



★ VIRGINIA ★
DEPARTMENT *of* ELECTIONS

GREB Handbook

Chapter 19

Recounts and Contested Elections

June 2016

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19. Recounts and Contested Elections

19.1 RECOUNTS

The state recount laws apply to all elections held in the Commonwealth, including primaries, general or special elections for offices, or referenda or questions before the electorate.¹

Virginia election law does not contain any provisions for a losing candidate in a party-conducted (non-primary) nomination process to request a recount of non-primary results. The Party Plan, rules or bylaws of that party, or the "Call" and rules for the non-primary nominating event may provide such a process.

19.1.1 Filing the petition

19.1.1.1 Margin of victory

A petition for a recount may be filed only in the event that there is a difference of not more than one percent (1%) of the total vote cast for the apparent winner and any apparently defeated candidate, as certified by the Department of Elections or the electoral board.² A recount is available when the following rule is true:

$$\frac{(Total\ votes\ for\ winner) - (Total\ votes\ for\ recount\ petitioner)}{(Total\ votes\ for\ winner) + (Total\ votes\ for\ recount\ petitioner)} < 0.01$$

A recount may be filed when there is a difference of not more than five percent (5%) of the total vote cast for the apparent winner and any apparently defeated candidate, if either such candidate was a write-in candidate.

$$\frac{(Total\ votes\ for\ winner) - (Total\ votes\ for\ recount\ petitioner)}{(Total\ votes\ for\ winner) + (Total\ votes\ for\ recount\ petitioner)} < 0.05$$

¹ §§ 24.2-800 - 802; § 24.2-800(A).

² § 24.2-800.



19.1.1.2 When to File

A recount cannot be requested until the election is certified. The petition for a recount, other than an election for presidential electors, must be filed within ten (10) days from the day the Department of Elections or the electoral board certifies the results of the election.³ If the winner for that office is certified at the local level, this means ten (10) days from the date the electoral board certifies the results; if the winner is certified by the State Board of Elections, it means ten (10) days from day the State Board of Elections certifies the results.

19.1.1.3 Where and How to File

In the case of an election for a statewide office, a petition for a recount must be filed in the Circuit Court of the City of Richmond.⁴ In the case of any other election for office, a petition for a recount must be filed in the Circuit Court of the county or city in which the candidate being challenged resides.⁵

A petition for a recount must set forth the results as certified by the Department of Elections or the electoral board and must also request that the Court recount the ballots or redetermine the count of any direct electronic voting device.⁶ A copy of the petition for a recount must be served on the candidate apparently elected or nominated within ten days after the Department of Elections or electoral board has certified the results of the election.⁷ In a referendum, a copy of the petition for a recount shall be served on the governing body of chief executive officer of the jurisdiction in which the election was held.

19.1.2 Preparing for the recount

19.1.2.1 Selecting the Recount Court

The Chief Judge of the Circuit Court in which the petition is filed must promptly notify the Chief Justice of the Supreme Court of Virginia. The Chief Justice of the Supreme Court of Virginia then designates two additional judges to sit with the Chief Judge. These three judges constitute the full recount court that will hear the case.⁸

³ [§ 24.2-801.](#)

⁴ [§ 24.2-801.](#)

⁵ [§ 24.2-801.](#)

⁶ [§ 24.2-801.](#)

⁷ [§ 24.2-801.](#)

⁸ [§ 24.2-801.](#)



19.1.2.2 Standards

The State Board of Elections adopts and issues standards for the conduct of recounts. The Chief Judge of the circuit court or the full recount court may, consistent with State Board of Elections standards, resolve disputes over the application of the standards and direct all other appropriate measures to ensure the proper conduct of the recount.⁹ The [Recount Step by Step Instructions](#) and [Examples for Handcounting](#) are on the Department of Elections website under the “Election Laws, Regulations, and Policies” page. For uniformity, the Department of Elections has directed that the [Ballot Examples](#) are to be used whenever ballots must be hand counted, whether in an election or in a recount.

19.1.2.3 Uniform Procedures Required

The recount procedures to be followed throughout the election district shall be as uniform as practicable, taking into account the types of ballots and voting devices in use in the election district.¹⁰

19.1.2.4 Preliminary Hearing

Shortly after the petition for a recount is filed, there shall be a preliminary hearing held by the Chief Judge to hear motions and set the recount procedures, subject to review by the full court.¹¹ It is highly suggested that the general registrar and/or electoral board attend this hearing to provide guidance to the court as necessary.

19.1.2.5 Court Hearing

After the full court is appointed, there shall be a hearing to decide all motions and the rules of the recount procedures.¹² It is highly suggested that the general registrar and/or electoral board attend this hearing to provide guidance to the court as necessary.

19.1.3 Rules and Procedures for Conducting the Recount

The following rules and procedures are presented in summary form and also apply to a recount pertaining to a referendum or question before the electorate as discussed below. For a more detailed accounting, please review [§ 24.2-802](#) in its entirety.

19.1.3.1 Which Votes to Count

The determination of the votes in a recount is based on votes cast in that election. Votes that cannot be taken into account include the following:

⁹ [§ 24.2-802](#).

¹⁰ [§ 24.2-802](#).

¹¹ [§ 24.2-802](#).

¹² [§ 24.2-802](#).



- Any absentee ballots or provisional ballots sought to be cast but ruled invalid and not counted in the election
- Ballots cast only for administrative or test purposes and voided by the officers of election
- Ballots spoiled by a voter and replaced with a new ballot.

The eligibility of any voter who has cast a counted ballot cannot be raised as an issue in a recount.¹³ It may only be raised in a contest.¹⁴

19.1.3.2 Party Representatives

Each party to the proceeding is permitted to select an equal number of officers of election who served during the election to serve as recount officials and alternates.¹⁵ On the request of any party to the recount, the court may allow that party to appoint one representative observer for each team of recount officials. The representative observers must have an unobstructed view of the work of the recount officials. The expenses of its representative observers shall be borne by each party.¹⁶

19.1.3.3 Other Officials

Teams of recount officials, substitutes, and observers are designated to undertake the count and determine the vote according to the provisions set forth in the code.¹⁷ The Court supervises the recount and may require delivery of any and all pollbooks, ballots, absentee ballots, etc., or may assume supervision thereof through the recount coordinators and officials. The court may select pairs of recount coordinators to serve for each county or city in the election district that shall be members of the county or city electoral board and represent different political parties.¹⁸

19.1.3.4 Procedures for Different Ballot Types

For paper ballots, the recount official will hand count the paper ballots using the [Ballot Examples for Hand counting Paper or Paper-Based Ballots for Virginia Elections and Recounts](#).¹⁹

For direct recording electronic equipment (DRE), the recount officials must open the sealed envelopes containing the machine print out to record the results.²⁰

¹³ [§ 24.2-802](#).

¹⁴ [§ 24.2-803](#) et seq.

¹⁵ [§ 24.2-802\(C\)](#).

¹⁶ [§ 24.2-802\(C\)](#).

¹⁷ [§ 24.2-802\(C\)](#).

¹⁸ [§ 24.2-802\(C\)](#).

¹⁹ [§ 24.2-802\(C\)](#).



For optical scan tabulators, the recount officials shall rerun all ballots through an appropriately programmed tabulator. Any ballots set aside as overvotes, undervotes, containing write-ins, or where a tabulator could not be appropriately programmed to set aside such votes must be hand counted using the [Ballot Examples for Handcounting Paper or Paper-Based Ballots for Virginia Elections and Recounts](#).²¹ If the total number of optical scan ballots counted by the ballot reader plus the total number of ballots set aside by the scanner do not equal the total number of ballots rerun through the scanner, the recount officials must count all the ballots by hand using the [Ballot Examples for Handcounting Paper or Paper-Based Ballots for Virginia Elections and Recounts](#).²²

19.1.3.5 *Concluding the Recount*

The recount officials write down and submit to the Court the number of valid ballots cast in the precinct for each of the two candidates in the recount, or for or against the question.²³ If the number of votes recorded on the direct electronic voting (DRE) devices is greater than the number of names on the pollbooks of persons voting on said devices, the figures recorded on the devices themselves shall be accepted as correct.

At the conclusions of the recount, after allowing the parties to visually inspect any questioned ballots and after hearing the arguments of the parties, the Court will rule on the validity of all questioned ballots and votes. By an appropriate order, the Court certifies to the Department of Elections and other appropriate electoral boards, the vote for each party to the recount or the vote for and against the question and declare the winning candidate or question accordingly.²⁴

The recount proceeding shall be final and not subject to appeal.²⁵ However, a candidate who was originally declared the winner, who loses as a consequence of a recount, may file a written complaint or a notice to contest the result, as applicable, within ten days of the entry of the order of the recount Court.²⁶ Procedures are set forth under the provisions governing Contested Elections.²⁷

19.1.3.6 *Costs*

The costs of the recount are assessed against the counties and cities comprising the election district if one of the following occurs:

²⁰ [§ 24.2-802\(C\)](#).

²¹ [§ 24.2-802\(C\)](#).

²² [§ 24.2-802\(D\)\(3\)](#).

²³ [§ 24.2-802\(D\)\(3\)](#).

²⁴ [§ 24.2-802\(D\)](#).

²⁵ [§ 24.2-802\(H\)](#).

²⁶ [§ 24.2-814](#).

²⁷ [§§ 24.2-803 - 814](#).



- The candidate petitioning for the recount wins
- The petitioners for a referendum win
- There is a difference of not more than one half of one percent, prior to the recount, between the two candidates

Normally the costs "assessed against the counties and cities" are their own respective costs that they pay to conduct the recount (reprogramming, mileage, officials, etc.).

When none of the above circumstances occurs, the costs are assessed against the petitioning candidate. The manner in which costs can be assessed against the petitioner and are calculated is discussed in detail in the code.²⁸ Any petitioner who may be assessed costs must post a bond with the Court in the amount of ten dollars per precinct in the area subject to the recount.²⁹

19.1.4 Special Procedures for Recounts of Elections for Presidential Electors

Because of the federal deadline for seating of presidential electors, the General Assembly in 2003 enacted legislation to ensure that any presidential recount in Virginia would be concluded no later than six days before the date set for the meeting of the presidential electors (so that Virginia's electoral votes could be counted). Detailed procedures for the filing of a petition for such a recount are set forth in [§ 24.2-801.1](#). Other deadlines (such as the date for the holding of the preliminary hearing) are shortened. Most importantly, any contest of such election would proceed concurrently, and not wait upon the results of the recount. The procedures and deadlines for the contest are in [§ 24.2-805](#).

19.1.5 Referendum recounts

19.1.5.1 Filing the petition

A petition for a recount involving a question or referendum may be filed only in the event that the difference in the vote for and against is not more than fifty votes or one percent of the total vote, whichever is greater, as certified by the State Board of Elections or the electoral board.³⁰

²⁸ [§ 24.2-802](#)(E), (F).

²⁹ [§ 24.2-802](#)(G).

³⁰ [§ 24.2-800](#)(C).



Should the vote difference fall within this range, fifty or more voters qualified to vote on the question may appeal from the determination of the State Board of Elections or electoral board by signing and filing a petition for a recount.³¹ The petition for a recount must be filed within ten days from the day the State Board of Elections or the electoral board certifies the results of the election.³² In the case of a statewide referendum, a petition for a recount must be filed in the Circuit Court of the City of Richmond. In the case of any other referendum, a petition for a recount must be filed in the Circuit Court of a county or city comprising a part of the election district.³³

A petition for a recount must set forth the results as certified by the State Board of Elections or the electoral board and must also request that the Court recount the ballots or redetermine the count of any direct electronic voting (DRE) device. A copy of the petition for a recount must be served on the governing body or chief executive officer of the jurisdiction in which the election was held within ten days after the State Board of Elections or electoral board has certified the results.³⁴

19.1.5.2 Conducting the Recount

The procedures for conducting the recount with respect to a question or referendum are the same as those set forth above in summary form with respect to elections for office.³⁵

19.1.6 Contesting a Recount

Any candidate originally determined the apparent winner in a primary or other election, but who subsequently loses as a consequence of a recount, may contest the election pursuant to the applicable provisions of a contested election discussed below.³⁶

³¹ [§ 24.2-800\(C\)](#).

³² [§ 24.2-801](#).

³³ [§ 24.2-801](#).

³⁴ [§ 24.2-801](#).

³⁵ See [§ 24.2-802](#).

³⁶ [§ 24.2-814](#).



19.1.7 Disposition of Election Records After a Recount

Official election records conveyed to the court in a recount proceeding by election or recount officials or by another Clerk of Court, must be secured and retained by the Clerk who received them, until the recount is concluded, and afterwards until the time for initiating a contest for that same election has expired and no contest is pending.

Afterwards, if the Clerk of the court where the recount was conducted is in possession of official election records conveyed from another county or city, not normally part of his jurisdiction, the Clerk must return those records to the Clerk of Court for that county or city. The election records should otherwise be handled the same as all other records for that election under appropriate laws or regulations.³⁷

19.2 CONTESTED ELECTIONS

19.2.1 Applicability and overview

An unsuccessful candidate for most elections, special elections or primaries can initiate a contest. The rules and procedures governing a contested election vary depending upon the office for which the election was held. The basic procedures described below apply to General Assembly elections.³⁸

19.2.2 Exceptions

Contests of elections for the U.S. Senate or U.S. House of Representatives are conducted under the procedures of the respective Houses.³⁹ Virginia law does not cover this subject.

Additionally, Virginia law does not provide procedures to contest the results of a presidential primary.⁴⁰ More generally, Virginia election law does not contain any provisions for a losing candidate in a party-conducted nomination process to contest the results. The Party Plan, rules or bylaws of that party, or the "Call" and rules for the nominating event may provide such a party-conducted process.

³⁷ §§ 24.2-668, 669.

³⁸ § 24.2-803.

³⁹ See [U.S. Const. Art. I, § 5](#) ("Each house shall be the judge of the elections, returns and qualifications of its own members...").

⁴⁰ Presidential primaries are a fairly recent development in Virginia (first held in 1988 as a one-time event, then put into state law in 1999).



19.2.3 Procedures governing a contested election to the general assembly

19.2.3.1 Notice of Intent to contest

To initiate a contest, the losing candidate (contestant) first must give written notice of his intent to contest the election, both to the party who has been declared the apparent winner (contestee) and the Clerk of the appropriate House. Additionally, the contestant must post a surety bond in the amount of \$100 for each precinct contained in whole or in part of the district contested. If the contestant wins the contest, the bond shall be returned. If the contestant loses the contest, the bond shall be forfeited to the extent of the contestee's actual and documented costs of defending against the contest.⁴¹

Notice must be submitted within thirty days following the date of the election or three days after the conclusion of a recount, whichever is later. The notice must state the grounds upon which the contest will be based. These grounds must include either or both of the following⁴²:

- Objections to the contestee's eligibility based on specific allegations
- Objections to the conduct or results of the election that, if proven true, would have a probable impact on the outcome of the election

Within ten days of service of this notice, the contestee must file a written answer with the Clerk of the appropriate House. The answer must admit or deny the allegations or state that he has no knowledge of particular allegations. Additional defenses may be included. This answer must be signed by the contestee and verified by oath or affirmation.⁴³

Either party following service of the notice may take depositions. The contestant must complete depositions within twenty days and the contestee within thirty days, following the date of the notice of intent to contest the election. Written affidavits by a witness may be submitted if stipulated to in writing by both parties.⁴⁴ Either party may apply to the Clerk of the Circuit Court of the county or city in which the party resides, or the Clerk shall issue subpoenas for witnesses.⁴⁵

19.2.3.2 Petition and subsequent Proceedings

A written petition must be filed with the clerk of the appropriate house within the time frame specified in [§ 24.2-803\(E\)](#).

⁴¹ [§ 24.2-803](#).

⁴² [§ 24.2-803\(B\)](#).

⁴³ [§ 24.2-803\(C\)](#).

⁴⁴ [§ 24.2-803\(D\)](#).

⁴⁵ [§ 24.2-803\(E\)](#).



The Clerk shall refer the record to the Committee on Privileges and Elections which, unless another Committee is designated, shall hear the contest, conduct an investigation, and report its findings and recommendations to the house for action.⁴⁶ The house may declare either party the winner or declare the election void and order a writ of election. Should it be determined that there is a tie vote, there shall be a determination by lot; however, no recount shall be permitted.⁴⁷ Should the house find that the contest was brought in bad faith by a two-thirds vote, the contestant shall be ordered to pay the contestee any amount above the posted bond in order to reimburse the contestee for his actual and documented costs in defending against the contest.⁴⁸

19.2.4 Variances applicable to contests in other elections

19.2.4.1 Contest of Election of Governor, Lieutenant Governor or Attorney General

Notice of intent to contest must be filed with the Clerk of the House of Delegates. The filing of a petition to contest must be within two days of either the commencement of a Special Session of the General Assembly convened expressly to hear the contest, or of the beginning of the next scheduled General Assembly, whichever occurs first.⁴⁹ At the time of filing the notice, the contestant shall post a surety bond of \$10 per precinct in the state. A final determination will be made by both houses of the General Assembly sitting jointly, presided over by the Speaker.⁵⁰

19.2.4.2 Contest of Election of Presidential and Vice Presidential Electors, United States Senate or, Primary for Statewide Office

The proceedings shall be in the Circuit Court of the City of Richmond before a special court composed as specified in [§ 24.2-805](#).

Notice of intent to contest a presidential election shall be filed no later than 5:00 p.m. on the second calendar day after the day the Department of Elections certifies the results. A copy of the complaint shall be served on each contestee within five calendar days after the Board's certification. The contestee's answer shall be filed within five calendar days after the complaint is served on him.

The contest shall not wait upon the results of any recount. The proceedings shall be completed at least six days before the fixed time for the meeting of electors.

⁴⁶ [§ 24.2-803\(G\)](#).

⁴⁷ [§ 24.2-674](#).

⁴⁸ [§ 24.2-803\(H\)](#).

⁴⁹ Why two days? The new terms for these offices begin at noon on the first Saturday after the second Wednesday in January, when the regular session of the General Assembly convenes.

⁵⁰ [§ 24.2-804](#).



19.2.4.3 Contest of Primary for the U.S. House of Representatives, State Senate, House of Delegates, or any County, City, Town or District Office, or Contest of Election of any County, City, Town or District Office

The contest is conducted in the Circuit Court of the county or city in which the challenged candidate resides before a special court composed as specified in [§ 24.2-806](#). Specific rules governing the procedures for contesting any of these elections are covered in detail under [§§ 24.2-807 - 813](#).

19.2.5 Bond

Only candidates contesting elections for Governor, Lt. Governor, Attorney General, the House of Delegates, or the State Senate are required to post bond in order to contest the election. There is no bond requirement for other candidates filing contests.

