
Recount Principles and Best Practices

Mark Halvorson

Citizens for Election Integrity Minnesota

Jane Platten

Former Director of Cuyahoga County Board of Elections

Sam Reed

Former Washington Secretary of State

Mark Ritchie

Minnesota Secretary of State

FEBRUARY 2014

About the Authors

- > **Mark Halvorson** is the founder, former executive director, and a current board member of Citizens for Election Integrity Minnesota (CEIMN). He observed the 2004 Ohio presidential recount and organized statewide, nonpartisan citizen observations of the Minnesota recounts in 2008 for U. S. Senate and in 2010 for governor. Mr. Halvorson was an executive editor of *Principles and Best Practices for Post-Election Audits*. He created the state audit and recount law searchable databases available at CEIMN.org and has written several editorials on audits and recounts.
- > **Jane Platten** serves as chief of staff of the Cuyahoga County Prosecutor’s Office, the largest public law firm in northeast Ohio. Ms. Platten previously served as the director of the Cuyahoga County Board of Elections, where she was responsible for all operations in the 13th largest voting jurisdiction in the U.S. Under her leadership all agency operations were overhauled and she led the successful transition to an optical scan ballot system. Ms. Platten implemented a county audit policy and created cuyahogaelectionaudits.com outlining best practice audit procedures. These reforms resulted in a renewed sense of public confidence in the Cuyahoga County election system.
- > **Sam Reed** had a 45-year career of public service in Washington state. Most recently, Sam served as Washington’s Secretary of State from 2001 to 2013. His accomplishments in this role include implementing the top-two primary system and statewide vote-by-mail elections. Prior to this role Mr. Reed served as Thurston County Auditor (and chief elections officer) for 23 years and served in other statewide roles for 10 years.

Mr. Reed served as the President of the National Association of Secretaries of State in 2005-2006. He was named “Public Official of the Year” by *Governing* magazine in 2009. As Secretary of State, Mr. Reed oversaw the recount of the closest gubernatorial race in U.S. history. It involved a machine recount, a hand recount, a contested election challenge in Superior Court, and two State Supreme Court cases.

As Thurston County (Olympia) Auditor, Mr. Reed conducted a couple dozen recounts. They included two congressional recounts, three legislative race recounts, and many local government races recounts. He attended Washington State University, where he received a bachelor’s degree in social studies and a master’s degree in political science.

- > **Mark Ritchie** is Minnesota’s Secretary of State.

Recount Panel

The recount panel includes representatives from a variety of groups, including election officials, election integrity advocates, journalists, and academics. The panelists were selected for their recount experience or expertise and were asked to review and comment on the recount principles and best practices. However, the statements and recommendations in this document are those of the authors alone and should not necessarily be ascribed to recount panel members, listed below.*

- > **Jennifer Brunner**, Secretary of State of Ohio, 2007–2011
- > **Edward B. Foley**, Director, *Election Law @ Moritz*, Moritz College of Law
- > **Bill Gardner**, Secretary of State of New Hampshire, 1976–present
- > **Sherril Huff**, Director of Elections, King County, Washington
- > **John Maa**, the first citizen in California history to request the recount of a statewide ballot initiative
- > **Joe Mansky**, Elections Manager, Ramsey County, Minnesota
- > **Patty O'Connor**, Director of Taxpayer Services, Blue Earth County, Minnesota
- > **Jay Weiner**, author, *This Is Not Florida: How Al Franken Won the Minnesota Senate Recount*

*Organizations are listed for identification purposes only.

Acknowledgements

We would like to thank Dan Pederson, CEIMN program coordinator and project editor for *Recount Principles and Best Practices*, for his invaluable contributions to this document.

We are also grateful for the assistance of Max Hailperin, Mark Lindeman, Rene LeBeau, Kirk Lund, and Barbara Simons, and for the comments received from several members of the Election Verification Network and the State Audit Working Group.

To submit comments or questions about this document, please contact:

Citizens for Election Integrity Minnesota
info@CEIMN.org
612-724-1736

Recount Principles and Best Practices may be freely copied and distributed. It is available for download at: www.CEIMN.org.

Contents

Introduction 1

Precursors 2

Initiating Mechanisms..... 3

Counting Methods 4

The Universe of Ballots Considered in Recounts 5

Impartiality and Nonpartisanship..... 5

Transparency 6

Who Manages and Conducts a Recount? 7

Challenges and Observers 7

Rules for Determining Voter Intent 8

Targeted Recount..... 9

Timing and Certification..... 9

Funding Recounts..... 10

Appendix 12

Resources..... 13

Recount Principles and Best Practices

Introduction

Recounts are common, but the vast majority are small recounts that receive little attention outside their locality. Most notable are the occasional high-profile, statewide recounts that attract wide attention and bring scrutiny to every action of election officials. These are high-stakes, emotionally charged events that stress our election systems, exhaust election officials, and reveal on a world stage the areas for improvement present in every election.

Although recounts challenge us, they serve an important purpose in our democracy. Foremost, properly conducted recounts assure candidates and the public that in a close election, there has been a fair examination of the procedures and an accurate count of all legally cast votes.

Recounts can also help us improve election systems. Any shortcomings in our voting equipment, ballot design, and ballot processing are revealed by the scrutiny of a recount. In addition, the administrative and security protocols and the overall pre-election planning are tested in this process, all in the public view.

The recommendations made in this document are based on the authors' recount experience as well as on input from a blue ribbon recount panel. Contained in the document are principles and practices for recounts along with one fundamental message: Above all, be prepared.

These principles and best practices are designed to help candidates, election officials, policy makers, and the public improve recount statutes and administrative rules. This document includes some management guidance, but it is not addressed in detail. Also excluded is any discussion of election contests: the reliance on the courts to determine the winner of an election. The guidance offered in this document is aimed at minimizing petitions for court interventions during the recount, as well as the need for post-election contests, by improving the legal and administrative framework necessary for fair, transparent, and accurate recounts.

Precursors

The following conditions must be in place to help ensure accurate and fair recounts.

Voter-verifiable paper records

One essential component of a voting system's accuracy, integrity, and security is a paper ballot or a voter-verifiable paper audit trail (VVPAT) for every vote cast. This ensures that election officials have an independent record to confirm that the results produced by the voting system accurately reflect the actual votes cast and the intention of the voters.

Ballot reconciliation¹

Thorough ballot accounting and reconciliation helps to ensure that the sum of the ballots used (including voted, spoiled, and unvoted) for a particular voting precinct matches the number of ballots assigned or delivered to a voting precinct. This process also involves verifying that the number of voters who have voted is neither greater nor less than the number of voted ballots, ensuring that no votes are lost and no votes are counted more than once.

Secure chain of custody

To safeguard against tampering and loss, paper ballots, records, and voting equipment should be fully secured and documented as to each individual who handled them, when they were handled, and for what purpose. Voting equipment and materials should be accounted for throughout the election administration process.²

¹ *Counting Votes 2012: A State by State Look at Voting Technology Preparedness*, p. 130:

http://countingvotes.org/sites/default/files/CountingVotes2012_Final_August2012.pdf.

For step-by-step procedures see: <http://cuyahogaelectionaudits.com/audit/ballot-reconciliation>.

See also poll book justification: <http://cuyahogaelectionaudits.com/audit/poll-book-justification>.

² U.S. Election Assistance Commission, *Election Management Guidelines*, Chapter 3, Physical Security:

www.eac.gov/assets/1/workflow_staging/Page/260.PDF.

Initiating Mechanisms

Close-vote margin

We recommend that all races be eligible for taxpayer-funded recounts when the margin of victory for a race is within a certain percentage or a set number of votes. The average, close-vote-margin trigger is approximately 0.4%.³ We recommend for statewide and congressional races a trigger, well below this average, that is set at either a percentage or an equivalent number of votes. States should decide if close-vote-margin recounts are conducted automatically or only initiated by formal request. In addition, states may want to consider setting the trigger threshold higher for local and single-county recounts than for statewide and multi-county recounts.⁴

Election officials

A mechanism should be in place to allow election officials to initiate a recount under the authority of a canvassing board or similar body in cases where they have reason to believe that an error, discrepancy, or inconsistency in the vote count has occurred. The recount would be paid for by the jurisdiction(s) initiating the recount.

Candidates

Candidates should have the option of requesting that a recount be conducted at their own expense if they lose outside the margin of eligibility for a taxpayer-funded recount. The cost of such a recount should be refunded to the candidate if the initial outcome of the race changes as a result of the candidate-initiated recount. Some states allow party officials to request a recount on behalf of a candidate.

Voters

When the results of a ballot question fall outside the margin of eligibility for a taxpayer-funded recount, a recount should be conducted if a large number of voters who are eligible to vote on the ballot question formally request a recount and fulfill the requirements to pay its costs. These costs should be refunded if the initial outcome of the race changes as a result of the recount.

³ This number is based on margins in effect for the 2012 general election presidential returns. Of the states that have close-vote-margin recounts, most of the triggers for statewide races were within the range 0.1%–0.5%. In 2012, some states set their trigger based on a specific number. When these numbers are converted to a percentage, all were within the range 0.06%–1%.

⁴ Some errors could have a more dramatic impact on the margin for small races because these errors do not necessarily scale proportionately to the total vote count. For a more detailed explanation of this issue, see pages 7–8, *Minnesota's 2010 Gubernatorial Recount*: <http://tinyurl.com/n6rlacd>.

Audits⁵

When discrepancies are found in a post-election audit, additional counting and examination may be necessary to find the cause of the discrepancies or to determine the election outcome. Audit protocols must clearly state what justifies additional counting and under what circumstances a full recount would be conducted.⁶

Counting Methods

When the best practices of this document are followed, hand counts are an accurate and transparent method of counting.⁷

Machine retabulations, when accompanied by protocols (see the Appendix) that include a visual inspection of every ballot, are an accurate and potentially cost-effective method of counting.

Central to a recount and any method of counting is:

- Consistency of methodology for all ballots recounted
- Clear information to election officials and the public on methodology
- The participation of opposing parties⁸ to observe and challenge the interpretation of a voter's intent—challenges which would be reviewed by the body authorized to decide ballot challenges

Close-vote-margin recounts⁹

When vote margins are close, recounts should be hand counted. In order to avoid unnecessary hand counting, states may want to set the thresholds for their taxpayer-funded, close-vote-margin recounts accordingly.

⁵ See *Principles and Best Practices for Post-Election Audits*: <http://electionaudits.org/principles>.

⁶ As an example, see New Mexico's audit statute (Sec. 1-14-13.2): <http://law.justia.com/codes/new-mexico/2009/chapter-1/article-14/section-1-14-13-2/>.

⁷ For a discussion of hand counting protocols, see Chapters 11–12 in the *2012 Recount Guide* published by the Office of the Minnesota Secretary of State: <http://www.sos.state.mn.us/index.aspx?page=230>.

⁸ Opposing parties could include challengers from campaigns, political parties, and ballot question advocacy groups. See the “Challengers and Observers” section of this document.

⁹ For a description of close-vote margin and other types of recounts, see the section on “Initiating Mechanisms.”

Candidate-initiated and voter-initiated recounts (discretionary recounts)

For discretionary¹⁰ recounts, when there is agreement among the interested parties on the counting method, states may want to offer the parties the option to select—and pay for—either a hand count or a machine retabulation. However, states should set a default counting method that would apply in the absence of an agreement.

The Universe of Ballots Considered in Recounts

All ballots cast and counted in an election should be counted again in a recount.¹¹

Uncounted ballots that were properly cast, including improperly rejected ballots, should be included in the universe of ballots for any recount.¹² These ballots should be reviewed by the canvassing board or adjudicated by another authority that is empowered by law to decide their status. Errors should not disenfranchise voters.

Impartiality and Nonpartisanship

It is essential that all public officials at every level of government conduct recounts in an impartial and nonpartisan manner. This principle should apply equally to elected officials, government employees, and poll workers (election judges). We recommend that every official involved with the recount take an oath to conduct the recount in a fair and impartial manner.

To the extent possible, the canvassing boards, review authorities, and judicial panels with the authority to rule on disputed issues during the recount should be formed with a balance of political party affiliations.

Impartiality and nonpartisanship will help to provide legitimacy to the eventual outcome of the election.

¹⁰ See the “Funding Recounts” section for a discussion of discretionary recounts.

¹¹ We recognize that some ballots cast and counted in an election may be invalidated during a recount because of identifying marks on the ballots.

¹² The acceptance of uncounted ballots properly cast (e.g. ballots discovered in the auxiliary compartment of a ballot box after Election Day or improperly rejected ballots) is dependent upon sound ballot accounting and chain of custody.

Transparency

“Transparency is key to a successful recount.”¹³

Transparency is essential to creating public confidence in the process and results of a recount. The importance of transparency should be conveyed to all state and local election officials and staff conducting the recount. Even if a recount is conducted fairly, failure to conduct it with transparency may result in an appearance of impropriety, a delay due to litigation, and an erosion of public confidence.

Recount statutes should accommodate the use of new technologies for transparency.

The transparency of recounts can be increased by using technologies, such as closed-circuit television and the Internet, to provide live broadcasts of the recount process, including the counting of ballots and legal and administrative proceedings. In addition, images of challenged ballots may be posted on the Internet. Digital images of essential recount documents should be made available before and during the recount to support the transparency of the process.

Running recount totals should be posted publicly, preferably on a daily basis. Two sets of results should be reported: 1) the full tally at the recount table, before any ballots are challenged, and 2) the number of ballots challenged by each candidate that day.¹⁴

For statewide recounts and issues relevant to all election jurisdictions in the state, there should be one election official with statewide responsibility for ensuring that all recount officials are using uniform standards and protocols to determine ballot validity. Uniform treatment of ballots is necessary to create a reliable report of recount results.

Developments in the recount process should be reported to the news media as soon as is practical. When difficulties arise in the recount process, election officials should proactively report what is happening and what is being done as a next step to address the issues. For statewide recounts and issues relevant to all jurisdictions in the state, there should be one election official with statewide responsibility for ensuring a uniform message to the public and the media.

¹³ U.S. Election Assistance Commission, *Election Management Guidelines*, Chapter 15, “Conducting a Recount,” p. 151: <http://www.eac.gov/assets/1/Documents/EMG%20chapt%2015%20august%2026%202010.pdf>.

¹⁴ Failure to report the number of ballots challenged by each candidate has the potential to create an incorrect public perception about the vote totals for each candidate, such as when one candidate has challenged many more ballots than their opponent has challenged.

For recounts and situations that are only relevant to smaller jurisdictions, there should be one official within the jurisdiction with the responsibility for media communications and the application of uniform standards.

A public archive of the recount documents, reports, and results should be maintained permanently in the case of electronic records, and for at least 22 months in the case of paper records.

Who Manages and Conducts a Recount?

We recommend that statewide and multicounty recounts be organized and managed on a statewide level by a public office, entity, or individual with statewide authority and that the actual counting of the ballots be conducted at the city or county level instead of at one statewide, centralized location. However, under some circumstances a central location can work.

There are security and chain of custody issues that could arise from transporting ballots to a central location. The reduced transparency of a centralized recount could also be a concern due to reduced access for observers across the state.

When counting ballots at the city or county level for a statewide recount, it is important to ensure uniform treatment of all equivalent ballots throughout the state.

We recommend that non-statewide recounts be organized and managed by the election jurisdiction in which the recount is conducted.

Challenges and Observers

Written and verbal instructions must provide a clear review of the process and detailed explanations of the roles of election officials, challengers, and observers.¹⁵

Challengers are representatives of the candidates, political parties, or groups supporting or opposing ballot questions, and they should have the right to register disagreement with—to challenge—an election official's determination of voter intent on a ballot. Challengers should be permitted to see (but never handle) any ballot so they can verify the accuracy of

¹⁵ Observers include the public and media.

the count. There needs to be clear statutory guidance and a uniform process to guide head election officials in deciding when a ballot challenge should be deemed frivolous or legitimate.¹⁶ The challenged ballots will then be reviewed by the body authorized to decide ballot challenges.

Ideally, an election official with statewide authority should be available to local canvassing boards to assist and advise when unusual questions arise in the recount process.

Observers have an interest in the outcome of the election. For the sake of election transparency, they should be accommodated in whatever way possible without interfering with the recount process. While observers have no formal role in the process, they play an important role in providing public oversight and an independent assessment of the recount proceedings.¹⁷ Observers should be allowed to use video or camera equipment.

Rules for Determining Voter Intent

Every effort should be made to accurately count all valid votes. A vote must not be rejected if it is possible to determine voter intent. Voter intent should be determined from a visual inspection of the ballot by election officials.

The process of determining voter intent primarily involves a review of undervotes and overvotes.¹⁸

Consistency is essential in all determinations of voter intent. These determinations should be guided by state law, administrative rule, or legally authorized instructions, and should be applied consistently throughout the state. The statewide rules should be accompanied by pictorial examples of voted ballots with instructions and training available to election officials on how the examples should be interpreted.¹⁹ For situations not addressed by these rules, the authority to determine voter intent should be identified in law.²⁰

16 Examples of frivolous challenges, from the *2012 Minnesota Recount Guide* (p. 11), include challenging entire precincts or groups of ballots or the absence of election judges' (poll workers') initials on a ballot.

17 An example is the *Eyes on the Vote Count* report of the 2008 Minnesota Senate recount prepared by Citizens for Election Integrity Minnesota: http://www.ceimn.org/sites/default/files/ceimn.report_color.pdf.

18 According to the U.S. Election Assistance Commission, an undervote occurs "when the number of choices selected by a voter in a contest is less than the maximum number allowed for that contest or when no selection is made for a single choice contest." An overvote is voting "for more than the maximum number of selections allowed in a contest."

19 For an example of a visual guide, see the standards from the state of Washington, *Voter Intent: Statewide Standards on What is a Vote*: http://www.sos.wa.gov/_assets/elections/2009StatewideStandardsonWhatisaVote.pdf.

20 Voter intent determinations at the recount site should be based on the impartial judgment of politically balanced teams of election officials. Disputed determinations are subject to the final ruling of the highest authoritative body or individual, as prescribed by state law.

Targeted Recount (also known as a Partial Recount)

There may be instances when candidates, political parties, or a large number of voters representing a ballot question have concerns about the election outcome in specific jurisdictions, such as when election results deviate significantly from historical voting patterns. In these cases, if the race or ballot question is not eligible for a taxpayer-funded recount, then a targeted recount of a limited number of ballots can be an efficient and cost-effective means to achieve candidate and public confidence in the outcome.

If a targeted recount alters the vote totals sufficiently to change the outcome of the election, or if it reveals an error rate that indicates the initial outcome may be altered if a recount of all precincts were to be conducted, then provisions should be in place for a full recount to be conducted.

The cost of targeted recounts can be contained by requiring that the candidate, political party, or group of voters requesting the recount pay the recount expenses. However, if the targeted recount leads to a full recount and the winner of the election is changed, the cost of the recount should be paid by the government agency or election jurisdiction specified in statute.

Timing and Certification

We support efforts to speed up recounts for presidential elections so that a state's certification can meet all federal and constitutional deadlines. An expedited recount is especially important if the electoral votes of a state could determine the outcome of the election.

There may be instances when the matter of who won an election is not resolved in time for someone to assume the office at the expiration of the term, such as when there is a prolonged election contest. Some states have addressed this problem by not allowing an election contest to delay the issuance of an election certificate following the completion of a recount and action by a canvassing board. If a court ultimately reverses the decision of the canvassing board, then the election certificate is revoked and a new one is issued to the winner as determined by the court.²¹ Protocols to address these situations deserve an exhaustive analysis and are outside the scope of this document.

²¹ For example, see Minnesota Statute 204C.40: <https://www.revisor.leg.state.mn.us/statutes/?id=204c.40>. Federal and state races may be treated differently based on applicable law.

Funding Recounts

Close-vote-margin, court-ordered, audit-initiated, and election-official-initiated recounts²²

These recounts should be taxpayer-funded. The jurisdictions or agencies responsible for the costs of a recount should be identified in law.

Discretionary recounts (recounts initiated by interested parties)²³

Whenever a taxpayer-funded recount is not available, an interested party should be granted a recount, if that party is willing to pay its costs. When there is agreement among the interested parties on the counting method, states may want to offer the parties the option to select—and pay for—either a hand count or a machine retabulation.

The cost-savings option of conducting a targeted recount of a limited number of precincts should be allowed.

The initiator of a discretionary recount should be refunded their deposit if the result of the recount changes the winner of an election. If the recount reduces the margin so that it falls within the close-vote margin, states may want to refund the deposit.

Payment methods to initiate and guarantee payment for the recount, or the authority to determine these payments, should be clearly described in statutes or rules. Some states base recount costs on fixed rates, such as per-ballot or per-precinct charges; others base them on the actual costs of the recount.

The methods for determining recount costs should be consistent throughout the state. Factors influencing recount costs—such as salaries, supplies, and research—should be stated clearly in advance. When feasible, the initiator of a discretionary recount should receive an estimate with a not-to-exceed amount.

²² See the section on “Initiating Mechanisms” for a description of these recounts.

²³ Interested parties, as discussed in the “Initiating Mechanism” section, include candidates and a large number of voters.

Appendix & Resources

Appendix

When conducting machine retabulations, it is critical to hand count (audit) a portion of the ballots and compare this result to the tabulator count for these ballots. This audit²⁴ of the tabulators provides an independent check that does not depend upon the reliability of the tabulators' software or hardware.

In addition to auditing a portion of the ballots by hand, machine retabulations should include these components:

- All ballots should undergo a visual inspection with a focus on identifying ballots for which the tabulator would be likely to incorrectly record the intent of the voter. Examples include, but are not limited to, inspecting overvotes and undervotes for voter intent. The visual inspection may also include an inspection for identifying marks or other indications of an invalid ballot.
- Ballots that contain valid votes but also contain features that may not scan properly (such as stray marks, tears, or irregular folds) should be hand counted.
- If a visual inspection is not conducted for all ballots, then undervote and overvote notification should be activated on the tabulator.

All ballot tabulators used in the retabulation should be tested again for logic and accuracy. Tests should include situations specific to the race being recounted.

²⁴ See the Cuyahoga Election Audits website for a step-by-step discussion of three different audit methods: <http://cuyahogaelectionaudits.com/audit>. For a discussion of additional audit methods see *Risk-Limiting Post-Election Audits: Why and How*: <http://www.stat.berkeley.edu/~stark/Preprints/RLAwhitepaper12.pdf>.

Resources

Resources cited in this document or consulted in its creation include:

- > CEIMN. Recount Database:
<http://www.ceimn.org/ceimn-state-recount-laws-searchable-database>.
- > CEIMN. *Eyes on the Vote Count*. May 26, 2009:
http://www.ceimn.org/sites/default/files/ceimn.report_color.pdf.
- > CEIMN. *Minnesota's 2010 Gubernatorial Recount*. Sept. 8, 2011:
<http://tinyurl.com/n6rlacd>.
- > *Counting Votes 2012: A State by State Look at Voting Technology Preparedness*.
Aug. 2012: <http://countingvotes.org/>.
- > Cuyahoga Election Audits. *Official Election Testing and Auditing Guide*:
<http://cuyahogaelectionaudits.com/audit>.
- > ElectionAudits.org. *Principles and Best Practices for Post-Election Audits*.
Sept. 2008: <http://electionaudits.org/principles>.
- > Foley, Edward B. "How Fair Can Be Faster: The Lessons of Coleman v. Franken."
Election Law Journal. Vol. 10, No. 3, 2011: 187-226.
- > Office of the Minnesota Secretary of State. *2012 Recount Guide*:
<http://www.sos.state.mn.us/index.aspx?page=230>.
- > Risk-Limiting Audits Working Group. *Risk-Limiting Post-Election Audits: Why and How*.
Oct. 2012: <http://www.stat.berkeley.edu/~stark/Preprints/RLAwhitepaper12.pdf>.
- > U.S. Election Assistance Commission. *Election Management Guidelines*:
http://www.eac.gov/election_management_resources/election_management_guidelines.aspx.
- > Washington Secretary of State. *Voter Intent: Statewide Standards on What is a Vote*.
June 2009: http://www.sos.wa.gov/_assets/elections/2009StatewideStandardsonWhatisaVote.pdf.