

**DEPARTMENT OF THE SECRETARY OF STATE
BUREAU OF CORPORATIONS, ELECTIONS AND COMMISSIONS
DIVISION OF ELECTIONS AND COMMISSIONS**

Chapter 550: RULES FOR DETERMINING VOTER INTENT

SUMMARY: This rule sets forth the criteria to be applied by election officials in determining voter intent when counting ballots at state and local elections and election recounts conducted pursuant to Title 21-A. It is based on relevant case law and provisions of Title 21-A of the Maine Revised Statutes.

SECTION 1. DEFINITIONS

1. **Voting indicator.** “Voting indicator” means the space provided next to the name of each candidate and ballot question choice, to be used for marking a vote in accordance with a particular type of ballot.

NOTE: On optical scan ballots currently in use, the write-in indicator is a broken arrow or an oval. On hand-counted paper ballots, it is a square.

2. **Write-in candidate.** A “write-in candidate” is a person whose name does not appear on the printed ballot under the office designation to which a voter may wish to elect the candidate.

SECTION 2. DEFECTIVE AND VOID BALLOTS

1. **Defective ballots.** A ballot that is not designed and printed in accordance with the requirements of Title 21-A is defective and should be handled in accordance with Title 21-A section 696, subsection 3. A defective ballot that has been cast by a voter may be counted only in accordance with the following rules:
 - A. The ballot may not be counted if it is photocopy of a ballot, produced on a copy machine, unless it was produced by the election officials under the express authorization of the Secretary of State’s office in the event of an emergency pursuant to 21-A M.R.S.A. § 604.
 - B. The ballot may not be counted if it is a sample ballot, unless the use of a sample ballot was expressly authorized by the Secretary of State’s office in the event of an emergency pursuant to 21-A M.R.S.A. § 604.
 - C. If the ballot is not completely printed, or if the printing is illegible, only those votes in candidate races and ballot questions for which the printing is legible and complete may be counted.

- D. If the ballot was prepared for a different municipality or voting district, outside the voting jurisdiction where the ballot was cast, then only the votes in candidate races and ballot questions applicable to the jurisdiction where the ballot was cast may be counted.
 - E. If the ballot has been torn or crumpled, then it must be hand counted, and the votes counted only in those candidate races and ballot questions for which the ballot remains legible and voter intent may be determined in accordance with section 4 of these rules.
2. **Void ballots.** A ballot may not be counted if it contains a mark of a type or in a place that is not specifically permitted, and which indicates an apparent intent of the voter to distinguish the ballot from other ballots for a fraudulent or dishonest purpose. This is considered to be a “distinguishing mark,” as defined in Title 21-A section 1, subsection 13.
- A. Any of the following markings will be considered to be a distinguishing mark that requires the ballot to be rejected as void:
 - (1) The name of an individual who is determined by election officials to be a voter in the voting jurisdiction, except where the name has been written in the space for a write-in candidate;
 - (2) A number, other than a number placed by an election official to indicate a challenged ballot pursuant to 21-A M.R.S.A. § 673(3), where it appears that the voter’s intent was to enable a person to determine who cast the ballot;
 - (3) A unique symbol, where it appears that the voter’s intent was to enable a person to determine who cast the ballot; or
 - (4) A comment or statement indicating the identity of the voter, either individually or as a member of an identified group, where it appears that the voter’s intent was to enable a person to determine who cast the ballot.
 - B. The following types of markings are not considered to be a distinguishing mark unless made in such a manner, or of such a character, as to manifest an intent to make the ballot distinguishable from other ballots for a fraudulent or dishonest purpose:
 - (1) a stray mark on the ballot;
 - (2) initials placed next to an erasure or cross-out of a voting indicator, which appear to have been written there by the voter merely to indicate that he or she made the change;

- (3) a mark made on or in the voting indicator or near the candidate's name, or in or near the space for a write-in candidate, in a manner that differs from the instructions at the top of the ballot; or
- (4) the name of a fictitious person, a deceased person, or a person from outside the State who could not be a candidate for office, written in the space for a write-in candidate.

SECTION 3. INVALID VOTES

1. **Write-in candidates.** A vote for a write-in candidate is deemed invalid by statute and may not be counted if:
 - A. the voter writes in the name of a person who has not filed a Declaration of Write-in Candidacy as provided by 21-A M.R.S. § 722-A;
 - B. the voter writes in the name of a declared write-in candidate in the blank space provided for a write-in but does not mark the voting indicator; or
 - C. the voter pastes in a printed sticker for a declared write-in candidate, whether or not the voting indicator is marked.
2. **Overvotes.** If the voter indicates a choice for more candidates for an office than there are vacancies to be filled, or indicates more than one choice for a ballot question, it is an invalid overvote and may not be counted. Whether the voter has indicated a choice shall be determined in accordance with section 4 of this chapter. If the voter has marked the voting indicator for a write-in candidate but leaves blank the space for the write-in candidate's name and also indicates a choice for a named candidate for the same office, that does not constitute an overvote and the vote shall be counted for the named candidate.

SECTION 4. DETERMINING VOTER CHOICE

Maine statute provides, in Title 21-A § 696(4), that if a voter marks the ballot in a manner that differs from the instructions at the top of the ballot but in such a manner that it is possible to determine the voter's choice, then the vote for the office or question concerned must be counted. If the voter marks the ballot in such a manner that it is impossible to determine the voter's choice, then the vote for that office or question may not be counted. (Title 21-A §696(2)(B)). If a voter marks the ballot in a manner that differs from the instructions at the top of the ballot, election officials shall attempt to determine the voter's choice in accordance with the following rules.

1. **Failure to fully mark voting indicator.** Where the voter has made some mark in the voting indicator, but has not fully completed it, the voter's intent must be determined as follows:

A. The vote must be counted if

- (1) the majority of the space in the voting indicator is filled in;
- (2) an “x,” check mark, plus sign (“+”), asterisk, or star has been placed within the voting indicator for a particular candidate or ballot question choice and the voter has marked the voting indicator in the same manner for at least some other offices or ballot questions appearing on the ballot; or
- (3) a horizontal, vertical or diagonal line has been placed within the voting indicator for a particular candidate or ballot question choice, and either the voter has marked the voting indicator in the same manner for at least some other offices or ballot questions on the same ballot, or it otherwise appears from the nature of the mark in the voting indicator space that the voter intentionally moved the pen or pencil across the paper from one point to another.

B. The vote must not be counted if:

- (1) there is only a small dot or a light pen or pencil mark inside the voting indicator that could have been made by merely resting the pen or pencil on the ballot and does not suggest that the voter intentionally moved the pen or pencil across the paper from one point to another; or
- (2) the mark in the voting indicator is not definite and is inconsistent with the manner in which the voter has marked the rest of the ballot.

2. Marks made outside the voting indicator. Where the voter has not marked the voting indicator but has made other marks on the ballot, the voter’s intent must be determined as follows:

A. The vote must be counted if:

- (1) there is an “x,” check mark, plus sign, asterisk, star or definite horizontal, vertical or diagonal line, a portion of which is contained in the voting indicator, provided it does not extend into the voting indicator for an opposing candidate or ballot question choice;
- (2) the mark made by the voter is near, although not within, the voting indicator and is closer to the indicator or name of that candidate or ballot question choice than to any opposing candidate or ballot question choice;

- (3) the voting indicator is circled or underlined, or clearly marked in some other way that indicates the voter's intent to make a choice;
- (4) the candidate's name or the ballot question choice is circled or underlined;
- (5) the candidate's party affiliation or party designation is circled or underlined;
- (6) an arrow or line connects the voting indicator to the candidate's name or ballot question choice;
- (7) a check mark appears next to the candidate's name or ballot question choice;
- (8) the voter has written words of affirmative choice (such as "vote for Smith" or "vote yes") in the area for the specific contest; or
- (9) the voter has crossed out the name of all but one candidate for the same office, provided the voter has consistently marked other races on the ballot in this manner.

B. The vote must not be counted if:

- (1) the mark made is equidistant between the voting indicators or names of two opposing candidates or ballot question choices; or
- (2) the mark appears to be a stray mark, not made by the voter with the intent to indicate a definite choice.

3. Cross-outs or erasures. Where the voter has filled in more than one indicator for an office or ballot question choice, but the marking in one of the indicators is crossed out or erased, the voter's intent must be determined as follows:

- A. If one of the voting indicators for two candidates or ballot question choices is crossed out or scribbled over, the vote must be counted for the other candidate or ballot question choice for which the voting indicator is filled in and is not crossed out or scribbled over.
- B. If it is apparent that the voter erased the markings on one indicator, the vote must be counted for the other candidate or ballot question choice for which the indicator is clearly filled in.

- C. If one indicator is merely filled in more lightly than the other, such that it is impossible to tell whether the voter intended to eliminate one choice, then it must be treated as an invalid overvote and may not be counted, in accordance with § 3, sub-§ 2 of this rule.
4. **Write-in votes.** Where the voting indicator next to the space for a write-in candidate has been filled in, or is otherwise marked in a manner that makes it possible to determine the voter's choice in accordance with this chapter, and the name of a declared write-in candidate has been placed in that space,
- A. The vote must be counted even if:
 - (1) the candidate's name is abbreviated, misspelled or incomplete, provided it is still possible to identify the candidate as the one who is a declared write-in candidate for that office;
 - (2) only the last name of the candidate is included, provided there is no other declared write-in candidate for that office with the same last name as the one appearing in the write-in space; or
 - (3) the voter has written in the name of a candidate whose name is already printed on the ballot for that office.

STATUTORY AUTHORITY: 21-A M.R.S.A. §696(6), as enacted by P.L. 2009, c. 253, § 33.

EFFECTIVE DATE: