

The Office of the West Virginia Secretary of State responds to public comments as required by W. Va. Code § 29A-3-11(a)(9) regarding the proposed amendments to 153 CSR 13, “Early Voting In-Person Satellite Precincts.”<sup>1</sup>

Comments Submitted by:

1. Kanawha County Clerk Vera McCormick and Kanawha County Commission, jointly;  
and
2. Putnam County Clerk Brian Wood

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### **Comments by Kanawha County Clerk and County Commission**

#### Kanawha Comment 1:

A County Clerk and County Commission, with approval of the SOS, should be afforded a mechanism for relocating early community voting locations due to emergency, weather-related closure, or other serious extenuating circumstance that causes the previously approved community voting location to become unavailable because doing so is in the best interest of the public.

Vera McCormick has served as the Kanawha County Clerk for nearly 20 years. Clerk McCormick is familiar with relocating a polling location due to emergency, road closure, building issue, or other extenuating circumstances. Clerk McCormick believes, and the Commission agrees, that a provision allowing for an emergency relocation of an early voting location could be handled just as a regular election day change and is in the best interest of the voting public.

Suggested revision is to follow existing procedures set forth in W.Va. Code § 3-1-7 pertaining to emergency precinct location changes, which reads in pertinent part as follows:

(f) If for any reason the election cannot be held at the designated polling place in a precinct and no provision has been made by the county commission for holding the election at another place, the commissioners of election for that precinct may hold the election at the nearest place which they can secure for the purpose. They shall make known by proclamation to voters present at the time for opening the polls, and by posting a notice at or near the entrance of the first named polling place, the location at which the election will be held. The county commission shall establish another place of voting for that precinct as soon thereafter as practicable.

(g) Notwithstanding any provision herein to the contrary, in the case of an emergency, the county commission may make the precinct change no later than sixty days prior to an election in accordance with the requirements herein with the approval of the Secretary of State. A change, if made however, shall not cause any voter to be moved to a different district.

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<sup>1</sup> The proposed amendments include a Rule Name change to “Early Voting In-Person Community Voting Locations” which will be reflected upon passage.

### WVSOS Response 1:

The suggested revisions will be substantially incorporated into the proposed rule, excepting the language from the referenced statute example pertaining to a voter being moved out of district. During the early voting period, all community voting locations have all county ballot styles available for in-person voting, and it is an unavoidable fact that some segment of voters who desire to vote early and in person will be required to travel out of their voting district to one of the few designated community voting locations.

### Kanawha Comment 2:

The County executive committee nomination process under 3.3.1 should be simplified because, as written in the Rule, it is confusing and potentially in conflict with the enabling statute.

We suggest simplifying the nomination process as it is currently set forth in the rule. As proposed, the rule would have the parties nominate sites by sending a notice to the County Clerk, who presumably forwards the nominations to the County Commission where “... *the County Commission shall, at a public meeting, decide whether to add the proposed community voting locations prior to the notice deadline set forth in section 3.1 of this rule (120 days).*”

This process seems to be in conflict with W. Va. Code §3-3-2a, which requires the County Clerk to approve any community voting location designated by the Commission. Also, this rule appears to create a process where a County Commission must meet first to *approve* the political party nominated site prior to the 3.1 deadline (120 days), and then again meet again to approve or disapprove the required County Clerk’s proposal, prior to the 3.4. deadline (90 days). We believe the public would be best served by having a process where all proposed sites are considered at the same time, during a public meeting.

### **Suggested revision:**

3.3.1. The county executive committees of the two major political parties may nominate sites to be used as community voting locations during the early voting period pursuant to W. Va. Code § 3-3-2a(b)(3). Nominations under this rule shall be made by written request to the clerk delivered no later than 150 days prior to election day, and shall clearly list the address(es) and neutrality criteria for each proposed community voting location. Upon approval of the written proposal by the clerk, the clerk shall submit said proposals to the county commission prior to the notice deadline set forth in section 3.1 of this rule; Provided, That delinquent nominations shall not prohibit the county commission from considering the proposed community voting locations within the deadlines set forth by law and this rule.

### WVSOS Response 2:

The suggested revisions will be substantially incorporated into the rule, modifying only the proviso to clarify the clerk’s duty to approve and submit a nomination proposal, which will read as follows:

Provided, That pursuant to the clerk’s authority under W. Va. Code § 3-3-2a(b), delinquent nominations by county executive committees shall not prohibit the clerk from approving or submitting a proposal to the county commission within the deadlines set forth by law and this rule.

Kanawha Comment 3:

Regarding the calculation of deadlines in the rule, please clarify through definition that “election day” as used in the rule, refers to the date of the Election, and not the first day of the early voting period which is 13 days before the Election.

Although this may be obvious, we believe removing any ambiguity regarding this language would be helpful for the purpose of calculating the 120 day and 90 day deadlines in the rule.

WVSOS Response 3:

The suggested revisions will be incorporated into the rule.

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**Comments by Putnam County Clerk, Brian Wood**

Putnam Comment 1:

Sections 3.3.1 and 3.3.2 do not clearly indicate the county clerk’s approval process stating that the clerk shall submit to the county commission.

WVSOS Response 1:

The suggested revisions will be incorporated into the rule at Section 3.3.1.

Putnam Comment 2:

Section 3.4 states the county commission shall approve or disapprove rather than the county commission shall approve with the consent of the clerk or disapprove (however, Section 3.5 does acknowledge the clerk’s role in approving a community voting location. Is it the opinion of the SOS office that this is sufficient to protect the county clerk’s role in approving a community voting location despite 3.3.1 and 3.4 not having language?)

WVSOS Response 2:

W. Va. Code § 3-3-2a(b) is clear that a county commission may only designate a community voting location “with the approval of the county clerk or other official charged with the administration of elections[.]”

Section 3.4 pertains to the deadline by which a county commission must complete its decision-making process, which comes only after a county clerk issues approval and submits a proposal for a new or changed community voting location.

Nevertheless, a county clerk's approval authority will be incorporated into Section 3.3.1 for uniformity and clarity.

Putnam Comment 3:

Section 3.4 seems to contradict WV Code 3-3-2a(b)(8) which states once a community voting location is designated it may continue to be used in subsequent elections without complying with the public notice requirements of subsection (1) of this section if the county commission finds and the county clerk agrees at least 50 days but not more 80 days prior to the election that the location continues to qualify under this section. In my opinion once a community voting location is designated, it should be grandfathered in for future elections and not be forced to redesignate for every election.

WVSOS Response 3:

The suggested revisions will be incorporated into the rule.

Putnam Comment 4:

Section 4.1 Does this section restrict the use of E-pollbooks for counties? When using E-pollbooks at different community voting locations the information is immediately updated to both locations through the E-pollbook and then later credit is given to the voter in the uniform voter registration system.

WVSOS Response 4:

Suggested revisions will be incorporated into the rule to account for the use of e-pollbooks.