

**STATE OF MAINE
SUPREME JUDICIAL COURT**

Docket Number: SJC-26-7

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

**WRITTEN LEGAL MEMORANDUM AND ARGUMENTS IN
SUPPORT OF CHALLENGER'S POSITION PURSUANT TO
PROCEDURAL ORDER OF MAY 13, 2026**

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STATEMENT OF FACTS

For the sake of brevity, reference is made to the Written Stipulation of Facts submitted to the Court on May 15th, 2026. Particular attention is paid to numbers 5, 8, 12, and 14, which establish that a candidate for office requested, was issued, and dropped off the absentee ballots in question, on behalf of two immediate family members. Additionally referenced are the applications for absentee ballots and ballot return envelopes which are Exhibit C in that filing.

Beyond those facts and exhibits, the vast majority of the arguments made in this memorandum are based in the authorities listed above.

ISSUES PRESENTED FOR REVIEW

In the May 13, 2026 Procedural Order, the Court states that, “Upon initial review, it appears that the memoranda of law should address the following issues:”

- “(a) Whether the issuance of an absentee ballot to a candidate, other than the candidate’s own ballot, may invalidate any votes cast using that ballot;
- (b) Whether the issuance of an absentee ballot to the candidate invalidates votes cast for offices other than those for which the candidate is running or for a different position on the same board for which the candidate is running, regardless whether it may

invalidate votes cast for the same position for which the candidate is running;

(c) Whether an application for an absentee ballot “contains” a signature as required by 21-A M.R.S. § 753-A(3)(A)(3) if the applicant signs on the line indicated for designation of the applicant as the one to whom the ballot is to be delivered, which is in item 5 of the applications at issue here, instead of on the line designated for the signature, which is in item 6 of the applications at issue here; and

(e) [sic] Whether, if the signature does not comply with 21-A M.R.S. § 753-A(3)(A)(3), that invalidates the votes cast using that ballot.”

This challenger suggests that there may also be another two issues relevant to these particular ballots at hand:

(f) Whether, if the signature *does* comply with 21-A M.R.S. § 753-A(3)(A)(3), that invalidates the votes cast using that ballot; and

(g) Whether these absentee ballot envelopes have material defects, and if that invalidates the votes cast using those ballots.

ARGUMENTS

I. THE BALLOTS ARE INVALID DUE TO MATERIAL IRREGULARITIES ON THE RETURN ENVELOPE.

The ballots in question should have been rejected by the clerk prior to ever being subject to challenge due to material irregularities with the ballot envelopes.

21-A M.R.S. § 753-B(1) states that “The clerk shall type or write in ink the name and the residence address of the voter in the designated section of the return envelope.”

Further, 21-A M.R.S. § 762 states that an absentee ballot may not be rejected for any “immaterial irregularity”, but goes on to say that, “The following information must be on the envelope for the ballot to be accepted:”, effectively defining a list of information the lack of which would constitute a “material irregularity”. In the same line, this list of information is explicitly tied to the ballot’s acceptance. Thus, the Court must decide whether any defects are of a material or immaterial nature, and if any defect is material, the ballot must be invalidated.

Subsection 1 of this list specifically states: “Name and address. The voter's name and residence address typed or written in ink by the clerk in the designated section of the return envelope;”

21-A M.R.S. § 1(40-B) defines “residence address”: “Residence address means the street and number or other designation indicating the physical location of a person's residence.”

The ballot return envelopes at issue in this case (see Exhibit C) notably lack a residence address anywhere on the envelope. On the rear of the envelopes on the “Voting Residence” line appears “Clifton”, but no other portion of an address indicating the physical location of the voter’s residence appears anywhere else on the envelope. Merely stating the town where the voter purports to live is insufficient as a “residence address” by the plain meaning of the statute.

A very close parallel can be drawn between this particular circumstance and *Miller v. Hutchinson*, 110 A.2d 577 (Me. 1954), which is the basis for most existing case law on absentee ballots. In *Miller*, the clerk prepared absentee return envelopes that contained an improper affidavit instead of the oath text that was required by statute. The requirement to prepare the envelopes properly was not met by the clerk

(through no fault of the voters) and yet, because the oath was ruled mandatory by the Court and the voters had failed to ensure that the ballot envelope they signed was in compliance with the law, those absentee ballots were ruled invalid.

Partially at question in *Miller* was what in the statute was considered “mandatory”. In *Opinion of the Justices*, 124 Me. 453, 126A54 (Me. 1924), the Court well-defined two different kinds of requirements: those that are “mandatory” and those that are “directory” (quoted in part):

“It is not easy to frame a definition that shall cover all cases, but, broadly speaking, requirements in a statute which are of the very essence of the thing to be done, and the ignoring of which would practically nullify the vital purpose of the statute itself, are regarded by the courts as mandatory and imperative, [...] In other words, while it is of course the duty of election officers to follow every statutory requirement on their part, the consequence of their disobedience so far as the innocent voter is concerned is fatal if the requirement be deemed mandatory, but not fatal if it be deemed directory.”

This concept was further touched on in *Opinion of the Justices*, 130 A.2d 526 (Me. 1956) where the separation between “mandatory” and “directory” statutes was reiterated. Since those opinions, the Legislature added a statutory definition of “mandatory” within Title 21-A to help clear up this question. 21-A M.R.S. § 7 defines that the words “shall” and

“must” are “used in a mandatory sense to impose an obligation to act in the manner specified by the context.”

In the case before the Court now, the clerk failed to prepare the absentee return envelopes in compliance with 21-A M.R.S. § 753-B(1); by its text (“The clerk shall”), a mandatory statute. Further, as in *Miller*, the voters failed to ensure that the envelopes complied with the additional mandatory requirement of 21-A M.R.S. § 762(1) that a “residence address” be present.

As these statutes are, by definition, mandatory, these failures are fatal and the ballots should be invalidated as they were in *Miller*.

II. THE HANDLING OF A BALLOT BY A CANDIDATE ON BEHALF OF AN IMMEDIATE FAMILY MEMBER INVALIDATES THE BALLOT.

A. The Legislature has expressly prohibited a candidate from handling an absentee ballot other than their own.

It is plainly evident from the text of Title 21-A that the Legislature went to great lengths to ensure that candidates for office do not handle any absentee ballots but their own. To that end,

they put a multi-layer prohibition in place with individual statutes for both the clerk *and* the candidate to attempt to prevent this situation from occurring.

The clerk's prohibition is framed as a limitation on authority to issue the ballot, with 21-A M.R.S. § 753-B(2), stating that "The clerk may not issue an absentee ballot: (E) To any candidate, except for the candidate's own ballot."

The candidate's prohibition is significantly more firm. 21-A M.R.S. § 791(3)(B) establishes that it is a Class C felony for a candidate who, "delivers, receives, accepts, notarizes, assists or witnesses an absentee ballot, other than the candidate's own".

Both of these statutes convey a mandatory, rather than directory context through a plain reading. Additionally, under the *Opinion of the Justices*, 124 Me. 453, 126A54 (Me. 1924) and later *Miller* test, the essence of both statutes is clearly that a candidate does not gain control of a ballot that is not theirs. Since actions that the "ignoring of which would practically nullify the vital purpose of the statute itself" are considered mandatory, either action alone is fatal to the ballot and invalidates it.

B. The actions of a designated family member are imputed to the voter themselves.

In addition to the clerk and candidate's actions above, the voters themselves still played an active role in improperly applying for the ballot. The voter, via 21-A M.R.S. § 753-A(3) designated a family member to act on the voter's behalf to deliver the ballot and make the application on behalf of the voter. This establishes an agency relationship between the voter and their designee.

The existing case law makes a distinction between the actions of the voter and the actions of a voting official and what proves fatal to the ballot from each. However, since that case law was established, the Legislature has added a potential "third category" of individual who can now have control over a voter's ballot and take actions that potentially could imperil the validity of the ballot. This "third category" is an immediate family member or third party who has been authorized to take control of a ballot, as defined in the statute.

This "new category" likely does not receive the same "immunity" from directory-type mistakes that election officials do,

as if they did, it would provide a path potentially fraught with problems. Because the voter designates the family member (or third party), their conduct is now voluntarily, inextricably tied to the voter's exercise of the right to vote. They are an agent. In this way, it is likely that this "category" is actually merely an extension of the voter. Any actions that the designee takes while acting on behalf of the voter that would invalidate their own ballot would in fact invalidate the voter's ballot.

If the designee's actions are not attributed to the voter than a large swath of the law is, in effect, void, as voters using third parties to retrieve and deliver ballots essentially become immune from challenge on procedural or directory issues.

C. The family member's actions directly relate to specific challenge provisions and invalidate the ballot

The family member candidate's actions in applying for and handling the ballots additionally are improper on their face. Since the designee's actions are imputed to the voter, then under 21-A M.R.S. § 673(1)(A)(5) the voter did not properly apply for an absentee ballot, because the application was improper from the

onset. Additionally, because the designee violated 21-A M.R.S. § 791(3)(B), the challenge would succeed under 21-A M.R.S. § 673(1)(A)(11) for any other specified violation of 21-A. Either of these would result in the ballot being invalidated.

In addition, and as stated above, the actions at face-value if ignored would sidestep the entire essence of the law and effectively nullify the provision preventing a candidate from obtaining another's ballot. This is additionally fatal to the ballot per *Miller*.

D. The clerk's actions without authority invalidate the ballot

The absentee ballots issued to the candidate were issued without lawful authority, and therefore the instrument itself is invalid.

21-A M.R.S. § 7 contains a definition of the statement "may not", stating that it, "indicates a lack of authority or permission to act". This demonstrates that the clerk has a total lack of authority to issue an absentee ballot in this circumstance.

The prohibition on issuing the ballot is mandatory under *Miller*, based on the fact that issuing the ballot nullifies the vital purpose of the statute itself. This alone invalidates the ballot.

III. A SUCCESSFUL CHALLENGE AGAINST A VOTER INVALIDATES THE BALLOT IN WHOLE

The candidate who handled the ballots at issue in this case appeared on those same ballots. However, the race that the ballots impact is a separate race. The Court must therefore address whether a successful challenge due to the candidate's handling of the ballots will result in the invalidation of the ballot in its entirety, or whether the invalidation of votes may be limited only to the race in which the candidate participated.

Under Maine statute, the eligibility of the *voter to vote* is under challenge, not the ballot itself (21-A M.R.S. § 673, “A voter of a municipality or an election official may challenge the right of another to vote [...]”). 21-A M.R.S. § 673(1)(A) specifically enumerates the allowed reasons for challenge and all apply to *actions of the voter*, not necessarily defects with the ballot. Some of these enumerated actions however,

especially those focused on absentee voting, will naturally manifest as defects with the ballot or application.

21-A M.R.S. § 1(7) defines a challenged ballot: “[...] means a ballot cast by one whose eligibility to vote has been questioned during election day.” Once the voter has been challenged, the ballot itself becomes labeled as “challenged”, because the natural remedy for a challenge to a voter’s eligibility succeeding is that the entire ballot is affected. The ballot is uniquely identified specifically so that “Should the challenge prove justified, the invalid ballot can be rejected because identified.”

Opinion of the Justices, 371 A.2d 616, 621 (Me. 1977)

Effectively, the argument of any challenge is not whether the ballot itself should be counted or not (or whether a portion of the ballot should be counted or not), it’s whether the voter is allowed to vote or not and the ballot is either valid or invalid based on the outcome of that decision. To that point, the process in 21-A M.R.S. § 696(1) details that a challenged ballot affecting the outcome of an election is to submitted to the SJC and “its validity must be determined”. “Its” in this case clearly referring to the ballot as a whole. To that end, the Legislature has provided no

mechanism under Title 21-A to partially invalidate a ballot, because a voter can't be partially ineligible to vote.

Under the challenge statutes in place today, the entire ballot's validity is in question based on if the voter is eligible. If the challenge succeeds, the entire ballot must be invalidated.

IV. IT IS LIKELY THAT THE APPLICATION FOR ABSENTEE BALLOT “CONTAINS” A SIGNATURE.

The Court asks whether an application for absentee ballot “contains” a signature as required by 21-A M.R.S. § 753-A(3)(A)(3) if the applicant signs on [the wrong line] (heavily paraphrased).

There is an argument to be made that the labels on a form convey meaning and that by writing where a form asks for a “name”, the writer is assigning that label to the writing on that line. Given the variance in handwriting from person to person, a cursive written name could be interpreted as a signature, even when it wasn't meant to be interpreted that way. Effectively, a clerk cannot be expected to determine what is and is not a signature except by looking at the labels on the form.

However, in this particular case, the writing on line 5 of the application appears to be in the typical format of a signature (or initials), and a reasonable person would likely conclude that it constitutes a signature and that the application “contains” a signature in compliance with 21-A M.R.S. § 753-A(3)(A)(3).

V. A LACK OF SIGNATURE ON AN APPLICATION FOR ABSENTEE BALLOT INVALIDATES THE BALLOT.

If an Application for Absentee Ballot does not contain a signature, the application is improper on its face due to the lack of required information. 21-A M.R.S. §753-A(3)(A)(3) details the requirement for a signature on the application and if it is missing, the ballot has not been properly applied for in violation of 21-A M.R.S. § 673(1)(A)(5).

As this is an enumerated reason for challenge, the plainly evident outcome of a successful challenge is that the ballot is invalidated.

VI. THE VALID SIGNATURE OF AN IMMEDIATE FAMILY MEMBER ON AN APPLICATION FOR ABSENTEE BALLOT INVALIDATES THE BALLOT.

As enacted currently, the Legislature allows for an immediate family member to be designated to sign the application on a voter's behalf (21-A M.R.S. § 753-A(3)(A)(3)), but requires the envelope to be signed by the voter specifically (21-A M.R.S. § 754-A(1)(C)). At time of receipt, 21-A M.R.S. § 756(2) requires that the clerk "shall" (mandatory) "compare the signature of the voter on the application, when required, with that on the corresponding return envelope." Logically, if the signature on the application comes from a family member and the signature on the envelope comes from the voter, these signatures cannot match.

A conclusion could be drawn that by using the words "the application" in 21-A M.R.S. § 756(2), the Legislature meant to indicate that "Maine Voter Registration Application" cards (as voter registration cards are more properly called) were to be used for signature comparison, but that conclusion would be dubious at best. This practice does not appear to be supported by statute.

In most of Title 21-A, Chapter 9, “application” alone refers to an Application for Absentee Ballot. In the context of Subchapter 4 (Absentee Voting) in particular, where 21-A M.R.S. § 756(2) appears, the only two references to Voter Registration Applications are explicit and all other unspecific “application” references are understood in context to be referring to an Application for Absentee Ballot.

Further, the clause “when required” to an “application” in this statute strongly implies that it is an Application for Absentee Ballot, specifically because signatures are occasionally not required on those applications in cases of aides, etc. Signatures (or equivalent marks) are always required on Voter Registration Applications under statute.

When the signature on the application for voter registration and return envelope do not match (because by statute they cannot) the clerk should then proceed to subsection 2(B) and attempt to contact the voter to cure the defect. Neither of the return envelopes contain curing marks as they would have if the ballot curing procedure detailed in 21-A M.R.S. § 756-A(2)(A) had been followed, so it is evident that process did not occur.

Regardless of whether the applications are determined to contain the candidate's signature or no signature, 21-A M.R.S. § 756-A(2)(B) would then require the clerk to "accept the ballot but challenge it pursuant to section 673, subsection 1" for either situation in the absence of a cure.

Due to the way the statute is written, this situation likely exists at every election across potentially thousands of ballots in the state. Any ballot retrieved and signed for by a voter's immediate family member is, by statute, subject to curing or an automatic challenge because the signatures cannot match by statute.

Given that the precedent set by *Miller* is that the failure to follow mandatory statutes is fatal to the ballots and the clerk is mandated to compare signatures that by statute *cannot* match, the ballots must be invalidated based on the lack of a statute-compliant signature match.

CONCLUSION

As detailed in the arguments, the voter's actions, the candidate's actions, and the clerk's actions on many separate occasions constitute clear statutory violations. Any one of these issues is enough to invalidate the ballots when considered individually. In the aggregate, it is evident that there was a strong pattern of disregard for the mandatory requirements that Maine's absentee ballot statutes impose. These protections were enacted deliberately, and this Court has long recognized that mandatory requirements do not allow for exception. For these reasons, this Challenger respectfully requests that the Court find the two challenged ballots invalid and order that the final tally be adjusted accordingly.

Respectfully submitted,

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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, Jeffery F. Niles, Jr., certify that service of this Written Legal Memorandum has been made on Stephen Wagner (in his capacity as attorney for the Town of Clifton), Deborah Hodgins (in her capacity as Clifton Town Clerk), Cynthia Grant, and Steve Armenia as provided in Rule 1E.

Dated: May 29, 2026

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