

# Recounts: Federal, State, and Judicial Offices

Minn. Stat. § 204C.35; Minn. Rules, ch. 8235

HOUSE RESEARCH

## Under what circumstances does a recount occur?

An **automatic recount** of the results of an election for federal office, state constitutional or legislative office, or judicial office will occur if the difference in the number of votes cast for the apparent winning candidate and any other candidate is less than one-half of 1 percent (0.5 percent). An automatic recount will also occur where the difference in votes cast is ten votes or less and the total number of votes cast for an office is 400 or fewer.

The apparent losing candidate is permitted to waive an automatic recount by filing a notice with the state canvassing board.

A **discretionary recount** of the results of an election for federal office, state constitutional or legislative office, or judicial office can also occur if the difference in the number of votes cast for the apparent winning candidate and any other candidate is one-half of 1 percent (0.5 percent) or greater. A discretionary recount will only take place upon the request of an apparent losing candidate in that election. A request for a discretionary recount must be submitted within five days of the canvass of a primary election or within seven days of the canvass of a general election.

A candidate who requests a discretionary recount may specify up to three precincts to be recounted first; the candidate may waive the remainder of the recount after the specified precincts are recounted.

## Who is responsible for conducting a recount?

The state canvassing board is responsible for final certification of the results of an election for all federal and statewide offices, regardless of whether a recount is conducted. In a recount, the board is also responsible for reviewing and determining whether a challenged ballot will be included in the final election results and for certifying the result of the recount.

The state canvassing board consists of the secretary of state, two justices of the Minnesota Supreme Court, and two judges of a Minnesota district court. The judges are selected by the secretary of state. A judge may not serve on the canvassing board if the judge is simultaneously a candidate in the election (see separate fact sheet, "Canvassing Boards").

## How is the recount conducted?

Minnesota law requires all recounts to be conducted by hand. During the recount, each ballot is manually inspected. If the intent of the voter can be discerned, a vote is counted for the appropriate candidate. State law establishes 15 principles for determining a voter's intent, which must be followed by the recount officials. The official may only determine intent based upon inspection of the markings on the ballot.

In conducting a recount, only the specific race on the ballot being recounted is reviewed. Recount officials review the ballot markings only and do not consider voter eligibility, absentee ballot status, or other aspects of election law.

By rule, ballots are recounted by precinct. More than one precinct may be recounted at a time, provided that the ballots from each precinct remain physically segregated.

A candidate or a candidate's representative may be present while a recount is being conducted. Members of the public may also observe the recount process. Candidates, representatives, or other members of the public are prohibited from handling ballots or other election materials.

If the candidate or representative of the candidate disagrees with the recount official's determination of intent, the ballot may be challenged. A challenge may not be made automatically or frivolously. The precinct name, basis for the challenge, and the name of the person making the challenge is recorded on the back of the ballot. Challenged ballots are placed in a separate envelope.

Upon completion of the full recount, challenged ballots are presented to the canvassing board. The canvassing board will review each ballot, hear the basis for the challenge if the challenger is present, and issue a ruling as to the final disposition of the ballot.

### **How are the results of a recount tallied?**

The vote totals for each candidate following a recount may be different—in some cases, substantially—from the unofficial results reported on election night. This is often because the recount will turn up ballots that reveal a voter's intent, but were unable to be read by an optical-scan voting machine. For example, optical-scan voting machines do not register a vote if the voter circles a candidate's name instead of filling in the oval next to the name; provided the intent is clear upon manual inspection of the ballot, however, the vote is counted as a part of the recount.

The final results as modified, if necessary, by the recount are considered the final results of the election and are certified as final by the canvassing board.

### **What if the results of the recount show a tie?**

If, even after a recount, the results of an election show that two candidates have an equal number of votes, Minnesota law requires that the canvassing board choose the winner by lot.

If the initial results of an election show an apparent tie, an automatic recount would be required because the margin would be within the 0.5-percent difference automatic recount standard.

### **Who pays for the costs of a recount?**

The governing body responsible for conducting an automatic recount is responsible for the expenses of the recount.

A candidate who requests a discretionary recount is responsible for the expenses of the recount. At the time a candidate requests a recount, the candidate must file a security deposit in an amount determined by the election official to cover the recount expenses.

If the results of a discretionary recount overturn the apparent results of the election, the governing body conducting the recount becomes responsible for the recount expenses. A governing body also becomes responsible for recount expenses if the manual recount results differ from the results reported on election day by a margin greater than one-half of 1 percent, even if the winning candidate does not change following the recount.