



ELECTION RECOUNTS

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I. INTRODUCTION

In Massachusetts, recounts are a quasi-judicial procedure based on the General Laws, court decisions, and customs developed from practical experience. The purpose of a recount is to ascertain the will and intention of the voters. McCavitt v. Registrars of Voters of Brockton, 385 Mass. 833 (1982).

The rights of all parties are clearly delineated in state law. Section 135 of chapter 54 of the Massachusetts General Laws is the principal reference for the procedures in this booklet. Sections 134, 135B, 136, and 137 of chapter 54 also contain relevant information.

The following procedures apply generally to recounts of all offices and questions decided in all local and state preliminaries, primaries, and elections. District-wide and statewide recounts after state primaries and elections (including presidential primaries, except for ward and town committees) have additional requirements which are found in a separate section IV of this booklet.

II. BEFORE THE RECOUNT

Petitioning for a Recount

Candidates may initiate a recount by petitioning the local election official in the city or town in which the recount is being requested. Only candidates for an office to be recounted may petition for a recount. Any registered voter of the city or town may petition for a recount of a ballot question. The chart on page 4 shows petition filing deadlines and signature requirements for different types of recounts. In every case, it is wise to secure more signatures than required.

Where to get Petition Forms

Recount petition forms are available from the Election Division of the Office of the Secretary of the Commonwealth and from city or town clerks or election commissioners. The petitioner must file a separate recount petition in each ward of a city or precinct of a town in which he or she desires a recount.

The Petition Form

Candidates who request a recount must specify on the petition form the office to be recounted – not the names of the candidates for that office. The form contains a statement that the signers have reason to believe that the election records are erroneous and that a recount will affect the results of that election; however, the petitioner must also specify the particular reasons for the recount request. Care should be taken in wording the reasons for the recount on the petition as no other count may be made or other information taken from the ballots than what is specified in the petition.

In communities voting by optical scanner ballot, petitioners who want a hand count of the ballots must state this on the form by checking the appropriate box.

Voters signing a recount petition must sign in person as registered, or substantially as registered, listing their current address of registration. The standards for certification of signatures on recount petitions are contained in the Code of Massachusetts Regulations, 950 CMR § 55.03.

Voters signing petitions for recounts of political party primaries must have been enrolled in that party on or before the last day to register to vote in that primary. G.L. c. 54, § 40A.

The signature of one signer for each ward of a city or precinct of a town must be notarized in the notarization certificate printed on the petition sheet. Each petition sheet must be accompanied by a written request for a recount signed by the candidate on whose behalf it is being conducted. The candidate's request is printed on the petition form in the upper left hand corner. The candidate need only sign one petition in the proper place.

Filing Procedure

Recount petitions must be filed with city or town clerks, except in communities with election commissions. In such cases, the petitions should be filed with the election commission.

Note: When filing any recount petition for a special state election, it is also essential to file a written statement of your intention to seek a recount with the Secretary of the Commonwealth, no later than 5:00 P.M. on the sixth day after the election. G.L. c. 54, §116.

Certification

Upon receipt of recount petitions, the city or town clerk will deliver them to the registrars of voters, along with the following materials from the election: sealed envelopes containing the ballots cast, including absentee and challenged ballots; original tally sheets; envelopes containing spoiled and unused ballots; voting lists used at the election; certificates issued to voters omitted from the voting list; written affirmations of current and continuous residence; precinct clerks' election records; applications for absentee ballots and absentee ballot envelopes; the list of voters who were sent absentee ballots, indicating whether the ballots were cast or rejected as defective or whether such persons voted in-person; and the sealed envelopes containing the ballots rejected as defective.

After examining the petition and statement and certifying the registration of the signers, the registrars shall schedule the recount. A recount may not be held before the deadline for filing recount petitions.

<u>Filing Deadlines and Signature Requirements</u>			
Recount Area*	Local Filing Deadline After a Primary or Preliminary Election	Local Deadline After Election	Number of Registered Voter Signatures Required
City Ward (Except Boston)	5:00 p.m. on the 6th day after	5:00 p.m. on the 10th day after	10 or more from each ward
Boston Ward	5:00 p.m. on the 6th day after	5:00 p.m. on the 10th day after	50 or more from each ward
Towns With Under 2,500 Voters or Without Precincts	5:00 p.m. on the 6th day after	5:00 p.m. on the 10th day after	10 or more from the town
Towns With Over 2,500 Voters and precincts	5:00 p.m. on the 6th day after	5:00 p.m. on the 10th day after	10 or more from each precinct
*See the special requirements for district-wide (including statewide) recounts after the state primaries and elections, on page 10.			

Setting the Date for the Recount

After examining the recount petition and certifying the registration of the signers, the registrars must set the recount time and place and give at least three days written notice of this to each candidate for the office for which the recount was petitioned. In the case of a recount on a ballot question, they shall give notice to the person designated by the petitioners and to the appropriate committee organized on the other side. For a recount of any office or question appearing on a state primary or state election ballot, the registrars must schedule the recount to be held within six days of the filing deadline for a primary recount petition and within ten days of the filing deadline for an election recount petition. The registrars may decide when the recount will be held as soon as they receive the petition, but it may be advisable to wait until after the petition filing deadline, if other recounts are possible.

The notice sent by the registrars must include the date and time of the recount in addition to the number of agents allowed, which will be equal to the number of persons counting and checking ballots for the registrars at the recount. Upon setting the date and time of a recount for an office or question appearing on a state primary or state election ballot, the registrars shall notify the Secretary of the Commonwealth in writing of what office or question is to be recounted, the time and place of the recount, and the number of observers (agents) to which each candidate is entitled.

Discontinuing a Recount

If the candidate who filed the petition for a recount files a written request with the city or town clerk that the recount be discontinued, the clerk shall immediately order the recount discontinued and shall notify each candidate that unless a written objection is received within 72 hours after the notice was sent, the recount shall be discontinued. If a written objection is received within 72 hours, the recount must continue. If no objections are received within 72 hours, the recount is discontinued.

Preparation for the Recount

Responsibility for the good order and smooth functioning of the recount proceedings lies with the registrars or election commissioners. It is preferable to have all four registrars or election commissioners at the recount, but a minimum of three is required. If necessary, a temporary registrar may be appointed by the mayor or selectmen in accordance with the provisions and procedures set forth in section 20 of chapter 51 of the General Laws.

The registrars or election commissioners sit as “judges” of the protested ballots; they do not tally the votes, but may appoint the number of clerks necessary to do the actual recounting. In addition to the ballot readers and clerks who record the ballots (tally clerks), there should be “runners” to bring the protested ballots to the registrars for examination and decision, and if desired, a stenographer to record the protested ballots. Designated “agents” or legal counsel can make arguments respecting the protested ballots **only** to the registrars, not the ballot readers or tally clerks.

Once a recount begins, all candidates (or ballot question representatives) have exactly the same rights, regardless of whether or not they requested the recount.

Each candidate for the office in question or person representing each side of a ballot question is allowed to witness the recount, accompanied by one or more counsel if desired. Each candidate or representative may also be represented by agents. Up to one agent for each officer or clerk reading the ballots or recording the votes is allowed. These agents must be appointed by the candidate or counsel in writing and have the right, along with the candidate and counsel, to watch and inspect the ballots, tally sheets and all other papers used in the recount, and to watch every individual act performed in connection with the recount.

The general public may also witness the recount but cannot participate.

Candidates or their counsel should, prior to the recount, consult with the registrars or election commissioners regarding procedures and in turn, instruct their agents. In some communities the registrars or commissioners instruct all parties before the recount begins. Some send out instructions to the candidates or agents in advance of the recount.

The set-up of the recount will vary depending on the size of the city or town, the number of ballots to be counted, the number of teams and tables, the space available, as well as

other factors. The number of counting tables will be determined based on the number of teams counting the ballots. The table for the registrars, with places for the candidates' counsel or representatives, should be separate from the tables where the counting takes place.

All candidates for the office in question may, upon written request to the city or town clerk, obtain and examine the record books and the precinct clerk's book, where used; and may require that a count be made of the number of persons checked on the voting lists as having voted and that the figures on each ballot box register be examined. G.L. c. 54, § 108.

III. THE RECOUNT

After the registrars and their clerks are in place, the candidates' representatives and agents are admitted to the recount area upon presentation of their written authorization. Only those people directly involved in the recount can be present within the recount area; however, the public and the press must be admitted into the room where the recount is being conducted, to observe the proceedings. Members of the public must remain outside the recount area. In some communities, badges are provided to identify the people present and their different roles and some communities use a "guardrail" to designate the recount area.

The registrars must supervise the removal of the ballots from the vault, and check for proper seals and markings. The candidates' counsel may accompany the registrars and ascertain to their satisfaction that all is in order.

Ballots to be Counted by Hand

Before the ballots are counted, they are first separated into blocks of 50 and each block is put into an envelope. Each counting team will receive a block of 50 ballots and a tally sheet on which to record the votes. While all ballots are to be counted, only the office or question being recounted is to be read and tallied. Those ballots protested during the recount are counted in accordance with the decision of the majority of the board of registrars. If there is a 2 – 2 vote by the board of registrars, the ballot is counted as called by the ballot reader. The recount includes counting all ballots cast for all the candidates for the office, blanks cast, all spoiled and unused ballots, and absentee ballot envelopes and applications.

Where hand-counted paper ballots are used, the boxes should be brought into the room one at a time and an envelope containing a block of 50 ballots with its tally sheet should be delivered to each counting team one at a time.

There should be two clerks on each team, facing each other across the table, one reading the ballot and one marking the tally sheet. An agent for each candidate may stand behind each clerk to watch and may keep a tally, or make notes.

Only the registrars and their clerks are permitted to handle the ballots. No marks whatsoever are to be made on the ballots. For paper ballots, each ballot should be spread fully on the table in front of the ballot reader so that everyone at the table may view first the outside, and then the inside of the ballot. A red pen or pencil is the only writing instrument to be used at the table by the tally-clerk, who enters the ballot count on new tally sheets. Conversation should be kept to a minimum.

The candidates' counsel and agents should also try to maintain tallies.

The Will of the Voters

All parties to a recount should keep in mind that the will of the voters, if it can be determined with reasonable certainty, must be given effect. If the marks on the ballot fairly indicate the voter's intent, the vote should be counted in accordance with that intent, as long as the voter has essentially complied with the election law. The voter is not disenfranchised because of minor irregularities. Where, however, the ballot is marked in a way that leaves the intent of the voter unclear, the vote should not be counted. See section V for examples of contested ballot marks. McCavitt v. Registrars of Voters of Brockton, 385 Mass. 833 (1982); Kane v. Registrars of Voter, 328 Mass. 511, 518 (1952); Munn v. Dabrowski, 335 Mass. 41 (1956).

Protested Ballots

When a ballot is protested by any agent, the tally clerk should not record the vote. The tally clerk should call the runner to take the ballot to the registrars' table where they may make their determination in the presence of the candidates' counsel. If all the counsel agree with the registrars' ruling, the runner returns the ballot to the table where it was originally protested and reports how the registrars ruled. The tally clerk records the vote as ruled and the ballot is resealed with the remainder of the ballots from that block. If any counsel protests the ruling of the registrars, one registrar signs the back of the protested ballot and above his signature puts the block number, the office for which the vote was protested, and the name of the candidate for whom the vote was counted. This ballot is returned to the table for counting according to the registrars' ruling, and then brought back to the registrars to be segregated with other protested ballots.

If the clerks finish counting the block before the runner returns with the protested ballot, they should wait for its return before tabulating the block total or opening a new block envelope.

Absentee Ballots Rejected as Defective

During a recount, the registrars examine the sealed inner ballot envelopes of absentee ballots which have previously been rejected as defective to determine whether each such ballot should have been rejected or accepted. The ballot must be rejected if the envelope is not signed by the voter. The envelope should not be rejected merely because a signature is difficult to read.

The registrars shall make a statement on the back of each of these inner ballot envelopes giving their reason for rejecting or accepting these ballots during the recount. The

statement must be signed by a majority of the registrars. This determination is subject to protest as each envelope is examined at the recount. If the registrars decide to accept an inner envelope originally rejected as defective, they must open the envelope, count the ballot, and attach the envelope to the ballot.

Write-in and Sticker Votes

Section 77 of chapter 54 of the General Laws provides that a voter intending to write-in a candidate on the ballot should insert “the name and residence of such candidate in the space provided.” The court has recognized the address requirement as a direction to the voter rather than a mandatory requirement.

In O’Brien v. Board of Election Commissioners, 257 Mass. 332, 338-339, 153 N.E. 553, 556 (1926) the court ruled that “if the intent of the voter can be determined with reasonable certainty from an inspection of the ballot, in the light of the generally known conditions attendant upon the election, effect must be given to that intent... The omission of residence... on some ballots on which the name has been written by the voters rightly was found not to invalidate such votes.” See also Maiewski v. Board of Registrars of Voters, 347 Mass. 681, 199 N.E. 2 d 680 (1964).

An “X” placed to the right of the candidate’s name is permitted, but not required on a write-in or sticker vote.

Votes written in for candidates who are already printed on the ballot for the same office are considered over-votes and must be tallied as blanks.

Challenged and Provisional Ballots

If any challenged or provisional ballots were voted on Election Day, the registrars must also decide whether to count or reject each such ballot. Challenged ballots result when a voter whose name appears on a voting list is challenged at the polls for some legal reason as set forth in section 85 of chapter 54 of the General Laws. Challenged ballots will have been cast in the ballot box and counted on Election Day, and are identified with the name and address of the voter, as well as the reason for the challenge.

Provisional ballots may have been used in certain circumstances: if a voter’s name did not appear on the voters list, but the voter believed they were registered; if a voter was required to present identification under the Help America Vote Act, but was unable to do so; and in primaries, if a voter believed they were listed with an incorrect party affiliation. G.L. c. 54, § 76C. The disposition of a provisional ballot is made after every primary and election, regardless of whether there is a recount.

For challenged ballots, the registrars may hold a hearing at the recount on whether or not to count each challenged ballot but must hold a hearing when requested as part of the recount. This will usually require deciding whether the challenged voter in question was eligible to vote. For this purpose, the registrars may issue summonses for witnesses or documents, and may administer oaths. G.L. c. 51, §§ 48, 49; G.L. c. 233, § 8. The registrars should also notify counsel for all candidates (or for committees concerning a

ballot question) of the time and place of these hearings, and give counsel an opportunity to examine and cross-examine witnesses, present evidence, and make arguments of law. The registrars should then vote whether to count each ballot; a tie vote results in counting a challenged ballot. The registrars should indicate on the back of each ballot their decision, signed by those registrars who agree. If they decide to count it, they should add the vote to the tally.

Optical Scanner Recount Procedures

If the recount petition does not include a request to hand count the optical scan ballot, the recount consists of inserting the optical scanner ballots, including absentee ballots, into the vote tabulator, which has been programmed and tested according to statute. Challenged ballots are examined and, if ruled acceptable, are included in the tabulation. Any optical scanner ballot which is rejected by the vote tabulator or which was mutilated so that it could not be inserted in the vote tabulator should be counted by hand.

Hand counting optical scanner ballots is similar to counting paper ballots. The general rule about giving effect to the will of the voter must be followed. Write-in votes are counted whether or not the voter has omitted the address or failed to mark the vote indicator for the write-in or sticker candidate. Sealed envelopes containing any absentee ballots rejected as defective are examined by the registrars. See page 7 for protested ballot procedures.

When the Recount is Complete

When the recount is complete, and with the candidates' counsel present if they wish, ballots must be properly sealed in their containers, certified and returned to the vault. The protested ballots must be placed in the vault in a separate, sealed and certified envelope. Only one recount is permitted. The registrars may not order a "re-count" unless the number of ballots in a block does not add up to the block count (e.g. there is a block of fifty ballots and the count shows 24 for "X," 24 for "Y" and 1 blank).

The registrars must make and sign a statement of their determination of the results of the recount. All materials, including the statement, must be returned to the city or town clerk or election commissioners, who must amend the final vote tallies. The amended records stand as the true record of the election.

The results of any recount of votes cast at a primary or state election, whether or not the tally has changed, must be reported immediately to the Secretary of the Commonwealth.

IV. AFTER THE RECOUNT

Rulings made by the board of registrars are binding and any appeal must be directed to the Superior Court in a civil action. G.L. c. 56, § 59; McCavitt v. Registrars of Voters of Brockton, 385 Mass. 833 (1982). Any appeals should be pursued as quickly as possible after the recount has been completed. In the case of an appeal, only the ballots recorded

as protested at the recount are required to be produced, except by express order of the court.

No officer recounting ballots may, except as required by law, make any statement or give any information regarding the ballots cast.

In state elections and primaries, the results of the election are declared by the statutory deadline for certification, even if a recount petition has been filed.

In city elections, the city clerk shall not declare the result of an election until the time for filing a petition for a recount has expired. If a recount petition has been filed, the results of the election are not declared until the ballots are recounted and the results amended. G.L. c. 54, § 137.

In town elections, the results of an election are declared as soon as they are certified, even if a recount petition is filed. After the recount has been completed, if it appears that a person was elected other than the person who was previously declared to be elected, the registrars must sign a certificate of that fact. The certificate must also state the number of votes for each candidate, as determined by the recount. The signed certificate must then be filed with the town clerk. The town clerk must record the certificate and, within 24 hours, deliver a copy of the certificate to both the candidate originally declared to be elected and to the candidate who by the recount certificate appears to be elected. G.L. c. 54, § 135.

The ballots and other materials for local elections must be preserved for 30 days. Ballots and other materials from biennial state primaries and elections (in which ballots federal candidates appear on the ballot) must be preserved for 22 months. 52 USC § 20701. In order to compel a clerk to preserve materials beyond the required period, a candidate or supporter or opponent of a ballot question must file with the city or town clerk or election commission a written claim to the office or declaration of intention to contest the election within 30 days of the election. G.L. c. 54, § 134.

V. DISTRICT-WIDE RECOUNTS (Including Statewide)

While basic recount procedures also apply to district-wide (including statewide) recounts of offices or questions voted on at a state primary, state election or presidential primary (except for ward and town committees), there are some additional procedures. **These procedures may be used only if the margin of victory is not more than one-half of one percent (0.5%) of the votes cast for an office or question.**

Please note that procedures and deadlines for district-wide and statewide recounts may be changed for certain elections pursuant to state law. Questions regarding the petitioning process for a specific election should be addressed to the Elections Division.

Petitioning

Petitioners must use different petitions for voters to sign from each city and town in the district. District-wide and statewide petition forms are similar to regular recount petitions on which candidates must specify on the petition form the office to be recounted and contains a statement that the signers have reason to believe that the election records are erroneous and that a recount will affect the results of that election. Further, the petitioner must also specify the particular reasons for the recount request. In communities voting by optical scanner ballot, petitioners who want a hand count of the ballots must state this on the form by checking the appropriate box.

In district-wide or statewide recounts of state primaries, petitions must be submitted to local registrars of voters no later than 5:00 p.m. on the third day after the state primary. The petitions must then be submitted to the Secretary of the Commonwealth no later than 5:00 p.m. on the seventh day after the state primary.

In district-wide or statewide recounts of state election offices or questions, the petitions must be submitted to the local registrars of voters no later than 5:00 p.m. on the seventh day after the election. The petitions must then be filed with the Secretary of the Commonwealth no later than 5:00 p.m. on the fifteenth day following the state election.

For a district-wide recount, the petitions must be signed by one-fourth of the number of voters required to sign a nomination paper to qualify a candidate for the ballot for that office. For example, to request a recount of the office of state representative, petitioners would need to file no less than 38 signatures – one-fourth of the 150 signatures required in order for a candidate's name to be printed on the ballot for state representative. **Check with the Elections Division for the exact number.** For a statewide recount, the petition must be signed by at least 1,000 registered voters of the Commonwealth. There is no limitation on where signatures may be obtained in the district; they may all be obtained in the same city or town, however, separate petition sheets must be used for each municipality. Further, at least one signature on the entire petition must be sworn to before a notary public. For a state primary district-wide or statewide recount petitions, signers must have been enrolled in the proper party as of the last day to register to vote for the primary, which is twenty days prior to the date of the primary.

After a state primary, the Secretary of the Commonwealth will order the district-wide recount conducted as soon as it appears to him that the difference in votes is within the required margin and that a sufficient number of signatures have been submitted.

After a state election, the Secretary of the Commonwealth must hold the recount petitions until after the official tabulation of votes is made by the Governor and Council. If the difference in the number of votes cast is greater than one-half of one percent of the total number of votes cast, the district-wide recount will not be held. If the difference is one-half of one percent or less of the total number of votes cast, the Secretary of the Commonwealth will order that the registrars of each city and town conduct the recount.

Setting the Date of the Recount

The board of registrars in each city or town shall set the date of the recount for an office or question that appeared on a state primary for a date not more than 6 days after the deadline for filing a recount petition for a primary and not more than 10 days after the deadline for filing a recount petition for an election. For statewide offices and questions, the recount date is not set until after official tabulation as noted above.

Retention of Ballots

If a district-wide recount petition has been filed, all ballots must be retained by the city and town clerks for at least **60 days** after the election.

Notice

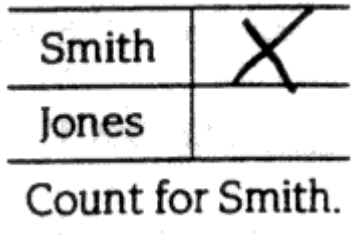
Written notice of the time and location of the recount must be given by local registrars to all candidates for the office to be recounted in a district-wide recount at least three days in advance of the recount. In the case of a recount on a question, committees that favor and oppose the question are treated as candidates and as such are entitled to receive notice of the recount and have counsel and observers attend.

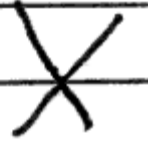
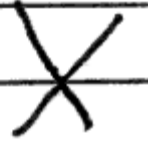
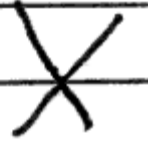



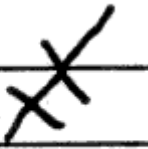

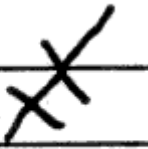

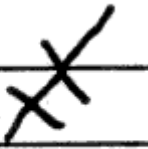


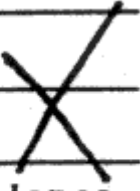

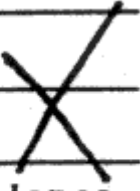

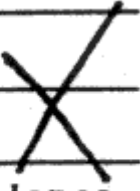
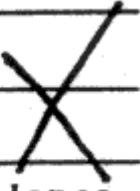
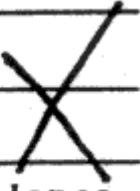
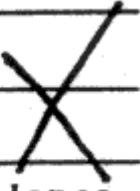
When the Recount is Complete


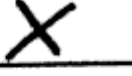

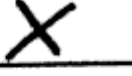

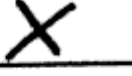









When the recount is complete, the registrars shall enclose and seal the ballots in envelopes or containers, keeping all protested ballots in a separate envelope; make and sign a statement of their determination of the questions raised; and return all materials to the city or town clerk. The city or town clerk will amend the records, which stand as the true record of the election, and sends copies immediately to the Secretary of the Commonwealth.

VI. EXAMPLES OF CONTESTED BALLOT MARKS

The below votes are examples of court rulings on contested ballots in election cases.

	<p>Example 1 Cross or check within parallel lines containing name of candidate.</p> <p>Legal References: <i>Beauchemin v. Flagg</i>, <i>229 Mass. 23, 118 N.E. 2d 251 (1918).</i></p> <p><i>Coughlin v. LeClair</i>, <i>294 Mass. 434, 2 N.E. 2d 461 (1936).</i></p>
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<table border="1" style="width: 100%; height: 100%;"> <tr> <td style="width: 50%; text-align: center;">Smith</td> <td style="width: 50%; text-align: center;"></td> </tr> <tr> <td style="text-align: center;">Jones</td> <td></td> </tr> </table> <p style="text-align: center;">Count as a blank.</p>	Smith		Jones		<p>Example 2 Apex of cross on line.</p> <p>Legal Reference: <i>Coughlin v. LeClair,</i> <i>294 Mass.434, 2 N.E. 2d 461 (1936).</i></p>
Smith					
Jones					
<table border="1" style="width: 100%; height: 100%;"> <tr> <td style="width: 50%; text-align: center;">Smith</td> <td style="width: 50%; text-align: center;"></td> </tr> <tr> <td style="text-align: center;">Jones</td> <td></td> </tr> </table> <p style="text-align: center;">Count for Smith.</p>	Smith		Jones		<p>Example 3 Diagonal marks used with some consistency.</p> <p>Legal Reference: <i>Gilligan v. Registrars of Voters,</i> <i>323 Mass. 346, 82 N.E. 2d 3 (1948).</i></p>
Smith					
Jones					
<table border="1" style="width: 100%; height: 100%;"> <tr> <td style="width: 50%; text-align: center;">Smith</td> <td style="width: 50%; text-align: center;"></td> </tr> <tr> <td style="text-align: center;">Jones</td> <td style="text-align: center;"></td> </tr> </table> <p style="text-align: center;">Count for Jones.</p>	Smith		Jones		<p>Example 4 More than one line intersecting diagonal, if distinguishable from attempt to obliterate.</p> <p>Legal Reference: <i>Gilligan v. Registrars of Voters,</i> <i>323 Mass. 346, 82 N.E. 2d 3 (1948).</i></p>
Smith					
Jones					
<table border="1" style="width: 100%; height: 100%;"> <tr> <td style="width: 50%; text-align: center;">Smith</td> <td style="width: 50%; text-align: center;"></td> </tr> <tr> <td style="text-align: center;">Jones</td> <td style="text-align: center;"></td> </tr> </table> <p style="text-align: center;">Count for Smith.</p>	Smith		Jones		<p>Example 5 "X" clearly appears in Smith box; diagonal line in Jones box inferred to be error.</p> <p>Legal Reference: <i>Gilligan v. Registrars of Voters,</i> <i>323 Mass. 346, 82 N.E. 2d 3 (1948).</i></p>
Smith					
Jones					
<table border="1" style="width: 100%; height: 100%;"> <tr> <td style="width: 50%; text-align: center;">Smith</td> <td style="width: 50%; text-align: center;"></td> </tr> <tr> <td style="text-align: center;">Jones</td> <td></td> </tr> </table> <p style="text-align: center;">Count for Jones.</p>	Smith		Jones		<p>Example 6 Apex of cross within Jones box.</p> <p>Legal Reference: <i>Kane v. Registrars of Voters,</i> <i>328 Mass. 511, 105 N.E. 2d 212 (1952).</i></p>
Smith					
Jones					

<table border="1"> <tr> <td>Smith</td> <td></td> </tr> <tr> <td>Jones</td> <td></td> </tr> </table> <p>Count for Jones.</p>	Smith		Jones		<p>Example 7 Obliteration or erasure.</p> <p>Legal References: <i>Kane v. Registrars of Voters</i>, 328 Mass. 511, 105 N.E. 2d 212 (1952).</p> <p><i>Munn v. Dabrowski</i>, 335 Mass. 41, 138 N.E. 2d 570 (1956).</p> <p><i>DePetrillo v. Registrars of Voters</i>, 342 Mass. 13, 171 N.E. 2d 843 (1961).</p> <p><i>Desjourdy v. Board of Registrars of Voters</i>, 358 Mass. 644, 266 N.E. 2d 672 (1971).</p> <p><i>Morris v. Board of Registrars of Voters</i>, 362 Mass. 48, 283 N.E. 2d 854 (1972).</p>
Smith					
Jones					
<table border="1"> <tr> <td>Smith</td> <td></td> </tr> <tr> <td>Jones</td> <td></td> </tr> </table> <p>Count for Smith.</p>	Smith		Jones		<p>Example 8 Imperfect cross.</p> <p>Legal References: <i>Kane v. Registrars of Voters</i>, 328 Mass. 511, 105 N.E. 2d 212 (1952).</p> <p><i>Munn v. Dabrowski</i>, 335 Mass. 41, 138 N.E. 2d 570 (1956).</p>
Smith					
Jones					
<table border="1"> <tr> <td>Smith</td> <td></td> </tr> <tr> <td>Jones</td> <td></td> </tr> </table> <p>Count for Smith.</p>	Smith		Jones		<p>Example 9 Checks and crosses intermingled on ballot, or all checks.</p> <p>Legal Reference: <i>Munn v. Dabrowski</i>, 335 Mass. 41, 138 N.E. 2d 570 (1956).</p>
Smith					
Jones					
<table border="1"> <tr> <td>Smith</td> <td></td> </tr> <tr> <td>Jones</td> <td></td> </tr> </table> <p>Count for Smith.</p>	Smith		Jones		<p>Example 10 "V" within Smith box; no mark in Jones.</p> <p>Legal Reference: <i>Munn v. Dabrowski</i>, 335 Mass. 41, 138 N.E. 2d 570 (1956).</p>
Smith					
Jones					

<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Smith</td> <td style="width: 50%; text-align: center; padding: 5px;">✕</td> </tr> <tr> <td style="padding: 5px;">Jones</td> <td style="text-align: center; padding: 5px;">○</td> </tr> </table> <p style="margin-top: 5px;">Count for Smith.</p>	Smith	✕	Jones	○	<p>Example 11 Consistent pattern of zeroes for candidates not voted for.</p> <p>Legal Reference: <i>Munn v. Dabrowski</i>, 335 Mass. 41, 138 N.E. 2d 570 (1956).</p>
Smith	✕				
Jones	○				
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Smith</td> <td style="width: 50%; padding: 5px;"></td> </tr> <tr> <td style="padding: 5px;">Jones</td> <td style="text-align: center; padding: 5px;">3</td> </tr> </table> <p style="margin-top: 5px;">Count for Jones.</p>	Smith		Jones	3	<p>Example 12 Use of numeral instead of cross.</p> <p>Legal Reference: <i>Munn v. Dabrowski</i>, 335 Mass. 41, 138 N.E. 2d 570 (1956).</p>
Smith					
Jones	3				
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Smith</td> <td style="width: 50%; text-align: center; padding: 5px;">✓</td> </tr> <tr> <td style="padding: 5px;">Jones</td> <td style="padding: 5px;"></td> </tr> </table> <p style="margin-top: 5px;">Count for Smith.</p>	Smith	✓	Jones		<p>Example 13 Clear impression of cross on paper, but only one leg penciled.</p> <p>Legal Reference: <i>Desjourdy v. Board of Registrars of Voters</i>, 358 Mass. 644, 266 N.E. 2d 672 (1971).</p>
Smith	✓				
Jones					
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Smith</td> <td style="width: 50%; text-align: center; padding: 5px;">✓</td> </tr> <tr> <td style="padding: 5px;">Jones</td> <td style="padding: 5px;"></td> </tr> </table> <p style="margin-top: 5px;">Count for Smith.</p>	Smith	✓	Jones		<p>Example 14 Check mark for Smith which dips slightly into Jones' box.</p> <p>Legal Reference: <i>Desjourdy v. Board of Registrars of Voters</i>, 358 Mass. 644, 266 N.E. 2d 672 (1971).</p>
Smith	✓				
Jones					