WEST VIRGINIA CODE: §3-1-41

§3-1-41. Challenged and provisional voter procedures; counting of provisional voters' ballots; ballots of election officials.

(a) It is the duty of the members of the receiving board, jointly or severally, to challenge the right of any person requesting a ballot to vote in any election:

(1) If the person's registration record is not available at the time of the election;

(2) If the signature written by the person in the poll book does not correspond with the signature purported to be his or hers on the registration record;

(3) If the registration record of the person indicates any other legal disqualification;

(4) If the person fails to present a valid identifying document pursuant to section 34 of this article; or

(5) If any other valid challenge exists against the voter pursuant to section 10, article three of this chapter.

(b) Any person challenged shall nevertheless be permitted to vote in the election. He or she shall be furnished an official ballot not endorsed by the poll clerks. In lieu of the endorsements, the poll clerks shall complete and sign an appropriate form indicating the challenge, the reason therefor, and the name or names of the challengers. The form shall be securely attached to the voter's ballot and deposited together with the ballot in a separate box or envelope marked "provisional ballots".

(c) At the time that an individual casts a provisional ballot, the poll clerk shall give the individual written information stating that an individual who casts a provisional ballot will be able to ascertain under the free access system established in this section whether the vote was counted and, if the vote was not counted, the reason that the vote was not counted.

(d) Before an individual casts a provisional ballot, the poll clerk shall provide the individual written instructions, supplied by the board of ballot commissioners, stating that if the voter is casting a ballot in the incorrect precinct, the ballot cast may not be counted for that election: *Provided*, That if the voter is found to be in the incorrect precinct, then the poll worker shall attempt to ascertain the appropriate precinct for the voter to cast a ballot and immediately give the voter the information if ascertainable.

(e) Provisional ballots may not be counted by the election officials. The county commission shall, on its own motion, at the time of canvassing of the election returns, sit in session to determine the validity of any challenges according to the provisions of this chapter. If the county commission determines that the challenges are unfounded, each provisional ballot of each challenged voter, if otherwise valid, shall be counted and tallied together with the

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regular ballots cast in the election. The county commission, as the board of canvassers, shall protect the privacy of each provisional ballot cast. The county commission shall disregard technical errors, omissions or oversights if it can reasonably be ascertained that the challenged voter was entitled to vote.

(f) Any person duly appointed as an Election Commissioner or clerk under the provisions of section 28 of this article who serves in that capacity in a precinct other than the precinct in which the person is legally entitled to vote may cast a provisional ballot in the precinct in which the person is serving as a commissioner or clerk. The ballot is not invalid for the sole reason of having been cast in a precinct other than the precinct in which the person is legally entitled to vote. The county commission shall record the provisional ballot on the voter's permanent registration record: *Provided*, That the county commission may count only the votes for the offices that the voter was legally authorized to vote for in his or her own precinct.

(g) The Secretary of State shall establish a free access system, which may include a toll-free telephone number or an Internet website, that may be accessed by any individual who casts a provisional ballot to discover whether his or her vote was counted and, if not, the reason that the vote was not counted.

(h) During the early in-person voting period, and in the case of a voter’s address change within the county, the voter may vote in the precinct serving their new address without casting a provisional ballot if the voter shows proof of new address and the change is completed in the state-wide voter registration system by the county clerk prior to canvass.

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