

CHAPTER 13

CANVASSING AND CERTIFYING AN ELECTION

Introduction

Many voters believe that the election results they see on television on election night are the final results. In fact, the outcome of the election is not official until the completion of the canvass¹ of votes and certification of results, which sometimes may be several weeks after Election Day.

The purpose of the canvass is to account for every ballot cast and to ensure that each valid vote is included in the official results. For an election official, the canvass means aggregating or confirming every valid ballot cast and counted—absentee, early voting, Election Day, provisional, challenged, and uniformed and overseas citizen. The canvass enables an election official to resolve discrepancies, correct errors, and take any remedial actions necessary to ensure completeness and accuracy before certifying the election.

Laws and regulations for conducting the canvass vary by State and, at times, by local jurisdiction. These laws and regulations cover all aspects of the canvass, including the following:

- ★ Who is responsible for the canvass.
- ★ Who may participate in the canvass.
- ★ When the canvass can start.
- ★ When the canvass must be completed.
- ★ What information must be contained in the canvass.
- ★ Which portions of the canvass process are open to the public.

An election official creates internal elections office procedures for conducting a successful canvass of votes and a valid certification of results.

¹ 2005 Voluntary Voting System Guidelines (VMSG) definition of canvass: Compilation of election returns and validation of the outcome that forms the basis of the official results by political subdivision (VMSG Volume 1, Version 1.0, A-6). These guidelines are available at www.eac.gov.

IMPORTANT REMINDER ★ ★ ★

Jurisdictions are reminded to implement these voluntary practices only after reviewing State and local laws and regulations. Local election officials should contact their State election officials with questions about the legality of a specific policy or procedure in their State.

Policies and Procedures

An election official may begin to plan for the canvass of votes and certification of results from the very beginning of the election cycle. The election official might consider including the important on the elections office's election calendar, which includes all start and end dates for various tasks related to the canvass and certification.

Because all aspects of election administration affect the accurate counting of ballots, an election official may want to make sure all necessary policies and procedures for canvassing and certifying an election are in place before devising plans to administer the actual casting of ballots. By assigning tasks to staff early in the process, an election official would have one less responsibility to handle on Election Day.

A possible first step for an election official is to review State and local laws related to canvassing votes and certifying the results of an election. This activity would provide the election official with the legal and procedural framework for conducting the canvass. An election official also might incorporate all policies and procedures into training and educational materials.

Election Calendar

Establishing a comprehensive election calendar is one task an election official will likely complete during every election cycle. The calendar covers all the steps the election official needs to administer an

election and will likely include specific tasks, such as proofing the ballots and conducting logic and accuracy testing of voting equipment, and specific events related to canvassing votes and certifying results.

For every task on the calendar, an election official might identify the earliest possible start date, the latest possible start date, the required completion date, and the person(s) responsible for each task. Sometimes, the earliest start date is defined by the State or local election code; other times, tasks must be completed in a certain order and the earliest start date for a specific task is contingent on the successful completion of another task. The latest start date is the date by which the task must begin in order to be completed on time and to be in compliance with laws and regulations.

The typical elections office calendar includes all the steps related to the canvassing of votes and certification of results. When building the calendar, an election official will likely lean toward comprehensiveness, knowing it is best to include all steps—no matter how obvious or minor. For example, a basic calendar might include dates for the posting of notices or legal publications, appointing canvass board members, registering for observer identification, training for temporary staff and canvass board members, and briefing observers, as well as the order for processing ballots.

A detailed timeline also includes as much about the individual tasks as possible. For instance, a possible order for canvassing votes might be (1) Election Day tallies, (2) early voting tallies, (3) absentee ballot tallies, (4) uniformed and overseas citizen (UOCAVA) ballot tallies, and (5) provisional and challenged ballot tallies. This processing order varies by State and locality in accordance with code and procedures.

Types of Canvass Boards

A canvass board will likely conduct the canvass of votes after an election, but an election official may have some discretion about convening additional ballot-specific canvass boards. An election official might convene a “write-in ballot canvass board” to review any write-in votes cast. Similarly, an election official might use a separate “provisional and challenged ballot canvass board” to review provisional and challenged ballots, in accordance with State laws and regulations. In those jurisdictions with subcanvass boards, the overall canvass board would

likely review the recommendations of the various ballot-specific boards and will make a final recommendation on certification of the results.

In almost every election, exceptions and issues arise during voting that must be resolved. An “exceptions and issues board” can be used to examine and resolve questions about these ballots.

- ★ **Exceptions** include signature mismatches on absentee ballot envelopes or in the poll books, damaged ballots, overvoted ballots, count/no count determinations, and voter intent issues. In each exception situation, the exceptions and ballot board will physically review the ballot and make a decision on how the ballot will be processed, in accordance with State laws and regulations.
- ★ **Issues** are ballots that have been counted incorrectly, have been counted in error, or have not been counted at all. Examples include ballots cast in the wrong precinct, missing ballots, misplaced ballots or other materials, items left at the polling place, memory cards not reading correctly, and other discrepancies. An election official will have policies and procedures for handling each situation well before Election Day and, for transparency, will publish these policies and procedures.

As soon as an election official defines the canvass board and any ballot-specific boards, he or she can begin to recruit members to fill the positions. The composition of the boards and the rules for participating on the boards varies by jurisdiction. When laws change, an election official might consider releasing the most up-to-date information for key stakeholders and the public to see. The election official can assign a member from the elections office staff to each canvass board to work as a liaison.

Observers

In many cases, observers with a stake in the outcome of the election will want to be—or must be allowed to be—present for the canvass of votes. Therefore, it is in the best interest of the elections office to prepare rules of conduct and behavior for these observers. The rules of conduct and behavior should clearly identify the public’s rights as prescribed by State and local laws and regulations. Even if the elections office conducts a briefing for observers before the canvass, the election official may want to make the rules of conduct and behavior visible and avail-

able at entrance points to the observation room. The election official may also post the rules on the elections office Web site before Election Day.

Observer rules of conduct and behavior generally specify where observers are allowed to be during the canvass. In some States, observers must stay within predetermined “observer sites.” Some jurisdictions physically separate the observers from the canvass board and elections staff by having the observers a certain distance away but still in the canvass room. Still other jurisdictions use webcams to stream the canvass of votes live via the Internet.

The rules of conduct and behavior also outline how an observer can question the canvass boards. In some States, the public cannot talk to the canvass board members while they are working and must direct all inquiries to the individual in charge—sometimes called the election superintendent. Other jurisdictions provide observers with a form to use if they want to challenge or discuss an issue they witnessed during the canvass of votes. This form not only helps election officials manage the canvass of votes, but it also provides documentation of issues for observers who challenge an action of the canvass board.

In some jurisdictions, an election official has the right to eject from the canvass room any observers who are disruptive. An election official might craft a detailed security protocol, including the hiring of security guards, if necessary, to ensure that observers do not interfere with the canvass process. A sample ‘Election Observers Rules of Conduct and Behavior’ is provided on the last page (page 138) of this chapter.

Preparing for the Canvass of Votes

Setting up the room in which the canvass will be conducted is a very important task for an election official. The room must accommodate the canvass board or boards as well as the observers. The election official can arrange the room so that the observer sites are situated close enough to the processing areas that the observers can see the canvassing activities, but not so close that the observers can touch or interfere with the election materials or the canvass board members. The election official will find the fair solution that works with his or her available space.

The canvass board may need various materials from the elections office, such as ballots, printouts,

and computer memory media from voting machines, to complete its tasks. The materials needed may include, but are not limited to, the following:

- ★ Rosters, signature cards, etc., from all precincts, vote centers, and early voting locations.
- ★ Electronic media and printouts (paper rolls) from all precincts, vote centers, and early voting locations.
- ★ Early voting ballots.
- ★ Absentee ballot.
- ★ Provisional ballots.
- ★ Challenged ballots.
- ★ Overseas and military ballots.
- ★ Spoiled ballots.
- ★ The results of required election audits conducted after the election, where applicable.

After consulting the election calendar to find the specific date on which notification of canvassing activities will be published, an election official may be required to notify the public. The election official might consider sending the notice of canvass to key stakeholders, including the local media, and could clearly specify the dates, times, and place that the canvass board or boards will meet. The official might also send notifications to all political parties, civic organizations, and advocacy groups. Unless restricted by State or local laws or regulations, all canvass activities are usually open to the public to increase transparency and confidence in the process.

Conducting the Canvass of Votes

An election official might consider providing a brief review of the process at the beginning of the canvass of votes. During the review, the election official might introduce the canvass board or boards, elections office staff, and registered observers and also remind the public about the observer rules of conduct and behavior.

The election official can provide a place where all observers and canvass board members can sign in to the canvassing room. The sign-in form documents their presence at the canvass of votes, which may be required by State or local law. Because documenting the process at all stages is essential to the canvass of votes process, an election official may assign an elections office staff member the task of recording every action that the canvass board takes, including any votes by board members.

Canvassing means different things in different jurisdictions. In some States, the activities outlined

in the following paragraphs will occur as part of the canvass of votes. In other jurisdictions, the tasks are completed before the official start of the canvass of votes, and, in still other jurisdictions, the tasks are not completed as individual steps and are accomplished in some other manner or order. The U.S. Election Assistance Commission (EAC) does not endorse one method over another. The following paragraphs present election officials with potential ways of accounting for votes following an election. As always, election officials should be certain to review State and local laws and regulations before adopting any practice.

Inspecting Returns—In some jurisdictions, the accounting of votes begins with an inspection of the returns from voting sites—early voting sites, polling places, vote centers, or any combination. The election official or canvass board compares the number of ballots tallied with the number of voters who cast ballots at one of the aforementioned locations. In the event the election official or the board finds discrepancies in the number of ballots cast and the number of voters who officially signed in, State and local law dictates how to remedy the problem, sometimes through an “exceptions and issues” subcanvass board.

Many jurisdictions have a procedure by which the chief poll worker in a polling place can record any problems that happened on Election Day. This documentation might include signature mismatches, overvotes, damaged ballots, and other errors. These types of discrepancies, as well as others not enumerated here, are usually resolved by the end of the canvass of votes.

Duplicating Ballots—For example, the canvass board or the exception and issues subcanvass board might review all ballots that have to be duplicated before processing. Duplication is necessary if a paper ballot is damaged in such a way that it cannot be counted in the usual manner, usually via an electronic ballot counter. For duplicated ballots, which represent valid votes, both the “original” and the “duplicate” ballots are clearly marked in case of a recount.

Reviewing Rejected Ballots—The canvass board may review ballots that have been rejected. In some jurisdictions, at least two members of the board are assigned to examine each rejected ballot and to confirm the rejection.

Reconciling Ballots Cast Outside the Polling Place—By the end of the canvass of votes, the canvass board will have reconciled all ballots cast outside the polling place and precinct. These ballots include regular absentee ballots and UOCAVA ballots. Although the actual accounting of the ballots will not change, an election official often makes extra effort to notify UOCAVA voters when their ballots are rejected. If an election official rejects a UOCAVA ballot because the voter is not registered, the election official includes a registration card with the notification of rejection. The canvass board may also account for any Federal Write-In Absentee Ballots that were mailed and received.

Processing Provisional And Challenged Ballots—In some jurisdictions, the canvass board processes the provisional and challenged ballots. The number of accepted and rejected provisional ballots, when added up, should be equal to the total number of provisional ballots cast. The number of accepted and rejected challenged ballots, when totaled, must be equal to the total number of challenged ballots cast. If these counts do not balance, the chief poll workers from the various polling places often provide a report explaining the discrepancies.

Federal law requires election officials to establish a free access system through which provisional voters can check the status of their ballots if they qualified for provisional ballots under the Help America Vote Act. The law also requires voters to be notified about the existence of such a system at the time they cast a provisional ballot.²

If required under State or local law, an election official may need to send a written notification to voters whose provisional or challenged ballots are rejected and provide the reason for the rejection. If a provisional ballot is rejected because the voter was not registered, the election official might consider sending the voter a registration form with the written notification. Similarly, a registration form could

² 42 U.S.C. § 15482.

be made available through the federally mandated free access system. In some jurisdictions, such as Boone County, Missouri, the provisional ballot affidavit also serves as a registration form for future elections, which eliminates the need to mail any forms to the voter after the election.

Documenting the Canvass

To provide an explanation of any exceptions and issues that occurred during the election and any remedial action taken to correct the problems, an election official can ensure full documentation of the canvass process. The final report of the canvass board often consists of at least three parts: the returns, the informational statistics, and the narrative.

- ★ The *results* are the tally of all valid ballots cast in the election. They are the vote totals from the election. The canvass board presents the results, usually in the form of a report, from the election management system, with no explanation or analysis.
- ★ The *informational statistics* are the data from the election and include, for example, the number of ballots cast by category (e.g., in-person, absentee, provisional, challenged), the number of ballots counted, the number of ballots rejected, the number of absentee ballots sent out, the number of absentee ballots returned, and the number of absentee ballots counted. An election official can use these data to provide an overview of the election and information about the administration of a specific election to the media, public, and EAC.
- ★ The *narrative* details the issues encountered during the process. In the narrative, the canvass board or election official does not report data but rather describes any audits performed. It might also include a discussion and rationale of any corrective actions taken to remedy issues that arose during the canvass. In general, the narrative tells the story of the election with the goal of instilling confidence in the accuracy of the election results.

Certifying the Results of an Election

The canvass board may be responsible for releasing the certification of election results after it reconciles the results from precincts, early voting sites, absentee voting, provisional and challenged ballots, and uniformed and overseas citizen ballots.

In some jurisdictions, the report that the canvass board releases represents the official certification of the election.

The certification of results often includes information about the following:

- ★ Reconciled precinct totals, including provisional and challenged ballots.
- ★ Reconciled vote center totals, including provisional and challenged ballots.
- ★ Reconciled write-in totals, including provisional and challenged ballots.
- ★ Reconciled UOCAVA ballot totals.
- ★ All duplicated ballots.
- ★ All replacement ballots issued at the polling place after a ballot was spoiled.
- ★ All rejected ballots.
- ★ Documentation of the canvass board's activities.

The certification of results might take place during the final meeting of the canvass board or separately, as specified in State and local law. Just as the election official does with other parts of the canvassing and certification processes, he or she might consider reaching out to the public and key stakeholders, especially the media, encouraging them to attend this meeting. The meeting at which the certification of results is made is an opportunity for the election official to review publicly all the documentation made during the canvassing process, including certified returns, statistics, and a narrative.

An election official might consider having his or her staff prepare detailed minutes of the meeting at which the certification of results is made so that he or she can include a record of the meeting in a documentation package. In some jurisdictions, the meeting at which the certification of results is made is considered an open meeting with specific requirements for public notice and the types of records that the election office must create and maintain.

If required by State or local law, the election official may need to provide each candidate, election district with a candidate or issue on the ballot, and chief State election official with a notice of the certification of the election. The election official may also make available for public review all documentation of the canvass and certification of results, including, but not limited to, a notice posted on the elections office Web site for easy accessibility.

OFFICIAL CANVASS
ELECTION OBSERVER RULES OF CONDUCT AND BEHAVIOR (SAMPLE³)
OBSERVERS HAVE THE RIGHT TO VIEW ALL CANVASS OPERATIONS

1. All observers must report and sign in daily at the check-in desk.
2. A Canvass Observer badge will be issued and must be worn at all times. The observer's name and who they are representing (candidate/organization/campaign) will be placed on the badge.
3. A staff member will escort the observer to the viewing area. Observers are not permitted to enter any area except the viewing area.
4. When leaving for the day, the observer will return the badge to the check-in desk.
5. Observers are not allowed smoking, food, or beverages in the viewing area. Observers are not permitted in the canvass work areas, except when permitted by a canvass supervisor.
6. Observers must set cell phones to vibrate or "all sound off" mode while observing the canvass. They must make all telephone calls outside the viewing area.
7. The observer's function is to observe the procedures. Observers cannot assist in operations. They cannot touch or handle any ballots or other election-related materials.
8. Observers will address all questions concerning a procedure to the supervisor in charge and may not direct questions to the canvass board members conducting the canvass.
9. No more than one (1) observer per candidate/organization/campaign is allowed to observe the canvass board work. Observers should avoid physical contact with canvass board members.
10. Observers will hold discussions and conversations outside the designated viewing area.
11. Observers will be allowed into the viewing area only when canvass board members are performing canvass operations. Observers and canvass board members must leave the work and viewing areas during breaks and lunch periods so that the areas remain secure.
12. Operations will continue as scheduled whether or not an observer is present.
13. **BALLOT SECURITY IS A PRIMARY CONCERN.** Violation of security by an observer will result in expulsion from the building or relocation by Sheriff Deputies or building security staff.

³ Jurisdictions should review State and local laws and regulations when creating their own election observers' rules for conduct and behavior.