

**PROPOSED REGULATION OF
THE SECRETARY OF STATE**

LCB File No. R009-23

July 17, 2023

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§ 1 and 9, NRS 293.247; § 2, NRS 293.124, 293.247, 293.565 and 298.690; §§ 3-8, NRS 293.124, 293.247, 293.250 and 293.269951, as amended by section 3.5 of Senate Bill No. 216, chapter 244, Statutes of Nevada 2023; §§ 10 and 11, NRS 293.124 and 293.247; § 12, NRS 293.124, 293.247, 293.269951, as amended by section 3.5 of Senate Bill No. 216, chapter 244, Statutes of Nevada 2023, 298.250 and 298.259; § 13, NRS 293.124, 293.247 and 293.403.

A REGULATION relating to elections; setting forth certain requirements for county clerks relating to preparing and distributing sample ballots for a presidential preference primary election; setting forth certain requirements related to registering to vote or voting by the system of approved electronic transmission created by the Secretary of State; clarifying the applicability of certain provisions of the Nevada Revised Statutes relating to the withdrawal of candidacy and challenging the candidacy of a person to a presidential preference primary election; setting forth the deadline for demanding a recount of the vote for the presidential preference primary election; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law generally requires a county clerk to distribute sample ballots to registered voters, but provides that a county clerk is not required to distribute a sample ballot to a person who registers to vote less than 20 days before the date of an election. (NRS 293.565) Existing law further requires a county clerk, in conducting a presidential preference primary election to distribute sample ballots for the presidential preference primary election. (NRS 298.690) **Section 2** of this regulation sets forth certain requirements for county clerks relating to sample ballots for a presidential preference primary election. Specifically, **section 2**: (1) provides that a clerk is only required to distribute a sample ballot for the presidential preference primary election to registered voters who indicated an affiliation with that major political party 20 days or more before the date of the presidential preference primary election; (2) requires a county clerk to provide an electronic copy of the sample ballot to each candidate who filed with the Secretary of State a declaration of candidacy for the presidential preference primary election; (3) requires a county clerk to provide an electronic copy of each sample ballot for a presidential preference primary election to the Secretary of State; and (4) requires a county clerk to post a copy of the sample ballot or list of candidates in a conspicuous place in the county clerk’s office.

Existing law requires the Secretary of State to establish a system of approved electronic transmission through which: (1) certain military and overseas voters; and (2) electors and registered voters with a disability may register to vote and apply for and cast a ballot using the system of approved electronic transmission. Senate Bill No. 216 of the 2023 Legislative Session authorized electors and registered voters who are tribal members and who reside on an Indian reservation or Indian colony to also use such system of approved electronic transmission. (NRS 293.269951, as amended by section 3.5 of Senate Bill No. 216, chapter 244, Statutes of Nevada 2023, NRS 293D.200) Existing law further requires the Secretary of State to prescribe the form and content of a declaration for use by a person authorized to use the system of approved electronic transmission to swear or affirm specific representations pertaining to identity, eligibility to vote, status as an elector or registered voter who is authorized to use such system and timely and proper completion of a ballot. (NRS 293.269951, as amended by section 3.5 of Senate Bill No. 216, chapter 244, Statutes of Nevada 2023) Existing regulations set forth the form and content of the declaration for use by: (1) certain military and overseas voters and electors; and (2) an elector or registered voter with a disability. (NAC 293.207) **Section 3** of this regulation sets forth the form and content of the declaration for use by an elector or registered voter who is a tribal member and who resides on an Indian reservation or Indian colony.

Section 4 of this regulation indicates the proper placement of **section 3** in the Nevada Administrative Code.

Sections 5-8 of this regulation make various changes to existing regulations relating to persons with a disability who use the system of approved electronic transmission to register to vote or vote so that such regulations also apply to members of an Indian tribe who reside on an Indian reservation or Indian colony.

Existing law authorizes certain former and new residents of the State of Nevada to vote in an election for President and Vice President of the United States but only for the offices of President and Vice President. Existing law further authorizes the Secretary of State, in a manner consistent with the election laws of this State, to adopt regulations to effectuate these provisions. (NRS 298.250, 298.259) **Section 12** of this regulation authorizes such a former or new resident to use the system of approved electronic transmission to vote for President and Vice President of the United States if he or she: (1) has a disability; (2) is a tribal member and resides on an Indian reservation or Indian colony; or (3) is a covered voter.

Existing law authorizes, under certain circumstances, an elector to file with the filing officer for the office a written challenge of the person on the grounds that the person fails to meet any qualification required for the office. (NRS 293.182) **Section 10** of this regulation provides that the candidacy of any person who filed a declaration of candidacy to be a major political party's nominee for President of the United States may be challenged by filing a written challenge with the Secretary of State.

Existing law authorizes, under certain circumstances, a candidate to submit a withdrawal of candidacy. (NRS 293.202) **Section 11** of this regulation provides that a person who filed a declaration of candidacy to be a major political party's nominee for President of the United States may submit to the Secretary of State a withdrawal of candidacy.

Existing law authorizes, under certain circumstances, a candidate defeated at any election to demand and receive a recount of the vote for the office for which he or she is a candidate. (NRS 293.403) **Section 13** of this regulation provides that a recount of the vote for the presidential preference primary election may be demanded within 3 working days after the Secretary of State certifies the number of votes received by each qualified candidate.

Section 1. Chapter 293 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. *The county clerk shall:*

1. Distribute sample ballots for the presidential preference primary election pursuant to NRS 298.690. If only one major political party has two or more qualified candidates for the presidential preference primary election, the county clerk is only required to distribute a sample ballot for the presidential preference primary election to registered voters who indicated an affiliation with that major political party 20 days or more before the date of the presidential preference primary election.

2. Provide an electronic copy of the sample ballot for the presidential preference primary election prepared pursuant to NRS 293.565 to each candidate who has filed with the Secretary of State a declaration of candidacy.

3. Provide an electronic copy of each sample ballot for a presidential preference primary election prepared pursuant to NRS 293.565 to the Secretary of State.

4. Post a copy of the sample ballot or a list of candidates in a conspicuous place in the county clerk's office.

Sec. 3. *1. The declaration that is required pursuant to NRS 293.269951, as amended by section 3.5 of Senate Bill No. 216, chapter 244, Statutes of Nevada 2023, for use by a registered voter who is a tribal member and resides on an Indian reservation or Indian colony and indicates that he or she will return the ballot by approved electronic transmission must be in the following form:*

***DECLARATION OF REGISTERED VOTER WHO IS A TRIBAL MEMBER AND
RESIDES ON AN INDIAN RESERVATION OR INDIAN COLONY***

*I am a registered voter who is a tribal member and resides on an Indian reservation or
Indian colony.*

I am a citizen of the United States.

I will be at least 18 years of age on election day.

*I have not been adjudicated mentally incompetent, or if so, my right to vote has been
restored.*

I am not registered to vote in any other jurisdiction in the United States.

*I have not applied, nor do I intend to apply, for a ballot from any other jurisdiction for
the same election.*

The information on this form is true and complete to the best of my knowledge.

*I acknowledge that if I return my voted ballot by approved electronic transmission, I
have waived my right to have my ballot kept secret. Nevertheless, I understand that
my signature will be permanently separated from my voted ballot to maintain its
secrecy at the outset of the tabulation process and thereafter.*

*I understand that a material misstatement of fact in completing this document may be
grounds for a conviction of perjury under the laws of the United States or this State.*

*I declare under penalty of perjury under the laws of the United States and this State that
the foregoing is true and correct.*

(Signed)

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***YOUR BALLOT CANNOT BE COUNTED UNLESS YOU SIGN THE ABOVE
DECLARATION AND INCLUDE IT WITH YOUR BALLOT.***

2. The declaration that is required pursuant to NRS 293.269951, as amended by section 3.5 of Senate Bill No. 216, chapter 244, Statutes of Nevada 2023, for use by a registered voter who is a tribal member and resides on an Indian reservation or Indian colony and indicates that he or she will return the ballot by mail must be in the following form:

***DECLARATION OF REGISTERED VOTER IS A TRIBAL MEMBER AND RESIDES
ON AN INDIAN RESERVATION OR INDIAN COLONY***

***I am a registered voter who is a tribal member and resides on an Indian reservation or
Indian colony.***

I am a citizen of the United States.

I will be at least 18 years of age on election day.

***I have not been adjudicated mentally incompetent, or if so, my right to vote has been
restored.***

I am not registered to vote in any other jurisdiction in the United States.

***I have not applied, nor do I intend to apply, for a ballot from any other jurisdiction for
the same election.***

The information on this form is true and complete to the best of my knowledge.

I understand that a material misstatement of fact in completing this document may be grounds for a conviction of perjury under the laws of the United States or this State.

I declare under penalty of perjury under the laws of the United States and this State that the foregoing is true and correct.

(Signed)

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***YOUR BALLOT CANNOT BE COUNTED UNLESS YOU SIGN THE ABOVE
DECLARATION AND INCLUDE IT WITH YOUR BALLOT.***

Sec. 4. NAC 293.205 is hereby amended to read as follows:

293.205 As used in NAC 293.205 to 293.212, inclusive, *and section 3 of this regulation*, “local elections official” has the meaning ascribed to it in NRS 293D.040.

Sec. 5. NAC 293.207 is hereby amended to read as follows:

293.207 1. A registered voter ~~with a disability~~ who applies for a ballot pursuant to NRS 293.269951 , *as amended by section 3.5 of Senate Bill No. 216, chapter 244, Statutes of Nevada 2023*, must indicate on the application:

(a) Whether the local elections official must send the ballot to the registered voter by mail or approved electronic transmission; and

(b) Whether the registered voter will return the ballot to the local elections official by mail or approved electronic transmission.

2. If a registered voter ~~{with a disability}~~ indicates on the application for a ballot that he or she will return the ballot by mail, the local elections official must provide to the registered voter a ballot and instructions for marking and returning the ballot, including, without limitation:

- (a) How to indicate the candidate or candidates for whom the voter is voting;
- (b) How to correct the ballot if the voter commits an error marking the ballot or wants to change the candidate or candidates for whom the voter is voting;
- (c) An explanation that the completed ballot must be inserted into the accompanying privacy sleeve or envelope;
- (d) An explanation that the registered voter must insert the privacy envelope or sleeve into the declaration envelope;
- (e) An explanation that the registered voter must complete and sign the declaration on the front of the declaration envelope; and
- (f) An explanation of the deadline for the registered voter to cast and return the ballot and other necessary voting materials, including, without limitation, the declaration set forth in NAC 293.208 ~~{}~~ *or section 3 of this regulation, as applicable*, by mail to the appropriate local elections official.

3. If a registered voter ~~{with a disability}~~ indicates on the application for a ballot that he or she will return the ballot by approved electronic transmission, the local elections official must provide to the registered voter a ballot and instructions for marking and returning the ballot, including, without limitation:

- (a) How to indicate the candidate or candidates for whom the registered voter is voting.

(b) An explanation that the declaration set forth in NAC 293.208 *or section 3 of this regulation, as applicable*, must be signed by the registered voter and returned by approved electronic transmission with the ballot.

(c) An explanation of how to return the ballot by approved electronic transmission.

(d) An explanation of the deadline for the registered voter to cast and return the ballot and other necessary voting materials, including, without limitation, the declaration set forth in NAC 293.208 ~~†~~ *or section 3 of this regulation, as applicable*, by approved electronic transmission to the appropriate local elections official.

4. In addition to any applicable requirements set forth in subsections 2 and 3, the local elections official must:

(a) Provide to the registered voter the contact information of the local elections official or an authorized representative of the local elections official who will be available during normal business hours to answer questions from the voter concerning the ballot. Such information must include, without limitation, the local elections official or authorized representative's name, address, phone number, facsimile transmission number and electronic mail address.

(b) Instruct the registered voter that the ballot may not be used by another registered voter or duplicated.

(c) Provide to the registered voter any other information required by the Secretary of State or local elections official.

Sec. 6. NAC 293.209 is hereby amended to read as follows:

293.209 If a local elections official receives a request for a ballot from a registered voter ~~[with a disability]~~ *who is authorized to make such a request* pursuant to NRS 293.269951 , *as amended by section 3.5 of Senate Bill No. 216, chapter 244, Statutes of Nevada 2023*, after a

mail ballot has been sent to the registered voter pursuant to NRS 293.269911 to 293.269937, inclusive, or NRS 293C.263 to 293C.26337, inclusive, the local elections official must indicate that the mail ballot is cancelled in the mail ballot record.

Sec. 7. NAC 293.211 is hereby amended to read as follows:

293.211 If a local elections official sends a ballot to a registered voter ~~[with a disability]~~ pursuant to NRS 293.269951, *as amended by section 3.5 of Senate Bill No. 216, chapter 244, Statutes of Nevada 2023*, the local elections official must:

1. Cause a unique identification number to be included on the ballot.
2. Record in the ballot record:
 - (a) The name of the voter, the voter's precinct or district, the voter's political affiliation, if any, and the unique identification number of the ballot.
 - (b) The method used by the local elections official to send the ballot to the registered voter. If approved electronic transmission is used by the local elections official to send the ballot, the local elections official must record in the ballot record the destination of the ballot, such as the facsimile transmission number or electronic mailing address, as applicable, to which the local elections official sent the ballot.
 - (c) The date and time that the local elections official sent the ballot to the voter.
 - (d) The initials of the person who sent the ballot to the voter.
3. Maintain the original ballot card in a secured area where access is allowed only with the approval of the local elections official.

Sec. 8. NAC 293.212 is hereby amended to read as follows:

293.212 Not later than 60 days after the date of an election, each local elections official shall report to the Secretary of State, in the form prescribed by the Secretary of State:

1. The number of ballots for that election that the local elections official sent to registered voters ~~with disabilities~~ pursuant to NRS 293.269951 ~~with~~, *as amended by section 3.5 of Senate Bill No. 216, chapter 244, Statutes of Nevada 2023;*

2. The number of ballots for that election that were returned by registered voters ~~with disabilities~~ pursuant to NRS 293.269951 ~~with~~, *as amended by section 3.5 of Senate Bill No. 216, chapter 244, Statutes of Nevada 2023;* and

3. The number of ballots described in subsection 2 which were counted by the local elections official.

Sec. 9. Chapter 298 of NAC is hereby amended by adding thereto by adding thereto the provisions set forth as sections 10 to 13, inclusive, of this regulation.

Sec. 10. *An elector may file with the Secretary of State pursuant to NRS 293.182 a challenge of any person who files a declaration of candidacy to be a major political party's nominee for President of the United States pursuant to NRS 298.660.*

Sec. 11. *A person who filed a declaration of candidacy to be a major political party's nominee for President of the United States pursuant to NRS 298.660 may submit to the Secretary of State a withdrawal of candidacy pursuant to NRS 293.202.*

Sec. 12. *A former resident of the State of Nevada described in NRS 298.250 or a new resident of the State of Nevada described in NRS 298.259 may use the system of approved electronic transmission established pursuant to NRS 293D.200 to vote for President and Vice President of the United States if he or she:*

- 1. Has a disability as described in NAC 293.206;*
- 2. Is a tribal member and resides on an Indian reservation or Indian colony; or*
- 3. Is a covered voter, as that term is defined in NRS 293D.030.*

Sec. 13. *A recount of the vote for the presidential preference primary election may be demanded pursuant to NRS 293.403 within 3 working days after the Secretary of State certifies the number of votes received by each qualified candidate pursuant to NRS 298.720.*