

410-RICR-20-00-23

TITLE 410 – BOARD OF ELECTIONS

CHAPTER 20 – ELECTIONS

SUBCHAPTER 00 –N/A

Part 23 - Rules and Regulations for Mail Ballot Certification Process

23.1 Purpose

This Regulation establishes uniform guidelines for the certification and challenging of mail ballots.

23.2 Authority

This Regulation is adopted pursuant to and in accordance with the provisions of R.I. Gen. Laws § 17-20-1, *et seq.*

23.3 Definitions

- A. “Board of Canvassers” means the board of canvassers in a city or town.
- B. “Board of Elections” or “State Board” means the Rhode Island Board of Elections.
- C. “CVRS” or “Central Voter Registration System” means the single, unified, centralized, interactive computerized statewide voter registration system maintained and administered by the Office of the Secretary of State. The CVRS shall be the official voter registration system utilized by local boards of canvassers for the conduct of all federal, state and local elections in Rhode Island and shall include the name and registration information for every registered voter in the state.
- D. “Designated Election Official” means a member of the Board staff, or other person expressly authorized by the Board or its Executive Director to conduct functions that relate to the processing of mail ballot certification envelopes. All authority to qualify or disqualify a mail ballot shall be subject to Board review and determination when required. Provided further that before any mail ballot envelope is determined to be not qualified, the mail ballot envelope shall be reviewed by at least one member of the Board, who can then bring the matter to the entire Board when needed. Designated Election Officials shall be sworn in by a member of the Board, or its Executive Director, and shall promise to apply all laws and regulations pertaining to elections, including but not limited to those laws and regulations pertaining to the certification of mail ballots.

- E. “Political party” means a political party that has met the recognition requirements of R.I. Gen. Laws § 17-1-2(9).

23.4 Verification and Certification of Mail Ballots

- A. Each mail ballot certification envelope shall be initially examined in a publicly noticed session and by a pair of designated election officials in accordance with the following procedure.
- B. Verification of Mail Ballot Certification Envelopes
1. Notice and Public Sessions
 - a. The Board shall provide notice at least two (2) business days whenever possible, but not less than twenty-four (24) hours before the commencement of all sessions held for the purpose of certifying mail ballots. Said sessions may begin twenty (20) days prior to and continuing up to and including Election Day, until completed.
 - b. Notice shall be given to the public on the Board’s website, and the Secretary of State’s website at least twenty-four (24) hours before commencing any session. All candidates for state and federal office, as well as state chairpersons for all recognized political parties, shall be given notice by telephone, electronic mail, or otherwise and shall inform the person of the day on which a candidate’s district will be verified, certified and tabulated.
 - c. The certification process shall be done within a railed space in the room in which it takes place, and the Board shall admit within the railed space, to witness the processing and certification of the ballots, the interested persons, including the candidates, or at least one representative of each candidate for whom votes are at the time being processed, and an equal number of representatives of each political party. These representatives shall be authorized in writing by the voter, the candidate, or the chairperson of the state committee of the political party, respectively, as the case may be. The Board shall also, in accordance with these rules, admit representatives of the press and newscasting agencies and any other persons that it deems proper.
 - d. No pen, pencil or other writing instrument or liquids shall be allowed within the designated area for verifying and processing mail ballots.
 2. Facially Deficient or Incomplete Mail Ballot Certification Envelopes.
 - a. During the public sessions, a pair of designated elections officials shall examine the voter certification envelope, or a scanned copy of

the voter certification envelope (R.I. Gen. Laws § 17-20-21) to determine that the following information is set forth therein::

- (1) Name of voter
- (2) Voting address
- (3) Voter signature or mark of voter

b. The information required above shall be included on all certification envelopes:

- (1) Where a voter is incapacitated and it would be an undue hardship to vote at the polls because of illness, or mental or physical disability, blindness, or serious impairment, the certification envelope shall be signed by the voter
- (2) Where a voter is confined in a hospital, convalescent home, nursing home, rest home or similar institution, public or private, within the state of Rhode Island, the voter must submit a certification envelope signed.
- (3) For voters who are temporarily absent from the state due to employment connected with military operations, or are a spouse or legal dependent residing with that person, or a voter is a United States citizen who will be outside of the United States, then the certification envelope need only be signed by the voter.
- (4) For those voters who choose to vote by mail for any reason, the certification envelope shall be signed by the voter.

c. Upon completion of the examination of the certification envelope, when the pair of designated election officials determines that any information enumerated above has not been included on the certification envelope, in accordance with the statutory requirements, or is left blank, the pair of designated election officials shall segregate the envelope. The reason for the deficiency shall be identified in the voter's record within the Central Voter Registration System (CVRS).

d. Upon request, the candidate or candidate's representatives shall also be afforded the opportunity to examine the certification envelopes at the time those ballot envelopes are being certified.

e. Immediately thereafter, but not more than two (2) business days later, the Designated Election Official shall notify the voter of the deficiency by telephone or by text message whenever possible. When not

possible, by mail, and also by providing notice electronically whenever the voter has opted-in to receive such electronic notifications from election officials, and said notice will indicate that the voter may correct the deficiency in accordance with the Cure Procedures set forth in § 23.11 of this Part.

- f. In the event that the voter does not cure the omitted, defective or deficient information within the time allowed under applicable law and regulation, the ballot shall not be removed from the certification envelope and shall not be tabulated. The envelope shall be stamped "VOID" and the voter shall be provided the ability to determine the status of their ballot using an electronic portal.
- g. In the event that the voter cures the facial deficiency within the time allotted, then the certification envelope shall be processed in accordance with the certification and tabulation process for valid ballots.

3. Signature and Verification Comparison Protocol

- a. Upon determination that the mail ballot certification envelope includes all of the required information, a pair of designated election officials shall compare the signature of the voter on the certification envelope with the signature set forth within the CVRS to verify that both the signatures are identical, pursuant to R.I. Gen. Laws §§ 17-20-26(b) and (c)(1)(2).
- b. For purposes of signature comparison, the signature of the voter shall be accepted as valid if it can be reasonably identified to be the signature of the voter. A voter's ballot shall not be disqualified merely because the voter did not sign his or her full name as it is listed on the voter registration list, or omitted or included a middle initial or name, abbreviated a first and/or middle name, or made a similar omission or inclusion, as long as the designated election officials are able to determine that the signatures match. (R.I. Gen. Laws § 17-14-8)
- c. The voter's mark "X" shall be considered sufficient if the person is unable to sign his or her name because of a physical incapacity or otherwise, in accordance with R.I. Gen. Laws §§ 17-20-3(e) and 17-20-8(a).
- d. In the event that one or both designated election officials determine that a signature is invalid or questionable, the certification envelope shall be segregated with a Deficient Mail Ballot Attestation Form sent to the affected voter(s). In the event that any candidate or designated representative of a candidate asserts a challenge to a

signature or other information set forth on a voter's certification envelope in accordance with the procedures set forth under § 23.6 of this Part below, the challenged voter's envelope shall be segregated and reviewed by the Board. with notice provided to the affected voter(s).

- e. In the event a voter is required to submit a copy of their identification with their mail ballot in accordance with Section 4(A) of Board rules on Voter Registration and the voter fails to provide a copy of their identification, the voter's ballot shall be deemed deficient and shall be processed in accordance with § 23.12 of this Part.
- f. The Board shall review all signatures that have been challenged by a candidate or candidate's representative, in accordance with the challenge protocol in § 23.7 of this Part.
- g. In the event that no challenge is asserted and the designated election officials find no discrepancy on the signature set forth on the certification envelope, the ballot shall be processed in accordance with the certification and tabulation process for valid ballots.

23.5 STANDING AND BASES FOR CHALLENGES TO MAIL BALLOTS

A. Who May Challenge a Mail Ballot

- 1. The following persons may assert a challenge to a mail ballot:
 - a. any voter who has cast a mail ballot being reviewed, or the voter's representative;
 - b. any candidate who appears on the ballot in question and whose votes are being processed, or his or her designated representative;
 - c. any recognized party representative or recognized party chair;
 - d. any registered voter of the same precinct as the person submitting a mail ballot.

B. Statutory Bases for Challenges

- 1. A challenge may be asserted based upon the information set forth on the certification envelope, including the compliance with each of the statutory obligations set forth under R.I. Gen. Laws Chapter 17-20:
 - a. the deposit of the ballot at the Board within the time allotted by law;

- b. the making of a false application or certification;
 - c. the verification of the voter's signature;
 - d. a mail ballot that was not voted by the voter who purportedly cast it or was voted by a person who was not eligible to vote by mail (R.I. Gen. Laws § 17-20-33).
2. Any mail ballot that was not cast in material conformance with the provisions of R.I. Gen. Laws Chapter 17-20, and has not been cured under the procedures set forth in § 23.10 of this Part, shall be rejected by the Board or the Designated Election Official.

23.6 TIME WITHIN WHICH CHALLENGE MAY BE ASSERTED

All objections must be submitted in writing at the time that the oath envelope is publicly examined under the verification process set forth under § 23.3 of this Part and prior to the acceptance and separation of the oath envelope from the inner envelope containing the mail ballot. Thereafter, any and all objections shall be deemed untimely and waived.

23.7 PROCEDURE FOR OBJECTION TO THE CERTIFICATION OF A BALLOT

- A. All objections to any mail ballot application/certification envelope shall first be made verbally to the designated election officials during the review process. The designated election official shall proceed to segregate the oath envelope that is the subject of the objection. The envelope shall remain segregated in a secure location until the objection has been ruled upon by the Board.
- B. Upon segregation of the ballot oath envelope, the challenger shall set forth the basis for the objection in writing, which shall be signed by the challenger upon a form promulgated by the Board. Each challenged mail ballot shall be challenged separately. Each challenge shall specify the reasons why the mail ballot does not comply with the requirements of R.I. Gen. Laws Chapter 17-20 or why the mail ballot voter is not legally entitled to vote in the election. The challenge shall be signed by the challenger. Said form shall notify the challenger that the mail ballot certification process shall not be subject to any frivolous or technical challenge. The Board shall stamp the objection with the time and date received.
- C. The failure to submit a timely written objection shall constitute a waiver of any challenge to the ballot in question.
- D. The Board shall convene one or more public meetings to address and rule upon all objections that have been filed in accordance with this protocol and that have not been cured by the voter.

23.8 BOARD HEARINGS ON THE MERIT

- A. The Board shall meet, at a duly noticed meeting consistent with the Open Meetings Act, R.I. Gen. Laws § 42-46-1, *et seq.*, and consider and decide all meritorious objections filed in writing and in a timely manner. The Board shall provide notice of said hearings to both the challenger and the mail ballot voter. Any voter whose ballot has been challenged may, either personally or through an authorized representative, appear before the Board at the hearing on the challenge and may present evidence as to the validity of the mail ballot. Said notice shall be communicated by mail or, where available, electronically and/or by telephone, to the challenger and voter. The Board shall determine if either oral argument or an evidentiary hearing is warranted. The Board may rule on any objection, with or without oral argument or the consideration of additional testimony or evidence, as the Board deems appropriate.
- B. When considering the merits of any objection, the Board shall not construe the statutory requirements set forth under R.I. Gen. Laws Chapter 17-20 to require the disqualification of a ballot merely because the voter did not sign his or her name as it is listed on the voter registration list, omitted or included a middle initial or name, abbreviated a first and/or middle name, or made a similar omission or inclusion, as long as the Board can reasonably determine the identification of the voter. (R.I. Gen. Laws § 17-20-24.1)
- C. When determining the merits of any challenge, and the availability of interested parties, the Board shall consider the circumstances of a voter who is subject to the challenge, particularly with respect to voters who have applied for a mail ballot due to illness or incapacity or is disabled for an indefinite period of time (R.I. Gen. Laws § 17-20-9(a)), is confined in a hospital, nursing home or similar institution, or is on active duty in the United States armed forces (R.I. Gen. Laws § 17-20-9.1), employed by the United States government and residing outside of the United States (R.I. Gen. Laws § 17-20-9.3).
- D. Where the Board finds it appropriate and necessary for the determination of the validity of a mail ballot certification, the challenger and challenged voter shall be provided the opportunity to submit evidence, argument, and the opportunity to cross-examine witnesses.
- E. The burden of proof in challenging a mail ballot certification envelope in conformance with the statutory requirements of R.I. Gen. Laws Chapter 17-20, is on the person challenging the ballot. Once the challenger establishes, by a preponderance of the evidence, that the mail ballot was not obtained and/or completed in conformance with the law, the burden of proof shall then shift to the person defending the ballot to demonstrate that it is indeed the ballot of the voter it purports to be, that the voter was eligible to vote by mail ballot, and that all of the applicable requirements have been met.

23.9 SUMMARY DISPOSITION OF CHALLENGES

- A. The Board may summarily dispose of any challenge upon a determination that:
1. the challenge was not submitted in writing;
 2. the challenge has been filed without any factual basis to support the claim;
 3. the claimed irregularity is insufficient, as a matter of law, to constitute a basis to reject the mail ballot; or
 4. where, upon an examination of the oath envelope, it is facially evident that the envelope was not submitted in compliance with each of the requirements set forth under R.I. Gen. Laws § 17-20-1 *et seq.*, including, but not limited to:
 - a. the deposit of the ballot at the Board within the time allotted by law;
 - b. the making of a false application or certification;
 - c. the verification of the voter's signature; or
 - d. a mail ballot that was not voted by the voter who purportedly cast it or was voted by a person who was not eligible to vote by mail.

23.10 RECORD OF PROCEEDINGS

A complete record of the proceedings conducted under § 23.7 of this Part shall be recorded electronically and/or by stenographic means by the Board.

23.11 ACCEPTANCE OR DISQUALIFICATION OF BALLOT

- A. Based on its own motion, the Board shall either accept as valid or disqualify any mail ballot which it determines, based upon a preponderance of the evidence, was not voted by the voter who purportedly cast it, or was voted by a voter who was not eligible to vote by mail ballot or was not obtained and voted in the manner prescribed by R.I. Gen. Laws Chapter 17-20. If the Board disqualifies the mail ballot, then the application and certification envelope and shall be marked VOID. The voter shall be notified of the Board's determination and the basis for its ruling.
- B. If the Board determines that the mail ballot is valid, then the ballot shall be processed and tabulated in the same manner as all other mail ballots. Provided, however, the Board shall not process a challenged mail ballot for at least one (1) business day in order to afford the challenger with the opportunity to seek emergency judicial review of the Board's final determination. Thereafter, the mail ballot shall be certified and tabulated.

- C. Unless otherwise afforded by law, any order or decision entered by the Board may be subject to discretionary review by a petition the Rhode Island Supreme Court. Otherwise, said order or decision entered by the Board shall be final.

23.12 PROTOCOL TO CURE DEFICIENCIES AND OMISSIONS

- A. When a mail ballot application or certification envelope has been challenged, or has been found defective or deficient by the designated election officials, the voter shall be provided notice of the challenge and/or defect by the Designated Election Official, in accordance with the requirements set forth under §23.4(B)(2)(c) and shall be afforded an opportunity to correct or complete the mail ballot application/certification envelope in accordance with the following procedures.
- B. Correcting for Omitted Signature or Other Information
1. Where a ballot has been returned to the Board in an envelope that has not been signed by the voter, the Designated Election Official shall notify the voter of the deficiency by mail, and by providing notice electronically whenever the voter has opted-in to receive such electronic notifications from election officials, that the ballot cannot be accepted unless the missing or deficient information is received (not just postmarked) no later than 4:00 p.m. on the third day following the date of a primary or seven (7) days following the date of an election. Mail will be sent to the address listed in Box A on the mail ballot application. If an address is also listed in Box B, mail will be sent to the addresses listed in Box A and Box B.
 2. The voter will be instructed to submit a Deficient Mail Ballot Attestation Form with all of the information required to certify the mail ballot certification envelope in accordance with R. I. Gen. Laws Chapter 17-20. The Deficient Mail Ballot Attestation Form must be received (not just postmarked) by the Board no later than 4:00 p.m. either three (3) days following a primary, or seven (7) days following an election.
 3. For those voters who are confined to a hospital, nursing home or other institution, the Board shall assign two (2) designated election supervisors to obtain a signature or other missing information from the voter in person, whenever possible.
 4. If the voter fails to provide the missing information required by law and these rules and regulation, within the deadline set forth in this section, the ballot shall be rejected and the certification envelope shall be marked "VOID." The voter shall have the ability via an electronic portal to determine the status of the ballot and the reasons why the ballot was not accepted.
- C. Mail Ballot Certification Signature Discrepancy

1. Whenever a person submits a challenge to the validity of a voter's signature, or where one or both designated election officials have been unable to verify that the signature set forth on the certification envelope is that of the voter, the Board shall immediately attempt to notify the voter by mail, and electronically if the voter has subscribed to receive such correspondence from election officials, that the ballot has been challenged, or not accepted by the Board, due to a signature discrepancy. The voter shall be notified that he or she must submit a Deficient Mail Ballot Attestation Form, with his or her signature and attestation that the mail ballot was submitted and signed by the voter. The Deficient Mail Ballot Attestation Form must be received (not just postmarked) by the Board no later than 4:00 p.m. either three (3) days following a primary, or seven (7) days following an election.

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