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**RULES & REGULATIONS
FOR PROVISIONAL VOTING
ADOPTED BY THE
RHODE ISLAND BOARD OF ELECTIONS**

The Rhode Island Board of Elections hereby adopts the within rules and regulations relating to provisional voting pursuant to and in accordance with the Help America Vote Act of 2002 (“HAVA”) (P.L. 107-252) and sections 17-7-5 et seq. and 17-19-24.1 et seq. of the Rhode Island General Laws of 1956, as amended.

Said rules and regulations are adopted pursuant to the Administrative Procedures Act (R.I.G.L. §42-35 et seq.) and are available for public inspection at the offices of the Rhode Island Board of Elections, 50 Branch Avenue, Providence, Rhode Island.

Section 1. Purpose

The within rules and regulations are hereby adopted by the Board of Elections for the purpose of establishing a procedure for the casting, certification and tabulation of provisional ballots pursuant to the requirements of the Help America Vote Act of 2002, hereinafter referred to as (“HAVA”).

Section 2. Definitions

“Ballot Identification Number” or “Ballot ID No.” shall mean the number appearing on a “Provisional Ballot Application” and which is unique to said application. Said number shall be used by election officials to process an individual’s provisional ballot and shall be used by the individual to determine the disposition of his/her ballot. The identity of the individual assigned said number shall be confidential.

“Board of Canvassers” or “Local Board” shall mean the board of canvassers in a city or town.

“Board of Elections” or “State Board” shall mean the Rhode Island Board of Elections.

RULES & REGULATIONS – PROVISIONAL VOTING

Section 2 (cont.)

“Disqualified Ballot” shall mean a provisional ballot executed by an individual who is deemed to be ineligible to vote in the election at which said ballot was cast. The votes cast on said ballot shall not be counted by election officials.

“Federal Office” shall mean the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress pursuant to Section 301(3) of the Federal Election Campaign Act of 1971.

“Federal Offices Only Ballot” shall mean a ballot executed by an individual who is deemed eligible to vote for federal offices only in the election at which the ballot was cast. Only those votes cast for federal offices shall be counted by election officials.

“Full Ballot” shall mean a ballot executed by an individual who is deemed eligible to vote for all offices and questions appearing on the ballot in the election at which the ballot was cast. All of the votes cast on said ballot shall be counted by election officials.

“Provisional Ballot” shall mean a ballot cast by an individual meeting the eligibility requirements set forth in these rules and regulations.

“Provisional Ballot Application” shall mean the document prescribed in these rules and regulations and executed by a voter seeking to cast a provisional ballot and used by election officials in ascertaining the disposition of a provisional ballot.

“Voting District” or “Precinct” shall mean the geographical subdivision within a community into which voters are assigned pursuant to §17-11-1.

Section 3. Voter Information - Public Posting

Election officials at each precinct shall publicly post on the day of each election for federal office voting information which shall include, but not be limited to:

- a) a sample version of the ballot used in the election;
- b) information regarding the date of the election and the hours during which the polling places are open;
- c) instructions on how to vote, including how to cast a vote and how to cast a provisional ballot;
- d) instructions for first-time voters who register by mail; and
- e) general information on voting rights under the applicable Federal and State laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate election officials if an individual feels his/her rights may have been violated.

RULES & REGULATIONS – PROVISIONAL VOTING

Section 4. Provisional Voting – Eligibility & Information

A. Eligibility

An individual shall be eligible to cast a provisional ballot if:

- 1) he/she declares that he/she is a registered voter and eligible to vote in the community in which he/she desires to vote but is informed by an election official on election day that his/her name does not appear on the official list of registered voters for the voting district or the community; or
- 2) an election official asserts that the individual is not eligible to vote; or
- 3) he/she registered to vote by mail but fails to provide the requisite identification prior to or at the time of voting.

Notwithstanding the provisions of Subsection 4(A), an individual may be declared eligible or ineligible, as the case may be, to cast a provisional ballot subject to the requirements of Section 9 of these rules and regulations.

Upon the declaration by an individual at a precinct that he/she is a registered voter in the community or, upon an election official asserting that an individual is not eligible to vote or, upon determining that a registrant has registered to vote by mail but failed to provide the requisite identification, the appropriate election official shall notify the individual that he/she may cast a provisional ballot and shall present to the individual a “Notice - Provisional Voting Information.”

B. Information

The “Notice - Provisional Voting Information” shall include, among other things:

- 1) information regarding the possible disposition of the individual’s ballot, which shall be as follows:
 - a) if it is determined that he/she is deemed to be a registered voter in the community and precinct in which he/she casts his/her provisional ballot, all of the races voted for on said ballot will be counted; or
 - b) if it is determined that he/she is deemed to be a registered voter in the community, but not the precinct, in which he/she casts his/her provisional ballot, only those votes cast for federal offices will be counted; or
 - c) if it is determined that he/she is not a registered voter in the community in which he/she casts his/her ballot, his/her ballot will be disqualified; and

RULES & REGULATIONS – PROVISIONAL VOTING

Section 4 (cont.)

- 2) instructions on how the individual may determine the disposition of his/her ballot, including whether or not the vote was counted and, if not, the reason it was not counted.

Subsequent to determining an individual's eligibility and the presentation of the "Notice – Provisional Voting Information," the appropriate election official shall give said individual a provisional ballot application, ballot and provisional ballot envelope along with instructions for completing said application and ballot.

Section 5. Provisional Ballot Application And Instructions

A. Instructions For Casting A Provisional Ballot

An individual who is eligible to cast a provisional ballot shall be given instructions on how to cast a provisional ballot by an election official. Said instructions shall direct the individual to, among other things:

- 1) read the "Notice – Provisional Voting Information" and to contact an election official with any questions the individual may have;
- 2) complete the "Provisional Ballot Application"; and
- 3) instruct the voter how to cast and transmit his/her ballot and "Provisional Ballot Application" to the appropriate election official, which shall be as follows:
 - a) "vote" his/her ballot by, using the marking device provided, connecting the head and tail of the arrow on the computer ballot next to the party, candidate, write-in candidate or ballot question, as is applicable, for whom the voter wishes to cast his/her ballot (Note: The voter shall be instructed to notify an election official if he/she makes an error or incorrectly marks his/her ballot.);
 - b) upon completing the ballot, the individual shall place the ballot in the "Provisional Ballot Envelope" and seal the envelope containing the voted ballot;
 - c) return the sealed "Provisional Ballot Envelope" and "Provisional Ballot Application" to the appropriate election official who shall:
 - i) remove and present to the voter his/her "Provisional Ballot Receipt" (Section C of the "Provisional Ballot Application");
 - ii) remove the self-sealing label from the "Provisional Ballot Application" and, where indicated, affix it to the "Provisional Ballot Envelope";
 - iii) return the "Provisional Ballot Envelope" with the affixed "Provisional Ballot Application" (with the Rhode Island Voter Registration Form and Sections A & B attached) to the voter; and

RULES & REGULATIONS – PROVISIONAL VOTING

Section 5 (cont.)

- d) the voter shall then:
 - i) place the “Provisional Ballot Envelope” with the affixed “Provisional Ballot Application” into the receptacle for provisional ballots; and
 - ii) retain the “Provisional Ballot Receipt” as well as the “Notice – Provisional Voting Information.”

B. Provisional Ballot Application

The “Provisional Ballot Application” shall include, but not be limited to, the following:

- 1) Section A:
 - a) the ballot identification number;
 - b) space for an election official to include the name of the community and precinct number where the ballot is being cast; and
 - c) space for the local board to indicate the disposition of the provisional ballot.
- 2) A Rhode Island Voter Registration Form (“RI Registration Form”).
- 3) Section B:
 - a) a Voter Attestation, wherein the individual seeking to cast a provisional ballot shall execute an attestation stating that he/she is a registered voter in the community & voting district in which said individual desires to vote and is eligible to vote in the election in which he/she desires to vote;
 - b) the ballot identification number;
 - d) space to include the date of the election in which the individual desires to vote;
 - e) space for an election official to cite the reason an individual has been given a provisional ballot; and
 - f) space for the local board to indicate the disposition of the provisional ballot.
- 4) Section C, which shall be the voter’s “Provisional Ballot Receipt” (“Receipt”) and include:
 - a) the ballot identification number; and
 - b) instructions on how the individual may ascertain whether his/her vote was counted and, if the vote was not counted, the reason it was not counted.

The Board of Elections may, at its sole discretion, include any additional items on the “Provisional Ballot Application” as it deems appropriate.

RULES & REGULATIONS – PROVISIONAL VOTING

Section 6. Processing And Certifying Provisional Ballots

Provisional ballots cast at a precinct shall be transmitted to the board of canvassers in each community pursuant to the manner prescribed by the Board of Elections. Said ballots shall be processed and certified by the board of canvassers in the city or town in which they were cast. Forthwith, upon receipt of the provisional ballots cast at a precinct the local board shall commence certifying said ballots and continue until said certification is complete. The processing and certification of all provisional ballots cast in a community shall be completed pursuant to the schedule established by the Board of Elections.

A. Processing Provisional Ballots

The local board shall process the provisional ballots cast in the community in the following manner.

- 1) Upon receipt of the provisional ballot receptacles from each precinct the local board shall separate and secure said ballot receptacles.
- 2) On a precinct by precinct basis the local board shall proceed to open the provisional ballot receptacles, remove the “Provisional Ballot Envelopes,” and proceed to determine the disposition of each provisional ballot within each precinct pursuant to the requirements and procedures set forth in Subsection 6(B).
- 3) Upon having determined the disposition of all of the provisional ballots cast in a precinct, the local board shall:
 - a) for each provisional ballot, remove and retain the RI Registration Form and Section B (which shall remain affixed to each other) of the “Provisional Ballot Application” (Note: Section A shall remain affixed to the “Provisional Ballot Envelope”; see Subsections 6(A)(5) and 6(A)(6) of these rules and regulations for instructions on processing the RI Registration Form and Section B of the “Provisional Ballot Application”);
 - b) upon having determined the disposition of each provisional ballot in a precinct and separating the RI Registration Form and Section B from Section A of the “Provisional Ballot Application” the local board shall sort the provisional ballots cast at a precinct by disposition (i.e. All “Full Ballots” on top followed by all ballots for “Federal Offices Only” followed by all “Disqualified” ballots) and place the provisional ballots into the provisional ballot receptacle from which they were delivered; and
 - c) place the provisional ballot receptacles for each precinct into the provisional ballot transfer case for transmittal to the Board of Elections in the manner, and pursuant to the schedule, established by the state board.

RULES & REGULATIONS – PROVISIONAL VOTING

Section 6 (cont.)

- 4) Forthwith, after having determined the disposition of all of the provisional ballots in the community the local board shall, pursuant to the procedures established by the state board, enter the requisite provisional ballot information onto the Board of Elections' website.
- 5) Subsequent to having entered all of the requisite data onto the Board's website the local board shall place the RI Registration Form and Section B of the "Provisional Ballot Application" into a sealed envelope labeled "Provisional Ballots – Attestation & Registration" which shall remain sealed until the local board is authorized by the Board of Elections to open said envelope.
- 6) Upon receiving authorization from the state board the local board may open the envelope labeled "Provisional Ballots – Attestation & Registration" at which time the RI Registration Form shall be separated from Section B and each shall be processed in the following manner:
 - a) the Rhode Island Voter Registration Form:
 - i) if, pursuant to the procedures set forth in Subsection 6(B), it is determined that the individual casting a provisional ballot is an eligible voter and the information provided on the RI Registration Form matches the information on the community's official list of registered voters the local board shall affix the RI Registration Form to the individual's voter registration form on file; or
 - ii) if, pursuant to the procedures set forth in Subsection 6(B), it is determined that the individual casting a provisional ballot is an eligible voter but the information provided on the RI Registration Form does not match the information on the community's official list of registered voters the local board shall treat and process the RI Registration Form in the same manner as prescribed by the Board of Elections for registrations which are submitted for the purpose of changes of name and/or address, or registrations which are defective or missing information; or
 - iii) if, pursuant to the procedures set forth in Subsection 6(B), it is determined that the individual casting a provisional ballot is not an eligible voter, the local board shall treat and process the RI Registration Form as a new application for voter registration and proceed accordingly.
 - b) Section B shall be placed in a sealed envelope labeled "Provisional Ballots – Voter Attestation" and shall be retained by the local board for a period of twenty-two (22) months from the date of the election.

RULES & REGULATIONS – PROVISIONAL VOTING

Section 6 (cont.)

B. Certifying Provisional Ballots

In determining the disposition of a provisional ballot the local board shall compare the information on the RI Registration Form of the “Provisional Ballot Application” with the information on the community’s official list of registered voters to determine if a “match” exists. After comparing the information on the “Provisional Ballot Application” with the community’s official list of registered voters the provisional ballot shall be processed as follows:

- 1) If the name, date of birth and community which appears on the RI Registration Form of the “Provisional Ballot Application” can be matched with an individual who appears on the community’s official list of registered voters the individual shall be deemed to be an eligible voter in the community and shall be eligible to vote pursuant to **a** or **b** below: (Note: If more than one match is found a comparison of the signatures appearing on the “Provisional Ballot Application” and the community’s official list of registered voters shall be undertaken to determine the appropriate match.)
 - a) if the street address which appears on the “Provisional Ballot Application” matches the street address which appears on the community’s official list of registered voters or if the street address which appears on the “Provisional Ballot Application” is in the same voting district as the street address which appears on the community’s official list of registered voters the individual shall be deemed eligible to cast a “Full Ballot” and the local board shall so indicate on the “Provisional Ballot Application”; or
 - b) if the street address which appears on the “Provisional Ballot Application” does not match the street address which appears on the community’s official list of registered voters and the street address is located outside of the voting district where the provisional ballot was cast the individual shall be deemed eligible to cast a ballot for “Federal Offices Only” and the local board shall so indicate on the “Provisional Ballot Application”; provided, however, that in the City of Providence, if the street address which appears on the “Provisional Ballot Application” does not match the street address which appears on the community’s official list of registered voters and the street address is located outside of the voting district and Congressional District where the provisional ballot was cast the individual shall be deemed eligible to cast a ballot for the offices of president and vice president only, and the local board shall so indicate on the “Provisional Ballot Application.”

RULES & REGULATIONS – PROVISIONAL VOTING

Section 6 (cont.)

- 2) If the name, date of birth and community which appears on the RI Registration Form of the “Provisional Ballot Application” cannot be matched with an individual who appears on the community’s list of registered voters the individual shall be deemed to be ineligible to vote and his/her ballot shall be “Disqualified” and the local board shall so indicate on the “Provisional Ballot Application.”

Notwithstanding the provisions of Subsection 6(B), the Board of Elections reserves the right to establish additional procedures to ascertain an individual’s eligibility to cast a ballot and have said ballot counted or disqualified.

Moreover, unless determined otherwise by the state board, the decision by the local board as to the disposition of a provisional ballot, which shall have been ascertained in accordance with these rules and regulations, shall be final.

C. Mail Ballots Submitted By First-Time Registrants By Mail Without The Requisite Identification & Deemed Provisional Ballots

Mail ballots of first-time registrants by mail which are received at the Board of Elections and which are required to include the requisite identification prior to or at the time of voting and for which the requisite identification is not received shall be deemed provisional ballots. The Board of Elections shall, upon receipt of a mail ballot deemed to be a provisional ballot:

- 1) contact the local board in the community in which the individual casting the mail ballot is registered to vote and determine whether the requisite identification has been submitted and, if said identification has not been submitted, the state board shall obtain a copy of the individual’s application for registration; and
- 2) based on the information provided on the individual’s application for registration, the state board shall attempt to verify said information; and
 - a) if the state board is able to verify the accuracy of the information provided on the application for registration and it is determined that the individual cast his/her ballot in the community in which he/she is registered to vote the state board shall determine whether the individual is eligible to cast a “Full Ballot” or a ballot for “Federal Offices Only” and shall notify the local board of its findings; or
 - b) if the state board is unable to verify the accuracy of the information provided on the application for registration the ballot shall be “Disqualified.”

RULES & REGULATIONS – PROVISIONAL VOTING

Section 7. Tabulation Of Provisional Ballots

All provisional ballots shall be tabulated by the Board of Elections in the manner prescribed by the Board which shall include, but not be limited to, the procedures set forth herein.

A. Provisional Ballots Cast At A Precinct

Provisional ballots cast at a precinct, which have been processed and certified pursuant to Sections 6(A) and 6(B) of these rules and regulations, shall be transmitted by the local board to the state board for tabulation. Upon receipt of all of the provisional ballots cast in a community the state board shall:

- 1) Separate the “Provisional Ballot Envelopes” into the following categories:
 - a) “Full Ballots”;
 - b) “Federal Offices Only”; and
 - c) “Disqualified”.
- 2) Place all of the “Provisional Ballot Envelopes” cast within a community and marked as “Disqualified” ballots into a sealed container. Said “Disqualified” ballots shall be returned to the local board for storage in accordance with §17-19-39.1.
- 3) Open those “Provisional Ballot Envelopes” cast within a community and marked as “Full Ballots” and proceed to remove and separate each ballot from its “Provisional Ballot Envelope” so as to be unable to determine from which envelope the ballot was removed. The Board shall then:
 - a) commence tabulating all ballots deemed to be “Full Ballots”; and
 - b) upon completing the tabulation of said “Full Ballots,” the state board shall place said ballots, along with the “Provisional Ballot Envelopes,” into a sealed container which shall be returned to the local board for storage in accordance with §17-19-39.1.
- 4) Open those “Provisional Ballot Envelopes” cast within a community and marked as “Federal Offices Only” and proceed to remove and separate each ballot from its “Provisional Ballot Envelope” so as to be unable to determine from which envelope the ballot was removed. The Board shall then:
 - a) commence tabulating all ballots deemed to be for “Federal Offices Only”; and
 - b) upon completing the tabulation of said “Federal Offices Only” ballots, the state board shall place said ballots, along with the “Provisional Ballot Envelopes,” into a sealed container which shall be returned to the local board for storage in accordance with §17-19-39.1.

RULES & REGULATIONS – PROVISIONAL VOTING

Section 7 (cont.)

- 5) Upon completing the tabulation of all “Full” and “Federal Offices Only” ballots the state board shall add the number of provisional votes cast in a precinct for a candidate or ballot question, as the case may be, to the total number of votes cast in a precinct on election day. Moreover, the Board shall report the total votes cast at a precinct as the sum of all ballots tabulated at a precinct on election day plus those provisional ballots tabulated at the state board, except as provided in Section 7(B).

B. Mail Ballots Deemed To Be Provisional Ballots

Prior to completing its tabulation of the mail ballots cast in an election the Board of Elections shall, pursuant to Section 6(C), determine whether a mail ballot which is deemed to be a provisional ballot is eligible to be counted as either a “Full Ballot” or a “Federal Offices Only” ballot, or is a “Disqualified” ballot and ineligible to be counted.

All mail ballots deemed to be provisional ballots which are eligible to be counted shall be tabulated by the state board at the time all other mail ballots are tabulated and the votes cast on said provisional ballots shall be included in the total number of mail ballots cast. Said ballots shall be retained and stored at the state board in accordance with §17-19-39.1.

Section 8. Access To Provisional Ballot Information

A. Access System To Determine Disposition Of Ballot

There shall be established on the Board of Elections’ internet website a “link” for provisional voting which an individual who has cast a provisional ballot may access in order to determine the disposition of his/her ballot. Upon “linking” to the appropriate page the individual will be instructed on how to proceed.

To maintain the security, confidentiality and integrity of each individual casting a provisional ballot access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot as well as the appropriate state officials responsible for maintaining the system established by the Board and the local officials entering the data regarding the provisional ballot. Thus, access to any information regarding the disposition of an individual’s provisional ballot may only be gained by entering the individual’s last name and “Ballot ID No.” which appears on the “Provisional Ballot Receipt” and which was presented to the individual at the time of casting his/her provisional ballot (see Section 5(A)(3)(c)(i).)

Upon accessing the appropriate web page and entering his/her last name and “Ballot ID No.” an individual shall be able to determine:

RULES & REGULATIONS – PROVISIONAL VOTING

Section 8 (cont.)

- 1) The disposition of his/her ballot, which shall be:
 - a) “Counted - Full Ballot”; or
 - b) “Counted - Federal Offices Only”; or
 - c) “Disqualified – Ballot Not Counted.”
- 2) If the “Full Ballot” was not counted, the reason why the ballot was not counted.

B. Confidentiality Of Provisional Ballots

Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot. Thus, election officials shall, during the casting, transmittal, certification and tabulation of provisional ballots take all necessary precautions to protect the security and confidentiality of each ballot thereby ensuring that information related to said ballot, including its disposition, shall be restricted to the individual having cast said ballot.

Section 9. Exceptions: Individuals Eligible Or Ineligible To Cast A Provisional Ballot

Subject to the provisions of Subsection (A) or (B) of this section, an individual may be declared eligible or ineligible, as the case may be, to cast a provisional ballot and have said ballot counted.

A. Primary Voters - Party Affiliation

An individual who, upon presenting himself/herself to vote in a primary and who is deemed to be an eligible voter, but asserts that he/she is affiliated with a party other than the party which appears on the official list of registered voters for the voting district or community, shall be permitted to cast a provisional ballot. With the following exceptions, said ballot shall be cast, processed, certified and tabulated pursuant to these rules and regulations.

- 1) At the time of presenting a ballot to the voter, the appropriate election official shall present a ballot of the party with whom the voter asserts he/she is affiliated.
- 2) Upon receipt of a provisional ballot having been cast by said individual, the local board shall determine which party the voter is affiliated with and proceed pursuant to **a** or **b** below.
 - a) If it is determined that the individual is eligible to cast a ballot in the party primary in which he/she, in fact, cast his/her ballot the ballot shall be counted as a “Full” or “ Federal Offices Only” ballot, pursuant to the requirements set forth herein.

RULES & REGULATIONS – PROVISIONAL VOTING

Section 9 (cont.)

- b) If it is determined that the individual is ineligible to cast a ballot in the party primary in which he/she cast his/her ballot, the ballot shall be “Disqualified.”

Notwithstanding any other provision of these rules and regulations, a provisional ballot cast by an individual who is deemed to be ineligible to vote in the party primary in which he/she cast a ballot shall be “Disqualified.”

B. Ineligibility To Cast A Provisional Ballot - Incorrect Congressional District

An individual shall be ineligible to cast a provisional ballot in a congressional district other than that in which said individual is eligible to vote. Moreover, except as provided in Section 6(B)(1)(b) of the within rules and regulations, an individual who casts a provisional ballot shall be declared ineligible to vote and have his/her ballot declared “Disqualified” and not counted if said ballot was cast in a congressional district other than the congressional district in which the individual is deemed eligible to vote.

Section 10. Implementation

The Board of Elections shall promulgate the appropriate policies and procedures as well as institute the requisite forms and systems necessary to effectuate the within rules and regulations. Moreover, the Board may, at its sole discretion, adopt and implement any measures it deems appropriate to facilitate the implementation of provisional voting as required by the Help America Vote Act of 2002 and the Rhode Island General Laws including, but not limited to, the addition or deletion of any provisions to these rules and regulations which it deems necessary to the fulfill the requirements of HAVA.

These rules and regulations are adopted this 6th day of July 2004 pursuant to the Administrative Procedures Act (R.I.G.L. 42-35-1, *et seq.*).

By Order of
Rhode Island Board of Elections

Roger N. Begin, Chairman