

STATE OF MAINE
SUPREME JUDICIAL COURT

DKT. NO. SJC-26-7

**IN RE BALLOT CHALLENGE IN ELECTION OF TOWN OF
CLIFTON SELECT BOARD MEMBER**

**WRITTEN LEGAL MEMORANDUM
OF
THE TOWN OF CLIFTON
PURSUANT TO PROCEDURAL ORDER OF MAY 13, 2026**

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Pursuant to the Court’s May 13, 2026, Procedural Order (the “Order”), the Town of Clifton submits this written legal memorandum.

General Background

This case began when the Town of Clifton (the “Town”) submitted a petition to the Court pursuant to 21-A M.R.S. § 696(1), along with an affidavit from Gregory Newell, challenging two absentee ballots cast in a March 24, 2026, election, for a one-year position on the Town’s Select Board.

In a case such as this, the Court has original jurisdiction to determine the validity of the ballots and sits as the trial court. *In re Ballot Challenge in Election of Town of Clifton Select Bd. Member*, 2026 ME 42, ¶ 1 (herein referred to as “*Clifton I*”). Because 21-A M.R.S. § 696(1) permits and requires that the question of the validity of challenged ballots be submitted to the Court only if the challenged ballots are determinative of the outcome of the election, section 696(1) necessarily confers upon the Court the power to determine the winner of the election.

In *Clifton I*, the Court determined that the challenger’s affidavit was substantively and formally defective and did not provide a basis for the Court to rule on the merits of the challenge. *Id.* ¶¶ 5-6. For that

reason, the Court dismissed the petition, declined to invalidate the two disputed ballots, and returned the matter for the Town to count the two ballots. *Id.* ¶ 7.

Following the Court's instructions, the Town opened the resumption of the counting of the two absentee ballots from the March 24 election on May 6, 2026, at 6 p.m. Before that process began, the Moderator allowed Jeffery F. Niles, Jr. ("Niles" or the "Challenger"), who had previously submitted a timely request to inspect the two absentee ballots, the incoming voter list, and the application for the absentee ballots, to inspect said materials. Niles then challenged the two ballots. Niles completed an affidavit challenging them and he and the Moderator signed a challenge certificate. The affidavit and challenge certificate were sealed in an envelope.

Town staff then opened and counted the ballots. Both challenged absentee ballots were cast in favor of Steve Armenia. Steve Armenia was identified as the winner of the election with a total of 115 votes compared to 114 votes for Cynthia Grant. Because the two challenged absentee ballots affected the outcome of the election, the Town submitted another

petition to the Court with Niles's affidavit pursuant to 21-A M.R.S. § 696(1) (the "Second Petition").

The Court reviewed the Second Petition and held a pretrial conference on May 13, 2025, to determine the course of the proceedings. Stephen Wagner, Esq., appeared on behalf of the Town. The Town Clerk, Cynthia Grant, and Niles also participated at the pretrial conference. Steve Armenia did not appear. He advised the Court in advance that he is not participating in this case and waives any opportunity to be heard, but he will serve if he is declared the winner.

After the conference, the Court issued the Order. The Order, among other things, directed the participating interested persons to confer regarding the underlying facts. The Order directed Attorney Wagner to prepare and submit a written stipulation of those facts, identifying any disputed fact.

The participating interested persons conferred and agreed on all material facts. They also agreed there is *no* disputed material fact for the Court to decide. On behalf of the participating interested persons, Attorney Wagner thereupon prepared and submitted a 34-page "Written Stipulation of Facts Pursuant to Procedural Order of May 13, 2026," with

its attached **Exhibits A through F** (the “Stipulated Facts”). Each of the participating interested persons signed the submitted Stipulated Facts. (Stipulated Facts at 5.) The undisputed material facts, taken from the Stipulated Facts, are as follows:

Undisputed Material Facts

1. The Town conducted a municipal secret ballot election on March 24, 2026.
2. Article 2 of said election was for a “Select Board Position” of a “1 Year Term,” for which two candidates were listed: Steve Armenia and Cynthia Grant.
3. Two particular absentee ballots were received prior to the close of polls on March 24, 2026.
4. Said two absentee ballots were dated, time-stamped, and initialed by the Town Clerk and Election Warden, who are one and the same person.
5. The morning after the election, said two absentee ballots were located, unopened, in a binder used at the election by the Town of Clifton election officials when checking in voters and collecting absentee ballots.

6. Review of the video security footage of the municipal office where the election was conducted revealed the ballots were dropped off to election officials in person and mistakenly not removed from the binder and put with the other absentee ballots for processing.

7. The election results determined and announced on March 24, 2026, listed in pertinent part 113 votes for Steve Armenia and 114 votes for Cynthia Grant.

8. The Town declared Cynthia Grant the prevailing candidate.

9. The election results were announced and certified on election night, before the two misplaced absentee ballots were discovered the next morning.

10. The Clerk/Warden discovered this anomaly when processing election materials for purpose of securing them as required by titles 21-A and 30-A.

11. In consultation with the undersigned Town Attorney and the Bureau of Corporations, Elections & Commissions of the Secretary of State, the Clerk/Warden was advised to and did, after consulting with the above-referenced candidates, set a date and time for resuming the counting of these two ballots only. *See also Marden v. Waterville, 226 A.2d*

369 (Me. 1967) (“Any qualified absent voter who returns his ballot to the (circuit court) clerk’s office in time for it to be delivered to the voting place in the precinct before the polls are closed on election day, and has satisfied all the statutory requirements with which he must comply, is entitled to have his vote counted, and if because of the failure of the county clerk or any other election official to do his duty, such ballot is not delivered to the inspector of the precinct in time for it to be counted by the precinct election board it will be counted by the court in an election contest proceeding.”) (internal quotation marks and citations omitted).

12. That proceeding was set for Friday, March 27, at 5 p.m.

13. The public was notified by the usual means for notice of municipal proceedings in Clifton.

14. Cynthia Grant submitted a written request to inspect the absentee ballot materials.

15. To ensure the integrity of the election and prevent disturbances, the above-referenced candidates were permitted to sit near the area where the election officials would resume counting the ballots, while the public was sectioned off from said area but able to hear and observe the proceedings.

16. Before proceeding to open and count the two absentee ballots, with guidance of the Town Attorney, the Clerk/Warden began the process of verifying that the absentee ballots were validly submitted.

17. Cynthia Grant inspected the absentee ballot envelopes and applications for said ballots and alleged a number of deficiencies that in her opinion invalidated the ballots and insisted therefore that they should not be counted.

18. The Town Attorney advised the alleged deficiencies were not grounds for invalidating the ballots but could be valid grounds for raising a challenge pursuant to 21-A M.R.S. §§ 673, 757.

19. Gregory Newell, a member of the public in attendance, made a challenge to the ballots.

20. The Town believes that the basis of the challenge was that, pursuant to 21-A M.R.S. § 753-B(2)(A), the absentee ballot was improperly issued to a third party who was a candidate or a member of a candidate's immediate family.

21. Attorney Wagner understood that to be grounds for a challenge; he believed that such a challenge did not automatically void the ballots; and he advised the challenger to make out an affidavit

pursuant to 21-A M.R.S. § 673(1)(A)(5) if he desired to pursue the challenge.

22. The challenger made out a single challenge affidavit challenging both ballots, as guided by the Clerk/Warden, with assistance from the Town Attorney, in accordance with 21-A M.R.S. § 673.

23. At the instruction of the Town Attorney, the Clerk/Warden assigned unique identifying numbers to the unopened absentee ballots and challenge affidavit. The unopened absentee ballots and challenge affidavit were secured together with the remaining election materials.

24. Attorney Wagner advised those in attendance that because the number of ballots challenged may affect the results of one race of the election, pursuant to 21-A M.R.S. § 696(1), the Town was required to present the challenge to the Supreme Judicial Court of the State of Maine for resolution.

25. Attorney Wagner advised that unless and until the Supreme Judicial Court ruled otherwise, the results of the election as announced March 24, 2026, remained in effect.

26. The Clerk then proceeded to swear in the candidates that prevailed, per the election results announced on March 24, 2026, including Cynthia Grant.

27. The Town received no timely request for an inspection or recount.

Additional Facts

28. Article #2 in its entirety, which also included elections for two additional Select Board positions and one School Board Member position, appeared on the March 24, 2026, warrant as follows:

ARTICLE # 1 To choose a moderator to preside at said meeting.

ARTICLE #2 To elect all necessary officers by secret ballot as follows:

VOTE for 1

**Select Board Position
(1 - One-year term)**
Steve Armenia
Cynthia Grant

**Select Board Position
(2 - Three-year terms)**
Leroy (Lee) Bryant
Gerald Folster
Gregory Newell
Rebecca Vignaly

**School Board Member Position
(1 – One year term)**

Write In: _____

Note

***A person who is not registered as a voter may not vote in any town election. ***

The First Petition

29. On April 2, 2026, pursuant to 21-A M.R.S. § 696(1), the Town submitted to this Court a petition forwarding, along with related materials, the affidavit from Gregory Newell challenging the two absentee ballots.

30. On May 4, 2026, this Court issued a judgment dismissing the petition “because the affidavit does not contain sufficient information that, if true, could invalidate a ballot.” *In re Ballot Challenge in Election of Town of Clifton Select Board Member*, 2026 ME 42, ¶ 1, ___ A.3d ___.

31. The Court therefore “decline[d] to invalidate the ballots, which must be counted,” citing 21-A M.R.S. § 696(1).

Proceedings Following Court’s Decision

32. In accordance with the Court’s judgment, the Moderator opened the resumption of the counting of the two absentee ballots from the March 24 election on May 6, 2026, at 6 p.m.

33. The public was notified by the usual means for notice of municipal proceedings in Clifton.

34. With the assistance of legal counsel, election staff began the process of counting the ballots.

35. Before that process began, the Moderator allowed Niles, who had previously submitted a timely request to inspect the absentee ballots, the incoming voter list, and the application for the absentee ballots, to inspect said materials.

36. Following the inspection, the staff then resumed counting, including reading the name of the absentee voters that cast the two ballots.

37. At that time, a challenge was made by Niles.

38. For purposes of a municipal election, the moderator is the presiding officer and receives challenges to ballots. *See* 21-A M.R.S. § 1(50) (defining “warden” as “the presiding officer at a voting place”); 21-A M.R.S. § 673(1) (providing that challenges to ballots are made to the warden, and warden administers oath to challenger and signs challenge certificate); 30-A M.R.S. § 2501 (providing that municipal elections are governed by Title 21-A “[e]xcept as otherwise provided by this Title or by charter”); 30-A M.R.S. § 2524(3) (providing that moderator “shall preside over and supervise the voting” at municipal elections); see also Maine Municipal Association, *Town Meeting and Elections Manual* at 10, 140, 146-47, 212-16 (Jan. 2020 rev. ed.) (noting that moderator presides over municipal elections, including challenges to ballots, in place of “warden” in state elections).

39. The Challenger completed an affidavit challenging both ballots.

40. The Moderator and Challenger signed a challenge certificate.

41. The affidavit and challenge certificate were sealed in an envelope.

42. Prior to the envelope being sealed, in accordance with statute, the challenge certificate and ballots were marked with unique identifying numbers, and those numbers placed on the sealed envelope.

43. Staff then proceeded with opening and counting the ballots.

44. Both ballots were cast in favor of Steve Armenia. Steve Arrmenia was identified as the winner of the election, with a total of 115 votes for Steve Armenia and 114 votes for Cynthia Grant.

45. Because it was determined that the challenged ballots affected the result of the election, the validity of the challenge must be submitted to and determined by this Court in accordance with 21-A M.R.S. § 696(1).

46. Based in part on the advice of counsel, the Clerk/Warden suspended certification of the new election result, pending resolution of the challenge.

47. The Town received no request for an inspection or recount prior to submitting this petition.

48. By letter dated May 5, 2026, Niles informed the Town that he wished to inspect the absentee ballot applications and envelopes before they were to be processed the next day, May 6, 2026. A copy of that letter is attached as **Exhibit B** to the Stipulated Facts.

49. On May 6, 2026, Niles did inspect the absentee register, and the absentee ballot applications and envelopes for two voters. Copies of the Applications for Absentee Ballots of those voters that he inspected, and the absentee ballot envelopes that he inspected, are attached as **Exhibit C** to the Stipulated Facts.

50. The Absntee [sic] Register for the election is attached as **Exhibit D** to the Stipulated Facts. It indicates that the two absentee voters being challenged requested absentee ballots “in person” on March 18, 2026, and that their absentee ballots were returned on March 24, 2026, at 4:15 p.m.

51. Gerald Folster requested and received said two absentee ballots on March 18, 2026.

52. A copy of the “Voter Challenge Affidavit” completed by Niles, described in the Petition at ¶ 41, is attached as **Exhibit E** to the Stipulated Facts.

53. A copy of the challenge certificate, described in the Second Petition at ¶ 42, is attached as **Exhibit F** to the Stipulated Facts.

54. Gerald Folster was a candidate for a three-year term on the Select Board in the March election.

55. Steve Armenia and Cynthia Grant were the candidates for a one-year term on the Select Board.

56. If the votes of these two voters are invalidated, Cynthia Grant will have won the election. If the votes of these two voters are not invalidated, Steve Armenia will have won the election.

57. Niles is challenging the validity of these two votes on the asserted grounds that, first, the absentee ballots of these two voters were issued by the clerk to a candidate on behalf of these two other people, not the candidate, in violation of 21-A M.R.S. § 753-B(2)(E); and second, the applications for the absentee ballots for these two voters were unsigned, in violation of 21-A M.R.S. § 753-A(3)(A)(3).

58. On March 18, 2026, the clerk issued Gerald Folster the absentee ballots for the two absentee voters whose votes are being challenged.

59. There appear no signatures in the fields for “Signature of Voter” or in the fields “Signature of Immediate Family Member Returning the Ballot” on either Application for Absentee Ballot.

60. On March 24, 2024, Gerald Folster dropped off the absentee ballot return envelopes of the two voters.

61. The Town has a video of the events that transpired on March 24, 2024, when Niles was in line to vote at approximately 4:15 p.m. That video is available to the Court upon its request. The video is time stamped.

Town’s Position

Pursuant to 21-A M.R.S. § 696(1), the Court is required to determine the validity of the two ballots in dispute. *See* 21-A M.R.S. § 696(1) (providing that because the validity of the two challenged ballots determines the outcome of the election, the validity of these two ballots “must be determined” by the Court). And because there are no material facts in dispute, the Town believes the Court is now in a position to rule as a matter of law on whether the votes cast by the two ballots are valid or not and to thereby declare who is the winner of the election—Ms. Grant or Mr. Armenia.

More specifically, the material facts pertaining to the two challenged ballots are identical, so either both votes cast by those ballots are valid or both votes cast by those ballots are invalid. Furthermore, the fact is undisputed that the two absentee ballots were issued to Gerald Foster, who was a candidate in the election for a three-year term on the Select Board, and neither absentee ballot was his own ballot. They were absentee ballots issued to him for other persons.

As the Court foreshadowed in its recitation of issues (a) and (b) in the Order, p. 3, the Court's determination of validity of the votes cast by these two ballots is complicated by the fact that Gerald Foster was a candidate in the election, but he was not running against either Ms. Grant or Mr. Armenia for a one-year term on the Select Board; he was a candidate for one of two three-year positions on the Select Board. And, as the Court foreshadowed in its recitation of issues (c) and (d), the absentee ballot applications do contain a signature, but the signature is contained in item 5 and not in item 6.

Title 21-A M.R.S. § 753-B(2)(E) states that the clerk "may not issue an absentee ballot . . . [t]o any candidate, except for the candidate's own ballot." Neither that statute, nor any other statute known to the Town,

states whether if the clerk does issue an absentee ballot to a candidate, other than the candidate's own ballot, whether that invalidates the absentee vote cast by that voter, and, in particular, whether that invalidates the absentee vote cast by that voter in an election for an open seat on the Select Board for which the candidate who picked up the absentee ballot was not a candidate.

Meanwhile, 21-A M.R.S. § 753-A(3)(A)(3) sets forth circumstances when a “written request for an absentee ballot must be accepted by the clerk.” That statute, in relevant part, provides that the application must be accepted by the clerk if it contains the voter’s name and date of birth, the voter’s residence address, the “signature . . . of the voter’s immediate family member,” and that person’s family relationship to the voter. The Applications for the two disputed ballots contain all that, except possibly the “signature of the voter’s immediate family member who is making the application,” *if that signature must be contained in item 6 of the Application.* (See Stipulated Facts at Exhibit C). The statute does not appear to indicate where in the Application the immediate family member must sign, yet item 6 of the Application is plainly titled “Signature of . . . Immediate Family Member of Voter.” (*Id.*).

The Town is unaware of any legal precedent or legal authority to guide the Court in determining whether the votes cast by these two absentee ballots are valid or not. Furthermore, because the Town has no unique or special legal expertise pertaining to the application of these statutes in these circumstances, and because arguing for or against the validity of the two votes cast by the disputed ballots would risk creating the appearance of a preference between the two candidates for office, the Town leaves any further legal argument to the participating interested persons.

The Town does urge, however, that this matter is ripe for decision by the Court. Because there is no disputed material fact, the Town believes there is no reason to return this matter back to the Town for further process or proceedings, at the expense of the Town, to determine finally the outcome of the election for the one, one-year term on the Select Board. As set forth in the Stipulated Facts, and by agreement of the participating interested persons, if the two votes cast by these two ballots are valid, then Mr. Armenia is the winner of the election for the open one-year term on the Select Board; if the two votes cast by these two ballots are invalid, then Ms. Grant is the winner. The Town therefore

respectfully requests that the Court now determine whether the two votes are valid or not and thereby explicitly declare whether Ms. Grant or Mr. Armenia is the winner of the election. The statute, 21-A M.R.S. § 696(1), vests this Court with such power and authority when sitting as the trial court with original jurisdiction tasked with determining the validity of election-determining votes cast by disputed ballots.

Dated at Bangor, Maine this 28th day of May, 2026.

Respectfully submitted,

/s/ Stephen W. Wagner

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CERTIFICATE OF SERVICE

The Procedural Order specifies that Rule 1E of the Rules of Appellate Procedure applies. That rule pertains to service of documents upon “parties.” In an effort to comply with that Rule in the context of this proceeding, I, Stephen W. Wagner, certify that service of this Written Legal Memorandum has been made on Cynthia Grant, Jeffery F. Niles, Jr., and Steve Armenia as provided in Rule 1E.

Dated: May 28, 2026

/s/ Stephen W. Wagner

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