



Project Vote is the leading technical assistance and direct service provider to the voter engagement and civic participation community. Since its founding in 1982, Project Vote has provided professional training, management, evaluation and technical services on a broad continuum of key issues related to voter engagement and voter participation activities in low-income and minority communities.

## THE ROLE OF CHALLENGERS IN ELECTIONS

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In recent years, Election Day challenges to voter eligibility have resulted in a number of controversies in polling places across the country. Though the underlying rationale of challenger statutes is to protect the integrity of elections by preventing voter fraud, challengers have the potential to deter qualified voters by causing substantial delay and confusion in polling places. Where challenges are used improperly, they can have the effect of intimidating voters and disrupting polling place procedures, which has more than a negative effect on the challenged voter. Aggressive challenger activity inevitably leads to distracted pollworkers. With other compelling Election Day issues to attend to (e.g. malfunctioning machines, voters missing from the voter rolls, and voter intimidation), a series of frivolous challenges can easily be the catalyst tone for other Election Day pitfalls. Partisan challengers that cast a wide net in minority areas only add to Election Day confusion. This formula for Election Day chaos - long lines, uncertainty, and wrongful denial of voting privileges - can quickly escalate in polling places where election officials have failed to adequately prepare pollworkers.

It is important that policymakers understand both the advantages and disadvantages of various challenger policies and regulations. Challengers can indeed play a valuable role in ensuring the integrity of elections; however, as in-person voter fraud is virtually exceedingly rare,<sup>1</sup> challengers are more likely to pose a significant threat to participation of qualified voters. It is imperative that policymakers are aware of this problem so that efforts can be made to protect voters. The implementation of clear-cut guidelines can minimize the negative effects of aggressive challenger activity.

This brief clarifies the role of a challenger, discusses the impact of challengers in recent elections, details state-specific challenger activity, provides an overview of challenge statutes nationwide, and concludes with policy recommendations.

In general, challengers can question to the eligibility of a voter on Election Day before a voter completes and casts a ballot. In most states, a challenger may also have the right to observe the work of pollworkers, the counting of absentee ballots, and, in a few states, challenge the procedures of election officials where a challenger has reason to believe that the election is being administered improperly. Pollworkers are required to keep a record of challenges. In most states, pollworkers are required to learn a complicated set of procedures to process challenges on Election Day.

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## The Role of Challenges in Elections

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In order to raise a proper challenge to a voter on Election Day, a challenger should have reliable evidence that a voter is not otherwise eligible to vote in the election or at a particular polling place. For example, a challenger may bring a challenge against a voter if the challenger has evidence that the voter is underage, no longer resides at his registration address, lacks U.S. citizenship, or is ineligible under state felony voting laws. The challenger must issue the challenge before a voter receives a ballot. If the challenge is valid, the pollworker must proceed with procedures aimed at verifying the qualifications of the voter in most states. In most states, this involves requiring the voter to submit to an oath or sign an affidavit. Some states require a voter to cast a provisional ballot when a challenge is issued, without determining the validity of the challenge on Election Day. Such procedures may be time-consuming and can cause considerable delay for both the challenged voters and individuals waiting in line at the polls. In a few states, if a challenged voter submits to an oath or signs an affidavit attesting to his eligibility, he may then cast a regular ballot. However, most states require additional questioning of challenged voters, and an agreement from a majority of pollworkers that a challenged voter has overcome a challenge.

### Who Can Serve as a Challenger?

Generally, election challengers may be appointed by political parties, or organizations formed to support or oppose the adoption of a ballot initiative. Florida recently passed legislation permitting political action committees to appoint challengers as well.<sup>2</sup> These organizations are required to submit notice of intent to appoint Election Day challengers several weeks or months before Election Day; however, political parties may be allowed to provide less notice than other organizations.<sup>3</sup> In general, an appointed challenger is required to be a registered voter in the state in which he intends to serve as a challenger. However, some states have more strict guidelines, such as requiring that a challenger be registered in the county or precinct where he intends to serve.<sup>4</sup>

Each organization appointing challengers is generally restricted in the number of challengers it may have serving on its behalf on Election Day. For example, in Michigan, an organization may not have more than two challengers present in a precinct at any given time. In addition, an organization may not have more than one challenger monitoring the tabulation of absentee ballots.<sup>5</sup>

Some states may also require that challengers carry certain credentials that list identifying information, such as the challenger's name, the name of the political party or organization for which the challenger is serving, and the precincts in which the challenger is authorized to serve. Upon request, a challenger may be required to provide his credentials to a pollworker, though a challenger is not necessarily required to visibly display credentials on his clothing.<sup>6</sup>

In addition to appointed challengers, a large percentage of states permit any qualified, registered voter to interpose a challenge. Generally speaking, these challengers must be registered in the precinct or county in which they seek to challenge voters. The state overview of challenge statutes below will cover the primary elements of United States challenger statutes in greater detail.

Challenges to voter eligibility are not limited to Election Day, a significant number of states permit pre-election challenges to be filed within a prescribed period before an election. In almost all cases, notice is given to the challenged voter and he or she is placed in the position of having to respond with evidence of eligibility in order to vote on Election Day.

### Distinction Between Challengers and Pollwatchers

For states that have both, it is important to understand the different roles that challengers and poll monitors have in elections. In general, poll monitors take on the role of mere observers who are considerably limited in their interaction with both voters and election personnel. Though challengers

and poll monitors both have a permanent presence in the polling place, and state law generally places a reasonable limit on precisely how many challengers or poll monitors an organization may appoint in each precinct, challengers have substantially more power to affect the manner in which an election is conducted.

Any individual who wishes to observe the election process, which is open to the public, is commonly referred to as a poll monitor, poll watcher, or observer. Unlike challengers, poll monitors are not always required to be registered voters. However, poll monitors are required to restrict themselves to public areas in polling places, whereas challengers are given leeway to sit behind or near pollworkers so they can easily view the pollbook, the issuing of ballots, applications to vote, and other administrative procedures. Most importantly, a challenger has the right to challenge an individual's right to vote as well as other pollworker procedures that a challenger believes are administered improperly or in error. A poll monitor does not wield such power and generally has a much less notable effect on the ease by which elections are administered.

## Proper and Improper Challenges

### Proper Challenges

Regardless of who may interpose a challenge, over-whelmingly the burden of proof is on the challenged voter to show that he or she is a qualified voter once a challenge is cast. The challenger is rarely required to prove the grounds for the challenge or provide affirmative evidence in support of the challenge. The mechanism for making challenges in most states is a written affidavit stating the grounds for the challenge. The most common standards for filing challenges are a "reasonable belief" or that a challenger "knows or suspects" that the challenged voter is not qualified to cast a ballot.

In Michigan, for example, a challenge is considered proper if a challenger has "good reason to believe that the elector is not eligible to vote in the precinct."<sup>7</sup> The Secretary of State has attempted to clarify this measure by stating that a challenge must be based on information obtained "through a reliable source or means."<sup>8</sup> In addition, the Secretary of State has advised that challengers know whom they intend to challenge before the polls open on Election Day.<sup>9</sup>

Other states have similarly vague provisions on what evidence constitutes a proper challenge. Florida Law requires that a challenge be made in writing "giving reasons for the challenge".<sup>10</sup> Theoretically, a challenger may simply challenge a person based on citizenship without indicating whether he has personal knowledge that the challenged voter does not meet the qualification at issue. Where a state law fails to require credible evidence based on personal knowledge, a challenge may very well be based on improper criteria, such as the ethnic association of a voter's surname or a voter's race or manner of dress.

### Improper Challenges

State and federal law prohibit challenges based on a voter's race, religion, ethnicity, or national origin.<sup>11</sup> In addition, election officials cannot accept challenges that reflect a pattern of illegal discrimination.<sup>12</sup>

Voter rights advocates recommend that pollworkers are trained on how to confront improper challenges and some states have issued rules to prevent potential intimidation. In Michigan, for example, the Secretary of State has issued a memorandum advising that challenges based on the following evidence are improper: the "impression" that the voter may not be eligible to vote in the precinct due to the voter's manner of dress

- a voter's inability to read or write English
- a voter's perceived race or ethnic background

- a voter's need for assistance with the voting process
- a voter's perceived or actual mental or physical disability

The memorandum further states that challengers who abuse the challenge process can be expelled from precincts.<sup>13</sup>

In Ohio, statutes once explicitly allowed for challenges based on a voter's suspected African ancestry.<sup>14</sup> Historically, once a challenge was issued, a voter could be subjected to several invasive questions, such as "Had your parents, either of them, a visible and distinct admixture of African blood?" or "In the community in which you live are you classified and recognized as a white or colored person, and do you associate with white or colored persons?"<sup>15</sup> The passing of the 15th Amendment and rulings of the Ohio Supreme Court prevent use of these questions today. It is, however, important that policymakers understand the racially divisive manner that challenges have been used in the past to prevent future problems. Many challenger statutes in the Southern part of the United States were initially passed in the post-Reconstruction era, in response to emerging political participation by African Americans.<sup>16</sup>

### Effects of Aggressive Challenger Activity

Though challengers claim to protect the integrity of elections by challenging unqualified voters and unlawful practices of election workers, there is a dearth of known incidents of in-person voter fraud.<sup>17</sup> Aggressive challenger practices do, however, have the effect of slowing down election procedures, while intimidating or disheartening would-be voters.<sup>18</sup>

Notwithstanding the paucity of any evidence of in-person voter fraud, challenge procedures often turn out to be both more complicated and time-consuming than election officials anticipate. Pollworkers are often unsure as to how the procedure should be implemented and must take time to read step-by-step instructions and document every action taken in response to the challenge. The voter is generally ushered to the side and multiple pollworkers abandon their primary duties to ensure that challenge procedures are implemented properly.<sup>19</sup>

In 2006, pollworkers in Detroit received written instructions to phone the clerk's office before permitting a challenged voter to cast a regular ballot.<sup>20</sup> As problems with phone lines persisted late into the morning on Election Day, voters subject to challenge often waited more than thirty minutes before casting a ballot. And even after a lengthy wait, many voters were forced to cast a provisional ballot if the clerk's office remained out of contact.<sup>21</sup> All too often voters are too discouraged by the delay and the lines at the polls get longer as pollworkers are distracted by challenger objections.

Indeed 'dirty tricks' have combined with aggressive challenger activity to generate conditions ripe for suppression. In several cities, voters have complained that they received notice redirecting them to improper polling places. Many others complained that they were told that the election had been delayed for a day.<sup>22</sup> In 1990, the Republican Party of North Carolina was part of an effort to mail 81,000 postcards to registered Democrats, 94% of which were African-American. The post cards provided false voter eligibility requirements and notified voters of federal criminal penalties for engaging in election fraud.<sup>23</sup> Any post cards that were returned as undeliverable were used to develop a list of voters to challenge on Election Day.<sup>24</sup> In 2006, two individuals who later identified themselves as Republican challengers misrepresented themselves to voters in a Detroit precinct by claiming to be state officials performing a fraud investigation concerning driver licenses.<sup>25</sup>

Challenge procedures against individual voters may seem unlikely to have a far-reaching effect, but where multiple barriers are erected, and a history of discriminatory activity is present, would-be

voters develop resentment and may justifiably distrust a system that appears designed to prevent equal participation in the electoral process.

### State Reports Concerning Challengers

In recent elections, most particularly the 2004 election when partisan operatives filed mass voter challenges in major metropolitan areas nationwide, many voting rights advocates have expressed concerns that organizations appointing challengers target minority-voting districts. Such occurrences have resulted in heightened advocacy by voting rights organizations, increased state regulation of challenger activity and, in some cases, federal intervention. The resolutions are far from perfect, however, as both challengers and voter advocates have turned to the judiciary for injunctive relief. Below is an in-depth review of recent challenger practices in Michigan, Florida, and Ohio followed by a brief summary of notable challenger movements in other states.

#### Michigan

As a battleground state, Michigan has become a hotbed for challenger activity in recent years. Nonpartisan and partisan organizations have responded to perceived challenger intimidation tactics by appointing election protection volunteers.

In one 1999 case, the federal government intervened to prevent future racially motivated challenges. The case involved an organization called Citizens for Better Hamtramck (CBH). CBH registered volunteers who systematically raised challenges to the citizenship of voters with dark skin and Arabic-sounding names. Pollworkers were untrained on how to deal with this and permitted the challenges to persist. The federal government brought suit against the city of Hamtramck. In response, the Hamtramck officials agreed to submit to monitoring by a federal examiner in upcoming elections, increase pollworker training on challenger regulations, and appoint more Arab-American and Bengali-American pollworkers.<sup>26</sup>

The Republican Party has continued to cause controversy in Michigan by recruiting challengers to serve in minority voting districts. In 2004, the Republican Party was reported as recruiting 1,000 paid challengers for the November 2nd election.<sup>27</sup> In 2006, the GOP doubled its efforts by deploying 2000 poll challengers.<sup>28</sup> Unfortunately, neither effort has gone forward without controversy. In 2004, a GOP state representative was quoted as saying, "If we do not suppress the Detroit vote, we're going to have a tough time in this election cycle."<sup>29</sup> After receiving several complaints of intimidation and harassment from voters, the Detroit Branch of the NAACP filed suit against Republican Party challengers on Election Day. A federal judge issued an injunction requiring that challengers refrain from initiating contact with voters.<sup>30</sup> In 2006, the Republican Party accused the Democratic Party of similar conduct, complaining that Democratic challengers were not only speaking to voters, but also wearing yellow vests that confused voters who were unable to distinguish challengers from pollworkers. Democratic challengers were similarly enjoined from initiating contact with voters in 2006.<sup>31</sup>

#### Florida

Florida's challenge statute has its roots in racism. When federal law granted African-Americans the right to vote in 1867, within a year, the Florida legislature responded with several disenfranchising voter policies, including the current challenge statute.<sup>32</sup> Election tensions continued to rise in Florida, and though election challenges are far from Florida's only election problem, ongoing controversies surround Election Day challenges in minority voting districts.

Of note, both major political parties signed up thousands of challengers for Florida's 2004 elections – though Democratic challengers have done so to respond to perceived voter suppression efforts by Republican challengers.<sup>33</sup> For example, a study of challenger appointments in Florida has indicated

that Republicans heavily target minority precincts when assigning challengers.<sup>34</sup> In 2002, a federal judge issued an injunction against 456 challengers from the conservative political action committee, “The Emergency Committee to Stop Bill McBride” (a Democratic candidate). Its goal was to monitor voters solely in Miami-Dade, which has a large minority population.

In 2006, federal election observers were assigned to cities in 5 different counties in Florida. One of their stated goals was to ensure that voters were not “challenged improperly on the basis of their race, color, or membership in a language minority group.”<sup>35</sup>

### Ohio

Ohio, another battleground state, has also had more than its share of challenger controversy.

In 2004, Republicans brought challenges against 35,000 new voters in Ohio prior to election day. An overwhelming percentage lived in areas heavily populated by minorities.<sup>36</sup> One study shows that 89% of African-Americans lived in areas covered by Republican challengers.<sup>37</sup> In one particular area, Cuyahoga County, Republicans dispatched over 1400 challengers.<sup>38</sup> As was the case in Florida and Michigan, federal officials from the Department of Justice were on hand in Cuyahoga County during the 2006 elections to watch for unlawful challenger activity.<sup>39</sup>

Courts have also been called to intervene in Ohio’s ongoing struggles with challengers. In 2004, in response to an emergency writ just days before the election, the Ohio Supreme Court reversed an earlier trial court decision that restricted the number of partisan challengers in polling places.<sup>40</sup> Two federal lawsuits that sought to prevent mass challenges by partisan challengers were vigorously prosecuted. The trial courts ruled in favor of the opponents to mass challenges. However, the decisions were finally decided by appellate courts, ultimately within hours of the opening of the polls.<sup>41</sup> With reports of Republican intimidation tactics on the rise, and many precincts being consolidated into single voting locations, voter advocates hoped to prevent partisan challengers from using their increased numbers to also increase the obstructionist impact on pollworkers and voters.

### Other States

Michigan, Florida, and Ohio are by no means the only states where organizations have initiated aggressive challenger activity. In 2004, the Republican Party came under fire for challenging voters with Latino surnames in Atlanta, Georgia, while making efforts to train and mobilize both paid and unpaid poll challengers in Wisconsin, Pennsylvania, and Kentucky. In some cases, the Republican Party reportedly performed thousands of background checks on voters in preparation for challenges.<sup>42</sup> With the renewal of the Voting Rights Act, federal observers have heightened vigilance in localities with a history of racial and ethnic discrimination in voting procedures. In 2006, the United States Department of Justice deployed 800 observers to 69 jurisdictions in 22 different states, an unprecedented number for a midterm election.<sup>43</sup>

### Overview of Challenge Statutes

A nationwide review of challenge statutes conducted by Project Vote reveals that there are many permutations to the basic practice of issuing a challenge to a voter’s qualifications and deciding that challenge. Oklahoma is the only state in the union that does not currently have a challenge statute on its books. Texas now has no provision for challenges by private persons, having repealed its law permitting Election Day challenges on January 1, 2004 and replaced it with provisions relating to provisional voting. Challenges to voter registrations in Texas can be interposed only by an election official.<sup>44</sup> Unfortunately, the remaining states and the District of Columbia all retain challenge statutes. An appendix containing summaries of all state challenge statutes is attached to this report.

Challenge laws, as varied as they are, have some key common elements including provisions that establish (1) who may challenge voters; (2) grounds for challenges; (3) a standard for making challenges; (4) who has the burden of proof; and (5) the process. This review will explore examples of the varied ways in which states have addressed these key elements.

### Who May Challenge Voters

The clear majority of states do not limit the right to issue voter challenges to election officials and appointed challengers. Most states permit any registered elector in the precinct, county or, “in the polling place” to interpose a challenge to the eligibility of a voter. Alaska, for example, permits any qualified voter to interpose a challenge at the polls. Arkansas, like most states that allow any qualified voter to issue a challenge, requires the challenger to be registered in the same county as the challenged voter. Some states, such as Michigan, more narrowly require that such challengers reside in the municipality or precinct in which the challenge is issued.

Many states only permit election officials and appointed challengers to issue challenges. This is the case in Arkansas, Indiana, Tennessee and New Jersey as well as several other states.

Although it is far from the norm, a few states, such as California, only permit election officials to challenge voters’ eligibility to cast a ballot. In that state, the precinct board may act upon suggested challenges by mail or otherwise under certain circumstances, but only if the suggested challenge is based upon probable cause to justify a challenge. Similarly, in Connecticut only challengers appointed by each registrar may challenge voter.

The chart below outlines who may issue challenges in all states, with the exception of Oklahoma, which does not have challenge provisions.

WHO MAY CHALLENGE <sup>45</sup>				
<i>Election Official Only</i>	<i>Any Registered Voter</i>			<i>Election Officials &amp; Appointed Challengers</i>
CA	AK	MI	OR <sup>49</sup>	AR
DE	AL	MN	PA <sup>50</sup>	CT
KS	AZ	MO	RI	IN
OH <sup>46</sup>	CO	MS	SC	KY
WY	DE	MT	TN	MA
	FL	NC	UT	MD <sup>47</sup>
	GA	NE	VA	ND
	HI	NH	WA	NJ
	IA	NV	WI	NM
	LA	NY	WV	VT
	ME	OH <sup>48</sup>		

### Grounds for Challenging Voters

Every state fundamentally determines challenges on the basis of whether the voter is a qualified elector under its laws and constitutional provisions. Qualifications include citizenship, residence, and age. States differ, however, in whether they clearly express the exact grounds that may form the basis of a challenge. Our review of state challenge statutes reveals that grounds are very often not clear. States that expressly set forth grounds for challenges greatly assist pollworkers and the challengers themselves. Tennessee is an example of one such state, listing six very specific grounds for interposing a challenge. Utah and Virginia also state the grounds for a challenge clearly. Vermont goes even further and limits the grounds to only two: (1) that the voter is not the person

whose name appears on the rolls, or (2) that the voter previously voted in the election. Maryland only permits challenges based on the grounds of identity.

### Standards for Issuing Challenges

The right to vote is fundamental to our democracy, and few would disagree that it should not be interfered with lightly. Yet challenges to that fundamental right can be issued in most states merely on a “reasonable” belief or suspicion that a particular voter lacks the qualifications to vote. This is the case in the majority of states, less than a handful of states require challengers to have personal knowledge, as opposed to a mere “belief” that the voter is not qualified. Where personal knowledge is required, it is sometimes loosely interpreted to include second and third hand knowledge. The reasonable belief or suspicion standard is used in the District of Columbia, Maine, Michigan, South Carolina, Vermont and many others. This is the most common standard for challenges in the nation. Alabama, Minnesota and Washington all provide that a challenger must have personal knowledge that a voter is not qualified before they may issue a challenge. This is arguably the best voter challenge standard. Many states do not even provide the standard under which challenges may be issued.

The chart, “Challenge Standards” below, gives an overview of the standards, or lack thereof, in all states that have passed challenge statutes.

CHALLENGE STANDARDS				
Personal Knowledge		Reason to Believe or Suspect		Not Stated
AL	CA	AK	MO	AR
CA	MN	AL	ND	AZ
MN	NV	CO	NE	DE
NV	WA	CT	NJ	GA
WA		DC	NY	HI
		FL	OR	ID
		IA	SC	IL
		IN	TX <sup>51</sup>	MD
		KS	VA	MS
		KY	VT	MT
		ME	WI	NC
		MI		

### Burden of Proof

As with the standard for issuing challenges, most states fall short of protecting the franchise when it comes to assigning the burden of proof to the correct party. Although a citizen cannot be convicted of jaywalking unless the arresting officer and prosecutor meet their burden of proving him guilty, he does not have that protection if his fundamental right to vote is challenged. In that case the burden of proof is often reversed. If a fellow citizen, acting only upon a “reasonable belief,” challenges his qualifications to vote, he has the burden of proving himself “innocent” of the charge and demonstrating that he is, indeed, qualified. This is the case in the vast majority of states. The challenged voter must affirmatively prove that he is registered, is voting in the right place, is who he says, or is otherwise qualified. A few states, fortunately, choose the wiser and more equitable path by placing the burden of proving that a challenged voter is not qualified to vote squarely where it belongs, on the challenger. An example of a state that places the burden of proof on the challenger is Arizona, which expressly provides that that a voter’s registration creates a presumption that he or she is qualified to vote.

Other states that place the burden of proof on the challenger are North Carolina and Washington. North Carolina’s challenger statute expressly assigns the burden of proof to the challenger and the precise, acceptable grounds for issuing the challenge are clearly expressed. No challenge may be sustained in North Carolina unless it is substantiated by affirmative proof. Washington also places the burden of proof on the challenger and goes one step further. A challenger must prove that the challenged voter is not qualified by “clear and convincing” evidence. This is a higher standard than the more common “preponderance of the evidence” standard. Rhode Island also requires challengers to provide evidence to support their challenges.

The widely reported 2004 partisan voter “caging,” or mass challenge, campaigns made use of vast mailings to compile their challenge lists. The challengers compiled the challenge lists merely on the basis of returned mail. Three states, Minnesota, Rhode Island and California, affirmatively prohibit using returned mail as evidence that the voter is ineligible to vote in his or her precinct. This legislation helps to eliminate some partisan challenges. Organized partisan challengers have often used targeted mass mailings to compile challenge lists as a means to suppress the minority vote.

North Carolina and Arizona, on the other hand, specifically provide that returned mail can be used as evidence to support a challenge. In North Carolina returned mail may be used to support a challenge if the challenge is made before the election, but returned mail cannot be used as evidence to support a challenge on Election Day.

The chart below provides an overview of the states’ approach to assigning the burden of proof when a voter is challenged. Those states labeled as placing the initial burden of proof on the challengers are those that provide for at least some affirmative evidence, tangible or not, to support the challenge (other than the challenger’s affidavit) before the burden shifts to the challenged voter to demonstrate that he or she is a qualified voter.

INITIAL BURDEN OF PROOF										
<i>On Challenger</i>			<i>On Challenged Voter</i>							
AZ	ID	RI <sup>53</sup>	AK	CT	KS	MN	NE	NY	SD	WI
CA	IN	WA	AL	FL	KY	MO	NH	OH	TN	WV
DC	ME		AR	HI	LA	MS	NJ	OR	TX	WY
DE	MT		AZ	IA	MD	MT	NM	PA	VA	
GA	NC <sup>52</sup>		CO	IL	MI	ND	NV	SC	VT	

**The Process**

Most states require challengers to sign an affidavit, under oath, setting forth the reasons for the challenge. Penalties for interposing frivolous or malicious challenges are not found in most states. States that do impose penalties for frivolous challenges include Florida, Rhode Island, South Dakota, and Vermont.

Similarly, most states require challenged voters to sign oaths attesting that they are qualified to vote. Several states, including Florida, Maryland, Kansas, Indiana, Montana and others require the challenged voter to cast a provisional ballot after signing the oath. Many more states follow the process of making inquiries into the challenged voter’s qualifications and attempting to make a decision on the spot. The decisions are generally made by a majority vote of the precinct pollworkers or other election officials. States that process challenges in this manner include New Mexico, Georgia, Louisiana, and Delaware. Finally, Idaho has implemented a process in which an election official reads the state’s qualifications to vote to any voter who is challenged. If the voter then signs an oath attesting that she is qualified to

vote, she may vote a regular ballot.

An overview of the several outcomes of successful challenges is provided in the chart below. Challenged ballots are, in some cases, similar to provisional ballots. There are exceptions, New Mexico, for example, marks the ballots of successfully challenged voters as “rejected” and does not count the vote.

OUTCOME IF CHALLENGE SUCCESSFUL				
Provisional Ballot		Challenged Ballot		No Ballot
AZ	MT	CT	AK*	NY*
AL	NE*	DC	CA**	ND*
AR	OH	HI	GA <sup>54</sup>	VT
CO	PA <sup>55</sup>	IL	HI	VA*
DE	SC	KY*	ID*	WI**
FL	TX <sup>56</sup>	ME	LA	
IN	UT	MS	MN	
IA	WV	NM	MO	
KS	WY	NC	NH*	
MD		OR	NJ	
		TN		
		WA		

\* Challenged voter may cast a regular ballot if he or she signs oath of affidavit attesting to qualifications.

\*\* No ballot given if challenged voter refuses to sign oath or affidavit, and signing the affidavit alone may not be sufficient to defeat challenge.

### Policy Recommendations

Legislators and election officials can take several measures to minimize the negative effects of Election Day challenges. Effective legislation and the promulgation of comprehensive rules and clear-cut policies can go a long way toward ameliorating or preventing the delay, confusion of that attends mass challenges, and the unlawful targeting of minority voters. Suggestions for such provisions and policies follow.

### Clear Specification of Challenge Grounds and Standards of Proof

If states choose to maintain challenge statutes, the best practice would be to limit and clearly specify grounds for challenges. Vermont’s statute is the best example of this. The statute limits the grounds for private challenges to (1) impersonating a voter or (2) voting more than once. This provision limits private challenges to the two grounds on which they are more likely to have personal knowledge and leaves more administrative grounds, such as validity of registration, to election officials more qualified to determine legal qualifications. Where grounds for challenges are broader than those implemented by Vermont, the best practice is to clearly enumerate the grounds. Broad provisions stating that a private person may issue a challenge if he or she knows or suspects that a voter is not qualified open the door to abuse of the challenge privilege. It is important to consider, in this context, that the ability to issue a challenge is a privilege granted by state legislatures. In contrast, voting is a fundamental right granted by the United States Constitution and state constitutions. Challenge legislation should be written with a keen eye to protect the fundamental right to vote against undue interference by private individuals or partisan groups.

challenge another citizen's right to vote, states should consider carefully the standard of proof that is required and what evidence may be accepted in support of the challenge. A challenger seeks to interpose herself between a voter and the state; therefore the initial burden of proof unquestionably should be placed on the challenger. Furthermore, the challenge should be based on personal knowledge, not a reasonable belief or suspicion as is the case in most states. The recommended practice would be to require challengers to present some prima facie evidence that the challenged voter is unqualified, evidence beyond the challenger's mere written or oral statement. This is the practice, for instance, in Rhode Island. To permit a challenge to be based on an unsupported statement opens the door to a floodgate of largely unfounded partisan challenges, such as those that have plagued election officials, judges, and voters alike in recent years. Once prima facie evidence is presented, the burden may shift to the voter to prove that she is qualified to vote. If the state chooses to permit challenges on the basis of affidavits unsupported by evidence, the balancing best practice would be to permit challenged voters to cast regular ballots if they sign an affidavit, under penalty of perjury, stating that they meet all qualifications to vote.

As the decision to grant or deny a challenge to the franchise is not to be taken lightly, the best practice would be to specify to the extent practicable what evidence may be used to support a challenge. As mentioned above, two states have rejected using returned mail from caging campaigns as evidence to support a challenge. Two others specifically allow the use of returned mail as evidence in some circumstances. North Carolina expressly permits the use of returned mail as evidence in a pre-election challenge, but excludes it as the basis of an Election Day challenge. Similarly, West Virginia permits such evidence to be used in pre-election challenges. Both states, however, impose thoughtful restrictions on the use of challenges.

The precedent set by Minnesota and California in prohibiting the use of returned mail as evidence to support a voter challenge is exemplary. This provision eliminates or at least minimizes the ability of partisan groups to issue frivolous challenges. Challenge provisions should be explicit as to what evidence is required to bring a successful challenge against a voter. Specifically, the law should require a challenger to present facts under oath showing that the challenged individual does not meet one of the state's voter eligibility requirements and to support the oath with evidence. If the challenger cannot sign an affidavit claiming personal knowledge of a voter's ineligibility, the voter should not be required to submit to challenge procedure. Where challenges are based on mere suspicion or good faith beliefs, the potential for unlawful discriminatory challenges are too great. Additionally, the burden should be placed squarely on the challenger to provide proof in support of his challenge. The burden of proving eligibility should not pass to the challenged voter until the challenger has produced some credible evidence to support the challenge.

States that retain challenge laws should pass legislation, promulgate rules and issue directives that directly address the problem of unsubstantiated challenges. At a minimum, a challenge knowingly interposed without probable cause should be punishable as a misdemeanor, subject to fine and incarceration. Knowingly issuing repeated challenges without foundation or engaging in a pattern of issuing unfounded challenges should be punishable as a felony. In accord with the Voting Rights Act, all pollworkers and challengers should be instructed that challenges based on the racial or ethnic characteristics of the voter are unlawful. It is advisable to implement provisions that would permit pollworkers to remove a challenger from the polling site if the challenger interferes with the lawful conduct of the election or interposes challenges without probable cause.

### Restrictions On Who May Challenge Voters

The best practice would be to require that challengers must be registered to vote in the precinct where they intend to serve.

### Policies That Allow For Tracking of Individual Challengers

Some states do not require that challengers register with election officials prior to Election Day. For example, in Michigan, only organizations intending to appoint challengers are required to register with election authorities.<sup>57</sup> In addition, most states permit any elector of the jurisdiction to issue a challenge. As a result, individual challengers accused of unlawful challenger activity are often difficult to trace. Generally, the organizations that appointed them immediately claim no affiliation once a challenger has been accused of questionable conduct. Requiring organizations to register the names of individual challengers and their appointments prior to Election Day can increase the accountability of organizations that appoint challengers and ease investigations into unlawful conduct. Challengers should also be required to wear identifying badges, issued by the election authorities, stating the challengers' organizational affiliations and pertinent identifying information.

### Pre-Filing of Challenges

Organizations should be aware of who they intend to challenge prior to Election Day and should provide a list of individuals to election officials by a certain deadline. In states that permit pre-election challenges, such deadlines are generally interposed. Where legitimate challenges are raised, due process must be extended to the challenged voters. Election officials should be required to send adequate notice to challenged voters and provide them an opportunity to be heard under the standards and burden of proof outlined above.

### Challenged Voters Should Be Allowed to Cast Ballot

In cases in which a voter refuses or fails to complete challenge procedure, or if the challenge is sustained, the voter should be advised of his right to cast a provisional ballot.

### Conclusion

States must take measures to curb illegal intimidation and harassment of voters. Aggressive challenger activity is highly suspect because evidence of in-person election fraud is exceedingly slim. The fact that areas with large minority populations have been consistently targeted for aggressive challenges indicates that unlawful voter suppression tactics are a continuing concern in our country. Enacting policies that both protect voters and provide an opportunity for challengers to raise legitimate concerns will help reinstate confidence in the integrity of our electoral system.

### Endnotes

<sup>1</sup> Brennan Center and Spencer Overton, Response to the Report of the 2005 Commission on Federal Election Reform (Sept. 19, 2005).

<sup>2</sup> Noe, Chuck, "Reno Blocks Effort to Stop Vote Fraud", Newsmax.com (November 2, 2002).

<sup>3</sup> In Michigan, political parties may appoint challengers right up until election day. "The Appointment, Rights and Duties of Election Challengers and Poll Watchers", Michigan Department of State, Bureau of elections (September 2003).

<sup>4</sup> Mich. Election Code § 168.733(1)(c), Fla. Stat. § 101.131(1), Ohio Rev. Code § 3505.20, Wis. Stats. § 6.925.

<sup>5</sup> Wolf v. Blackwell, 105 Ohio St.3d 1204 (2004); "The Appointment, Rights and Duties of Election Challengers and Poll Watchers", Michigan Department of State, Bureau of elections (September 2003).

<sup>6</sup> "The Appointment, Rights and Duties of Election Challengers and Poll Watchers", Michigan Department of State, Bureau of elections (September 2003).

<sup>7</sup> Mich. Election Code § 168.727(1).

- <sup>8</sup> "The Appointment, Rights and Duties of Election Challengers and Poll Watchers", Michigan Department of State, Bureau of elections (September 2003).
- <sup>9</sup> *Id.*
- <sup>10</sup> Fla. Stat. § 101.111(1).
- <sup>11</sup> Advancement Project, "Report to State and Local Election Officials On the Urgent Need For Instructions For Partisan Poll Watchers" (October 27, 2004).
- <sup>12</sup> *Id.* See also *Batson v. Kentucky*, 476 U.S. 79 (1986). See also, Section 2 of Voting Rights Act.
- <sup>13</sup> "The Appointment, Rights and Duties of Election Challengers and Poll Watchers", Michigan Department of State, Bureau of elections (September 2003).
- <sup>14</sup> 42 Rev. Stat. Ohio §§ 104-07 (1868).
- <sup>15</sup> Former 32 Rev. Stat. Ohio §§ 11-24.
- <sup>16</sup> *Supra.*, Advancement Project, note 11. Oct. 27, 2004.
- <sup>17</sup> Brennan Center and Spencer Overton, Response to the Report of the 2005 Commission on Federal Election Reform (Sept. 19, 2005).
- <sup>18</sup> *Supra.*, Advancement Project, note 11. Oct. 27, 2004.
- <sup>19</sup> Project Vote, Election Day Observations in Detroit, Michigan (November 2006).
- <sup>20</sup> Detroit News (Nov. 8, 2006)
- <sup>21</sup> Project Vote, Election Day Observations in Detroit, Michigan (November 2006).
- <sup>22</sup> Los Angeles Times (October 26, 04).
- <sup>23</sup> *United States v. Republican Party of North Carolina*, Civ. Action No. 92-161-CIO-5-F, U.S. Dist. Ct., E.D. of North Carolina (1990).
- <sup>24</sup> *Id.*
- <sup>25</sup> Detroit News, (November 8, 2006).
- <sup>26</sup> *United States v. City of Hamtramck*, Civ. Action No. 00-73541, U.S. Dist Ct. (E.D. Mich., 1999).
- <sup>27</sup> Detroit Free Press, (April 29, 2004).
- <sup>28</sup> The Ann Arbor News, (November 6, 2006).
- <sup>29</sup> New York Times, (September 13, 2004).
- <sup>30</sup> Detroit Free Press, (November 8, 2005).
- <sup>31</sup> Detroit Free Press, (November 7, 2007); Detroit News, (November 8, 2006).
- <sup>32</sup> *Supra.*, Advancement Project, note 11. Oct. 27, 2004.
- <sup>33</sup> "Gov. Bush: Poll Watchers Can, Should Challenge Voters," St. Petersburg Times, (2004)
- <sup>34</sup> Expert Report of Philip Klinker, James S. Sherman, Associate Professor of Government, Hamilton College.
- <sup>35</sup> United States Department of Justice Press Release (Nov. 2006).
- <sup>36</sup> Noe, Chuck, "Reno Blocks Effort to Stop Vote Fraud", Newsmax.com (November 2, 2002).
- <sup>37</sup> Columbus Dispatch, (October 24, 2004).
- <sup>38</sup> *Supra.*, Advancement Project, note 11. Oct. 27, 2004.
- <sup>39</sup> United States Department of Justice Press Release (Nov. 2006).
- <sup>40</sup> *State Ex Rel. Wolf v. Blackwell*, 105 Ohio St. 3d 1204 (2004).
- <sup>41</sup> *Spencer v. Blackwell*, 347 F. Supp. 2nd 528, S.D. Ohio, 2004 and *Summit County Democratic Cent. & Executive Comm. v. Blackwell* (Summit County I), No. 5:04CV2165, 2004 U.S. Dist. LEXIS 22539.
- <sup>42</sup> *Supra.*, Advancement Project, note 11. Oct. 27, 2004.
- <sup>43</sup> "As Vote Nears, Parties Prepare for Legal Fights" New York Times, (November 3, 2006)
- <sup>44</sup> See appendix A, which includes citations for all challenge statutes addressed herein.
- <sup>45</sup> Oklahoma does not have a challenge statute; Texas repealed its challenge law and replaced it with provisional voting law.
- <sup>46</sup> Applies to Election Day challenges only
- <sup>47</sup> Allows any individual to enter polls to challenge, with permission of election judge. Must leave after challenge.
- <sup>48</sup> Applies to pre-election challenges
- <sup>49</sup> Oregon has all mail balloting, may challenge ballots
- <sup>50</sup> Applies to pre-election challenges
- <sup>51</sup> Pre-election challenges to registration by registrars only.
- <sup>52</sup> Challenger must show probable cause to challenge in pre-election challenges.
- <sup>53</sup> Challengers must show probable cause and returned private mail does not constitute probable cause.
- <sup>54</sup> If election official at polls does not have time to decide the challenge on Election Day, the challenged voter is given a challenged ballot. If the voter is successfully challenge, no ballot is offered.
- <sup>55</sup> Challenges are to registrations only, successful challenge means that voter's name stricken from rolls.
- <sup>56</sup> See footnote 54.
- <sup>57</sup> "The Appointment, Rights and Duties of Election Challengers and Poll Watchers", Michigan Department of State, Bureau of elections (September 2003).

## Appendix A: Challenge Law Summaries

**Alabama:** An inspector or clerk can challenge, under penalty of perjury, on the basis of knowledge that the person is not entitled to vote at that precinct. The inspector fills out a prescribed form setting forth the grounds for the challenge, with a copy given to the voter. The voter can then cast a provisional ballot. (*Act 2003-313, p. 733, § 5; Act 2006-281, p. 496, § 1; § 17-10A-2; amended and renumbered by Act 2006-570, p. 1331, § 5*)

**Alaska:** Every election official shall question, and any other qualified voter may question, a person attempting to vote if he has “good reason to suspect” that the person is not qualified to vote in the precinct. Grounds for questioning the voter must be set forth in writing. The voter may then sign a declaration attesting that he meets each qualification for voting and that he understands that a false statement may subject the voter to prosecution, and may vote. If the voter refuses to execute the declaration, he may not vote. (*AS 15.15.210. Questioning of Voters of Suspect Qualification*)

**Arizona:** Any qualified elector of the county may orally challenge a person at the polls on the grounds that the person is not qualified or on the basis that the person has already voted at the election. Contrary to the provisions of Minnesota and California law, which essentially prohibit challenges on the basis of returned mail sent by private parties, Arizona expressly provides that returned mail sent to the challenged person or that person's spouse is sufficient grounds to interpose a challenge. After a challenge is issued, the person must take an oath prescribed in the affidavit of registration and answer questions material to the challenge. If a majority of the election board sustains the challenge, the person must vote a provisional ballot. (*Ariz. Rev. Stat. § 16-591. Grounds for challenging an elector; Ariz. Rev. Stat. § 16-592. Proceedings on challenge; disposition of ballot*)

**Arkansas:** Each candidate, group or party may have one poll watcher in the polling place for the purpose of challenging any voter. The poll watcher may challenge ballots upon notification to an election official before the voter signs the precinct voter registration list and upon completing a “Challenged Ballot Form.” The person challenged must be notified of the challenge and may cast a provisional ballot. (*Arkansas Code 7-5-312*)

*History: Acts 1969, No. 465, Art. 7, § 14; 1977, No. 114, § 1; A.S.A. 1947, § 3-714; Acts 1987, No. 247, § 2; 1987, No. 905, § 1; 1991, No. 407, § 1; 1991, No. 529, § 1; 1997, No. 451, § 23; 2003, No. 994, § 6; 2003, No. 1154, § 1; 2005, No. 67, § 8; 2005, No. 880, § 3; 2007, No. 224, § 6*

Intimidating a voter other than by the challenge process prescribed by law is a felony under a 2003 amendment. (*HB 1608, 2003 Ark. Acts, Act 1458*)

**California:** A person may be orally challenged only by a member of the precinct board and only on one of the following grounds:

- 1) that he is not the person named on the precinct list
- 2) that he is not a resident of the precinct, unless he has moved there within 14 days of the election
- 3) that he is not a citizen of the United States
- 4) that he has already voted that day
- 5) that he is on parole for a felony conviction.

The precinct board may also act upon suggested challenges from others by mail or otherwise, but only upon evidence of probable cause to justify a challenge. Returned mail is not in itself sufficient evidence of non-residence. In most cases, an oath sworn by the voter is sufficient to overcome the challenge, and the question is resolved in favor of the voter. Challenges on the grounds that the voter is a non-resident or a non-citizen shall be resolved on the spot, and other witnesses with

knowledge of the matter may be called. (*California Elections Code, Sections 14240-14253*)

A 2003 amendment provides that an *election* may be challenged if eligible voters were denied the right to vote. (*AB 346, 2003 Cal. Stats, Chap. 173*)

**Colorado:** A person's right to vote may be challenged by any election judge or any eligible elector in the presence of the person challenged. If the person refuses to answer the questions or sign the challenge form or take the oath prescribed by statute, he or she may vote by provisional ballot. Challenges must be made in writing, set forth the name of the person challenged and the grounds for the challenge and shall be signed by the challenger under penalty of perjury. Challenges may be on the issues of citizenship, residency in the precinct or age. (It is implied in this statute that CO law provides that ownership of property in the precinct entitles one to vote there, presumably without residency there, and the voter may also be challenged on that basis if that is his or her claim of eligibility.) If the challenged voter answers all relevant questions that establish his or her eligibility to vote, the challenge may be withdrawn and he or she may vote by regular ballot. If the voter refuses to answer the questions, he or she the voter may still vote by provisional ballot. (*Colorado Statutes 1-9-201, 1-9-202, 1-9-203, 1-9-204*)

**Connecticut:** Each registrar may appoint one or more challengers who may challenge any voter on grounds of identity, disenfranchisement or residence. Challenges may not be indiscriminate and may only be when the challenger knows, suspects or reasonably believes the person is not qualified and entitled to vote. Challenges must be made under oath. The election moderator must keep extensive records of the challenge. If the moderator's disposition of the challenge is not favorable to the voter, the voter may nonetheless request a challenged ballot, which includes an affidavit that the voter is qualified and entitled to vote. The challenged ballot will be recorded as such and segregated. (*Connecticut Code, Chapter 146, Sec. 9-232*)

**Delaware:** The eligibility of any voter challenged shall be determined immediately. The voter's right to vote shall be decided by the majority of the inspector and the two judges of the election. If the voter is not permitted to vote, that shall be noted on the signature card. The grounds for challenge include identity of the voter, alleged bribery or acceptance of a bribe by the voter, or residency of the voter. (*Delaware Code §4936 et seq.*)

**District of Columbia:** Challenges may be made by authorized "watchers" or by any registered voter. The challenge must be made in writing under oath and state the basis of the challenge and any evidence to support it. The challenger must swear that the challenge is made upon substantial evidence and in good faith. The election official must then give the challenged voter a chance to respond. Challenges may not be made on any basis unrelated to the elector's qualifications to vote, such as race, gender, religion, disability or political affiliation. The precinct captain shall review the evidence and decide the challenge, then record and transmit the decision to the Board of Elections. Either the challenger or the voter can appeal the decision. If the voter prevails, she may cast a regular ballot. If the challenge is sustained, she may cast a "challenged" ballot, accompanied by an affidavit attesting to her qualifications to vote. Such a ballot will be segregated and will be counted only if the challenge is removed through the appeal process. (*DC Code § 1-1001.09*)

**Florida:** Any elector or poll watcher may challenge a voter at the polls by signing an oath giving his or her name, address and political affiliation in addition to the reason for the challenge. The challenge standard is a "good faith belief," not personal knowledge. In 2005, Florida amended its challenge statute to eliminate provisions that gave challenged voters the opportunity to oppose the challenge at the polls, show that they were eligible and vote a regular ballot. The challenged voter is now required to cast a provisional ballot on the basis of the challenger's oath.

The period of time for a provisional voter to provide evidence of eligibility to election officials was reduced from three day to 48 hours. Filing a frivolous challenge in Florida is a first-degree misdemeanor, but there is a "good faith" exception that states: "electors or poll watchers shall not be subject to liability for any action taken in good faith and in furtherance of any activity or duty permitted of such electors or poll watchers by law." (*Fla. Sessions Laws Ch. 2005-277. HB 1567; Fla. Stat. Ann. § 110.111*)

**Georgia:** Any elector may challenge the right of any other elector to vote at any time prior to that person's voting, or, if the person is voting by absentee ballot, any time prior to 5:00 p.m. of the day before the election. The challenge must be in writing and must specify the grounds for the challenge. The board of registrars must immediately consider whether there is probable cause to sustain the challenge, and if so, must inform the pollworkers and, if practical, give the challenged voter an opportunity to be heard. If the registrars sustain the challenge, the elector will not be permitted to vote. If there is not sufficient opportunity to hear the matter, the elector may cast a challenged ballot, which will be evaluated after the matter is heard. Either party may appeal the decision of the registrars. (*O.C.G.A. § 21-2-230*)

**Hawaii:** Any elector in the polls on Election Day may challenge a voter based on identity or residency. The challenge need not be in writing. It will be investigated and decided upon immediately by precinct officials. The ruling may be appealed by the voter, and the voter will be allowed to vote but the ballot labeled and segregated. Any challenge prior to Election Day must be made in writing, stating the grounds and signed by the challenger, and the challenged voter must be informed immediately. The Clerk must investigate and rule on the challenge as soon as possible. The Clerk's ruling may be appealed. (*HRS §11-25*)

**Idaho:** If an elector is challenged, one of the election judges must read him the qualifications to vote. If the elector subscribes to the elector's oath that he meets the qualifications, he may vote. (*Idaho Statutes, 34-1111*)

**Illinois:** If any voter is not personally known to the judges to have the requisite qualifications and is challenged by a legal voter, she must subscribe to an affidavit stating her qualifications to vote. She must also provide two forms of identification showing a current address. (*10 ILCS 5/17-10*) (*from Ch. 46, par. 17-10*)

**Indiana:** A challenge may be made by a precinct election officer, a watcher, a challenger or a pollbook holder. The challenge must be made in the form of an affidavit containing the name of the challenger, the name of the challenged voter, the reason for the challenge and the source of the information. A challenge may not be made based on the voter's student status or residence in student housing. A challenge may not be made based on the voter's political party, except in a primary election, or based on support or opposition to any candidate or issue. If the challenged voter makes an affirmation that he or she is eligible to vote, he or she may vote by provisional ballot. (*IC 3-5-4.5, IC 3-11-8*)

Amendments from the 2006 Session provide that if the voter cast a provisional ballot solely for want of required identification and later provides that identification, the provisional ballot shall be counted. If the voter cast a provisional ballot for any other reason and the only evidence before the board is the affidavit of the voter and the affidavit of the challenger, then the provisional ballot shall be counted. Any election official violating the law shall be subject to sanctions, including removal or prosecution, for obstructing a voter. (*P.L.164-2006*)

**Iowa:** A precinct election official or registered voter may challenge if the official or voter believes the person is not qualified to vote on the basis of citizenship, age, residence, felon status, fraud or

incompetence. (*Iowa Code sec. 49.79. The specific grounds for challenge were added by amendment to the Code in 2007 : HF 848, 2007.*)

The election official may inquire of the voter as to his or her qualifications to vote, and the voter may supply additional evidence. Even if the challenge is not withdrawn, a challenged voter may nonetheless vote by provisional ballot. (*Iowa Code sec. 49.81*)

**Kansas:** An election judge has the duty to challenge anyone whom he knows or suspects is unqualified to vote. (*Kansas Statutes Annotated 25-414*) A person so challenged may fill out a voter registration application, execute an affirmation and cast a provisional ballot. (*KSA 25-409*)

**Kentucky:** A challenger may challenge any voter where he has reason to believe the voter is not registered in the precinct, is not a resident of the precinct, is a convicted felon whose rights have not been restored or is not the person he claims to be. The challenge shall be lodged with the precinct election officer. The voter must sign an oath as to his qualifications before the voter may vote, and the challenger must sign the voter's oath and state the reason for the challenge if the voter's name appears on the roster. (*Ky. Acts 117.245, 117.316*)

**Louisiana:** A commissioner, watcher or qualified voter may challenge on the grounds that the applicant is not qualified to vote in the election, the applicant is not qualified to vote in the precinct or the applicant is not the person whose name is on the register. A majority of the commissioners present shall determine the validity of the challenge. If they deem the challenge valid, the applicant cannot vote unless the reason is change of residence into or out of the parish within 3 months, in which case voting is allowed upon completion of an address confirmation card. If they deem the challenge invalid, the applicant may vote. All records of the challenge shall be retained. (*L.R.S. 18:565*)

**Maine:** A voter or election official may challenge based on personal knowledge or reasonably supported belief, on the grounds that the person isn't registered, is not in the party in whose primary he or she is attempting to vote or isn't qualified to register because of age, citizenship, residency in the municipality or district, lack of required identification (which challenge may only be made by an election official) or several other specified reasons. (*Sec. 32. 21-A MRSA § 673, sub-§ 1, A, as repealed and replaced by PL 2003, c. 688, Pt. B, § 6; LD 1761, 2007 Me. Laws, Chap. 455*)

Challenges must be made in the form of a sworn affidavit under penalty of perjury and must contain the name and identifying information as to the challenger, as well as the factual basis upon which the challenge is made. No challenge may be made based upon allegations by an anonymous third party. Any doubt in the interpretation of the law must be resolved in favor of the challenged voter. (*LD 426, 2003 Me. Laws, Chap. 395*) After the election, the registrar must hold a hearing within a reasonable time to determine the qualifications of the challenged voter. (*Sec. 33. 21-A MRSA § 673, sub-§ 7*)

**Maryland:** The right of an individual to vote may be challenged only on the grounds of identity. The election judge shall require the challenger to state in writing, under penalty of perjury, the reason for the challenge. The election judge shall offer the challenged voter the opportunity to cast a provisional ballot and submit an attestation, witnessed by the election judge, as to her identity. These materials will be submitted to the local election board for a determination of whether the voter is who she claims to be and is otherwise entitled to vote. (*Maryland Code § 10-312*)

**Massachusetts:** Any voter who is challenged may take an oath attesting to his or her identity, registration, residence and that he or she has not already voted in this election. Then he or she shall be able to vote. The voter's name and address, and the challenger's name and the grounds for the challenge, shall be written on the outside of the ballot. (*Chapter 54, Section 85*)

**Michigan:** Pre-election challenges are permitted. The challenger must sign an affidavit stating the grounds for the challenge. Notice is sent to the voter's last known address and he or she has 30 days to respond. If the voter does not respond, the registration is marked as challenged. At the polls, the election official cannot permit the voter to cast a ballot until he or she satisfactorily answers the grounds of the challenge. Provisional ballots are not mentioned. If the clerk does not independently determine that the voter was qualified to vote on the date of the notice, or if the voter does not respond, the clerk must cancel the voter's registration 30 days from the date of notice. Another statute (*MCL 168.509cc*), however, appears to be inconsistent with this time deadline, indicating that the registration is to be cancelled effective the first business day after the second federal election that follows the notice.

Challenges are also permitted at the polls. Any elector of the municipality, any elector of the precinct who is in the polling place and any election inspector may challenge a voter on the grounds that the challenger "knows or has good reason to suspect" that the voter is ineligible. In addition, challengers may be appointed by parties, by issue proponents or opponents, by organizations or by "organized committee(s) of citizens" interested in "preserving the purity of elections."

Appointed challengers can also challenge any election procedure they consider improper at the polls. Michigan challenge statutes did not substantially change after 2002. (*MCL § 168.509cc Challenge of registration; response by voter; duties of clerk; MCL § 168.512 Challenge of elector; affidavit, contents; answering affidavit; cancellation of registration; indiscriminate challenge, penalty. 168.727 Challenge; duty of election inspector; indiscriminate challenge; penalty*)

**Minnesota:** Any registered voter of a county can challenge a voter of the same county. Before an election, the challenger may file a written affidavit with the county auditor, who then shall send notice to the challenged voter within five days and set a hearing. Challenges may also be issued on Election Day. An election judge must, and an appointed challenger may, challenge a voter on the basis of personal knowledge or a reasonable belief that the voter is ineligible or doesn't meet residency requirements. In 2005, the Election Day challenge statute was changed to provide that an appointed challenger must be a state resident and must sign an oath stating the grounds on the basis of personal knowledge. The challenged voter must answer questions on eligibility posed by the election judge, who decides to grant or deny the challenge. If a challenge is upheld, the voter is not permitted to vote. No mention is made of casting a provisional ballot. In 2006, Minnesota passed the following provision: "Challengers and the political parties that appoint 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." (*Minn. Stat. § 204C.07 Subd. 5.; Minn. Stat. § 201.195 CHALLENGES; Minn. Stat. § 204C.07 CHALLENGERS; Minn. Stat. § 204C.12 CHALLENGES TO VOTERS; Minn. Stat. § PENALTY; Minn. Stat. § 203B.20 CHALLENGES.*)

**Mississippi:** Any candidate, any poll watcher appointed by a candidate or party, any registered voter of the precinct and any election manager or pollworker present in the precinct may challenge a voter's eligibility at the polls. County registrars may challenge a registration before Election Day, after the municipal clerk forwards the registration to the county. A voter may be challenged upon the following grounds:

- a) That he or she is not a registered voter in the precinct
- b) That he or she is not the registered voter under whose name he or she has applied to vote
- c) That he or she has already voted in the election
- d) That he or she is not a resident in the precinct where he or she is registered
- e) That he or she has illegally registered to vote
- f) That he or she has removed his or her ballot from the polling place
- g) That he or she is otherwise disqualified by law.

When a challenge is issued at the polls, one of three things may happen: the election manager may 1) decide the challenge is frivolous or taken in bad faith and disregard the challenge, 2) decide after inquiry that the challenge clearly appears to be valid, in which case the voter's ballot is marked "rejected," or 3) accept the voter's ballot but mark it as "challenged." Ballots marked as challenged are kept separately from other ballots and counted after all unchallenged ballots are counted. A separate return is made of challenged and unchallenged ballots. (*Miss. Code Ann. § 23-15-571. Challenge to voter qualifications; Miss. Code Ann § 23-15-579. Procedure when vote challenged; Miss. Code Ann. § 23-15-643. Examination of affidavits; challenges*)

**Missouri:** Any registered voter at the polling place and any election authority personnel can interpose a challenge to a voter at the polls. In addition, political parties may designate a challenger for each polling place, subject to the approval of the election authority. Appointed challengers must be residents of the jurisdiction in which they serve. Such challengers are to bring their challenges to the attention of the election judges. If they are not satisfied with an election judge's opinion, they may bring the decision to the attention of the election authorities. The decision is made by a majority of election judges, who may require the challenged voter to sign an affidavit of qualification. The state's election law was changed in 2006 to provide for challenges to the validity of identification offered by a voter. If election judges decide not to permit a person to vote because of doubt as to his or her identity or qualifications, the person may apply for relief to the election authority or to the circuit court. (*Mo. Rev. Stat. § 115.105.1; Mo. Rev. Stat. § 115.303 Absentee ballot, how challenged; Mo. Rev. Stat. § 115.429. 1 Person not allowed to vote—appeal, how taken—voter may be required to sign affidavit, when—false affidavit a class one offense*)

**Montana:** Any registered elector may challenge a voter by submitting an affidavit and any evidence in support of the challenge to the election administrator, or, if the challenge is made on Election Day, to the election judge. No standard is given for issuing a challenge, but the standard for deciding a challenge is a preponderance of the evidence. If the challenge is based on a claim that the voter is incompetent or is serving a sentence on a felony, the burden is on the challenger to submit court documents as evidence in support of the claim. For challenges issued before the close of registration, the election administrator takes evidence from both the challenger and the challenged voter to determine whether the challenged voter's registration should be cancelled. If the challenge is issued on Election Day, the challenged voter must cast a provisional ballot. If the election administrator can determine after Election Day that the voter is eligible, the ballot is counted; if not it is rejected. A provisional ballot cast by any elector whose voter information is verified before 5 p.m. on the day after the election must be counted.

The grounds for issuing a challenge are that the voter:

- a) is of unsound mind, as determined by a court
- b) has voted before in that election
- c) has been convicted of a felony and is serving a sentence in a penal institution
- d) is not registered as required by law
- e) is not 18 years of age or older
- f) has not been, for at least 30 days, a resident of the county in which the elector is offering to vote, unless the elector is exempt under [13-2-514](#), MCA, and has been a resident of the state for at least 30 days
- g) is a provisionally registered elector whose status has not been changed to a legally registered voter

In 2005, Montana's challenge law was amended to require challengers to sign an affidavit stating grounds for the challenge and to permit challenges at any time, not just on Election Day. Also, the legislature added additional grounds for challenges. (*Mont. Code Ann. § 13-13-301, (HB 177)*).

*Challenges; Mont. Code Ann. § 13-15-107 (HB 520, 2007); Mont. Admin. R. [44.3.2109](#) Procedures For Challenges)*

**Nebraska:** A voter may be challenged as unqualified by any inspector, judge or clerk of election or registered voter. The challenge must be in writing and be issued on the basis that the challenger “knows or reasonably suspects” that the voter is ineligible. The grounds for challenges are not expressly stated but are implied in a series of statutes outlining questions to be asked if a voter is challenged on citizenship, residency and age. If the voter signs an oath of eligibility and answers questions put to him or her by the inspector or judge of elections, the voter shall be permitted to vote. If the voter indicates he or she has moved to another residence in the county, but outside the precinct, he or she shall vote a provisional ballot. There have been no significant changes in the state’s challenge laws since 2002. (*Neb. Rev. Stat. § 32-926; Person offering to vote; challenge authorized; procedure; Neb. Rev. Stat. § 32-225 Precinct and district inspectors; duties; Neb. Rev. Stat. §§ 32-927 to 32-932*)

**Nevada:** An elector’s registration may be challenged during a five-day period commencing 30 days before the next election by any elector of the same precinct. The challenge must be based on the challenger’s personal knowledge, signed and verified. Notice is sent to the challenged elector within 5 days, giving the elector an opportunity to respond and contest the challenge. If the elector does not respond, a copy of the challenge is sent to the prosecutor. Election Day challenges may be interposed by an elector of the same precinct on the grounds that the elector is not the person he or she claims to be or that he or she has already voted in that election. Challenges based on these two grounds must be in writing, under penalty of perjury, and based on personal knowledge. Election Day challenges may also be interposed on any grounds on which a pre-election challenge may be made. If the challenge is based on identification, the voter must provide photo ID or a qualified witness to attest to the voter’s identity and sign an affidavit attesting to his or her identity. If the challenge is based on residence, proof of residence and an affidavit of residency are required. A voter who refuses to sign an oath attesting to residency must vote at a special polling place. His or her ballot will be kept separate from other ballots, but they will be counted and kept until any recount is completed. (*NRS 293.303 Challenges; NRS 293.304 Voting by person successfully challenged on grounds of residency; NRS 293.547 Written challenges*)

**New Hampshire:** Any legal voter at any state election, election officials, and any person appointed as a challenger by a political party or the state attorney general may challenge a voter at the polls on Election Day in New Hampshire. The challenged voter may vote a regular ballot if the voter signs an affidavit attesting that she is the person she represents herself to be. For a period of one year, records of the affidavits indicating the names of the challengers and the voters and the reasons for the challenges must be kept. Absentee ballots may also be challenged during the ballot count. An election official, the “moderator,” determines whether or not the challenge is well grounded. It is recommended, but not required, that all successfully challenged absentee voters be given notice of the challenge. There have been no material changes to New Hampshire’s challenge laws since 2002. (*N.H. Rev. Stat. Ann. § 659:27 Challenge of Voter; Affidavit; N.H. Rev. Stat. Ann. §§ 659:29 - 659:33; N.H. Rev. Stat. Ann. § 659:103 Preservation of Challenge Affidavits.*)

**New Jersey:** A voter in New Jersey may be challenged at the polls by members of the district boards, by a candidate or by any challenger appointed by a candidate, political party or the proponents or opponents of a ballot question. A challenger need only “know, suspect or believe” that the challenged voter is not qualified. Challenges based on “race, color, national origin, expected manner of voting or residence” in a particular location are prohibited, but challenges based on residency requirements are not. A voter challenged by an appointed challenger may sign an affidavit of eligibility and provide evidence to support the affidavit. The district board of

elections decides whether the challenge is valid. If the challenge is successful, the challenger must sign an affidavit stating the reasons for the challenge. A successfully challenged voter may file an oral appeal to a Superior Court Judge at a county seat on Election Day. Before each general, primary, municipal and special election, county election superintendents must compile challenge lists made up of voters who are no longer eligible to vote in their jurisdictions. Voters on this list who appear at the polls are subject to similar procedures and have the same rights of appeal as those originally challenged on Election Day. (*N.J. Stat. Ann. § 19:15-18. Voter challenges; N.J. Stat. Ann. § 19:15-18.1. Challenged voter may establish right; N.J. Stat. Ann. § 19:15-18.2. Grounds for challenging right to vote specified; N.J. Stat. Ann. § 19:15-22. Examination of challenged voter*)

**New Mexico:** A challenge may be interposed at the polls by a member of the precinct board or by a party challenger on the grounds that the person is not qualified, not registered, received an absentee ballot or is on the purge list. Grounds for challenges are: 1) that the voter is not registered; 2) that the voter is on a purge list or has received an absentee ballot; or 3) that the person is not a qualified elector. At a primary election, a person may be challenged on the grounds that he or she is not affiliated with a party represented on the ballot. If the presiding judge and the two election judges affirm the challenge, the voter is given a paper ballot that is sealed in an envelope marked "rejected," and it is not counted. The election judges mark the signature rosters as "Affirmed" or "Not Affirmed," depending on the outcome of the challenge. (*N.M. Stat. Ann. § 1-12-20. Conduct of election; interposing challenges. (1987); 1-12-21. N.M. Stat. Ann. § Conduct of election; challenges; entries. 1987 ; N.M. Stat. Ann. § 1-12-22. Conduct of election; challenges; disposition*)

**New York:** A political party or independent body with a candidate on the ballot, and in primaries, candidates themselves, may appoint poll watchers, each of whom must be a qualified voter of the city or district in which he or she serves. An inspector or clerk, any duly appointed poll watcher or any registered voter properly in the polling place may challenge a voter's eligibility at the polls. When a voter is challenged, the inspector issues one or more oaths designed to determine the voter's eligibility. A voter who refuses to take any one of the oaths required by the inspector or to answer questions related to the voter's eligibility may not vote. The registrations of such voters are cancelled after the election. If the inspector is satisfied with the voter's qualifications after the preliminary oath required of all challenged voters, the voter is permitted to cast a ballot. If not, the inspector administers a qualification oath or other oaths depending on the reason for the challenge. A voter who takes the oaths is permitted to cast a ballot. (*N.Y. Elec. Law § 8-502. Challenges; generally; N.Y. Elec. Law § 8-504. Challenges; of voter at the polling place*)

**North Carolina:** Challenge may be issued before an election and on Election Day. Pre-election challenges may be made separately in writing, under oath, to the county boards of election by any registered voter of the county in which the challenged voter is registered. The county election board holds a preliminary hearing to determine whether there is probable cause to believe that the challenge is valid. If so, notice is sent to the challenged voter, and a hearing is scheduled at which the challenger has the burden of proof.

Grounds for a challenge are specified and include residency requirements, age, citizenship, felony status or death. On Election Day, any registered voter of the precinct and the chief judge, judge or assistant may challenge a voter on the above grounds or because he or she has voted, is impersonating a voter or in a primary. A successfully challenged voter may request a challenged ballot, which will not be counted unless the election is contested. There is a request that the challenged ballots be considered, and it is found that the challenge was not valid. A right of appeal within 10 days of the election is provided.

North Carolina has a unique approach to dealing with challenges to residence based on a returned first-class piece of mail. In pre-election challenges, the returned mail is *prima facie* evidence that the voter has changed addresses, but in Election Day challenges, it may not be used as evidence of a change in residence. The burden of proof is placed squarely on the challenger, and the challenge must not be made “indiscriminately.” No challenge shall be sustained unless the challenge is substantiated by affirmative proof. In the absence of proof, the presumption is that the voter is properly registered or affiliated. (*N.C. Gen. Stat. § 163-85. Challenge procedure other than on day of primary or election; N.C. Gen. Stat. § 163-87. Challenges allowed on day of primary or election; N.C. Gen. Stat. § 163-88. Hearing on challenge made on day of primary or election; N.C. Gen. Stat. § 163-90.1. Burden of proof; N.C. Gen. Stat. § 163-88.1. Request for challenged ballot; N.C. Gen. Stat. § 163-90.2. Action when challenge sustained, overruled, or dismissed; N.C. Gen. Stat. § 163-127.6. Appeals*)

**North Dakota:** A member of the election board and poll challengers appointed by political parties may challenge a voter on Election Day. A poll challenger must be a member of the district in which he or she serves, and a party may have only one challenger at a time in the polling place. The grounds for challenging a voter are expressly stated and include 1) age, 2) citizenship, 3) failing to provide proof of residency if voting for the first time in the district, 4) that the voter is not a resident of the precinct or 5) failing to provide identification. A challenge shall be based on knowledge or reasonable belief that the voter is not qualified. A challenged voter may vote after signing an affidavit under penalty of perjury indicating the voter’s qualifications. (*N.D. Cent. Code § 16.1-05-04.*)

**Ohio:** Ohio substantially changed its challenge law on June 1, 2006. Under prior law, all challenged voters were entitled to notice and an opportunity to be heard before the election board decided the pre-election challenge. Under the new law, the board can grant or deny the challenge without notice to the voter if the board decides that it can make that determination from its records alone. If the board grants the challenge without notice and the successfully challenged voter appears at the polls, the voter has the burden of proof to show that his or her disqualifying “disabilities” have been “removed” and that he or she “has a right to vote.” If the board cannot decide the challenge on its records, it gives notice to the challenged voter and holds a hearing. All qualified electors are permitted to interpose pre-election challenges. A positive change to the challenge law in 2006 was the elimination of partisan challengers at the polls; only precinct election judges may challenge voters. If the challenge is not resolved in the voter’s favor, he or she may vote a provisional ballot. (*O.R.C. §§ Challenge of elector, 3505.19; 3505.20 Challenge of elector at polling place; and 3503.24*)

**Oklahoma:** No challenge statutes are found in Oklahoma. The Oklahoma Administrative Code indicates that appointed poll watchers may only challenge a decision made in the counting of a ballot. (*Okl. Admin. Code § 230:45-5-4. Watchers*)

**Oregon:** The state has an all vote-by-mail system with provisions for challenging ballots. A county clerk, election official or any elector shall challenge the ballot of any person whom the challenger knows or suspects is not qualified. Challenges must be filed in the election office under oath and on an official challenge form. A ballot may be challenged until the ballot is separated from the return envelope for processing. The county elections official shall flag the mail ballot until the challenge is resolved. If the challenge is on the basis that the voter is not qualified to vote, the official shall notify the voter that the ballot will not be counted unless the voter demonstrates his or her eligibility within ten days of the notice. (*Or. Rev. Stat. § 254.415 Persons authorized to challenge persons offering to vote; Or. Rev. Stat. § 253.700 Duty to challenge absentee ballot; procedures*)

**Pennsylvania:** Pre-election challenges are permitted in Pennsylvania. Election officials and any qualified elector of the municipality may challenge a person's right to be registered by filing an affidavit including the complainant's contact information and the reason for the challenge. The challenged person must respond to the challenge in a written, sworn statement and has the burden of proving that he or she is qualified and the registration is valid. In addition, any qualified elector, poll watcher or election official may petition in writing under oath to have a voter's name stricken from the rolls on the grounds that the challenged person does not reside at the address on the registration and that the petitioner has made inquiries of the current occupant of the residence in arriving at this conclusion. The challenger must also swear or affirm that he has given the challenged voter at least 24 hours notice before filing the petition. Once such a petition is filed, the registration is stricken unless the voter gives evidence in support of his qualifications and the validity of his registration. Before the 2004 election, Pennsylvania relaxed its restrictions on partisan poll watchers. Under the old law, poll watchers were restricted to the polling place in which they were officially enrolled. Under the new law, they could move from one polling place within the county, permitting greater latitude in organizing mass challenges. (*Pa. Cons. Stat. § 1329. Challenges. Pa. Cons. Stat. § 1509. Petition to strike off names*)

**Rhode Island:** Any elector may challenge the registration of any registered voter by filing a prescribed affidavit with the local board, citing evidence to establish probable cause that the challenged voter is not eligible. The return of mail that was not sent by an election official may not form the basis for probable cause to support a challenge. The board shall examine the affidavit to determine if it establishes probable cause and, if so, the board shall set a hearing. Notice is sent to the voter at the registration address. Return of this notice may be used as evidence at the hearing. A voter who appears is asked a series of specific questions, depending on the grounds of the challenge, and the board makes its determination. If the voter does not appear, the board begins a registration confirmation process. The local board must publish a preliminary list of registered voters after the close of registration and hold a canvass hearing at which any qualified elector may challenge the eligibility of a registered voter. A person who "willfully and maliciously" challenges a voter without reasonable cause is guilty of a misdemeanor. (*R.I. Gen. Laws § 17-9.1-28 Procedure on challenge of registration; R.I. Gen. Laws § 17-9.1-29 Penalty for unsubstantiated challenge; R.I. Gen. Laws § 17-9.1-30 Appeal of ruling by board of canvassers; R.I. Gen. Laws § 17-19-27 Challenge of identity as to right to vote; R.I. Gen. Laws § 17-10-16 Challenge lists*)

**South Carolina:** Managers of election, appointed watchers or any elector may challenge any voter at the polls who is "known or suspected" not to be a qualified elector. When a challenge is issued, the manager of election must explain the eligibility requirements to the voter and make inquiries. If the voter thereafter asserts that he or she is qualified, the voter may cast a provisional ballot. The county board of canvassers must hold a hearing at which objections to the provisional ballots are heard. If the challenger does not appear or offer evidence before the hearing to sustain the objection, the ballot is no longer considered to be provisional. The board's decision regarding such provisional ballots is final. (*S.C. Code Ann. § 7-13-810. Prevention of illegal voting or taking too much time; challenging voters; S.C. Code Ann. § 7-13-830. Procedure when voter challenged*)

**South Dakota:** Challenges to voters are permitted at the polls, although the statute does not clearly state who may interpose a challenge. Grounds for a challenge are very limited. A voter may be challenged only as to his or her identity as the person registered or on grounds that within 15 days preceding the election the person was convicted of a felony or declared by proper authority to be mentally incompetent. South Dakota's challenge law was last amended in 1999. (*S.D. Codified Laws § 12-18-10. Grounds for challenge of applicant to vote—Determination by judges—Notation on registration list*)

**Tennessee:** A political party and any organization of citizens interested in a ballot question or “interested in preserving the purity of elections and in guarding against abuse of the elective franchise” may appoint poll watchers. Poll watchers, acting through election judges, and any person present in the polling place may challenge a voter on the grounds that the voter:

- 1) Is not a registered voter in Tennessee and did not vote a provisional ballot
- 2) Is not a resident of the precinct where the person seeks to vote
- 3) Is not the registered voter under whose name the person has applied to vote
- 4) Has already voted in the election
- 5) Has become ineligible to vote in the election being conducted at the polling place since the person registered
- 6) In a primary election, is not a member of the party for which he or she intends to vote

The election judges administer an oath to the challenged voter and inquire as to his or her qualifications. A voter who refuses to take the oath may not vote. The decision of the election judges must be unanimous in order for the challenge to be sustained. A voter who is successfully challenged shall cast a ballot that is placed in an envelope that is marked “rejected.” (*Tenn. Code Ann. § 2-7-104. Poll watchers; Tenn. Code Ann. § 2-7-123. Challenges to right to vote—Oath of challenged voter; Tenn. Code Ann. § 2-7-124. Challenges—Grounds and procedure; Tenn. Code Ann. § 2-7-125. Challenged voter—Voting procedure*)

**Texas:** The Texas provision permitting Election Day challenges was repealed effective January 1, 2004, in HB 1549 and replaced by statutes relating to provisional ballots. There is a provision for challenges to registration by an election official. If, after determining that a voter’s registration application is properly completed, a registrar has reason to believe that the registrant is ineligible, the registrar shall challenge the voter’s eligibility. The challenged registrant is given notice of the challenge and a hearing is set. If the registrar makes the challenge in the registrant’s presence, the registrant may request the hearing to determine his or her eligibility at that time. Challenge hearings are held by the registrar, and the challenged registrant has a right to appeal an adverse decision. (*Tex. Elec. Code Ann. § 13.074. CHALLENGE OF APPLICANT; Tex. Elec. Code Ann. § 13.075. NOTICE OF CHALLENGE TO APPLICANT; Tex. Elec. Code Ann. § 13.076. REQUEST FOR HEARING ON CHALLENGE; Tex. Elec. Code Ann. § 13.077. HEARING ON CHALLENGE; Tex. Elec. Code Ann. § 13.079. DETERMINATION OF CHALLENGE*)

**Utah:** Any person, including appointed poll watchers, may challenge the eligibility of a voter at the polls on Election Day. Such challenges are made by an oral statement of the challenged voter’s name and the basis of the challenge. A pre-election challenge to a voter’s registration may also be issued by filing a signed written statement of the challenge with the county clerk up to two days before an election. The grounds for issuing a challenge are expressly stated. They include age, citizenship, residence issues and felony status. When a pre-election challenge is filed, the county clerk shall write the words “to be challenged” in the official register. Pollworkers must raise the challenge when the voter appears at the polls and proceed as with an Election Day challenge. Utah amended its challenge provisions in 2006 to provide that a challenged voter shall vote by provisional ballot. A 2007 amendment did not substantially alter the challenge provision. (*Utah Code Ann. § 20A-3-202. Challenges*)

**Vermont:** Challenges to a voter’s right to vote may be made at the polls by election officials as well as an appointed representative of a political party, a committee interested in a public question or a candidate not represented by a party. The standard for issuing a challenge is that the challenger “knows or suspects” that the challenged voter is not qualified. Grounds for issuing a challenge are limited to only two: 1) that the voter is not, in fact, the person whose name appears on the checklist, or 2) that the voter has previously voted in the same election.

The members of the board of civil authority present in the polling place immediately convene to decide each challenge. If the board sustains the challenge, the challenged voter has a right of appeal to any superior or district judge in the county or district. The voter may cast a ballot if he or she obtains an order to that effect from the appeals court and presents the order before the polls close. (*VT. Stat. Ann. tit. 17 § 2564. Challenges; VT. Stat. Ann. tit. 17 § 2148. Appeal from board of civil authority*)

**Virginia:** Any qualified elector may challenge the eligibility of a voter by signing a challenge statement (subject to penalties for hindering, intimidating or interfering with a qualified voter) that indicates one or more of the grounds for challenge. The challenge form lists the acceptable grounds for a challenge, including commonly raised issues such as age, citizenship, residence, civil disqualification, impersonating a voter or having already voted. The process for deciding the challenge consists of election officers explaining the qualifications for voting and administering an oath to any voter who maintains that he or she is qualified. The challenged voter's oath, like the challenger's statement, is given on a specific form that requires the challenged voter to attest to his or his qualifications to cast a ballot. Voters who sign the oath are then permitted to vote, and the fact of the challenge is recorded. Voters who decline are not permitted to vote. (*VA. Code Ann. § 24.2-651. Voter who is challenged; how challenge tried. VA. Code Ann. § 24.2-651.1. Voter who is shown as having already voted; challenge and procedure for voting; voter identification*)

**Washington:** In 2006, the Washington legislature amended its challenge laws to place significant barriers to unfounded voter challenges. Under the new law, any registered voter or the county prosecutor may challenge a voter's registration by affidavit. The challenge must be made on the basis of personal knowledge, under oath, and under penalty of perjury. The voter's registration is deemed presumptive evidence that he or she is eligible to vote. The burden of proving that the voter is not eligible is upon the challenger, who must prove the voter's ineligibility under a heightened standard of proof calling for "clear and convincing" evidence instead of the lesser standard of "preponderance of the evidence." The challenged voter is given an opportunity to give evidence at a hearing or in writing. Challenges may be interposed against an elector's registration before an election and Election Day challenges are also permitted. (*RCW 29A.08.810 to RCW 29A.08.850*)

**West Virginia:** Challenges to voter eligibility may be filed before an election and on Election Day. Any voter and certain election officials may challenge a voter's registration by completing a form prescribed by the secretary of state and stating the reason for the challenge. Notice is given to the challenged voter that he or she must appear and give evidence of eligibility within 30 days or his or her registration shall be cancelled. Returned mail or failure to appear is considered *prima facie* evidence of the registrant's ineligibility and results in the cancellation of the registration. On Election Day it is the duty of members of the receiving board to challenge any voter who is not listed in registration records, if his or her signature does not match the pollbook, or if the person has any other legal disqualification. A challenged voter shall vote a provisional paper ballot. Any statement made in support of a challenge is subject to penalty of perjury. A person who maliciously or without probable cause challenges another person's right to vote is subject to criminal prosecution on a misdemeanor punishable by a fine and incarceration. (*W. VA. Code § 3-4-23. Voting by challenged voters; W. VA. Code § 3-9-7. Wrongful refusal or allowance of votes; malicious or frivolous challenges; penalties. W. VA. Code § 3-1-41. Challenged and provisional voter procedures; W. VA. Code § 3-3-10. Challenging of absent voters' ballots*)

**Wisconsin:** Challenges to registration may be made before elections, and challenges to a voter's eligibility may also be made on Election Day. Any registered elector of the municipality may file a challenge to another voter's registration by filing an affidavit stating the reasons therefore with the

municipal clerk or the executive director of the board of election commissioners in cities of more than 500,000. Both the challenger and the challenged voter are required to appear at a hearing to decide the challenge. If the challenge is sustained, that fact is indicated on the registration list and given to election inspectors for use on Election Day. An election inspector (except for an inspector appointed through the youth inspector program) shall and any elector may challenge a voter's right to vote on Election Day for cause if they know or suspect that the voter is not qualified. A challenged voter is required to take an oath and respond to questions to ascertain his or her eligibility. If the challenger does not withdraw the challenge after the questions are answered, the election inspector administers another prescribed oath and series of questions. If the voter answers to the inspector's satisfaction, he or she may vote. If, however, the voter does not take the oath or satisfactorily establish his or her qualifications, the vote is rejected. (*Wis. Stat. 6.92 Inspector making challenge. Wis. Stat. 6.925 Elector making challenge in person*)

**Wyoming:** An election judge shall challenge a voter's right to vote if it is known or apparent to him or her that the voter is not qualified. If the challenge cannot be resolved by verification from the county clerk that the challenged voter is a qualified elector of that county, the voter may sign an affidavit attesting to his or her qualification to vote and vote by a provisional ballot. A challenged voter may present information and documentation of his or her eligibility to register at the election or to vote to the county clerk until the close of business on the day following the election. The provisional ballot shall be counted only after the voter has presented relevant documentation to the county clerk, thereby establishing that he or she had previously registered and is a qualified elector or that he or she was eligible to register at the election and is a qualified elector. The grounds for challenging voters are enumerated as follows:

- 1) Not a qualified elector
- 2) Not entitled to vote in the precinct
- 3) Name does not appear on poll list and the person cannot meet the requirements to register at the polls
- 4) Not the person he or she claims to be
- 5) Has already voted

(*Wyo. Stat. Ann. § 22-15-101. Right to vote may be challenged; Wyo. Stat. Ann. § 22-15-104. Grounds for challenge; Wyo. Stat. Ann. § 22-15-105. Challenged person may vote; generally*)