

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 processing, tabulation, and challenging of mail ballots.

### 23.2 AUTHORITY

This regulation is adopted within the rules pursuant to and in accordance with the provisions of R.I. Gen. Laws § [17-20-1](#), *et seq.*

### 23.3 DEFINITIONS

- A. “Automated mail ballot signature verifier” means an electronic device that is calibrated to capture an electronic image of a voter’s signature for comparison with the voter’s signature maintained in his or her voter registration records.
- B. “Board of Canvassers” means the board of canvassers in a city or town.
- C. “Board of Elections” or “State Board” means the Rhode Island Board of Elections.
- D. “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.
- E. “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 ultimately remain the function of the Board members. 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.

- F. “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, opening and tabulation of mail ballots. Said sessions may begin fourteen (14) days prior to and continuing up to and including Election Day.
    - b. Notice shall be given to the public on the Board’s website, the Secretary of State’s website and announcements in newspapers of general circulation published 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 (R.I. Gen. Laws § [17-20-21](#)) to determine that the following information is set forth therein, as required by R.I. Gen. Laws §§ [17-20-13](#) and [17-20-13.1](#):
      - (1) Name of voter
      - (2) Voting address
      - (3) Date of birth
      - (4) Name of hospital or institution and address (where applicable)
      - (5) Facsimile number (where applicable)
      - (6) Certification that voter is eligible for mail ballot for statutorily designated reasons
      - (7) Voter signature or mark of voter
      - (8) Notary public signature (where applicable)
      - (9) Signature of two witnesses with addresses (where applicable)
      - (10) Signatures of bi-partisan pair of supervisors appointed by the Board (where applicable)
    - b. The information required above shall be included on all certification envelopes where statutorily applicable and as set forth further below:
      - (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, and either witnessed by two (2) witnesses who shall sign the certification and set forth their full addresses or a notary public who shall set forth his or her address;

- (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 and witnessed by a bi-partisan pair of supervisors appointed by the Board;
  - (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. No witnesses or notary are required. (R.I. Gen. Laws § [17-20-2\(3\)](#));
  - (4) For those voters who otherwise may not be able to vote at his or her poll place on Election Day, the certification envelope shall be signed by the voter, in the presence of two (2) witnesses, who shall also set forth their addresses where signed or where the voter voted, or in the presence of a notary, or other person authorized to administer oaths, where signed or where the voter voted.
- 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 publicly announce that the envelope is facially deficient, identify the reason for the deficiency, and segregate the envelope.
  - d. Thereafter, the candidate or candidate's representatives shall also be afforded the opportunity to examine the certification envelopes.
  - e. Immediately thereafter, but not more than two (2) business days, the Board shall inform the appropriate board of canvassers of the deficiency and the board of canvassers shall immediately, but not more than two (2) business days later, notify the voter of the deficiency, by providing notice electronically whenever possible, 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 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 notified of the reason(s) for the rejection of the ballot.
- 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 name, residence and signature of the voter on the certification envelope with the name, residence and signature set forth on the ballot application to verify that both the signatures are identical, pursuant to R.I. Gen. Laws §§ [17-20-26\(b\)](#) and [\(c\)\(1\)\(2\)](#) or by an automated mail ballot signature verifier which will compare the voter signature on the outer envelope to the voter signature on file in the Central Voter Registration System to verify that both signatures are identical.
- 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\(a\)](#). The application shall include a box to be checked by the voter indicating that he or she is incapable of signing his or her full name due to a physical, mental or other incapacity.
- d. In the event that one or both designated election officials or the automated mail ballot signature verifier determine that a signature

is invalid or questionable, the certification envelope, along with the application, shall be segregated for a review by the Board at a public meeting with notice provided to the affected voter(s), as well as any and all challengers. 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 in accordance with the procedures set forth under § 23.7 of this Part.

- e. The Board shall review all signatures that have been segregated by the designated election officials or challenged by a candidate or candidate's representative, in accordance with the challenge protocol in § 23.7 of this Part.
- f. 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 procedures set forth under § 23.10 of this Part.

## **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 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. the sufficiency of witness signatures and witness addresses – where applicable;
  - e. the execution of the certification envelope by a valid notary or other person authorized by law to administer oaths where signed, where applicable;
  - f. any failure of a witness or notary to be physically present when the document was signed by the mail ballot applicant (R.I. Gen. Laws § [17-20-32](#));
  - g. any other failure by a witness or notary, as the case may be, to comply with the provisions of R.I. Gen. Laws Chapter [17-20](#); or
  - h. 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.

## **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, or Board staff, 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 and, 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;
    - d. the sufficiency of witness signatures and witness addresses – where applicable;

- e. the execution of the certification envelope by a valid notary or other person authorized by law to administer oaths where signed, where applicable;
- f. any failure of a witness or notary to be physically present when the document was signed by the mail ballot applicant;
- g. any other failure by a witness or notary, as the case may be, to comply with the provisions of R.I. Gen. Laws Chapter [17-20](#); or
- h. 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 and challenger shall be notified by the local board of canvassers in writing 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 local board of

canvassers, 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 either not been signed by the voter or properly witnessed or notarized, when applicable, the Board staff shall notify the appropriate board of canvassers. Immediately, but not more than one (1) business day later, upon notice by the Board, the local board of canvassers will attempt to notify the voter by electronic correspondence (if known) and mail 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 either appear at the Board of Elections office to correct the error or provide the information, or the voter shall be instructed to submit an Omitted Signature Affidavit Form with all of the information required to certify the mail ballot application in accordance with R. I. Gen. Laws Chapter [17-20](#). The Omitted Signature Affidavit 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 be notified in writing by the local board of canvassers that the mail ballot was not accepted 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 name, residence and signature set forth on the certification envelope is that of a voter, the Board shall immediately attempt to notify the voter, electronically or otherwise, 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 either personally appear at the Board of Elections office to confirm his or her signature or, alternatively, the voter may complete and return a Signature Certification Affidavit Form, with his or her signature and attestation that the mail ballot was submitted and signed by the voter. The Signature Certification Affidavit 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.

### **23.13 REMAKING OF DAMAGED BALLOT**

- A. Ballots that are torn or otherwise damaged upon opening of the envelopes in addition to ballots that are unable to be processed by the automated ballot counter (i.e. improperly marked ballots, damaged ballots, blank ballots) that have been segregated by the automated ballot counter will be given to the Board or its designee to determine voter intent, and remaking of the original ballot. Ballots that have been duplicated by the Board will be kept together in a secured container until the duplication process is completed.
- B. Ballots containing write-in votes will be segregated to the write-in vote compartment of the automated ballot counter.
- C. The Board will review the rejected blank ballot to determine voter intent, consistent with § 23.15. If voter intent can be determined the ballot shall be duplicated per § 23.13(A) of this Part above. If the Board is unable to determine voter intent, the ballot will be processed as a blank ballot.
- D. If it is determined that a ballot has been damaged and cannot be electronically read due to the damage, then the ballot shall be duplicated in the following manner:
  - 1. A blank ballot will be retrieved from the blank ballot inventory for the appropriate precinct, and marked "DUPLICATE" on the back of the ballot and assigned a number. All duplicated ballots will be numbered sequentially.
  - 2. The original ballot will be marked on the back "ORIGINAL" and given the same identifying number as the duplicate ballot.

3. Two designated election officials shall remake the ballot identical to the original ballot. Duplicated ballots will remain in a secured container until the duplication process is completed.

### **23.14 WRITE-IN VOTES**

- A. The procedures for processing and recording of ballots containing write-in votes are as follows:
  1. The ballot counter will out-stack ballots containing write-in votes after the automated ballot counter records votes on contests where write-ins do not appear.
  2. The pair of designated election officials will record on write-in tally sheets the write-in votes.
  3. After recording the write-in votes, the ballots will be placed into the appropriate storage container.
- B. Write-in votes are not permitted in primaries; provided, that write-in votes may be cast for presidential candidates at any presidential primary. Write-in votes are not permitted for delegate candidates at a presidential primary.

### **23.15 VOTER INTENT FOR REJECTED MAIL BALLOTS**

- A. Whenever a mail ballot is rejected by the digital scanner or other electronic computer reader, the Board shall, whenever possible, determine voter intent with respect to any and all mail ballots rejected by the reader.
- B. No mail ballot shall be rejected for any immaterial addition, omission, or irregularity in the preparation or execution of the computer ballot, nor for failure of the voter to affix sufficient postage. No mail ballot shall be invalid by reason of mistake or omission in writing in the name of any candidate or ballot question where the candidate or ballot question intended by the voter is plainly identifiable. Where, because of any defect in marking, a mail ballot is held invalid as to any particular candidate for office or ballot question, it shall remain valid as to the candidates for other offices or other ballot question. No mail ballot shall be invalid by reason of the voter writing upon the inner envelope the name of a community within a town in place of the name of the town. No defect in the marking of the appropriate space associated with casting a vote shall invalidate any mail ballot or a vote for any candidate or ballot question, where the intention of the voter is clearly indicated.
- C. No mail ballot shall be rejected if the intention of the voter is clear unless it contains clear evidence of the identity of the voter.

- D. A mail ballot shall not be rejected solely due to the voter's failure to comply with the instructions for marking a ballot when the marking technique used by the voter clearly and consistently indicates his or her choices on the mail ballot.
- E. Inconsistent or extraneous markings on the mail ballot will not disqualify a ballot so long as the voter's intent is evident from the voter's markings.
- F. Intent shall be ascertained only from the face of the mail ballot.
- G. If a voter places a mark beside the names of more candidates for an office than are to be elected or nominated, the mail ballot is defective with respect only to that office. No vote shall be counted for any candidate for that office, but the rest of the mail ballot shall be counted if possible.
- H. If a voter votes both yes and no on a question, no vote may be counted for that question, but the rest of the mail ballot must be counted, if possible.
- I. If a voter has written the name of an individual in the proper place on a general or special election ballot a vote shall be counted for that individual whether or not the voter makes a proper mark opposite the blank where the name has been written.
- J. If the names of two candidates have been marked with the completion of the oval, and an attempt has been made to erase or obliterate one of the marks, a vote shall be counted for the remaining marked candidate. If an attempt has been made to obliterate a write-in name a vote shall be counted for the remaining write-in name or marked candidate.

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Editorial Note: This Part was filed with the Department of State prior to the launch of the Rhode Island Code of Regulations. As a result, this digital copy is presented solely as a reference tool. To obtain a certified copy of this Part, contact the Administrative Records Office at (401) 222-2473.