

**WAC 434-261-086 Statewide standards on what is a vote.** (1) Pursuant to 42 U.S.C. § 15481(a)(6) and *Bush v. Gore*, 531 U.S. 98 (2000), the following standards determine whether irregular marks on a ballot constitute a valid vote that may be counted.

(a) Target area. Any marks made in the target area shall be counted as valid votes, with the exceptions below. Any marks made outside of the target area shall be valid only if they form a pattern of similar marks as outlined in (b) of this subsection, or qualify as written instructions in (e) of this subsection. Marks that trace or outline the target area are not valid votes unless they form a pattern of similar marks as outlined in (b) of this subsection. The following marks in the target area are exceptions that are not valid votes:

- (i) Obvious stray marks;
- (ii) Hesitation marks;
- (iii) Parts of written notes; and
- (iv) Corrected votes, as described in (c) and (e) of this subsection.

(b) Pattern of similar marks. Marks made outside of the target area shall be counted as valid votes as long as those marks form a pattern of similar marks. All races and issues for which the voter has indicated a choice outside the target area must have a similar mark.

(i) Marks made outside of the target area may be counted as valid votes even if one pattern of similar marks is used on one page of the ballot and another pattern of similar marks is used on another page of the ballot.

(ii) Marks made outside of the target area shall be counted as valid votes if one pattern of similar marks is used for measures and another pattern of similar marks is used for candidate races.

(iii) If some marks are in the target area and some are not, but the same type of mark is used, all such marks shall be counted as valid votes.

(iv) If the marks strike through candidate names or ballot measure responses in a pattern of similar marks throughout the ballot, all such marks shall be counted as valid votes.

(v) A mark outside the target area on a ballot that contains only one race or measure is not required to form a pattern.

(c) Corrected votes.

(i) If the voter has followed the instructions for correcting a vote, the stricken vote shall not be counted.

(ii) If a second choice is marked, it shall be counted as a valid vote. If a second choice is not marked, the race shall be considered undervoted.

(iii) If the voter has marked two target areas and placed an 'X' or slash over one of the marked areas, the choice without the 'X' or slash shall be counted as a valid vote.

(d) Not a correction. If the voter has both marked a choice correctly and placed an 'X' in the same target area, but has not marked a second target, it shall be counted as a valid vote. Changes made by the voter to wording printed on the ballot will not invalidate votes cast for that race or measure.

(e) Written instructions. If the voter has attempted to vote or correct a vote by providing written instruction regarding his or her

intent, it shall be counted as the voter instructed. Written instructions can include words, circles, lines, or arrows.

(f) Identifying marks. Marks identifying the voter, such as initials, signatures, or addresses do not disqualify a ballot.

(g) Overvotes. Races or issues that have more target areas marked than are allowed are overvotes. No votes for that race or issue shall be counted. An exception is write-in votes for a candidate already printed on the ballot, as provided in (i) of this subsection.

(h) Write-in: Blank target area. If a name is written on a write-in line, it shall be counted as a valid write-in vote regardless of whether the corresponding target area is marked.

(i) Write-in: Already on the ballot. If the name of a candidate who is already printed on the ballot is written in, that vote shall not be tallied as an overvote, but shall be counted as a valid vote for the printed candidate. This applies even if both target areas are marked or no target areas are marked.

(j) Write-in: Name variations. If a write-in vote is cast for a declared write-in candidate using a commonly recognizable nickname or spelling variation, it shall be counted as a valid vote for that candidate.

(k) Write-in: Blank line. If the write-in target area is marked, but no name is written on the line, it shall not be counted as a valid vote, even though it may be tallied as a write-in vote by the tabulation system.

(l) Write-in: Blank line and candidate. If a candidate's target area is marked, and the write-in target area is marked but no name is written on the line, it shall not be tallied as an overvote, but shall be counted as a valid vote for the printed candidate.

(m) Write-in: Name combinations. If a write-in vote is cast for a candidate with a combination of names already on the ballot, it shall NOT be counted as a vote for either printed candidate, but rather shall be counted as a valid vote for the name as written.

(n) Write-in: (~~Overvotes~~) Candidate and write-in response area. If a candidate's target area is marked, the write-in target area is also marked, and something other than that candidate's name is written in the write-in response area, it shall be counted as an overvote and not a valid vote for any candidate. (~~This applies whether or not the target area for the write-in is marked.~~) If a candidate's target area is marked and the write-in target area is not marked, it shall be counted as a valid vote for the marked candidate. If the voter's intent cannot be ascertained, the ballot shall be referred to the canvassing board.

(o) Write-in: Not eligible. A write-in vote for a race not appearing on the voter's ballot shall not be counted.

Exception: If a provisional ballot has been cast and the voter has written in an office or measure that is not on the ballot, that vote shall be counted if it is determined, based on the voter's registration, that he or she is eligible to vote for that office or measure.

(p) Write-in: Vote in the wrong place. A write-in vote for a race appearing elsewhere on the ballot shall be counted as a valid vote, as long as all other requirements are fulfilled and the office, position number and political party, if applicable, are clearly indicated.

(q) Messy marks. When otherwise valid votes marked in a target area partially extend into the response area, it shall be counted as a vote if most of the mark is in the target area and intent can easily be discerned.

(r) Pattern of partisan voting. Voter intent in any single contest shall not be determined based on a pattern of partisan voting on the ballot.

Exception: On a federal write-in absentee ballot (FWAB) in which the voter has not written in a candidate's name but has written in the name of a political party, the written instructions may be counted as a vote if the canvassing board can discern that a candidate's party preference is consistent with the voter's instructions. The canvassing board shall not count the instructions as a vote if no candidate's party preference is consistent with the voter's instructions, or if multiple candidates' party preferences are consistent with the voters' instructions.

(s) Anything else. Voter intent on questionable marks not covered by the rules in this manual must be determined by county canvassing boards according to all applicable laws of the state of Washington and the canvassing board manual. Where more than one rule may apply, the county canvassing board has authority to determine which rule is most appropriate.

(2) The secretary of state shall publish an illustrated version of these standards in each optical scan and digital scan voting system used in the state. The secretary of state shall distribute the illustrated version to each county canvassing board and post it on the web site.

(3) The secretary of state shall periodically review and update the manual as necessary, and seek input from county canvassing boards and other interested parties to ensure that the standards remain current and comprehensive.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

**WAC 434-261-102 Resolving ballots on digital scan vote tallying systems.** In counties tabulating ballots on a digital scan vote tallying system, two staff designated by the auditor's office must resolve each ballot((s)) identified as requiring resolution. Staff resolving ballots must have completed training on voter intent rules as outlined in WAC 434-261-086. A log of the resolutions must be printed linking staff conducting the resolutions to the ballots resolved. The log must be signed by the two staff.