

# **Exhibit J**

## **Secretary of State Guidance**

## **Challenge Resolution Statutes and Administrative Rules Review**

The purpose of this guide is to review the statutes and rules that may help you to resolve any challenge to a voter's registration.

As noted before, although your office is required by 13-13-301(3)(a) to make the final decisions regarding each challenged elector, we hope the statutory and rule review below will be useful.

This review is based on discussions with your offices and with your county attorneys and is intended to provide as much uniformity as possible in the process of resolving the challenges in question.

**\*Please note "[a]ny challenge made under this rule shall be decided in favor of the challenged elector, unless it is demonstrated by a preponderance of the evidence that the challenged elector should not be permitted to vote." ARM 44.3.2019(6). "A change of residence may be made only by the act of removal joined with intent to remain in another place." 13-1-112(8), MCA. A change of post office address is not conclusive proof of a change of residence and can be rebutted by an elector's proof of intent to remain at the registration residence in the voting process, as described below. Therefore, while additional evidence should be weighed by the preponderance of evidence standard, a postal change of address form by itself is insufficient to cancel the registration, especially of an elector who confirms his residence in the voting process.**

### **Resolving Challenges to Electors Who Have Updated their Registrations to Match the Postal Change of Address Files**

For those electors who have updated their registrations to match the postal change of address file, you may determine that the challenge should be resolved in the elector's favor.

### **Resolving Various Categories of Challenged Electors**

As we understand from speaking with county election officials, there are three basic categories of challenged electors.

1. **First** are those who the challenger claims filled out postal change of address forms for an **in-county address change**, but whose postal address allegedly did not match the residence address on file with your office.

For those electors who have not updated their registration to match the postal change of address form, you may, without receiving further evidence determine, in light of 13-2-512(1), that the challenge should be resolved in the elector's favor.

This is due to the statement under 13-2-512(1), *below*, that allows an elector making an in-county precinct change to vote in the precinct where the elector is registered at the first election at which the elector offers to vote.

13-2-512, MCA: "An elector who has changed residence to a different precinct within the same county and has failed to notify the election administrator of the change by a transfer or new registration form may vote in the precinct where the elector is registered at the first election at which the elector offers to vote after the change or at a central location designated by the election administrator unless the elector's registration has been canceled as provided in 13-2-402. . . ."

2. **Second** are those who the challenger claims filled out postal change of address forms for an address change from **one Montana county to another Montana county**, but who

have allegedly not changed their voter registration residence address to the new county listed on the address change.

For those electors who have not updated their county registration to match the postal change of address form, you may without receiving further evidence determine that the challenge should be resolved in the elector's favor.

This decision in the elector's favor, would be due to the lack of evidence that the postal change of address from one Montana county to another Montana county was meant to be a change of the elector's voting residence rather than a non-residential change of address.

3. **Third** are those challenged electors who the challenger claims filled out postal change of address forms for an **out-of-state address change**, but who have allegedly not changed their voter registration residence address to the new state listed on the address change.

For these electors, see the analysis under (2) above.

### **Absentee Voting**

For any challenged electors who submit an absentee ballot application or an absentee ballot, these electors submit with their absentee ballot a statement of their address (see pages 77 and 80 of the forms booklet attached and excerpted below).

#### Application for Absentee Ballot Residency Section

I, _____ (print your name legibly), the undersigned, with a birth date of _____ being a duly qualified elector of _____ County, whose residence address in said county is _____, do hereby make application for an official absentee ballot for the upcoming _____ (example: school, general, primary, other) election to be held in said county.
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#### Absentee Affirmation Form Residency Section

<b>PRESCRIBED ABSENTEE AFFIRMATION FORM FOR LEGALLY REGISTERED ELECTORS</b>	
I, _____, do hereby affirm that I am a resident of Precinct/Ward/District No. _____ and reside at _____, in the town or city of _____, County of _____, State of Montana, and entitled to vote in such precinct in the election.	

For these challenged electors, you may without receiving further evidence and after consulting with your county attorney, determine that the challenge should be resolved in the elector's favor since on their application and/or affirmation they have re-affirmed their residence address.

### **Polling Place Voting**

You should be able to resolve most if not all of your challenged ballots before election day through the processes outlined above. However, if the challenge is unresolved by election day, a challenged elector, as with all electors, should be asked the elector's address while appearing at the polls (see election judge handbook, page 16).

The challenged elector will state his or her current residence address, and the elector should provide identification, sign the register, and be provided with a regular ballot.

### **Electors Challenged After the Close of Regular Registration or on Election Day**

The challenges you have received up to the date of this review have been received prior to the close of regular registration. Please note in the challenge statute and challenge rule the

difference in procedures for electors who are challenged after the close of regular registration or on election day.

The applicable subsection for challenges after the close of regular registration, 13-301(3)(b), MCA, indicates that "after the close of registration or on election day, the election administrator or, on election day, the election judge shall allow the challenged elector to cast a provisional paper ballot, which must be handled as provided in 13-15-107."

The subsection above refers to the process of allowing a challenged elector to cast a provisional paper ballot. The subsection is for electors for whom the challenge is not resolved by the time the elector is issued a ballot.

If the challenge at issue is resolved in the challenged elector's favor before the time the elector is issued a ballot, the elector is no longer a challenged elector and can vote a regular ballot. A challenge after the close of regular registration may be resolved at the polling place in the same manner described above by a challenged elector's confirmation of his address prior to receiving a ballot. As described above, if the challenged elector provides a current address that conforms with the registration address, then the elector should provide identification, sign the register, and be provided with a regular ballot.

### **Main Applicable Laws and Statutes**

As we have provided in earlier messages, please see below the main challenge statutes and rules for your reference.

**13-13-301. Challenges.** (1) An elector's right to vote may be challenged at any time by any registered elector by the challenger filling out and signing an affidavit stating the grounds of the challenge and providing any evidence supporting the challenge to the election administrator or, on election day, to an election judge.

(2) A challenge may be made on the grounds that the elector:

(a) is of unsound mind, as determined by a court;

(b) has voted before in that election;

(c) has been convicted of a felony and is serving a sentence in a penal institution;

(d) is not registered as required by law;

(e) is not 18 years of age or older;

(f) has not been, for at least 30 days, a resident of the county in which the elector is offering to vote; or

(g) is a provisionally registered elector whose status has not been changed to a legally registered voter.

(3) When a challenge has been made under this section:

(a) prior to the close of registration under 13-2-301, the election administrator shall question the challenger and the challenged elector and may question other persons to determine whether the challenge is sufficient or insufficient to cancel the elector's registration under 13-2-402; or

(b) after the close of registration or on election day, the election administrator or, on election day, the election judge shall allow the challenged elector to cast a provisional paper ballot, which must be handled as provided in 13-15-107.

(4) (a) In response to a challenge, the challenged elector may fill out and sign an affidavit to refute the challenge and swear that the elector is eligible to vote.

(b) If the challenge was not made in the presence of the elector being challenged, the election administrator or election judge shall notify the challenged elector as soon as possible of who made the challenge and the grounds of the challenge and explain what information the elector may provide to respond to the challenge. The election administrator or, on election day, the election judge shall also provide to the challenged elector a copy of the challenger's affidavit and any supporting evidence provided. If the challenge is made more than 5 days before an election, "as soon as possible", as used in this subsection (4)(b), means no later than 5 days after the challenge.

(5) The secretary of state shall adopt rules to implement the provisions of this section and shall provide standardized affidavit forms for challengers and challenged electors.

**History:** (1) En. Sec. 34, Ch. 368, L. 1969; amd. Sec. 11, Ch. 365, L. 1977; Sec. 23-3015, R.C.M. 1947; (2) En. Sec. 111, Ch. 368, L. 1969; amd. Sec. 33, Ch. 365, L. 1977; Sec. 23-3611, R.C.M. 1947; R.C.M. 1947, 23-3015(3), 23-3611; amd. Sec. 132, Ch. 571, L. 1979; amd. Sec. 33, Ch. 475, L. 2003; amd. Sec. 12, Ch. 586, L. 2005.

#### 44.3.2109 PROCEDURES FOR CHALLENGES

(1) An elector's right to vote may be challenged at any time by any registered elector. The challenger must fill out and sign an affidavit stating the grounds of the challenge and providing any evidence supporting the challenge to the election administrator or, on election day, to an election judge.

(2) A challenge may be made on the grounds that the elector:

(a) is of unsound mind, as determined by a court;

(b) has voted before in that election;

(c) has been convicted of a felony and is serving a sentence in a penal institution;

(d) is not registered as required by law;

(e) is not 18 years of age or older;

(f) has not been, for at least 30 days, a resident of the county in which the elector is offering to vote, unless the elector is exempt under 13-2-514, MCA, and has been a resident of the state for at least 30 days; or

(g) is a provisionally registered elector whose status has not been changed to a legally registered voter.

(3) When a challenge has been made under this rule:

(a) prior to the close of registration under 13-2-301, MCA, the election administrator shall question the challenger and the challenged elector and may question other persons to determine whether the challenge is sufficient or insufficient to cancel the elector's registration under 13-2-402, MCA; or

(b) after the close of registration or on election day, the election administrator or, on election day, the election judge shall allow the challenged elector to cast a provisional paper ballot, which must be handled as provided in 13-15-107, MCA.

(4) In response to a challenge, the challenged elector may fill out and sign an affidavit to refute the challenge and swear that the elector is eligible to vote.

(a) If the challenge was not made in the presence of the elector being challenged, the election administrator or election judge shall notify the challenged elector as soon as possible of who made the challenge and the grounds of the challenge and explain what information the elector may provide to respond to the challenge. The election administrator or, on election day, the election judge shall also provide to the challenged elector a copy of the challenger's affidavit and any supporting evidence provided. If the challenge is made more than five days before an election, "as soon as possible", as used in this section, means no later than five days after the challenge.

(5) The Secretary of State shall provide standardized affidavit forms for challengers and challenged electors.

(6) Any challenge made under this rule shall be decided in favor of the challenged elector, unless it is demonstrated by a preponderance of the evidence that the challenged elector should not be permitted to vote.

**History:** 13-13-301, MCA; IMP, 13-13-301, MCA; NEW, 2006 MAR p. 2671, Eff. 10/27/06.