

CHAPTER 13

CHALLENGE OF VOTER AT THE POLLING PLACE

SECTION A: CHALLENGE PROCEDURE

1. A voter's qualifications to vote may be challenged by:
 - a. an election official;
 - b. a poll watcher or inspector; or
 - c. any person legally entitled to be within the polling place. [Sec. 63.010(a)]
2. A challenge by anyone other than the presiding judge must be directed to the presiding judge. [Sec. 63.010(b)]
3. A challenge may occur before or after a person is accepted for voting, but may not occur after an accepted voter enters a voting station. [Sec. 63.010(c)]
4. The presiding judge may not refuse to accept a voter without informing the voter of the voter's right to vote under the challenge procedure. The presiding judge must inform the voter of the challenge and the issues raised by the challenge, and may request a voter to present proof of identification, but a voter's failure to present proof of identification does not affect the voter's right to vote. [Sec. 63.010(d)]
5. Affidavit of challenged voter If a voter does not have a certificate while attempting to vote and the voter's name does not appear on the list of registered voters, and the voter's status as a registered voter cannot be verified by the voter registrar, the voter may vote by signing the Affidavit of Challenged Voter. By signing this affidavit, the voter is swearing that the voter is qualified to vote and the voter has registered to vote. If the challenged voter establishes by affidavit that the voter is a qualified voter of the precinct, the voter must be permitted to vote. [Secs. 63.010(e), 63.009]

NOT An election officer may not refuse to accept a voter without informing the voter of the voter's right to vote under the challenge procedure. [Sec. 63.010(a)]

6. Reasons for a challenge
 - a. Voter does not have a certificate and is not on the list. [Sec. 63.009]
 - b. Voter is not a resident of territory and/or the State of Texas. [Secs. 11.001(2) & 11.002(5)]
 - c. Voter is a convicted felon, [Sec. 11.002(4)] unless:
 - (1) two years have elapsed since:
 - receipt of certificate of discharge; or

- completion of probation;
- (2) pardoned; or
- (3) conviction otherwise dismissed.
- d. Voter is not a U.S. citizen. [Sec. 11.002(2)]
- e. Voter has been determined mentally incompetent by a final judgment of a court. [Sec. 11.002(3)]
- f. Voter is not 18 years of age or older (at time of election). [Sec. 11.002(1)]
- g. Voter is not registered to vote. [Sec. 11.002(6)]

SECTION B: OTHER AFFIDAVITS

The following situations may be resolved with various affidavits other than the affidavit of challenged voter:

1. A voter with an incorrect voter registration certificate who is not on the precinct list of registered voters. [Sec. 63.007(a)] A voter who, when offering to vote, presents a voter registration certificate indicating that the voter is currently registered in a different precinct from the one in which the voter is offering to vote, and whose name is not on the precinct list of registered voters, shall be accepted for voting if the voter executes an affidavit stating that the voter:
 - a. is a resident of the precinct in which the voter is offering to vote or is otherwise entitled by law to vote in that precinct;
 - b. was a resident of the precinct in which the voter is offering to vote at the time that information on the voter's residence address was last provided to the voter registrar;
 - c. did not deliberately provide false information to secure registration in a precinct in which the voter does not reside; and
 - d. is voting only once in the election.
2. A voter without a voter registration certificate whose name is on list. [Sec. 63.008] A voter who does not present a voter registration certificate when offering to vote, but whose name is on the list of registered voters for the precinct in which the voter is offering to vote, must be accepted for voting if the voter executes an affidavit stating that the voter does not have a voter registration certificate in the voter's possession at the polling place at the time the voter offers to vote.

3. Voter without a voter registration certificate who is not on list but is actually registered.
[Sec. 63.009] A voter who does not present a voter registration certificate when offering to vote, and whose name is not on the list of registered voters for the precinct in which the voter is offering to vote, may be accepted for voting if:
 - a. an election officer can determine from the voter registrar that the person is a registered voter of the county and the voter executes the affidavits required by situations (A) and (B) above; or
 - b. the voter executes an affidavit of challenged voter.