§ 9-209. Canvass of early mail, absentee, military and special ballots, and ballots cast in affidavit envelopes.

Before completing the canvass of votes cast in any primary, general, special, or other election at which voters are required to sign their registration poll records before voting, the board of elections shall proceed in the manner hereinafter prescribed to review, cast and canvass early mail, any absentee, military, special presidential, special federal or other special ballots and any ballots cast in affidavit envelopes, including ballots cast by voters pursuant to section 8-604 of this chapter. Each such ballot shall be retained in the original envelope containing the voter's affidavit and signature, in which it is delivered to the board of elections until such time as it is to be reviewed, in order to be cast and canvassed.

1. Central board of canvassers. Within four days of the receipt of an early mail, absentee, military or special ballot, the board of elections shall designate itself or such of its employees as it shall deem appropriate as a set of poll clerks to review such ballot envelopes. The board may designate additional sets of poll clerks and if it designates more than one such set shall apportion among all such sets the election districts from which such ballots have been received, provided that when reviewing ballots, all ballots from a single election district shall be assigned to a single set of clerks, and that each such set shall be divided equally between representatives of the two major political parties. Each such set of clerks shall be deemed a central board of canvassers for purposes of this section.

2. Review of early mail, absentee, military and special ballot envelopes. Within four days of the receipt of an early mail, absentee, military or special ballot before the election, and within one day of receipt on or after the election, each central board of canvassers shall examine the ballot affirmation envelopes as nearly as practicable in the following manner:

(a) If a person whose name is on a ballot envelope as a voter is not on a registration poll record, the computer-generated list of registered voters or the list of special presidential voters, or if there is no

name on the ballot envelope, or if the ballot envelope was not timely postmarked or received, or if the ballot envelope is completely unsealed, such ballot envelope shall be set aside unopened for review pursuant to subdivision eight of this section with a relevant notation indicated on the ballot envelope notwithstanding a split among the central board of canvassers as to the invalidity of the ballot; provided, however, if the ballot envelope is completely unsealed, such voter shall receive notice pursuant to paragraph (h) of subdivision three of this section.

(b) If there is more than one timely ballot envelope executed by the same voter, the one bearing the later date of execution shall be accepted and the other rejected. If it cannot be determined which ballot envelope bears the later date, then all such ballot envelopes shall be rejected. When the board of elections has issued a second ballot it shall set aside the first ballot unopened to provide the voter time to return the second ballot. Notwithstanding the foregoing, if a ballot envelope for a voter was previously reviewed and opened, then the subsequently received ballot envelope shall be set aside unopened.

(c) If such person is found to be registered, the central board of canvassers shall compare the signature, if any, on each ballot envelope with the signature, if any, on the registration poll record, the computer-generated list of registered voters, or the list of special presidential voters, of the person of the same name who registered from the same address. If the signatures are found to correspond, such central board of canvassers shall certify thereto in a manner provided by the state board of elections.

(d) If such person is found to be registered and has requested a ballot, the ballot envelope shall be opened, the ballot or ballots withdrawn, unfolded, stacked face down and deposited in a secure ballot box or envelope. Upon such processing of the ballot, the voter's record shall be updated with a notation that indicates that the voter has already voted in such election. The board of elections shall adopt procedures, consistent with regulations of the state board of elections, to prevent voters from voting more than once and to secure ballots and prevent public release of election results prior to election day. Such procedures shall be filed with the state board of elections at least ninety days before they shall be effective.

(e) In the case of a primary election, the ballot shall be deposited in the box only if the ballot is of the party with which the voter is enrolled according to the entry on the back of his or her registration poll record or in the computer-generated registration list; if not, the ballot shall be rejected without inspection or unfolding and shall be returned to the ballot envelope which shall be endorsed "not enrolled".

(f) If the central board of canvassers determines that a person was entitled to vote at such election it shall prepare such ballot to be stacked face down and deposited in a secure ballot box or envelope consistent with paragraph (d) of this subdivision if such board finds that ministerial error by the board of elections or any of its employees caused such ballot envelope not to be valid on its face.

(g) If the central board of canvassers splits as to whether a ballot is valid, it shall prepare such ballot to be cast and canvassed pursuant to this subdivision.

(h) As each ballot envelope is opened, if one or more of the different kinds of ballots to be voted at the election are not found therein, the central board of canvassers, shall make a memorandum showing what ballot or ballots are missing. If a ballot envelope shall contain more than one ballot for the same offices, all the ballots in such ballot envelope shall be rejected. When the review of such ballots shall have been completed, the central board of canvassers shall ascertain the number of such ballots of each kind which have been deposited in the ballot box by deducting from the number of ballot envelopes opened with the number of missing ballots, and shall make a return thereof. The number of voters' ballots deposited in the ballot box shall be added to the number of other ballots deposited in the ballot box, in order to determine the number of all ballots of each kind to be accounted for in the ballot box.

3. Curing ballots. (a) At the time a ballot affirmation envelope is reviewed pursuant to subdivision two of this section, the board of elections shall determine whether it has a curable defect.

(b) A curable defect includes instances where the ballot envelope: (i) is unsigned; (ii) has a signature that does not correspond to the registration signature; (iii) has no required witness to a mark; (iv) is returned without a ballot affirmation envelope in the return envelope;

(v) has a ballot affirmation envelope that is signed by the person that has provided assistance to the voter but is not signed or marked by the voter; (vi) contains the signature of someone other than the voter and not of the voter; or (vii) is returned by mail between two and seven days after the election without a postmark.

(c) The board shall indicate the issue that must be cured on the ballot envelope and, within one day of such determination, send to the voter's address indicated in the registration records and, if different, the mailing address indicated on the ballot application, a notice explaining the reason for such rejection and the procedure to cure the rejection. The board shall also contact the voter by either electronic mail or telephone, if such information is available to the board in the voter's registration information, in order to notify the voter of the deficiency and the opportunity and the process to cure the deficiency.

(d) The voter may cure the aforesaid defects by filing a duly signed affirmation attesting to the same information required by the ballot affirmation envelope and attesting that the signer of the affirmation is the same person who submitted such ballot envelope; provided, however, that for the defect described in subparagraph (vii) of paragraph (b) of this subdivision, such affirmation shall also include an attestation that the voter mailed the ballot envelope on or before the day of the election. The board shall include a form of such affirmation with the notice to the voter. The affirmation shall be in a form prescribed by the state board of elections, and with such affirmation the board of elections shall provide to the voter a domestic postage paid return envelope which may be used if the voter returns the cure affirmation in paper form by mail. A cure affirmation, at the option of any voter submitting such cure affirmation, may be transmitted to the board of elections in person, by mail or in electronic form as an attachment to an email. Such cure affirmation may also be provided to the board of elections as an uploaded electronic document if such board of elections provides such functionality. The cure affirmation, whether in paper or electronic form, shall include the signature of the voter duly affixed to the appropriately completed cure affirmation form.

(e) Such cure affirmation shall be received by the board no later than seven business days after the board's mailing of such curable rejection notice or by five p.m. on the seventh day following the election,

whichever is later. Any cure affirmation received electronically as an email attachment or by upload prior to midnight of the last day to cure is timely. Provided the board determines that such affirmation addresses the curable defect, the rejected ballot shall be reinstated and prepared for canvassing pursuant to subdivision two of this section. If the board of elections is split as to the sufficiency of the cure affirmation, such envelope shall be prepared for canvassing pursuant to paragraph (d) of subdivision two of this section.

(f) If the ballot envelope contains one or more curable defects that have not been timely cured, the ballot envelope shall be set aside for review pursuant to subdivision eight of this section.

(g) Ballot envelopes are not invalid and do not require a cure if: (i) a ballot envelope is undated or has the wrong date, provided it is postmarked on or prior to election day or is otherwise received timely by the board of elections; (ii) the voter signed or marked the ballot affirmation envelope at a place on the envelope other than the designated signature line; (iii) a voter used a combination of ink (of any color) or pencil to complete the ballot envelope; (iv) papers found in the ballot envelope with the ballot are materials from the board of elections, such as instructions or an application sent by the board of elections; (v) an extrinsic mark or tear on the ballot envelope appears to be there as a result of the ordinary course of mailing or transmittal; (vi) the ballot envelope is sealed using tape, paste or any other binding agent or device and there is no indication of tampering; or (vii) the ballot envelope is partially unsealed but there is no ability to access the ballot.

(h) When the board of elections invalidates a ballot affirmation envelope and the defect is not curable, the ballot envelope shall be set aside for review pursuant to subdivision eight of this section and the board shall notify the voter by mail, sent within three business days of such rejection, and by either electronic mail or telephone, if such information is available to the board in the voter's registration information, and notify the voter of other options for voting, and, if time permits, provide the voter with a new ballot.

(i) If a ballot affirmation envelope is received by the board of elections prior to the election and is found to be completely unsealed and thus invalid, the board shall notify the voter by mail, sent within

three business days of such determination, and by either electronic mail or telephone, if such information is available to the board in the voter's registration information, and notify the voter of other options for voting, and, if time permits, provide the voter with a new ballot.

4. Review of federal write-in absentee ballots. (a) Such central board of canvassers shall review any federal write-in absentee ballots validly cast by an early mail voter, an absentee voter, a military voter or a special federal voter for the offices of president and vice-president, United States senator and representative in congress. Such central board of canvassers shall also review any federal write-in absentee ballots validly cast by a military voter for all questions or proposals, public offices or party positions for which a military voter is otherwise eligible to vote as provided in section 10-104 of this chapter.

(b) Federal write-in absentee ballots shall be deemed valid only if: (i) an application for an early mail, absentee, military or special federal ballot was received from the early mail, absentee, military or special federal voter; (ii) the federal write-in absentee ballot was submitted from inside or outside the United States by a military voter or was submitted from outside the United States by a special federal voter; (iii) such ballot is received by the board of elections not later than thirteen days following the day of election or seven days after a primary election; and (iv) the early mail, absentee, military or special federal ballot which was sent to the voter is not received by the board of elections by the thirteenth day following the day of a general or special election or the seventh day after a primary election.

(c) If such a federal write-in absentee ballot is received after election day, the envelope in which it is received must contain: (i) a cancellation mark of the United States postal service or a foreign country's postal service; (ii) a dated endorsement of receipt by another agency of the United States government; or (iii) if cast by a military voter, the signature and date of the voter and one witness thereto with a date which is ascertained to be not later than the day of the election.

(d) If such a federal write-in absentee ballot contains the name of a person or persons in the space provided for a vote for any office, such ballot shall be counted as a vote for such person or persons. A vote for

a person who is the candidate of a party or independent body either for president or vice-president shall be deemed to be a vote for both the candidates of such party or independent body for such offices. If such a ballot contains the name of a party or independent body in the space provided for a vote for any office, such ballot shall be deemed to be a vote for the candidate or candidates, if any, of such party or independent body for such office. In the case of the offices of president and vice-president a vote cast for a candidate, either directly or by writing in the name of a party or independent body, shall also be deemed to be votes for the electors supporting such candidate. Any abbreviation, misspelling or other minor variation in the form of the name of a candidate or a party or independent body shall be disregarded in determining the validity of the ballot, if the voter's intention can be ascertained.

5. Nothing in this section prohibits a representative of a candidate, political party, or independent body entitled to have watchers present at the polls in any election district in the board's jurisdiction from observing, without objection, the review of ballot envelopes required by subdivisions two, three, four, and seven of this section.

6. Casting and canvassing of early mail, absentee, military and special ballots. (a) The following provisions shall apply to the casting and canvassing of all valid ballots received before, on or after election day and reviewed and prepared pursuant to subdivision two of this section, and all other provisions of this chapter with respect to casting and canvassing such ballots which are not inconsistent with this subdivision shall be applicable to such ballots.

(b) The day before the first day of early voting, the central board of canvassers shall scan all valid ballots previously reviewed and prepared pursuant to this section as nearly as practicable in the following manner:

(i) Such ballots may be separated into sections before being placed in the counting machine and scanned;

(ii) Upon completion of the scanning of such valid ballots, the scanners used for such purpose shall be secured, and no tabulation of the results shall occur until one hour before the close of the polls on

election day. Any ballots scanned during this period shall be secured in the same manner as voted ballots cast during early voting or on election day. The board of elections shall adopt procedures to prevent the public release of election results prior to the close of polls on election day and such procedures shall be consistent with the regulations of the state board of elections and shall be filed with the state board of elections at least ninety days before they shall be effective;

(iii) Any valid ballots that cannot be cast on a scanner shall be held inviolate and unexamined and shall be duly secured until after the close of polls on election day when such ballots shall be examined and canvassed in a manner consistent with subdivision two of section 9-110 of this article.

(c) After the close of the polls on the last day of early voting, the central board of canvassers shall scan all valid ballots received and prepared pursuant to this section, and not previously scanned on the day before the first day of early voting, in the same manner as provided in paragraph (b) of this subdivision using the same or different scanners.

(d) In casting and canvassing such ballots, the board shall take all measures necessary to ensure the privacy of voters.

(e) The board of elections may begin to obtain tabulated results for all ballots previously scanned, as required by this subdivision, one hour before the scheduled close of polls on election day; provided, however, no unofficial tabulations of election results shall be publicly announced or released in any manner until after the close of polls on election day at which time such tabulations shall be added into the election night vote totals.

(f) Upon completing the casting and canvassing of any remaining valid ballots as hereinabove provided for any election district, the central board of canvassers shall thereupon, as nearly as practicable in the manner provided in this article for early mail, absentee, military and special ballots, verify the number of ballots so cast, tally the votes so cast, add such tally to the previous tally of all votes cast in such election district, and record the result.

(g) The record of the vote counted by each scanner and manually for each candidate and for and against each ballot proposal, printed by election district, shall be preserved in the same manner and for the same period as the returns of canvass for the election.

7. Post-election review and canvassing of affidavit ballots. (a) Within four business days of the election, the board of elections shall review all affidavit ballots cast in the election. If the central board of canvassers determines that a person was entitled to vote at such election it shall cast and canvass such affidavit ballot; provided, however, if the board of elections receives one or more timely early mail or absentee ballots from a voter who also cast an affidavit ballot at a poll site, the last such timely early mail or absentee ballot received shall be canvassed and the affidavit ballot shall be set aside unopened; and provided further, if a voter was issued an early mail or absentee ballot and votes in person via an affidavit ballot and the board does not receive such early mail or absentee ballot, the affidavit ballot shall be canvassed if the voter is otherwise qualified to vote in such election.

(b) Affidavit ballots are valid when cast at a polling site permitted by law by qualified voters: (i) who moved within the state after registering; (ii) who are in inactive status; (iii) whose registration was incorrectly transferred to another address even though they did not move; (iv) whose registration poll records were missing on the day of such election; (v) who have not had their identity previously verified; (vi) whose registration poll records did not show them to be enrolled in the party in which they are enrolled; (vii) who are incorrectly identified as having already voted; and (viii) who have registered to vote pursuant to section 8-604 of this chapter.

(c) Affidavit ballots are valid to the extent that ministerial error by the board of elections or any of its employees caused such ballot envelope not to be valid on its face.

(d) If the central board of canvassers determines that a person was entitled to vote at such election, the board shall cast and canvass such affidavit ballot if such board finds that the voter appeared at a polling place, in the correct county, which is designated as a polling place for the correct assembly district, regardless of the fact that the voter may have appeared in the incorrect election district or polling place, and regardless of whether the voter's name was in the registration poll record; provided, however, that in the event such ballot includes one or more offices for which such person is not

entitled to vote at such election, such ballot shall only be cast and canvassed for the offices for which such person is entitled to vote at such election.

(e) If the central board of canvassers finds that a voter submitted a voter registration application through the electronic voter registration transmittal system pursuant to title eight of article five of this chapter and signed the affidavit ballot, the board shall cast and canvass such affidavit ballot if the voter is otherwise qualified to vote in such election.

(f) If the central board of canvassers determines that a person was entitled to vote at such election, the board shall cast and canvass such affidavit ballot if such board finds that the voter substantially complied with the requirements of this chapter. For purposes of this paragraph, "substantially complied" shall mean the board can determine the voter's eligibility based on the statement of the affiant or records of the board.

(g) If the central board of canvassers finds that the statewide voter registration list supplies sufficient information to identify a voter, failure by the voter to include on the affidavit ballot envelope the address where such voter was previously registered shall not be a fatal defect and the board shall cast and canvass such affidavit ballot.

(h) (i) If a voter registration application for a person was received by a board of elections by the tenth day prior to the election, an affidavit ballot from the person shall be cast and counted if the voter is otherwise qualified to vote in such election, notwithstanding the fact that the person's name was omitted from a registration poll record or list of registered voters.

(ii) If the central board of canvassers finds that the voter registered or pre-registered to vote for the first time pursuant to title nine of article five of this chapter at least ten days before a primary, appeared at such primary election, and indicated on the affidavit ballot envelope the intent to enroll in such party, the affidavit ballot shall be cast and canvassed if the voter is otherwise qualified to vote in such election.

(i) A voter registration submitted by a person registering to vote at an early voting polling location pursuant to section 8-604 of this chapter shall be processed and an affidavit ballot from such person

shall be cast and canvassed if the voter is otherwise qualified to vote in such election, notwithstanding the fact that the person's name is not on a registration poll record or list of registered voters.

(j) When the central board of canvassers determines that an affidavit ballot is invalid due to a missing signature on the affidavit ballot envelope, or because the signature on the affidavit ballot envelope does not correspond to the registration signature, such ballots shall be subject to the cure procedure in subdivision three of this section. The absence of a signature on a registration poll record or computer generated list of registered voters shall not provide a basis for rejecting affidavit ballots submitted pursuant to section 8-604 of this chapter.

(k) At the meeting required pursuant to paragraph (a) of subdivision eight of this section, each candidate, political party, and independent body shall be entitled to object to the board of elections' determination that an affidavit ballot is invalid. Such ballots shall not be counted absent an order of the court. In no event may a court order a ballot that has been counted to be uncounted.

* (l) The board of elections shall enter information into the ballot tracking system, as defined in sections 8-414 and 8-712 of this chapter, to allow a voter who cast a ballot in an early voting or affidavit envelope to determine if the vote was counted.

* NB There are 2 par l's

* (l) The provisions of this subdivision shall apply notwithstanding any other provision of this chapter.

* NB There are 2 par l's

8. Post-election review of invalid early mail, absentee, military and special ballots. (a) Within four business days of the election, the board of elections shall designate itself or such of its employees to act as a central board of canvassers as provided in subdivision one of this section and meet to review early mail, absentee, military and special ballots determined to be invalid pursuant to paragraph (a) of subdivision two of this section, ballot envelopes that were returned to the board as undeliverable, and ballot envelopes containing one or more curable defects that have not been timely cured.

(b) At least five days prior to the time fixed for such meeting, the

board shall send notice by first class mail to each candidate, political party, and independent body entitled to have had watchers present at the polls in any election district in the board's jurisdiction. Such notice shall state the time and place fixed by the board for such post-election review.

(c) Each such candidate, political party, and independent body shall be entitled to appoint such number of watchers to attend upon each central board of canvassers as the candidate, political party, or independent body was entitled to appoint at the election in any election district for which the central board of canvassers is designated to act.

(d) Upon assembling at the time and place fixed for such meeting, each central board of canvassers shall review the ballot envelopes determined to be invalid and set aside in the review required by subdivision two of this section, ballot envelopes that were returned as undeliverable, and ballot envelopes containing one or more curable defects that have not been timely cured.

(e) Each such candidate, political party, and independent body shall be entitled to object to the board of elections' determination that a ballot is invalid. Such ballots shall not be counted absent an order of the court. In no event may a court order a ballot that has been counted to be uncounted.

9. State board of elections; powers and duties for canvassing of early mail, absentee, military, special and affidavit ballots. The state board of elections shall promulgate rules and regulations necessary for the implementation of the provisions of this section. Such rules and regulations shall include, but not be limited to, provisions to (a) ensure an efficient and fair review process that respects the privacy of the voter, (b) ensure the security of the central count scanners used before election day, and (c) ensure that ballots cast as provided in this section are canvassed and counted as if cast on election day.