

MEMORANDUM¹

This memo is an update to two memos on selected states' recount laws, prepared by the Brennan Center in 2006. The states reviewed here are: Colorado, Florida, Indiana, Kentucky, Ohio, Pennsylvania, and Virginia.

Colorado

In Colorado, recounts are automatically triggered whenever the margin of victory is within 0.5%.² When a recount is not automatic, an interested party -- defined as a candidate who has lost an election or the party or political organization of such a candidate -- may request a recount at their own expense. Colorado law does not provide for voter requested election recounts. Recounts take place after the original vote count is certified by the county canvass board,³ and are conducted by the county canvass board.⁴ Watchers, official observers, and media observers may be present at a recount.⁵

If the random audit of the voting machines reveals a discrepancy in the totals recorded by the voting machine and the counts of the voter-verified paper records, it appears to be within the discretion of the elections officials how to follow up. In the event of such a discrepancy, Colorado law requires that the county clerk and recorder, in consultation with the canvass board of the county, to investigate the discrepancy and to "take such remedial action as necessary in accordance with its powers."⁶ The county officials also must promptly notify the secretary of state, who must post the information about the discrepancy on its website within 24 hours.⁷

The secretary of state has the power to call for a recount in elections for United States Senator, Representative in Congress, any state office or district office of state concern, any state ballot question, or any state ballot issue.⁸ The secretary of state must order the recount within 25 days of the election, and the recount must be completed within 30 days of the election.⁹ The secretary of state promulgates the rules and regulations to conduct the recount, which take into account the type of voting system used.¹⁰ Prior to the recount, the canvass board in each relevant county must randomly choose 5% voting devices to test and compare the totals the machine reported with the hand-counted totals of the voter-verified paper records.¹¹ If the results of this test show no discrepancy

¹ This memorandum was prepared by Lawrence Norden, Margaret Chen, Laura Seago, Jonathan Blitzer and Monique Chase, all of the Brennan Center.

² COLO. REV. STAT. ANN. § 1-10.5-101(1)(b) (2008).

³ COLO. REV. STAT. ANN. § 1-10.5-101 (2008).

⁴ COLO. REV. STAT. ANN. § 1-10.5-107 (2008).

⁵ 8 COLO. CODE REGS. § 1505-1 (8.11) (2008).

⁶ COLO. REV. STAT. ANN. § 1-7-514(2)(a) (2008).

⁷ COLO. REV. STAT. ANN. § 1-7-514(2)(c), (3) (2008).

⁸ COLO. REV. STAT. ANN. § 1-10.5-102(1) (2008).

⁹ COLO. REV. STAT. ANN. § 1-10.5-102(1), (2) (2008).

¹⁰ COLO. REV. STAT. ANN. § 1-10.5-102(2) (2008); *see* 8 COLO. CODE REGS. § 1505-1 (Rule 14) (2008).

¹¹ COLO. REV. STAT. ANN. § 1-10.5-102(3)(a) (2008); 8 COLO. CODE REGS. § 1505-1 (14.6.2) (2008).

between the machine totals and the hand-counted totals – or if any discrepancy can be accounted for by voter error – then the recount will just be electronic.¹² If the results of the test show a discrepancy that cannot be accounted for by voter error, then the voter-verified paper records will be recounted.¹³ However, if the voter-verified paper records have been “irrevocably compromised,” then the secretary of state may choose which method – electronic or manual counting – will ensure the most accurate vote count.¹⁴ A court could review the secretary of state’s decision for “abuse of discretion.”¹⁵ The secretary of state promulgates rules for how many ballots to recount, an audit of every type of machine used for the contest being recounted, and the confidentiality of the ballots cast.¹⁶

In addition, the county clerk and recorder can order a recount in any election coordinated by him/her for offices not listed above if “it appears, as evidenced by the official abstract of votes cast, that a recount is required...”¹⁷ This recount must occur within 30 days of the election.¹⁸

Finally, certain “interested parties” can also request a recount of votes to be done at their own expense.¹⁹ The following categories of people/entities are entitled to request a recount: (1) a candidate who lost the election, (2) the political party or political organization of such a candidate, (3) any petition representative for a ballot issue or question that did not pass, (4) the governing body that referred a losing ballot question or issue to the electorate, and (5) the agent of certain issue committees that supported a losing ballot question or opposed a winning ballot question.²⁰ Such parties may submit a notarized written request for a recount at their own expense within 20 days of a primary or 24 days of any other election.²¹ The recount must be completed within 30 days of the election.²² The interested party will have to pay the cost of the recount, to be determined by the elections official who would conduct the recount, before the recount will begin.²³ However, the party who requested the recount will not have to pay if either (1) the recount reverses the election outcome in favor of that person or entity, or (3) the recount yields a new count that would have required a recount anyway (i.e. if the vote difference is less than 0.5%).²⁴

“Interested parties” that have reasonable grounds to believe that a recount of a county, state, national or district office of state concern is not being conducted in a fair, impartial,

¹² COLO. REV. STAT. ANN. § 1-10.5-102(3)(b) (2008).

¹³ COLO. REV. STAT. ANN. § 1-10.5-102(3)(b) (2008).

¹⁴ COLO. REV. STAT. ANN. § 1-10.5-102(3)(b) (2008).

¹⁵ COLO. REV. STAT. ANN. § 1-10.5-102(3)(b) (2008).

¹⁶ COLO. REV. STAT. ANN. § 1-10.5-102(3)(c) (2008).

¹⁷ COLO. REV. STAT. ANN. § 1-10.5-103 (2008).

¹⁸ COLO. REV. STAT. ANN. § 1-10.5-103 (2008).

¹⁹ COLO. REV. STAT. ANN. § 1-10.5-106 (2008).

²⁰ COLO. REV. STAT. ANN. § 1-10.5-106 (2008).

²¹ COLO. REV. STAT. ANN. § 1-10.5-106(2) (2008).

²² COLO. REV. STAT. ANN. § 1-10.5-106(2) (2008).

²³ COLO. REV. STAT. ANN. § 1-10.5-106(2) (2008).

²⁴ COLO. REV. STAT. ANN. § 1-10.5-106(2) (2008).

and uniform manner may apply for an order to stop the recount by the county clerk and recorder and have the recount conducted by the secretary of state.²⁵

Florida

If the unofficial returns show that the margin of victory for any candidate or measure is less than 0.5%, a recount will be ordered.²⁶ For optical scan ballots, this involves running all of the ballots through the tabulating machines again.²⁷ Before a recount, the tabulating equipment must be tested.²⁸ If there is no error, the county canvassing board may proceed with a machine recount of optical scan ballots.²⁹ If there is an error, the county canvassing board must correct the error and proceed with a machine recount.³⁰ For touchscreen ballots, this involves comparing the counters on precinct tabulators to the overall election returns.³¹ If there is a discrepancy between the election returns and the precinct tabulator counters, the precinct tabulator counters will be presumed correct.³² Rules adopted by the department of state prescribe additional recount procedures for each certified voting system.³³

If, after the recounts described above, the margin of victory for any candidate or measure is less than 0.25%, there will be a manual recount of overvotes and undervotes.³⁴ In the case of touchscreen machines, this means comparing the printout of ballot images against the “voting system report from the machine recount that contains the result for each contest in each precinct.”³⁵ However, if the number of number of overvotes, undervotes, and provisional ballots is fewer than the number of votes needed to change the outcome of the election, this manual recount will not occur.³⁶

Manual recounts are open to the public.³⁷ In a manual recount, teams of at least two members from at least two different political parties will go through the overvotes and undervotes.³⁸ They decide whether the voter's intent is clear, under rules adopted by the Florida Department of State.³⁹ If they cannot agree, the county canvassing board will decide.⁴⁰ If the county uses touchscreen voting machines, a ballot image report of each

²⁵ COLO. REV. STAT. ANN. § 1-10.5-109 (2008).

²⁶ FLA. STAT. ANN. § 102.141(7) (2008).

²⁷ FLA. STAT. ANN. § 102.141(6)(a) (2008).

²⁸ FLA. STAT. ANN. § 102.141(7)(a) (2008).

²⁹ FLA. ADMIN. CODE ANN. r. 1S-2.031(2)(a)(1) (2008).

³⁰ FLA. ADMIN. CODE ANN. r. 1S-2.031(2)(a)(1) (2008).

³¹ FLA. STAT. ANN. § 102.141(7)(b) (2008).

³² FLA. STAT. ANN. § 102.141(7)(b) (2008).

³³ FLA. STAT. ANN. § 102.141(7)(d) (2008).

³⁴ FLA. STAT. ANN. § 102-166(1) (2008).

³⁵ *Wexler v. Lepore*, 342 F.Supp.2d 1097 (S.D.FL. 2004).

³⁶ FLA. STAT. ANN. § 102-166(1) (2008).

³⁷ FLA. STAT. ANN. § 102.166(3) (2008).

³⁸ FLA. STAT. ANN. § 102-166(5)(a) (2008).

³⁹ FLA. STAT. ANN. § 102-166(4)(b) (2008); *see also* FLA. ADMIN. CODE ANN. r. 1S-2.027 (2008).

⁴⁰ FLA. STAT. ANN. § 102-166(5)(c) (2008).

undervote will be printed out from each machine.⁴¹ (Overvotes are not possible with touchscreen machines.⁴²) The number of undervotes will be manually counted and compared with the number of undervotes reported by the machine.⁴³ If there is a discrepancy in a precinct, the county canvassing board is authorized to examine the machine request a diagnostic from the vendor.⁴⁴ It is not clear from the regulation what happens if the discrepancy continues after the diagnostics.

When the results of an election do not meet this statutory trigger, an election may be contested in the circuit court by any unsuccessful candidate, qualified elector or taxpayer, who must file a complaint and pay the required fees within 10 days of the certification of election results.⁴⁵ The complaint must set forth the grounds on which the election is contested, which may include misconduct, fraud or corruption on the part of election officials or members of canvassing boards and proof that an elector, election official or canvassing board member was offered a bribe.⁴⁶

Indiana

Indiana allows for a manual recount in certain situations and upon the request of the person petitioning for a recount. Petitioners for recounts may request a manual recount in precincts that use a ballot card voting system. This procedure is described by Ind. Code § 3-12-11-17.5(a): “A petition or cross-petition filed under this chapter may request that ballot cards in specified precincts that used a ballot card voting system be counted manually. If a petition or cross-petition includes such a request, automatic tabulating machines may not be used to count ballot cards in the specified precincts. Ballot cards in those precincts shall be counted manually” Recounts are conducted by the state recount commission, which oversees the state board of accounts, the body that is responsible for the physical tallying of the ballot.⁴⁷ Teams of auditors manually tally all ballots according to the *Agency Guidelines for Conduct of Recount for the State Recount Commission, May 2004 edition*.⁴⁸ Each audit team will audit one precinct at a time, opening each container of election materials and recording the total number of votes on the precinct certificate, the number of absentee ballots delivered to the precinct, the number of absentee voters listed on the poll list, the number of absentee ballots not counted, the number of absentee voter applications, and the number of votes for each candidate as reported by the precinct board; and discrepancies must be noted.⁴⁹ The audit team then tallies the total number of undisputed valid ballots cast for each candidate in

⁴¹ FLA. ADMIN. CODE. ANN. r. 1S-2.031(4)(b)(1).

⁴² FLA. ADMIN. CODE. ANN. r. 1S-2.031(4)(a)(1).

⁴³ FLA. ADMIN. CODE. ANN. r. 1S-2.031(4)(b)(5).

⁴⁴ FLA. ADMIN. CODE. ANN. r. 1S-2.031(4)(b)(6).

⁴⁵ FLA. STAT. ANN. § 102.168 (2008).

⁴⁶ FLA. STAT. ANN. § 102.168(3) lists all grounds on which an election can be contested.

⁴⁷ 28 Ind. Reg. 1608, Chapter 2 (1), (2) (February 1, 2005).

⁴⁸ 28 Ind. Reg. 1608, Chapter 2 (3)(b), (5)(c) (February 1, 2005). The guidelines, which provide the tally sheets and forms for recording the information described above, are available at http://www.in.gov/sos/elections/voters/Recount_Manual.pdf.

⁴⁹ 28 Ind. Reg. 1608, Chapter 2 (15)(a), (15)(b) (February 1, 2005).

each relevant race, the number of undisputed invalid ballots for each candidate, the number of disputed ballots for each candidate, and the number of no votes in the precinct.⁵⁰ The recount commission then reviews the reports from the auditors' tallies and, after the disposition without recount of all precincts without disputed votes, proceeds with the official recount.⁵¹ After ordering that undisputed valid votes be counted and all undisputed invalid votes or no votes not be counted,⁵² the commission examines disputed ballots presented by the petitioner and the cross-petitioner and determines whether or not those votes should be counted.⁵³ Once the commission has completed its count based on this determination, it will adjust the tallies accordingly.⁵⁴

There is no statutory trigger for a recount in Indiana. Recounts in Indiana must be initiated by one or more candidates no later than fourteen days after election day. If a candidate fails to initiate a recount within this time period, a recount can be initiated either by the state chairman of the candidate's political party (in the case of federal or statewide offices) or by a county chairman who resides in the election district in which the recount is desired and is a member of the same political party as the candidate who is entitled to a recount (in the case of legislative offices).⁵⁵ These petitions must be received no later than noon 17 days after the day of the election. Petitions for recounts must state a reason for the filing of the petition, which may fall into a variety of broad categories that are enumerated by Ind. Code § 3-12-11-3.

Kentucky

For precincts that report any administrative or clerical error, the county clerk must file an action in the Circuit Court within 15 days of an election requesting a recount of the ballots in the precinct.⁵⁶ The county clerk will also notify all the candidates by regular mail of the recount.⁵⁷ The Circuit Court must review the request "summarily and without delay."⁵⁸ The county clerk certifies the final recount results.⁵⁹

Candidates for office to any state, county, district or city office (except Governor, Lieutenant Governor, General Assembly member, and certain city officers) may request a recount by filing a petition within 10 days of the election, or if the candidate is contesting election results, including a petition for a recount with the contest proceedings.⁶⁰ Electors qualified to vote and did vote on any public question, other than a constitutional amendment or local question, may file a petition to recount the ballots within 30 days

⁵⁰ 28 Ind. Reg. 1608, Chapter 2 (18) (February 1, 2005).

⁵¹ 28 Ind. Reg. 1608, Chapter 2 (20)b(3) (February 1, 2005).

⁵² 28 Ind. Reg. 1608, Chapter 2 (20)b(5) (February 1, 2005).

⁵³ 28 Ind. Reg. 1608, Chapter 2 (20)b(8)-(20)b) (February 1, 2005).

⁵⁴ 28 Ind. Reg. 1608, Chapter 2 (25) (February 1, 2005).

⁵⁵ IND. CODE § 3-12-11-1(b), (c) (2008).

⁵⁶ KY. REV. STAT. ANN. § 120.017(1), (2) (2008).

⁵⁷ KY. REV. STAT. ANN. § 120.017(2) (2008).

⁵⁸ KY. REV. STAT. ANN. § 120.017(3) (2008).

⁵⁹ KY. REV. STAT. ANN. § 120.017(7) (2008).

⁶⁰ KY. REV. STAT. ANN. § 120.185(1) (2008).

after an election.⁶¹ Electors qualified to vote and did vote on any constitutional convention, constitutional amendment, or statewide public question can file a petition demanding a recount within 15 days of the official canvass.⁶²

Until 4:00 p.m. on the Tuesday following a general election, the voting machines and absentee ballots of any precinct or a number of precincts for a race may be recanvassed upon discovery of a discrepancy in the tally of votes cast in any precinct or number of precincts, or a candidate's written request to the county board of elections.⁶³ For electronic voting machines *with* central tabulation system, elections officials will either (a) clear the system by setting the counter to zero and retabulate the votes recorded on the memory cartridges by using the central tabulation system or (b) compare the results printout from each voting machine with the county-wide recapitulation sheet.⁶⁴ For electronic voting machines *without* a central tabulation system, elections officials will compare the results printout from each voting machine with the county-wide recapitulation sheet.⁶⁵

Ohio

In statewide and district elections, the secretary of state shall order a recount when the vote total for the winning candidate (or the winning nominee, question, or issue) is higher than the candidate/question/issue that received the next largest number of votes by less than one fourth of one percent (in statewide elections) or less than one half of one percent (in district elections) of the total vote.⁶⁶

In county or municipal elections, the appropriate board of elections shall order a recount when the vote total for the winning candidate (or the winning nominee, question, or issue) is higher than the candidate/question/issue that received the next largest number of votes by less than one half of one percent of the total vote.⁶⁷

If all candidates declared to have lost by these small margins file a written request to stop a recount before it begins, it will be canceled.⁶⁸ If a written request to stop a recount is filed by the declared losing candidate after the recount has begun, it will be allowed if the precincts recounted thus far show that there would be no change to the outcome of the election; if they would change the outcome of the election, the request will be denied.⁶⁹

Any person who was a candidate and was not declared elected can request a recount of the votes cast in that election in any precinct by filing a written application for a recount

⁶¹ KY. REV. STAT. ANN. § 120.250 (2008); *see also* KY. REV. STAT. ANN. § 120.260 (2008).

⁶² KY. REV. STAT. ANN. § 120.280 (2008); *see also* KY. REV. STAT. ANN. § 120.290 (2008).

⁶³ KY. REV. STAT. ANN. § 120.305 (2008).

⁶⁴ 31 KY. ADMIN. REGS. 4:070 Section 4(1) (2007).

⁶⁵ 31 KY. ADMIN. REGS. 4:070 Section 4(2) (2007).

⁶⁶ OHIO REV. CODE ANN. § 3515.011 (2008).

⁶⁷ OHIO REV. CODE ANN. § 3515.011 (2008).

⁶⁸ OHIO REV. CODE ANN. § 3515.03 (2008).

⁶⁹ OHIO REV. CODE ANN. § 3515.04 (2008).

with the board of elections of the relevant county within five days of the declaration of the results of the election.⁷⁰

Voters can only request a recount for a ballot question or issue.⁷¹ To do this, five electors must file applications within five days of the declaration of the result stating that they voted yes on a measure that was declared defeated or no on a measure that was declared carried.⁷²

If a recount changes the outcome of an election, the now-losing candidate or voters on the now-losing side of a ballot question can file an application for a recount in any precinct not already recounted. They must file this application within five days of the declaration of the result of the recount.⁷³

Applications for a recount must separately list each precinct for which a recount is requested, and the applicant must deposit \$50 for each precinct listed as security for the payment of charges for making the recount.⁷⁴ The board of elections will fix the cost of conducting a recount, which will be between \$5 and \$50 per precinct, and this amount will be taken from the deposit made.⁷⁵ If the recount results in an increase of more than 4% in the vote total of the applicant (or the applicant's ballot issue) in the precinct, *or* if after the recount, the applicant candidate is declared the winner, the applicant will not have to pay for the recount.⁷⁶

The time, method, and place for the recount will be decided by the board of elections, who will give notice to the secretary of state (for statewide elections) or the board of elections of the most populous county involved in the election (for elections involving more than one county).⁷⁷ The recount will take place within 10 days of the filing of the application.⁷⁸ The director of the board will mail notice of the time and place of the recount to the applicant(s) for the recount, and to anyone who received votes in the election.⁷⁹

In the case of punch card ballots, if a chad on a ballot is still attached by three or four corners no vote will be recorded.⁸⁰ For votes cast on DREs, the voter-verified paper trails will be the official ballots that are recounted.⁸¹

⁷⁰ OHIO REV. CODE ANN. §§ 3515.01, .02 (2008).

⁷¹ OHIO REV. CODE ANN. § 3515.01 (2008).

⁷² OHIO REV. CODE ANN. §§ 3515.01, .02 (2008).

⁷³ OHIO REV. CODE ANN. § 3515.06 (2008).

⁷⁴ OHIO REV. CODE ANN. § 3515.03 (2008).

⁷⁵ OHIO REV. CODE ANN. § 3515.07 (2008).

⁷⁶ OHIO REV. CODE ANN. § 3515.07 (2008).

⁷⁷ OHIO REV. CODE ANN. § 3515.03 (2008).

⁷⁸ OHIO REV. CODE ANN. § 3515.03 (2008).

⁷⁹ OHIO REV. CODE ANN. § 3515.03 (2008).

⁸⁰ OHIO REV. CODE ANN. § 3515.04 (2008).

⁸¹ OHIO REV. CODE ANN. § 3506.18(a) (2008).

Ohio has a comprehensive statutory framework that prescribes the circumstances under which a recount may be requested. Ohio courts have recognized that it is “well established” that this statutory framework is both “mandatory and ... jurisdictional.” *Kinsey v. Garver*, 91 N.E.2d 54, 55 (Ohio Com.Pl. 1950) (citing *State ex rel. Fowler v. Board of Elections*, 186 N.E. 446 (Ohio 1933) (strict compliance with statute respecting application for recount ... is mandatory and jurisdictional)). That is, applications for recounts that follow the statutory recount procedures will be granted while applications that fail to follow these requirements will be rejected. Under Ohio’s statutory framework, this means that individual voters have no ability to request a recount when the candidate they voted for did not win. *See Rios v. Blackwell*, 345 F.Supp.2d 833, 835 (N.D. Ohio 2004) (noting that there is “no right vested under Ohio law in individual electors to seek or obtain a recount,” and that plaintiffs were unable to show “that an individual citizen has a federal constitutional right to a recount.”).

The procedures for recounts prescribed by Ohio statute are as follows: any candidate who loses either a primary, special, or general election may apply for a recount in any precinct.⁸² Any group of five or more voters may do the same for ballot issues.⁸³ There is a mandatory recount when the margin of victory in a county, municipal, or district election is within .5 percent, and when the margin is within .25 percent for statewide elections.⁸⁴ A person filing an application for recount must do so within five days after the election results are certified.⁸⁵ When using direct recording electronic voting machines, the voter verified paper audit trail serves as the official ballot to be recounted.⁸⁶ Any recount of votes in a presidential election shall be completed within six days of when the presidential electors meet.⁸⁷ There are also additional statutory requirements for notice of recount and the appointment of persons to witness the recount,⁸⁸ application for recount in precincts not recounted,⁸⁹ procedures for making a recount as well as stopping a recount,⁹⁰ and the duties of the board of elections once the recount is completed.⁹¹

Pennsylvania

Pennsylvania has a newly implemented statutory trigger for statewide races. An automatic recount is ordered where the vote was decided by less than .05%.⁹²

⁸² OHIO REV. CODE ANN. § 3515.01 (2008).

⁸³ OHIO REV. CODE ANN. § 3515.01 (2008).

⁸⁴ OHIO REV. CODE ANN. § 3515.011 (2008).

⁸⁵ OHIO REV. CODE ANN. § 3515.02 (2008).

⁸⁶ OHIO REV. CODE ANN. § 3506.18(a) (2008).

⁸⁷ OHIO REV. CODE ANN. § 3515.041 (2008).

⁸⁸ OHIO REV. CODE ANN. § 3515.03 (2008).

⁸⁹ OHIO REV. CODE ANN. § 3515.06 (2008).

⁹⁰ OHIO REV. CODE ANN. § 3515.04 (2008).

⁹¹ OHIO REV. CODE ANN. § 3515.05 (2008).

⁹² 25 PA. CONS. STAT. § 3154(g)(1)(i) (2008).

If an election does not fit this statutory trigger, Pennsylvania law allows three qualified electors of an election district to file a petition alleging reliable information of fraud or error in the returns of the election and requesting a recount. This statute also states that there is to be a recount “[w]henever it shall appear that there is a discrepancy in the returns of any election district.”⁹³

Pennsylvania law allows for manual recounts of all overvotes.⁹⁴ Additionally, when electronic voting systems use paper ballots, it appears that manual recounts are sometimes permitted. “In a county in which an election district uses an electronic voting system utilizing paper ballots . . . [t]he county board shall recount all ballots using manual, mechanical or electronic devices of a different type used for the specific election.”⁹⁵ Furthermore, when paper ballots are not used in conjunction with an electronic voting system, they are recounted manually.⁹⁶

Virginia

There is no statutory trigger for recounts in Virginia or “automatic” recount.⁹⁷ Recounts in Virginia must be requested by the apparent losing candidate pursuant to Va. Code Ann. § 24.2-801. The losing candidate may request a recount if the difference between the apparent winning and losing candidates is less than or equal to 1% of the votes cast for the two candidates.⁹⁸

The procedure for recounts in Virginia is governed by Va. Code Ann. § 24.2-802. Recounts by hand are mandatory when votes have been cast using paper ballots. Votes cast using various mechanical methods generally are not recounted by hand.⁹⁹ There are some exceptions to this rule, however. For votes cast using DREs, officials must examine the printout of the voting machines. If the printout is unclear—or at the request of a court—the officials are to rerun the printout or examine the counters as appropriate.¹⁰⁰ For precincts using optical scanners, officials must the ballots through a tabulator that is programmed only to count votes for the office or issue in question.¹⁰¹

⁹³ 25 PA. CONS. STAT. § 3154(e): “Whenever it shall appear that there is a discrepancy in the returns of any election district, or, upon petition of three voters of any district, verified by affidavit, that an error, although not apparent on the face of the returns, has been committed therein, or of its own motion . . . the county board shall at any time prior to the completion of the computation of all of the returns for the county, summon the election officers of the district, and said officers, in the presence of said board, shall conduct a recount or recanvass of all ballots cast.”

⁹⁴ 25 PA. CONS. STAT. § 3154(e)(3)(ii) (2008).

⁹⁵ 25 PA. CONS. STAT. § 3154(e)(3)(i) (2008).

⁹⁶ 25 PA. CONS. STAT. § 3154(e)(2) (2008).

⁹⁷ State Board of Elections. “Virginia Recounts – The Basics.” November 2007. *available at* http://www.sbe.virginia.gov/cms/documents/NOV_2007_Virginia_Recounts_-_The_Basics.doc

⁹⁸ VA. CODE ANN. § 24.2-801 (2008).

⁹⁹ VA. CODE ANN. § 24.2-802 (2008).

¹⁰⁰ State Board of Elections, “Standards for Recounts of Virginia Elections,” at 4. Rev. Sept. 8, 2008. *available at* http://www.sbe.virginia.gov/cms/documents/2008_RecountStards.pdf

¹⁰¹ State Board of Elections, “Standards for Recounts of Virginia Elections,” at 4. Rev. Sept. 8, 2008. *available at* http://www.sbe.virginia.gov/cms/documents/2008_RecountStards.pdf

Ballots containing write-in votes, undervotes and overvotes and those ballots that are not accepted by the tabulator are to be hand counted.¹⁰²

It does not appear that voter-verified paper records will ever be counted in Virginia. Virginia law expressly stipulates the method by which votes will be recounted.¹⁰³ For paper ballots, the recount officials will hand count the ballots.¹⁰⁴ For mechanical lever machines without printouts, the recount officials will open the machines and read the counters.¹⁰⁵ For mechanical lever machines with printouts and direct recording electronic machines (DREs), the recount officials will open the envelopes with the printouts and read the results from the printouts.¹⁰⁶ If the printout is not clear, or if the court requests it for another reason, the recount officials will rerun the printout from the machine or examine the counters.¹⁰⁷ For optical scan and punchcard ballots, the recount officials first examine the printout to redetermine the vote.¹⁰⁸ Only if the printout is not clear, or on the request of the court, the recount officials will rerun all the ballots through a tabulator programmed to count only the votes for the office or issue in question in the recount.¹⁰⁹ If any ballots contain write-in votes, overvotes, and undervotes, they are set aside and hand counted.¹¹⁰ (The Virginia code also gives detailed instructions on determining whether punchcard ballots with “hanging chads” and the like should be counted.¹¹¹)

The Virginia code also stipulates that “[t]here shall be only one redetermination of the vote in each precinct,”¹¹² suggesting that the paper receipts from DREs with voter-verified paper trails will never be counted in a recount. In addition, Virginia law stipulates that if the number of votes cast on a mechanical or DRE voting machine totals more than the number of voters on the pollbooks who voted, the totals recorded by the DRE or mechanical voting machine shall be accepted as correct.¹¹³ (So, even in the case of a clearly erroneous result, Virginia law does not allow for a hand count of voter-verified paper records.)

However, if a candidate contests the election, he or she *may* be able to get a court order to examine paper receipts. However, there is a chance the court will deny this; the relevant statute only discusses using depositions as evidence of the (in)validity of an election.¹¹⁴

¹⁰² VA. CODE ANN. § 24.2-802(D)(4), (5) (2008). Va. Code Ann. § 24.2-802(5) describes what counts as an undervote or an overvote.

¹⁰³ VA. CODE ANN. § 24.2-802 (2008).

¹⁰⁴ VA. CODE ANN. § 24.2-802(D)(1) (2008).

¹⁰⁵ VA. CODE ANN. § 24.2-802(D)(2) (2008).

¹⁰⁶ VA. CODE ANN. § 24.2-802(D)(3) (2008).

¹⁰⁷ VA. CODE ANN. § 24.2-802(D)(3) (2008).

¹⁰⁸ VA. CODE ANN. § 24.2-802(D)(4), (5) (2008).

¹⁰⁹ VA. CODE ANN. § 24.2-802(D)(4), (5) (2008).

¹¹⁰ VA. CODE ANN. § 24.2-802(D)(4), (5) (2008).

¹¹¹ VA. CODE ANN. § 24.2-802(D)(5) (2008).

¹¹² VA. CODE ANN. § 24.2-802 (2008).

¹¹³ VA. CODE ANN. § 24.2-802 (2008).

¹¹⁴ VA. CODE ANN. § 24.2-810 (2008).