

1-1-104. Definitions.

(51) "Watcher" means an eligible elector other than a candidate on the ballot who has been selected by a political party chairperson on behalf of the political party, by a party candidate at a primary election, by an unaffiliated candidate at a general, congressional vacancy, or nonpartisan election, or by a person designated by either the opponents or the proponents in the case of a ballot issue or ballot question. If selected by a political party chairperson, a party candidate, or an unaffiliated candidate, the watcher shall be affiliated with that political party or unaffiliated as shown on the registration books of the county clerk and recorder.

1-5-503. Arrangement of voting equipment or voting booths and ballot boxes.

The voting equipment or voting booths and the ballot box shall be situated in the polling place so as to be in plain view of the election officials and watchers. No person other than the election officials and those admitted for the purpose of voting shall be permitted within the immediate voting area, which shall be considered as within six feet of the voting equipment or voting booths and the ballot box, except by authority of the election judges or the designated election official, and then only when necessary to keep order and enforce the law.

Source: L. 92: Entire article R&RE, p. 717, § 8, effective January 1, 1993. L. 2004: Entire section amended, p. 1344, § 8, effective May 28.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-6-503 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-4-204 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2004 act amending this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 303.

C.J.S. See 29 C.J.S., Elections, §§ 313-315.

1-7-105. Watchers at primary elections.

(1) Each political party participating in a primary election shall be entitled to have a watcher in each precinct in the county. The chairperson of the county central committee of each political party shall certify the persons selected as *watchers* on forms provided by the county clerk and recorder and submit the names of the persons selected as *watchers* to the county clerk and recorder. To the extent possible, the chairperson shall submit the names by the close of business on the Friday immediately preceding the election.

(2) In addition, candidates for nomination on the ballot of any political party in a primary election shall be entitled to appoint some person to act on their behalf in every precinct in which they are a candidate. Each candidate shall certify the persons appointed as *watchers* on forms provided by the county clerk and recorder and submit the names of the persons selected as *watchers* to the county clerk and recorder. To the extent possible, the candidate shall submit the names by the close of business on the Friday immediately preceding the election.

Source: L. 92: Entire article R&RE, p. 733, § 9, effective January 1, 1993. L. 2007: Entire section amended, p. 1977, § 22, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-202 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-15-104 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) This section was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

ANNOTATION**Analysis****I. General Consideration.****II. Irregularities.****I. GENERAL CONSIDERATION.**

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 304.

C.J.S. See 29 C.J.S., Elections, §§ 319, 320.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Designation of poll watchers for political organizations is not required in order to ensure constitutional access to the voting process. *Baer v. Meyer*, 728 F.2d 471 (10th Cir. 1984).

II. IRREGULARITIES.

The presumption that election officers have faithfully discharged their duties always obtains until the

contrary is shown. *Londoner v. People ex rel. Barton*, 15 Colo. 557, 26 P. 135 (1890); *Baldauf v. Gunson*, 90 Colo. 243, 8 P.2d 265 (1932).

And the will of the people should not be defeated by an honest mistake of election officers. *Baldauf v. Gunson*, 90 Colo. 243, 8 P.2d 265 (1932).

Moreover, literal compliance with prescribed forms is not required if the spirit of the law is not violated. *Baldauf v. Gunson*, 90 Colo. 243, 8 P.2d 265 (1932).

And form should be subservient to substance when no legal voter has been deprived of his vote and no injury of any kind has been done to anyone. *Baldauf v. Gunson*, 90 Colo. 243, 8 P.2d 265 (1932).

But where there is a gross disregard of the procedure and formalities required in the conduct of elections, whether permitted by design, through ignorance, or negligence, the returns should be rejected. *People v. Lindsey*, 80 Colo. 465, 253 P. 465 (1927).

However, it is not necessary that actual fraud should be committed. *People v. Lindsey*, 80 Colo. 465, 253 P. 465 (1927).

Rather, when it is clearly established that frauds subversive of the purity of the ballot box and tending to nullify the popular will have been perpetrated by the election officers of a precinct, or have been perpetrated by others with their knowledge, connivance, and consent, and the extent of such frauds cannot be disclosed with reasonable certainty, the official returns from the precinct should be thrown out. *Londoner v. People ex rel. Barton*, 15 Colo. 557, 26 P. 135 (1890); *Baldauf v. Gunson*, 90 Colo. 243, 8 P.2d 265 (1932).

However, where the counting officers divulged how the vote stood and left the tally books in an unlocked box, such irregularities did not constitute fraud subversive of the purity of the ballot box and tending to nullify the popular will or such culpable negligence as to render the doings of the election officials unworthy of credence and destroy the integrity of the returns. *Baldauf v. Gunson*, 90 Colo. 243, 8 P.2d 265 (1932).

Entire poll ordinarily not rejected. The fact that illegal ballots have been cast, or that other irregularities have taken place, does not ordinarily warrant the rejection of the entire poll. *Londoner v. People*, 15 Colo. 557, 26 P. 135 (1890); *Baldauf v. Gunson*, 90 Colo. 243, 8 P.2d 265 (1932).

But where it is impossible to separate with reasonable certainty legal from illegal votes, the entire vote should be rejected. *People v. Lindsey*, 80 Colo. 465, 253 P. 465 (1927).

1-7-106. Watchers at general and congressional vacancy elections.

Each participating political party or issue committee whose candidate or issue is on the ballot, and each unaffiliated and write-in candidate whose name is on the ballot for a general or congressional vacancy election, shall be entitled to have no more than one watcher at any one time in each precinct polling place in the county and at each place where votes are counted in accordance with this article. The chairperson of the county central committee of each major political party, the county chairperson or other authorized official of each minor political party, the issue committee, or the write-in or unaffiliated candidate shall certify the names of one or more persons selected as watchers on forms provided by the county clerk and recorder and submit the names of the persons selected as watchers to the county clerk and recorder. To the extent possible, the chairperson, authorized official, issue committee, or candidate shall submit the names by the close of business on the Friday immediately preceding the election. The watchers shall surrender the certificates to the election judges at the time they enter the polling place and are sworn by the judges. This section shall not prevent party candidates or county party officers from visiting polling places to observe the progress of voting in the precincts.

Source: **L. 92:** Entire article R&RE, p. 733, § 9, effective January 1, 1993. **L. 95:** Entire section amended, p. 862, § 122, effective July 1. **L. 2002:** Entire section amended, p. 1633, § 15, effective June 7. **L. 2007:** Entire section amended, p. 1978, § 23, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-104 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-109 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) This section was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

1-7-107. Watchers at nonpartisan elections.

Candidates for office in nonpartisan elections, and proponents and opponents of a ballot issue, are each entitled to appoint one person to act as a watcher in every polling place in which they are a candidate or in which the issue is on the ballot. The candidates or proponents and opponents shall certify the names of persons so appointed to the designated election official on forms provided by the official and submit the names of the persons selected as watchers to the county clerk and recorder. To the extent possible, the candidate, proponent, or opponent shall submit the names by the close of business on the Friday immediately preceding the election.

Source: **L. 92:** Entire article R&RE, p. 734, § 9, effective January 1, 1993. **L. 93:** Entire section amended, p. 1416, § 65, effective July 1. **L. 2007:** Entire section amended, p. 1978, § 24, effective August 3.

Editor's note: This section was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

1-7-108. Requirements of watchers.

(1) Watchers shall take an oath administered by one of the election judges that they are eligible electors, that their name has been submitted to the designated election official as a watcher for this election, and that they will not in any manner make known to anyone the result of counting votes until the polls have closed.

(2) Neither candidates nor members of their immediate families by blood or marriage to the second degree may be poll watchers for that candidate.

(3) Each watcher shall have the right to maintain a list of eligible electors who have voted, to witness and verify each step in the conduct of the election from prior to the opening of the polls through the completion of the count and announcement of the results, to challenge ineligible electors, and to assist in the correction of discrepancies.

Source: L. 92: Entire article R&RE, p. 734, § 9, effective January 1, 1993. L. 93: (1) amended, p. 1417, § 66, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-105 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-3-112 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 320.