

**OFFICE OF POLICY AND LEGAL ANALYSIS**

**Date:** April 14, 2021  
**To:** Veterans and Legal Affairs Committee  
**From:** Janet Stocco, Legislative Analyst

**LD 253** **An Act To Strengthen Maine's Election Laws by Requiring Photographic Identification for the Purpose of Voting** (*Rep. Cebra*)

**LD 557** **An Act To Require Photographic Identification for the Purpose of Voting** (*Rep. Johansen*)

**LD 1083** **An Act To Create a Voter Identification System** (*Rep. Faulkingham*)

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**SUMMARY**

LDs 253, 557 & 1083 amend [21-A M.R.S. §671](#), the statute establishing procedures for in-person voting on election day, to require that a voter provide the following photo identification to receive a ballot:

	<b>LD 253</b>	<b>LD 557</b>	<b>LD 1083</b>
<b>Acceptable identification</b>	<ul style="list-style-type: none"> <li>➤ A “photographic identification document” approved by the Secretary of State by rule.</li> </ul>	<ul style="list-style-type: none"> <li>➤ current, valid driver’s license</li> <li>➤ current, valid nondriver ID card</li> <li>➤ U.S. Passport</li> <li>➤ Military ID card</li> <li>➤ concealed handgun permit (if permit includes a photo).</li> </ul>	<i>Same as LD 557</i>
<b>Unacceptable identification</b>		<ul style="list-style-type: none"> <li>➤ photo ID issued by a college or university in the State.</li> </ul>	<i>Same as LD 557</i>
<b>Additional provisions</b>			If voter does not possess a required form of ID, the voter may request a free photographic voter ID card from the Secretary of State. The Secretary of State must adopt rules to implement this provision.

**Other pending legislation:** [LD 1099](#), which is also pending before the VLA Committee, would similarly amend [21-A M.R.S. §671](#) to provide that, during in-person voting on election day, an “election clerk may not accept a ballot unless the voter provides photo identification.” The types of acceptable and unacceptable photo identification are not specified in LD 1099.

**ISSUES RAISED IN TESTIMONY**

**A. Preventing of voter fraud and increasing confidence in elections.** The bills’ supporters assert that requiring a photo ID to vote is a common-sense measure that will secure Maine’s elections against potential voter fraud and thereby increase public confidence in the integrity of the State’s elections. Although Maine has had few documented cases of voter impersonation fraud in the past, the bills’

supporters observe that it would have been difficult to detect such fraud in the absence of a photo ID requirement. In addition, the bills' proponents observe that photo IDs are currently required for a multitude of other transactions in today's society. The Maine Policy Institute that the prohibition in LD 557 and LD 1083 against acceptance of a college or university identification for voting purposes reflects the fact that, like workplace photo IDs, which are similarly not acceptable proof of voter identification in these bills, college and university identifications do not verify an individual's Maine residency.

**B. Disproportionately impacted voters.** Several organizations and individuals testifying against the bills expressed concern about the impact on groups who are more likely to lack photo IDs, including:

- Transgender Mainers: Equality Maine testified the driver's license or other form of ID possessed by approximately 25% of transgender individuals does not reflect the individual's gender identity.
- People of color: Several organizations testified that, according to national statistics, people of color are less likely to possess government-issued photo IDs than white Americans.
- Seniors: Several organizations noted that some seniors do not renew their driver's licenses as they age; thus, they may have difficulty securing rides to obtain new IDs. In addition, a subset of seniors either lack a birth certificate or may have difficulty obtaining a copy of their certificate, either due to administrative or financial considerations, preventing them from obtaining IDs.
- Individuals living in poverty: ACLU Maine testified that individuals living in poverty are less likely to own a car or to possess a driver's license. Due to financial considerations, it may be difficult for these individuals to obtain the documents required to obtain a state-issued ID (even if the ID is free) and to secure the time off of work and transportation needed to obtain that ID.

**C. Potential court challenges.** Attorney General Frey testified that these bills might render Maine vulnerable to lawsuits under the federal Voting Rights Act ([52 U.S.C. §10301](#)) and the [14th Amendment](#) (Equal Protection and Due Process clauses) and [24th Amendment](#) (poll taxes prohibited) to the U.S. Constitution. He suggested the State might increase its chance of prevailing in these potential lawsuits by offering a cost-free and accessible means of obtaining a photo ID, but cautioned that the inclusion of such a provision would not necessarily insulate the State from the costs of defending a lawsuit.

Secretary of State Bellows added the following concerns about potential lawsuits against the State:

- The exclusion of college IDs in LD 557 and LD 1083 may be challenged on equal protection ([14th Amendment](#)) or age discrimination ([26th Amendment](#)) grounds; and
- The imposition of a voter ID requirement might more generally be challenged on the ground that it creates an additional qualification to vote not specified by [Article II, §1 of the Maine Constitution](#). See [ME. CONST. art. II, §1](#) ("Every citizen of the United States of the age of 18 years and upwards, excepting persons under guardianship for reasons of mental illness, having his or her residence established in this State, shall be an elector for Governor, Senators and Representatives, in the city, town or plantation where his or her residence has been established . . .").

**D. Administrative costs and time.** Secretary Bellows testified that these bills would:

- Increase the time to vote and municipal staffing expenses by requiring election officials to request voters' IDs and check voters' names and addresses on the IDs against the information on the Incoming Voter List and by requiring that voters without ID to be offered the opportunity to vote on a provisional or challenged ballot as required by federal law. The Maine Municipal Association and Maine Town & City Clerk's Association shared these time and staffing concerns. ACLU

Maine further suggested the bills will lead to increased costs for municipalities to train election workers regarding new photo ID procedures and requirements.

- **Increase State administrative expenses:** (1) to produce free non-driver identification cards for Maine voters who lack a photo ID—Secretary Bellows estimated that as many as 162,266 Maine voters lack a required form of ID and that it would cost \$3.46 to produce a free voter ID for each individual, yielding a total estimated cost of \$561,440 and as well as potential increased staffing costs for BMV offices in the weeks prior to an election; (2) to conduct a public outreach campaign to educate voters on the voter ID requirement—Secretary Bellows noted, for example, that according to a [2014 NCSL report](#) Mississippi budgeted \$40,000 for a its public education campaign after enacting a voter ID law while Indiana spent \$600,000 on voter education and outreach the first year after implementing its voter ID law.

**E. Ambiguous administrative requirements.** The Maine Town & City Clerk’s Association, which testified neither for nor against these bills, requested clarification on the following topics:

- **Procedure when voter lacks required ID.** The bills do not specify what process—either the current challenged ballot process or a new provisional ballot process, similar to the process included in past voter ID legislation—applies when a voter appears at the polls without a required photo ID.
- **Procedure when photo ID presented:** The bills do not specify whether an election official must compare only the name or also the residence address on the photo ID presented by a voter against the residence address (from the voter’s registration) listed on the incoming voting list.

**F. Comparison to voter registration and absentee voting requirements.**

- **Voter registration:** The Maine Town & City Clerks’ Association noted the bills would create a higher threshold to prove identity (and possibly residency) when voting than is required to prove identity and residency when registering to vote. Under 21-A M.R.S. [§112](#) & [§112-A](#), a voter-registration applicant may prove the applicant’s identity and residency with a utility bill or other government or official document showing the applicant’s name and address.
- **Absentee voting:** Several organizations questioned why an in-person voter, but not an absentee voter, is required to produce a photo ID under these bills.

## PROPOSED AMENDMENTS

**A. Identification requirement for absentee ballots.** The Maine Policy Institute proposed adding an identity requirement for absentee voters. Specifically, it suggested following the law in Georgia, O.C.G.A. §21-2-386, which effective July 1, 2021, will provide<sup>1</sup>:

- In addition to signing the return envelope, an absentee voter must disclose the voter’s date of birth and driver’s license or state ID number on the envelope or, if the voter attests on the envelope to not having a driver’s license or state ID, the last 4 digits of the voter’s social security number.
- If this information is not included on the return envelope, the absentee ballot must be rejected. However, the voter may cure the defect within 3 days of the election by submitting an affidavit to the board of registrars or absentee ballot clerk and producing a photo ID (Georgia driver’s license or ID card, passport, or a government-employee, military or tribal photo ID card) or a copy of a

<sup>1</sup> The Maine Policy Institute did not explain whether it was suggesting Maine follow the current or newly enacted Georgia law governing absentee ballots. However, the contents of the Institute’s testimony suggested it was describing the new law.

current utility bill, bank statement, government check, paycheck or other government document showing the name and address of the voter.

**B. Provisional ballot process.** Representative Faulkingham, the sponsor of LD 1083, testified that creating a new provisional ballot process for a voter who is unable to produce sufficient proof of identity at the polls, rather than employing the challenged ballot process established in current Maine law, would be a significant improvement.

## ADDITIONAL INFORMATION

### A. Challenged vs. Provisional ballots.

- **Challenged ballots.** Under [21-A M.R.S. §673](#) (attached), an election official or another registered voter in the municipality may challenge the right of an individual to vote before the voter enters the voting booth by submitting an affidavit, under penalty of perjury,<sup>2</sup> identifying the reason for the challenge and the personal knowledge upon which the challenge is based. The ballot issued to a challenged voter must be marked with a unique number that is also recorded on a separate certificate memorializing the challenge, which is then sealed in a separate envelope with the signed affidavit. Under [21-A M.R.S. §696\(1\)](#) (attached), **a challenged ballot must be counted, unless the number of challenged ballots might affect the results of the election.** If the number of challenged ballots might affect the election results, the challenged certificates and affidavits must be submitted to the Supreme Judicial Court for a determination of the challenged ballots' validity. Regardless of whether the Supreme Judicial Court determines the validity of a challenged ballot, [§673\(7\)](#) requires the registrar of voters to conduct a hearing to determine the qualifications of each challenged voter “within a reasonable time after the election.” If a challenged voter is deemed ineligible, the voter’s registration must be canceled in the central voter registration system.

The grounds for challenging a voter are set forth in [§673\(1\)\(A\)](#). Because a photo ID is not currently required to vote, failure to present a photo ID is not listed as a ground for challenging a voter under current law. It is possible that a voter’s failure to present a required photo ID would constitute the commission of “any other specified violation of this Title” under [§673\(1\)\(A\)\(12\)](#), however.

- **Provisional ballots / “Fail safe voting”.** Under §302 of the federal Help America Vote Act (HAVA), [52 U.S.C. §21082](#), a voter who appears at the voting place and declares that the voter is registered and eligible to vote in the jurisdiction—but who does not appear on the list of eligible voters or who an election official believes is ineligible to vote—must be permitted to cast a provisional ballot. HAVA does not require election officials to count each provisional ballot. Instead, HAVA directs that a provisional ballot **must be counted if a State or local election official must later determines** that the voter who cast that provisional ballot was eligible to vote under State law.

**B. Requirement to prove identity and residency when registering to vote.** For more information on the federal and state requirements for proving residency and identity when registering to vote in person or by mail, see Attachment I to [LD 1126 bill analysis](#).

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<sup>2</sup> In Maine, perjury is a class C crime punishable by up to 5 years’ imprisonment and a \$5,000 fine. [17-A M.R.S. §451](#).

**C. Recent legislative history.**

LD (Session)	Provisions (ID required, provisional ballots, fiscal note)
<p><a href="#">LD 121</a> (128th), <a href="#">as amended</a> by a minority (7-6) of the VLA Committee.</p>	<p><b>Acceptable ID:</b></p> <ul style="list-style-type: none"> <li>• Current official ID issued by a state or by the federal government;</li> <li>• Current official ID issued by a Maine college or university;</li> <li>• Current Maine electronic benefits transfer card (of the card includes a photo); or</li> <li>• Free nondriver ID provided to person who lacks a driver’s license or nondriver identification card and who requests the ID solely for the purpose of voting.</li> </ul> <p><b>Alternative:</b> during the first year of implementation, an election worker who knows a voter lacking the required ID may attest to that voter’ identity.</p> <p><b>Provisional ballot:</b> a voter lacking a required ID would be permitted to cast a provisional ballot after signing an affidavit swearing or affirming to be the person listed on the incoming voting list. The provisional ballot would be sealed in a provisional ballot envelope and the number on that envelope would be written on a form given to the voter. If the voter provided the required photo ID to the municipal clerk or registrar within 3 days after of the election, the provisional ballot would be counted. If not, the provisional ballot would be rejected.</p> <p><b>Report:</b> Within 20 days after the election, the Secretary of State would be required to report on the Secretary’s publicly accessible website the number of provisional ballots cast, accepted or rejected.</p> <p><b>Fiscal note:</b> The minority amendment included a mandate preamble (based on the provisional voting process) and appropriations of \$351,022 in the first year and \$264,714 in the second year to fund: the provision of free IDs, provisional ballot and affidavit printing, conducting voter outreach, and programing the CVR.</p>
<p><a href="#">LD 322</a> (129th), <a href="#">as amended</a> by a minority (8-5) of the VLA Committee.</p>	<p>LD 322, as initially drafted, was identical to current LD 253.</p> <p>The minority committee amendment to LD 322 was identical to the minority committee amendment to LD 121 in the 128th Legislature (above) — including by adding a mandate preamble (based on the provisional voting process) and a <a href="#">fiscal note</a> to fund the costs of providing free nondriver ID cards, printing provisional ballots and affidavits, conducting voter outreach, and programming the CVR.</p>

**D. Laws in other states.**

NCSL has compiled information on voter ID requirements in other states, available at the following link: <https://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>. This information is also available, in a format that is hopefully easier to print, in the [Electronic LD files](#) for these bills.

Summarized on a high-level, the information compiled by NCSL reveals that, as of August 2020, the laws in 18 states required voters to produce some form of photographic identification at the polls on election day while the laws in 17 states required voters to produce identification that need not contain a photograph (for example, utility bills, bank statements, and vehicle registrations were permitted). Of the 18 states that required photographic identification, 6 states required voters who lacked the requisite photo ID to vote on a provisional ballot that would not be counted unless the voter returned to an election office within a certain number of days and produced the required form of photo ID. The 12

other photo ID states, by contrast, provided alternative methods for voters to verify their identity—for example, with an affidavit attesting to the voter’s identity signed by the voter or an election worker or by signing an envelope in which the provisional ballot was placed, with election officials later comparing that signature to the voter’s signature on file.

#### **E. Constitutionality of voter ID laws under U.S. Supreme Court Precedent.**

In *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008)—a case that did not involve claims of racial discrimination—the U.S. Supreme Court upheld Indiana’s voter ID law against a claim that it impermissibly burdened the right to vote under the 14th Amendment to the U.S. Constitution. The challenged Indiana law required individuals voting in-person to present a state or federal government-issued photo ID. A voter who did not present the identification could cast a provisional ballot that would be counted if the voter presented the required photo ID within 10 days after the election. In addition, a voter who was indigent or who had a religious objection to being photographed was permitted to cast a provisional ballot that would be counted if the voter executed an affidavit at the circuit clerk’s office within 10 days of the election averring either that the person was indigent and unable to obtain proof of ID without paying a fee or had a religious objection to being photographed. Indiana also offered free photo IDs to qualified voters who lacked a required ID and could establish their residency and identity.

In *Crawford*, the U.S. Supreme Court held that, unlike a poll tax which is an invidious restriction on the right to vote that is irrelevant to a voter’s qualifications, Indiana’s voter ID requirement was an “evenhanded restriction that protect[ed] the integrity and reliability of the voting process itself.” *Id.* at 190. To assess the constitutionality of the requirement, the Court evaluated the burden imposed on a person’s the right to vote and weighed it against the interests asserted by Indiana in support of the requirement. For most eligible voters who lacked a photo ID, the Court concluded that the burden of obtaining the required prerequisite documents and traveling to the BMV to obtain a free ID was not substantial. *Id.* at 198. A smaller subset of voters—who would have difficulty obtaining the underlying documentation required to obtain an ID; homeless persons; and persons with a religious objection to being photographed—the burden was much heavier, but was nevertheless mitigated by the option of casting a provisional ballot and traveling to the circuit clerk’s office within 10 days to execute the required affidavit. These burdens were amply justified in the Court’s opinion by Indiana’s legitimate and important interests: (1) in preventing potential voter fraud and (2) in protecting public confidence in the integrity of the electoral process.

The *Crawford* decision left open the possibility that a particular voter might be able to demonstrate that, as applied to that voter, Indiana’s law was impermissibly burdensome under the 14th Amendment. In addition, if Indiana had imposed a tax or fee to upon voters who lacked a photo ID and requested the voter ID card, the Court suggested the law might constitute an unconstitutional poll tax. *Id.* at 198-200.

Numerous lawsuits have been brought across the country to challenge other states’ voter ID laws after *Crawford*. These courts have reiterated that, in evaluating the constitutionality of such laws, laws that place more severe burden on the right to vote will be subjected to stricter scrutiny. *See, e.g., Greater Birmingham Ministries v. Secretary of State for Alabama*, 966 F.3d 1202, 1224 (11th Cir. 2020).

The following types of provisions may be viewed as mitigating the burden of voter ID laws:

- Wider variety of photo IDs accepted—in addition to allowing different forms of photo ID, some states allow voters to present IDs that have been expired for less than one year;

- Availability of free voter ID for qualified voters—In addition to providing free voter IDs, some states allow a voter to execute an affidavit to obtain the ID rather than requiring copies of specific underlying documents while other states provides free access to the underlying documents;
- Reasonable impediment provisions—allowing voters who do not possess a photo ID to cast a vote if they execute an affidavit affirming their identity and providing a valid reason for their inability to obtain a photo ID (ex: religious objection, having a lost or stolen ID, being unable to obtain a photo ID due to disability, lack of transportation, inability to obtain required documentation, etc.).
- Allowing election officials to swear to the identity of a voter who lacks the required photo ID.

## REQUESTS FOR INFORMATION

### A. To Attorney General Frey:

1. Information on the types of legal challenges brought in other states that have passed photo ID laws and advice regarding whether the photo ID requirements in these bills and in LD 1099 are vulnerable to potential constitutional challenges.
2. Information on whether, when someone newly registers to vote in Maine after moving from another state, the State engages in a follow-up investigation to ensure that the newly registered voter obtains a Maine driver's license within 30 days.

*Analyst Note:* The laws requiring a person to register the person's motor vehicle in Maine and to switch an out-of-state driver's license to a Maine driver's license after becoming a Maine resident appear in:

- [29-A M.R.S. §351](#): Failure to register vehicle in Maine is a traffic infraction if “more than 30 days but less than 150 days has elapsed since establishing residency” and a class E crime “if more than 150 days have elapsed since establishing residency; and
- [29-A M.R.S. §1251](#): Failure to obtain a Maine driver's license is a traffic infraction “if the person has been a resident for [more than 30 days but] less than 90 days” and a Class E crime “if the person has been a resident for at least 90 days.”

## TECHNICAL / DRAFTING ISSUES

1. **Proof of identity vs. proof of residency.** Several individuals who testified at the hearing or submitted written testimony assumed the photo ID required by LD 253, LD 557 & LD 1083 would be used to establish both the voter's identity and residency. Yet, as each bill is currently drafted, on Election Day an in-person voter must present “proof of identity” in the form of the photo ID required by each bill. Relatedly, as the Maine Town & City Clerks' Association observed (see above), it is unclear what information on the photo ID—name, year of birth, residence address—must match the incoming voting list to establish that person's “identity” before a person may receive a ballot.
2. **Challenged ballot.** If the committee intends that a voter who does not present a required photo ID is subject to the challenged ballot process, the committee may wish to consider amending [21-A M.R.S. §673\(1\)\(A\)](#) (attached) to specify that this is an authorized ground for challenging a voter.
3. **Expired IDs?** LD 557 and LD 1083 clearly permit voters to present only a “current and valid” driver's license or nondriver identification card, but it is not clear whether a voter may present an

expired United States passport, military identification or State permit to carry a concealed handgun (if that permit includes a photograph).

4. **Out-of-State College ID?** The Maine Town & City Clerks' Association observed that LD 557 & LD 1083 provide that “an identification issued by a college or university *in this State*” may not be presented as proof of a voter’s identity, suggesting that a voter with an ID issued by a college or university in another state—*i.e.*, for a Maine resident attending school outside of Maine but who has maintained a Maine residency—would be acceptable proof of a voter’s identity. Is this intended?
5. **Mandate?** If any of these bills are amended to provide for a provisional ballot process—including a process for voters to present proof of their identification with a few days of casting a provisional ballot—the legislation may, like LD 121 in the 128th Legislature and the amended version of LD 322 in the 129th Legislature, be considered a “[state mandate](#).”

Under [Article IX, Section 21](#) of the Maine Constitution, the State “may not” (1) “require a local unit of government to expand or modify that unit’s activities” (2) “so as to necessitate additional expenditures from local revenues”—this is a 2-part test—unless either:

- The State provides 90% of the funding for those expenditures; or
- 2/3 of the elected members of each chamber of the Legislature vote in favor of the legislation—if this option is selected, a “mandate preamble” should be added to the legislation.

If legislation that constitutes a state mandate is enacted without either the required funding or a mandate preamble, affected local units of government are not bound by the mandate contained within that legislation.

6. **LD 253 Rulemaking.** If the committee wishes to pass LD 253, it may wish to consider amending the bill to place the authority of the Secretary of State to adopt rules establishing photographic identification document standards in statute, rather than in (difficult to find) unallocated law.
7. **LD 1083 drafting error in section 2?** The committee may wish to consider amending LD 1083 to clarify that the phrase “photographic identification document” has the same meaning under section 2 of the bill as it has in section 1 of the bill.

## FISCAL IMPACT

Not yet determined.



### §673. Challenges

A voter of a municipality or an election official may challenge the right of another to vote at an election in that municipality. [PL 2007, c. 455, §31 (AMD).]

**1. How made.** The challenge must be made to the warden. The challenger must state in the form of a signed affidavit setting forth, under oath administered by the warden, the challenger's name, address, party affiliation, status as a registered voter in the municipality, the name of the voter challenged, the reason the particular individual being challenged may be ineligible to vote, the specific source of the information or personal knowledge upon which the challenge of the particular individual is based and a statement that the challenger understands that making a false statement on the affidavit is punishable under penalties of perjury.

A. A voter or an election official may challenge another voter only upon personal knowledge or a reasonably supported belief that the challenged voter is unqualified. Only the following reasons for challenges may be accepted by the warden. The challenged person:

- (2) Is not enrolled in the proper party, if voting in a primary election;
- (3) Is not qualified to be a registered voter because the challenged person:
  - (a) Does not meet the age requirements as specified in section 111, subsection 2 and section 111-A;
  - (b) Is not a citizen of the United States; or
  - (c) Is not a resident of the municipality or appropriate electoral district within the municipality;
- (4) Registered to vote during the closed period or on election day and did not provide satisfactory proof of identity and residency to the registrar pursuant to section 121, subsection 1-A, except that only an election official may challenge for this reason;
- (5) Did not properly apply for an absentee ballot;
- (6) Did not properly complete the affidavit on the absentee return envelope;
- (7) Did not cast the ballot or complete the affidavit before the appropriate witness;
- (8) Communicated with someone as prohibited by section 754-A, subsection 1, paragraph B or subsection 3, paragraph B or D;
- (9) Did not have the ballot returned to the clerk by the time prescribed;
- (10) Voted using the name of another;
- (11) Committed any other specified violation of this Title; or
- (12) Voted using the wrong ballot for the appropriate electoral district or political party, if applicable. [RR 2011, c. 2, §21 (COR).]

B. A challenge made must be made at the time the voter being challenged is checking in with the election clerk in charge of the incoming voting list in accordance with section 671 but before that voter enters the voting booth, except that the registrar or clerk may complete a challenge affidavit under oath to the warden before or during election day. [PL 2003, c. 395, §2 (NEW).]

C. A challenge must be made against an absentee ballot after the name of the absentee voter is announced by the warden or clerk in accordance with section 759 and before the ballot is placed into the ballot box or voting machine. [PL 2003, c. 395, §2 (NEW).]

D. The merits of a challenge may not be decided at the time the challenge is made, but only after the election consistent with the provisions of section 696. [PL 2003, c. 395, §2 (NEW).]

**2. Voting list marked.** As soon as the challenge has been made, the election clerk in charge of the incoming voting list shall write "Challenged" beside the voter's name on the list, and give a ballot to the warden. [PL 1985, c. 161, §6 (NEW).]

**3. Ballot marked.** The warden shall write a number on the outside of the ballot. The warden shall also complete a certificate on which appears the word "Challenged," the name of the voter challenged and the reason for the challenge. The challenger and the warden shall sign the certificate. After the challenger has signed the certificate, the warden shall place the number that was written on the ballot in a conspicuous place on the

certificate. Only the warden and the challenged voter may know the ballot number. The warden shall place the challenge certificate and the signed affidavit under subsection 1 in a sealed envelope marked "Challenge Certificate #(certificate number)" and shall retain the envelope until it is sealed with the ballot materials pursuant to section 698. [PL 2003, c. 395, §3 (AMD).]

**3-A. List of challenged ballots.** The warden shall maintain a list of all challenges made. The list must include the name of the voter challenged, the name of the challenger and the reason for the challenge. The list may not include the unique number assigned to the ballot of the challenged voter. The list must be made available for public inspection after the polls close. [PL 1997, c. 436, §98 (NEW).]

**4. Proceed to vote.** The challenged voter shall then proceed to vote in the usual way using the marked ballot. [PL 1985, c. 161, §6 (NEW).]

**5. Regulation of challengers and challenges.** A person challenging the right of another person to vote may not create a disturbance or obstruction and may not interfere with or delay the challenged voter's exercise of the right to vote once the challenge affidavit has been completed. A challenger other than a registrar, clerk or other election official may not handle or inspect registration cards or files or other materials used by the registrar or clerk except as provided in section 22. [PL 2003, c. 395, §4 (NEW).]

**6. (REALLOCATED FROM TITLE 21-A, §673, sub-§5) Challenged ballots relating to court order.** In an election for federal office, if a federal or state court has issued an order extending the time established for closing the polls, any ballots cast during the period of that extension must be challenged according to this section, segregated and counted separately from all regular and challenged ballots cast during the normal polling hours. [RR 2003, c. 1, §12 (RAL).]

**7. Hearing held.** After the election at which a voter has been challenged, the registrar shall hold a hearing to confirm the qualifications of the challenged voter pursuant to section 161, subsection 4. The qualifications of the voter must be resolved within a reasonable time after the election and the voter's name either retained or cancelled from the central voter registration system. [PL 2007, c. 455, §33 (NEW).]

#### **§696. Challenged, defective or void ballots**

The counting of ballots is governed by the following provisions. [PL 1985, c. 161, §6 (NEW).]

**1. Challenged ballot.** A challenged ballot must be counted the same as a regular ballot. The validity of a challenged ballot need not be determined unless it affects the results of an election. If the challenged ballot affects the result of an election, the envelope containing the challenge certificate and the signed affidavit under section 673, subsection 1 must be submitted to the Supreme Judicial Court and its validity must be determined, except when final determination of the election of a candidate is governed by the United States Constitution. [PL 2003, c. 395, §5 (AMD).]

...