

**PROPOSED REGULATION OF
THE SECRETARY OF STATE**

LCB File No. R088-21

December 20, 2021

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

AUTHORITY: §§ 1, 2, 4, 14 and 15, NRS 293.124 and 293.247; § 3, NRS 293.124, 293.196 and 293.247; §§ 5 and 16, NRS 293.124, 293.247 and 293.565; §§ 6-8, NRS 293.124 and 293.675; §§ 9-13, NRS 293.124, 293.247 and 293.4685.

A REGULATION relating to elections; revising provisions relating to certain provisional ballots; revising certain requirements relating to election notices; revising certain provisions relating to the offices of justice of the Supreme Court; eliminating obsolete language related to an acceptance of candidacy; revising certain requirements relating to sample ballots; revising requirements for a county clerk to submit a voting history of certain voters; revising certain filing requirements relating to certain election complaints; updating citations to certain federal law; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes, under certain circumstances, a person to cast a provisional ballot if the person registers to vote in person or updates his or her voter registration information, as applicable, at a polling place. (NRS 293.5832-293.5847) Existing law further authorizes a person to cast a provisional ballot if the person completes a written affirmation and: (1) declares that he or she is registered to vote and is eligible to vote in the election in that jurisdiction but his or her name does not appear on the voter registration list; (2) has registered to vote by mail or computer, has not voted in an election for federal office in this State and fails to provide identification to an election board officer at the polling place; or (3) declares that he or she is entitled to vote after the polling place would close as a result of certain court orders. (NRS 293.3081, 293.3082) Existing regulations set forth various provisions related to the latter type of provisional ballot. (NAC 293.270, 293.275, 293.280, 293.466 and 293.472) **Sections 1, 6 and 7** of this regulation define the term “provisional ballot” for purposes of these sections to clarify that the provisions apply only to the latter type of provisional ballot.

Existing regulations require the Secretary of State to send each county clerk a written notice designating the offices for which candidates are to be nominated at a primary election and requires each county clerk to publish the notice in a newspaper in his or her county within 10 days of receipt. (NAC 293.040) **Section 2** of this regulation requires the Secretary of State to also: (1) send an electronic notice to each county clerk; and (2) post a copy of the notice on the website of the Secretary of State. **Section 2** further requires the county clerk to publish the notice

on the Internet website of the county clerk and provides that if the county clerk is unable to publish the notice in a newspaper within 10 days due to the publishing deadlines of the newspaper, the county clerk must publish the notice as soon as practicable.

Existing regulations set forth the years in which the seats of the offices of justice of the Supreme Court are to be elected. (NAC 293.060) **Section 3** of this regulation updates these years.

Sections 4, 5, 14 and 15 of this regulation eliminate obsolete references to an “acceptance of candidacy,” as that term is no longer used in the Nevada Revised Statutes..

Existing regulations require the county clerk and city clerk to mail at least five sample ballots and provide an electronic sample ballot to the Secretary of State. (NAC 293.120 and 293C.110) **Sections 5 and 16** of this regulation instead require the county and city clerks to provide only an electronic sample ballot to the Secretary of State.

Existing regulations require each county clerk to submit to the Secretary of State a voting history for each voter in the county who casts a ballot in an election not later than 45 days after each primary or general election. (NAC 293.474) **Section 8** of this regulation instead requires the county clerk to send the voting history not later than 45 days after every election.

Existing regulations require certain election complaints to be filed in the Office of Secretary of State in Carson City. (NAC 293.515) **Section 9** of this regulation removes the requirement that the complaint be filed in Carson City.

Sections 9-13 of this regulation update existing citations to the federal Help America Vote Act of 2002, Public Law 107-252, 52 U.S.C. §§ 21081 to 21102, inclusive.

Section 1. Chapter 293 of NAC is hereby amended by adding thereto a new section to read as follows:

As used in NAC 293.270, 293.275 and 293.280 and this section, “provisional ballot” has the meaning ascribed to it in NRS 293.3078.

Sec. 2. NAC 293.040 is hereby amended to read as follows:

293.040 1. The Secretary of State will, not later than November 15 of the year before the year in which a primary election is held ~~H; prepare~~:

(a) Prepare and send to each county clerk a written *and electronic* notice which designates the judicial, statewide and multicounty district offices for which candidates are to be nominated at the primary election ~~H~~; *and*

(b) Post a copy of the notice prepared pursuant to paragraph (a) on the Internet website of the Secretary of State.

2. ~~{Within}~~ *Except as otherwise provided in this subsection, within* 10 days after receipt of a notice required to be sent pursuant to subsection 1, the county clerk shall publish once in a newspaper published in his or her county *and on the Internet website of the county clerk* that portion of the notice which applies to his or her county. If ~~{no}~~ :

(a) *No* newspaper is published in his or her county, the publication must be made in any newspaper of general circulation which is published in the nearest county of this State ~~{}~~ ; *or*

(b) *The publication deadline of the newspaper prevents the county clerk from publishing the notice within 10 days, the publication must be made as soon as practicable after receipt of the notice.*

Sec. 3. NAC 293.060 is hereby amended to read as follows:

293.060 1. For purposes of elections only, the offices of justice of the Supreme Court are designated as seats A, B, C, D, E, F and G.

2. The offices which will be filled at the general election of ~~{1980,}~~ **2016**, and each 6 years thereafter, are designated seats A and E. The ~~{office}~~ *offices* which will be filled at the general election of ~~{1982,}~~ **2018**, and each 6 years thereafter, ~~{is}~~ *are* designated ~~{seat}~~ *seats* C ~~{}~~ , **F and G**. The offices which will be filled at the general election of ~~{1984,}~~ **2020**, and each 6 years thereafter, are designated seats B and D. ~~{The offices which will be filled at the general elections of 1998 and 2000, and each 6 years thereafter, are designated seats F and G.}~~ The following illustrates the sequence:

(a) Seat A — ~~{1980, 1986, 1992, 1998,}~~ **2016, 2022, 2028, 2034**, etc.;

(b) Seat B — ~~{1984, 1990, 1996, 2002,}~~ **2020, 2026, 2032, 2038**, etc.;

(c) Seat C — ~~{1982, 1988, 1994, 2000,}~~ **2018, 2024, 2030, 2036**, etc.;

(d) Seat D — ~~{1984, 1990, 1996, 2002,}~~ **2020, 2026, 2032, 2038**, etc.;

- (e) Seat E — ~~{1980, 1986, 1992, 1998,}~~ 2016, 2022, 2028, 2034, etc.;
- (f) Seat F — ~~{1998, 2000, 2006, 2012,}~~ 2018, 2024, 2030, 2036, etc.; and
- (g) Seat G — ~~{1998, 2000, 2006, 2012,}~~ 2018, 2024, 2030, 2036, etc.

Sec. 4. NAC 293.081 is hereby amended to read as follows:

293.081 1. A candidate may change the manner in which his or her name will appear on the ballot by filing a written request to amend his or her declaration of candidacy . ~~{for acceptance of candidacy.}~~ The request must be filed by the candidate in person with the filing officer with whom he or she filed the declaration of candidacy ~~{for acceptance of candidacy}~~ not later than 5 p.m. on the last day to file the declaration of candidacy . ~~{for acceptance of candidacy.}~~

2. This section does not authorize the amendment of any matter contained in a declaration of candidacy ~~{for acceptance of candidacy}~~ other than the manner in which the name of the candidate appears.

Sec. 5. NAC 293.120 is hereby amended to read as follows:

293.120 The county clerk shall:

1. Mail a copy of the sample ballot for the primary election ~~{, as provided in}~~ *prepared pursuant to* NRS 293.565 ~~{,}~~ to each candidate who has filed with the county clerk a declaration of candidacy . ~~{for an acceptance of candidacy.}~~ The copy must be mailed to the mailing address which is stated in the declaration of candidacy . ~~{for acceptance of candidacy.}~~

2. Mail a copy of the sample ballot for the primary election ~~{, as provided in}~~ *prepared pursuant to* NRS 293.565 ~~{,}~~ to each candidate who has been certified to the county clerk by the Secretary of State.

3. If a candidate's name appears on more than one type of sample ballot, mail a copy of at least one of the sample ballots to the candidate, but the county clerk shall make a copy of each sample ballot available to the candidate upon request.

4. ~~Mail a copy of at least five sample ballots and provide~~ *Provide* an electronic copy of each sample ballot for a primary election ~~as provided in~~ *prepared pursuant to* NRS 293.565, to the Secretary of State.

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

Sec. 6. NAC 293.466 is hereby amended to read as follows:

293.466 1. If a county clerk receives notice from the Secretary of State or another county clerk that the statewide voter registration list contains information that is potentially inaccurate, duplicative or otherwise requiring verification, the county clerk shall, not later than 5 calendar days after receiving such notification, take such action as is necessary to correct the information in the statewide voter registration list and in the computerized database established pursuant to NAC 293.454.

2. If the county clerk is unable to obtain the correct information relating to the voter that is described in subsection 1 before the day of an election, the voter must show such identification before any ballot may be cast, except that a voter may cast a provisional ballot pursuant to the provisions of NRS 293.3081 to 293.3086, inclusive.

3. As used in this section, "provisional ballot" has the meaning ascribed to it in NRS 293.3078.

Sec. 7. NAC 293.472 is hereby amended to read as follows:

293.472 1. At the close of business on the 19th calendar day before a particular election, the Secretary of State will make a record, to be used by each county clerk, of the official list of registered voters in this State for that election.

2. The official list of registered voters distributed pursuant to subsection 1:

(a) Except as otherwise provided in subsection 3, must be used to determine voter eligibility and the validity of any provisional ballot cast *pursuant to the provisions of NRS 293.3081 to 293.3086, inclusive*, in the election; and

(b) May only be amended by the Secretary of State or a county clerk under the following circumstances:

(1) A court of competent jurisdiction orders such amendment;

(2) A person registers to vote pursuant to NRS 293.502 after the 19th calendar day before the election;

(3) Pursuant to the provisions of NAC 293.462 to 293.468, inclusive, or 293.476; or

(4) The clerk determines that the voter was incorrectly omitted from the list of registered voters.

3. Each county clerk shall prepare registers, rosters and lists used at polling places by using the information contained in the computerized database established pursuant to NAC 293.454 if such information is identical to the information contained in the official list of registered voters distributed pursuant to subsection 1.

4. As used in this section, “provisional ballot” has the meaning ascribed to it in NRS 293.3078.

Sec. 8. NAC 293.474 is hereby amended to read as follows:

293.474 Each county clerk shall submit to the Secretary of State, not later than 45 business days after each ~~{primary or general}~~ election, a voting history for each voter in the county who cast a ballot in the election. The voting history must be in the format prescribed by the Secretary of State and ~~{must}~~, *for each registered voter who voted in person at a polling place*, indicate the ~~{dates}~~ *date* on which and ~~{locations}~~ *location* at which ~~{each}~~ *the* registered voter cast a ballot.

Sec. 9. NAC 293.515 is hereby amended to read as follows:

293.515 1. A person who believes that a violation of Title III of the Help America Vote Act of 2002, Public Law 107-252, ~~{42}~~ 52 U.S.C. §§ ~~{15481}~~ 21081 to ~~{15502}~~ 21102, inclusive, has occurred, is occurring or is about to occur may file a complaint with the Office of the Secretary of State.

2. A complaint filed pursuant to subsection 1 must:

(a) Be in writing, notarized and signed and sworn *to* by the complainant. If the Secretary of State prescribes a form for the complaint, the complaint must be filed on that form.

(b) Provide the name of each respondent and a concise statement of the facts of the alleged violation of ~~{42}~~ 52 U.S.C. §§ ~~{15481}~~ 21081 to ~~{15502}~~ 21102, inclusive.

(c) Be filed in the Office of the Secretary of State : ~~{in Carson City}~~

(1) Not later than 60 days after the occurrence of the action or event that forms the basis for the complaint or for the belief of the complainant that a violation of ~~{42}~~ 52 U.S.C. §§ ~~{15481}~~ 21081 to ~~{15502}~~ 21102, inclusive, is about to occur; or

(2) Not later than 60 days after the complainant knew or, with the exercise of reasonable diligence, should have known of the action or event that forms the basis for the complaint or for

the belief of the complainant that a violation of ~~42~~ 52 U.S.C. §§ ~~15481~~ 21081 to ~~15502,~~ 21102, inclusive, is about to occur,

↳ whichever is later.

3. The complainant shall mail or deliver a copy of the complaint to each respondent not later than the date on which the complaint is filed.

Sec. 10. NAC 293.520 is hereby amended to read as follows:

293.520 1. The Secretary of State or a designee thereof will review each complaint filed pursuant to NAC 293.515 to determine whether the complaint:

- (a) States a violation of ~~42~~ 52 U.S.C. §§ ~~15481~~ 21081 to ~~15502,~~ 21102, inclusive; and
- (b) Complies with the requirements of NAC 293.515.

2. If a complaint fails to state a violation of ~~42~~ 52 U.S.C. §§ ~~15481~~ 21081 to ~~15502,~~ 21102, inclusive, or does not comply with the requirements of NAC 293.515, the complaint will be dismissed without further action and notice of the dismissal will be provided to the complainant.

3. Except as otherwise provided in subsection 4, a complainant whose complaint has been dismissed pursuant to this section may refile the complaint within the time set forth in paragraph (c) of subsection 2 of NAC 293.515.

4. A complainant whose complaint has been dismissed for failure to state a violation of ~~42~~ 52 U.S.C. §§ ~~15481~~ 21081 to ~~15502,~~ 21102, inclusive, may refile the complaint only one time.

Sec. 11. NAC 293.535 is hereby amended to read as follows:

293.535 1. Except as otherwise provided in this subsection, the Secretary of State or a designee thereof will act as the hearing officer for a hearing held pursuant to NAC 293.530. If

the Secretary of State is a respondent in the complaint, the Secretary of State will appoint a designee who is an independent professionally qualified person to act as the hearing officer.

2. The complainant, any respondent and any interested member of the public may appear at the hearing, in person or by teleconference, and testify or present relevant evidence in connection with the complaint. All testimony to be considered in the hearing will be taken under oath. The hearing officer may limit the testimony of witnesses, if necessary, to ensure that all interested persons may present their views. The hearing officer may recess the hearing and reconvene the hearing at a later date, time and place, which must be announced publicly at the hearing.

3. A complainant, respondent or other person who testifies or presents evidence at the hearing may, but need not, be represented by an attorney.

4. Cross-examination at the hearing will be permitted only at the discretion of the hearing officer, but a person may testify or present evidence at the hearing to contradict any other testimony or evidence presented at the hearing. If a person has already testified or presented evidence at the hearing and wishes to contradict testimony or evidence presented subsequently, that person is entitled to be heard again only at the discretion of the hearing officer, who may authorize the person to provide an oral or written response, or both.

5. The hearing will be recorded on audiotape by and at the expense of the Office of the Secretary of State. The recording will not be transcribed, but the Secretary of State, a local board of elections or any party to the hearing may obtain a transcript of the hearing at its own expense. If a board or party obtains a transcript of a hearing, the board or party shall file a copy of the transcript as part of the record and any other interested party may examine the copy of the transcript on record.

6. Any party to the proceeding may file a written brief or memorandum with the hearing officer not later than 5 business days after the conclusion of the hearing. The party shall serve a copy of any such written brief or memorandum on all other parties not later than the time the written brief or memorandum is filed with the hearing officer. No responsive or reply memorandum to such a brief or memorandum will be accepted without the specific authorization of the hearing officer.

7. At the conclusion of the hearing and after any brief or memorandum has been filed pursuant to subsection 6, the hearing officer will determine whether, by a preponderance of the evidence, a violation of ~~42~~ 52 U.S.C. §§ ~~15481~~ 21081 to ~~15502~~ 21102, inclusive, has occurred, is occurring or is about to occur.

Sec. 12. NAC 293.540 is hereby amended to read as follows:

293.540 If a complainant has not requested a hearing on a complaint filed pursuant to NAC 293.515, the Secretary of State or a designee thereof will review the complaint and any accompanying record and determine whether, by a preponderance of the evidence, a violation of ~~42~~ 52 U.S.C. §§ ~~15481~~ 21081 to ~~15502~~ 21102, inclusive, has occurred, is occurring or is about to occur. If the Secretary of State is a respondent in the complaint, the Secretary of State will appoint an independent professionally qualified person to act as the designee pursuant to this section.

Sec. 13. NAC 293.545 is hereby amended to read as follows:

293.545 1. If the Secretary of State or a designee thereof, whether acting as a hearing officer pursuant to NAC 293.535 or reviewing a complaint pursuant to NAC 293.540, determines that a violation of ~~42~~ 52 U.S.C. §§ ~~15481~~ 21081 to ~~15502~~ 21102, inclusive, has occurred, is occurring or is about to occur, the Secretary of State or the designee will provide the appropriate

remedy, including, without limitation, an order to a respondent commanding the respondent to take specified action or prohibiting the respondent from taking specified action, with respect to a past or future election. Such a remedy will not include an award of money damages or attorney's fees.

2. If the Secretary of State or the designee, whether acting as a hearing officer pursuant to NAC 293.535 or reviewing a complaint pursuant to NAC 293.540, determines that a violation of ~~42~~ 52 U.S.C. §§ ~~15481~~ 21081 to ~~15502~~ 21102, inclusive, has not occurred, is not occurring or is not about to occur, the Secretary of State or the designee will dismiss the complaint.

3. The Secretary of State or the designee will issue a final determination on a complaint made pursuant to subsection 1 or 2 in writing. The final determination will include an explanation of the reasons for the determination and, if applicable, the remedy selected.

4. Except as otherwise provided in NAC 293.550, a final determination of the Secretary of State or the designee on a complaint will be issued within 90 days after the complaint is filed, unless the complainant consents in writing to an extension. The final determination will be:

(a) Mailed to the complainant, each respondent and any interested person who has requested in writing to be advised of the final determination;

(b) Posted on the website of the Secretary of State; and

(c) Made available by the Secretary of State, upon request, to any interested person.

Sec. 14. NAC 293C.070 is hereby amended to read as follows:

293C.070 Not later than 5 working days after the last day upon which any candidate who has filed a declaration ~~for acceptance~~ of candidacy may withdraw his or her candidacy pursuant to NRS 293C.195, each city clerk shall send to the Secretary of State a list certified by him or her that contains the name and mailing address of each person who is a candidate for a city office.

Sec. 15. NAC 293C.080 is hereby amended to read as follows:

293C.080 1. A candidate may change the manner in which his or her name will appear on the ballot by filing a written request to amend his or her declaration of candidacy . ~~{or acceptance of candidacy.}~~ The request must be filed by the candidate in person with the filing officer with whom the declaration of candidacy ~~{or acceptance of candidacy}~~ was filed not later than 5 p.m. or close of business on the last day to file the declaration of candidacy . ~~{or acceptance of candidacy.}~~

2. This section does not authorize the amendment of any matter contained in a declaration of candidacy ~~{or acceptance of candidacy}~~ other than the manner in which the name of the candidate appears.

Sec. 16. NAC 293C.110 is hereby amended to read as follows:

293C.110 The city clerk shall:

1. Mail a copy of the sample ballot for the primary city election ~~{, as provided in}~~ *prepared pursuant to* NRS 293.565 ~~{,}~~ to each candidate.

2. Mail a copy of the sample ballot for the primary city election ~~{, as provided in}~~ *prepared pursuant to* NRS 293.565 ~~{,}~~ to each candidate who has been certified to him or her by the Secretary of State.

3. If a candidate's name appears on more than one type of sample ballot, mail a copy of at least one of the sample ballots to the candidate, but the city clerk shall make a copy of each sample ballot available to the candidate upon request.

4. ~~{Mail a copy of at least five sample ballots and provide}~~ *Provide* an electronic copy of each sample ballot for a primary city election ~~{, as provided in}~~ *prepared pursuant to* NRS 293.565 ~~{,}~~ to the Secretary of State.

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