



Memorandum

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SUBJECT: State Recount and Contested Election Statutes

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This memorandum provides a survey of state statutes regarding recounts and contested elections.

CRS-2

ALABAMA

Alabama statutes regarding contested elections and recounts do not appear to apply to elections for federal office. *See* Code of Ala. 17-15-1.

ALASKA

STATE REQUIRED AUTOMATIC RECOUNTS

If two or more candidates tie in having the highest number of votes for the same office, the Director [of the board of Elections] shall notify the candidates of the tie and immediately proceed with the recount of votes in the manner discussed below. Alaska Stat. 15.15.460

PRIVATELY INITIATED RECOUNTS

Standing

A defeated candidate or ten qualified voters may petition for a recount. § 15.20.430.

Grounds

The petitioner must allege a mistake made by an election official or by the counting board in counting the votes in an election. *Id.*

Filing deadlines

The application must be filed within five days after the completion of the state review with the Director. *Id.*

Form and its content

An application stating the basis of the belief that a mistake has been made. § 15.20.440.

Costs of the recount

If the recount includes an office for which candidates received a tie vote, or the difference between the number of votes cast was 20 or less or was less than .5 percent of the total number of votes cast for the two candidates for the contested office, the application need not include a deposit (\$300 for each precinct, \$750 for each election district, and \$10,000 for the entire state) and the state shall bear the cost of the recount. Otherwise, the deposit is returned if the recount: (1) proves successful to the originally defeated candidate, or (2) reveals an error that is 4 percent or more of the original count. § 15.20.450.

Procedures involved in recount

The Director shall fix the date of the recount to be held within 5 days after the receipt of an application requesting a recount. § 15.20.460. The director is responsible for all aspects of the recount process and may employ additional personnel necessary to assist in the recount. § 15.20.480. The recount shall be completed within 10 days. *Id.*

Scope of materials used

All ballots are reviewed by the Director. *Id.*

Observers

Candidates, political parties, or organized groups having a direct interest in a recount and who are seeking to protect their interests during a recount may provide, at their own expense, two or more observers to witness the recount. § 15.20.440.

Methods used based on type of voting equipment

The rules in § 15.15.360 governing the counting of ballots in hand-count precincts shall be followed in the recount when a ballot is challenged on the basis of a question regarding the voter's intent to vote for the candidate, proposition or question. § 15.20.480.

Procedure for invalidating ballots

A candidate or any person who requested a recount may challenge the recount by appealing to the state supreme court within 5 days of the completion of the recount. § 15.20.510.

A candidate or persons who requested a recount may challenge the recount by appealing to the chamber in which the candidate seeks membership in accordance with the

applicable rules of Congress. § 15.20.520.

Security of and access to materials

The director has custody of the ballots and all other relevant election materials. § 15.20.480.

Deadlines

The recount must start within five days of the request, and must be completed within 10 days. § 15.20.460; 15.20.480.

Appeals

A candidate or any person who requested a recount who has reason to believe an error has been made in the recount may appeal to the supreme court in accordance with rules as may be adopted by the court. The appeal must be filed within five days of the completion of the recount. The court enters judgment either setting aside, modifying or affirming the recount. § 15.20.510.

PRIVATELY INITIATED CONTESTS

Standing

A defeated candidate or ten qualified voters may contest an election. § 15.20.540.

Grounds

Grounds to contest include: (1) malconduct, fraud, or corruption on the part of an election official sufficient to change the result of the election; (2) when the person certified as elected or nominated is not qualified as required by law; and (3) any corrupt practice as defined by law sufficient to change the results of the election. *Id.*

Filing Deadlines

The action must be filed within ten days after the completion of the state review. § 15.20.550.

Form and its content

The contest is initiated by a petition to the court. However, the statute does not prescribe the contents of the petition.

Forum for filing and hearing

The petition must be filed in superior court. *Id.*

Relief available

The court: (1) may pronounce judgment of which candidate was elected or nominated; (2) may declare a tie (the director would immediately proceed to determine the election by lot as is provided by law) or (3) may set aside the contested election. § 15.20.560.

ARIZONA

STATE REQUIRED AUTOMATIC RECOUNTS

An automatic recount is conducted before certification when the margin of votes between the two highest candidates is not more than 0.1 percent of the number of votes cast for both such candidates, or 200 votes. AZ Stat. § 16-661.

The Secretary of State is responsible for conduct of the recount. When the Secretary determines that the margin is so small that an automatic recount must be conducted, he certifies the facts to the Superior Court of Maricopa County. The court then orders the recount. If votes were cast on or tabulated by electronic voting equipment, the Secretary of State shall order that the ballots be recounted "on an automatic tabulating system to be furnished and programmed by the Secretary of State" and "the programs used in the recount of votes . . . shall differ from the programs . . . used in the initial tabulation of the votes." The code further provides that the Secretary of State may designate a county Board of Supervisors to perform duties required of him for carrying out the recount. §16-664.

The recount shall be conducted in accordance with the laws pertaining to contests of elections. § 16-663(A).

The costs of the recount are paid by the state. § 16-666.

PRIVATELY INITIATED RECOUNTS

Arizona does not appear to provide a statutory right for a privately initiated recount.

PRIVATELY INITIATED CONTEST

Statutes providing for election contests do not appear to apply to elections for the United States House of Representatives. *See* § 16-672.

ARKANSAS

STATE REQUIRED AUTOMATIC RECOUNTS

State law does not appear to provide for an automatic recount.

PRIVATELY INITIATED RECOUNTS

Standing

Any dissatisfied candidate may file for a recount. A.C.A. § 7-5-319(a)(1).

Grounds

The candidate is dissatisfied with the returns from any precinct. The statute does not set forth any additional grounds. *Id.*

Filing deadlines

When the number of outstanding absentee ballots of overseas voters is not sufficient to change the results of the election, the candidate must present the petition no later than two days after the board declares the unofficial results of the election. When the number of outstanding absentee ballots of overseas voters is sufficient to potentially change the results of the election, the candidate must present the petition at any time before the board finally completes the canvass of the returns of the election and certifies the results. § 7-5-319(a)(2).

Costs of the recount

The costs (based on the actual cost incurred to conduct the recount, but in no instance shall the amount charged be more than 25 cents per vote cast in the precincts where the recount is requested, or a total of \$2,500 for the entire county, whichever is less) for any recount must be borne by the candidate petitioning for it, and payment of the costs must be made prior to the recount. In the event the outcome is altered by recount, the costs shall be refunded.

§§ 7-5-319(e), (f)

Procedures involved in recount

The board shall open the package containing the ballots and recount the ballots in the manner prescribed by law for the count to be made by the judges in the first instance. § 7-5-319(c)(1).

Observers

Any candidate or political party may be present in person or by representative designated in writing. § 7-5-316.

Methods used based on type of voting equipment

Same as in the primary and general elections. *Id.*; *See* § 7-5-315.

Procedure for invalidating ballots

Same as in the primary and general elections. *Id.* Any candidate or his representative may challenge the ballot of any voter. § 7-5-312.

Security of and access to materials

After the recount is completed, the ballots shall again be sealed and kept as provided by law. § 7-5-319(c); § 7-5-317.

Deadlines

The recount must be completed before the statutory deadline by which certification must be made to the Secretary of State. § 7-5-701.

PRIVATELY INITIATED CONTESTS

Standing

Any candidate has the right to contest the result of an election. § 7-5-801(a).

Ten (10) reputable citizens of any county may file a complaint with the circuit judge. § 7-5-807(a).

Grounds

Wrongful conduct must be declared by the candidate contesting the election. § 7-5-801(b).

The 10 reputable citizens must allege that illegal or fraudulent votes were cast, that fraudulent returns or certifications were made, or that the Political Practices Act was violated. § 7-5-807(a).

Filing deadlines

Twenty (20) days after the certification complained of. § 7-5-801(d).

Twenty (20) days after the election being complained of. § 7-5-807(a).

Form and its content

A complaint must be filed with the circuit court alleging that illegal or fraudulent votes were cast, that fraudulent returns or certificates were made, or that the Political Practices Act was violated. §§ 7-5-801(a); 7-5-807(a).

Forum for filing and hearing

Contest is to be filed within any county in the circuit wherein any of the wrongful acts occurred when any district office is involved, and, except as otherwise provided, in the Pulaski County Circuit Court when the Office of U.S. Senator is involved. § 7-5-801.

The complaint is to be filed with the circuit court when the allegations are made by 10 reputable citizens. § 7-5-807(a).

Deadlines

The complaint shall be answered within 20 days. § 7-5-801(e).

Provisions for preserving evidence

In general elections, the County Board of Election Commissioners has custody over all ballots and certificates (the records of the vote tabulation), § 7-5-702, and the County Clerk has responsibility for absentee ballots. § 7-5-401. In primary elections, the county party committee has custody of all materials. Voting machines may be impounded. § 7-5-530.

Relief available

Candidate may be deprived of the nomination or, where the candidate has already taken office, may be made to forfeit the nomination. §§ 7-5-808, 809.

Appeal

Decisions may be appealed. § 7-5-804.

CALIFORNIA**STATE REQUIRED AUTOMATIC RECOUNTS**

During the official canvass of every election in which a voting system is used the official conducting the election shall conduct a public manual recount of the ballots tabulated by such devices cast in 1 percent of the precincts chosen at random by the election official.

In addition to the 1 percent count, the election official shall, for each race not included in the initial group of precincts, count one additional precinct. The manual recount shall apply only to the race not previously counted.

Additional precincts for the manual recount may be selected at the election official's discretion. Cal. Elec. Code § 15360

PRIVATELY INITIATED RECOUNTS**Standing**

The election official, voters, or the district attorney at the request of the board of supervisors or grand jury may request a recount. §§ 15610, 15620, 15640.

Grounds

If the election official requests the recount, he must have reasonable grounds to believe the ballots in the precinct have been miscounted, and he finds that the precinct board members or central counting board are unable to explain the returns of their respective precincts. § 15610.

If a voter requests a recount, no grounds need be stated. § 15620.

The district attorney may petition the superior court for an order directing a recount, to be made of ballots tabulated by a voting system, upon finding that there is probable cause to believe that there was (1) misconduct or (2) errors or failures in the safekeeping, handling, tallying, counting, recording, or certification of the ballots or votes cast, sufficient to make it likely that the result of the election was affected as to the successful candidates or tie holders, or sufficient to cast substantial doubt on the substantial accuracy of the results without regard to affecting any result. § 15640(a).

Filing deadlines

No deadline is specified for election official-ordered recounts. § 15610

A voter-requested recount for offices not voted on statewide must be filed within 5 days following the completion of the official canvass. § 15620. For statewide offices the filing must be made within 5 days beginning on the 29th day after a statewide election. § 15621.

Board of supervisors or grand jury-ordered recounts must be filed within 25 days of the election. §15640.

Form and its content

No specific form is specified for recounts ordered by an election official. §15610.

Voter-requested recounts for offices not voted on statewide must be filed with the election official responsible for conducting an election in the county wherein the recount is sought. §15620. If an election is conducted in more than one county, the request for recount may be filed with the election official of, and the recount conducted within, any or all of the affected counties. The request shall specify on behalf of which candidate it is filed. § 15621.

Voter-requested recounts for statewide office must be filed with the Secretary of State and shall state for which county or counties the recount is sought and shall specify on behalf of which candidate it is filed. § 15621.

Board of supervisors or grand jury-requested recounts must be made by the district attorney. The district attorney must file a petition with the superior court stating the grounds for such a request. § 15640(a).

Costs of the recount

The cost relating to an election official-requested recount is not specified. § 15610.

The cost (as determined by the election official) for a voter-requested recount must be paid by the voter making the request prior to the recount and at the beginning of each day following. The money shall be returned if the candidate for which the declaration is filed is found to have received a plurality of votes cast which the candidate had not received according to the official canvass or, in an election where there are two or more candidates, the recount results in the candidate for whom the recount was requested appearing on the ballot in a subsequent runoff election or general election who would not have so appeared in the absence of the recount. Otherwise, money deposited in excess of the cost of the recount shall be returned. § 15624.

In a board of supervisors or grand jury-requested recount the court may order payment of the costs of any such recount in whole or in just proportion by any person or any public agency, or both, who petition for a recount. § 15640(c).

Procedures involved in recount

There is no procedure specified in official-requested recounts. § 15610.

Recounts requested by voters shall be commenced not more than 7 days following the election official's receipt of the request for recount, § 15620 or 15621 and shall be conducted by special recount boards. § 15625; 15626.

Methods used based on type of voting equipment

If the election was recorded by means of a punchcard voting system or by electronic or electromechanical vote tabulating devices, the voter who files for a recount may select whether the recount shall be conducted manually or by means of the voting system originally used, or both. § 15627.

Procedure for invalidating ballots

In a voter-requested recount, ballots may be challenged for incompleteness, ambiguity, or other defects in accordance with the following procedure:

- (a) The person challenging the ballot shall state the reason for the challenge.
- (b) The official counting the ballot shall count it as he believes proper and then set it aside with a notation as to how it was counted.
- (c) The elections official shall, before the recount is completed, determine whether the challenge is to be allowed. The decision of the elections official is final. § 15631.

Deadlines

Voter-requested recounts shall be continued daily, Saturdays, Sundays, and holidays excepted, for no less than 6 hours each day until completed. The recount shall be commenced no more than 7 days following receipt of the request for recount. The recount shall not be commenced until the first day following notification of the individuals specified in § 15628. § 15626.

PRIVATELY INITIATED CONTESTS

Standing

Any elector of a county, city, or of any political subdivision of either may contest any general election held therein. § 16100. In a primary election, any candidate may contest the right of another candidate to nomination to the same office. § 16101.

Grounds

A general election may be contested for any of the following causes: (a) precinct board guilty of malconduct; (b) person declared elected was not eligible for that office; (c) defendant has given to any elector or member of a precinct board any bribe or reward, or has offered any bribe or reward for the purpose of procuring his election, or has committed any other offense against the elective franchise; (d) illegal votes were cast; (e)

the precinct board in conducting the election or in canvassing the returns, made errors sufficient to change the result of the election as to any person who has been declared elected; (f) an error in the vote-counting programs or summation of ballot counts. § 16100.

A primary election may be contested for any of the following reasons: (a) the defendant is not eligible to the office in dispute; (b) the defendant has committed any offense against the elective franchise; (c) a sufficient number of votes were illegal, fraudulent, forged, or otherwise improper, and had such votes not been counted, the defendant would not have received as many votes as the contestant; (d) due to mistake, error or misconduct the votes in any precinct were so incorrectly counted as to change the result. § 16101.

Filing deadlines

In a general election, the contestant shall verify the statement of contest and file it within the following times after the declaration of the result of the election by the body canvassing the returns thereof: (a) in cases other than cases of a tie, where the contest is brought on any of the grounds mentioned above, six (6) months; (b) in all cases of tie, twenty (20) days; (c) in cases involving presidential electors, 10 days; and (d) in all other cases, 30 days. § 16401.

In a primary election, the challenge shall be filed within five (5) days after the completion of the official canvass by the board of supervisors of the county last making the declaration. § 16421.

Form and its content

When an elector contests a general election he must file with the county elections official a written statement setting forth specifically: (a) the name of the contestant and that he is an elector of the district or county in which the contested election was held; (b) the name of the defendant; (c) the office; (d) the particular grounds of contest and the section of the code under which the statement is filed; and (e) the date of declaration of the result of the election by the body canvassing the returns thereof. § 16400.

A candidate contesting a primary election must file an affidavit, naming the defendant, in the office of the clerk of the superior court having jurisdiction. §§ 16420, 16421.

Forum for filing and hearing

In an election contest involving a recount the affidavit shall be filed in the office of the clerk of the superior court having jurisdiction. § 16461.

In an election contest not involving a recount the affidavit shall be filed in the superior court of any county within the political subdivision. § 16441.

Costs of the contest

In both general and primary elections, the contestant shall be liable for the expenses involved in making any recount. He shall pay into court in advance each day such sum as the judge determines. If the proceedings are dismissed for insufficiency or for want of prosecution, or the election is confirmed by the court, the costs shall be paid by the contestant. If the election is annulled or set aside on the ground of errors of a precinct board, the costs shall be charged against the county or city where the election was held. When the election is annulled or set aside on any other ground, the defendant shall pay the costs. §§ 16503, 16800.

Deadlines

In a general election contest the court, after hearing the proofs and allegations of the parties and within ten (10) days after submission thereof, shall file its findings of fact and conclusions of law, and immediately pronounce judgment. § 16603

Relief available

In a contest of a general election the court may either confirm or annul and set aside the election. §§ 16701 - 16703.

Appeal

Any party aggrieved by the judgment may appeal to the court of appeals. Until the appeal is finalized, the person declared elected by the superior court shall be entitled to the office in like manner as if no appeal had been taken. § 16900.

COLORADO**STATE REQUIRED AUTOMATIC RECOUNTS**

A recount of any election shall be held if the difference between the highest number of votes cast in that election contest and the next highest votes cast in that election contest is less than or equal to one-half of one percent of the highest vote cast in that election contest. A recount shall occur only after the canvass board certifies the original vote count. CO Rev. Stat. § 1-10.5-101(b).

Whenever a recount of a congressional office is required, the Secretary of State shall order the recount no later than the 25th day following the election. § 1-10.5-102(a). The recount shall be completed no later than the 40th day after the election. § 1-10.5-102(b).

PRIVATELY INITIATED RECOUNTS**Standing**

Whenever a recount is not required pursuant to § 1-10.5-101, an interested party may submit a notarized written request for a recount. § 1-10.5-106(2).

“Interested party” means the candidate who lost the election, the political party or political organization of such candidate, any petition representative identified pursuant to section 1-40-113 for a ballot issue or ballot question that did not pass the election, the governing body that referred a ballot question or ballot issue to the electorate if such ballot question or ballot issue did not pass at the election, or the agent of an issue committee that is required to report contributions pursuant to the “Fair Campaign Practices Act,” article 45 of this title, that either supported a ballot question or ballot issue that did not pass at the election or opposed a ballot question or ballot issue that passed at the election. § 1-10.5-106(1).

Filing deadlines

A request for a recount shall be filed within 25 days after the election. § 1-10.5-106(2).

Form and its content

The candidate must submit a notarized written request for recount. § 1-10.5-106(2).

Costs of the recount

The election official who will conduct the recount shall determine the cost of the count within three days of receiving the request, notify the interested party of the cost, and collect the costs of conducting the recount. If the request is filed with the secretary of state, the secretary of state shall determine the cost of the recount by adding the individual amounts determined by the political subdivisions conducting the recount. The interested party shall pay the cost of the recount by certified funds to the election official with whom the request for a recount was filed within two days of receiving the election official's cost determination. The funds shall be placed in escrow for payment of all expenses incurred in the recount. If after the recount the result of the election is reversed in favor of the interested party that requested the recount or if the amended election count is such that a recount otherwise would have been required, the payment for expenses shall be refunded to the interested party that requested the recount. § 1-10.5-106(2).

Procedures involved in recount

The recount is made by the canvassing board that officiated in certifying the official abstract of votes cast. § 1-10.5-107. The ballots cast shall be recounted using the same procedures, methods and processes that were utilized for the original count. § 1-10.5-108(2).

Scope of materials used

Recount shall be of the ballots cast and the votes shall be recorded on sheets other than those used at the election. § 1-10.5-108(1).

Methods used depending on type of equipment

All recounts of votes case on direct record electronic voting machines shall be conducted using electronic ballot images and vote totals shall be retabulated from the individual ballot images. § 1-10.5-110.

Observers

The county clerk and recorder shall be official observers during any recount conducted. § 1-10.5-109.

Security of and access to materials

The designated election official is responsible for the preservation of all election records. § 1-7-802.

PRIVATELY INITIATED CONTESTS

Standing

An election may be contested by any eligible elector of the political subdivision. §1-11-202.

Grounds

An election may be contested on the following grounds: (a) the candidate was ineligible; (b) illegal votes were received or legal votes were rejected in sufficient number to change the election results; (c) an election judge, board of canvassers, or member of a board of canvassers has committed malconduct, fraud, or corruption that changed the result of the election; (d) an election judge or the board of canvassers made an error in counting or declaring the result of an election that changed the result of the election; or (e) for any reason, another candidate was legally elected to the office. § 1-11-201(1).

Filing deadline

Statement of intention to contest the election must be filed with the district court within 10 days after the official survey of returns has been filed with the designated election official. § 1-11-213(4).

Form and contents of filing

The style and form of process, the manner of service of process and papers, the fees of officers, and judgment for costs and execution shall be according to the rules and practice of the district court. § 1-11-213(1). The petition filed with the court must include the name of the contestor, a statement that the contestor is an eligible elector of the political subdivision, the name of the contestee, the office being contested, the time of the election, and the particular grounds for the contest. § 1-11-213(4).

Procedures

After the contestor files with the district court, the clerk of the court shall issue a summons in the ordinary form with the contestor named as plaintiff and the contestee as defendant. The summons shall be served upon the contestee within 10 days after the statement of intention is filed. The contestee must file an answer with the court within 10 days after the service of the summons admitting or specifically denying each allegation of the statement. If the contestee's answer includes a new matter constituting a counterstatement, the contestor must file a reply within 10 days after the answer is filed admitting or specifically denying each allegation contained in the answer. § 1-11-213(5) - (8).

Provisions for preserving evidence

The designated election official is responsible for the preservation of all election records. § 1-7-802.

CONNECTICUT

STATE REQUIRED AUTOMATIC RECOUNTS

Automatic recount is triggered if: (1) the margin of votes between the winning and losing candidates is less than 0.5 percent of the total vote cast for the office but not more than 2,000 votes in a general election or 1,000 votes in a primary election or (2) less than 20 votes. Automatic recounts involve a recanvass of the returns of the voting machine(s) and absentee ballots. The recount may be waived by the losing candidate. Conn. Gen. Stat. Ann. § 9-311a

In case of a tie vote, there shall be a recanvass of the returns unless, prior to the time of such recanvass, all but one of the candidates so receiving an equal number of votes dies, withdraws his name or for any reason becomes disqualified to hold such office. § 9-311b.

RECANVASS INITIATED BY ELECTION MODERATOR

Standing

The moderator of the election may call for a recanvass. Conn. Gen. Stat. Ann. § 9-311.

Grounds

The moderator may call for a recanvass when it appears that there is a discrepancy in the returns of any voting district. *Id.*

Filing deadlines

The moderator must call for a recanvass within three (3) days after an election. *Id.*

Form and its content

The moderator must summon, by written notice delivered personally, the recanvass officials. Such summons shall require the clerk to bring materials specified by statute and shall require such recanvass officials to meet at a specified time not later than the fifth (5th) business day after such election. Notice shall also be given to the chairman of the town committee of each political party which nominated candidates for the election and to the secretary of state. *Id.*

Procedures involved in recount

The recanvassing officials shall tally the votes in the following order: (1) voting machines; (2) absentee ballots; and (3) write-in ballots. A recanvass return shall be filed with the secretary of state and the town clerk no later than ten (10) days after the election or primary. This recanvass is substituted for the original return. *Id.*

Scope of materials used

The clerk shall supply the depository envelopes, the package of write-in ballots, the absentee ballot applications, the list of absentee ballot applications, the registry list and the moderators' returns. *Id.*

Observers

Each chairman or the town committee of each political party notified by the moderator shall send two (2) representatives to be present at the canvass. The recanvassing procedures shall be open to public observation. *Id.*

Methods used based on type of voting equipment

All recanvassed votes are tallied manually. All of the recanvass officials shall use the same forms for tallies and returns as were used at the original canvass and the absentee ballot counters shall also sign the tallies. *Id.*

Security of and access to materials

Upon completion of the recanvass, the write-in ballots shall be replaced in a properly secured sealed envelope. Recanvassed voting machines shall be locked and sealed, the keys thereof shall immediately be returned to such clerk and such machine shall remain so locked until the expiration of fourteen (14) days after such election or for such longer

period as is ordered by the court. The absentee ballots shall be replaced in their wrappers and be resealed by the moderator in the presence of the recanvass officials. *Id.*

Deadlines

A recanvass return shall be filed with the secretary of state and the town clerk no later than ten (10) days after the election or primary. *Id.*

PRIVATELY INITIATED CONTESTS**Standing**

Any elector or candidate in the election for presidential electors, U.S. Senator or U.S. Representative has standing. § 9-323.

Grounds

Contest may be made if the contestant is aggrieved by a ruling of an election official, alleges that there was a mistake in the vote count, or alleges improper conduct, such as bribery, fraud, or undue influence. *Id.*

Filing Deadlines

Complaints must be made no later than 14 days after the election or primary. *Id.*

Form and its content

Contestant must file a complaint alleging the grounds for such challenge. *Id.*

Forum for filing and hearing

In a general election contest, the complainant must file with any judge of the supreme court and must deliver a copy to the State Elections Enforcement Commission. If the complaint is filed prior to the election, a copy must also be delivered to the secretary of state. If the complaint is made prior to the election, the judge shall proceed expeditiously to render judgment on the complaint. After receiving the complaint, such judge shall forthwith order a hearing to be had upon a day not more than five (5) days nor less than three (3) days from making such order. *Id.*

Costs of the contest

The complainant, in a general or primary election contest, shall give a good and sufficient bond for prosecution for the payment of costs, and the judge or judges hearing such application shall make such order regarding the payment of costs in such actions as may be equitable and may render judgment and issue execution therefor. § 9-327.

Deadlines

For a general election, if the supreme court finds any error, mistake, or violation it must certify the result of their finding or decision to the secretary of state before the first Monday after the second Wednesday in December. § 9-323.

Relief available

In a general election contest, the supreme court may order a new election or a change in the existing election schedule. § 9-323.

Appeal

A final judgment from the superior court may be appealed to the supreme court. The judges of the supreme court may establish rules of procedure for the speedy and inexpensive hearing of such appeals within fifteen (15) days of such judgment of a judge of the superior court. § 9-325.

DELAWARE

STATE REQUIRED AUTOMATIC RECOUNTS

State law does not appear to provide for an automatic recount of election results.

PRIVATELY INITIATED RECOUNTS

Standing

Any candidate for statewide office in a general election. 15 Del. C. § 5702(c).

Grounds

The candidate may apply for a recount if the number of votes separating such candidate and the closest opposing candidate is less than 1,000 votes or less than one half of one percent of all votes cast for the two candidates, whichever amount is less. *Id.*

Filing deadline

The request for a recount must be presented before the adjournment of the board of canvass for the election in question. *Id.*

Costs of recount

The recount is conducted at state expense. *Id.*

Deadline for completion

The recount shall not extend beyond the petitioner's contest. *See below.*

PRIVATELY INITIATED CONTESTS

Standing

Any person claiming to be elected to an office may contest the right of any person declared to be duly elected to such office. 15 Del. C. § 5941.

Grounds

A contest may be filed for any of the following reasons:

- 1) For malconduct on the part of the election officers or clerks holding the election, or any one of them;
- 2) When the person whose right to the office is contested was not at the time of the election eligible to such office;
- 3) When the person whose right is contested has given any elector or inspector, judge or clerk of election, any bribe or reward or shall have offered any bribe or reward for the purpose of procuring his or her election;
- 4) On account of illegal votes. *Id.*

Filing deadline

The person contesting the election must file within 20 days after the result of the election shall have been officially ascertained by the board of canvass, and at least 60 days before the first day of the term of court at which the contest shall be tried or called for trial. § 5945.

Forum for filing

The contest must be filed with the Prothonotary in the county in which the contest is made. *Id.*

Contents

The filing must include a particular and explicit statement setting forth fully and specifically the names of any and all election officers upon the malconduct of whom he or she will rely and respecting which he or she intends to procure evidence, and setting forth the election districts of such election officers and the particular malconduct of each, respectively, the names and residences of the witnesses and the substance of their testimony, by whom he or she expects to prove such malconduct.

If such contest is based upon ineligibility of a person to hold the office, the statement

shall specifically, fully and explicitly state the grounds and causes of the ineligibility of the person whose right to the office is contested.

When such contest is based on an alleged bribe or reward or the offer of a bribe or reward, the statement shall explicitly, fully and clearly state the name of any elector, election officer or other person to whom any bribe or reward shall have been offered and the time, place and amount of such bribe or reward and the name and residence of the witnesses by whom the contestant expects to prove the offering of any bribe or reward, with a brief statement of their testimony.

When the contest shall be on the ground of illegal votes, the statement shall specifically, fully and explicitly set forth the names, residences and respective causes of disqualification of each person alleged to have illegally voted, the polls at which such illegal vote has been received, the names of the election officers favoring the acceptance of such vote, whether such vote was challenged by the duly accredited challenger of the party of which the contestant was the candidate, and whether all the judges or inspectors present at such polls concurred in accepting and receiving such vote. If it appears that all of such judges or inspectors concurred in accepting or receiving such vote or that the right of the voters, respectively, to deposit such votes was not at the time challenged by the duly accredited challenger of the party of which the contestant was a candidate, the legality or illegality of such vote shall not be brought into question in any such contest. The statement shall further set forth the names and residences of the witnesses who shall be produced on behalf of the contestant to prove such illegal votes and the substance of the testimony to be given by each. *Id.*

Costs of contest

The person contesting the election shall be required to give security for costs in such amount and manner as the court shall order. Such security, however, shall in no case be enforced unless judgment for costs be rendered against the contestant. § 5947.

Costs in all cases shall be awarded against the unsuccessful party to the contest. Charges for costs shall be as near as possible to the charges for similar services in other cases tried in the superior court. § 5955.

Dismissal

The court may dismiss the proceedings if the statement of the cause or causes of the contest do not conform to the requirements set forth by statute or for want of prosecution. § 5949.

Proceedings

All election contests shall be fully heard and determined by the superior court, without the aid or intervention of a jury, unless 1 or both of the parties to the contest shall claim a trial by jury, and the court shall in its judgment determine that it is a case which, under the constitution and laws of the state, the party or parties are entitled to a trial by jury. § 5951.

Relief available

After hearing the allegations and proof in the cause the Court shall render judgment (in accordance with the verdict of the jury, if a jury shall have tried the cause) either confirming or annulling such election altogether.

If it appears by the judgment of the Court or the verdict of the jury (if there be a jury) that any person other than the one whose election is contested received the highest number of legal votes, judgment shall be rendered declaring such person duly elected.

When the person whose election is contested is proved to be ineligible to the office, judgment shall be rendered declaring the election void and the office vacant, and such proceedings shall then be had as in vacancies happening from any other cause. When it shall appear that 2 persons have received an equal number of legal votes for the same office, the provisions of law for the settlement of such cases shall prevail, if there be any such provision; if there be none, then the office shall be adjudged and declared vacant, and such proceedings shall then be had as in vacancies happening from any other cause. § 5954.

FLORIDA

STATE REQUIRED AUTOMATIC RECOUNTS Fla. Stat. Ann. § 102.141(6)

If the unofficial returns reflect that a candidate for any office was defeated or eliminated by one-half of a percent or less of the votes cast for such office, the board responsible for certifying the results of the vote on such race or measure shall order a recount of the votes cast with respect to such office or measure. A recount need not be ordered with respect to the returns for any office, however, if the candidate or candidates defeated or eliminated from contention for such office by one-half of a percent or less of the votes cast for such office request in writing that a recount not be made.

In counties with voting systems that use paper ballots, each canvassing board responsible for conducting a recount shall put each ballot through automatic tabulating equipment and determine whether the returns correctly reflect the votes cast. If any paper ballot is physically damaged so that it cannot be properly counted by the automatic tabulating equipment during the recount, a true duplicate shall be made of the damaged ballot pursuant to the procedures in *s. 101.5614(5)*.

In counties with voting systems that do not use paper ballots, each canvassing board responsible for conducting a recount shall examine the counters on the precinct tabulators to ensure that the total of the returns on the precinct tabulators equals the overall election return. If there is a discrepancy between the overall election return and the counters of the precinct tabulators, the counters of the precinct tabulators shall be presumed correct and such votes shall be canvassed accordingly.

If the second set of unofficial returns pursuant to *s. 102.141* indicates that a candidate for any office was defeated or eliminated by one-quarter of a percent or less of the votes cast for such office, the board responsible for certifying the results of the vote on such race or measure shall order a manual recount of the overvotes and undervotes cast in the entire geographic jurisdiction of such office or ballot measure. § 102.166(1).

PRIVATELY INITIATED RECOUNT**Standing**

If the second set of unofficial returns pursuant to *s. 102.141* indicates that a candidate for any office was defeated or eliminated by between one-quarter and one-half of a percent of the votes cast for such office, any such candidate or the political party of such candidate is entitled to a manual recount of the overvotes and undervotes cast in the entire geographic jurisdiction of such office or ballot measure. § 102.166(2)(a).

Deadline for filing

A request for a manual recount must be made by 5 p.m. on the third day after the election. § 102.166(2)(a).

Form and its content

Requests for manual recounts must be made in writing to the state Elections Canvassing Commission. § 102.166(2)(b).

Procedures

Upon receipt of a proper and timely request, the Elections Canvassing Commission shall immediately order a manual recount of overvotes and undervotes in all affected jurisdictions. § 102.166(2)(c).

The county canvassing board shall appoint as many counting teams of at least two electors as is necessary to manually recount the ballots. A counting team must have, when possible, members of at least two political parties. A candidate involved in the race shall not be a member of the counting team.

Each duplicate ballot prepared pursuant to *s. 101.5614(5)* or *s. 102.141(6)* shall be compared with the original ballot to ensure the correctness of the duplicate.

If a counting team is unable to determine whether the ballot contains a clear indication that the voter has made a definite choice, the ballot shall be presented to the county canvassing board for a determination.

The Department of State shall adopt detailed rules prescribing additional recount procedures for each certified voting system which shall be uniform to the extent practicable. § 102.166(6).

Observers

Manual recounts are open to the public. § 102.166(4).

PRIVATELY INITIATED CONTESTS

Standing

The certification of election or nomination of any person to office may be contested in the circuit court by any unsuccessful candidate for such office or by any elector qualified to vote in the election related to such candidacy, or by any taxpayer, respectively. §102.168(1)

Grounds

The grounds for contesting an election under this section are:

- (a) Misconduct, fraud, or corruption on the part of any election official or any member of the canvassing board sufficient to change or place in doubt the result of the election.
- (b) Ineligibility of the successful candidate for the nomination or office in dispute.
- (c) Receipt of a number of illegal votes or rejection of a number of legal votes sufficient to change or place in doubt the result of the election.
- (d) Proof that any elector, election official, or canvassing board member was given or offered a bribe or reward in money, property, or any other thing of value for the purpose of procuring the successful candidate's nomination or election or determining the result on any question submitted by referendum. § 102.168(3).

Filing deadlines

A complaint shall be filed within 10 days after midnight of the date the last county canvassing board empowered to canvass the returns certifies the results of the election being contested. § 102.168(2).

Form and its content

The complaint shall be filed with the clerk of the circuit court and shall set forth the grounds on which the contestant intends to establish his or her right to such office. § 102.168(2), (3).

Procedures

The Elections Canvassing Commission shall be the proper party defendant, and the successful candidate shall be an indispensable party to any action brought to contest the election or nomination of a candidate. § 102.168(4).

A copy of the complaint shall be served upon the defendant and any other person named therein in the same manner as in other civil cases under the laws of the state. Within 10 days after the complaint has been served, the defendant must file an answer admitting or denying the allegations on which the contestant relies or stating that the defendant has no knowledge or information concerning the allegations, which shall be deemed a denial of the allegations, and must state any other defenses, in law or fact, on which the defendant relies. If an answer is not filed within the time prescribed, the defendant may not be granted a hearing in court to assert any claim or objection that is required to be stated in the answer. § 102.168(6).

Any candidate, qualified elector, or taxpayer presenting such a contest is entitled to an immediate hearing. However, the court at its discretion may limit the time to be consumed in taking testimony, with a view therein to the circumstances of the matter and to the proximity of any succeeding election. § 102.168(7).

Costs of the contest

Contestant bears the cost. *See* §§ 28.24; 28.241.

Relief available

If the contestant is found to be entitled to the office, a judgment to that effect is entered. If the adverse party has been commissioned or has entered upon the duties thereof or is holding the office, then a judgment of ouster shall be entered against such party. Upon presentation of a certified copy of the judgment of ouster to the Governor, the Governor shall revoke such commission and commission the person found in the judgment to be entitled to the office. § 102.1682.

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GEORGIA

STATE REQUIRED AUTOMATIC RECOUNTS

State law does not appear to provide for an automatic recount.

PRIVATELY INITIATED RECOUNT

Standing

(a) In precincts where paper ballots or vote recorders have been used, the superintendent may, either of his own motion or upon petition of any candidate or political party, order a recount. § 21-2-495(a).

(b) In precincts where voting machines have been used, the superintendent may, either of his own motion or upon the sworn petition of three electors of any precinct, order a recanvass. § 21-2-495(b).

(c) Whenever the difference between the number of votes for the successful candidate and another candidate or candidates is not more than 1 percent, such unsuccessful candidate or candidates may order a recount of the votes cast. § 21-2-495(c).

(d) A candidate for federal office may petition the secretary of state for a recount or recanvass of votes. § 21-2-495(d).

Grounds

(a) Paper ballots or vote recorders: when there appears to be a discrepancy or error, although not apparent on the face of the returns. § 21-2-495(a).

(b) Voting machines: whenever it appears that there is a discrepancy in the returns recorded or that an error, although not apparent on the face of the returns, exists. § 21-2-495(b).

(c) Close margin: No additional grounds required.

(d) Federal office: When it appears that a discrepancy in the returns recorded or that an error, although not apparent on the face of the returns, has been made. § 21-2-495(d).

Filing deadlines

(a) The recount may be held at any time prior to the certification of the consolidated returns by the superintendent. § 21-2-495(a).

(b) The recount may be held at any time prior to the certification of the consolidated returns by the superintendent. § 21-2-495(b).

(c) Request for a recount must be made within 5 days following the certification of the election results. § 21-2-495(c).

(d) The recount may be held at any time prior to the certification of the consolidated returns by the Secretary of State. § 21-2-495(d).

Form and its content

(a) Recount may be ordered upon motion of the superintendent or upon a petition by any candidate or political party. § 21-2-495(a).

(b) The recanvass may be ordered by motion of the superintendent or upon the sworn petition of three electors of any precinct. § 21-2-495(b).

(c) The losing candidate must make a written request to the Secretary of State in order to assert his right to a recount. § 21-2-495(c).

(d) A federal candidate petitioning the Secretary of State for a recount or recanvass must set forth the discrepancies or errors and any supporting evidence for which such a request is based. The recount or recanvass may be ordered at the discretion of the secretary of

state. § 21-2-495(d).

Procedures involved in recount

A recount is conducted as soon as possible in the county, and in the manner and using the same equipment as was used in the election. *See* § 21-2-495.

Scope of materials used

(a) Recount of all ballots for a particular precinct or precincts. § 21-2-495(a).

(b) Recanvass of the votes shown on any voting machine or machines in which a discrepancy or error is alleged. § 21-2-495(b).

(c) Recount of all the votes cast shall be made immediately. § 21-2-495(c).

(d) Recount or recanvass shall be done as provided in § 21-2-495(a)-(c). The Secretary may require additional information concerning the apparent discrepancies or errors in the counting or canvassing of votes. § 21-2-495(d).

Observers

(a), (b), (d) Each candidate may be present in person, or by representative, and each party or body affected by the recount may send two representatives to be present at the recount. §§ 21-2-495(a), (b), (d).

(c) No provision.

Procedure for invalidating ballots

If the ballot box is found to contain more ballots than the number of voters who voted in a precinct, the superintendent may, in his discretion, exclude the poll of that precinct, either as to all offices, candidates, or parties and bodies, or as to any particular offices, candidates, or parties and bodies, as to which such excess exists. § 21-2-493(c).

PRIVATELY INITIATED CONTESTS

Standing

Any person who was a candidate in the election or any aggrieved elector who was entitled to vote for such person. § 21-2-521.

Grounds

Grounds for contest are: (1) misconduct, fraud, or irregularity by a primary or election official sufficient to change or place in doubt the result; (2) when the defendant is ineligible; (3) when illegal votes have been received or legal votes rejected at the polls sufficient to change or place in doubt the result; (4) for any error in counting the votes or declaring the result of the primary or election, if such error would change the result; and (5) for any other cause which shows that another was the person legally nominated, elected, or eligible to compete in a run-off primary or election. § 21-2-522.

Filing Deadlines

A petition to contest a primary or election shall be filed within 5 days after the official consolidation of the returns of that particular office and certification thereof by the election official having responsibility for taking such action or within 5 days after the official consolidation and certification of the returns of that particular office by the election official having responsibility for taking such action following a recount. § 21-2-524(a).

Form and its content

The petition must allege: (1) the contestant's qualification to institute the contest; (2) the contestant's desire to contest the result of such primary or election and the name of the nomination or office in the contest; (3) the name of the defendant; (4) the name of each person who was a candidate at such primary or election for such nomination or office; (5) each ground of contest; (6) the date of the official declaration of the result in dispute; (7) the relief sought; and (8) such other factors as are necessary to provide a full, particular, and explicit statement of the cause of contest. § 21-2-524(a).

Forum for filing and hearing

The contestant shall file his petition in the office of the clerk of the superior court having jurisdiction within 5 days after the results are certified by the secretary of state. *Hammill v. Valentine*, 373 S.E.2d 9 (1988); § 21-2-524(a).

The contestant must also serve a copy of the petition on the State Election Board by serving the chairman thereof, by mailing a copy to the chairman by certified or registered mail; and a certificate that such service has been made shall be filed by the plaintiff or his attorney. § 21-2-524(b).

Deadlines

The defendant shall appear and answer the petition, on a day to be fixed in the notice by the court, not more than ten (10) days nor less than five (5) days after service of such notice.

§ 21-2-524(f).

Relief available

The court may void the result and a new election ordered, or the result can be changed and a new winner designated. § 21-2-527.

Appeal

An appeal may be taken within ten (10) days from the rendition of the final determination to the Supreme Court or the Court of Appeals. § 21-2-528.

STATE REQUIRED AUTOMATIC RECOUNTS

State law does not appear to provide for an automatic recount.

PRIVATELY INITIATED RECOUNT

State law does not appear to provide for a privately initiated recount.

PRIVATELY INITIATED CONTESTS HI Rev. Stat. Ann. §§ 11-171 et seq.

Standing

Any candidate, or qualified political party directly interested, or any thirty voters of any election district, may file a complaint (election contest) in the state supreme court. § 11-172.

Grounds

A complaint must set forth any cause or causes, such as but not limited to, provable fraud, overages, or underages, that could cause a difference in the election results. The complaint must also state any reasons for reversing, correcting, or changing the decisions of the precinct officials of the officials at a counting center in an election using the electronic voting system. § 11-172

Filing Deadlines

The complaint must be filed in the office of the clerk of the supreme court not later than 4:30 p.m. on the 20th day following the general, special general, or special election. § 11-174.5.

Form and its content

A complaint must set forth any cause or causes, such as but not limited to, provable fraud, overages, or underages, that could cause a difference in the election results. The complaint must also state any reasons for reversing, correcting, or changing the decisions of the precinct officials of the officials at a counting center in an election using the electronic voting system. § 11-172.

Forum for filing and hearing

The complaint must be filed with the clerk of the supreme court. The clerk will issue to the defendants named in the complaint a summons to appear before the supreme court. § 11-174.5.

Costs of the contest

The complaint must be accompanied by a deposit for costs of the court as established by rules of the supreme court. § 11-174.5.

Deadlines

As established by the supreme court. § 11-174.5.

Relief available

The court may invalidate the election; or decide that a certain candidate, or candidates, received a majority or plurality of votes cast and were elected. § 11-174.5.

STATE REQUIRED AUTOMATIC RECOUNTS

Although a provision entitled *automatic recount* does exist it operates as a *privately initiated recount* and will be discussed in the following section.

PRIVATELY INITIATED RECOUNT

Standing

Any candidate may request a recount. Id. Code Ann. § 34-2301.

Any losing candidate for the office in question may request an automatic recount if the difference between the vote cast for that candidate and for the winning candidate is less than or equal to one-tenth of one percent (0.1%) of the total votes cast for that office. § 34-2309.

Filing deadlines

Requests for a recount must be filed within 20 days of the state canvass. §§ 34-2301, 2309.

Form and its content

Application must specify the precinct or precincts to be recounted and shall remit the appropriate cost of the recount. §34-2302.

A request for an automatic recount must be made in writing. § 34-2309.

Costs

The recount shall cost \$100 per precinct to be recounted. § 34-2302. However, the candidate must request that at least twenty (20) precincts be recounted. § 34-2306. The state will pay the cost of the recount if the results of the recount indicate a difference which if projected across all the precincts of the office in question would change the result of the election in favor of the candidate requesting the recount. § 34-2306. In an automatic recount, the state shall pay for the recount. § 34-2309.

Procedures

The applicant may specify precincts to be recounted, with a minimum of 20 precincts and at least 5,000 votes. § 34-2306. In an automatic recount, all the ballots are recounted. § 34-2309.

The recount shall commence at the time and place so ordered, and shall continue until the recount is finished and the results are tabulated. § 34-2305.

Observers

All candidates named on the ballot for the office contested, or a representative of either or all of them, may be present to watch the counting. All other interested persons may also be present. § 34-2304.

Methods used based on type of voting equipment

The recount shall be conducted under the same conditions and in the same manner as the original count. § 34-2305.

Procedure for invalidating ballots

The attorney general shall be the final authority concerning any question which arises during the recount. § 34-2305.

Security of and access to materials

The attorney general shall cause all ballot boxes in an election in the precinct or precincts in which a recount is to be made to be immediately impounded and taken into custody by the sheriff of the county or counties in which precinct or precincts are located. § 34-2303.

Appeal of recount determination

Any candidate for the office for which recount has been requested disagreeing with the results of the recount and alleging that the law has been misinterpreted or misapplied, and if it appear that different application or interpretation of the law would have required a general recount where no general recount was ordered or would not have required a general recount where a general recount was ordered then the candidate claiming the misinterpretation or the misapplication of law may appeal to the district court in the county concerned if the office be a county office or to the district court in Ada county if the office be a federal or state office. The submittal on appeal shall be by brief and submitted within twenty-four (24) hours following the recount. A decision thereon shall be given within five (5) days. Any appeal from the decision of the district court must be taken within twenty-four (24) hours after a decision is rendered. A decision on the appeal shall be given within five (5) days. No further appeal shall be allowed. § 34-2308.

PRIVATELY INITIATED CONTESTS Id. Code Ann. § 34-2105

The Senate and House of Representatives shall severally hear and determine contests of the election of their respective members.

CRS-27
ILLINOIS

Illinois does not provide a statutory right for contesting or recounting elections for federal office. *See Young v. Mikva*, 363 N.E.2d 851 (Ill. 1977). The applicable statute states that the "senate and house of representatives shall severally hear and determine contests of the election of their respective members. 10 ILCS 5/23-2. Moreover, a petition for recount may only be granted by a court hearing an election contest. 10 ILCS 5/23-23.2. Thus, a recount of a federal election is precluded.

CRS-28
INDIANA

STATE REQUIRED AUTOMATIC RECOUNTS

Indiana does not appear to provide for an automatic recount of election returns.

PRIVATELY INITIATED RECOUNT Ind. Stat. Ann. § 3-12-11-1 et seq.

Standing

Any candidate for federal office may request a recount. § 3-12-11-1(a). If a candidate who is entitled to file a petition for recount does not file within the specified time frame, the state chairman of the candidate's political party may file a petition to have the votes recounted in one or more precincts. § 3-12-11-1(b). Joint petitions for recount are permitted. § 3-12-11-8.

A verified cross-petition for recount may be filed by a candidate who is nominated or elected to an office at an election on the face of the election returns. § 3-12-11-4.

Grounds

A petition for a recount must be based on a good faith belief that the votes were not correctly counted and returned. § 3-12-11-3(a)(5).

Filing deadlines

A candidate who desires a recount must file a verified petition with the secretary of state no later than noon seven (7) days after election day. § 3-12-11-2(a).

A state chairman is entitled to and who desires to file a petition for a recount must file a verified petition with the secretary of state no later than noon ten (10) days after election day. § 3-12-11-2(b).

A verified cross-petition for a recount must be filed with the secretary of state no later than noon fourteen (14) days after election day. § 3-12-11-4.

Form and its content

A petition for a recount must state the following: (1) the office for which a recount is requested; (2) the precincts to be recounted; (3) that the individual is entitled to a recount and that the specified precincts voted for the office in question; (4) the name and address of the candidates; (5) that the petitioner, in good faith, believes the votes were not correctly counted and returned; and (6) that the petitioner desires a recount of all of the votes cast for the office at the election in the precincts specified. § 3-12-11-3(a).

A cross-petition must state the following: (1) the office for which the cross-petitioner desires a recount; (2) the precincts in which recount is sought; (3) that the cross-petitioner was a candidate at the election in question and that the office was voted upon in the precincts specified; (4) the name and address of the cross-petitioner's opposing candidate or candidates; (5) that the cross-petitioner, in good faith, believes the votes were not correctly counted and returned; and (6) that the cross-petitioner desires a recount of all of the votes cast for the office at the election in the precincts specified. § 3-12-11-6.

Amendment of a petition or cross-petition

The state recount commission may allow either petition to be amended at any time upon the terms and conditions that the commission orders. However, the commission may not allow a petition or cross petition to be amended following the deadline for filing a petition or cross-petition under this chapter if the petition or cross petition as originally filed 1) failed to comply with section 3 or 6 of this chapter; or 2) was not filed before the deadline specified in section 2 or 4 of this chapter. A precinct that was specified in the original petition or cross-petition may not be stricken unless each opposing candidate so consents. § 3-12-11-7.

Costs of the recount

Each petitioner must furnish a minimum cash deposit of \$100. § 3-12-11-10(a). If the difference between the number of votes cast for the candidate nominated or elected and the petitioner is not more than 1% then the petitioner shall also deposit \$10 for each

precinct in excess of ten (10). § 3-12-11-10(b). If the difference between the number of votes cast for the candidate nominated or elected and the petitioner is more than 1% then the petitioner shall also deposit \$100 for each precinct in excess of ten (10). § 3-12-11-10(c).

The deposit shall be returned if the petitioner is successful. § 3-12-11-10(d).

A percentage of any unexpended balance remaining from the deposit shall be returned to the depositor. § 3-12-11-10(e).

A cross-petitioner shall furnish a cash deposit equal to \$10 multiplied by the number of precincts sought to be recounted if the difference between the number of votes cast for the cross-petitioner and the petitioner is not more than 1% then the petitioner shall also deposit \$10 for each precinct in excess of ten (10). § 3-12-11-11(b). If the difference between the number of votes cast for the cross-petitioner and the petitioner is more than 1% then the petitioner shall also deposit \$100 for each precinct in excess of ten (10). § 3-12-11-11(c).

Procedures involved in recount

The state recount commission or its designee shall convene at a place fixed by order of the commission and expeditiously complete the recount of all votes ordered recounted. § 3-12-11-17.

Scope of materials used

The commission shall use all ballots, voting machines, and electronic voting systems used in the precincts involved; all tally sheets relating to the votes; and all poll lists of persons registered by the poll clerks as having voted for the office. § 3-12-11-16.

Observers

All candidates affected by the recount may have a watcher present at the recount and may also be present in person. Representatives of the media may also attend the recount. § 3-12-11-17(a).

Methods used based on type of voting equipment

A petitioner or cross-petitioner may request that ballot cards in specified precincts that used a ballot card voting system be counted manually. If such a request is made, automatic tabulating machines may not be used to count ballot cards in the specified precincts. Ballot cards in those precincts shall be counted manually, and the tabulation of votes must comply with § 3-12-11-7. § 3-12-11-17.5(a).

Automatic tabulating machines may be used if the above request is withdrawn. § 3-12-11-17.5(b).

Procedure for invalidating ballots

If a party to the recount presents evidence of fraud, tampering, or misconduct affecting the integrity of the ballot within a precinct and the commission determines that such action was so pervasive that it is impossible for each commission to determine the approximate number of votes that each candidate received in that precinct, the commission may order that none of the ballots from that precinct be counted. § 3-12-11-17.7(b).

Security of and access to materials

The state recount commission may by order impound and provide for the protection of the following: (1) all ballots, voting machines, and electronic voting systems used in the precincts involved; (2) all tally sheets relating to the votes; and (3) all poll lists of persons registered by the poll clerks as having voted for the office. § 3-12-11-16(a).

PRIVATELY INITIATED CONTESTS

In general, the procedures for election contests are substantially similar to the procedures for recounts. Additional provisions relate to the disposition and retention of ballots.

Standing

Any candidate for federal office may contest the nomination or election of a candidate for such office. § 3-12-11-1(a). If a candidate who is entitled to file a petition for contest does not file in time, the state chairman of the candidate's political party may file a petition to contest the nomination or election of a candidate. § 3-12-11-1(b)(2). Joint petitions for recount are permitted. § 3-12-11-8.

Grounds

A petition for a recount must be based on a good faith belief that: (a) the successful candidate does not comply with an applicable constitutional or statutory requirement; (b) a mistake was made in the printing or distribution of ballots that makes it impossible to determine which candidate received the highest number of votes in the election; (c) a mistake occurred in the programming of a voting machine or electronic voting system, making it impossible to determine the candidate who received the highest number of votes; and (d) a voting machine or electronic voting system malfunctioned, making it impossible to determine the candidate who received the highest number of votes. § 3-12-11-3(b)(4).

Filing Deadlines

A candidate who desires to contest a nomination or election must file a verified petition with the secretary of state no later than noon seven (7) days after election day. § 3-12-11-2(a).

A state chairman is entitled to and who desires to file a petition for contest must file a verified petition with the secretary of state no later than noon ten (10) days after election day. § 3-12-11-2(b).

Form and its content

A petition for a contest must state the following: (1) the nomination or election to office that the petitioner contests; (2) that the individual is entitled to contest an election or nomination under this chapter; (3) the name and address of each of the candidates; and (4) the petitioner's grounds for contest. § 3-12-11-3(b). If the petitioner states that a mistake was made in the printing or distribution of ballots he must identify each precinct in which: (1) ballots containing the mistake were cast; (2) a mistake occurred in the programming of a voting machine or electronic voting system; or (3) a voting machine or electronic voting system malfunctioned. § 3-12-11-2(c).

Forum for filing and hearing

The candidate or chairman of the political party must file with the secretary of state. § 3-12-11-2.

Disposition of contested ballots

If a ballot or any part of a ballot is protested, the poll clerks immediately shall write on the back of each protested ballot the word "counted" or the words "not counted," as appropriate. The clerks shall then officially sign each protested ballot. § 3-12-2-4.

Retention of ballots

The circuit court clerk shall preserve the receptacle containing the envelop or bag in the clerk's office for so long as the contest is undetermined. During this period, the clerk shall keep the receptacle securely locked, subject only to an order of the court trying the contest. § 3-12-2-12.

STATE REQUIRED AUTOMATIC RECOUNTS

Iowa does not appear to provide for an automatic recount of election returns.

PRIVATELY INITIATED RECOUNT

Standing

A candidate for that office or nomination whose name was printed on the ballot of the precinct or precincts where the recount is requested. Iowa Code Ann. § 50.48(1)(a).

Any other person who receives votes for that particular office or nomination in the precinct or precincts where the recount is requested and who is legally qualified to seek and hold the office in question. *Id.*

Filing deadlines

Request must be filed with the county commissioner or, when the election involves multiple counties, the commissioner responsible for conducting the election no later than 5:00 p.m. on the third day following the county board's canvass of the election in question. § 50.48(1).

Form and its content

A written request, signed by the person seeking the recount, must be submitted. *Id.* The request must name a designee to be included in the recount board. § 50.48(3).

Costs of the recount

A bond shall be filed with the state commissioner for recounts in the following amount: U.S. Senator, \$1,000; and U.S. Representative, \$500. However, no bond shall be required when the abstracts of the vote indicate that the difference between the total number of votes cast for the apparent winner and the total number of votes cast for the candidate requesting the recount is less than 50 votes or 1 percent of the total number cast for the office or nomination in question. § 50.48(2).

Any bond so posted shall be returned to the candidate who requested the recount if the apparent winner before the recount is not the winner as shown by the corrected or completed canvass. *Id.*

Procedures involved in recount

The recount shall be conducted by a board which shall consist of: (a) a designee of the candidate requesting the recount; (b) a designee of the apparent winning candidate; and (c) a person chosen jointly by the parties to the recount. § 50.48(3). The recount shall be undertaken and completed as expeditiously as reasonably possible. § 50.48(4). The commissioner or the commissioner's designee shall supervise the handling of the ballots or voting machine documents. *Id.*

Scope of materials used

The board shall recount only the ballots which were voted and counted for the office in question. Any member of the recount board may at any time during the recount proceedings extend the recount of votes cast for the office or nomination in question to any other precinct or precincts in the same county, or from which the returns were reported to the commissioner responsible for conducting the election. *Id.*

Methods used based on type of voting equipment

If an electronic tabulating system was used to count the ballots, the recount board may request the commissioner to retabulate the ballots using the electronic tabulating system. *Id.*

Security of and access to materials

The commissioner or the commissioner's designee shall supervise the handling of the ballots or voting machine documents to ensure that the ballots and other documents are protected from alteration or damage. *Id.*

Deadlines

The recount board shall complete the recount and file its report not later than the eighteenth day following the county board's canvass of the election in question. *Id.*

PRIVATELY INITIATED CONTESTS**Standing**

Any eligible person who received votes for the office may contest. § 57.1(1)(a).

Grounds

Grounds to contest include: (1) misconduct; (2) fraud; (3) corruption; (4) ineligibility; (5) bribery; (6) illegality; (7) situation where the apparent winner had been convicted of a felony prior to the election; (8) errors by the canvassers; and (9) any other cause or allegation which would show that a person other than the incumbent was duly elected to the office in question. § 57.1(2).

Filing Deadlines

The contestant shall file a statement within two days from the day on which the returns are canvassed by the board of canvassers, and, within the same time, serve a copy of the same, with a notice of the contest, on the incumbent in the manner provided by the rules of civil procedure for service of an original notice. § 60.4.

Form and its content

The contestant shall file a written statement of intention to contest the election, setting forth the name of the contestant, and that the contestant is qualified to hold such office, the name of the incumbent, the office contested, the time of the election, and the particular causes of contest, which statement shall be verified by the affidavit of the contestant, or some elector of the county, that the causes set forth are true as that person verily believes. § 62.5.

Forum for filing and hearing

The statement is filed with the office of the secretary of state. § 60.4. The contest shall be heard by a panel consisting of the chief justice of the supreme court and four judges of the district court. § 60.1.

Costs of the contest

The contestant shall file in the office of the clerk of the supreme court a bond in such amount and at such time as the court determines, conditional to pay all costs in case the election be confirmed or the contest dismissed. § 60.7.

Deadlines

Judgment shall be rendered at least six days before the first Monday after the second Wednesday in December next following. § 60.5.

Relief available

The judgment of the court shall determine which of the parties is entitled to hold office; and the judgment so rendered shall constitute a final determination of the title to the office, and a certificate of appointment shall be issued to the successful party. § 60.6.

STATE REQUIRED AUTOMATIC RECOUNTS

Kansas does not appear to provide for automatic recounts of election returns.

PRIVATELY INITIATED RECOUNT

Standing

The majority of the members of the county board of canvassers or any candidate may request a recount. K.S.A. § 25-3107.

Grounds

If initiated by the board, a majority of the board must determine that there are manifest errors which might make a difference in the election result. *Id.*

No grounds necessary for a candidate to request a recount. *Id.*

Filing deadlines

The request must be submitted in writing no later than 12:00 p.m. on the Monday following the election, or if the canvass is held on Monday, not later than 5:00 p.m. Tuesday next following the election. *Id.*

Form and its content

The written request must be filed with the county election officer. The request shall specify which voting areas are to be recounted. *Id.*

Costs of the recount

The candidate requesting a recount must file a bond with the county election officer, who sets the amount of the bond based on estimated costs. If the requester is declared the winner of the recount, the county will bear the costs; otherwise, the bond is forfeited. *Id.*

Whenever the election returns reflect that a candidate for office was defeated by one-half of one percent or less of the total number of votes cast and if such candidate requests a recount in one or more counties of the ballots, the state shall bear the cost of any recount performed. *Id.*

Procedures involved in recount

The county board of canvassers shall cause a special election board appointed by the county election officer to meet under the supervision of the county election officer and recount the ballots with respect to any office specified by the board or requested by the candidate. *id.*

Methods used based on type of voting equipment

If a recount is required in a county that uses optical scanning systems, the method of conducting the recount shall be at the discretion of the person requesting such recount. *Id.*

Security of and access to materials

Upon completion of any recount the election board shall package and reseal the ballots as provided by law, and the county board of canvassers shall complete its canvass. *Id.*

Deadlines

Any recount shall be initiated not later than the day after the request must be filed and shall be completed not later than 5:00 p.m. on the Friday of such week, or if the recount request is made on the Tuesday after the election because of a Monday canvass, not later than 5:00 p.m. the next following Monday. *Id.*

PRIVATELY INITIATED CONTESTS

Kansas does not statutorily provide for contests of the election of a United States Senator or Representative in Congress. See K.S.A. §§ 25-1434; 25-1435.

CRS-34
KENTUCKY

STATE REQUIRED AUTOMATIC RECOUNTS

Precinct election officers at all primary, regular or special elections must report to the county clerk any administrative or clerical error discovered in the process of conducting the polling or tabulation of votes; the county clerk must then file an action in the Circuit Court of the county where the applicable precinct is located, within fifteen days of the election, requesting a recount of ballots for the precinct reporting the error. Notice must be given to all candidates and such candidates, upon proper motion, are made parties to the action; if the election is for offices for the state at large the action must be filed in the Franklin Circuit Court. KRS §120.017

PRIVATELY INITIATED RECOUNTS

Kentucky does not appear to provide by statute for a privately initiated recount of election returns in elections for United States Senate or Representative in Congress.

PRIVATELY INITIATED CONTESTS

Kentucky does not appear to provide a statutory right to contest an election for United States Senate or Representative in Congress.

CRS-35
LOUISIANA

STATE REQUIRED AUTOMATIC RECOUNTS

Louisiana does not appear to provide for automatic recounts of election returns.

PRIVATELY INITIATED RECOUNTS

Standing

A party to the suit contesting the election may request a recount of absentee ballots. R.S. 18:1451.

Grounds

Requester must allege an error in the counting of the absentee ballots which would have changed the outcome of the election. *Id.*

Filing deadlines

Recounts of absentee ballots must be done prior to the trial of the election contest. R.S. 18:1451.

Costs of the recount

If the court determines that the original count of the absentee ballots was correct or that the error would not have changed the result of the election, the cost shall be assessed against the party who demanded the recount. If the court determines that an error was made in the original count that changed the result of the election, the cost shall not be assessed against any party. *Id.*

Procedures involved in recount

The trial judge shall appoint counters to conduct the recount of absentee ballots. The recount may be held in open court or in any other place and at a time the judge deems appropriate. The judge shall give notice of the time and place to all interested parties; the parties or their representative may be present but the recount shall not be an adversary proceeding. R.S. 18:1453.

Procedure for invalidating ballots

Any absentee ballot with a distinguishing mark or feature making the ballot susceptible of identification will be rejected by majority vote of the board if it is determined that the mark was made by the voter; any ballot containing a combination of authorized marks and any ballot marked by a mark or an instrument other than as instructed on the ballot shall be considered as susceptible of identification and shall be rejected. R.S. 18:1316.

Security of and access to materials

Absentee ballots are in the custody of the registrar of voters. The registrar shall preserve the envelope and the absentee ballots contained therein, inviolate and except by court order shall not allow the ballots to be inspected by anyone until either the time for filing a contest action has passed or a final judgment in a contested action has become definitive. R.S. 18:1313.

PRIVATELY INITIATED CONTESTS

Standing

A candidate in the election R.S. 18:1401; or the Board of Ethics for Elected Officials may contest an election. R.S. 18:43.

Grounds

A candidate may file a contest alleging that except for substantial irregularities or error or except for fraud or other unlawful activities he would have been elected. R.S. 18:1401.

The Board of Ethics for Elected Officials may initiate an investigation upon the receipt of a sworn statement by any registered voter alleging error, fraud, irregularity or other unlawful activity in the conduct of an election; if investigative authority of the board is challenged or ignored the board has the power and authority to institute proceeding in any court of competent jurisdiction. R.S. 18:43.

Filing deadlines

Actions contesting any election involving election to office shall be instituted on or before the ninth day after the date of the election. R.S. 18:1405(B).

Form and its content

The petition must set forth the facts upon which the contest is based and the alleged fraud, error or unlawful activities. R.S. 18:1406(B).

Forum for filing and hearing

The district courts shall have exclusive original jurisdiction of actions contesting elections. In a judicial district where there is a criminal and a civil district court, the civil district court shall have exclusive original jurisdiction. R.S. 18:1403.

An action objecting to a candidate or contesting an election shall be instituted in the district court for the parish where the state capitol is situated if the action involves an office filled by statewide election and shall be instituted in the district court for any parish included in whole or part, in the district for the office the action involves. R.S. 18:1404.

Appointment of Agent for Service of Process

By filing notice of candidacy, a candidate appoints the clerk of court for each parish in which he is to be voted on as his agent for service of process in any action contesting his election to office. R.S. 18:1407.

Trial; Decision; Appeal

Actions contesting an election shall be tried summarily, without a jury, and in open court. The trial shall begin no later than 10:00 a.m. on the fourth day after suit was filed. The trial judge shall render judgment within twenty-four hours after the case is submitted to him and shall indicate the date and time rendered on the judgment; deadlines for all appeals are specified. R.S. 18:1409.

No application for a new trial or for a rehearing shall be entertained by any court, but a court, upon its own motion, may correct manifest error to which its attention is called. R.S. 18:1409.

Costs of the Contest

If a trial judge determines that an action contesting an election or objecting to candidacy was filed frivolously, he may award all costs of court, plus a reasonable attorney fee, plus damages, to the defendant. R.S. 18:1432.

Costs are paid by the plaintiff unless the defendant was served personally at least twenty-four hours prior to the hearing and a court appointed attorney was necessitated by his failure to appear at the trial, in which case the court may require the defendant to pay the court appointed attorney fee. R.S. 18:1409.

Provision for preserving evidence

At the termination of voting the voting machines used in the election are locked and sealed by the precinct commissioners. R.S. 18:571. The machines are then released to the parish custodian who shall insure that all voting machines are returned to the appropriate warehouse. R.S. 18:1376. On the third day the clerk of court, in the presence of the parish board of election supervisors and the candidates or their respective representatives, shall record the total votes cast for each candidate as shown on the voting machines and the total number of absentee ballots filed with the clerk by the parish board. The clerk shall remove the envelope containing the precinct commissioner's election night tabulations from the voting machine and shall preserve the envelope and its contents inviolate and except upon order of a court shall not allow them to be inspected by anyone until the date for filing an action contesting the election has lapsed. R.S. 18:573.

Relief available

The court can order a recount, and under certain circumstances a court can declare the election void and order a new election for all candidates or the court can order a restricted election specifying appropriate candidates for the election and which voters will be eligible to vote. R.S. §§ 18:1431; 18:1432; 18:1433.1.

Appeal

The decision can be appealed to the Court of Appeal sitting en banc in cases involving candidates for offices voted on throughout the state or throughout a congressional district.
R.S. 18:409.

STATE REQUIRED AUTOMATIC RECOUNTS 21-A M.R.S. § 737-A.

When the margin between the number of votes cast for the leading candidate and the number of votes cast for the 2nd-place candidate is less than 1% of the total number of votes cast in that race, a recount is presumed necessary.

PRIVATELY INITIATED RECOUNTS

Standing

A losing candidate in any election may request a recount. 21-A M.R.S. §737-A.

Filing deadlines

The request must be submitted within five business days after the election. *Id.*

If, after the official tabulation is submitted to the Governor, the apparent winner is determined the losing candidate, that candidate may request another recount within three business days after the date the Governor receives the tabulation. *Id.*

Form and its content

A written request for a recount must be filed with the Secretary of State. *Id.*

Costs of the recount

The following amounts must be deposited by the candidate requesting the recount:

<u>Percentage difference of total vote</u>	<u>Cost</u>
2% or less	\$ 0
More than 2% and less than 4%	\$ 500
4% or more	\$1,000

If the resulting count fails to change the outcome of the election the deposit is forfeited to the state; if the recount reverses the election, the deposit must be returned to the candidate requesting the recount. *Id.*

Procedures involved in recount

Secretary of State shall send written notice of a recount to the candidates for the office in question, stating the time and place of the recount. The recount must be held as soon as reasonably possible at a time and place that affords the candidates a reasonable opportunity to be present. 21-A M.R.S. §739.

Procedure for invalidating ballots

The recount is held under the supervision of the Secretary of State, who shall allow the candidates representatives or counsel to recount the ballots. The candidate may not act as a counter of ballots. Disputed ballots are segregated and photocopied by the Secretary of State. Challenged and disputed ballots must be packaged separately and kept until released to the court in case of an appeal. *Id.*

Security of and access to materials

The state police shall store and maintain exclusive control over ballots and other materials pending and during the recount except when the counting is conducted by the Secretary of State. *Id.*

PRIVATELY INITIATED CONTESTS

Maine does not appear to provide for the contest of elections for United States Senate or Representative in Congress. *See* 21-A M.R.S. § 737-A.

CRS-39
MARYLAND

STATE REQUIRED AUTOMATIC RECOUNTS

Maryland does not appear to provide for an automatic recount of election returns.

PRIVATELY INITIATED RECOUNTS

Standing

A candidate for public or party office who has been defeated based on the certified results of any election may petition for a recount of the votes cast for the office sought. Md. Ann. Code art. 33, § 12-101 (effective through December 31, 2002).

Contents of petition

The petition shall specify that the recount be conducted in all of the precincts in which the office was on the ballot; or only in the precincts designated in the petition. *Id.*

Forum for filing

The petition shall be filed with the same election authority with which the candidate certificate of candidacy was filed. *Id.*

Filing deadline

The petition must be filed within 3 days after the results of the election have been certified. *Id.*

Counterpetition for recount

An opposing candidate of the petition under § 12-101 may file a counterpetition if 1) the petition filed under § 12-101 did not specify all of the precincts in which the office was on the ballot; and on completion of the recount, the winner of the election is changed. Md. Ann. Code art. 33, § 12-102.

The counterpetition must request a recount of the votes for the office in the precincts not specified by the petitioner under § 12-101. The counterpetition is filed with the same election authority with which the candidate's certificate of candidacy was filed and must be filed within two days of the completion of the original recount in which the winner of the election was changed. *Id.*

Cost of recount

A petition or counterpetition shall be filed with a bond sufficient to pay the reasonable costs of the recount. If a recount is being conducted in only one county, a judge of the circuit court of the county determines and sets the bond. If the recount is being conducted in more than one county, a judge of the Circuit Court for Anne Arundel County determines and sets the bond. Md. Ann. Code art. 33, § 12-105.

The petitioner or counterpetitioner is not liable for the costs of the recount if the outcome of the election is changed; the petitioner has gained a number of votes equal to 2% or more of the total votes cast for the office in all precincts being counted; or the margin of difference in the number of votes received by an apparent winner and the losing candidate with the highest number of votes for an office is 0.1% or less of the total votes cast for those candidates. If the petitioner is not liable for the costs associated with the recount, the county shall pay the costs of the recount in that county. Md. Code Ann. art. 33, § 12-107.

PRIVATELY INITIATED CONTESTS

Standing

A registered voter may seek relief from any act or omission relating to an election. Md. Ann. Code art. 33, § 12-202 (effective until December 31, 2002).

Grounds

The act or omission relating to an election 1) is inconsistent with state election laws; and 2) may change or has changed the outcome of the election. *Id.*

Deadline for filing

Relief must be sought within the earlier of 1) 10 days after the act or omission or the date the act or omission became known to the petitioner; or 2) 7 days after the election results are certified. *Id.*

Venue

Relief must be sought with the appropriate circuit court. *Id.*

Procedure and Appeals

Proceedings shall be conducted in accordance with the Maryland Rules, except that the proceedings shall be heard and decided without a jury and as expeditiously as the circumstances require; on the request of a party or sua sponte, the chief administrative judge of the circuit court may assign the case to a three-judge panel of circuit court judges; and an appeal shall be taken directly to the Court of Appeals within 5 days of the date of the decision of the circuit court. Md. Ann. Code art. 33, § 12-203.

Remedies available

If the court determines that the alleged act or omission materially affected the rights of interested parties or the purity of the elections process and may have changed the outcome of any election already held, the court shall declare void the election for the office or question involved and order that the election be held again at a date set by the court; or order any other relief that will provide an adequate remedy. Md. Ann. Code art. 33, § 12-204 (effective until December 31, 2002).

If the court determines that the alleged act or omission materially affected the rights of interested parties or the purity of the elections process and may change the outcome of a pending election, the court may order any relief it considers appropriate under the circumstances; and if the court determines that it is the only relief that will provide a remedy, direct that the election for the office or question involved be postponed and rescheduled on a date set by the court. *Id.*

CRS-41
MASSACHUSETTS

STATE REQUIRED AUTOMATIC RECOUNTS

Massachusetts does not appear to provide for automatic recounts of election returns.

PRIVATELY INITIATED RECOUNTS

Standing

A petition for recount may be filed by any candidate if 10 or more voters sign the petition as well. Mass. Ann. Laws ch. 54, § 135.

Grounds

The recount petition must allege that the records of the election are erroneous, must specify why the records are believed to be erroneous, and must allege that the recount will affect the election result. *Id.*

Filing deadlines

The petition must be submitted on or before 5:00pm of the tenth day following the election to the city or town clerk along with the signatures of a specified number of voters registered in the particular jurisdiction. In the case of a statewide recount, the petition must be submitted to the registrars of voters of the city or town in which the signers appear to be voters and then to the state secretary on or before 5:00pm of the fifteenth day following such election. *Id.*

Form and its content

A recount petition form furnished by the Secretary of State is used. The petition contains a written request for recount signed by the candidate and signed by a specified number of voters within the district or, for state-wide recounts, within the state. *Id.*

Procedures involved in recount

The registrars in each city or town where a recount is requested conduct the recount. The board of registrars of voters in each affected city or town shall set the date of any recount for an office which appeared on a state election ballot, except for state-wide offices; state-wide office recounts must begin not more than ten days after the last day for filing a recount petition. *Id.*

Scope of materials used

The requester may specify the extent of the recount. Materials involved include ballots, voting machines, tally sheets, spoiled and unused ballots, voting lists, and absentee voting documentation. *Id.*

Observers

Candidates for the office for which a recount was petitioned or their representatives and one or more counsel and as many agents appointed by the candidate or his counsel sufficient in number to provide one such agent for each officer counting or checking such ballots; in the case of a recount of ballots cast for offices which are filled by all voters of the commonwealth, the duly organized state political committees may also be present. *Id.*

Methods used based on type of voting equipment

Paper ballots are entirely retallied unless the candidate requests only a partial recount.

Voting machines: Checking with the records and voting lists of the total sheets containing the results of the votes counted, including those cast by voting machines, by ballots of challenged voters and by absent voting ballots, the rejection or counting of ballots cast by challenged voters and the counting of absent voting ballots cast, and the examination of sealed absentee ballot envelopes which had been rejected. §135A.

Electronic voting systems: Consists of inserting the original ballots or ballot cards in a computer or tabulating mechanism which has been programmed and tested in accordance with section thirty-three F; if requested in the recount petition, a handcount must be performed. §135B.

Procedures for invalidating ballots

There are no standards specified for invalidating a ballot though the registrar must endorse the back of each rejected ballot and must state a reason for the rejection on the ballot envelope. The registrar's determinations are subject to protest as they are examined at the recount. §135.

Security of and access to materials

City and Town clerks shall retain in their custody the envelopes or containers containing the ballots cast, without examining them or permitting them to be examined by any person except as required by law, and upon the expiration of the period fixed for their preservation shall cause such ballots to be destroyed. City and Town clerks shall transfer the voting lists to the registrars of voters who shall preserve them for two years after which they may be destroyed. §109.

Deadlines

The board of registrars of voters shall set the date of any recount for an office which appeared on a state election ballot except, for statewide office the recount must begin not more than ten days after the last day for filing a recount petition. §135.

PRIVATELY INITIATED CONTESTS**Standing**

Any person who has received votes for any office at an election or his agent may serve upon a city or town clerk a written claim to such office or a declaration of intention to contest the election of any other person. Mass. Ann. Laws ch. 54, S 134.

Deadline

Declaration of intention to contest the election must be filed within 30 days after the election. *Id.*

Forum and Procedure

The claim must be in writing and filed with the city or town clerk. *Id.*

Preservation of evidence

The clerk shall retain the envelopes or containers containing the ballots for such office until such claim is withdrawn or the contest is determined. Any court of competent jurisdiction, or any body having jurisdiction under any constitution, statute, or charter to judge the elections or returns of its own members, may require the clerk to produce such envelopes or containers and ballots. *Id.*

CRS-43
MICHIGAN

STATE REQUIRED AUTOMATIC RECOUNTS MI Comp. Laws Ann. § 168.880a

A recount of all precincts in the state shall be conducted at any time a statewide election shall be certified by the board of state canvassers as having been determined by a vote difference of 2,000 votes or less.

PRIVATELY INITIATED RECOUNTS

Standing

A candidate for any office may petition for a recount of the votes cast for that office in any precinct or precincts. MI Comp. Laws Ann §§168.862; 168.879.

Grounds

The petition shall allege that the candidate is aggrieved on account of fraud or mistake in the canvass of the votes by the inspectors of election or the returns made by specified voting officials. The petition shall contain specific allegations of wrongdoing only if evidence of that wrongdoing is available to the petitioner, otherwise, if evidence is not available alleged fraud or mistake is sufficient. §168.879.

Filing deadlines

The petition for a recount shall be filed with the secretary of state not later than 48 hours following the completion of the canvass of votes cast at an election. §168.879.

An opposing candidate may file a counterpetition in the same manner as the original petition not later than 4pm on the seventh day after the original recount petition has been filed with the secretary of state. §168.882.

Form and its contents

The petition shall be signed and sworn to by the candidate and shall specify the counties, cities, or townships and precincts in which the recount is requested. § 168.879.

Costs of the recount

A person filing a recount petition shall file the petition with the state bureau of election and shall deposit the sum of \$10.00 for each precinct in which a recount of the votes is demanded; this money is refunded if the recount establishes fraud or mistake as set forth in the petition and the petitioner receives a certificate of election. §168.881.

If a counterpetition by an opposing candidate is filed as explained above, then the same deposit must be made as was made for the original recount petition. §168.882.

Procedures involved in recount

All recounts will be conducted in the specified county. The time and place is prescribed by the board of state canvassers. §168.889.

Scope of materials used

The requester must specify the extent of the recount. §168.879.

Observers

The recount may be observed by the candidates, their counsel and not to exceed one watcher and one tallier at each table. §168.874.

Methods used based on type of voting equipment

A board of canvassers may conduct the recount by a manual tally of the ballots, a tabulation of the ballots on a computer using a particularly designed software application, or a tabulation of the ballots on a computer using the same software application used in the precinct on election day or any combination of these three methods. §168.871.

Security of and access to materials

The board of state canvassers have the right to demand ballot boxes, poll books, tally sheets, the statement of votes and such other documents and reports deemed necessary

and these shall be safely guarded and returned to the officials charged with the their custody. §168.888.

Deadlines

All recounts must be completed not later than the thirtieth day immediately following the last day for filing counter petitions or the first day that such recounts may lawfully begin. §168.875.

PRIVATELY INITIATED CONTESTS

State law does not specifically provide for a contest of Congressional elections. However, state law does address the preservation of evidence in the event a Congressional election is contested. *See* §§ 168.109 et seq.; 168.150 et seq.; 168.879(3).

CRS-45
MINNESOTA

STATE REQUIRED AUTOMATIC RECOUNTS Minn. Stat. § 204C.35

The state canvassing board shall recount the votes when the difference between the votes of a candidate who would otherwise be declared elected and the votes of any other candidate for that office (1) is less than one-half of one percent of the total number of votes counted for that office; or (2) is ten votes or less if the total number of votes cast for the office is 400 votes or less.

PRIVATELY INITIATED RECOUNTS

Standing

A losing candidate for election to a legislative office. Minn. Stat. § 204C.35.

Filing deadlines

The votes shall be recounted if the candidate files a request during the time for filing notice of contest of the election for which a recount is sought. *Id.*

Costs of the recount

The recount is at the candidate's own expense; the candidate shall file with the filing officer a bond, cash, or surety in an amount set by the filing officer for the payment of the recount expenses, which are as follows: the compensation of the secretary of state, or designees, and any election judge, municipal clerk, county auditor, administrator, or other personnel who participate in the recount; the costs of computer operation, preparation of ballot counting equipment, necessary supplies and travel related to the recount; the compensation of the appropriate canvassing board and costs of preparing for the canvass of recount results; and any attorney fees incurred in connection with the recount by the governing body responsible for the recount. *Id.*

Partial recounts

The secretary of state may conduct a recount to verify the accuracy of vote counting and recording in one or more precincts in which an electronic voting system was used in the election. § 206.88.

PRIVATELY INITIATED CONTESTS

Standing

Any eligible voter, including a candidate, may contest an election. Minn. Stat. § 209.02.

Grounds

The contest may be brought 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. *Id.*

Filing deadlines

Notice must be served within seven days after the canvass is completed except if the ground for filing is based on a deliberate, serious, and material violation of the election laws which was discovered from the statements of receipts and disbursements required to be filed by candidates and committees, the action may be commenced and the notice served and filed within ten days after the filing of the statements. If a notice questions only which party received the highest number of votes legally cast, a contestee who loses may serve and file a notice on any other ground during the three days following expiration of the time for appealing the decision on the vote count. §209.021.

Form and its content

Service of a notice of contest must be made in the same manner as the service of summons in civil actions. §209.021.

Forum for filing

U.S. Senate: Court administrator of district court in Ramsey county (§209.021) A contest regarding a statewide office must be heard by three judges assigned by the chief justice of the supreme court. §209.045.

House of Representatives: Court administrator of district court in the county where the contestee resides. §209.021.

A copy of the notice must be served on the candidate who is the contestee (sent to the contestee's last known address by certified mail) and a copy must be furnished to the official authorized to issue the certificate of election. §209.021.

Costs of the contest

The losing party pays the costs of the contest. If the contestee loses because of an error in the counting of ballots or canvass of the returns or because of any other irregularity in the election procedure, costs must be paid, in the discretion of the judge, by the election jurisdiction responsible for the errors. §209.07.

Any party which applies for the inspection of ballots shall file a \$250 bond with the court administrator of district court if the contest is in a single county. In other cases the bond shall be in a sum set by the court. §209.06.

Deadlines

The contest proceedings must be brought on for trial by either the contestant or contestee as soon as practicable within 20 days after the filing of the notice of contest. The court shall proceed in the manner provided for the trial of civil actions so far as practicable. §209.065.

Provisions for preserving evidence

The contestant or contestee may keep a visual guard over the ballots. The guard may be maintained either by the candidate, contestant, or contestee, or by their duly authorized agents (not more than two at a time for each party to the contest). If a candidate, contestant, or contestee seeks to guard the ballots, the custodian of the ballots shall appoint some suitable person to guard the ballots so they are not in the sole custody of the candidate, contestant, contestee, or their agents. §209.05.

Relief available

The court may invalidate and revoke any election certificate which has been issued. If the contest involved an error in counting of ballots, the official authorized to issue the certificate of election shall issue the certificate to the person entitled to it but, if a contestant succeeds in a contest where there is no question as to which of the candidates received the highest number of votes cast at the election, the contestant is not, by reason of the disqualification of the contestee, entitled to the certificate of election. If the court decides that a serious and material defect in the ballots used, changed the outcome of the election for the contested office, the election must be declared invalid for that office. §209.07.

Appeal

U.S. Senate: Minnesota Supreme Court §§209.09;209.10

House of Representatives: Court of appeals §209.09

When a contest relates to the office of Senator or member of the House of Representative of the United States, the only question to be decided by the court is which party to the contest received the highest number of votes legally cast at the election and is therefore entitled to receive the certificate of election. Evidence on any other points specified in the notice of contest must be taken and preserved by the judge trying the contest, but the judge shall make no findings or conclusion on those points. The court administrator of the district court shall promptly certify and forward the files and records of the proceedings, with all the evidence taken, to the presiding officer of the Senate or the House of Representatives of the United States. §209.12.

CRS-47
MISSISSIPPI

STATE REQUIRED AUTOMATIC RECOUNTS

Mississippi does not appear to provide for automatic recounts of election returns.

PRIVATELY INITIATED RECOUNTS

There do not appear to be any provisions specific to privately initiated recounts. However, candidates may examine ballot boxes at any time within 12 days of after the canvass of election returns. *See* Miss. Code Ann. § 23-15-911.

PRIVATELY INITIATED ELECTION CONTESTS

Mississippi does not appear to provide by statute for election contests of federal general elections.

STATE REQUIRED AUTOMATIC RECOUNTS

Missouri does not appear to provide for automatic recounts of election returns.

PRIVATELY INITIATED RECOUNTS

Standing

Any candidate who was defeated by less than one percent of the votes cast for the office shall have the right to a recount of the votes cast for the office. § 115.601 R.S.Mo.

Form and contents of filing

The candidate must file with the Secretary of State a request for a recount stating that the person was defeated by less than one percent of the votes cast. *Id.*

Filing deadline

A request for a recount shall be filed not later than seven days after certification of the election. *Id.*

Procedures

The secretary of state shall notify all concerned parties of the filing of the request for a recount.

The secretary of state shall authorize the election authorities to conduct a recount pursuant to this section if the requesting party or his position on a question was defeated by less than one percent of the votes cast, and shall determine the number of persons necessary to assist with the recount.

Persons assisting with the recount shall be appointed equally from lists submitted by the contestant and the opponent who received more votes. Each person appointed shall be a disinterested person and registered voter of the area in which the contested election was held. *Id.*

Observers

No one other than the Secretary of State, the election authorities involved, the contestant and the other witnesses described above, their attorneys, and those specifically appointed by the Secretary of State to assist with the recount shall be present during the recount. *Id.*

Methods for conducting recount depending on type of equipment

Whenever a recount of votes cast on paper ballots is ordered pursuant to section 115.583 or 115.601, the court or legislative body shall proceed to open and count the votes and, after the count has been completed, shall tabulate by voting district the votes cast for the contestant and the contestee.

Whenever a recount of votes cast on any voting machine is ordered pursuant to section 115.583 or 115.601, the court or legislative body shall make visible the registering counters of the machine and, without unlocking the machine against voting, shall record the votes cast on the machine.

Whenever a recount of votes cast on ballot cards is ordered pursuant to section 115.583 or 115.601, the court or legislative body shall supervise a test of the automatic tabulating equipment conducted in the manner provided in section 115.233 and shall cause the votes to be recounted automatically, or may order a hand count of the votes. In its discretion, the court or legislative body may order a new computer program to be made, which shall be tested in the manner provided in section 115.233 before the votes in question are recounted automatically. § 115.585 R.S.Mo.

Deadline for conducting recount

The secretary of state shall conduct and certify the results of the recount as the official results in the election within twenty days of receipt of the aforementioned notice of recount. § 115.601.

PRIVATELY INITIATED ELECTION CONTESTS**Standing**

Any candidate for election to any office at a primary or general election may file a contest. §115.526.

Form and contents of filing

The candidate must file a verified petition with the appropriate court setting forth the points on which he or she wishes to challenge the qualifications of the candidate and the facts he or she will prove in support of such points.

Filing deadline

The petition must be filed no later than 5 days after the latest date for certification of a candidate by the officer responsible for issuing such certification.

Costs

The court may require the contestant to post bond for the costs and expenses of the election contest. The costs may be adjudged against the unsuccessful party. § 115.547.

Procedure

Immediately after a petition is filed, the clerk of the circuit court shall issue a summons upon the petition to the contestee. The summons shall be served in any county of the state in the same manner provided for service of process in civil actions. The clerk shall also send by certified or registered mail a copy of the petition to the officer responsible for issuing the statement announcing the results of the contested election and to each election authority responsible for conducting the election in any area where an alleged irregularity occurred. All officers and election authorities so notified shall immediately suspend all action on the office until the contest has been determined. The contestee may file an answer to the petition, specifying reasons why his or her nomination should not be contested, not later than 4 days after the petition is filed. § 115.533.

Not later than 5 days after the petition is filed, a preliminary hearing shall be held to determine whether there shall be a recount and not to determine what the recount would show. § 115.537.

Relief available

The court may order a full or partial recount, or a new election may be ordered. §§ 115.539; 115.593.

Appeals

The parties may appeal the decision of the court to the Court of Appeals for the appropriate jurisdiction. § 115.597.

CRS-50
MONTANA

STATE REQUIRED AUTOMATIC RECOUNTS

Montana does not appear to provide for an automatic recount of election returns in election for federal office.

PRIVATELY INITIATED RECOUNTS

A candidate who is defeated may petition for a recount. §13-16-201.

An unsuccessful candidate for any public office at an election may apply to the district court of the county where the election was held for an order directing the county recount board to make a recount of the votes cast in any or all of the precincts. §13-16-301.

Grounds

Candidate was defeated by a margin not exceeding 1/4 of 1 percent of the total votes cast for all candidates for the same position. §13-16-201.

The application for a court-ordered recount shall specify the grounds for a recount and be verified by the applicant that the matters contained in it are true to the best of the applicant's knowledge, information and belief. §13-16-301.

Filing deadlines

A recount must be requested within five days after the official canvass. §13-16-201.

An application for a court-ordered recount must be filed within 5 days after the canvass of election returns; within 5 days after filing the application, the judge shall hear the application and determine its sufficiency. §13-16-301.

Form and its content

File with the secretary of state a verified petition stating the candidate believes a recount will change the result and a recount of the votes for the office should be had. §13-16-201.

Application for a court-ordered recount to be made to the district court of the county where the election was held. §13-16-301.

Costs of the recount

The candidate who is defeated by a margin exceeding 1/4 of 1% but not exceeding 1/2 of 1% of the total votes cast for all candidates for the same position shall post bond with the clerk and recorder of the county in which he resides in the amount set by the clerk and recorder sufficient to cover all costs of the recount incurred by each county in which a recount is sought. §13-16-211.

For a court-ordered recount, the court will determine the probable expense of making the recount, and the applicant asking for the recount shall deposit with the county recount board the amount determined in cash; deposit is returned if the recount shows that an applicant has been elected to office. §13-16-307.

Procedures involved in recount

The county recount board shall recount the votes cast in the precincts in which a recount is ordered; the election administrator must produce, unopened, each sealed package or envelope received from the election judges of the precinct in which a recount is ordered. §13-16-412.

The recount board shall remove the seals from the voting machines in all precincts where a recount is required and proceed to record the votes cast for all candidates in the same manner as the count is made after the closing of the polls. §13-16-413.

The recount shall test the automatic tabulating equipment used for votes cast by voting devices. If the test does not show any errors, the votes cast for the candidates or on the issues for which a recount is ordered shall be recounted by the tabulating equipment. §13-16-414.

Observers

Representatives of the news media; each candidate involved may appear personally or by a representative; the recount shall be public, but the audience may be limited to prevent interference with the procedures. §13-16-411.

Security of and access to materials

The election judges, before they adjourn, shall (1) enclose election items such as pollbooks, precinct register, the list of individuals challenged, tally sheets, unused ballots, all ballots voted, in a strong envelope or package which is securely fastened and on which each election judge has written his name across all seals, and (2) deliver the package to the election administrator. §13-15-205.

The election administrator shall file the packages, unopened, until the county board of canvassers meets to canvass the returns; immediately after the returns are canvassed, the election administrator shall file the packages with the unopened packages of ballots and ballot stubs. §13-15-301.

PRIVATELY INITIATED CONTESTS**Standing**

An elector may contest the right of any person to election to public office for which the elector has the right to vote. §13-36-101.

Grounds

Deliberate, serious, and material violation of any provision of the law relating to election; the person whose right is contested was not, at the time of the election, eligible to such office; on account of illegal votes or an erroneous or fraudulent count or canvass of votes. §13-36-101.

Filing deadlines

Any action to contest the right of a candidate to be declared elected to an office or annul and set aside an election or to remove from office for an offense listed above must be commenced within 1 year after the day of election at which the offense was committed. §13-36-102.

Form and its content

Petition must name the person whose election is contested and the grounds of the contest. §13-36-201. A suggested form of complaint is found at §13-36-203.

Forum for filing and hearing

Petition must be filed in the district court of the county in which the declaration or acceptance of his nomination as a candidate for the office to which he is declared elected is filed. §13-36-103.

Costs of the contest

The petitioner must give bond to the state in a sum which is ordered by the court but which must not exceed \$2,000, with not less than two sureties. §13-36-204. The prevailing party may recover costs, disbursements, and reasonable attorneys fees. §13-36-205.

Deadlines

Upon the filing of a petition, the clerk must immediately notify the judge of the court and issue a citation to the person whose office is contested, citing him to appear and answer not less than 3 nor more than 7 days after the date of filing the petition. Every contest must take precedence over all other business on the court docket and must be tried and disposed of with all convenient dispatch. §13-36-206. Proceedings must be advanced on the docket by request of either party but the court may postpone or continue the trial if necessary. §13-36-208.

Provisions for preserving evidence

The election administrator will keep the unopened packages containing voted ballots, detached stubs, unvoted ballots, and unused ballots from an election; after 12 months, if there is no contest begun, recount pending, or appeal of a decision relating to a contest or

recount, an election administrator may destroy the ballots without opening the packages. §13-1-303.

Relief available

If the contestee was guilty of any corrupt practice, illegal act or undue influence, he will be deprived of office and the vacancy filled in the manner provided by law. §13-36-210. If, in any case of a contest on the ground of illegal votes, it appears that a person other than the one returned has the highest number of legal votes after the illegal votes have been eliminated, the court must declare such person elected. §13-36-212. *See* §13-36-211 for further clarification on illegal votes.

CRS-53
NEBRASKA

STATE REQUIRED AUTOMATIC RECOUNTS R.R.S. Neb. § 32-1119.

If it appears that any candidate failed to be elected by a margin of (a) one percent or less of the votes received by the candidate who received the highest number of votes for the office at an election in which more than five hundred total votes were cast or (b) two percent or less of the votes received by the candidate who received the highest number of votes for the office at an election in which five hundred or less total votes were cast, then such candidate shall be entitled to a recount.

Any losing candidate may waive his or her right to a recount by filing a statement with the Secretary of State, election commissioner, or county clerk with whom he or she made his or her filing.

All expenses of the recount shall be paid by those political subdivisions involved in the recount.

Recounts for candidates who filed with the Secretary of State shall be made on the fifth Wednesday after the election and shall commence at 9 a.m.

PRIVATELY INITIATED RECOUNT

Standing

Any candidate who failed to be elected by more than the margin provided for above may petition for a recount at his or her expense. § 32-1121.

Grounds

See above.

Filing deadline

Request shall be filed not later than the tenth day after the county canvassing board or the board of state canvassers convenes. *Id.*

Form and content

The request shall be filed with the filing officer with whom the candidate filed for election. *Id.*

Costs of the recount

The candidate requesting the recount shall pay the estimated cost of the recount before the recount is scheduled to be conducted. If the recount involves more than one county, the election commissioner or county clerk shall certify the cost to the Secretary of State. The Secretary of State shall then notify the candidate of the determined cost, and the cost shall be paid before any recount is scheduled to be conducted. The candidate shall pay the cost on demand to the county treasurer of each county involved, and such sums shall be placed in the county general fund to help defray the cost of the recount. If the actual expense is less than the determined cost, the candidate may file a claim with the county board for overpayment of the recount. If the recount determines the candidate to be the winner, all costs which he or she paid shall be refunded. Refunds shall be made from the county general fund. *Id.*

Procedures for recount

The procedures for the recounting of ballots shall be the same as those used for the counting of ballots on election day. The recount shall be conducted at the county courthouse, except that if vote counting devices are used for the counting or recounting, such counting or recounting may be accomplished at the site of the devices. Counties counting ballots by using a vote counting device shall first recount the ballots by use of the device. If substantial changes are found, the ballots shall then be counted using such device in any precinct which might reflect a substantial change. § 32-1119(6).

PRIVATELY INITIATED CONTESTS

Grounds

The election of any person to an elective office may be contested:

- (1) For misconduct, fraud, or corruption on the part of an election commissioner, a county clerk, an inspector, a judge or clerk of election, a member of a counting or canvassing board, or an employee of the election commissioner or county clerk sufficient to change the result;
- (2) If the incumbent was not eligible to the office at the time of the election;
- (3) If the incumbent has been convicted of a felony unless at the time of the election his or her civil rights have been restored;
- (4) If the incumbent has given or offered to any voter or an election commissioner, a county clerk, an inspector, a judge or clerk of election, a member of a counting or canvassing board, or an employee of the election commissioner or county clerk any bribe or reward in money, property, or thing of value for the purpose of procuring his or her election;
- (5) If illegal votes have been received or legal votes rejected at the polls sufficient to change the results;
- (6) For any error of any board of canvassers in counting the votes or in declaring the result of the election if the error would change the result;
- (7) If the incumbent is in default as a collector and custodian of public money or property;
or
- (8) For any other cause which shows that another person was legally elected. § 32-1101

Procedure

Upon the presentation of a petition contesting an election and the answer to such petition, if any, the court shall appoint an official to the court to take the testimony of the petitioner and the person whose election is contested. The court order shall specify the points and facts in regard to which the testimony is to be taken and the time when the official shall make his or her report to the court. The official shall have the power to administer oaths and take depositions, to compel the attendance of witnesses by summons and attachment, to require such witnesses to testify, and to certify such testimony. § 32-1103.

The petitioner and the person whose election is being contested shall have the right to attend the examination of the witness appearing before the official of the court and to cross-examine the witness. § 32-1104.

Costs of contest

If the contested seat is not in the Legislature, the petitioner shall file in the proper court within ten days after filing of the petition a bond with security to be approved by the clerk of the court conditioned to pay all costs in case the election is confirmed. If the contested seat is in the Legislature, the petitioner shall file with the Clerk of the Legislature within ten days after filing the petition a bond with security approved by the Clerk of the Legislature conditioned to pay all costs in case the election is confirmed. The bond shall be in an amount of at least five thousand dollars as determined by the Clerk of the Legislature. If the Clerk of the Legislature determines that the bond is inadequate, he or she may order an increase in the amount of the bond at any stage of the contest proceedings. §32-1105

Deadline for hearing contest

The contest shall be heard within fifteen days after the matter is at issue unless the contest is continued by mutual consent of the parties or for good cause shown. § 32-1110.

Remedies available

The court may issue a writ ordering the recount of ballots. Procedures for recounts during an election contest are set forth in the statutes. *See* §§ 32-1112 - 32-1116.

STATE REQUIRED AUTOMATIC RECOUNTS

Nevada does not appear to provide for an automatic recount of election returns.

PRIVATELY INITIATED RECOUNT

Standing

Any candidate defeated at any election may demand and receive a recount of the vote for the office for which he is a candidate. N.R.S. 293.403.

Filing deadline

The defeated candidate must file petition within 3 working days after the canvass of the vote and the certification by the county clerk or city clerk of the abstract of votes. *Id.*

Forum for filing

The petition must be filed with the officer with whom he filed his declaration of candidacy or acceptance of candidacy. *Id.*

Costs of recount

The estimated costs of the recount must be determined by the person with whom the advance is deposited based on regulations adopted by the secretary of state defining the term "costs." The candidate requesting the recount must deposit in advance the estimated cost of the recount with the appropriate officer. *Id.*

If the person who demanded the recount does not prevail, and it is found that the sum deposited was less than the cost of the recount, the person shall, upon demand, pay the deficiency to the county clerk, city clerk or secretary of state, as the case may be. If the sum deposited is in excess of the cost, the excess must be refunded to him.

If the person who demanded the recount prevails, the sum deposited with the secretary of state, county clerk or city clerk must be refunded to the person and the cost of the recount must be paid as follows: (a) If the recount concerns an office or ballot question for which voting is not statewide, the cost must be borne by the county or city which conducted the recount. (b) If the recount concerns an office or ballot question for which voting is statewide, the clerk of each county shall submit a statement of its costs in the recount to the secretary of state for review and approval. The secretary of state shall submit the statements to the state board of examiners, which shall repay the allowable costs from the reserve for statutory contingency account to the respective counties. § 293.405

Methods used based on type of voting equipment

Except in counties using a mechanical voting system, the recount must include a count and inspection of all ballots, including rejected ballots, and must determine whether those ballots are marked as required by law. § 293.404.

If a recount is demanded in a county or city using a mechanical voting system, the person who demanded the recount shall select the ballots for the office affected from 5 percent of the precincts, but in no case fewer than three precincts, after notification to each candidate for the office or his authorized representative. The recount board shall examine the selected ballots, including any duplicate or rejected ballots, shall determine whether the ballots have been voted in accordance with state law and shall count the valid ballots by hand. In addition, a recount by computer must be made of all the selected ballots. *Id.*

Observers

Each candidate for the office affected by the recount may be present in person at the recount. § 293.404.

Deadline for completion of recount

Each recount must be commenced within 5 days after demand, and must be completed within 5 days after it is begun. Sundays and holidays must not be excluded in determining each 5-day period. § 293.405.

PRIVATELY INITIATED CONTESTS

State law does not provide for an election contest of elections for United States Senator or Representative in Congress. § 293.407.

CRS-57
NEW HAMPSHIRE

STATE REQUIRED AUTOMATIC RECOUNTS

New Hampshire does not appear to provide for an automatic recount of election returns.

PRIVATELY INITIATED RECOUNTS

Standing

Any person for whom a vote was cast may apply for a recount. RSA § 660:1.

Deadline for filing

An application for a recount shall be filed no later than the Friday following the election.
Id.

Form and contents

The application for a recount shall be made in writing. *Id.*

Costs of recount

If the difference between the vote cast for the applying candidate and a candidate declared elected shall be less than one percent of the total votes cast in the towns which comprise the office to be recounted, the fee shall be \$250.

If the difference between the vote cast for the applying candidate and a candidate declared elected shall be between one percent and 2 percent of the total votes cast in the towns which comprise the office to be recounted, the fee shall be \$500.

If the difference between the vote cast for the applying candidate and a candidate declared elected shall be between 2 percent and 3 percent of the total votes cast in the towns which comprise the office to be recounted, the fee shall be \$1,000.

If the difference between the vote cast for the applying candidate and a candidate declared elected shall be greater than 3 percent of the total votes cast in the towns which comprise the office to be recounted, the candidate shall pay \$1,000 and shall agree in writing with the secretary of state to pay any additional costs of the recount. § 660:2.

Observers

The candidates, their counsel and assistants shall have the right to inspect the ballots and participate in the recount under such suitable rules as the secretary of state may adopt. § 660:5.

Appeal

Any candidate who, by declaration of the secretary of state upon recount, did not have the greatest number of votes, may within 3 days after said declaration, appeal therefrom to the ballot law commission by filing his written appeal with the secretary of state. § 665.6.

PRIVATELY INITIATED CONTESTS

New Hampshire does not appear to provide by statute for contests of elections for federal offices.

CRS-58
NEW JERSEY

STATE REQUIRED AUTOMATIC RECOUNTS

New Jersey does not appear to provide for an automatic recount of election returns.

PRIVATELY INITIATED RECOUNT

Standing

Any candidate at any election may request a recount. N.J. Stat. § 19:28-1.

Grounds

Belief that an error has been made by any district board or any board of canvassers in counting the vote or declaring the vote of any election. *Id.*

Filing deadline

On or before the second Saturday following the election. *Id.*

Forum for filing

Must file request with a judge of the Superior Court assigned to the county wherein such district or districts are located. *Id.*

Costs of recount

Any applicant or group of applicants, as the case may be, for such recount, upon applying therefor, shall deposit with the county clerk or such other public officer or officers as such judge shall direct, such sum of money proportioned to the number of votes to be counted but not exceeding twenty-five dollars (\$25.00) for any one district recount of which is asked, as the judge shall order as security for the payment of the costs and expenses of the recount in case the original count be confirmed. § 19:28-2.

PRIVATELY INITIATED CONTESTS

Standing

Any voter in the state may contest an election. § 19:29-1

Grounds

The grounds for filing an election contest are as follows:

- a. Malconduct, fraud or corruption on the part of the members of any district board, or of any members of the board of county canvassers, sufficient to challenge the result;
- b. When the incumbent was not eligible to the office at the time of the election;
- c. When the incumbent had been duly convicted before such election of any crime which would render him incompetent to exercise the right of suffrage, and the incumbent had not been pardoned at the time of the election;
- d. When the incumbent had given or offered to any elector or any member of any district board, clerk or canvasser, any bribe or reward, in money, property or thing of value for the purpose of procuring his election;
- e. When illegal votes have been received, or legal votes rejected at the polls sufficient to change the result;
- f. For any error by any board of canvassers in counting the votes or declaring the result of the election, if such error would change the result;
- g. For any other cause which shows that another was the person legally elected;
- h. The paying, promise to pay or expenditure of any money or other thing of value or incurring of any liability in excess of the amount permitted by this title for any purpose or in any manner not authorized by this title;
- i. When a petition for nomination is not filed in good faith or the affidavit annexed thereto is false or defective. *Id.*

Form and content of petition, forum for filing

In the case of an office or proposition voted for by the voters of the entire State or more than 1 county thereof, the contest shall be heard by any judge of the Superior Court assigned for that purpose by the Chief Justice of the Supreme Court, and shall be commenced by the filing of a petition therefor with the Clerk of the Superior Court signed by at least 25 voters of the State or by any defeated candidate for such nomination, party

position or public office.

In all other cases the contest shall be heard and determined by a judge of the Superior Court assigned to the county wherein such office or proposition is to be contested, and shall be commenced by the filing of a petition therefor with the Clerk of the Superior Court, signed by at least 15 voters of the county or by any defeated candidate for such nomination, party position or public office. The petition shall be verified by the oath of at least 2 of the petitioners, or by the candidate filing the same, as the case may be, which verification may be made on information and belief. §19:29-2.

Deadlines

The petition contesting any election to public office or approval or disapproval of any proposition shall be filed no later than 30 days after such election, unless the ground of action is discovered from the statements, deposit slips or vouchers filed under this Title, subsequent to such primary or other election, in which event such petition may be filed 10 or 30 days respectively after such statements, deposit slips or vouchers are filed. Any petition of contest may be filed within 10 days after the result of any recount has been determined or announced. §19:29-3.

The judge shall appoint a suitable time for hearing such complaint, not more than 30 nor less than 15 days after the filing of the petition. § 19:29-4.

Procedures

The proceedings shall be similar to those in a civil action so far as practicable, but shall be under the control and direction of the court, which shall hear and determine the matter without a jury. § 19-29-5.

Costs

The contestant and incumbent shall be liable to the officers and witnesses for the costs made by them, respectively. If the election be confirmed, or the petition dismissed, or the prosecution fail, judgment shall be rendered against the contestant for costs; and if the judgment be against the incumbent, or the election be set aside, he shall pay the costs at the discretion of the court; and in the case a contestant is successful in contesting the approval or disapproval of a proposition, the State, county or municipality, as the case may be, which caused the proposition to be submitted to the voters, shall pay the costs at the discretion of the court. §19:29-14.

Remedies available

If the judgment be made against the incumbent, and he has already received a certificate of election, the judgment shall annul it. If the judge finds that no person was duly elected, the judgment shall be that the election be set aside. § 19:29-9.

Appeal

The party against whom judgment was rendered may have it reviewed by the Appellate Division of the Superior Court. § 19:29-11.

CRS-60
NEW MEXICO

STATE REQUIRED AUTOMATIC RECOUNTS

New Mexico does not appear to provide for an automatic recount of election returns.

PRIVATELY INITIATED RECOUNT

Standing

Any candidate for office may request a recount of the election returns. N.M Stat. Ann. §1-14-14

Grounds

A request for a recount may be based on the following grounds: a belief that any error or fraud has been committed by any precinct board in counting or tallying the emergency paper ballots or absentee ballots, in the verification of the votes cast on the voting machines or in the certifying of the results of any election whereby the results of the election in the precinct have not been correctly determined, declared or certified. *Id.*

Deadline

A request for a recount must be filed within six days after completion of the canvass by the proper canvassing board. *Id.*

Forum for filing request

In the case of any office for which the state canvassing board issues a certificate of nomination or election, application for recount or recheck shall be filed with the secretary of state.

In the case of any office for which the county canvassing board issues a certificate of nomination or election, application for recount or recheck shall be filed with the district judge for the county in which the applicant resides. *Id.*

Costs

Any applicant for a recount shall deposit with the proper canvassing board fifty dollars (\$50.00) in cash, or a sufficient surety bond in an amount equal to fifty dollars (\$50.00), for each precinct for which a recount is demanded. Any applicant for a recheck shall deposit with the proper canvassing board ten dollars (\$10.00) in cash, or a sufficient surety bond in an amount equal to ten dollars (\$10.00), for each voting machine to be rechecked. The deposit or surety bond shall be security for the payment of the costs and expenses of the recount or recheck in case the results of the recount or recheck are not sufficient to change the results of the election.

If it appears that error or fraud sufficient to change the winner of the election has been committed, the costs and expenses of the recount or recheck shall be paid by the state upon warrant issued by the secretary of finance and administration supported by a voucher of the state canvassing board, or shall be paid by the county upon warrant of the county clerk from the general fund of the county, as the case may be. If no error or fraud appears to be sufficient to change the winner, the costs and expenses for the recount or recheck shall be paid by the applicant. § 1-14-15.

Procedures

Immediately after the filing of the application for a recount, the state canvassing board shall issue a summons directed to the precinct board of each precinct specified in the application commanding it to appear at the county seat of the county where in the precinct is situated on a day fixed in the summons, which date shall not be more than ten days after the filing of the application for a recount.

The precinct boards, district judge and the county clerk shall meet at the county courthouse at 10:00 a.m. on the date fixed for the recount, and the ballot boxes or voting machines of the precincts involved in the recount shall be opened.

The precinct boards shall recount and retally the emergency paper ballots or the absentee ballots, or recheck the votes cast on the voting machine, as the case may be, for the office

in question in the presence of the county clerk, district judge or person designated to act for him, and any other person who may desire to be present. § 1-14-16.

PRIVATELY INITIATED CONTESTS

Standing

Any unsuccessful candidate for nomination or election to any public office may contest an election. § 1-14-1.

Procedure for initiating contest

Any action to contest an election shall be commenced by filing a verified complaint of contest in the district court of the county where either of the parties resides. § 1-14-3.

Deadline for filing complaint

A complaint to contest an election shall be filed no later than thirty days from issuance of the certificate of nomination or issuance of the certificate of election to the successful candidate. *Id.*

Remedy available

Judgment shall be rendered in favor of the party for whom a majority of the legal votes shall be proven to have been cast, and shall be to the effect that he is entitled to the office in controversy with all the privileges, powers and emoluments belonging thereto. § 1-14-4.

Costs

If the contestant prevails he shall have judgment placing him in possession of the contested office and for the emoluments thereof from the beginning of the term for which he was elected and for his costs. § 1-14-4.

Right to appeal

An appeal shall lie from any judgment or decree entered in the contest proceeding to the supreme court of New Mexico within the time and in the manner provided by law for civil appeals from the district court. § 1-14-5.

CRS-62
NEW YORK

New York does not appear to provide by statute for an automatic or privately initiated recount or contest of federal general elections.

CRS-63
NORTH CAROLINA

STATE REQUIRED AUTOMATIC RECOUNTS

There are provisions in state law referred to as “mandatory recounts,” but they require a candidate’s request for a recount. These provisions will be discussed below.

PRIVATELY INITIATED RECOUNTS

Standing

A candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate are not more than the following:

(1) For a nonstatewide ballot item, one percent of the total votes cast in the ballot item, or in the case of a multiseat ballot item, one percent of the votes cast for those two candidates;

(2) for a statewide ballot item, one-half of one percent of the votes cast in the ballot item, or in the case of a multiseat ballot item, one-half of one percent of the votes cast for those two candidate, or 10,000 votes, whichever is less. N.C. Gen. Stat. § 163-182.7

Deadline for filing

The demand must be filed by noon on the second Wednesday after the election. *Id.*

Procedures

The State Board of Elections is responsible for promulgating rules for conducting recounts. *Id.*

PRIVATELY INITIATED CONTESTS

North Carolina statutes refer to election protests rather than contests.

Standing

A protest concerning the conduct of an election may be filed with the county board of elections by any registered voter who was eligible to vote in the election or by any person who was a candidate for nomination or election in the election. § 163-182.9.

Form and contents of filing

The protest shall be in writing and shall be signed by the protester. It shall include the protester’s name, address and telephone number and a statement that the person is a registered voter in the jurisdiction or a candidate. The protest shall also state whether the protest concerns the manner in which votes were counted and results tabulated or some other irregularity. The protest shall state what remedy the protester is seeking. *Id.*

Deadline

The timing for filing a protest shall be as follows:

a. If the protest concerns the manner in which votes were counted or results tabulated, the protest shall be filed before the beginning of the county board of election’s canvass meeting.

b. If the protest concerns the manner in which votes were counted or results tabulated and the protest states good cause for delay in filing, the protest may be filed until 6:00 P.M. on the second day after the county board of elections has completed its canvass and declared the results.

c. If the protest concerns an irregularity other than vote counting or result tabulation, the protest shall 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.

d. If the protest concerns an irregularity on a matter other than vote counting or result tabulation and the protest is filed before election day, the protest proceedings shall be stayed, unless a party defending against the protest moves otherwise, until after election day if any one of the following conditions exists:

1. The ballot has been printed.
2. The voter registration deadline for that election has passed.

3. Any of the proceedings will occur within 30 days before election day. *Id.*

Proceedings

The county board shall, as soon as possible after the protest is filed, meet to determine whether the protest substantially complies with the requirements set forth above and whether it establishes probable cause to believe that a violation of election law or irregularity or misconduct has occurred. If the board determines that one or both requirements are not met, it shall dismiss the protest. The protester may file an amended protest or may appeal to the State Board. If the board determines that both requirements are met, it shall schedule a hearing. *Id.*

Appeal

The decision by the county board of elections on an election protest may be appealed to the State Board of Elections. An appeal must be filed within 24 hours after the county board files the written decision. § 163-182.11.

CRS-65
NORTH DAKOTA

STATE REQUIRED AUTOMATIC RECOUNTS N.D. Cent. Code § 16.1-16-01(1)

A recount must be conducted when any person failed to be elected in a general or special election by one-half of one percent or less of the highest vote cast for a candidate for that office.

PRIVATELY INITIATED RECOUNT

Standing

Any person who failed to be elected in a general or special election by more than one-half of one percent and less than two percent of the highest vote cast for a candidate for that office. § 16.1-16-01(2).

Deadline

A demand for a recount must be made within three days after the canvass of the votes. § 16.1-16-01(3).

Forum for filing, form of request

The demand must be in writing, must state the basis for the recount, must contain a bond in an amount previously established by the auditor or auditors doing the recount sufficient to pay the cost of the recount, and must be filed with the secretary of state. *Id.*

Scope of materials used in recount

The county auditor shall review all paper, machine, and electronic voting system ballots, whether the ballots were counted at the precinct or the county canvass, and all properly postmarked absentee ballots. § 16.1-16-01(5).

Costs of recount

The expenses incurred in a recount of a congressional, state, or legislative election must be paid by the state from the general fund upon approval by the secretary of state of a statement of expenses received from the county auditors. The expenses incurred in a recount demanded under subsection 2 of section 16.1-16-01 must be paid by the secretary of state or county auditor from the bond submitted by the person requesting the recount. § 16.1-16-01(9).

Deadline for completion of recount

The county auditor or other election official shall certify the results of the recount no later than three days after the recount. § 16.1-16-01(7).

PRIVATELY INITIATED CONTESTS

Standing

A defeated candidate or ten qualified electors may contest the nomination or election of any person. § 16.1-16-02.

Form of complaint

An action to contest an election must be commenced by service of a summons and verified complaint. § 16.1-16-03.

Deadline for filing

Within five days after final certification of a recount by the appropriate canvassing board or within fourteen days after the final certification by the appropriate canvassing board if no recount is to be conducted. § 16.1-16-04.

Grounds for contest

An election contest may be commenced for any of the following causes:

1. If the contestee does not or cannot meet the qualifications to hold the office as required by law.
2. Because of illegal votes or erroneous or fraudulent voting, count, canvass, or recount of votes. § 16.1-16-05.

Procedures

Election contest actions must be tried as civil actions to the court without a jury. The district court shall set the hearing on the contest action not more than ten days after the filing of the contest answer. Election contests must take precedence over regular court business so elections are determined as soon as practicable. § 16.1-16-06.

Right to appeal

An appeal to the supreme court of the judgment in an election contest action may be had by filing a notice of appeal with the clerk of the trial court within ten days of the date of the service of notice of entry of the judgment. § 16.1-16-09.

STATE REQUIRED AUTOMATIC RECOUNTS

The state automatic recount is triggered for a U.S. House of Representatives seat when the difference between the winning candidate and the losing candidate is 0.5 percent or less, for a U.S. Senate seat when the margin is 0.25 percent or less. ORC Ann. § 3515.011.

PRIVATELY INITIATED RECOUNT

Standing

Any defeated candidate has standing to file for a recount. § 3515.01.

Filing deadlines

A request for a recount must be filed within five days after the board of elections or the Secretary of State declares a result. § 3515.02.

Forum for filing

For U.S. Senate, file request with Secretary of State. For House of Representatives, where the district is primarily within one county, file with the county board of elections; where the district encompasses a multi-county area, file with the county board of elections in the most populous county. § 3515.02.

Form and its content

Each recount application shall separately list each precinct as to which recount of the votes therein is requested. § 3515.03.

Costs of the recount

A deposit of \$10 per precinct is required at the time of filing. § 3513.03.

The board of elections determines the final cost. Funds are returned if vote for applicant increases 4 percent or if he is declared the winner. § 3515.07.

Procedure for recount

At the time and place fixed for making a recount, the board of elections, in the presence of all witnesses who may be in attendance, shall open the sealed containers containing the ballots to be recounted, and shall recount them. If a county used punch card ballots and if a chad is attached to a punch card ballot by three or four corners, the voter shall be deemed by the board not to have recorded a candidate, question, or issue choice at the particular position on the ballot, and a vote shall not be counted at that particular position on the ballot in the recount.

Ballots shall be handled only by the members of the board or by the director or other employees of the board. Witnesses shall be permitted to see the ballots but they shall not be permitted to touch them, and the board shall not permit the counting or tabulation of votes shown on the ballots for any nomination, or for election to any office or position, or upon any question or issue, other than the votes shown on such ballots for the nomination, election, question or issue concerning which a recount of ballots was applied for. § 3515.04.

Deadlines

Recount must begin no later than ten days after request is filed. § 3515.03.

PRIVATELY INITIATED CONTESTS

Standing

The nomination or election of any person to any public office may be contested by qualified electors of the state or political subdivision. § 3515.08.

Filing Deadlines

An action to contest must be filed within fifteen days after the result of the election or within ten days after the result of the recount, if any. § 3515.09.

Form and its content

No provision. A petition must be signed under oath citing grounds for the action. § 3515.09.

Forum for filing and hearing

The action is filed and heard in the Ohio Supreme Court. § 3515.08.

Deadline for hearing contest

The court shall fix a suitable time for hearing the contest, which shall be not less than fifteen nor more than thirty days after the filing of the petition. § 3515.10.

Proceedings

The proceedings at the trial of the contest of an election shall be similar to those in judicial proceedings, in so far as practicable, and shall be under the control and direction of the court which shall hear and determine the matter without a jury. § 3515.11.

Costs of the contest

A bond is required for all costs as estimated by the Clerk of the Supreme Court. If the contestant prevails, the county bears the cost of the contest. If not, the county receives the bond. § 3515.09.

Appeal

The person against whom judgment is rendered in a contest of election may appeal on questions of law, within twenty days, to the supreme court. However, such appeal shall not supersede the execution of the judgment of the court. § 3515.15.

CRS-69
OKLAHOMA

STATE REQUIRED AUTOMATIC RECOUNTS

Oklahoma does not appear to provide for an automatic recount of election returns.

PRIVATELY INITIATED RECOUNT

Standing

Any candidate has standing to obtain a recount of a federal election. 26 Okl. St. § 8-111.

Filing deadlines

A request for a recount must be filed with the state election board by 5 p.m. on the Friday next following the election. § 8-109.

Form and its content

In the event a candidate or individual authorized to request a recount requests a recount of the ballots cast in an election, he must set forth in his petition the precincts and absentee ballots which he desires to be recounted. The petition may indicate a preference for the ballots to be recounted manually. § 8-111.

Costs of the recount

Petitions for recounts must be accompanied by either a cashier's check or certified check in the amount of \$600 for each county affected by the petition. If the candidate or individual requests that the ballots be recounted manually, the petition must be accompanied by a cashier's check or certified check in the amount of \$600 for the first 3,000 ballots to be recounted and \$600 for each additional 6,000 ballots to be recounted, for each county affected. § 8-111.

Deadline for initiating recount

The secretary of the appropriate election board has the duty to order the recount to begin not less than three nor more than 10 days from the date of filing the petition. § 8-111.

Scope of materials used

All ballots are recounted and electronic devices are tested for accuracy. § 8-111.

Observers

If a recount is being conducted using electronic voting devices, the devices used shall be tested for accuracy and all contestants or their agents shall have an opportunity to view the testing procedure. If a recount is being conducted manually, each candidate affected or individual petitioning for the recount is entitled to have a watcher present at each place where a count is being made. § 8-114.

Security of and access to materials

It shall be the duty of the sheriff in each county to provide security for the ballot boxes or transfer cases from the time said ballot boxes or transfer cases are stored by the county election board following an election until 5:00 p.m. Friday next following the election or, in the event a recount contest is filed, until such time as said ballot boxes or transfer cases are delivered to the district courtroom. § 8-110.

PRIVATELY INITIATED CONTESTS

Standing

Any candidate or any individual authorized to request a recount may contest the results of an election. § 8-109.

Grounds

Election contests may be filed for fraud and irregularities. § 8-118.

Filing Deadlines

An action to contest a federal election must be filed before 5 p.m. on the Friday after election. § 8-111.

Form and its content

A petition alleging fraud must include a statement of fraud and identify the precincts or absentee ballots involved, and the specific act of fraud and the perpetrators. § 8-119.

A petition alleging irregularities must include a statement of a sufficient number of irregularities and of such nature as to : (1) prove that the contestant is lawfully entitled to be issued a certificate of election or (2) prove that it is impossible to determine "with mathematical certainty" which candidate is entitled to certification. § 8-120.

Forum for filing and hearing

The secretary of the election board receiving the petition shall set a hearing. § 8-118.

Costs of the contest

When a petition alleging fraud is filed, it must be accompanied by a cash bond of \$5,000 for each county in which fraud is alleged to have occurred, running in favor of the contestee and conditioned upon payment of any and all liabilities or judgments arising from the contest so filed. § 8-119.

When a petition alleging irregularities is filed, it must be accompanied by either a cashier's check or certified check in the amount of \$250 for each county affected by the petition. § 8-120.

CRS-71
OREGON

STATE REQUIRED AUTOMATIC RECOUNTS

The Secretary of State shall order a recount of the votes cast for nomination or election to a public office for which the Secretary of State is the filing officer, and the county clerk who conducted the election shall order a recount of the votes cast for nomination or election to any other public office if the canvass of votes of the election reveals that: (1) two or more candidates for that office have an equal and the highest number of votes; or (2) the difference in the number of votes cast for a candidate apparently nominated or elected to the office and the votes cast for the closest apparently defeated opponent is not more than one-fifth of one percent of the total votes for both candidates. ORS § 258.280.

PRIVATELY INITIATED RECOUNT

Standing

A candidate or an officer of a political party on behalf of a candidate of the political party may file a demand requiring the Secretary of State to direct a recount. § 258.161.

Filing deadlines

The first demand must be filed with the Secretary of State not later than the 35th day, a first supplemental demand not later than the 45th day, and a second supplemental demand not later than the 50th day, after the date of the election. *Id.*

Form and its content

The person making a demand for a recount may specify a partial or a full recount. A person making a demand for a partial recount shall specify the precincts in which votes were cast for the nomination or office to be recounted. If in the first demand the person requested a partial recount, the person may file a supplemental demand for a recount of all the remainder of the precincts.

Each demand shall be in the form and shall contain the information prescribed by the Secretary of State, including the names and addresses of all persons and organizations providing any part of the cash deposit and the amount provided by each. *Id.*

Costs of the recount

Each demand must be accompanied by a cash deposit of \$15 for each precinct to be recounted up to a maximum of \$8,000 for a recount of all precincts in the state. *Id.*

If the abstract of the votes resulting from a full recount shows that a candidate for whose benefit the recount was demanded received a plurality of the votes, the required deposit shall be refunded. § 258.250.

Procedures

After a recount demand is filed, the Secretary of State shall direct the official who conducted the election or the clerk of any county containing precincts in which ballots were cast for the office specified in the demand for a recount to conduct a recount in the precincts specified.

The Secretary, no later than the third day after the filing of the first demand, shall notify the affected candidates by certified mail that a recount is to be made in the precincts specified in the demand.

The official who is to conduct the recount, within a reasonable time before the recount, shall notify the affected candidates of the date, time and place of the recount. § 258.190.

The official who is to conduct the recount shall appoint as many counting boards as may be necessary to complete the recount within the shortest practicable time after the demand is filed. § 258.200.

The counting board shall conduct the recount by hand. § 258.211.

Observers

An affected candidate or an elector authorized in writing by an affected candidate, and an elector authorized in writing by each major or minor political party may observe a recount. § 258.211.

PRIVATELY INITIATED CONTESTS**Standing**

The election of any person may be contested by any elector entitled to vote for the person or by any person who was a candidate at the election for the same nomination or office, by the Secretary of State if the contest involves a state measure or candidate for whom the Secretary of State is the filing officer, or by the county clerk who conducted the election. § 258.016.

Grounds

One of the following grounds must be proven: (1) deliberate and material violation of any provision of the election laws in connection with the nomination or election; (2) ineligibility of the person elected to the office to hold the office at the time of election; (3) illegal votes; (4) mistake or fraud in the canvass of votes; (5) fraud in the count of votes; (6) nondeliberate and material error in the distribution of the official ballots by a local election official or a county clerk. § 258.016.

Filing Deadlines

A petition for contest must be filed within 40 days after the election or the 7th day after the completion of a recount of votes cast in an election. § 258.036.

Form and its content

The petition must specify the cause of the contest, name the contestees, and be verified by the contestant in the manner required for the verification of complaints in civil cases. § 258.036.

Forum for filing and hearing

The petition shall be filed with the Circuit Court for Marion County. § 258.036.

The contest is heard by the circuit court where the filing took place (§ 258.055).

Costs of the contest

The prevailing party in the contest proceeding shall recover costs, disbursements and reasonable attorneys' fees at trial and on appeal against the losing party. If the cause of the contest is a mistake in the canvass of votes and the contestant prevails, the cost is paid by the county. § 258.046.

Deadlines

The circuit court shall fix a time for a hearing of the contest proceedings, and not later than the fifth day before the hearing shall give written notice of the hearing to each party to the proceeding. § 258.055.

Proceedings

The circuit court shall hear and determine the proceeding without a jury and shall issue written findings of law and fact. The practice and procedure otherwise applicable to civil cases shall govern the proceeding, except that the contestant has the burden of proof by clear and convincing evidence. *Id.*

Relief available

After the contest hearing, the circuit court shall render a judgment affirming or setting aside the nomination or election of the person for or to the office. § 258.065.

Appeal

Any party to the contest proceeding may appeal from the judgment rendered by the circuit court to the Court of Appeals in the same manner as appeals in civil cases are taken. § 258.085.

CRS-73
PENNSYLVANIA

STATE REQUIRED AUTOMATIC RECOUNTS

Pennsylvania does not appear to provide for automatic recounts of election returns.

PRIVATELY INITIATED RECOUNT

Standing

Three qualified electors may petition the Common Pleas Court requesting a recount. 25 P.S. § 3261

Grounds

The electors petitioning for a recount must allege that upon information which they consider reliable they believe that fraud or error was committed in the computation of the votes cast for all offices or for any particular office, or in the marking of the ballots, or otherwise in connection with such ballots. It is not necessary for the petitioners to specify in their petition the particular act of fraud or error, nor to offer evidence to substantiate the allegations of their petition. § 3262.

Filing deadlines

Any petition to open a ballot box or to recanvass a voting machine must be filed no later than five days after the completion of the official count. § 3263.

Costs of the recount

A cash deposit of \$50 or a bond of \$100 per ballot box or voting machine must be filed in the office of the county prothonotary. If it appears that fraud or substantial error was committed then the cash is returned to the petitioners or the bond is canceled. § 3261.

Procedures involved in recount

The court of common pleas is responsible for conducting the recount. The time and place is determined by the court. § 3262.

PRIVATELY INITIATED CONTESTS

It appears that state law pertaining to election contests only apply to elections for the nomination of candidates for United States Senator or Representative and not to the general election of persons to fill those seats. *See* 25 PS § 3291.

CRS-74
RHODE ISLAND

STATE REQUIRED AUTOMATIC RECOUNTS

Rhode Island does not appear to provide by statute for an automatic recount of election returns.

PRIVATELY INITIATED RECOUNTS R.I. Gen. Laws. § 17-19-37.1(a)

A candidate requesting a recount of the votes cast in his or her race shall be entitled to request a recount as follows:

(1) Any candidate challenging the results of his or her race shall petition the state board to conduct a recount of votes cast by re-reading the programmed memory device or devices and comparing the results and totals obtained at this recount with the results and totals obtained on election night. Any discrepancy in the results shall entitle a candidate in the race to a recount as provided in subsection (2), provided that a candidate trails the winning candidate by less than five percent (5%).

(2) When the recount conducted in subdivision (a)(1) results in a discrepancy between the results certified on election night and the results produced as a result of the recount and a candidate trails the winning candidate by less than five percent (5%), the candidate shall be allowed to request a recount of votes by re-feeding the computer ballots cast in the race into the optical scan voting equipment which has been prepared with a new programmed cartridge.

(3) If the recounts in subdivisions (a)(1) and (a)(2) produce a change in the results of a race which cause a candidate to trail in the winning candidates by less than three percent (3%), the candidate is allowed to request a recount of votes through a manual count of the ballots cast in a given race.

PRIVATELY INITIATED CONTESTS

State law does not appear to provide for the contest of elections for federal office.

CRS-75
SOUTH CAROLINA

GOVERNMENT INITIATED RECOUNT S.C. Code Ann. §7-17-280

Whenever the difference between the number of votes received is no more than one percent of the total votes which were cast, the committee or board charged by law with canvassing such votes shall order a recount of such votes to be made unless the other candidate or candidates shall waive a recount in writing.

PRIVATELY INITIATED RECOUNTS

South Carolina law does not provide for privately initiated recounts of election returns. A recount may be sought by filing an election contest. *See below.*

PRIVATELY INITIATED CONTESTS

Deadline for filing

Any protest or contest shall be filed in writing not later than noon five days following the canvassing of the votes for such office. § 7-17-260.

Venue

The State Board of Elections shall have jurisdiction over a protest or contest that may arise in the case of federal officers. *Id.*

Form and contents of filing

The protest shall be in writing and shall contain each ground thereof concisely stated separately. *Id.*

Procedures

The chairman of the board [of elections] shall serve upon each candidate in the protested race a copy of the protest and serve a notice of the time and place of the meeting of the board for the purposes of hearing the protest. *Id.*

The board, acting in a judicial capacity, shall hear the protest or contest not earlier than the fifth nor later than the twenty-fifth day following receipt of the protest. Testimony at the hearing of the protest shall be limited to the grounds stated in the written protest. § 7-17-270.

The chairman of the board shall provide for and conduct the hearing as nearly as possible in accordance with the procedures and rules of evidence observed by the circuit courts of the state. *Id.*

Observers

The protestant and each other candidate in the protested race shall have the right to be present at the hearing. *Id.*

Appeals

Appeals from decisions of the board shall be taken directly to the Supreme Court. *Id.*

CRS-76
SOUTH DAKOTA

STATE REQUIRED AUTOMATIC RECOUNTS

Whenever by reason of a tie vote found to exist upon the canvass of the original official returns, it is impossible to declare who has been elected, an automatic recount shall occur. S.D. Codified Laws § 12-21-16.

PRIVATELY INITIATED RECOUNT

Standing

A defeated candidate may petition for a recount if the margin of vote between him and the winning candidate is not more than one-fourth of one percent of the total vote cast for all candidates for such office. § 12-21-12.

Any three registered voters of a precinct may file with the officer in charge of the election, a petition requesting a recount, duly verified by them, setting forth that they believe that the official returns from such precinct as to a specified candidate are erroneous. § 12-21-8.

Filing deadlines

The candidate must file a request for a recount within three days after completion of the official canvass by the state board of canvassers. *Id.*

Form and its content

Candidate must file a petition setting forth that the candidate believes that a recount will change the result and that all the votes cast for the office should be recounted. *Id.*

Procedures

The secretary of state shall notify each county auditor that has precincts included in the petition. *Id.*

The county auditor, immediately on the due filing of any petition for a recount or upon receipt from the secretary of state of notice of such filing, shall notify, in writing, with the seal of the auditor's office, the presiding judge of the circuit court for the auditor's county. The presiding judge shall appoint a board for each county in the circuit in which a recount is to be conducted. § 12-21-20.

The county recount board of each county which conducts a recount shall consist of a recount referee and two voters. The recount referee shall be a duly qualified member of the bar of the state of South Dakota and 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.

Deadlines

The counting board shall convene in the office of the county auditor on the second Monday at nine a.m. following the filing of the petition. If the second Monday is a legal holiday, the board shall convene at nine a.m. of the day following. § 12-21-20.

Observers

Each candidate for any office involved in the recount may appear, personally or by a representative, and shall have full opportunity to witness the opening of all ballot boxes and the count of all ballots. § 12-21-26.

Appeal from recount

Whenever any candidate is aggrieved by the final determination made as a result of any recount, he may have the proceedings of such recount board reviewed upon certiorari by the state supreme court. The petition for the writ must be filed within five days after the filing of the recount certificate with the secretary of state or county auditor. §§ 12-21-47; 12-21-48.

PRIVATELY INITIATED CONTESTS

South Dakota statutes do not provide for a contest of an election of a United States Senator or Representative in Congress. *See* § 12-22-2.

CRS-78
TENNESSEE

GOVERNMENT INITIATED RECOUNTS

It appears that a recount may only be ordered by an entity that has jurisdiction over an election contest. There does not appear to be a provision for an automatic recount. However, a recount may be ordered under any of the following circumstances:

- (1) A tie vote;
- (2) An indication of fraud if the number of votes affected would be sufficient to change the result of the election;
- (3) A malfunction of a voting machine or tabulator if the number of votes affected would be sufficient to change the result of the election; or
- (4) In any other instance the court or body with jurisdiction of a contested election finds that a recount is warranted. Tenn. Code Ann. § 2-17-117.

Scope of recount

Any recount ordered shall be a complete recount of all ballots cast in such election. *Id.*

Method for conducting recount

The court or body with jurisdiction shall determine if the recount shall be conducted by hand or with automated tabulators. *Id.*

PRIVATELY INITIATED CONTESTS

Standing

The incumbent office holder and any candidate for the office may contest the outcome of an election for the office. § 2-17-101.

Venue

Election contests shall be tried in the chancery court of the division in which the defendant resides. § 2-17-101.

Deadlines

A complaint contesting an election must be filed within 10 days after the election. § 2-17-105.

The trial of an election contest shall be held not less than 15 nor more than 50 days from the day the complaint is filed and less than 10 days after the complaint is served on the defendant. § 2-17-106.

Proceedings

The testimony of an election contest may be taken orally or by deposition, upon such notice as the court may prescribe, and the court may make all necessary orders with respect to any matter required in the contest. § 2-17-107.

Remedies available

After hearing the case the court shall give judgment either confirming the election; declaring the election void; declaring a tie between persons who have the same number of votes; or declaring a person duly elected if it appears that such person received or would have received the highest number of votes had the ballots intended for such person and illegally rejected been received. § 2-17-112.

Costs

Costs and a reasonable attorney's fee shall be assessed against the contestant or the appellant if the contest or the appeal is maliciously or frivolously prosecuted. § 2-17-115.

STATE REQUIRED AUTOMATIC RECOUNTS

When an election resulting in a tie vote is not otherwise resolved [*see* Tex. Elec. Code § 2.002(i)], an automatic recount shall be conducted. Tex. Elec. Code § 216.001.

The final canvassing authority shall request the recount in the same manner as a petitioner requests such. § 216.003.

The costs of an automatic recount shall be paid by each political subdivision or county executive committee. § 216.005.

PRIVATELY INITIATED RECOUNT

Standing

The losing candidate has standing to file for a recount. § 212.022.

Grounds

A candidate may obtain an initial recount if: the margin of votes between the winning and losing candidate is less than ten percent of the winner's total; the candidate is shown by the election returns to be entitled to a place on a runoff ballot or tied for nomination, election, or entitlement to a place on a runoff ballot; 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 the total number of votes received by all candidates for the office is less than 1,000 as shown by election returns. § 212.022.

No grounds are required to obtain an initial recount of electronic voting system results. A candidate may obtain an initial recount of electronic voting system results in an election in which the person was a candidate only if the candidate is shown by the election returns not to be nominated or elected. § 212.0241.

Filing deadlines

A petition for an initial recount must be submitted by the later of: (1) 5 p.m. of the fifth day after election day; or (2) 5 p.m. of the second day after the date the canvassing authority to whose presiding officer the petition must be submitted completes its canvass of the original election returns. § 212.028.

Form and its content

A written petition must be submitted identifying the office for which a recount is desired, identifying the precincts in which the recount is requested, stating the grounds for the recount, and indicating the voting method used in each precinct involved. It must be signed by the candidate or his agent and include at least one name, address, and telephone number for each of the candidates involved. § 212.001.

Costs of the recount

The amount of the deposit required is determined by the number of precincts for which a recount is requested in the document that accompanies the deposit, in accordance with a schedule based on the number of precincts and type of voting system. § 212.112.

The recount coordinator shall return the deposit: on rejection of a recount document; on the timely withdrawal of a recount document, less any necessary expenditures; or if a recount method is used other than the one chosen by the contestant, less any necessary expenditures. § 212.113.

Scope of materials used

Subject to certain exceptions, all votes cast in the election precincts included in a recount on the office specified by the recount document are subject to the recount. § 212.135.

Write-in votes cast in connection with a voting system shall be excluded from a recount of an election in which a plurality vote is sufficient, unless a recount of only write-in votes is requested or the write-in candidate is the petitioner or person entitled to notice of the recount. § 212.136.

Procedures

The presiding officer of each local canvassing authority having jurisdiction of election precincts included in a recount shall manage and supervise the recount for the precincts in that authority's jurisdiction. § 213.001.

Before beginning a recount, each recount supervisor shall appoint a recount committee composed of as many members as the supervisor determines are necessary for a speedy recount. The committee must be composed of at least four members. § 213.002.

The recount supervisor shall make the arrangements necessary for conducting the recount and shall set the time and place for beginning the recount. § 213.008.

Notice shall be given to the interested parties at least 18 hours before the recount begins. § 213.009.

One member of the counting team shall read the ballots, and the other two members shall tally the votes as the ballots are read. § 214.002.

Observers

Only persons who are specifically permitted by law to attend a recount may be inside the room in which the recount is conducted, or in any hallway or corridor in the building in which recount is conducted that is within 30 feet of the entrance to the room, while the recount is in progress. § 213.015.

All candidates and candidate representatives, all persons entitled to notice of the recount, and political party representatives (when a candidate is aligned with a political party) are entitled to be present during a recount. § 213.013.

Methods used based on type of voting equipment

A person requesting a recount of electronic voting system ballots has a choice of: (1) an electronic recount using the same program as the original count; (2) an electronic recount using a corrected program, if obtainable; or (3) a manual recount. § 214.042.

A recount of votes cast on mechanical voting machines is conducted by comparing the results registered on the registering counters with the results recorded on the original election returns. § 214.022.

PRIVATELY INITIATED CONTESTS

Texas does not appear to provide by statute for a contest of an election for United States Senator or Representative in Congress.

STATE REQUIRED AUTOMATIC RECOUNTS

Utah does not appear to provide for an automatic recount of election returns.

PRIVATELY INITIATED RECOUNTS

Standing

Any candidate who loses by no more than a total of one vote per voting precinct may request a recount. Utah Code Ann. § 20A-4-401.

Deadline

The candidate must file a request for a recount within seven days of the canvass. *Id.*

Forum for filing

For statewide and multicounty races, the candidate must file with the lieutenant governor. *Id.*

Costs

Costs incurred by a recount may not be assessed against the person requesting the recount. *Id.*

PRIVATELY INITIATED CONTESTS

Standing

A registered voter may contest the right of any person declared elected to any office. § 20A-4-403.

Grounds

An election may be contested on the following grounds:

- (a) for malconduct, fraud, or corruption on the part of the judges of election at any polling place, or of any board of canvassers, or any judge or member of the board sufficient to change the result;
- (b) when the person declared elected was not eligible for the office at the time of the election;
- (c) when the person declared elected has:
 - (i) given or offered to any registered voter, judge, or canvasser of the election any bribe or reward in money, property, or anything of value for the purpose of influencing the election; or
 - (ii) committed any other offense against the elective franchise;
- (d) when illegal votes have been received or legal votes have been rejected at the polls sufficient to change the result;
- (e) for any error of any board of canvassers or judges of election in counting the votes or declaring the result of the election, if the error would change the result;
- (f) when the election result would change because a sufficient number of ballots containing uncorrected errors or omissions have been received at the polls;
- (g) when the candidate declared elected is ineligible to serve in the office to which the candidate was elected;
- (h) when an election judge or clerk was a party to malconduct, fraud, or corruption sufficient to change the result of the election; and
- (i) for any other cause that shows that another person was legally elected. § 20A-4-402.

Form and contents of petition, forum for filing

The registered voter must file a verified written complaint with the district court of the county in which he resides. The complaint shall include:

- (i) the name of the party contesting the election;
- (ii) a statement that the party is a registered voter in the jurisdiction in which the election was held;
- (iii) the name of the person whose right to the office is contested;
- (iv) the office to which that person was ostensibly elected;
- (v) one or more of the grounds for an election contest specified in Section 20A-4-402;
- (vi) the person who was purportedly elected to the office as respondent; and

(vii) if the reception of illegal votes or the rejection of legal votes is alleged as a ground for the contest, the name and address of all persons who allegedly cast illegal votes or whose legal vote was rejected. § 20A-4-403.

Deadline for filing complaint

The complaint must be filed within 40 days after the canvass. *Id.*

Costs

The court shall enter judgment for costs against the party contesting the election if: (a) the proceedings are dismissed for: (i) insufficiency of pleading or proof; or (ii) want of prosecution; or (b) the election is confirmed by the court. The court shall enter judgment for costs against the party whose election was contested if the election is annulled and set aside. § 20A-4-405.

Appeals

Either party may appeal the district court's judgment to the Supreme Court as in other cases of appeal from the district court. § 20A-4-406.

CRS-83
VERMONT

STATE REQUIRED AUTOMATIC RECOUNTS

Vermont does not appear to provide for an automatic recount of election returns.

PRIVATELY INITIATED RECOUNT

Standing

Any losing candidate, if the difference between the number of votes cast for a winning candidate and the number of votes cast for a losing candidate is less than five percent of the total votes cast for all the candidates for an office, divided by the number of persons to be elected, that losing candidate shall have the right to have the votes for that office recounted. 17 V.S.A. § 2601.

Deadline for filing petition

A petition for recount shall be filed within 10 days after the election. § 2602(b).

Forum for filing petition

The petition shall be filed with the superior court, Washington County, in the case of candidates for state or congressional office, or for a presidential election. *Id.*

Procedures

The superior court shall set an early date for the recount, notifying all candidates at least five days in advance. The court shall appoint a sufficient number of impartial voters as a committee to recount the votes. § 2602(c). The court shall appoint an equal number of persons from each party and from those persons representing an independent candidate. § 2602a.

The county clerk shall supervise the recount and shall assign committee members to teams of at least four persons, consisting of one caller and one observer, representing different candidates, and one tally person and one double-check person, representing different candidates. § 2602b.

Observers

Persons who are not committee members shall be permitted to view a recount in progress, but persons not authorized by the clerk shall not be permitted within the area designated by the clerk. § 2602j.

Costs

The secretary of state shall bear the costs of recounts covered under this chapter. § 2602(i).

PRIVATELY INITIATED CONTESTS

Standing

The result of an election for any office, other than for the general assembly, or public question may be contested by any legal voter entitled to vote on the office or public question to be contested. § 2603(a).

Forum

Complaint should be filed with the superior court in Washington County. § 2603(b).

Form and contents of complaint

The complaint should allege (1) that errors were committed in the conduct of the election or in 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. *Id.*

Deadline for filing complaint

The complaint shall 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(c).

Proceedings

The Vermont Rules of Civil Procedure shall apply to contests of elections, except that such cases shall be placed upon a special calendar, and hearings shall be scheduled on a priority basis. § 2603(d).

Remedies available

The court may order a recount or a new election. § 2603(e).

STATE REQUIRED AUTOMATIC RECOUNTS

Virginia does not appear to provide for an automatic recount of election returns.

PRIVATELY INITIATED RECOUNTS

Standing

When there is a difference between the losing candidate and winning candidate of no more than one percent of the total vote cast, the losing candidate may appeal for a recount of the vote. Va. Code Ann. § 24.2-800.

Deadline

The petition for a recount shall be filed within ten days from the day the State Board [of Elections] or the electoral board certifies the result of the election. § 24.2-801.

Forum for filing petition

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. *Id.*

Form and contents of the petition

The petition shall set forth the results certified by the Board or electoral board and 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. *Id.*

Proceedings

Within seven days of the filing of the petition, the chief judge of the circuit court shall call a preliminary hearing at which motions may be disposed of and the rules of procedure may be fixed, but subject to review by the full court. The chief judge, subject to review by the full court, may set the place or places for the recount and may order the delivery of election materials to a central location and the transportation of voting devices to a central location in each county or city under appropriate safeguards. § 24.2-802(B).

Scope of materials used in recount

The determination of votes in a recount shall be based on votes cast in the election and shall not take into account any absentee ballots or conditional ballots sought to be cast but ruled invalid and not cast in the election; ballots cast only for administrative or test purposes and voided by the officers of election; or ballots spoiled by a voter and replaced with a new ballot. § 24.2-802(B).

Methods depending on type of equipment

For paper ballots, the recount officials shall hand count the ballots.

For mechanical lever machines without printouts, the recount officials shall open the machines and read the counters.

For mechanical lever machines with printouts and direct recording electronic machines, the recount officials shall open the envelopes with the printouts and read the results from the printouts.

For optical scan tabulators, the recount officials shall first examine the printout to redetermine the vote. If the printout is not clear, or on the request of the court, the recount officials shall rerun all the ballots through a tabulator programmed to count only the votes for the office in question and to set aside all ballots containing write-in votes, overvotes and undervotes. The ballots that are set aside and any ballots not accepted by the tabulator shall be hand counted.

For punchcard tabulators, the recount officials shall first examine the printout to redetermine the vote. If the printout is not clear, or on the request of the court, the recount officials shall rerun all the ballots through a tabulator programmed to count only the votes for the office in question and to set aside all ballots containing write-in votes, overvotes

and undervotes. The ballots that are set aside and any ballots not accepted by the tabulator shall be hand counted. (Specific provisions for handcounting punchcards are included in the statute.) § 24.2-802(D).

Costs

Costs of the recount shall be assessed against the counties and cities comprising the election district when (i) the candidate petitioning for the recount is declared the winner; (ii) the petitioners in a recount of a referendum win the recount; or (iii) there was between the candidate apparently nominated or elected and the candidate petitioning for the recount a difference of not more than one-half of one percent of the total vote cast for the two such candidates as determined by the State Board or electoral board prior to the recount. Otherwise the costs of the recount shall be assessed against the candidate petitioning for the recount or the petitioners in a recount of a referendum. If more than one candidate petitions for a recount, the court may assess costs in an equitable manner between the counties and cities and any such candidate if both are liable for costs under this subsection. Costs incurred to date shall be assessed against any candidate or petitioner who defaults or withdraws his petition. § 24.2-802(E).

Appeals

The recount proceeding shall be final and not subject to appeal. § 24.2-802(H).

PRIVATELY INITIATED CONTESTS

Virginia does not appear to provide by statute for a contest of a general election for United States Senate or Representative in Congress. *See* §§24.2-805; 24.2-806.

CRS-87
WASHINGTON

GOVERNMENT INITIATED RECOUNT

If the official canvass of all of the returns for any office at any primary or election reveals that the difference in the number of votes cast for a candidate apparently nominated or elected to any office and the number of votes cast for the closest apparently defeated opponent is less than two thousand votes and also less than one-half of one percent 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. Rev. Code Wash. § 29.64.015.

If the difference in the number of votes cast for the apparent winner and the closest apparently defeated opponent is less than one hundred fifty votes and also less than one-fourth of one percent of the total number of votes cast for both candidates, the votes shall be recounted manually or by an alternative method selected by the apparent winner and the closest apparently defeated opponent. *Id.*

PRIVATELY INITIATED RECOUNT

Standing

An officer of a political party or any person for whom votes were cast at any election may file a written application for a recount of the votes or a portion of the votes cast at that election for all candidates for election to that office. § 29.64.010.

Deadline

An application for a recount shall be filed within three business days after the county canvassing board or secretary of state has declared the official results of the election for the office for which the recount is requested. *Id.*

Form and contents, venue for filing

An application for a recount must be filed with the officer with whom filings are made for the jurisdiction. *Id.*

The application must specify whether the recount will be done manually or by the vote tally system. *Id.* The application must also state the office for which a recount is requested and whether the request is for all or only a portion of the votes cast in that jurisdiction for that office. § 29.64.020.

Procedures

The county canvassing board shall determine a time and place or places at which the recount will be conducted. This time shall be less than three business days after the day upon which the application was filed with the board; the request for a recount or directive ordering a recount was received by the board from the secretary of state; or the returns are certified which indicate that a recount is required as discussed above. § 29.64.020.

Not less than two days before the date of the recount, the county auditor shall mail a notice of the time and place of the recount to the applicant or affected parties and, if the recount involves an office, to any person for whom votes were cast for that office. The county auditor shall also notify the affected parties by either telephone, fax, e-mail, or other electronic means at the time of mailing. *Id.*

When a partial recount of votes cast for an office or issue changes the result of the election, the canvassing board or the secretary of state, if the office or issue is being recounted at his or her direction, shall order a complete recount of all ballots cast for the office or issue for the jurisdiction in question. § 29.64.035.

Costs

The person filing an application for a manual recount shall, at the same time, deposit with the county canvassing board or secretary of state, in cash or by certified check, a sum equal to twenty-five cents for each ballot cast in the jurisdiction or portion of the jurisdiction for which the recount is requested as security for the payment of any costs of conducting the recount. If the application is for a machine recount, the deposit must be

equal to fifteen cents for each ballot. These charges shall be determined by the county canvassing board or boards under RCW 29.64.060.

The expenses for conducting a recount of votes shall be fixed by the canvassing board. The cost of the recount shall be deducted from the amount deposited by the applicant for the recount at the time of filing the request for the recount, and the balance shall be returned to the applicant. If the costs of the recount exceed the deposit, the applicant shall pay the difference. No charges may be deducted by the canvassing board from the deposit for a recount if the recount changes the result of the nomination or election for which the recount was ordered. § 29.64.060.

Observers

Each person entitled to receive notice of the recount may attend, witness the recount, and be accompanied by counsel. § 29.64.020.

Proceedings of the canvassing board are public under state law. In accordance with reasonable and equitable guidelines adopted by the canvassing board, all interested persons may attend and witness a recount. *Id.*

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.

The recount may be observed by persons representing the candidates affected by the recount or the persons representing both sides of an issue that is being recounted. The observers may not make a record of the names, addresses, or other information on the ballots, poll books, or applications for absentee ballots unless authorized by the superior court. The secretary of state or county auditor may limit the number of observers to not less than two on each side if, in his or her opinion, a greater number would cause undue delay or disruption of the recount process. § 29.64.030.

PRIVATELY INITIATED CONTESTS

Standing

Any registered voter may contest the right of any person declared elected to an office to be issued a certificate of election. § 29.65.010.

Grounds

A contest may be filed for any of the following causes:

- (1) For misconduct on the part of any member of any precinct election board involved therein;
- (2) Because the person whose right is being contested was not at the time he was declared elected eligible to that office;
- (3) Because the person whose right is being contested was previous to the election convicted of a felony by a court of competent jurisdiction, his conviction not having been reversed nor his civil rights restored after the conviction;
- (4) Because the person whose right is being contested gave a bribe or reward to a voter or to an inspector or judge of election for the purpose of procuring his election, or offered to do so;
- (5) On account of illegal votes. *Id.*

Deadline for filing

The contest must be filed no later than 10 days following the issuance of a certificate of election. § 29.65.020.

Form and contents of complaint, forum for filing

The complaint shall be filed with the appropriate court and shall set forth specifically: (1) the name of the contestant and that he is a registered voter in the county, district or precinct, as the case may be, in which the office is to be exercised; (2) the name of the person whose right is being contested; (3) the office; (4) the particular causes of the contest. *Id.*

Proceedings

Upon the filing of the contest, it shall be the duty of the clerk to inform the judge of the appropriate court, who may give notice, and order a session of the court to be held at the usual place of holding said court on some day to be named by him, not less than twenty days from the date of such notice, to hear and determine such contested election:

Provided, that if no session be called for the purpose, such contest shall be determined at the first regular session of court after such statement is filed. § 29.65.040.

The court shall meet at the time and place designated to determine such contested election by the rules of law and evidence governing the determination of questions of law and fact, so far as the same may be applicable, and may dismiss the proceedings if the statement of the cause or causes of contest is insufficient, or for want of prosecution. § 29.65.050.

After hearing the proofs and allegations of the parties, the court shall pronounce judgment on the premises, either confirming or annulling and setting aside such election, according to the law and right of the case. *Id.*

Costs

If the proceedings are dismissed for insufficiency, or want of prosecution, or if the election is confirmed by the court, judgment shall be rendered against the party contesting such election for costs, in favor of the party charged with error or omission. If such election is annulled and set aside, judgment for costs shall be rendered against the party charged with the error or omission and in favor of the party alleging the same. § 29.65.055.

CRS-90
WEST VIRGINIA

STATE REQUIRED AUTOMATIC RECOUNTS

West Virginia does not appear to provide for the automatic recount of election returns.

PRIVATELY INITIATED RECOUNTS

Standing

Any candidate voted for at the election may demand a recount. W. Va. Code § 3-6-9.

Deadlines

A recount may be requested at any time within the forty-eight hour period after the canvass of election returns and before the results are certified.

If a recount has been demanded, the board shall have an additional twenty-four hours after the end of the forty-eight hour period in which to send notice to all candidates who filed for the office in which a recount has been demanded, of the time and place where the board will convene to commence the recount.

The recount shall be set for no sooner than three days after the serving of the notice to all candidates who filed for the office in which a recount has been demanded. *Id.*

Costs

Every candidate who demands a recount shall be required to furnish bond in a reasonable amount with good sufficient surety to guarantee payment of the costs and the expenses of such recount in the event the result of the election is not changed by the recount; but the amount of the bond shall in no case exceed three hundred dollars. *Id.*

PRIVATELY INITIATED CONTESTS

West Virginia does not appear to provide by statute for contests of elections for United States Senator or Representative in Congress.

CRS-91
WISCONSIN

STATE REQUIRED AUTOMATIC RECOUNTS

Wisconsin does not appear to provide for an automatic recount of election returns.

PRIVATELY INITIATED RECOUNTS

Standing

Any candidate voted for at any election may request a recount. Wis. Stat. § 9.01(1)(a).

Grounds

The petitioner is informed of and believes that a mistake or fraud has been committed in a specified ward or municipality in the counting and return of the votes cast for the office, or specifies any other defect, irregularity or illegality in the conduct of the election. *Id.*

Filing deadline

Not earlier than the time of completion of the canvass and not later than 5 p.m. on the 3rd business day following the last meeting day of the municipal or county board of canvassers determining the election for that office; if the board of state canvassers makes the determination, then not later than 5 p.m. on the 3rd business day following the day on which the elections board receives the last statement from a county board of canvassers for the election. *Id.*

Form and its content

The petitioner shall file a verified petition with the clerk or body with whom nomination papers are filed for that office. The petition must specify each ward or each municipality in which a recount is desired unless a recount is requested for all wards within a jurisdiction. *Id.*

The elections board must prescribe standard forms and procedures for the making of recounts under this section. § 9.01(10).

Procedures

Whenever a clerk receives a valid petition and payment, the clerk shall thereupon notify the proper board of canvassers. The boards shall convene no later than 9 a.m. on the second day after receipt of an order and may adjourn for not more than one day at a time until the recount is completed in the county, except that the board may permit extension of the time for adjournment. § 9.01(1).

Costs of the recount

If the difference between the votes cast for the leading candidate and those cast for the petitioner is less than 10 if 1,000 or less votes are cast, or less than .5% of the total votes cast for the office, the petitioner is not required to pay a fee.

If the difference between the votes cast for the leading candidate and those cast for the petitioner is at least 10 if 1,000 or less votes are cast, or at least .5% if more than 1,000 votes are cast, the petitioner must pay a fee of \$5 for each ward for which the petition requests a ballot recount, or \$5 for each municipality where no wards exist.

All fees must be prepaid in cash or another form which is acceptable to the officer to whom they are paid; petition is not valid without the fee. *Id.*

Procedures involved in recount

The board examines and recounts ballots and absentee ballots, recounts the votes cast on voting machines and retabulates any electronic voting machines (very specific instructions are contained in the statute for invalidating results or opening voting machines for malfunctions, *etc.*). The statute specifies that all steps of the recount shall be performed publicly; all materials and ballots may be viewed and identified by the candidates, the person demanding the recount and their authorized representatives; and counsel may object to the counting of any ballot. *Id.*

Observers

The petitioner, all opposing candidates and interested persons shall be entitled to be present in person and by counsel. §9.01(3).

Security of and access to materials

The polling place inspectors secure together all ballots which have been counted so that they cannot be tampered with or untied without breaking the seal and then place them in the ballot container in such a manner that the container cannot be opened without breaking the seals or locks or destroying the container; the container is then delivered to the municipal clerk. Where voting machines are used, as soon as the count is complete and fully recorded, the inspectors shall seal, close and lock the machine, or remove the record so it cannot be voted on or tampered with (see the statute for further details). § 7.51(3).

Deadlines

Returns from a recount shall be transmitted to the office of the board as soon as possible but in no case later than 13 days from the date of the order of the board directing the recount. § 9.01(1).

Appeals

Within 5 days after recount any candidate may appeal to the circuit court. § 9.01(6).

Within 30 days after entry of the order of the circuit court a party may file an appeal to the court of appeals. § 9.01(9).

PRIVATELY INITIATED CONTESTS

Wisconsin does not appear to provide by statute for a contest of elections beyond the provisions for a recount set forth above. *See* § 9.01(10).

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STATE REQUIRED AUTOMATIC RECOUNTS

The county canvassing board shall make a recount of precinct votes if it appears to the board that a recount is required due to irregularities in that precinct. Wyo. Stat. § 22-16-109(a).

There shall be a recount made of all the votes cast for any office in which the difference in number of votes cast for the winning candidate receiving the least number of votes and the number of votes cast for the losing candidate receiving the greatest number of votes is less than one percent (1%) of the number of votes cast for the winning candidate receiving the least number of votes cast for that office. § 22-16-109(b).

PRIVATELY INITIATED RECOUNTS

Standing

A candidate may seek a recount of votes for the office he is seeking. § 22-16-110.

Grounds

The petitioner must allege that fraud or error occurred in counting, returning or canvassing the votes cast in any part of the district in which he is standing for election. *Id.*

Deadlines

The affidavit must be filed: (i) not later than 2 days after the county canvass has been completed if the office is certified by the county canvassing board; or (ii) not later than 2 days after the state canvass has been completed if the office is certified by the state canvassing board. *Id.*

Forum for filing

The affidavit must be filed in the same office the candidate filed his application for nomination. *Id.*

Costs of the recount

An affidavit requesting a recount must include a \$100 deposit. If the recount shows sufficient error to change the result of the election, the county in which the recount was taken will pay the expenses of the recount and the deposit shall be returned. Otherwise the applicant or applicants seeking the recount shall be liable for the actual cost of conducting the recount up to a maximum of \$500 per county recounted. § 22-16-113.

Costs for automatic recounts shall be paid by the county in which the recount is taken regardless of the result of the recount. *Id.*

PRIVATELY INITIATED CONTESTS

Standing

A qualified elector may contest the right of a person declared elected to office in the elector's county, municipality, district or precinct. § 22-17-101.

Grounds

A qualified elector may contest an election on the following grounds: (1) misconduct or material negligence of an election official sufficient to change the result of the election; (2) the person certified as elected or nominated is not qualified as required by law; (3) the person whose election is contested offered to give a bribe to a voter or election official to procure his election; (4) illegal votes were counted or legal votes were not counted; and (5) the person whose election is contested violated the provisions of W.S. 22-26-101 et seq. ("offense and penalties" relating to an election). *Id.*

Filing Deadlines

The action must be filed within 14 days after the results of the election have been certified by the county or state canvassing board. § 22-17-102.

Form and its content

A petition setting forth the following must be submitted: (i) the name of the contestant and that he is a registered elector in the county, district, or precinct in which the office is to be exercised; (ii) the name of the person whose election is being contested; (iii) the office; and (iv) the grounds for the contest. *Id.*

Forum for filing and hearing

The petition must be filed with the clerk of the district court of the county. *Id.*

Costs of the contest

If the proceedings in an election contest are dismissed for insufficiency or want of prosecution, or if the election is confirmed by the court, judgment shall be rendered for costs against the party contesting the election and in favor of the party whose election was contested. If the election is annulled and set aside, judgment for costs shall be rendered against the party whose election was contested and in favor of the party contesting the election. § 22-17-104.

Relief available

A judgment of the court shall confirm or annul the election or declare elected a qualified candidate receiving the highest number of legal votes. § 22-17-108.