

## RULE ON WHAT CONSTITUTES A VOTE

- I. Authority:** In accordance with the provisions of 42 U.S.C. § 15481 and 17 V.S.A. § 2587 this rule provides for uniform, nondiscriminatory standards for establishing what constitutes a vote and what shall be counted as a vote for all categories of voting systems and voting procedures used in Vermont.
- I. Definitions:**
- A. Board of Civil Authority: The Town Clerk, members of the select board, and Justices of the Peace in each municipality.
  - B. Election Official: A member of the Board of Civil Authority, an assistant Town Clerk, or any election official appointed by the Board of Civil Authority to assist in an election.
  - C. Machine Ballot: A machine ballot is an official ballot printed by the Vermont Secretary of State to be used in a municipality that counts ballots by using optic scan tabulator machines.
  - D. Paper Ballot: A paper ballot is an official ballot printed by the Vermont Secretary of State to be used in a municipality that counts ballots by hand count.
  - E. Presiding Officer: The Town Clerk, unless the town has voted otherwise, or the person appointed as presiding officer by the Board of Civil Authority for an election.
- II. What Constitutes a Vote for a name printed on the ballot:**
- A. On a paper or machine ballot, a vote shall be cast for the candidate where the voter has marked the box or oval opposite one candidate's name, or in races where the voter is instructed to "Vote for not more than" a number of candidates, a vote shall be cast for each candidate where the voter has marked the box or oval opposite each candidate's name so long as the voter has not marked more candidates than the number of "Vote for not more than" in that race.
  - B. On a paper ballot, the two election officials who are tallying the ballot shall follow the rules set out in Section IV below for determining the voter's intent in marking the ballot.
  - C. On a paper ballot, if a voter has marked in the box or oval opposite more candidate(s) than are to be elected in that race, the ballot shall be counted as spoiled for that race. This is an overvote. The secretary of state shall provide notices and public information to educate voters to try to eliminate overvoting in any race.
  - D. On a machine ballot, if a voter has marked in the oval opposite more candidate(s) than there are candidates to be voted in that race, the optic scan tabulator machine shall be set to reject the ballot, and an election official shall instruct the voter that he or she had overvoted in a race, and shall offer the voter the opportunity to void that ballot, and to take another ballot into the voting booth in order to properly mark the number of candidates to be voted in each race.
- III. What Constitutes a Vote for a write-in candidate:**
- A. On a paper ballot or machine ballot, the act of writing in the name of candidate, or pasting a label or sticker containing a candidate's name on the write-in line for a race on the ballot, shall constitute a vote for that candidate even if the box or oval opposite the write-in line has not been marked.
  - B. In a machine ballot town, the presiding officer shall direct not less than two election officials to fan the ballots from the large ballot bin to look for ballots where a write-in candidate's name has been written in or a label affixed, but where no mark was made in the

## Appendix M

oval. The ballots found with a write-in name but no mark in the oval shall be combined with the write-in ballots in the “write-in bin” of the machine. All ballots containing write-ins shall be counted by teams of two election officials using the same rules as paper ballots and the tally for each write-in candidates shall be added to the summary sheet and to the official return of votes.

- C. On each tally sheet, the counters shall add together the names of candidates that are clearly the same person, even though a nickname or last name only is used.
- D. Names of fictitious persons shall not be counted or listed as write-in candidates.

### **IV. Determination of Intent of the Voter on paper ballot:**

- A. In counting votes, where a box or oval is not clearly marked for a candidate as determined by the two counting election officials, the following guidance shall assist the election officials in determining the intent of the voter as expressed by the markings on the ballot:
  - 1. The two election officials agree that the voter’s act of circling a candidate or making any mark that shows clear intent to vote for a particular candidate shall be counted as a vote for that candidate, even if the mark is made outside of the box or oval (such as circling a name).
  - 2. If the two election officials determine that no marks have been made indicating the intent of the voter in a race, the ballot shall be counted as blank for that race.
  - 3. If the two election officials agree that either the voter has marked more candidates than the “Vote for” in the race (overvote), or the election officials agree that it is impossible to determine the intent of the voter from marks that were made, then the ballot shall be counted as spoiled for that race. An overvote only spoils the ballot for the race in which it occurred and the remainder of the races are counted.
  - 4. If the two election officials agree that a voter has cast a vote for fewer candidates than the “Vote for” in the race (undervote), the vote or votes properly cast shall be counted and a blank vote or votes shall be recorded for each undervote (number of “Vote for not more than” less the number of votes cast).
  - 5. If the two election officials determine that a candidate has received more than one vote for the same office on any ballot, such as a box or oval being marked and the same candidate name is written on the write-in line, the candidate shall receive one vote only for that office and the write-in shall not be counted.
  - 6. If the two officials determine that the write-in box or oval has been marked, but no name has been written in and no sticker or label affixed, it shall be counted as a spoiled ballot for that race.
  - 7. If the two election officials cannot agree on the intent of the voter although some mark or marks have been made for the race, then they shall notify the presiding officer who then presents the question of the intent of the voter for a decision by majority vote of all the assembled election officials.
  - 8. If the two election officials determine that any mark was made on a ballot for the purpose of allowing the ballot to be identified and the vote traced, they shall notify the presiding officer, and if by majority vote of the Board of Civil Authority members present it is determined that any mark was made on a ballot for the purpose of allowing the ballot to be identified and the vote traced, the entire ballot shall be marked spoiled.