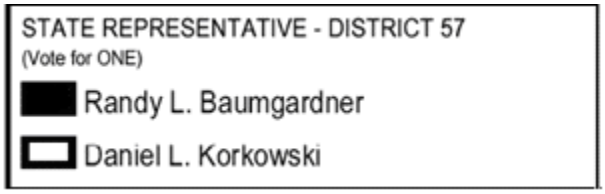


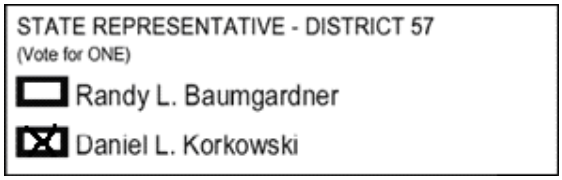
Example 2: Valid target area markings

Any mark within the target area will count as a vote as long as the voter did not select more candidates or ballot measure responses than the maximum number allowed (see Chapter 4).

For example:



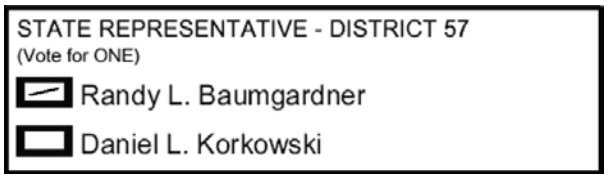




Example 3: Incomplete marks that count as a valid vote

An incomplete or defective mark in the target area will be counted if no other cross mark or comment appears indicating an intention to vote for some other candidate or ballot issue within the same contest.

For example:



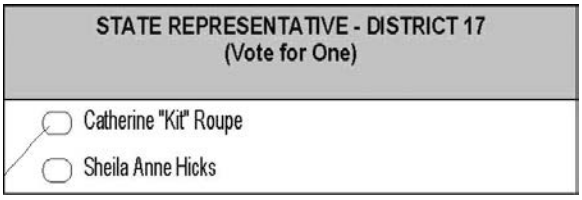
Exceptions: Marks made in the target area are not counted as valid votes if one or more of the following apply:

1. Obvious stray marks
2. Hesitant marks
3. Parts of written notes
4. Corrected vote (see Chapter 3)

1. Obvious stray marks

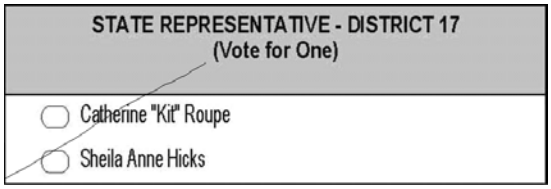
Example 1: Obvious stray marks outside the target area

In the example below, the mark near a candidate's name is a stray mark that is not counted. Even though it partially extends into the target area of one candidate, it is not primarily concentrated in that area. Because the mark is considered stray, it is not counted.



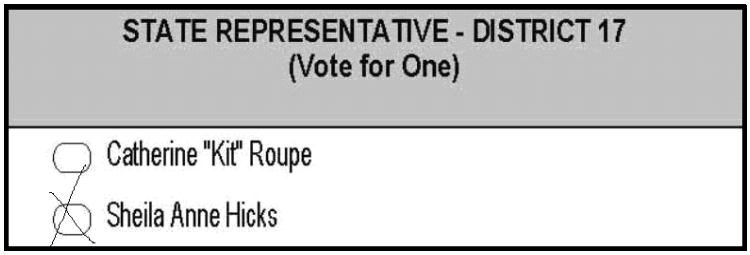
Example 2: Obvious stray marks through the target area

The example below shows a stray mark that is not counted, even though the mark extends through the target areas. Note that to determine whether a mark in a target area is a stray mark, it may be necessary to review the race for consistent patterns, which are discussed in Chapter 2.



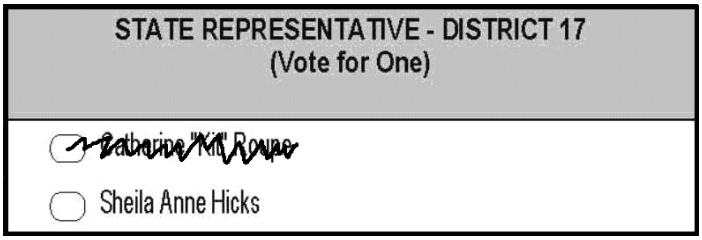
Example 3: Stray marks extending outside one target area into another target area

In the example below, the mark extends outside the target area of one candidate and into another target area. But the mark clearly indicates a preference for one candidate. This race would be counted as a vote for Sheila Anne Hicks.



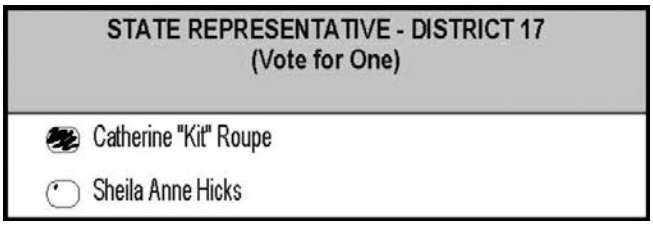
Example 4: Candidate's name stricken

In this example, the voter has stricken the name of candidate Catherine "Kit" Roupe. Part of this mark extends into the target area, but it is considered a stray mark and no vote is counted for the candidate. This would be considered an undervote.



2. Hesitant Marks

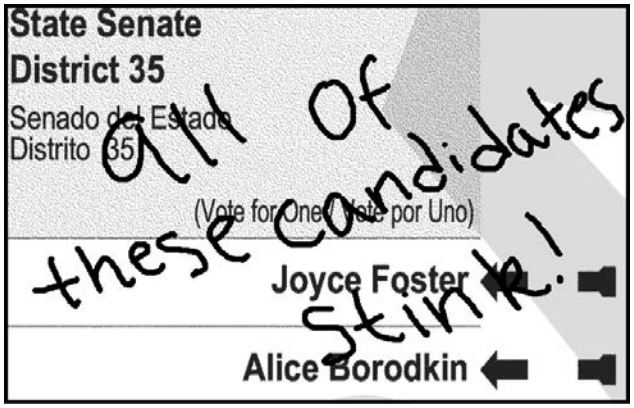
While there is a mark in the target area for both candidates in the example below, the smaller mark appears to be the result of a hesitation and should be disregarded. The race would count as a vote for Catherine "Kit" Roupe.



3. Parts of Written Notes

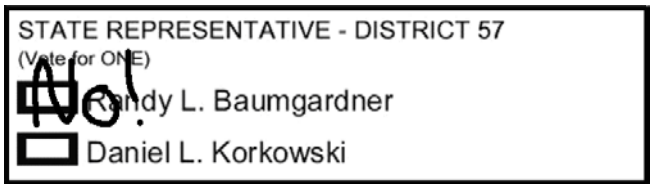
Example 1: Notes written outside the target area

In the example below, the note extends into the target areas. But here, the voter intent dictates clearly that none of the written remarks would be considered a valid vote.



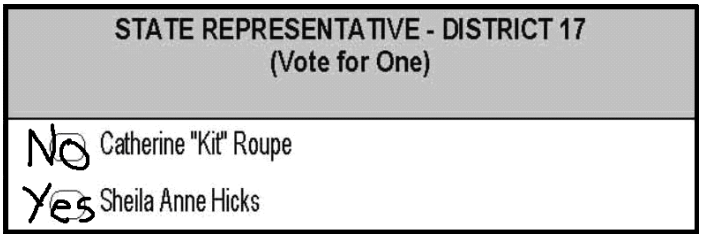
Example 2: Marks inside the target area as written comments

As with the previous example, although the note extends into the target area, the voter intent is clear. This would not be counted as a vote for either candidate.



Example 3: Marks either within or outside the target area as written instructions

In this example, the voter provided clear instructions that dictate that the vote is counted for Sheila Anne Hicks.



4. Corrected Vote

Please see Chapter 3 for an explanation and examples of this exception

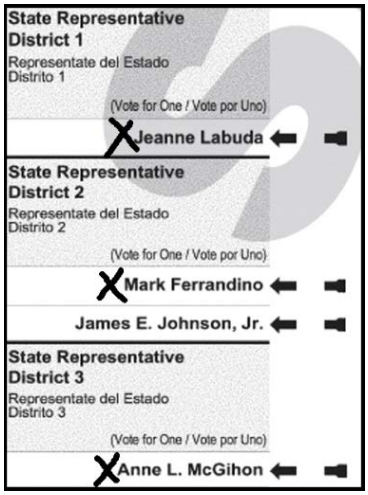
CHAPTER 2: MARKING PATTERNS

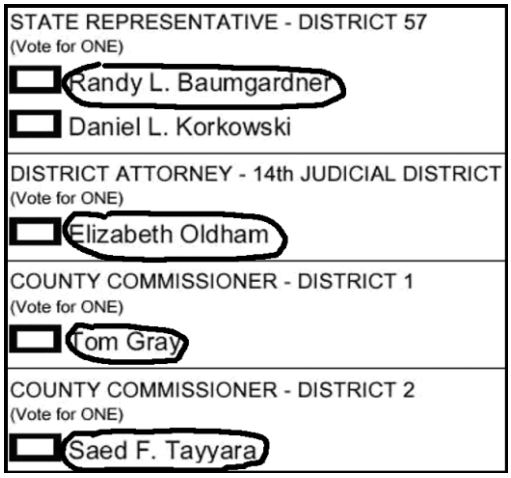
If a voter marks outside the target area, those votes are considered valid if the voter uses a consistent pattern or method of marking. All marks must follow the same pattern or method.

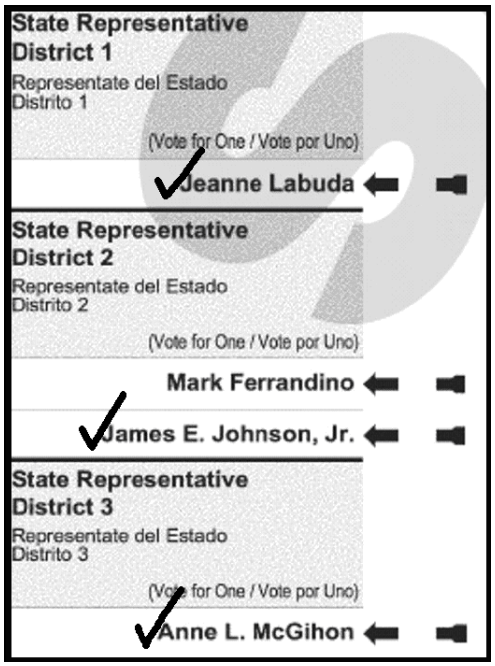
Consistent Marking Patterns

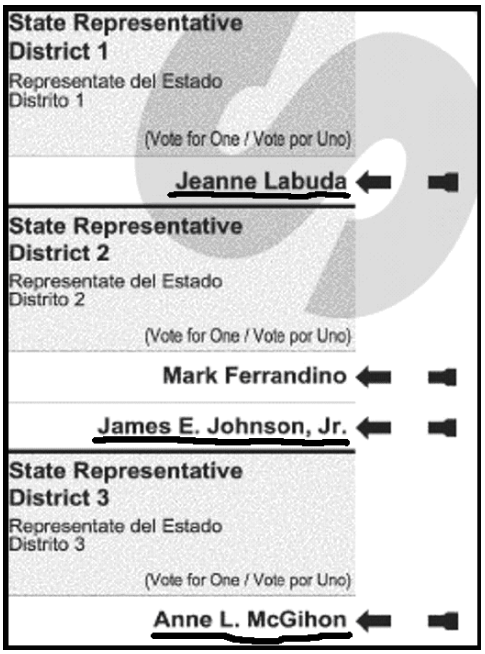
Example 1: Consistent pattern outside the target area

The examples below illustrate a consistent pattern of marking outside the target area. In these examples all the marks made should be considered valid votes.



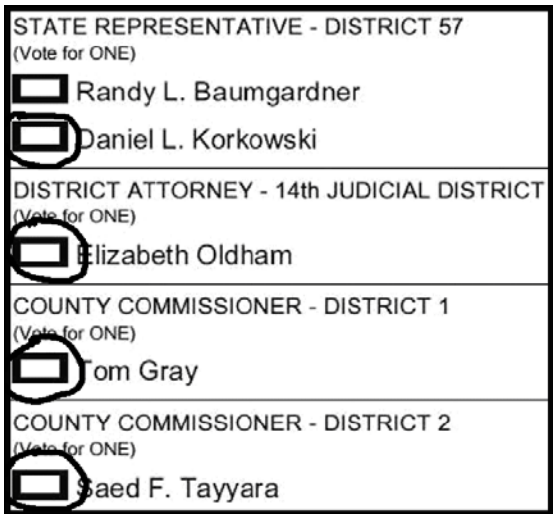






Example 2: Consistent pattern around the target area

In this example, the voter has consistently made the same mark that falls around, but outside, the target areas. Because the marks are all the same, all the votes on this ballot are valid.



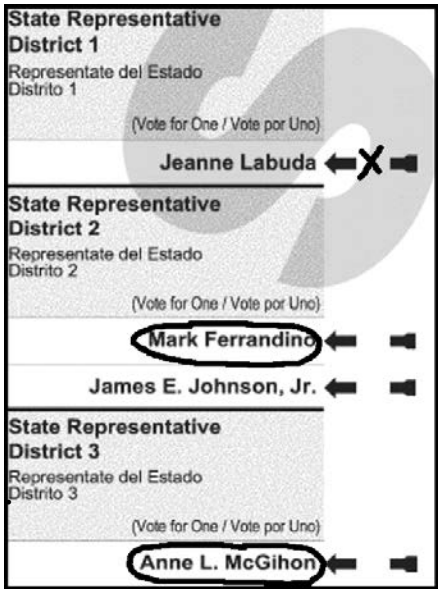
Note that if the voter had marked any choices with an X, check, or other mark in the target area, only the responses where the target area is marked would be counted (see Example 3 in the next section).

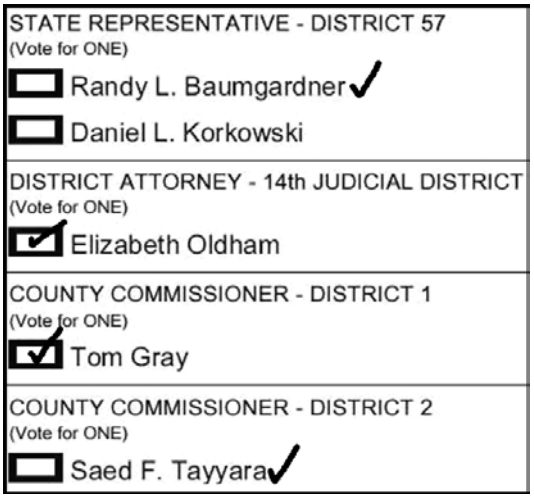
Inconsistent Marking Patterns

Example 1: Inconsistent marking patterns that enter the target area

In the examples below, the voter has used inconsistent patterns to mark his or her votes. In this case, only the marks in the target areas would count as valid votes.

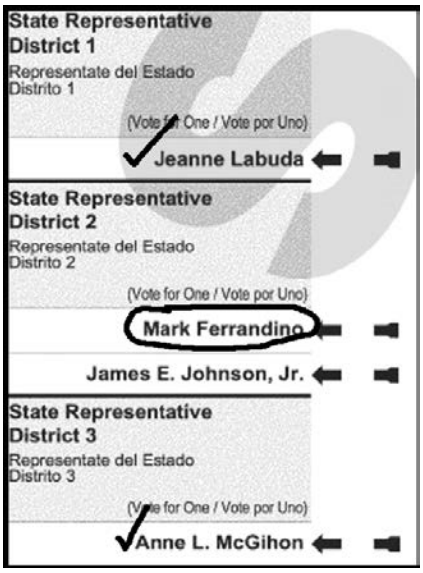
On the left, a valid vote would only be counted for Jeanne Labuda. On the right, only valid votes for Elizabeth Oldham and Tom Gray would be counted.





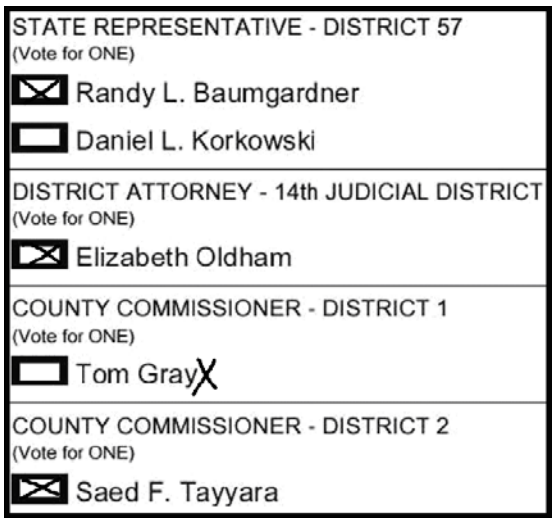
Example 2: Inconsistent markings outside the target area

In this example, the voter made all of his or her marks outside the target areas, but did not make them in a consistent manner. Since there are no marks in any target area and there is no consistent pattern to the selections, there are no valid votes on this ballot.



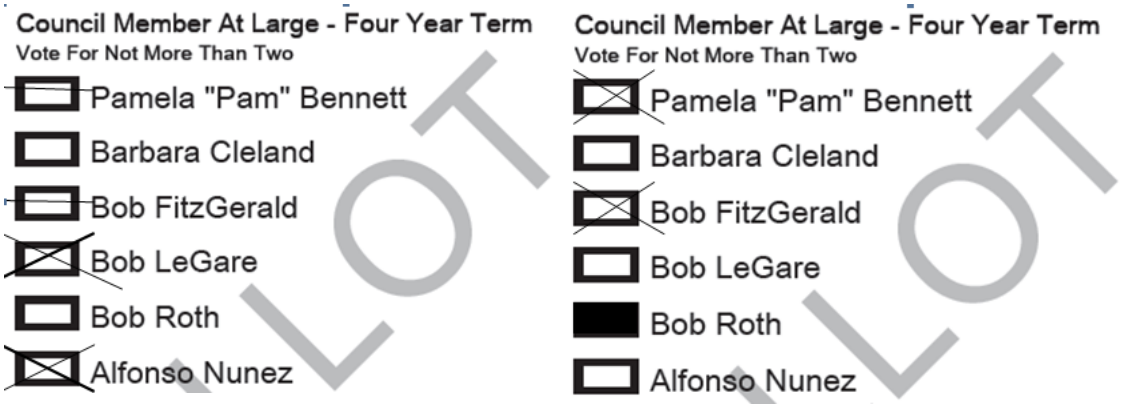
Example 3: Inconsistent marking inside and outside the target area

While the voter has made the same type of marks throughout the ballot, not all of the marks are uniformly inside or outside of the target areas. In this scenario, only the marks within the target areas count. The votes for Randy L. Baumgardner, Elizabeth Oldham, and Saed F. Tayyara would be counted as valid votes, but the vote for Tom Gray would not be counted as valid.

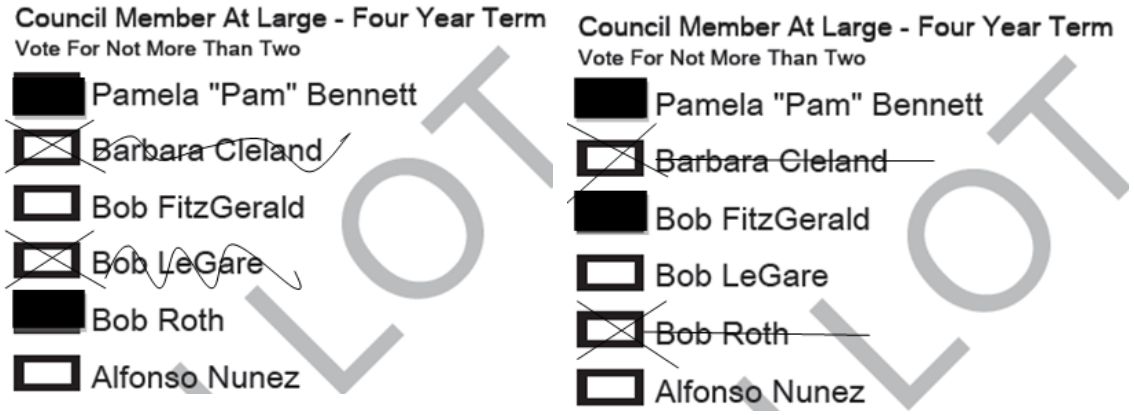


Example 4: Vote for two or more

If the voter can choose more than one candidate in a race, all marks must follow the same pattern or method. If the voter uses inconsistent marks, the entire race will be invalidated, except where the voter uses an inconsistent mark to clearly indicate his or her intention not to vote for a candidate (see Chapter 3, Part 2, "Valid Correction of Votes" and Chapter 4, "Written Instructions"). In the examples below, all of the marks extend into the target area and the voter's intent cannot be determined because the voter has used inconsistent marks.



In the following examples, although the marks are inconsistent, the voter has made a correction to indicate his or her intent.



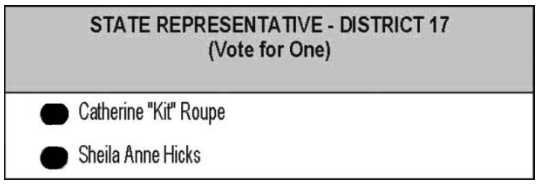
CHAPTER 3: OVERVOTES AND CORRECTED VOTES

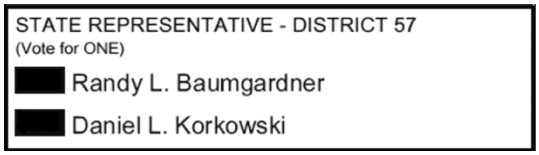
An overvote is a race or ballot measure where the voter has selected more options than are allowed. No votes for that race or measure will be counted unless the voter provided written instructions, corrections, or some other clear explanation of his or her intent. If an elector has corrected the vote or provided instructions, the vote will be counted as indicated.

Most ballot scanning equipment will send ballots with overvoted races or measures to adjudication and the resolution board must determine whether the voter clearly indicated his or her choice. Keep in mind that it is also possible that the scanning equipment detection of a potential overvote is the result of a stray mark. For counties whose ballot scanning equipment does not have adjudication software, the scanner will reject the ballot and judges will need to manually determine the voter's intent and duplicate when necessary.

NOTE: Beginning in 2018, unaffiliated voters in a primary election may receive more than one party's ballot and might mark more than one ballot. But voters may only legally vote in one party's primary election. This means that if an unaffiliated voter votes for candidates of more than one party during a primary, then all of the votes on both ballots should be considered overvotes and not be counted. (Section 1-4-1203(4)(c), C.R.S.). This is true even if the voter otherwise properly marked one ballot. This situation is discussed in further detail in Chapter 6.

Example 1: The examples below illustrate an over voted race where the voter has not clearly indicated a single choice



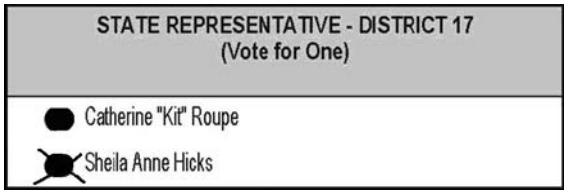


Corrected Votes

If a voter marked more than one target area, but clearly indicates a single selection (or no more than allowed for the race) the vote will be counted according to the correction.

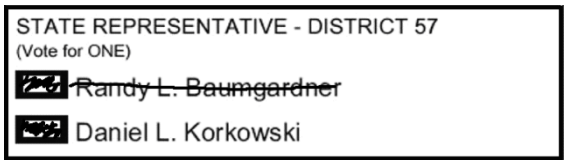
Example 1: Crossing out a mistake

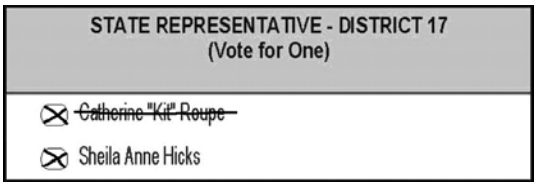
In the example below, the voter attempted to clarify his or her vote by crossing out the mistake. The X is a clear correction and the properly marked candidate or issue should receive a vote. (Section 1-7-508(2), C.R.S.).



Example 2: Striking through the name of the candidate that the voter did not intend to mark

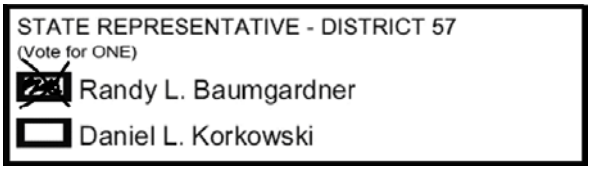
In the examples below, the voter has attempted to correct or clarify the vote by crossing out the name of the candidate they did not intend to vote for. Here, the strike through amounts to written instructions. In these examples, a vote would be counted according to the correction.





Example 3: Filling in the target area to correct an incomplete or incorrect mark

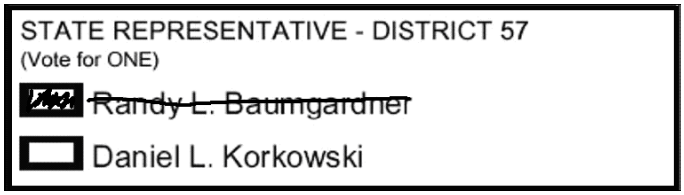
In this example, it appears that the voter may have initially marked his or her selection using an "X". The voter then filled in the entire target area, attempting to clearly indicate their vote. This will be counted as a valid vote for Randy L. Baumgardner.



Example 4: Corrections without second choices

In this example, the voter corrected the vote but did not make a second choice. In this case, the voter undervoted, and neither candidate receives a vote.

Note that the voter's intent in this example would only be discovered during a hand-count or if the ballot was sent to adjudication by the ballot scanner for some other reason, such as being unreadable or damaged.

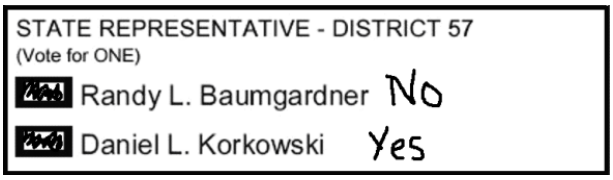


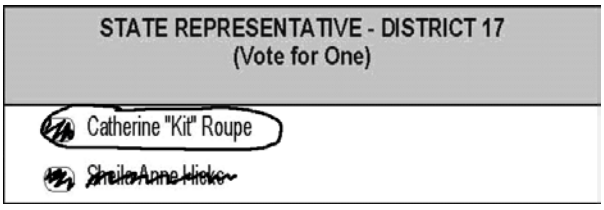
CHAPTER 4: WRITTEN INSTRUCTIONS

If a voter provides written instructions that clarify his or her intent, the vote will be counted according to the instructions. Written instructions may include things like words, circles, or arrows.

Example 1: All targeted areas marked and voter provides instructions or indications

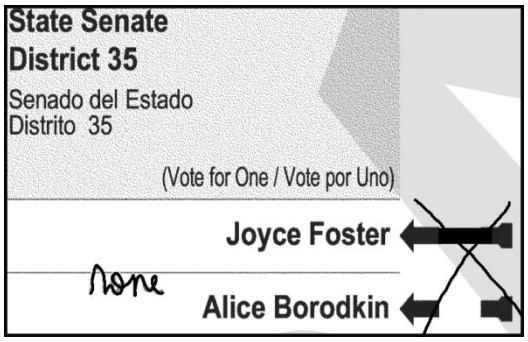
The examples below illustrate written instructions clearly indicating which candidate the voter intended to mark.

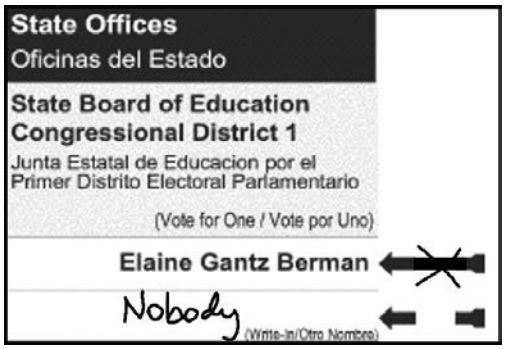




Example 2: Valid written instructions cancelling a vote

In the examples below, the voter selected a candidate and then drew an "X" through one or both target areas to indicate they did not want to vote for either candidate. Based on the "none" or "nobody" comment, this race is considered undervoted and neither candidate will receive a vote.



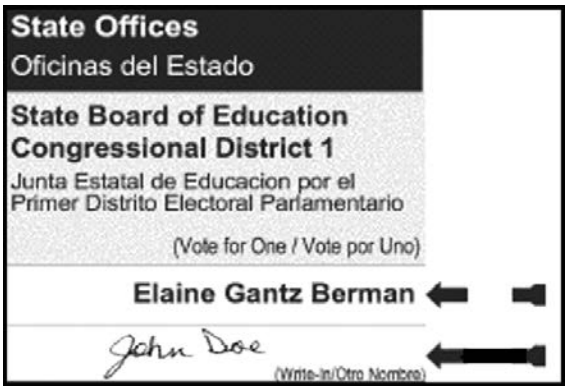


CHAPTER 5: WRITE-IN CANDIDATES

Votes for write-in candidates can present unique circumstances in determining voter intent. A properly cast vote for a write-in candidate consists of a correctly marked target area and the correctly spelled name of a qualified write-in candidate written in the provided space. However, a write-in vote may still be counted if it does not meet this threshold. Following are some examples of situations you may face when reviewing write-in candidate votes.

Example 1: A properly cast vote for a write-in candidate

The example below illustrates a properly cast vote for a write-in candidate as long as John Doe is a legally qualified write-in candidate for that race.



There are four general issues you may face when counting write-in candidate votes:

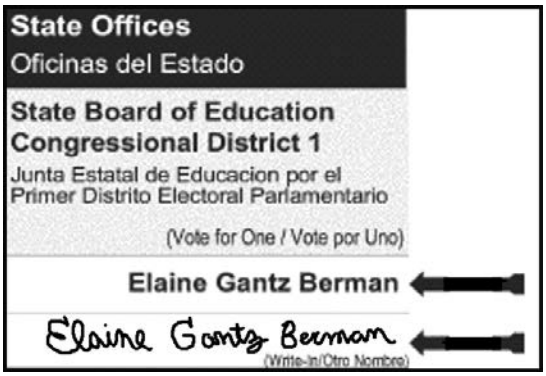
1. Printed candidate and write-in candidate target areas both marked
2. Write-in candidate target area not marked
3. Write-in candidate target area properly marked, written area has issue
4. Votes for President or Governor

1. Printed Candidate and Write-in Candidate Target Areas both Marked

Example 1: Repeat of a candidate's name

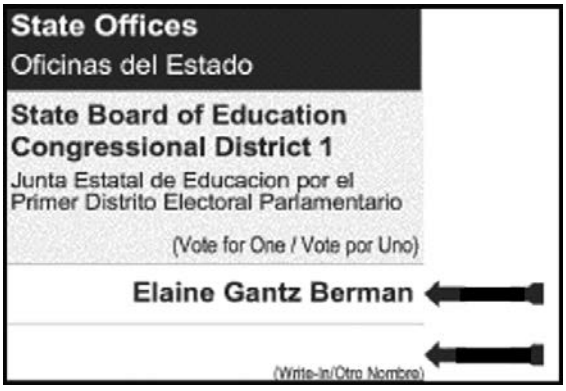
In the example below, the name of a candidate who is already printed on the ballot is written in. In this case, the vote is not adjudicated as an overvote, but is instead adjudicated as a valid vote for the candidate whose name was printed on the ballot.

This applies even if both target areas are marked, as in this example.



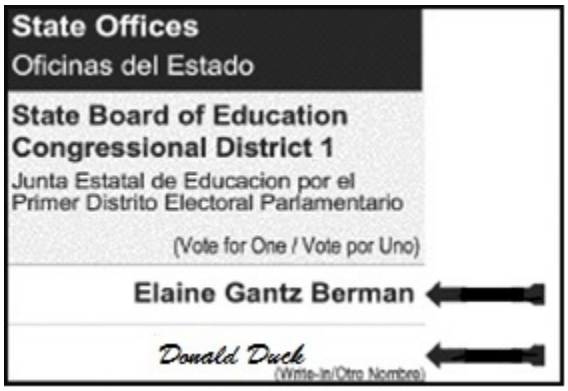
Example 2: Both target areas marked, no name written in

In the example below, the voter marked both target areas, but did not write-in a name in the space provided. Because there is no name written in, this should not be adjudicated as an overvote. It is adjudicated as a valid vote for candidate whose name is listed on the ballot.



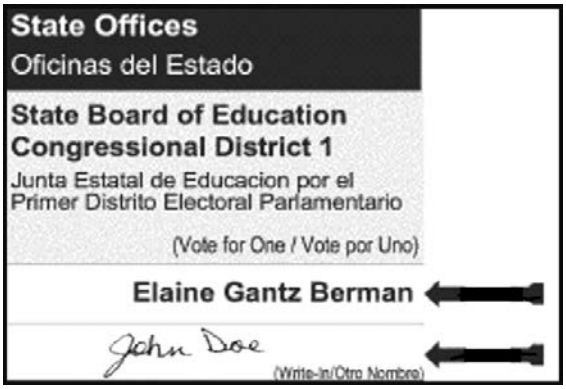
Example 3: Both target areas marked, invalid write-in candidate listed

In the example below, the voter marked both target areas, and did write-in a name in the space provided. However, the name written in was invalid. This should be considered an overvote despite the fact that the write-in candidate is invalid. There is no indication that the voter intended to vote for only one individual in this race.



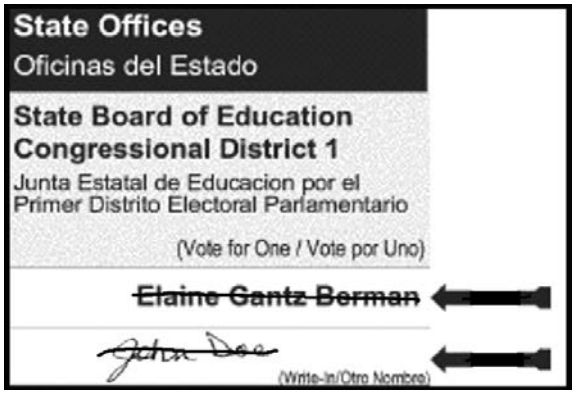
Example 4: Both target areas marked and a valid write-in candidate listed

In the example below, both target areas are marked and a valid write-in candidate is written in the space provided. In this case, the contest should be adjudicated as an overvote because the voter did not provide any instructions clearly indicating which candidate they intended to vote for.



Example 5: Both target areas marked with write-in candidate listed, but the voter provided written instructions

In the example below, both target areas are marked and a write-in candidate is written in the space provided, but the voter has also stricken through both names. In this case a vote should not be adjudicated for either candidate according to the voter's instructions.



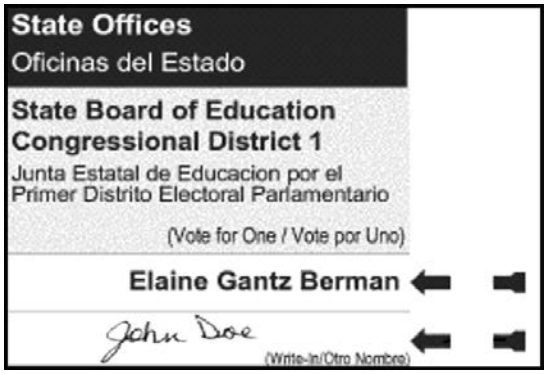
Note that if the voter had instead written a note indicating they meant to vote for one of the candidates, the vote would have been adjudicated as a vote for that candidate according to the voter's instructions.

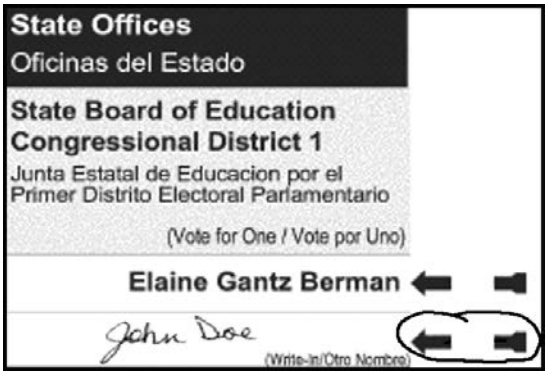
2. Write-in Candidate Target Area not marked

When reviewing a ballot for voter intent, a resolution board should count votes for a legally qualified write-in candidate, regardless of whether the target area was marked, as long as number of candidates selected does not exceed the number of candidates permitted. In counties whose ballot scanning equipment is not capable of digital resolution or of detecting voter markings on or in a write-in line or area if the corresponding target area is not also marked, the votes need only be counted in a recount if the number of undervotes in a ballot contest could change the outcome if attributed to an eligible write-in candidate. (Election Rule 18.5.3).

Example 1: Write-in votes where the target area is not marked

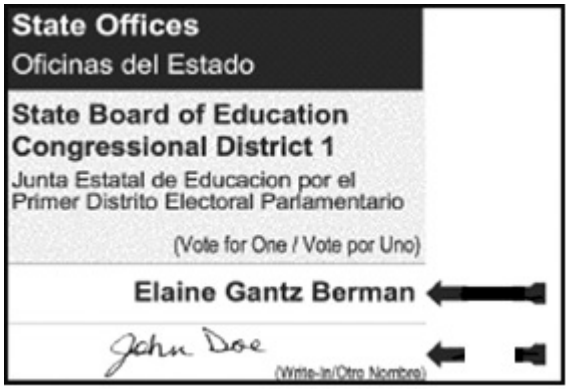
Assuming John Doe is a valid write-in candidate, the first example should be counted as a vote for him. The voter has not marked any target area, but has written in John Doe's name. Because this single selection does not exceed the number of candidates permitted this vote should be counted. In the second example below, the voter clearly marked outside the target area. In this case, the vote will be counted as long as this was a consistent mark as identified in Chapter 2 of this guide.





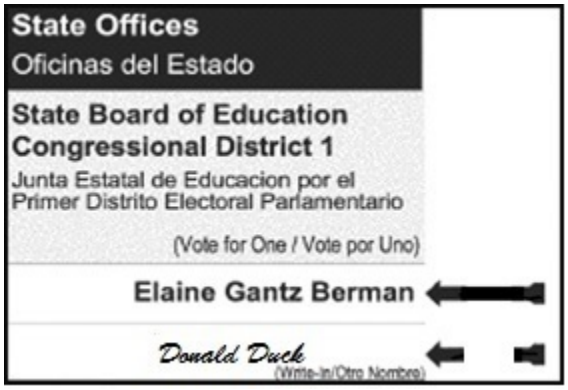
Example 2: Printed candidate target area marked, valid write-in candidate listed but unmarked

In the example below, the target area of the printed candidate has been marked and a write-in candidate has been listed, but is unmarked. This would not be considered an overvote because the single mark clearly indicates the intention of the voter. The vote should be counted for the marked, printed candidate.



Example 3: Candidate target area marked, invalid write-in candidate written in but not marked

In the example below, the voter has properly marked the target area of a printed candidate, and has written in a candidate. However, the write-in candidate was invalid and was not marked. Because there is only one properly marked candidate, and that candidate is valid, this would not be considered an overvote, and would count as a vote for the properly marked, printed candidate.



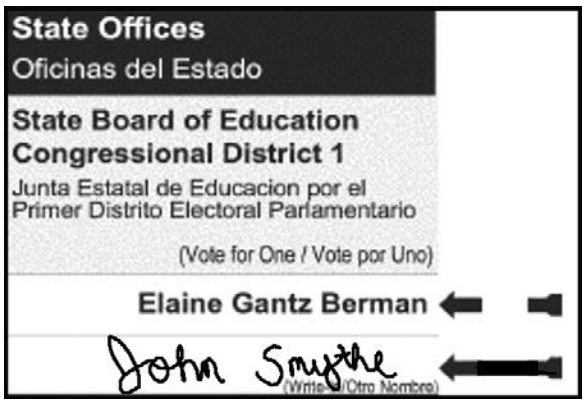
3. Problem with Written Area

Example 1: The write-in candidate's name is misspelled

In this scenario, John Smith is a qualified write-in candidate. Although the last name is misspelled, the vote is counted.

The last name of the candidate must be provided. The voter may also provide the candidate's nickname or initial of the first name, and as long as the voter provides a reasonably correct spelling of at least the last name of a qualified write-in candidate, the vote will be counted (Section 1-7-114, C.R.S.).

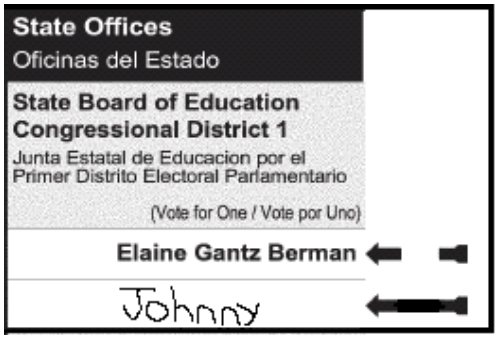
In the case of a gubernatorial or presidential candidate the last name of both candidates comprising the pair (president/vice president, governor/lieutenant governor) must be provided, even if misspelled. (Sections 1-4-304(5); 1-4-1103; 1-5-403(2) C.R.S.). See section 4 of this chapter for more details.



Example 2: Voter fails to list a candidate's last name

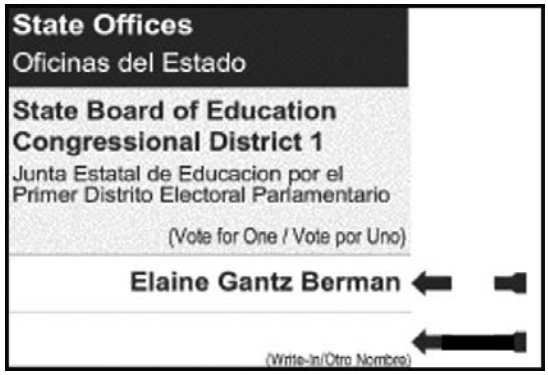
In the example below, the voter has only provided a first name. Here, the vote would not count even if there was only one qualified write-in candidate with the name Jonathan, John, or even Johnny. The voter must include at least a reasonably correct spelling of a qualified write-in candidate's last name in order for the vote to count (Section 1-7-114(1), C.R.S.).

In the case of a gubernatorial or presidential election the voter must include at least a reasonably correct spelling of the last names of both candidates comprising the pair (president/vice president, governor/lieutenant governor) (Sections 1-4-304(5); 1-4-1103; 1-5-403(2) C.R.S.). See section 4 of this chapter for more details.



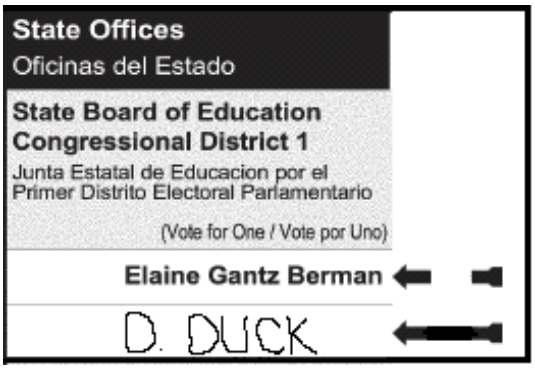
Example 3: No write-in candidate provided

In the example below, the write-in target area is marked, but no name is written on the line. No candidate would receive a vote in this case because only the write-in target area is marked and no name is listed in the space provided.



Example 4: Voter fails to list a qualified write-in candidate

In the example below, the voter has properly marked the target area, but has not written in the name of a qualified candidate. In this case, no candidate would receive a vote because the voter must write the name of a legally qualified write-in candidate in order for the vote to count (Sections 1-4-1101 and 1-7-114, C.R.S.).

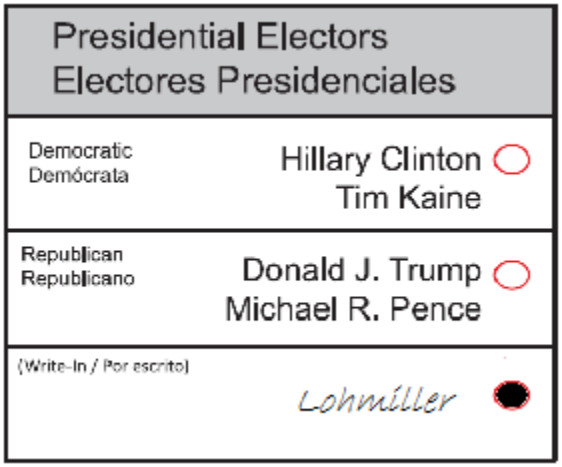


4. Votes for President or Governor

In the case of a presidential or gubernatorial election write-in candidate, a valid write-in vote for president and vice president or governor and lieutenant governor must include, at a minimum, a reasonably correct spelling of the last name of both candidates comprising the pair. (Sections 1-4-304(5); 1-4-1103; 1-5-403(2) C.R.S.). The following examples should help you determine in what situations this threshold has been met.

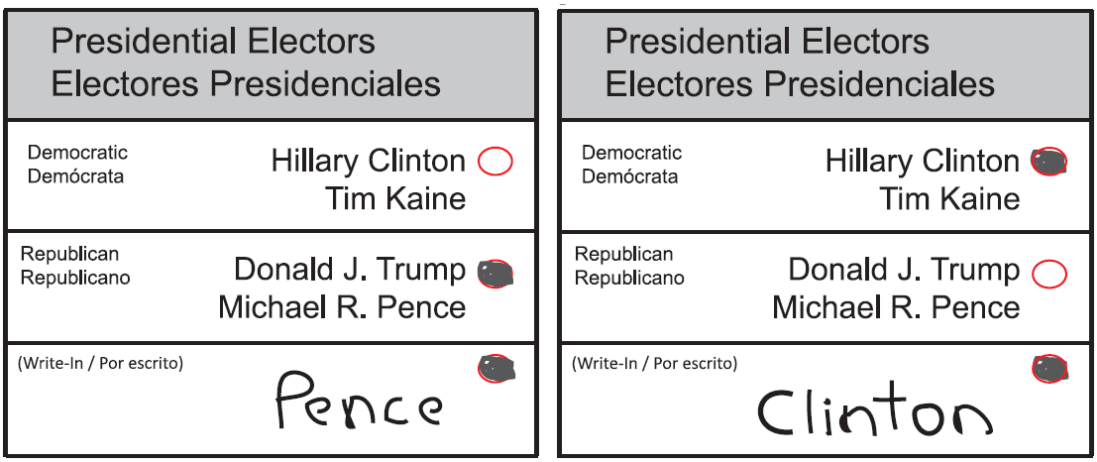
Example 1: Voter fails to list both candidates of a valid, write-in candidacy

In the example below, the voter has properly marked the target area and has written in the name of a qualified write-in candidate for President. However, the voter failed to write in the name of the candidate for Vice-President and made no other marking for this office. Because the voter did not write in the name of both candidates comprising the pair, this vote should not be counted.



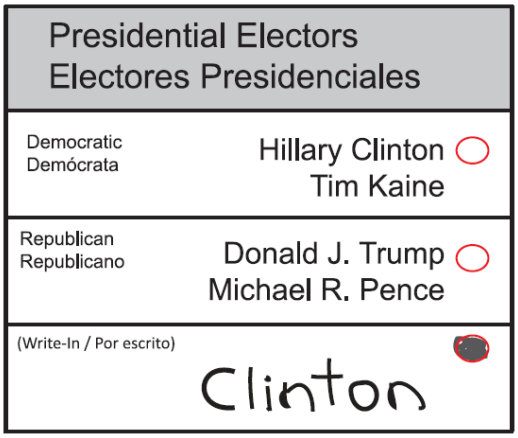
Example 2: Printed pair and write-in column both marked, but voter writes in only one-half of the pair

In these examples, the voter has marked next to both a printed pair of candidates and next to the write-incolumn. However, in the write-in column the voter has listed only one of the pair of candidates. Although the voter has not correctly spelled out the pair of names, because there is a reasonably correct spelling of one of the candidate's names and the same printed names have been marked, the voter's intent can be determined and this vote should be counted for the printed, marked candidates.



Example 3: Voter writes in only one-half of printed pair with no marking next to printed pair

In this example the voter has marked the write-in candidate column. The voter has also correctly spelled out one half of a printed pair of candidates. Unlike the previous example however, the voter has not made clear that they intended to vote for both Clinton and Kaine, because the voter did not also mark next to the printed pair. Because we cannot determine the voter's intent for this write-in, no vote should be counted in this race.



CHAPTER 6: UNAFFILIATED PRIMARY BALLOTS

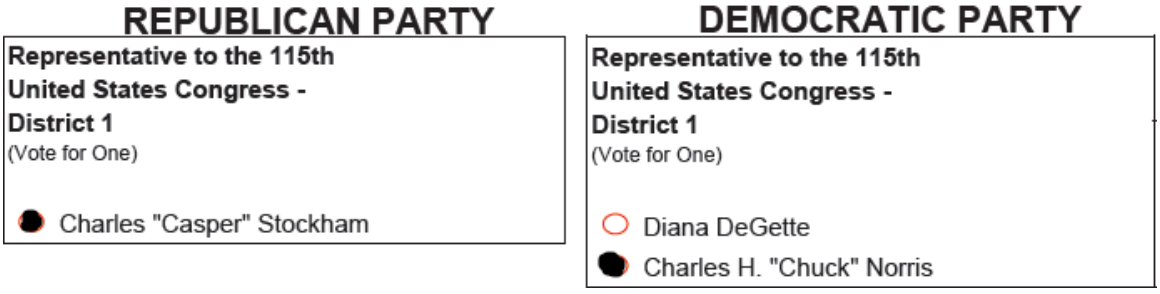
Primary ballots create their own unique challenges in determining voter intent. Along with determining the intent of a voter in a particular race, you may also be asked to determine which ballot a voter intended to vote. Because many unaffiliated voters may be sent more than one primary ballot it is possible that they may mark more than one ballot. However, doing so invalidates both ballots in their entirety. (Section 1-4-101(2)(a) C.R.S.). This chapter will help you determine when an unaffiliated voter's ballot should be rejected for voting in more than one party's primary election. As a general rule, if it is clear that the voter intended to void all but one of the returned ballots, you should count the remaining ballot. If this is not clear then you should not count any of the returned ballots.

Clear Votes on Different Party Ballots

Example 1: Voter clearly marked races on two different party ballots

Unafilliated voters who return more than one party's primary ballot will not have votes on either ballot counted if they voted on both ballots. In the example below, the voter has made a selection for Charles Stockham on the Republican Party ballot and has also made a selection for Charles Norris on the Democratic Party ballot. Because the voter clearly voted in both elections, none of his or her votes in either election should be tallied and both ballots should be rejected.

Note that even if an unafilliated voter selects only a single race in more than one party's primary, all the votes on both ballots should not be tabulated. This is true regardless of what race the voter selected on each party ballot.

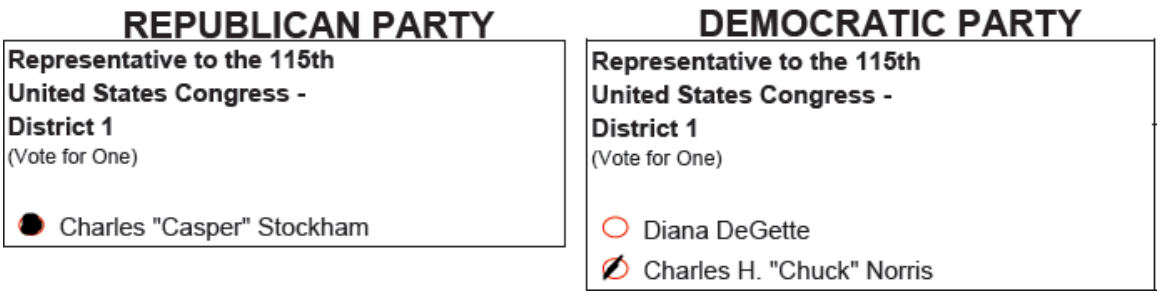


Clear Vote on one Party Ballot, Unclear Marking on Another Party Ballot

If a voter makes a mark that is clear on one primary ballot but unclear on the second primary ballot then you should use the prior chapters of this guide and the following examples to determine if the voter intended to void the second primary ballot. If you determine that the mark was intended to void the second primary ballot then the first ballot should be accepted. If you determine that the voter did not intend to void the second primary ballot then neither ballot should be forwarded on for tabulation.

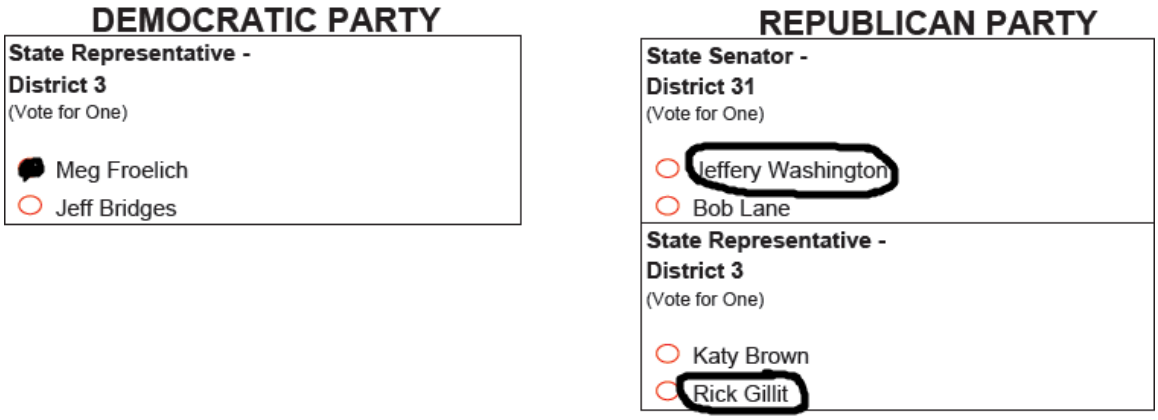
Example 1: Incomplete mark in target area on second ballot

In this example the voter has clearly voted in a race on the Republican Party primary ballot. On the Democratic Party ballot, the voter has made an incomplete mark in the target area of one of the races. Using the guidance from Chapter 1, this should count as a vote for this Democratic candidate. Since the voter has voted in two different primaries, both ballots should be rejected.



Example 2: Consistent marking patterns on second ballot

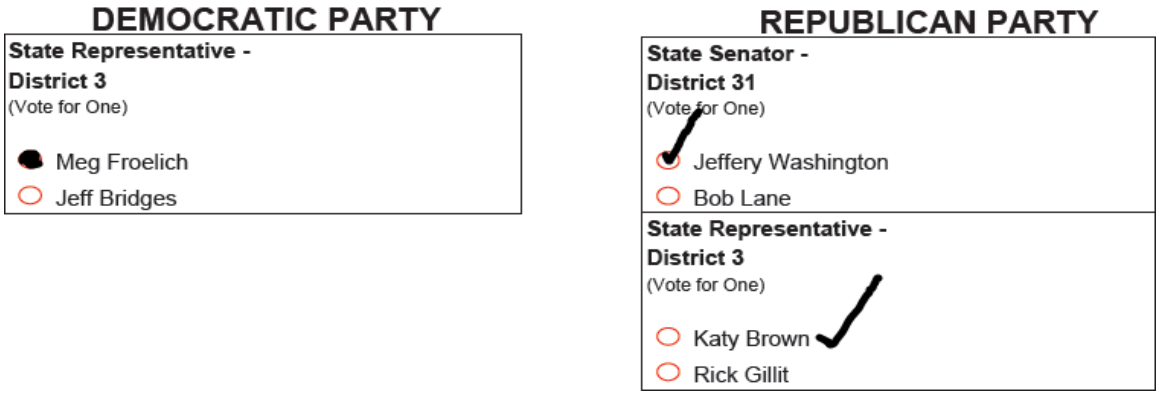
Here, the voter has clearly voted in the Democratic Party primary. On the Republican Party ballot, the voter has not marked in the target area, but has made consistent markings throughout the ballot. Although these markings are inconsistent from those found on the Democratic Party ballot, they still do not show that the voter intended to void the Republican ballot. Because the voter's markings were not intended to void the Republican ballot neither ballot should be forwarded on for tabulation.



Example 3: Inconsistent marking patterns that enter target area on second ballot

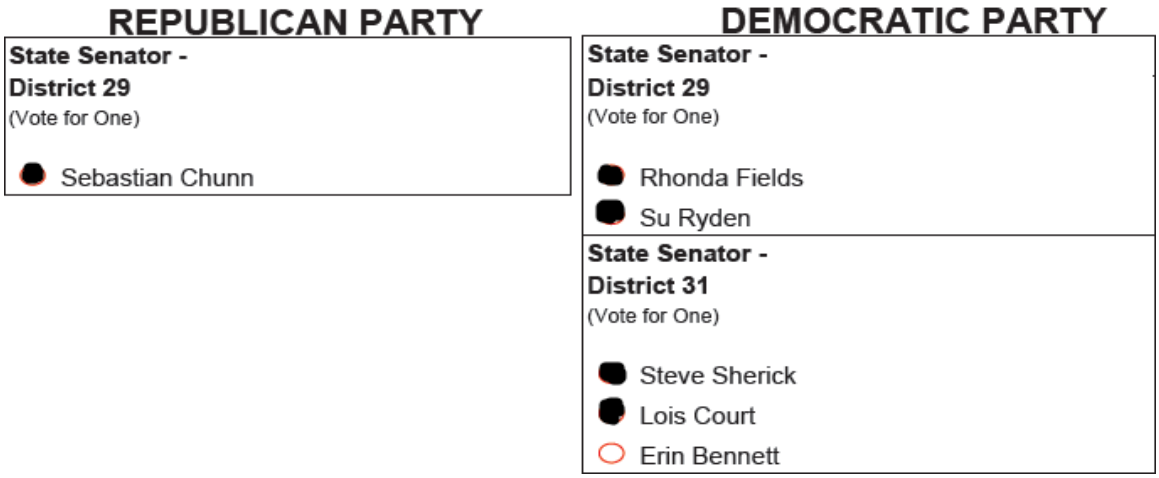
Again, the voter has clearly voted in the Democratic Party primary. However, on the Republican Party ballot, the voter has made inconsistent marks, some inside the target area, and some outside. Although these markings are inconsistent with the markings found on the Democratic Party ballot and with eachother, some of the markings are found in the target area. Because of this, those should be counted as votes which means both ballots should be rejected.

Note that even if the voter had only made inconsistent marks that did not enter the target area, both ballots should still be rejected. This is because the voter did not make clear with their marks that they intended to void the Republican Party ballot.



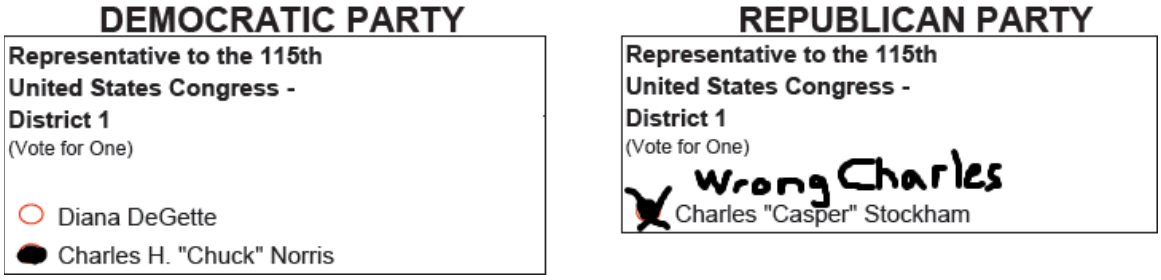
Example 4: Overvote on second ballot

In this example, the voter has clearly voted the Republican Party ballot. However, on the Democratic Party ballot, the voter has overvoted each race. Normally this would result in none of the votes on the Democratic Party ballot counting since they would all be considered overvotes. However, in this situation, the voter has not made clear with their markings that they intended to void the Democratic Party ballot. Instead, it appears that the voter meant to vote the Democratic Party ballot, and simply failed to do so correctly. Because of this, the voter has voted on two different party ballots and both ballots should not be forwarded on for tabulation.



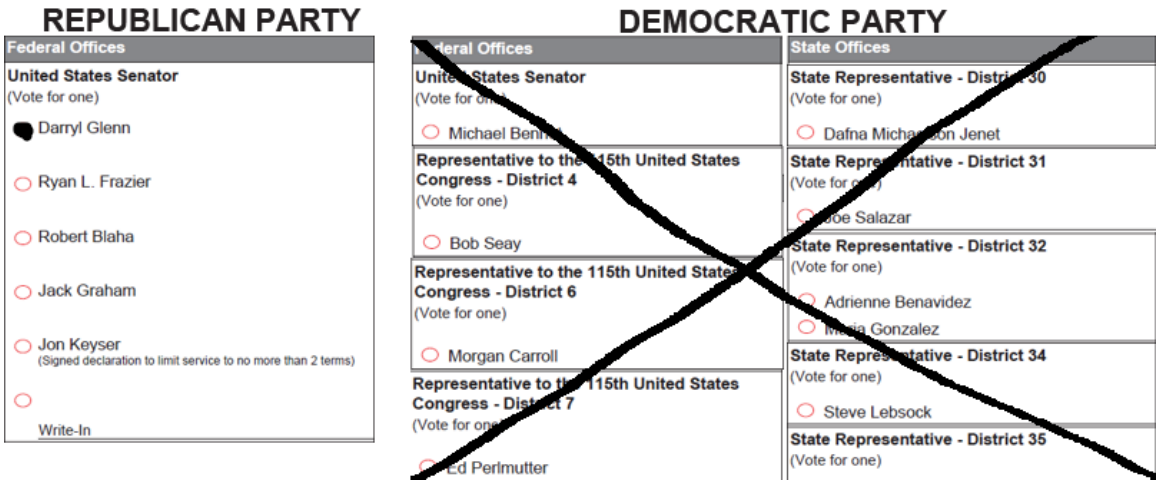
Example 5:Written instructions or corrected votes on second ballot

In the example below the voter has clearly voted the Democratic Party ballot. The voter has also made a mark on the Republican Party ballot, but wrote clear instructions not to count this mark as a vote. Because the voter made it clear that they intended to void their vote on the Republican Party ballot, this mark should not be counted as a vote. As long as there are no other votes without instructions on the Republican Party ballot, the Democratic Party ballot should be tabulated.



Example 6: One ballot crossed out

In this example, the voter has clearly voted in the Republican Primary. The voter has also made a mark on the Democratic primary, and that mark has entered the target area for Ed Perlmutter. However, the large X over the ballot shows that the voter intended not to vote in the Democratic primary. Because the voter made clear that they intended to void the Democratic Party ballot none of the Democratic primary votes will count, the Republican ballot should be tabulated.



Unclear Markings on both Party Ballots

If a voter returns more than one party ballot you should first look to determine if either ballot contains a mark in the target area that would clearly be counted as a vote. If you determine that both ballots have marks, but the marks are not clear votes then you should determine if any of these unclear markings should be counted as votes. If you find that both ballots contain marks that should be considered votes, you should reject both ballots. If you find only one ballot contains marks that should be considered votes, and the voter's marks on the other ballot show that they intended to void that ballot then you should accept only the first ballot for processing. Use the examples from this chapter and the rest of this guide to determine if a marking is a vote or not.