

Recounts and Challenges in Battleground States

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Abstract:

Because the 2020 election results in several states are quite close, the Trump campaign has sought recounts in some and challenged the counts in others. Litigation over the counting process and the legality of ballots has proceeded in state and federal court. A recount in Georgia will soon begin, and one has been promised in Wisconsin. Others may follow depending on the final margins emerging from the canvassing of votes.

This report summarizes the grounds for legal challenges to votes and for recounts in the battleground states. States differ in who, when, and why votes can be challenged. This report focuses on grounds for disqualifying absentee ballots, given that such challenges have been most salient in 2020. For each state, the report also examines the relevant litigation surrounding state recount laws and specifies how states and candidates can order a recount of the vote.

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Certification and Recount Procedures in Battleground

States

State	Certification Deadline	Automatic Recount [†] (Mandated)	Deadline for Candidate-Requested Recount (Non-Mandated)
Arizona	November 30, 2020; 27 days (by fourth Monday after Election Day; may be postponed up to 30 days until all county results received)	Yes ; less than or equal to the lesser of any of the following in candidate elections: 0.1% of the votes cast for both candidates, 200 votes for offices where the turnout is greater than 25,000, or 50 votes for offices where the turnout is 25,000 or less (Az. § 16-661)	Statute does not disclose a deadline
Georgia	November 20, 2020 by 5:00pm; 17 days	N/A	N/A; However, recounts conducted because an error or discrepancy is suspected must be completed before the canvass is finished (Ga. § 21-2-495(d))
Michigan	November 23, 2020; 20 days	Yes ; recount for statewide office candidates is required where the election is determined by a difference of 2,000 votes or less (Mi. § 168.880a)	Within 30 days after the last day for filing counter petitions, or the first day that recounts may begin (Mi. § 168.875)
Nevada	November 24, 2020; 21 days (fourth Tuesday in November)	N/A	N/A
North Carolina	November 24, 2020 21 days (3 weeks after election) (up to 10 day extension to December 4, 2020 if county abstracts are missing)	N/A	N/A
Pennsylvania	November 11, 2020; 8 days	Yes ; less than or equal to 0.5% for statewide offices and statewide ballot measures. An automatic recount might also occur if election officials discover certain discrepancies	The recount must take place by the third Wednesday following the election and must be completed by the following Tuesday; count certification is delayed if a

		described here (Pa. § 3154(g))	recount/re canvass is requested (Pa. § 3154(g)(5); 3154(f))
Wisconsin	December 1, 2020 ; 28 days (First day of December)	N/A	N/A

†Reference to automatic recount means it is triggered by a close vote margin; in this instance, automatic recount is not due to error. If standard post-election audits of a jurisdiction or jurisdictions identify administrative or systems errors, a recount will likely occur.

For more information regarding recount requests, thresholds, and deadlines, see tab “Compilation of Recount Deadlines in Battleground States” in the “[State Election Administration Deadlines by State](#)” spreadsheet.

Introduction

This memo examines the procedures and laws governing (1) how and when states recount the vote; and (2) who can initiate challenges to votes and on what bases those challenges can be made. These processes vary widely by state, both in terms of statutory requirements and administration. In each of the seven swing states described below, we examine, in particular, mandatory and discretionary vote recounts, how much discretion states give to local officials and other parties in challenging the vote, and relevant litigation surrounding state laws on recounting. We order this examination in two steps:

Recount procedures: Some states require a mandatory recount when the margin of victory is below a statutorily specified threshold. Meanwhile, other states have no such requirement but instead permit candidates to request a recount if the vote margin is small or if the candidate suspects that an error was made in the initial count. Recounts are often performed manually by hand although some states permit recounts to proceed using electronic ballot scanners. States also have different rules on who can be present to observe the recount. While some state recounts are open to the general public, other states limit the number of watchers.

Challenging ballots: States have many different procedures for challenging the validity of both individual ballots and election-wide results:

- (a) **Invalidating individual ballots due to procedural defects.** Some states permit county election officials to invalidate individual ballots due to procedural defects such as a missing signature, a missing witness, or a mismatch in signature verification. These invalidations typically occur while the votes are being tabulated, counted, or recounted.
- (b) **Challenging individual voter qualifications.** Some states permit individual voters to challenge other voters' qualifications and potentially invalidate their ballots. These challenges often must be made and resolved on Election Day although some states recognize that these challenges may take longer to resolve.
- (c) **Challenging election results.** Different states have different timelines and procedures for candidates to challenge statewide or county-specific election results.

Some states require challenges to proceed in a judicial court while other states permit the county or state board of elections to decide a challenge. In any case, a challenge often bears some resemblance to a court proceeding because challenges typically involve extensive fact-finding with witnesses, affidavits, briefs, and oral arguments. Remedies include requiring that votes be recounted entirely or that new results of the election be declared. In some states, the losing party after the challenge can also file an appeal.

(d) Other challenges not explicitly permitted by statute, where applicable. In counting and canvassing the vote, some states have statutory procedures that do not explicitly permit challenge. Some candidates have challenged these procedures nonetheless, alleging that these procedures were not duly followed. For example, while some laws permit the public to observe the processing and counting of ballots, these laws do not explicitly spell out a specialized procedure for challenging that a precinct failed to abide by that law.

Arizona

A. Recount Procedures

As of this writing, the margin for the presidential race in Arizona is approximately [11,400 votes](#), with President-Elect Biden leading by 0.34%. This is outside the 200 vote or 0.1% margin that would trigger an automatic recount in the state. Over 98% of the total votes in Arizona have been counted and it seems at this point unlikely that the margins will shrink to the threshold for a recount. Votes that remain to be counted are provisional ballots, those for which signatures were cured by November 9, 2020, and ballots that require extra processing, such as braille ballots. Requested recounts are not permitted in Arizona.

Arizona uses paper and Direct Recording Electronic (DRE) systems [for its elections](#) and requires a voter-verified paper audit trail (VVPAT) in its election and recount procedures. DRE systems are voting machines “designed to allow a direct vote on the machine by the manual touch of a screen, monitor, wheel, or other device. A DRE records the individual votes and vote totals directly into computer memory and does not use a paper ballot.” [DREs come with a VVPAT](#), which “consists of physical paper records of voter ballots as voters have cast them on an electronic voting system. In the event that an election recount or audit is called for, the VVPAT provides a supporting record.” [These two systems](#) are used in conjunction with one another to ensure proper recording of ballots and paper records for canvassing, post-election audit, and in the event of a recount. Furthermore, a post-election logic and accuracy test is performed to ensure the proper functioning of the electronic equipment.

Once the initial electronic tabulating is complete, an [Audit Board reviews](#) election board logs, the Official Ballot Report, tabulation units, accessible voting device tapes/printouts, and a copy of the precinct results. The audit must occur before the canvass results are accepted “in order to ensure the integrity of the canvass results.” A limited precinct hand count audit may follow the electronic audit to ensure that the results of the hand count audit are within the designated margin of electronic results for the selected ballots. These limited precinct hand count audits are only permitted for certain races, including presidential elections.

Arizona state statute [A.R.S 16-661](#) mandates an **automatic recount when** the canvass of returns in a primary or general election shows **the margins are less than or equal to the least of the following:**

1. **One-tenth of one% of the total number of votes cast** for both candidates or measures or proposals.
2. **Two hundred votes** for offices where the turnout is 25,000 or more.
3. Fifty votes in the case of an office to be filled by state electors and for which the total number of votes cast is 25,000 or less.
4. Two hundred votes in the case of an initiated or referred measure or proposal to amend the constitution.
5. Fifty votes in the case of a member of the legislature.
6. Ten votes in the case of an office to be filled by the electors of a city or town or a county or subdivision of a city, town or county.

If the canvass shows that a recount is required, the secretary of state must, in the case of an office to be filled by voters of the entire state, a congressional district, a legislative district or a subdivision of the state greater than a county, certify the facts requiring the recount to the superior court in Maricopa County. [A.R.S 16-662](#). A count within the recount margins automatically triggers the recount, which must be initiated by court order. Requested recounts are not permitted in Arizona.

The secretary of state is charged with supervising the recount and, for offices other than county supervisor, can designate a county board of supervisors to perform their recount duties permitted under [A.R.S 16-663-67](#). While the recount [is in progress](#), election officials may not publicly release vote totals.

On completion of the recount, the county chairs of the political parties must select at random “five% of the precincts for the recounted race for a hand count, and if the results of that hand count when compared to the electronic tabulation... are less than the designated margins pursuant to section [16-602](#), the recount is complete.” [A.R.S 16-663](#).

B. Challenging the Vote

1. *Invalidating Individual Ballots for Procedural Defects*

Absentee ballots can be invalidated in Arizona if the signature on the ballot does not match the signature that the board of elections has on file for the voter or if the ballot is missing a signature entirely. Voters with mismatched signatures have until five days after the election to verify their ballots

before their ballot is rejected, while voters with missing signatures have only until 7:00 PM on Election Day to fix the error before their ballot is rejected. The Arizona Democratic Party, in [Arizona Democratic Party v. Hobbs](#), [sued](#) over this disparity in procedures between mismatched and missing signatures. In particular, they argued that the Election Day deadline makes voters more likely to have their vote rejected, as they are far less likely to receive notice in time to correct the error. In addition, they also claimed that the inconsistency between the deadline for mismatched signatures and missing signatures could be a source of confusion for voters. The 9th Circuit [overturned the district court ruling](#) extending the deadline, finding a minimal burden.

Ballots can also be rejected in the processing stage if they are cast in the wrong precinct. This rule has also generated litigation. In [Brnovich v. DNC](#), the plaintiffs seek to [eliminate](#) the requirement that ballots cast in the wrong precinct are automatically discarded and not counted, proposing instead that votes for county, state, and national offices on ballots cast in the wrong precinct should be counted but that votes for precinct-specific offices should not be counted. The Ninth Circuit [struck down](#) the law, finding that it was enacted with the intent to discriminate against minority voters. But the Arizona [Attorney General](#) appealed the case to the Supreme Court, which granted certiorari and will [hear the case](#) in 2021; the law [remains in effect](#) until that time.

2. Election contests

A contest can be filed for the election of a candidate to U.S. congressional seats; state, county, city, town or political subdivision office; an initiated or referred measure; an amendment to the Arizona Constitution or any other question or proposal submitted to the vote of the people. Notably, the relevant statute [ARS §16-672](#) explicitly provides recount procedures for candidates for state office, but in [Harless v. Lockwood](#), the Arizona Supreme Court held that the statute “applies alike to candidates for representatives in the Congress as it does to state officers even though the federal offices are not always specifically enumerated.” In other words, while the statute specifically lists challenge procedures for state offices but does not explicitly consider challenge procedures for federal offices, the statute should be read broadly to include, at a minimum, federal congressional races. Neither this statute nor the case law interpretation of this statute explicitly applies these contest procedures to candidates for the President of the United States.

The grounds for a contest according to Arizona statute are: (1) misconduct on the part of election officials; (2) eligibility of the person elected; (3) an offense committed against the elective franchise; (4) bribery of an election official or judge; (5) illegal votes; and (6) erroneous count of votes.

Contests may be brought in the Superior Court of Maricopa County or in the superior court of the county in which the person contesting resides. [ARS §16-673](#) requires the contest to be filed within five days of the completion of the canvass and the secretary of state has declared the results. Pursuant to [ARS §16-676](#), a hearing will take place no later than 10 days after the date in which the statement of contest is filed. Within five days of the completion of the hearing, the court is required to file its findings and immediately pronounce judgment, either confirming the election or annulling and setting it aside.

Georgia

A. Recount Procedures

While Georgia law does not require automatic recounts under any circumstances, [O.C.G.A. § 21-2-495](#) establishes the mechanisms for triggering a recount. Prior to results certification, a county superintendent may order a recount of the ballots whenever there appears to be any discrepancy or error in the returns. Likewise, any candidate for state or federal office may petition the secretary of state for a recount prior to certification on the same basis. The petition must describe the observed discrepancies or errors and any supporting evidence, and the secretary of state has the discretion to grant, deny, or request additional evidence of alleged inconsistencies.

After certification, candidates in very close races can also petition for a recount. Where the margin of victory in a federal or state race is <0.5%, the losing candidate is entitled to a taxpayer-funded recount upon making a written request to the secretary of state within two days of certification under [O.C.G.A. § 21-2-495\(c\)\(1\)](#). After granting the request, the secretary of state notifies the county election superintendents in the districts involved in the contested race(s), and they oversee the recount process in accordance with [SEB Rule 183-1-15-.03](#). As of the time of this writing, the margin of the presidential race in Georgia is approximately [14,100 votes](#), or 0.28%. The current margin falls under the statutory cap of 0.5% for a taxpayer-funded recount.

The default under Georgia law is for election superintendents to use electronic ballot scanning machines to perform a recount of the county's results. Prior to initiating the recount, the election superintendent must test each ballot scanning machine to be used in the recount. To do so, the superintendent selects a test deck of ballots made up of 75 ballots marked by an electronic ballot marking device and 25 absentee ballots marked by hand. If possible, these test ballots should be drawn

from ballots from 3 different precincts, and selected from throughout the ballot container. The superintendent then runs the test deck through the ballot scanner, and also performs a manual hand tabulation. If the results of the hand tabulation and electronic tabulation match, the machine scanning machine is authorized to be used in the recount. If not, the error must be investigated and corrected. If all available machines are malfunctioning and not authorized for use in the recount, officials must undertake a manual hand recount in accordance with [Rule 183-1-15-.03\(2\)](#).

Once the ballot scanning machines are successfully tested, the election superintendent can rescan all the ballots subject to the recount in the approved ballot-scanning machines, never opening more than one ballot container per ballot-scanning machine at a time. The scanning machines must be programmed to flag or reject overvotes, and contested selections must be manually reviewed by an adjudicatory panel to establish the voter's intent. Bent, torn, and damaged ballots must be duplicated, labeled "RECOUNT DUPLICATE", and scanned. Throughout the count, the superintendent must maintain a clear audit trail, including by logging "the seal numbers on ballot containers before and after the recount." Once all ballots subject to the recount have been rescanned by the ballot machines, the superintendent can print out tabulation results and compare the original and the new results and, if necessary, make corrections.

Like ordinary tabulation, ballot tabulation during a recount is open to public view by party-designated poll observers. The superintendent may designate a viewing area in order to maintain order and preserve the integrity of the county, and only election personnel designated by the superintendent may handle ballots and ballot containers.

B. Risk Limiting Audit Rules

In 2019, the Georgia legislature [updated](#) the state's election laws in a variety of ways, including by adopting a manual statewide pre-certification risk limiting audit (RLA) for elections held in even numbered years. In general, RLAs are used to confirm with strong statistical likelihood that the votes cast for a certain contest were tabulated correctly (i.e. that the same results would have been reached had the ballots been counted by hand), and limit the risk that the wrong winner gets certified. Unlike traditional post-election audits where the number of ballots to be examined is fixed in state law, the number of ballots subject to a RLA [depends](#) on the closeness of a given race. Where the margin is wide, fewer ballots must be inspected to reach statistical confidence about the results; where the margin is narrow, significantly more sample ballots must be examined.

After the adoption of the audit provisions at [O.C.G.A. § 21-2-498](#), Georgia partnered with the non-partisan and non-profit civic technology company VotingWorks to roll out and implement the RLA, which VotingWorks [calls](#) the “gold standard of tabulation audits.” While the RLA was piloted in a few counties after the June 2020 presidential primary, the November 3rd contest will be the first in Georgia’s history to be subject to a statewide RLA.

SEB [Rule 183-1-15.04](#) lays out the parameters for preparing for and conducting the RLA, which this year must be completed by November 20—the state certification deadline. First, the secretary of state selects and publicly announces which race (e.g. presidential, senatorial) and will be subject to the audit. In determining which race to audit, the secretary must consider 1) the closeness of the reported tabulation outcomes; 2) the geographical scope of the contests; 3) the number of ballots counted in the contests; 4) any cause for concern regarding the accuracy of the reported tabulation outcome of the contests; 5) any other benefits that may result from auditing certain contests; and 6) the ability of the county to complete the audit before the state certification deadline. The secretary must also publicly announce the time, date, and locations of the audit, and the risk limit for the audit, which the Rule states must not be greater than 10%. (If the risk limit is 5%, for example, enough ballots must be audited to provide 95% accuracy in the results.) Finally, the secretary’s office informs each county—based on the computer algorithm—which ballots they must select for auditing.

To conduct the hand audit of the selected ballots, the county election superintendent must create audit teams comprised of at least two sworn designees (permitted to be non-employees) who take an oath to conduct the audit accurately and securely. The teams work through the random sample of ballots selected for review, and compare the electronic tabulation to the sampled paper ballot. In reviewing hand-marked ballots, “the auditors shall rely on the choices indicated by the voter by filling in the oval adjacent to the candidate or question,” and for electronically marked ballots, “the auditors shall rely on the printed text on the ballot to determine the voter’s selection.” Election workers must maintain the chain of custody for all selected ballots during the audit process, including by logging the seal numbers on the ballot containers before and after the audit. The audit is complete once all selected ballots have been reviewed, and the designated confidence level reached. Public observers and press are permitted to observe the audit process, but are prohibited from handling ballots, and may be sequestered in a viewing area at the direction of the election superintendent.

C. Recounts and Audits in the 2020 Election

On November 11 at 1pm EST, Secretary of State Raffensperger [announced](#) that the presidential contest would be the subject of the pre-certification RLA. However, instead of selecting a random sample of ballots for each county to review, the secretary announced that the close margins

(~14,000 votes, or 0.3%) would trigger a full hand re-tally of the approximately five million ballots cast across all 159 counties. (This announcement followed [pressure](#) from the Trump campaign and other Georgia Republican on the secretary to conduct a full recount.) While only around 1.5 million ballots technically need to be audited in order to provide statistical confidence about the winner in this tight presidential contest, VotingWorks [explained](#) that it is actually “less work to sample every cast ballot, simply because attempting to audit a large subset incurs the work of retrieving and replacing specific ballots, while reviewing all ballots does not.”

The secretary’s office has [directed](#) counties to begin the audit process no later than November 13 at 9am, and complete it by 11:59pm on November 18—two days prior to the state certification deadline. Given that the audit will affect *all* ballots, the audit teams will be responsible for essentially retabulating the presidential vote totals by hand instead of comparing electronic and paper results for randomly selected ballots. During the audit process, “[t]here will be inventory sheets to track which batch of ballots were counted when, audit board sheets that identify vote totals for each batch and the people that audited them and even a sign in sheet for partisan monitors that can closely watch the process.” VotingWorks has made copies of this paperwork (and even a humorous [video](#) demonstrating the tasks required in a full hand tally) publicly available [online](#). Some facilities will also offer [live streaming](#) of the audit process.

Given the short timeline for the audit, audit teams across Georgia will be working around the clock until November 18 to carefully complete the retabulation and to report the results to the secretary of state in time for the November 20 certification deadline. Fulton County (Georgia’s largest) shared with a local reporter that they expect the manual re-tally of their 528,000 ballots to require around 300 people working 10 hours days Saturday through Wednesday. Importantly, even if the tallies reported by Georgia’s county election officials to the secretary of state affirm that Vice President Biden remains in the lead (as he is expected to), the Trump campaign can request *another* recount by November 22 (two days after the certification deadline) if the margin remains below 0.5%. As described above, that recount would be performed by optical scanning machines, which are more accurate and expeditious than the manual alternative.

D. Challenging the Vote

1. *Invalidating Individual Ballots for Procedural Defects*

Absentee ballots can be automatically rejected, without challenge, for a number of reasons. The biggest reason for ballot rejection is lateness: If a ballot is received after the deadline (which is the

close of polls on November 3), the clerk must reject it according to [O.C.G.A. § 21-2-386\(F\)](#). Although the late ballots are not counted, the clerk is required to store these ballots for a specified period and eventually destroy them without opening them.

Another significant reason for rejection is errors with the ballot envelope oath (missing signature, mismatched signature, missing information, etc). If clerks are unable to correct signature and other ballot errors through the ballot curing process by November 6 (or if they deem the voter's submitted affidavit as insufficient to cure the error), they must reject it under [O.C.G.A. § 12-2-386\(C\)](#). Finally, if the voter is a first-time voter, opted to vote by mail, failed to provide acceptable identification in the absentee ballot request or alongside the provisional absentee ballot, and did not furnish the requested material after being notified of their provisional ballot status by November 6, their ballot cannot be counted. While Georgia does have a secrecy sleeve (inner envelope) requirement as outlined in [O.C.G.A. § 21-2-386](#), for the 2020 elections, the secrecy envelope has been replaced with a white sheet of paper meant to act as a "secrecy sleeve." The change is meant to speed up processing, but Georgia elections officials have assured voters that ballots will not be rejected if they lack the sleeve.

Pursuant to [O.C.G.A. § 12-2-386\(E\)](#), election officials must prepare three copies of numbered list of rejected absentee voters and note the name of the voter and the reason for the rejection in each case. They must then distribute the three copies of the numbered list of rejected absentee voters—along with the numbered list of certified absentee voters—to the poll manager responsible for counting absentee ballots.

While it does not necessarily lead to rejection of the *entire* ballot, individual vote selections may be rejected if they are [insufficiently filled](#) or otherwise unclear. Specifically, vote selections that fill less than 10% of the target oval will not be considered a vote under new, more lenient SEB rules about ballot scanning machine settings. And marks that fill between 10% and 20% of the target oval will be manually reviewed by an adjudicatory panel. If the panel cannot adequately assess the voter's intent, the vote selection must be rejected.

2. Challenges to Voter Qualification

Pursuant to [O.C.G.A. § 21-2-230](#), any voter in the county or municipality may challenge any other voter appearing as unqualified to vote in an election. The challenger [carries the burden](#) of proving that the challenged voter is unqualified to vote, either because they fail to meet the voter

registration requirements, or have been adjudged mentally incompetent. A challenger must submit their challenge to the board of registrars in writing and articulate the reason for the challenge either before the challenged voter casts their ballot at the polling place or, if the challenged voter is casting an absentee ballot, prior to 5:00 PM on the day before the election. The board of registrars then must immediately consider the challenge and decide whether there is probable cause to sustain it. If there is, the board of registrars must notify the poll officials at the challenged voter's in-person and absentee ballot precinct and contact the challenged voter if feasible.

If the challenged voter appears at the polls, they must be given the opportunity to answer to the board of registrars about the challenge. If it is practical to conduct a hearing on the challenge prior to the close of polls on Election Day, the board of registrars will conduct a hearing pursuant to [O.C.G.A. § 21-2-229](#) to determine the merits. If they decide that the challenge is without merit, the challenged voter will be permitted to vote even if the polls have closed so long as the voter votes immediately after the decision is rendered. If the board sustains the challenge, the challenged voter will be unable to vote and will be removed from the list of voters if the challenge was based on eligibility.

If it is not practical to conduct a hearing by the close of polls on Election Day when a challenged voter appears to vote, or if the board of registrars begins a hearing but cannot render a decision before close of polls, the challenged voter must be permitted to vote. To do so, they are [issued](#) a paper provisional ballot marked "Challenged," which they then complete and enclose first within a privacy envelope, then within an absentee ballot outer envelope. If the challenged voter casts an absentee ballot, poll officials similarly write "Challenged" on the back of the outer envelope, and process the ballot using an optical scanner. However, in order to determine whether "challenged" ballots cast by voters whose eligibility is in question can remain in the tabulated total, the board of registrars must hold an expedited hearing to determine the merits of the challenge as soon as possible after Election Day. The superintendent may not certify the county election results *until* the board of elections has resolved each challenge. If the board concludes that the challenge was without merit, the superintendent can proceed to certify the results. If the board upholds the challenge, the voter must be removed from the list of qualified voters, their challenged ballot not counted, and the election returns adjusted. Both the challenged voter and the voter who lodged the challenge may appeal the board's conclusion pursuant to [O.C.G.A. § 21-2-229](#).

Michigan

A. Recount Procedure

Michigan will automatically trigger a statewide vote recount if its election was determined by 2,000 votes or less. At the time of this writing, the margin of the presidential race in Michigan is over [148,000 votes](#), with over 98% of the total vote counted. It is therefore unlikely that a statewide automatic recount will be triggered in Michigan since the margin will likely remain above 2,000 votes.

However, under Michigan Coded Laws [§§168.880](#) and [168.880a](#), registered voters in Michigan can also petition for a vote recount. Additionally, candidates can petition the Michigan Secretary of State to conduct a vote recount in certain counties. Under Michigan Coded Laws [§168.879](#), the candidate must petition for a recount within 48 hours of the completion of certification. The candidate must be able to allege a good-faith belief that but for voter fraud or mistake, the candidate would have had a reasonable chance of winning the election. The petition need only allege specific instances of wrongdoing if the candidate has such evidence, but the candidate must specify the counties in which he or she requests a recount. Under Michigan Coded Laws [§§168.867](#) and [168.881](#), the candidate requesting a recount must pay \$25 deposit per precinct. This fee is raised to \$125 per precinct if the pre-petition margin of victory for the winning candidate over the petitioner is greater than 50 votes, or 0.5% of all votes cast, whichever is greater. If the outcome of the election is altered as a result of the recount, the deposit is refunded. The [deadline](#) to complete a recount is 30 days after either the last day to file counter petitions or the first day that recounts may begin.

Precincts with ballots that are inaccurately counted¹ [are ineligible](#) for a recount, even though one might expect such precincts to be the priority during a recount. A precinct is also [ineligible](#) for a recount if the seal on the ballot container was placed in such a way that ballots could be inserted or removed from the container without breaking the seal. Finally, ballots in a precinct where the total number of ballots, as reflected by a physical count, [does not agree](#) with the number of voters as shown in the Poll Book are ineligible for a recount. However, for this last group, if an acceptable explanation²

¹ If the following three numbers [don't match](#), absentee ballots in a precinct are considered to be inaccurately counted: The number of absentee ballots recorded in the precinct's poll book; the number on the ballot container seal; and the number recorded in the precincts Statement of Votes or ballot container certificate that was signed, dated and attested to by two election inspectors who have expressed a preference for different political parties.

² In determining whether an acceptable explanation exists, the Board of County Canvassers [must](#) make "all efforts... to identify the reason for the discrepancy, including a review of the following: 1) spoiled and/or defective ballots 2) duplicate

for the discrepancy can be identified or if the number of ballots counted corresponds to the total number of ballots tabulated on election night as reflected on the Statement of Votes, the precinct is eligible for a recount. Since voting centers are expected to grapple with incredibly high absentee voting this election, there may be increased risks for errors that would make precincts ineligible for a recount. In Detroit, for example, [72% of voting centers](#) reported inaccurate ballot counts during the August 4th primary.

Per [MCL 168.870](#), the Michigan Board of State Canvassers has the authority to issue subpoenas to the persons in charge of the ballot boxes in those precincts where a recount was petitioned for. They [may](#) conduct the recount using a manual tally of the ballots, a tabulation of the ballots on a computer using a software application designed to specifically count only the office or ballot question subject to the recount, 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. However, if one of the following issues is present, the Board [may not](#) recount a precinct's ballots:

- The seal on the ballot container is broken or bears a different number than that recorded on the poll book and the breaking or discrepancy is not explained to the satisfaction of the board of canvassers;
- There is a breaking or a discrepancy, and ballot labels or rotation of candidates' names is different than that shown by other voting devices in the precinct and records of the board of election commissioners; or
- The number of ballots to be recounted and the number of ballots issued on election day do not match and the difference is not explained to the satisfaction of the board of canvassers.

If the ballots are not eligible for a recount due to one or more of these issues, the Board of State Canvassers must [consider](#) the original vote tally correct.

The Board [must](#) conduct their recount in a public place where the petitioning candidate, their counsel, one watcher, and one tallier may be present. While these people may observe, they may “take notes as they desire for their own records.” The board of canvassers [shall](#) identify ballots counted or rejected under protest and keep a record of said protests. If on the first recount of a precinct's ballots, the vote count does not match the original count, the Board [must](#) conduct a second recount. If on the second recount, the count still does not match the original count, then the second count will be

ballots and corresponding original ballots 3) provisional envelope ballots 4) remarks page notations and 5) Statement of Votes.”

considered final. If the second recount matches the original count, then the Board must conduct a third recount. The third recount's count is considered final.

Additionally, per [MCL 168.872](#), if the Board has “probable cause” to believe that there has been fraud, wrongdoing or a violation of the law due to the recount, they must fully investigate. To this end, the Board [has complete authority](#) to subpoena witnesses and to open any ballot box, regardless of the condition of its seal. If the Board believes that a violation of the law occurred, they [may issue](#) a report to that effect to the Michigan attorney general and the circuit judge of the county of Ingham.

B. Challenging the Vote

1. *Invalidating Individual Ballots for Procedural Defects*

Michigan invalidates ballots that fail signature verification. In this process, an election official compares the signature on the voter's ballot to the voter's digital signature in the state's Qualified Voter File (QVF) . The Michigan Bureau of Elections (MBE) recommends that clerks also use a second signature from the application for an absentee ballot or, in some cases, a third signature from the voter registration application (called the master card). In Detroit, clerks typically turn to physical records only if there is a question of mismatch. When comparing signatures, [the secretary of state instructs clerks to presume the voter signed their ballot](#).

Clerks are required to contact voters as soon as possible if they discover a missing or mismatched signature. In the case of a missing signature, voters can sign their ballot envelope in person at the clerk's office. In case of a signature mismatch, the voter must spoil their original ballot and request a new one. There may be cure processes offered at some jurisdictions at the discretion of the election clerk. The [secretary of state's guidance](#) suggests voters can provide a “corrected signature” at the clerk's office, but there is no legally mandated statewide standard for cure. Voters [have until](#) 8:00 PM on election day to sign the return envelope or provide a corrected signature. Otherwise, the voter's ballot will be rejected.

There are no known requests to observe signature verification in the clerk's office, so the procedures are unclear. However, one appointed election challenger per eligible group may observe the conduct of the “absent voter counting board,” which tallies absentee votes on Election Day and the

day before Election Day. If a challenger believes an absentee ballot is being submitted by a person unqualified to vote in their precinct, the challenger may challenge that ballot. Additionally, members of the public may also observe the conduct of the board ([Election Officials' Manual](#)).

2. Challenges to Voter Qualification

On Election Day, poll challengers are allowed to [challenge](#) any person's right to vote in the precinct if they have good faith reason to believe that the person is not eligible to vote in the precinct. Challenges may not be [issued](#) based on mere "impressions" arising from an elector's manner of dress, inability to read or write English, race, ethnic background, disability, support for or opposition to a candidate or political party, need for assistance with the voting process, or lack of acceptable picture ID. Once an elector's right to vote has been challenged, the precinct chairperson [must](#) ask them, under oath, about their qualifications to vote. If convinced of the elector's eligibility, the precinct chairperson will [issue](#) the voter "a specially prepared challenged ballot" and must enter a complete record of the challenge into the pollbook. Additionally, poll challengers may observe the conduct of the absent voter county board. While they may not challenge ballots during their observation, they [may challenge](#) the actions of election inspectors if they believe that election laws are not being followed.

Poll challengers may also [challenge](#) the actions of election inspectors serving in the precinct and have the right to report the improper handling of a ballot by any precinct official. It is unclear from the recount [guidance](#) issued by Michigan's Bureau of Elections what role poll challengers are allowed to play in the recount procedures, or even if they are allowed to observe the process. As they are not mentioned in that guidance, nor in Michigan's [Manual for County Canvassers](#), it is unlikely that ballots are allowed to be challenged during a recount.

Nevada

A. Recount Procedures

A candidate defeated in any election may request a recount within 3 working days of the canvass of the vote and the subsequent city or county clerk’s certification of the abstract of votes. The candidate must also make a deposit that covers the estimated cost of the recount. [N.R.S. § 293.403\(1\)](#). Any voter at an election may also request a recount. The voter must file a demand with the secretary of state if the voter is demanding a recount of a ballot question that affects more than a single county—but, like a candidate, the voter must also make a deposit to cover certain estimated costs.³ [N.R.S. § 293.403\(2\)](#); [N.A.C. § 293.375](#). If the person who demanded the recount prevails, the deposit is returned, and the costs are withdrawn from a state account; otherwise, the person remains responsible for these actual costs once the recount is complete (and will either be reimbursed if the deposit was greater than the actual costs, or assessed additional costs if the deposit was insufficient). [N.R.S. § 293.405\(1\)-\(2\)](#). Each recount must begin within 5 days of the demand for a recount, and then must conclude within 5 days from when it begins. [N.R.S. § 293.405\(3\)](#). At the county clerk’s request, the secretary of state will also designate a representative to observe the recount. [N.A.C. § 293.371](#).

To conduct the recount, the county clerk unseals the ballots to be counted and gives them to the recount board. [N.R.S. § 293.404\(4\)](#). The recount board must count and inspect all ballots—including rejected ballots—and determine whether they were “marked as required by law.” [N.R.S. § 293.404\(3\)](#). Ballots must also be recounted in the same way that they were initially tabulated. *Id.* The individual who requested the recount may withdraw the request at any time before the recount is complete; in this case, he or she may not subsequently request a continuation of the recount or a new recount of those votes. [N.A.C. § 293.371\(2\)](#). In addition, if a recount or contest occurs, the county or city clerk must ensure that every election device that recorded votes electronically provides a paper record of each ballot voted on the device, which is deposited in the clerk’s vaults. [N.R.S. § 293B.400](#).

When the recount concludes, the board of county commissioners makes an abstract of votes and transmits a copy of that abstract as well as a “mechanized report” of that abstract to the Secretary

³ The estimated and actual costs of a recount include utilities for the building used for the recount before or after business hours, rent for use of a non-publicly owned building, and salaries for overtime work of regularly employed staff members, but exclude certain other costs. [N.A.C. § 293.375](#).

of State. [N.A.C. § 293.365\(2\)](#); [N.R.S. § 293.395\(1\)](#); [N.R.S. § 293.393\(2\)-\(4\)](#). Nevada’s regulations require that the results of a recount be canvassed within five working days after the completion of the recount. [N.A.C. § 293.365\(1\)](#). Once a recount concludes, that precinct cannot be subject to another recount for the same candidate or question in the same election. [N.R.S. § 293.405\(4\)](#).

B. Challenging the Vote

1. *Invalidating Individual Ballots due to Procedural Defects*

In Nevada, a “rejected ballot” is a ballot that cannot be counted by the election board or counting board for a reason required by law. [N.R.S. § 293.094](#). Nevada law mandates that when determining whether a ballot should be rejected the election board must consider, with reasonable belief entertained in good faith, whether an identifying mark on the ballot indicates that the ballot has been tampered with, and whether, as a result of the tampering, the outcome of the election would be affected. [N.R.S. § 293.367](#). If an election board officer rejects a ballot, the officer must seal the ballot in an envelope and record that it was rejected and provide the reason for rejecting it. [N.R.S. §293.367\(2\)\(e\)](#). If a person’s vote has been rejected and that person attempts to vote in the same election at a polling place other than where they are registered, that person is guilty of a gross misdemeanor. [N.R.S. § 293.790](#). Ballots must be counted if the designated space to mark a vote is darkened, checked, or crossed. [N.R.S. § 293C.369](#); [N.R.S. § 293.3677](#).

(a) Signature Verification

Nevada is one of at least 30 states that require voters to be [notified](#) of a missing or mismatched signature and [allows voters to cure](#) the deficiency. Nevada also provides a post-Election Day period for voters to cure signature defects. November 10 is the last day voters can [cure signature defects](#) on mail ballots. A new Nevada law, [A.B. 4](#), provides [that ballots can be rejected for signature defects if](#) the signature “differs in multiple, significant and obvious respects from the signatures of the voter available in the records of the county clerk. Despite the lawsuits filed by the Trump campaign requesting records containing voters’ signatures, there appears to be no explicit statutory authority for non-election officials to reject or challenge signatures on mail ballots.

SIGNATURE VERIFICATION

Statutes ⁴	Statutory Language
A.B. 4 § 23(1)(a)	The clerk or employee shall compare the signature on the ballot with all signatures of the voter available in the records of the clerk.
A.B. 4 § 23(1)(b)	If at least two clerks or employees believe there is a “ reasonable question of fact ” as to whether the signature on the ballot matches the signature on record, a clerk or employee must notify the voter to confirm whether the signature belongs to the voter.
A.B. 4 § 23(2)(a)	There is a reasonable question of fact as to whether the signature used for the mail ballot matches the signature of the voter if the signature used for the mail ballot differs in multiple, significant and obvious respects from the signatures of the voter available in the records of the clerk.
A.B. 4 23(2)(b)	There is not a reasonable question of fact as to whether the signature used for the mail ballot matches the signature of the voter if: (1) the signature used for the mail ballot is a variation of the signature of the voter caused by the substitution of initials for the first or middle name or the use of a common nickname and it does not otherwise differ in multiple, significant and obvious respects from the signatures of the voter available in the records of the clerk or (2) There are only slight dissimilarities between the signature used for the mail ballot and the signatures of the voter available in the records of the clerk
A.B. 4 § 23(4)	If the clerk or employee determines that there is a mismatched or missing signature,, or there is reasonable question of fact as to whether the signature on the ballot matches the signature on record, the voter must provide a signature or confirmation no later than 5:00pm on November 12 (the ninth day following the election)
A.B. 4 § 23(6)(a-c)	The clerk will contact the voter as soon as possible by mail, telephone, or e-mail depending on what information is available to the clerk.
A.B. 4 § 23(3) and § 23(5)(c)	If the clerk determines that the voter is entitled to cast the mail ballot, the mail ballot will continue to be processed, § 23(3), and the clerk must ensure that the mail ballot is delivered to the mail ballot central counting board, § 23(5)(c)
N.R.S § 293.8874(1)	[W]hen a mail ballot is returned by or on behalf of a voter to the county or city clerk, as applicable, and a record of its return is made in the mail ballot record for the election, the clerk or an employee in the office of the clerk shall... (a) [C]heck the signature used for the mail ballot against all signatures of the voter available in the records of the clerk. (b) If at least two employees in the office of the clerk believe there is a reasonable question of fact as to whether the signature used for the mail ballot matches the signature of the voter, the clerk shall contact the voter and ask the voter to confirm whether the signature used for the mail ballot belongs to the voter.

(b) *Late Ballots*

It is unlikely that a significant number of mail ballots in Nevada will be rejected for arriving late or having postmark issues. Mail ballots that are postmarked by November 3 will [still be counted](#)

⁴ For [A.B. 4 § 23](#), see also [N.R.S. § 293.325](#) as amended by [A.B. 4 § 39](#); [N.R.S. § 293C.325](#) as amended by [A.B. 4 § 69](#)

[after Election Day](#) as long as they arrive before November 10.⁵ Ballots with missing or illegible postmarks will be counted [if they arrive](#) by November 6.⁶

2. *Challenging Individual Voter Qualifications*

Nevada law also allows individuals to challenge the validity of individual voter’s ballots for a variety of reasons. The Trump campaign has made legal challenges alluding to the illegality of individual votes. However, the procedures set out in the Nevada code appear to procedurally preclude the Trump campaign’s claims, and there is little proof to support the substance of the claims.

Challenges alleging that a registered voter is not a citizen of the United States or no longer a citizen of Nevada can be made by any other voter or “reliable person.” [N.R.S. § 293.535](#). The challenger must file an affidavit stating that he or she has personal knowledge of the facts set forth in the affidavit. [N.R.S. § 293.535](#). The clerk is directed to notify the challenged voter, and if the challenged voter fails to respond their voter registration will be canceled. [N.R.S. § 293.535\(2\)](#). However, the statute requires that this type of challenge be made no later than 30 days before an election. [N.R.S. § 293.535\(3\)](#).

Other written challenges need to be made between the 30th and 25th day before an election. [N.R.S. 293.547\(1\)](#). In addition, a registered voter may challenge another voter’s application to vote only if the challenger is registered to vote in the same precinct and has personal knowledge of the challenged voter. [N.R.S. § 293.547](#); [N.R.S. § 293.547](#). In many cases, if the challenged voter takes an oath under penalty of perjury that the challenge is not valid, the challenged voter would be able to vote. [N.R.S. §293.303](#). It may take up to 21 calendar days after an election for the county clerk to mail notice to voters on the challenged list with the name of the challenger and the result of the challenge. [N.R.S. §293.3035](#). Below are the specific codes and procedures regarding challenges of individual votes in Nevada:

N.R.S. 293.303 CHALLENGES					
N.R.S. Section	Challenge	Election Board Officer Shall Tender the Challenged Person the Following Oath or Affirmation	If Challenged Person Refuses to Execute the Affirmation	If the Challenged Person Takes the Affirmation	Can the Challenged Voter Vote?

⁵ [A.B. 4 § 20\(1\)](#); N.R.S. § 293.317 (as amended by [A.B.4 § 37](#)).

⁶ [A.B. 4 § 20\(2\)](#); [N.R.S. § 293C.319](#) (as amended by [A.B. 4 § 67](#)); N.R.S. § 293.317 (as amended by [A.B. 4 § 37](#)).

293.303(2)(a) 293.303(4) 293.303(6)	The challenged person does not belong to the political party designated upon the roster	“I swear or affirm under penalty of perjury that I belong to the political party designated upon the roster”	The election board officers shall issue the person a nonpartisan ballot. 293.303(4)	The election board officers shall issue the person a partisan ballot. 293.303(6)	Yes
293.303(2)(b) 293.303(4) 293.303(6)	The roster does not show that the challenged person designated the political party to which he or she claims to belong	“I swear or affirm under penalty of perjury that I designated on the application to register to vote the political party to which I claim to belong”	The election board officers shall issue the person a nonpartisan ballot. 293.303(4)	The election board officers shall issue the person a partisan ballot. 293.303(6)	Yes
293.303(2)(c) 293.303(3) 293.303(5) 293.303(6) 293.303(7) 293.304	The challenged person does not reside at the residence for which the address is listed in the roster	“I swear or affirm under penalty of perjury that I reside at the residence for which the address is listed in the roster”	The person must not be issued a ballot, and the election board officer shall indicate in the roster “Challenged” by the person’s name. 293.303(3) The election board officers shall inform the person that he or she is entitled to vote only in the manner prescribed in NRS 293.304 . 293.303(5)	The election board shall not issue the person a ballot until he or she furnishes satisfactory identification which contains proof of the address at which the person actually resides. For the purposes of this subsection, a voter registration card does not provide proof of the address at which a person resides. 293.303(7) The election board officers shall issue the person a partisan ballot. 293.303(6)	Yes, but see NRS 293.304 (election board shall instruct the voter that he or she may vote only at the special polling place).
293.303(2)(d) 293.303(3) 293.303(6)	The challenged person previously voted a ballot for the election	“I swear or affirm under penalty of perjury that I have not voted for any of the candidates or questions included on this ballot for this election”	The person must not be issued a ballot, and the election board officer shall indicate in the roster “Challenged” by the person’s name. 293.303(3)	The election board officers shall issue the person a partisan ballot. 293.303(6)	Depends if challenged person takes oath
293.303(2)(e) 293.303(3) 293.303(8)	The challenged person is not the person he or she claims to be	“I swear or affirm under penalty of perjury that I am the person whose name is in this roster” and the oath or affirmation must be set forth on a form prepared by the Secretary of State and signed by the challenged person under penalty of perjury.	The person must not be issued a ballot, and the election board officer shall indicate in the roster “Challenged” by the person’s name. 293.303(3)	The election board shall not issue the person a ballot unless the person: (a) Furnishes official photo ID or (b) Brings before the election board officers a person who is at least 18 years of age who: (1) Furnishes official photo ID and (2) Executes an oath or affirmation under penalty	Depends if challenged person provides photo ID, or brings a 18+ person with photo ID who will execute an oath or affirmation that the challenged

				of perjury that the challenged person is who he or she swears to be. 293.303(8).	person is who he or she swears to be
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3. *Challenging Election Results*

Election contests in Nevada are court cases where any candidate or registered voter [can challenge](#) the results for the presidential election. The following are grounds for contesting election results pursuant to [293.410\(2\)](#):

- One or more members of the election board are guilty of malfeasance.
- The person elected is not eligible for office.
- Illegal or improper votes were counted, legal and proper votes were not counted, or some combination of the two.
- The election board made errors sufficient to change the results in the course of conducting the election or canvassing the returns.
- The winning candidate or a person acting on their behalf has given or offered anything of value for purposes of manipulating the outcome of the election.
- A malfunction of a voting device or other mechanism was sufficient to raise reasonable doubt as to the outcome of the election.

A case constituting the election contest is a special proceeding with its own rules⁷. The challenger must file a written statement of contest with the clerk of the district court containing the grounds for the challenge within fourteen days of the presidential election or five days of a recount of the presidential election. [N.R.S. § 293.407\(2\)](#); [N.R.S § 293.413\(1\)](#). Statement of contests cannot be dismissed for certain procedural deficiencies of form. [N.R.S. § 293.410](#). After the filing of a statement of contest, the court will have a hearing in between five to ten days. [NRS 293.413\(2\)](#). Parties to the contest [may take depositions, submit briefs, and have oral arguments](#). A recount of ballots in the presence of the parties can also be conducted as part of the contest hearing and entered into evidence.

⁷ Bradley Scott Schrager, Esq., [Post-Election Law and Procedure in Nevada: Recounts and Election Contests](#), Nev. Law., September 2012, at 17

[N.R.S § 293.423](#). Investigations may take place, witnesses deposed, and aspects in some complex cases may be referred to a special master.⁸

After the contest hearing, if a court finds that the challenging candidate received the greatest number of legal votes, as part of the judgment that person shall be declared elected. [N.R.S. § 293.417\(1\)](#). The court can ultimately confirm, annul, reserve election results.⁹ Generally, the loser of the case is responsible for the court costs. [N.R.S. § 293.420](#). Nevada law does not explicitly require specialized procedures for losing candidates to appeal the decision to appellate courts.

4. ***Other challenges not explicitly permitted by statute***

(a) Public Observation Laws

Nevada law requires the county clerk to allow members of the general public ability to observe the processing, tabulating, and handling of ballots, as long as the observers do not interfere with the process. However, there is no clear law that gives redress for voters, candidates, or political parties hoping to challenge election procedures for lack of meaningful observation. Because recounts and election contests in Nevada take the form of court cases, it is possible that challengers could use evidence of little or no public observation as indication of wrongdoing. The Trump campaign and the Republicans have been alleging, across the country and in Nevada specifically, that there is no or little ability for the public to observe ballot counting. As of November 5, no court interpreting Nevada law has found cognizable violations of any Nevada statute regarding election observation.

However, these laws still need to be kept in mind. For example, on [November 3 the Nevada Supreme Court actually set dates](#)¹⁰ for briefing on a case involving observation challenges instead of affirming the complete [denial of relief](#) for the Trump campaign by a [lower court](#). If it were not for this [case potentially ending](#) in a [stipulation](#), the parties would go on to argue whether the court should prohibit Clark County Registrar from continuing to “duplicate mail ballots”¹¹ unless observers are granted an opportunity to meaningfully observe the process.

⁸ *Id.*

⁹ *Id.*

¹⁰ [Kraus v. Cegavske \(2020\), Nevada Supreme Court page 2](#).

¹¹ [According to The Nevada Independent](#), ballot duplication is the process where election workers copy a voter’s original ballot onto a new blank ballot if their original ballot has an issue preventing it from being processed by a machine.

OBSERVATION		
N.R.S. Section	Title	Statutory Language
293B.330	Duties of election board upon and after closing of polls; public may observe handling of ballots	(4) The county clerk shall allow members of the general public to observe the handling of the ballots pursuant to subsection 293B.330(1) if those members do not interfere with the handling of the ballots.
293B.335	Delivery of ballots and election materials to receiving center or counting place; disposition of other materials; members of general public allowed to observe delivery	(3) Any member of the general public may observe the delivery of a sealed container to a receiving center or to the central counting place if he or she does not interfere with the delivery of the sealed container.
293B.353	Clerk to allow members of general public to observe counting of ballots at central counting place; members of general public allowed to photograph or otherwise record counting of ballots; request for photograph or recording of counting of ballots.	(1) The county or city clerk shall allow members of the general public to observe the counting of the ballots at the central counting place if those members do not interfere with the counting of the ballots. (2) The county or city clerk may photograph or record or cause to be photographed or recorded on audiotape or any other means of sound or video reproduction the counting of the ballots at the central counting place. (3) A registered voter may submit a written request to the county or city clerk for any photograph or recording of the counting of the ballots prepared pursuant to subsection 2. The county or city clerk shall, upon receipt of the request, provide the photograph or recording to the registered voter at no charge.
293B.354	Clerk to submit plans to secretary of state for accommodation of members of general public who observe delivery, counting, handling and processing of ballots. [Effective through June 30, 2021.]	(1) The county clerk shall, not later than April 15 of each year in which a general election is held, submit to the secretary of state for approval a written plan for the accommodation of members of the general public who observe the delivery, counting, handling and processing of ballots at a polling place, receiving center or central counting place. (2) The city clerk shall, not later than January 1 of each year in which a general city election is held, submit to the secretary of state for approval a written plan for the accommodation of members of the general public who observe the delivery, counting, handling and processing of the ballots at a polling place, receiving center or central counting place.
293B.380	Ballot processing and packaging board: Composition; duties.	The board shall: (a) Allow members of the general public to observe the counting area where the computers are located during the period when ballots are being processed if those members do not interfere with the processing of the ballots.
293.363	Preparation by counting board to count paper ballots	When the polls are closed, the counting board shall prepare to count the ballots voted. The counting procedure must be public and continue without adjournment until completed.

5. *Post-Election Legal Challenges as of November 6, 2020*

(a) *[Stokke v. Cegavske](#) - Challenge to Use of Agilis Signature Verification Software and Lack of Meaningful Observation*

On November 5, the same day the Trump campaign [offered to drop a lawsuit](#) pending in front of the Nevada Supreme Court against Clark County in exchange for expanded poll observation, the Trump campaign [filed a federal lawsuit](#) to stop Agilis automatic signature verification of ballots *and for greater access to ballot counting observers*. The complaint asks that the federal court to: enjoin Clark County from using the Agilis signature verification system; compel Clark County clerks or employees to check all mail ballots before they can be verified as valid; direct Clark County to allow for “meaningful access to the ballot counting process;” and declare that Clark County violated N.R.S § 293.8874,¹² N.R.S. § 293.8881,¹³ N.R.S. § 293.363,¹⁴ the constitutional Elections Clauses, and the constitutional Equal Protection Clause.

Allegations in the complaint include that Clark County has allowed 3,000 ineligible voters to cast ballots, including ballots cast on behalf of deceased voters. Trump campaign attorneys also [sent a letter](#) to Attorney General William Barr identifying the 3,000 voters who moved out of Clark County and were therefore ineligible to vote there. Legal observers have noted that deployed military members and college students are [allowed to cast a ballot while temporarily out of state](#). However, as shown above and [reported by the Nevada Independent](#), Nevada law requires challenges to the legitimacy of registered voters to be filed at least 25 days before the election.

The named Plaintiff, Jill Stokke was allegedly not allowed to vote in person because election officials wrongly believed she had already cast a mail ballot. The complaint claims that Agilis software allowed Stokke’s unsigned ballot to be accepted and counted. The Trump campaign also continues to allege that people have been prohibited from observing the processing of mail ballots, as alleged in other lawsuits. The complaint claims that although Clark County allowed Plaintiff Prudhorne to observe the ballot count, he was not in a place where he could “meaningfully observe.” Nevada law does allow for public observation of ballot counting and processing if the observers do not interfere

¹² See Signature Verification chart above

¹³ 1. For any affected election, the mail ballot central counting board may begin counting the received mail ballots 15 days before the day of the election. The board must complete the count of all mail ballots on or before the ninth day following the election. The counting procedure must be public. 2. If two or more mail ballots are found folded together to present the appearance of a single ballot, they must be laid aside. If a majority of the inspectors are of the opinion that the mail ballots folded together were voted by one person, the mail ballots must be rejected and placed in an envelope, upon which must be written the reason for their rejection. The envelope must be signed by an election board officer and placed in the container or ballot box after the count is completed. Nev. Rev. Stat. Ann. § 293.8881 (West).

¹⁴ See Observation chart above.

with the counting. But it is unclear that the public was in fact prevented from observing the counting process.

(b) [Nevada Republican Central Committee v. Clark County](#) - Nevada Public Records Act Application

On October 27, the Nevada Republican Central Commission [filed a Nevada Public Records Act Application and a petition for declaratory and injunctive relief](#) to compel Clark County to make available election records. The *Washington Post* opined that [this may be a step towards challenging individual votes on the grounds that the signed ballots don't match the signatures on file](#). Some of the record requests [include](#):

- Images of every voter's signature on ballots for the general election as well as images of their signatures on file.
- The names, parties and shifts of members of the counting board.
- Detailed documents regarding policies, training materials and names of employees regarding every aspect of poll watching, ballot processing, and security.
- All records showing how many ballots have been rejected based upon signature authentication, including the number of mail ballots cast in the general election that were not counted for signature defect, along with the name and voter ID of the voter who cast the ballot.

(c) [Kraus v. Cegavske](#) - Challenge to Signature-Matching, "Meaningful Observation," and "Ballot Duplication"

On October 23, the Nevada Republican Party and Trump's re-election campaign [filed a temporary restraining](#) order for Clark County to halt separating or counting ballots until certain procedures were put in place. They [argued](#) that Clark County has a faulty signature verification process for mail-in ballots and that observers did not have ample opportunities to view or challenge the work of election workers. They specifically asked for "meaningful observation."¹⁵ Some of the allegations include: election officials failed to follow counting procedures (["but no procedure was identified"](#)); observers were unable to see some tables and see inside some rooms from the observation

¹⁵ Specifically, they made challenges pursuant to N.R.S. 293B.354(1) and N.R.S. § 293B.353(1) (see Observation Chart above)

area; observers were unable to see all election staff monitors and the names on those monitors; a claim that some signatures did not match the record (but the observer “[admitted she had no signature comparison training](#)”). On October 29, [the lower court denied the plaintiff's claim](#) for lack of standing, failing to prove Clark County registrar of voters Gloria did not meet his statutory duty under N.R.S. 293B.353(1), and because there was no proof that there had been an equal protection violation.

On November 3, the Nevada Supreme Court denied the request for an immediate injunction for the Trump campaign, but scheduled a briefing on the issues in the days following Election Day. The Nevada Supreme Court noted that it is “unclear from the motion how appellants are being prevented from observing the process or that the use of the Agilis machine is prohibited under A.B. 4.” On November 5, hours before the Trump campaign’s brief was due, Trump attorneys filed an [emergency motion for an extension of the briefing schedule pending a settlement](#). The Trump campaign [agreed to drop the lawsuit](#) in exchange for expanded poll observation. Specifically, the [stipulation asks](#) for the Registrar to “allow the public to have additional access to the ballot duplication in the Greystone Facility such that all tables where the duplication process is occurring shall be visible to the public.” As of November 5, the Democratic Party “[acknowledged receipt](#)” and Nevada’s Democratic Party filed to intervene.

North Carolina

A. Recount Procedures

North Carolina has two types of vote recounts: discretionary and mandatory. Pursuant to [N.C. Gen. Stat. §163-182.7](#), a county board of elections or the State Board of Elections has discretion to order a recount “when necessary to complete its canvass,” so long as the state board hasn’t already denied a recount to the petitioner of the recount. A losing candidate on a statewide ballot has the right to demand a mandatory recount if the margin of votes between the losing and the prevailing candidate is less than 0.5% of the votes cast or fewer than 10,000 votes. At the time of this writing, the margin in the presidential race in North Carolina is approximately [73,300 votes](#), or 1.3%.

If the losing candidate wants to exercise the right to a recount where the margin is under 0.5% or 10,000 votes, they must submit their demand in writing to the state board by “noon on the second business day after the county canvass.” If the executive director later revises the initial results and concludes that the winning margin qualifies the losing candidate to demand a recount, then the executive director is required to notify the losing candidate immediately. After being notified, the losing candidate has 48 hours to exercise the right to a recount.

Under [N.C. Gen. Stat. §163-182.7A](#), candidates also have the right to demand an *additional* recount. The losing candidate following the recount can only demand an additional recount if the initial recount did not recount the ballots manually. The losing candidate must demand the additional recount within 24 hours of completion of the initial recount. The recount initially only occurs in a three-percent sample of precincts, and the ballots in these precincts must be recounted manually. If the results of that recount differ from the initial recount within those precincts “to the extent that extrapolating the amount of the change to the entire jurisdiction . . . would result in the reversing of the results,” then the State Board of Elections must order a manual recount of the entire state. There is no cost to the candidate for that statewide recount.

[N.C. Gen. Stat. §163-182.7](#) requires the State Board of Elections to develop rules for recounts regarding “the goals of bipartisan participation” and “opportunity for public observation.” However, the rules pertaining to recounts in the North Carolina Administrative Code do not currently explicitly contain any mention of observers, partisan ballot challengers, or requirements that the recount be conducted publicly. Nevertheless, a North Carolina statewide memo planning for a

recount in the 2016 election suggests that the state generally permits free access for all interested parties to observe the recount. Indeed, the memo explicitly [stated](#): “Any person may attend the recount. This includes the candidates, their representatives or legal counsel, media representatives, and any other interested persons. These persons may observe the counting process, but may not observe individual ballots.”

B. Challenging the Vote

1. *Invalidating Individual Ballots for Procedural Defects*

While North Carolina does not have a signature matching verification process, county board staff [do inspect](#) envelopes to ensure they are signed by the voter and the witness and that the witness information is printed. The North Carolina State Board of Elections (NCSBE) requires the county board staff to confirm that the voter has signed the Voter Certificate in the correct place and that the witness or assistant has provided their name and address, signed on the correct line, sealed the ballot envelope, and that the voter has not indicated on their ballot that the voter is requesting a replacement ballot.

The NCSBE gives specific instructions guiding county board staff on what sort of missing information does not require a cure. In response to litigation that had recently concluded in the state, the Board issued an [October 17 memo](#) that modified the instructions for how officials should handle missing ballot information. Indeed, the Board had originally issued guidance in September to make both witness and signature defects broadly curable via affidavit, but the Trump campaign and North Carolina General Assembly leaders [objected](#) to this new guidance. After a dizzying array of interrelated lawsuits and, after early voting had already started and absentee ballots were already being submitted, a federal court in *Moore v. Circosta* [issued](#) an injunction on Oct. 14 that split the baby. It requires state officials to reject ballots that lack a witness signature but provide a standard notice and cure process for other ballot errors, such as an incomplete witness address, a witness or voter signature on the wrong line, or a missing voter signature. The decision was appealed (primarily on other issues in the case) but [left in place](#) by an en banc ruling of the U.S. Court of Appeals for the Fourth Circuit, and on Oct. 28, by a [decision](#) of the U.S. Supreme Court.

County boards are involved in the review of ballot deficiencies when they are first noticed, including when there is no ballot or more than one ballot in the official return envelope. If, by

majority vote in a board meeting, the county board rejects a return envelope due to a deficiency, the voter is notified of the deficiency according to the notification process.

2. *Challenging Individual Voter Qualifications*

North Carolina state statutes govern the challenge process on the day of the election.¹⁶ Under [N.C. Gen. Stat. §163-87](#), North Carolina permits any individual voter to challenge the validity of any other voter’s ballot or registration at the time the challenged voter offers to vote, provided that the voter who raises the challenge and the challenged voter are both registered to vote in the same precinct. For instance, a voter can assert that another voter is not a citizen of North Carolina, is not a citizen of the United States, is not who they represent themselves to be, or has already voted in the particular election. Under [N.C. Gen. Stat. §163-88](#), the chief judge and judges of the election in the precinct of the challenged registrant must hear and decide the challenge before the polls are closed. Challenged registrants may only vote if they make an oath that they are verified to vote in the precinct. A precinct election official must also conduct a hearing for the challenged registrant to prove their identity. If the precinct official conducting the hearing is not sufficiently “satisfied that the challenged registrant is a legal voter,” the challenge will be sustained, and the voter will not be permitted to vote. Otherwise, if the challenge is overturned and the voter is permitted to vote, one of the judges of election must mark the registrant as “sworn” on the registration record and on the pollbook.

Under [N.C. Gen. Stat. §163-89](#), North Carolina also permits any individual voter to challenge the validity of any other voter’s *absentee* ballot, provided that the two voters are registered to vote in the same precinct. The challenge must be made no earlier than noon and no later than 5:00 P.M on the day of the election. Each challenge must be made in writing and, if available, on a form prescribed by the State Board of Elections. The challenge must be addressed and filed to the county board of elections and must specify why the absentee voter is not legally entitled to vote in the particular primary or election. If the challenge is sustained, the county board of elections must not count the absentee ballot but must still preserve it for at least six months after the canvass day. If the challenge is overruled, the county board of elections must count the ballot and update the appropriate abstracts of returns.

¹⁶ North Carolina has separate statutes that govern the procedures for challenging voter registrations before the election and for challenging voter registrations on the day of the election. The former are specified under N.C. Gen. Stat. [§§163-84, 163-85](#). These statutes require challenges to be filed at least 25 days before the election. Each county must keep its voter registration records open for inspection by any registered voter of the State during the normal business hours of the county board of elections. During those times, any registered voter in a county can challenge the right of any other person in that county to register, remain registered, or vote shall be subject to objection and challenge.

N.C. Gen. Stat §163-90.1 specifies the burden of proof for challengers. In particular, voters cannot make challenges indiscriminately. Indeed, challengers must know, suspect or reasonably believe that a person is not qualified and entitled to vote. Furthermore, the challenger must produce “affirmative proof” that the challenged voter is not qualified to vote. In the absence of such proof, the challenged voter is presumptively legally registered.

3. *Challenging Election Results*

Under [N.C. Gen. Stat. §163-182.9](#), any registered voter can file an “election protest” with a county board of elections. The protest must state the remedy the protester is seeking and whether the dispute is over the manner in which votes were counted and tabulated or concerns some other irregularity. Any protest over the manner in which votes were counted and tabulated must be filed before the beginning of the county board of election's canvass meeting, unless the protest states good cause for delay in filing, in which case the protester may file the protest until 5:00 P.M. on the second business day after the county board of elections has completed its canvass and declared the results. If the protest concerns any other irregularity unrelated to vote counting or tabulation, the protest must be filed before 5:00 P.M. on the second business day after the county board of elections has completed its canvass and declared the results

Under [N.C. Gen. Stat. §163-182.10](#), when the protest is filed, the county board of elections must determine if the protest substantially complies with N.C. Gen. Stat. §163-182.9 (described 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, the board must dismiss the protest. If the board permits the protest to proceed, it must notify any affected parties, including other candidates or county officials alleged of wrongdoing. The board must then conduct a hearing to examine the evidence that parties submit, including affidavits and witnesses. If the board does not find “substantial evidence” of irregularity or misconduct, it must dismiss the protest. If, however, the board does find substantial evidence of irregularity or misconduct that could affect the outcome of the election, the board can order any of the following remedies:

- (1) That the vote total as stated in the precinct return or result of the canvass be corrected and new results declared.
- (2) That votes be recounted.

- (3) That the protest and the county board's decision be sent to the state board for action by it.
- (4) Any other action within the authority of the county board.

[N.C. Gen. Stat. §163-182.11](#) permits parties to appeal a county board of election's decision to the State Board of Elections, but parties must do so within five days after the day the original decision was filed by the county board office. The State Board of Elections can then resolve the protest on the existing record, request additional fact finding, conduct its own hearing, or remand the protest back to the county board of elections for further proceedings. The State Board of Elections can order a [new election](#) if four of its members agree that any of the following conditions are met:

- (1) Ineligible voters sufficient in number to change the outcome of the election were allowed to vote in the election, and it is not possible from examination of the official ballots to determine how those ineligible voters voted and to correct the totals.
- (2) Eligible voters sufficient in number to change the outcome of the election were improperly prevented from voting.
- (3) Other irregularities affected a sufficient number of votes to change the outcome of the election.
- (4) Irregularities or improprieties occurred to such an extent that they taint the results of the entire election and cast doubt on its fairness.

When the State Board of Elections renders a final decision, including a decision to order a new election, the Board must serve the parties with a copy of the final decision. Parties [may appeal](#) the final decision to the Superior Court of Wake County within 10 days of service.

Pennsylvania

A. Recount Procedures

Under Pennsylvania [law](#), if there is a discrepancy or “palpable error” (such as when the total vote count exceeds the number of registered voters), the county board is authorized to recount the ballots. In addition, a recount must occur under a number of circumstances, including if “a discrepancy is found in the comparison of the sealed and unsealed general returns.”

[Pennsylvania law](#) also provides for a mandatory close vote margin recount when candidates or ballot questions “appearing on the ballot in every election district in [the] Commonwealth” have a margin of [0.5% or less](#) of all votes cast. At the time of this writing, the margin in the presidential contest in Pennsylvania is over [58,500 votes](#), or 0.86%, exceeding the statutory cap. Close vote margin recounts may also occur “if three qualified [voters] of the election district shall file . . . a petition duly verified by them, alleging that upon information which they consider reliable they believe that fraud or error, although not manifest on the general return of votes made therefrom, was committed in the computation of the votes cast . . . It shall not be necessary for the petitioners to specify in their petition the particular act of fraud or error which they believe to have been committed, nor to offer evidence to substantiate the allegations of their petition.”

Candidates themselves cannot directly request a recount in Pennsylvania, but they [may appeal](#) the “order or decision of any county board regarding the computation or canvassing of the returns of any primary or election, or regarding any recount or recanvass thereof.” This process can result in a recount.

Although Pennsylvania law does not require recounts to be conducted in public, various types of recounts allow each candidate (or an attorney from the candidate) to be present at the recount or recanvass. Moreover, “[a]ny candidate, attorney or watcher present at any recount of ballots or recanvass of voting machines [shall be entitled to examine the ballots](#), or the voting machine and to raise any objections regarding the same.”

When a recount is ordered, and “the election district uses an electronic voting system utilizing paper ballots,” Pennsylvania law applies a particular statutory provision called section 1701. 25 Pa. Stat. Ann. § 3031.18 (West). As of June 2020, all 67 of the state’s counties use voting systems with

[voter-verifiable paper records](#), so section 1701 is likely to apply. Under that section, before any ballot boxes are opened, the court must first “direct that notice of time and place of proposed recount be given, either personally or by registered mail, to each candidate for the office or offices which are to be recounted by the order of the court.” 25 Pa. Stat. Ann. § 3261 (West). In addition, each candidate (or a representative) may be present during the recount.

Ballot boxes “may be opened . . . at any time within four months” after Election Day, and during this process the Commonwealth Court shall “open the ballot box of each election district in which ballots were used” and “cause the entire vote of the election district to be correctly counted by persons designated by the court.” Typically, these recounts are governed by 25 Pa. Stat. Ann. § 3154 (West), which has specific rules for counties using “electronic voting system utilizing paper ballots” (which should apply to all counties in 2020). During a recount, each county board recounts “all ballots using manual, mechanical or electronic devices of a different type used for the specific election,” but all ballots containing “overvotes” must be counted manually. The results of the recount must then be submitted to the secretary of state by noon the day after the recount (or recanvass) is complete, and the secretary is required to issue a press release and publish the results of the recount on the internet.

Typically the costs of the recount are paid by the requester. However, if the recount finds any “fraud or substantial error,” then the court must certify such fact to a notary (who will then reimburse the requester).

B. Challenging the Vote

1. *Challenging Individual Voter Qualifications*

According to the Department of State [guidance](#) issued in October, Pennsylvania law allows each candidate to appoint up to two poll watchers for each election district, and the state also allows poll watchers to be present during pre-canvassing and canvassing of the vote. Poll watchers may keep a list of voters and “may make good faith challenges to any voter’s identity, continued residence in the election district, or qualifications as an eligible voter.” Any challenge must be made directly to the Judge of Elections, who must then determine if the challenge is based on evidence and decide whether the challenged voter is a qualified voter.

Challenges, however, may not be based on race, appearance, national origin, surname, language, religion, or other characteristics not relevant to someone’s qualifications to vote. According to the October guidance, “[d]iscriminatory challenges that interfere with the free exercise of the elective franchise are unlawful under Pennsylvania law.” The Judge of Electors is required to reject routine or frivolous challenges. As discussed above, challenges may also [never](#) be based upon a signature analysis.

Absentee and mail-in ballot applications may only be challenged prior to 5:00 pm on the Friday prior to the election, and they can not be later challenged by a candidate’s authorized representatives during the pre-canvas or canvass process. Importantly, under Pennsylvania [law](#) and [state guidance](#), challenges to absentee ballots must be on the grounds that the would-be voter is not a “qualified” voter. More specifically, acceptable challenge claims will likely be limited to a voter’s identity (*i.e.*, that they are not who they claim to be) or their residence (*i.e.*, that they live outside the state or relevant jurisdiction). It is unclear from the 2020 guidance if other challenges (such as challenging a would-be voter’s citizenship) are acceptable under current law, especially because any validly registered Pennsylvania voter has already shown their citizenship status.

Wisconsin

A. Recount Procedures

1. *Petitioning for a Recount*

The Trump campaign has [announced](#) that it will request a recount in Wisconsin, where Biden has been [projected](#) as the winner by [just over 20,500 votes](#), or 0.62% of total votes cast. For elections with more than 4,000 votes cast for the office that the candidate seeks, a candidate who trails the leading candidate by 1% or less of the total votes cast [can petition](#) for a recount in Wisconsin.¹⁷ The petitioning candidate can file a petition with the proper clerk (this would be the Wisconsin Elections Commission for any federal office) after the canvass has been completed and the results have been certified at the county level. For an election for President of the United States, the recount petition deadline is 5 p.m. on the first business day after the Wisconsin Elections Commission (“WEC”) receives the last county board of canvassers’ certified results (the [deadline](#) for which is November 17). The petitioner is required to pay a fee unless the candidate trails by .25% or less following the canvass of all provisional and absentee ballots.¹⁸

In the recount petition, the candidate [must state the basis](#) for requesting the recount. This can consist of a general statement that the petitioner believes that a mistake or fraud was committed in a specified ward or municipality in the counting and return of the votes cast for the office; or more specific grounds, such as a particular defect, irregularity, or illegality in the conduct of the election. The petitioner must state if this information is based on personal knowledge of the petitioner or if the petitioner believes the information to be true based on information received from other sources (Wis. Stat. § [9.01\(1\)\(a\)2.b](#)).

When a valid petition for a recount is filed, no final certification of election may be issued by the Wisconsin Elections Commission until the recount has been completed and the time allowed for filing an appeal has passed, or, if appealed, until the appeal is decided (Wis. Stat. § [7.53\(4\)](#)).

¹⁷ There are no automatic recount procedures in Wisconsin.

¹⁸ Green Party candidate Jill Stein [paid](#) nearly \$3.5 million to initiate a full state recount of the presidential vote four years ago.

2. *Recount Process*

Whenever the commission receives a valid petition and the required payment, if any, the commission must promptly order the county boards of canvassers to commence the recount. If necessary to conduct the recount, the boards may [issue subpoenas](#) to compel witnesses or documents for the recount.

Under [Wis. Stat. §9.01](#), in a recount, canvassers must review all absentee ballot certificate envelopes, including those previously rejected. Canvassers examine the rejected absentee ballot envelopes and make their own determination for each; improperly rejected ballots are marked and placed into the pool of ballots to be counted. Canvassers also examine all absentee ballot certificate envelopes for any defects not identified on election night. An absentee ballot envelope is [defective](#) only if it is not witnessed (with a witness signature), or if it is not signed by the voter, or if the certificate accompanying an absentee ballot that the voter received by facsimile transmission or electronic mail is missing. If a previously unidentified defect is found, the envelope is set aside.

The last step prior to beginning the recount is to [examine the provisional ballots](#) to determine whether they were correctly processed. Canvassers must determine if all ballots for voters providing the required information have been included in the original result and report any discrepancies.

Unless a court orders otherwise, the board of canvassers [may decide](#) to either hand-count or use voting equipment to tabulate the ballots. The board of canvassers may also choose to hand-count certain wards, while using voting equipment to tabulate other wards. For wards that hand count ballots, canvassers are [directed](#) to sort ballots by candidate, then create stacks by a fixed number, and finally tally the stacks to determine the total vote. If an optical scan tabulator is used, canvassers are first directed to examine the equipment for tampering and ensure it is programmed directly. They then compare duplicate ballots that were made by election officials from original ballots that could not be scanned by the tabulators due to defects, to ensure consistency. Canvassers then review each ballot, scan it, and ensure it was recorded correctly by the tabulator. Finally, the tabulators are placed in post-election mode and generate results. The board of canvassers adds any votes counted separately by hand using new tally sheets and records the total results as part of the revised canvass statement.

Wards that use Direct Record Electronic voting equipment in conjunction with paper ballots or optical scan ballots to enable individuals with disabilities to vote are [provided](#) additional instructions after completing the steps above. DRE equipment records votes two separate ways:

electronically and on a paper tape that the voter can view to verify that the equipment is recording their votes correctly before casting their ballot. In a recount, canvassers are required to use the paper record. Canvassers are instructed to cut the paper record to separate the individual voter records, further cut the paper tape into the individual ballots, and then randomize these ballots. Canvassers carefully count each individual ballot record as recorded on the tape. Two individuals record the count on two tally sheets. After all of the counts have been recorded, the two tally sheets should be compared against each other to ensure an accurate count is determined. The recount vote totals are then compared against the original results as generated by the DRE and any discrepancies shall be recorded in the minutes.

[After concluding the recount](#) for a particular reporting unit, the board of canvassers gathers and accounts for all original election materials. All election materials should be accounted for before proceeding to the next reporting unit to prevent the accidental mixing of materials from different reporting units.

If any corrections were made to the results, the board of canvassers shall [prepare a statement](#) of revised election results using the canvass reporting form. Returns from a federal election recount must be [transmitted](#) to the WEC as soon as possible, but in no case later than 13 days from the date of the order of the commission directing the recount.

3. *Observing the Recount*

Any person [may attend](#) the recount. This includes the candidates, their representatives or legal counsel, media representatives, and any other interested persons. If there are multiple representatives from a single campaign, a single representative shall be identified as the designated primary representative to the board of canvassers. Secondary representatives may ask clarifying questions of recount staff and request that ballots be set aside for further review by the board of canvassers, but any challenges or objections for the record must be made by the designated primary representative. All persons who are not under the supervision of the board of canvassers are considered observers and are subject to the observer rules established by the WEC. If an observer engages in disruptive behavior that in the opinion of the board of canvassers threatens the orderly conduct of the recount, the board of canvassers must issue a warning and if the observer does not cease the offending conduct, order the observer's removal.

The official Wisconsin Election Recount Procedures Manual can be found [here](#).

B. Challenging Votes

1. *Invalidating Individual Ballots for Procedural Defects*

If a municipal clerk receives an absentee ballot that fails to include all of the information required for the certificate (e.g., voter address, voter signature, and witness signature) or a ballot is submitted with no certificate, the clerk may return the ballot to the voter with a new envelope “whenever time permits the [voter] to correct the defect and return the ballot.” (Wis. Stat. § [6.87\(9\)](#)). If the issue is not resolved, the ballot will not be counted.

Whenever any individual who votes by absentee ballot is required to provide proof of residence but fails to do so, the inspectors must treat the ballot as a provisional ballot. If the voter appears at the polling place where the ballot is cast before the closing hour and provides the proof of identification, the inspectors must remove the voter’s ballot from the separate carrier envelope, note on the poll list that the voter’s provisional ballot is withdrawn, and deposit the voter’s ballot in the ballot box. If the issue is not resolved, the ballot will not be counted. (Wis. Stat. § [6.88\(3\)\(a\)](#))

2. *Challenging Individual Voter Qualifications*

An election inspector may challenge for cause any person offering to vote whom the inspector knows or suspects is not a qualified voter or who does not adhere to any voting requirement. (Wis. Stat. § [6.92\(1\)](#)). An election inspector also must challenge any absentee ballot cast by a voter who is ineligible to vote because of a felony conviction. (Wis. Stat. § [6.88\(3\)\(c\)](#)).

Any voter may also challenge any person offering to vote whom the challenger knows or suspects is not qualified to vote in that precinct. As a threshold matter, one of the inspectors must administer the required oath or affirmation to the challenging voter, and one of the inspectors *may* administer the oath or affirmation to the challenged voter. The inspector must then ask questions to test the qualifications of the challenged voter (such as their age, and whether they are a resident of the ward). (Wis. Stat. § [6.925](#))

If the challenged voter refuses to fully answer any relevant questions put to them by the inspector under s. 6.92, the inspectors must reject the challenged voter's vote. If the challenge is not withdrawn after the challenged voter has answered the questions, one of the inspectors *must* then administer to the challenged voter the required oath or affirmation (affirming their eligibility to vote). If the person challenged refuses to take the oath or affirmation, the person's vote must be rejected. If the person challenged answers fully all relevant questions put to the voter by the inspector under s. 6.92, takes the oath or affirmation, and fulfills the applicable registration requirements, and if the answers to the questions given by the person indicate that the person meets the voting qualification requirements, the person's vote must be received. (Wis. Stat. § [6.94](#)).

Whenever any individual who is required to provide proof of residence under s. 6.34 in order to vote appears to vote at a polling place and cannot provide the required proof of residence, the inspectors must offer the opportunity for the individual to vote provisionally. If this voter later appears at the polling place where the ballot is cast before the closing hour and provides the proof of identification, the inspectors must remove the voter's ballot from the separate carrier envelope, note on the poll list that the voter's provisional ballot is withdrawn, and deposit the voter's ballot in the ballot box. (Wis. Stat. § [6.97\(3\)\(a\)](#)). If the ballot is not cured, it will not be counted.

Conclusion

Recounting and challenging the results of federal elections is a complex process that varies state by state. The expansion of vote-by-mail during the 2020 election cycle among states with little prior experience counting large numbers of absentee ballots may have caused a significant number of ballots to be invalidated on procedural defects. Moreover, the closeness of an election, especially in certain battleground states, can result in recounts and challenges that prolong uncertainty in a state's election results. Indeed, President Trump's campaign has already begun to challenge the validity of election procedures and results in Pennsylvania and Nevada. Any recounts that occur after the election may also take a significant amount of time in states that require hand-counting and that permit the losing candidate to appeal the results of the recount to a higher board or even to a court. While Election Day may have passed, election contests and disputes may continue in the days and weeks ahead.