MIKE McGRATH
Montana Attorney General
CHRIS D. TWEETEN
Chief Civil Counsel
ANTHONY JOHNSTONE
Solicitor
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
Telephone: (406) 444-2026
Fax: (406) 444-3549

COUNSEL FOR DEFENDANT
SECRETARY OF STATE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BUTTE DIVISION

MONTANA DEMOCRATIC PARTY, as an organization and representative of its members, JOSEPH BREITENBACH and CYNTHIA ANNE GREEN, Plaintiffs, v. JACOB EATON, MAX HUNSAKER, MONTANA REPUBLICAN PARTY, and BRAD JOHNSON, in his official capacity as Montana Secretary of State, Defendant.	Cause No. CV-08-141-M-DWM **AFFIDAVIT OF LISA KIMMET**

STATE OF MONTANA)
: ss.
County of Lewis and Clark)

LISA KIMMET, being first duly sworn, deposes and states as follows:

I am an Elections Deputy in the office of the Montana Secretary of State.

I have attached true and correct copies of the following exhibits:

Exhibit 1: Email of September 30, 2008 from Lisa Kimmet to Election Administrators.

Exhibit 2: Email of October 1, 2008 from Lisa Kimmet to Election Administrators with attachment.

Exhibit 3: Email of October 1, 2008 from Vickie Zeier to Lisa Kimmet with attachment.

Exhibit 4: Email of October 1, 2008 from Lisa Kimmet to Leo Gallagher and Dennis Paxinos.

Exhibit 5: Email of October 2, 2008 at 10:20 a.m. from Lisa Kimmet to Vickie Zeier, Marie Hatcher, Mary McMahon, mellemd@co.hill.us, Glenda Hall, Paulette DeHart, and chansen@rooseveltcounty.org, with attachments.

Exhibit 6: Email of October 2, 2008 at 4:07 p.m. from Lisa Kimmet to Vickie Zeier, Marie Hatcher, Mary McMahon, mellemd@co.hill.us, Glenda Hall, Paulette DeHart, and chansen@rooseveltcounty.org.

Exhibit 7: Email of October 3, 2008 from Lisa Kimmet to Vickie Zeier, Mary McMahon, Marie Hatcher, Cheryl Hansen, Paulette DeHart, Diane Mellem, and Glenda Hall. This guidance was prepared in consideration of both state law and the applicable sections of the National Voting Rights Act.

Exhibit 8: Email of October 3, 2008 from Lisa Kimmet to Clerks and Election Administrators with attachment.

Exhibit 9: Email of October 6, 2008 from Lisa Kimmet to Vickie Zeier, Marie Hatcher, mmcmahon@bsb.mt.gov, Glenda Hall, chansen@rooseveltcounty.org, mellemd@co.hill.mt.us, and Paulette DeHart.

Exhibit 10: Email of October 6, 2008 from Lisa Kimmet to Chris Tweeten.

Exhibit 11: Email of October 6, 2008 from Lisa Kimmet to Vickie Zeier, Paulette DeHart, chansen@rooseveltcounty.org, Mary McMahon, Marie Hatcher, Diane Mellem, and Glenda Hall.

Exhibit 12: Email of October 8, 2008 at 7:56 a.m. from Lisa Kimmet to Vickie Zeier, Paulette DeHart, chansen@rooseveltcounty.org, Mary McMahon, Marie Hatcher, Diane Mellem, and Glenda Hall.

Exhibit 13: Email of October 8, 2008 at 1:10 p.m. from Lisa Kimmet to Vickie Zeier, Paulette DeHart, Mary McMahon, Marie Hatcher, Glenda Hall, Diane Mellem, and chansen@rooseveltcounty.org.

Exhibit 14: Statewide Vote Registration List Certification for the General Election Being Held November 4th, 2008. The Certification included all voters challenged by Jacob Eaton and Max Hunsaker.

Further affiant sayeth not.

Lisa Kimmet

Lisa Kimmet

Subscribed and sworn to before me this 10th day of October, 2008.

Katherine E Stelling

Printed Name: Katherine E Stelling

(SEAL)

Residing at Helena, Montana.

My Commission expires: 07-31-11

CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2008, an accurate copy of the foregoing Affidavit of Lisa Kimmet was served on the following persons by the following means:

1, 2, 3 CM/ECF

1 Clerk, U.S. District Court

2 Mr. Peter Michael Meloy
Meloy Law Firm
P.O. Box 1241
Helena, MT 59624-1241

3 Mr. John J. Mudd
Mudd Nelson, P.C.
P.O. Box 8154
Missoula, MT 598074-8154

DATED: October 10, 2008

/s/ Anthony Johnstone
ANTHONY JOHNSTONE
Assistant Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

#1

Kimmet, Lisa

From: Kimmet, Lisa

Sent: Tuesday, September 30, 2008 1:07 PM

To: (anita.malmquist@gallatin.mt.gov); Alan Miller (almiller@mt.gov); Amanda Kelly (akelly@co.judith-basin.mt.us); Barb Cox (bcox@co.yellowstone.mt.gov); Blanche McLure (graclerk@co.granite.mt.us); Bonnie Ramey (bramey@jeffco.mt.gov); Bowen (SOS) Greenwood (BGreenwood@mt.gov); Brenda Wood (fallоncc@midrivers.com); Bret Rutherford (brutherford@co.yellowstone.mt.gov); Cameron Lowe (clowe@meaghercounty.org); Cecila Parker (cparker@co.lewis-clark.mt.us); Charlotte Mills (charlotte.mills@gallatin.mt.gov); Cheryl Hansen (chansen@rooseveltcounty.org); Cindy Maxwell (cmaxwell@co.bighorn.mt.us); Darla Dahl (dahld@co.hill.mt.us); Debbe Merseal (dmerseal@co.missoula.mt.us); Debbie Mart (elections@co.cascade.mt.us); Debbie Scott (dscott@co.beaverhead.mt.us); Debbie Walker (debbiew@3rivers.net); Debbie Wyrick (fcclkrc@midrivers.com); Denise Nelson (clerkrecorder@parkcounty.org); Diane Mellem (mellemd@co.hill.mt.us); Diane Proefrock (gcclerk@co.glacier.mt.us); Duane Winslow (dwinslow@co.yellowstone.mt.gov); Geraldine Custer (clerkandrecorder@rangeweb.net); Geri Livingston (g.livingston@co.custer.mt.us); Glenda Hall (glaciercounty@yahoo.com); Helen Ricci (riccih@co.hill.mt.us); Howell, Timothy; Jan Pankratz (jpankratz@rooseveltcounty.org); Jane Mang (mshlcocr@midrivers.com); Janet Sherer (gccr@midrivers.com); Janice Doggett (jdoggett@mt.gov); Janice Hoppes (clerkrec@3rivers.net); Jeanne Clapp (clappj@dawsoncountymail.com); Jennine Robbins (clerk&recorder@sanderscounty.mt.gov); jirvin (jirvin@co.broadwater.mt.us); Jo Ann Stanton (gccrd@midrivers.com); JoAnn Johnson (joann59442@yahoo.com); Jo-Ann Staudinger (elections@co.carbon.mt.us); Judy Gillespie (treas@co.broadwater.mt.us); June Johnson (jjohnson@co.sheridan.mt.us); Justus Wendland (JWendland@mt.gov); Katherine Jasper (kjasper@co.mineral.mt.us); Kathie Newgard (knewgard@lakemt.gov); Kathy Gustin (kgustin@co.lewis-clark.mt.us); Kelann Mclees (kmclees@co.mineral.mt.us); Kristy Jones (clerkrec@danielsco.mt.gov); Lachenbruch, Jerry; Laurel Hines (clerkrecorder@phillipscounty.mt.gov); Lavonne Schroeder (l.schroeder@co.custer.mt.us); Leigh Riggleman (leigh@libby.org); Leslie Martini (lmartini@jeffco.mt.gov); Lisa Kimmet (lkimmet@mt.gov); Lisa Wadsworth (voter@sanderscounty.mt.gov); Lori Lundstrom (payrollclerk@phillipscounty.mt.gov); Lynne Nyquist (Lnyquist@co.valley.mt.us); Maridel Kassner (clerk@midrivers.com); Marie Hatcher (clerk-recorder@anacondadeerlodge.mt.gov); Marie Wehri (m.wehri@co.custer.mt.us); Marilyn Bracken (mbracken@co.lewis-clark.mt.us); Mary Harwood (tcclerk@3rivers.net); Mary Lu Berry (berryml@midrivers.com); Mary Lynch (mlynch@co.sheridan.mt.us); Mary McMahon (mmcmahon@bsb.mt.gov); Misit Wood (elections@co.fergus.mt.us); Monica Eisenzimer (meisenzimer@flathead.mt.gov); Amende, Karen; Blasing, Daryl; P. Zinda (wibauxco@midrivers.com); Pam Gilman; Pamela Castleberry (cccnrc@midrivers.com); Paula Jaconetty (paula@3rivers.net); Paula Robinson (robinson@flathead.mt.gov); Paulette DeHart (pdehart@co.lewis-clark.mt.us); Pauline Mishler (pmishler@stillwater.mt.gov); Peggy Kaatz (pkaatz@madison.mt.gov); Penni Lewis (plewis@richland.org); Phillips County Deputy Clerk & Recorder; Ralph Peck (rpeck@mt.gov); Rana Wichman (clerkrecorder@co.fergus.mt.us); Rebecca Korell (korellrl@midrivers.com); Regina Plettenberg (rplettenberg@ravallicounty.mt.gov); Rhonda Pimley (clerk@co.liberty.mt.gov); Rina Moore (rmoore@co.cascade.mt.us); Robin Cerny (robinc@libby.org); Ronda Winge (rwinge@parkcounty.org); Ruth Baker (clerkrecorder@rangeweb.net); Sandy Boardman (sboardman@co.blaine.mt.gov); Sandy Tatsuhara (statsuhara@ravallicounty.mt.gov); Sarah Clarke (saraha@3rivers.net); Shannon Stevens (sstevens@mt.gov); Sherry Bjorndal (sgclerk1@cablemt.net); Shirley Kreiman (dawclerk@midrivers.com); Staci Hayes (shayes@co.mineral.mt.us); Stephanie Hess (shess@mt.gov); Susan Armstrong (armstrongs@co.hill.mt.us); Susan Patton; Tammy Lauer (lcclerk@libby.org); Tena Miller (tmiller@ravallicounty.mt.gov); Vicki Zeier (vzeier@co.missoula.mt.us)

Subject: Challenged voters

Dear Election Administrators,

As you may know, Jacob Eaton has filed paperwork with several counties challenging the voter registration

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of certain voters. I am copying below 13-13-301 MCA Challenges and Administrative Rule 44.3.2109 Procedures for Challenges for your review.

Although we do not have all of the specifics on the challenges, what we heard from one county was that there are several different scenarios under which the registrations are being challenged. The Statute and Rule are both specific that resolution of the challenges has to come from the county election official. We would recommend, as we did to the two counties we heard from yesterday, that you contact your county attorney immediately to determine how your county should proceed because timing is an issue.

If you have already consulted with your county attorney or election staff and have come up with a process that you are going to implement, and wouldn't mind sharing that information, it might be helpful to every county that has received challenges.

We are available to assist you with getting this taken care of in an expeditious and uniform manner, and we invite you to call or e-mail us if your county received challenges, to discuss what technical resources this office might be able to offer you to deal with this situation during such a busy and important time in each election office.

Lisa Kimmet, Elections Deputy
Office of Montana Secretary of State
406-444-5376
lkimmet@mt.gov

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

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

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

(b) has voted before in that election;

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

(d) is not registered as required by law;

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

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

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

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

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

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

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

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

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

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

44.3.2109 PROCEDURES FOR CHALLENGES

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

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

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

(b) has voted before in that election;

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

(d) is not registered as required by law;

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

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

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

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

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

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

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

(a) If the challenge was not made in the presence of the elector being challenged, the election administrator or election judge shall notify the challenged elector as soon as possible of who made the challenge and the grounds of the challenge and explain what information the elector may provide to respond to the challenge. The election administrator or, on election

day, the election judge shall also provide to the challenged elector a copy of the challenger's affidavit and any supporting evidence provided. If the challenge is made more than five days before an election, "as soon as possible", as used in this section, means no later than five days after the challenge.

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

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

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

(2)

Kimmet, Lisa

From: Kimmet, Lisa

Sent: Wednesday, October 01, 2008 9:25 AM

To: 'dscott@co.beaverhead.mt.us'; Maxwell, Cyndy; 'sboardman@co.blaine.mt.gov'; Broadwater Co Treas; 'elections@co.carbon.mt.us'; 'cccnrc@midrivers.com'; 'elections@co.cascade.mt.us'; 'joann59442@yahoo.com'; 'm.wehri@co.custer.mt.us'; Jones, Kristy; 'dawclerk@midrivers.com'; Hatcher, Marie; 'falloncc@midrivers.com'; 'clerkrecorder@co.fergus.mt.us'; 'electionweb@flathead.mt.gov'; 'charlotte.mills@gallatin.mt.gov'; 'gccr@midrivers.com'; 'glaciercounty@yahoo.com'; 'berryml@midrivers.com'; 'graclerk@co.granite.mt.us'; 'mellemd@co.hill.mt.us'; 'bramey@jeffco.mt.gov'; Kelly, Amanda; 'knewgard@lakemt.gov'; DeHart, Paulette; Liberty Co Clerk & Recorder; 'lcclerk@libby.org'; Kaatz, Peggy; 'clerk@midrivers.com'; 'clowe@meaghercounty.org'; 'kjasper@co.mineral.mt.us'; Zeier, Vicki; 'mshlcocr@midrivers.com'; 'clerkrecorder@parkcounty.org'; Brindley, Mary; Phillips County Clerk & Recorder; 'clerkrec@3rivers.net'; Amende, Karen; 'dsgmt2001@yahoo.com'; Prairie Co. Clerk & Recorder/SVOR; 'rplettenberg@ravallicounty.mt.gov'; 'plewis@richland.org'; 'chansen@rooseveltcounty.org'; 'gcuster@rosebudcountymt.com'; Robbins, Jennine; Lynch, Mary; 'mmcmahon@bsb.mt.gov'; Mishler, Pauline; 'sgclerk1@cablemt.net'; 'paula@3rivers.net'; 'tcclerk@3rivers.net'; 'clerkrecorder@rangeweb.net'; Nyquist, Lynne; 'wccr@mtintouch.net'; 'wibauxco@midrivers.com'; 'dwinslow@co.yellowstone.mt.gov'

Cc: Doggett, Janice; Miller, Alan; Greenwood, Bowen (SOS)

Subject: Voter Registration Challenges

Attachments: challenge procedure guidance 9.30.08.doc

Dear Election Administrators,

I'm attaching a guide that walks through the statutes and rules regarding the challenges some of you received this week. Most of the information addresses challenges that occur before the close of voter registration, as these recent challenges did.

One suggestion I would make is that as you are sending out notices to the challenged electors that you include a voter registration card.

I hope to be able to provide a sample letter to both the challenger and the challenged voter later in the morning.

I'm happy to hear that most of you have this under control, and that your county attorneys are helping you through the process. Even though I may not tell you this often, I couldn't be more proud to be associated with you all. To pull together and work through a situation like this the way you all have is indicative of why Montana's elections are the fairest, most accurate and most efficiently run.

If your county attorney, or you, have questions, please let me know.

Lisa Kimmet, Elections Deputy
Office of Montana Secretary of State
406-444-5376
lkimmet@mt.gov

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Challenge Statutes and Administrative Rules Review

The purpose of this guide is to review the statutes and rules that may help you to process any challenge to a voter's registration. Although your office is required by 13-13-301(3)(a) to make the final decisions regarding each challenged elector, we hope the statutory and rule review below will be useful.

1. The statute and rule on challenges are both specific that resolution of the challenges has to come from the county election official. This means that your office will need to determine whether the preponderance of evidence standard under 44.3.2109(6), ARM has been met.

   44.3.2109 PROCEDURES FOR CHALLENGES

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

2. As noted in 44.3.2109(6), ARM, any challenge made under this rule shall be decided in favor of the challenged elector, unless it is demonstrated by a preponderance of the evidence that the challenged elector should not be permitted to vote.

3. Please note the difference in 13-13-301(3)(a) and (b) between challenges made **before** the close of regular registration and challenges made **after** the close of regular registration.

4. Please note that under 13-13-301(4)(b), electors should be given the option to fill out and sign a notarized affidavit to refute the challenge and swear that the elector is eligible to vote. Under the subsection of law, they "may" fill out an affidavit. It may be important to be careful to inform the voter of the option to fill out an affidavit, while not leading them to believe that the failure to provide the affidavit will necessarily prove fatal to their ability to vote.

   By definition, an affidavit is a voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths.

   Whatever is submitted by the challenger or the challenged elector, under 44.3.2109(6), you will still need to determine whether the preponderance of evidence standard has been met.

5. Please note 13-13-301(4)(b), MCA: If the challenge was not made in the presence of the elector being challenged, the election administrator or election judge shall notify the challenged elector as soon as possible of who made the challenge and the grounds of the challenge and explain what information the elector may provide to respond to the challenge.

   The election administrator or, on election day, the election judge shall also provide to the challenged elector a copy of the challenger's affidavit and any supporting evidence provided.

   If the challenge is made more than 5 days before an election, "as soon as possible", as used in this subsection (4)(b), means no later than 5 days after the challenge.

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The above statute is clear that you must notify electors within 5 days after the challenge, but does not specify the timeframe within which the challenge must be resolved.

6. In regard to those challenged electors who are on the permanent absentee list or who have requested an absentee ballot, if and when you receive their absentee ballot affirmation, you may wish to take note of the information provided, in particular information about their residence and the signature *(see the affirmation below).* The information provided by the elector in the affirmation may be relevant evidence in your determination of the outcome of the challenge.

I, _____, do hereby affirm that I am a resident of Precinct/Ward/District No. _____and reside at _____, in the town or city of _____, County of _____, State of Montana, and entitled to vote in such precinct in the election.

Date _____ _____
Signature of Elector

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

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

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

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

(b) has voted before in that election;

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

(d) is not registered as required by law;

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

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

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

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

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

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

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

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

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

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

44.3.2109 PROCEDURES FOR CHALLENGES

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

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

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

(b) has voted before in that election;

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

(d) is not registered as required by law;

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT 2
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(3)

Kimmet, Lisa

From: Vickie Zeier [vzeier@co.missoula.mt.us]
Sent: Wednesday, October 01, 2008 9:51 AM
To: Kimmet, Lisa
Cc: Mike Sehestedt
Subject: Fwd: re: Elector Challenges

Attachments: Fwd: re: Elector Challenges

Fwd: re:
lector Challenge

Hi Lisa:

Here is Mikes memo to me. Also here is a copy of a letter I am sending to my out of county and out of state challenged electors.

I will be notifying the in county challenges with a different letter - I hope to have that ready early this afternoon. I will also send the letter I plan on sending to Jacob Eaton regarding Mike's memo.

Feel free to share this. With each letter I am sending copy of Eaton's challenge, statute on residency, statute on late registration and a voter registration card.

Vickie

Vickie M. Zeier
Missoula County Clerk & Recorder/Treasurer vzeier@co.missoula, mt.us
(406) 258-3234

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MISSOULA COUNTY

FRED VAN VALKENBURG
COUNTY ATTORNEY
200 W. BROADWAY
MISSOULA, MONTANA 59802-4292
(406) 523-4779
FAX # (406) 523-2979

DATE: September 30, 2008

MEMORANDUM

TO: Vickie Zeier, Clerk and Recorder/Treasurer

FROM: Michael Sehestedt
Deputy County Attorney

RE: Elector Challenges-Electors Moving Within Missoula County

Issue: Is a registered elector who has moved from one Missoula County address to another Missoula County address without changing their voter registration address subject to challenge as not registered as required by law.

Held: No, an elector who has moved within Missoula County and failed to notify the Election Administrator of a change in address is specifically permitted to vote at the precinct where they are registered by Section 13-2-512 MCA.

Discussion:

Background

Late yesterday (September 29, 2008) the Elections Office received a large number of affidavits challenging registration of Missoula County electors.

The challenges are based on a comparison of the United States Postal Service's National Change of Address Data Base with the challenged electors'

registered address. The allegation is that when an elector no longer resides at the address shown on their voter registration, then the elector no longer meets the requirements of a registered elector under Section 13-2-208 (1) MCA and hence is subject to challenge under Section 13-13-301 (2) (d).
The affidavit further requests cancellation of the elector registrations for failing to meet the qualifications set out in Section 13-1-111 MCA.

The challenges received fall into three categories:

1) Electors for whom the National Change of Address Data Base shows a new address within Missoula County
2) Electors for whom the National Change of Address Data Bank shows a new address outside Missoula County but still within Montana, and
3) Electors for whom the National Change of Address Data Base shows a new address outside Montana.

This memo addresses only those challenges in the first category of electors whose address has changed from one address in Missoula County to another address in Missoula County.

Legal Analysis

While the question of residence is more complicated than merely mailing addresses (see Section 13-1-112 MCA) and requires both physical relocation and intent to remain at the new location for purposes of this memo it will be assumed that the change of address does in fact constitute a change of residence.

In the case of registered electors moving within a County and failing to update their registration address, the legislature has provided clear and unambigous guidance, saying in Section 13-2-512 (1) MCA that:

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

The provisions of section 13-2-512(1) MCA are dispositive of the challenges to those electors who are merely alleged to have moved within Missoula County. The elector must be allowed to vote at the precinct where the elector is registered to vote.

The right to vote at the precinct where the elector is registered is applicable only to the first election, at which the elector offers to vote, after the change of residence within the County. Since there is nothing in the challenge to suggest that the challenged elector has offered to vote at other earlier elections since the change in residence, the challenges fail to state a basis to disqualify the elector.

While the foregoing is dispositive of these challenges to those electors who have moved within Missoula County there are fundamental flaws (in addition to ignoring Section 13-2-511 (1) MCA) in the challenger's reasoning that should be addressed.

Section 13-2-208 (1) MCA is addressed solely to the initial registration of electors. The challenge does not even suggest that the elector never resided at the address given in the initial registration. Rather the challenge is merely that the elector no longer resides at the address given in the registration.

The transfer of registration is governed by Title 13, Chapter 2, Part 5 which, as set out above, permit an elector to vote once, following a change of residence within a County at the precinct where the elector was registered prior to the change of residence within the County.

If the challenged elector in fact resided at the address given in the registration at the time of registration, then there is no violation of Section 13-2-208(1). Since the challenge does not contest residence **at the time of registration** it is insufficient to establish a violation of Section 13-2-208 (1) MCA.

Since nothing in the affidavit establishes that the challenged elector is not registered as required by law, the challenge must be rejected.

While these challenges must be rejected, I would urge you to continue to remind election judges of the requirement that each elector give their current address and require each elector who gives an address different from the address shown in the precinct register fill out a transfer form or new registration before being allowed to vote. (See Section 13-2-512(3) MCA)

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Kimmet, Lisa

From: Kimmet, Lisa
Sent: Wednesday, October 01, 2008 10:20 AM
To: 'Leo Gallagher'; Dennis Paxinos
Cc: Merle Raph (E-mail 2); John Petak (E-mail); Fred Van Valkenburg (E-mail); Dan Schwarz; Duane Winslow; Marty Lambert (E-mail 2); George Corn (E-mail); 'Mike Weber'; Brant Light (E-mail)
Subject: RE: voter registration challenges

Attachments: challenge procedure guidance 9.30.08.doc; Elector Challenges Zeier Memo 093008.doc

challenge Elector
:edure guidanceenges Zeier Mer

Dear Dennis,

Thanks for taking the time to share your concerns and insights about the current voter challenge situation. At this crucial time in the election administration process, we appreciate any suggestions on enhancing the efficiency and uniformity of the collaborative effort between counties and state to produce reliable and error-free elections.

Our office has been on the phone and otherwise corresponding with county election administrators steadily since the first county notified us of receiving the challenge affidavits trying to work through the questions and to walk through the Administrative Rules that outline the steps to take in challenge situations. I am attaching our guide on the challenge rules that was sent to each county.

Because both statute and rule require the county election administrator to gather evidence and make fact-based determinations based on that evidence, we advised that one of the first things they should do is contact their county attorney for assistance with that process. Each election administrator I've talked to has indicated that their county attorney is aware of the challenges and is assisting the election office.

The Missoula County Election Administrator was kind enough to share a memo that her Deputy County Attorney has drafted and I am attaching that memo as well. We will also be forwarding sample letters to the counties that have received challenges, and would be happy to send them to each county if requested, and to continue to keep you informed of what is going on. We want to make sure we're not encouraging your county election administrators to pursue a course you wouldn't agree with.

Thanks again Dennis. After spending over 18 years as an election administrator, I know first-hand how supportive county attorneys are of election administration and I appreciate your efforts in that regard.

Lisa Kimmet, Elections Deputy
Office of Montana Secretary of State
406-444-5376
lkimmet@mt.gov

-----Original Message-----
From: Leo Gallagher [mailto:lgallagher@co.lewis-clark.mt.us]
Sent: Tuesday, September 30, 2008 4:03 PM
To: Dennis Paxinos; Kimmet, Lisa
Cc: Merle Raph (E-mail 2); John Petak (E-mail); Fred Van Valkenburg (E-mail); Dan Schwarz; Duane Winslow; Marty Lambert (E-mail 2); George Corn (E-mail); 'Mike Weber'; Brant Light (E-mail)
Subject: Re: voter registration challenges

Dennis -

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Have you passed on to the press your very cogent & timely thoughts about this issue?

>>> "Dennis Paxinos" <DPaxinos@co.yellowstone.mt.gov> 9/30/2008 3:23 PM
>>> >>>
Dear Ms. Kimmet:

I received a copy of an e-mail you apparently sent to all the county election administrators asking each to contact their respective county attorney to see how to respond voter registration challenges. I could be wrong but I have always thought that the Sec of State was the state's office holder specifically put in charge of elections. It seems to me, that the Sec of State would want to set forth a uniform, consistent response for the respective county election administrators to use if the question of voter challenges arises. Your current method could create state-wide confusion b/c you might get 55 different ideas or methods made by county attorneys whose expertise is certainly not in administering elections. As I said, I believe that is the job description and expertise of the Sec of State.

Dennis Paxinos
Yellowstone Co. Atty

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Kimmet, Lisa

From: Kimmet, Lisa

Sent: Thursday, October 02, 2008 10:20 AM

To: Zeier, Vicki; Hatcher, Marie; 'McMahon, Mary'; 'mellemd@co.hill.mt.us'; Hall, Glenda; DeHart, Paulette; 'chansen@rooseveltcounty.org'

Cc: Doggett, Janice; Johnstone, Anthony

Attachments: draft challenge letter 9.30.08.doc; Missoula Co - in county draft letter reviewed.doc; draft to jacob eaton reviewed.doc

Attached are draft sample letters that Missoula County has drafted to send to challenged voters, and to the challenger. Vickie has graciously offered to share these with any other county that might want to modify them for their own use.

Please let me know if you have any questions, or need further assistance.

Lisa Kimmet, Elections Deputy
Office of Montana Secretary of State
406-444-5376
lkimmet@mt.gov

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October 2, 2008

Voter Name
Address
City State Zip

Re: Voter Registration Challenge #

Dear Voter's Name:

On September 29, 2008, the xxxxx County Election Office received an Affidavit of Challenger from Jacob Eaton (see attached). Mr. Eaton is formally challenging your voter registration as provided in M.C.A. 13-13-301 (2)(d).

XXXX County has you registered to vote at xxxxxxxxxxx according to Mr. Eaton the United States Postal Service's National Change of Address reveals you currently live at xxxxxxxx If you are no longer a resident of xxxxx County, please indicate that on the challenge form so that we can cancel your voter registration in xxxxxx County. If your new address is a temporary residence pursuant to Montana Law, please indicate that on the challenge form. (See attached Montana statutes regarding residency requirements).

Pursuant to Montana Law, please complete the attached Affidavit of Challenger. After you have completed the challenger affidavit, please have it notarized. Please return your affidavit as soon as possible so that I can resolve this challenge before the November 4, 2008 election.

Any challenge shall be decided in favor of the challenged elector, unless it is demonstrated by a preponderance of the evidence that the challenged elector should not be permitted to vote. If I am unable to resolve the challenge in your favor, you will have to cast a provisional ballot. In order for your ballot to be counted, we will need to resolve your residency.

If you have any questions, please do not hesitate to contact me.

Sincerely,

MISSOULA COUNTY

ELECTIONS OFFICE
200 WEST BROADWAY
MISSOULA MT 59802-4292

PHONE: (406) 523-4751

October 2, 2008

Voter Name
Address
City State Zip

Re: Challenge Letter - Voter ID #

Dear Voter Name:

On Monday, September 29, 2008, I received the attached Affidavit of Challenger from Jacob Eaton. County Attorney XXXXXhas advised me to reject certain challenges such as the one filed against you because they fail to meet the qualifications set out in Section 13-1-111 MCA. (See attached memo).

Our records indicate you reside at:

XXXXXXXX

If this information is incorrect you have two options to correct your address for the November 4, 2008 Election:

- Montana Law allows an elector who has changed residence to a different precinct within the same county and has failed to notify the election administrator of the change, to vote in the precinct where the elector is registered at the first election at which the elector offers to vote after the change. If and when you go to the polls to vote, you will be asked to complete a new voter registration form and then you will be given your ballot to vote. (If you wish to complete the voter registration card in advance – the card is attached).
- If you wish to vote absentee . . .
- Or, you can come in to the Elections Office between October 7th and November 4th and re-register using the late registration provisions as set out in MCA 13-2-304. If you wish to complete the voter registration card in advance – the card is attached. You will receive a ballot for the new precinct where you reside.

If you have any questions, please do not hesitate to contact us.

Sincerely,

MISSOULA COUNTY

ELECTIONS OFFICE
200 WEST BROADWAY
MISSOULA MT 59802-4292

PHONE: (406) 523-4751

October 2, 2008

Jacob Eaton

Helena, MT 59

Re: Elector Challenges

Dear Mr. Eaton;

This is to acknowledge receipt of your challenges to XXXXX County electors.

A number of the challenges appear to have been resolved by changes entered in the Montana Votes master registration list used by each county election administrator and maintained by the Secretary of State. It is from this master registration list that the final XXXXX County precinct lists will be prepared (see section 13-2-116 MCA). I will provide you with a list of challenges resolved in this manner.

Based on Section 13-2-512(1) MCA and the attached memo from my County Attorney's Office, I am rejecting as insufficient all challenges that are based on an alleged change of residence within XXXXX County. I do however intend to mail each of the applicable challenged electors a letter advising them of the challenge and telling them that even though they may vote at their original precinct in this election, they must update their registration before the next election after the November election.

For any remaining electors, I am mailing to each elector you have challenged as residing outside XXXXXX County, whose registration has not been corrected in Montana Votes, the attached cover letter together with a copy of your challenge, a blank affidavit form for the voter's response and a copy of Section 13-1-112 and 13-1-113 MCA which sets out the laws for determining residence. I will resolve these challenges as the responses come into my office.

As the challenges are resolved you will be advised.

Sincerely,

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Kimmet, Lisa

From: Kimmet, Lisa
Sent: Thursday, October 02, 2008 4:07 PM
To: Zeier, Vicki; Hatcher, Marie; 'McMahon, Mary'; 'mellemd@co.hill.mt.us'; Hall, Glenda; DeHart, Paulette; 'chansen@rooseveltcounty.org'
Cc: Doggett, Janice; Miller, Alan
Subject: Important Information - challenges
Importance: High

A couple of important things in regard to the challenges:

In an effort to ensure uniformity in the challenge process, we are listing what we understand the 7 counties that received challenges are doing:

1) Sending letters/notices to each challenged elector notifying them of the challenge with a copy of the challenge documents for each elector
2) Addressing the challenges of electors who have moved within the county in light of MCA 13-2-512 (1)
3) Sending the letters/notices to the address provided on the Affidavit of Challenger

Also, when notifying the challenged elector, please review your letter to make sure that it does not have an indication that would discourage the elector from updating their information or from voting. We would be happy to review the letter you and your county attorney have drafted if you would like us to.

This, of course, is not an exhaustive list, but outlines several of the most pertinent process issues. If you are doing something substantially different, please let this office know as soon as possible.

Also, we are working on some information to help you with the process as we move into the absentee voting period and at the polls in regard to the challenged voters. I know how busy you are, and do not want to bombard you with information, but it is important that the challenged voters be treated the same from county to county.

Lisa Kimmet, Elections Deputy
Office of Montana Secretary of State
406-444-5376
lkimmet@mt.gov

From: Kimmet, Lisa
Sent: Thursday, October 02, 2008 10:20 AM
To: Zeier, Vicki; Hatcher, Marie; 'McMahon, Mary'; 'mellemd@co.hill.mt.us'; Hall, Glenda; DeHart, Paulette; 'chansen@rooseveltcounty.org'
Cc: Doggett, Janice; Johnstone, Anthony
Subject:

Attached are draft sample letters that Missoula County has drafted to send to challenged voters, and to the challenger. Vickie has graciously offered to share these with any other county that might want to modify them for their own use.

Please let me know if you have any questions, or need further assistance.

Lisa Kimmet, Elections Deputy
Office of Montana Secretary of State
406-444-5376
lkimmet@mt.gov

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Kimmet, Lisa

From: Kimmet, Lisa

Sent: Friday, October 03, 2008 12:51 PM

To: Zeier, Vicki; 'McMahon, Mary'; 'Marie Hatcher'; 'Cheryl Hansen'; DeHart, Paulette; 'Diane Mellem'; Glacier Co Clerk & Recorder; Hall, Glenda

Cc: Doggett, Janice

Subject: challenges

We are in the process of finishing up the uniform guidance on handling challenges. One thing that has come up in doing our research is whether or not a challenged voter has to take some kind of action before the challenge can be resolved. Our guidance suggests that if the voter does not take any action such as returning the affidavit, that inaction alone will not cause the challenge to be decided in favor of the challenger. There must be a "preponderance of evidence" or the challenge must be decided in favor of the challenged elector (44.3.2109 ARM).

For this reason, we are asking that the language in the notice you are sending to each challenged elector not cause the challenged elector to think that inaction on their part will cause them to not be able to vote, or to have to vote provisionally.

Again, my personal thanks to each one of you for your patience, for the professional and competent way this situation has been dealt with by your offices, and for your cooperation in helping to facilitate a uniform and consistent response to these challenges.

One other thing: I would like to send the information we are working on and will send out today, to your county attorney as well. You can either forward it to the appropriate person in that office, of if you would like me to send it, please send me the e-mail address for that person - THANKS.

Lisa Kimmet, Elections Deputy
Office of Montana Secretary of State
406-444-5376
lkimmet@mt.gov

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Kimmet, Lisa

From: Kimmet, Lisa

Sent: Friday, October 03, 2008 4:12 PM

To: 'dscott@co.beaverhead.mt.us'; Maxwell, Cyndy; 'sboardman@co.blaine.mt.gov'; Broadwater Co Treas; 'elections@co.carbon.mt.us'; 'cccnrc@midrivers.com'; 'elections@co.cascade.mt.us'; 'joann59442@yahoo.com'; 'm.wehri@co.custer.mt.us'; Jones, Kristy; 'dawclerk@midrivers.com'; Hatcher, Marie; 'fallonco@midrivers.com'; 'clerkrecorder@co.fergus.mt.us'; 'electionweb@flathead.mt.gov'; 'charlotte.mills@gallatin.mt.gov'; 'gccr@midrivers.com'; 'glaciercounty@yahoo.com'; 'berryml@midrivers.com'; 'graclerk@co.granite.mt.us'; 'mellemd@co.hill.mt.us'; 'bramey@jeffco.mt.gov'; Kelly, Amanda; 'knewgard@lakemt.gov'; DeHart, Paulette; Liberty Co Clerk & Recorder; 'lcclerk@libby.org'; Kaatz, Peggy; 'clerk@midrivers.com'; 'clowe@meaghercounty.org'; 'kjasper@co.mineral.mt.us'; Zeier, Vicki; 'mshlcocr@midrivers.com'; 'clerkrecorder@parkcounty.org'; Brindley, Mary; Phillips County Clerk & Recorder; 'clerkrec@3rivers.net'; Amende, Karen; 'dsgmt2001@yahoo.com'; Prairie Co. Clerk & Recorder/SVOR; 'rplettenberg@ravallicounty.mt.gov'; 'plewis@richland.org'; 'chansen@rooseveltcounty.org'; 'gcuster@rosebudcountymt.com'; Robbins, Jennine; Lynch, Mary; 'mmcmahon@bsb.mt.gov'; Mishler, Pauline; 'sgclerk1@cablemt.net'; 'paula@3rivers.net'; 'tcclerk@3rivers.net'; 'clerkrecorder@rangeweb.net'; Nyquist, Lynne; 'wccr@mtintouch.net'; 'wibauxco@midrivers.com'; 'dwinslow@co.yellowstone.mt.gov'

Cc: Doggett, Janice; Johnstone, Anthony; Greenwood, Bowen (SOS); Miller, Alan

Subject: challenged voters guidance

Attachments: challenge procedure resolution guidance 10 3 08.doc

Dear Clerks and Election Administrators,

Attached please find "Challenge Procedure Resolution Guidance" prepared by this office. Please review the document carefully, and provide a copy to your county attorney for his review. This guidance should help you to resolve challenges in a uniform manner and in a manner consistent with Montana Law and Administrative Rule.

If you have any questions, or would like further information, please let me know. Also, as mentioned before, if you would like this office to forward a copy to your county attorney, please send the e-mail address for that office.

(Sent via e-mail and fax)

Thanks and have a great weekend everybody.

Lisa Kimmet, Elections Deputy
Office of Montana Secretary of State
406-444-5376
lkimmet@mt.gov

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Kimmet, Lisa

From: Kimmet, Lisa

Sent: Friday, October 03, 2008 3:40 PM

To: Kimmet, Lisa; Zeier, Vicki; 'McMahon, Mary'; 'Marie Hatcher'; 'Cheryl Hansen'; DeHart, Paulette; 'Diane Mellem'; Glacier Co Clerk & Recorder; Hall, Glenda

Subject: When are letters going out?

Could each of you let me know when you are planning to send your notices out? I know the challenges arrived on different days at different counties so everyone does not have to send out at the same time. We have been fielding a lot of calls about the challenges, and I suspect that once the notices go out to electors we will be getting calls from (angry....confused.....indignant....) voters, as will your offices.

Lisa Kimmet, Elections Deputy
Office of Montana Secretary of State
406-444-5376
lkimmet@mt.gov

From: Kimmet, Lisa
Sent: Friday, October 03, 2008 12:51 PM
To: Zeier, Vicki; 'McMahon, Mary'; 'Marie Hatcher'; 'Cheryl Hansen'; DeHart, Paulette; 'Diane Mellem'; Glacier Co Clerk & Recorder; Hall, Glenda
Cc: Doggett, Janice
Subject: challenges

We are in the process of finishing up the uniform guidance on handling challenges. One thing that has come up in doing our research is whether or not a challenged voter has to take some kind of action before the challenge can be resolved. Our guidance suggests that if the voter does not take any action such as returning the affidavit, that inaction alone will not cause the challenge to be decided in favor of the challenger. There must be a "preponderance of evidence" or the challenge must be decided in favor of the challenged elector (44.3.2109 ARM).

For this reason, we are asking that the language in the notice you are sending to each challenged elector not cause the challenged elector to think that inaction on their part will cause them to not be able to vote, or to have to vote provisionally.

Again, my personal thanks to each one of you for your patience, for the professional and competent way this situation has been dealt with by your offices, and for your cooperation in helping to facilitate a uniform and consistent response to these challenges.

One other thing: I would like to send the information we are working on and will send out today, to your county attorney as well. You can either forward it to the appropriate person in that office, of if you would like me to send it, please send me the e-mail address for that person - THANKS.

Lisa Kimmet, Elections Deputy
Office of Montana Secretary of State
406-444-5376
lkimmet@mt.gov

Challenge Resolution
Statutes and Administrative Rules Review

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

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

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

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

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

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

Resolving Various Categories of Challenged Electors

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

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

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

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

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

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

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

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

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

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

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

Absentee Voting

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

Application for Absentee Ballot Residency Section

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

Absentee Affirmation Form Residency Section

PRESCRIBED ABSENTEE AFFIRMATION FORM FOR LEGALLY REGISTERED ELECTORS

I, _____, do hereby affirm that I am a resident of Precinct/Ward/District No. _____ and reside at _____, in the town or city of _____, County of _____, State of Montana, and entitled to vote in such precinct in the election.

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

Polling Place Voting

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

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

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

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

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

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

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

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

Main Applicable Laws and Statutes

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

> **13-13-301. Challenges.** (1) An elector's right to vote may be challenged at any time by any registered elector by the challenger filling out and signing an affidavit stating the grounds of the challenge and providing any evidence supporting the challenge to the election administrator or, on election day, to an election judge.
>
> (2) A challenge may be made on the grounds that the elector:
>
> (a) is of unsound mind, as determined by a court;
>
> (b) has voted before in that election;
>
> (c) has been convicted of a felony and is serving a sentence in a penal institution;
>
> (d) is not registered as required by law;
>
> (e) is not 18 years of age or older;
>
> (f) has not been, for at least 30 days, a resident of the county in which the elector is offering to vote; or
>
> (g) is a provisionally registered elector whose status has not been changed to a legally registered voter.
>
> (3) When a challenge has been made under this section:
>
> (a) prior to the close of registration under 13-2-301, the election administrator shall question the challenger and the challenged elector and may question other persons to determine whether the challenge is sufficient or insufficient to cancel the elector's registration under 13-2-402; or
>
> (b) after the close of registration or on election day, the election administrator or, on election day, the election judge shall allow the challenged elector to cast a provisional paper ballot, which must be handled as provided in 13-15-107.
>
> (4) (a) In response to a challenge, the challenged elector may fill out and sign an affidavit to refute the challenge and swear that the elector is eligible to vote.
>
> (b) If the challenge was not made in the presence of the elector being challenged, the election administrator or election judge shall notify the challenged elector as soon as possible of who made the challenge and the grounds of the challenge and explain what information the elector may provide to respond to the challenge. The election administrator or, on election day, the election judge shall also provide to the challenged elector a copy of the challenger's affidavit and any supporting evidence provided. If the challenge is made more than 5 days before an election, "as soon as possible", as used in this subsection (4)(b), means no later than 5 days after the challenge.

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

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

44.3.2109 PROCEDURES FOR CHALLENGES

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

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

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

(b) has voted before in that election;

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

(d) is not registered as required by law;

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

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

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

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

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

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

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

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

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

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

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

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Kimmet, Lisa

From: Kimmet, Lisa

Sent: Monday, October 06, 2008 8:29 AM

To: Zeier, Vicki; Hatcher, Marie; 'mmcmahon@bsb.mt.gov'; Hall, Glenda; 'chansen@rooseveltcounty.org'; 'mellemd@co.hill.mt.us'; DeHart, Paulette

Cc: Johnstone, Anthony; Tweeten, Chris; Doggett, Janice

Subject: Important - do not send out letters

Importance: High

We just received word that the Montana Democratic Party is going to court this morning to try to get an injunction to stop the voter challenge letters from being mailed out. Those that have not mailed yet, PLEASE HOLD OFF UNTIL YOU HEAR BACK FROM ME!

Thanks

Lisa Kimmet
Office of Montana Secretary of State Brad Johnson

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10

Kimmet, Lisa

From: Kimmet, Lisa
Sent: Monday, October 06, 2008 5:42 PM
To: Tweeten, Chris
Subject: RE: Re: Letters to Challenged Voters

Will do, we agree.

-----Original Message-----
From: Tweeten, Chris
Sent: Monday, October 06, 2008 5:41 PM
To: Kimmet, Lisa
Subject: RE: Re: Letters to Challenged Voters

Lisa and Janice:

In light of what Eaton has told Paul Stahl, do you think it would be appropriate to just advise all the clerks to hold off from mailing until we hear from the judge, so everybody can go home for dinner?

Chris D. Tweeten
Chief Civil Counsel
Office of the Montana Attorney General
P.O. Box 201401
Helena, MT 59620-1401
Tel.: 406-444-1380

-----Original Message-----
From: Kimmet, Lisa
Sent: Monday, October 06, 2008 5:35 PM
To: Tweeten, Chris
Subject: FW: Re: Letters to Challenged Voters

Vickie Zeier from Missoula just forwarded the message below to me.

-----Original Message-----
From: Vickie Zeier [mailto:vzeier@co.missoula.mt.us]
Sent: Monday, October 06, 2008 5:23 PM
To: Kimmet, Lisa
Subject: Fwd: Re: Letters to Challenged Voters

FYI - Vickie

Vickie M. Zeier
Missoula County Clerk & Recorder/Treasurer vzeier@co.missoula, mt.us
(406) 258-3234

>>> "Leo Gallagher" <lgallagher@co.lewis-clark.mt.us> 10/6/2008 4:44 PM
>>> >>>
Eaton just called Stahl and requested that the our county NOT send the letters and that he wouldn't sue us if we didn't. We're not sending the letters.

>>> "Fred VanValkenburg" <fvanvalk@co.missoula.mt.us> 10/6/2008 4:36 PM
>>> >>>
Leo,

This is to let you know that Missoula County is taking an opposite view to that which you have apparently advised the Lewis and Clark County Clerk & Recorder to take regarding letters being sent to voters against whom a challenge has been filed. We have done so on the basis that Lisa Kimmet of the Secretary of the State's office has advised all affected local election officials to not mail anything at this time (see below) and that a lawsuit

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has been filed this morning in federal court by the Montana Democratic Party alleging among other things that the national voting rights act preempts state action on this matter.

Fred

****

From: Kimmet, Lisa
Sent: Monday, October 06, 2008 8:29 AM
To: Zeier, Vicki; Hatcher, Marie; 'mmcmahon@bsb.mt.gov'; Hall, Glenda; 'chansen@rooseveltcounty.org'; 'mellemd@co.hill.mt.us'; DeHart, Paulette
Cc: Johnstone, Anthony; Tweeten, Chris; Doggett, Janice
Subject: Important - do not send out letters
Importance: High

We just received word that the Montana Democratic Party is going to court this morning to try to get an injunction to stop the voter challenge letters from being mailed out. Those that have not mailed yet, PLEASE HOLD OFF UNTIL YOU HEAR BACK FROM ME!

Thanks

Lisa Kimmet
Office of Montana Secretary of State Brad Johnson

>>> Vickie Zeier 10/6/2008 04:15 PM >>>
FYI - Vickie

Vickie M. Zeier
Missoula County Clerk & Recorder/Treasurer vzeier@co.missoula, mt.us
(406) 258-3234

>>> "Paulette Dehart" <PDEHART@co.lewis-clark.mt.us> 10/6/2008 4:04 PM
>>> >>>
Vickie:
My county attorney is telling me I have to mail them so the post mark is the fifth day. I am taking them to the mail room now.
Paulette

11

Kimmet, Lisa

From: Kimmet, Lisa
Sent: Monday, October 06, 2008 5:56 PM
To: Zeier, Vicki; DeHart, Paulette; 'chansen@rooseveltcounty.org'; 'McMahon, Mary'; Hatcher, Marie; 'Diane Mellem'; Hall, Glenda
Cc: Doggett, Janice; Tweeten, Chris
Subject: RE: Challenge notifications
Importance: High

Although we have heard nothing from the Court on the challenges, we have been advised that Jake Eaton has notified Lewis and Clark County that the Republican Party will not sue over not meeting the 5-day notification requirement. In light of that, we should await a possible order from the Court before sending out the notices, to ensure that the voters don't get confused.

Let's all go home for the night.

Thanks for your patience and understanding.

From: Kimmet, Lisa
Sent: Monday, October 06, 2008 4:42 PM
To: Zeier, Vicki; DeHart, Paulette; 'chansen@rooseveltcounty.org'; 'McMahon, Mary'; Hatcher, Marie; 'Diane Mellem'; Hall, Glenda
Subject: Challenge notifications

Per our most recent conversation with the AG's office just now, for those counties that are up against the 5-day notification deadline, if you can hold off until 5:00, we hope to hear something by then.

Lisa Kimmet
Deputy for Elections
Office of Montana Secretary of State Brad Johnson
406-444-5376

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Kimmet, Lisa

From: Kimmet, Lisa

Sent: Wednesday, October 08, 2008 7:56 AM

To: Zeier, Vicki; DeHart, Paulette; 'chansen@rooseveltcounty.org'; 'McMahon, Mary'; Hatcher, Marie; 'Diane Mellem'; Hall, Glenda

Cc: Doggett, Janice

Subject: Challenges withdrawn

Dear Election Administrators,

This office received a copy of a letter that Jacob Eaton sent to each of you yesterday notifying you that he is formally withdrawing all of the elector challenges filed.

I will touch base with those counties that have mailed letters out to the challenged voters, so that we can plan appropriate notification to those voters.

Thank you all for your hard work, professionalism, and patience throughout this process. Each one of you is a shining example of what Montana Election Administration is all about.

Lisa Kimmet
Deputy for Elections
Office of Montana Secretary of State Brad Johnson
406-444-5376

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Kimmet, Lisa

From: Kimmet, Lisa

Sent: Wednesday, October 08, 2008 1:10 PM

To: Zeier, Vicki; DeHart, Paulette; 'McMahon, Mary'; Hatcher, Marie; Hall, Glenda; 'Diane Mellem'; 'chansen@rooseveltcounty.org'

Cc: Doggett, Janice

Subject: challenges

If you sent notices out to the challenged voters, following is our advice for notification to them that the challenges have been withdrawn:

This notification should be on LARGE card-stock mailing in red letters to ensure that the voter gets the message and does not have to open a mailing in order to read it:

IMPORTANT NOTICE
YOU **HAVE** THE RIGHT TO VOTE

Please DISREGARD a previous communication from this office regarding your voter registration challenge. ALL CHALLENGES HAVE BEEN WITHDRAWN.

Please VOTE early by absentee ballot, or at the polls on November 4, 2008!

Lisa Kimmet
Deputy for Elections
Office of Montana Secretary of State Brad Johnson
406-444-5376

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IN THE NAME AND BY THE AUTHORITY OF THE

STATE OF MONTANA

STATEWIDE VOTER REGISTRATION LIST CERTIFICATION

for the General Election being held November 4th, 2008

I, **BRAD JOHNSON**, Secretary of State of the State of Montana, do hereby certify the official statewide voter registration list as of the close of regular voter registration for the General Election being held Tuesday, November 4th, 2008; pursuant to § 13-2-115, Montana Code Annotated.

In Testimony Whereof, I have hereunto subscribed my name and caused the Great Seal of the State of Montana to be affixed this 10th day of October, 2008.

BRAD JOHNSON
Secretary of State

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