

electionline.org

Briefing



Recounts: From Punch Cards to Paper Trails

While our country has always had divisions, it has rarely been as closely divided as it is now between liberals and conservatives, Republicans and Democrats. The number of states termed “battlegrounds” seemingly increases with every presidential contest.

The difference between winning and losing has become a matter of just a few percentage points in races across the country.

Electoral photo finishes have become almost commonplace. From Florida’s 2000 election to Washington’s gubernatorial battle, finding a winner in a race that does not readily reveal one is an ongoing challenge.

And it’s a challenge that is becoming more complex with the implementation of modern voting systems, recently-enacted national requirements including provisional ballots and a growing number of states using electronic voting machines with paper backup systems that allow for two different methods of counting the same ballot.

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In this 12th election reform Briefing, *electionline.org* examines the rules in each state governing recounts, with a particular focus on the impact of voter-verifiable paper audit trails (VVPATs), absentee and provisional ballots. As with most election issues, federalism has produced a variety of rules governing the same process.

Nevada's paper audit trails, while offered to put voters' minds at ease as they cast electronic ballots, are not used in recounts while in 15 other states, VVPATs will guide the process.

Less than half the states allow voters to request recounts after elections, while 16 states have in their law rules that mandate statewide recounts in races where the margin of victory fails to exceed a certain threshold.

A survey of state election officials, conducted during August and September 2005, examined what factors trigger vote recounts as well as how they are conducted and funded.

Additionally, source documents, including state election codes, were used to determine how recounts are held in each state.

As the 2000 election so vividly demonstrated, nearly any election system, no matter how smoothly it has appeared to work in the past, reveals its shortcomings in a close race. A deeply flawed election system will fare much worse.

In many cases, problems in one state inspire legislation in another. Hanging chad in Broward County, Florida, led to vote-counting standards well beyond the Sunshine State.

Washington's 2004 gubernatorial election forced the state to reconsider the handling of provisional ballots. Nevada's experience requiring a mandatory 1 percent audit of VVPATs used with electronic voting machines could alter vote-counting procedures in the 24 other states with VVPAT requirements.

New systems and rules require new approaches, and often, controversy ensues.

In 2006, officials around the country will face their first votes for federal offices with new machines and requirements under the Help America Vote Act. State law and rules for recounts will almost certainly be tested somewhere, and the pressure of a high-stakes contest, partisan passions and a divided electorate will almost certainly test the administration of elections once again.

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Executive Summary

High-profile recounts have not only become more commonplace, they have become more complex.

Growing numbers of absentee and early ballots, new procedures including provisional balloting and new election equipment – touch-screen machines and, in some cases, voter-verifiable paper audit trails (VVPATs) – will make recounting ballots far more complicated than the closely-watched hand counts of just a few years ago.

While the Bush-Gore drama of 2000 and the equally compelling (at least locally) Washington gubernatorial election of 2004 made headlines, recounts are far more common in local races. Eight states reported they recount races regularly, particularly in New Hampshire, which has more elected offices per capita than any other state. The state conducted 18 recounts in 2004; 13 in 2002; and 32 in 2000. Wisconsin officials estimated there are between 50 and 100 local recounts following spring elections every year.

electionline.org's survey of 51 state election directors (including the District of Columbia) detailed the procedures used around the country to recount and audit ballots as well as the factors that trigger recounts after elections.

RECOUNTS AND VVPATS

The use of VVPATs or paper ballots is required in 25 states. VVPATs produce a paper record of each vote, retained by election officials and not voters, to allow voters to see if the printed version of their ballot matches the electronic vote they have placed. In essence, a VVPAT attachment to an electronic machine produces two versions of the same vote – one digital, one tangible.

While VVPATs are clearly becoming more popular nationwide, states have differing procedures for their use. Critics, who include many election officials, have called VVPAT recounts “onerous and time-consuming,” as well as inaccessible to some people with disabilities, while paper trail advocates insist that the backup system would be rendered “meaningless” if electronic records, which are not verified by voters, are used in recounts.

- 15 states require that the paper record (VVPAT) be counted as the official record of the vote. Those are: Alaska, Arkansas, California, Colorado, Connecticut, Minnesota, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oregon, Utah, Washington and West Virginia.
- 2 VVPAT states – Nevada and Idaho require a recount of electronic ballots only.

- 2 states – Missouri and Maine, have rules under development as of press time.

The remaining states have rules about paper ballots but do not use DREs or in the case of Hawaii do not have recount procedures in place.

RECOUNT TRIGGERS

The *electionline.org* survey found four general categories to describe when recounts take place.

Candidate-initiated recounts: In 39 states, losing candidates may request recounts. Of those, 25 allow a request regardless of the outcome of the election while in 14, losing candidates can apply only if the difference is within a certain margin.

Voter-initiated recounts: 18 states allow voters to request recounts. In 11 of those, voters may request recounts in races involving candidates or ballot questions. Seven other states only allow recounts for ballot questions.

Close election: 16 states conduct recounts automatically if the margin of victory between candidates is within a certain threshold – usually not exceeding 1 percent.

Automatic recounts: Four states – California, Kentucky, New York and West Virginia – recount a small percentage of ballots from randomly-chosen precincts.

No recount provisions: Hawaii and Mississippi have no provisions in state law for recounts, leaving the process to the legal system.

MANUAL AUDITS

Audits, as opposed to recounts, are used in 12 states requiring VVPATs to test the accuracy of electronic voting machines. Laws concerning the use of VVPATs are still under debate in many states. However, trends are beginning to emerge in which between 1 and 10 percent of all precinct voting machines will be audited around the country. Nevada requires hand counts of VVPATs in 2 percent of the machines used in less populous counties and in three percent of more populous counties.

The state conducted the audits of VVPATs following the November 2004 general election, counting 64,000 paper representations of electronic ballots. While the state found a 100 percent matchup between paper and electronic votes, some officials decried the process in which teams of four took four hours to complete an audit of one 318-foot spool of VVPATs.

Key Findings

Since the presidential election of 2000, ballot recounts have more often than not been associated with some sort of court proceeding.

Recounts at the local level, however, are much more common than the highly-publicized cases and often have no court involvement whatsoever. Courts can and do become involved, but often the recount procedures established in many states can settle the issue.

With new machinery at polling places and recently-adopted federal rules regarding the counting of provisional ballots, recounts have become increasingly complex. This involves absentee and in-person ballots, late-arriving provisional ballots which have been verified for voter eligibility after the election and, in many states, two ballot styles even from the same polling place.

The survey undertaken by *electionline.org* examined recount procedures in place in each state, with special attention to the role of new technology or procedures in the process.

Who can request recounts

Recounts are undertaken in states for several reasons – including the expected, a close race. There are four general categories that can describe when an election will be recounted.¹

1. Candidate-initiated recounts:

Thirty-nine states allow candidates to request recounts. Of these, 25 allow candidates to make recount requests regardless of the margin of victory. In the other 14 states, losing candidates may apply for a recount only if the difference between their

vote total and the vote total of the candidate or candidates who have more votes is within a certain margin. For example, in Vermont, a recount may be requested by “any losing candidate where the difference between the winner and the next candidate is less than 5 percent of the total votes cast for all candidates for that office.”² (See chart on page 11 for state-specific recount rules at-a-glance.)

2. Voter-initiated recounts:

Eighteen states allow voters to request recounts. In 11 of these states, voters may request a recount for an election involving candidates or a question, measure or proposition on the ballot. In the seven other states, voters may only request recounts for propositions, measures or questions on the ballot. In Oregon, for example, “an elector may file a demand for recount in specified precincts in which votes were cast on any measure that appeared on the ballot.”³

3. Close election: In 16 states, a recount is triggered automatically when there is a small enough of a margin (the exact margin varies) between the vote totals of two or more candidates. The margin in these states varies, but almost never exceeds 1 percent of the ballots cast for the office.

In Washington, the difference between Republican candidate for governor Dino Rossi and Democrat (and eventual winner) Christine Gregoire in the initial count was

261 ballots in Rossi’s favor. State law dictates “an automatic recount is triggered if the returns indicate the difference between the apparently nominated or elected candidate and the next closest candidate is less than 2,000 votes and also less than one-half of 1 percent of the total number of votes cast for both candidates.”⁴ After the initial machine recount narrowed the margin, Democrats filed for a statewide manual recount, leading to Gregoire’s eventual election.

4. Automatic recounts: Four states – California, Kentucky, New York and West Virginia – automatically recount a small percentage of ballots in every election for audit and accuracy purposes. For example, California manually recounts 1 percent of ballots from randomly-chosen precincts in every election.⁵

Recount procedures in several states do not fit into any of the above four categories. In Hawaii and Mississippi, there are no provisions for recounts. Hawaii state law allows candidates, parties or voters to challenge any election in the state supreme court.⁶ Mississippi allows for election results to be contested in court as well.⁷ In Louisiana, candidates may request the recount of absentee ballots during an election contest. In Tennessee, a court can order a recount if there is a tie vote, if there is an indication of fraud or a voting machine malfunction, or as a part of a contested election.

Eleven states have provisions that allow for both candidate-initiated and voter-initiated recounts.

Additionally, five states – Michigan, Ohio, Oregon, Washington and Wyoming – allow candidate-initiated and voter-initiated recounts as well as recounting votes in close elections.

Time limits

With set deadlines for elected officials to take office, states generally have laws in place concerning how quickly recount requests must be made.

In 24 states, recount requests must be made in a certain time frame relative to the day the canvass of the vote has been completed or the results have been made official.

Fifteen states require the request to be made within a set number of days after Election Day. The remaining states either do not have recounts or specific information about time tables could not be found.

Costs and financial responsibility

In 32 states, candidates or voters who request a recount must pay a deposit to initiate the recount. If the recount results in a change in the election result in the requesting candidate or voters' favor, they are refunded their deposit and any other associated costs.

In Ohio, Libertarian and Green Party presidential candidates raised money for a statewide recount of the November 2004 election. The candidates had to come up with \$10 per precinct, a total of \$113,600. Some in the state complained that the fee was too low to adequately cover the cost of the recount and that taxpay-

ers ultimately shouldered the financial burden.⁸

In New Mexico, the same Libertarian and Green Party candidates claimed the fee required by the state with a recount request was prohibitively high. The candidates submitted approximately \$115,000 – an amount they said was consistent with state law. The state canvassing board, however, countered that the candidates had to supply the state with nearly \$1.4 million, an amount they said would be necessary to cover the full cost of the recount. The recount never took place, and the two candidates subsequently filed a lawsuit that, at press time, awaited action in the state supreme court.⁹

Frequency

Statewide recounts are generally rare. However, several states reported that recounts are a normal occurrence at the local level. In responding to *electionline.org* eight states described how recounts at the local level happen on a fairly regular basis.

In New Hampshire – a state with more elected officials per capita than any other¹⁰ – there were 18 recounts involving 96 candidates in 1996; in 2000 there were 32 recounts involving 137 candidates; in 2002 there were 13 recounts involving 83 candidates and in 2004 there were 18 recounts involving 112 candidates, including in the primary where three races were decided by two votes or less after recounts.¹¹

“Due to New Hampshire’s laws and traditions, the state has more centrally conducted recounts than virtually any other state. It is not

unusual to recount one quarter of the ballots in the state in one election year,” said Thomas Manning, then-assistant secretary of state, responding to an earlier *electionline.org* survey.¹²

In Wisconsin, the state estimates that between 50 and 100 recounts occur following spring elections each year at the local level.¹³

Voter-verifiable paper audit trails

Twenty-five states have laws or regulations that mandate either a voter-verifiable paper audit trail or ballots must be made of paper (as opposed to electronic). In states that specifically use electronic voting machines with a voter-verifiable paper audit trail, (VVPAT) most but not all will use the paper ballot in a recount. Fifteen states have specified in their VVPAT laws that if there is a recount, the paper ballot, not the computer record, shall be used. In two states, Idaho and Nevada, the electronic record, not the paper ballot, will be used in a recount. Two states – Maine and Missouri – reported regulations are still in development. The remaining states have rules about paper ballots but do not use DREs or in the case of Hawaii do not have recount procedures in place.

In California, one of the first states to mandate the use of VVPATs, lawmakers, activists and election officials clashed over how paper should be used in recounts and manual audits of the vote.

A bill signed by Gov. Arnold Schwarzenegger in mid-October,

S.B. 370, mandated that VVPATs be integrated into vote counts – their use required in recounts and in the state’s required 1 percent manual tally of ballots. Schwarzenegger said that while he shared the concerns of people with disabilities that paper VVPATs could not confirm ballot choices for sight-impaired voters, he nonetheless noted that the measure was necessary to ensure confidence in the vote.

“I am signing this measure because I believe that using the voter verified paper audit trails to audit the accuracy of overall election results will provide confidence in the accuracy and integrity of votes cast on these machines to California voters,” Schwarzenegger wrote in a bill-signing message.



Provisional Ballots Complicated Washington’s Recount

The November 2004 Washington gubernatorial election – riddled with poll-worker errors and accusations of illegal votes – triggered lawsuits, partisan ill will and, eventually, a wave of reform in the state legislature.

Numerous modifications to the state election code included changes in the way recounts will be conducted in the future. The secretary of state now has the authority to require that recount results from all 39 counties be submitted on the same day. The number of votes that automatically trigger a manual recount for statewide elections increased from 150 votes to 1,000 votes. Damaged and/or questionable ballots can no longer be “enhanced” or altered by election workers.¹⁵

The outcome of the closest election in the state’s history was in the hands of the state’s court system until June 2005, eight months after the November election, only after manual and machine recounts were conducted throughout the state. Christine Gregoire (D) was sworn in on January 10, 2005 despite ongoing litigation.

Chelan County Judge John Bridges shut the door on an effort by Republican gubernatorial candidate Dino Rossi to overturn the results, rejecting charges that Gregoire’s 129-vote victory was a result of illegally-cast ballots.

Bridges ruled that the state Republican Party did not meet its burden of proof. While there was evidence of irregularities, Bridges said it was not substantial enough to prove that improper conduct or irregularities tainted Gregoire’s election.¹⁶

The King County elections department wound up in the middle of the controversy marred by reports that hundreds of unverified provisional ballots were improperly counted, scores of valid absentee ballots weren’t counted and a staff report to the canvassing board that incorrectly showed all ballots accounted for.¹⁷

After committing a number of errors during the November 2004 election, King County officials in August said they have made procedural changes so that “[future votes] will run more smoothly” including laws adopted during the 2005 session to curtail any future problems.¹⁸

New election laws applied during September municipal elections required provisional and absentee ballots to be visually distinguishable from other ballots.

According to figures released by the secretary of state’s office, 2004 statewide machine recounts cost about \$200,000 for all 39 counties and manual recounts cost approximately \$900,000.¹⁹

In King County the machine and manual recounts cost close to \$660,000. Altogether the state spent close to \$11.3 million on the general election and recount procedures.²⁰

Recounts and VVPATs

A photograph from Clark County, Nevada shows a woman holding a strip of four-inch wide paper. She's inside a warehouse and the paper appears to stretch from one end of the cavernous room to the other. The tape is 318 feet long.

The strip of paper is 64 voter-verifiable paper ballots that were attached to one of the state's touch-screen voting machines. The woman is an analyst taking part in a mandatory 1 percent audit of Clark County's paper trails to make sure the paper ballots match up with the digitized results.

Larry Lomax, registrar of voters for the county, said it took a four-person team – one counting votes, one verifying and checking for errors and two recording results – about four hours to complete one tape, or nearly four minutes per ballot.²¹

From punch cards to paper trails

Recounts on punch-cards and other paper ballots are fairly simple, as long as proper procedures and rules are in place. The lasting images from South Florida in 2000 show election judges holding ballots up to florescent overhead lights, the size of their eyeballs exaggerated almost comically from magnifying glasses as they peer at tiny bulging chad to try and determine the voter's intent. The difficulty was not counting, per se, but non-uniform voter-intent standards that did not clearly delineate what constituted a vote from county to county.

Advancing voting technology, however, complicates the issue. A paper-trail recount is time consuming

and requires physical space and mental endurance by workers charged with making sure the vote totals are correct. It's not more complex than a punch-card ballot, but the argument has been made that it's not really a ballot at all. Unlike punch cards or optical-scan ballots, voter-verified paper audit trails (VVPATs) are not designed to be counted quickly. Rather, they are engineered to be read by voters as they cast electronic votes.

How VVPATs should be used after elections question their very purpose. Are paper trails simply to put voters' minds at ease as they shift from paper-based elections with pencils and chad to those conducted using black boxes with smart cards and silicon chips? Or can they be used as ballots themselves to recount entire elections in case questions arise concerning the reliability, accuracy and security of the electronic machines?

States that have opted to require VVPATs are now confronted with the issue of what exactly to do with them. What logistical and/or personnel challenges await the first county in a VVPAT-requiring state that has to do a full recount, not just an audit of a fraction of the total number of ballots, and is the peace-



Photograph courtesy of Larry Lomax, registrar of voters, Clark County, Nevada. Reprinted with Permission.

of-mind worth the effort?

Opposition on the ground

Recounting an electronic vote total from a paperless machine would mean reproducing the total using the same data source.

Generally speaking, the journal of votes in the back of a machine would match the data cartridge in the front. Technically, it would seem unlikely the journal tape would differ from the electronic record. Similarly, on machines that save images of individual ballots, the screen images would faithfully reproduce the same vote total.

But what about when paper is added to the mix?

Fears about the performance and security of direct-recording electronic voting machines have driven a number of states to adopt rules requiring the use of VVPATs or for paper ballots. And among those with paper requirements, how the backup systems can be used in the event of a recount have varied rules.

The *electionline.org* survey found that, of the 25 states that require either the use of VVPATs with electronic voting machines or paper ballots generally as valid votes, 15 require that the paper – not the digitized record – be used for a recount. Two states, Idaho and Nevada, will use electronic records in recounts, while officials from Missouri and Maine indicated recount rules were under development.


Some election officials do not want VVPATs to be the official record for the recount. Local election officials in California in September wrote a letter to Gov. Arnold Schwarzenegger (R) that the use of VVPATs in manual audits would be “onerous and time consuming,” prone to mechanical problems as well as “unwise” as a 1 percent manual paper trail audit has never been undertaken in the state.²²

Election officials from across the country, from Maryland to Nevada to New Mexico and California, have expressed similar opposition to using paper audit trails for recount or manual audit purposes.

Those who support requirements for voter-verifiable paper audit trails just as strongly believe that paper should be used in recounts.

The California Voter Foundation, in a letter to Schwarzenegger supporting legislation requiring the use of paper for manual audits of electronic voting, wrote that failing to use the paper

Those who support requirements for voter-verifiable paper audit trails just as strongly believe that paper should be used in recounts.



printouts renders the entire process “meaningless.”

“The voter-verifiable paper audit trail must be used to perform the 1 percent manual tally. Otherwise, the voter-verifiable paper audit trail is practically meaningless, and the 1 percent manual tally is totally meaningless. *If the paper audit trail that the voter verified is not used to verify the overall election results, then it will be possible for the paper record to reflect one set of votes while the electronic record reflects a different set of votes without ever being detected.*”²³ (Emphasis in original.)

California Sen. Debra Bowen, D-Redondo Beach, introduced legislation (S.B. 370) that required paper trails to be used in recounts. Schwarzenegger signed the bill in October.

“The idea is astonishing that you would go to all the trouble of a paper trail then use it for nothing,” Bowen said.²⁴

Access at core of argument

Lack of VVPAT accessibility further complicates the question of whether they should be used for audits or recounts.

Ohio State University law professor Dan Tokaji wrote that states will find it difficult to comply with both the accessibility requirements of HAVA and the state rules on VVPATs.

“A handful of states, including California and Ohio, will require implementation of the VVPAT effective 2006. It remains uncertain how or whether those states will both comply with this mandate and the disability access requirements of HAVA. This is probably one of the most pressing issues that VVPAT states face,” Tokaji wrote.²⁵

While some election officials oppose paper for recounts because of complexity and time, advocates for people with disabilities have been loath to add an inaccessible component to voting at a time when the electoral system is, for the first time, about to be equal for all voters.

The Help America Vote Act (HAVA) requires that all states provide at least one machine per polling place accessible to people with disabilities by 2006 that allows the casting of an independent and secret ballot.²⁶

Scrolling paper trails do not allow for voters with some disabilities, particularly blindness, to verify in the same fashion as a voter with sight. And that, argue some advocates, stratifies what could have finally been a level playing field for voters.

“For blind or visually impaired voters, including many elderly voters, the creation of a paper trail obviously offers no benefit (causing them, instead, even greater concerns over privacy),” stated a press release from the American Association of People with Disabilities. “Proponents of voter-verifiable paper trails attempt to respond to the concerns of blind voters by suggesting that they be allowed to verify their ballots, in lieu of paper, by having the DRE read or display their choices back to them prior to final casting of the ballot. Yet this ‘solution’ for the blind is exactly the kind of verification that the law already requires for every voter. Apparently such proponents believe that the current technology for ballot verification is fundamentally flawed, yet is somehow still good enough for people with disabilities.”²⁷

The U.S. Department of Justice, however, issued an opinion two years ago that cleared the way for localities to use paper trails, stating that voting systems must be examined “holistically.”

“The statutory issue would not be whether the paper record is accessible to the sight-impaired, but whether the entire DRE voting system is accessible in a manner that provides disabled voters “the same opportunity for access and participation” that other voters enjoy,” the

opinion stated.

“So long as DRE voting systems provide sight-impaired voters with audio equipment that enables them to verify their ballots before they are cast, we conclude that the provision of a contemporaneous paper record to assist sighted voters in verifying their ballots does not run afoul of HAVA...The essentials of such a voting system – including the ability to verify one’s ballot – are available to disabled and non-disabled voters alike, giving them the ‘same opportunity’ for access and participation. Knowledge of the contents of the paper record is simply one of the means by which a sighted voter may verify his ballot before casting it, and DRE voting systems satisfy section 15481(a)(3)(A) so long as they provide a comparable means for sight-impaired voters to achieve this essential end.”²⁸

Another Way?

Inevitably, with a growing number of states considering requiring VVPATs, and perhaps with a boost from the National Commission on Federal Election Reform recommending their use with electronic voting machines nationwide, the question of the meaning of paper records – whether simply for voters’ peace of mind, or auditing tool for recounts and machine verification – will continue.

California’s local election officials, who have opposed the use of the state’s required paper trails in manual audits, wrote in their letter to Schwarzenegger that there should be a better way to go about it than unrolling unruly spools of VVPATs.

“We do believe that a separate, independent verification of [electronic voting machine] accuracy is necessary, but remain convinced that we must address the continuing evolution of technology by finding new

methods of validating the accuracy of the equipment used to cast or tabulate votes,” the letter stated.²⁹

One such alternative being explored in 2005 is the “voter verified audio audit transcript trail” (VVAATT), a recording of a ballot that could be equally accessible to those with and without sight.

Ted Selker, a professor at the Massachusetts Institute of Technology, along with Sharon Cohen, a graduate student, put forth the VVAATT idea in a May 2005 paper. According to Selker’s report, test subjects using VVAATTs and VVPATs were asked to vote on a number of hypothetical elections using both systems. The researchers suggest “significant promise for the VVAATT system while exposing some of the flaws with the VVPAT system.”³⁰

In the test elections, Selker and Cohen found that voters were far more likely to discover errors using audio confirmation rather than the scrolling paper system. While both “offer reliable and secure audit technology,” the study indicated that “VVAATT serves as a much more accurate and useful audit trail with voters able to identify significantly more errors.”

The test was hardly a slam dunk, however. More than 90 percent of the subjects said they would recommend a VVPAT system to their local election official instead of the audio system, while the audio clips themselves, which in Selker’s test could not be shortened, added to the amount of time it took to conduct an election.

Manual Audits Popular with Paper Trails

Whether states opt to use voter-verifiable paper audit trails (VVPATs) as official ballots to conduct recounts or decide against it, many that require the backup system will use them to conduct audits as a check on the accuracy of electronic voting machines.

At least 12 states have rules requiring audits – a time-consuming and labor-intensive process that involves unspooling thousands of feet of paper to test whether the paper trail version of ballot matches up with digitized totals saved on electronic voting machines.³¹

An audit is not a recount. An audit of a VVPAT-equipped election machine is a comparison of vote totals from paper to machine. The number of votes for each candidate is only used as a point of reference. The results of an election would not be overturned, though flaws revealed in an audit could compel a state or locality to conduct a recount. Some states that require the use of paper trails for manual audits will not use the paper ballots for recounts.

Nine states, California, Colorado, Connecticut, Hawaii, New Mexico, New York, North Carolina, Washington and West Virginia, passed bills this year requiring the use of voter-verifiable paper audit trails (VVPATs) in manual audits. Two states, Minnesota and Illinois, had existing laws already in place mandating VVPAT use that were modified in this legislative session.³²

Counties in Nevada conducted a mandatory 2 percent manual count of VVPATs in smaller counties and 3 percent in larger counties to verify the accuracy of machines in 2004.

Nevada's audit, which involved comparing totals from 145 VVPAT-equipped electronic voting machines with more than 64,000 paper versions of the ballots found a 100 percent match, Secretary of State Dean Heller reported.³³

The percent of machines and/or votes that are studied in a manual recount varies from state to state.

Colorado, for example, audits no fewer than 1 percent of voting machines; Connecticut audits two machines per assembly district; in Hawaii, 10 percent of the precincts using electronic voting machines are audited;

New York audits 3 percent of voting machines.³⁴

North Carolina does not define the percentage and/or number. The law states that “the size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random.”³⁵

In West Virginia, the 5 percent audit of VVPATs during the vote canvass can lead to a statewide recount of all ballots.³⁶ The same is true in New York and North Carolina where state law dictates that if the results of an audit show discrepancies, a recount be ordered. New York and North Carolina give the boards of election and the State Board respectively the discretion to determine when discrepancies warrant a recount.³⁷

The recent report released by the Commission on Federal Election Reform, co-chaired by former President Jimmy Carter and former Secretary of State James Baker, defines audits as being used to “test the reliability of voting machines and identify problems.”

The Commission endorsed audits, stating, “regular audits should be done of all voting machines, including DREs and optical scan systems.” It did not, however, weigh in on the use of voter-verifiable paper trails in an audit, preferring to leave that decision to the states.³⁸

Using a DRE machine with a VVPAT for an audit in an applicable state would involve checking the paper trail against the electronic record to see if there are any discrepancies. In a recount, however, a state would look at the electronic record or the paper trail, depending on the state's law, but not at both.

A potential problem with using VVPATs in a manual audit is meeting the deadlines that some states place on them. Counting VVPATs is time consuming work,³⁹ and in states such as New York, where 3 percent of the voting systems must be manually audited within 15 days of a general and special election and within seven days of a primary election, this could pose a challenge without large teams of ballot counters.⁴⁰

What triggers recounts?

Key:

Voter initiated – a voter may file a request for a recount for a race with candidates and/or for a ballot measure, depending on the state.

Candidate initiated – a candidate may file a request for a recount under varying conditions depending on the state.

Close election – if the difference in election results between two or more candidates and yes or no on a ballot measure is within a certain margin, a recount is mandated.

Automatic – a recount of a certain percentage of the vote is mandated by law for every election regardless of the vote margin.

| State | Voter initiated | Candidate initiated | Close election | Automatic |
|----------------------|-----------------|---------------------|----------------|-----------|
| Alabama | | | ✓ | |
| Alaska | ✓ | ✓ | | |
| Arizona | | | ✓ | |
| Arkansas | | ✓ | | |
| California | | | | ✓ |
| Colorado | | ✓ | ✓ | |
| Connecticut | | | ✓ | |
| District of Columbia | | ✓ | ✓ | |
| Delaware | | ✓ | | |
| Florida | | | ✓ | |
| Georgia | ✓ | ✓ | | |
| Hawaii* | | | | |
| Idaho | | ✓ | | |
| Illinois | | ✓ | | |
| Indiana | | ✓ | | |
| Iowa | | ✓ | | |
| Kansas | ✓ | ✓ | | |
| Kentucky | | ✓ | | ✓ |
| Louisiana* | | | | |
| Maine | | ✓ | ✓ | |
| Maryland | | ✓ | | |
| Massachusetts | ✓ | ✓ | | |
| Michigan | ✓ | ✓ | ✓ | |
| Minnesota | | ✓ | ✓ | |
| Mississippi* | | | | |
| Missouri | | ✓ | | |
| Montana | | ✓ | | |
| Nebraska | | ✓ | ✓ | |
| Nevada | ✓ | ✓ | | |
| New Hampshire | | ✓ | | |
| New Jersey | ✓ | ✓ | | |
| New Mexico | | ✓ | | |
| New York | | | | ✓ |
| North Carolina | | ✓ | | |
| North Dakota | | ✓ | ✓ | |
| Ohio | ✓ | ✓ | ✓ | |
| Oklahoma | ✓ | ✓ | | |
| Oregon | ✓ | ✓ | ✓ | |
| Pennsylvania | ✓ | | | |
| Rhode Island | | ✓ | | |
| South Carolina | | | ✓ | |
| South Dakota | ✓ | ✓ | | |
| Tennessee* | | | | |
| Texas | | ✓ | | |
| Utah | ✓ | ✓ | | |
| Vermont | | ✓ | | |
| Virginia | ✓ | ✓ | | |
| Washington | ✓ | ✓ | ✓ | |
| West Virginia | | ✓ | | ✓ |
| Wisconsin | ✓ | ✓ | | |
| Wyoming | ✓ | ✓ | ✓ | |

*There are no recount provisions in Hawaii and Mississippi. In Louisiana, candidates may request recount of absentee ballots as part of an election contest. In Tennessee, recounts can only be ordered as part of a legally-contested election.

Snapshot of the States:

Alabama⁴¹

Trigger: Close election. When a candidate is defeated or any statewide ballot measure is defeated by not more than one half of 1 percent of the votes cast.

Timing: Must start 72 hours after certification of the results.

Cost: Paid by the state if for non-county office. Paid by the county if for a county office.

Authority: The county canvassing board.

VVPATs and recounts: N/A

Alaska⁴²

Trigger: Candidate initiated or voter initiated.

Timing: Application may be filed within five days after the completion of the state review. The recount must be completed within 10 days.

Cost: The application must include a deposit in the amount of \$300 for each precinct, \$750 for each house district, and \$10,000 for the entire state.

Authority: State elections director.

VVPATs and recounts: The paper audit trail will be used in a recount.

Arizona⁴³

Trigger: Close election. When the margin between the two candidates receiving the greatest number of votes for a particular office, or between the number of votes cast for and against initiated or referred measures is less than or equal to the lesser of the following:

- 1.) One-tenth of 1 percent of the number of votes cast for both such candidates or upon such measures or proposals;
- 2.) 200 votes in the case of an office to be filled by state electors and for which the total number of votes cast is more than 25,000;
- 3.) 50 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.) 200 votes in the case of an initiated or referred measure or proposal to amend the constitution;
- 5.) 50 votes in the case of a member of the legislature;
- 6.) 10 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.

Timing: Not specified.⁴⁴

Cost: Paid by state, county, city or town.

Authority: In statewide races, the secretary of state certifies the facts requiring the recount to the superior court in Maricopa County. In local races, the board of supervisors of the county certifies the facts requiring a recount to the superior court in the county.

VVPATs and recounts: N/A

Arkansas⁴⁵

Trigger: Candidate initiated.

Timing: Recount request must be made no later than two days after the preliminary unofficial results if the number of absentee ballots will not affect the election.

Cost: The cost of any recount is based on the actual costs incurred to conduct the recount, but in no instance will the amount exceed the rate of \$.25 per vote cast in the precincts where the recount is requested or a total of \$2,500 for the entire county, whichever is less.

Authority: Conducted by counties.

VVPATs and recounts: The paper audit trail will be used in a recount.

California⁴⁶

Trigger: Automatic or voter initiated.

Timing: For local elections, any voter may request a recount five days following completion of the official canvass. For statewide elections, any voter may request a recount within five days beginning on the 29th day after a statewide election following completion of the official canvass. The recount will commence not more than seven days following the receipt by the elections official of the request for the recount.

Cost: For voter-initiated recounts, the voter filing the request seeking the recount will deposit with the elections official a sum as required by the elections official to cover the cost of the recount for that day.

Authority: Supervised by local election officials and performed by special recount boards consisting of four voters of the county appointed by the elections official.

VVPATs and recounts: The paper audit trail will be used in a recount.

Colorado⁴⁷

Trigger: Close election or candidate initiated. For a close election, a recount occurs if the difference between the highest number of votes cast and the next highest number of votes cast is less than or equal to one-half of 1 percent of the highest vote cast in that election contest.

Timing: No later than 25 days after the election, to be completed no later than 40 days after the election.

Cost: For candidate-initiated recounts, the interested party that requested the recount pays the cost of the recount.

Authority: The secretary of state provides each county clerk and recorder with the necessary rules and regulations to conduct the recount in a fair, impartial, and uniform manner, including provisions for watchers during the recount.

VVPATs and recounts: The paper audit trail will be used in a recount.

Connecticut⁴⁸

Trigger: Close election. When the plurality of an elected candidate for an office over the vote for a defeated candidate receiving the next highest number of votes was either 1.) less than a vote equivalent to one-half of 1 percent of the total number of votes cast for the office but not more than two thousand votes, or 2.) less than 20 votes. Or a recount can be ordered by the election moderator if there appears to be a discrepancy.

Timing: Must be called within three days after the election and must be completed within five days after the election.

Cost: Each municipality pays for its own recount.

Authority: Canvass board.

VVPATs and recounts: If there is a discrepancy between the paper and the electronic totals, the paper would be counted. However, if there is no difference, the electronic totals will be used.

Delaware⁴⁹

Trigger: Candidate initiated. If the number of votes separating the winning candidate and the closest opposing candidate is less than 1,000 votes or less than one half of 1 percent of all votes cast for the two candidates, whichever amount is less.

Timing: Recount request must be made within 48 hours of the closing of the polls.

Cost: State pays full costs of recounts.

Authority: Conducted by the court.

VVPATs and recounts: N/A

District of Columbia⁵⁰

Trigger: Candidate initiated or close election. In a close election, if the certified results show a margin of victory for a candidate that is less than 1 percent of the total votes cast for the office, a recount is conducted.

Timing: Recount request must be made within seven days of certification of results.

Cost: The candidate deposits a fee of \$50 for each precinct included in the recount.

Authority: Conducted by board of elections.

VVPATs and recounts: N/A

Florida⁵¹

Trigger: Close election. When a candidate or issue is defeated or eliminated by one-half of 1 percent or less of the votes cast for the office or issue. After an automatic machine recount is conducted, if that recount shows a candidate or issue was defeated or eliminated by one-quarter of 1 percent or less of the votes cast for such office an automatic manual recount is conducted. A manual recount will not be ordered if the number of overvotes, undervotes and provisional ballots is fewer than the number of votes needed to change the outcome of the election.

Timing: Machine recounts are ordered on the third day after a primary election and must be completed by 3 p.m. on the fifth day after the primary. Machine recounts are ordered on the fifth day after a general election and must be completed by 3 p.m. on the eighth day after the general election. Manual recounts are ordered immediately after the machine recount totals are determined.

Cost: Paid for by counties.

Authority: County canvass boards.

VVPATs and recounts: N/A

Georgia⁵²

Trigger: Candidate initiated or voter initiated. The losing candidate may request a recount if the difference between

the votes received by the winning candidate is not more than 1 percent of the total votes cast for that office.

Timing: Recount request must be made within two days following the certification of the results of a primary or general election.

Cost: Recounts are paid for by the governing authority of the county or counties holding the recounts. No money is required from the persons requesting the recount.

Authority: Superintendent of elections.

VVPATs and recounts: N/A

Hawaii

No recount provisions found.

Idaho⁵³

Trigger: Candidate initiated.

Timing: A recount must be requested within 20 days of the canvass. The recount must be conducted within 10 days of the order.

Cost: The application for a recount must be accompanied by a deposit of \$100 for each precinct.

Authority: The attorney general issues recount orders. The order names the prior election judges and clerks of the precinct to act in the same capacity and receive the same compensation as they did on election day.

VVPATs and recounts: The electronic ballots will be used in a recount.

Illinois⁵⁴

Trigger: Candidate initiated. Allows a candidate who received 95 percent of the vote of a successful candidate for the same office to file asking for 25 percent of the precincts in an election jurisdiction to be recounted.

Timing: Recount request must be made within five days of the deadline to canvass the election (locally, 21 days after the election; statewide, 31 days after the election).

Cost: The requesting party must include deposit of \$10 per precinct.

Authority: County canvassing board or board of election commissioners.

VVPATs and recounts: No DREs currently certified.

Indiana⁵⁵

Trigger: Candidate initiated.

Timing: Recount must be requested 14 days after

Election Day for a candidate and 17 days after Election Day for county and state political party chairmen.

Cost: Each petitioner is required to furnish a cash deposit or a bond to the approval of the court for the payment of all costs of the recount. The minimum amount of the cash deposit or bond is \$100.

Authority: State recount commission.

VVPATs and recounts: N/A

Iowa⁵⁶

Trigger: Candidate initiated.

Timing: Recount must be requested not later than 5 p.m. on the third day following the canvass.

Cost: The candidate requesting a recount posts a bond.

Authority: A board consisting of a designee of the candidate requesting the recount, a designee of the apparent winning candidate and a person chosen jointly by the members designated.

VVPATs and recounts: N/A

Kansas⁵⁷

Trigger: Voter initiated or candidate initiated.

Timing: Deadline to request a recount is the day after the county canvass. Counties canvass either on Friday after the election or the following Monday.

Cost: If a candidate or voter requests a recount, he/she has to post a bond to cover the cost.

Authority: A local recount is performed by the county without state involvement. In a statewide or multi-county district the request for the recount is made to the secretary of state, who then coordinates the recount among the affected counties.

VVPATs and recounts: N/A

Kentucky⁵⁸

Trigger: Automatic or candidate initiated. As part of the official canvass, a manual recount of randomly selected precincts representing 3 to 5 percent of the total ballots cast in each election is conducted.

Timing: Petition for recount must be filed in circuit court no later than 10 days following a primary or general election.

Cost: The party requesting the recount must execute a bond with approved surety for the costs of the recount in an amount to be fixed by the circuit judge.

Authority: Circuit court.

VVPATs and recounts: N/A

Louisiana⁵⁹

Trigger: Candidates may request recount of absentee ballots during a legally contested election.

Timing: Can be requested prior to the trial of a legally contested election.

Cost: If the court determines the original absentee ballot count was correct or that the error would not have changed the result of the election, the party demanding the recount pays. If the results of the election change due to the absentee recount, the party does not pay.

Authority: When a recount is ordered, the trial judge appoints counters to conduct the recount.

VVPATs and recounts: N/A

Maine⁶⁰

Trigger: Close election or candidate initiated. In a close election, if the margin between the number of votes cast for the leading candidate and the number of votes cast for the second-place candidate is less than 1 percent of the total number of votes cast in that race, a recount is presumed necessary.

Timing: The recount request deadline is by 5 p.m. on the fifth business day after the election.

Cost: All deposits must be made with the secretary of state when a recount is requested by a losing candidate.

Authority: All recounts are supervised by the secretary of state.

VVPATs and recounts: The accessible voting equipment decision is still pending; recount procedures will be developed accordingly.

Maryland⁶¹

Trigger: Candidate initiated.

Timing: The recount petition must be filed within three days after the results of the election have been certified. The recount must start within two business days after receiving the petition (provided it is after the certification of the results) and continues daily at least eight hours each day until completion.

Cost: The petition will be filed with a bond set by the circuit court sufficient to pay the reasonable costs of

the recount.

Authority: County boards of election.

VVPATs and recounts: N/A

Massachusetts⁶²

Trigger: Candidate initiated or voter initiated. The petition for the recount must have a certain number of voters' signatures and the candidate's signature.

Timing: For state primaries, recount petitions must be filed within six days after the primary. For state and local general elections, the petitions must be filed within 10 days.

Cost: The costs of recounts are paid for by municipalities. A person requesting a recount does not have to provide an initial deposit.

Authority: Registrars of voters.

VVPATs and recounts: N/A

Michigan⁶³

Trigger: Candidate initiated, voter initiated or close election. A recount of all precincts in the state must be conducted when a statewide primary or election is certified by the board of state canvassers as having a vote differential of 2,000 votes or less.

Timing: Local level recounts must be petitioned for within six days following the certification of the results. State level recounts must be petitioned for within 48 hours following the certification of the results.

Cost: A filing fee of \$10 per precinct must be submitted at the time of filing.

Authority: The board of state canvassers.

VVPATs and recounts: No VVPAT requirement, however the state is implementing a uniform optical-scan voting system.

Minnesota⁶⁴

Trigger: Candidate initiated or close election. In a close election, a recount is conducted when the difference between the votes of a candidate who would otherwise be declared elected and the votes of any other candidate for that office is 1.) less than one-half of 1 percent of the total number of votes counted for that office; or 2.) is 10 votes or less if the total number of votes cast for the office is 400 votes or fewer.

Timing: A recount must not delay any other part of the

canvass. The results of the recount must be certified by the canvassing board as soon as possible.

Cost: The requesting candidate will file with the filing officer a bond, cash, or surety in an amount set by the filing officer for the payment of the recount expenses.

Authority: The county canvassing board.

VVPATs and recounts: The paper audit trail will be used in a recount.

Mississippi

No recount provisions found.

Missouri⁶⁵

Trigger: Candidate initiated or court ordered. Any contestant defeated by less than 1 percent of the votes cast for the office and any contestant who received the second highest number of votes cast for that office if two or more are to be elected and who was defeated by less than 1 percent of the votes cast, or any person whose position on a question was defeated by less than 1 percent of the votes cast on the question.

Timing: For local offices a request must be made with the circuit court within five days after the official certification of the primary results; 30 days after a general election. For statewide offices the request must be received within seven days of the official certification of the results. For a recount conducted at the direction of the court, the judge sets the time frame. Recounts conducted by the secretary of state must be completed within 20 days of receipt of the request.

Cost: The state or the county pays for the recount.

Authority: The secretary of state with the assistance of the election authorities involved.

VVPATs and recounts: To be determined.

Montana⁶⁶

Trigger: Candidate initiated. A recount must be conducted if a candidate for a congressional office, a state or district office voted on in more than one county, the legislature or judge of the district court is defeated by a margin not exceeding one-quarter of 1 percent of the total votes cast for all candidates for the same position and the defeated candidate files a petition with the secretary of state. Or, if the margin exceeds one-quarter of 1 percent but not exceeding one-half of 1 percent of the total votes cast the candidate may file a petition and post a

bond to cover all the costs of the recount.

Timing: Recount petition must be filed five days after the official canvass.

Cost: The expense of the recount is a county charge while recount expenses of the secretary of state and board of state canvassers are a state charge.

Authority: The county recount board, which will consist of three members.

VVPATs and recounts: State law mandates that voting systems use paper ballots that can be manually counted. The exception is DRE voting machines without a VVPAT can be used if the federal government and the secretary of state have not certified any machines with a VVPAT and “the system records votes in a manner that will allow the votes to be printed and manually counted or audited if necessary.”

Nebraska⁶⁷

Trigger: Candidate initiated or close election. A recount is triggered if the percent difference between two candidates is less than 1 percent of top vote-getter total. (2 percent if less than 500 votes cast in race). A losing candidate can request a recount if outside the margin.

Timing: The losing candidate may request recount within 10 days after canvass board (state or local) convenes.

Cost: Close election recounts are paid by county. Requested recounts paid by losing candidate.

Authority: The county canvassing board.

VVPATs and recounts: N/A

Nevada⁶⁸

Trigger: Voter initiated or candidate initiated.

Timing: Recount request must be made within three working days. Each recount must be commenced within five days after demand, and must be completed within five days after it is begun.

Cost: Candidate initiated - deposits in advance the estimated costs of the recount with that officer. Voter initiated - the voter deposits in advance the estimated costs of the recount with the person to whom he made his demand.

Authority: County clerk/city clerk.

VVPATs and recounts: The electronic ballots will be used in a recount.

New Hampshire⁶⁹

Trigger: Candidate initiated.

Timing: Recounts may be requested no later than 5 p.m. on the Friday following the election. State statute requires recounts to begin on the Wednesday following the last day to request; however, there is no statutory timeline for completion.

Cost: The candidate pays for the recount at the time of requesting. The fee is based on the percentage of vote difference between the applying candidate and the candidate declared the winner. If the difference is greater than three percent, the candidate must agree in writing before the recount that they will pay all costs for the recount.

Authority: The secretary of state.

VVPATs and recounts: The paper audit trail will be used in a recount.

New Jersey⁷⁰

Trigger: Candidate initiated or voter initiated. Ten voters at any election who have reason to believe that an error has been made in counting the votes upon any public question may request a recount.

Timing: Recount request must be made within 15 days following the election.

Cost: Any applicant or group of applicants deposits up to \$25 per district, as directed by the county clerk or other election official.

Authority: A superior court judge orders recounts to be publicly made under his direction by the county board.

VVPATs and recounts: Rules go into effect in 2008. No determination has been made on using VVPATs in recounts.

New Mexico⁷¹

Trigger: Candidate initiated.

Timing: Recount request must be made within six days after completion of the canvass.

Cost: An applicant for a recount deposits \$50 for each precinct to be recounted.

Authority: The precinct boards conduct recounts.

VVPATs and recounts: The paper audit trail will be used in a recount.

New York⁷²

Trigger: Automatic. Within 15 days after each general, special or primary election, and within seven days after every village election conducted by the board of elections at which voting machines are used, the vote will be re-canvassed.

Timing: Within 15 days after each general, special or primary election, and within seven days after every village election.

Cost: Paid by state as part of the regular budget.

Authority: County board of canvassers.

VVPATs and recounts: The paper audit trail will be used in a recount.

North Carolina⁷³

Trigger: Candidate initiated or discretionary recounts. Candidate initiated - If the difference between the votes for that candidate and the votes for a prevailing candidate are not more than 1.) for a non-statewide ballot item, 1 percent of the total votes cast in the ballot item or in the case of a multi-seat ballot item, 1 percent of the votes cast for those two candidates. 2.) for a statewide ballot item, one-half of 1 percent of the votes cast in the ballot item, or in the case of a multi-seat ballot item, one-half of 1 percent of the votes cast for those two candidates or 10,000 votes, whichever is less.

Discretionary recounts – The county board of elections or the state board of elections may order a recount when necessary to complete the canvass in an election.

Timing: Recounts have to be requested in writing and received by a county board (in cases of a local race recount) by 5 p.m. the first day after canvass (canvass is seventh day after election). Recounts have to be requested in writing and received by a state board of elections (in cases of a state race recount) by 12 p.m. the second Thursday after an election.

Cost: Paid for by the elections office conducting the recount.

Authority: The recount is conducted under the supervision of the county board of elections, using precinct officials.

VVPATs and recounts: The paper audit trail will be used in recount.

North Dakota⁷⁴

Trigger: Close election and candidate initiated. In a close

election, a recount must be conducted when: Any person failed to be nominated in a primary election by 1 percent or less of the highest vote cast for a candidate for the office sought. Any person failed to be elected in a general or special election by one-half of 1 percent or less of the highest vote cast for a candidate for that office. A question, measure, or bond issue submitted to the qualified electors has been decided by a margin not exceeding one-fourth of 1 percent of the total vote cast for and against the question at any election. Candidates who failed to either be nominated or elected and are within specific vote margins of the winning candidate may request a recount.

Timing: Recounts for county or city elections must be requested within three days after the meeting of the county canvassing board. Recounts for congressional, state, district, or legislative elections must be requested within three days after the meeting of the state canvassing board.

Cost: The candidate requesting the recount must submit a letter requesting the recount along with a bond in the amount established by the filing officer to cover the cost of the recount. In a close-election recount, either the state or the county pays for the recount depending on the jurisdiction of the office involved in the recount. The state would pay for statewide and legislative races and the county would pay for county or city races.

Authority: The county auditor.

VVPATs and recounts: N/A

Ohio⁷⁵

Trigger: Candidate initiated, voter initiated or close election. In a close election, if the number of votes cast for the declared winning candidate in a district election does not exceed the number of votes cast for the declared losing candidate by a margin of one-half of 1 percent or more of the total vote, a recount will be conducted. If the number of votes cast for the declared winning candidate in a statewide election does not exceed the number of votes cast for the declared losing candidate by a margin of one-fourth of 1 percent or more of the total vote, a recount will be conducted. Any group of five or more qualified electors may also file an application for a recount of the votes at an election upon any question or issue, provided that they either voted “Yes” or in favor of an issue that was defeated or if they voted “No” or against an issue that was adopted.

Timing: The application for recount must be filed within five days after results are declared.

Cost: Each application for recount must separately list each precinct as to which a recount of the votes therein is requested, and the person filing an application will at the same time deposit with the board of elections \$10 per precinct.

Authority: County boards of election.

VVPATs and recounts: The paper ballot will be used in a recount.

Oklahoma⁷⁶

Trigger: Candidate initiated or voter initiated.

Timing: Not less than three or more than 10 days from the date of filing of said petition.

Cost: The petition must be accompanied by \$600 for each county affected by the petition.

Authority: Secretaries of the appropriate election board. In the event of a recount for an office under the jurisdiction of the state election board, the actual recount of ballots will be conducted by the county election board or boards as assigned by the secretary of state.

VVPATs and recounts: N/A

Oregon⁷⁷

Trigger: Candidate initiated, voter initiated or close election. In a close election, a recount is ordered in the event of a tie or if the margin of victory is not more than one-fifth of 1 percent of votes cast.

Timing: A demand for recount must be filed no later than the 35th day after the date of the election. A demand recount filed on behalf of the electors of presidential and vice presidential candidates must be filed no later than five business days after the results are certified.

Cost: The individual who files the recount demand is responsible for paying for the recount. A \$15 deposit per precinct is required at the time of filing the demand for recount, with a maximum deposit of \$8,000.

Authority: The secretary of state.

VVPATs and recounts: The paper audit trail will be used in a recount.

Pennsylvania⁷⁸

Trigger: Voter initiated or county ordered.⁷⁹ Three qualified electors of the election district may file a petition alleging reliable information of fraud or error in the returns.

Timing: A recount may be requested at any time prior to the completion of a county board's computation of election returns or within five days after the completion of the computation.

Cost: A petition filed with a county court of common pleas for the opening of a ballot box or the re-canvassing of a voting machine must be accompanied by a cash deposit of \$50 or a \$100 bond.

Authority: The court of common pleas, or a judge thereof, will open the ballot box and order the entire vote to be correctly counted by people designated by the court or judge.

VVPATs and recounts: N/A

Rhode Island⁸⁰

Trigger: Candidate initiated. A candidate may request a recount if the losing candidate trails the winning candidate by 5 percent or less. The formula changes in races where more than one candidate is elected. Write-in candidates may request a recount if the candidate received a minimum of 10 votes or 1 percent of the votes cast in the race. Recounts for ballot questions or other offices can be requested by a person of 'recognized standing' as determined by the board of elections if the difference between approval and rejection is two percent or less if less than 100,000 votes are cast.

Timing: A request for a recount in a primary election must be requested within 24 hours of the day of the primary. A recount for a general election must be requested within seven days. There is no time limit on when recounts have to be completed for a general election, but for a primary the recounts must be completed within seven days of the primary.

Cost: The state bears the cost of the recount.

Authority: State board of elections.

VVPATs and recounts: N/A

South Carolina⁸¹

Trigger: Close election. Outside of the close-election recount, the authority charged with conducting the election can also decide for whatever reason they deem appropriate to order a recount. This decision could come at someone's request, but the law does not provide for a specific request procedure.

Timing: According to state law, the close-election recount must be completed "forthwith," or immediately.

Cost: Paid for by the authority charged with conducting the election.

Authority: Board of state canvassers.

VVPATs and recounts: N/A

South Dakota⁸²

Trigger: Candidate initiated or voter initiated. In a state candidate election, the losing candidate may request a recount if the loss does not exceed one-fourth of 1 percent of total votes cast.

Timing: If the recount is candidate initiated, the request must be filed within three days after the official state canvass for that office. If the recount is voter initiated the request must be filed within ten days after an election. The recount will proceed as expeditiously as reasonably possible until completed.

Cost: Counties pay.

Authority: The county recount board of each county which conducts a recount authorized by this chapter will consist of a recount referee and two voters of the county to be appointed by the presiding judge of the circuit court for that county, and will provide for representation of the two political parties with the largest party registration in that county.

VVPATs and recounts: N/A

Tennessee⁸³

Trigger: Recounts can only be ordered as part of a legally contested election.

Texas⁸⁴

Trigger: Candidate initiated or voter initiated. If the difference between the number of votes received by petitioner and number of votes received by the person who was elected is less than 10 percent of the number of votes received by the person elected; or the number of votes received by all candidates is less than 1,000; or an election judge swears that he or she counted paper ballots incorrectly. No grounds required for recount of electronic system results.

Timing: No later than 5 p.m. of the fifth day after Election Day or 5 p.m. of the second day after the canvass.

Cost: The person or group requesting the recount must include a deposit.

Authority: For statewide or district office, the state coordinator appoints recount committees for each county involved in the election. For a countywide precinct recount, the recount petition is filed with the county judge or appropriate local party chair for a primary elec-

tion. There are other filing authorities for other local officers and measure elections.

VVPATs and recounts: N/A

Utah⁸⁵

Trigger: Candidate initiated or voter initiated. Any candidate who loses by not more than a total of one vote per voting precinct. Any 10 voters who voted in an election when any ballot proposition or bond proposition was on the ballot.

Timing: The candidate or voter may file a request for a recount within seven days after the canvass.

Cost: Costs incurred by recount may not be assessed against the person requesting the recount for regular primary, regular general, or municipal general, or the Western States Presidential primary. For a ballot proposition or bond proposition, the voters requesting the recount will pay the costs of the recount.

Authority: The "appropriate election officer" will supervise the recount.

VVPATs and recounts: The paper audit trail will be used in a recount.

Vermont⁸⁶

Trigger: Candidate initiated. Any losing candidate where the difference between the winner and the next candidate is less than 5 percent of the total votes cast for all candidates for that office.

Timing: Petition must be filed in Superior Court within 10 days after the election. The court must "set an early date" but no completion date is given in the statutes.

Cost: The state pays for the recount.

Authority: Recount committees selected by the county clerk.

VVPATs and recounts: No electronic ballots are used. State law requires, "No voting shall occur in any general election which does not use printed ballots."

Virginia⁸⁷

Trigger: Candidate initiated or voter initiated. When there is a difference of not more than 1 percent of the total vote cast for the two such candidates, the defeated candidate may petition for a recount. When there is between the vote for a question and the vote against a question a difference of not more than 50 votes or 1 percent of the total vote cast, 50 or more voters qualified to

vote on the question may file a petition for a recount.

Timing: Petition must be filed within 10 days from the date the election result is certified.

Cost: Costs of the recount are assessed against the counties and cities comprising the election district when 1.) the candidate petitioning for the recount is declared the winner; 2.) the petitioners in a recount of a referendum win the recount; or 3.) there was between the candidate apparently nominated or elected and the candidate petitioning for the recount a difference of not more than one-half of 1 percent of the total vote cast for the two such candidates as determined by the state board or electoral board prior to the recount. Otherwise the cost of the recount is assessed against the candidate petitioning for the recount or the petitioners in a recount of a referendum.

Authority: The chief judge of the circuit court or the full recount court may, consistent with State Board of Elections standards, resolve disputes over the application of the standards and direct all other appropriate measures to ensure the proper conduct of the recount.

VVPATs and recounts: N/A

Washington⁸⁸

Trigger: Candidate initiated, voter initiated or close election. In a close election a recount is triggered if the returns indicate the difference between the apparently nominated or elected candidate and the next closest candidate is less than 2,000 votes and also less than one-half of 1 percent of the total number of votes cast for both candidates. For statewide elections if the difference is 1,000 and also less than one-fourth of 1 percent the recount must be manual. For all other races, if the difference in the number of votes cast is less than 150 votes and also less than one-fourth of 1 percent, the recount is conducted manually.

Timing: If the recount is for an office in which the candidate filed a declaration of candidacy with the secretary of state, the recount request must be made within three days. If the race is statewide or multi-jurisdictional, the secretary of state may direct the counties to conclude the recount on a specific date.

Cost: If the recount is mandatory, the county incurs the cost. If the requested recount is manual, a deposit of \$.25 per ballot is required at the time the request is made. If the requested recount is a machine recount, a deposit of \$.15 per ballot is required. The county can-

vassing board determines the cost of recount after it has been concluded and if it was less than the deposit, the balance is refunded. If it was more, the board bills the party that requested the recount.

Authority: The county canvassing board.

VVPATs and recounts: The paper audit trail will be used in a manual recount.

West Virginia⁸⁹

Trigger: Automatic or candidate initiated. During the canvass and any requested recount, at least 5 percent of the precincts are to be chosen at random and the ballot cards will be counted manually. A candidate may demand the board open and examine any of the sealed packages of ballots and recount them.

Timing: Request for recount must be made within the 48-hour period after the election results are publicly declared. The recount will be set for no sooner than three days after the serving of the notice.

Cost: Every candidate who demands a recount is required to furnish a bond to guarantee payment of the costs and the expenses of the recount in the event the result of the election is not changed by the recount; but the amount of the bond will in no case exceed \$300.

Authority: County board of canvassing.

VVPATs and recounts: The paper audit trail is to be used for random testing or when an election is contested, challenged or disputed.

Wisconsin⁹⁰

Trigger: Candidate initiated or voter initiated. Any person who voted at a referendum election may request a recount of the referendum election results.

Timing: The petition can be filed no later than 5 p.m. on the third business day following the last meeting day of the last board of canvassers.

Cost: In some cases, a fee may be required. The fee depends on the difference in the vote margin.

Authority: The proper board of canvassers.

VVPATs and recounts: The state does not have a paper trail requirement. The state does require that an electronic voting machine produce a permanent paper record of the vote cast by each elector at the time that it is cast that enables a manual count or recount of the elector's vote. In a recount on these machines, electronic ballots would be used, with paper records as a check.

Wyoming⁹¹

Trigger: Candidate initiated, voter initiated or close election. In a close election, a recount occurs if the difference in the number of votes cast for the winning candidate and the losing candidate is less than 1 percent of the number of votes cast for the winning candidate.

Timing: Recount must be requested no later than two days after the canvass of the vote.

Cost: An affidavit requesting a recount must be accompanied by a deposit of \$100. If the recount shows sufficient error to change the result of the election, the county in which the recount is taken will pay expenses of the recount and the deposit will be returned. Otherwise the applicant or applicants seeking the recount are liable for the actual cost of conducting the recount up to a maximum of \$500 per county recounted.

Authority: The county canvassing board.

VVPATs and recounts: N/A.

Methodology

Information for this report was derived largely from the results of a survey of state election directors conducted in August and September 2005. To supplement the research – and to collect information from states that did not respond to the survey – data was derived from state law. Secondary sources including newspapers, reports by other organizations and state election Web sites were also used.

All sources are cited in the endnotes section.

The opinions expressed by election officials, lawmakers and other interested parties in this document do not reflect the views of non-partisan, non-advocacy *electionline.org* or the Election Reform Information Project.

All questions concerning research should be directed to Sean Greene, research coordinator, at 202-338-9860.

Endnotes

1. The four categories were developed by the Moritz School of Law at Ohio State University, which is an excellent resource for recount laws and procedures. Their recount information can be found at <http://moritzlaw.osu.edu/electionlaw/keyissues/key-recounts.html>. Another good resource is the U.S. House of Representatives Minority Staff of the Committee on Government Reform report, *Summaries of State Election Procedures*, published in November 2002, which can be found at <http://www.democrats.refom.house.gov/Documents/20040628121347-35675.pdf>.
2. Vermont's response to *electionline.org* survey, received August 2005.
3. Oregon's response to *electionline.org* survey, received August 2005.
4. Washington's response to *electionline.org* survey, received August 2005.
5. California Elections Code § 15360.
6. Hawaii Statutes § 11-172.
7. Mississippi Election Code § 23-15-921.
8. December 24, 2004.
9. Siegel, Jim. "Recount request criticized," *The Cincinnati Inquirer* December 24, 2004.
10. Massey, Barry. "High court hears recount dispute," *The Associated Press* as reported in *The Santa Fe New Mexican*, August 29, 2005.
11. Seligson, Dan. "New Hampshire Leads, the Nation Follows – In Election Reform Controversies," *electionline Weekly*, September 25, 2003.
12. New Hampshire's response to *electionline.org* survey, received August 2005.
13. New Hampshire's response to *electionline.org* survey, received March 2004.
14. Wisconsin's response to *electionline.org* survey, received September 2005.
15. Press Release. "Reed Prepares State for Historic Election Reform; New Legislation to Restore Voter Trust," April 25, 2005.
16. Final Judgment by the Honorable John E. Bridges, <http://www.sec-state.wa.gov/documentvault/694.pdf>
17. Ervin, Kenneth. "County Election Office Gets Beefed Up," *The Seattle Times*, August 11, 2005.
18. Heffter, Emily. "Training, Procedures Undergoing Changes," *The Seattle Times*, August 29, 2005.
19. "County Election and Recount Costs," Washington Secretary of State Website, http://www.secstate.wa.gov/elections/pdf/County_Election_and_Recount_Costs.pdf
20. *ibid.*
21. Interview conducted via email correspondence, September 14, 2005.
22. California Association of Clerks and Election Officials, Letter to The Honorable Arnold Schwarzenegger, Governor of the State of California, September 1, 2005.
23. California Voter Foundation, Letter to The Honorable Arnold Schwarzenegger, Governor of the State of California in Support of Senate Bill 370, August 31, 2005.
24. Hoffman, Ian. "Paper trail may clog e-voting advances," *Inside Bay Area*, August, 16, 2005.
25. Tokaji, Dan. Memorandum: Accessibility for Voters with Disabilities, April 3, 2005.
26. Help America Vote Act of 2002, 42 U.S.C.A. § 15481(a)(1)(A)(i).
27. "Leadership Council on Civil Rights Oppose Voter Verified Paper Ballots." American Association of People with Disabilities, 2003.
28. United States Department of Justice, Memorandum Opinion for the principal deputy assistant attorney general, Civil Rights Division, "Whether certain direct recording electronic voting systems comply with the Help America Vote Act and the Americans with Disabilities Act," October 10, 2003.
29. *Op.-Cit.*, California Association of Clerks and Election Officials.
30. Selker, Ted and Cohen, Sharon. "An Active Approach to Voting Verification," CalTech/MIT Voting Technology Project, Working Paper #28, May 2005.
31. Nevada is the only state that thus far has used VVPAT systems in a presidential election. A manual audit was conducted after the race, the first reported manual audit of paper trail ballots.
32. "Manual Audit Requirement," Verified Voting Foundation, August 18, 2005.
33. Heller, The Honorable Dean, Secretary of State for the State of Nevada, Press release: "State canvass of 2004 election completed," November 23, 2004.
34. *Op. Cit.* Verified Voting Foundation.
35. Text of North Carolina Senate Bill 223. <http://www.ncga.state.nc.us/Sessions/2005/Bills/Senate/PDF/S223v6.pdf>.
36. West Virginia House Bill 2950, enacted in May 2005, states that: "Results in a different prevailing candidate or outcome, either passage or defeat, of one or more ballot issues such precincts for any contest or ballot issue; then the discrepancies shall be immediately disclosed to the public and all of the voter-verifiable paper ballots shall be manually counted. In every case that there is a difference between the totals obtained from the automatic vote tabulation equipment and the corresponding vote totals obtained from the manual count of the voter-verifiable paper ballots, the manual count of the voter verified paper ballot shall be the vote of record"
37. *Op. Cit.* Verified Voting Foundation.
38. Commission on Federal Election Reform, "Building Confidence in U.S. Elections," September 2005, p.28.
39. Clark County Registrar Harvard Lomax reported that it took five

- teams of four people two full days to count the requisite 20 VVPAT spools for the mandatory audit. Each spool had 64 ballots, representing 2 percent of ballots cast on electronic voting machines. The same five teams of four counters would take 100 days to complete a full recount of all ballots in the county.
40. Text of New York Senate Bill 5877.
<http://assembly.state.ny.us/leg/?bn=SO5877&sh=t>.
 41. Ala. Code § 17-13-12.
 42. Alaska Stat. § 15.20.430, 440, 450, 460, 470, 480, 490.
 43. Ariz. Rev. Stat. § 16-661 – 16-666.
 44. The superior court shall forthwith make and enter an order requiring a recount.
 45. Survey response.
 46. Survey response.
 47. Colo. Rev. Stat. § 1-10.5-101, 1-10.5-102, 1-10.5-103, 1-10.5-10631-10-1207.
 48. Survey response.
 49. Survey response.
 50. D.C. Code Ann. § 1-1001.11.
 51. Survey response.
 52. Survey response.
 53. Survey response.
 54. Survey response.
 55. Survey response.
 56. Iowa Code, Title 2, Chapter 50.48, 50.50.
 57. Survey response.
 58. Survey response.
 59. Louisiana Rev. Stat. § 18:1451.
 60. Survey response.
 61. Survey response.
 62. Survey response.
 63. Survey response.
 64. Minn. Statutes § 204C.35.
 65. Survey response.
 66. Survey response.
 67. Survey response.
 68. Nev. Rev. Stat. § 293.403, 293.404, 293.405.
 69. Survey response.
 70. Survey response.
 71. N.M. Stat. § 1-14-14, 1-14-15, 1-14-16.
 72. Survey response.
 73. Survey response.
 74. Survey response.
 75. Ohio Revised Code § 3515.01 – 3515.071.
 76. Oklahoma Statutes § 8-109-13, 8-111, 8-111-17, 9-109-17.
 77. Survey response.
 78. Survey response.
 79. According to Pennsylvania state law and the state's survey response, "A county board of elections may, on its own motion, recount the ballots cast in an election district or re-canvass the voting machines in an election district."
 80. Survey response.
 81. Survey response.
 82. Survey response.
 83. Survey response.
 84. Survey response.
 85. Survey response.
 86. Survey response.
 87. Survey response.
 88. Survey response.
 89. West Virginia Code §§ 3-6-9 and 3-4A-28.
 90. Survey response.
 91. Survey response.

electionline.org

Briefing

electionline.org, administered by the Election Reform Information Project, is the nation's only nonpartisan, non-advocacy website providing up-to-the-minute news and analysis on election reform.

After the November 2000 election brought the shortcomings of the American electoral system to the public's attention, The Pew Charitable Trusts made a grant to the University of Richmond to establish a clearinghouse for election reform information.

Serving everyone with an interest in the issue – policymakers, officials,

journalists, scholars and concerned citizens – *electionline.org* provides a centralized source of data and information in the face of decentralized reform efforts.

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