

A Survey of Absentee Ballot Processing in the 2020 Election Cycle

Examining the Most Competitive States

Prepared For:
Public Policy Leadership, U.S. Election Administrators & Interested Citizens

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Context

We are seeing the massive implications of the COVID-19 pandemic on our elections in real time—through extended wait-times in hastily scheduled primaries,^{1,2} and through sweeping changes to absentee rules across the country.³ Earlier this year, Global Director of Technology & Standards for the OSET Institute [Edward Perez](#) conducted a deeper dive⁴ into the bipartisan nature of these COVID-related measures across the United States. He found forty-eight of the fifty states were offering some form of voting by mail to all voters shortly after the initial outbreak in the U.S., and during primary season. This paper takes a similar nonpartisan approach. However, rather than examining all practices in all states, on a macro scale, it hones in on the procedures specific to the states most competitive in the general election. Analysis herein relies upon data from the states considered to have been most relevant in deciding the 2016 election, and their continued importance in defining Senate and White House races in 2020.

The purpose of this paper is to catalog the general processes each of these states utilizes to count absentee ballots in the upcoming election. Elections conducted by mail vary widely from in-person elections in their administration, differing in verification of identity and/or signature, election certification dates, and processing requirements. As a result, a series of crucial

¹ Gallagher, Dianne, and Paul P. Murphy. "Polls Closed in Georgia after a Day Marked by Voters Waiting for Hours to Cast Their Ballots." CNN. Cable News Network, June 10, 2020. <https://www.cnn.com/2020/06/09/politics/georgia-primary-election-delays/index.html>.

² Bauer, Scott, Steve Peoples, and Associated Press. "Wisconsin Voters Wait for Hours, Others Stay Home amid Virus." Star Tribune. Star Tribune, April 8, 2020. <https://www.startribune.com/pandemic-politics-wisconsin-primary-moving-forward/569431452/>

³ Perez, Eddie. "Ok, Call Me Surprised. (Really.) <https://t.co/djw3sLzr8b>." Twitter. Twitter, July 29, 2019. <https://twitter.com/eddieperezTX/status/1155858009962115072>.

⁴ Perez, Edward. "Election Policy Briefing The Bipartisan ... - Trustthevote.org." OSET Institute, May 27, 2020. https://trustthevote.org/wp-content/uploads/2020/05/27May20_BipartisanTruthAboutByMailVoting_v3.pdf.

questions arises concerning each state's practices, especially within this new, COVID-influenced paradigm of election administration:

1. How are ballots processed in each state?
2. Are signature and identity verification methods electronic or human-based?
3. What happens if a signature is deemed *invalid*?
4. Is there an auditing of results?
5. What constitutes a recount?
6. When can we expect results?

The answers to these questions are closely linked to waning public confidence in the integrity of our elections. They also highlight potential problems arising in states as they strive to administer a safe and secure election in the fall.

Compounding anxiety in this new election environment is the current funding crisis at the United States Postal Service. Back on August 14, the USPS notified forty-six of the fifty states (excepting only Oregon, Nevada, New Mexico, and Rhode Island) that on-time delivery of all ballots returned by mail *may not* be possible, *before* the return deadlines, due in part to a narrow turnaround time between ballot-request deadlines and ballot-return deadlines.⁵

During the research and drafting of this paper, some procedures referenced herein have already changed, due to the tumult of the pandemic, and to a slew of legislative actions around the country occurring at lightning-fast pace. Some further policies in some of these states may have changed by the time this paper is published. And certainly more may well change in the remaining month before Nov. 3. Editorial adjustments reflect such changes as they are publicized. However, as a result of the ever-changing election landscape, this resource serves best as a time-stamped ([October 5, 2020](#)) snapshot of the moment in which we find ourselves, as election officials and state legislatures scramble to conduct safe elections in 2020. We will endeavor to update this resource as often as practical and reasonable, which may be via our blog or social media ([@OSET](#)). The states addressed in this paper include:

1. Arizona
2. Florida
3. Maine
4. Michigan
5. Minnesota
6. Nevada
7. New Hampshire
8. North Carolina
9. Ohio
10. Pennsylvania
11. Texas
12. Wisconsin

⁵ Erin Cox, Elise Viebeck. "Postal Service Warns 46 States Their Voters Could Be Disenfranchised by Delayed Mail-in Ballots." The Washington Post. WP Company, August 18, 2020. https://www.washingtonpost.com/local/md-politics/usps-states-delayed-mail-in-ballots/2020/08/14/64bf3c3c-dcc7-11ea-8051-d5f887d73381_story.html.

1. Arizona

1.1 Background and COVID-19 Response

In Arizona, Secretary of State Katie Hobbs' office oversees elections, while a county recorder and county elections director administer elections at the local level.⁶ Elections in Arizona have long practiced voting-by-mail, with an extended early voting period, which goes a long way to smooth the adjustment to the necessary COVID-related measures. According to Arizona's Citizens' Clean Elections Commission, about 80% of Arizona voters already receive their ballots in the mail.⁷

Arizona's presidential primary occurred on March 17, at the very beginning of the pandemic's spread across the country. Secretary Hobbs implemented policies and guidance following CDC recommendations, in order to run elections as smoothly as possible, despite short notice. For voting sites used mainly by senior citizens, specific guidelines to increase safety included the curbside voting, full cleaning and disinfecting of polling places, and clearly advertised early voting.⁸ For Arizona's August 4 primary, similar precautions were in effect, including twenty-seven days of early voting before Election Day, and voters were encouraged to cast their ballots early.

In July, Governor Doug Ducey and Secretary Hobbs announced an investment of nine million dollars, provided by the CARES Act, in voting safety and security measures for the primary and general election. According to the press release, "the majority of funding will be distributed to county election officials to support their efforts including hiring temporary staff and increasing curbside voting locations. Additional dollars will support early voting opportunities in rural and tribal communities [and PPE purchases]."⁹ For those voting in person, Arizona created a guide to voting safely, including sections encouraging voters to cast their ballots early or by mail. If voting on Election Day, voters are encouraged to bring their own pens, maintain social distancing, and wear face masks, among other safety recommendations.¹⁰

1.2 Ballot Requests, Processing, and Signature Verification

Any registered voter in Arizona may file either a permanent or one-time request to cast their ballot by mail; a ballot may be requested online, through a phone call or email to their local county recorder, or by mail.¹¹ Voters had until July 6 to register for absentee voting for the August 4 primary, and until October 5 for the general election. These ballots are tamper-evident,

⁶ "County Election Officials Contact Information." Arizona Secretary of State. Accessed September 6, 2020. <https://azsos.gov/county-election-info>.

⁷ "Vote By Mail." Citizens Clean Elections Commission. Accessed September 6, 2020. <https://www.azcleelections.gov/how-to-vote/early-voting/vote-by-mail>.

⁸ "Arizona Election Officials Update Response to COVID-19." Arizona Secretary of State, March 11, 2020. <https://azsos.gov/about-office/media-center/press-releases/1116>.

⁹ "Governor Ducey, Secretary Hobbs Announce \$9 Million Investment For Safe Elections Plan." Arizona Secretary of State, July 2, 2020. <https://azsos.gov/about-office/media-center/press-releases/1201>.

¹⁰ "AZVoteSafe Guide - Azsos.gov." Arizona Secretary of State Accessed September 6, 2020. https://azsos.gov/sites/default/files/Voting_Safely_in_2020_17.pdf.

¹¹ "Voting by Mail: How to Get a Ballot-by-Mail." Arizona Secretary of State. Accessed September 6, 2020. <https://azsos.gov/votemail>.

include prepaid postage, and allow for ballot tracking by the voter, to ensure that their vote is properly received and counted. Ballots must be received by the County Recorder by 7:00 p.m. on Election Day. Voters are advised to mail their ballots at least a week before Election Day, or drop them off at any secure ballot drop-box before the deadline.¹²

Once received by local election officials, the ballot must be initially processed through signature verification. Signature verification in Arizona is on par with many other states that utilize this practice; trained election workers compare the signed ballot envelope to an electronic database of voter records. If there is an apparent mismatch, the ballot is forwarded to a higher-level staff member who is biannually trained in signature verification, to make a final determination.¹³ Arizona does offer a cure provision, wherein if a signature on the absentee ballot is found not to match the signature in the database, the voter is contacted and given the opportunity to update their signature. If the voter's updated signature is found to be still inconsistent with the voter's registration record, the county recorder or other presiding officer in charge must make a "reasonable effort" to contact the voter, advising them to correct the inconsistency within five business days of the election.¹⁴

Ballots are eligible for tally fourteen days before Election Day,¹⁵ which will likely help significantly to get results quickly for the November general election. Early processing of ballots is conducted by an early election board, appointed by the board of supervisors, or equivalent local political governing body. The results from these early tallies must remain private until all precincts have reported, or until one hour after the polls close, whichever occurs first, by penalty of felony.¹⁶ Representatives from each political party may bear witness to the early tally, and either party may challenge ballots of allegedly unqualified/unregistered voters, or on the ground that a voter has already cast their vote.¹⁷ Challenged ballots are then set aside, until voters submit affidavits of proper registration, or, if they refuse to be sworn or affirmed, until voters submit provisional ballots.¹⁸

1.3 Election Certification, Recounts, and Auditing

Following Election Day, the local governing body overseeing administration canvasses all forms of ballots together (early, regular, and provisional). Official election results and the report published by the board of supervisors must note the number of ballots cast and the number of ballots rejected in each precinct, along with the number of votes for each candidate and ballot

¹² *Ibid*

¹³ "Frequently Asked Questions." Adrian Fontes - Maricopa County Recorder. Accessed September 6, 2020. <https://recorder.maricopa.gov/site/faq.aspx>.

¹⁴ "Arizona Revised Statutes § 16-550." Arizona Legislature. Accessed September 6, 2020. <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/16/00550.htm>.

¹⁵ *Ibid*.

¹⁶ "Arizona Revised Statutes § 16-551." Arizona Legislature. Accessed September 6, 2020. <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/16/00551.htm>.

¹⁷ "Arizona Revised Statutes § 16-591." Arizona Legislature. Accessed September 6, 2020. <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/16/00591.htm>.

¹⁸ "Arizona Revised Statutes § 16-592." Arizona Legislature. Accessed September 6, 2020. <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/16/00592.htm>.

measure on a per-precinct and per-county basis. For non-federal or statewide offices, the deadline for a board of supervisors to canvass the votes, after the completion of all necessary audits, is between six and twenty days following the election. For primary elections, votes must be canvassed within ten days. This deadline may be pushed back if results are missing from one or more precincts, but after six postponements, the canvass must proceed without the missing results. In the case of a federal or statewide race, this canvass occurs through the secretary of state, who must canvass the results on the fourth Monday following the election.¹⁹ For any counties failing to report, similar postponement may occur on a day-by-day basis for thirty days, after which time all reported results must be canvassed. At this point, a certificate of nomination or election is forwarded to each winning candidate.

In Arizona, a recount is automatically triggered if any of the following vote margins emerge:

- 1/10 of 1% or less ($\leq .001$) of the total number of votes cast for the top two candidates, or for the ballot measure in question
- 200 votes for statewide or federal office, where the total number of votes cast exceeds 25,000, or 200 votes for a ballot measure
- 50 votes for statewide or federal office, where the total number of votes cast less than or equal to 25,000
- 50 votes for legislative office
- 10 votes for county, city, or town office²⁰

A recount must be mandated by court order, even when vote margins trigger a recount, and cannot be requested by a third-party. Following the canvass, a court order must be obtained through a lawsuit by a filing officer to the local Superior Court, and a hearing date set to announce the results. In any race other than for secretary of state, that office is charged with setting up the voting equipment to conduct the recount, along with the power to delegate its responsibility to a board of supervisors or elections director. The equipment used to conduct the recount is the same as the equipment used during the actual election, but with a slight reconfiguration to indicate a recount.²¹ The votes in question are then run through the voting equipment again. The new results are treated as a new election; accordingly, they are audited anew. Final results of the recount are sealed until declared by the court, following the hearing.

Audits are conducted separately for each form of voting, and commence within twenty-four hours of the close of polling. Audits must be completed before the canvassing of the election for a given county. The counties or races chosen for audit are selected by the officer in charge of elections and political party chairpeople. Audits on early voting (such as by-mail) are conducted separately from audits on provisional ballots or in-person voting on Election Day.

¹⁹ “Arizona Revised Statutes § 16-648.” Arizona Legislature. Accessed September 6, 2020. <https://www.azleg.gov/ars/16/00648.htm>.

²⁰ “Arizona Recount Laws.” Citizens for Election Integrity Minnesota, July 27, 2020. <https://ceimn.org/searchable-databases/recount-database/arizona>.

This is a valuable open-source database for recount laws across the country, and was frequently used as a resource for researching recounts in states around the country during the drafting of this paper.

²¹ “State of Arizona Elections Procedures Manual.” Verified Voting. Accessed September 6, 2020. <https://www.verifiedvoting.org/wp-content/uploads/2018/05/2018-0330-State-of-Arizona-Elections-Procedures-Manual.pdf>.

For early ballots, an initial full count is taken. Then the chairman of each political party randomly selects several early-ballot batches, including at least one batch from each machine used for tabulation. From these batches, either one percent of the total number of selected ballots, or five thousand ballots (whichever is fewer), are set aside for a manual audit. If the audit finds a discrepancy in any race that is equal to, or greater than, the margin of error for electronically tabulated results, then the audit is expanded for that specific race, by another one percent of *total* early ballots, or five thousand ballots (whichever is fewer). If this expanded audit still finds a discrepancy, then a manual count for that race must be repeated until it results in a discrepancy of less than the originally designated margin. If there is not an equal or larger discrepancy, then the electronic tabulation's numbers are included in the canvass and the audit is concluded.²²

After all tabulation is concluded, voted ballots are retained in sealed containers at the County Treasurer's office for twenty four months following a federal election, and six months for any others. They may only be unsealed in the event of a court order, such as for a recount or election contest.

²² "Arizona Revised Statutes § 16-602." Arizona Legislature. Accessed September 6, 2020.
<https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/16/00602.htm>.

2. Florida

2.1 Background and COVID-19 Response

Florida has long been known to stir up controversy regarding election administration. Absentee ballots are no exception. In 2019, Floridians cast 2.9 million mail-in ballots in the general election, which “spawned allegations of ballot stuffing, protests and more than a half-dozen lawsuits.”²³ The uptick in mail-in voting has been a major concern for election officials in the state. Many have argued they have severely “gunked-up” the process, due to inadequate staff and long processing times for the such a volume of mail-in ballots.

Elections in Florida are managed by the Florida Division of Elections, under the Department of State (DoS), currently run by Secretary of State Laurel M. Lee. Under Florida state statute, Lee serves as chief election officer; her office formulates, interprets, and implements election laws, provides standards, public voter education and training to poll workers, and manages mail-in ballots, among myriad other responsibilities required to oversee election administration.²⁴ As a result, that office will be under intense scrutiny during this year’s elections, to see how the state handles the expected increase in mail-in voting, and how election results are attained.

Florida’s history of election controversy invites negative preconceptions about its current state of affairs. Nevertheless, Florida has improved its voting process by leaps and bounds in recent years. The most serious threat to current Florida elections is the expansion of the COVID-19 pandemic. In an effort to reduce the strain of increased mail-in voting on officials running elections, Governor Ron DeSantis issued an executive order permitting the early processing of absentee ballots. This would allow for fewer elections officials processing at a single time, effectively limiting infection risk, as well as more efficient and timely tabulation of votes.²⁵

2.2 Ballot Requests, Processing, and Signature Verification

Florida has recently made by-mail voting widely accessible, with ballots available upon request through the website of each local county election, by in-person pickup, email, or by phone.²⁶ As soon as absentee ballots become available, they can be requested at any time, including on Election Day. When a mail-in ballot is submitted by an absent voter, it must be received at the county by 7:00 p.m. on Election Day. Any ballots received after that time will be marked with their time of receipt and held aside in the election supervisor’s office.²⁷ In 2019, that deadline

²³ Smiley, David & Ostroff, Caitlin. “Mail-in Votes Helped Make Florida's Election a Nightmare. A Solution? More Mail-in Votes.” *miamiherald*. Miami Herald, February 28, 2019. <https://www.miamiherald.com/latest-news/article224873455.html>.

²⁴ “Florida Statutes § 97.012.” Justia Law, 2019. <https://law.justia.com/codes/florida/2019/title-ix/chapter-97/part-i/section-97-012/>.

²⁵ Dobrzyn, Erin. “Florida to Allow Early Mail-in Ballots Due to COVID-19 Concerns, Report Says.” WKMG News 6; ClickOrlando, June 18, 2020. <https://www.clickorlando.com/news/local/2020/06/18/florida-to-allow-early-mail-in-ballots-due-to-covid-19-concerns-report-says/>.

²⁶ “Contact Your Supervisor of Elections.” Florida Division of Elections - Department of State. Accessed September 6, 2020. <https://dos.elections.myflorida.com/supervisors/>.

²⁷ “Voting-by-Mail.” Florida Division of Elections - Department of State. Accessed September 6, 2020. <https://dos.myflorida.com/elections/for-voters/voting/vote-by-mail/>.

resulted in the rejection of over ten thousand ballots, due to having been received late—which in turn could be due to the fact that election workers simply weren't able to time-stamp them fast enough, even though they had been timely delivered.²⁸ Now Florida voters will be able to track the status of their ballots at any time, using their county's elections website.

The Florida Department of State directly implements training for signature verification across the state, to ensure uniformity among county-level election supervisors and county canvassing board members.²⁹ The absentee ballot signature-verification process involves an election official comparing the signature on the outside of an absentee ballot to the signature in the registration books, to determine whether it is valid. If the signature does *not* match, the voter is allowed to sign an affidavit, and submit their identification, in order to “cure” the ballot, up until 5:00 p.m. on Election Day.³⁰ If a voter's ballot is lost, stolen, or destroyed, they may receive a replacement ballot, twice if necessary, which must be returned before 7:00 p.m. on Election Day.³¹

Mail-in ballots are eligible for canvassing as early as 7:00 a.m. on the twenty-second day before the election, including actual ballot processing through optical scanning equipment, although the results of any early tabulation is secret to the public until Election Day.³² The optical scanners used in Florida, as of 2018, are standardized across many counties, and all of them offer a paper trail for each ballot cast.³³ This is in stark contrast to past elections in Florida, in which many counties have used electronic machines with no artifacts of voter intent, leading to many of the state's election-related controversies.

2.3 Election Certification, Recounts, and Auditing

Once ballots are processed, and Election Day has come and gone, each county supervisor must notify individually any voter whose ballot was rejected, giving the specific reason for its exclusion. Additionally, the supervisor will give the voter an opportunity either to re-register to vote, or to update the signature on file.

After all ballots have been processed, and the numbers certified by the county canvassing board, the board must file a “county return” to the DoS by 5:00 p.m. on the seventh day following a primary election, or 12:00 noon on the twelfth day following a general election. If final returns of contested ballots are not submitted by this deadline (except in emergency circumstances),

²⁸ Smiley, David & Ostroff, Caitlin. “Mail-in Votes Helped Make Florida's Election a Nightmare...”

²⁹ “Florida Statutes § 97.012.” Justia Law, 2019. <https://law.justia.com/codes/florida/2019/title-ix/chapter-97/part-i/section-97-012/>.

³⁰ “VOPP: Table 14: How States Verify Voted Absentee Ballots.” National Conference of State Legislatures, April 17, 2020. <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-14-how-states-verify-voted-absentee.aspx>.

³¹ “Florida Statutes § 101.6103.” Justia Law, 2019. <https://law.justia.com/codes/florida/2019/title-ix/chapter-101/section-101-6103/>.

³² “Florida Statutes § 101.68.” Justia Law, 2019. <https://law.justia.com/codes/florida/2019/title-ix/chapter-101/section-101-68/>.

³³ “Frequently Asked Questions: Optical Scanner Voting System.” FAQs-Optical Scanner Voting System. Accessed September 6, 2020. <https://www.voteinellas.com/General-Information/Voter-Outreach/Voting-System/FAQs-Optical-Scanner-Voting-System>.

then the DoS will certify the results they have on file at that time, which may or may not be complete.

If an election's results show that a candidate was defeated by 0.25% or less of total votes cast for that office, then there is an automatic recount of the entire jurisdiction in which the election took place. The only instance where such a recount would *not* take place is when the number of votes is fewer than the amount needed to change the election outcome, or if the losing candidate requests in writing that a recount not be held.³⁴ The responsibility of administering a recount falls on the DoS in the event of a federal/statewide/multicounty election. Otherwise that responsibility belongs to local county canvassing boards. Absentee ballots, in a recount, must clearly indicate voter choice, and must be reviewed by a counting team representing at least two political parties. If such ballots do not clearly show voter intent, they will be presented, much like in-person ballots, to the county's board for a determination.³⁵

Any audit is conducted under the authority of the DoS, whose responsibility it is to create auditing procedures for Florida elections.³⁶ Immediately after election certification, "the county canvassing board or the local board responsible for certifying the election shall conduct a manual audit or an automated, independent audit of the voting systems used in randomly selected precincts."³⁷ Both manual and automated audits include ballots from Election Day, early voters, absentee, provisional, and overseas voters. A manual audit pulls a one- to two-percent of sampling of ballots from all precincts, chosen randomly, manually tallied by election officials, in public. An automated audit involves a minimum of 20% of precincts, and the selection process is public. Audit results must be made publicly available by 11:59 p.m. on the seventh day following election certification by the county canvassing board or other certifying authority.³⁸ Within fifteen days of an audit's completion, the local authority (whether a county canvassing board or something other) must submit a report to the DoS detailing the accuracy of the audit, description and cause of any problems, and recommendations to avoid any such issues in the future.³⁹ Importantly, the results of these audits often emerge *after* election results have been certified. Thus they do not, usually, revise election outcomes. Instead, lessons learned from most audits apply to the next election.⁴⁰

Department of State supervision provides additional accountability for election officials. If petitioned by any public authority or candidate, or by five percent of voters, the DoS has the

³⁴ "Florida Statutes § 102.166." Statutes & Constitution- Florida Legislature, 2019. http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute.

³⁵ *Ibid.*

³⁶ "Florida Statutes § 101.5911." Justia Law, 2019. <https://law.justia.com/codes/florida/2019/title-ix/chapter-101/section-101-5911/>

³⁷ "Florida Statutes § 101.591." Justia Law, 2019. <https://law.justia.com/codes/florida/2019/title-ix/chapter-101/section-101-591/>

³⁸ *Ibid*

³⁹ *Ibid*

⁴⁰ "Florida Audit Laws." Verified Voting. Accessed September 6, 2020. <https://verifiedvoting.org/florida-2/>

authority to appoint deputies to oversee the registration and election process. These deputies have the power to access and examine every aspect of an election’s administration, from registration books to voting machines, and to submit a report of their findings to the DoS, as well as the specified county’s circuit court clerk.⁴¹

⁴¹ “Florida Statutes § 101.58.” Justia Law, 2019.
<https://law.justia.com/codes/florida/2019/title-ix/chapter-101/section-101-58/>

3. Maine

3.1 Background and COVID-19 Response

Maine's State Department, through its Bureau of Corporations, Elections, and Commissions, administers elections in the state. At a local level, town clerks work in tandem with municipal wardens to oversee election administration. Before their legislative session ended in March, Maine's legislature passed a bill that granted increased authority of election administration directly to Governor Janet Mills.⁴² Governor Mills issued an executive order on April 10, postponing the state's primary from June 9 to July 14, accordingly pushing the deadline to request an absentee ballot until close of polling on Election Day.⁴³ For the 2020 general election on November 3, the deadline to request an absentee ballot by telephone or Online Absentee Ballot Request Service is 5:00 p.m. on Thursday, October 29, 2020.

Historically, Maine has allowed for widely-accessible absentee voting. But the state has seen an exponential increase in absentee ballot requests (nearly 180,000 for the July 2020 primary) in comparison to past election years. Maine's infrastructure is bound to be tested to its limits.⁴⁴ Secretary of State Matthew Dunlap has strongly encouraged all primary voters to cast their ballots by mail, and has implemented social distancing, along with other safety guidelines, for voters who cast their ballots in person on Election Day.⁴⁵ Maine has expressed concern that funding from the original CARES act may not sufficiently cover increased election administration costs, due to its inability to reallocate the required matching funds while the state legislature out of session.⁴⁶

⁴² "Effects of COVID-19 on Elections & Civic Engagement." Maine League of Women Voters. Accessed September 6, 2020.
<https://www.lwvme.org/CovidAndElections>.

⁴³ "AN ORDER MODIFYING THE PRIMARY ELECTION TO REDUCE EXPOSURE TO COVID-19 ." Office of the Governor - Maine, April 10, 2020.
<https://www.maine.gov/governor/mills/sites/maine.gov.governor.mills/files/inline-files/An%20Order%20Modyifying%20the%20Primary%20Election%20to%20Reduce%20Exposure%20to%20COVID-19.pdf>

⁴⁴ Piper, Jessica. "Maine Sees Partisan Split on Absentee Ballots as Many Republicans Wait to Vote in Person." Bangor Daily News, July 8, 2020.
<https://bangordailynews.com/2020/07/08/politics/maine-sees-partisan-split-on-absentee-ballots-as-many-republicans-wait-to-vote-in-person/>

⁴⁵ "Covid-19 Resources for July 14 Election." Bureau of Corporations, Elections & Commissions. Accessed September 6, 2020.
<https://www.maine.gov/sos/cec/elec/upcoming/covid19.html>

⁴⁶ Thistle, Scott. "Maine May Struggle to Claim Federal Pandemic Funding for Elections." Press Herald, April 28, 2020.
<https://www.pressherald.com/2020/04/27/feds-offer-election-funds-in-coronavirus-act-but-maine-may-struggle-to-claim-it/>

3.2 Ballot Requests, Processing, and Signature Verification

Any registered voter in Maine can request a ballot online without a specific reason.⁴⁷ To become a registered voter, however, an individual must submit a registration application, with a copy of identification, either by mail or by registering in-person with a town clerk. Generally, absentee ballots are available at least thirty days prior to Election Day. The applications for an absentee ballot, however, were available three months before the election, on August 3.⁴⁸ The deadline to request a ballot remotely (whether online or by telephone) is 5:00 p.m. on the third business day before the election; ballots may be requested in person until 5:00 p.m. on Election Day. A voter may request an absentee ballot for an immediate family member as well. These ballots do not require notarization or witness, unless the voter receives assistance from another person in reading or marking the ballot.⁴⁹ Voters are responsible for postage on their absentee ballots, in order to return them via USPS.

Ballots must be received by the municipal clerk before 8:00 p.m. on Election Day, regardless of how they are delivered.⁵⁰ A third party may deliver any voter's ballot (i.e. for someone other than an immediate family member), though only with a written request, which has been witnessed by either a notary public or a town clerk, or two other witnesses.⁵¹ Currently, only overseas voters submitting their ballots through UOCAVA (Uniformed and Overseas Citizens Absentee Voting Act) may track the status of their absentee ballots.

Processing of absentee ballots may begin on Election Day, but only if notice of this processing has been disseminated to local party chairpeople at least seven days prior to the election.⁵² Absentee ballots across the state are processed through a uniform procedure: first, election wardens verify the signature visually. If the signature on the ballot envelope does not match the signature on the voter's absentee ballot application, or if the affidavit is not properly completed, the ballot is rejected, with no opportunity for the voter to fix their mistake.⁵³ If the signature is verified, the election officials then call out the name of the absent voter, and cross-check the name on voter rolls, to ensure that the voter has not already cast a ballot in person. Ballots may be rejected for a number of reasons: incomplete affidavit, non-matching signature, wrong voter-registration location, missing the ballot-return deadline, or the voter having previously cast a ballot in person. Any rejected absentee ballots are marked with the reason for rejection and set

⁴⁷ "Welcome to the Maine Online Absentee Ballot Request Service for the November 3, 2020 General Election." Maine Absentee Ballot Request. Accessed September 6, 2020. <https://apps.web.maine.gov/cgi-bin/online/AbsenteeBallot/index.pl>

⁴⁸ "Absentee Voting Guide." Bureau of Corporations, Elections & Commissions. Accessed September 6, 2020. <https://www.maine.gov/sos/cec/elec/voter-info/absenteeguide.html>

⁴⁹ *Ibid*

⁵⁰ *Ibid*

⁵¹ *Ibid*

⁵² "Maine Title 21-A, §759: Counting Procedure." Maine Legislature. Accessed September 6, 2020. <https://legislature.maine.gov/statutes/21-A/title21-Asec759.html>

⁵³ *Ibid*

aside for storage. At this point, ballot tabulation may begin, and absentee ballots are counted along with normal ballots.

3.3 Election Certification, Recounts, and Auditing

The counting of ballots begins immediately upon the close of polls on Election Day, and is a public process. The secretary of state has the power to issue ballot-counting instructions to wardens, and to assign a counting priority rank to each different type of ballot (absentee first, in-person second, etc.). Ballots are split into batches of fifty. Two teams of election officials from different political parties then count the ballots, either by hand, or by optical scanning equipment. As soon as ballot counting is completed, the warden at a precinct or central counting location can announce unofficial results, which are required to be released. Within twenty days after Election Day, the secretary of state must tabulate the election results from around the state, and submit that tabulation to the governor, with the exception of any races where a recount is in progress.⁵⁴ Election certificates to winning candidates are then issued “within a reasonable time after an election.”⁵⁵

In the unlikely case of a tie, a special election is called. However, if the tie occurs in a contest for president, the state legislature must convene and choose the winner.⁵⁶ Recounts may be ordered or requested within five business days after the election. After this deadline, ballot containers are unsealed and kept in storage at municipal clerk offices as a matter of public record.

As in other states, Maine offers three principle avenues to begin a recount: a close vote margin, a candidate-initiated request, and a voter-initiated request. The margins for an automatic recount are dependent on the level of office. In an election for a state senator or representative, or for a county office within the jurisdiction of a single county, the margin must be equal to or less than 1.5% of total votes cast. For multi-county or statewide offices, the margin must be either less than 1%, or fewer than one thousand votes, whichever volume is lower. Candidates are not required to bear the expense of these automatic recounts. However, in all other forms of recounts, candidates and voters are responsible for the cost of conducting the recount, which cost depends on both the level of the contest being recounted, and also on the outcome of the recount. Also, any apparent losing candidate may make a request for a recount in their race. And a group of two hundred or more registered voters may petition for a recount on a statewide referendum. The actual recounting itself must be conducted as soon as possible, and “at a time and place that affords the designated recount candidates a reasonable opportunity to be present.”⁵⁷

⁵⁴ “Maine Title 21-A, §722:Secretary of State to Tabulate and Print Results.” Maine Legislature. Accessed September 6, 2020.
<https://legislature.maine.gov/statutes/21-A/title21-Asec722.html>

⁵⁵ “Maine Title 21-A, §724-A: Written Notice to Legislature.” Maine Legislature. Accessed September 6, 2020.
<http://legislature.maine.gov/statutes/21-A/title21-Asec724-A.html>

⁵⁶ “Maine Title 21-A, §732: Procedure.” Maine Legislature. Accessed September 6, 2020.
<https://legislature.maine.gov/statutes/21-A/title21-Asec732.html>

⁵⁷ “Maine Title 21-A, §737-A: Recount.” Maine Legislature. Accessed September 6, 2020.
<https://legislature.maine.gov/statutes/21-A/title21-Asec737-A.html>

There are no forms of mandatory election auditing in Maine. In 2019, however, the secretary of state was directed to investigate election best practices regarding post-election audits and recounts. The results of this investigation are due to be submitted by December 6, 2023.⁵⁸

⁵⁸ “H.P. 756 - L.D. 1026 Resolution Directing the Secretary of State To Examine Best Practices in Elections.” Maine State Legislature, June 5, 2019. <http://legislature.maine.gov/legis/bills/getPDF.asp?paper=SP0755>

4. Michigan

4.1 Background and COVID-19 Response

Elections in Michigan are supervised by Secretary of State Jocelyn Benson, and administered locally, rather than at the county level. According to the office of the secretary, “Of the eight states that administer elections on the local level, Michigan is the largest state, both in terms of its population and geography, to do so... Michigan's elections system is administered by 1,603 county and local election officials, making it the most decentralized elections system in the nation.”⁵⁹

Michigan’s COVID-19 response concerning elections was swift, due to the timing of its primary election, held on May 5, 2020, early on in its lockdown period. Although Michigan accepts no-excuse absentee voting, Governor Gretchen Whitmer went further, issuing an executive order to explicitly encourage every jurisdiction to conduct elections “to the greatest extent possible by absent-voter ballots, issued and submitted without in-person interaction,” while also providing at least one in-person voting location per jurisdiction.⁶⁰ The governor’s order also facilitated jurisdictions in rescheduling ballot proposals for the state’s August 4 primary.⁶¹ Amid tensions between the legislative and executive branches of Michigan’s state government, Secretary Benson has been working to ensure polling places are adequately staffed for the upcoming election. But the average age for election workers in Michigan is around seventy-four, the demographic at highest risk of infection and complications due to COVID-19. Benson’s particular challenge has been to find younger volunteers.⁶² Meanwhile local election officials are preparing for more than 1.5 million absentee ballot applications—a three-fold increase over demand before the same election in 2016.⁶³

4.2 Ballot Requests, Processing, and Signature Verification

Michigan’s deadline for requesting an absentee ballot in person is 4:00 p.m. on the day preceding the election.⁶⁴ For voters who wish to vote by mail, absentee ballot applications are available online any time before 5:00 p.m. on the Friday before the election.⁶⁵ Application for an

⁵⁹ “Michigan's Elections System Structure Overview.” Secretary of State - Voter Information. Accessed September 8, 2020. https://www.michigan.gov/sos/0,4670,7-127-1633_8716---,00.html

⁶⁰ “Whitmer Executive Order 2020-27 (COVID-19).” Michigan Governor - Executive Orders. Accessed September 8, 2020. https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-523400--,00.html

⁶¹ *Ibid*

⁶² “Voting Changes, COVID-19 Change Michigan Election for ...” WNEM News, June 12, 2020. https://www.wnem.com/news/voting-changes-covid-19-change-michigan-election-for-clerks/article_7c37e0d4-c44a-11ea-8f7f-dbcfe8c30af2.html

⁶³ *Ibid*

⁶⁴ “Obtaining an Absent Voter Ballot.” Secretary of State - Voter Information. Accessed September 8, 2020. https://www.michigan.gov/sos/0,4670,7-127-1633_8716_8728-21037--,00.html

⁶⁵ “Apply for an Absentee Ballot Online.” Michigan Online Absent Voter Ballot Application. Accessed September 8, 2020. <https://mvic.sos.state.mi.us/avapplication>

absentee ballot in Michigan can also be made by letter, by postcard, or by preprinted application available from a local clerk's office.

The voter's completed and signed ballot must be submitted to the local clerk by 8:00 p.m. on Election Day, whether that be via US mail or in-person delivery.⁶⁶ Any voter who is unable to return the ballot personally can have their absentee ballot picked up by election officials, who are required to do so, when the voter makes a request for the pick up before 5:00 p.m. on the Friday preceding the election.⁶⁷ If a voter wishes to change a vote already submitted, the voter may do so by mail, before 2:00 p.m. on the Saturday before the election, or in-person by 4:00 p.m. on the Monday before the election, having first contacting the local clerk.⁶⁸

Michigan is one of only three states (along with Pennsylvania and Wisconsin) where state policies impose onerous restrictions on election officials' ability to "pre-process" absentee ballots before the start of scanning and tabulation on Election Day. Unlike other states, where election officials can get a "head start" weeks in advance of Election Day by performing signature verification, opening envelopes, and removing and flattening ballots ahead of time, Michigan's restrictions create a severe bottleneck, which will be tested by a massive influx of ballots that must be processed in a relatively short amount of time. Although recent policy changes have given officials ten hours on the day before Election Day to begin pre-processing, this extra time is unlikely to significantly relieve the bottleneck. For already-overwhelmed election staff, this may also increase the risk of human error, and is likely to prolong the time required for Michigan to report election results in the 2020 general election.

Election officials first check all returned ballots for a signature match, using an electronic database to compare ballot signatures to voter signatures on file. If a signature is determined not to be a match, or if a voter is found to be deceased, the ballot remains unopened, and is rejected with a mark across the front stating the ballot was rejected as illegal. If time permits, "clerks will contact voters who submit a ballot with a signature that does not match. Clerks are instructed to make every attempt to contact a voter without delay if there is an issue with their ballot application or ballot."⁶⁹ Any rejected ballots are then stored in the locality clerk's office, to ensure the preservation of all official ballots.⁷⁰

Of some ten thousand ballots rejected in Michigan's August 14 primary, eight thousand were returned too late, more than fourteen hundred were disqualified due to lack of any signature, and almost eight hundred were rejected due to a non-matching signature, according to Secretary Benson. She has asked the Michigan legislature to put a cure provision in place, and extend ballot return deadlines, to prevent a similar level of inadvertent disenfranchisement.

⁶⁶ *Ibid*

⁶⁷ "Michigan Absentee Voting Process." Elections Officials' Manual - Bureau of Elections. November 2019. https://www.michigan.gov/documents/sos/VI_Michigans_Absentee_Voting_Process_265992_7.pdf Page 7

⁶⁸ *Ibid*

⁶⁹ "What Happens If the Signature on a Voter's Absentee Ballot Does Not Match the Signature on Their Voter File?" Secretary of State - Voter Information, August 2020. https://www.michigan.gov/sos/0,4670,7-127-5647_12539_99645-537549--00.html

⁷⁰ "Michigan Election Law § 168.767." Michigan Legislature. Accessed September 8, 2020. [http://www.legislature.mi.gov/\(S\(wliha3xnnhmzggyl41mka41e\)\)/mileg.aspx?page=GetMCLDocument](http://www.legislature.mi.gov/(S(wliha3xnnhmzggyl41mka41e))/mileg.aspx?page=GetMCLDocument)

After signature verification of the ballot, and a cross-check of the voter's name and address in the poll book, the outer envelope of the ballot is opened. As noted above, this may occur during Election Day at the earliest.⁷¹ At this point, if the voter received assistance in filling out their ballot, the information of the individual who provided assistance is recorded, along with the voter's information in the poll book. The serial numbers on the ballot envelope are then matched to the numbers on the ballot filed for each absentee voter. If the numbers do not match, and there is no reasonable explanation (e.g., voters from the same household accidentally switch envelopes or ballots), then the ballot is marked as challenged. At this point, taking special care not to expose the vote of the absent voter,⁷² election workers begin tabulation.

4.3 Election Certification, Recounts, and Auditing

Once processed, ballots are removed from secrecy envelopes and tabulated in multiples. Any ballots which are "rejected by the tabulator must be visually inspected by an election inspector to verify the reason for the rejection. If the rejection is due to a false read, the ballot must be duplicated by two election inspectors who have expressed a preference for different political parties." Said duplicates must be made before 8:00 p.m.⁷³ After this time, the total number of ballots tabulated, including those which have been duplicated and tabulated, must be compared to the total number of ballots delivered for processing. If there is a discrepancy between the numbers, a reason for the discrepancy must be determined.⁷⁴

Michigan conducts an extensive audit after each election (as of a ballot measure in 2018), which includes at least one race in each precinct randomly selected for audit, and at least one statewide race or ballot question. All procedures are reviewed before, during, and after the election.⁷⁵ Any audit must be conducted and the results published within thirty days of canvass completion (unless there is a recount). This process includes looking through electronic poll books for any unusual modifications to the software; testing voting and tabulation equipment, voter assistance terminals, the ballot container, and provisional ballots. UOCAVA and absent voter information is also cross-checked against the poll books. The final stage in this auditing process is essentially a risk-limitation audit. Two-person teams manually count ballots from randomly selected election contests, to certify the results are sound when compared to tabulators' results.⁷⁶ This audit cannot change any election result. Instead, it is used to develop best practices for increasing election security and accuracy in future elections.⁷⁷

⁷¹ "Michigan Election Law § 168.765." Michigan Legislature . Accessed September 8, 2020. [http://www.legislature.mi.gov/\(S\(dh24zddvceixtgdcgkeykln0\)\)/mileg.aspx?page=getobject](http://www.legislature.mi.gov/(S(dh24zddvceixtgdcgkeykln0))/mileg.aspx?page=getobject)

⁷² "Absent Voter Ballot Election Day Processing." Election Officials' Manual - Bureau of Elections, February 2019. https://www.michigan.gov/documents/sos/VIII_Absent_Voter_County_Boards_265998_7.pdf Page 4-5.

⁷³ *Ibid* Page 6.

⁷⁴ *Ibid*

⁷⁵ "Post-Election Audits." National Conference of State Legislatures, October 25, 2019. <https://www.ncsl.org/research/elections-and-campaigns/post-election-audits635926066.aspx>

⁷⁶ "Post-Election Audit Manual." Bureau of Elections. Michigan Department of State, January 2020. https://www.michigan.gov/documents/sos/Post_Election_Audit_Manual_418482_7.pdf Page 3.

⁷⁷ "Post-Election Audits." National Conference of State Legislatures.

Recounts in Michigan can be initiated in three ways: triggered by a close vote margin, candidate-initiated, and voter-initiated, much like the other states discussed here. If the vote differential between candidates or ballot items is fewer than two thousand votes,⁷⁸ regardless of total number of votes cast, a recount is automatically initiated.⁷⁹ If the race in question is a ballot proposition, the board of state canvassers must meet to determine the recount procedure, on the seventh day following election certification.⁸⁰

Any candidate running for statewide office, or a party official on their behalf,⁸¹ may petition for a recount of the votes in the precincts of their choice, if they believe there has been canvassing fraud or error in those specific precincts.⁸² State level congressional candidates may petition if the margin is five hundred or fewer votes for a senate seat, and two hundred or fewer votes for a house seat. They are not required to allege fraud or mistake. Deadlines for filing a recount vary, depending on the position in question; generally, the deadline for candidate-driven petitions is forty-eight hours after election certification. The recount itself must begin within thirteen days of the last day of the petition filing process, or within twenty days for a recount in a primary election.

Lastly, for voter-initiated recounts, any registered voter “who alleges fraud or error in the canvass of the votes may request a recount on ballot questions, propositions, or charter and constitutional amendments...[can file a petition at any level.]”⁸³ Petitions for a recount on a ballot proposition or constitutional amendment must be filed within two days after final certification,⁸⁴ and for elected offices, within six days of certification.⁸⁵ The timeline to complete and publish these recounts is the same as for any others: thirteen days for a general election, and twenty days for a primary. For both voter- and candidate-initiated recounts, the fee per precinct for requesting a recount “is determined by the vote margin between the winning

⁷⁸ It is important to note that this is *not* a percentage-based calculation, so it may not scale as effectively to larger elections with millions of votes.

⁷⁹ “Michigan Recount Laws.” Citizens for Election Integrity Minnesota, March 9, 2020. <https://ceimn.org/searchable-databases/recount-database/michigan>

⁸⁰ “Michigan Election Law § 168.880a.” Michigan Legislature. Accessed September 8, 2020. [http://www.legislature.mi.gov/\(S\(hxw2o34mj1sptnqpc04m5ouq\)\)/mileg.aspx?page=getObject](http://www.legislature.mi.gov/(S(hxw2o34mj1sptnqpc04m5ouq))/mileg.aspx?page=getObject)

⁸¹ This does not apply to presidential primary candidates.

⁸² “Michigan Election Law § 168.879.” Michigan Legislature. Accessed September 8, 2020. [http://www.legislature.mi.gov/\(S\(nlue0iw0ntw3351x4dj4atxs\)\)/mileg.aspx?page=getObject](http://www.legislature.mi.gov/(S(nlue0iw0ntw3351x4dj4atxs))/mileg.aspx?page=getObject)

⁸³ “Michigan Election Law § 168.880.” Michigan Legislature. Accessed September 8, 2020. [http://www.legislature.mi.gov/\(S\(ouvkfbww1sbxe325tdc55yd\)\)/mileg.aspx?page=getObject](http://www.legislature.mi.gov/(S(ouvkfbww1sbxe325tdc55yd))/mileg.aspx?page=getObject)

⁸⁴ “Michigan Election Law § 168.88.” Michigan Legislature. Accessed September 9, 2020. [http://www.legislature.mi.gov/\(S\(ds24v35vn2acyboqok3y5y5k\)\)/mileg.aspx?page=getObject](http://www.legislature.mi.gov/(S(ds24v35vn2acyboqok3y5y5k))/mileg.aspx?page=getObject)

⁸⁵ “Michigan Election Law § 168.866.” Michigan Legislature. Accessed September 9, 2020. [http://www.legislature.mi.gov/\(S\(ro5l1ertgwagp2acs11vkrp\)\)/mileg.aspx?page=getObject](http://www.legislature.mi.gov/(S(ro5l1ertgwagp2acs11vkrp))/mileg.aspx?page=getObject)

candidate and the petitioner.”⁸⁶ If the recount reverses the election result, then the fee is refunded in full.⁸⁷

⁸⁶ “Michigan Recount Laws.” Citizens for Election Integrity Minnesota, March 9, 2020. <https://ceimn.org/searchable-databases/recount-database/michigan>.

⁸⁷ “Michigan Election Law § 168.881.” Michigan Legislature . Accessed September 9, 2020. [http://www.legislature.mi.gov/\(S\(b0fcluggeevh4yivkxeccsba\)\)/mileg.aspx?page=getObject](http://www.legislature.mi.gov/(S(b0fcluggeevh4yivkxeccsba))/mileg.aspx?page=getObject).

5. Minnesota

5.1 Background and COVID-19 Response

In Minnesota, Secretary of State Steve Simon oversees election administration. County election offices administer elections on a local level. Minnesota has had absentee voting available for all voters since 2014,⁸⁸ and in the 2018 election, about a quarter of all votes cast were absentee ballots.⁸⁹ In the face of COVID-19, Governor Tim Walz and other legislative figures are pushing to expand absentee voting, potentially even implementing universal vote-by-mail in November via executive action.⁹⁰ Minnesota's legislature has already rebuked a bill that would enact such a measure; to date there have been no significant changes related to the pandemic in Minnesota's election administration.⁹¹ Nevertheless, the state has taken steps to ensure the safety of voters in this tumultuous time.

According to state statutes, Minnesota has a range of emergency options available, which can affect elections, especially should the pandemic worsen by November. For example, county level election officials may consolidate or move polling places, provided they post notice of any such changes. Meanwhile, mandatory emergency plans are already in place at the state and local level, guided and reviewed by both the secretary of state and the Governor.

In a court ruling on August 4, a Minnesota district judge ordered changes to Minnesota's absentee ballots, removing the witness-or-notary requirement from the outer envelope of absentee ballots, and extending by one week the deadline for postmark and return of ballots. Ballots may now be counted as valid with a postmark up to and including Election Day, and delivered by 8:00 p.m. one week after the election.⁹² Minnesota's August 11 primary election was administered with state guidance, encouraging voters to cast ballots early, via absentee ballot. Minnesota has also implemented election-day curbside registration and voting, for voters who do not wish to enter a polling place, and endorses the CDC-recommended social distancing and sanitation measures generally followed throughout the country.

5.2 Ballot Requests, Processing, and Signature Verification

All eligible voters in Minnesota can request to receive an absentee ballot for a current election, and also to receive ballot applications automatically for all future elections. Applications are

⁸⁸ Stassen-Berger, Rachel E. "No Excuse Needed to Vote Absentee in Minnesota." *Star Tribune*, June 23, 2014. <https://www.startribune.com/no-excuse-needed-to-vote-absentee-in-minnesota/264181781/>.

⁸⁹ Montemayor, Stephen. "Gov. Tim Walz Considers 'next Steps' to Increase Mail-in Voting." *Star Tribune*. *Star Tribune*, May 14, 2020. <https://www.startribune.com/walz-considers-next-steps-to-increase-mail-in-voting-in-minnesota/570415312/>.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² LeBlanc, Paul, and Kate Sullivan. "Minnesota Drops Mail-in Voting Witness Requirement Ahead of November Election." *CNN*. Cable News Network, August 4, 2020. <https://www.cnn.com/2020/08/03/politics/minnesota-vote-by-mail-witness-requirement/index.html>.

available online, returnable to one's county election office via fax, US mail, or email.⁹³ Any absentee ballot application submitted online must include either a Minnesota driver's license number, a Minnesota ID card number, or the last four digits of the voter's Social Security Number. Any unregistered voter can register to vote at the same time as they apply for an absentee ballot, provided they include proof of residency for their registration.⁹⁴ For the August 11 primary, registered voters are not required to have a witness signature on their absentee ballots, but absentee ballots of unregistered voters must include a witness signature. A witness can be either a notary public or any registered Minnesota voter, whose signature and personal information must appear on the ballot envelope.

Absentee ballots may be requested on any day up to Election Day, but they must be postmarked by Election Day at the latest. Ballots must be received by the local canvassing board before the canvass begins, and delivered by a deadline one week after Election Day, per the August 4 court ruling.⁹⁵ Ballots may also be dropped off in person any time before 3:00 p.m. on Election Day. A voter may drop off absentee ballots for up to three other voters, provided the person dropping off the ballots shows a signature and verifies his or her own identity.⁹⁶

Once received, ballots are verified by local ballot boards, but ballots may only be counted after the polls close on Election Day. A ballot board is an appointed group of election officials in each municipality, that oversees ballot processing and training of election judges.⁹⁷ To speed up post-Election Day processing, approved ballots may also be opened and placed into ballot boxes within seven business days of the election.⁹⁸ In ballot processing, officials first inspect ballots to verify their authenticity, checking the voter signature, name, and ID number indicated on the ballot against the voter's ballot application. If the ID number doesn't match, then the signature is compared to what is currently on file. If a voter's signature does not match the one on their application, or if there are any other mistakes found, including within the witness portion of the ballot, election officials will mail replacement materials to the voter, with an explanation of why the ballot was rejected—provided the election is more than five days away. If the election is fewer than five days away, election officials must make every effort to contact the voter by means other than by mail, to let them know that they must recast their ballot in person, at their local election office or polling place on Election Day.⁹⁹

⁹³ "Vote Early By Mail." Office of the State Of Minnesota Secretary of State. Accessed September 9, 2020. <https://www.sos.state.mn.us/elections-voting/other-ways-to-vote/vote-early-by-mail/>.

⁹⁴ "Requesting an Absentee Ballot." Minnesota Secretary of State Online Voter Tools. Office of the Minnesota Secretary of State. Accessed September 9, 2020. <https://mnvotes.sos.state.mn.us/ABRegistration/ABRegistrationStep1.aspx>.

⁹⁵ <https://www.cnn.com/2020/08/03/politics/minnesota-vote-by-mail-witness-requirement/index.html>

⁹⁶ "Vote Early By Mail." Office of the State Of Minnesota Secretary of State.

⁹⁷ "Minnesota Statute §203B.121." Office of the Revisor of Statutes. Minnesota Legislature. Accessed September 9, 2020. <https://www.revisor.mn.gov/statutes/cite/203B.121>.

⁹⁸ *Ibid*

⁹⁹ "Vote Early By Mail." Office of the State Of Minnesota Secretary of State.

5.3 Election Certification, Recounts, and Auditing

After the polls close on Election Day, two members of each local ballot board begin the process of tabulating absentee ballots and recording them, on a summary statement to be forwarded to the county auditor or clerk. Within twenty-four hours after the end of in-person voting, officials must cross-reference the absentee ballot returns with rosters for election attendance, to ensure that no absentee ballots are counted for voters who have already voted in person. At this point, any additional ballots returned late (but before the deadline) are processed and tabulated, in the same manner as other absentee ballots. For state-level primary and general elections, the totals for absentee ballots are then added to the overall vote totals per precinct; for other elections, they may be reported separately, at the discretion of local elections supervisors.¹⁰⁰

As previously mentioned, county canvassing boards meet to certify election results from three to ten days after the election. They then announce the winners of any elections encompassed within that county. Election returns containing the number totals from the initial canvass for state and federal offices are conveyed to the secretary of state and the State Canvassing Board, for a centralized canvass. The State Canvassing Board meets on the third Tuesday following the state general election to go over the county-level reports and prepare a final report, which will be publicly published within three days of the completion of the canvass.¹⁰¹

Recounts can be initiated through a variety of methods in Minnesota. There are the normal mechanisms: close vote margin, candidate-initiated, and voter-initiated. But recounts may also be initiated through an audit, or by election officials. Losing candidates for county, municipal, or school district offices may petition for a publicly-funded recount if the margin is less than 0.25% and if there are between four hundred and fifty thousand votes cast for that specific office. If there are fewer than four hundred votes, then the margin for a recount is ten votes or fewer.¹⁰² The deadline for a candidate to file for this county-level recount is by 5:00 p.m. on the fifth day after the canvass of a primary, or by the same time on the seventh day after the canvass for a special or general election.¹⁰³ “The county auditor shall recount the votes for a county office at the expense of the county, the governing body of the municipality shall recount the votes for a municipal office at the expense of the municipality, and the school board of the school district shall recount the votes for a school district office at the expense of the school district.”¹⁰⁴

If the vote margins are greater than previously described, a candidate may still petition for a recount, but the candidate will be responsible for the cost of the recount, paid in advance. If the recount results in a change of election results, the jurisdiction is responsible for reimbursing the candidate for all costs. The candidate requesting a recount may choose up to three precincts to count first, and the results of said recount must be certified as soon as possible.¹⁰⁵ Ballot-

¹⁰⁰ “2020 Minnesota Election Laws.” Elections Division. Office of Minnesota Secretary of State, 2020. <https://www.sos.state.mn.us/media/2304/minnesota-election-laws-statutes-and-rules.pdf>. §203B.121 Subd. 5

¹⁰¹ *Ibid.* §204C.33 Subd. 3

¹⁰² *Ibid.* §204C.36 Subd 1

¹⁰³ *Ibid.* (d)

¹⁰⁴ *Ibid.* (e)

¹⁰⁵ *Ibid* §204C.36 Subd 2

question recounts are similarly discretionary, and must be filed by a person eligible to cast a vote on the relevant ballot question. The cost of a ballot-question recount is publicly funded if the margin is less than .25%. Otherwise the recount is funded by the person filing for the recount.

All voting machines in Minnesota leave a paper trail for audit after the election takes place. This process is referred to in the state as a “postelection review,” and equivalent in meaning to an “audit” elsewhere in the country. A date and time is set by each county canvassing board at the canvass of the state primary, and cannot begin earlier than the eleventh day after the general election; the process must be complete before the eighteenth day after the election.¹⁰⁶ Ballots up for review include both ballots counted at a polling place, and absentee ballots counted centrally for a precinct. Counties with less than fifty thousand voters must audit at least two precincts; counties having between fifty thousand and one hundred thousand voters must audit at least three precincts reviewed; any county with more than one hundred thousand voters, must audit four precincts, or 3% of all precincts in the county (whichever is greater). No review is required for an election that is undergoing a recount, but all votes cast for president, governor, US senator, or US representative must be reviewed.¹⁰⁷

The review process itself begins with the appointment of a postelection review official by a county canvassing board. All voted ballots are then manually counting in the selected precincts. This count occurs in a public place, with members of both political parties present and participant in the process. The review must be completed no later than two days before the convening of the State Canvassing Board to certify results for the state general election and county returns.¹⁰⁸ The final count of the review must be within 0.5% of the initial count, barring votes not processed through the voting systems. If the discrepancy is greater than 0.5%, or more than two votes in an election, where fewer than four hundred votes are cast, then an additional review is required. At least three additional precincts are selected within the jurisdictions where the discrepancy occurred, and the review process is repeated. If all precincts in a jurisdiction have already been reviewed, a county auditor must select at least three additional precincts to review. This additional review must be completed within two days of precinct selection. If the same margin of the discrepancy is still apparent after the second review, then “the county auditor must conduct a review of the ballots from all the remaining precincts in the county” for relevant races, and the results must be reported to the secretary of state within a week of the second review being completed.¹⁰⁹ If discrepancies are occurring in counties holding more than 10% of the total number of people voting in the election, the secretary will forward a notice to each postelection review official, mandating that a full manual recount must occur for all ballots cast within two weeks of the notice. The results of this full recount are to be reported to the State Canvassing Board, at least two days before the State canvas.¹¹⁰ At this point, if election results

¹⁰⁶ *Ibid.* § 206.89 Subd. 2

¹⁰⁷ *Ibid.* Subd. 3

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.* Subd. 5

¹¹⁰ *Ibid.* Subd. 6

have changed as a result of this process, the revised totals are incorporated into the official results.¹¹¹

¹¹¹ *Ibid.* Subd. 7

6.1 Background and COVID-19 Response

Nevada’s Secretary of State Barbara Cegavske oversees elections, and each county within the state has its own clerk and elections office to administer elections at the local level. Also, Governor Steve Sisolak maintains implicit emergency authority over elections, with the power to suspend statutes, if protection of the population is at stake.¹¹² Assembly Bill 4 explicitly gives Governor Sisolak this authority, along with the right to command the secretary of state to make modifications to election administration, paving the way to implement wide mail-in voting.¹¹³

In early August, Nevada joined the ranks of other fully-mail-in-voting states, in passing legislation that would send an absentee ballot for the general election in November to all active voters in the state. Nevada is one of several states around the country that have passed similar legislation to increase voting accessibility in the face of the pandemic.¹¹⁴ In the 2018 general election, absentee/mailed ballots amounted to approximately 10% of the total number of votes cast.¹¹⁵ In the state’s 2020 primary, that number shifted closer to 98% of all ballots cast,¹¹⁶ upon the secretary of state’s recommendation that it be conducted almost entirely by mail.¹¹⁷ The window for reporting results was much longer than usual—an unavoidable reality when conducting an election primarily by mail—but there were no hiccups in election administration, other than the delay in reporting results. There were no allegations of fraud or other mismanagement during that primary, countering claims that elections by mail encourage fraudulent behavior.¹¹⁸ Furthermore, on September 21, a federal judge dismissed a lawsuit filed by President Trump’s reelection campaign against the State of Nevada, declaring that the

¹¹² “Chapter 414 - Emergency Management Statutes.” Nevada Legislature . Accessed September 9, 2020. <https://www.leg.state.nv.us/NRS/NRS-414.html>. §414.070.

¹¹³ “AB4 Overview - An Act Relating to Elections.” Nevada Legislature . Accessed September 9, 2020. <https://www.leg.state.nv.us/App/NELIS/REL/32nd2020Special/Bill/7150/Overview>.

¹¹⁴ “Nevada Passes Bill to Mail All Voters Ballots amid Pandemic.” CBS News. CBS Interactive, August 3, 2020. <https://www.cbsnews.com/news/nevada-mail-in-voting-bill-passes-coronavirus-pandemic/>.

¹¹⁵ “2018 General Election Turnout.” Office of Nevada Secretary of State, November 20, 2018. <https://www.nvsos.gov/sos/home/showdocument?id=6050>.

¹¹⁶ “2020 Primary Election Turnout.” Office of Nevada Secretary of State, June 19, 2020. <https://www.nvsos.gov/sos/home/showdocument?id=8686>.

¹¹⁷ “Primary Election Turnout Exceeds 480,000, Sets up Major Races for November.” The Nevada Independent, June 18, 2020. <https://thenevadaindependent.com/article/primary-election-turnout-exceeds-480000-sets-up-major-races-for-november>.

¹¹⁸ Associated Press and staff reports. “Trump Campaign Sues State of Nevada over Mail-in Ballot Law Ahead of November Election.” Reno Gazette Journal, August 5, 2020. <https://www.rgj.com/story/news/2020/08/04/trump-campaign-sues-state-nevada-over-mail-ballot-initiative/3297017001/>.

campaign's claimed injuries related to mail-in ballot fraud were "speculative," and the campaign lacked standing to sue.¹¹⁹

6.2 Ballot Requests, Processing, and Signature Verification

In a normal election year, any registered voter in the state of Nevada is able to request an absentee ballot without an excuse, although proof of residency and identification is required for first-time absentee voters. An online form may be downloaded from the secretary of state's website, and forwarded via mail or in-person delivery to a local county clerk or registrar. As for this year's election, all registered voters will be receiving a ballot in the mail, with no action required. Voters may also request a permanent absentee ballot, whereby a ballot will be mailed to them for all future elections in which they are eligible to vote.¹²⁰ For residents with disabilities, Nevada also offers a program known as EASE (Effective Absentee System for Elections), which allows residents to register to vote, request a ballot, and mark it, all within one service.¹²¹ Ballot requests must be received by local clerks or registrars earlier than 5:00 p.m. on the fourteenth day before the election. In this instance, an absentee request deadline is not applicable. However, the return deadline for these ballots remains critically important, to ensure that each vote is counted.

The deadline to return a ballot in-person is 7:00 p.m. on Election Day. If returned by mail, the ballot must be postmarked by Election Day, and reach the local office within seven days of the election. A voter may request that a family member return their ballot for them, which is also permissible.¹²² Ballots that are not delivered within this time frame will be set aside, uncounted. Voters may track the progress of their ballot on its journey through a look-up tool on the secretary of state website.¹²³

Once a voter returns an absentee ballot to a clerk's office, if a central absentee counting board has been appointed, the clerk notes the voter's name in the record book, opens the outer envelope, verifies the ballot's signature against the voter's original signature in the register, and securely stores the ballot. If there is not yet a central absentee counting board, absentee ballots are stored before signature verification, with the intention to deliver them to the appropriate election board.¹²⁴ If at least two city clerk employees believe a voter's signature does not match, the voter is contacted by the county clerk, to confirm that the voter did indeed submit the ballot. Once a voter confirms their signature and identity, the ballot is forwarded to the appropriate

¹¹⁹ Reno Gazette Journal. "Trump, GOP vote-by-mail lawsuit dismissed by federal judge." <https://www.rgj.com/story/news/2020/09/21/trump-gop-vote-mail-lawsuit-against-nevada-dismissed-judge/5854496002/>

¹²⁰ "Absent Voting." Nevada Secretary of State. Accessed September 9, 2020. <https://www.nvsos.gov/sos/elections/voters/absentee-voting>.

¹²¹ "Absentee Voting." Nevada Secretary of State. Accessed September 9, 2020. <https://www.nvsos.gov/sos/elections/voters/voters-with-disabilities/absentee-voting>.

¹²² "Absent Voting." Nevada Secretary of State.

¹²³ "Voter Search." Voter Registration Search. Office of Nevada Secretary of State. Accessed September 9, 2020. <https://www.nvsos.gov/votersearch/>.

¹²⁴ NRS: CHAPTER 293 - ELECTIONS. Nevada Legislature . Accessed September 9, 2020. <https://www.leg.state.nv.us/NRS/NRS-293.html>. §293.325.

election board or central absentee counting board.¹²⁵ In Nevada’s 2020 primary, almost half of some twelve thousand ballots initially rejected for a mismatched or missing signature were corrected, and subsequently counted (accounting for fewer than 1% of all ballots cast).¹²⁶

When the election is fewer than four days away, city clerks can begin to transfer these sealed ballot containers to their respective absentee counting boards for further processing and tabulation. Ballots may be counted publicly by the absentee counting board no earlier than four days before the election, and the returns/totals of these votes are kept separate from other forms of voting at any given precinct.¹²⁷ The results of any preliminary counting are withheld until the end of Election Day. Once all ballots are received and counted, at least seven days after Election Day, canvassing and certification of the returns may begin.

6.3 Election Certification, Recounts, and Auditing

Canvassing of election returns in Nevada may begin as soon as the first returns are delivered to each Board of County Commissioners, and must be completed before the seventh business day after the election. During the canvass, the board must ensure that any clerical errors discovered are taken into account, and that the result represents the votes cast.¹²⁸ In elections for federal office or statewide office, voting returns are aggregated as an abstract of the votes cast, detailing how many votes each candidate receives, along with the total number of votes, and other key information. Calculation of these abstracts must begin on or before the tenth day after the election, and certified by the local county clerk.¹²⁹ The completed, certified abstracts are forwarded to the secretary of state. On the fourth Tuesday of November after the general election, Nevada’s Supreme Court convenes with the secretary of state to canvass the votes from these abstracts, to decide presidential voters, US Senators and Representatives, and any multi-county or statewide offices.¹³⁰

In the case of a tie for US Senator, US Representative, or multi-county candidate in a general election, the state legislature, voting in both chambers, determines the victor.

The losing candidate in any election may petition for a recount of the votes cast for that office within three days of the results being canvassed and certified. The apparent loser must file a demand for recount with the same election official who filed their candidacy, and must deposit the estimated cost of the recount up front. Also, any voter may request a recount for a ballot question, of the secretary of state directly for a multi-county question, or, if the question is contained within that county, of their local clerk. The petitioning voter must leave a deposit for

¹²⁵ *Ibid.*

¹²⁶ “About 6,700 Nevada Primary Ballots Rejected over Signatures.” AP NEWS. Associated Press, June 26, 2020. <https://apnews.com/a9c95d374f922747b1e6d03b5cc39f41>.

¹²⁷ NRS: CHAPTER 293 - ELECTIONS. Nevada Legislature . Accessed September 9, 2020. <https://www.leg.state.nv.us/NRS/NRS-293.html>. §293.385.

¹²⁸ *Ibid.* §293.387

¹²⁹ *Ibid.* §293.393

¹³⁰ *Ibid.* §293.395

the cost of the recount at the time of the request.¹³¹ Who ultimately pays the costs, for both candidate- and voter-initiated recounts, depends on the outcome of the recount; if the result is changed, the city or county must cover the cost, and the deposit from the petitioner is refunded.¹³² Both forms of recounts occur within precincts or counties chosen by the petitioner in the demand for the recount.

The recount procedure begins with the appointment of a recount board, which will conduct the recount within the relevant city or county. All ballot containers must be unsealed by the county or city clerk, and given to the recount board for tabulation. At this point, “[t]he recount must include a count and inspection of all ballots, including rejected ballots, and must determine whether all ballots are marked as required by law. All ballots must be recounted in the same manner in which the ballots were originally tabulated.”¹³³ Recounts occur in public. Observers may be appointed by either party or candidate, and every effort must be made to ascertain voter intent when counting ballots, including reinspecting those which previously had been rejected.¹³⁴

In Nevada, risk-limiting audits are conducted under the supervision and regulation of the secretary of state.¹³⁵ These audits are being newly piloted in 2020, with the launch of a phased program to require risk-limiting audits across the state. In 2022, every county clerk will be mandated to conduct a risk-limiting audit. Previously, a traditional auditing system has audited two percent of voting machines in counties with populations of over one hundred thousand, and three percent of voting machines in counties with a lower population. The exact strategy for conducting risk-limiting audits this year comes under the purview of the secretary of state. However, according to SB 123, which mandates the execution of such audits, statistical principles will be implemented to limit the risk of certifying an incorrect outcome, and will likely mirror the procedures of other states which use the same form of audit.¹³⁶

¹³¹ *Ibid.* §293.403

¹³² “Nevada Recount Laws.” Citizens for Election Integrity Minnesota, November 2, 2018. <https://ceimn.org/searchable-databases/recount-database/nevada>.

¹³³ NRS: CHAPTER 293 - ELECTIONS §293.404

¹³⁴ *Ibid.*

¹³⁵ *Ibid.* §293.394

¹³⁶ “SB123 - An Act Relating to Elections.” SB123 Overview. Nevada Legislature . Accessed September 9, 2020. <https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6130/Text>.

7. New Hampshire

7.1 Background and COVID-19 Response

In New Hampshire, the office of Secretary of State William Gardner oversees election administration. Town and city elections are administered locally through a clerk's office. A moderator is elected in each town for a two-year term, who oversees the counting and processing of ballots at precincts in the state.¹³⁷

In early April, New Hampshire's Governor Sununu issued executive order 2020-05, declaring a State of Emergency caused by the pandemic, and issuing multiple recommendations on the conduct of elections in the face of the crisis. The goal was to ensure elections would run smoothly, and to assure voters they would be able to cast their ballots safely.

Executive order 2020-05 implemented absentee voting for all voters concerned about Covid-19, in the September primary and in the November general election, regardless of other circumstances. The order also reinforces the notion that an absentee ballot should not be rejected over the legitimacy of a voter's absenteeism; any concerns must instead be forwarded to the attorney general of the state for investigation.¹³⁸

7.2 Ballot Requests, Processing, and Signature Verification

New Hampshire usually requires a legitimate excuse or verifiable disability, in order to register as absentee by mail and to vote as an absentee. Due to the pandemic, however, the term "disability" has been broadened to include being ill with COVID-19, caring for someone with symptoms, and/or general concern about being exposed to the virus.¹³⁹ The deadline for voter registration was September 1 for the primary election held on September 8, and October 27 for the general election.¹⁴⁰ Absentee ballot applications can be downloaded from the New Hampshire secretary of state website, and must be returned to a local town clerk by the day before the election, by US mail, fax, or hand delivery. To register to vote as an absentee in New Hampshire, the voter is required to present both identification and a witness signature with the absentee ballot application (both requirements are currently under litigation). If an unregistered voter requests an absentee ballot, and then casts a vote with said ballot, the voter is notified

¹³⁷ "NEW HAMPSHIRE ELECTION PROCEDURE MANUAL: 2018-2019." New Hampshire Department of State. Accessed September 10, 2020. <https://sos.nh.gov/media/oszptv33/epm-2018.pdf>. 81.

¹³⁸ Gardner, William, and Gordon MacDonald. "Memorandum Regarding Elections Operations During the State of Emergency." New Hampshire Secretary of State, April 10, 2020. <https://sos.nh.gov/media/43tlxqiq/voting-by-absentee-ballot-during-the-state-of-emergency-related-to-covid-19.pdf>.

¹³⁹ "COVID-19 RELATED REGISTRATION AND VOTING INSTRUCTIONS." New Hampshire Secretary of State, n.d. <https://sos.nh.gov/media/1g0l0ix5/covid-19-how-to-request-absentee-voter-registration-and-absentee-ballot-packets.pdf>.

¹⁴⁰ "Voter Registration Deadlines." New Hampshire Secretary of State. Accessed September 10, 2020. <https://sos.nh.gov/elections/voters/register-to-vote/registration-deadlines/>.

within seven days that they must certify their voter registration before their ballot can be counted.¹⁴¹

An absentee ballot must be returned by 5:00 p.m. on Election Day, whether delivered by mail or in person. Voters are responsible for affixing postage to ballots returned by mail. A delivery agent may return absentee ballots for up to four individuals, but the agent must be either a family member, a long-term care administrator, or an assistant to a voter with a disability. The delivery agent or individual assisting a disabled voter must sign the absentee affidavit, acknowledging their assistance. Voters planning to return their votes by mail are strongly advised to request their ballots long before the deadline, and mailed at least two weeks prior to the election.¹⁴² Any ballots received after the deadline are marked as rejected in the statewide voter registration database, and eventually destroyed without being opened, at a set time. Voters can check on the status of their ballot through an online portal.¹⁴³

Voters who return their absentee ballots to the local clerk in person can to verify their identity at the same time; the voter must voluntarily show the clerk legal proof of identity and domicile, or, if the voter cannot show proper identification, they can complete a challenged voter affidavit on the spot. These ballots from identified voters are stamped as such and checked off a list of verified absentee voters. If a voter returning a ballot in person chooses not to identify themselves, their ballot is grouped together with all other ballots returned by mail, and verified in the same way as a mail-in ballot.

A recent lawsuit by Democracy Docket challenges a number of these practices, naming six features of New Hampshire election law which are potentially disenfranchising.¹⁴⁴ (It's important to note that these practices are not exclusive to New Hampshire; similar practices in other states around the country are likely under litigation as well.) The features being challenged are as follows: (1) the cumbersome absentee registration request process; (2) the requirement that absentee registrations be witnessed by another person; (3) the requirement that proof of identity and domicile be provided with an absentee registration; (4) the failure to prepay return postage for completed absentee ballots; (5) the rejection of absentee ballots delivered after 5:00 p.m. on Election Day; (6) the prohibition on third-party collection and delivery of sealed absentee ballots.¹⁴⁵ The lawsuit argues that each of these features unconstitutionally restricts the right to vote; the plaintiffs are requesting an injunction of each of the laws in question. The results of this lawsuit, and any potential implications from a ruling, would likely have a positive impact on the ability of voters from New Hampshire to cast their ballots by mail.

¹⁴¹ "TITLE LXIII ELECTIONS- Chapter 657 ABSENTEE VOTING." General Court of New Hampshire. Accessed September 10, 2020. <http://www.gencourt.state.nh.us/rsa/html/lxiii/657/657-mrg.htm?id=8589992027>. §657:16

¹⁴² "COVID-19 RELATED REGISTRATION AND VOTING INSTRUCTIONS." New Hampshire Secretary of State.

¹⁴³ "Absentee Ballot Search." State of New Hampshire Voter Information Lookup. New Hampshire Secretary of State. Accessed September 10, 2020. <https://app.sos.nh.gov/Public/AbsenteeBallot.aspx>.

¹⁴⁴ "New Hampshire." Democracy Docket. Accessed September 10, 2020. <https://www.democracymarket.com/state/new-hampshire/>.

¹⁴⁵ *American Federation of Teachers v. William Gardner & Gordon MacDonald*. Democracy Docket. Accessed September 10, 2020. <https://www.democracymarket.com/wp-content/uploads/sites/41/2020/08/Complaint.pdf>.

Absentee ballots must remain unprocessed until 1:00 p.m. on Election Day, at which time signature verification can begin. The process also may begin two hours after the polls open (but no earlier), if such a time is posted with at least twenty-four hours' notice. At the specified time, there is an announcement by the election moderator that processing is about to begin. Processing also may be postponed until after the polls close, if ten or more voters submit an objection in writing. Trained moderators begin the processing phase by removing all absentee ballots from their outer envelopes, and verifying each affidavit signature. They compare the signature on a voter's absentee ballot application to the signature on their absentee affidavit. If a signature cannot be verified, the ballot is rejected. A notice may be mailed to the voter, letting them know why their ballot was rejected.¹⁴⁶ Ballots from voters who receive assistance in filling out their ballot do not need to be signature-verified. So long as the information on the ballot is proper, and all other requirements are satisfied, the ballot is counted.¹⁴⁷ All absentee ballots must be processed, before *any* counting can take place.¹⁴⁸ Any ballots rejected during the processing stage must be recorded in an online database maintained by the secretary of state. At this point the counting phase may begin.

7.3 Election Certification, Recounts, and Auditing

After all absentee ballots have been processed, the local election moderator, in a public space, begins to count the votes cast in the election. Aides appointed by the New Hampshire secretary of state or Attorney general may assist the moderator to complete the tally. To be counted, absentee ballots are fed through optical scanners, much like the in-person ballots cast on Election Day. When all ballots have been counted, the moderator announces the final count in each contest.¹⁴⁹

After the completion of the tally, election returns must be submitted to the secretary of state. These returns include, but are not limited to, information regarding the number of ballots cast in the affirmative or negative for ballot questions, the number of votes cast for each candidate in election contests, and any write-in candidates. A moderator's certificate also must be filed with the secretary within forty-eight hours of the polls closing, incorporating more detailed information about the administration of the election. The total number of ballots cast is included, for example, as well as the number of state and federal absentee ballots cast, and the number of votes cast via Accessible Voting Systems for disabled voters. These returns and certificates must be certified by a town clerk or ward, and multiple copies are kept and forwarded to the secretary of state's office.

Once all towns within an electoral district have submitted their returns to the secretary of state, he or she must examine the returns and determine the victor of all relevant contests. If an electoral district only contains one town or ward, the local moderator can declare the elected

¹⁴⁶ NHPR Staff. "2020 Elections Guide: How to Vote Absentee or At the Polls in New Hampshire During COVID-19." New Hampshire Public Radio. Accessed September 10, 2020. <https://www.nhpr.org/post/2020-elections-guide-how-vote-absentee-or-polls-new-hampshire-during-covid-19>.

¹⁴⁷ *Ibid.*

¹⁴⁸ "TITLE LXIII ELECTIONS- 659 ELECTION PROCEDURE." General Court of New Hampshire. Accessed September 10, 2020. <http://www.gencourt.state.nh.us/rsa/html/LXIII/659/659-mrg.htm>. §659:61.

¹⁴⁹ *Ibid.* §659:49-70

representatives in that district. At this point, the governor issues certificates of election to candidates who received the most votes, except when a recount is in progress.

Any candidate at the level of a state general election may request a recount, if the margin between the petitioning candidate and the apparent winner is less than 20% of the total votes cast in the election.¹⁵⁰ The deadline to file the request for recount is the Friday following the election. This recount margin is far larger than many other states. However, when the petitioner pays the fees for a recount, closer margins come into play. For example, if, in a race for president, United States senator, or governor, the margin is less than one percent of total votes cast, the candidate must pay \$500. If that margin is between one and two percent, the candidate must pay \$1,000. If the margin is between two and three percent, the fee doubles to \$2,000. If the margin is any greater than three percent, the candidate must pay the \$2,000 in fees up front, in addition to any additional future costs of the recount.¹⁵¹

The secretary of state must commence the recount no later than the Wednesday following the filing deadline, giving reasonable notice of the time and place of the recount to both the petitioning candidate and the candidate-elect. No voting or tabulation machines are allowed to be used during the recount process.¹⁵² All ballots cast for the office in question must be visually inspected by the Secretary and any one of their recounting assistants. Both the petitioning candidate and the winning candidates, or their respective counsels, can protest the counting of a ballot, or the failure to count a ballot. If this occurs, the secretary of state must rule on the ballot in question, and attach a memorandum to the ballot, explaining the ruling. Any such discrepancy during the recount compels a pause in the recount, until the discrepancy can be solved. Only then does the recount resume. The same petitioning candidate cannot request a secondary recount.¹⁵³ Upon the completion of a recount, all ballots counted and not protested must be kept in secure storage for at least sixty days following the recount, in the event that the ballot law commission requests the ballots for inspection.

New Hampshire does not currently conduct post-election audits. Early in 2020, discussions on a bill to introduce post-election audits were scrapped, due to a legislative session cut short by the virus, and opposition from the secretary of state.¹⁵⁴ The secretary argued that post-election audits are an unnecessary expense. And because New Hampshire's elections run on antiquated technology from the 1990's, a major overhaul is required to make the current voting systems compatible with post-election audits. With an eye toward just such modernization, Secretary

¹⁵⁰ "TITLE LXIII ELECTIONS - 660 POST ELECTION PROCEDURE." General Court of New Hampshire. Accessed September 10, 2020. <http://www.gencourt.state.nh.us/rsa/html/lxiii/660/660-mrg.htm?id=8589970733>. §660:1

¹⁵¹ *Ibid.* §660:2

All fees for recounts in other elected offices can be found in this statute.

¹⁵² *Ibid.* §660:5

¹⁵³ *Ibid.*

¹⁵⁴ Brooks, David. "N.H.'s Ballot-Counting Machines Are Two Decades Old, with No Replacement in Sight." Concord Monitor. February 10, 2020. <https://www.concordmonitor.com/voting-machines-election-new-hampshire-32538778>.

Scanlon notes that his office is considering options regarding both voting machines and post-election audits.¹⁵⁵

¹⁵⁵ *Ibid.*

8. North Carolina

8.1 Background and COVID-19 Response

North Carolina's elections are run through a State Elections Commission, as opposed to through the secretary of state's office. The State Board of Elections is comprised of five members, appointed by the governor, who control election administration statewide. In the past, North Carolina has faced serious controversy over absentee ballots. In 2018, an operative working on a state-level campaign was accused of harvesting ballots, and improperly signing off on votes.¹⁵⁶ The State Elections Commission took a hardline approach against the indicted operative, making a strong example of his arrest for others who might be otherwise tempted to defraud elections in North Carolina.¹⁵⁷

Due to the pandemic, the state of North Carolina is loosening—or removing entirely—many regulations regarding the request and return of a ballot. For example, House Bill 1169, which was passed in both house and senate with bipartisan support¹⁵⁸ and signed into law by Governor Roy Cooper on June 12, lowered the witness requirement (from two to one), allowed for absentee requests through email or fax (previously requests had to be made by mail or in person), provided for prepaid postage on ballots, and facilitated ballot-tracking by absent voters. Some groups have criticized these measures for potentially weakening voter protections, claiming that they open a door to misuse and shady politics.¹⁵⁹

8.2 Ballot Requests, Processing, and Signature Verification

Any voter in North Carolina can request an absentee ballot via email, without requirement for special circumstances.¹⁶⁰ To return the absentee ballot, the voter must either use the postage-paid envelope included with the ballot, or hand-deliver the completed ballot to their local election board. If hand-delivered, the ballot must be received by the board no later than 5:00 p.m. on Election Day. Under normal conditions, if returned by mail, a ballot will be considered valid only if received “no later than 5:00 p.m. on the third day following the date of the election,

¹⁵⁶ Blinder, Alan. “Election Fraud in North Carolina Leads to New Charges for Republican Operative.” The New York Times. The New York Times, July 30, 2019. <https://www.nytimes.com/2019/07/30/us/mccrae-dowless-indictment.html>.

¹⁵⁷ Dalesio, Emery P., and Jonathan Drew. “Leslie McCrae Dowless, Political Operative, Charged in North Carolina Congressional Race.” PBS. Public Broadcasting Service, February 27, 2019. <https://www.pbs.org/newshour/nation/leslie-mccrae-dowless-political-operative-charged-in-north-carolina-congressional-race>.

¹⁵⁸ Harte, Julia. “North Carolina to Expand Absentee Voting Access in 2020 Elections.” Reuters. Thomson Reuters, June 11, 2020. <https://www.reuters.com/article/us-usa-election-north-carolina-law/north-carolina-to-expand-absentee-voting-access-in-2020-elections-idUSKBN23I3AP>.

¹⁵⁹ Jackson, Andy. “State Board of Elections Recommendations Would Weaken Voter Protections.” Civitas Institute, April 30, 2020. <https://www.nccivitas.org/2020/state-board-elections-recommendations-weaken-voter-protections/>.

¹⁶⁰ “North Carolina Absentee Ballot Request Form.” North Carolina State Board of Elections. Accessed September 10, 2020. <https://s3.amazonaws.com/dl.ncsbe.gov/Forms/NCAbsenteeBallotRequestForm.pdf>.

and bear a postmark that is dated on or before Election Day.”¹⁶¹ However, in September, the North Carolina State Board of Elections agreed to extend the deadline for receiving mail ballots by six days.

When an absentee ballot is received at a drop-off location before Election Day, it must be kept securely, until it is delivered to the local county’s board of elections for processing. During ballot processing, due to new regulations by the State Elections Commission, election officials may now use signature-matching software as an alternative to “ballot witnessing.” According to an August 2020 court ruling, when a discrepancy is found during signature-verification, officials must contact the voter and give them the opportunity to fix the mismatch. Estimates suggest that, in the upcoming election, this measure alone could allow tens of thousands of ballots to be counted which previously would not have been valid.¹⁶²

Once at the county board, all valid absentee ballots are compiled in a list, and at least four copies are generated, which the chair of the county’s board of elections then certifies under oath. These lists are kept for a minimum of twenty-two months. One copy is submitted to the State Board of Elections, either electronically or by first-class mail. Another copy must be retained for public inspection. The remaining two copies of the list are sent out to precincts on Election Day. In voter rolls at the precinct, the names of voters who have already cast a vote via absentee ballot are marked with an “A,” in order to avoid duplicate voting. A similar process is followed for absentee ballots delivered on or after Election Day, to ensure that no in-person voter has also cast an absentee ballot.¹⁶³ These are the procedures which allowed the ballot-harvesting scheme of 2018 to be discovered. Investigative journalists noticed that a huge number of absentee ballots were “witnessed” by a single person, with the included addresses leading to a single one-bedroom apartment. The investigation soon followed.

Once ballots have been collected at the County Board of Elections, the board meets in a public location to begin the tabulation process, which is open to any voter in the county. Ballot counters may not leave the public counting area unless absolutely necessary, or if the count is completed before polls close. During the tabulation process, ballots may be read by an optical scanning machine *only* when a.) board members from *both* parties are present, and b.) results are kept secret before Election Day.¹⁶⁴

8.3 Election Certification, Recounts, and Auditing

A County Board of Elections must convene on the tenth day after an election, “to complete the canvass of votes cast and to authenticate the count in every ballot item in the county by

¹⁶¹ “Read Our Step-by-Step Guide to Absentee by-Mail Voting.” NCSBE. Accessed September 10, 2020. <https://www.ncsbe.gov/voting/vote-mail>.

¹⁶² “Federal Judge Orders Notice and Cure Process for Absentee Ballots in LWV North Carolina Case.” League of Women Voters, August 5, 2020. <https://www.lwv.org/newsroom/press-releases/federal-judge-orders-notice-and-cure-process-absentee-ballots-lwv-north>.

¹⁶³ “SUBCHAPTER VII. ABSENTEE VOTING. ARTICLE 20. ABSENTEE BALLOT.” North Carolina Legislature. Accessed September 10, 2020. https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_163/Article_20.pdf.

¹⁶⁴ *ibid.*

determining that the votes have been counted and tabulated correctly.”¹⁶⁵ If the initial counting has not been completed by that time, the meeting can be pushed back to a “reasonable time thereafter.”¹⁶⁶ The State Board then meets three weeks after Election Day. If, at that time, the board is missing any abstracts (a condensed results-form for each ballot item in a county, prescribed by the State Board), their meeting may be adjourned for a maximum of ten days.¹⁶⁷

Recounts in the state of North Carolina can be either discretionary or mandatory. If any county or the State Board of Elections considers a recount necessary, in order to complete the canvass in an election, they may conduct a discretionary recount. The only instance where a discretionary recount is not within the power of a county is when the State Board has already denied a petitioner’s request.¹⁶⁸ Otherwise, at the county level, candidates “have the right to demand a recount of the votes if the difference... is not more than one percent (1%) of the total votes cast in the ballot item.”¹⁶⁹ On a statewide ballot item, a mandatory recount is triggered by a margin of 0.5% of votes cast statewide, or ten thousand votes—whichever number is lower. If the recount is conducted by machine rather than hand-to-eye, and if the results are not reversed, then a second recount may be conducted by hand-to-eye method, using a sample of all ballots from 3% of precincts in each county. If the results are reversed in the second recount, then a full recount occurs in the entire jurisdiction where the election was held, whether that be town, county, or statewide, using the hand-to-eye method.¹⁷⁰

In the unlikely case of a tie, if a ballot item has more than five thousand votes, a runoff election is held. But if there are fewer than five thousand votes, the winner is determined randomly by the State Board of Elections.¹⁷¹

North Carolina currently conducts six (6) forms of post-election audit:¹⁷²

1. Voter History Audit

¹⁶⁵ “2019 North Carolina General Statutes :: Chapter 163 :: Article 15A :: § 163-182.5 - Canvassing Votes.” Justia Law. Accessed September 10, 2020. <https://law.justia.com/codes/north-carolina/2019/chapter-163/article-15a/section-163-182-5/>.

¹⁶⁶ *ibid.*

¹⁶⁷ “2019 North Carolina General Statutes :: Chapter 163 :: Article 15A :: § 163-182.6 - Abstracts.” Justia Law. Accessed September 10, 2020. <https://law.justia.com/codes/north-carolina/2019/chapter-163/article-15a/section-163-182-6/>.

¹⁶⁸ “2019 North Carolina General Statutes :: Chapter 163 :: Article 15A :: § 163-182.7 - Ordering Recounts.” Justia Law. Accessed September 10, 2020. <https://law.justia.com/codes/north-carolina/2019/chapter-163/article-15a/section-163-182-7/>.

¹⁶⁹ *ibid.*

¹⁷⁰ “2019 North Carolina General Statutes :: Chapter 163 :: Article 15A :: § 163-182.7A - Additional Provisions for Hand-to-Eye Recounts.” Justia Law. Accessed September 10, 2020. <https://law.justia.com/codes/north-carolina/2019/chapter-163/article-15a/section-163-182-7a/>.

¹⁷¹ “2019 North Carolina General Statutes :: Chapter 163 :: Article 15A :: § 163-182.8 - Determining Result in Case of a Tie.” Justia Law. Accessed September 10, 2020. <https://law.justia.com/codes/north-carolina/2019/chapter-163/article-15a/section-163-182-8/>.

¹⁷² “Post-Election Procedures and Audits.” NCSBE. Accessed September 10, 2020. <https://www.ncsbe.gov/about-elections/election-security/post-election-procedures-and-audits>.

- Compares number of voter-check-in forms (Authorization To Vote, or ATV) with the number of ballots cast, to catch discrepancies and potential fraud
- 2. Manual Entry Audit
 - Also known as a hand-count audit, wherein actual reentry of results by an official could discover any errors in tally sheets or election record tapes
- 3. Provisional Audit
 - Verification is conducted for any voter who has cast a provisional ballot, pulling information from the state's DMV, among other sources, to ensure the provisional ballot has been cast legally
- 4. Sample Audit
 - Compares ballot-reading equipment to results from hand-counted ballots, to ensure that the machinery is reading votes correctly
- 5. Close Contest Audit
 - Compares the margin of victory to any variances discovered by other audits to determine proper election outcome
- 6. Risk-Limiting Audit
 - Currently a pilot program, wherein statistical calculations determine the optimal ballot-count sample-size required to achieve a confidence interval vis-à-vis election results¹⁷³

North Carolina is one of only a few states that are either currently using or planning to implement the risk-limiting audit, which offers a statistically-sound way to ensure election results are accurate. Over all, this state has made strides in its election administration process, and appears to be ramping up capacity to handle mail-in ballots commensurate with the expected spike. Long-standing use of mail-in voting, along with improvements to already-solid practices, bode well for a smoothly run general election in North Carolina.

¹⁷³ *Ibid.*

9.1 Background and COVID-19 Response

In Ohio, the secretary of state oversees elections; current Secretary Frank LaRose has held the office since 2019. A board of elections office in each of Ohio's eighty-eight counties administers local elections. These Boards are governed by two members of each political party.¹⁷⁴

Due to the pandemic, Ohio's legislature and Governor Mike DeWine postponed the state's presidential primary from March 17 to April 28, and moved to conduct the election almost entirely by mail.¹⁷⁵ According to the secretary of state's office, nearly two million absentee ballots were requested for this year's primary, representing a 421% increase over absentee ballots in 2016.¹⁷⁶ In-person voting was restricted to three groups: disabled voters, voters without a mailing address to properly receive a ballot, and voters whose absentee ballots did not arrive in time to return them by the deadline. Voters in the latter group were given provisional ballots. In-person polling places were limited to one per county, a vast centralization when compared to the more than four thousand polling places in the 2016 and 2018 general elections.¹⁷⁷

In a mid-August briefing on election preparations for the November general election, Secretary LaRose urged Ohioans to request and submit their absentee ballots as early as possible, irrespective of the actual deadline on the Saturday before the election. LaRose also announced, that ballot drop-boxes would be limited to a single drop-box per county, just one outside of each County Board of Elections. LaRose said, "instead of waiting for continued legal analysis [by the Attorney general regarding the legality of additional drop boxes]... we are not going to allow additional drop-boxes for this election . . . I don't think it's time to change the way we have done things here in Ohio."¹⁷⁸ This move has garnered criticism from many community leaders who argue, in light of recent controversy about the ability of the USPS to deliver ballots on time, that there is significant risk of mail-in votes going uncounted.¹⁷⁹

¹⁷⁴ "County Boards of Elections Directory." Ohio Secretary of State. Accessed September 10, 2020. <https://www.ohiosos.gov/elections/elections-officials/county-boards-of-elections-directory/>.

¹⁷⁵ Harte, Julia. "Coronavirus-Spurred Changes to Ohio's Primary Raise Concerns about November." Reuters. Thomson Reuters, April 27, 2020. <https://www.reuters.com/article/us-health-coronavirus-ohio-election-insi/coronavirus-spurred-changes-to-ohios-primary-raise-concerns-about-november-idUSKCN229152>.

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.*

¹⁷⁸ Hlavaty, Kaylyn. "Ohio Secretary of State LaRose Urges Early Absentee Voting, Nixes Extra Drop Boxes." News 5 Cleveland, August 13, 2020. <https://www.news5cleveland.com/news/election-2020/ohio-secretary-of-state-larose-urges-early-absentee-voting-nixes-extra-drop-boxes>.

¹⁷⁹ Ingles, Jo. "Ohio Secretary Of State's Decision Leaves Ballot Drop Boxes Hard To Get To." WOSU Radio. Accessed September 10, 2020. <https://radio.wosu.org/post/ohio-secretary-states-decision-leaves-ballot-drop-boxes-hard-get>.

9.2 Ballot Requests, Processing, and Signature Verification

Absentee ballot applications were mailed to every registered voter in Ohio on September 2, approximately sixty days before the election.¹⁸⁰ The deadline to return this application is the Saturday before the election. In the April primary, a significant number of ballots which were requested at the last minute likely did not reach voters in time to be filled out and mailed back before April 27, the day before the official election. Again, voters whose ballots arrive too late to turn around before the deadline will be able to cast a provisional ballot on Election Day itself. But a broader issue of forcing voters to cast ballots in person, despite their timely and valid absentee ballot requests, looms over the November election. In the April primary, for example, Columbus resident Carly Young reflected the experience of many voters, saying she had waited more than two weeks for her requested ballot, which still had not arrived on the night before Election Day.¹⁸¹

Absentee ballots are counted when a.) they are postmarked and mailed prior to the day of election, and b.) arrive within eleven days after Election Day. Additionally, absentee voters are allowed to deliver their absentee ballots in person, instead of by mail, provided they show identification to elections officials.¹⁸² Absentee voters in Ohio can track their ballots through a webpage on the county's Board of Elections website, to ensure their vote travels safely.¹⁸³ The location for processing and counting of these ballots varies by county, as each board of elections independently determines its own county's processing and tabulation sites. The time period during which ballots may be counted also varies according to county. But when a tabulation date is established, no ballots may be counted at any other time. No strict guidelines dictate how long before Election Day tabulation may begin, but the count itself must not be disclosed before the end of Election Day.¹⁸⁴ Beginning the processing and tabulation of absentee ballots *prior* to Election Day in the November general election will certainly alleviate some issues likely to arise from a massive turnout of absentee voters, and better ensure a timely count.

Voters must include their signature on the ballot return envelope, along with other identifying information.¹⁸⁵ Once the ballot is returned, election officials compare the signature on the envelope to the signature on the voter's registration form, to determine the legitimacy of that voter's ballot. If any identifying information is incomplete or doesn't match the voter's identity, a notice is mailed to the voter. At this point, Ohio requires a special form to verify the voter's

¹⁸⁰ Hlavaty, Kaylyn. "Ohio Secretary of State LaRose Urges Early Absentee Voting, Nixes Extra Drop Boxes."

¹⁸¹ Harte, Julia. "Coronavirus-Spurred Changes to Ohio's Primary Raise Concerns about November."

¹⁸² "Chapter 3509.05 : Voting and Return Procedure." Lawriter - Ohio Laws and Rules. Accessed September 10, 2020.
<https://codes.ohio.gov/orc/3509.05v1>

¹⁸³ "Track Your Ballot." Voter Toolkit - Ohio Secretary of State. Accessed September 10, 2020.
<https://www.ohiosos.gov/elections/voters/toolkit/ballot-tracking/>.

¹⁸⁴ "Chapter 3509.06 : Counting Absent Voters' Ballots." Lawriter - Ohio Laws and Rules. Accessed September 10, 2020.
<https://codes.ohio.gov/orc/3509.06v1>.

¹⁸⁵ Examples of identifying information include a voters driver's license number, the last four digits of one's social security number, or enclosing a copy of either of those two forms of identification.

identity, which the voter must complete and to return to the local county's board of elections, either through the mail or in person, within seven days after Election Day.¹⁸⁶ The League of Women Voters (LWV) is currently suing to eliminate the existing signature-verification process, claiming the system is inconsistent and causes disenfranchisement.¹⁸⁷ Ohio's secretary of state says he is open to changing the verification process, but opposes removing it entirely, arguing that to do so could open the door to widespread voter fraud.¹⁸⁸

9.3 Election Certification, Recounts, and Auditing

Absentee ballots returned by mail are scanned through optical scanners and added to existing precinct or county totals, according to the level at which they are counted. However, absentee ballots are stored apart from votes cast early or in person. As a result, they are counted separately in a recount, which will be further detailed below.

Any candidate who loses their race (whether in a primary, special, or general election) may file for a recount of all votes cast at any precinct and/or county of their choice. Additionally, because absentee ballots are tallied at a county level, "the county shall be considered a separate precinct for purposes of recounting such absentee ballots."¹⁸⁹ Therefore, a candidate who wishes to include absentee ballots in their recount must specifically say so, by choosing also to count the county at large, along with the precinct(s) of their choice. If this recount (petitioned by the candidate who loses the original tally) alters the election results, then the opponent (the winning candidate of the original tally) may request to expand the recount to include, in addition, any or all relevant precincts.¹⁹⁰ The cost of the recount is incurred by the petitioning candidate, unless the results of the recount change the original results of the election, in which case the cost is absorbed by the state.

Recounts also may be ordered by the relevant board of elections in county or municipal races with a final margin of 0.5% of the total vote. For district and statewide elections, if the margin is within 0.25% the secretary of state must order a recount. On a ballot question or issue, any group of five voters may petition for a recount.

When a recount is ordered, the Board of Elections convenes at a fixed time and place. Under the scrutiny of observers present, the board opens the previously sealed boxes containing all the ballots from a precinct, and recounts the votes for the specific race in question. The petitioning candidate may motion to stop the recount before the final results of the recount are recorded. If the recounted ballots up to that point show that the recount thus far will not change the results of the election, the board may grant the motion to stop. However, if the board finds that the number of ballots recounted up to that point may change the election's results, the petitioner's motion will be dismissed, and the recount will continue to its conclusion. In a presidential

¹⁸⁶ "Chapter 3509.06 : Counting Absent Voters' Ballots." Lawriter - Ohio Laws and Rules.

¹⁸⁷ Thomas, Matthew. "Groups Sue over Ohio's Absentee Ballot Signature Matching." WSYX, July 31, 2020. <https://abc6onyourside.com/news/local/groups-sue-over-ohios-absentee-ballot-signature-matching>.

¹⁸⁸ *Ibid.*

¹⁸⁹ "Chapter 3515: RECOUNT; CONTEST OF ELECTIONS." Lawriter - Ohio Laws and Rules. Accessed September 10, 2020. <https://codes.ohio.gov/orc/3515>. §3515.01

¹⁹⁰ *Ibid.* §3515.06

election, any recount of votes for presidential candidates must be completed six days before the convening of the electoral college.¹⁹¹

In Ohio, audits on election results can occur in all general elections, and in primary elections held during even-numbered years. An audit must begin no earlier than six days after election results are announced. The deadline to complete an audit is twenty-one days after election results are announced. If a recount has been conducted, an audit must begin immediately after the results of the recount are certified, and completed within fourteen days. At least three races, questions, or ballot issues must be included in the audit: the highest office on the ticket is selected, along with a statewide office selected at random, and one candidate in a non-statewide race. Absentee ballots are grouped with provisional, early, and regular ballots. Every vote canvassed during an election is eligible to be audited. The secretary of state makes the determination as to what auditing protocol should be used, whether it be a risk-limiting audit, a percentage-based audit, or some other method approved by the secretary.¹⁹²

Risk-limiting audits are conducted in Ohio the same way they are in most other states that employ them: a bipartisan team hand-counts some number of ballots statistically calculated to minimize the margin of error. In a contest with a margin of victory greater than 1%, the target accuracy rate is 99.5% of votes cast; for a margin smaller than 1%, the target rate is 99.8% (these accuracy rates also apply for any other audit protocol in Ohio).

Percentage-based audits in Ohio consist of a hand count of at least 5% of the votes cast¹⁹³ in a given precinct, polling location or voting machine. County Boards of Elections may choose what level of election will be audited, but the smallest unit available is recommended. If the first count does not sufficiently increase the accuracy rate, the sample size is expanded by at least 5%,¹⁹⁴ and the hand count is conducted again. If, after a second recount, the accuracy rate is still below 99.5%, an investigation into the discrepancy is undertaken, and the secretary may require a full hand count.¹⁹⁵ The results of the audit must be certified and sent to the secretary of state within five days of its completion. At this point election results declarations may be amended if necessary.¹⁹⁶

¹⁹¹ *Ibid.* §3515.041

¹⁹² “Chapter 3505.331 Audit of Election Results.” Lawriter - Ohio Laws and Rules. Accessed September 10, 2020. <http://codes.ohio.gov/orc/3505.331>.

¹⁹³ The exact percentage is chosen by the Secretary of State

¹⁹⁴ This percentage is also under the same discretion

¹⁹⁵ “Post-Election Audits.” National Conference of State Legislatures, October 25, 2019. <https://www.ncsl.org/research/elections-and-campaigns/post-election-audits635926066.aspx>.

¹⁹⁶ “Chapter 3505.331 Audit of Election Results.” Lawriter - Ohio Laws and Rules. Accessed September 10, 2020. <http://codes.ohio.gov/orc/3505.331>.

10. Pennsylvania

10.1 Background and COVID-19 Response

Pennsylvania's elections are run through the office of Secretary of the Commonwealth Kathy Boockvar, which holds the power to approve voting machines, certify ballots and elections, train poll workers, and order recounts or recanvasses. Elections are administered at a county-level, by sixty-seven individual county Boards of Elections. As of the beginning of 2020, all sixty-seven counties have started using voting systems that produce paper records of ballots.¹⁹⁷

Pennsylvania's COVID-related election response has been swift; as a result, said Secretary Boockvar, the primary election of early June ran "remarkably smoothly."¹⁹⁸ For one thing, Pennsylvania implemented no-excuse absentee voting for the first time, which helped to ease Election Day waiting lines. According to Boockvar's office, voters requested almost two million absentee ballots—seventeen times as many applications as in the presidential primaries of 2016.¹⁹⁹ Important to note is that although Election Day may have run smoothly, the results of the election took far longer than usual to certify, due to that massive increase in absentee voting. Some online vote tallies were updated weeks after the primary date.²⁰⁰ This lag time is all but unavoidable in elections conducted predominantly by mail. And the American people are still growing accustomed to the likelihood that they will not know the outcome of elections until days or even weeks after Election Day.

10.2 Ballot Requests, Processing, and Signature Verification

Pennsylvania makes a distinction between mail-in and absentee ballots. Mail-in ballots are available to any voter with a valid Pennsylvania driver's license or ID. Absentee voting, however, requires a viable reason for being absent. Both mail-in and absentee ballots are available online through Pennsylvania's election website. An online questionnaire determines whether the voter should receive an absentee or mail-in ballot.²⁰¹ The deadline to apply for an absentee ballot is October 27.²⁰² Mail-in voters must return their ballots to their local county election office by 8:00 p.m. on Election Day, unless an extension is granted. In Pennsylvania's early-June primary, for example, Governor Tom Wolf extended the deadline for return of absentee ballots

¹⁹⁷ "Election Security in Pennsylvania." Votes PA. Accessed September 9, 2020. <https://www.votespa.com/About-Elections/Pages/Election-Security.aspx>.

¹⁹⁸ Murphy, Jan. "Pa. Primary Election 'Went Remarkably Smoothly' despite Many Challenges." pennlive, June 2, 2020. <https://www.pennlive.com/news/2020/06/pa-primary-election-went-remarkably-smoothly-despite-many-challenges.html>.

¹⁹⁹ *Ibid.*

²⁰⁰ "Live Election Results: Pennsylvania Primaries 2020." POLITICO, August 19, 2020. <https://www.politico.com/2020-election/results/pennsylvania/>.

²⁰¹ Brandt, Joe. "Here's How to Vote by Mail in Pennsylvania, New Jersey and Delaware." NBC10 Philadelphia. NBC 10 Philadelphia, May 4, 2020. <https://www.nbcphiladelphia.com/news/coronavirus/heres-how-to-vote-by-mail-in-pa-nj-and-del/2384570/>.

²⁰² "Ballot Request Application." Pennsylvania Voter Services. Accessed September 9, 2020. <https://www.pavoterservices.pa.gov/OnlineAbsenteeApplication/>.

in six counties, by one week, due to civil unrest and extensive protest amid the pandemic.²⁰³ If conditions in November are similarly unsettled, the deadline for absentee voting will likely be extended in the general election as well. Voters can also track their ballots using Pennsylvania Voter Services' online tracking system.²⁰⁴

Unlike some other states discussed above, absentee ballots in Pennsylvania do not require a witness signature on the ballot envelope. The voter simply affixes their signature, which election officials at the precinct then manually cross-reference with information in the voter's file. If, in the opinion of these election officials, the signatures do not match, then the voter is given a six-day window to prove their identification to their county's board of elections. If they do not verify their identity within this time frame, their ballot goes uncounted.²⁰⁵ Critics allege inconsistencies among counties statewide, in both the process of verifying signatures, and the process of notifying voters of a mismatch. A lawsuit recently filed by the League of Women Voters claims that uniform statewide policies and procedures are needed to ensure the equal right to vote across the state.²⁰⁶

10.3 Election Certification, Recounts, and Auditing

Like Michigan and Wisconsin, Pennsylvania has tight restrictions on when absentee ballots may begin to be processed, in preparation for scanning and tabulation. Absentee ballots in Pennsylvania remain unopened and in a secure location until Election Day, unlike many other states where election officials can get a "head start" weeks in advance of Election Day, by performing signature verification, opening envelopes, and removing and flattening ballots ahead of time. The bottleneck in Pennsylvania is likely to be tested by a massive influx of ballots that must be processed in a relatively short amount of time. For already-overwhelmed election staff, this may also increase the risk of human errors, and it may prolong the time required for Pennsylvania to report election results.

In the Pennsylvania primary, these policy restrictions resulted in a massive surge of ballots on Election Day, and a corresponding delay in the vote count; actual election results may not be certified for weeks. At that time, in Erie County, one of the most contentious battlegrounds in the state for 2020, Elections Supervisor Tonia Fernandez expressed hope for some changes before November. Authorization to begin canvassing absentee ballots before Election Day, for

²⁰³ Southwick, Ron. "Gov. Tom Wolf Extends Deadline for Mail-in Ballots for Pa. Primary Election in 6 Counties." pennlive, June 1, 2020. <https://www.pennlive.com/news/2020/06/gov-tom-wolf-says-hes-extending-time-to-count-mail-in-ballots-for-pa-primary.html>.

²⁰⁴ "Election Ballot Status." Pennsylvania Voter Services. Accessed September 9, 2020. <https://www.pavoterservices.pa.gov/pages/ballotracking.aspx>.

²⁰⁵ "VOPP: Table 14: How States Verify Voted Absentee Ballots." National Conference of State Legislatures, April 17, 2020. <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-14-how-states-verify-voted-absentee.aspx>.

²⁰⁶ Wells, Porter. "Pennsylvania Sued Over Signature-Matching Ballot Procedures." Bloomberg Law, August 7, 2020. <https://news.bloomberglaw.com/coronavirus/pennsylvania-sued-over-signature-matching-ballot-procedures>.

instance, would significantly expedite the ballot tally process; but those changes appear unlikely to happen.²⁰⁷

For Election Day itself, Pennsylvania state statute lays out specific procedures for canvassing absentee ballots. As soon as the polls open on Election Day, absentee ballots are opened and hand-verified. Canvassing begins immediately, in the presence of officials from both parties, and under the public eye as well, if local voters so decide. These absentee ballots are either hand-counted or run through automatic tabulation equipment, depending on the county.²⁰⁸ If local election officials believe a voter is not qualified, or that their reasoning for obtaining an absentee ballot is not sound, the officials can challenge the ballot and set it aside for a hearing; because of changes occurring as a result of Governor Wolfe's executive order to implement no-excuse absentee voting, some previously "challengeable" ballots would no longer be eligible to contest. Hearings to rule on challenged ballots should take place within a week of the challenge, and all challenged voters have the opportunity to present their side to the county's board of elections. Challenged ballots which have been approved are canvassed on the eighth day following the election, under the same procedure as normal ballots. A ballot which is challenged for missing or unverified voter identification, but which is resolved before the sixth day following the election, is also canvassed as a normal ballot. If any errors or fraud are discovered in the poll books following a canvass, the election results are nevertheless certified, and forwarded to the local district attorney's office for investigation.²⁰⁹

Recounts and recanvasses occur mainly in three circumstances:

- If there is a margin of less than 0.5% for a districtwide office, or on a ballot question; ordered by the Secretary of the Commonwealth
- If an error is believed to have occurred during the election; petition filed by any three voters in any district
- Before election returns are tallied; conducted by a local county board, at will, at any time, provided they notify those who maintain the voting machines, as well as any candidates or other parties that may be affected by the recount

Recounts must occur before the third Wednesday after the election, and completed by the following Tuesday. If a discrepancy is found, then the returns are corrected accordingly.²¹⁰ If a recount is underway in a district that uses paper ballots exclusively, all of the ballots from the districts in question are counted manually, under the supervision of the county Board, and/or any election overseers appointed by the board. If there are no petitions for a recount or

²⁰⁷ Hudak, Zak. "Pennsylvania's Mail-in Votes Still Weren't All Tallied after One Week - Officials Fear Election 'Nightmare' in November." CBS News. CBS Interactive, June 13, 2020. <https://www.cbsnews.com/news/pennsylvania-general-election-fears-primary-results-delay-mail-in-votes/>.

²⁰⁸ "Pennsylvania Statutes Title 25 P.S. Elections & Electoral Districts § 3146.8." Findlaw. Accessed September 9, 2020. <https://codes.findlaw.com/pa/title-25-ps-elections-electoral-districts/pa-st-sect-25-3146-8.html>.

²⁰⁹ "Pennsylvania Statutes Title 25 P.S. Elections & Electoral Districts § 3154." Findlaw. Accessed September 9, 2020. <https://codes.findlaw.com/pa/title-25-ps-elections-electoral-districts/pa-st-sect-25-3154.html/>.

²¹⁰ *Ibid.*

re canvass within five days, then the records are certified, and certificates of election are forwarded to the winning candidates.

Audits are automatic in Pennsylvania post-elections, and conducted for every item on the ballot. The traditional audit consists of counting, either by hand or electronically, a random sampling of 2% of all ballots, or two thousand ballots, whichever number is lower. The count is conducted as part of the canvass before the certification of election results. These audits are open to affected candidates, their attorneys, and their appointed “watchers.”²¹¹ In 2019, Pennsylvania began implementing risk-limiting audits, to ensure more statistical accuracy of election outcomes.²¹²

²¹¹ “Post-Election Audits.” National Conference of State Legislatures, October 25, 2019. <https://www.ncsl.org/research/elections-and-campaigns/post-election-audits635926066.aspx>.

²¹² “Pennsylvania Completes Pilot Post-Election Audits Using Cutting-Edge Security Measure.” Pennsylvania Pressroom, November 22, 2019. <https://www.media.pa.gov/Pages/State-Details.aspx?newsid=366>.

11. Texas

11.1 Background and COVID-19 Response

Texas may be an unexpected addition to a list of battleground states. But in 2020, for the first time since the 1970's, polls indicate the state may be a toss-up in the presidential election.²¹³ This is due to an uptick in population, and an increasingly urban and diverse demographic.²¹⁴ And because of its unexpected swing-state status, Texas could now determine the direction of the country for years to come. So it is vitally important to understand the elements at play there.

Secretary of State Ruth R. Hughes is the chief elections officer of the state of Texas, much like the other states discussed here. Local and county level elections are administered by County Elections Administrators appointed by County Election Commissions. In addition, an Early Voting Board established by members of both parties, presides over the processing of all early voting, including the signature verification process of absentee ballots.

In response to the pandemic, Texas has taken less action than many other states; it is one of only a few states nationwide that has not expanded access to absentee voting, despite continued legal pressure to do so. Secretary Hughes, Governor Greg Abbott, and Attorney General Ken Paxton have expressed opposition to the expansion of voting by mail. But given the risk of pandemic exposure, they have issued guidance to election administrators across the state on how to conduct in-person voting more safely.²¹⁵ This guidance includes mask recommendations, social distancing methods, sanitation advice, and adherence to existing directives. Existing measures include curbside voting, late voting due to recent sickness or disability, online address-update access for voters who remain within a county, and remote voter registration, among other recommendations.²¹⁶

11.2 Ballot Requests, Processing, and Signature Verification

In order to vote absentee in Texas, one must first be a registered voter. A new federal court ruling allows residents of the state to register online.²¹⁷ Alternatively, a voter may print out a paper version of the application from the state's elections website, or pick one up at the county

²¹³ "Latest Polls - Who's Ahead in Texas?" FiveThirtyEight, September 11, 2020. <https://projects.fivethirtyeight.com/polls/president-general/texas/>.

²¹⁴ Milligan, Susan. "The 2020 Swing States: Texas, Who Votes, Past Results and Why It Matters." U.S. News & World Report, July 17, 2020. <https://www.usnews.com/news/elections/articles/the-2020-swing-states-texas-who-votes-past-results-and-why-it-matters>.

²¹⁵ Olivares, Valeria, Cassandra Pollock, and Alex Samuels. "Democrats, Local Election Leaders Fear Donald Trump's Attacks on Mail-in Voting Foreshadow Voter Suppression." The Texas Tribune. The Texas Tribune, August 15, 2020. <https://www.texastribune.org/2020/08/14/texas-mail-in-voting-postal-service/>.

²¹⁶ Ingram, Keith. "Election Advisory No. 2020-14 - COVID-19 Voting and Election Procedures." Texas Secretary of State, April 6, 2020. <https://www.sos.state.tx.us/elections/laws/advisory2020-14.shtml>.

²¹⁷ Lee, David. "Federal Judge Orders Texas to Make Online Voter Registration Available." CNS, August 28, 2020. <https://www.courthousenews.com/federal-judge-orders-texas-to-make-online-voter-registration-available/>.

voter registrar's office. Once completed and signed, the application must be returned to the registrar's office no later than thirty days before an election, either by mail or in person. Absentee voting in Texas is relatively restricted compared with other states. To qualify for absentee voting, a voter must fall into one of these categories:²¹⁸

- Over the age of sixty-five
- Disabled (including illness that would make in-person voting a health threat to the voter)
- Out of the county on Election Day and any early voting period
- Confined to jail (but otherwise eligible to cast a ballot)

The Texas Supreme Court has ruled that lack of immunity to COVID-19 does not count as a “disability or illness,” as required under Texas law.²¹⁹ However, the Court noted that “lack of immunity” could be taken into consideration, in a voter's self-description as “disabled” or “ill,” since the voter's reason to apply for an absentee ballot is ultimately discretionary. Ballot applications must be returned at least eleven days before Election Day, either in person or by mail. Ballots themselves must be postmarked by Election Day at the latest, and received by the registrar's office no later than the day after Election Day. Voters may receive assistance in filling out and mailing their ballots; the person assisting the voter must sign a written oath and include it in the absentee envelope.²²⁰ The United States Postal Service has cited a thin turnaround between the latest valid postmark date and the required delivery date as a primary reason for potential ballot undercounts, further exacerbating USPS concerns about timely mail delivery.²²¹

Once voters have returned their ballots and the early voting clerk has received them, the clerk determines whether the ballot return is timely, and if it fully complies with all requirements. If the clerk finds any part of the outer ballot envelope to be not in compliance with all requirements, the clerk may return the ballot to the voter, either in person or by mail, or contact the voter by phone, to notify them of the error. The notification method is at the discretion of the clerk, but whichever method is used for one ballot must be used for all ballots received.²²² Clerks must store any received ballots until the ninth day before in-person early voting ends, at the earliest. They must then forward all accepted ballots to the Early Voting Ballot Board, any time before the closing of polls on Election Day. This process is separate from signature verification and any potential cure provisions for non-matching signatures; the Signature Verification Committee handles these matters later.

²¹⁸ “Texas Absentee Ballot Information.” Vote.org. Accessed September 11, 2020. <https://www.vote.org/absentee-ballot/texas/>.

²¹⁹ Ura, Alexa. “Texas Supreme Court: Lack of Immunity to Coronavirus Alone Isn't Enough for Mail-in Ballot.” The Texas Tribune, May 27, 2020. <https://www.texastribune.org/2020/05/27/texas-vote-by-mail-coronavirus/>.

²²⁰ “Texas Election Code § 86.010.” Findlaw. Accessed September 11, 2020. <https://codes.findlaw.com/tx/election-code/elec-sect-86-010.html>.

²²¹ Olivares et al. “Democrats, Local Election Leaders Fear Donald Trump's Attacks on Mail-in Voting Foreshadow Voter Suppression.”

²²² “Texas Election Code § 86.011.” Findlaw. Accessed September 11, 2020. <https://codes.findlaw.com/tx/election-code/elec-sect-86-011.html>.

At this point, the Early Voting Ballot Board must inspect the ballots, before they can be forwarded to the Signature Verification Committee, a subset of the board.²²³ The early voting clerk determines whether or not a Signature Verification Committee is needed, and if so, one is appointed from among registered voters within the county where they would serve.²²⁴ Members of the committee compare the voter signature on the ballot outer envelope (excluding those signed by a witness) with signatures of the voter on file over the preceding six years, to determine validity. If a majority of the committee finds a mismatch on any ballot, the ballot is stored separately, and subsequently delivered to the board. If a majority of the board disagrees with the committee, the board may overrule the committee's determinations on specific ballot signatures.²²⁵ No cure provision exists for the voter whose signature is found to be a mismatch. A lawsuit, currently in progress, is challenging the current signature verification process.²²⁶

Although ballots may be signature-verified upon receipt, they must not be counted until the beginning of Election Day, or, in a county with a population of over one hundred thousand, the conclusion of in-person early voting.²²⁷

11.3 Election Certification, Recounts, and Auditing

All early votes cast, whether through mail or otherwise, are counted together by the Early Voting Ballot Board.²²⁸ Ballot marking systems vary by county in Texas, ranging from highly verifiable hand-marked paper ballots to less secure direct-recording electronic systems (known as DREs). But for absentee voting, hand-marked ballots are counted either manually or by optical scanners, as in other states.²²⁹ If, during the count, any discrepancies are found between returns and precinct tally lists, the presiding judge of that precinct makes a determination as to how the returns should be corrected.²³⁰ The Early Ballot Voting Board in each county, upon concluding the count, must then prepare and deliver local election returns to the appropriate authorities; "appropriate authorities" range from a county commissioner's court, for an election ordered by the governor or county authority, to the political subdivision's governing body, if ordered by a

²²³ "Texas Election Code § 87.027." Findlaw. Accessed September 11, 2020. <https://codes.findlaw.com/tx/election-code/elec-sect-87-027.html>.

²²⁴ *Ibid.*

²²⁵ "EARLY VOTING BALLOT BOARD & SIGNATURE VERIFICATION COMMITTEE Handbook for Judges and Clerks." Texas Secretary of State, 2020. <https://www.sos.state.tx.us/elections/forms/ballot-board-handbook.pdf>. p 17.

²²⁶ "Docket for George Richardson v. Texas Secretary of State, 5:19-Cv-00963." CourtListener. Accessed September 11, 2020. <https://www.courtlistener.com/docket/16027137/george-richardson-v-texas-secretary-of-state/>.

²²⁷ "Texas Election Code § 87.0241." Findlaw. Accessed September 11, 2020. <https://codes.findlaw.com/tx/election-code/elec-sect-87-0241.html>.

²²⁸ "Texas Election Code § 87.062." Findlaw. Accessed September 11, 2020. <https://codes.findlaw.com/tx/election-code/elec-sect-87-062.html>.

²²⁹ "Verifier - Polling Place Equipment in Texas." Verified Voting. Accessed September 11, 2020. <https://verifiedvoting.org/verifier/>.

²³⁰ "Texas Election Code § 67.004." Findlaw. Accessed September 11, 2020. <https://codes.findlaw.com/tx/election-code/elec-sect-67-004.html>.

subdivision other than a county. For any statewide elections other than governor or lieutenant governor, returns must be canvassed by the governor himself.²³¹ For the governor's race, returns are canvassed by the state legislature, with the results declared by the speaker of the house.²³²

Deadlines for canvassing returns depend on the office conducting the canvass;

- A local canvass must begin no earlier than the third day after the election, or the date by which the Early Voting Board has verified all provisional ballots, and no later than the fourteenth day after Election Day.²³³ The time is set by the local canvassing authority
- The governor's canvass must be conducted between the fifteenth and the thirtieth day after Election Day.²³⁴ The time is set by the secretary of state
- The legislature must complete their canvass as soon as possible; results are forwarded to the secretary of state²³⁵

For all statewide, multi-county, and federal offices, all precinct results (including totals from early and absentee voting) are reported to the secretary of state within thirty days of the election, stored for ten to twelve years, and then transferred to permanent storage within the state library.²³⁶

Recounts in Texas, as in many other states, are dependent on the requests of candidates, voters, or election officials.²³⁷ Recounts may change the outcome of an election if the new results show a different candidate leading, or a ballot question getting the most votes.²³⁸ It is important to note that early vote totals are not counted in precinct totals. Instead, all early votes cast will count toward their own precinct's early-vote total.²³⁹ A recount in the state of Texas is automatically triggered only in the case of a tie—no other close-vote margins trigger a recount. In order for the

²³¹ "Texas Election Code § 67.010." Findlaw. Accessed September 11, 2020. <https://codes.findlaw.com/tx/election-code/elec-sect-67-010.html>.

²³² "Texas Election Code § 67.011." Findlaw. Accessed September 11, 2020. <https://codes.findlaw.com/tx/election-code/elec-sect-67-011.html>.

²³³ "Texas Election Code § 67.003." Findlaw. Accessed September 11, 2020. <https://codes.findlaw.com/tx/election-code/elec-sect-67-003.html>.

²³⁴ "Texas Election Code § 67.012." Findlaw. Accessed September 11, 2020. <https://codes.findlaw.com/tx/election-code/elec-sect-67-012.html>.

²³⁵ "Texas Election Code § 67.010."

²³⁶ "Texas Election Code § 67.017." Findlaw. Accessed September 11, 2020. <https://codes.findlaw.com/tx/election-code/elec-sect-67-017.html>.

²³⁷ "Texas Recount Laws." Citizens for Election Integrity Minnesota, October 23, 2018. <https://ceimn.org/searchable-databases/recount-database/texas>.

²³⁸ "Texas Election Code § 211.003." Findlaw. Accessed September 11, 2020. <https://codes.findlaw.com/tx/election-code/elec-sect-211-003.html>.

²³⁹ "Texas Election Code § 212.134." ELECTION CODE CHAPTER 212. REQUESTING RECOUNT. Accessed September 11, 2020. <https://statutes.capitol.texas.gov/Docs/EL/htm/EL.212.htm#212.134>.

recount to begin, however, it must be requested by an election authority in the relevant jurisdiction.²⁴⁰

Candidate-initiated recounts are of three different types: initial, supplementary, and expedited. An initial recount is a partial recount, applicable only to races in which there are two candidates, and a majority is not required to win the election (where a majority is required, the remedy is an expedited recount, below). A candidate may request an initial recount if the vote margin is less than 10%, if the candidate is entitled to a runoff, if the secretary finds counting errors in election returns, or if the total number of votes cast is less than one thousand. The number and location of precincts to be recounted is chosen by the candidate, but the opposing candidate may choose additional precincts to be recounted, if they are within precincts that use paper ballots. If the county in question uses DREs, the filing candidate also may choose the counting method, whether a hand-count, retabulation, or electronic review. Whatever specific method a candidate chooses must likewise be applied everywhere possible within the recounted precincts.²⁴¹ An initial recount request must be filed by 5:00 p.m. on the fifth day after Election Day, or 5:00 p.m. on the second day after the canvass is complete.

A supplementary recount expands the recount beyond the initial precincts reviewed;²⁴² any precincts for an office in question that have not yet been recounted will now be considered, provided they use paper ballots.²⁴³ A supplementary recount must be requested by 5:00 p.m. on the second day after receiving initial recount results.

An expedited recount occurs in elections where a majority vote is required to win, or where more than two candidates are in the running. The deadline to request an expedited recount is 2:00 p.m. on the third day following Election Day, or 2:00 p.m. on the day after the local canvass concludes.²⁴⁴

Texas allows voters to file for recounts in more offices than in many other states discussed previously. Voters can request initial and supplementary recounts, for offices as well as for ballot questions, whenever the vote margin is less than 10%. In all recounts, who pays the costs depends upon their outcome, but in all cases, the recount initiator must pay a deposit and a fee at the time of filing. In the unlikely event of an automatic recount, the costs are paid by a county executive committee or political subdivision.²⁴⁵

²⁴⁰ “Texas Election Code § 216.003.” Texas Statutes. Accessed September 11, 2020. <https://statutes.capitol.texas.gov/Docs/EL/pdf/EL.216.pdf>.

²⁴¹ “Texas Election Code § 214.042.” ELECTION CODE CHAPTER 214. COUNTING PROCEDURES. Accessed September 11, 2020. <https://statutes.capitol.texas.gov/Docs/EL/htm/EL.214.htm#214.042>.

²⁴² “Texas Election Code § 212.056.” ELECTION CODE CHAPTER 212. REQUESTING RECOUNT. Accessed September 11, 2020. <https://statutes.capitol.texas.gov/Docs/EL/htm/EL.212.htm#212.056>.

²⁴³ “Texas Election Code § 212.052.” ELECTION CODE CHAPTER 212. REQUESTING RECOUNT. Accessed September 11, 2020. <https://statutes.capitol.texas.gov/Docs/EL/htm/EL.212.htm#212.052>.

²⁴⁴ “Texas Election Code § 212.083.” ELECTION CODE CHAPTER 212. REQUESTING RECOUNT. Accessed September 11, 2020. <https://statutes.capitol.texas.gov/Docs/EL/htm/EL.212.htm#212.083>.

²⁴⁵ §216.005 “Texas Election Code § 216.005.” ELECTION CODE CHAPTER 212. AUTOMATIC RECOUNT. Accessed September 11, 2020. <https://statutes.capitol.texas.gov/Docs/EL/htm/EL.216.htm#216.005>.

Election audits, also known in Texas as partial manual counts, are run by local election officials with additional oversight by the secretary of state. According to guidelines from the secretary of state, the custodian of election records must conduct a manual count of “all the races in at least one percent of the election precincts or in three precincts, whichever is greater, in which the electronic voting system was used.”²⁴⁶

Guidelines do not apply to tabulation from DRE (direct-recording electronic) voting systems in Texas, but rather to paper ballots only, including absentee votes. If a discrepancy is found, the election official conducting the audit must continue recounting ballots until a cause for the discrepancy is found. The resolution for an irreconcilable discrepancy is unclear; that determination is likely made jointly by the election official conducting the audit and the secretary of state.²⁴⁷ Audits must begin within three days of the polls closing, and conclude no later than the twenty-first day after the election.²⁴⁸ Within three days of concluding of the count, the results must be forwarded to the secretary.

²⁴⁶ “Texas Election Code § 127.201.” ELECTION CODE CHAPTER 127. PROCESSING ELECTRONIC VOTING SYSTEM RESULTS. Accessed September 11, 2020.
<https://statutes.capitol.texas.gov/Docs/EL/htm/EL.127.htm#127.201>.

²⁴⁷ “Election Advisory No. 2012-03 - Electronic Voting System Procedures.” Texas Secretary of State. Accessed September 11, 2020.
<https://www.sos.state.tx.us/elections/laws/advisory2012-03.shtml>.

²⁴⁸ *Ibid.*

12. Wisconsin

12.1 Background and COVID-19 Response

Elections in Wisconsin are administered by the Wisconsin Elections Commission, comprised of six members (two governor-appointed and four chosen by legislative leaders). The Commission has actively taken measures to ease the effects of the pandemic. In a May 27 update, the Commission directed a total of approximately four million dollars (\$1.10 per registered voter) to local election officials, to help defray the costs of preparation for and increased administration in the November election. The state also plans to send absentee ballot requests to all voters in the state. Lastly, the Commission has directed local staff to “incorporate intelligent-mail barcodes into the existing design and to issue best practices to local election officials on how to maximize the usability of the current envelope design,” in an effort to change the way absentee ballot envelopes work.²⁴⁹

The April 7 presidential primary in Wisconsin is a foreshadowing of what could happen in the November election. By April 13, the final day for absentee ballot return (as per a court-ordered deadline extension), about 1.1 million absentee ballots were reported as returned, accounting for approximately 80% of the total 1.4 million votes cast in the primary.²⁵⁰ Importantly, these statistics also cast doubt on the state’s capacity to send out that many absentee ballots; on the same date, almost twelve thousand absentee ballot requests remained unfulfilled.²⁵¹ The ability of a state to actually deliver an absentee ballot to every voter who requests one, and guarantee to every single voter the chance to cast a ballot, will be absolutely crucial in ensuring a proper vote count in November. Additionally, research shows that widespread in-person voting in the April primary caused an uptick in COVID-19 cases in Wisconsin. A study by The University of Wisconsin finds a statistically significant relationship between the virus and in-person voting, tracing more than fifty cases back to polling places (through poll workers and/or voters).²⁵² This adds another dimension to the risks hovering over this election, and shows the importance of widespread vote-by-mail, to best protect our most vulnerable populations.

12.2 Ballot Requests, Processing, and Signature Verification

In Wisconsin, any voter with a photo ID can request an absentee ballot (by mail, online, in person, via fax, or by email), with no requirement to prove special circumstances.²⁵³ An application for an absentee ballot must be received before 5:00 p.m. on the Thursday preceding

²⁴⁹ “Update on Commission Actions 5/27- COVID-19.” Wisconsin Elections Commission, May 27, 2020. <https://elections.wi.gov/index.php/node/6915>.

²⁵⁰ Rakich, Nathaniel. “What Went Down In The Wisconsin Primary.” FiveThirtyEight, April 13, 2020. <https://fivethirtyeight.com/features/what-went-down-in-the-wisconsin-primary/>.

²⁵¹ “Absentee Ballot Statistics for April 7.” Wisconsin Elections Commission. Accessed September 11, 2020. <https://elections.wi.gov/node/6765>.

²⁵² Reimann, Nicholas. “Coronavirus Infections Spiked In Wisconsin After In-Person Election, Study Says.” Forbes. Forbes Magazine, May 19, 2020. <https://www.forbes.com/sites/nicholasreimann/2020/05/19/coronavirus-infections-spiked-in-wisconsin-after-in-person-election-study-says/>.

²⁵³ “Absentee Voting.” Wisconsin Elections Commission. Accessed September 11, 2020. <https://elections.wi.gov/elections-voting/voters/absentee>.

the election; the completed ballot must be returned by mail no later than 8:00 p.m. on Election Day,²⁵⁴ creating an unrealistic window of time for a voter to receive and timely return an absentee ballot by mail.²⁵⁵ Additionally, a voter may cast an absentee ballot in person as a form of online voting (Wisconsin’s version of early voting), though exact dates when voters can cast their absentee ballots in person vary on a per-county basis.²⁵⁶ The process of sending out absentee ballots was temporarily halted in early September, due to a court case concerning whether the Green Party’s presidential candidate should be added to the ballot, but mailing of ballots has since resumed, after the Wisconsin Supreme Court denied the Green Party’s bid.²⁵⁷

Wisconsin is one of only three states (along with Michigan and Pennsylvania) where state policies impose onerous restrictions on election officials’ ability to “pre-process” absentee ballots before the start of scanning and tabulation on Election Day. Unlike other states—where election officials can get a “head start” weeks in advance of Election Day, by performing signature verification, opening envelopes, and removing and flattening ballots ahead of time—Wisconsin’s restrictions create a severe bottleneck, which will be tested by a massive influx of ballots requiring processing in a relatively short amount of time. For already-overwhelmed election staff, this may also increase the risk of human error, and may prolong the time necessary for Wisconsin to report election results.

When an absentee ballot is returned to a Municipal clerk’s office (or when a voter casts an absentee ballot at the office, in person), election inspectors first examine the envelope for a signature by the voter, as well as for a signature and address from the ballot witness (signatures are not necessarily matched against existing signatures on file).²⁵⁸ If a clerk notices that there is an error in any of these aspects, the voter is contacted to remedy the issue. All acceptable ballots are then held until the deadline for turning in absentee ballots, at which point processing begins on all ballots. Any insufficient ballot not remediated by the voter is rejected; all sufficient ballots are cross-checked with poll lists to ensure that no voter has cast their ballot twice.²⁵⁹ Rejected ballots are then examined and endorsed by election inspectors, who subsequently signify that

²⁵⁴ *Ibid.*

²⁵⁵ “Wisconsin Voting Deadlines and Facts for November 2020.” Wisconsin Elections Commission. Accessed September 11, 2020. <https://elections.wi.gov/node/7039>.

²⁵⁶ “Absentee Voting.” Wisconsin Elections Commission.

²⁵⁷ Vetterkind, Riley. “Wisconsin Supreme Court Temporarily Suspends Mailing of Absentee Ballots.” madison.com. Wisconsin State Journal, September 11, 2020. https://madison.com/wsj/news/local/govt-and-politics/wisconsin-supreme-court-temporarily-suspends-mailing-of-absentee-ballots/article_fc835ffc-3ac3-5783-a13e-1288ac341bb0.html.

²⁵⁸ “Are Election Inspectors Required to Scrutinize Voter Signatures?” Wisconsin Elections Commission. Accessed September 11, 2020. <https://elections.wi.gov/node/1965>.

²⁵⁹ “Absentee Ballot Organization and Processing Tips.” Wisconsin Elections Commission, April 9, 2020. <https://elections.wi.gov/sites/elections.wi.gov/files/2020-04/Absentee%20Ballot%20Organization%20and%20Processing%20Tips%20-%2004.9.2020.pdf>.

each rejected ballot has been checked.²⁶⁰ Members of the public can witness this entire procedure.

The canvassing of absentee ballots begins immediately on Election Day. According to Wisconsin state statute, “the Board of Absentee Ballot Canvassers shall, any time after the opening of the polls and before 10:00 p.m. on Election Day, publicly convene to count the absentee ballots for the municipality.”²⁶¹ The canvasser begins by opening the outer ballot envelope, reading the name of the voter aloud for the public to hear (if they so desire), and then opening the inner ballot envelope. The ballot itself is not “unfolded or examined,” but is instead deposited into a ballot box. After this process is concluded for all absentee ballots, members of the board of canvassers open the ballot boxes to begin counting the number of ballots, also ensuring that each is a single ballot. If any multiple ballots are folded together to appear as a single ballot, they are held aside until the count is completed, and upon inspection, may be not counted, but marked with the reason for removal and kept aside instead. If a canvasser determines that a ballot is defective for any reason, or the voter’s choices are unclear, this ballot is not included in the tabulation phase, but is instead marked as “rejected” and kept aside. The canvassers must keep a running list (in multiple copies) of all ballots set aside, along with their reasoning for doing so. When this process is concluded, the original absentee envelopes from which these ballots were removed are returned to the county clerk, and the vote-counting process begins.

12.3 Election Certification, Recounts, and Auditing

The Municipal clerk may call a meeting to begin counting ballots at any point between the opening of the polls and 10:00 p.m. on Election Day. The public is given at least forty-eight hours’ notice of the meeting, as the process is open for any voter to observe. When all absentee ballots have been certified, canvassers begin tally sheets counting how many votes have been cast for each office or ballot item. Multiple copies of this sheet are made, ensuring redundancy, and once completed, they are signed by each member of the Board of Absentee Ballot Canvassers. These results are then publicly announced by the board, and all records are made available for public inspection.²⁶²

In Wisconsin, a recount is not triggered automatically, but occurs when a candidate (or for a referendum, a voter) petitions for a recount. Such a petition may be filed by any party if there is a difference of less than forty votes in an election of under four thousand total votes, or under 1% if the election is greater than four thousand votes. Upon filing a request, the petitioner is responsible (at least partially) for the cost to conduct said recount.²⁶³ The deadline to file such a

²⁶⁰ “2019 Wisconsin Statutes & Annotations :: Chapter 6 :: 6.88 Voting and Recording the Absentee Ballot.” Justia Law. Accessed September 11, 2020. <https://law.justia.com/codes/wisconsin/2019/chapter-6/section-6-88/>.

²⁶¹ “2019 Wisconsin Statutes & Annotations :: Chapter 7 :: 7.52 Canvassing of Absentee Ballots.” Justia Law. Accessed September 11, 2020. <https://law.justia.com/codes/wisconsin/2019/chapter-7/section-7-52/>.

²⁶² *Ibid.*

²⁶³ “2019 Wisconsin Statutes & Annotations :: Chapter 9 :: 9.01 Recount.” Justia Law. Accessed September 11, 2020. <https://law.justia.com/codes/wisconsin/2019/chapter-9/section-9-01/>.

petition is no later than “5:00 p.m. on the third business day following the day on which the commission receives the last statement from a County Board of Canvassers for the election or referendum, following canvassing of all valid provisional ballots”.²⁶⁴ In presidential elections, the deadline is shortened to 5:00 p.m. on the first business day following the board’s last statement.

Election audits in Wisconsin are less prevalent than in other states. Audits cannot overturn election results, and county-level audits are considered voluntary. Audit samples do not include absentee, provisional, or early ballots. The purpose of an audit in Wisconsin is to ensure that the error rate in ballot tabulation is equivalent to the federal standard (one error per five hundred thousand ballots), and must begin within two weeks of election certification. According to the Wisconsin Elections Commission, “[t]he audit consists of two [public] independent hand-tallies of ballots tabulated by electronic voting systems. The results of the hand-count are verified against the results report produced by the voting system.”²⁶⁵

Audits in Wisconsin do not have the same impact that they do in other states which conduct audits to ensure accuracy in the counting process. Instead, they are used to learn what changes should be made for future elections with regard to voting equipment, and to ensure any errors are not repeated.²⁶⁶

As Wisconsin’s hectic primary demonstrated, the state has still more work to do in preparation for the massive surge of absentee voting expected in November. The number of voters casting ballots in the general election is exponentially than in the primary; Wisconsin election officials must plan accordingly, to keep their election running smoothly.

²⁶⁴ *Ibid.*

²⁶⁵ “Introduction to Voting Equipment Audits.” Wisconsin Elections Commission. Accessed September 11, 2020. <https://elections.wi.gov/elections-voting/voting-equipment/audit-page>.

²⁶⁶ *Ibid.*

Conclusion

In the absentee-voting processes among each of the states here reviewed, a number of notable differences advantage some states over others, especially with regard to timely processing and ballot counting on Election Day (or days). Election integrity may be more important than a rapid vote count, but these aspects are neither mutually exclusive nor sufficient on their own.

Election integrity is more complex than simply ensuring security. It involves ensuring that voters trust in the election process, and that they are willing participants in this fundamental element of representative democracy. Without prioritizing voter trust in our election process, fretting over election security is pointless. If citizens do not vote because they believe voting doesn't matter, there's arguably nothing to secure.

This paper stops short of issuing a set of best practices or recommendations for states' election administration, for some perhaps obvious reasons.

1. There is no “one-size-fits-all” solution for mail-in (absentee) voting. Each of these states has a different mail infrastructure, and different statutory constraints when it comes to implementing new measures.
2. There are plenty of experts in election administration process, already offering best-practices, insights, opinions, and recommendations to improve the election process.

Our focus is principally on technology infrastructure and its interplay in the elections process. Nevertheless we deem it important to call out any practices that may sow the seeds of confusion and chaos in the ballot-return process.

The OSET Institute is dedicated to providing the knowledge necessary to make informed decisions regarding the administration and security of elections, with a primary focus on technology infrastructure. However, process and platform are tightly integrated in the matters of this paper. So we've made an effort here to examine the processes and regulations that impact the administration of absentee ballots, as they complement our technology work.

Our hope is that this paper will serve as a resource for those interested in investigating and learning about the procedural differences among the most competitive states in the 2020 election—as we continue to research important technology innovations with potential to improve, secure, and make trustworthy our election processes going forward.

About the Author



Dennis Mema is an election technology policy analyst at the OSET Institute focused on election technology as critical infrastructure national security assets, including their innovation and protection. He is a recent graduate of the University of Connecticut with a degree in Political Science and minor in Public Policy, where he led collaboration with University administration on new mental health policy. Mr. Mema also served as an Advanced Information Technology Specialist for the University of Connecticut's professional staff including matters of cybersecurity. He began his work with the Institute as under-author of "*Potential of a Federal Ballot*," an essay exploring modernizing election infrastructure for cost and security. Dennis will attend law school in the fall of 2021, and is now developing his scholarship in constitutional law.

About the OSET Institute

The Open Source Election Technology ("OSET") Institute, founded in 2006, is a 501(c)(3) tax-exempt nonpartisan, nonprofit election technology research corporation chartered with research, development, and education in election technology innovation in order to increase confidence in elections and their outcomes in defense of democracies, as a matter of national security.

The Institute's flagship initiative, the [TrustTheVote Project](#) is a democracy software foundry that is building **ElectOS**, a next generation higher integrity, lower cost, easier to use election administration and voting technology framework freely available for any election jurisdiction to adopt, and have professionally adapted and deployed. ElectOS and all open source election technology is being designed and engineered per the requirements and specifications of election officials, administrators, and operators through a Request For Comment (RFC) process.

As part of our research, development and education mission, from time to time, the Institute produces technology policy research briefings and other related policy content to inform stakeholders, supporters, and the public about issues of election technology innovation and integrity, as well as innovations in election administration process.

Threats to free and fair elections anywhere are inherently threats to our democracy everywhere

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