State of Nevada

Recount and Contest Guide

2014

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STATE OF NEVADA

2014 RECOUNT AND CONTEST GUIDE

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PREFACE

The Secretary of State's office has prepared this brief guide of the recount and contest procedures as printed in Chapter 293 of the Nevada Revised Statutes (NRS) and other pertinent sections of the Nevada Constitution, Title 24 Election Laws of NRS and Nevada Administrative Code (NAC). The purpose of this guide is to provide a general understanding of the procedures and requirements necessary for demanding and receiving a recount or contesting an election. **It is important to note that this guide is for general information only and does not have the force and effect of Nevada law, regulation or rule**. Interested parties should obtain the most recent version of NRS and NAC, as **Nevada's Election Laws are amended each legislative session** and the Election Regulations are updated periodically. Interested parties should also be aware that election issues are periodically addressed by the Attorney General, or by State or Federal courts. Due to the general scope of this guide, some of these issues may not be addressed here. Interested parties should review Attorney General opinions and court decisions, and should contact the Secretary of State or a Nevada attorney with any specific questions.

NOTE

Please note that the procedures described herein *do not apply to federal officers*. The removal of U.S. Representatives or U.S. Senators is governed by the United States Constitution, Article 1, Sec. 5(2), which states "Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member." The President, Vice President and all civil officers of the United States are removed through the process of "impeachment" which is governed by the United States Constitution.

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RECOUNT AND CONTEST INFORMATION

This section contains general information relating to all recounts and election contests. The provisions governing recounts and election contests are found in Nevada Revised Statutes (NRS) 293.400 through NRS 293.435 and in Nevada Administrative Code (NAC) 293.361 through 293.375.

For race specific recount information, please refer to the sections below relating to statewide recounts, multi-county district recounts, single county district recounts and city recounts. For specific information on election contests, see the section below relating to contests.

WHAT IS THE DIFFERENCE BETWEEN A RECOUNT AND AN ELECTION CONTEST?

A contest of an election is an adversary proceeding filed in District Court (except in Assembly, Senate, Governor, Lieutenant Governor or Justice of the Supreme Court races, which are filed with the Secretary of State) between a candidate for public office who has received the greatest number of votes and any other candidate for that office, or, in certain cases any registered voter for the purpose of determining the validity of an election (NRS 293.042). A recount is a recount of votes cast at an election. A candidate at an election or a registered voter may request a recount and/or contest an election**.**

CAN A RECOUNT AND AN ELECTION CONTEST OCCUR FOR THE SAME OFFICE OR THE SAME BALLOT QUESTION?

Yes. Under the NRS provisions, both a recount and an election contest can occur. However, the election contest must be based on specific statutory grounds as set forth in NRS 293.410.

WHO MAY REQUEST A RECOUNT?

Any defeated candidate or any candidate who ends up in a tie with another candidate may demand and receive a recount of the number of votes received for the candidate and the number of votes received for the person who won the election. The recount is not done for every candidate for that office. Any voter may demand and receive a recount for a ballot question. (NRS 293.400(3); 293.403(1 & 2)).

WHEN MUST THE RECOUNT DEMAND BE MADE?

A recount cannot be demanded prior to the official canvass of the vote. A demand for a recount must be made **within three (3) working days after the canvass of the vote**. The canvass of the vote is the review of the election results by the Nevada Supreme Court, County Commissioners or City Council. (NRS 293.032 and NRS 293.403). See pages 4-8 for specific timelines regarding statewide, multi-county districts, single county districts and city recounts.

WHEN DOES THE CANVASS OCCUR?

The canvass of the vote is the review of the election results by the County Commissioners or City Council, or Nevada Supreme Court. (NRS 293.032 and NRS 293.403(4)) The canvass must be completed on or **before the sixth working day following the election** with the results being transmitted to the Secretary of State not more than 7 working days after the election. (NRS 293.387) For the General Election, on the fourth Tuesday of November, the Justices of the Supreme Court, or a majority thereof, shall meet with the Secretary of State, and shall open and canvass the vote for United States Senator, Representative in Congress, members of the Legislature, State Officers who are elected statewide or by district, District Judges, or District Officers whose districts include areas in more than one county and for and against any question submitted. (NRS 293.395)

HOW IS THE DEMAND FOR A RECOUNT MADE?

A recount cannot be demanded prior to the official canvass of the vote. A demand for a recount must be made within three (3) working days after the canvass of the vote. A demand for a recount for a statewide or multi-county office must be filed in writing with the Secretary of State. A single county demand for a recount must be filed with the County Clerk/Registrar of Voters of that county. A city demand must be filed with the City Clerk. *The demand for a recount must be accompanied by a deposit of the estimated cost of the recount made in advance with the appropriate filing officer* (NRS 293.403(1)(a) & (b)). Payment can generally be made in cash, cashier's check, by credit card, or certified check. See pages 6-7 for cost determinations.

IS THERE A RECOUNT DEMAND FORM TO BE FILLED OUT?

No. The candidate or voter who would like a recount simply submits a letter stating the office or ballot question for which the recount is requested, and the precincts he/she desires to be recounted, and includes the appropriate advanced deposit for the cost of the recount (NRS 293.403 and 293.404(4). See pages 6-7 for cost determinations.

AFTER A DEMAND IS MADE IS THERE A TIME DURING WHICH THE RECOUNT MUST OCCUR?

NRS 293.405(3) states the recount must begin within five days after the demand is filed and that the recount must be completed within five days after it has begun. Sundays and holidays are included in determining each five day period. Each county or city may decide to begin a recount at any time during that five-day period after the demand is made. However once the recount has begun, it must be completed within five days.

WHO DETERMINES WHAT PRECINCTS SHALL BE RECOUNTED?

The candidate or voter who demanded the recount shall select five percent (5%) of the precincts, but in no case fewer than three (3) precincts, within each of the affected counties. All of the ballots selected within those precincts for that office will be recounted. If it is a candidate who demands the recount, the candidate must, prior to selecting the precincts, notify each of the other candidates for office (or candidates' authorized representatives) as to which precincts are being selected (NRS 293.404(4)). (The person demanding a recount shall include in the demand for a recount a list, by county, of the precincts selected to be recounted).

WHAT IS THE PROCESS FOR RECOUNTING THE BALLOTS?

NRS 293.404 sets forth the recount process as follows:

- The County Clerk/Registrar of Voters of each county shall employ a Recount Board, which shall conduct the recount. (Please see NAC 293.361 for membership restrictions).
- The County Clerk/Registrar of Voters shall act as the chairman of the Recount Board (unless the recount is for the office of County Clerk).
- The County Clerk/Registrar of Voters shall unseal and give to the Recount Board all ballots to be recounted.
- The Recount Board shall examine all of the ballots from the selected precincts to determine whether the ballots were voted in accordance with state election laws.
- **This process is the same for city recounts.**

WHO CAN OBSERVE THE RECOUNT?

The public and each candidate and/or the candidate's representative may observe the recount, but observers may not challenge ballots or interfere in any way with the determination of the Recount Board as to how ballots are counted. Observers are subject to removal if they interfere in the counting procedures (See, NRS 293B.353 and Attorney General's Opinion No. 175 (Nov. 25, 1974), a copy of which is included in the Appendix).

DOES THE SECRETARY OF STATE OBSERVE THE RECOUNT?

A County Clerk/Registrar of Voters may request the Secretary of State or his designated representative to observe the recount (NAC 293.371).

WHEN WILL THE RESULTS OF THE RECOUNT BE RELEASED TO THE PUBLIC?

The results of a recount must be canvassed within five (5) working days after completion of the recount. (NAC 293.365). After the canvass of the recount is completed, the County Clerk/Registrar will notify the Secretary of State of the results. The Secretary of State will release the results to the public when the results from all affected counties are received. (NRS 293.387)

MAY THE PERSON WHO DEMANDS A RECOUNT WITHDRAW THE DEMAND?

Yes, a withdrawal of a demand for a recount must be made in writing to the appropriate filing officer and can be requested at any time before the completion of the recount. However, a person who withdraws the demand for a recount may not request a new recount or that the recount begin again (NAC 293.371). That person will also be responsible for the costs accrued by the county or city up until the recount is stopped.

STATEWIDE RECOUNTS

This section contains information specific to statewide office and statewide ballot question recounts only. Statewide races are those which are voted upon by all voters of the entire state of Nevada. (See Attorney General Letter Opinion dated August 11, 1982, a copy of which is included in the Appendix). The filing officer for statewide offices is the Secretary of State (NRS 293.057 and 293.185).

WHEN MUST A STATEWIDE RECOUNT DEMAND BE MADE?

A demand for a recount must be made within three working days of the canvass of the vote. (NRS 293.403(1). For the 2014 Primary Election, the counties must canvass their votes by June 18, 2014, and must certify their results to the Secretary of State by June 19, 2014. For purposes of a Primary Election recount, the demand must be made within three working days of the Board of County Commissioners last completing its canvass. (NRS 293.403(4)(a)).

For a general election, a demand must be made within three working days of the Board of County Commissioners last completing its canvass, or the Justices of the Supreme Court canvass. (NRS 293.403(4)(c)). The counties must canvass their votes by November 13, 2014, and certify their results to the Secretary of State by November 14, 2014. (NRS 293.403(1). For statewide offices and ballot questions, the Canvass of the Votes by the Justices of the Supreme Court for the 2014 General Election takes place on November 25, 2014. Therefore, a demand for a recount for statewide offices and questions must be made by 5 p.m. on Friday, November 28, 2014. (NRS 293.403 (4)(c)(1)).

HOW IS THE DEMAND FOR A STATEWIDE RECOUNT MADE?

Statewide recount demands must be filed in writing with the Secretary of State. (NRS 293.403(1)(a)). The demand for a recount must be accompanied by a deposit made in advance with the Secretary of State of the estimated cost of the recount (NRS 293.403(1)(b)). Payment can be made in cash, cashier's check, certified check, or by credit card. See below for cost determination.

HOW IS THE COST OF A STATEWIDE RECOUNT DETERMINED?

At the request of the Secretary of State, each County Clerk/Registrar of Voters shall calculate the estimated cost for that county and notify the Secretary of State of the cost in writing. The determination of estimated or actual costs of any recount must be made in accordance with NAC 293.375.

If the person who demanded the recount does not prevail and the cost of the recount is greater than the advance deposit, the person shall, upon demand by the Secretary of State, pay the deficiency. If the advance deposit is greater than the cost of the recount, the excess shall be refunded by the Secretary of State. If the person who demanded the recount prevails, the advance deposit shall be refunded in full by the Secretary of State to that person. (NRS 293.405(1) & (2))

MULTI-COUNTY DISTRICT RECOUNTS

This section is specific to multi-county office and multi-county ballot question recounts. A multi-county office or multi-county ballot question is voted upon by all or part of more than one county in Nevada. The demand for a recount in this jurisdiction must be made to the Secretary of State. (NRS 293.404(6))

WHEN MUST A MULTI-COUNTY DISTRICT RECOUNT DEMAND BE MADE?

A demand for a recount involving a multi-county office or multi-county ballot question must be made within three working days of the canvass of the vote. For the 2014 Primary Election, the counties must canvass their votes by June 18, 2014, and must certify their results to the Secretary of State by June 19, 2014.

For purposes of a Primary Election recount, the demand must be made within three (3) working days of the canvass by the Board of County Commissioners last completing its canvass. (NRS 293.403(1) & (4)(a)). For the General Election, the state canvass by the Supreme Court of the 2014 General Election takes place on **November 25, 2014**. Therefore a demand for a recount must be made by **5 p.m. on Friday, November 28, 2014.** (NRS 293.403(1) & (4)(c)(1))

MAY A PERSON DEMAND A MULTI-COUNTY DISTRICT RECOUNT IN FEWER COUNTIES THAN THE DISTRICT IS COMPOSED OF?

No. Such a recount must include all counties which comprise the district. (NRS 293.405(2)(b))

HOW IS THE DEMAND FOR A MULTI-COUNTY DISTRICT RECOUNT MADE?

Multi-county district recount demands must be filed in writing with the Secretary of State (NRS 293.403(1)(a) & 293.404(6)). The demand for a recount must be accompanied by a deposit made in advance with the Secretary of State of the estimated cost of the recount (NRS 293.403(1)(b)). Payment can be made in cash, cashier's check, certified check, or by credit card. See below for cost determination.

HOW IS THE COST OF A MULTI-COUNTY DISTRICT RECOUNT DETERMINED?

At the request of the Secretary of State, each County Clerk/Registrar of Voters shall calculate the estimated cost for that county and notify the Secretary of State in writing.
The determination of estimated or actual costs of any recount must be made in accordance with NAC 293.375.

If the person who demanded the recount does not prevail and the cost of the recount is greater than the advance deposit, the person shall, upon demand by the Secretary of State, pay the deficiency. If the advance deposit is greater than the cost of the recount, the excess shall be refunded by the Secretary of State. If the person who demanded the recount prevails, the advance deposit shall be refunded in full by the Secretary of State to that person. (NRS 293.405(1) & (2))

SINGLE COUNTY DISTRICT RECOUNTS

This section contains information specific to single county recounts only. Single county races and single county ballot questions are those that are wholly comprised of all or part of one single county. The filing officer for single county offices is the County Clerk/Registrar of Voters for that county. (NRS 293.403(1) & 293.185(2)). Please check with the County Clerk/Registrar of the county for additional requirements the county may have.

WHEN MUST A SINGLE COUNTY DISTRICT RECOUNT DEMAND BE MADE?

A demand for a single county district recount must be made within three (3) working days of the canvass of the vote. For the 2014 Primary Election, the Board of County Commissioners must canvass their votes by June 18, 201 (NRS 293.387). Contact the appropriate County Clerk/Registrar for the scheduled date of the canvass.

For the 2014 General Election, the Board of County Commissioners must canvass their votes by November 13, 2014. Contact the appropriate County Clerk/Registrar for the scheduled date of the canvass (NRS 293.403(1) & 293.387).

HOW IS THE DEMAND FOR A SINGLE COUNTY DISTRICT RECOUNT MADE?

Single county recount demands must be made with the County Clerk/Registrar of Voters. The demand for a recount must be accompanied by a deposit made in advance with the appropriate County Clerk/Registrar of Voters of the estimated cost of the recount (NRS 293.403(1)(b)). Payment can generally be made in cash, cashier's check, by credit card, or certified check, but verify with the County Clerk/Registrar of Voters as to what type of payment is accepted by them. See below for cost determination.

HOW IS THE COST OF A SINGLE COUNTY DISTRICT RECOUNT DETERMINED?

The county in which the recount is sought shall furnish the candidate with the estimated cost of the recount upon request by the person demanding the recount. NRS 293.403(3)

The determination of the estimated or actual costs of any recount must be made in accordance with NAC 293.375.

If the person who demanded the recount does not prevail and the cost of the recount is greater than the advance deposit, the person shall, upon demand by the county, pay the deficiency. If the advance deposit is greater than the cost of the recount, the excess shall be refunded by the county. If the person who demanded the recount prevails, the advance deposit shall be refunded in full by the county to that person. (NRS 293.405(1) & (2)).

CITY RECOUNTS

This section contains information specific to comprised city recounts only. City races and city ballot questions are those that are wholly composed of all or part of one city. The filing officer for a single city recount is the City Clerk for that city. (NRS 293.403(1)). Some cities hold their elections to coincide with state elections in even numbered years. (NRS 293C.115). For these cities, see information under single county recounts for timeframes. Please check with the City Clerk of the appropriate city for additional requirements the city may have.

WHEN MUST A CITY RECOUNT DEMAND BE MADE?
A demand for a city recount must be made within three (3) working days after the canvass of the vote. Contact the appropriate City Clerk for the scheduled date of the canvass. (NRS 293.403(1) & 293C.387)

HOW IS THE DEMAND FOR A CITY RECOUNT MADE?
City recount demands must be made with the City Clerk. The demand for a recount must be accompanied by a deposit made in advance with the appropriate City Clerk of the estimated cost of the recount (NRS 293.403(1)(b)). Payment can generally be made in cash, cashier's check, by credit card or certified check, but verify with the City Clerk as to what type of payment is accepted by them. See below for cost determination.

HOW IS THE COST OF A CITY RECOUNT DETERMINED?
The city in which the recount is sought shall furnish the person demanding the recount with the estimated cost of the recount upon request. (NRS 293.403(3))

The determination of the estimated or actual costs of any recount must be made in accordance with NAC 293.375.

If the person who demanded the recount does not prevail and the cost of the recount is greater than the advance deposit, the person shall, upon demand by the city, pay the deficiency. If the advance deposit is greater than the cost of the recount, the excess shall be refunded by the city (NRS 293.405(1)). If the person who demanded the recount prevails, the advance deposit shall be refunded in full by the city to that person.

CONTESTS

WHO MAY CONTEST AN ELECTION?
A candidate at any election or any registered voter of the appropriate political subdivision may contest the election of any candidate, except elections for the office of United States Senator or Representative in Congress. (NRS 293.407(1))

WHEN MUST AN ELECTION CONTEST BE FILED?
The statement of contest shall be filed no later than five (5) days after a recount is completed, and no later than fourteen (14) days after the election if no recount is demanded. (NRS 293.413(1); 293.425(1); 293.430(1))

WHERE MUST AN ELECTION CONTEST BE FILED?
An election contest is filed either with the District Court or with the Secretary of State. For the offices of State Assembly, State Senator, Governor, Lieutenant Governor or Justice of the Supreme Court, the General Election contest must be filed with the Secretary of State. (NRS 293.425(1) & 293.430(1). For all other election contests, the election contest is filed with the District Court in the affected county. (NRS 293.407(2))

WHEN MUST THE ELECTION CONTEST BE HEARD BY THE COURT?
With the exception of a contest concerning the offices set forth below, the court shall set the matter for hearing not less than five (5) days nor more than ten (10) days after the filing of the statement of contest. Election contests shall take precedence over all regular business of the court. (NRS 293.413(2)). Contests of the General Election for the offices of State Assembly, State Senator, Governor, Lieutenant Governor and Justice of the Supreme Court are heard by one or both houses of the Legislature, not the court, as discussed on page 10. (NRS 293.427(1); 293.430(1))

WHO PAYS THE COURT COSTS ASSOCIATED WITH THE CONTEST?
If the contest is dismissed for insufficiency or for lack of prosecution, or if the court confirms the election, the person who filed the contest is responsible for court costs. If the election is annulled or set aside for errors or malfeasance of any election official in the conduct of the election or in canvassing the returns, the costs shall be charged against the state or political subdivision in which the election was held. When an election is annulled or set aside on any other ground, the defendant (for example, the losing candidate or the election officials) is responsible for court costs. (NRS 293.420)

ARE ELECTION CONTESTS FOR ASSEMBLY AND STATE SENATE DIFFERENT THAN OTHER ELECTION CONTESTS?
Yes. The statement of contest for General election contests involving an Assembly or State Senate office must be filed with the Secretary of State. The statement of contest must be filed no later than five (5) days after a recount is completed or no later than 14 days after the election if no recount is demanded. The contestant in a contest of a General Election for an Assemblyman or Senator may amend the statement of contest filed by filing an amended statement of contest on or before December 15th of the year immediately preceding a regular legislative session. The Secretary of State shall deliver the statement of contest to the presiding officer of the appropriate house of the Legislature on the day of the organization of the Legislature. The contestant may

withdraw his statement of contest before the contest has been decided by giving written notice to the Secretary of State, who shall dismiss the contest. The contest, if not dismissed, must be heard and decided by that house of the Legislature. If, after hearing the contest, the house decides to declare the contestant elected, the governor shall execute a certificate of election and deliver it to the contestant. The certificate of election previously issued to the other candidate is void. (NRS 293.425; 293.427)

ARE ELECTION CONTESTS FOR GOVERNOR, LIEUTENANT GOVERNOR OR JUSTICE OF THE SUPREME COURT DIFFERENT THAN OTHER ELECTION CONTESTS?

Yes. The statement of contest for General election contests involving the office of Governor, Lieutenant Governor, or justice of the Supreme Court must be filed with the Secretary of State. The statement of contest must be filed no later than five (5) days after a recount is completed or no later than fourteen (14) days after the election if no recount is demanded. The Secretary of State shall then deliver the statement of contest to the Speaker of the Assembly on the day of the organization of the Legislature. A joint session of both houses must be convened within ten (10) days of receipt of the statement of contest. The contest shall be decided by a majority vote of the elected membership of both houses within thirty (30) days after the contest hearing is begun. If the houses decide to declare the contestant elected, the Secretary of State shall execute and deliver a certificate of election to the contestant. The certificate of election previously issued to the other candidate is void. (NRS 293.413(1); 293.430; 293.433; 293.435)

APPENDIX:

Pertinent Sections of Nevada Revised Statutes (NRS)
Chapters 293, 293B, and 293C

Pertinent Sections of Nevada Administrative Code (NAC) 293

Attorney General's Opinion No. 175 (November 25, 1974)

Attorney General's Letter Opinion (August 11, 1982)

Pertinent Sections of the
NEVADA REVISED STATUTES

NRS 293.032 "Canvass" defined. "Canvass" means a review of the election results by the board of county commissioners or the mayor and city council or the justices of the Supreme Court, by which any errors within the election results are officially noted and the official election results are declared.
(Added to NRS by 1975, 935; A 1987, 334)

NRS 293.042 "Contest" defined. "Contest" means an adversary proceeding between a candidate for a public office who has received the greatest number of votes and any other candidate for that office or, in certain cases, any registered voter of the appropriate political subdivision, for the purpose of determining the validity of an election.
(Added to NRS by 1975, 935)

NRS 293.057 "Filing officer" defined. "Filing officer" means the secretary of state, county or city clerk or any other officer authorized by law to receive designations and declarations of candidacy, certificates and acceptances of nomination or any other nomination papers.
(Added to NRS by 1960, 236; A 1987, 334)

NRS 293.185 Offices for filing declarations, certificates and acceptances of candidacies. The declaration of candidacy, the certificate of candidacy and the acceptance of candidacy must be filed during regular office hours, as follows:
1. For United States Senator, Representative in Congress, statewide offices, State Senators and Assemblymen to be elected from districts comprising more than one county, and all other offices whose districts comprise more than one county, with the Secretary of State.
2. For Representative in Congress and district offices voted for wholly within one county, State Senators and Assemblymen to be elected from districts comprising but one or part of one county, county and township officers, with the county clerk.
(Added to NRS by 1960, 244; A 1965 Special Session, 4; 1983, 1287; 1987, 1367)

NRS 293.387 Canvass of returns; abstract of votes.

1. As soon as the returns from all the precincts and districts in any county have been received by the board of county commissioners, the board shall meet and canvass the returns. The canvass must be completed on or before the sixth working day following the election.

2. In making its canvass, the board shall:

(a) Note separately any clerical errors discovered; and

(b) Take account of the changes resulting from the discovery, so that the result declared represents the true vote cast.

3. The county clerk shall, as soon as the result is declared, enter upon the records of the board an abstract of the result, which must contain the number of votes cast for each candidate. The board, after making the abstract, shall cause the county clerk to certify the abstract and, by an order made and entered in the minutes of its proceedings, to make:

(a) A copy of the certified abstract; and

(b) A mechanized report of the abstract in compliance with regulations adopted by the Secretary of State,

➥ and transmit them to the Secretary of State not more than 7 working days after the election.

4. The Secretary of State shall, immediately after any primary election, compile the returns for all candidates voted for in more than one county. The Secretary of State shall make out and file in his or her office an abstract thereof, and shall certify to the county clerk of each county the name of each person nominated, and the name of the office for which the person is nominated.

(Added to NRS by 1960, 261; A 1961, 292; 1963, 1374; 1967, 861; 1969, 786; 1971, 445, 1487; 1977, 245; 1987, 349, 1370; 1989, 1665; 1991, 1106; 1997, 3464; 1999, 3553; 2007, 621)

NRS 293.395 Transmission of copy of certified abstract of votes and mechanized report to Secretary of State; canvass of vote by justices of Supreme Court; Governor to grant certificates of election and issue proclamations.

1. The board of county commissioners, after making the abstract of votes as provided in NRS 293.393, shall cause the county clerk to certify the abstract and, by an order made and entered in the minutes of its proceedings, to make:

(a) A copy of the certified abstract; and

(b) A mechanized report of that abstract in compliance with regulations adopted by the Secretary of State, and forthwith transmit them to the Secretary of State.

2. On the fourth Tuesday of November after each general election, the justices of the Supreme Court, or a majority thereof, shall meet with the Secretary of State, and shall open and canvass the vote for the number of presidential electors to which this state may be entitled, United States Senator, Representative in Congress, members of the Legislature, state officers who are elected statewide or by district, district judges, or district officers whose districts include area in more than one county and for and against any question submitted.

3. The Governor shall issue certificates of election to and commission the persons having the highest number of votes and shall issue proclamations declaring the election of those persons.

(Added to NRS by 1960, 262; A 1965 Special Session, 4; 1969, 65; 1971, 1415; 1987, 1371; 1989, 1666; 1991, 1106; 1997, 3465; 2003, 1706)

NRS 293.400 Determination of winner if tie vote; recounts.

1. If, after the completion of the canvass of the returns of any election, two or more persons receive an equal number of votes, which is sufficient for the election of one or more but fewer than all of them to the office, the person or persons elected must be determined as follows:

(a) In a general election for a United States Senator, Representative in Congress, state officer who is elected statewide or by district, district judge, or district officer whose district includes area in more than one county, the legislature shall, by joint vote of both houses, elect one of those persons to fill the office.

(b) In a primary election for a United States Senator, Representative in Congress, state officer who is elected statewide or by district, district judge, or district officer whose district includes area in more than one county, the secretary of state shall summon the candidates who have received the tie votes to appear before him at a time and place designated by him and he shall determine the tie by lot. If the tie vote is for the office of secretary of state, the governor shall perform these duties.

(c) For any office of a county, township, incorporated city, city organized under a special charter where the charter is silent as to determination of a tie vote, or district which is wholly located within one county, the county clerk shall summon the candidates who have received the tie votes to appear before him at a time and place designated by him and determine the tie by lot. If the tie vote is for the office of county clerk, the board of county commissioners shall perform these duties.

2. The summons mentioned in this section must be mailed to the address of the candidate as it appears upon his declaration of candidacy at least 5 days before the day fixed for the determination of the tie vote and must contain the time and place where the determination will take place.

3. The right to a recount extends to all candidates in case of a tie.

(Added to NRS by 1960, 263; A 1965, 614; 1981, 1740; 1987, 1371; 1995, 2628)

NRS 293.403 Recount of vote: Demand; advance deposit of costs.

1. A candidate defeated at any election may demand and receive a recount of the vote for the office for which he is a candidate to determine the number of votes received for the candidate and the number of votes received for the person who won the election if within three (3) working days after the canvass of the vote and the certification by the county clerk or city clerk of the abstract of votes the candidate who demands the recount:

(a) Files in writing his demand with the officer with whom he filed his declaration of candidacy or acceptance of candidacy; and

(b) Deposits in advance the estimated costs of the recount with that officer.

2. Any voter at an election may demand and receive a recount of the vote for a ballot question if within three (3) working days after the canvass of the vote and the certification by the county clerk or city clerk of the abstract of votes:

(a) He files in writing his demand with:

(1) The secretary of state, if the demand is for a recount of a ballot question affecting more than one county; or

(2) The county or city clerk who will conduct the recount, if the demand is for a recount of a ballot question affecting only one county or city; and

(b) He deposits in advance the estimated costs of the recount with the person to whom he made his demand.

3. The estimated costs of the recount must be determined by the person with whom the advance is deposited based on regulations adopted by the secretary of state defining the term "costs."

4. As used in this section, "canvass" means:

(a) In any primary election, the canvass by the board of county commissioners of the returns for a candidate or ballot question voted for in one county or the canvass by the board of county commissioners last completing its canvass of the returns for a candidate or ballot question voted for in more than one county.

(b) In any primary city election, the canvass by the city council of the returns for a candidate or ballot question voted for in the city.

(c) In any general election:

(1) The canvass by the supreme court of the returns for a candidate for a statewide office or a statewide ballot question; or

(2) The canvass of the board of county commissioners of the returns for any other candidate or ballot question, as provided in paragraph (a).

(d) In any general city election, the canvass by the city council of the returns for a candidate or ballot question voted for in the city.

(Added to NRS by 1960, 263; A 1965, 1255; 1975, 940; 1977, 237; 1981, 1700; 1983, 1288; 1987, 350; 1989, 1591, 2167; 1991, 1107; 1995, 2628; 1997, 3465; 2001, 2031)

NRS 293.404 Employment and duties of recount board; persons present; count of ballots; recounts affecting more than one county; regulations.

1. Where a recount is demanded pursuant to the provisions of NRS 293.403, the:

(a) County clerk of each county affected by the recount shall employ a recount board to conduct the recount in the county, and shall act as chair of the recount board unless the recount is for the office of county clerk, in which case the registrar of voters of the county, if a registrar of voters has been appointed for the county, shall act as chair of the recount board. If a registrar of voters has not been appointed for the county, the chair of the board of county commissioners, if the chair is not a candidate on the ballot, shall act as chair of the recount board. If the recount is for the office of county clerk, a registrar of voters has not been appointed for the county and the chair of the board of county commissioners is a candidate on the ballot, the chair of the board of county commissioners shall appoint another member of the board of county commissioners who is not a candidate on the ballot to act as chair of the recount board. A member of the board of county commissioners who is a candidate on the ballot may not serve as a member of the recount board.

(b) City clerk shall employ a recount board to conduct the recount in the city, and shall act as chair of the recount board unless the recount is for the office of city clerk, in which case the mayor of the city, if the mayor is not a candidate on the ballot, shall act as chair of the recount board. If the recount is for the office of city clerk and the mayor of the city is a candidate on the ballot, the mayor of the city shall appoint another member of the city council who is not a candidate on the ballot to act as chair of the recount board. A member of the city council who is a candidate on the ballot may not serve as a member of the recount board.

2. Each candidate for the office affected by the recount and the voter who demanded the recount, if any, may be present in person or by an authorized representative, but may not be a member of the recount board.

3. Except in counties or cities using a mechanical voting system, the recount must include a count and inspection of all ballots, including rejected ballots, and must determine whether those ballots are marked as required by law.

4. If a recount is demanded in a county or city using a mechanical voting system, the person who demanded the recount shall select the ballots for the office or ballot question affected from 5 percent of the total number of precincts for that particular office or ballot question, but in no case fewer than three precincts, after notification to each candidate for the office or the candidate's authorized representative.
5. The recount board shall examine the selected ballots, including any duplicate or rejected ballots, shall determine whether the ballots have been voted in accordance with this title and shall recount the valid ballots in the same manner in which the ballots were originally tabulated. If the recount of the selected ballots for all 5 percent of the precincts selected shows a total combined discrepancy of all precincts selected equal to or greater than 1 percent or five votes, whichever is greater, for the candidate demanding the recount or the candidate who won the election according to the original canvass of the returns, or in favor of or against a ballot question, according to the original canvass of the returns, the county or city clerk, as applicable, shall determine whether the person who demanded the recount is entitled to a recount and, if so, shall order a recount of all the ballots for that office or ballot question.
6. The county or city clerk shall unseal and give to the recount board all ballots to be counted.
7. In the case of a demand for a recount affecting more than one county, including, without limitation, a statewide office or a ballot question, the demand must be made to the Secretary of State. The person who demanded the recount shall select the ballots for the statewide office or ballot question affected from 5 percent of the total number of precincts for that particular office or ballot question after notification to each candidate for the office or the candidate's representative. The Secretary of State shall notify the county clerks of the 5 percent of statewide precincts selected by the person who demanded the recount to examine the ballots in accordance with the provisions of this section and to notify the Secretary of State of the results of the recount in their respective precincts. If the separate examinations, when combined, show a total discrepancy equal to or greater than 1 percent for the candidate demanding the recount or the candidate who won the election, according to the original canvass of the returns, or in favor of or against a ballot question, according to the original canvass of the returns, the Secretary of State shall determine whether the person who demanded the recount is entitled to a recount and, if so, shall order the county or city clerk, as applicable, to recount all the ballots for that office or ballot question.
8. The Secretary of State may adopt regulations to carry out the provisions of this section.
(Added to NRS by 1963, 1382; A 1975, 941; 1979, 267; 1985, 1097; 1987, 351; 1989, 1592; 1995, 2629; 1999, 2160; 2001, 2032; 2003, 1651; 2011, 3282)

NRS 293.405 Costs of recount; commencement and completion of recount; limitation on additional recount.
1. If the person who demanded the recount does not prevail, and it is found that the sum deposited was less than the cost of the recount, the person shall, upon demand, pay the deficiency to the county clerk, city clerk or Secretary of State, as the case may be. If the sum deposited is in excess of the cost, the excess must be refunded to him.
2. If the person who demanded the recount prevails, the sum deposited with the Secretary of State, county clerk or city clerk must be refunded to the person and the cost of the recount must be paid as follows:
(a) If the recount concerns an office or ballot question for which voting is not statewide, the cost must be borne by the county or city which conducted the recount.

(b) If the recount concerns an office or ballot question for which voting is statewide, the clerk of each county shall submit a statement of its costs in the recount to the Secretary of State for review and approval. The Secretary of State shall submit the statements to the State Board of Examiners, which shall repay the allowable costs from the Reserve for Statutory Contingency Account to the respective counties.

3. Each recount must be commenced within 5 days after demand, and must be completed within 5 days after it is begun.

4. After the recount of a precinct is completed, that precinct must not be subject to another recount for the same office or ballot question at the same election.

(Added to NRS by 1960, 263; A 1965, 1255; 1977, 237; 1981, 1700; 1987, 351; 1989, 1592; 1991, 1761; 2003, 1706)

NRS 293.407 Filing of written statement of contest with clerk of district court; verification.

1. A candidate at any election, or any registered voter of the appropriate political subdivision, may contest the election of any candidate, except for the office of United States Senator or Representative in Congress.

2. Except where the contest involves the general election for the office of governor, lieutenant governor, assemblyman, state senator or justice of the supreme court, a candidate or voter who wishes to contest an election, including election to the office of presidential elector, must, within the time prescribed in NRS 293.413, file with the clerk of the district court a written statement of contest, setting forth:

(a) The name of the contestant and that he is a registered voter of the political subdivision in which the election to be contested or part of it was held;

(b) The name of the defendant;

(c) The office to which the defendant was declared elected;

(d) The particular grounds of contest and the section of Nevada Revised Statutes pursuant to which the statement is filed; and

(e) The date of the declaration of the result of the election and the body or board which canvassed the returns thereof.

3. The contestant shall verify the statement of contest in the manner provided for the verification of pleadings in civil actions.

4. All material regarding a contest filed by a contestant with the clerk of the district court must be filed in triplicate.

(Added to NRS by 1960, 263; A 1965, 1230; 1981, 1741)

NRS 293.410 Dismissal of statement of contest; grounds for contest.

1. A statement of contest shall not be dismissed by any court for want of form if the grounds of contest are alleged with sufficient certainty to inform the defendant of the charges he is required to meet.

2. An election may be contested upon any of the following grounds:

(a) That the election board or any member thereof was guilty of malfeasance.

(b) That a person who has been declared elected to an office was not at the time of election eligible to that office.

(c) That illegal votes were cast and counted for the defendant, which, if taken from him, will reduce the number of his legal votes below the number necessary to elect him.

(d) That the election board, in conducting the election or in canvassing the returns, made errors sufficient to change the result of the election as to any person who has been declared elected.

(e) That the defendant has given, or offered to give, to any person a bribe for the purpose of procuring his election.

(f) That there was a possible malfunction of any voting or counting device.

(Added to NRS by 1960, 264; A 1961, 293; 1971, 446; 1977, 246)

NRS 293.413 Time for filing statement of contest; precedence of election contest; referral to special master.

1. The statement of contest provided for in NRS 293.407 shall be filed with the clerk of the district court no later than 5 days after a recount is completed, and no later than 14 days after the election if no recount is demanded. The parties to a contest shall be denominated contestant and defendant.

2. The court shall set the matter for hearing not less than 5 days nor more than 10 days after the filing of the statement of contest. Election contests shall take precedence over all regular business of the court in order that results of elections shall be determined as soon as practicable.

3. The court may refer the contest to a special master in the manner provided by the Nevada Rules of Civil Procedure, and such special master shall have all powers necessary for a proper determination of the contest.

(Added to NRS by 1960, 264; A 1967, 850)

NRS 293.415 Depositions in election contests; trial and submission of matter. Any party to a contest may take the deposition of any witness. The matter shall be tried and submitted so far as may be possible upon depositions and written or oral argument as the court may order.

(Added to NRS by 1960, 264)

NRS 293.417 Judgment of court in election contest.

1. If, in any contest, the court finds from the evidence that a person other than the defendant received the greatest number of legal votes, the court, as a part of the judgment, shall declare that person elected or nominated.

2. The person declared nominated or elected by the court is entitled to a certificate of nomination or election. If a certificate has not been issued to him, the county clerk, city clerk or secretary of state shall execute and deliver to that person a certificate of election or a certificate of nomination.

3. If a certificate of election or nomination to the same office has been issued to any person other than the one declared elected by the court, that certificate must be annulled by the judgment of the court.

4. Whenever an election is annulled or set aside by the court, and the court does not declare some candidate elected, the certificate of election or the commission, if any has been issued, is void and the office is vacant.

(Added to NRS by 1960, 264; A 1987, 352)

NRS 293.420 Court costs.
1. If a contest proceeding is dismissed for insufficiency of the statement of contest or for want of prosecution, or if the district court confirms the election, judgment shall be rendered for costs in favor of the defendant and against the contestant.
2. If an election is annulled or set aside for errors or malfeasance of any election official in the conduct of the election or in canvassing the returns, the costs shall be a charge against the state or political subdivision in which the election was held.
3. When an election is annulled or set aside on any other ground, judgment for costs shall be given in favor of the contestant and against the defendant.
(Added to NRS by 1960, 265; A 1967, 850)

NRS 293.423 Recount of ballots at hearing of contest. At the hearing of any contest, the ballots may be opened and a recount made, in the presence of the parties or their representatives, of the votes cast for the various candidates for the contested office.
(Added to NRS by 1960, 265)

NRS 293.425 Contest of general election for office of Assemblyman or Senator: Statement of contest and other documents and materials to be filed with Secretary of State; ability of contestant to amend statement of contest; list of witnesses; depositions, investigation and presentation of evidence.
1. If the contest is of the general election for the office of Assemblyman or Senator, a statement of contest, prepared as provided in NRS 293.407, and all depositions, ballots and other documents relating to the contest must be filed with the Secretary of State within the time provided for the filing of statements of contests with the clerk of the district court. The parties to such a contest shall be designated contestant and defendant.
2. On or before December 15 of the year immediately preceding a regular legislative session:
    (a) The contestant in a contest of a general election for the office of Assemblyman or Senator may amend the statement of contest filed pursuant to this section by filing an amended statement of contest and any relevant depositions, ballots and other documents relating to the contest with the Secretary of State; and
    (b) Each party in a contest of a general election for the office of Assemblyman or Senator shall provide the Secretary of State with a list of the witnesses the party intends to present at the hearing of the contest.
3. Each party in a contest of a general election for the office of Assemblyman or Senator may:
    (a) Before the hearing of the contest:
        (1) Take the deposition of any witness in the manner prescribed by rule of court for taking depositions in civil actions in the district courts; and
        (2) Investigate issues relating to the contest; and
    (b) At the hearing of the contest, present any relevant depositions and other evidence obtained as a result of such investigation at the hearing of the contest, including, without limitation, evidence obtained after the date for filing an amended statement of contest. If a party obtains evidence after such date, the evidence may not be included in the statement of contest or amended statement of contest.
(Added to NRS by 1960, 265; A 1967, 850; 1971, 450; 1977, 246; 1981, 1742; 1995, 1660; 2003, 1699)

NRS 293.427 Contest of general election for office of Assemblyman or Senator: Seating of candidate with highest number of votes; withdrawal of statement of contest; hearing and deciding of contest by appropriate house of Legislature; certificates of election; remedy.

1. The Secretary of State shall deliver the statement of contest filed pursuant to NRS 293.425 and all other documents, including any amendments to the statement, to the presiding officer of the appropriate house of the Legislature on the day of the organization of the Legislature.

2. Until the contest has been decided, the candidate who received the highest number of votes for the office in the contested election must be seated as a member of the appropriate house.

3. If, before the contest has been decided, a contestant gives written notice to the Secretary of State that he wishes to withdraw his statement of contest, the Secretary of State shall dismiss the contest.

4. The contest, if not dismissed, must be heard and decided as prescribed by the standing or special rules of the house in which the contest is to be tried. If after hearing the contest, the house decides to declare the contestant elected, the Governor shall execute a certificate of election and deliver it to the contestant. The certificate of election issued to the other candidate is thereafter void.

5. In a contest of a general election for the office of Assemblyman or Senator, the house in which a contest was tried or was to be tried shall determine the remedy, if any, to be awarded to a party to such a contest. The remedy may include, without limitation, any costs incurred by a party in connection with the contest.

(Added to NRS by 1960, 265; A 1971, 450; 1981, 1742; 1995, 1661; 2003, 1700)

NRS 293.430 Contest of general election for office of Governor, Lieutenant Governor, justice of Supreme Court or judge of Court of Appeals: Filing of documents and other evidence with Secretary of State; seating of candidate; duties of Secretary of State and Legislature; withdrawal of contest. [Effective January 1, 2015, if the provisions of Senate Joint Resolution No. 14 (2011) are approved and ratified by the voters at the 2014 General Election.]

1. If the contest is of the general election for the office of Governor, Lieutenant Governor, justice of the Supreme Court or judge of the Court of Appeals, the statement of contest and all depositions, ballots and other documents relating to the contest must be filed with the Secretary of State within the time provided for filing statements of contests with the clerk of the district court.

2. Until the contest is decided, the candidate who received the highest number of votes for the office in the contested election must be seated and commence the duties of the office.

3. The Secretary of State shall deliver the statement of contest and all other papers and documents to the speaker of the assembly on the day of the organization of the Legislature.

4. A joint session of both houses must be convened as soon thereafter as the business of both houses permits, but not later than 10 days after receipt of statement of contest.

5. If, before the contest has been decided, a contestant gives written notice to the Secretary of State that the contestant wishes to withdraw his or her statement of contest, the Secretary of State shall dismiss the contest.

(Added to NRS by 1960, 265; A 1961, 293; 1967, 850; 1977, 247; 1981, 1742; 1995, 1661; 2013, 1779, effective January 1, 2015, if the provisions of Senate Joint Resolution No. 14 (2011) are approved and ratified by the voters at the 2014 General Election)

NRS 293.433 Decision of contest for office of governor, lieutenant governor or justice of supreme court by senate and assembly in joint session.
1. The senate and assembly meeting in joint session shall proceed to decide the contest.
2. The speaker of the assembly shall preside at such joint session, and the session shall be conducted under the joint standing rules or joint special rules adopted for the occasion.
3. The contest shall be decided by a majority vote of the elected membership of both houses not later than 30 days after the contest hearing is begun.
(Added to NRS by 1960, 266)

NRS 293.435 Certificate of election delivered after decision.
1. After both houses sitting in joint session have decided an election contest, the secretary of state shall execute and deliver a certificate of election to the person declared elected, unless such a certificate was already issued to him.
2. If a certificate of election to the same office has been issued to any person other than the one declared to have been elected, that certificate is void.
(Added to NRS by 1960, 266; A 1995, 1661)

NRS 293B.353 Clerk to allow members of general public to observe counting of ballots at central counting place; members of general public allowed to photograph or otherwise record counting of ballots; request for photograph or recording of counting of ballots.
1. The county or city clerk shall allow members of the general public to observe the counting of the ballots at the central counting place if those members do not interfere with the counting of the ballots.
2. The county or city clerk may photograph or record or cause to be photographed or recorded on audiotape or any other means of sound or video reproduction the counting of the ballots at the central counting place.
3. A registered voter may submit a written request to the county or city clerk for any photograph or recording of the counting of the ballots prepared pursuant to subsection 2. The county or city clerk shall, upon receipt of the request, provide the photograph or recording to the registered voter at no charge.
(Added to NRS by 1995, 2785)

NRS 293C.387 Returns filed with city clerk; canvass of returns; preparation and entering of abstract of votes; limitation on inspection of returns; certificates of election.
1. The election returns from a special election, primary city election or general city election must be filed with the city clerk, who shall immediately place the returns in a safe or vault designated by the city clerk. No person may handle, inspect or in any manner interfere with the returns until they are canvassed by the mayor and the governing body of the city.
2. After the governing body of a city receives the returns from all the precincts and districts in the city, it shall meet with the mayor to canvass the returns. The canvass must be completed on or before the sixth working day following the election.
3. In completing the canvass of the returns, the governing body of the city and the mayor shall:
(a) Note separately any clerical errors discovered; and
(b) Take account of the changes resulting from the discovery, so that the result declared represents the true vote cast.

4. After the canvass is completed, the governing body of the city and mayor shall declare the result of the canvass.
5. The city clerk shall enter upon the records of the governing body of the city an abstract of the result. The abstract must be prepared in the manner prescribed by regulations adopted by the Secretary of State and must contain the number of votes cast for each candidate.
6. After the abstract is entered, the:
(a) City clerk shall seal the election returns, maintain them in a vault for at least 22 months and give no person access to them during that period, unless access is ordered by a court of competent jurisdiction or by the governing body of the city.
(b) Governing body of the city shall, by an order made and entered in the minutes of its proceedings, cause the city clerk to:
(1) Certify the abstract;
(2) Make a copy of the certified abstract;
(3) Make a mechanized report of the abstract in compliance with regulations adopted by the Secretary of State;
(4) Transmit a copy of the certified abstract and the mechanized report of the abstract to the Secretary of State within 7 working days after the election; and
(5) Transmit on paper or by electronic means to each public library in the city, or post on a website maintained by the city or the city clerk on the Internet or its successor, if any, a copy of the certified abstract within 30 days after the election.
7. After the abstract of the results from a:
(a) Primary city election has been certified, the city clerk shall certify the name of each person nominated and the name of the office for which the person is nominated.
(b) General city election has been certified, the city clerk shall:
(1) Issue under his or her hand and official seal to each person elected a certificate of election; and
(2) Deliver the certificate to the persons elected upon their application at the office of the city clerk.
8. The officers elected to the governing body of the city qualify and enter upon the discharge of their respective duties on the first regular meeting of that body next succeeding that in which the canvass of returns was made pursuant to subsection 2.
(Added to NRS by 1997, 3439; A 2003, 2256; 2007, 622; 2009, 519)

Pertinent Sections of the
NEVADA ADMINISTRATIVE CODE

NAC 293.361 Restrictions on membership of recount board. (NRS 293.124, 293.247, 293.404)
1. A recount board employed pursuant to NRS 293.404 must not consist solely of members of the same political party.
2. No member of a recount board employed pursuant to NRS 293.404 may be a candidate for nomination or election to the office for which the recount of votes is demanded, or a relative of such a candidate within the second degree of consanguinity or affinity.
(Added to NAC by Sec'y of State, eff. 3-15-96)—(Substituted in revision for NAC 293.178)

NAC 293.365 Manner of conducting canvass. (NRS 293.124, 293.247)

1. The results of a recount of any election demanded pursuant to NRS 293.403 must be canvassed within 5 working days after the completion of the recount.

2. If the recount concerns a candidate or ballot question that was voted on in more than one county, the board of county commissioners of each county shall conduct the canvass in the manner prescribed in subsections 2, 3 and 4 of NRS 293.393 and subsection 1 of NRS 293.395.

3. If the recount concerns a candidate or ballot question that was voted on in one county, the board of county commissioners shall conduct the canvass in the manner prescribed in subsections 2 and 3 of NRS 293.387.

4. If the recount concerns a candidate or ballot question that was voted on in a city election, the mayor and the governing body of the city shall conduct the canvass in the manner prescribed in subsections 3 to 7, inclusive, of NRS 293C.387.

(Added to NAC by Sec'y of State by R013-00, eff. 4-4-2000)—(Substituted in revision for NAC 293.1785)

NAC 293.371 Designation of observer by Secretary of State; withdrawal of demand. (NRS 293.124, 293.247)

1. At the request of the city or county clerk, the Secretary of State will designate a representative to observe a recount of votes.

2. A person who demands a recount of votes may withdraw the demand by filing a withdrawal in writing at any time before the completion of the recount. The city or county clerk shall stop the recount as soon as practicable after the person demanding the recount notifies the clerk of the withdrawal of the demand. A person who withdraws a demand for a recount of votes may not request a continuation of the recount or a new recount of those votes.

(Added to NAC by Sec'y of State, eff. 3-15-96)—(Substituted in revision for NAC 293.179)

NAC 293.375 Determination and allocation of cost. (NRS 293.124, 293.247, 293.403, 293.405)

1. In determining the estimated or actual cost of any recount, the county or city clerk or Secretary of State:

(a) May include the cost of:

(1) Utilities used in a public building which is occupied for a recount before or after the normal hours of business;

(2) Rent for the use of a building not owned by the public;

(3) Salaries for overtime work of regularly employed members of the staff who normally handle elections;

(4) Salaries for other employees engaged for the recount;

(5) Services rendered by the personnel of the Division of Enterprise Information Technology Services of the Department of Administration or the agency of the county or city that is charged with the responsibility of administering a telecommunications or computer system for the county or city and the computer time associated with the recount;

(6) Mileage and per diem allowances for county or city clerks who attend meetings at the request of the candidate;

(7) Extra materials ordered for the particular recount, such as tally books; and

(8) Any required support from vendors of equipment or materials used in the recount.
(b) May not include the cost of:
(1) Utilities used during the regular hours of business in a public building which is normally used for the purpose of elections;
(2) Rent in a public building which is normally used for the purpose of elections;
(3) During their normal hours of employment, the salaries of regularly employed members of the staff who normally handle elections; or
(4) Payment for overtime work which is not allowed by the county or city to the county or city clerk for conducting the recount.
2. Except as otherwise provided in subsection 1, the Secretary of State may charge the candidate for actual expenses incurred in organizing and conducting a statewide recount.
3. When two or more recounts are ordered in any election district in the State, the recounts must be conducted simultaneously. If all of the candidates who requested the recount fail to prevail at the finish of the recount, the cost of the recount must be divided equally among those candidates.
[Sec'y of State, Conduct of Elections Reg. § A-35, eff. 2-28-80]—(NAC A 7-18-88; R217-97, 5-26-98; R163-07, 12-4-2007)

CARSON CITY, November 25, 1974

THE HONORABLE WM. D. SWACKHAMER, *Secretary of State*, The Capitol, Carson City, Nevada 89701

DEAR MR. SWACKHAMER:

One of the candidates for the Office of United States Senator from Nevada in the recent general election has indicated to you that he will demand a recount after the Supreme Court canvass on November 27, 1974. You have requested the advice of this office on the nature of the recount.

FACTS

The general election was held on November 5, 1974. There was an election for the Office of United States Senator on the ballot and one of the candidates received, in the unofficial tally, 620 votes more than his opponent. His opponent indicated he would seek a recount after the Supreme Court, pursuant to NRS 293.395, canvassed the vote.

QUESTIONS

Is a recount merely another count of the vote, or is it a procedure whereby the candidates may challenge the legality of the ballots? In this connection, must ballots, which are counted by electronic computer, be counted by hand or once again be counted by the computer?

ANALYSIS

There appears to be some question in the cases researched as to whether a recount is but a mathematical count of ballots previously canvassed and recorded on the tally sheet, or whether it is a recanvass of the votes involving determination as to whether

ballots were properly allowed for the original counting. It is certain that a recount is not an election contest. See Words and Phrases, "Recount." Election recounts and election contests are separate proceedings. State ex rel. Booth v. Board of Ballot Commissioners, 196 S.E.2d 299 (W.Va., 1973); 29 C.J.S., Elections § 291. A contest is an adversary proceeding, or suit, between a candidate certified as elected and one not certified for the purpose of determining the validity of an election. McClendon v. McKeown, 323 S.W.2d 542 (Ark. 1959); see also Words and Phrases, "Contest." The differentiation between recount and contest is found in the statutory scheme of NRS 293.400 et seq. There are different procedures stated for each.

It is also certain that recounts and contests did not exist at common law. Therefore, they are subject solely to statutory interpretation. They are special proceedings regulated by statute only. In re Parson, 76 Nev. 442, 357 P.2d 120 (1960); 26 Am.Jur.2d, Elections, § 295. The applicable statute for the conduct of a recount is NRS 293.404. Section 1 sets up the recount board, while section 2 describes the basic procedure for recounts. Section 2 provides that:

> The recount shall include a count of all ballots, including rejected ballots, *and shall determine whether such ballots are marked as required by law.* The county clerk shall have authority to unseal and give to the recount board all ballots to be counted. (Italics added.)

The statute specifically orders the recount board to inspect each ballot and to determine if each is marked as required by NRS 293.293 and 293.367. By this provision, the recount board conducts the recount in the same manner as was done by the election board in the original count of the ballots after the general election. In other words, in Nevada, a recount is but a replay of the procedures for inspecting and counting the ballots as was done immediately after the general election.

These inspections and determinations are to be the sole responsibility, as provided by NRS 293.404, of the recount board. The position of the candidates or their representatives is to function merely as observers with no power to challenge ballots or interfere in any way with the determination of the recount board in which ballots are to be counted or in how the ballots are to be counted. Such observers are in the same position as observers of the political parties or candidates on election night. See Rules 35 and 39 of the "Rules and Regulations for the Conduct of Primary and General Elections Promulgated by the Secretary of State." In both instances they are to merely observe and are subject to removal if they interfere in the counting procedures. If such observers believe that illegal ballots are being counted in the recount, they may record such information for their own use in bringing a contest action. Such observers, however, may not challenge ballots. The recount board alone determines which ballots are to be counted and how they are to be counted.

As additional reasoning for this view, we would note NRS 293.391, subsection 3, which states that ballots deposited with the county clerk shall not be subject to the inspection of anyone, except in cases of contested elections. The purpose of this statute, originally enacted in 1879, was to prevent tampering with the ballots by prohibiting anyone but the county clerks from handling, receiving or inspecting the ballots. State v. Baker and Josephs, 35 Nev. 1 (1912). This statute has been modified by NRS 293.404 by permitting an official recount board to inspect such ballots. However, the original intent

remains. No one but the county clerk or his designated recount board, of which the county clerk serves as chairman, may handle, receive or inspect ballots. A candidate or his representative may, however, observe the entire process.

What this means in terms of counting ballots for the recount is as follows. In the case of noncomputer ballots, a recount board hand counts the ballots, determining which ballots are to be counted. In the case of computer ballots, a recount board first inspects the ballots to determine which ballots are to be counted and then proceeds to count such ballots by means of an electronic computer. In both instances, the decision on which ballots to count and how they are to be counted lies with the recount board. In both instances, the candidates or their representatives are merely limited to roles as observers and may not interfere in the recount process. They may merely observe for the purpose of detecting irregularities which may later serve as the basis of a contest.

CONCLUSION

A recount, according to Nevada law, involves a determination by a recount board in each county as to which ballots may be counted and then the recount board proceeds to count such ballots. The process is the same as the process followed by the election boards on election night. In the case of noncomputer ballots, such ballots are hand counted by the recount boards, whereas in the case of computer ballots, such ballots are first inspected to see if they are in accordance with Nevada law on marking ballots and are then counted, as on election night, by electronic computer.

The candidates or their representatives may act as observers, but only as observers. They may not challenge ballots or interfere in any way with the counting of ballots. If observers note any irregularities in the counting of ballots, they may contest such irregularities only through an election contest.

Respectfully submitted,

ROBERT LIST, *Attorney General*

August 11, 1982

The Honorable William D. Swackhamer
Secretary of State
Capitol Complex
Carson City, Nevada 89710

Dear Bill:

Re: Meaning of "Statewide Office"
as used in NRS 293.269

You have requested advice from this office as to the meaning of the phrase "statewide office" as the same appears in NRS 293.269. This statute provides that every ballot upon which president and vice president of the United States shall contain for each office an additional line which allows the voter to indicate that he favors "none of these candidates." This option,

however, is to be made available by law to voters only with respect to statewide offices and the office of the president or vice president of the United States.

The phrase "statewide office" is not defined in NRS 293.269 or elsewhere in Chapter 293 of the Nevada Revised Statutes. Likewise, we have not found any reported decision of the Nevada Supreme Court defining "statewide office." Under such circumstances, we must look elsewhere for relevant authority.

The term "statewide office" was defined in the case of Vaughn v. Boone, 62 A.2d 351, 353 (Md. 1948) as embracing all offices to be filled by voters of the entire state. This court approved definition of the term "statewide office" appears consistent with the definition set forth at page 2462 of Webster's New International Dictionary (2nd ed.), i.e., "extending throughout the length and breadth of a state; including all parts of a state."

Based upon the limited authorities available, it is the opinion of this office that the term "statewide office" as the same appears in NRS 293.269 means only those offices whose incumbents are selected by all the voters of the entire State of Nevada.

The 1981 Legislature, having been advised by the appropriate federal authorities that two individuals could now be elected from Nevada to the House of Representatives, divided the state into two congressional districts. Only those voters residing in a particular congressional district will be able to cast their vote to select a member of Congress from that district. Therefore, the congressional districts would not appear to b a "statewide office" within the meaning of NRS 293.269, and the option of casting a vote for "none of these candidates" is not available by law with respect to those races.

We trust the above satisfactorily answers your inquiry concerning the definition for the term "statewide office" and in particular its application to the new congressional districts. If we may be any further assistance on this or other mattes of mutual concern, please advise.

Sincerely,

RICHARD H. BRYAN
Attorney General