

STATE BOARD OF ELECTION COMMISSIONERS

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RULES FOR VOTER INTENT

The State Board of Election Commissioners held a public hearing on July 6, 2011 following a thirty-day public comment period to adopt revisions to the "Rules for Voter Intent" that set forth the procedures for determining voter intent in marking paper ballots. Below is a summary of the initial revisions that were approved by the Board on May 25, 2011 for the public comment period, followed by a list of persons commenting on the rule, a summary of the comments, and the agency's responses to the comments.

Initial changes included: 1) adding a definition of "Measure" so that the more encompassing word "measure" can be substituted for the word "issue" where appropriate in the rules; 2) adding some statutory language regarding write-in candidates for clarity; and 3) changes in language for clarity.

PERSONS COMMENTING ON THE RULE

Pulaski County Director of Elections, Melinda Allen (email: Wednesday, June 15, 2011)

SUMMARY OF COMMENTS

Rule 301(4) on page 6, Rule 301(7) on page 8, and Rule 301(10) on page 9 regarding the standards for determining whether a paper ballot has been properly marked and whether a vote should be counted: A request for clarification of the rule was made since the county uses precinct scanners at every poll on election day that are not set to detect under-votes.

Rule 301(13) on page 10 regarding write-in votes: A request was made for specific instructions on reasons to count or disqualify write-in votes.

AGENCY'S RESPONSES TO COMMENTS

Rule 301 pertaining to under-votes only applies in the instance of a hand count, as outlined in the opening paragraph of the rule.

Generally, courts that have addressed the issue of variations in write-in names have applied very flexible standards to give effect to the intent of the voter to the extent possible. Of course, election commissions must draw the line when it comes time to count votes. However, they have to do so with the understanding that, in an election contest, a court would apply the rules with its thumb on the scale in favor of voter intent. State election officials will continue providing guidance on an ad hoc basis but any change in policy from what exists under the current statutory scheme should be initiated by the legislature, not the State Board.

RULE CHANGE AS A RESULT OF PUBLIC COMMENTS

None