This is an amendment to 1.10.23 NMAC, Sections 7, 9 and 10 and repealing Sections 12 and 13, effective 4/7/2020.

Explanatory statement: Percentages in Section 9 were spelled out to conform to current legislative style.

1.10.23.7 DEFINITIONS:

[~~A. "Abbreviated name"~~ ~~means shortened given or surname including, but not limited to, 'Pat' for Patrick, Patricio, or Patricia, 'Wm' or 'Bill' for William, 'Rick' for Ricardo or Richard, 'Mtz' for Martinez.~~]

[~~B.~~] A. "Absentee ballot" means a method of voting by [~~ballot~~] mail, accomplished by a voter who is absent from the voter's polling place on election day. "Absentee ballot" has the same definition under the Absent Voter Act as a mailed ballot.

[~~C. "Absent voter precinct board"~~ ~~means the voters of a county who are appointed by the county clerk to open, tabulate, tally and report absentee ballot results.~~]

[~~D.~~] B. "Absentee provisional ballot" means the paper ballot issued to a provisional absentee voter.

[~~E.~~] C. "Audit" means a check of the voting systems conducted pursuant to Section [~~1-14-13.1~~] 1-14-13.2 NMSA 1978.

[~~F.~~] D. "Ballot" means a paper ballot card that is tabulated on an optical scan vote tabulating system or hand tallied.

[~~G.~~] **E. "Contest"** means court litigation that seeks to overturn the outcome of an election pursuant to Sections 1-14-1 *et seq.* NMSA 1978.

[~~H.~~] **F. "County canvassing board"** means the board of county commissioners in each county.

[~~I.~~] G. "Designated polling place" means the voting location assigned to a voter based on that voter's residence within a precinct of the county.

[~~J.~~] **H. "High speed central count [~~marksense~~] ballot tabulator"** means a self-contained optical scan vote tabulating system that uses an automatic ballot feeder to process ballots placed in the tabulator in any orientation. Ballots are processed at high speed and the tabulator has a built in sorting system to divert processed ballots into appropriate bins.

[~~K. "In-lieu-of-absentee ballot"~~ ~~means a ballot provided to a voter at his designated polling place when the absentee ballot was not received by the voter before election day.~~]

[~~L.~~] **I. "Observer"** means a voter of a county who has been appointed by a candidate, political party chair, or election related organization pursuant to the provisions of the Election Code.

[~~M.~~] J. "Optical scan" or [~~**marksense**~~] **"EVT ballot"** means a ballot used on an optical scan vote tabulating system or EVT [~~marksense~~] voting system.

[~~N.~~] K. "Optical scan vote tabulating system" or **"electronic vote tabulating (EVT) [~~marksense~~] voting system"** means a voting system which records and counts votes and produces a tabulation of the vote count using one ballot imprinted on either or both faces with text and voting response areas, and includes a high-speed central count [~~marksense~~] ballot tabulator. The [~~marksense or~~]optical scan vote tabulating system records votes by means of marks made in the voting response areas.

[~~O.~~] **L. "Overvote"** means the selection by a voter of more than the number of alternatives allowed in a voting response area.

[~~P.~~] M. "Provisional absentee voter" means a voter who votes on an absentee provisional ballot after initially attempting to vote by absentee ballot but whose name does not appear on the signature roster or has failed to meet the voter identification requirements in the Election Code.

[~~Q.~~] **N. "Provisional ballot"** means a ballot that is marked by a provisional voter.

[~~R.~~] O. "Provisional voter" means a voter casting a provisional ballot pursuant to the provisions of the Election Code.

[~~S.~~] P. "Recheck" shall have the meaning given in Subsection A of Section 1-1-6 NMSA 1978.

[~~T.~~] Q. "Recount" shall have the meaning given in Subsection B of Section 1-1-6 NMSA 1978 and shall include hand recounts conducted pursuant to this part.

R. "Recount precinct board" means the voters of a county who are appointed by the county clerk to open, tabulate, tally and report absentee ballot results.

[~~U.~~] **S. "Signature roster"** means the certified list of voters at a polling place which is signed by a voter when presenting himself on election day.

[V.] T. "Tally sheet" means a document prepared by the county clerk and used for the counting of ballots that are electronically tabulated.

[W.] U. "Undervote" means the failure of a voter to select any of the alternatives in a voting response area.

[X.] V. "Vote" shall have the meaning given in [Subsection A and Paragraphs (1) through (4) of Subsection B of Section 1-9-4.2 NMSA 1978] Section 1-1-5.2 NMSA 1978.

[**Y.] W. "Voter"** means any [person who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States and who is registered under the provision of the Election Code of the state of New Mexico.] qualified elector or federal qualified elector who is registered under the provisions of the Election Code.

[Z.] X. "Voting response area" means the place on a ballot where the voter is instructed to mark his preference for a candidate or question.

[1.10.23.7 NMAC - N/E, 10/2/2008; A/E, 11/3/2008; A, 4/7/2020]

1.10.23.9 VOTING SYSTEM CHECK PROCEDURES: This section applies to voting system checks for all federal offices, for governor, and for the statewide elective office other than the office of the governor for which the winning candidate won by the smallest percentage margin of all candidates for statewide office in New Mexico, as required by Section 1-14-13.2 NMSA 1978.

A. Auditor functions

(1) Selection of precincts for the voting system check. The number of precincts to be selected for each contest shall be based on the margin between the top two candidates as determined in Table 1 of Section 1-14-13.2 NMSA 1978. (The calculations for determining the number of precincts in the sample assume that the maximum margin shift in any precinct will not exceed thirty percent. Achieving the ninety percent probability of detection with the number of precincts in the sample as indicated in Table 1 requires that the probability of selecting a precinct is proportional to the precinct size.)

(a) By no later than 12 calendar days after the election, the auditor shall select the precincts for the voting system check pursuant to the precinct selection process set forth in Section 1-14-13.2 NMSA 1978.

(b) The auditor will conduct an agreed upon procedures engagement in accordance with AICPA statements on standards for attestation engagements for procedures set forth in Section 1-14-13.2 NMSA 1978 and 1.10.23.9 NMAC.

(c) Precincts will be randomly selected using a process that is visually observable, such as rolling dice or selecting pieces of paper from a box, with the probability of selection being proportional to the number of persons registered to vote in the last election in each precinct.

(d) The random sampling process shall be open to public observation. At least seven days prior to the random sampling conducted pursuant to this subsection, the secretary of state shall post notice on its web site of the time, date, and location of the random sampling.

(2) Notification of the county clerks: By no later than 13 days after the election the auditor shall notify the county clerks of the precincts that have been selected for the voting system check.

(a) The auditor shall provide the county clerks with tally sheets for the offices to be subjected to voting systsem checks in the selected precincts.

(b) The auditor shall reference rules and guidelines that have been provided in advance by the secretary of state for conducting the hand counts and reporting the results to the auditor.

(3) Analysis of results: The auditor shall compare the hand count results with the vote tabulator results to determine if further sampling or a full hand count is needed for any office being subjected to the voting system check.

(a) The auditor determines within 26 days after the election if further sampling is required. The determination is made by 1) calculating the difference between the vote tabulator counts divided by the votes cast for the office in the sample as reported by the vote tabulators and the hand counts divided by the votes cast for the office in the sample as reported by the hand counts for the putative first place candidate, 2) calculating the difference between the vote tabulator counts divided by the votes cast for the office in the sample as reported by the vote tabulators and the hand counts divided by the votes cast for the office in the sample as reported by the hand counts for the putative second place candidate, and 3) subtracting the result in 2) for the putative second place candidate from the result in 1) for the putative first place candidate. For any office being subjected to the voting system check, if the result in 3) exceeds ninety percent of the reported margin between the first and second place candidates, a voting system check must be conducted on an additional sample of the same size as the original

sample. The procedures in subsection A are repeated for selecting the additional sample and notifying the county clerks. If the result in 3) does not exceed ninety percent of the reported margin between the first and second place candidates, the auditor reports to the secretary of state that no further checking of voting systems for that office pursuant to Section 1-14-13.2 NMSA 1978 is required.

(b) If a second sample was required, the auditor determines within 39 days after the election if a full hand count is required. The determination is made by 1) calculating the difference between the vote tabulator counts divided by the votes cast for the office in both samples as reported by the vote tabulators and the hand counts divided by the votes cast for the office in both samples as reported by the hand counts for the putative first place candidate, 2) calculating the difference between the vote tabulator counts divided by the votes cast for the office in both samples as reported by the vote tabulators and the hand counts divided by the votes cast for the office in both samples as reported by the hand counts for the putative second place candidate, and 3) subtracting the result in 2) for the putative second place candidate from the result in 1) for the putative first place candidate. For any office being subjected to the voting system check, if the result in 3) exceeds ninety percent of the reported margin between the first and second place candidates, a full hand count of all precincts must be conducted for the contest. If the result in 3) does not exceed ninety percent of the reported margin between the first and second place candidates, the auditor reports to the secretary of state that no further checking of voting systems for that office pursuant to Section 1-14-13.2 NMSA 1978 is required.

(4) Reporting results: The auditor shall, within three days of receiving the hand counting results from the county clerks for the initial sample, an additional sample, if applicable, and a full hand recount, if applicable, submit a report to the secretary of state and to the public that shall include, for each office subject to the voting system check, the numbers and names of the precincts in the initial sample and, if applicable, the second sample for each office; the outcome of full recounts, if conducted; a comparison of the vote tabulator results with the hand counts in each precinct in the samples and the full recount, if conducted; a comparison of the vote tabulator results with the hand counts for all precincts; a comparison of the reported margin between the first and second place candidates with the error rates in the first sample and, if applicable, in both samples and for a full recount, if conducted. Within 30 days of receiving the hand counting results from the county clerks, a final report to the secretary of state and to the public shall also include a description of the procedures used for the voting system check.

B. Secretary of state functions: The secretary of state shall contract with an auditor whose firm name appears on the state auditor's list of independent public accountants approved to perform audits of New Mexico government agencies.

(1) Within 28 days of the closing of voter registration, the secretary of state shall provide the auditor with the number of registered voters in each precinct in the state.

(2) Upon receipt of the county canvass results and no later than 10 days after the date of the election, the secretary of state shall provide the auditor with the voting results from each county to be used to determine the size of the random sample of precincts for the voting system check.

(3) The secretary of state shall provide a venue and the necessary supplies and equipment for use by the auditor in publicly selecting precincts for each office subject to the voting system check.

(4) The secretary of state shall provide the auditor with the forms or templates to be used by the county clerks and by the auditor for recording, reporting and analyzing results of the voting system check. These forms or templates may include those used for notifying county clerks of the precincts selected for each office, for tallying hand counts, for reporting hand count results to the auditor, for analyzing results of the voting system check by the auditor, and for reporting results of the voting system check to the secretary of state and state canvassing board. The secretary of state shall provide tally sheets to the auditor for only those precincts and offices being tallied as part of the voting system check.

(5) The secretary of state shall arrange for the communications channels and terminals to be used by the auditor for communications of information related to the voting system check to and from the county clerks.

(6) The secretary of state shall provide guidelines to the county clerks for conducting the hand counts and reporting the results to the auditor.

(7) The secretary of state shall post on the web the intermediate and final results reported by the auditor as soon as they are available.

C. County clerk functions

(1) Early voting, absentee voting and election day voting ballots counted by vote tabulators by the time of closing of the polls on election night will be subject to the voting system check. Therefore, it is recommended that sorting of these ballots by precinct should be done in advance.

(a) Within 10 days of the notice to conduct the voting system check, the county clerk shall report their results to the auditor.

(b) The county clerk shall choose a location for the voting system check that is accessible to the public.

(c) The county clerk or her designee shall arrange for transportation of ballots to the site of the voting system check and contact the sheriff or state police to move the ballot boxes from the current place of storage to the site of the voting system check.

(d) At least one person in addition to the county clerk shall witness all movement of ballots during the voting system check, and all movement of ballots from and to the ballot box during the voting system check shall be logged. Each time that ballots are removed from or returned to a ballot box, the number of ballots shall be determined and compared to the number of ballots that should be in that particular ballot box. Any discrepancies shall be noted and the identity of the witness shall be documented.

(e) Prior to conducting the voting system check, the county clerk shall [~~seek an order from the district judge permitting the county clerk to open~~] have a district judge present when opening those ballot boxes containing ballots from the precincts selected for the voting system check.

(f) The county clerk shall assign counting teams of at least two members (a reader and a marker) and preferably three, to particular precincts. The third member, if present, verifies that what the reader reads is correct and is what the marker marks. The team members shall consist of at least two distinct political parties, if possible.

(2) Hand counting procedures. The ballots from the precincts selected for auditing shall be hand tallied pursuant to the procedures in this subsection.

(a) For election day voting, and when possible, for absentee and early voting, the counting team shall ensure that the serial number for the voting system and the type of ballot to be counted are prominently displayed on the tally sheet. When multiple vote tabulators are used for a precinct as in early voting and absentee voting, this rule may be ignored.

(b) To count the votes by a two person team, the reader shall read the vote to the marker and the marker shall observe whether the reader has correctly read the vote; the marker shall then mark the tally sheet of the appropriate precinct, and the reader shall observe whether the marker correctly marked the tally sheet. With a three person team the third person verifies that the marker marks correctly and the reader reads correctly. Upon completion of the recount of a precinct, the marker shall add the total number of votes for each candidate as well as any undervotes or overvotes. The reader with the verifier shall confirm these amounts. The marker, the reader and, if present, the verifier shall sign the tally form.

(c) If a two person counting team is used, it is recommended that the ballots be counted again using the sort and stack method. With this method, the ballots are sorted into stacks by candidate, undervotes and overvotes. The stacks are then hand counted. The results of the sort and stack method shall be compared to the hand tally method. Any discrepancies may require the processes in (b) and (c) to be repeated. The reasons for the discrepancies shall be noted on the tally sheet.

(d) If a ballot is marked indistinctly or not marked according to the instructions for that ballot type, the counting team shall make the appropriate determination as provided for in Subsection A and Paragraphs (1) through (4) of Subsection B of Section [~~1-9-4.2~~] 1-1-5.2 NMSA 1978. In no case, shall the counting team mark or re-mark the ballot. [~~1.10.23.12 NMAC contains illustrative examples of how to discern voter intent.~~]

(e) Upon completion of the hand counting of the initial sample of precincts included in the voting system check, and of subsequent samples, if conducted, the results of the hand counting shall be reported to the auditor within 10 days of the notice to conduct the voting system check. If a full hand count is required pursuant to Section 1-14-13.2 NMSA 1978, the results shall be reported as soon as practicable.
[1.10.23.9 NMAC - N/E, 10/2/2008; A/E, 10/16/2008; A/E, 11/3/2008; A/E, 10/15/2010; A, 4/7/2020]

1.10.23.10 RECOUNT AND RECHECK PROCEDURES: This section applies to rechecks and recounts conducted pursuant to Sections 1-14-14 and 1-14-24 NMSA 1978, and recounts resulting from audits performed under Section 1-14-13.2 NMSA 1978. [~~Except as otherwise provided in Subsection E of Section 1-14-23 NMSA 1978 and this section, the~~] The recheck and recount procedures in this section shall be used in conjunction with the procedures in Sections 1-14-16 and 1-14-18 through 1-14-23 NMSA 1978, along with guidance from the secretary of state.

A. Time and place; ballot security.

(1) Pursuant to Subsection A of Section 1-14-16 NMSA 1978, the recount or recheck shall be held at the county [~~courthouse~~] seat.

(2) The county clerk shall arrange for transportation of ballots to the recount or recheck site and contact the sheriff or state police to move the ballot boxes from the current place of storage to the recount or recheck site.

(3) The county clerk shall convene the [~~absent voter~~] recount precinct board no more than 10 days after the filing of the application for a recount or recheck, notice of an automatic recount, or notice of a recount required by Subsection B of Section 1-14-13.2 NMSA 1978.

(4) The presiding judge of the [~~absent voter~~] recount precinct board shall assign counting teams of at least two members, of opposite political parties if possible, to particular precincts.

(5) At least one person in addition to the district judge or presiding judge shall witness all movement of ballots during the recount, and all movement of ballots from and to the ballot box during the recount process shall be logged. Each time that ballots are removed from or returned to a ballot box, the number of ballots shall be determined and compared to the number of ballots that should be in that particular ballot box. Any discrepancies shall be noted.

B. Random selection of ballots to determine whether the recount shall be hand tallied or electronically tabulated. This subsection does not apply to recounts resulting from audits performed under Section 1-14-13.2 NMSA 1978. To determine whether votes shall be recounted using optical scan vote tabulating systems pursuant to Section 1-14-23 NMSA 1978, the [~~absent voter~~] recount precinct board shall electronically tabulate [~~absentee~~] recount ballots from the precincts to be recounted in accordance with the procedures in this subsection.

(1) A separate results cartridge programmed with ballot configurations for all precincts in the county or the ballot configuration for the precinct to be tabulated shall be inserted into an [~~M-100~~] optical scan vote tabulating system. A summary zeros results report shall be generated and certified by the precinct board.

(2) [~~Absentee~~] Recount ballots equal to at least the number required by Subsection B of Section 1-14-23 NMSA 1978 shall be fed into the optical scan vote tabulating system. Any [~~absentee~~] recount ballots rejected by the optical scan vote tabulating system shall be placed back into the ballot boxes and additional [~~absentee~~] recount ballots shall be inserted until the number of ballots tabulated by the system is equal to at least the amount required by Subsection B of Section 1-14-23 NMSA 1978. If the [~~absent voter~~] recount precinct board uses a results cartridge programmed with only the ballot configuration for the precinct being tabulated, then the procedure in Paragraph (1) of this subsection shall be repeated for each precinct being tabulated.

(3) The [~~absent voter~~] recount precinct board shall then hand tally the votes from the same ballots counted by the optical scan vote tabulating system in accordance with the procedures in [~~Subsection E of this section~~] Section 1-14-23 NMSA 1978.

[~~**(4)** Pursuant to Subsection C of 1-14-23 NMSA 1978, for statewide or federal offices, if the results of the hand-tally and the electronic vote tabulating system differ by one-fourth of one percent or less, the remaining ballots shall be recounted using optical scan vote tabulating systems pursuant to Subsection C of this section. Otherwise, the remaining ballots shall be recounted by hand in accordance with the procedures in Subsection E of this section.~~

~~**(5)** Pursuant to Subsection D of 1-14-23 NMSA 1978, for offices other than statewide or federal offices, if the results of the hand-tally and the optical scan vote tabulating system differ by the greater of one percent or less, or two votes, the remaining ballots shall be recounted using optical scan vote tabulating systems pursuant to Subsection C of this section. Otherwise, the remaining ballots shall be recounted by hand in accordance with the procedures in Subsection E of this section.~~]

C. Electronic recount procedures.

(1) [~~**Class A counties.** If the remaining ballots in a class A county are to be re-tabulated using optical scan vote tabulating systems, the absent voter precinct board shall use an M-650 optical scan vote tabulating system in accordance with the procedures in this paragraph, provided that the M-650 optical scan vote tabulating system was not used to tabulate voted absentee, early in person or election day ballots. If the M-650 optical scan vote tabulating system was used to tabulate voted ballots, the absent voter precinct board shall use M-100 optical scan vote tabulating systems in accordance with the procedures in Paragraph (2) of this subsection].~~

~~**(a)** To recount the ballots for a particular ballot type (e.g., absentee ballots, election day ballots, early in person ballots), a results cartridge programmed with ballot configurations for all precincts to be recounted in the county shall be inserted into the optical scan vote tabulating system. A summary zeros report shall be generated and certified by the absent voter precinct board.~~

~~**(b)** The ballots for the ballot type being recounted shall be inserted into the optical vote tabulating system.~~

~~**(c)** The votes from any ballots rejected by the system shall be tallied by hand in accordance with the procedures in Subsection E of this section.~~

~~**(d)** A machine report shall be generated for each precinct after ballots are tabulated for that precinct, and the machine results shall be zeroed out. The ballots for the next precinct shall be tabulated until all ballots for the ballot type being recounted are tabulated.~~

~~**(e)** The procedures in this paragraph shall be repeated for each ballot type being recounted.~~

~~**(2) Non-class A counties.]**~~ If the remaining ballots in a non-class A county are to be re-tabulated using optical scan vote tabulating systems, the [~~absent voter~~] recount precinct board shall use [~~M-100~~] optical scan vote tabulating systems selected at random by the county clerk in accordance with the procedures in this paragraph.

(a) A separate results cartridge programmed with ballot configurations for all precincts in the county or the ballot configuration for the precinct to be tabulated shall be inserted into the optical scan vote tabulating system chosen by the county clerk.

(b) A summary zeros report shall be generated and certified by the precinct board.

(c) The ballots for the ballot type (e.g., absentee ballots, election day ballots, early in-person ballots) and precincts to be recounted shall be fed into the optical scan vote tabulating system.

(d) All ballots rejected by the tabulator shall be tallied by hand in accordance with the procedures in Subsection E of this section.

(e) A machine report shall be generated and certified by the [~~absent voter~~] recount precinct board.

(f) If the [~~absent voter~~] recount precinct board uses a results cartridge programmed with ballot configurations for all precincts in the county, then the procedures in this paragraph shall be repeated for each ballot type being recounted. If the [~~absent voter~~] recount precinct board uses a results cartridge programmed with only the ballot configuration for the precinct being tabulated, then the procedures in this paragraph shall be repeated for each precinct being tabulated.

[~~(3)~~] 2. If the voted ballots in a precinct are unavailable or incomplete for recount, the district judge, in consultation with the county clerk, may order that a results tape or report be regenerated from the results cartridge that was used to tabulate the voted ballots.

D. Review of rejected ballots and re-tally of provisional, in-lieu of absentee ballots and other paper ballots in a recount.

(1) The district judge shall orally order that any ballot boxes, envelopes, or containers that hold provisional, in-lieu of absentee, and absentee provisional ballots be opened one at a time.

(2) The presiding judge shall count the total number of provisional, absentee provisional, and in-lieu of absentee ballots in each precinct and the number shall be compared to the previously certified signature roster count in that precinct and noted. Any discrepancies shall be noted.

(3) The county clerk shall review the qualification of all rejected provisional, absentee provisional, and in-lieu of absentee ballots pursuant to Section 1-12-25.4 NMSA 1978 and 1.10.22 NMAC.

(4) The [~~absent voter~~] recount precinct board shall review the qualification of all rejected absentee ballots in accordance with 1.10.12.15 NMAC and any other rejected ballots in accordance with applicable law.

(5) All previously and newly qualified ballots (including provisional, absentee provisional, in-lieu of absentee ballots, absentee ballots and other paper ballots) shall be recounted and the votes shall be added to the tally of the appropriate precinct.

(6) If any voting data changes as a result of this review, the county clerk shall update the report required in Subsection I of 1.10.22.9 NMAC.

E. Hand counting procedures for recounts. This subsection applies to hand recounts. The secretary of state shall provide tally sheets for only those races being recounted, and shall include options for marking undervotes and overvotes.

(1) The counting team shall ensure that the precinct and the ballot type (eg., election day, early in-person, absentee, in-lieu of absentee, and provisional) being counted are prominently displayed on the tally sheet.

(2) To recount the votes, the reader shall read the vote to the marker and the marker shall observe whether the reader has correctly read the vote; the marker shall then mark the tally sheet of the appropriate precinct, and the reader shall observe whether the marker correctly marked the tally sheet. Upon completion of the recount of a precinct, the marker shall add the total number of votes for each candidate as well as any undervotes or overvotes. The reader shall confirm these amounts. Both the marker and the reader shall sign the tally form.

(3) If a ballot is marked indistinctly or not marked according to the instructions for that ballot

type, the counting team shall count a vote as provided for in Subsection A and Paragraphs (1) through (4) of Subsection B of Section [~~1-9-4.2~~] 1-1-5.2 NMSA 1978. In no case, shall the counting team mark or re-mark the ballot. 1.10.23.12 NMAC contains illustrative examples of how to discern voter intent.

(4) If a recount for an office selected for a voting system check is conducted pursuant to the provisions of Chapter 1, Article 14 NMSA 1978, the vote totals from the hand count of ballots for that office in precincts selected for the voting system check may be used in lieu of recounting the same ballots for the recount.

F. Recount and recheck reconciliation procedures.

(1) Upon completion of a recount, the district judge or presiding judge shall tabulate the total vote count from the machine generated tapes or reports and the tally sheets from the hand recount.

(2) The county clerk or secretary of state in a statewide race shall compare the results of each recount or recheck to the results of the county or statewide canvass. County clerks shall make available to the public and provide to the secretary of state the results of the recount or recheck within five days of the completion of the recount or recheck. The secretary of state shall combine the county files and place the results on the secretary of state's website.

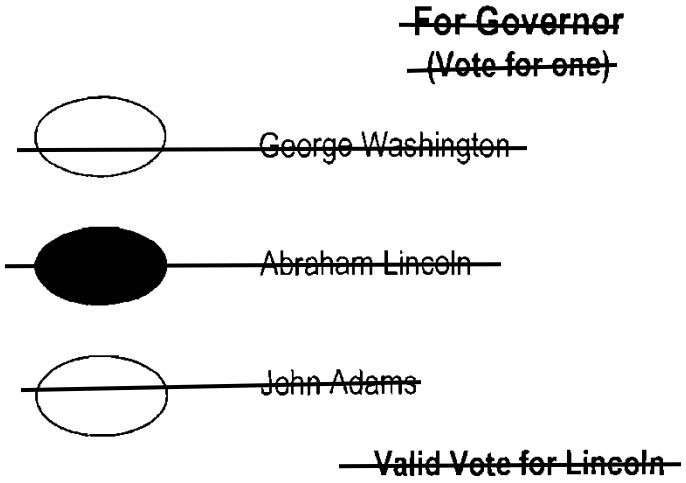
(3) Pursuant to Subsection A of Section 1-14-18 NMSA 1978, the [~~absent voter~~] recount precinct board shall send the certificate of recount or recheck executed pursuant to Subsection D of Section 1-14-16 NMSA 1978 to the proper canvassing board.

(4) In the event of a recount or recheck conducted pursuant to Section 1-14-14 NMSA 1978, if no error or fraud appears to be sufficient to change the winner, the county clerk may provide documentation of costs to the secretary of state, or directly to the candidate, for reimbursement from the money provided pursuant to Section 1-14-15 NMSA 1978.

[1.10.23.10 NMAC - Rn & A/E, 1.10.22.11 & 12 NMAC, 10/2/2008; A/E, 11/3/2008; A/E, 10/15/2010; A, 4/7/2020]

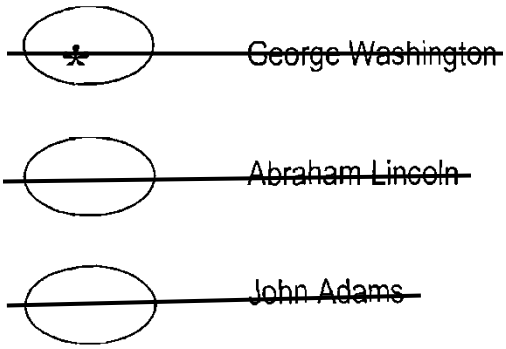
1.10.23.12 [~~STANDARDS FOR WHAT CONSTITUTES A VOTE:~~ ~~All optical scan ballots that are read by a ballot scanner shall be counted in accordance with applicable provisions of the New Mexico Election Code. The following standards shall apply in determining whether a ballot has been properly voted and whether a vote should be counted for any office or ballot question when counting ballots by hand. In the event of a recount, a court should provide guidance as to whether the recount shall be conducted by a ballot scanner or by hand. These standards have been adopted in accordance with the New Mexico Election Code, where applicable.~~

~~**A. Optical Scan 1** - A ballot that is properly marked, as specified by the legally valid ballot instructions, in the target area for an office or ballot question shall be counted as a vote for that candidate or ballot response.~~



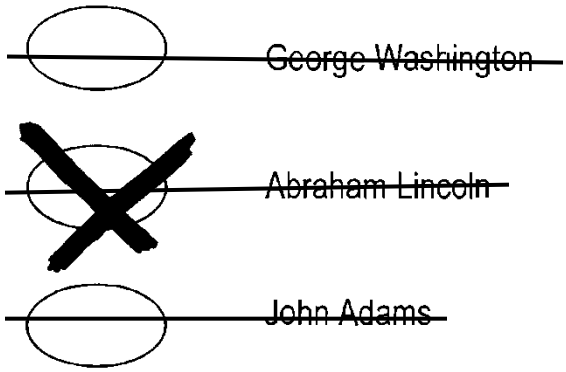
~~**B. Optical Scan 2** - A ballot containing a clear mark indicating the intent of the voter, any portion of which is contained in the target area and does not enter into another target area, shall be counted as a vote for that candidate or ballot response.~~

For Governor
(Vote for one)



Valid Vote for Washington

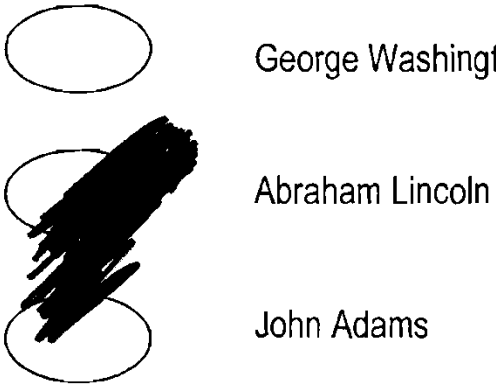
For Governor
(Vote for one)



Valid Vote for Lincoln

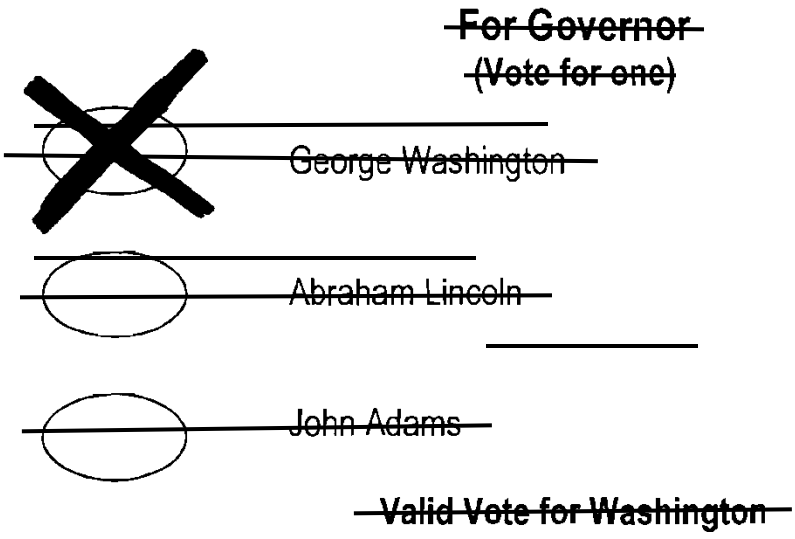
C. Optical Scan 3 A ballot that has any mark in the target area that partially extends into another target area or areas shall not be counted for that office or ballot question.

For Governor
(Vote for one)



Invalid vote

D. Optical Scan 4 - A ballot that has any mark in the target area that partially extends into an area surrounding a candidate or ballot response, other than its target area, shall be counted as a vote for the candidate or ballot response so marked.

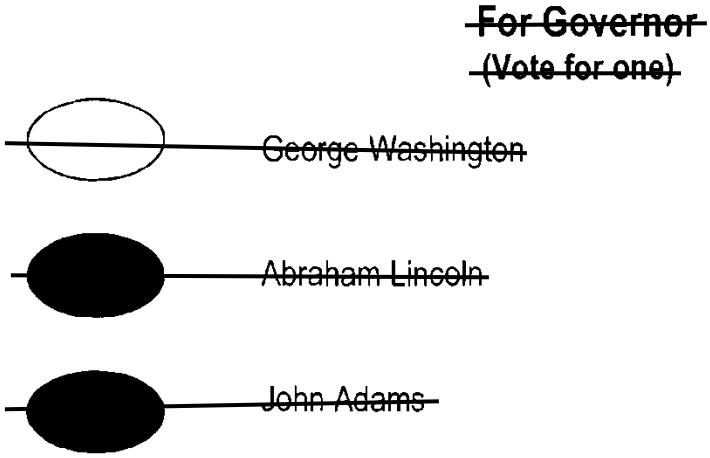


Valid Vote for Washington

E. Optical Scan 5 - A ballot properly marked with any device other than the marking device provided to the voter shall be counted.

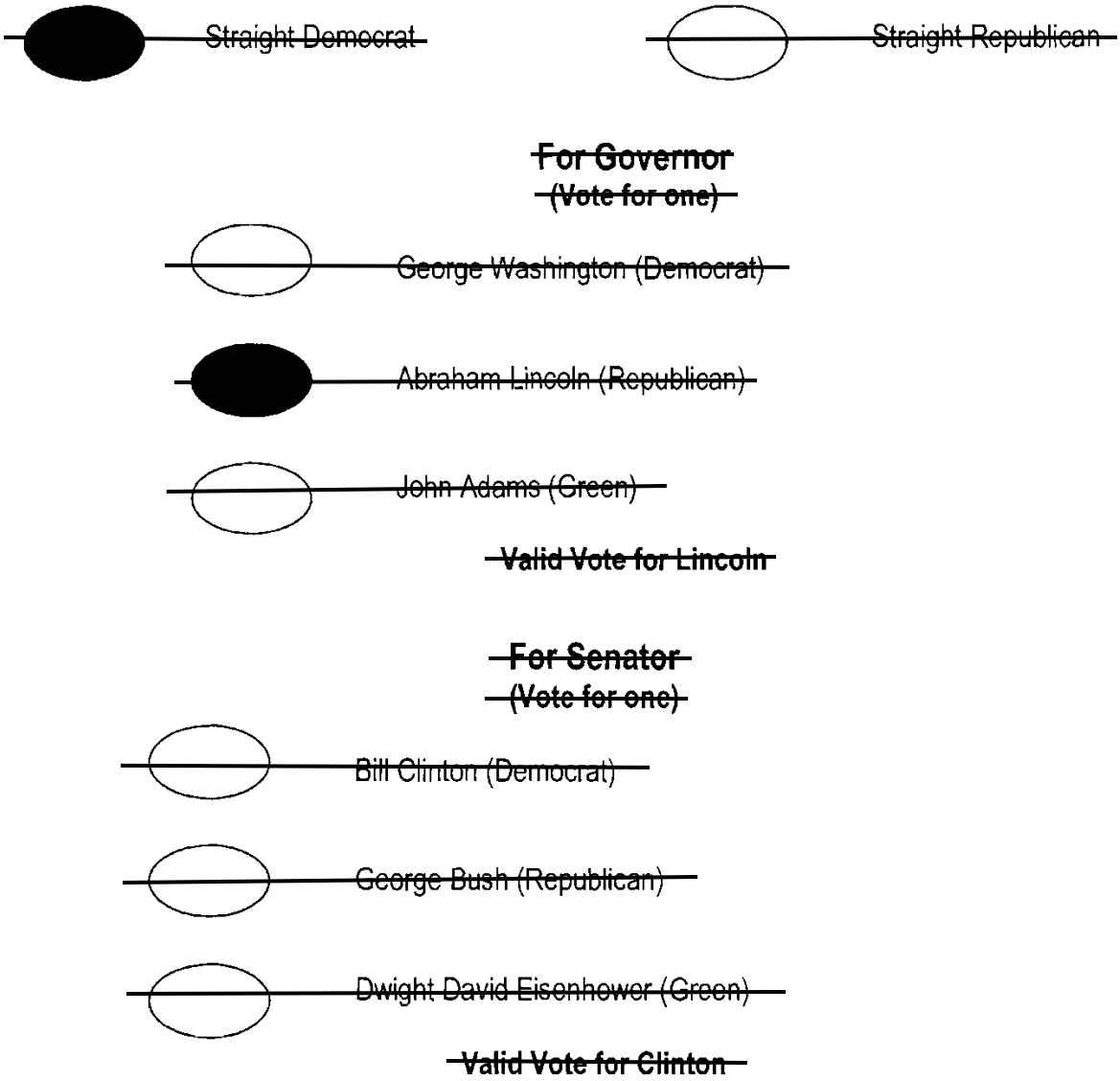
F. Optical Scan 6 - A ballot marked with more than one type of marking device shall not be counted for any office or ballot question on the ballot.

G. Optical Scan 7 - A ballot with marks for more candidates in an office or more responses to a ballot question than permitted shall be deemed an over-vote, and no vote shall be counted for that office or ballot question.

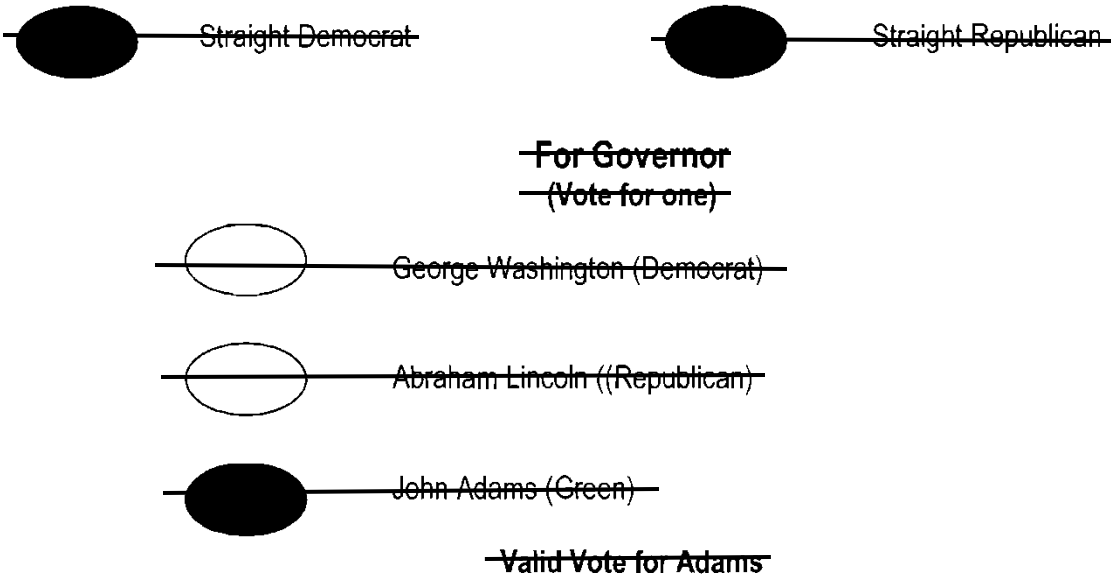


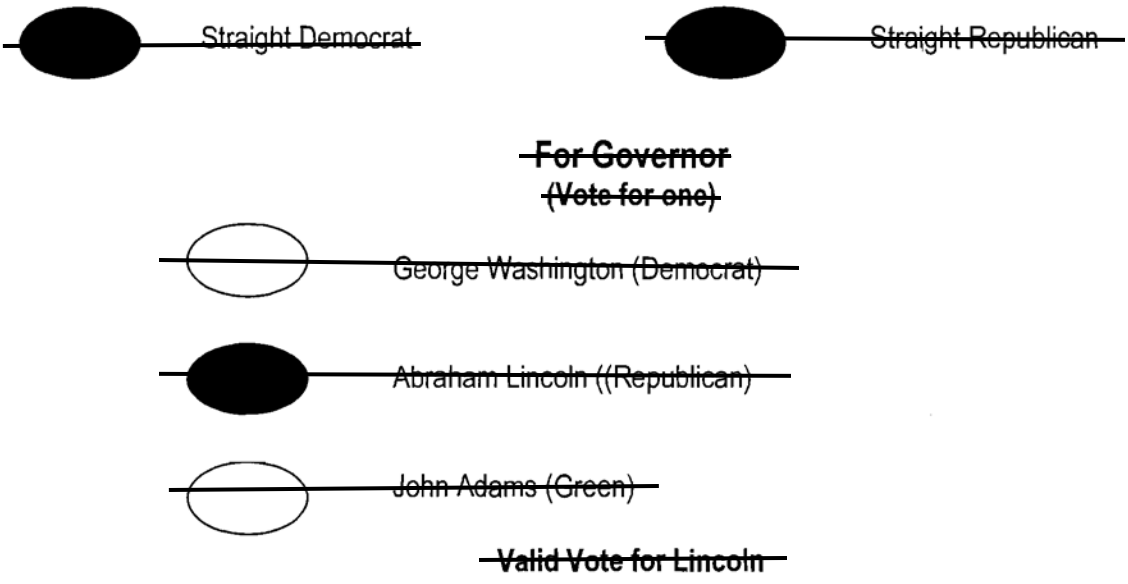
Invalid vote

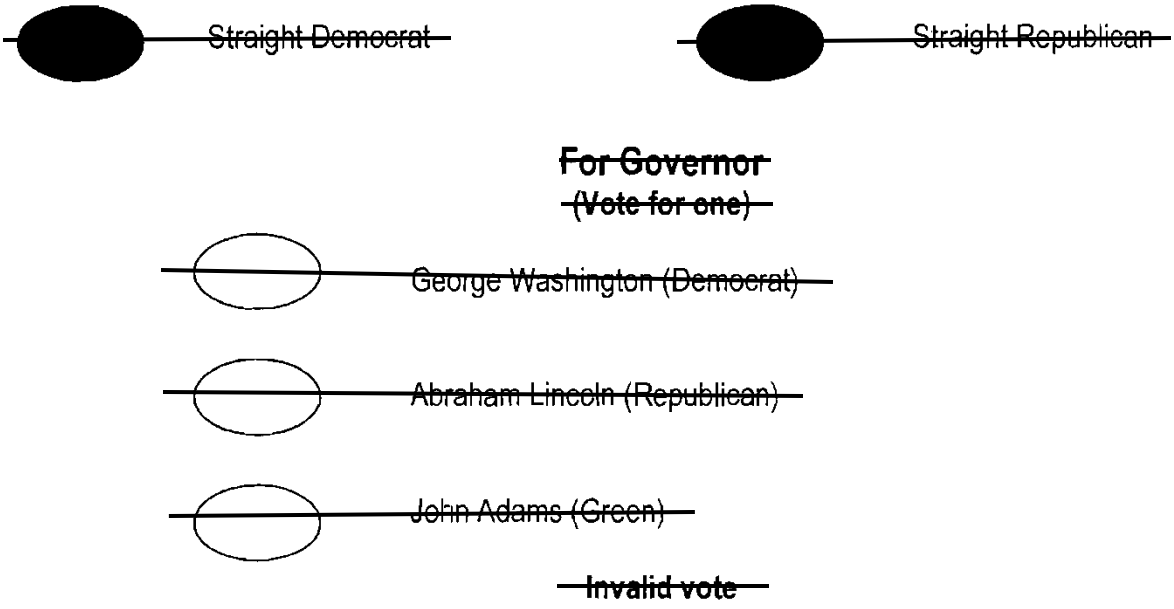
H. Optical Scan 8 - A ballot with a proper mark in the straight party target area and with additional marks for candidates or ballot responses elsewhere on the ballot shall be counted for those candidates or ballot responses properly marked outside the straight party area. For the other offices on the ballot, the ballot shall be counted for the candidates of the political party for which the voter cast a straight party vote.



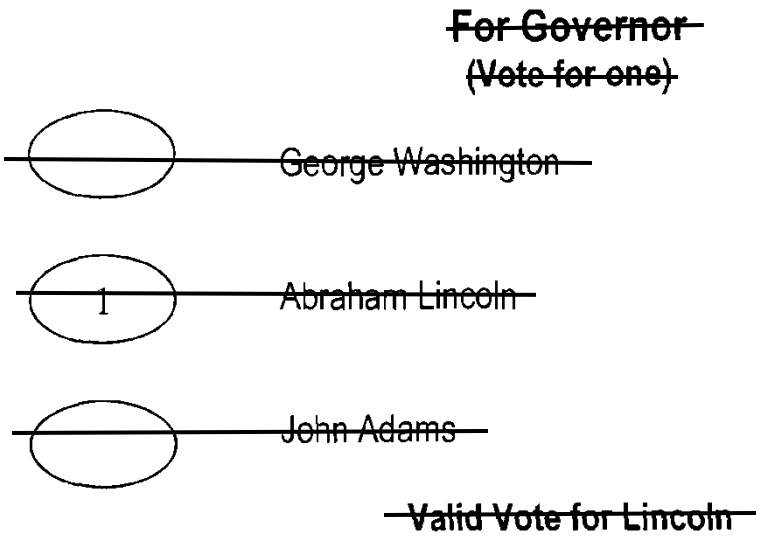
I. Optical Scan 9 - A ballot with marks for more than one party in the straight party target areas, and with additional marks in the target areas of candidates or ballot responses elsewhere on the ballot, shall be counted only for those candidates or ballot responses properly marked.


Straight Democrat
Straight Republican
For Governor
(Vote for one)
George Washington (Democrat)
Abraham Lincoln ((Republican)
John Adams (Green)
Valid Vote for Adams

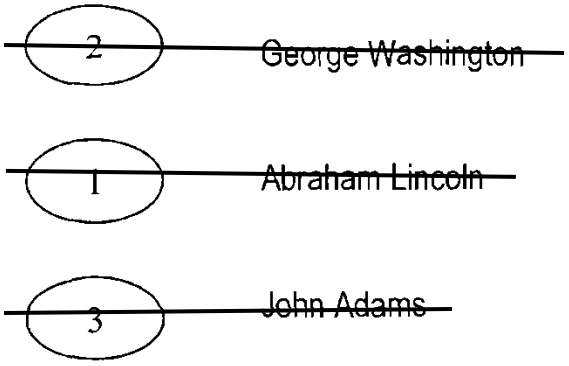

Straight Democrat
Straight Republican
For Governor
(Vote for one)
George Washington (Democrat)
Abraham Lincoln ((Republican)
John Adams (Green)
Valid Vote for Lincoln



J. Optical Scan 10 - A ballot on which writings or remarks in the target area appear to be ranking candidates (letters, numbers, etc.) shall be considered valid marks only if they do not exceed the number of candidates permitted to be elected for that office.

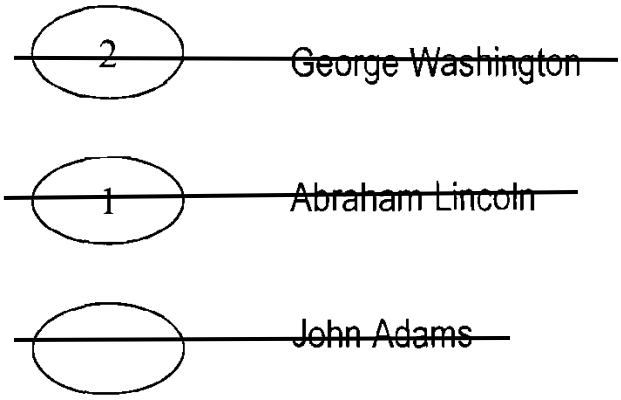


~~For Governor~~
~~(Vote for one)~~



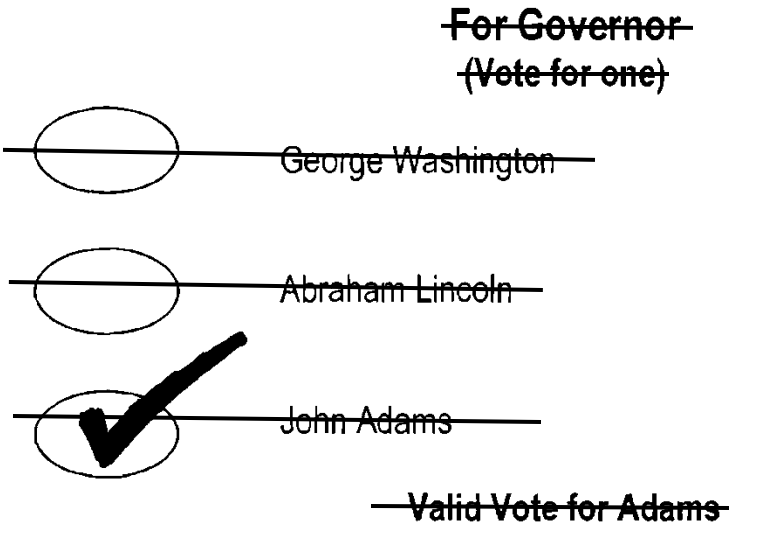
~~Invalid vote~~

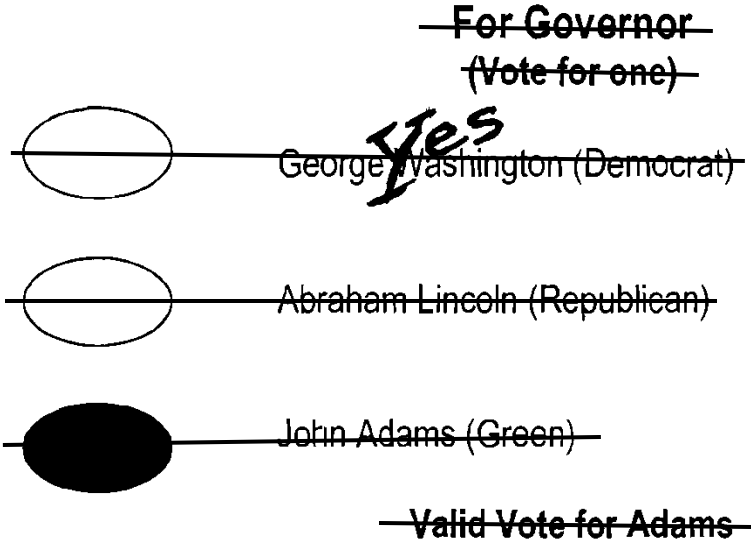
~~For Governor~~
~~(Vote for two)~~



~~Valid Votes for Lincoln & Washington~~

~~K. Optical Scan 11~~ ~~A ballot with any writings or remarks regarding one or more candidates or ballot responses shall not be counted as a vote for that office or question, unless clarified by an additional mark or marks in the target area(s) that indicate support for those candidates or ballot responses.~~

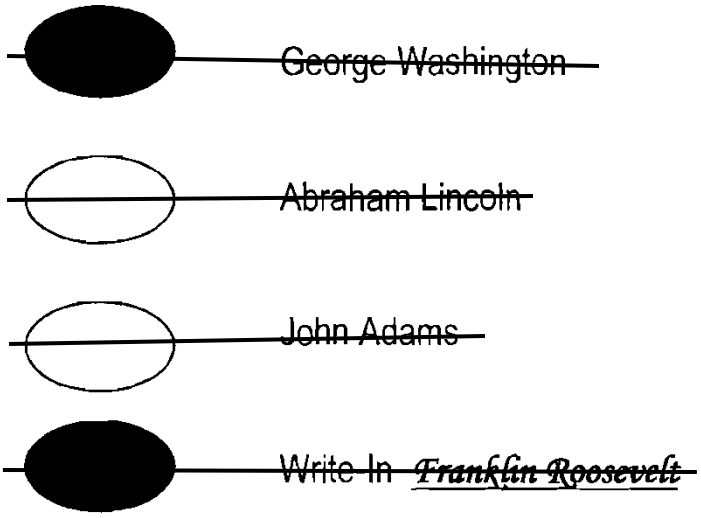




L. Optical Scan 12 A ballot on which the voter casts a vote on the ballot and properly writes in a different candidate in the write-in area shall be considered an over-vote for that office if the number of chosen candidates exceeds the number permitted to be voted for in that office and no vote shall be counted, except as provided by optical scan 13.

~~**For Governor**~~

~~**(Vote for one)**~~

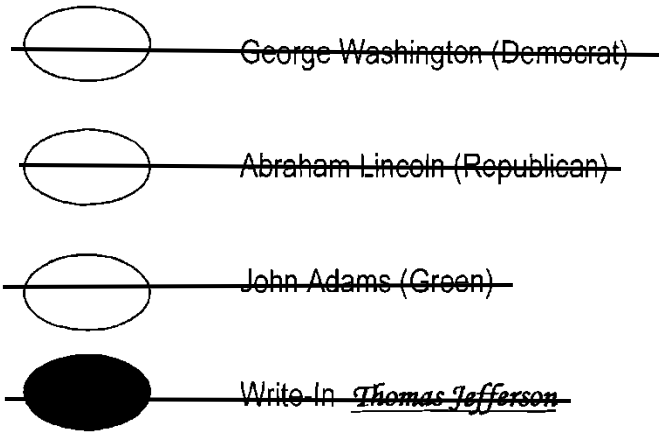


~~**Invalid vote**~~

~~**M. Optical Scan 13** - A ballot on which the voter casts a straight party vote and properly writes in a candidate in the write-in area shall be counted only for the write-in candidate in that office. For the other offices on the ballot, the ballot shall be counted for the candidates of the political party for which the voter cast a straight party vote.~~

~~**For Governor**~~

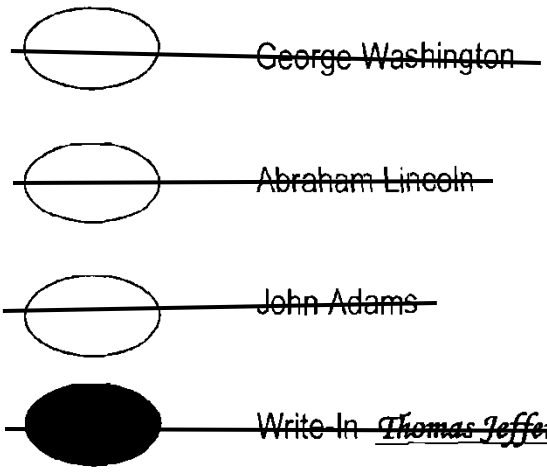
~~**(Vote for one)**~~



~~**Valid Vote for Jefferson**~~

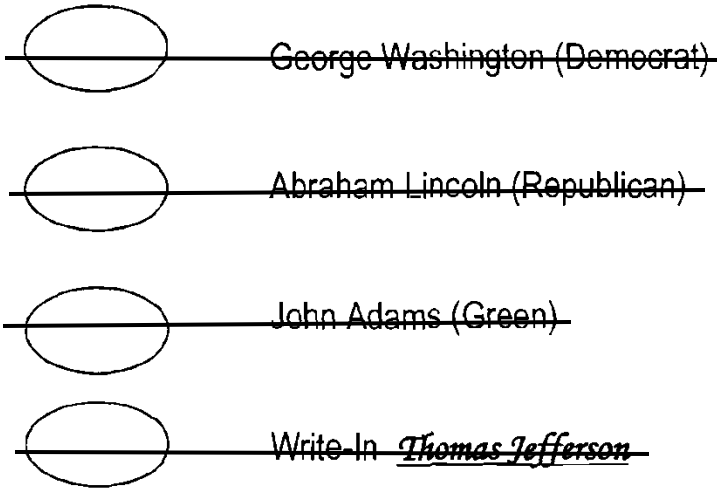
~~**N. Optical Scan 14** - A properly cast write-in vote shall contain a mark in the target area and, in the space provided, the written name of a candidate whose name does not otherwise appear on the ballot for that office.~~

For Governor
(Vote for one)



Valid Vote for Jefferson

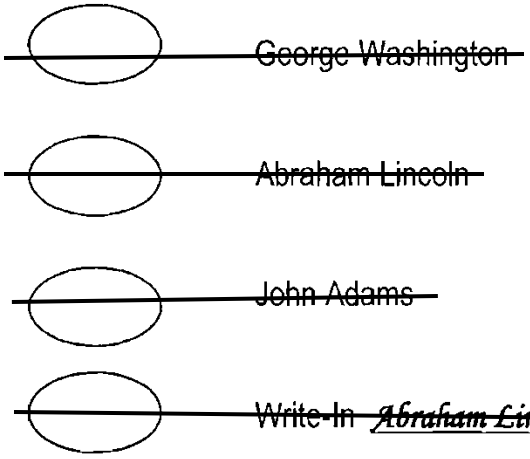
For Governor
(Vote for one)



Invalid Vote

~~For Governor~~

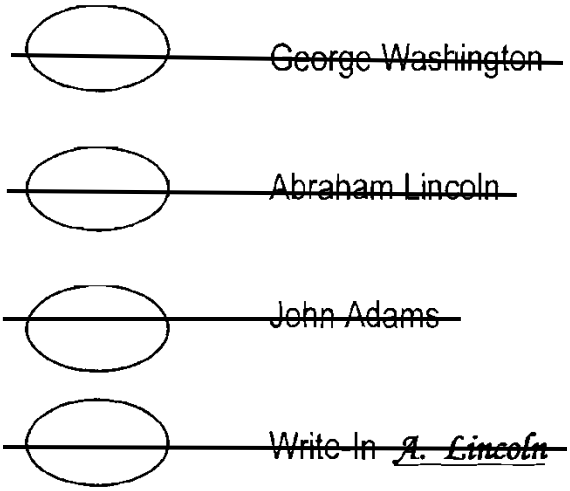
~~(Vote for one)~~



~~Invalid Vote~~

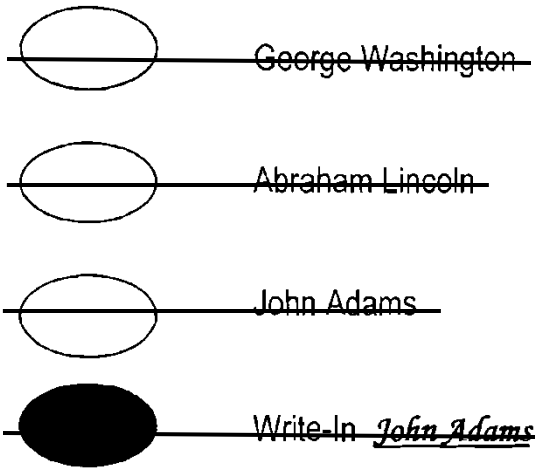
~~For Governor~~

~~(Vote for one)~~



~~Invalid Vote~~

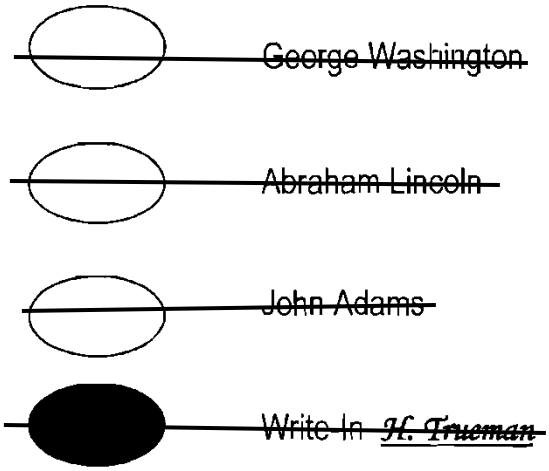
For Governor
(Vote for one)



Invalid Vote

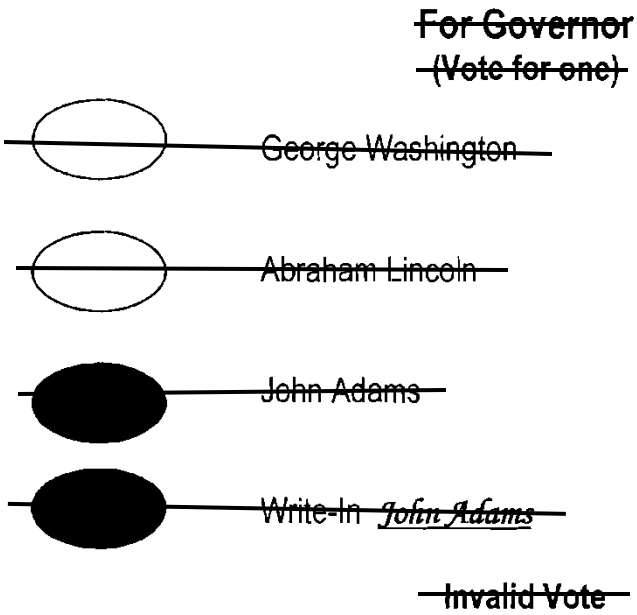
O. Optical Scan 15 - All properly cast write-in votes must be counted exactly as they appear on the ballot.

For Governor
(Vote for one)



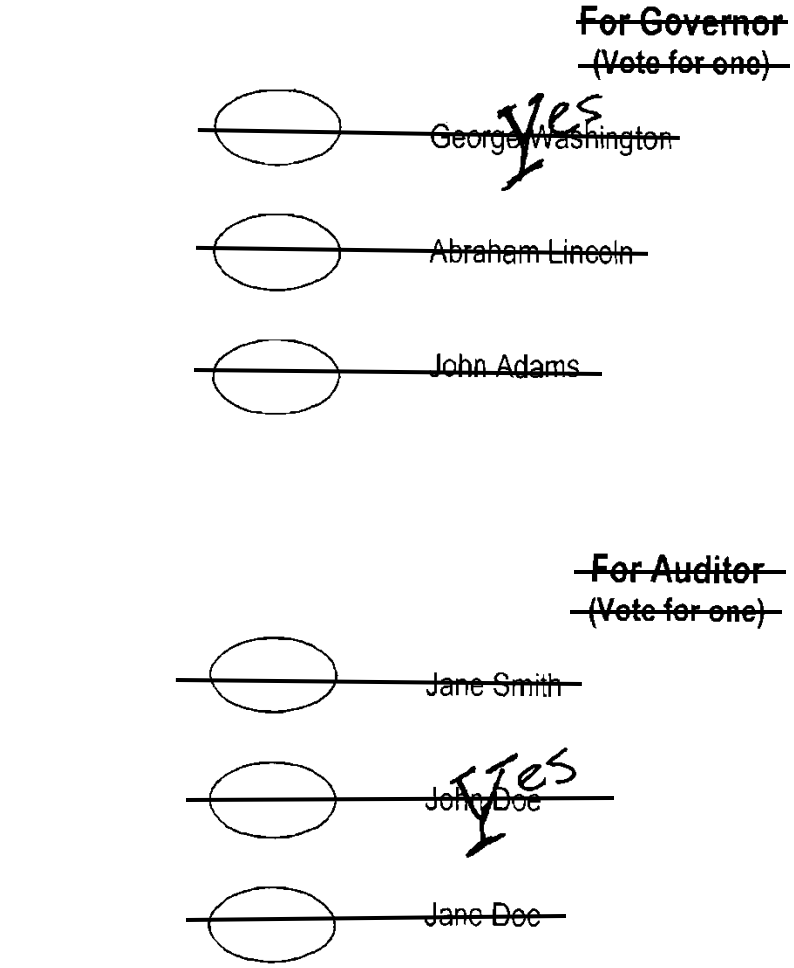
Valid Vote for H. Trueman only

P. Optical Scan 16 - If a voter designates a vote for a named candidate on the ballot and also properly writes in the same candidate in the write-in area, no vote shall count for that candidate.



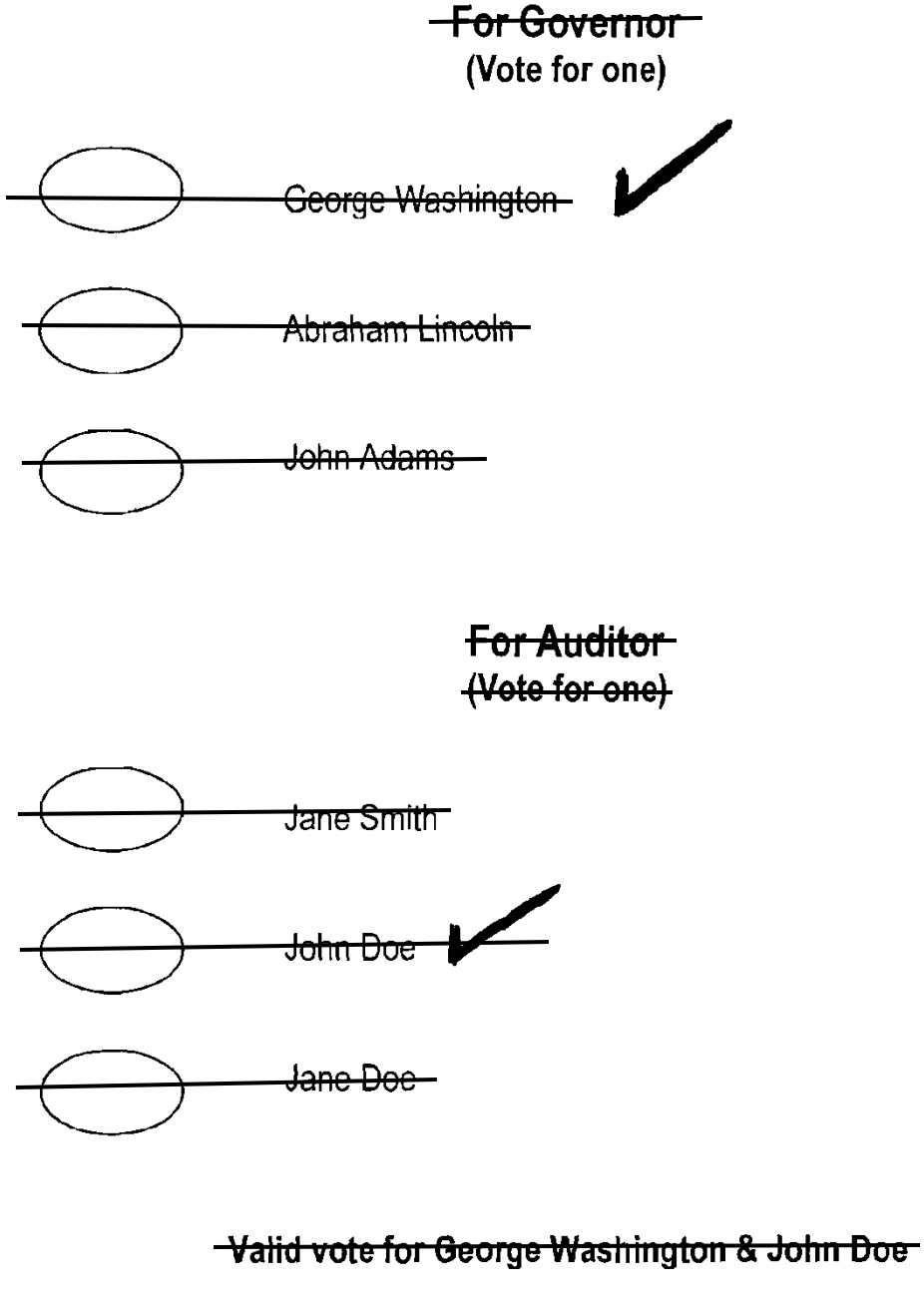
Q. Optical Scan 17 A ballot on which the voter does not mark the voting response area but instead marks the ballot in a consistent manner, such as placing some type of consistent mark (other than a circle), on or around a candidate's name, shall be counted as a vote for that candidate or ballot response.

~~Example 1)~~



~~Valid vote for George Washington & John Doe~~

~~Example 2)~~



~~Valid vote for George Washington & John Doe~~

[RESERVED]

[1.10.23.12 NMAC - N/E, 11/3/2008; Repealed, 4/7/2020]

1.10.23.13 [~~RECOUNT PROCEDURES FOR STATEWIDE AUTOMATIC RECOUNTS:~~ ~~This section applies to automatic recounts for statewide elective office in a general election when the margin between the two candidates receiving the greatest number of votes for the office, the margin between those supporting and those opposing a ballot question or the margin affecting the outcome of a nonpartisan judicial retention election is less than [one-half of one percent of the total votes cast for that office in that election]~~the margins set forth in 1-14-24 ~~NMSA 1978. Upon notification by the secretary of state to the state canvassing board that an automatic recount is required, a recount shall proceed according to the procedures set forth in these rules.~~

~~**A. Dates and times prescribed for the Recount.** Pursuant to 1-14-16 NMSA 1978, the [absent] recount voter precinct board ("the absentee board"), district judge ("district judge") and county clerk ("clerk") shall meet at the county seat on day one of the recount to recount and re-tally the ballots in the contest for commissioner~~

of public lands, and no other contest. Upon receipt of this order, county clerks shall send notices, by registered mail, of the date for the recount to the district judge for the county, the absentee board members and the county chair of each of the political parties that participated in the election for the office in question. In addition to the notices sent by registered mail, the state canvassing board strongly recommends that county clerks promptly contact, by telephone, e-mail, and all other appropriate media the district judge, absentee board members and county chairs involved in the recount. It is also recommended that there be notification to the general public in all appropriate media. The secretary of state's office shall order 500 new, unused compact flash cards ("cards") for the vote tabulators and will provide those to the counties for the conduct of the recount. In the weeks preceding the commencement of the recount, the removable storage media for the election tabulators and *results tabulating reporting* (RTR) servers will be programmed to conduct the recount of the ballots for the commissioner of public lands race. The absentee board, district judge and clerk shall meet on the date fixed, at 8:00 AM, for the recount. The recount shall continue until all ballots shall have been recounted and re-tallied. If the recount is not completed during the first day of the recount, the process shall continue until at least 5:00 PM on that day and shall continue on the second day beginning at 8:00 AM and continuing until at least 5:00 PM or until the process is completed. If the process is still not complete, the same schedule used for day 2 shall be followed each succeeding day until such time as the recount and re-tally is completed and the absentee board has certified the results to the secretary of state (Section 1-14-16 (D) NMSA 1978). All counties, with the exception of Bernalillo county, should complete the recount and re-tally not later than day 2, and shall complete the process not later than day 3. Should a continuation of the process beyond day 3 be deemed necessary, the clerk shall request an extension, in writing, to the secretary of state, providing the reasons for the extension and the ballot security measures in place. Bernalillo county should complete the recount and re-tally not later than day 4, and shall complete the process not later than day 5. Should a continuation of the process beyond day 5 be deemed necessary, the clerk shall request an extension, in writing, to the secretary of state, providing the reasons for the extension and then ballot security measures in place. The absentee board shall consist of a sufficient number of members to ensure that each time a tabulator is in operation in the conduct of the recount, whether it is for absentee ballots, early voting ballots, or Election Day ballots, a two-person team is assigned to conduct the recount on that particular tabulator. Examples follow:

(1) If a county uses five tabulators simultaneously to recount early voting ballots cast, 10 precinct board members would be required to conduct that portion of the recount.

(2) If, simultaneously, absentee ballots are being recounted on one tabulator, early voting ballots are being recounted on two tabulators, and Election Day ballots are being recounted on three tabulators, all tabulators being programmed for the respective ballot types, then 12 absentee board members would be required to be present in order to ensure the required two-person team per tabulator. County clerks shall appoint additional members of the absentee board in order to ensure the board is sufficiently staffed to complete the recount, provided that equal numbers of qualified board members from the democratic party and the republican party shall be appointed. Names and respective political party affiliations of absentee board members shall be provided to the secretary of state not later than noon, Thursday, December 4, 2014. If any absentee board members are replaced or added during the recount, the names and political party affiliations of the replaced members and of those of the new members replacing them shall be provided to the secretary of state.

B. Duties of the state canvassing board, secretary of state, presiding judge, absentee board, district judge and clerk. The state canvassing board has adopted these procedures governing the statewide recount to ensure that all ballots are treated uniformly and consistently throughout the state and that the procedures followed are uniform and consistent in each county.

(1) The presiding judge ("presiding judge") of the absentee board in each county is charged with the duty of conducting and maintaining an orderly recount following the procedures set forth in this order and under the oversight and supervision of the secretary of state, and shall maintain a record of the proceedings ("the log").

(2) The district judge, or his or her designee, is charged with maintaining the security of the ballots and election returns during the conduct of the recount.

(3) The clerk is charged with providing the tabulators, staff assistance as required by the presiding judge in zeroing machines, or other technical assistance not provided by the *dominion* technical representatives, lists of voters as required, and shall supervise review of qualified and unqualified provisional ballots and absentee-in-lieu-of ballots. The clerk shall maintain the list of watchers (Subsection I).

(4) Consistent with the provisions of Sections 1-2-1 and 1-2-2 NMSA 1978, the secretary of state shall be authorized to provide required ministerial and technical instructions as needed to implement this order.

C. Ballot Security. When the absentee board is properly convened in the presence of the district judge and county clerk, the ballot boxes and ballot containers or voting machines of the precincts involved in the

recount or recheck shall be opened. Either the district judge or the presiding judge and at least one other witness, shall witness the movement of all ballots during the recount. All movement of ballots to and from the ballot boxes shall be logged by the precinct board. Each time that ballots are removed from or returned to a ballot box, the presiding judge shall ensure that the number of ballots present are determined and ensure that that number is compared to the number of ballots that should be in that particular box. All discrepancies shall be noted by the absentee board, and the presiding judge shall report the same to the office of the secretary of state, bureau of elections.

D. Preparation; zeroing and testing procedures. The absentee board shall recount and re-tally the ballots for the office in question in the presence of the clerk, district judge or person designated to act for the district judge, and any other person who may desire to be present. The automatic recount shall be conducted pursuant to the recount procedures established in Sections 1-14-16 and 1-14-18 through 1-14-22 NMSA 1978, and further delineated in greater detail in this order.

(1) The recount will involve the machine re-tabulating and tallying of an expected number of 521,797 ballots cast, based on county canvass reports and any additional provisional or absentee ballots which may be determined to have been improperly disqualified and that may be qualified during the course of the recount.

(2) Pursuant to the express provisions of Section 1-14-24 NMSA 1978, the provisions of Section 1-14-23 NMSA 1978, do not apply to a statewide automatic recount. Therefore, the ballots in this statewide recount will be electronically tabulated using *imagecast evolution* (ICE), *imagecast precinct* (ICP) and i*magecast central count* (ICC) voting systems, which shall be certified according to the procedures set forth below.

(3) In each instance where an ICE or ICP is being used, the clerk and the presiding judge shall ensure that only new and unused cards programmed by and provided by *dominion voting* are employed for the recount, and that each is clearly marked for use in recounting and re-tabulating for either "absentee," "early voting" or "Election Day" ballots. The clerk and presiding judge shall confirm such markings in the log.

(4) In each instance where an ICE or ICP is being used, the clerk and the presiding judge shall ensure that each tabulator present for use in the recount, or designated as a back-up tabulator, is clearly marked for either "absentee," "early voting" or "Election Day" ballots, and that only those ballots and those cards designated for the corresponding method of voting shall be inserted into any tabulator. Upon ensuring that tabulator identification has been completed, the clerk and the presiding judge shall confirm such markings in the log.

(5) In each instance where an ICC is being used, the clerk and presiding judge shall ensure that the correct file for each method of voting is uploaded, and that each ICC is labeled as early voting 1, early voting 2, Election Day 1 and election 2, as the case may be. Counties with two ICCs or fewer will ensure the labels conform to the method of voting being recounted.

(6) The recount shall be conducted using newly acquired removable media storage devices for the tabulators which shall be programmed to accept all precincts in the county. A team of two members of the absentee board, one from each of the major political parties involved in the recount, shall be assigned to each tabulator.

(7) A zero summary report ("zero tape") shall be generated and certified by the absentee board in the presence of the clerk and a designated representative of a candidate or political party who may desire to witness the certification, prior to tabulating any ballots on any machine. This designated representative shall be chosen from the appointed discussed in Subsection I below. Remove alpha and parentheses next

(8) One hundred (100) ballots of the ballot type (absentee, early voting and Election Day) to be recounted on each tabulator shall be used to test the accuracy of each tabulator to be used in the recount. 100 absentee ballots shall be inserted into the absentee tabulator, 100 early ballots shall be inserted into each early vote tabulator and 100 Election Day ballots shall be inserted into each Election Day tabulator. The same ballots for each shall have been hand-tallied by the absentee board prior to being fed into the tabulators. If the vote totals on the tabulator tape match the hand-tally totals for each candidate, the recount may then proceed with the machine recount. If the count does not match, the presiding judge shall supervise a re-tally of the hand count at least twice to ensure that no error has occurred in the hand tally. If after the presiding judge is certain that the tabulator and the hand-tally counts cannot be reconciled on the tabulator being tested, new removable storage media cards shall be programmed for that ballot type and inserted in a new tabulator, and shall be tested. Only those tabulators that match the hand-tally with 100% accuracy shall be used. Write as one hundred percent

(9) If 100 ballots of a particular ballot type were not voted during the November 4, 2014 general election, then the test shall be conducted using all those ballots available from that particular ballot type, and if the tabulator tape matches the hand-tally of those same ballots the totals produced in that process shall constitute the final totals of that particular portion of the recount, and that portion shall be concluded.

E. Recounting and re-tallying of ballots. The ballots shall be re-tabulated by precinct and ballot type (absentee ballots, early voting ballots and Election Day ballots).

(1) Where ICE and ICP units are in use, the absentee board two-person team conducting each recount on each ballot type on each tabulator shall closely preview each ballot. Those ballots which do not show a mark in a voting target oval (an oval alongside one of the two candidates, indicating a choice for a candidate) but which do provide an indication of voter intent, such as a circled name, check mark beside a candidate's name or other similar marking, shall be set aside for hand-tallying. All other ballots shall be inserted into the tabulator. Once all the ballots for the precinct or *voting convenience center* (VCC) being recounted have been inserted into the tabulator, the absentee board shall then hand-tally the ballots that have been set aside for review. Those ballots shall be adjudicated according to procedures shown in Subsection H.

(2) When all ballots to be tabulated in that vote category (absentee, early, Election Day) have been either placed in the tabulator or hand-counted, the presiding judge shall close the polls on the tabulator and generate a results tape. The total of hand-tallied ballots and machine-tallied ballots shall be compared to the existing results - the official canvassed results of the 2014 general election, and any discrepancies shall be noted by the absentee board.

(3) When all ballots in all categories have been tabulated the clerk shall upload the results from the removable storage media (cards) to the secretary of state's *integrated reporting and integrity system* (IRIS).

(4) Where ICC units are in use, the two-person teams shall use the adjudication program provided for those ballots with ambiguous marks or over votes, applying the same standards outlined in Subsection H.

(5) The existing removable media storage devices from the 2014 general election shall be preserved in their current state, and shall not be handled, examined, erased, or altered, and shall be retained by the clerks, including the ballot images, all audit logs and audit marks. In the event any voted ballots are unavailable or incomplete for the recount, the district judge, in consultation with the clerk, may order that a results tape or ballot images be regenerated from the removable storage media that was originally used to tabulate the voted ballots.

(6) Each clerk shall ensure that tabulators, sufficient in number to allow for the completion of the recount, are available in each county beginning on day one of the recount and concluding not later than day 3, or in the case of Bernalillo county not later than 5:00 PM, day 5. Should a continuation of the process beyond those scheduled dates be deemed necessary, the clerk shall request, in writing to the secretary of state, an extension, providing the reasons for the extension and detailing the ballot security measures in place.

(7) As each box of ballots is completely tabulated in the recount, the absentee precinct board shall replace the ballots in the original ballot box and re-lock it. The absentee precinct board shall certify to the secretary of state the results of the recount. The district judge, or the person designated to act for the district judge, and clerk shall also certify that the recount was made in their presence. The secretary of state shall have the authority to extend the time set aside for the statewide recount on a county-by-county basis, if extraordinary circumstances are deemed to exist.

F. Provisional ballots. Any ballot boxes, envelopes or containers that hold provisional or absentee-in-lieu-of ballots shall be opened one at a time.

(1) The presiding judge shall count the total number of provisional and absentee-in-lieu-of ballots in each polling location and the number shall be compared to the previously certified signature roster count in that polling location and noted. Any discrepancies in the number of ballots shall be immediately reported to the clerk, district judge and secretary of state's office, bureau of elections. Section 1-4-22 NMSA 1978, states "the secretary of state shall issue rules governing and allowing procedures for reviewing the qualification of provisional ballot envelopes, absentee and other paper ballots in case of a contest or recount of election results. All rejected provisional paper ballot envelopes shall be included in any contest or recount of election results, and a review of the qualifications of provisional ballots envelopes shall occur in a recount."

(2) The clerk shall review the qualification of all rejected provisional and absentee in-lieu-of ballots. Reasons for rejected ballots shall be clearly stated and detailed and shall be noted on the ballot application or other appropriate form or record. If a previous record of reasons for rejected ballots exists on the ballot application or other appropriate form, new comments or details that may be added by the clerk shall be added in blue pencil, or in such a manner as to ensure the new comments are distinguishable from previous records.

(3) The absentee board shall review the qualification of all rejected absentee ballots. Reasons for rejected ballots shall be clearly stated and detailed and shall be noted on the ballot application or other appropriate form or record. If a previous record of reasons for rejected ballots exists on the ballot application or other appropriate form, new comments or details that may be added by the presiding judge shall be added in blue pencil or in such a manner as to ensure the new comments are distinguishable from previous records.

(4) The clerk shall not disqualify any provisional ballot or absentee-in-lieu-of ballot because the voter's address on the affidavit of the outer provisional ballot envelope does not match the voter's address on the certificate of registration, provided the clerk can identify the voter with other information provided on the affidavit or certificate of voter registration attached to the provisional ballot outer envelope.

(5) The clerk shall not disqualify a provisional or absentee-in-lieu-of ballot because the voter has used an abbreviated name, abbreviated address, middle name, middle initial or suffix, provided the clerk can identify the voter with other information provided on the provisional ballot outer envelope or certificate of voter registration attached to the provisional ballot outer envelope. The clerk shall not disqualify a provisional or absentee-in-lieu-of ballot because the voter did not sign both the affidavit and the polling place roster if the voter provided a valid signature and the clerk can identify the voter with the information provided on the affidavit on the outer envelope or certificate of voter registration attached to the provisional ballot outer envelope.

G. Hand-tallied ballots. Any ballots that cannot be read by a ballot tabulator shall be hand-tallied by the absentee board. (See Subsection H, as applicable.)

(1) The absentee board shall utilize tally sheets provided by the bureau of elections showing only the commissioner of public lands race, with options for under votes and over votes. The two-person counting team for hand-tallying shall be a democrat and a republican. The team shall ensure that the ballot type (Election Day, early, absentee, provisional, or absentee-in-lieu-of) and the precinct number are noted on each hand-tally sheet.

(2) The reader shall read the vote to the marker and the marker shall observe whether the reader has correctly read the vote. The marker shall then mark the tally sheet of the appropriate precinct and the reader shall observe whether the marker correctly marked the tally sheet. Upon completion of the hand-tally sheet, the marker shall add the total number of votes for each candidate, as well as any under votes and over votes. The reader shall confirm those numbers. Both the marker and the reader shall sign the tally sheet.

H. Ambiguous marks. If a ballot is marked indistinctly or not marked according to the instructions on the ballot, the counting team shall count as a vote as provided for in Section 1-1-5.2 NMSA 1978. A vote shall be counted if it is:

(1) marked in accordance with the ballot instructions;

(2) the preferred candidate's name is circled;

(3) there is a cross or check within the voting response area for the preferred candidate; or

(4) the presiding judge and election judges for the absentee precinct board unanimously agree that the voter's intent is clearly discernable. In no case shall the counting team mark or remark a ballot. The presiding judge shall inform the counting team of the procedures to be followed. The presiding judge shall ensure that the counting team is sensitive to the need to handle ballots in a manner that facilitates possible reviews and inspections. The counting team shall not use black ink pens or markers to mark the tally sheets and shall only use blue or red pencils.

I. Watchers.

(1) Appointment. Each candidate and each political party participating ("organization") in the recounted race shall be entitled to have watchers present during the recount, provided that watchers shall not disturb or obstruct the conduct of the recount. Watchers may be appointed for each county. The list of watchers appointed by each organization shall be provided to the clerk not later than noon, Friday, December 5, 2014.

(2) Counties other than Bernalillo county. The county chairs for the democratic and republican parties of each county may appoint a watcher to be present during the recount for each method of voting: absentee voting recount, early voting recount, and Election Day voting recount. Each of the candidates may appoint a watcher to be present in each county in the same manner as provided for the political parties. Substitute watchers may be employed, but no more than one watcher for each organization, or a maximum of 12 individuals may act as watcher at one time (four for each method of voting recount). No watcher may be appointed who is a sheriff, deputy sheriff, marshal, deputy marshal, or state or municipal police officer. Nor may a watcher be a member of the judiciary or a member of the staff of a judicial officer or the office of the district attorney.

(3) Bernalillo county. Watchers may be appointed in the same manner as described in Paragraph (2) of Subsection I above, except that each organization may have a maximum of three watchers for the absentee ballot recount, and two each for the early vote ballot recount and Election Day ballot recount. No more than 12 watchers may be present for the absentee vote ballot recount at any one time. No more than eight watchers may be present for the early vote ballot recount. No more than eight watchers may be present for the Election Day ballot recount.

(4) Identification. Watchers shall identify themselves to the clerk or clerk staff, and clerk staff shall verify watchers' appointments on the list provided by the organization. At all times while present at the recount proceedings, a watcher shall wear a self-made badge, nameplate, or other suitable means of identification,

~~designating himself or herself as an authorized watcher on behalf of the organization he or she represents. Substitute watchers must observe the same rule, and watchers leaving the area shall remove their identification.~~

~~**(5) Permitted activities.** A watcher, upon ensuring his or her identifying badge is visible to the presiding judge, shall be permitted to be present at any time from the time the absentee precinct board convenes at the recount location until the completion of the absentee board's duties. A watcher may view, but not handle, signature rosters, precinct or VCC voter lists, ballots and provisional ballot applications. He or she may view each tabulator to ensure that the public counter is at zero, and to ensure the zero tape contains no votes and that there are no voted ballots in the voting machine bins, and the results tape which is produced for each tabulator in the course of the recount. The watcher may also make and preserve for future reference written memoranda of any action or omission on the part of any member of the absentee board, or other official present at the recount.~~

~~**(6) Questions.** While a watcher shall not be permitted to interfere with or disrupt the proceedings, he or she may interpose reasonable questions to the presiding judge. The presiding judge is charged with conducting the recount in accordance with the provisions set forth in this order, pertinent provisions of the Election Code and 1.10.23 NMAC, as applicable. Determinations made by the presiding judge in consultation with the absentee board shall be adhered to in the course of the recount proceedings. The presiding judge may refer questions, if he or she deems it necessary, to the secretary of state. However, questions or discussions should not, except in rare instances, require any pause in the recount proceedings. In the event a watcher or candidate or party representative is not satisfied with a decision taken by the presiding judge, the watcher may file a statement, report, or question, in writing, to the office of the secretary of state. Such report or question shall outline in detail the concerns or issues in question and shall be forwarded immediately via email or other appropriate media available. However, no pause in the recount proceedings shall take place unless the presiding judge so determines.~~

~~**(7) Provisional ballots.** Watchers may review qualification and disqualification decisions of the clerk, and may pose reasonable questions regarding the qualifications. Determinations made by the clerk shall be adhered to in the course of the recount proceedings. The clerk may refer questions, if he or she deems it necessary, to the secretary of state. In the event a watcher or candidate or party representative is not satisfied with a decision taken by the clerk, the watcher may file a report, in writing, to the office of the secretary of state. Such report shall be forwarded via email immediately, but no pause in the recount proceedings shall take place, unless the presiding judge so determines.~~

~~**(8) Prohibited activities.** Watchers shall not be permitted to perform any duty of absentee board member; shall not handle the ballots, signature rosters, checklist of voters or voting machines, or take any part in the recounting or re-tallying of the ballots; shall not be allowed to view a voter's full date of birth or any portion of the voter's social security number; and shall not interfere with the orderly conduct of the recounting or re-tallying of ballots.~~

~~**J. Preservation of the record.** Upon completion of the recount and the certification of the results to the secretary of state, the clerk shall take all measures necessary to preserve the record of the recount proceedings, including all ballots cast, the identity of the tabulators used and the ballots contained therein, the cards and the identity of the cards, hand-tallied ballots, and all other categories of ballots; including all records, notes, observations and provisional ballots accepted and rejected. The clerk shall ensure that all the above records are locked and secured in a secure location. The clerk shall preserve all records for a minimum of 22 months from the date the results of the recount are certified to the secretary of state, or until the office of the secretary of state provides further information regarding their disposition.~~] **[RESERVED]**

[1.10.23.13 NMAC - N/E, 12/2/2014; Repealed, 4/7/2020**]**

[~~1.10.23.13 NMAC is being adopted and filed pursuant to Section 1-12-4 NMSA 1978. As it is an emergency in nature, upon filing, this section will become immediately effective without public hearing or publication. It is intended to be temporary and shall expire at the conclusion of the recount and no more than 30 days from the effective date~~.]