

May 7, 2024

Common Cause Rhode Island
245 Waterman Street, Suite 400A
Providence, RI 02906

Verified Voting
1500 Chestnut Street, #2320
Philadelphia, PA 19102

Patricia Chatelle
Rhode Island Board of Elections
2000 Plainfield Pike
Cranston, RI 02921

Dear Ms. Chatelle:

On September 26, 2023, Common Cause Rhode Island and Verified Voting respectfully submitted a petition for the promulgation of rules pursuant to R.I.G.L. § 42-35-6 to the Rhode Island Board of Elections (herein “Board”). That petition contained the draft regulations for risk-limiting audits in Rhode Island now before the Board.¹

At an October 2, 2023 meeting of the Board, its staff requested several minor changes to the proposed regulations, specifically clarifying what role members of the Board of Elections versus Board of Elections staff play in the risk-limiting audit process. Common Cause Rhode Island and Verified Voting support all of the staff’s suggested changes.

In addition to the changes proposed by the Board of Elections staff, our organizations propose several additional minor changes to the proposed regulations. These changes reflect additional lessons from the April 2024 risk-limiting audit of the Rhode Island Presidential Preference Primary and input from the Secretary of State’s office. We believe these changes are a logical extension of the original rules and do not require the Board to provide further notice and comment. All of the proposed changes are underlined in the attached draft.

At the October 2, 2023 meeting of the Board of Elections, the staff requested that at various points in the proposed regulation it be clarified that it is the Board of Elections staff, not the Board of Elections, that is performing a task. We agree with that

¹ We have attached our original petition to this letter so it is included in the rule-making record.

suggestion, and the draft attempts to parse which functions should be conducted by the staff and which by the Board of Elections.

We also received feedback from the staff of the Secretary of State's office. Based on that feedback we also propose:

- Standardizing use of the term "Board of Elections" instead of the abbreviated "Board" throughout the rule.
- Clarify in 410--RICR--20-10--28.2(B) and (C) that "written notice" shall be "by regular mail."
- Clarify in 410--RICR--20-10--28.2(E) that chain of custody shall be maintained "in accordance with any Board of Elections rule, regulation, policy or procedure."
- Clarify in 410--RICR--20-10--28.2(F) that any audit of a presidential contest must be completed in time for the state to conduct its role in the Electoral College.

Additionally, based on our observations we suggest the following additions, based on observations from the most recent risk-limiting audit:

- Change in 410--RICR--20-10--28.2(D) the requirements for what must be included and what may be included in the ballot manifest to better reflect the practice in Rhode Island.
- Clarify in 410--RICR--20-10--28.2(D) that the ballot manifest is published two "calendar" days prior to "ceremony to select the random seed."
- Add a requirement in 410--RICR--20-10--28.3(K) that notice of the audit, "shall include a link to the livestream of the audit, if one is being provided."
- Add requirement in 410--RICR--20-10--28.3(T) that audit teams put zeros on the tally sheets whenever a candidate or a question receives no votes, helping make sure the audit teams put the correct tallies in the correct cells on the tally sheets.
- Add requirement in 410--RICR--20-10--28.3(T) that audit teams only use red pens, which is a best practice.
- Add requirement in 410--RICR--20-10--28.3(W) that both the tally form and audit tool be visible on the livestream, if one is provided.
- Clarify in 410--RICR--20-10--28.3(W) that in the instance "If there are any discrepancies in the tallies provided by an audit team, the batch or sub-batch may be retallied by the review board."
- Clarify in 410--RICR--20-10--28.3(V) that when there are disagreements by an audit team and review board over voter intent, those are noted in the audit tool, "or in the published results," since the audit tool currently does not allow for that functionality.

Finally, we recommend the following grammatical corrections:

- In 410--RICR--20-10--28.3(N) change “open” to “opened.”
- In 410--RICR--20-10--28.3(O) change the first “of” to “from.”
- In 410--RICR--20-10--28.3(T) add “the” before “Board of Elections” in the final sentence.

Thank you for considering these proposed changes.

Sincerely,

Mark Lindeman
Policy and Strategy Director
Verified Voting

John Marion
Executive Director
Common Cause Rhode Island

Attachments: (2)

28.1 Definitions

- A. "Audit Team" means a pair of two electors, not of the same political affiliation in Rhode Island, who manually examine and report markings on ballot cards.
- B. "Audit Center" means the page or pages of the Board of Elections' website devoted to risk-limiting audits.
- C. "Auxiliary Audit Stratum" means a group of ballots for which no batch tallies are available, and which are audited by a ballot polling audit, the results of which are combined with a batch comparison audit of the ballots for which batch tallies are available.
- D. "Ballot Cards" means the individual pieces of paper that together constitute a single ballot containing all of the contests an elector is eligible to vote. For example, a ballot consisting of a single piece of paper with content printed on the front or the front and back contains one ballot card, and a ballot consisting of two pieces of paper with content printed on the front and back of the first page and the front or front and back of the second page contains two ballot cards.
- E. "Ballot Manifest" means a list that indicates how the ballot cards in an election are organized and stored.
- F. "Ballot Polling Audit" means a type of risk-limiting audit in which the audit teams examine voter markings on randomly selected ballot cards seeking strong evidence that the reported tabulation outcome is correct.
- G. "Batch" means a group of ballot cards.
- H. "Batch Comparison Audit" means a type of risk-limiting audit in which the audit teams examine and tally markings on randomly selected batches of ballot cards, then compare the totals for the batches to the voting system's tabulation totals for the same batches.
- I. "Batch Tallies" means the vote counts, reported by batch, for each candidate or choice in the target contest(s).
- J. "Contest" means an election for an office or for a measure.
- K. "Public Observation Area" means the place where the general public can observe the audit. Any person who willfully disrupts the audit to the extent that the orderly conduct of the audit is seriously compromised may be removed from the public observation area.
- L. "Reported Tabulation Outcome" means the presumed winning and losing candidates or voting choices of a contest as reflected in the unofficial final results.

- M. "Review Board" means a pair of two electors, not of the same political affiliation in Rhode Island who, when an audit team cannot agree, manually examine and report markings on ballot cards.
- N. "Risk Limit" means the largest statistical probability that an incorrect reported tabulation outcome is not detected and corrected in a risk-limiting audit.
- O. "Risk-Limiting Audit" (herein "RLA") means a manual tally employing a statistical method that ensures a large, predetermined minimum chance of requiring a full manual tally whenever a full manual tally would show an electoral outcome that differs from the outcome reported by the vote-tabulating system for the audited contest.
- P. "RLA tool" means the software and user interfaces used by the Board of Elections in order to conduct RLAs.
- Q. "Target Contest" means a contest selected by the Board of Elections for a risk-limiting audit.
- R. "Unofficial Final Results" means election results tabulated pursuant to R.I. Gen. Laws §§ 17-19-36 and 17-19-37.

28.2 Preparing for the Audit

- A. Risk limit. No later than 10 days before Election Day, the Board of Elections must establish and publish on the Audit Center the risk limit that will apply in RLAs for that election. The risk limit for all target contests must be no larger than 9%.
- B. Audit team. No later than five days before Election Day, the Board of Elections must appoint audit teams, and alternates, to conduct the risk-limiting audit. The chairpersons of the recognized political parties in Rhode Island may submit to the Board of Elections, no later than 10 days before Election Day, lists of electors to serve on the audit teams, and as alternates. The Board of Elections must give written notice by regular mail to the chairpersons of their opportunity to nominate audit team members, and alternates.

The Board of Elections shall designate appropriately affiliated electors as audit team members, and as alternates. Local election officials, members of their staff, and members of the boards of canvassers may serve as members of audit teams, and as alternates. Prior to assisting with the audit, each member of an audit team, and alternates, must swear and sign an oath that they will faithfully discharge their duties.

- C. Review board. No later than five days before Election Day, the Board of Elections must appoint a review board or review boards, including alternates. The chairpersons of the recognized political parties in Rhode Island may submit to the Board of Elections, no

later than 10 days before Election Day, lists of electors to serve on the review boards. The Board of Elections must give written notice by regular mail to the chairpersons of their opportunity to nominate review board members. Members of the Board of Elections may serve as members of review boards, and as alternates.

- D. Ballot manifest. The Board of Elections staff must maintain an accurate ballot manifest that is independent of the voting system. The ballot manifest must include an accounting of all ballot cards counted in the election, no matter what type of ballot (including mail ballots and provisional ballots).

The ballot manifest must uniquely identify ~~the following for~~ each batch of ballot cards, ~~the tabulator used to scan the batch, and report~~ the number of cards in ~~the~~ each batch; The ballot manifest must contain enough information to determine, for each batch, the reporting group (polling place, early voting, or mail) and, if applicable, the polling place or early voting site where the ballots were cast, and the storage container in which the batch is stored after tabulation. If applicable, the ballot manifest may identify the number of cards in the batch on which each target contest appears, the tabulator used to scan each batch, and/or the storage container in which the batch is stored after tabulation.

No later than two calendar days, excluding holidays and weekends, prior to the public ceremony to select the random seed, commencement of the audit the Board of Elections staff shall publish the complete ballot manifest for all voted ballots on the Audit Center.

- E. Chain-of-custody. The Board of Elections staff and local boards of canvassers must secure and contain in sealed ballot containers all tabulated ballot cards in the batches. Throughout the audit, the local board of canvassers and Board of Elections staff must maintain and document uninterrupted chain-of-custody, on forms prescribed by the Board of Elections, for each ballot card storage container, in accordance with any Board of Elections rule, regulation, policy or procedure.
- F. Selection of target contest(s). No later than 10 days after Election Day, the Board of Elections must select the target contest(s). In a presidential preference primary, the Board of Elections must select at least one contest to be audited. In a general election, the Board of Elections must select at least one statewide contest. If there is no statewide contest, the Board of Elections must select at least one contest for Congress. If auditing the presidential contest, the audit must take place in a timeframe that allows the Board of Elections time to certify the election before the day on which the electors of President and Vice President meet and give their votes. The Board of Elections must publish a complete list of all target contests on the Audit Center immediately after making the selection. The Board of Elections must consider at least the following factors in selecting a target contest:
 - a. A high level of interest in a contest;
 - b. Any cause for concern regarding the accuracy of the reported tabulation of a contest;

- c. The closeness of the reported tabulation outcome of a contest;
 - d. The number of ballots counted in a contest;
 - e. Any benefits that may result from auditing a certain contest; and
 - f. The feasibility of completing the audit before any deadlines.
- G. The batch tallies for all target contests from the election management system must be published on the Audit Center before the public meeting to establish the random seed(s). In the event that the batch tallies are not available for some voted ballot cards, the Board of Elections staff must create a separate ballot manifest for these ballots, to be used in auditing an auxiliary audit stratum as described below; if necessary, create an updated ballot manifest including only the voted ballots for which batch tallies are available; and publish the manifest(s) on the Audit Center.

28.3 Conducting the Audit

- A. The Board of Elections staff must establish a random seed to be used in conjunction with a pseudo-random number generator. The Board of Elections staff shall publish an announcement of the time and place of this event on the Open Meetings Portal of the Secretary of State's website, as well as the website of the Board of Elections. The seed is a number consisting of at least 20 digits, and each digit will be selected in order by sequential rolls of 10-sided dice. The Board of Elections staff will randomly select members of the public who attend the meeting to take turns rolling the 10-sided dice, and designate one or more staff members to take turns rolling the 10-sided dice in the event that not enough members of the public attend the meeting. In the event that an auxiliary stratum is used, the Board of Elections must use the same procedure to establish a random seed for that stratum. The Board of Elections staff must publish the seed(s) on the Audit Center immediately after the seed(s) are established.
- B. Board of Elections staff must enter the risk limit for each target contest, including unofficial final results for each target contest, into the RLA tool. If an auxiliary audit stratum is used, the unofficial final results entered into the RLA tool must exclude the ballots in the auxiliary audit stratum.
- C. A Board of Elections staff member must enter the target contest or contests into the RLA tool.
- D. A Board of Elections staff member must enter the ballot manifest into the RLA tool.
- E. A Board of Elections staff member must enter batch tallies into the RLA tool.
- F. A Board of Elections staff member must enter the number of batches initially to be audited into the RLA tool.

- G. A Board of Elections staff member must enter the random seed produced in III.(A.) of this Rule into the RLA tool.
- H. If an auxiliary audit stratum is used, the Board of Elections staff must enter the target contest(s), the ballot manifest for this stratum, the unofficial final results in each target contest among ballots in this stratum, the number of ballot cards in this stratum initially to be audited, and the random seed for this stratum into the RLA tool.
- I. The RLA tool must randomly select and identify the batches of ballot cards, and the individual ballot cards in the auxiliary audit stratum if applicable, to audit by applying a publicly disclosed algorithm to the random seed(s) in conjunction with the ballot manifest(s) and batch tallies.
- J. The Board of Elections staff must publish on the Audit Center the information from the ballot manifest about the initial sample of batches of ballot cards before the audit teams begin auditing.
- K. As soon as possible after the selection of the initial audit sample, the Board of Elections staff must retrieve the batches selected for audit from the local boards, following all prescribed chain of custody procedures. The Board of Elections staff must post an announcement of the time and place for the review and tallying of the audit sample by the audit teams on the Open Meetings Portal of the Secretary of State's website, as well as the website of the Board of Elections. Such notice shall include a link to the livestream of the audit, if one is being provided.
- L. All batches of ballot cards selected for the audit pursuant to subsection III.(I.) of this Rule, and (if applicable) all ballot cards that comprise the auxiliary audit stratum, must remain within view of the public observation area at all times.
- M. If an auxiliary audit stratum is used, one or more audit teams must manually count or use a digital counting scale to retrieve the ballot cards to be audited in that stratum, within view of the public observation area.
- N. Within view of the public observation area, any time a batch of ballots is opened or closed, the Board of Elections staff or designees must show that the seals on the appropriate storage containers are those recorded on the applicable chain of custody forms as prescribed by the Board of Elections.
- O. Within view from the public observation area, at least two members of the Board of Elections staff or designees may divide batches of ballots into sub-batches. If an auxiliary audit stratum is used, the ballot cards to be audited in that stratum may be treated as one batch or divided into sub-batches.

- P. Board of Elections staff or designees shall deliver to each audit team batches, or sub-batches of ballot cards, for auditing. Each member of the audit team must sign a form, as prescribed by the Board of Elections, acknowledging receipt of the batch or sub-batch of ballot cards.
- Q. The audit teams must examine each card in the batch, or sub-batch, of ballot cards. The audit team must interpret voter markings on ballot cards for audit in accordance with promulgated voter intent standards consistent with the Board of Elections' Voter Intent Guide. Each member of the audit team must call out in a loud and distinct voice, clear and audible, that must be able to be heard by those in the public observation area, their interpretation of the voter's selection, including overvotes and undervotes, for each audited contest, placing each audited ballot card in the appropriate pile.
- R. The public must be able to be close enough during the examination of the ballots to be able to see the voter markings so that they can evaluate for themselves whether the voter marking agrees with the audit team's interpretations of the voter's selection.
- S. If a batch or sub-batch contains a duplicate ballot, the audit team must interpret the voter markings on the ballot card marked as "ORIGINAL."
- T. When the audit team has finished examining all ballot cards in the batch, or sub-batch, they must tally the votes for each candidate or question in the contest and record the results, including any candidate or question that received no votes, on a form as prescribed by the Board of Elections. The audit team shall use red pens to mark all forms, including tallies. Both members of the audit team must sign the form before returning the batch, or sub-batch, to the Board of Elections staff.
- U. If the audit team members cannot unanimously agree on the voter's intent for the contest being audited, they must place the ballot card in an envelope provided by the Board of Elections. Any ballots that the audit team cannot unanimously agree upon must be delivered to the review board.
- V. The review board will examine any cards submitted by the audit teams. If the review board, using the Voter Intent Guide, cannot unanimously agree on the voter's intent, a note must be made in the RLA tool or in the published results.
- W. Two members of the Board of Elections staff must enter the results of the audit team's tallies of the voter markings in the RLA tool. One member of the staff shall read out the tallies in a loud and distinct voice, clear and audible, that can be heard in the public observation area. The other shall repeat the tallies as the first staff member enters them into the RLA tool. The form and audit tool must be displayed so that they are clearly visible in the public observation area and on any livestream, if provided. If an auxiliary audit stratum is used, the staff members must enter tallies from this stratum separately from the other batch, or sub-batch, tallies, as prompted by the RLA tool. If there are any

discrepancies in the tallies provided by an audit team, the batch or sub-batch may be retallied by the review board.

- X. When all of the batches, and ballot cards, identified for the audit have been examined and the results have been entered, the RLA tool will be used to determine if additional batches, or ballot cards, need to be audited. If the RLA tool indicates that the risk limit for the targeted contests is not met, the Board of Elections must randomly select additional batches of ballot cards (and, if applicable, additional ballot cards from the auxiliary audit stratum) for audit using the RLA tool. The RLA will continue until the risk limit for the targeted contest is met or until a full manual tally is completed.
- Y. The Board of Elections must post the results of the RLA on the Audit Center within two business days of completion of the RLA. The results report will contain:
 - a. The name of the target contest or contests;
 - b. For each contest:
 - i. The number of winners;
 - ii. The total number of ballot cards;
 - iii. The unofficial final results;
 - iv. The number of times batches were randomly selected for the audit;
 - v. The number of batches in each sample; and
 - vi. The corresponding batch identifiers (and, if applicable, the number of ballot cards sampled from the auxiliary audit stratum);
 - c. The number of ballot cards audited in each batch and the audit tally totals;
 - d. The measured risk for each audited contest; and
 - e. An explanation of any discrepancies found during the audit.

September 26, 2023

Common Cause Rhode Island
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Verified Voting
1500 Chestnut Street, #2320
Philadelphia, PA 19102

Chairwoman Diane Mederos
Rhode Island Board of Elections
2000 Plainfield Pike
Cranston, RI 02921

Dear Chairwoman Mederos and Members of the Rhode Island Board of Elections:

Common Cause Rhode Island and Verified Voting respectfully submit this petition for the promulgation of rules pursuant to R.I.G.L. § 42-35-6. The Board of Elections is subject to the Administrative Procedures Act pursuant to R.I.G.L. § 17-19-37.4(h) and is required to promulgate rules to implement risk-limiting audits in Rhode Island.

Common Cause Rhode Island is a nonpartisan, nonprofit organization based in Providence promoting transparent and accountable government in Rhode Island. It is part of Common Cause, a nonpartisan grassroots organization based in Washington, D.C. Since its formation in 1970, Common Cause Rhode Island has educated and mobilized the people of Rhode Island on issues related to elections, ethics, open government, and campaign finance. Common Cause Rhode Island was a strong supporter and advocate for the initial passage of the legislation that added Chapter 17-19-37.4, the subject of this rulemaking, to the Rhode Island General Laws.

Verified Voting is a nonpartisan, nonprofit national organization whose mission is to strengthen democracy for all voters by promoting the responsible use of technology in elections. Founded in 2004, Verified Voting works with election officials, policymakers, and other stakeholders to help voters vote and to promote policies that support justified public confidence in elections. Verified Voting is well known for its expertise in the theory and practice of risk-limiting audits, and its staff have worked closely with Rhode Island Board of Elections staff on pilots and audits over the last five years.

In 2017 the Rhode Island General Assembly created Chapter 17-19-37.4, making Rhode Island the second state to require risk-limiting audits. “Risk-limiting audits provide statistical assurance that election outcomes are correct by manually examining portions of the audit trail—paper ballots or voter-verifiable paper records.”¹

¹ See: Mark Lindeman and Philip B. Stark, *A Gentle Introduction to Risk-Limiting Audits* at <https://www.stat.berkeley.edu/~stark/Preprints/gentle12.pdf>.

On June 10, 2020 the Rhode Island Board of Elections conducted its first risk-limiting audit of the Presidential Preference Primary. It has subsequently audited two more elections, in 2020 and 2022. In that time Rhode Island has made important contributions to our understanding of the practice of risk-limiting audits.

The Rhode Island Board of Elections needs to adopt a rule for implementation of § 17-19-37.4 to codify the practice of conducting future risk-limiting audits. The attached document provides proposed language for the rule to govern risk-limiting audits in Rhode Island.

Adoption of this rule will further the public interest by promoting confidence in Rhode Island's election outcomes. Through its adoption, the Board will confirm, for the public, that upcoming audits will meet high standards and provide an unbiased check of future election results. The rule provides consistent specifications and protocols that the public can rely on, to know that our election audits will be performed objectively and not performatively.

In several states, mis- and dis-information is being spread under the guise of conducting *ad hoc* election reviews and calling them "audits." Adopting a consistent regulatory framework for Rhode Island's risk-limiting audits will help protect against allegations that any processes could benefit a particular candidate – particularly if the rule is adopted before the next election cycle begins. Rhode Islanders deserve to be able to rely on our election results; this rule serves the public interest by promoting that trust.

The proposed rule seeks not only to codify existing practice as it has developed in Rhode Island, but to improve the conduct of risk-limiting audits by embracing best practices.² The rule begins with a set of definitions for key terms, including for the two types of audits Rhode Island has conducted: batch comparison and ballot polling audits. This is in keeping with the best practice of responsiveness to particular circumstances. Rhode Island has typically conducted batch comparison audits, but in November 2022 was forced to conduct a type of hybrid audit that also incorporated ballot polling.

The proposed rule details the necessary pre-audit work. The majority of the proposed rule reflects current practice. The rule builds on current practice by making several improvements. These include naming bipartisan audit teams and a bipartisan review board, as is standard practice for risk-limiting audits in Colorado and Georgia. While many other functions of elections in Rhode Island are administered in a bipartisan fashion, including all 39 local boards of canvassers and polling places, risk-limiting audits have thus far not incorporated that feature.³

² See: *Principles and Best Practices for Post-Election Tabulation Audits* at

<https://www.electionaudits.org/files/Audit%20Principles%20and%20Best%20Practices%202018.pdf>

³ Bipartisan election administration is endorsed by the Bipartisan Election Administration Task Force. See: https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2023/04/BPC_Elections-Policy-to-Carry-U-s-Beyond-the-Next-Election.pdf, page 42. 47 of 50 states require bipartisanship in polling places. See: <https://bipartisanpolicy.org/report/poll-worker-policy/>

The proposed rule also sets a maximum risk limit of nine percent. Rhode Island has used a nine percent risk limit in all audits conducted to date. Other states have been lowering their risk limits over time as they have refined practices. In 2022, Colorado's risk limit was set at three percent and Georgia's risk limit was set at five percent.⁴

It is a best practice to separate the functions of conducting the audit from setting the risk limit and determining the contests to be audited. § 17-19-37.4 does not allow for the separation of those functions. However, the proposed rules do put in place criteria for the Board of Elections to follow when determining what contests to audit.

Finally, the proposed rule includes all of the necessary steps for conducting the audit, in keeping with the *Principles and Best Practices for Post-Election Tabulation Audits*.

- The rule creates a public process for determining the random seed, as is current practice in Rhode Island.
- The rule explains in detail how the ballot cards are handled, including being separated into sub-batches, delivered to and examined by the audit teams, and secured in the ballot storage containers. It creates a process for reviewing ballots when the audit team does not reach consensus.
- The rule allows for members of the public, as long as they are not disrupting the audit, to follow each step of the process, including specifying what information the Board of Elections needs to put online for public inspection. Risk-limiting audits provide evidence that the election yielded the correct outcome, but for the public to trust the results, it must be able to examine that evidence.
- The rule outlines exactly how the audit can, if needed, escalate to a full manual tally.
- Finally, it requires the Board of Elections to report the results of the audit, including discrepancies, in a timely fashion.

Adopting this rule will provide the Board of Elections with a detailed protocol for conducting future risk-limiting audits. It will improve Rhode Island's risk-limiting audit practices by including best practices from other jurisdictions. And it will advance the public interest by ensuring that the risk-limiting audits are transparent and accessible.

⁴ See:

<https://www.coloradosos.gov/pubs/elections/RLA/2022/general/2022GeneralEstablishmentOfRiskLimit.pdf>
and
<https://sos.ga.gov/news/georgias-2022-statewide-risk-limiting-audit-confirms-results#:~:text=A%20risk%20limit%20of%205.audited%20328%20batches%20of%20ballots.>

Sincerely,

Mark Lindeman
Policy and Strategy Director
Verified Voting

John Marion
Executive Director
Common Cause Rhode Island

cc: Robert Rapoza, Executive Director, Rhode Island Board of Elections
Raymond Marcaccio, Legal Counsel, Rhode Island Board of Elections