

31 KAR 6:030. Uniform definition of a vote.

RELATES TO: KRS 117.265, 117.379, 117.381, 42 U.S.C. 15481

STATUTORY AUTHORITY: KRS 117.015(1), 42 U.S.C. 15481(a)(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. 42 U.S.C. 15481(a)(6) requires each state to adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the state. This administrative regulation establishes those standards.

Section 1. Definitions. (1) "Accessibility device" means any mechanism:

(a) Used to aid the voter in casting a vote for a candidate or an answer to a question on the ballot; and

(b) That is approved pursuant to KRS 117.379 and 117.381.

(2) "Ballot" is defined by KRS 117.375(6).

(3) "Ballot label" is defined by KRS 117.375(5).

(4) "Direct recording electronic voting system" or "DRE voting system" means a computer-driven unit that counts votes cast by a voter through the use of a touchscreen, a button, or an approved accessibility device, and that processes and records the data by means of internal memory devices.

(5) "First name" means an individual's name or names given at birth, as distinguished from a family name or surname.

(6) "Name" means one (1) or more first names coupled with one (1) or more surnames.

(7) "Nickname" means a shortened version of an individual's name or a descriptive or alternative name, in addition to or instead of the first name or surname of an individual.

(8) "Overvote" means a voter has made more than the permitted number of selections in a single race except when a voter casts a vote using a straight party option and votes for an opposing candidate in a particular race.

(9) "Scan voting system" means a tabulating device that reads paper ballots by detecting voters' marks by electronic means.

(10) "Surname" means the family name bestowed at birth, acquired by marriage, or legally adopted by choice.

(11) "Touchscreen" means a screen on a DRE voting system that the voter touches to enter selections in casting a ballot in an election.

(12) "Write-in vote" means a vote on a ballot on which the voter writes, types, or uses an approved accessibility device to record, the surname of an eligible write-in candidate in the space reserved on the ballot for write-in votes and, on a paper ballot, properly marks the oval or box or connects the arrow according to the directions provided to the voter.

Section 2. A ballot may be paper or electronic.

Section 3. Definition of a Vote for the Direct Recording Electronic Voting System.

(1) A vote on a direct recording electronic voting system shall be the choice made when a voter selects a candidate, or the desired answer to a question, and touches the screen, presses a button, or uses an approved accessibility device to cast a ballot.

(2) To select a candidate or an answer to a question, the voter shall:

(a) Press the appropriate place on the touchscreen, press the button, or use an approved accessibility device to choose a candidate or answer to a question for which the voter desires

to vote;

(b) Type on the touchscreen or use the scrolling device to select on the screen the letters for the name of a write-in candidate in accordance with the instructions for voting on the DRE voting system and press the appropriate place on the touchscreen or press the button to record the write-in vote; or

(c) Press the appropriate place on the ballot label to designate a write-in candidate and write in the name of an eligible candidate on the paper provided in the write-in candidate window.

(3) To cast a ballot, the voter shall:

(a) Press the place on the touchscreen or press the button designated for casting the ballot; or

(b) Use an approved accessibility device for the accessible voting unit to signify the voter's desire to cast the ballot.

Section 4. Definition of a Vote for the Scan Voting System. (1) Automatic tabulation. If ballots are tabulated electronically, a vote cast on a scan voting system shall be the choice made by a voter by:

(a) Filling in the oval or box or connecting the arrow next to the candidate's name or the question choice; or

(b) Writing in the name of an eligible candidate in the designated write-in space and filling in the oval or box or connecting the arrow next to the designated write-in space.

(2) Manual tabulation. If ballots are tabulated manually, the following marks made by a voter shall constitute a vote for a candidate or question choice on an optical scan voting system:

(a) The majority of an oval, box, or arrow designating a candidate or question choice is filled in;

(b) The oval, box, or arrow next to the candidate's name or the question choice is circled or underlined;

(c) The candidate's name or the question choice is circled or underlined;

(d) The party, group, organization, or independent status abbreviation next to the candidate's name is circled or underlined;

(e) There is an "X", a check mark, a plus sign, an asterisk, a star, or any other mark indicating the intent of the voter next to the candidate's name or question choice; or

(f) There is a diagonal, horizontal, or vertical line:

1. A portion of which intersects two (2) points on the oval or arrow next to the candidate's name or the question choice; and

2. That does not intersect another oval or arrow at any two (2) points.

(3) Manual tabulation of write-in voting.

(a) If write-in ballots are tabulated manually, the following shall constitute a valid vote for a candidate:

1. The oval, box, or arrow next to the area designated for the selection of a write-in candidate is marked consistent with subsection (2) of this section; and

2. The voter shall write the name of an eligible write-in candidate as provided in KRS 117.265 in the area designated for the selection of a write-in candidate.

(b) If a voter designates a vote for a named candidate on the ballot and also writes in the name of a different person, these actions shall be considered an overvote, with neither candidate receiving credit for the vote, except as provided in Section 7 of this administrative regulation.

(4) Manual tabulation of other marks or words. If a choice is indicated in accordance with subsection (2) or (3) of this section, and another choice is similarly marked constituting an

overvote, the voter may take one (1) of the following actions to cancel the overvote:

- (a) If the voter used a pencil, the voter may erase the mark for the candidate the voter does not wish to select; or
- (b) If the voter used ink, the voter may circle the name of the candidate the voter wishes to select.

Section 5. Definition of a Vote for a Paper Ballot. (1) Tabulation. The following marks made by a voter shall constitute a vote for a candidate or question choice on a paper ballot:

- (a) The majority of an oval, box, or space designating a candidate or question choice is filled in;
- (b) The oval, box, or space next to the candidate's name or the question choice is circled or underlined;
- (c) The candidate's name or the question choice is circled or underlined;
- (d) The party, group, organization, or independent status abbreviation next to the candidate's name is circled or underlined;
- (e) There is an "X", a check mark, a plus sign, an asterisk, a star, or any other mark indicating the intent of the voter next to the candidate's name or question choice; or
- (f) There is a diagonal, horizontal, or vertical line:
 - 1. A portion of which intersects two (2) points on the oval, box, or space next to the candidate's name or the question choice; and
 - 2. That does not intersect another oval, box, or space at any two (2) points.

(2) Write-in voting on a paper ballot.

(a) The following shall constitute a valid vote for a candidate:

- 1. The oval, box, or space next to the area designated for the selection of a write-in candidate is marked consistent with subsection (1) of this section; and
- 2. The name of an eligible write-in candidate as provided in KRS 117.265 is written in the area designated for the selection of a write-in candidate.

(b) If a voter designates a vote for a named candidate on the ballot and also writes in the name of a different person, these actions shall be considered an overvote, with neither candidate receiving credit for the vote, except as provided in Section 7 of this administrative regulation.

(3) Other marks or words on a paper ballot. If a choice is indicated in accordance with subsection (1) or (2) of this section, and another choice is similarly marked constituting an overvote, the voter may take one (1) of the following actions to cancel the overvote:

- (a) If the voter used a pencil, the voter may erase the mark for the candidate the voter does not wish to select; or
- (b) If the voter used ink, the voter may circle the name of the candidate the voter wishes to select.

Section 6. Definition of a Vote for Write-in Voting Generally. (1) Only votes cast for eligible write-in candidates as provided in KRS 117.265 shall be considered valid and counted.

(2) A write-in vote for a candidate whose name already appears on the ballot label as a candidate shall not be counted as a vote as provided in KRS 117.265.

(3) The use of stickers, labels, rubber stamps, or other similar devices shall not be counted as write-in votes.

(4) Any minor misspelling of the name of a candidate shall be disregarded in determining the validity of a write-in vote as long as the intended candidate may be clearly determined.

(5) Writing in only the surname of an eligible candidate shall constitute a valid vote, unless there is more than one (1) filed candidate with the same surname for that office. If there is

more than one (1) filed candidate with the same surname for that office, writing in only the last name or surname shall not constitute a vote.

(6) Writing in only the first name of an eligible candidate shall not constitute a valid vote.

(7) Writing in only the initials of a candidate shall not constitute a vote.

(8) Writing in only the nickname of an eligible candidate shall not constitute a valid vote.

(9) If the voter writes in any other name along with the surname of an eligible write-in candidate, the other name written by the voter shall comply with the variations of names listed by the candidate on SBE/SOS/01, SBE/SOS/02, or SBE/SOS/03, depending on the candidate, to constitute a valid vote.

(10) Writing in the surname of the candidate for Governor or the surname of the candidate for Lieutenant Governor shall be sufficient to cast a write-in vote for the slate.

(11) Writing in the surname of the candidate for President or the surname of the candidate for Vice President shall be sufficient to cast a write-in vote for the slate.

Section 7. Straight Party Voting. (1) For all voting systems and types of ballots, if a voter designates a choice to vote a straight political party ticket and also designates a vote for an opposing candidate whose name appears on the ballot or writes in the name of an eligible write-in candidate in a specific race, the vote shall be counted for the opposing candidate or the eligible write-in candidate for that specific race and the remaining votes on the ballot shall be counted for the straight political party.

(2) Straight party voting shall not be considered an overvote if cast in a manner consistent with subsection (1) of this section.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) SBE/SOS/01-"Declaration of Intent to be a Write-In Candidate", February 2011 edition;

(b) SBE/SOS/02-"Presidential/Vice Presidential Candidates' Declaration of Intent to be Write-In Candidates", February 2011 edition; and

(c) SBE/SOS/03-"Governor/Lieutenant Governor Candidates' Declaration of Intent to be a Write-In Candidates", February 2011 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (32 Ky.R. 1008; 1217; eff. 2-3-2006; 33 Ky.R. 112; 540; eff. 10-5-2007; 37 Ky.R. 2443; 2828; eff. 7-1-2011; Crt eff. 3-6-2019.)