

## STATE PROFILES

### INTRODUCTION

This appendix provides brief summaries of the laws and regulations governing voter challenges in eighteen states. These states will likely serve as key battlegrounds in 2012, both during the general election campaign in the fall and during the Republican primary elections leading up to Super Tuesday (March 6, 2012). The legal summaries herein illustrate the broad range of procedures that states currently use to adjudicate privately-initiated challenges to voters' rights.

The eighteen states reviewed include Arizona, Colorado, Florida, Iowa, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Virginia, and Wisconsin.

### ARIZONA

#### *Challenges on Election Day*

Arizona law permits any "qualified elector" to challenge another voter in the same county at the polls.<sup>1</sup> In addition, each political party is entitled to appoint a limited number of "challengers" to serve inside every polling place.<sup>2</sup>

To challenge a voter, the challenger must orally identify a specific reason why the voter should be prevented from casting a ballot.<sup>3</sup> Arizona's challenger statute recognizes only two valid grounds for challenging a voter at the polls: (1) the voter has already cast a ballot in the same election; and (2) the voter is not properly registered.<sup>4</sup>

Once a voter has been challenged, a member of the precinct's "election board"<sup>5</sup> may ask the challenged voter to take an oath affirming that she is qualified to vote.<sup>6</sup> If the challenged voter takes this oath, the precinct "inspector"<sup>7</sup> may then ask the voter a series of questions to determine

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<sup>1</sup> ARIZ. REV. STAT. ANN. § 16-591.

<sup>2</sup> ARIZ. REV. STAT. ANN. § 16-590. Under state law, only one challenger may serve in each voting precinct at any one time. ARIZ. REV. STAT. ANN. § 16-590(B). However, political parties may agree to allow multiple challengers inside a particular polling place at one time. ARIZ. REV. STAT. ANN. § 16-590(C).

<sup>3</sup> ARIZ. REV. STAT. ANN. § 16-591.

<sup>4</sup> *Id.* Under Arizona law, a voter is presumed to be properly registered if the voter's registration form includes the voter's name, residence address, date of birth, signature, affirmation of U.S. citizenship, and some government-issued identification number (such as the voter's driver's license number or the last four digits of the voter's social security number). ARIZ. REV. STAT. ANN. § 16-121.01(A). This presumption of proper registration can only be rebutted by clear and convincing evidence that the voter is improperly registered. ARIZ. REV. STAT. ANN. § 16-121.01(B).

<sup>5</sup> Arizona state law requires that every voting precinct be staffed by an "election board," whose members are appointed by the county board of supervisors. ARIZ. REV. STAT. ANN. § 16-531(A). The board members must be evenly divided between the state's two major parties and every board member must be a qualified voter of the precinct (unless an insufficient number of qualified individuals reside in the precinct). *Id.*

<sup>6</sup> ARIZ. REV. STAT. ANN. § 16-592(A).

<sup>7</sup> Every election board consists of one "inspector," one "marshal," and two "judges." ARIZ. REV. STAT. ANN. § 16-531. The inspector is considered the chairperson of the election board. ARIZ. REV. STAT. ANN. § 16-534(A).

whether the challenged voter is eligible to vote.<sup>8</sup> These questions must be related to the challenge itself.<sup>9</sup> After the voter has answered these questions, the election board must then decide whether the challenged voter should be permitted to vote.<sup>10</sup> If a majority of the board is satisfied with the voter's oath and responses to the inspector's questions, the challenged voter may cast a regular ballot.<sup>11</sup> If a majority of the board is not satisfied with the challenged voter's responses to the inspector—or if the voter simply refuses to take the oath—the board must permit the voter to cast a provisional ballot.<sup>12</sup> The board must keep a record of every challenge and its outcome, which it must then submit to the county board of supervisors.<sup>13</sup>

State law makes it a misdemeanor for anyone, including challengers, to knowingly hinder any voter from casting a ballot or to interfere with a voter within 75 feet of the polling place.<sup>14</sup> Moreover, the Secretary of State's 2012 *Election Procedures Manual* prohibits appointed challengers from interfering with election procedures or staff and authorizes election officials to “eject” any appointed observers that fail to comply with these rules.<sup>15</sup>

### *Challenges before Election Day*

Under Arizona state law, the county chairperson of every political party may appoint a limited number of “party representatives” to observe the processing of any “early ballots”<sup>16</sup> cast in that county.<sup>17</sup> These representatives can challenge early ballots on behalf of their respective political parties.<sup>18</sup>

Early ballot challenges must be submitted in writing to the “early election board”<sup>19</sup> and must identify the specific grounds for the challenge.<sup>20</sup> Whenever the early election board receives a challenge, it must notify the challenged voter within 24 hours by first-class mail.<sup>21</sup> The notice must

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<sup>8</sup> ARIZ. REV. STAT. ANN. § 16-592(A).

<sup>9</sup> *Id.* (noting that the inspector's questions to the voter should be “material to the challenge”).

<sup>10</sup> *Id.*

<sup>11</sup> ARIZ. REV. STAT. ANN. § 16-592(B).

<sup>12</sup> ARIZ. REV. STAT. ANN. § 16-592(C). If the challenged voter votes by provisional ballot, the county recorder must verify the ballot within ten days of the election in order for the provisional ballot to count officially. ARIZ. REV. STAT. ANN. § 16-584(E).

<sup>13</sup> ARIZ. REV. STAT. ANN. § 16-594.

<sup>14</sup> ARIZ. REV. STAT. ANN. §§ 16-1017(2) & -1017(6). *See also* ARIZ. REV. STAT. ANN. §§ 16-1004(A) (“A person who at any election knowingly interferes in any manner with an officer of such election in the discharge of the officer's duty, or who induces an officer of an election or officer whose duty it is to ascertain, announce or declare the result of such election, to violate or refuse to comply with the officer's duty or any law regulating the election, is guilty of a class 5 felony.”).

<sup>15</sup> *Election Procedures Manual*, ARIZ. SEC'Y OF STATE (2010), available at [http://www.azsos.gov/election/Electronic\\_Voting\\_System/manual.pdf](http://www.azsos.gov/election/Electronic_Voting_System/manual.pdf), 107.

<sup>16</sup> Arizona allows every qualified voter to request an “official early ballot” during the 93 days prior to an election. ARIZ. REV. STAT. ANN. §§ 16-541(A) & 16-542(A).

<sup>17</sup> ARIZ. REV. STAT. ANN. § 16-552(C).

<sup>18</sup> *Id.*

<sup>19</sup> The “early election board” for every county is appointed by the county board of supervisors (or equivalent governing body) for the purpose of canvassing and tallying early election ballots. ARIZ. REV. STAT. ANN. § 16-551(A). These elections boards are appointed in the same manner as all other election boards of elections. *Id.* *See also* ARIZ. REV. STAT. ANN. § 16-531 (describing the appointment process for the members of local election boards).

<sup>20</sup> ARIZ. REV. STAT. ANN. § 16-552(D). Early ballot challenges must be based on one of the grounds recognized for Election Day challenges. *Id.*

<sup>21</sup> ARIZ. REV. STAT. ANN. § 16-552(E).

include a copy of the challenge and must notify the voter of the time and place where she can defend against the challenge.<sup>22</sup> At that time, the challenged voter must be given an opportunity to make or submit a brief statement to the board regarding her voting qualifications.<sup>23</sup> The burden of proof at the hearing is on the challenger, who must demonstrate that the challenged voter is not qualified to vote.<sup>24</sup>

If the early election board sustains the challenge, the board must notify the voter that her early ballot will not be counted.<sup>25</sup> The board's decisions are final<sup>26</sup> and the board must keep a record of challenge.<sup>27</sup>

## COLORADO

### *Challenges on Election Day*

Colorado state law currently permits “any eligible elector” to challenge a voter at the same precinct on Election Day where the challenger is registered.<sup>28</sup> In addition, political parties and candidates can appoint poll “watchers,” who can also lodge challenges.<sup>29</sup> The same rules apply to both challenges made by voters and challenges made by watchers.

All Election Day challenges must be made under oath, in writing,<sup>30</sup> and in the presence of the person challenged.<sup>31</sup> In addition, every challenge must identify the challenged voter and clearly state the basis for the challenge.<sup>32</sup> Typically, challengers have only three valid grounds for challenging a voter at the polls: (1) the voter is not a U.S. citizen; (2) the voter lacks state residency;<sup>33</sup> and (3) the voter is underage.<sup>34</sup>

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<sup>22</sup> *Id.* This hearing must be scheduled no earlier than 96 hours after the election board mailed the notice to the challenged voter (or 48 hours if the board sent the notice by overnight mail) and no later than 5:00pm on the Monday following Election Day. *Id.*

<sup>23</sup> ARIZ. REV. STAT. ANN. § 16-552(E). The statute explicitly forbids the board from taking the challenged voter's failure to appear at the hearing as an admission of guilt. *Id.* As noted above, the two recognized grounds for challenging a voter are: (1) the voter has already voted in the same election; and (2) the voter is not properly registered. ARIZ. REV. STAT. ANN. § 16-591.

<sup>24</sup> ARIZ. REV. STAT. ANN. § 16-552(E).

<sup>25</sup> ARIZ. REV. STAT. ANN. § 16-552(G).

<sup>26</sup> ARIZ. REV. STAT. ANN. § 16-552(E).

<sup>27</sup> ARIZ. REV. STAT. ANN. § 16-552(D).

<sup>28</sup> COLO. REV. STAT. ANN. § 1-9-201(2).

<sup>29</sup> Colorado law permits every political party with a candidate on the primary or general ballot, unaffiliated and write-in candidates in general elections, and candidates for office in nonpartisan elections to appoint one “watcher” in every voting precinct. *Id.* State regulations place substantial limits on poll watchers' activities and prohibit them from interfering with or disrupting the voting process. *See*

COLO. CODE REGS. § 1505-1, Rule 8.8, *available at* <http://www.sos.state.co.us/CCR/NumericalSubDocList.do?deptID=20&deptName=1505%20Department%20of%20State&agencyID=104&agencyName=1505%20Secretary%20of%20State&ccrDocID=2771&ccrDocName=8%20CCR%201505-1%20ELECTIONS>.

<sup>30</sup> COLO. REV. STAT. ANN. § 1-9-202 (“No oral challenge shall be permitted.”).

<sup>31</sup> COLO. REV. STAT. ANN. § 1-9-201(3).

<sup>32</sup> COLO. REV. STAT. ANN. § 1-9-202.

<sup>33</sup> State regulations make clear that a voter cannot lose her Colorado residency merely by leaving the state temporarily.

*See* COLO. CODE REGS. § 1505-1, Rule 48, *available at*

<http://www.sos.state.co.us/CCR/NumericalSubDocList.do?deptID=20&deptName=1505%20Department%20of%20State&agencyID=104&agencyName=1505%20Secretary%20of%20State&ccrDocID=2771&ccrDocName=8%20CCR%201505-1%20ELECTIONS>

Once a voter has been challenged, the precinct’s “election judge”<sup>35</sup> must determine if the challenge is valid. In order to do so, the election judge should briefly question the challenged voter about her voting qualifications.<sup>36</sup> The election judge should also ask the voter to sign a form or take an oath affirming her qualifications.<sup>37</sup> If the challenged voter complies with these requests, then the election judge must permit the voter to cast a regular ballot.<sup>38</sup> If the challenged voter refuses to answer the judge’s questions, sign the form, or take the oath, then the voter must still be allowed to cast a provisional ballot.<sup>39</sup> The election judge must document every challenge, regardless of its outcome.<sup>40</sup>

State law makes it a misdemeanor to knowingly lodge a false challenge.<sup>41</sup> State regulations also preclude poll watchers from interfering with the voting process or carrying any “cell phones, cameras, recording devices, laptops or PDA” inside the polling place.<sup>42</sup>

### *Challenges before Election Day*

Colorado state law permits “[a]ny registered elector” to challenge the voter registration of any other person.<sup>43</sup>

All challenges must be submitted in writing to the “county clerk and recorder”<sup>44</sup> no later than 60 days before any election.<sup>45</sup> Challenges must include a signed statement that identifies the challenger’s address, the name and precinct number of the challenged voter, and the basis for the

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<sup>34</sup> COLO. REV. STAT. ANN. § 1-9-203. During certain elections that require property ownership within the political subdivision as a voting qualification, a voter may be challenged for lack of property ownership in the political subdivision. COLO. REV. STAT. ANN. § 1-9-203(5).

<sup>35</sup> Under Colorado law, “election judges” are appointed by the county clerk and recorder (or other designated elected official who performs the same role) upon the recommendation of local political party leaders. *See* COLO. REV. STAT. ANN. § 1-6-101(1). At least three election judges will be appointed to every voting precinct during partisan elections and at least two judges will be appointed to each voting precinct during nonpartisan elections. COLO. REV. STAT. ANN. § 1-6-111. Each major political party is entitled to roughly half of the election judges in every voting precinct. COLO. REV. STAT. ANN. § 1-6-109.

<sup>36</sup> COLO. REV. STAT. ANN. § 1-9-203.

<sup>37</sup> *See* COLO. REV. STAT. ANN. § 1-9-204(1).

<sup>38</sup> COLO. REV. STAT. ANN. § 1-9-203(7).

<sup>39</sup> COLO. REV. STAT. ANN. § 1-9-201(1)(b). State regulations outline the process for verifying and counting provisional ballots. *See* COLO. CODE REGS. § 1505-1, Rule 26, *available at* <http://www.sos.state.co.us/CCR/NumericalSubDocList.do?deptID=20&deptName=1505%20Department%20of%20State&agencyID=104&agencyName=1505%20Secretary%20of%20State&ccrDocID=2771&ccrDocName=8%20CCR%201505-1%20ELECTIONS>.

<sup>40</sup> COLO. REV. STAT. ANN. §§ 1-9-201 & 1-9-203(7).

<sup>41</sup> COLO. REV. STAT. ANN. §§ 1-9-202 & 1-13-104.

<sup>42</sup> COLO. CODE REGS. § 1505-1, Rule 8, *available at* <http://www.sos.state.co.us/CCR/NumericalSubDocList.do?deptID=20&deptName=1505%20Department%20of%20State&agencyID=104&agencyName=1505%20Secretary%20of%20State&ccrDocID=2771&ccrDocName=8%20CCR%201505-1%20ELECTIONS>.

<sup>43</sup> COLO. REV. STAT. ANN. § 1-9-101(1)(a).

<sup>44</sup> *Id.* Each county elects its own county clerk and recorder, who is responsible for administering elections. COLO. REV. STAT. ANN. § 30-10-401.

<sup>45</sup> COLO. REV. STAT. ANN. § 1-9-101(1)(a).

challenge.<sup>46</sup> In addition, the challenger must submit “documentary evidence” supporting the challenge.<sup>47</sup>

Within 30 days of receiving the challenge, the county clerk and recorder must schedule a hearing to evaluate the evidence and determine whether to sustain the challenge.<sup>48</sup> The clerk and recorder must notify both the challenger and the challenged voter of the time, date, and location of this hearing.<sup>49</sup> At the hearing, the challenger bears the burden of proving that the challenged voter is not a qualified voter. If the county clerk and recorder affirms the challenge, the voter’s name is struck from the registration list.<sup>50</sup> Both challengers and challenged voters can appeal the decisions of the county clerk and recorder to the district court within three days of the decision.<sup>51</sup>

Voters who cast mail-in ballots<sup>52</sup> can also be challenged “in the same manner and for the same causes as other persons are challenged.”<sup>53</sup>

## FLORIDA

### *Challenges on Election Day*

Florida state law currently permits “[a]ny registered elector” to challenge another voter in the challenger’s county if the challenger has reason to believe that voter is not qualified.<sup>54</sup> In addition, political parties and candidates may appoint poll “watchers,” who can also challenge voters.<sup>55</sup> The same rules apply to both challenges made by voters and challenges made by watchers.

Every challenger must sign a written oath, which includes her name, address, and party membership.<sup>56</sup> The written challenge must also specify the basis for the challenge.<sup>57</sup> State law does not identify a specific list of grounds for challenging a voter but requires challengers to produce some valid reason for believing that the challenged voter is ineligible.<sup>58</sup> If the challenge is based on

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* The burden of proof rests with the person challenging the registration. *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> COLO. REV. STAT. ANN. § 1-9-101(1)(b).

<sup>51</sup> COLO. REV. STAT. ANN. § 1-9-101(2). The hearing on any petition at this point will be final. *Id.*

<sup>52</sup> Any voter may seek to vote by mail-in ballot in Colorado. *See* COLO. CODE REGS. § 1505-1 (2006); *Colorado Mail-In Ballot Application*, COLO. SEC’Y OF STATE, [http://www.sos.state.co.us/pubs/elections/vote/mib\\_application\\_eng\\_clr.pdf](http://www.sos.state.co.us/pubs/elections/vote/mib_application_eng_clr.pdf). It can be used for a single election, or a voter can elect to permanently vote by mail-in ballot. *Id.*

<sup>53</sup> COLO. REV. STAT. ANN. § 1-8-110. *See also* COLO. REV. STAT. ANN. § 1-9-207 (“The ballot of any elector that has been cast by mail may be challenged using a challenge form signed by the challenger under penalty of perjury setting forth the name of the person challenged and the basis for the challenge.”).

<sup>54</sup> FLA. STAT. ANN. § 101.111(1)(a).

<sup>55</sup> *Id.* Florida law permits each political party, each candidate, and each political committee formed for the purpose of advocating passage or defeat of an issue on the ballot to station one “watcher” in each polling place during every election. FLA. STAT. ANN. § 101.131(1). These poll watchers must be registered voters in the county in which they are serving and must wear an official identification badge, identifying them by name, while they are at the polls. FLA. STAT. ANN. §§ 101.131(1) & (5).

<sup>56</sup> FLA. STAT. ANN. § 101.111(1)(a).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

precinct non-residency, the election official must give the challenged voter a chance to fill out a “change of legal residence” form at the polling place.<sup>59</sup> If the voter’s new address is in the same precinct, then the voter must be permitted to cast a regular ballot.<sup>60</sup> If the challenged voter insists that she is at her proper precinct, then she will be given a provisional ballot.<sup>61</sup>

Once a voter has been challenged, a “clerk or inspector”<sup>62</sup> must immediately present the challenged voter with a copy of the challenger’s written oath.<sup>63</sup> The challenged voter must be given an opportunity to cast a provisional ballot.<sup>64</sup> Although Florida’s challenger statute itself does not specify how these challenges are adjudicated,<sup>65</sup> its provisional ballot statute suggests that voter challenges are decided after the election by a “county canvassing board.”<sup>66</sup> Challenged voters who are forced to cast provisional ballots may present evidence of their eligibility to vote to the supervisor of elections within two days after Election Day.<sup>67</sup>

Florida law makes it a misdemeanor to file “a frivolous challenge of any person’s right to vote.”<sup>68</sup>

### *Challenges before Election Day*

Florida state law permits voters to challenge the registration of other voters in the same county before Election Day.<sup>69</sup> These challenges must, however, be filed within thirty days of an election.<sup>70</sup>

Every challenger must provide the “supervisor of elections” with a signed, written oath, which includes her name, address, party membership, and basis for challenging the voter.<sup>71</sup> The supervisor of elections will then notify election officials in the challenged voter’s precinct, who will ensure that the voter receives a provisional ballot if she attempts to vote on Election Day.<sup>72</sup> Neither the

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<sup>59</sup> FLA. STAT. ANN. § 101.111(1)(b).

<sup>60</sup> *Id.* If the voter’s new address is in a different precinct, election officials must direct the voter to the correct precinct.

<sup>61</sup> *Id.*

<sup>62</sup> Under Florida law, “clerks and inspectors” are appointed by the county’s supervisor of elections (an elected office) and are responsible for staffing every polling place during an election. FLA. STAT. ANN. § 102.012(1). At every polling place, the clerk and inspectors cannot all be members of the same political party (unless the only contested elections are primary elections for one party). *Id.*

<sup>63</sup> FLA. STAT. ANN. § 101.111(1)(b).

<sup>64</sup> *Id.*

<sup>65</sup> State election regulations are similarly silent on this issue. See FLA. ADMIN. ANN. r. 1S-2.034 (incorporating the Secretary of State’s *Polling Place Procedural Manual*, Form DS-DE 11, by reference), available at [http://election.dos.state.fl.us/rules/adopted-rules/pdf/1S2034\\_final.pdf](http://election.dos.state.fl.us/rules/adopted-rules/pdf/1S2034_final.pdf). See also *Form DS-DE 11, Polling Place Procedures Manual*, FLA. SEC’Y OF STATE (2010), [http://election.dos.state.fl.us/rules/adopted-rules/pdf/DSDE11\\_Final\\_1S2034.pdf](http://election.dos.state.fl.us/rules/adopted-rules/pdf/DSDE11_Final_1S2034.pdf).

<sup>66</sup> See FLA. STAT. ANN. § 101.048(2)(a) (“In determining whether a person casting a provisional ballot is entitled to vote, the county canvassing board shall review the information provided in the Voter’s Certificate and Affirmation, written evidence provided by the person pursuant to subsection . . . , any other evidence presented by the supervisor of elections, and, in the case of a challenge, any evidence presented by the challenger.”).

<sup>67</sup> FLA. STAT. ANN. § 101.048(1) (“A person casting a provisional ballot shall have the right to present written evidence supporting his or her eligibility to vote to the supervisor of elections by not later than 5 p.m. on the second day following the election.”).

<sup>68</sup> FLA. STAT. ANN. § 101.111(2).

<sup>69</sup> FLA. STAT. ANN. § 101.111(1)(c).

<sup>70</sup> *Id.*

<sup>71</sup> FLA. STAT. ANN. §§ 101.111(1)(a) & (1)(c).

<sup>72</sup> FLA. STAT. ANN. §§ 101.111(1)(c).



challenger statute nor the state's election regulations provide any opportunity for the challenged voter to contest her challenged status prior to the election.<sup>73</sup>

Just as with in-person challenges, if a voter is challenged on the basis of non-residency within a voting precinct, election officials must give the challenged voter an opportunity to complete a "change of legal residence" form on Election Day.<sup>74</sup>

## IOWA

### *Challenges on Election Day*

Iowa law allows any "registered voter" to challenge any voter at the polls on Election Day.<sup>75</sup>

State statutes recognize just seven grounds for a challenge: (1) the voter lacks U.S. citizenship; (2) the voter is underage; (3) the voter does not live in the election district; (4) the voter lied on her voter registration form or declaration of eligibility to vote; (5) the voter has a criminal conviction and has not had her rights restored; and (6) the voter has been adjudged incompetent by the appropriate court.<sup>76</sup> A voter may also be challenged if she does not currently live at the address listed on her registration; however, any voter challenged for this reason must be given a chance to update her registration address at the polling place in her new voting precinct.<sup>77</sup> According to Secretary of State guidelines, challenges may also be based on a claim that the voter is deceased.<sup>78</sup>

Every challenge must be made in writing to the "precinct election officials"<sup>79</sup> on a form provided by the Iowa Secretary of State, the state's chief election official.<sup>80</sup> All challengers are required to provide their name, address, phone number, and an affirmation that the information contained in the challenge is true.<sup>81</sup> In addition, challengers must sign an affidavit affirming that they understand the penalties for filing a false challenge.<sup>82</sup>

When the precinct officials receive a challenge, they may ask the challenged voter questions about her age and residency to determine if she is qualified.<sup>83</sup> If the challenged voter answers these

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<sup>73</sup> See FLA. STAT. ANN. § 101.111; FLA. ADMIN. ANN. r. 1S-2.034.

<sup>74</sup> FLA. STAT. ANN. § 101.111(1)(b).

<sup>75</sup> IOWA CODE ANN. § 49.79(1) ("Any person offering to vote may be challenged as unqualified by any precinct election official or registered voter.").

<sup>76</sup> IOWA CODE ANN. § 49.79(2).

<sup>77</sup> *Id.* See also IOWA CODE ANN. § 48A.27(2)(a) (allowing a voter to update her registration address by submitting "a registration form to the precinct election officials at the precinct of the voter's current residence" on Election Day). A voter may not be challenged simply because she has updated her registration address at the polls. See IOWA SEC'Y OF STATE, *Poll Watchers Guide*, p. 4 (2012) <http://sos.iowa.gov/elections/pdf/pollwatcherguidebook.pdf>.

<sup>78</sup> *Id.*

<sup>79</sup> Under Iowa law, every precinct typically has a board of 3 or 5 precinct election officials, who are appointed by the county commissioner of elections. IOWA CODE ANN. § 49.12. No more than a simple majority of these officials may be members of the same political party. *Id.*

<sup>80</sup> IOWA CODE ANN. § 49.79(3).

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> IOWA CODE ANN. § 49.80(2) ("[A] precinct election official may place such person under oath and question the person as, (a) where the person maintains the person's home; (b) how long the person has maintained the person's home at such place; (c) if the person maintains a home at any other location; (d) the person's age.").

questions adequately, the challenge may be withdrawn, in which case the official will let the voter cast a regular ballot. If the challenge is not withdrawn, the voter must still be given an opportunity to cast a provisional ballot.<sup>84</sup> Any challenged voter who casts a provisional ballot must be given a printed statement from the Secretary of State explaining the reasons for the challenge and describing the challenge process.<sup>85</sup>

State law makes it a misdemeanor to file a challenge containing “false information.”<sup>86</sup> It is also illegal to interfere with any voter attempting to cast a ballot inside the polls.<sup>87</sup>

### *Challenges before Election Day*

Iowa law permits any “registered voter” to challenge the registration of any other voter before Election Day, as long as both voters live in the same county.<sup>88</sup>

Pre-election challenges must either be filed less than 20 days after the “county commissioner of elections”<sup>89</sup> receives the voter’s registration form or at least 70 days before the election itself.<sup>90</sup> These challenges must be made in writing to the county commissioner and must be based on at least one of the grounds permitted for Election Day challenges.<sup>91</sup> State law expressly prohibits challengers from filing any single challenge against more than one registered voter.<sup>92</sup>

Whenever the county elections commissioner receives a valid challenge, the commissioner must schedule a hearing and notify the challenged voter of the hearing date within five days.<sup>93</sup> The notice

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<sup>84</sup> *Id.* See also IOWA CODE ANN. § 49.81(1) (“A prospective voter who is prohibited under . . . section 49.80 . . . from voting except under this section shall be notified by the appropriate precinct election official that the voter may cast a provisional ballot.”).

<sup>85</sup> IOWA CODE ANN. § 49.81(2)(c).

<sup>86</sup> IOWA CODE ANN. § 39A.3(1)(a)(4).

<sup>87</sup> IOWA CODE ANN. § 39A.4(1)(a)(4) (“A person commits the crime of election misconduct in the third degree if the person willfully . . . [i]nterfer[es] or attempt[s] to interfere with a voter when the voter is inside the enclosed voting space, or when the voter is marking a ballot.”).

<sup>88</sup> IOWA CODE ANN. § 48A.14(1) (“The registration of a registered voter may be challenged by another registered voter of the same county subject to the conditions and limitations of this section.”).

<sup>89</sup> Under Iowa law, the “county commissioner of elections” is responsible for administering elections and processing voter registrations within the county. IOWA CODE ANN. § 47.2(1). The county auditor is typically responsible for serving as county commissioner of elections. *Id.*

<sup>90</sup> IOWA CODE ANN. § 48A.14(4).

<sup>91</sup> See IOWA CODE ANN. § 48A.14(1). The statute lists the following grounds for registration challenges:

- a. The challenged registrant is not a citizen of the United States.
- b. The challenged registrant is less than seventeen and one-half years of age.
- c. The challenged registrant is not a resident at the address where the registrant is registered.
- d. The challenged registrant has falsified information on the registrant's registration form.
- e. The challenged registrant has been convicted of a felony, and the registrant's voting rights have not been restored.
- f. The challenged registrant has been adjudged by a court of law to be a person who is incompetent to vote and no subsequent proceeding has reversed that finding.

The statute does not specifically list not being a resident of the election district or being deceased as bases for a registration challenge, however. *Id.*

<sup>92</sup> IOWA CODE ANN. § 48A.14(2) (“A challenge shall not contain allegations against more than one registered voter.”).

<sup>93</sup> IOWA CODE ANN. § 48A.15(3); see also IOWA CODE ANN. § 48A.15(4) (“The notice prescribed by subsection 3 shall be sent by first class forwardable mail to the challenged registrant at the registrant's most recent mailing address according to the registration records.”).



must also include a copy of the challenge and tell the voter that she has a right to appear at the hearing and to submit evidence of her voting qualifications to the commissioner before the hearing.<sup>94</sup> The hearing itself must be scheduled between 20 and 30 days after the commissioner first received the challenge.<sup>95</sup> If the challenged voter wants to attend the hearing but cannot do so on the date of the scheduled hearing, she may ask the commissioner to re-schedule the hearing.<sup>96</sup> At the hearing itself, both the challenger and the challenged voter may present evidence to help the commissioner decide the challenge.<sup>97</sup> If the commissioner ultimately decides to uphold the challenge, the voter's registration will be canceled.<sup>98</sup> If the commissioner decides to cancel the challenged voter's registration and the voter was not present at the hearing, then the commissioner must immediately notify the voter of the canceled registration by forwardable mail.<sup>99</sup>

## MASSACHUSETTS

### *Existing Law for Challenging Voters at the Polls on Election Day*

Massachusetts state law currently permits any person to challenge a voter at the polls on Election Day.<sup>100</sup> Any challengers that have been specifically appointed by a political party, however, will be assigned to a specific location in the voting area from which to observe polling place activities.<sup>101</sup>

Once a voter has been challenged, the “presiding officer”<sup>102</sup> of the polling place will administer an oath to the challenged voter.<sup>103</sup> The challenged voter must then write her name and residence on her ballot before submitting it to the presiding officer.<sup>104</sup> After receiving the ballot, the presiding officer must record the challenger's name on the ballot as well as the basis for the challenge.<sup>105</sup> Another election officer is required to record the name of every person challenged on a separate document.<sup>106</sup>

Massachusetts law expressly prohibits challengers from using the challenge process to intimidate voters or ascertain how they might have voted.<sup>107</sup> Moreover, state law empowers election officers to

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<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> IOWA CODE ANN. § 48A.16(1).

<sup>98</sup> *Id.*

<sup>99</sup> IOWA CODE ANN. § 48A.16(2).

<sup>100</sup> MASS. GEN. LAWS Ch. 54, § 85A.

<sup>101</sup> *Id.* Every challenger appointed by a political party may demonstrate her right to challenge voters on behalf of a party by means of a written statement signed by the political party's chairperson that recognizes that the challenger is acting on behalf of the political party. *Id.*

<sup>102</sup> In Massachusetts, the “presiding officer” serves as the chief election official inside the polling place. MASS. GEN. LAWS Ch. 54, § 71. Under state law, the presiding officer is typically also known as the polling place's “warden” and must be joined by at least three other election officers in every polling place. 950 MASS. CODE REGS. 53.01.

<sup>103</sup> MASS. GEN. LAWS Ch. 54, § 85.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> MASS. GEN. LAWS Ch. 56, § 31.

have any disruptive individuals—including challengers—removed from the polling place by a police officer if they refuse to obey the election officer’s lawful instructions.<sup>108</sup>

### *Existing Law for Challenging Voters Prior to Election Day*

Massachusetts state law permits any “registered voter” to challenge the registration of another voter prior to Election Day.<sup>109</sup>

In order to bring the challenge, the challenger must submit a signed and sworn complaint to the local registrar explaining why he or she believes that the challenged voter is not properly registered.<sup>110</sup> The complaint must be filed at least fourteen days before the election in any city with a population greater than 150,000.<sup>111</sup> In smaller municipalities, the complaint must be filed at least four days before an election.<sup>112</sup>

After receiving the complaint, the registrar must issue a summons to the challenged voter asking the voter to appear before the registrar to defend her registration.<sup>113</sup> The registrar is required to give the challenged voter at least 2 days’ advance notice of the hearing but may not give the voter more than 14 days’ notice.<sup>114</sup>

At the hearing, the challenged voter must take an oath affirming that she is legally eligible to vote and may present any evidence she would like to demonstrate her voting qualifications to the registrar.<sup>115</sup> The challenged voter is also entitled to cross-examine all witnesses against her at the hearing and may be represented by counsel.<sup>116</sup> If the registrar determines that the challenged voter is qualified to vote but simply registered at the incorrect residence address, the registrar is required to update the voter’s registration address and may not cancel the voter’s registration.<sup>117</sup>

Any voter who fails appear at the hearing and fails to explain her absence to the registrar prior to Election Day may have her registration canceled.<sup>118</sup> However, the registrar may not cancel the voter’s registration unless the challenger’s testimony accurately identifies a legitimate basis for challenging the voter’s registration.<sup>119</sup>

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<sup>108</sup> MASS. GEN. LAWS Ch. 54, § 74. *See also* MASS. GEN. LAWS Ch. 54, § 71 (“[The presiding election officer] shall have authority to maintain order and to enforce obedience to his lawful commands, in and about the polling place and to keep the access thereto open and unobstructed, and he may require any police officer, constable or other person to communicate his orders and directions and assist in their enforcement.”).

<sup>109</sup> MASS. GEN. LAWS Ch. 51, § 48.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* Massachusetts state law specifically defines the term “city” as any municipality with a population of 150,000 or more. MASS. GEN. LAWS Ch. 43, § 128.

<sup>112</sup> MASS. GEN. LAWS Ch. 51, § 48.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> MASS. GEN. LAWS Ch. 51, § 49.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

## MICHIGAN

### *Challenges on Election Day*

Michigan law currently permits “[a]ny elector” to challenge another voter in the challenger’s precinct on Election Day if the challenger knows or suspects that the person is not registered to vote in that precinct.<sup>120</sup> Political parties, incorporated organizations, and organized “committees of citizens” may also appoint up to two designated challengers to serve at voting precincts on their behalf.<sup>121</sup>

Although Michigan’s challenger statute does not specify the grounds for challenges, the Michigan Department of State—the agency responsible for administering elections—has identified five specific grounds for bringing a challenge.<sup>122</sup> These are: (1) the voter is not a resident in the city or township where she seeks to vote; (2) the voter is not a U.S. citizen; (3) the voter failed to register by the “close of registration” date; (4) the voter is underage; (5) the voter received an absentee ballot before Election Day.<sup>123</sup>

Once a voter has been challenged, an “election inspector”<sup>124</sup> must mark the challenged voter’s ballot and produce a brief written report documenting the circumstances of the challenge.<sup>125</sup> The election inspector must then administer an oath to the challenged voter<sup>126</sup> and inform her of her rights.<sup>127</sup> Any inspector at the precinct may then question the challenged voter about her voting qualifications.<sup>128</sup> If the voter provides satisfactory answers to all of these questions, she must be permitted to cast a regular ballot.<sup>129</sup> State law requires that before the election inspectors may begin to address any voter challenge, they must wait until any unchallenged voters waiting in line have had a chance to vote.<sup>130</sup>

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<sup>120</sup> MICH. COMP. LAWS § 168.727(1).

<sup>121</sup> MICH. COMP. LAWS § 168.730 (“At an election, a political party or an incorporated organization or organized committee of citizens interested in the adoption or defeat of a ballot question being voted for or upon at the election, or interested in preserving the purity of elections and in guarding against the abuse of the elective franchise, may designate challengers as provided in this act.”).

<sup>122</sup> *The Challenge Process: Questions and Answers*, MICH. DEPT OF STATE (last visited Sept. 23, 2011), [www.michigan.gov/documents/sos/Challenger\\_QA\\_177165\\_7.pdf](http://www.michigan.gov/documents/sos/Challenger_QA_177165_7.pdf).

<sup>123</sup> *Id.*

<sup>124</sup> Michigan law requires that every precinct be staffed by at least three “election inspectors,” who are appointed by the local board of election commissioners. MICH. COMP. LAWS § 168.674(1). Each major political party must be represented by at least one election inspector. *Id.*

<sup>125</sup> MICH. COMP. LAWS § 168.727(2). The written report must include: “(i) All election disparities or infractions complained of or believed to have occurred. (ii) The name of the individual making the challenge. (iii) The time of the challenge. (iv) The name, telephone number, and address of the challenged individual. (v) Other information considered appropriate by the election inspector.” *Id.*; see also MICH. COMP. LAWS § 168.745 (describing how election inspectors must mark challenged ballots).

<sup>126</sup> MICH. COMP. LAWS § 168.729.

<sup>127</sup> MICH. COMP. LAWS § 168.727(2)(d).

<sup>128</sup> MICH. COMP. LAWS § 168.729.

<sup>129</sup> *Id.*

<sup>130</sup> MICH. COMP. LAWS § 168.728.

Although challengers are not required to produce documentation to support their allegations,<sup>131</sup> Michigan law explicitly prohibits challengers from bringing challenges “indiscriminately and without good cause.” and makes it a misdemeanor to bring challenges “for the purpose of annoying or delaying voters.”<sup>132</sup>

### *Challenges before Election Day*

Michigan state law permits “any elector” to challenge the registration of another voter in the same municipality prior to Election Day.<sup>133</sup>

To bring the challenge, the challenger must submit an affidavit to the municipal clerk stating her grounds for making the challenge.<sup>134</sup> After receiving this affidavit, the clerk must then notify the challenged voter by mail about the pending challenge, informing the voter of the grounds stated in the affidavit.<sup>135</sup> The challenged voter then has thirty days to either (1) appear in front of the clerk to affirm that she is properly registered and respond to the clerk’s questions; or (2) submit an affidavit to the clerk affirming that she is properly registered, stating her voting qualifications, and responding to the challenger’s allegations.<sup>136</sup> If the challenged voter fails to respond to the clerk’s notice within 30 days, the clerk will cancel the voter’s registration.<sup>137</sup>

As with polling place challenges, Michigan law makes it a misdemeanor to bring voter registration challenges “indiscriminately and without good cause or for the purpose of harassment.”<sup>138</sup>

## **MINNESOTA**

### *Challenges on Election Day*

Minnesota state law allows any voter to challenge another voter on Election Day whom the challenger “knows or reasonably believes is not an eligible voter.”<sup>139</sup> In addition, each major political party may appoint one partisan “challenger” to every polling place during partisan elections.<sup>140</sup>

Challengers must be residents of Minnesota and must state the basis for their challenge on form supplied by Minnesota’s Secretary of State, the state’s chief elections officer.<sup>141</sup> Although the statute

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<sup>131</sup> See *The Challenge Process: Questions and Answers*, MICH. DEP’T OF STATE (last visited Sept. 23, 2011), [www.michigan.gov/documents/sos/Challenger\\_QA\\_177165\\_7.pdf](http://www.michigan.gov/documents/sos/Challenger_QA_177165_7.pdf).

<sup>132</sup> MICH. COMP. LAWS § 168.727(3).

<sup>133</sup> MICH. COMP. LAWS § 168.512.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> MINN. STAT. ANN. §§ 204C.12(1)–(2).

<sup>140</sup> MINN. STAT. ANN. § 204C.07(1). Candidates in non-partisan elections may also appoint challengers to serve at the polls. *Id.* at § 204C.07(2). Groups of citizens may petition local officials for permission to appoint challengers at the polls during elections “where a question is to be voted upon.” *Id.* at § 204C.07(3).

<sup>141</sup> MINN. STAT. ANN. § 204C.12(2). Challengers must also provide their full name, signature, phone number, and address on the form. *Id.* The form itself appears in the state’s election law regulations, see MINN. R. 8200.9960, and is

does not identify any specific grounds for a challenge, the Secretary of State published informational guidelines in 2008. The guidelines list only seven rationales for a challenge:<sup>142</sup> (1) the voter is not a U.S. citizen; (2) the voter has been adjudged incompetent by an appropriate court; (3) the voter lacks Minnesota residency; (4) the voter lacks residency in the voting precinct where she is attempting to vote; (5) the voter is currently under a non-expired felony sentence; (6) the voter is underage; and (7) the voter is under court-ordered guardianship.<sup>143</sup>

Each challenge must be made under oath and must be based on the challenger's "personal knowledge."<sup>144</sup> According to the Secretary of State, the "personal knowledge" requirement means that mere "suspicion is not a sufficient basis for making a challenge."<sup>145</sup> The Secretary of State has also made clear that challengers may not speak to voters, take pictures inside the polling place, disrupt voting, or base any challenge on mail sent to a voter by a political party and returned as undeliverable.<sup>146</sup>

Once a voter has been challenged, an "election judge"<sup>147</sup> will administer an oath to the challenged voter and ask any questions necessary to determine whether the challenged voter is eligible.<sup>148</sup> If the challenged voter refuses to answer or sign a polling place roster, the challenged voter cannot cast a regular ballot.<sup>149</sup> Similarly, if the election judge concludes that the challenged voter is ineligible because she lacks precinct residency, the challenged voter will not be allowed to vote.<sup>150</sup> However, if the voter answers the judge's questions and the judge concludes that the voter is eligible, the voter must be permitted to cast a regular ballot.<sup>151</sup>

### *Challenges before Election Day*

State law permits "any voter" to challenge the registration of another voter before Election Day, as long as both voters live in the same county.<sup>152</sup>

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also available for download on the Minnesota Secretary of State's website, *see Forms & Publications*, MINN. SEC'Y OF STATE (last visited Sept. 29, 2011), *available at* <http://www.sos.state.mn.us/index.aspx?page=138>.

<sup>142</sup> *Election Day "Challengers"*, MINN. SEC'Y OF STATE (2008), <http://www.sos.state.mn.us/Modules/ShowDocument.aspx?documentid=4283>.

<sup>143</sup> *Id.*

<sup>144</sup> MINN. STAT. ANN. § 204C.12(2).

<sup>145</sup> *See Know Your Rights: Challenges and Vouching Must Be Based upon Personal Knowledge*, MINN. SEC'Y OF STATE (May 12, 2010), <http://www.sos.state.mn.us/Modules/ShowDocument.aspx?documentid=4303> ("For example, it is impermissible to challenge a voter who you think is not a citizen simply because of the way that the voter speaks or dresses.").

<sup>146</sup> *The Role of Challengers in the Polling Place*, MINN. SEC'Y OF STATE (June 3, 2010), <http://www.sos.state.mn.us/Modules/ShowDocument.aspx?documentid=5076>; *see also* MINN. STAT. ANN. § 204C.07(5) ("Challengers and the political parties that appointed them must not compile lists of voters to challenge on the basis of mail sent by a political party that was returned as undeliverable or if receipt by the intended recipient was not acknowledged in the case of registered mail.").

<sup>147</sup> Under Minnesota law, election judges are selected from lists submitted by political party leaders to the Secretary of State and appointed to polling precincts by either the municipal or county governing body of the jurisdiction. MINN. STAT. ANN. § 204B.21. Every precinct must have at least two election judges "affiliated with different major political parties." *Id.*

<sup>148</sup> MINN. STAT. ANN. § 204C.12(2).

<sup>149</sup> MINN. STAT. ANN. § 204C.12(4).

<sup>150</sup> MINN. STAT. ANN. § 204C.12(3).

<sup>151</sup> *Id.*

<sup>152</sup> MINN. STAT. ANN. § 201.195(1).

The challenger must submit an affidavit to the county election administrator stating the basis for the challenge.<sup>153</sup> All registration challenges must be based upon the challenger’s “personal knowledge.”<sup>154</sup>

Within five days of receiving the registration challenge, the “county auditor”<sup>155</sup> will set a hearing date and notify both the challenger and the challenged voter.<sup>156</sup> The auditor will then decide whether to affirm the challenge.<sup>157</sup> If the auditor affirms the challenge, the challenged voter can appeal to the Secretary of State, who must hear the appeal within five days (or sooner if necessary to decide the matter before Election Day).<sup>158</sup>

## MISSOURI

### *Challenges on Election Day*

Missouri state law currently permits “any registered voter” to challenge another person attempting to vote at the polls on Election Day.<sup>159</sup> In addition, political party leaders in each county may appoint their own designated “challengers” to serve at the polls.<sup>160</sup>

Missouri’s challenger statute does not identify specific grounds for challenging voters at the polls. Rather, it permits a challenger to act whenever she “believes the election laws of [Missouri] have been or will be violated.”<sup>161</sup> When a challenger has reported an alleged violation to the “election judges”<sup>162</sup> at the polling place, the judges must then decide by majority vote whether to permit the challenged voter to cast a ballot.<sup>163</sup> If the challenged voter’s qualifications cannot be “immediately established,” the voter must be permitted to cast a provisional ballot.<sup>164</sup>

When deciding any challenge, election judges may require the challenged voter to complete an affidavit affirming her voting qualifications (blank affidavits must be available at the polls for challenged voters to complete).<sup>165</sup> Election judges must mark these affidavits with all relevant

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<sup>153</sup> *Id.*

<sup>154</sup> *Id.* The affidavit form itself appears in the state’s election law regulations, *see* MINN R. 8200.9950, and is also available for download on the Minnesota Secretary of State’s website, *see Forms & Publications*, MINN. SEC’Y OF STATE (last visited Sept. 29, 2011), *available at* <http://www.sos.state.mn.us/index.aspx?page=138>.

<sup>155</sup> Under Minnesota law, the “county auditor” is elected for each county in the state. MINN. STAT. ANN. § 384.01.

<sup>156</sup> MINN. STAT. ANN. § 201.195(1).

<sup>157</sup> *Id.*

<sup>158</sup> MINN. STAT. ANN. § 201.195(2).

<sup>159</sup> MO. REV. STAT. § 115.429.

<sup>160</sup> MO. REV. STAT. § 115.105. These appointed challengers must be registered to vote in the jurisdiction where they intend to serve. *Id.*

<sup>161</sup> MO. REV. STAT. § 115.105(2).

<sup>162</sup> MO. REV. STAT. § 115.105(6). Missouri law requires that the local election authority appoint at least two “election judges” from each of the major political parties to every polling place. MO. REV. STAT. § 115.081(2). No polling place may have a majority of election judges from a single political party. *Id.*

<sup>163</sup> MO. REV. STAT. § 115.429(3).

<sup>164</sup> MO. REV. STAT. § 115.430(2)(1); *see also* MO. CODE REGS. ANN. tit. 15, § 30-8.10, *available at* <http://www.sos.mo.gov/adrules/csr/current/15csr/15c30-8.pdf>.

<sup>165</sup> MO. REV. STAT. § 115.429(5).



information or comments regarding the challenge.<sup>166</sup> Challenged voters may appeal the election judges' decisions to their jurisdiction's "election authority"<sup>167</sup> or to the circuit court.<sup>168</sup>

Missouri law makes it a misdemeanor for any person to use "any fraudulent device or contrivance" to prevent or impede another person from voting.<sup>169</sup>

### *Challenges before Election Day*

Missouri law does not allow private citizens to challenge voters before Election Day. Only election officials may investigate a voter's qualifications before Election Day.<sup>170</sup>

## NEVADA

### *Challenges on Election Day*

Nevada state law currently permits "any registered voter" to challenge another voter attempting to cast a ballot in the challenger's precinct on Election Day.<sup>171</sup>

All challenges must be based on the challenger's "personal knowledge."<sup>172</sup> Additionally, challengers must submit a sworn affirmation, signed under penalty of perjury, stating that their challenges are based on firsthand information.<sup>173</sup> Nevada law identifies several grounds for a challenge: (1) the voter has already voted during the same election; (2) the voter has misrepresented her identity for voting purposes; and (3) the voter does not live at the address listed in the election board register.<sup>174</sup>

Once a challenge has been submitted, an "election board officer"<sup>175</sup> will then ask the challenged voter to take an oath and sign an affirmation verifying her voting qualifications.<sup>176</sup> The challenged voter's affirmation shall be made on a written form prescribed by the Secretary of State, that includes the challenger's name, address, phone number, precinct number, the factual basis for each

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<sup>166</sup> *Id.*

<sup>167</sup> "Election authority" in this context means either the board of election commissioners for the jurisdiction or, if no such board exists, the county clerk. MO. REV. STAT. § 115.015.

<sup>168</sup> MO. REV. STAT. § 115.429(3).

<sup>169</sup> MO. REV. STAT. § 115.635(3). Challengers are also barred from using, or threatening, "any force" to prevent others from voting. MO. REV. STAT. § 115.635(2). And any challenger who "interferes with the orderly process of voting" may be subject to removal from the polling place. MO. REV. STAT. § 115.111.

<sup>170</sup> MO. REV. STAT. § 115.191.

<sup>171</sup> NEV. REV. STAT. § 293.303(1)(a).

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> NEV. REV. STAT. § 293.303(1) and (2). A voter may also be challenged during a partisan primary election on the ground that she is not a member of the political party designated in the election board register. NEV. REV. STAT. § 293.287. If a voter is challenged on that ground, the election board officer must permit the voter to cast a "nonpartisan ballot." *Id.*

<sup>175</sup> The county clerk appoints "election board officers" to every precinct or district within the county. NEV. REV. STAT. § 293.217(1). Although state law does not specify exactly how many election board officers are appointed in each precinct, it explicitly prohibits any precinct from being staffed entirely by officers of a single political party. *Id.*

<sup>176</sup> NEV. REV. STAT. § 293.303(2). The oath and affirmation will vary depending on the ground on which the voter is challenged. *See id.*

ground for the challenge, and a statement asserting that the challenge is based on the challenger's "personal knowledge."<sup>177</sup> Voters whose identity is challenged must also furnish photo identification or bring an adult witness before the election board officers to testify as to the voter's identity.<sup>178</sup> Voters whose registration address is challenged must furnish some proof-of-residence other than their voter registration card.<sup>179</sup> Even if a voter is successfully challenged on non-residency grounds, she may be eligible to cast a ballot at another polling place.<sup>180</sup> Election board officers will not issue a ballot to any voter who refuses to take an oath or affirmation and will mark "challenged" next to the voter's name in the election board register.<sup>181</sup> The election board officer must also keep a "challenge list" documenting the name of every challenger, challenged voter, and challenge result.<sup>182</sup>

Any person who attempts to use the voter challenge process to intimidate another voter or impede another voter from casting a ballot is guilty of a felony under Nevada law.<sup>183</sup> Although members of the public can "observe" at polling places,<sup>184</sup> observers are expressly prohibited from speaking to voters, interfering with the voting process, using any mobile phones or computers, or electioneering inside the polling place.<sup>185</sup> Observers can be ejected from the polling place for violating these rules.<sup>186</sup>

### *Challenges before Election Day*

Nevada state law permits any "registered voter" to challenge the registration of another voter before Election Day, as long as both voters live in the same precinct.<sup>187</sup>

All challenges must be made in writing and submitted to the county clerk's office during the five-days between the 30th day and 25th day before an election.<sup>188</sup> Each challenge must also be signed and verified by the challenger<sup>189</sup> and must include the challenger's name, address, phone number, and precinct number.<sup>190</sup> The challenger must provide the name, address, and (if possible) phone number of the challenged voter<sup>191</sup> as well as a statement asserting that the challenge is based on the challenger's "personal knowledge."<sup>192</sup> Multiple voters cannot be challenged on a single form.<sup>193</sup>

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<sup>177</sup> NEV. ADMIN. CODE § 293.416(2), *available at* <http://www.leg.state.nv.us/nac/NAC-293.html#NAC293Sec416> (designating information to be provided on the prescribed form).

<sup>178</sup> NEV. REV. STAT. § 293.303(8).

<sup>179</sup> NEV. REV. STAT. § 293.303(7).

<sup>180</sup> NEV. REV. STAT. § 293.304(1). Even if a voter cannot establish that she resides within a particular voting precinct, she may still be able to establish residency within the state. This would make her eligible to vote for federal and certain statewide offices at a "special polling place." NEV. REV. STAT. § 293.304(3).

<sup>181</sup> NEV. REV. STAT. § 293.303(3).

<sup>182</sup> NEV. REV. STAT. § 293.303(9). *See also* NEV. REV. STAT. § 293.035 (defining "challenge list" as a "form furnished election board officers to be used in making a record of all challenges."); NEV. REV. STAT. § 293.373(1) (requiring local counting board officers to submit the "challenge list" to the county clerk after all the ballots have been counted).

<sup>183</sup> NEV. REV. STAT. § 293.710.

<sup>184</sup> NEV. REV. STAT. § 293.274(1).

<sup>185</sup> NEV. ADMIN. CODE § 293.245(2), *available at* <http://www.leg.state.nv.us/nac/NAC-293.html#NAC293Sec245>.

<sup>186</sup> *Id.*

<sup>187</sup> NEV. REV. STAT. § 293.547(2).

<sup>188</sup> NEV. REV. STAT. § 293.547(1).

<sup>189</sup> NEV. REV. STAT. § 293.547(3).

<sup>190</sup> NEV. ADMIN. CODE § 293.416(1), *available at* <http://www.leg.state.nv.us/nac/NAC-293.html#NAC293Sec416>.

<sup>191</sup> *Id.*

<sup>192</sup> NEV. REV. STAT. § 293.547(1). *See also* NEV. ADMIN. CODE § 293.416(1).

<sup>193</sup> NEV. REV. STAT. § 293.547(4).

Within five days of receiving the challenge, the county clerk must notify the challenged voter by mail that her registration was challenged.<sup>194</sup> The notice must tell the challenged voter how to properly re-register and must include a copy of the challenge itself.<sup>195</sup> If the voter fails to respond to the notice or appear before the county clerk by the specified time, the clerk will cancel the voter's registration.<sup>196</sup> Written challenges may be withdrawn no later than the 25th day immediately preceding an election.<sup>197</sup>

## NEW HAMPSHIRE

### *Challenges on Election Day*

New Hampshire state law currently permits any “voter” to challenge another voter attempting to cast a ballot in the same town or ward on Election Day.<sup>198</sup> In addition, state political party leaders can appoint challengers to serve at the polls on their behalf.<sup>199</sup> The same rules govern challenges made by both voters and party representatives.

All challenges must be submitted in writing to an election “moderator”<sup>200</sup> and must cite specific grounds for the challenge.<sup>201</sup> State law recognizes just ten permissible grounds for challenging a voter: (1) the voter has already voted in the same election; (2) the voter is not a U.S. citizen; (3) the voter is underage; (4) the voter has misrepresented her identity so that she could vote in the election; (5) the voter was previously convicted of willfully violating state election law; (6) the voter is not domiciled in the town or ward where she is seeking to vote; (7) the voter does not reside at the address listed on the registration list; (8) the voter is an incarcerated convicted felon; (9) the voter is not a member of the party in whose primary she is attempting to vote; and (10) the voter is ineligible under some other specific provision of state law.<sup>202</sup>

Challengers must also assert specific facts to support their claims.<sup>203</sup> These facts—and their source—must be identified in an affidavit.<sup>204</sup> Challengers who deliberately file false or misleading information can face felony charges.<sup>205</sup>

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<sup>194</sup> NEV. REV. STAT. § 293.547(5). The clerk must also file the challenge with the local registrar of voters and notify the local district attorney of the challenge. *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> NEV. REV. STAT. § 293.548(1).

<sup>198</sup> N.H. REV. STAT. ANN. § 659:27(I).

<sup>199</sup> N.H. REV. STAT. ANN. § 666:4. Each party may only appoint one representative to serve as a challenger in each polling place. *Id.*

<sup>200</sup> Under New Hampshire law, the “moderator” is the election officer responsible for overseeing the conduct of elections inside a polling place. N.H. REV. STAT. ANN. § 659:9 (“It shall be the duty of the moderator to secure the observance of the provisions of the following sections relating to the conduct of voting.”).

<sup>201</sup> N.H. REV. STAT. ANN. § 659:27-a.

<sup>202</sup> N.H. REV. STAT. ANN. § 659:27-a(II).

<sup>203</sup> *Id.* (“A challenge may be asserted only upon personal knowledge or other basis of probable cause that the challenged voter is ineligible to vote.”).

<sup>204</sup> N.H. REV. STAT. ANN. § 659:27-a(I).

<sup>205</sup> N.H. REV. STAT. ANN. § 659:40(III). *See also* N.H. REV. STAT. ANN. § 659:45 (“It shall be the responsibility of the moderator to report any violation occurring under RSA 659:34 through RSA 659:44 to the attorney general.”).

After receiving any challenge, the election moderator must determine whether the challenge is “well grounded.”<sup>206</sup> If the moderator finds that the challenger has provided adequate support for the challenge, the moderator will then ask the challenged voter to complete an affidavit affirming that the voter is qualified to vote.<sup>207</sup> A challenged voter who refuses to complete this affidavit will not be permitted to vote a regular ballot.<sup>208</sup>

New Hampshire law expressly prohibits anyone from challenging other voters based on information that the challenger knows is false or misleading.<sup>209</sup> In addition, state law prohibits any person from interfering or attempting to interfere with any voter inside the polling place.<sup>210</sup>

### *Challenges before Election Day*

New Hampshire law does not allow private citizens to challenge other voters before Election Day.

## **NEW MEXICO**

### *Challenges on Election Day*

New Mexico state law currently permits any “challenger,” who has been formally appointed by a local political party, to challenge voters at the polls.<sup>211</sup> These challengers must be registered to vote in the county where they have been appointed to serve.<sup>212</sup> Only election officials and appointed challengers may challenge voters at the polls.<sup>213</sup>

State law recognizes just five grounds for bringing a challenge: (1) the voter is not registered; (2) the voter received an absentee ballot for the same election; (3) the voter has already cast a ballot during the same election; (4) in a primary election, the voter is not affiliated with a political party on the ballot; or (5) the voter is not legally qualified.<sup>214</sup>

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<sup>206</sup> N.H. REV. STAT. ANN. § 659:27 (II)

<sup>207</sup> *Id.* The Secretary of State is responsible for producing and distributing this affidavit to local election workers. N.H. REV. STAT. ANN. § 659:28.

<sup>208</sup> N.H. REV. STAT. ANN. § 659:31.

<sup>209</sup> N.H. REV. STAT. ANN. § 659:40 (III)

<sup>210</sup> N.H. REV. STAT. ANN. § 659:37.

<sup>211</sup> N.M. STAT. ANN. § 1-12-20 (“A challenge may be interposed by a member of the precinct board or by a party challenger.”). Party challengers are typically appointed to specified polling places by the county chair of each political party or, if the county chair declines to appoint any challengers, by the party’s precinct chair. *See* N.M. STAT. ANN. § 1-2-21.

<sup>212</sup> N.M. STAT. ANN. § 1-2-22 (“Challengers and watchers shall be voters of a precinct located in that county to which they are appointed.”). Furthermore, candidates for office, their close relatives, and certain law enforcement officers are prohibited from serving as challengers. *Id.*

<sup>213</sup> N.M. STAT. ANN. § 1-12-20.

<sup>214</sup> N.M. STAT. ANN. § 1-12-20.

Challengers must wear an identification badge at all times when they are inside the polling place.<sup>215</sup> The badge must conform to requirements set forth by election officials and must identify the political party that appointed the challenger.<sup>216</sup>

After receiving a challenge, the “election judges”<sup>217</sup> in the polling place must record the challenger’s name, the reason for the challenge, and the time of the challenge next to the challenged voter’s name in the signature roster.<sup>218</sup> If any of the three judges in the polling place refuses to affirm the challenge, then the voter must be allowed to vote a regular ballot and the judges must update the signature roster to note that the challenge was not affirmed.<sup>219</sup> If all three judges decide to affirm the challenge, however, then the challenged voter may only vote a provisional ballot.<sup>220</sup>

State law expressly prohibits challengers from interfering with the voting process at the polls.<sup>221</sup> In addition, it is a felony to intimidate any voter or election judge “by use of or threatened use of force, violence, infliction of damage, harm or loss or any form of economic retaliation.”<sup>222</sup>

### *Challenges before Election Day*

New Mexico state law does not permit challenges to be filed before Election Day.

## **NORTH CAROLINA**

### *Challenges on Election Day*

North Carolina state law currently permits any “registered voter” to challenge another voter attempting to cast a ballot in the challenger’s precinct on Election Day if the challenger knows or suspects that the person is not qualified to vote.<sup>223</sup>

State law recognizes only seven grounds for challenging a voter at the polls: (1) the voter is not a U.S. citizen; (2) the voter lacks residency in the state, county, or voting precinct; (3) the voter is disqualified due to prior felony conviction; (4) the voter is underage; (5) the voter is not who she

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<sup>215</sup> N.M. STAT. ANN. § 1-2-24 (“At all times while they are present in the polling place, challengers shall wear uniform identification badges designating them as authorized challengers of the political party which they represent.”).

<sup>216</sup> *Id.* (“The secretary of state shall prescribe the form and materials of such badges and such badges shall be furnished to the challengers by the presiding judge upon presentation of their written appointments.”).

<sup>217</sup> Under New Mexico law, every voting precinct must be staffed by three election “judges” during primary, general, and special federal elections. N.M. STAT. ANN. § 1-2-12(A). At least one of these judges must be a member of a different political party from the other judges serving in the same precinct. N.M. STAT. ANN. § 1-2-12(B)(1).

<sup>218</sup> N.M. STAT. ANN. § 1-12-21.

<sup>219</sup> N.M. STAT. ANN. § 1-12-22(B).

<sup>220</sup> N.M. STAT. ANN. § 1-12-22(A).

<sup>221</sup> N.M. STAT. ANN. § 1-2-25(A) (“Challengers, watchers and county canvass observers shall: (1) not be permitted to perform any duty of a precinct board member; (2) not handle the ballots, signature rosters, checklist of voters or voting machines or take any part in the counting or tallying of the ballots or the county canvass; (3) not be allowed to view a voter’s full date of birth or any portion of the voter’s social security number; (4) not interfere with the orderly conduct of the election, the counting or tallying of the ballots or the county canvass; (5) be allowed in the room in which the voting is being conducted at a polling location, provided that at any given time each political party, candidate or election-related organization may have no more than one person present.”).

<sup>222</sup> N.M. STAT. ANN. § 1-20-14.

<sup>223</sup> N.C. GEN. STAT. ANN. §§ 163-87-90.1

represents herself to be; (6) the voter already voted in the same election; or (7) the voter is not a member of the political party in whose primary she seeks to vote.<sup>224</sup> If a voter moves within a county and is challenged at the polls for lack of residency, she must be given an opportunity to transfer her registration to her new voting precinct.<sup>225</sup>

The challenger has the burden of proving that the challenged voter is ineligible<sup>226</sup> and is required to provide some “affirmative proof” to support his or her allegations (returned mail sent to the voter’s last known address is not considered affirmative proof).<sup>227</sup> Once a voter has been challenged, the precinct’s “election judge[s]”<sup>228</sup> must explain North Carolina’s voting qualifications to the challenged voter.<sup>229</sup> Next, the election judges must examine the voter to determine whether she meets those qualifications.<sup>230</sup> Finally, the judges must administer an oath to the challenged voter, who must affirm that she is eligible to vote.<sup>231</sup> The judges may also opt to hear testimony from witnesses as to the challenged voter’s qualifications.

Although challengers may briefly enter the voting enclosure to make a challenge<sup>232</sup> they are barred from directly impeding or interfering with any voter casting a ballot.<sup>233</sup> Poll workers can have challengers arrested if they interfere with voters.<sup>234</sup>

### *Challenges before Election Day*

North Carolina law permits voters to challenge the registration of another voter before Election Day, as long as both voters live in the same county.<sup>235</sup> These challenges, however, must be filed at least twenty-five days before an election.<sup>236</sup>

Every challenger must provide the “county board of elections”<sup>237</sup> with a signed, written oath on a form provided by the State Board of Elections that identifies the grounds for the challenge.<sup>238</sup> The challenge must also include the challenger’s address.<sup>239</sup>

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<sup>224</sup> N.C. GEN. STAT. ANN. §§ 163-85(c) & -87.

<sup>225</sup> N.C. GEN. STAT. ANN. § 163-87.

<sup>226</sup> N.C. GEN. STAT. ANN. § 163-90.1.

<sup>227</sup> N.C. GEN. STAT. ANN. § 163-90.1 (“No challenge shall be sustained unless the challenge is substantiated by affirmative proof. In the absence of such proof, the presumption shall be that the voter is properly registered or affiliated.”). *See also* N.C. GEN. STAT. ANN. § 163-88 (“A letter or postal card mailed by returnable mail and returned by the United States Postal Service purportedly because the person no longer lives at that address or because a forwarding order has expired shall not be admissible evidence in a challenge heard under this section.”)

<sup>228</sup> North Carolina law provides that every voting precinct have one “chief judge” and two other “judges of election” to conduct the election. N.C. GEN. STAT. ANN. § 163-41. No more than two of these judges may be members of the same political party. *Id.*

<sup>229</sup> N.C. GEN. STAT. ANN. § 163-88.

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> N.C. GEN. STAT. ANN. § 163-87 (“On the day of a primary or election, at the time a registered voter offers to vote, any other registered voter of the precinct may exercise the right of challenge, and when he does so may enter the voting enclosure to make the challenge, but he shall retire therefrom as soon as the challenge is heard.”).

<sup>233</sup> N.C. GEN. STAT. ANN. § 163-273(a)(3) (making it illegal to “interfere with, or attempt to interfere with, any voter when inside the voting enclosure”).

<sup>234</sup> N.C. GEN. STAT. ANN. § 163-273(b).

<sup>235</sup> N.C. GEN. STAT. ANN. § 163-85(a).

<sup>236</sup> *Id.*



After receiving any pre-election challenge, the county board of elections must schedule a preliminary hearing to determine whether the challenge is legitimate, where it may receive sworn testimony and other evidence.<sup>240</sup> Since the challenger bears the burden of proving that the voter is ineligible, the board will dismiss any challenges for which no testimony is offered.<sup>241</sup>

If the board finds at the preliminary hearing that there is probable cause to believe that the voter is ineligible, it may schedule a second hearing to adjudicate the challenge.<sup>242</sup> The board must notify the challenged voter of the date and time of this hearing by first-class mail at least 10 days before the hearing date.<sup>243</sup> The challenged voter must appear at this second hearing—or send an adult representative to speak on her behalf—and take an oath affirming that she is eligible to vote.<sup>244</sup>

## OHIO

### *Challenges on Election Day*

Ohio state law does not currently permit private citizens to challenge voters on Election Day.<sup>245</sup>

However, citizens can act as “observers” at the polls on behalf of a candidate or a party.<sup>246</sup> Observers are only permitted to watch election officials and voters and inspect the counting of all ballots in the polling place or board of elections.<sup>247</sup> Observers cannot wear any official uniforms.<sup>248</sup>

### *Challenges before Election Day*

Ohio law permits “any qualified elector” to challenge the qualifications of any registered voter before Election Day.<sup>249</sup>

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<sup>237</sup> North Carolina law provides that every county in the state have a three-member board of elections. N.C. GEN. STAT. ANN. § 163-30. Board members must be registered voters of the county in which they sit and are appointed by the State Board of Elections and selected from lists submitted by political party leaders. *Id.*

<sup>238</sup> N.C. GEN. STAT. ANN. § 163-85(b).

<sup>239</sup> *Id.*

<sup>240</sup> N.C. GEN. STAT. ANN. § 163-85(d).

<sup>241</sup> N.C. GEN. STAT. ANN. § 163-85(d). The statute notes that mail that has been sent to the address listed in the voter’s registration records and returned as undeliverable will constitute prima facie evidence of a voter’s ineligibility. N.C. GEN. STAT. ANN. § 163-85(e).

<sup>242</sup> N.C. GEN. STAT. ANN. § 163-85(d).

<sup>243</sup> N.C. GEN. STAT. ANN. § 163-86(b). The board may also decide that the challenge should be adjudicated at the polls on Election Day in the same manner as an in-person challenge. *Id.*

<sup>244</sup> *Id.*; N.C. GEN. STAT. ANN. § 163-86(d).

<sup>245</sup> Ohio formerly permitted Election Day challenges but repealed its statute allowing such challenges in 2006. *See* H.B. 3, at § 1, 126th Gen. Assemb. (effective since May 2, 2006), *available at* [http://www.legislature.state.oh.us/BillText126/126\\_HB\\_3\\_EN\\_N.html](http://www.legislature.state.oh.us/BillText126/126_HB_3_EN_N.html). Under current law, only election officials may challenge voters at the polls on Election Day. OHIO REV. CODE ANN. § 3505.20.

<sup>246</sup> OHIO REV. CODE ANN. § 3505.21. Under Ohio law, each political party that has a candidate on the ballot (and any group of five or more candidates) can appoint one person to serve as an observer in each precinct and the board of elections. *Id.* No more than six observers can be appointed to any one precinct. OHIO REV. CODE ANN. § 3505.21(E).

<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

Challenges must be filed at least 20 days before an election,<sup>250</sup> either in person at the county board of elections<sup>251</sup> or in a letter to the board.<sup>252</sup> All written challenges must include the challenger's name and address and signed under penalty of falsification and must be on a form provided by the Secretary of State.<sup>253</sup>

The board will first attempt to resolve the matter by consulting its own records.<sup>254</sup> Based on that information, the board may then either reject the challenge outright or cancel the challenged voter's registration.<sup>255</sup> Alternatively, if the board cannot make a determination based solely on its records, it can schedule a hearing, within 10 days, to decide the challenge.<sup>256</sup> The board's director must notify the challenged voter of the hearing in writing at least three days before the hearing date.<sup>257</sup> Both parties may appear at the hearing<sup>258</sup> and the challenged voter may call witnesses, testify, present evidence, and be represented by counsel.<sup>259</sup> Either side can ask the board to issue subpoenas for witnesses to testify.<sup>260</sup> If, after evaluating the evidence presented at the hearing, the board affirms the challenge, it will cancel the voter's registration.<sup>261</sup> Otherwise, the challenged voter must remain on the voter registration list.<sup>262</sup>

## PENNSYLVANIA

### *Challenges on Election Day*

Pennsylvania state law currently permits “any qualified elector” to challenge another person at the polls on Election Day.<sup>263</sup> In addition, poll “watchers,” who are appointed by political candidates and parties to monitor the polling places, may also challenge voters on Election Day.<sup>264</sup> Watchers and voters must adhere to the same rules.

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<sup>249</sup> OHIO REV. CODE ANN. § 3503.24(A); OHIO REV. CODE ANN. § 3505.19 (“Any person registered as an elector may be challenged by any qualified elector as to the registered elector's right to vote prior to the nineteenth day before the day of an election.”).

<sup>250</sup> OHIO REV. CODE ANN. § 3503.24(A); OHIO REV. CODE ANN. § 3505.19.

<sup>251</sup> Under Ohio law, the Secretary of State appoints four members to a board of elections in each county. OHIO REV. CODE ANN. § 3501.06. The members serve terms of four years, and two are appointed every two years. *Id.* With every appointment cycle, the Secretary will appoint one member from the party that cast the highest number of votes for the office of governor, and the second member will be from the party that cast the second highest number of votes for the office of governor. *Id.*

<sup>252</sup> OHIO REV. CODE ANN. § 3505.19.

<sup>253</sup> OHIO REV. CODE ANN. § 3503.24(A); OHIO REV. CODE ANN. § 3505.19.

<sup>254</sup> OHIO REV. CODE ANN. § 3503.24(B).

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> *Id.*

<sup>258</sup> *Id.*

<sup>259</sup> *Id.*

<sup>260</sup> *Id.*

<sup>261</sup> OHIO REV. CODE ANN. § 3503.24(C).

<sup>262</sup> *Id.*

<sup>263</sup> 25 PA. CONS. STAT. § 3050(d).

<sup>264</sup> 25 PA. CONS. STAT. § 2687(b) (“Watchers allowed in the polling place under the provisions of this act, shall be permitted to keep a list of voters and shall be entitled to challenge any person making application to vote and to require proof of his qualifications.”). Political candidates may appoint up to two poll watchers per election district

Pennsylvania only recognizes a handful of grounds for challenging a voter at the polls. These are: (1) the challenged voter has misrepresented her identity; (2) the challenged voter lacks residency in the election district; (3) the challenged voter engaged in bribery during the election; and (4) the challenged voter is not a member of the political party in whose primary she has sought to vote.<sup>265</sup>

If a voter's residency or identity is challenged, the challenged voter must produce another qualified voter from her election district to submit an affidavit verifying the challenged voter's residency and identity.<sup>266</sup> However, state laws and regulations do not provide additional details describing how in-person challenges should be decided or by whom.

Pennsylvania law makes it a felony to engage in “any intimidation, threats, force or violence” intended to prevent a voter from casting a ballot.<sup>267</sup>

### *Challenges before Election Day*

Pennsylvania state law currently permits any “qualified elector” to challenge the registration of another voter before Election Day, as long as both voters live in the same municipality.<sup>268</sup>

To challenge another voter's registration, the challenger must submit an affidavit to the county registration “commission”<sup>269</sup> stating reasons for the challenge.<sup>270</sup> The challenged voter must then respond to the challenge by submitting a written statement affirming her eligibility to vote<sup>271</sup> and offering some evidence of her voting qualifications.<sup>272</sup> A voter's registration will be cancelled only if the commission determines the challenged voter is not qualified to vote.<sup>273</sup>

## **SOUTH CAROLINA**

### *Challenges on Election Day*

South Carolina state law currently permits “any elector” to challenge another voter at the polls on Election Day.<sup>274</sup> Parties and candidates can also appoint “watcher[s]” to serve at the polls and

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while political parties may appoint up to three per election district. *Id.* at § 2687(a). Poll watchers must be registered to vote in the county that contains the election district where they will serve. *Id.*

<sup>265</sup> 25 PA. CONS. STAT. §§ 3050(d) & 3051.

<sup>266</sup> 25 PA. CONS. STAT. § 3050(d).

<sup>267</sup> 25 PA. CONS. STAT. § 3527.

<sup>268</sup> 25 PA. CONS. STAT. § 1329.

<sup>269</sup> 25 PA. CONS. STAT. § 1203 (“The commission has jurisdiction over the registration of applicants, qualified electors and registered electors of the county.”). Commissioners are typically elected although they may sometimes be appointed, depending on the size and laws of the county. *Id.*

<sup>270</sup> 25 PA. CONS. STAT. § 1329(b). The challenger's affidavit must take a “form prescribed by the secretary” and “contain the following information: (1) Name of challenged individual. (2) Address of challenged individual. (3) Name of complainant. (4) Address of complainant. (5) Date of affidavit. (6) Reason for challenge.” *Id.*

<sup>271</sup> 25 PA. CONS. STAT. § 1329(c).

<sup>272</sup> *Id.*

<sup>273</sup> 25 PA. CONS. STAT. § 1329(d).

<sup>274</sup> S.C. CODE ANN. § 7-13-810.

challenge voters on their behalf.<sup>275</sup> Challengers and appointed watchers must adhere to the same rules and procedures for challenging voters.<sup>276</sup>

All challenges must be addressed directly to the poll “manager”<sup>277</sup> and not to the challenged voter herself.<sup>278</sup> State law does not identify any specific grounds for challenging a voter other than that the challenged voter is “known or suspected not to be a qualified voter.”<sup>279</sup>

Each challenge must be made before the challenged voter casts her ballot or the challenge will be immediately dismissed.<sup>280</sup> If the challenge is made in time, the poll manager must explain to the voter the qualifications required for voting.<sup>281</sup> The manager may also question the voter about her own qualifications.<sup>282</sup> If, after responding to the manager’s questions, the voter claims that she is still eligible to vote, the poll manager must provide the voter with a provisional ballot.<sup>283</sup> The county board of canvassers will then evaluate each of these provisional ballots after the election to determine, based on whatever evidence they have received, whether to uphold or reject the challenge.<sup>284</sup> The board’s decisions are final.<sup>285</sup>

State law makes it a felony for any challenger who uses the process to “threaten, mistreat, or abuse a voter.”<sup>286</sup>

### *Challenges before Election Day*

South Carolina law permits private citizens to challenge a voter’s registration before Election Day.<sup>287</sup>

Pre-election challenges must be made in writing and submitted to the “board of registration” in the county where the challenged voter is registered.<sup>288</sup> The board must hold a hearing within 10 days of

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<sup>275</sup> South Carolina permits political parties and candidates in contested elections to appoint a limited number of “watchers” in every voting place where the candidate or party appears on the ballot. S.C. CODE ANN. § 7-13-860. These watchers may observe the conduct of the election on behalf of their party or candidate but must remain in the area of the polling place designated for them by the polling place manager and may not interfere with the election or “influence any voter in the casting of his ballot.” *Id.* Watchers must be registered to vote in the county in which they plan to serve and must, at all times, “wear visible identification specifying the candidate or party, as appropriate, which they represent.” *Id.*

<sup>276</sup> S.C. CODE ANN. § 7-13-810.

<sup>277</sup> Under state law, at least three poll “managers” must be appointed to every polling place during all primary and general elections. S.C. CODE ANN. § 7-13-72. These managers are responsible for maintaining order at the polls and for generally administering and overseeing election conduct. S.C. CODE ANN. §§ 7-13-1770, 7-13-130, 7-13-140.

<sup>278</sup> S.C. CODE ANN. § 7-13-810 (“[C]hallenges by persons other than a manager must be addressed to the manager and not directly to the voter.”).

<sup>279</sup> *Id.*

<sup>280</sup> *Id.*

<sup>281</sup> S.C. CODE ANN. § 7-13-830.

<sup>282</sup> *Id.*

<sup>283</sup> *Id.*

<sup>284</sup> *Id.* See also S.C. CODE ANN. §§ 7-17-10, 7-17-510 (outlining the procedures for meetings of the county board of canvassers).

<sup>285</sup> S.C. CODE ANN. § 7-13-830.

<sup>286</sup> S.C. CODE ANN. § 7-25-80.

<sup>287</sup> S.C. CODE ANN. § 7-5-230(A).

<sup>288</sup> *Id.*

receiving the written challenge where it must accept and evaluate evidence to determine whether or not the challenge is valid.<sup>289</sup> The board must notify both the challenger and the challenged voter before the hearing.<sup>290</sup>

## TEXAS

### *Challenges on Election Day*

Texas state law does not permit private citizens to challenge other voters at the polls on Election Day.<sup>291</sup> However, political parties and candidates can appoint a limited number of poll “watchers” to observe the election and report any irregularities to local election officials.<sup>292</sup>

These watchers have limited authority under the law and may not communicate with any election officer about the election except to report an election irregularity or legal violation.<sup>293</sup> Watchers cannot speak to voters or communicate with them in any way about the election.<sup>294</sup> Although watchers may take written notes,<sup>295</sup> they cannot use any visual or audio recording device inside the polls.<sup>296</sup>

### *Challenges before Election Day*

Texas state law permits any “registered voter” to challenge the registration of any other voter before Election Day, as long as both voters live in the same county.<sup>297</sup>

Challenges must be submitted to the county registrar<sup>298</sup> and must include a sworn statement that identifies both the challenger and the specific basis for challenging the voter.<sup>299</sup> Every challenge must be based on the challenger’s “personal knowledge” of the challenged voter’s ineligibility.<sup>300</sup> State statutes identify five valid grounds for challenging a voter’s registration: (1) the voter is not a resident of the state where she is registered; (2) the voter is not a U.S. citizen; (3) the voter has been adjudged mentally incapacitated by the appropriate court; (4) the voter has a past criminal conviction and has not discharged the sentence or been pardoned; or (5) the voter is underage.<sup>301</sup>

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<sup>289</sup> *Id.*

<sup>290</sup> *Id.*

<sup>291</sup> Texas formerly permitted Election Day challenges but repealed its statute allowing such challenges in 2003. *See* Act of June 22, 2003, H.B. 1549, at § 57, Chapter 1315, 78th Legislature (effective since Jan. 1, 2004), *available at* <http://www.legis.state.tx.us/billlookup/Text.aspx?LegSess=78R&Bill=HB1549>.

<sup>292</sup> TEX. ELEC. CODE ANN. § 33.058(b). Watchers observe elections on behalf of a candidate, a political party, or the proponents or opponents of a ballot measure. TEX. ELEC. CODE ANN. § 33.001. Each of these appointing authorities can appoint no more than two watchers per polling place. TEX. ELEC. CODE ANN. § 33.007.

<sup>293</sup> TEX. ELEC. CODE ANN. § 33.058.

<sup>294</sup> *Id.*

<sup>295</sup> TEX. ELEC. CODE ANN. § 33.056(d).

<sup>296</sup> TEX. ELEC. CODE ANN. § 33.051(c).

<sup>297</sup> TEX. ELEC. CODE ANN. § 16.091.

<sup>298</sup> In Texas, the registrar’s duties are carried out by the county tax assessor-collector unless the registrar’s duties have been delegated to another county official, such as the county clerk. TEX. ELEC. CODE ANN. § 12.001.

<sup>299</sup> TEX. ELEC. CODE ANN. §§ 16.092(1)–(2).

<sup>300</sup> *Id.*

<sup>301</sup> TEX. ELEC. CODE ANN. § 11.002(a).

For all challenges other than residency-based challenges, the registrar must hold a hearing within 21 days of when the challenge was filed (unless the two parties agree otherwise).<sup>302</sup> The challenged voter must receive notice of the hearing at least 15 days in advance, including the date, time and location of the hearing, and a copy of the challenge.<sup>303</sup> The challenger must be told they have the right to appeal the registrar's decision.<sup>304</sup> Each side may either submit affidavits to the registrar in advance of the hearing or appear in person to present other evidence.<sup>305</sup>

Residency challenges follow a slightly different procedure. These challenges must be submitted at least 75 days before an election.<sup>306</sup> Upon receipt of the challenge, the registrar must send the challenged voter a "confirmation notice," which allows the voter to update her address in the voting register.<sup>307</sup> If the voter does not respond to the confirmation notice within 30 days, the voter is placed on the registrar's "suspense list."<sup>308</sup>

## VIRGINIA

### *Challenges on Election Day*

Virginia state law currently permits "any qualified voter" to challenge another person at the polls if that person's name is "listed in the pollbook" and the challenger "knows or suspects" that the person is not qualified to vote.<sup>309</sup>

Every challenger must complete a form, provided by the State Board of Elections, identifying the specific grounds for the challenge.<sup>310</sup> The form recognizes eight possible grounds for challenging a voter at the polls: (1) the voter is not a U.S. citizen; (2) the voter lacks Virginia residency; (3) the voter lacks residency in the voting precinct; (4) the voter has been disqualified from voting under state law and has not had her rights restored; (5) the voter is underage; (6) the voter has already voted in the same election; (7) the voter is not who she represents herself to be; and (8) the voter is not a resident of the town (in a town election).<sup>311</sup>

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<sup>302</sup> TEX. ELEC. CODE ANN. § 16.093(b).

<sup>303</sup> TEX. ELEC. CODE ANN. § 16.094(a) & (c).

<sup>304</sup> TEX. ELEC. CODE ANN. § 16.094(b).

<sup>305</sup> TEX. ELEC. CODE ANN. § 16.093 (c).

<sup>306</sup> TEX. ELEC. CODE ANN. § 16.0921(c). This does not apply to a voter who submitted their registration after the 75<sup>th</sup> day but prior to the 30<sup>th</sup> day before the general election for state and county officers. *Id.*

<sup>307</sup> TEX. ELEC. CODE ANN. § 16.0921(a). *See also* TEX. ELEC. CODE ANN. § 15.051(a) ("If the registrar has reason to believe that a voter's current residence is different from that indicated on the registration records, the registrar shall deliver to the voter a written confirmation notice requesting confirmation of the voter's current residence.").

<sup>308</sup> TEX. ELEC. CODE ANN. § 15.053. & 16.0921(b). The registrar of each county is responsible for maintaining a "suspense list," which keeps track of voters in the county who fail to respond to an election official's request for the voter to confirm his or her residence address. *See* TEX. ELEC. CODE ANN. § 15.081 (describing the reasons why a voter might be placed on the "suspense list").

<sup>309</sup> VA. CODE ANN. § 24.2-651.

<sup>310</sup> *Id.*

<sup>311</sup> *Id.*



Once a voter has been challenged, an “election officer”<sup>312</sup> must “explain to the challenged voter the qualifications of a voter and may examine him concerning his qualifications.”<sup>313</sup> The election officer is also authorized to administer an oath to witnesses and hear testimony about voter’s qualifications.<sup>314</sup> At the conclusion of testimony, the challenged voter must sign a form affirming that she is qualified to vote. The challenged voter may not vote unless she signs this form.<sup>315</sup> Finally, after the challenged voter has voted, the election officer will document the challenge next to the voter’s name in the pollbook.<sup>316</sup>

Virginia law expressly prohibits “loiter[ing] or congregat[ing]” within 40 feet of a polling place entrance.<sup>317</sup> Similarly, state law makes it a misdemeanor to “hinder or delay a qualified voter in entering or leaving a polling place.”<sup>318</sup>

### *Challenges before Election Day*

Virginia state law permits any three voters to challenge the registration of a voter in their city or county before Election Day.<sup>319</sup>

The three challengers must give every challenged voter 15 days’ advance notice of their challenge.<sup>320</sup> To bring the challenge, they must file a petition with the local court.<sup>321</sup>

When a court adjudicates a challenge to a voter’s registration, the matter must be heard at the next court session.<sup>322</sup> Either party can appeal the decision to the Supreme Court of Virginia.<sup>323</sup>

## **WISCONSIN**

### *Challenges on Election Day*

Wisconsin state law currently permits “any elector” to challenge another voter on Election Day if the challenger “knows or suspects [the voter] is not a qualified elector.”<sup>324</sup>

State law recognizes only six valid grounds for a challenge: (1) the voter is not a U.S. citizen; (2) the voter has not resided in the election district for at least 10 days; (3) the voter has been disenfranchised for a past felony conviction and has not had her rights restored; (4) the voter has

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<sup>312</sup> Virginia law requires that each voting precinct have at least three “election officers” and that they represent each major political party in roughly equal numbers. VA. CODE ANN. § 24.2-115.

<sup>313</sup> VA. CODE ANN. § 24.2-651.

<sup>314</sup> *Id.*

<sup>315</sup> *Id.*

<sup>316</sup> *Id.*

<sup>317</sup> VA. CODE ANN. § 24.2-604(A).

<sup>318</sup> *Id.*

<sup>319</sup> VA. CODE ANN. § 24.2-431.

<sup>320</sup> VA. CODE ANN. § 24.2-432.

<sup>321</sup> *Id.*

<sup>322</sup> *Id.* (noting that decisions may be made “without . . . formal pleadings”).

<sup>323</sup> VA. CODE ANN. § 24.2-433.

<sup>324</sup> WIS. STAT. ANN. § 6.925.

been adjudicated incompetent; (5) the voter is underage; (6) the voter already voted in the same election.<sup>325</sup>

Once a voter has been challenged, an election “inspector”<sup>326</sup> must then question the challenger about her voting qualifications to determine whether she is eligible to bring a challenge.<sup>327</sup> The inspector must also keep a written record of the challenge<sup>328</sup> and may remove any challenger from the polling place who “abuses the right to challenge.”<sup>329</sup>

After questioning the challenger, the inspector must decide whether to administer an oath to the challenged voter and question the voter about her qualifications.<sup>330</sup> If the inspector chooses to question the challenged voter, she may only ask specific questions about the voter’s eligibility listed in the state Government Accountability Board’s regulations.<sup>331</sup> Challenged voters who take the oath and answer questions must be issued a ballot and allowed to vote.<sup>332</sup> Voters will only be denied a ballot if they refuse to take an oath or answer the inspector’s questions, or if the answers indicate ineligibility.<sup>333</sup>

### *Challenges before Election Day*

Wisconsin state law permits any registered voter to challenge the registration of any other registered voter before Election Day.<sup>334</sup>

Every challenger must submit an affidavit to the municipal clerk stating the basis for the challenge (in Milwaukee, these affidavits should be sent to the executive director of the board of elections).<sup>335</sup> Both the challenger and challenged voter must appear before municipal clerk within one week of the challenge.<sup>336</sup> In Milwaukee, the challenged voter and the challenger must arrange to appear before the board of elections, which meets to decide registration challenges on the last Wednesday before Election Day.<sup>337</sup>

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<sup>325</sup> WIS. ADMIN. CODE G.A.B. § 9.02, available at <http://legis.wisconsin.gov/rsb/code/gab/gab009.pdf>.

<sup>326</sup> Wisconsin state law currently requires that each polling place is staffed by at least five “inspectors” (or at least seven inspectors in precincts that do not use voting machines). WIS. STAT. ANN. § 7.30(1).

<sup>327</sup> WIS. ADMIN. CODE G.A.B. §§ 9.02(1)-(2).

<sup>328</sup> WIS. ADMIN. CODE G.A.B. § 9.05. The inspector must preserve a written record of the challenge, even if the challenger ultimately withdraws the challenge. *Id.* at § 9.02(4).

<sup>329</sup> WIS. ADMIN. CODE G.A.B. § 9.02.

<sup>330</sup> WIS. STAT. ANN. § 6.925 (“If a person is challenged as unqualified by an elector, one of the inspectors *may* administer the oath or affirmation to the challenged elector . . . and ask the challenged elector the questions . . . which are appropriate to test the elector’s qualifications.” (emphasis added)).

<sup>331</sup> WIS. ADMIN. CODE G.A.B. §§ 9.02(3) & (5).

<sup>332</sup> WIS. ADMIN. CODE G.A.B. §§ 9.03. The election inspector must make a notation on the back of the challenged voter’s ballot indicating that the voter was challenged. WIS. STAT. ANN. § 6.95. This may require giving the voter an absentee ballot if the polling place uses voting machines that prevent the election inspector from making a written notation on the voter’s ballot. *Id.*

<sup>333</sup> WIS. ADMIN. CODE G.A.B. §§ 9.02(6)-(7).

<sup>334</sup> WIS. STAT. ANN. § 6.48(1)(a).

<sup>335</sup> *Id.*

<sup>336</sup> WIS. STAT. ANN. § 6.48(1)(b).

<sup>337</sup> WIS. STAT. ANN. § 6.48(2)(a).