

Challenges  
**XV. CHALLENGES**

**WHO HAS THE RIGHT TO CHALLENGE A VOTER?**

Any voter may have his right to cast a ballot in a given election challenged by any registered voter of the same town or ward. Election officials and challengers appointed in writing by the political party committees, or the Attorney General may also challenge a voter. RSA 659:27; RSA 659:27-a; RSA 666:4; RSA 666:5.

**WHEN CAN CHALLENGES OCCUR?**

Usually challenges occur at the time the voter is at the check-in table before receiving his or her ballot. A moderator or clerk may challenge an absentee voter who appears on the checklist, so long as they complete an "Asserting a Challenge" form. No voter or appointed challenger shall challenge a person's qualifications to be a voter at the registration table. RSA 659:27, III. Challenges may, however, be made at any point up until the ballot is deposited in the ballot box.

**HOW DOES A CHALLENGE OCCUR?**

A challenger must state a specific reason for the challenge. The challenger must complete an "Asserting a Challenge" form, signing it under oath. See "Asserting a Challenge" form at page 283.

**CHALLENGERS AT THE POLLING PLACE**

Any member of the public has a right to observe the conduct of an election from outside the rail. The public trust in elections, sometimes referred to as the legitimacy of elections, relies in part on conducting elections in the open. These observers do not have any special legal status. In contrast, challengers appointed by a state political party or the Attorney General do have a special legal status.

Moderators must ensure that the polling place and rail are set up in such a manner that party challengers and any other interested member of the public can see and hear

people check in to vote. RSA 666:4. The moderator may ask a challenger to present the appropriate signed statement if he or she is from a political party committee or the Attorney General's Office.

**TRACKING AND REPORTING OF WHO VOTED**

The statutes give political parties the authority to designate a person to challenge individuals seeking to vote whom the challenger believes is not qualified to vote. The public nature of the election process, however, allows anyone who so desires to monitor people checking in to vote. A challenger or an observer may keep track of who has voted. They may use this information in any legal manner.

Campaigns identify voters who are likely to vote for their candidate(s) and use the process described above to learn who actually showed up at the polls. They contact those who do not show up and encourage them to vote.

Individuals conducting this type of activity may seek more direct access to the checklist, to read off who has voted, or may ask to have names repeated more than once after a person announces his or her name for the ballot clerks. Moderators should establish and enforce a uniform policy regarding such requests. While appointed challengers have a right to stand where they can see and hear each voter check in, they do not have a right to disrupt the polling place. Generally, challengers have no right to stop voters by making a challenge until the voter is in line to get a ballot and checking in. Challengers have a right to have the voter announce his or her name aloud and for the ballot clerks to repeat the name two times, but otherwise they have no right to any further announcement of the voter's identity.

#### WHO IS A PARTY POLL WATCHER?

Challengers appointed by a party to work at a polling place are sometimes, incorrectly, referred to as poll watchers.

#### BASIS FOR A CHALLENGE

All challenges, including those made by election officials, must be asserted using a reason set forth on the "Asserting a Challenge" form on page 283. A challenger must have personal knowledge or documentary evidence that the challenged voter is ineligible to vote.

#### CHALLENGE PROCEDURE

A voter or appointed challenger seeking to make a challenge must notify the moderator. The voter or challenger must identify the voter he or she seeks to challenge. The moderator must afford the challenger a reasonable opportunity to complete the "Asserting a Challenge" form, but may want to discuss the basis for the challenge first. Instruct both the challenger and the voter to address the moderator, not each other. In some cases explaining the law may make a formal challenge unnecessary. Either the voter may learn that he or she should be voting at a different polling place or the challenger may learn that their basis for challenging is not sufficient or accurate. To the extent necessary, the moderator may ask the voter and the challenger to step aside, to allow those in line to proceed with checking in and voting. To proceed with a formal challenge, the challenger must complete the form and swear or affirm, under penalties of perjury, the grounds cited as the basis of the challenge.

If the ground for the challenge (including challenges to absentee voters) is age, citizenship, or domicile, the supervisors of the checklist rule whether or not the challenged voter either is qualified or not qualified.

The moderator rules on challenges based on all other grounds. If the voter is found to be not qualified (the challenge is well-grounded), the challenged person may vote only if he or she completes and swears to a

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Challenged Voter Affidavit. If the voter is found to be qualified (the challenge is not well-grounded), the person must be allowed to vote without any further action. RSA 659:27-a.

The voter must swear to or affirm the Challenged Voter Affidavit before an election officer, notary public, justice of the peace or any person authorized by law to administer oaths. If the voter signs and properly swears to the affidavit, then the moderator must allow the individual to vote. RSA 659:30.

The ballot of a voter challenged in person is not marked. The ballot of a challenged absentee voter is marked with a sequential number. See discussion of challenges to absentee voters below.

The clerk must keep a record of all challenges with the name and address of voters completing the affidavits, the name of the person making the challenge, which is the person who signed the "Asserting the Challenge" form, the outcome of the challenge, and the reason for the challenge. RSA 657:26; RSA 659:27; RSA 659:27-a; RSA 659:32. For successfully challenged absentee ballots, the clerk shall enter this information in the *ElectioNet* Absentee Ballot module, by selecting the reasons from the appropriate dropdown. RSA 657:26.

The moderator has a duty to report violations of the election laws to the Attorney General's Office. RSA 659:45. If the moderator determines that the challenge is well-grounded, that is a determination that the person who was seeking to vote violated the wrongful voting statute, therefore, the matter should be reported to the Attorney General's Office. Violations discovered on election day should be reported immediately to (866) 868-3703. A written report on all violations will be required. Mail reports to: Office of the Attorney General, Elections Unit, 33 Capitol Street, Concord, NH 03301.

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### PRESERVATION OF CHALLENGES

The moderator, at the end of the election, turns all Challenged Voter Affidavits over to the town or city clerk. The clerk preserves the information until the contest is settled and all appeals have expired or at least 22 months after the election, whichever is longer. RSA 33-A:3-a.

### CHALLENGED ABSENTEE BALLOTS

Absentee ballots are subject to challenge after the moderator publicly announces the absentee voter's name, but not after the moderator removes the ballot from the envelope.

The challenger (including election officials) must complete an "Asserting a Challenge" form.

If the ground for the challenge is age, citizenship, or domicile, the supervisors of the checklist must rule whether or not the challenged voter either is qualified or not qualified.

The moderator rules on challenges based on all other grounds. The moderator shall write on the affidavit envelope, containing the ballot, the word "Challenged," the name and address of the person making the challenge, and the reason the challenger lists on the "Asserting a Challenge" form. RSA 659:27-a.

The moderator shall number each challenged envelope sequentially, i.e. challenge #1, etc.

If YES ('well-grounded' or 'not qualified as a voter') - the moderator does not open the envelope, but shall preserve it with the other ballots cast at the election.

If NO ('not well-grounded' or 'qualified as a voter') - the moderator shall open the envelope containing the ballot, so that the affidavit is not destroyed and proceed first to mark on the reverse side of the folded ballot the corresponding challenge number as marked on the envelope. Then the moderator will process the ballot like all the other ballots. RSA 659:51.

The moderator shall record next to the name of the absentee voter on the clerk's list of absentee voters the word "Challenged" the name of the person challenging, who signed the "Asserting the Challenge" form, the outcome of the challenge and the reason for the challenge. The clerk shall record the applicable information in *ElectioNet*. RSA 657:26.