BOARD OF COUNTY COMMISSIONERS:
RESOLUTIONS RELATING TO ELECTRONIC VOTING SYSTEMS

WHEREAS Under CRS § 1.1.111(1)(a) Board of County Commissioners are entitled to call elections and shall supervise the conduct of elections; and

WHEREAS 1.1 111(1)(b) Where appropriate the BICC consults with the clerk and SOS in regard to the conduct of elections in rendering decisions and interpretations under this code

WHEREAS 1.1 111(2) All powers and authority granted to the governing board of a political subdivision may be exercised by an election official designated by the board. The governing body may also contract with the county clerk and recorder of the county in which the political subdivision is organized to perform all or part of the required duties in conducting the election.

WHEREAS, CRS § 1-3-107 denotes any public officer who violates, neglects, or fails to perform such duty or is guilty of corrupt conduct in the discharge of the same as per CRS § 1.13.111.

WHEREAS, CRS § 1-5-601.5 requires any voting system used in Colorado to comply with the Federal Election Commission’s 2002 Voting System Standards (2002 VSS); and

WHEREAS, the voting system testing laboratory (VSTL) Pro V&V was not certified by the Election Advisory Committee (EAC) to perform testing between February 24, 2017 and February 1, 2021; and

WHEREAS, the previous voting system (DVS 5.11) was tested by the uncertified VSTL Pro V&V on June 7, 2019 which is in violation of C.R.S. § 1-5-608.5; and

WHEREAS, the voting system currently in use (DVS 5.13) is also in violation of C.R.S. § 1-5-608.5 because the it is an upgrade of an uncertified system with only portions being tested when Pro V&V regained their certification in February of 2021; and

WHEREAS the proprietary software being held in escrow by NCC Group, a foreign held corporation, is not tested even by the Pro V&V simply accepted as trustworthy by contract with the Secretary of State; and

WHEREAS CISA has issued an advisory for the use of ICX Ballot Marking Devices, additionally declared by Dr. Halderman as a vulnerability are in use in our current voting system; and

WHEREAS, CRS § 1-5-612(1)(b) as amended by SB 22-153, provides that the county commissioners must adopt an “electronic or electromechanical voting system to be used for tabulating votes…;”and

WHEREAS, Colorado Revised Statutes CRS § 1-5-603 provides that the board of county commissioners may adopt any kind of voting system on the condition that it complies with Colorado law; and

WHEREAS, no Colorado law requires an electronic or electromechanical voting system to be used for any function other than "tabulating votes;" and

WHEREAS, the common meaning of tabulating is “counting”; and

WHEREAS, the legal definition of Tabulation is: “[Tabulation](https://www.lawinsider.com/dictionary/tabulation) means the act of a tabulator (e.g., optical scanner) counting the voter selections for candidates or ballot measures. The tabulator scans the voter selections on a ballot or paper output from a hybrid voting system and determines the vote count for the candidate or ballot measure. [Tabulator](https://www.lawinsider.com/dictionary/tabulator) means a device that scans marked paper ballots, interprets voter marks on the paper ballot, and safely stores and tabulates each vote from each paper ballot.”; and

WHEREAS, reports based on the forensic images of the electronic voting system in Mesa County indicate that system does not comply the 2002 VSS and thus does not comply with Colorado law; and

WHEREAS, the Colorado Secretary of State has confirmed in litigation with Elbert County that the Elbert County system is essentially identical to the non-compliant Mesa count system; and

WHEREAS, the county commissioners have reason to believe that the electronic voting system employed in this county is similar, if not essentially identical, to the systems employed in the aforementioned counties; and

WHEREAS, the county commissioners wish to comply with all aspects of the Colorado Election Code and Colorado Statute;

NOW THEREFORE be it resolved that in the General Election November 8, 2022, the following procedures are to be implemented:

1. The use of Ballot Marking Devices shall be restricted to those voters whose physical disabilities require the use of such device as outlined in CRS § 1-5-705.
*CRS § 1-5-705 “A voting system must include at least one direct recording electronic voting system specially equipped for individuals with disabilities or other accessible voter interface device installed at each polling location that meets the requirements of this section.
CRS § 1-5-706(1) The secretary of state shall establish procedures to enable a voter with a disability to independently and privately mark a ballot or use an electronic voting device that produces a paper record using nonvisual access, low-vision access, or other assistive technology in order for the voter to vote in a mail ballot election pursuant to article 7.5 of this title 1. The procedures shall include a method, to be determined by the secretary of state, by which a voter with a disability may request such a ballot.
Election Rules [8 CCR 1505-1] 11.8.2 (h) The voting system’s ability to enable voters with disabilities to vote independently and privately, and on the same or substantially similar devices throughout Colorado, without regard to their county of residence;
CRS § 1.1.4 “Ballot marking device” (BMD) means a device that may integrate components such as a ballot scanner, printer, touch-screen monitor, audio output, and a navigational keypad and uses electronic technology to: (a) Mark a paper ballot at voter direction; (b) Interpret the ballot selections; (c) Communicate the interpretation for voter verification; and (d) Print a voter-verifiable ballot.*

2. An optical scanner shall be used to scan ballots and tabulate votes; the vote count from each scanned batch of ballots will be recorded immediately on a hand-maintained tally sheet.
*CRS § 1.1.29 “Optical scanner” means an optical or digital ballot scanner*

3. For each batch scanned in item 2. above, a hand count and tally of the votes cast shall be performed; then, a comparison shall be made of those results with the results from the scanner.

4. A final hand count and tally of all votes cast at the conclusion of the election before results are announced shall be conducted. The purpose is a double check of election accuracy.

5. The processes described in items 2. 3. and 4. above are to be supervised by representatives from the Democrat and Republican Parties while being recorded on video for permanent record.

6. The processes described in items above start on election day with the goal of accuracy not speed.