
Appendix C

Recounts and Contested Elections

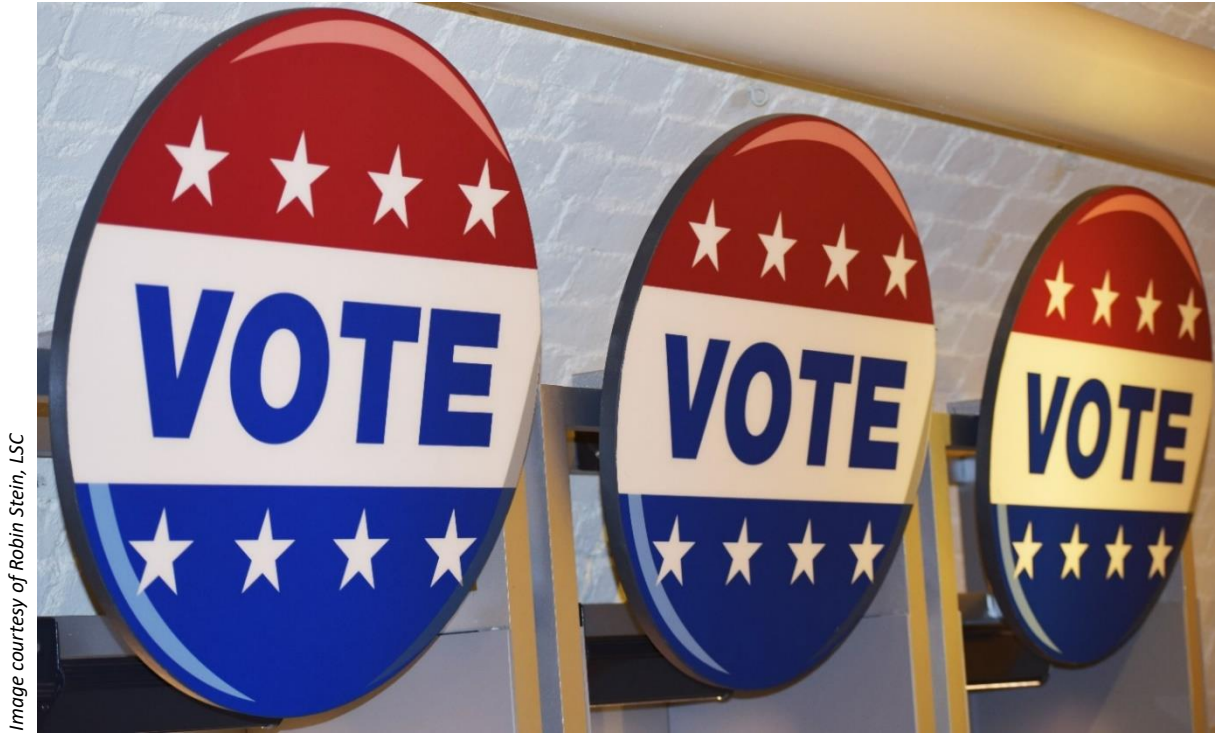


Image courtesy of Robin Stein, LSC

Elections Display, Statehouse Museum Education Center

Recounts

If the winner of a primary or general election for Senator or Representative does not win by a margin of at least 0.5%, an automatic recount is conducted. Otherwise, any losing candidate in the race may file a request with the relevant board of elections for a recount in any particular precinct. The request must be filed within five days after the election results are declared.

The government pays the costs of an automatic recount. However, if a recount is requested, the candidate requesting the recount must pay the cost of the recount, up to a maximum fee of \$60 per precinct. The candidate's money will be returned if the recount results in a change in the election result or if the recount reveals a number of votes for the candidate in a precinct that is more than 4% larger than the candidate's previously recorded number of votes.

After setting the time and place of any recount, the board of elections must notify each candidate by certified mail. The candidates or their designees are entitled to observe all of the proceedings, but only the election officials may touch the ballots. If the recount in one or more precincts changes the declared election result, the candidate originally declared the winner may request a recount in any other precinct where the ballots were not recounted. The candidate must file that request within five days after the amended election results are released.

Contested Elections

A Senator's or Representative's election also may be contested by filing a petition with the appropriate court within 15 days after the election results are announced or within ten days after the results of any recount are announced. The petition must (1) set forth the grounds for the election contest, (2) be signed either by the losing candidate or by at least 25 persons who voted for the office being contested, (3) be verified by the oath of the losing candidate or at least two of the petitioners, and (4) be accompanied by a surety bond in a sum sufficient to pay all costs of the contest. (The person who files the petition is known as the "contestor.") The court causes a copy of the petition to be served upon the Senator or Representative whose election is being contested. (The Senator or Representative is known as the "contestee.") The Senator or Representative has ten days after receiving the petition to answer it. After the Senator or Representative answers, the contestor has five days to reply.

Between 15 and 30 days after the petition is filed, the court holds a trial of the contest at which evidence is taken. The trial proceeds much as an ordinary civil trial and is heard expeditiously by the court without a jury. In order to prevail, the contestor must prove by clear and convincing evidence (1) that one or more election irregularities occurred and (2) that the irregularity or irregularities affected enough votes to change or make uncertain the result of the election.

If a Senate or House district is larger than a county, the appropriate court to hear an election contest arising with respect to the district is the Ohio Supreme Court. If a Senate or House district consists of one county or is smaller than a county, the appropriate court to hear an election contest arising with respect to the district is the court of common pleas of the county in which the contest arose.

When the election of someone other than a Senator or Representative is at issue, the court pronounces judgment at the conclusion of the trial. However, when a Senator's or Representative's election is contested, the court does not pronounce judgment because each house of the General Assembly has exclusive power to judge the election, returns, and qualifications of its members. After hearing the contest, the court transmits a transcript of the testimony and all other evidence presented in the case to the Clerk of the Senate or the Clerk of the House. The Senate or House then proceeds to resolve the contest. The only limitation on the Senate and House in resolving a contest is that they cannot declare a person to be eligible if the person is ineligible under the Ohio Constitution.