



MINORITY STAFF  
COMMITTEE ON GOVERNMENT REFORM  
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## **Summaries of State Election Procedures**

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This report describes election procedures in the 50 states and the District of Columbia. It includes descriptions of the types of voting machines and other voting methods used by the states. It also describes state recount and contest procedures, including deadlines for initiating such proceedings.

In the case of disputed elections involving the House of Representatives, the House is the final arbiter of its membership under the Constitution. Because the House has traditionally deferred to state election procedures, there is a strong presumption that winning candidates certified by the states will be seated in the Congress. As a result, candidates who have lost in close elections normally follow available state recount and contest procedures prior to seeking any relief in the House.

## Alabama

### **Voting Procedures**

In 2002, the vast majority of precincts will use optical scanning machines; several will use direct recording electronic machines; one will use a lever; and none will use paper ballots or punch card ballots.

### **Recount Procedures**

There are no automatic recount provisions under Alabama election law. Any voter may petition a county canvassing authority for a recount of returns for offices in an election within 48 hours after the election results have been declared. State of Alabama Electronic Voting Committee Rules, § 307 X-I-.21. The recount “should be conducted as simply as the type of equipment and local conditions permit” as long as certain minimum safeguards are observed. If the recount of the resulting election contest alters the result of the election, the cost of the recount is borne by the county. Otherwise the cost is borne by the requester.

### **Contest Procedures**

Alabama law does not address contest procedures for federal elections. With respect to state and local elections, any voter may contest the election. Grounds for such a contest include: (1) malconduct, fraud, or corruption on the part of any inspector, clerk, marker, returning officer, board of supervisors or other person; (2) ineligibility of the person elected; (3) illegal votes; (4) rejection of legal votes; (5) offers to bribe, bribery, intimidation, or other malconduct calculated to prevent a fair, free, and full exercise of the elective franchise. Alabama Code § 17-15-1. Such contests must commence within 20 days after the election results are declared. § 17-15-22.

## Alaska

### **Voting Procedures**

Alaska uses optical scanning systems; no punch card ballot systems are used.

### **Recount Procedures**

There are no automatic recount provisions in Alaska election law, except in the event of a tie vote for two or more candidates for the same office for which there is to be elected only one candidate. Alaska Statutes § 15.15.430. A recount may be requested by a defeated candidate or ten voters within a particular precinct or state house district. Recount requests must be made by filing an application with the elections director within five days of the state review of the votes, except that requests for a recount of votes cast for governor and lieutenant governor must be filed within three days after completion of the state review. § 15.20.430. The elections director fixes the date of the recount to be held within three days after the receipt of a recount request regarding an election for governor and lieutenant governor and within five days after receipt of a recount request regarding any other office, question, or proposition. § 15.20.460.

The director, along with additional personnel he or she employs for assistance, reviews all ballots to determine which ballots were properly marked and which ballots are to be counted in the recount and checks the accuracy of the original count, the precinct certificate, and the review. The director also counts absentee ballots received before the completion of the recount. The recount must be completed within ten days. § 15.20.480.

If the difference between the number of votes cast was 20 or less or was less than 0.5% of the total number of votes cast for the two candidates for a contested office, the state bears the cost of the recount. § 15.20.450. Otherwise the application for recount must include a deposit of \$300 per precinct, \$750 per state house district, and \$10,000 for a state recount request. If as a result of the recount a candidate is declared elected who is not the candidate that received the original election certificate, or the total vote in favor of the candidate or issue on the application is 4% or more than the vote reported by the state review of the election, the deposit is refunded. § 15.20.450.

### **Contest Procedures**

A defeated candidate or ten voters may contest the election of any person on one or more of the following grounds: (1) malconduct, fraud, or corruption on the part of an election official sufficient to change the result of the election; (2) the person elected is not qualified; and (3) any corrupt practice as defined by law sufficient to change the results of the election. § 15.20.540. Such an action must be brought in superior court within ten days of the state review of the election. § 15.20.550.

## Arizona

### **Voting Procedures**

In 2002, ten counties – containing 20% of Arizona’s voters – will use punch card ballot voting; two of these counties will have the results tabulated by optical scanning machines. The remaining counties – containing 80% of Arizona’s voters – will use marked paper ballots with optical scanning machines.

### **Recount Procedures**

An automatic recount is required when the margin between the two candidates with the greatest number of votes for a particular office is either less than 0.1% of votes cast or does not exceed 200 votes for statewide offices or 50 votes for offices in the state legislature. Arizona Revised Statutes Annotated § 16-661. When the canvass shows a recount is required for a statewide office or a congressional race, the Secretary of State certifies the facts requiring the recount to the superior court in Maricopa County. § 16-662. The court enters an order requiring a recount in accord with state requirements regarding election vote counting. § 16-663. Where the vote was conducted on electronic voting equipment, the recount is conducted on an automatic tabulating system furnished and programmed by the Secretary of State. § 16-664. The results are presented to the court and the court announces the results and enters an order describing its determination. §16-665. The state or county pays the costs of the recount. § 16-666.

Recount requests are not permitted. *Barrera v. Superior Court*, 117 Ariz. 528, 573 P.2d 928 (App. Div.2 1977).

### **Contest Procedures**

There are no specific contest procedures in the Arizona code for federal elections. A voter may contest an election for a state or local office on the following grounds: (1) misconduct on the part of election boards or any members, or on the part of any officer making or participating in a canvass for a state election; (2) ineligibility of the person elected to the office; (3) offenses against the elective franchise committed by the person elected; (4) illegal votes; or (5) an erroneous count of votes such that the person declared elected did not in fact receive the number of votes sufficient to carry the election. § 16-672. The contest regarding state office elections may be brought in the superior court in which the contestor resides or in Maricopa County, and must be filed within five days of the completion of the canvass. §§ 16-672, 16-673. The contest regarding local office elections may be brought in the superior court in which the contestor resides within five days of the completion of the canvass. § 16-674. The court considers such contests under an expedited schedule. § 16-676.

## Arkansas

### **Voting Procedures**

In 52 counties, Arkansas uses paper balloting systems, the majority of which involve counting by optical scanning machines. Eight counties use lever machines, and seven counties use punch card ballots.

### **Recount Procedures**

There are no automatic recount provisions in Arkansas election law. Any candidate who receives votes and who is “dissatisfied with the returns from any precinct” may obtain a recount of votes within that precinct by petitioning the county board of election commissioners. Such a petition must be presented within two days after the board has declared preliminary and unofficial election results, if the number of outstanding absentee ballots of overseas voters is not sufficient to change the election results. If the number of outstanding absentee ballots of overseas voters is sufficient to change the election results, the petition must be presented before the board completes the canvass of election returns and certifies the result. Arkansas Code § 7-5-319.

When the petition is presented, the board must provide to the requester a copy of results of tests on voting machines required by law. The board then conducts the recount in the manner prescribed by law for counting votes in the first instance or, if the board determines that the voting equipment may be malfunctioning, it may recount by any manner prescribed by law. The requester bears the costs of the recount unless the outcome of the election is altered by the recount. Only one recount per candidate per election is allowed. The board may upon its own motion conduct a recount of the returns from any or all precincts. § 7-5-319.

### **Contest Procedures**

Any candidate may contest the certification of a vote by election officials by filing a complaint within 20 days of the certification in the circuit court of the county in which the certification of vote is made and within any county in the circuit or district wherein any of the wrongful acts alleged occurred when a circuit or district office is involved. In cases involving an election for the office of United States Senator or any state office, such as the action is brought in the Pulaski County Circuit Court. § 7-5-801.

Any ten citizens of a county may file a complaint with a circuit judge within 20 days after an election alleging that illegal or fraudulent votes were cast, fraudulent returns or certifications were made, or that the Political Practices Act was violated. If the judge finds there is good ground to believe the charges true, the court must convene a special term to consider the charges unless the court is in session or will convene within 30 days.

## **California**

### **Voting Procedures**

In the 2000 election, 30 counties used punch card ballot systems, 26 counties used optical scanning, and one county used a touch screen machine. Voters in March 2002 approved a \$200 million bond issue to buy new voting machines to replace punch card systems.

### **Recount Procedures**

There are no automatic recount provisions in California election law. Within five days of the official canvass, any voter may file a request for recount of votes for candidates of any office with the elections official in the affected county or counties. California Elections Code § 15620. At any time during the conduct of a recount or 24 hours thereafter, any other voter may request a recount for the same office in precincts not originally included in the original request. § 15623. The requester pays the cost of the recount unless the result of the recount is that the candidate for which the recount is declared has the plurality of votes or appears on the ballot of a runoff that would not have occurred under the official election count. § 15624. The recount begins not more than seven days following the receipt of the request and is continued daily, Saturdays, Sundays, and holidays excepted, for not less than six hours each day until completed. § 15626. Recounts are conducted publicly under the supervision of the elections official by special recount boards consisting of four voters of the county appointed by the elections official. §§ 15625, 15628.

### **Contest Procedures**

Any elector can challenge an election on the following grounds: (1) misconduct by the precinct board or any member thereof; (2) ineligibility of the person elected; (3) bribery by defendant of electors or precinct board members; (4) casting of illegal votes; (5) errors by precinct board sufficient to change the result of the election; or (6) error in the vote counting programs or summation of ballot counts. § 16100. In general, challenges must be filed within 30 days of the declaration of the election result. § 16401. The elector must file a statement with the superior court with jurisdiction describing the grounds for the contest. § 16400.

The court hears the submission of proofs and allegations of the parties and within ten days of such submission issues a judgment either confirming or annulling the election. § 16603. If the court dismisses the contestant's claims for insufficiency or confirms the election result, the contestant pays the costs. If the election is annulled or set aside on the grounds of error by the precinct board in conducting the election or canvassing, costs are paid by the county or city conducting the election. If the election is annulled or set aside on other grounds, the judgment for costs is against the defendant. § 16800.

## Colorado

### **Voting Procedures**

Most counties use optical scanning systems; the others use touch screen machines and paper ballots.

### **Recount Procedures**

An automatic recount is required when the difference between highest number of votes cast and the second highest number of votes cast is less than or equal to 0.5% of the highest vote cast in the contest. Colorado Revised Statutes Annotated § 1-10.5-101. Any expenses incurred in conducting such a recount are paid by the entity that certified the candidate. §1-10.5-101.

A losing candidate or the candidate's party also can request a recount of votes for an elected office. § 1-10.5-106. The interested party must submit a notarized written request for a recount with the Secretary of State, the county clerk and recorder, the designated election official, or other governing body that originally certified the candidate within 25 days after the election. § 1-10.5-106. The interested party pays the expenses of the recount, but these funds are refunded to the requester if the result of the recount is reversal of the election result in favor of the interested party. § 1-10.5-106. If the Secretary of State determines a recount is necessary, the recount occurs not later than the 25<sup>th</sup> day after the election, and recounts for congressional, state, and district offices, as well as state ballot questions and ballot issues, must be completed no later than the 40<sup>th</sup> day after the election. § 1-10.5-102.

Recounts are conducted by the canvass board that officiated in certifying the official abstract of votes, using the same procedures that were used for the original count, unless otherwise directed by the Secretary of State. §§ 1-10.5-107, 1-10.5-108.

### **Contest Procedures**

Any voter may contest an election of any candidate on the grounds that: (1) the candidate elected is not eligible to hold office; (2) illegal votes were received or legal votes rejected at the polls in sufficient numbers to change the result of the election; (3) an election judge or canvass board made an error in counting or declaring the result of an election that changed the result of the election; (4) an election judge, canvass board, or member of a canvass board committed malconduct, fraud, or corruption that changed the result of the election; or (5) for any reason, another candidate was legally elected to the office. §§ 1-11-201, 1-11-202. In general, the contestor must, within ten days after the official survey of returns has been filed with the designated election official, file a written statement of intention to contest the election with the clerk of the district court. §1-11-213. The contestor pays the fees of the contest in the event of judgment against the contestor. §1-11-217.

## Connecticut

### **Voting Procedures**

In 2002, Connecticut will use lever machines in the vast majority of its precincts but optical scanning machines will be used in a few precincts.

### **Recount Procedures**

Automatic recounts occur when the margin of victory between the winning candidate and a defeated candidate is less than 0.5% of the total votes cast for the office but not more than 2,000 votes, or less than 20 votes, unless the defeated candidate waives this right to a recount. Connecticut General Statutes Annotated § 9-311a. An election moderator – an individual appointed by election registrars prior to the election – may also require a recount if, within three days of the election, it appears to the moderator that there is a discrepancy in the returns of any voting district. § 9-311.

Within five days of the election, recanvass officials must begin the recount. The recount is conducted in public view by recanvassing and reading aloud the votes cast on the counter compartment of each voting machine and recanvassing and reading aloud the votes cast in absentee ballots, using the same tally and return forms used for the original canvass. § 9-311. The recount costs are borne by the municipalities.

### **Contest Procedures**

In elections for presidential electors, United States Senators and Representatives, and state officers, any voter or candidate may within 14 days of the election file a complaint on the grounds that he or she is aggrieved by: (1) a ruling of an election official in connection with the election; (2) a mistake in the vote count; or (3) a violation of certain election laws including prohibitions on fraudulent conduct. §§ 9-323, 9-324, 9-328. For elections involving federal offices, such a complaint is filed with any judge of the Connecticut Supreme Court (§ 9-323); for elections involving state offices, such a complaint is filed with a judge of the Superior Court (§ 9-324). The judge receiving the complaint must order a hearing on the complaint not more than five or less than three days from the date of the order. If sufficient reason is demonstrated, the judges may order a recount. The judges also may order a new election. §§ 9-323, 9-324, 9-328.

The complainant must give a bond for payment of the costs of prosecuting the complaint, and the judge or judges hearing the complaint must make an order regarding payment of the costs “as may be equitable.” § 9-327.



## **Delaware**

### **Voting Procedures**

Delaware has used touch screen voting machines statewide since 1996.

### **Recount Procedures**

A candidate who loses by less than 0.5% or fewer than 1,000 votes may petition the Superior Court for a recount, but must do so before the state canvassing board adjourns. The recount is performed by the Court under state expense. 15 Delaware Code § 5702.

### **Contest Procedures**

A candidate may file a petition to contest an election with the Office of the Commissioner of Elections within ten days of certification of the election results. The Board of Elections will rule on the petition which may then be appealed to Superior Court. The candidate must also provide notice to the winning candidate of an intention to contest within 20 days of the certification of results and must furnish grounds for contesting the results within ten days following that notice of intention. § 5901.

## **District of Columbia**

### **Voting Procedures**

The District of Columbia will use new optical scanning machines in the 2002 elections, as well as at least one touch screen voting system per precinct for voters with vision impairment.

### **Recount Procedures**

A candidate may petition the D.C. Board of Elections and Ethics for a recount within seven days after the Board certifies the election results. The petitioner must pay a fee of \$50 for each precinct to be recounted. If additional costs are required, the petitioner must remit payment within 15 days of notice by the Board. Any voter may also petition the D.C. Court of Appeals to review the election results within seven days of the certification as well. D.C. Code § 1-1001.11.

### **Contest Procedures**

There are no statutes governing election contest procedures other than those listed above for recounts.

## **Florida**

### **Voting Procedures**

Florida has eliminated the use of punch card ballots and now uses only optical scanning machines and touch screen voting machines. Forty-two Florida counties use optical scanning machines, while 15 counties use touch screen machines.

### **Recount Procedures**

The county canvassing board must file the county returns for the election of a federal or state officer with the Department of State immediately after certification of the election results. Returns must be filed by 5:00 p.m. on the 11<sup>th</sup> day following the general election. Florida Statutes Annotated § 102.112.

An automatic recount is ordered by the Elections Board if a candidate loses by less than 0.25% of the votes cast for such office. A candidate or member of his party may request a recount if the candidate loses by between 0.25% and 0.5% of the votes cast for such office. This request must be made in writing to the Elections Canvassing Commission by 5:00 p.m. on the third day after the election. All costs are borne by the county or state. § 102.166.

### **Contest Procedures**

Any candidate, voter, or taxpayer may contest the certification of an election to the appropriate circuit court no later than midnight of the tenth day following the most recent certification by the state canvassing board. § 102.168.

# Georgia

## **Voting Procedures**

Following a statewide reform effort, November 2002 will mark the first statewide use of electronic touch screen voting systems in Georgia's 2,823 voting precincts. The electronic touch screen systems will be used in all federal, state, and county elections. Voters will be given a coded card with their precinct information and will use the machines as they would use a touch-pad on an ATM. In addition, optical scanning machines will be used to scan absentee ballots.

## **Recount Procedures**

Federal and state candidates can ask the Secretary of State to conduct a recount if the margin of victory is less than 1% of the total votes cast. Three voters may also request a recanvass of voting machine returns. The request must be made within five days following the election. Others may request recounts if they have proof of errors by filing a written petition with the Secretary of State prior to the official certification of the consolidated election results. Georgia Statutes § 21-2-495. The official certification occurs by the Secretary of State no later than 14 days following the date of the election. § 21-2-499. There are no statutes which detail the burden of costs which may be incurred by a recount.

## **Contest Procedures**

Any candidate for a federal, state, or county office or "any aggrieved elector who was entitled to vote for such person or for or against such question" may contest an election result. § 21-2-521. Allowable grounds are: (1) misconduct, fraud, or irregularity by any primary or election official or officials sufficient to change or place in doubt the result; (2) ineligibility of the person elected; (3) illegal votes received or legal votes rejected at the polls sufficient to change or place in doubt the result; (4) any error in counting the votes or declaring the result of the primary or election, if such error would change the result; (5) any other cause which shows that another was the person legally elected. § 21-2-522.

A petition to the State Election Board must be filed within five calendar days (including weekends and holidays) of the certification of the election results by the Secretary of State. The state court will conduct an expedited trial on a date set within 20 days of the return of the petition. If the election results are confirmed, or if the petition fails or is dismissed, the contestant is liable to pay all costs. If the results are overturned or if misconduct is found, the defendant is liable for all costs. §§ 21-2-523 - 21-2-529.

## **Hawaii**

### **Voting Procedures**

Hawaii uses optical scanning machines in its four counties.

### **Recount Procedures**

Hawaii does not appear to have a specific law regarding recounts apart from a challenge to the election.

### **Contest Procedures**

Any candidate, qualified political party, or 30 voters of an election district may file a complaint with the Hawaii Supreme Court challenging any election. Hawaii Statutes § 11-172. The complaint must be filed in the office of the clerk of the Supreme Court not later than 4:30 p.m. on the 20<sup>th</sup> day following the general election and must be accompanied by a deposit for costs as determined by the Supreme Court rules. § 11-174.5. The court will hear all of the evidence and state findings of fact and law. It is empowered to invalidate the election and cause a new election to be called or to decide which candidate or candidates have been elected.

## **Idaho**

### **Voting Procedures**

Idaho has three types of voting systems. Sixteen counties use paper balloting, 14 use punch card ballots, and 14 use optical scanning machines. Since the 2000 election, Idaho has changed its law regarding absentee ballots; voters must now request their absentee ballot at least six days before the election.

### **Recount Procedures**

Any candidate for federal office may request a recount by applying to the Idaho Attorney General within 20 days of the canvass of the election. Idaho Election Law § 34-2301. If the candidate lost the election by less than or equal to 0.1% of the total votes cast for the office, the recount is automatic and the state pays the costs. § 34-2309. If the candidate lost by a greater margin, the application must specify the precincts to be recounted and include \$100 for each precinct. § 34-2302. If the results of the recount indicate that the results would be different if projected across all of the precincts of the office in question, the money will be returned to the candidate and a recount shall be made of all remaining precincts and the state will pay the costs. §§ 34-2306, 34-2307.

### **Contest Procedures**

Any “elector of the state, judicial district, county, township, precinct, city or incorporated village” may contest the election of “any person declared elected to any office.” § 34-2007. The contestants must file a complaint in court within 20 days after the votes are canvassed. § 34-2008. The contestant must also file a bond to pay costs of the contest if the election is confirmed, the complaint dismissed, or the prosecution fails. § 34-2008. Section 34-2001 of Idaho Election Law contains the grounds upon which the election can be contested.

## **Illinois**

### **Voting Procedures**

Jurisdictions in Illinois use either punch card ballots or optical scanning machines. Illinois did not enact any election reform legislation after the 2000 election, but a lawsuit filed in the wake of voting problems in 2000 has impacted elections. A court granted petitioners' request to use error-detecting equipment at the polling places during the election.

### **Recount Procedures**

Within five days of the announcement of the canvas, any candidate who received "at least 95% of the number of votes cast for any successful candidate for the same office" may file a petition for discovery (recount) with the election authority. Illinois Compiled Statutes 10 § 5/22-9.1. The petition shall "ask that ballots, voting machines, or ballot cards – as the case may be – shall be examined, that any automatic tabulating equipment shall be tested, and that ballots, recorded votes, or ballot cards – as the case may be – shall be counted in specified precincts, not exceeding 25% of the total number of precincts within the jurisdiction of the election authority." 10 § 5/22-9.1. The petition must be accompanied by a fee of \$10 per precinct specified to be recounted. 10 § 5/22-9.1. A candidate affected by this discovery has the right to attend, or send a representative to, the examination. 10 § 5/22-9.1.

This discovery has no impact on the election and is only for informative purposes. The count is not "binding in an election contest brought about under the provisions of the Election Code, shall not be a prerequisite to bringing such an election contest, shall not prevent the bringing of such an election contest, nor shall it affect the results of the canvass previously proclaimed." 10 § 5/22-9.1.

### **Contest Procedures:**

Illinois does not have a specific statute for contesting federal elections. Its election law provides that "[t]he circuit court shall hear and determine contests of election of all other county, township and precinct officers, and all other officers for the contesting of whose election no provision is made." 10 § 5/23. A party must contest an election within "30 days after the proclamation of the result of the canvass of the State electoral board." 10 § 5/23-13.

## **Indiana**

### **Voting Procedures**

Indiana uses several different types of balloting machines including lever, punch card ballots, optical scanning, and touch screen machines. Indiana has enacted widespread voting reforms in a number of areas, but a state budget crunch may delay some reforms. For instance, the state legislature banned punch-card machines after 2006, but may not meet that deadline. The state also enacted a law to create a statewide voter registration database by 2004, but may miss that as well. In addition, Indiana changed its laws regarding absentee ballots and increased voter identification requirements.

### **Recount Procedures**

Any candidate for federal office is entitled to have the votes in the election recounted or to contest the election. Indiana Code § 3-12-11-1(a). The recount or contest petition must be filed with the election division within seven days of the election. § 3-12-11-2(a). If the candidate does not file a petition within the established time, the state chairman of the candidate's political party may file a petition for a recount or to contest the election. § 3-12-11-1(b). This petition must be filed within ten days of the election. § 3-12-11-2(b). The petitioner must furnish a cash deposit for the costs of the recount. § 3-12-11-10. The amount differs depending on how close the election is and how many precincts are to be recounted. The deposit will be returned if the results show that the petitioner was elected. Cross-petitions may also be filed by the winning candidate. Indiana § 3-12-11-4. The state recount commission determines whether to grant the petition and cross-petition. § 3-12-11-12.

### **Contest Procedures**

The procedure for contesting the election is the same as the procedure for seeking a recount.



## **Iowa**

### **Voting Procedures**

Iowa uses a variety of voting machines. Seventy-seven counties use optical scanning machines, 14 counties use electronic machines, 7 counties use lever machines, and one uses paper ballots. In the wake of the 2000 election, Iowa banned future use of the punch card voting system.

### **Recount Procedures**

A candidate may request a recount by filing a written request with the commissioner of the county in the district that has the greatest taxable base. Iowa Code § 50.48. The request must be made by 5:00 p.m. on the third day following the election and must be signed by the candidate. § 50.48. The candidate must post a bond of \$500 unless the margin is either less than 50 votes or 1% of the total number of votes cast for the office. § 50.48. If the candidate is later declared the winner, the bond is returned.

A commissioner responsible for conducting an election may request an administrative recount when the commissioner suspects that voting equipment used in the election malfunctioned, that there were counting errors, or that programming errors may have affected the outcome of the election. § 50.50.

### **Contest Procedures**

A candidate for representative in Congress can contest the election. § 57.1. Grounds for contest are delineated in section 57.1(2). The contestant must file a statement “within two days from the day on which the returns are canvassed by the state board of canvassers.” § 60.4 (as amended by H.F. 2472). The court for the trial shall be the Chief Justice of the Supreme Court and four judges of the district court. § 60.1. The parties to the contested election have the right to have the ballots opened and to have the court correct all errors by election officials. § 57.5. The court determines which party is entitled to hold office and that judgment constitutes a final determination of the title to office. § 60.6.

## **Kansas**

### **Voting Procedures**

Kansas uses a variety of voting machines. Eighty-one counties use optical scanning machines, 21 counties use hand-counted paper ballots, 1 county uses touch screen, and 2 counties use electronic machines. Recently Kansas has simplified its recount provisions, making it easier for statewide candidates to post bonds when requesting recounts. Kansas has also made it a crime to exchange votes.

### **Recount Procedures**

Kansas law does not provide for an automatic recount. A candidate for office, however, may request a recount of the votes in one or more counties. Kansas Statutes § 25-3107. The request must be made by noon on the Monday following the election. The requester must file a bond to pay for the costs of the recount, unless the candidate lost the election by 0.5% or less, in which case the state bears the costs of the recount. § 25-3107. If the candidate has requested the recount and is later found to be the winner, no action shall be taken on the bond. § 25-3107.

### **Contest Procedures**

Kansas law allows any registered voter to contest elections, but these contest provisions specifically exclude a contest to “the election of persons to the United States congress.” § 25-1435. No other statutory provision appears to address a contest of an election to Congress.

## **Kentucky**

### **Voting Procedures**

In Kentucky, 103 counties use touch screen machines, 5 counties use a mix of lever machines and touch screen machines, 1 county uses optical scanning machines, and 1 county uses lever machines. Kentucky has recently enacted voting reforms that strengthen voter identification requirements.

### **Recount Procedures**

If precinct election officers discover an error in the process of polling or tabulating the votes, they must report the error to the county clerk who then files an action in the circuit court for a recount of those ballots. Kentucky Statutes § 120.017. Affected candidates will be notified and made parties to the action. No statute appears to specifically allow for candidates for federal office to request a recount. Candidates for election to any state, county, district or city office, however, may “request a recount of the ballots by filing a petition so requesting . . . within ten (10) days after the day of the election.” § 120.185. The party requesting the recount must execute a bond to pay the costs of the recount. The election materials are transferred to the circuit court, which then recounts the ballots and enters the results.

### **Contest Procedures**

No statute appears to provide expressly for candidates for federal office to contest an election. Kentucky law, however, provides that “any candidate for election to any state, county, district or city office” may contest an election if they received not less than 25% of the number of votes cast for the successful candidate. § 120.155. The petition should be filed in the circuit court of the county where the contestee resides. The petition “shall be filed and process issued within thirty (30) days after the day of the election; it shall state the grounds of the contest relied on, and no other grounds shall afterwards be relied upon.” § 120.155. The contest shall proceed as an equity action. § 120.165. The court may invalidate the election or adjudge one of the parties to be elected to the office.

## **Louisiana**

### **Voting Procedures**

Louisiana uses lever machines and touch screen machines in its parishes. Recently, the state has purchased 700 touch screen machines to replace punch card ballots for in-person absentee voting and to be used on election day in two parishes.

### **Recount Procedures**

Candidates can request a recount of absentee ballots if they allege that there was an error in counting the absentee ballots that will change the outcome of the election and if there is an election contest filed. Louisiana Statutes § 18:1451. If the recount does not change the result of the election, the party requesting the recount must bear the costs. § 18:1452.

### **Contest Procedures**

Any candidate can contest the election by alleging that “except for substantial irregularities or error, or except for fraud or other unlawful activities in the conduct of the election” the candidate would have been elected. § 18:1401(B). The action must be instituted on or before the ninth day following the election. § 18:1405(B). The trial on such an action is without a jury and begins within four days of filing the suit. § 18:1409. The judge may determine the outcome of the election based on the evidence. § 18:1431. If a judge determines that irregularities or problems were sufficient enough to change the vote and an outcome cannot be determined, the judge can order a new election. § 18:1432.

## Maine

### **Voting Procedures**

Voters in Maine use paper ballots and optical scanning machines. Since the 2000 election, Maine has begun the process of creating a statewide voter registration database.

### **Recount Procedures**

A recount is presumed necessary if the margin between the leading candidate and the second-place candidate is less than 1% of the total number of votes cast in the race. Maine Statutes § 737-A. If the margin is greater than 1%, a losing candidate can request a recount by filing a written request with the Secretary of State within five business days after the election. § 737-A. The candidate must file a deposit of \$500 if the margin is within 2% and 4%, and \$1,000 if the margin is greater than 4%. No deposit is required if the margin is less than 2%. § 737-A.

### **Contest Procedures**

Maine law does not appear to contain specific provisions allowing for the contest of elections.

## Maryland

### **Voting Procedures**

Maryland uses optical scanning voting machines (19 counties) and touch screen machines (5 counties). Following the 2000 elections, Maryland enacted several changes. The state eliminated mechanical lever and punch card ballots in the few counties that were still using them. Maryland created a system of provisional ballots when the voter's name is not on precinct registry. In addition, Maryland required that any absentee or provisional ballots be optical scan ballots.

### **Recount Procedures**

Any defeated candidate for public office may petition for a recount within three days after the results have been certified. Maryland Election Law Code § 12-101. The petition may seek a recount in all of the precincts in which the candidate was on the ballot or in a select number of precincts. If the winner of the election is changed on completion of the recount, the opposing candidate may file a counter-petition within two days of the original winner being changed. § 12-102. Both the petition and counter-petition must be filed with the election board with which the candidate's certificate of candidacy was filed. §§ 12-101, 12-102. Recount petitions and counter-petitions also may be filed by any register voter eligible to vote for the office. §§ 12-103, 12-104. Any petitioner or counter-petitioner shall pay for the cost of a recount, unless: (1) the recount changes the outcome of the election or the recount; (2) the recount has resulted in a gain of votes equal to 2% of the total votes cast; or (3) the margin of difference between the winner and the second place finisher is 0.1% or less than the total votes cast for those candidates. § 12-107.

### **Contest Procedures**

A registered voter may seek judicial relief of any act or omission relating to an election, whether or not the election has been held, if the act or omission is inconsistent with state election law and may change or has changed the outcome of the election. § 12-202. Judicial relief must be sought within either ten days after the act or omission occurred or became known to the petitioner, or seven days after the election results are certified, unless the election was a gubernatorial primary or special primary election, in which case relief must be sought within three days after the election results are certified. § 12-202. A court may order that the election be voided and reheld, or postponed and rescheduled, or provide any other appropriate relief. § 12-204.

## **Massachusetts**

### **Voting Procedures**

Massachusetts uses paper punch card ballots, optical scanning machines, and touch screen machines.

### **Recount Procedures**

Candidates may obtain recounts by filing a petition with the Secretary of the Commonwealth by 5:00 p.m. on the tenth day following the election. The petition may specify whether the candidate wants a hand recount. In statewide elections, a recount may be done only if the margin of victory is less than 0.5% percent. Massachusetts Annotated Laws, ch. 54 § 135. There are no statutory requirements for payments by petitioners of the cost of recounts. A full description of the recount process may be found here: <http://www.state.ma.us/sec/ele/elerct/rctidx.htm>

### **Contest Procedures**

Candidates may challenge an election up to 30 days after the election by filing a petition with the Secretary of the Commonwealth. § 134.

## **Michigan**

### **Voting Procedures**

Michigan uses optical scanning machines, punch card ballots, electronic machines, mechanical lever machines, and paper ballots. In 2002, Michigan enacted a law that banned straight-ticket voting, but this provision has been suspended pending the outcome of a referendum vote on this bill.

### **Recount Procedures**

For statewide elections, there is an automatic recount of all precincts in the state if the vote differential is 2,000 votes or less. Michigan Compiled Laws Service § 168.880a. In addition, any candidate can petition for a recount if “the candidate is aggrieved on account of fraud or mistake in the canvass of the votes . . . or the returns.” § 168.879. The petition must be sworn and in writing, and must specify the counties, cities, townships, and precincts in which the recount is requested. The recount petition must be filed with the Secretary of State within 48 hours following the completion of the vote. At the time the petition is filed, the petitioner must deposit with the State Bureau of Elections \$10 for each precinct in which a recount is demanded. § 168.881. If the petitioner successfully proves fraud or mistake or is able to change the result of the election, the funds are returned. The Secretary of State will give notice of the recount petition to each opposing candidate within 48 hours after the filing of the petition. § 168.882. Opposing candidates may file a counter-petition or objections to the original petition no later than 4:00 p.m. of the seventh day after the filing of the original petition.

### **Contest Procedures**

Michigan does not have a specific provision governing contest procedures for federal elections. However, Michigan election law states that “[n]othing . . . shall be construed to repeal any action or remedy which may now exist by reference of any controversy to the courts, except that any proceeding . . . shall be instituted only against the board of state canvassers and by no other action than mandamus.” § 168.878.



# Minnesota

## **Voting Procedures**

Minnesota uses optical scanning voting machines and paper ballots. Following the 2000 election, Minnesota created a grant program to allow jurisdictions using paper ballots to purchase optical scan voting machines. Minnesota has changed the identification requirements for Election Day voter registration so that some forms of tribal identification can be used.

## **Recount Procedures**

There is an automatic recount in a general election when the difference between the votes of the winning candidate and any other candidate is less than 0.5% of the total number of votes counted for that office. Minnesota Statutes § 204C.35 subd. 1. A losing candidate may waive this automatic recount. In addition, a losing candidate can request a recount, at the losing candidate's expense, when the vote difference is greater than 0.5%. § 204C.35 subd. 2.

## **Contest Procedures**

Any eligible voter, including a candidate, may contest a United States Senate or House of Representatives election “over an irregularity in the conduct of an election or canvass of votes, over the question of who received the largest number of votes legally cast, over the number of votes legally cast in favor of or against a question, or on the grounds of deliberate, serious, and material violations of the Minnesota Election Law.” § 209.02. A notice of contest must be filed within five days after the canvass has been completed in a primary or special primary and within seven days after the canvass has been completed in a special or general election. § 209.021.

# Mississippi

## **Voting Procedures**

Individual county governments in Mississippi are permitted to use any type of voting system that they choose. Consequently, there is much variation in the voting machines used in the state's 82 counties: 60 use optical scanning machines; 11 use punch card ballots; 10 use lever machines; and one uses electronic machines. Following the 2000 election, Mississippi approved the creation of a statewide voter registration database and established statewide voter intent standards.

## **Recount Procedures**

There is no procedure under Mississippi law for recounts.

## **Contest Procedures**

There is no procedure specified in Mississippi law to contest a federal election. In the case of state and local elections, however, any person who has reason to believe that an election law has been violated may file a written complaint with the county election commissioners in which the alleged violation occurred. § 23-15-903. State law also provides for filing petitions with the Mississippi Senate or House of Representatives to contest elections involving seats in those bodies. § 23-15-955.

# Missouri

## **Voting Procedures**

Missouri uses optical scanning machines, punch card ballots, and paper ballots. Following the 2000 election, Missouri enacted several changes in its election laws: it approved the use of touch screen voting machines (but none are currently in place); it required voters to produce a state-issued identification unless they are recognized by at least two election supervisors; it provided that provisional ballots will be used for people not on the voter rolls; and it established ballot counting standards.

## **Recount Procedures**

A candidate who loses by less than 1% of the total votes cast has the right to seek a recount. Revised Statutes of Missouri § 115.601. The recount request must be filed no later than seven days after the election is certified with the Secretary of State. The results of the recount will be certified within 20 days of the receipt of the recount request by the Secretary of State. The candidate requesting the recount may be required to post a bond. In addition, an election authority may petition a circuit court for a recount or new election “if convinced that errors or omission of commission have occurred on the part of the election authority, election judges, or any election personnel in the conduct of an election.” § 115.600.

## **Contest Procedures**

A candidate for election to an office may challenge the correctness of the returns for that office by alleging that irregularities occurred in the election. § 115.553. A contest petition must be filed in the office of the clerk of the Missouri Supreme Court within 30 days after the official announcement of the election result by the Secretary of State. § 115.557. A contestant may be required to post a bond to cover costs and expenses of the election contest in the event that the contestant is unsuccessful in the contest. § 115.591. If a court hearing a contest finds that there is a prima facie showing of irregularities which place the result of a contested election in doubt, the court shall order a recount of all votes brought into question. § 115.583. In such instances, the court also may order a new election. § 115.593.

# **Montana**

## **Voting Procedures**

Montana uses optical scanning machines, punch card ballots, and paper ballots. No reforms have been passed since the 2000 election.

## **Recount Procedures**

A candidate may seek a recount if the margin of victory is 0.25% or less of the total votes cast. Montana Code § 13-16-201. The recount petition must be filed with the Secretary of State within five days after the official canvass. The expenses for this type of recount are covered by the state and the counties. § 13-16-205.

In addition, a candidate may seek a recount if the margin of victory exceeds 0.25% but does not exceed 0.5% of the total votes cast. § 13-16-211. A petition for a recount under these circumstances must be filed with the officer with whom the candidate's nomination petition or declaration was filed. The petitioner must also post a bond to cover the costs of the recount.

## **Contest Procedures**

Within five days after the canvass of election returns, an unsuccessful candidate may apply to the district court of the county where the election was held for an order directing the county recount board to recount the votes in any or all of the precincts. § 13-601-301. If the election was held in more than one county, the application shall be made to the district court of the county where the candidate resides. If the court finds probable cause to believe that votes were not correctly counted, the court shall order a recount. The applicant must bear the cost of a court-ordered recount, unless the recount shows that the applicant has won the election. § 13-16-307.

## Nebraska

### **Voting Procedures**

Nebraska uses optical scanning machines and paper ballots. Following the 2000 election, Nebraska changed its election law to allow provisional balloting, to allow split shifts for poll workers, and to require poll worker training.

### **Recount Procedures**

An automatic recount occurs if the margin of victory is 1% or less in an election in which more than 500 votes were cast. Revised Statutes of Nebraska § 32-1119. A losing candidate can waive his right to the automatic recount. If a candidate loses by more than 1%, the candidate may submit a written request for a recount not later than the tenth day after the county canvassing board or the board of state canvassers convenes. § 32-1121. Prior to conducting the recount, the cost of the recount will be determined, and the candidate will be required to pay the estimated costs of the recount before it is conducted. If the candidate is declared the winner after the requested recount, all amounts paid will be refunded to the candidate.

### **Contest Procedures**

There is no specific provision for contesting federal elections. However, elections involving the Nebraska legislature and ballot questions may be contested within 40 days of the election. §§ 32-1106 - 32-1108. An election may be contested to a court on several grounds, including: “misconduct, fraud, or corruption”; bribery; “[i]f illegal votes have been received or legal votes rejected”; and an error which would change the election result. § 32-1101. The case will be heard by a court within 15 days “after the matter is at issue.” § 32-1110. Within ten days after filing a contest petition, the contestant will file a bond with the appropriate clerk of the court to cover all costs in the event that the election is confirmed. § 32-1105. If the contestant prevails, the costs will be covered by the state or county. § 32-1116.

## Nevada

### **Voting Procedures**

In Nevada, nine counties use optical scanning machines, seven use punch card machines, and one uses electronic machines.

### **Recount Procedures**

Any defeated candidate, or any candidate who has tied with another candidate, may demand and receive a recount. The demand must be filed in writing within three working days after the official count and certification of the vote. Nevada Statutes §§ 293.400, 293.403. The demand must be made to the officer with whom the candidate filed the declaration or acceptance of candidacy or, if the recount affects more than one county, to the Secretary of State. §§ 293.403(1)(a), 293.404(6). The candidate requesting the recount must deposit the estimated costs of the recount, which will be refunded if the candidate prevails; otherwise, the candidate must pay costs. §§ 293.403(b), 293.405(1)-(2). In counties or cities using mechanical voting systems, the candidate seeking the recount must select 5% of the affected precincts (and no less than three precincts) for which ballots will be recounted by hand and by computer. If the hand or computer counts show a discrepancy greater than or equal to 1% or five votes, whichever is greater, for the candidate seeking the recount or the original winner, all ballots for that office will be counted by hand. Otherwise, all ballots will be recounted by computer. In counties and cities that do not use a mechanical voting system, the recount will include a count and inspection of all ballots. § 293.404.

A recount must be begun within five calendar days of the demand and must be completed within five calendar days after it is begun. § 293.405. Only one recount is allowed for each precinct regarding the same office at the same election. § 293.405.

### **Contest Procedures**

There are no procedures set out in the Nevada election laws for contesting elections for the office of U.S. Senator and Representative other than seeking a recount. These federal offices are explicitly excluded from the provisions for contesting the election of a candidate. § 293.407.

## **New Hampshire**

### **Voting Procedures**

New Hampshire uses optical scanning machines in 93 municipalities; the remaining municipalities use paper ballots. There have been no major changes to New Hampshire election laws in 2002, while state lawmakers await the results of a statewide election law study. In 2001, a committee was established to study Internet and electronic voting and the state took steps to move closer to a uniform ballot design.

### **Recount Procedures**

Any candidate can apply for a recount. The application must be made in writing to the Secretary of State by the Friday after the election. The applying candidate has to pay fees that vary depending on how close the vote was (and which will be refunded if the candidate prevails on the recount). New Hampshire Statutes §§ 660:1-2, 660:1-6. The Secretary of State begins recounting the ballots on the Wednesday after the due date for the application. § 660:4. Any candidate who does not have the most votes upon a recount can appeal to the Ballot Law Commission within three days. § 665:6.

### **Contest Procedures**

There are no procedures set out in the New Hampshire election laws for contesting federal elections other than seeking a recount. It appears that an individual might be able to raise questions regarding the legality or regularity of elections in New Hampshire Superior Court. *See* § 665:6.

## New Jersey

### **Voting Procedures**

New Jersey uses direct recording electronic machines, mechanical lever machines, optical scanning machines, paper ballots, and punch card ballots.

### **Recount Procedures**

Any candidate may seek a recount through an application to a Superior Court judge in the appropriate county by the second Saturday after the election. New Jersey Statutes § 19:28-1. The state, county, or municipality will pay for the costs of a recount if the result of the election is changed or the difference in the vote changes by more than 10 votes or 10% of the total vote cast (whichever is greater). Otherwise, the costs and expenses of the recount are paid by the applicant. § 19:28-2. If an error has been made that changes the result of the election, the judge will revoke the certificate of election already issued and will direct that a new certificate be issued in favor of the true winner. § 19:28-4. If the recount results in a tie, the judge will revoke the original certificate. § 19:28-4.

### **Contest Procedures**

Voters may contest an election for a variety of reasons, including: any error in counting the votes that would change the result; fraud or corruption by members of any district election board sufficient to challenge the result; and ineligibility of the person declared elected. § 19:29-1. In the case of a tie, “either party” may contest the election. § 19:29-1. Contests are begun with the filing of a petition signed by the defeated candidate or the requisite number of voters (25 voters for an office voted for by the entire state or more than one county). § 19:29-2. The petition must be accompanied by a bond or cash security conditioned to pay costs in case the election is confirmed or the petition dismissed. § 19:29-2. The petition must be filed within 30 days of the election or within 10 days after the result of any recount has been determined or announced. § 19:29-3. The person that the judge declares elected is entitled to a certificate of election and any preexisting, contrary certificate will be annulled. §§ 19:29-8, 19:29-9. If the judge finds that no one was duly elected, the election will be set aside. § 19:29-9. The judge’s decision may be appealed to the Appellate Division of the Superior Court. § 19:29-11.



## New Mexico

### **Voting Procedures**

New Mexico uses electronic voting machines in 23 counties and optical scanning machines in 13 counties.

### **Recount Procedures**

Any candidate may file a petition for a recount with the Secretary of State within six days of the certification of the state canvassing board issuing a certificate of nomination or election. New Mexico Statutes Annotated § 1-14-14. The candidate must pay a fee of \$50 to the Secretary of State for each precinct to be recounted and a fee of \$10 for each voting machine to be recounted. The candidate's fee will be repaid if it appears that error or fraud is found to change the winner of the election contest. § 1-14-15. The recount must take place within ten days of the filing of the recount application. § 1-14-16.

### **Contest Procedures**

A candidate may file a complaint of contest with the Secretary of State within 30 days following the certification of nomination or election to the successful candidate. §§ 1-14-1 through 1-14-7.

## **New York**

### **Voting Procedures**

In New York, 94% of votes are cast on mechanical lever machines. Paper ballots, which are used primarily for absentee, affidavit and emergency ballots, account for less than 6% of votes cast.

### **Recount Procedures**

In New York, there is an automatic recount within 15 days of the election. New York Law § 9-208(1). If the recount reveals an error in the original count, the recounted votes will supersede the original results filed. § 9-208(2). If upon a recount, “it shall be found that a discrepancy still remains unaccounted for,” the Board of Elections must examine and test the voting machine to determine the cause of the discrepancy. The custodian of the machine will then file with the board of elections a written statement detailing the results of the examination. § 9-208(3).

### **Contest Procedures**

Any voter may initiate a proceeding in the New York Supreme Court to contest a vote count. § 16-106(2). The proceeding must be begun within 30 days after the election or purported erroneous determination was made. § 16-106(5). The court may direct a recount, the correction of an error, or the performance of a legal duty by the relevant state or local election officials. § 16-106(4).

## **North Carolina**

### **Voting Procedures**

North Carolina uses punch card ballots, electronic machines, and paper ballots. Following the 2000 election, the state decided to eliminate punch card voting systems by 2006. The state also eliminated the requirement that someone casting an absentee ballot had to have an excuse.

### **Recount Procedures**

A candidate can demand a recount if the difference between the votes for that candidate and the votes of the winning candidate is less than: (1) 1% of the total votes cast in a nonstatewide race; or (2) 0.5% of the total votes cast in a statewide race. North Carolina General Statutes § 163.182.7. The demand for a recount must be in writing and must be received by the state board of elections by noon on the second Wednesday after the election. In addition, either the county or state board of elections may order a discretionary recount.

### **Contest Procedures**

Any registered voter, including a candidate, may file a protest concerning the conduct of an election with the county board of elections. § 163-182.9. The protest must be in writing and must state whether the protest concerns the manner in which the votes were counted or some other irregularity. The protest also must state the remedy that the protestor is seeking. Any protest must be filed no later than 6:00 p.m. on the second day after the county board has completed its canvass and declared the results. Decisions of county board of elections on an election protest may be appealed to the state board of elections. § 163-182.11.

## **North Dakota**

### **Voting Procedures**

North Dakota uses optical scanning machines, punch card ballots, and paper ballots. Since 2000, North Dakota has changed its election rules to allow an election board member to check a voter's identification in the event of a challenge and to require that instructions be included with absentee ballots.

### **Recount Procedures**

A recount is required during a general election if the margin of victory is 0.5% or less of the winning candidate's vote total. North Dakota Code § 16.1-16-01. In addition, a candidate in a general election may request a recount if the candidate fails to be elected by more than 0.5% and less than 2% of the winning candidate's vote total. Such a request must be made within three days after the canvass of the votes by the state canvassing board in the case of a congressional or statewide election. The request must be in writing, must contain a bond, and must be filed with the Secretary of State. Within four days after the canvass of the votes by state canvassing board, the Secretary of State shall notify all county auditors to conduct recounts. Each candidate involved in the recount, either personally or by a representative, may participate in the recount. The county auditor shall certify the result of the recount no later than three days after the recount.

### **Contest Procedures**

A defeated candidate or ten qualified electors may contest an election. § 16.1-16-02. Any such complaint must be filed within 5 days after the final certification of a recount or within 14 days after the final certification if no recount is to be conducted. § 16.1-16-04. The complaint must be filed in the district court of the contestee's county of residence.

# Ohio

## **Voting Procedures**

Ohio primarily uses punch card ballots, but also uses lever machines, electronic machines, and optical scanning machines.

## **Recount Procedures**

In Ohio, there is an automatic recount when the number of votes for the declared winning candidate does not exceed the number of votes for the declared defeated candidate by a margin of 0.5% or more of the total vote in a county, municipal, or district election, or by a margin of 0.25% or more of the total vote in a statewide election. Ohio Code § 3515.011. Any losing candidate may seek a recount by filing a written application within five days after the election results are declared. §§ 3515.01, 3515.02. The applicant must provide a deposit as security for the payment of the recount costs. §3515.03. The applicant will be charged for the recount costs by precinct unless: (1) the recount results in the applicant being declared elected or (2) the total number of recounted votes cast in a precinct for the applicant is over 4% greater than the number of votes for the applicant originally recorded. § 3515.07. The Board of Elections must begin a recount within ten days of the declaration that prompts an automatic recount or the filing of an application. § 3515.03.

The declared losing candidate may file a written request with the Board of Elections not to start an automatic recount; the Board must grant such a request. § 3515.03. If a person was declared elected to an office, but a recount resulted in that person not being elected, the person may, within five days of an amended declaration of election results, apply for a recount in any precinct where ballots were not recounted. § 3515.06.

## **Contest Procedures**

Federal election results may be contested by filing a petition with the clerk of the Ohio Supreme Court within 15 days after the results have been announced by the proper authority, or within 10 days after the results of a recount have been announced. §§ 3515.08, 3515.09. The petition must be signed by the defeated candidate or by at least 25 voters who voted for or against a candidate for the relevant office. § 3515.09. The petition must provide the grounds for the contest and be accompanied by a bond with surety sufficient to pay all costs. § 3515.09. If the results of the election are confirmed, the petition is dismissed, or the prosecution fails, the contestor will be liable for costs; if the results of the election are set aside, the appropriate county will pay the costs. § 3515.09. To prevail, a contestor must prove that: (1) one or more irregularities occurred and (2) the irregularity or irregularities affected enough votes to change or make uncertain the election result. *In re Election of Nov. 6, 1990 for Office of Atty. Gen. of Ohio*, 58 Ohio St.3d 103, 105, 569 N.E.2d 447, 450 (Ohio 1991).

## Oklahoma

### **Voting Procedures**

Oklahoma has used optical scanning machines throughout the state for the last ten years. It will continue to use them in the 2002 elections.

### **Recount Procedures**

A candidate can obtain a recount by filing a petition with the State Election Board before 5:00 p.m. on the Friday following the election, along with payment of \$600 for each county affected by the recount. If there is an outstanding balance following the recount or in the case of a successful petition, the payment will be returned to the candidate.

The petition can specify whether a manual recount is desired. Recounting must begin no less than three and no more than ten days after the petition is filed. 26 Oklahoma Statutes §§ 8-109-13, 9-109-17.

### **Contest Procedures**

A petition for a contest based on irregularities must be filed with the State Election Board before 5:00 p.m. the Friday following the election. The hearing must be scheduled no less than three nor more than ten days from the date the petition is filed. § 26-8-118.

# Oregon

## **Voting Procedures**

Oregon uses optical scanning machines and punch card ballots. All ballots are mailed to Oregon residences and must be returned by mail or dropped off at a designated site. The state has recently required the implementation of a centralized voter registration database, set out details for instructions on ballot handling and counting, required public testing of voting machines, addressed vote-by-mail concerns, and ordered local election officials to make reasonable efforts to educate voters on how to cast a vote on their specific voting system.

## **Recount Procedures**

An automatic recount is required when two or more candidates are tied for the highest number of votes or the difference in the number of votes for the apparently elected candidate and the next closest candidate is no more than 0.2% of the total votes for both candidates. Oregon Statutes § 258.280. A candidate, or an officer of a political party on behalf of a candidate, may file a demand for a recount. § 258.161(1). The candidate or officer may demand a full recount of all the precincts in which votes were cast for the relevant office. §§ 258.006(6), 258.161(4). Alternatively, the candidate or officer may demand a partial recount, which involves 5% of the precincts in which votes were cast for the relevant office or three specified precincts. §§ 258.006(8), 258.161(4). The candidate or officer may later file a supplemental demand for a recount of the remaining precincts. § 258.161(4). With a few exceptions, a cash deposit must be paid with the recount demand. § 258.161(5). If a full recount reveals that the candidate for whose benefit the recount was conducted received a plurality of the votes, the deposit will be refunded. § 258.250. A county clerk may file a demand for a recount in specified precincts, the cost of which will be paid by the relevant county. § 258.161(3).

## **Contest Procedures**

An election may be contested by any candidate, any individual qualified to vote for the candidate, or certain state or county officials for the following reasons: (1) deliberate and material violation of any provision of the election laws in connection with the election; (2) ineligibility of the person elected to hold the office at the time of the election; (3) illegal votes; (4) mistake or fraud in the canvass of votes; (5) fraud in the count of votes; or (6) nondeliberate and material error in the distribution of the official ballots. Oregon Statutes § 258.016. A petition to contest a federal election must be filed with the Circuit Court for Marion County by the 40<sup>th</sup> day after the election or the 7<sup>th</sup> day after completion of a recount and must specify the cause of the contest and the names of all candidates for the office other than the candidate contesting the results. §§ 258.006(3), 258.036. The prevailing party will recover costs, disbursements, and reasonable attorney fees from the losing party. § 258.046. However, if the cause of the contest is a mistake in the canvass of votes and the contestant prevails, the cost of any recanvass will be paid by the relevant political subdivision. § 258.046.

# **Pennsylvania**

## **Voting Procedures**

Pennsylvania uses paper ballots, mechanical lever machines, punch card ballots, optical scanning machines, and electronic machines. A statewide voter registration system, known as the Statewide Uniform Registry of Elections, became law earlier this year.

## **Recount Procedures**

A recount of ballots is required in an election district if three qualified electors in that district file a petition alleging that, upon information they consider reliable, fraud or error was committed. 25 Pennsylvania Statutes § 3261. Similarly, a recanvassing of voting machines is required in an election district if three qualified electors in that district file a petition alleging that, upon information they consider reliable, fraud or error was committed. In either case, each candidate may be present at the recount or recanvassing. § 3261-2. Recounting or recanvassing petitions must be filed within five days of the tabulation of that county's returns; however, if error or fraud is found, the interested parties get another five days to file additional petitions. § 3263.

## **Contest Procedures**

There are no state provisions allowing a candidate for office in the U.S. Congress to contest the results of a general election.



## **Rhode Island**

### **Voting Procedures**

Rhode Island uses optical scanning machines. Rhode Island recently approved a fund to purchase touch screen machines in the future that will be available to voters with disabilities and passed legislation to allow the Secretary of State to create a centralized voter registry as federal funding becomes available.

### **Recount Procedures**

Any candidate challenging an election result may petition the Board of Elections for a recount within seven days after the declaration of the election result. Rhode Island Laws § 17-19-37. The initial recount will be conducted by re-reading the programmed memory devices of the optical scanning machines. § 17-19-37.1(a)(1). Any discrepancy in the initial recount results and the results from the original election will entitle a candidate to a recount of votes by re-feeding the computer ballots cast into the optical scanner, provided that a candidate trails the winning candidate by less than 5%. § 17-19-37.1(a)(2). If the initial recount or subsequent recount produce a change in the results of a race that cause a candidate to trail the winning candidate by less than 3%, the candidate may request a manual recount of votes. § 17-19-37.1(3)

### **Contest Procedures**

There are no procedures set out in the Rhode Island election laws for contesting federal general elections other than seeking a recount. However, at any time before the certification of the results of an election, the Board of Elections may, upon its own motion, investigate and take appropriate action on any allegation of error, irregularity, or impropriety that comes to the Board's attention regarding the conduct of the election. § 17-22-5.1.

## **South Carolina**

### **Voting Procedures**

South Carolina uses optical scanning machines, punch card ballots, and electronic machines. The state recently passed legislation recommending pay hikes for election managers and poll workers and calling for members and staff of county boards of voter registration and county election commissions to participate in a common training curriculum.

### **Recount Procedures**

In South Carolina, there is an automatic recount whenever there is a difference of no more than 1% of total votes between the number of votes received by the declared elected candidate and the number of votes received by any other candidate. South Carolina Code § 7-17-280. The recount must be made “forthwith” unless the other candidate or candidates waive the recount in writing. § 7-17-280.

### **Contest Procedures**

The Board of State Canvassers must meet within ten days of a general election to canvass the vote for all officers voted for in the election. § 7-17-220. Any protest regarding the election of a federal officer must be filed in writing, setting out the grounds for the protest, with the chairman of the Board no later than noon five days after the canvassing of the votes. § 7-17-260. The Board must hear the protest no earlier than the fifth day and no later than the 25<sup>th</sup> day following the receipt of the protest. § 7-17-270. Appeal from decisions of the Board must be taken to the state Supreme Court on petition for a writ of certiorari and must be granted “first priority of consideration” by the Supreme Court. § 7-17-270.

## **South Dakota**

### **Voting Procedures**

South Dakota uses optical scanning machines, paper ballots, and punch card ballots. The state has passed legislation creating a statewide voter registration database, updating procedures used monthly in removing dead people and convicted felons from voter rolls, allowing localities to use electronic voting, and requiring that recounts be conducted in public.

### **Recount Procedures**

Within three days of the official canvassing of votes, any candidate for an office voted on in more than one county – including a candidate for the U.S. Congress – who has lost by less than 0.25% of the total votes cast may seek an automatic recount by filing a petition with the Secretary of State. South Dakota Statutes § 12-21-12. **WITHIN TEN DAYS OF AN ELECTION, ANY THREE REGISTERED VOTERS IN A PRECINCT** can demand an automatic recount of that precinct’s votes; within three days of the petition seeking a recount, recounts can be demanded in any other precinct within the county. §§ 12-21-8, 9. If a recount is ordered, the presiding judge of the county’s circuit court shall appoint a recount board consisting of a referee and two voters of the county and providing for representation of the two largest political parties in the county. The referee shall be a member of the political party which polled the largest number of votes for Governor in the county in the last gubernatorial election. § 12-21-2. The recount board shall convene in the office of the county auditor on the second Monday following the filing of the recount petition at 10:00 a.m. § 12-21-20. Detailed rules govern the conduct of the recount, which shall proceed “as expeditiously as reasonably possible until completed.” § 12-21-25.

### **Contest Procedures**

South Dakota’s provisions for contesting elections do not apply to elections for office in the U.S. Congress. § 12-22-2.

# Tennessee

## **Voting Procedures**

Tennessee uses optical scanning machines, punch card ballots, electronic machines, and paper ballots.

## **Recount Procedures**

Recounts are only allowed in the event of a tie, fraud, or malfunction of a voting machine. The court or body of jurisdiction will determine if there is to be an automated or manual recount. Tennessee Statutes Annotated § 2-17-117. The county election commission must certify the results of the recount within one week of the election date. The state election commission may extend this period if necessary. There are no specific requirements for candidates to bear the cost of a recount. § 2-8-101.

## **Contest Procedures**

Any candidate may contest the election results within ten days after the election to the State Election Commission. The contesting candidate bears financial responsibility for any malicious or frivolous contest. The case is determined in the chancery court of the defendant's residence by a judge from a different division. §§ 2-17-101 - 2-17-115.

# Texas

## **Voting Procedures**

Texas uses optical scanning machines, paper ballots, punch card ballots (which are being phased out), touch screen and other electronic machines, and mechanical lever machines. Texas has passed new rules regarding vote counting and registration list purges, as well as a ban on new punch card machines. Another measure established a voting rights hotline.

## **Recount Procedures**

A candidate may obtain an initial recount if (1) the difference in the number of votes received by the candidate and the winning candidate “is less than 10 percent of that candidate’s number of votes”; (2) the candidate is shown by the election returns to be entitled to a place on a runoff ballot; (3) the Secretary of State certifies that counting errors affecting the election occurred in one or more election precincts in which paper ballots were used; or (4) the total number of votes received by all candidates for the office is less than 1,000. Texas Statutes § 212.022. In addition, a losing candidate may obtain an automatic recount of electronic voting system results; a winning candidate may also obtain such a recount if the losing candidate obtains a recount that does not include all of the voting system precincts in the election. § 212.0241.

Petitions for an initial recount must be submitted by the later of 5:00 p.m. of the fifth day after election day or 5:00 p.m. of the second day after the date the canvassing authority completes its canvass of the original election returns. § 212.028. The petition shall be reviewed for compliance within 48 hours, and the recount will be held not later than the seventh day after the date the petition is approved. §§ 212.029, 212.031.

## **Contest Procedures**

Texas’s provisions for contesting elections do not apply to general or special elections for office in the U.S. Congress. § 221.001.

## Utah

### **Voting Procedures**

Most counties in Utah use punch card ballots, although four counties use paper ballots and two counties use optical scanning machines. Utah legislators passed election reforms allowing provisional voting, improving accessibility for the disabled, and ensuring that voting equipment meets Federal Election Commission standards.

### **Recount Procedures**

Any candidate who loses by not more than a total of one vote per voting precinct may file a request for a recount within seven days after the election. The election officer shall supervise the recount and recount all ballots cast for that office. Utah Statutes § 20A-4-401.

### **Contest Procedures**

A registered voter may contest the results of any general election by filing a written complaint with the district court of the county in which the voter resides within 40 days after the vote. §§ 20A-4-402, 20A-4-403. If the reception of illegal votes or the rejection of legal votes is alleged as a ground for the contest, the complaint shall include the name and address of all persons who allegedly cast illegal votes or whose legal vote was rejected. § 20A-4-403. The contest shall occur no less than 10 and no more than 30 days from the date of the petition's filing. § 20A-4-404. Either party may appeal the district court's judgment to the Utah Supreme Court. § 20A-4-406.

## Vermont

### **Voting Procedures**

Most municipalities use paper ballots that are counted by hand, though some municipalities use ballots that are counted by electronic tabulator.

### **Recount Procedures**

If the difference between the number of votes cast for the winning and losing candidates is less than 5% of the total votes cast for all the candidates for the office, the losing candidate has the right to have the votes recounted. 17 Vermont Statutes § 2601. A petition for a recount must be filed within ten days after the election. Candidates for congressional office should file the petition with the superior court in Washington County. The superior court must set an early date for the recount, notifying all candidates at least five days in advance. § 2602.

Detailed rules govern the sorting and counting of the ballots. Candidates may present evidence to the court relating to the conduct of the recount. If the court determines that any violations of recount procedures have occurred and that they may have affected the outcome of the recount, a new recount must be ordered. § 2602j.

### **Contest Procedures**

Any legal voter may contest the result of an election – except for elections to the general assembly – by filing a complaint with the superior court in Washington county alleging (1) that errors were committed in the conduct of the election or in the count or return of votes, sufficient to change the ultimate result; (2) that there was fraud in the electoral process, sufficient to change the ultimate result; or (3) that for any other reason, the result of the election is not valid. The complaint must be filed within 15 days after the election in question, or if there is a recount, within 10 days after the court issues its judgment on the recount. § 2603.

# Virginia

## **Voting Procedures**

Virginia uses a range of voting systems, including punch card ballots, mechanical lever machines, touch screen machines, paper ballots, and optical scanning machines. Virginia passed measures to update the state's provisional voting laws and to require local officials to notify an absentee voter within 90 days if his or her absentee ballot has been rejected. Another measure provided that overvotes or undervotes will not be factored into the recount of a contested race.

## **Recount Procedures**

If the difference between the winning and losing candidates is not more than 1% of the total votes cast for the two candidates, the defeated candidate may appeal for a recount of the vote. Virginia Statutes § 24.2-800. The petition for a recount shall be filed within ten days from the day the state board of elections or the electoral board certified the result of the election. The petition shall be filed in the Circuit Court of the City of Richmond in the case of any statewide office and in the circuit court of the county or city in which the candidate being challenged resides in the case of any other office. The petition shall request the court to have the ballots in the election recounted or, in the case of mechanical or direct electronic voting devices, the vote redetermined. The chief judge of the circuit court in which a petition is filed shall promptly notify the Chief Justice of the Supreme Court of Virginia, who shall designate two other judges to sit with the chief judge, and the court shall be constituted and sit in all respects as a court appointed and sitting in cases of a contested election. § 24.2-801.

Detailed rules govern the selection of recount officials, the recounting process for different voting systems, and the standards to be used when determining whether ballots with attached chads are to be counted. The recount proceeding is final and not subject to appeal. § 24.2-802.

## **Contest Procedures**

There are no state provisions allowing a candidate for office in the U.S. Congress to contest the results of a general election.



## **Washington**

### **Voting Procedures**

Twenty-four counties use optical scanning machines and 15 counties use punch card ballots. State lawmakers passed a bill establishing a statewide registration database by early 2003. The state also came up with new rules to determine voter intent on questioned ballots, to define punch card ballot votes, and to determine how absentee ballots are handled.

### **Recount Procedures**

An officer of a political party or a candidate may file a written application for a recount of all or a portion of the votes cast. The application must be filed with the officer with whom filings for the office are made within three business days after the county canvassing board or Secretary of State has declared the official results of the election. The application must specify whether the recount will be done manually or by the vote tally system. § 29.64.010.

If the difference in the number of votes cast for the winning candidate and the second-place candidate is less than 2,000 votes and also less than 0.5% of the total number of votes cast for both candidates, the county canvassing board shall conduct a recount of all votes cast on that position. If the difference in the number of votes cast for the winning candidate and the second-place candidate is less than 150 votes and also less than 0.25% of the total number of votes cast for both candidates, the votes shall be recounted manually unless the two candidates agree on an appropriate alternative method. If more than one balloting system was used in casting votes for the office, an alternative to a manual recount may be selected for each system. Washington Statutes § 29.64.015.

Witnesses shall be permitted to observe the ballots and the process of tabulating the votes, but they shall not be permitted to handle the ballots. § 29.64.030. If a partial recount changes the result of the election, a complete recount of all ballots cast for the office in question shall take place. § 29.64.035. The votes in any precinct may not be recounted and the results recertified more than twice. § 29.64.051.

### **Contest Procedures**

Any registered voter may contest an election on various grounds including misconduct on the part of a member of the election board or illegal votes. § 29.65.010. If misconduct is alleged, the election result will not be set aside unless the rejection of the votes of the precincts in question would change the outcome of the election. § 29.65.070. If illegal votes are alleged, the election result will not be set aside unless the rejection of the votes in question would change the outcome of the election. § 29.65.100.

## West Virginia

### **Voting Procedures**

West Virginia uses optical scanning machines, punch card ballots, paper ballots, touch screen machines, and lever machines. For the November 2002 elections, state officials have launched a program to allow 16- and 17-year-olds to serve as poll worker trainees. The state also established a “no excuse” absentee voting period of 15 days before an election and shortened the voter registration deadline from 30 days before an election to 20 days.

### **Recount Procedures**

After canvassing the election returns, each county board of canvassers publicly declares the results of the election; however, they do not enter an order certifying the election results for a period of 48 hours after the declaration, excluding Saturdays, Sundays and legal holidays. Within the 48-hour period, a candidate may demand that the board open, examine, and recount any of the ballots. West Virginia Code § 3-6-9.

Every candidate who demands a recount is required to furnish bond to guarantee payment of the costs and the expenses of the recount, but the amount of the bond shall not exceed \$300. If the result of the election is not changed by the recount, the costs and expenses of the recount are paid by the party at whose instance the recount was made. § 3-6-9.

At least 5% of the precincts are to be chosen at random, and the ballot cards will be counted manually. Where electronic voting systems is used, at least 5% of the precincts will be chosen at random, and the ballot images are to be printed from the internal electronic memory of the voting device and are to be counted manually. If the variance between the random manual count and the automatic tabulating equipment count is equal to or greater than 1%, then a manual recount of all ballot cards is required. In the course of any recount, if a candidate demands, or if the board of canvassers elects to recount the votes cast for an office, the votes cast for that office in any precinct are to be recounted by manual count. § 3-4A-28.

### **Contest Procedures**

There are no state provisions allowing a candidate for office in the U.S. Congress to contest the results of a general election.

## **Wisconsin**

### **Voting Procedures**

Wisconsin uses paper ballots, punch card ballots, lever machines, and optical scanning machines.

### **Recount Procedures**

Any candidate voted for at any election may request a recount. The candidate must file a verified petition with the clerk or body with whom nomination papers are to be filed for that office. The petition should be filed not earlier than the time of completion of the canvass and not later than 5:00 p.m. on the third business day following the determination of the results of the election. WI Statutes § 9.01. The petition must specify each ward or municipality in which a recount is desired. An opposing candidate or any voter or other interested party may similarly file a petition for a recount in any or all of the remaining wards or municipalities. § 9.01.

If the difference between the votes cast for the leading candidate and those cast for the petitioner is not more than 0.5% of the total votes if more than 1,000 votes are cast, the petitioner is not required to pay a fee. Otherwise, the petitioner must pay the calculated or estimated fee at the time of filing. § 9.01.

### **Contest Procedures**

Within five business days after completion of the recount, any candidate aggrieved by the recount may appeal to circuit court. The appellant must file the notice with the clerk of the circuit court together with an undertaking and surety in the amount approved by the court. § 9.01.

## Wyoming

### **Voting Procedures**

Of the 23 counties in Wyoming, 14 use optical scanning machines, 5 use punch card ballots, 3 use lever machines, and 1 uses a touch screen system.

### **Recount Procedures**

Recounts are conducted under three circumstances: (1) if the difference in the number of votes for the winning candidate and the losing candidate is less than 1% of votes cast for the winning candidate; (2) if it appears to a county canvassing board that there are irregularities in that precinct; (3) if a losing candidate requests a recount and files an affidavit within two days of certification by the state canvassing board. Wyoming Statutes §§ 22-16-109 - 22-16-110.

If an automatic recount is necessary, the county will pay for the cost of the recount. Otherwise, the candidate must pay a fee of \$100 when filing the recount affidavit and pay up to \$500 for each county that requires a recount. Any surplus will be returned to the candidate as will any payment in which the recount shows sufficient error to change the result of the election. § 22-16-113.

### **Contest Procedures**

A petition may be filed with the clerk of the district court of the county within 14 days after the election results have been certified by the Secretary of State. The case will be considered in an expedited civil court proceeding. §§ 22-17-101- 22-17-114.