



October 2022

# Opening the Curtain

*A Multistate Look at the Laws that Govern  
Verification, Counting, Canvassing, &  
the Certification of Votes*

**SECURE**   
**DEMOCRACY**  
**FOUNDATION**

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# Key Takeaways

- ✓ Many states offer robust opportunities for self-appointed watchdogs and party representatives to challenge the eligibility of voters before an election or while casting ballots.
- ✓ A number of approaches to mail ballot return and verification exist in various states. Several states have created new limits for voters returning their ballots, as well as new hurdles to have one's ballot counted. Others have expanded opportunities for voters to learn of issues that could lead to ballot rejection and correct them.
- ✓ Some states give party representatives significant authority at polling and counting locations.
- ✓ Counting and canvassing processes are designed to verify the chain of custody of all ballots, accurately reflect each voter's intent, and correctly sum results in each race.
- ✓ While certification processes are designed to be non-discretionary, structural issues in statutory and administrative guidance can lead to problems.
- ✓ Recounts and election contests provide a formal framework for candidates and voters to resolve disputes concerning results, subject to limitations concerning the margin of victory and requirements to produce evidence in support of claims.







## Introduction

Traditionally, both election observers and participants have focused their attention on voters' ability to cast a ballot – offering little thought to what happens once ballots are cast. The 2020 election generated new interest in that critical portion of election administration: when, whether and how ballots are verified, counted, canvassed, and certified once they are out of the voter's hands and in those of election officials and state leaders.

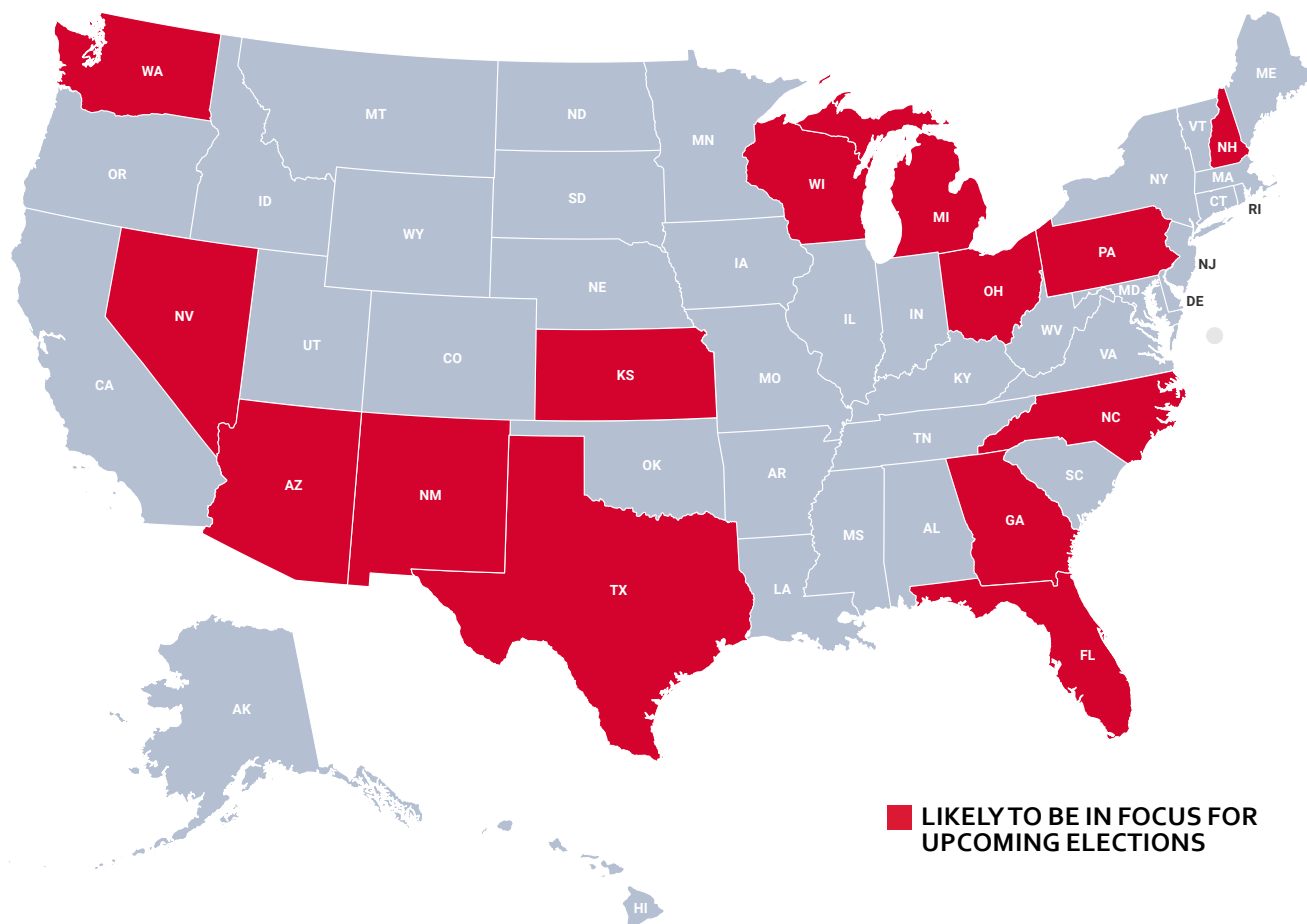
In this report, Secure Democracy Foundation provides a comprehensive review of the critical election administration processes that occur before and after voters close the curtain on the voting booth. Our goal is to provide accurate information on state laws concerning ballot verification, polling place observers, challenges to voter eligibility before and during voting, ballot counting, canvassing, certification, election contests and recounts. Each section of this report outlines these processes in a rough chronological order from the weeks leading into Election Day through the weeks immediately after. We provide state-specific examples of typical laws in each section while also pointing out unusual aspects of state laws that warrant particular focus and transparency during coming elections.

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Fourteen states (Arizona, Florida, Georgia, Kansas, Michigan, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Pennsylvania, Texas, Washington, and Wisconsin) are likely to be in focus for upcoming elections. While many states follow a similar pattern in their administration of elections, we also found that each state's laws contain unique provisions at different points in the election administration timeline. Election officials, voters, the media and observers should know these unique features ahead of Election Day – both to avoid and dispel confusion during this year's election cycle, and to identify areas for policy improvement prior to 2024.



## Pre-Election Registration Challenges

Recently, self-appointed watchdog groups have grown more aggressive in seeking to challenge the eligibility of registered voters, with the stated goal of removing ineligible voters from rolls prior to Election Day. Federal and state law generally provide guardrails around this process to avoid the cancellation of registration for eligible voters close to Election Day. Cancellation of an eligible voter's registration could lead to confusion and delays at polling locations, as well as during counting and canvassing processes as voters and election officials attempt to resolve discrepancies that kept qualified voters from

casting a ballot. In certain scenarios, voters could be forced to cast provisional ballots, which require additional follow-up by both voters and election officials to ensure all eligible votes are counted.

Federally, the National Voter Registration Act (NVRA) restricts the ability of local election officials to cancel voter registrations within 90 days of Election Day.<sup>1</sup> The NVRA prohibits large-scale, systematic cancellation of voter registrations, but leaves the question of challenges to individual voters up to state law. State laws often provide a method for a person to challenge the registration of an individual voter by alleging the voter does not meet one of the state's qualifications for registration (i.e. the voter is not a U.S. citizen, the voter has not resided in the state or precinct for a minimum amount of time, the voter has lost their right to vote due to a conviction).

Laws vary concerning the extent of proof necessary to bring, and ultimately prove, a challenge. States also have different laws concerning the format of challenges and the body charged with their review. At times, a voter whose registration is successfully challenged may not receive notice of the challenge, forcing them to vote using a provisional ballot that might not be ultimately counted on Election Day. Historically, more than one in four provisional ballots have not been accepted for counting.<sup>2</sup>

Many state laws include safeguards to avoid the cancellation of voter registrations near Election Day. In **North Carolina**, any challenge to a voter's registration must be made no later than 25 days before Election Day.<sup>3</sup> Challenges must be made separately, in writing, and under oath subject to penalties for perjury.<sup>4</sup> Challengers must satisfy the county board at a preliminary hearing that some merit to the challenge exists – a hearing before the board that voters are entitled to before Election Day. **Texas** law similarly requires challengers to file a sworn statement of the grounds of the challenge based on their personal knowledge<sup>5</sup> and prohibits the cancellation of any voter's registration on residency grounds within 75 days of an election.<sup>6</sup>



## STATE HIGHLIGHT

# Georgia

Georgia lawmakers included provisions in 2021's SB 202 that authorize private citizens to initiate mass challenges to the eligibility of thousands of voters at a time, establishing a tight mandatory time frame for hearings that could lead to cancellations of registration shortly before Election Day. Local election officials are also prohibited from creating any limitations on the number of challenges a single voter may file.<sup>8</sup> Hearings must be scheduled within 10 business days of a challenge being made, leading to the possibility of hearings shortly before Election Day.<sup>9</sup> Local officials who fail to comply with new challenge requirements face sanctions by the State Election Board.<sup>10</sup>

Other states lack such protections and place a greater burden on voters to verify and protect their registration status. Recently-enacted **Georgia** law explicitly protects private citizens' ability to make an unlimited number of registration challenges (**see state highlight**). **Pennsylvania** law concerning pre-election registration challenges is vague, and can be interpreted to place the burden of proof on the challenged voter rather than requiring the challenger to prove the merit of their challenge.<sup>7</sup> Pennsylvania law also contains no explicit deadlines for raising, hearing, or resolving pre-election challenges.

## Mail Ballot Return

States have varying laws governing how voters and others acting on their behalf may lawfully return completed mail ballots. Differences between states lie in how each state addresses three main questions: 1) Who may return a ballot for a voter?; 2) Where may a person return a ballot?; and 3) When must the person return the ballot in order for it to be verified and counted?

Like the majority of states generally, almost all of the states covered by this report place some kind of limitation on individuals returning ballots on behalf of voters (other than by placing a ballot in the mail).<sup>11</sup> Some states limit ballot return to individuals related to voters or who live in the same residence as the voter. **Ohio** limits ballot return to a voter's family members.<sup>12</sup> **Georgia** law offers a more expansive list of authorized ballot returners that includes not only a voter's family members, but also a voter's household member or caregiver.<sup>13</sup>

Other states place limitations on the number of ballots an individual may return for other voters. Since 2020, Florida enacted multiple laws to limit ballot return by individuals other than the voter. In 2021, **Florida** enacted Senate Bill 90 to make it a crime for a person to possess or return more than two ballots that do not belong to immediate family members of that person.<sup>14</sup> In 2022, Senate Bill 524 reclassified the recently-created offense as a felony.<sup>15</sup> A few states, like **Texas**<sup>16</sup> and **Wisconsin**<sup>17</sup>, do not authorize anyone to return a ballot (other than by placing it in the mail) on behalf of another except under very limited circumstances.

State laws also vary greatly on the subject of in-person ballot return. Some states offer robust options for voters to return their ballots at numerous accessible locations. **Washington**, which conducts its elections by entirely mail ballot, allows voters to return their ballot to a county auditor's office, a vote center, or drop boxes located throughout each county.<sup>18</sup> Similarly, **Michigan** law authorizes local election officials to provide drop boxes at their discretion, subject to certain security requirements.<sup>19</sup>

Some states place certain restrictions on locations for in-person ballot return. **North Carolina** law does not authorize standalone drop boxes, but does allow voters to return ballots to early voting ("one-stop") locations.<sup>20</sup> **Ohio** law currently allows a single drop-off location outside each county elections office during the absentee voting period.<sup>21</sup>

Changes enacted by Senate Bill 90 now require drop boxes in **Florida** to be staffed by election office employees at all times they are available to the public for ballot return.<sup>22</sup> **Georgia**'s Senate Bill 202 reduced the total number of drop boxes available to voters.<sup>23</sup> A recent court decision interpreted Wisconsin law to not allow unstaffed drop off locations throughout the state (**see state highlight**).

The final consideration is a state's deadline for the return of mail ballots. In 2020, the requirement for ballots to be returned by the close of polls on Election Day in **Michigan** and **Pennsylvania** was the subject of substantial litigation, with the Pennsylvania case advancing all the way to the U.S. Supreme Court.<sup>24</sup> Those two states, along with others like **Florida**<sup>25</sup>, **Georgia**<sup>26</sup>, and **Arizona**<sup>27</sup>, will only count ballots received by the close of polls on Election Day in 2022. **Ohio**<sup>28</sup>, **Texas**<sup>29</sup>, and **Kansas**<sup>30</sup> will accept ballots that are postmarked by Election Day and received by election officials within a set amount of time after Election Day.


## Mail Ballot Verification

Once returned, mail ballots must be verified and prepared for counting. State laws differ in terms of when and how ballots are verified. Typically, verification is conducted by bipartisan teams of election workers, with observers representing candidates and political parties also present. Additionally, some states offer voters an opportunity to correct ("cure") minor errors on their mail ballot envelopes that are discovered during the verification process.

Beginning the verification process well before Election Day (known as "pre-processing") allows election officials to spread out the work of ballot verification and to prepare ballots for counting ahead of time – allowing for quick reporting of unofficial results once polls

### STATE HIGHLIGHT

## Wisconsin



Wisconsin statutes do not mention drop boxes, simply requiring voters to return their ballots "to the municipal clerk." In recent elections, the Wisconsin Elections Commission (WEC) issued guidance to local clerks advising that clerks may use their discretion to determine how they receive ballots, including whether to provide drop boxes. Many jurisdictions provided drop boxes during the 2020 election. Following that election, Wisconsin voters sued the WEC over the guidance, arguing that the statutory direction that ballots be returned "to the clerk" required a person to receive them, and only staffed drop boxes at the clerk's office or an alternative early voting location could be used. In July, a divided Wisconsin Supreme Court agreed.<sup>31</sup> Thus, voters who relied on drop boxes to return their ballots in 2020 will not be able to do so in 2022.



close on Election Day. States like **Florida**<sup>32</sup> and **Ohio**<sup>33</sup> are able to report nearly complete unofficial results within a few hours of polls closing because election officials may begin verifying mail ballots weeks ahead of time. **Michigan**<sup>34</sup> and **Pennsylvania**<sup>35</sup>, on the other hand, can experience a longer period to report unofficial results because election officials in those states may not begin verifying mail ballots until Election Day.

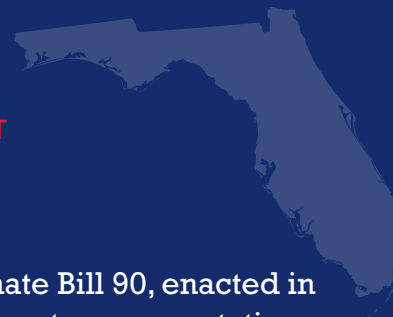
Many states verify mail ballots by comparing the voter's signature on the envelope or affidavit returned with the ballot to the signature on file with election officials. For example, **Arizona** election officials will compare the voter's signature on the early voting ballot affidavit with the signature in the voter's registration record.<sup>36</sup> Certain states, like **Florida**, allow party representatives to observe and challenge election officials' decisions to accept or reject ballots during the verification process (see state highlight).

Some states require voters to complete additional tasks, beyond signing their ballot envelope to have their ballot verified. **North Carolina** requires the voter to either include the signature of two witnesses on their return envelope or have the envelope notarized.<sup>37</sup> After 2020, **Texas**<sup>38</sup> and **Georgia**<sup>39</sup> both enacted laws requiring voters to include an identification number (driver's license, state ID, or social security number) on the return envelope. The newly-enacted Texas law led to a sharp increase in the rate of rejected mail ballots during the 2022 state primary in March. While roughly 1% of mail ballots were rejected in 2020 prior to the law's enactment, more than 12% of mail ballots were rejected during the 2022 primary.<sup>40</sup>

Since 2020, several states have implemented laws requiring officials to notify voters of any issues related to their ballot, often offering voters the opportunity to fix those errors that could lead to the rejection of their ballot if not addressed. Currently, 31 states offer voters this opportunity to correct small unintentional errors, such as a missing signature, address, or date. **Texas** included notice and cure provisions in its sweeping election bill, Senate Bill 1, passed in 2021.<sup>41</sup> **North**

#### STATE HIGHLIGHT

## Florida



Provisions of Senate Bill 90, enacted in 2021, guarantee party representatives the opportunity to observe and challenge ballot verification decisions much earlier in the process than previously authorized. Prior to the bill's enactment, the law did not explicitly allow party representatives to be present during mail ballot verification, similarly limiting challenge opportunities during verification. Senate Bill 90's provisions mandated that parties be allowed to have representatives, who may object to the acceptance of a mail ballot at any time prior to its removal from the ballot envelope, present at all times verification is conducted.<sup>45</sup> Observers expect a significant increase in mail ballot challenges in 2022 due to the changes.

**Carolina** election officials offered cure options beginning in 2020 following federal litigation.<sup>42</sup>

However, some states took steps to limit cure opportunities following the 2020 election. **Arizona** enacted legislation requiring voters to cure missing ballot envelope signatures by the close of polls on Election Day.<sup>43</sup> Previously, such voters could cure a missing signature up to five business days after Election Day. **Wisconsin** has gone even further by completely eliminating election officials' ability to assist voters with incomplete information on their ballot return envelopes.<sup>44</sup>

## Party Representatives at Polling Locations

Since 2020, state legislatures have increasingly focused on the presence and access of political party representatives at polling locations, ballot verification sites, and ballot counting sites. Several states have passed new laws increasing the ability of party representatives to move throughout voting and counting locations, observe election activities, and interact with election workers.

Party representatives at polling locations generally fall within one of two categories: 1) poll watchers, who may observe election activities and discuss perceived election irregularities with election workers; and 2) challengers, who may take a more active role by disputing the eligibility of individual voters or the actions of polling place officials. Some states allow for just one type of party representative, while a few authorize both.

Traditionally, poll watchers have a limited role at polling locations. They may observe various facets of the voting process and are often allowed to assist their party in "get out the vote" efforts by checking voters' status on a precinct's list of registered voters. State laws generally prohibit poll watchers from interacting directly with voters or accompanying voters into the voting booth. Poll watchers may not use video or audio recording equipment while performing their duties. State law also establishes the qualifications for party representatives as well as the appointment process and any required training.

Several states have passed laws increasing poll watchers' access to election processes at polling locations and limiting the ability of election officials to discipline or eject poll watchers who do not follow the laws governing them. One notable example is **Texas**, where provisions in Senate Bill 1 increased poll watchers' freedom of movement significantly, even creating a circumstance in which poll watchers can enter a vehicle being used for curbside voting by a voter with a disability.<sup>46</sup> The provisions of Senate Bill 1 also prevent an election official from ejecting a poll watcher based solely on a report of harassment from a voter<sup>47</sup> and create new criminal penalties against election officials for failing to accept, or obstructing the view of, poll watchers.<sup>48</sup>

Challengers, on the other hand, generally have greater leeway to directly interact with voters and election officials. Existing laws in several states give party representatives substantial authority at polling locations. **Arizona** law creates a robust system for authorized party representatives to challenge voter eligibility (**see state highlight**). **Michigan** law authorizes parties to appoint both poll watchers and challengers.<sup>49</sup> A party may have two challengers at each precinct polling location in Michigan – those challengers may inspect poll books and ballots, as well as challenge the eligibility of voters and the actions of polling place officials.<sup>50</sup> An increase in access for party representatives at polling locations has led to increased concerns over the potential for voter intimidation, the disruption and delay of voting processes, and even violent activity at polling locations.

An additional concern is the increased criminalization of the voting process. States have increased the number and severity of possible offenses for which voters and election officials may be charged. Some states have also dedicated new law enforcement resources to election-related conduct. In 2022, **Florida's** Senate Bill 524 created an “Office of Election Crimes and Security” staffed by 15 investigators and supported by 10 dedicated law enforcement officers spread throughout the state.<sup>51</sup> **Georgia** also recently increased the authority of the state’s Bureau of Investigation to investigate election irregularities, including the power to subpoena election records and equipment.<sup>52</sup>

Citing concerns over disruptions at polling locations, some states have issued rules to more clearly define limits to party representatives' access and actions. The **North Carolina** State Board of Elections recently created new rules that limit the ability of party representatives to view private voter information or engage in distracting behavior while voting is taking place.<sup>53</sup> In September, the **Wisconsin** Elections Commission also began studying possible changes to the state’s rules concerning election observers.<sup>54</sup>

## STATE HIGHLIGHT

### Arizona

Arizona law allows not only authorized party representatives, but also any registered voter, to challenge the eligibility of a voter at a polling location.<sup>55</sup> Voters may be challenged based on failure to meet a qualification for registration (age, citizenship, minimum residency, etc.) or for having already voted in the election.<sup>56</sup> Challenges can be made orally rather than in writing, and must be immediately resolved by polling place officials.<sup>57</sup> Voters who are successfully challenged must cast a provisional ballot and follow up with canvassing officials within five days after Election Day for their ballot to be counted. The ability for any registered voter to challenge other voters, combined with the immediacy of the required resolution process at the polling place, could lead to disruption and delays at in-person polling locations.

# Counting and Canvassing Votes Locally

Once polls close, local election officials begin the process of counting in-person and mail ballots to ensure accuracy and timely delivery to the local canvassing authority. The canvassing authority will then check all of the reported results for accuracy and compile the results in the various races to prepare for certification of local races and transmission to a state canvassing authority to determine the winner of multi-jurisdiction and statewide races.

Votes cast in person on Election Day are counted at their respective polling location, which may serve a single precinct or may allow voters from anywhere in the county to cast their ballot.<sup>58</sup> Mail ballots are generally counted at a central location within the town, city, or county that conducts the election. Poll watchers and challengers are typically allowed to stay and observe the counting process, but lack any authority to challenge the accuracy of the count. While the vast majority of ballots are easily read by tabulation equipment, ballots that may be damaged, contain undervotes or overvotes<sup>59</sup>, or are otherwise unreadable by automatic tabulation equipment, require additional review by election officials, with precinct officials completing paperwork to detail the number of ballots voted, spoiled, or remaining blank. In locations using paper ballots, every paper ballot, whether voted, spoiled, or blank, is documented and returned to local election officials. Vote totals reported by tabulation equipment are also compared to the number of voters who are checked in on precinct voter lists.

Nearly every state provides detailed guidance to election officials on how to determine a voter's intent when it is in question. Several states, like **New Mexico**, provide a definition of what constitutes a valid vote in statute.<sup>60</sup> Other states define the process whereby election officials work together to determine the voter's intent. **Arizona** requires officials who are reviewing early voting ballots by hand to agree unanimously on a voter's intent, otherwise the official in charge of the canvass will make the final determination.<sup>61</sup>

Occasionally, variations in ballot styles may make some ballots unreadable by automatic tabulation equipment. In those cases, states have a process whereby election officials, typically working in bipartisan teams and often in the presence of party representatives, will duplicate the unreadable ballots so that they may be read by tabulation equipment. The process has strict guidelines to ensure ballots requiring duplication accurately reflect the voter's choices and are counted only once. For example, duplicated ballots in **Georgia** must be prepared in the presence of a witness for tabulation with other ballots from the same precinct.<sup>62</sup> The duplicated ballot must be clearly marked "DUPLICATE" and must bear the same serial number as the original ballot to avoid double counting.<sup>63</sup>

Many state laws set deadlines for the transmission of results to county election officials. **Texas** county officials must report their precinct results, including Election Day and early voting ballots (cast both in-person and by mail) within 24 hours of the close of polls.<sup>64</sup> **Michigan** law requires each precinct's board of inspectors to deliver a completed

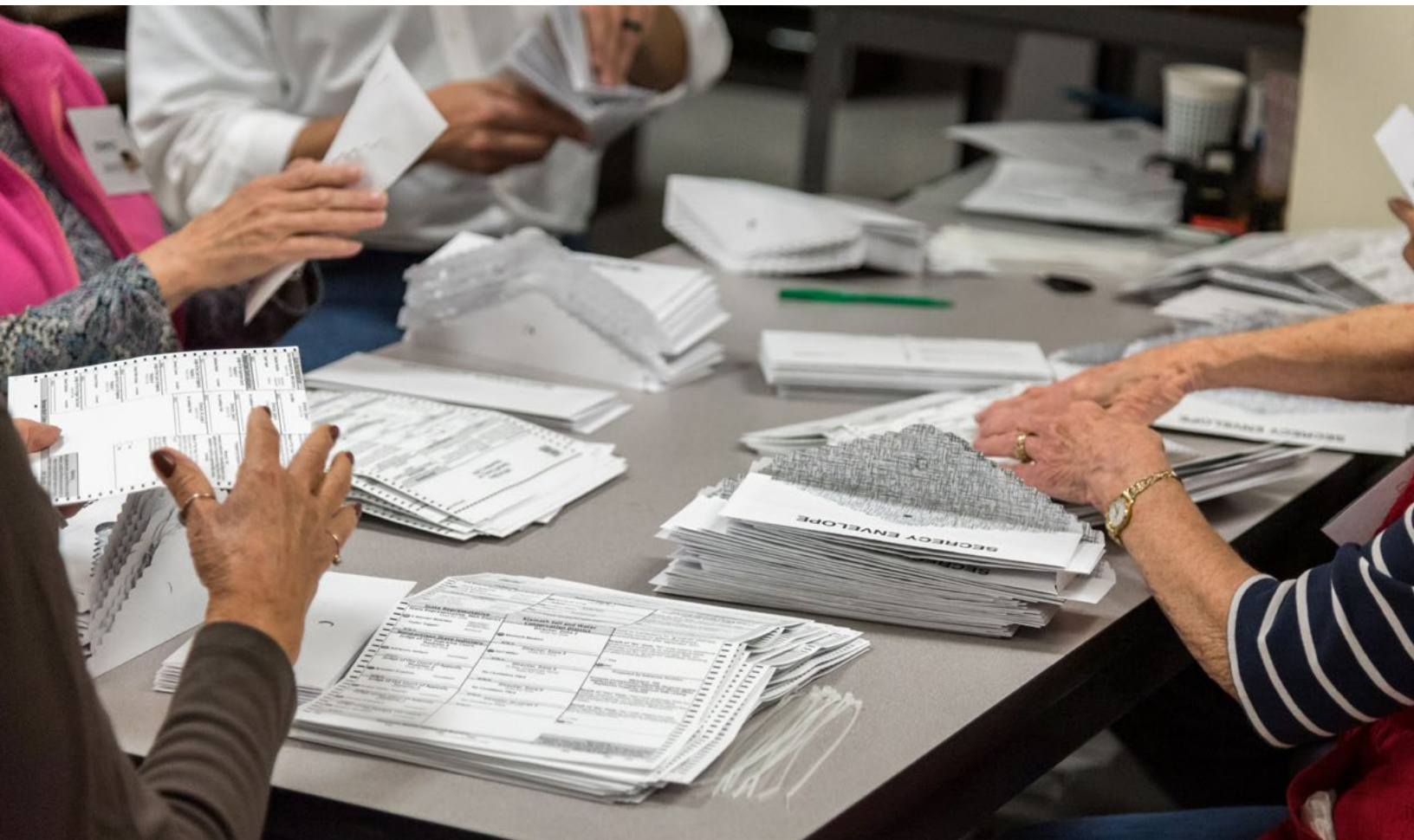


statement of returns by 11 a.m. on the day following the election.<sup>65</sup>

Some states establish periodic requirements for the reporting of unofficial results. **Florida** canvassing boards must report all in-person early voting and mail ballots tabulated within 30 minutes after polls close. Thereafter, the board must update unofficial result tallies with precinct totals and updated mail ballot tabulations every 45 minutes.<sup>66</sup> In 2020, **Ohio** Secretary of State Frank LaRose directed counties to report vote totals for absentee ballots within 30 minutes of polls closing, and then required updates to unofficial results every quarter, half, or full hour depending on the county.<sup>67</sup>

Once ballots of all types are totalled, local officials will conduct the “canvass,” in which they total the results from precinct and mail ballot tabulation to create a single report of votes for the entire jurisdiction. During the local canvass, election officials (typically, a bipartisan board) will confirm the accuracy of reported totals from each precinct and counting location. The officials then confirm that each precinct complied with chain of custody and ballot reconciliation requirements, as well as verify ballot totals to ensure all records concerning the number of ballots issued to voters match. If officials discover a discrepancy from a particular precinct, they will summon the precinct officials to explain and resolve the discrepancy prior to certification of the results.

Some states establish a deadline by which the local canvass must be completed. **Ohio** requires the local canvass to be complete no later than 21 days after Election Day.<sup>68</sup> **Michigan** law sets a deadline at 14 days after Election Day.<sup>69</sup> Other states establish an exact date for the local canvass. **North Carolina** requires the canvass to be conducted on the 10th day after Election Day at 11 a.m.<sup>70</sup>



**Pennsylvania** has a unique rule concerning the local canvass. Local officials there must complete the canvass and submit unofficial results to the Secretary of the Commonwealth by the Tuesday following the election. Those results remain unofficial for five days to allow for a petition for recount or recanvass from a candidate or party to be filed. If no petition is filed within the five day period, the results become official.<sup>71</sup>

Some states also conduct a counting audit at the county level shortly before or after completion of the canvass. **Arizona** law authorizes counties to conduct a hand count audit of unofficial precinct and early voting results prior to completion of the canvass.<sup>72</sup> The hand count audit will compare the tabulation results in selected races in 2% of precincts and among 1% of early voting ballots. Depending on the scale of any discrepancy, the hand count can be expanded to cover either a greater percentage of ballots or every ballot cast within a county. **Florida** conducts a tabulation audit after the canvass. Counties may select a hand count of one race in 1-2% of precincts or a machine count of all races in at least 20% of precincts.<sup>73</sup>

Following the local canvass, the appropriate local officials will generally certify the results of elections for races and questions that are determined solely by the votes totaled in the local canvass. Officials will also transmit local results to the appropriate agency for inclusion in the state canvass.

## **Local & State Certification**

Different officers or agencies are responsible for certifying local results following the canvass in each state. Some states use an existing election official or agency, while others appoint a special body for the task. In **Georgia**, the superintendent of elections is solely responsible for the certification of local results.<sup>74</sup> **Arizona** county results are certified by the county's board of supervisors.<sup>75</sup> **Michigan (see state highlight)** and **Ohio**<sup>76</sup> appoint bipartisan local canvassing boards to perform the task of certifying local results.

**State law generally leaves little discretion to the person or agency designated to certify results.** Read in their entirety, state laws are designed for any errors to be discovered and corrected at the canvass stage prior to certification. Still, vagueness in some laws concerning certification discretion has led to county boards in several states refusing to certify results despite no clear discrepancy in results. In **New Mexico**, Otero County refused to certify its results following the June 7 primary despite lacking any evidence of irregularities.<sup>77</sup> In **Pennsylvania's** 2022 primary, three counties refused to certify their primary results, citing a disagreement over mail ballots without a signature date – an issue that had already been decided by the courts.<sup>78</sup> In both instances, courts stepped in and directed the county boards to certify, ruling that the boards had no discretion over the decision to certify based on the circumstances.

Local races that are determined entirely by the votes certified at the local level are certified at the local level. The local board or clerk will provide the winning candidate

with a certificate of election or declare the winner of a local ballot question to be certified. Local officials will then transmit certified vote totals for multicounty, state, and federal offices and ballot questions to the agency responsible for canvassing and certifying statewide results.

State canvasses typically involve little more than compiling the results reported across the state following local certification. State law can place responsibility for canvassing different elections with different officers or agencies. In **Texas**, the governor conducts the state canvass for all elections other than governor and lieutenant governor, which are canvassed by the incoming state legislature.<sup>79</sup>

Some states specify a date on which the state canvassing agency must begin to meet, although additional time is often allowed to await later results arriving from counties. In **Arizona**, the secretary of state must begin the state canvass 27 days after Election Day, but may wait an additional three days to complete the process if necessary.<sup>80</sup> **Michigan** requires the state canvassing board to meet beginning 20 days after Election Day and gives a buffer of up to 20 additional days.<sup>81</sup> Other states direct the exact day that the appropriate officials must meet to canvass results. The **Florida** Elections Canvassing Commission, consisting of the governor and two members of the cabinet, must meet at 9 a.m. on the 14th day after the election to canvass state results.<sup>82</sup>

State certification generally comes immediately after completion of the state canvass.<sup>83</sup> State election officials will send winning candidates in multicounty, state, and federal races certificates of election and certify the results of statewide ballot questions and constitutional amendments.



## STATE HIGHLIGHT

# Michigan

Michigan law requires boards of canvassers at the local and state levels to be composed of four members, two from each of the two major political parties.<sup>84</sup> The partisan balance is designed to ensure fairness to the candidates and parties during the certification process. Following the November 2020 election, the two Republican members of the Wayne County Board of Canvassers refused to certify the county's results for a short time, citing unspecified concerns centered largely on Detroit, before reaching a resolution to end their holdout.<sup>85</sup> Observers were concerned that the state canvassing board might have a similar deadlock, but one of the two Republicans on the board voted with the Democratic members to certify the state's results. Recently, fears of partisan deadlock have been renewed as Republican members of the state board refused to certify ballot initiatives for inclusion on the November 2022 ballot, despite the approval of the petition signatures by the Bureau of Elections. Those members voted to certify only after the state supreme court ordered them to do so, citing the non-discretionary nature of the board's responsibilities.<sup>86</sup>

# Recounts

States typically offer a mechanism for a formal recount of votes when the results of a race may be in question. Recounts may be conducted at one or more particular precincts, across an entire county, or by state, depending on the circumstances. Recounts may be automatically required based on state law, or may be requested by a losing candidate who meets certain requirements.

Automatic recounts generally occur when unofficial results show a race to have a very tight margin between two candidates. **Texas** only conducts automatic recounts when unofficial results show a race to be tied.<sup>87</sup> **Michigan** will conduct an automatic recount for a statewide race if the candidates are separated by 2,000 votes or fewer.<sup>88</sup> In 2022, **Arizona** enacted legislation to increase the margin to trigger an automatic recount from .1% to .5%, a typical threshold across many states.<sup>89</sup> Some states, such as **Wisconsin** and **New Hampshire**, do not provide for any automatic recounts.

Recounts may also be done at the request of candidates who meet certain requirements. In **North Carolina**, candidates in statewide races may request a recount only if the margin between the top two candidates is .5% of all votes cast or 10,000 total votes, whichever is less.<sup>90</sup> At the other extreme, **New Hampshire** gives candidates much more leeway by allowing any candidate who is within 20% of the leading candidate to request a recount.<sup>91</sup> Some states allow one or more registered voters to request a recount (**see state highlight**), while others, like **Florida**, provide no process to request a recount. Many states require the candidate or individual requesting a recount to pay a deposit up front to cover some or all of the costs of the recount.

Whether a recount is automatic or requested, state law generally requires the same tabulation and canvassing processes used for the original count when conducting the recount, with the agency responsible for canvassing the race generally overseeing the recount process. Some states, like **Florida**<sup>92</sup>, require the recount to be conducted by

## STATE HIGHLIGHT

### Pennsylvania

Pennsylvania law is particularly permissive on the subject of requested recounts. Three qualified voters of an election district can request a recount by filing a petition in the appropriate court of common pleas.<sup>94</sup> The petition must state that fraud or error occurred in the counting, marking, or some other process relevant to the ballots. However, the voters requesting a recount do not need to state any particular act of fraud or error and do not have to offer evidence for their allegations in the petition. The requesting voters need only post a \$50 bond, and may petition for a recount at any time up to four months after the date of the election.<sup>95</sup>



automatic tabulation, while others, like **Texas**<sup>93</sup>, allow the requesting party to require the counting to be conducted by hand. Regardless of the method of counting, the work is typically performed by bipartisan teams, and candidates are generally given the opportunity to have observers present during the process. Once the recount process is complete, affected races are recanvassed and certifications are changed when necessary.

## Election Contests

Rules concerning deadlines to initiate contests, as well as who and how they are decided, vary between states – and can often vary within states depending on the office being contested.

Generally, states allow contestants a short period after the certification of results to initiate an election contest, though states like **North Carolina** establish a tighter timeline (**see state highlight**). Local races that are certified following a local canvass will generally have an earlier contest deadline than multicounty, state, or federal races that are only certified after the state canvass. A number of states set different deadlines for contests of different races. **Texas** has three different deadlines for election contests, depending on whether the contest concerns presidential electors, statewide or state legislative offices, or other offices.<sup>96</sup>

In many states, election contests are judicial proceedings in which each side has the opportunity to file pleadings and present evidence and arguments in their favor. In **Georgia**, the losing candidate or an “aggrieved voter” may file a petition that alleges fraud, misconduct, or irregularity in the conduct of the election or counting of ballots in the superior court of the winning candidate’s home county.<sup>97</sup> The winning

### STATE HIGHLIGHT

## North Carolina

North Carolina makes election contests widely available, subject to strict guidelines. Any registered voter or any candidate may file a signed and notarized protest form with the county board of elections.<sup>105</sup> Petitions may be based on an allegation that there was a violation of election law, irregularity, or misconduct sufficient to cast doubt on the election’s results.<sup>106</sup> Petitions alleging errors in tabulation must be filed before the beginning of the county canvass meeting, while those alleging other irregularities must be filed no later than 5 p.m. on the second business day after the county canvass.<sup>107</sup> Petitioners must follow strict requirements that include affirming their belief in their allegations under penalty of perjury, providing affidavits of facts not within the personal knowledge of the petitioner, and providing the names of witnesses to support their claims.<sup>108</sup> Election contests are resolved by county boards of elections, with potential for appeals to the state board of elections and subsequently to state courts.<sup>109</sup>

candidate has 5-10 days to respond to the petition after receiving notice.<sup>98</sup> The court will hold a hearing no later than 20 days after the winning candidate receives notice, and can uphold the reported result of the election, declare a losing candidate the winner, or order a new election based on the evidence presented at the hearing.<sup>99</sup>

Other states name political bodies or officers as the judges for election contests to certain races. In **Texas**, the governor decides election contests concerning presidential electors and the state legislature decides all contests involving its own members and statewide offices.<sup>100</sup> Similarly, **Florida** interprets a provision in its state constitution to solely authorize the state legislature to determine contests involving its own members.<sup>101</sup>

Election contests are limited in certain states. **Wisconsin** law does not authorize a specific judicial process for contesting election results beyond an appeal of a recount.<sup>102</sup> Similarly, **Michigan** does not have a statutory process for lawsuits contesting elections.<sup>103</sup> This lack of clarity around the election contest process led to confusion even among state supreme court justices in lawsuits contesting the 2020 election in Michigan.<sup>104</sup>



## Conclusion

Each state charts the course from the beginning of voting to the certification of results differently. With some notable exceptions, states generally have rules in place to avoid cancellations of registrations of qualified voters that can lead to confusion at polling locations and possible disenfranchisement through no fault of the voter. Election workers across the political spectrum work together to verify voters' mail ballots and help voters have questioned ballots counted. On Election Day, poll workers carry out the critical task of operating polling places according to law under the watchful eyes of party and candidate representatives.

Once polls close and all ballots are cast, election workers and canvassing boards follow strenuous procedures to ensure every voter's ballot choices are correctly tabulated and totals are correct. Different bipartisan teams check and recheck results to confirm accuracy before they are sent to the agency responsible for certification. Candidates with questions about close races can request a recount or file an election contest that requires the contestant to provide evidence of their allegations of irregularities.

Though each state's laws governing the election timeline of casting, counting, canvassing, and certifying votes are different, voters, candidates, and parties can rely on existing safeguards in every state that ensure votes are counted accurately and the will of the voters is reflected in the certified results.

# Citations

- 1 National Voter Registration Act, § 8, 52 U.S.C. § 20507(c)(2)(A)
- 2 Acceptance rates for provisional ballots nationally vary. A report by the Election Assistance Commission (EAC) found that of the roughly 10 million provisional ballots issued between 2006-2016, approximately 73% were ultimately counted. “EAVS Deep Dive: Provisional Ballots”, Election Assistance Commission. Available at [https://www.eac.gov/sites/default/files/document\\_library/files/EAVSDeepDive\\_provisionalballot.pdf](https://www.eac.gov/sites/default/files/document_library/files/EAVSDeepDive_provisionalballot.pdf)
- 3 N.C. Gen. Stat. § 163-85(a)
- 4 N.C. Gen. Stat. § 163-85(b)
- 5 Tex. Elec. Code § 16.092
- 6 Tex. Elec. Code § 16.0921(c)
- 7 25 Pa. Cons. Stat. § 1329. A challenged individual must respond to the challenge affidavit in a written statement sworn or affirmed by the challenged individual. The challenged individual must produce other evidence as may be required to satisfy the registrar or commissioner of their qualifications.
- 8 Ga. Code § 21-2-229
- 9 Id.
- 10 Id.
- 11 Washington law contains no limitation on third party ballot return.
- 12 Ohio Rev. Code § 3509.05(A). Authorized family members for ballot return include the voter's spouse, parent, father-in-law, mother-in-law, grandparent, sibling of the half or whole blood, child, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, niece, or nephew.
- 13 Ga. Code § 21-2-385(a)
- 14 Fla. Stat. § 104.0616
- 15 Id.
- 16 Tex. Elec. Code § 86.006. Texas allows only the voter to return their ballot in person. Additionally, the voter may only return the ballot to the clerk's office and may only do so on Election Day.
- 17 Wis. Stat. § 6.87(6). In August 2022, a federal court ruled that voters with disabilities may continue to receive assistance with returning their mail ballots. See Aug. 31, 2022 Opinion and Order, Carey v. Wisconsin Elections Commission, Case No. 3:22-cv-00402 (W.D. Wisc.).
- 18 Wash. Rev. Code § 29A.40.160(4); Wash. Rev. Code § 29A.40.091(4)
- 19 Mich. Comp. Laws § 168.761d
- 20 N.C. Gen. Stat. § 163-226(f)
- 21 Oh. Sec’y of State Dir. 2021-10
- 22 Fla. Stat. § 101.69. Following the passage of Senate Bill 524 in 2022, alternative ballot drop off locations are now called “secure ballot intake stations.”
- 23 Ga. Code § 21-2-382(c)(1)



- 24 League of Women Voters of Michigan v. Benson, Case No. 353654 (Mich. Ct. of Appeals 2020); Republican Party v. Boockvar, Case No. 20-542 (U.S. S. Ct.), 141 S. Ct. 1
- 25 Fla. Stat. § 101.67(2)
- 26 Ga. Code § 21-2-385(a)
- 27 Ariz. Rev. Stat. § 16-548(A)
- 28 Ohio. Rev. Code § 3509.05
- 29 Tex. Elec. Code § 86.007(a)
- 30 Kan. Stat. § 25-1132
- 31 Order, July 8, 2022. Teigen v. Wisconsin Elections Commission, No. 2022AP91 (Wisc. S. Ct.).
- 32 Fla. Stat. § 101.68
- 33 Ohio Rev. Code § 3509.06(F)
- 34 Mich. Comp. Law § 168.765a(8)
- 35 25 Pa. Stat. § 3146.8
- 36 Ariz. Rev. Stat. § 16-550(A)
- 37 N.C. Gen. Stat. § 163-231(a)(6)
- 38 Tex. Elec. Code § 86.002(g)
- 39 Ga. Code § 21-2-385(a)
- 40 Weber, P. & Coronado, A. “Texas mail ballot rejections soar under new restrictions”, AP (March 16, 2022).
- 41 Tex. Elec. Code § 87.0271; Tex. Elec. Code. § 87.0411
- 42 Democracy NC v. N.C. State Bd. of Elections, Case No. 1:20-cv-00457 (M.D. N.C.); Numbered Memo 2020-19, N.C. State. Bd. of Elections (Aug. 21, 2020).
- 43 Ariz. Rev. Stat. § 16-550
- 44 Memo from Wisconsin Elections Commission, “Temporary Injunction on WEC Guidance re Missing Absentee Witness Address” (Sept. 13, 2022); available at <https://www.wispolitics.com/wp-content/uploads/2022/09/220913Memo.pdf>
- 45 Fla. Stat. § 101.68
- 46 Tex. Elec. Code § 64.009
- 47 Tex. Elec. Code § 32.075(g)
- 48 Tex. Elec. Code § 33.051(g); Tex. Elec. Code § 33.061(a)
- 49 Mich. Comp. Laws § 168.730; Mich. Election Official’s Manual ch. 11
- 50 Mich. Comp. Laws § 168.730; Mich. Comp. Laws § 168.733
- 51 Fla. Stat. § 97.022
- 52 Ga. Code § 35-3-4.5

- 53 08 N.C Admin. Code § 20.0101
- 54 Venhuizen, H. “Commission proposes review of Wisconsin poll observer rules”, AP (Sept. 21, 2022). Available at <https://apnews.com/article/2022-midterm-elections-wisconsin-government-and-politics-1d7166a6889508b104c083af2b5b87f4>
- 55 Ariz. Elections Procedure Manual, pp. 189-191
- 56 Ariz. Rev. Stat. § 16-591
- 57 Ariz. Rev. Stat. § 16-592; Ariz. Rev. Stat. § 16-609
- 58 Of the states reviewed for this report, Texas, Arizona, Washington, Kansas, Nevada, & New Mexico allow local officials to conduct in-person voting at “vote centers” allowing county residents to vote at any location throughout the county regardless of their precinct assignment.
- 59 “Undervotes” occur when a voter fails to vote for an office or question on a ballot. “Overvotes” occur when a voter chooses more options for an office or question than is allowed (ex.-two votes in a race in which only a single candidate can be elected).
- 60 N.M. Stat. § 1-1.5.2
- 61 Ariz. Rev. Stat. § 16-602(G); Ariz. Elec. Procedure Manual p. 233
- 62 Ga. Stat. § 21-2-483
- 63 Id.
- 64 Tex. Elec. Code § 66.053
- 65 Mich. Comp. Laws § 168.809
- 66 Fla. Stat. § 102.141
- 67 Dir. 2020-23, Ohio Sec’y of State. Available at <https://www.ohiosos.gov/globalassets/elections/directives/2020/dir2020-23.pdf>. More populous counties were required to update results more often than less populous one.
- 68 Ohio Rev. Code § 3505.32
- 69 Mich. Comp. Laws § 168.822. However, Michigan law allows an earlier deadline for the certification of votes for presidential electors. The Secretary of State may direct the local canvass for presidential electors to be completed within 7 days of Election Day if the contest is separated by 25,000 votes or fewer. Mich. Comp. Laws § 168.842(2)
- 70 N.C. Gen. Stat. § 163-182.5(b)
- 71 25 Pa. Stat. § 3154
- 72 Ariz. Rev. Code § 16-602
- 73 Fla. Stat. § 101.591
- 74 Ga. Code § 21-2-493(k)
- 75 Ariz. Rev. Stat. § 16-642
- 76 Ohio. Rev. Code § 3505.32
- 77 “GOP Commission Refuses to Certify Primary Vote.”, AP (June 15, 2022). Available at <https://www.politico.com/news/2022/06/15/gop-commission-refuses-to-certify-new-mexico-primary->

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- 78** Richards, Z., “Pennsylvania sues county election boards over failure to certify election results.”, NBC News (July 12, 2022). Available at <https://www.nbcnews.com/politics/2022-election/pennsylvania-sues-county-election-boards-refusal-certify-primary-resul-rcna37965>
- 79** Tex. Elec. Code §§ 67.010-67.011; Tex. Const. art. IV, § 3
- 80** Ariz. Rev. Stat. § 16-648
- 81** Mich. Comp. Laws § 168.842
- 82** Fla. Stat. § 102.111; Fla. Stat. § 102.121
- 83** One exception is certification of the governor and lieutenant governor races in Texas. Those races are not officially certified until the newly-elected state legislature convenes in early January of the following year. Tex. Elec. Code § 67.011
- 84** Mich. Const. art. II, § 7
- 85** Hendrickson, C., “GOP members reverse course, vote to certify Wayne County results.”, Detroit Free Press (Nov. 17, 2020). Available at <https://www.freep.com/story/news/local/michigan/detroit/2020/11/17/wayne-county-election-certification/6309668002/>
- 86** Hendrickson, C., “Michigan Supreme Court orders the certification of Promote the Vote proposal.”, Detroit Free Press (Sept. 8, 2022). Available at <https://www.freep.com/story/news/politics/2022/09/08/court-orders-certification-of-voting-rights-proposal/65474712007/>
- 87** Tex. Elec. Code § 216.001
- 88** Mich. Comp. Laws § 168.880a
- 89** Ariz. Rev. Stat. § 16-661.
- 90** N.C. Gen. Stat. § 163-182.7
- 91** N.H. Rev. Stat. § 660:1
- 92** Fla. Stat. § 102.141
- 93** Tex. Elec. Code § 214.042
- 94** 25 Pa. Stat. § 3261
- 95** Id.
- 96** Tex. Elec. Code § 243.003; Tex. Elec. Code § 241.003; Tex. Elec. Code § 232.008. Contests concerning statewide offices or state legislative offices must be filed within 7 days of results becoming publicly available or the official result is determined. Contests concerning presidential electors must be filed within 10 of results becoming publicly available or the official result is determined. Contests of other offices must be filed within 30 days of the election.
- 97** Ga. Code § 21-2-521
- 98** Ga. Code § 21-2-524
- 99** Ga. Code § 21-2-527
- 100** Tex. Elec. Code § 241.003; Tex. Elec. Code § 242.003; Tex. Elec. Code § 243.003
- 101** Fla. Stat. § 102.171; Fla. Const. art. III, § 2

- 102** Wis. Stat. § 9.01(11). “This section (concerning recounts) constitutes the exclusive judicial remedy for testing the right to hold an elective office as the result of an alleged irregularity, defect or mistake committed during the voting or canvassing process.” (parenthetical added)
- 103** Michigan law does contain a process whereby a candidate may sue to have an election re-run as a special election by mail if the petitioner can prove voters were unable to vote due to equipment or ballot defects. Mich. Comp. Laws § 168.831
- 104** Johnson v. Sec’y of State, 951 N.W. 310, 321 (Mich. 2020) (Viviano, J., dissenting) “...while the vast majority of states have adopted legislation creating a mechanism for the summary or expedited resolution of election contests, Michigan has not.”
- 105** N.C. Gen. Stat. § 163-182.9
- 106** Id.; 8 N.C. Admin. Code § 2.0111
- 107** N.C. Gen. Stat. § 163-182.9(b)
- 108** 8 N.C. Admin. Code § 2.0111
- 109** N.C. Gen. Stat § 163-182.14. Appeals from state board decisions in contests involving state legislative seats are heard by the state legislature.