



Election Coverage Resources For NM Journalists

Midterms 2022

The following information, compiled by the [New Mexico Local News Fund](#) and the [Election Reformers Network](#), aims to support accurate and insightful media coverage of New Mexico election matters. This primer focuses particularly on information needed for coverage of close or contested elections.

Overview

Most elections are decided by large margins and generate no controversy at all. But close elections happen, and when they do, it is important that voters and candidates can have confidence in the result.

Every state has structures to handle close and contested elections. These include procedures to verify the accuracy of results and legal processes that provide candidates or groups of voters the ability to challenge the results in court. It is important for citizens to understand these processes. **The existence of election disputes is not itself an indication of any serious problem, particularly when there is acceptance of the legal process by all sides.**

Election Process Details

What safeguards support accurate vote counting?

Nationally

Voting equipment is [tested](#) before Election Day to ensure that it accurately counts a batch of test ballots. In many states, these tests are open to the public and overseen by at least two elections staff or inspectors of different political parties. The public is usually encouraged to attend these tests.

At the end of Election Day, poll workers must verify that the number of ballots cast matches the number of voters who signed in to vote during the course of the day.

These layers of verification support voters' confidence in the process. This confidence is reinforced by the fact that audits and recounts (discussed below) rarely uncover irregularities, and election contests very rarely overturn results. In part for these reasons, even in close elections, the vast majority of losing candidates concede the election without any challenge or contest.

Voting Machine Certification in NM¹

(<https://www.sos.state.nm.us/voting-and-elections/voter-information-portal/rumor-vs-reality/>)

New Mexico's election administrators are in compliance with all state and federal laws regarding voting machine certification. The bi-partisan [Voting System Certification Committee](#) certifies machines for use in New Mexico. The latest testing/certification process was completed in 2021, following state statute.

The [Federal Election Assistance Commission \(EAC\)](#) publishes federal standards for voting machine certification, known as Voluntary Voting System Guidelines (VVSG). All EAC-approved systems across the nation are currently certified to the VVSG 1.0.

Paper Ballots in NM

New Mexico uses paper ballots to record every citizen's vote. Paper ballots allow auditing and verification of automated vote counting systems. Paper ballots enable election officials to recount a single race or an entire election should the need arise.²

Air-Gapped Counting Systems in NM

Any systems that count votes, aka tabulators, are prevented by state law and process from being joined to a computer network or the Internet. Systems that sum votes at the county level are prevented by law and process from being joined to a computer network or the Internet.³

Counting System Accuracy Testing in NM

Prior to every election, election officials test that tabulators accurately count actual paper ballots with a known outcome. Furthermore, they confirm that they properly handle over-vote and under-vote conditions. Then, the expected outcome is checked at every step in the process to verify that the sums at the county and state levels are accurate, as are the results that are displayed on election results website.⁴

NOTE: The [results displayed on election night](#) are UNOFFICIAL. It would be impossible for New Mexico to count one hundred percent of the votes and meet its stringent auditing obligations in a single day.

¹ [NM Secretary of State](#)

² [NM Secretary of State](#)

³ [NM Secretary of State](#)

⁴ [NM Secretary of State](#)

How does NM maintain voting lists?

Procedures for voter list maintenance

During the voter list maintenance process New Mexico’s election administrators, as required by law, must maintain and update their voter rolls continually — everything from checking obituaries, receiving monthly reports from NM Vital Statistics about deceased individuals, and suspending or reinstating voters based on conviction notices from the Department of Corrections. This is done in conjunction with the proactive, pro-voter measures already in place in New Mexico, such as automated voter registration, all-mail special elections, and online and same day voter registration. All of these systems combine to ensure that voter information is up-to-date in New Mexico, resulting in our state having some of the “cleanest” voter records in the United States.⁵

New Mexico also participates in the [Electronic Registration Information Center \(ERIC\)](#). ERIC uses information from motor vehicle departments, Social Security Administration records, and other databases to compare voters across all member states and securely shares this information with member states. We have an ERIC FAQ page on [the NMSOS website](#).

Additionally, County clerks send frequent election-related material to registered voters at their registration addresses and then use that information to do voter record list maintenance. Learn more about how states accurately maintain their voter lists at this helpful website from the [National Conference of State Legislatures](#).

What voter ID requirements exist in NM?

A physical form of identification is required for first-time New Mexico voters who registered by mail and did not include identification with their voter registration application form. Otherwise, you will be asked to provide a verbal or written statement of identification including your name, year of birth, and registered address.⁶

How does NM handle mail, dropbox and absentee voting?

Absentee voting provisions vary somewhat from state to state. In New Mexico, absentee voters are required to provide the following identification when requesting a ballot using the state’s online application portal: New Mexico driver’s license number, state ID number, or the last 4 digits of social security number. Voters using the paper application provide their signature.⁷

⁵ [NM Secretary of State](#)

⁶ [Voting | Maggie Toulouse Oliver - New Mexico Secretary of State](#)

⁷ [New Mexico Absentee and Mail Ballots - VoteAmerica](#)

When returning an absentee ballot, New Mexico voters must provide the last four digits of their Social Security number on the return envelope, underneath the privacy flap. They also provide their year of birth and address.

Absentee ballots may be submitted by mail, hand-delivered to a polling location, or placed in a certified drop box.

Election Oversight Details

What roles do election challengers, watchers or observers play?

In most states, parties and/or candidates have the right to delegate observers to watch most election processes. This is an important source of transparency to ensure elections are conducted fairly. This also enables political parties to lodge formal complaints if their observers identify concerns about potential electoral infractions or irregularities.

Parties and/or candidates in some states may also have the right to designate a registered voter to be an official challenger in their precinct. Usually, challengers will submit challenges regarding the legality of individual voters to the poll workers or election officials if they have clear and convincing evidence.

What are the qualifications and restrictions of being an election challenger or observer?

Challengers and watchers in New Mexico shall be voters of a precinct located in that county to which they are appointed NMSA 1978, 1-2-22. Challenges and watchers cannot be appointed if they are:

- A candidate
- A spouse, parent, child, brother or sister of any candidate
- Other relationships that cause a perception problem
- Married to a parent, child, brother or sister of any candidate
- The candidate's in-laws
- A local or state police officer

How are challengers and observers selected?⁸

Challengers are appointed in NM by the County Chair of each political party, and one may be appointed for each polling location. If more than one challenger is appointed to a polling location, the challengers shall be listed in ranking order. If any County Chair fails to make such appointments, or if there is no county chair, the state chair

⁸ [NM Secretary of State – Challenges](#)

of the political party may, in a partisan election, appoint in writing one challenger for the polling location corresponding to the precinct.

Election observers are people registered with the U.S. Department of State as an international election observer or, in New Mexico, registered with its Secretary of State, using [this form](#). Election observers registered at least 7 days prior to Election Day.

What are the rights of an election challenger or observer on Election Day?

- Challengers and watchers should be respectful of the responsibilities of the poll official.
- As an accredited challenger and watcher, you have certain rights, and poll officials are required to protect you when you are exercising these rights.
- The requirement that the presiding judges protect your rights, however, is not absolute. A presiding judge may remove you if you are exercising your rights in a manner that interferes with the voting process or the work of the poll officials in conducting the election and carrying out their assigned tasks.

Do challengers, watchers or observers need to wear identification badges?

- Yes, they must wear uniform identification badges designating you as authorized challengers of the political party which you represent at all times while present in the polling place.
- They may not wear any other form of identification, party or candidate pins.
- They must have their own authorization from the New Mexico Secretary of State.

What is considered inappropriate conduct for challengers, watchers or observers?

Election challengers, watchers and observers shall:

- Not be permitted to perform any duty of an election board member.
- Not handle the ballots, signature rosters, checklist of voters or voting machines or take any part in the counting or tallying of the ballots or the county canvass.
- Not be allowed to view a voter's full date of birth or any portion of the voter's social security number.
- Not interfere with the orderly conduct of the election, the counting or tallying of the ballots or the county canvass.
- Be allowed in the room in which the voting is being conducted at a polling location, provided that at any given time, each political party, candidate or election-related organization may have no more than one person present.
- Pursuant to NMSA 1978, Section 1-20-20, individuals shall not disturb the polling place.
 - Disturbing the polling place consists of creating any disorder or disruption at the polling place on Election Day, or interfering with in any manner the conduct of the election or with a member of the

precinct board, voter, challenger or watcher, in the performance of his duties. Whoever disturbs the polling place is guilty of a petty misdemeanor.

- Pursuant to NMSA 1974, Section 1-20-17, individuals shall not obstruct the polling place.
 - Any person other than the voter, a member of the precinct board, a lawfully appointed challenger or watcher, an election observer, an election official having business in the polling place or a person authorized by the Election Code, approaching nearer than 50 feet from the door through which voters may enter to vote or willfully blocking the entrance to the polling place as to prevent free ingress and egress is guilty of a petty misdemeanor.

How could a voter report inappropriate conduct at a polling location?

Individuals who witness voter intimidation or who are victims of voter intimidation may report the incident to the Secretary of State's Office, their County Clerk's Office and County District Attorney.

The New Mexico Secretary of State's Office is charged with investigating complaints related to elections and ethics under New Mexico law. If you believe your complaint falls under the authority of our office, please submit your complaint, in writing, to our office, on the [Complaint Form](#). Our office accepts complaints in both original and electronic form, but we do prefer e-mail. We do not process or investigate anonymous complaints.

Election Results Auditing

Most states conduct conventional audits of elections. That means that a fixed percent of ballots are hand counted and the results from that sample compared against the preliminary totals. Some places vary the percentage of ballots based on how close the election was, checking more ballots in closer contests.

Some states use risk-limiting audits, a sophisticated way of auditing ballots that generates a high degree of confidence that the overall result is correct. These processes generally must be completed before the election results are considered official. Additional information on post-election audits is available from the [National Conference of State Legislatures](#).

In New Mexico, according to the Secretary of State's office, the results are canvassed or audited so that accuracy is ensured. Canvassing first happens at the county level utilizing a group of staff. Then it is completed by a new team of staff at the state level. Finally, the results are audited by an independent contractor before they are forwarded to the New Mexico State Canvassing Board to be made official.

New Mexico also conducts a risk-limiting audit following every statewide election. This process involves randomly selecting a few races and precincts throughout the state and hand counting the results in those precincts. The hand counted results are then compared to the normal machine counted results. Any discrepancies between the results are thoroughly investigated.

When and why do recounts happen?

Nationally

According to the [National Conference on State Legislature](#), many states automatically recount all the ballots in a contest if the margin of victory is very close. In many more states, candidates or voters can request a recount if the margin is within a certain range. Sometimes, they can request a recount no matter what the margin is, as long as they are willing to pay for the recount if it does not change the outcome.

Recount results historically have shown that votes are counted accurately, because the result of the recount is always extremely close to the original count. Reversals in the outcome do occasionally happen, but only in the very closest of races. For example, in the roughly 6,000 statewide races across the U.S since 2000, there have only been [three recounts](#) that overturned the outcome of the race, and those were all elections with a margin of victory less than 0.06%.

New Mexico

Tracking of all contests within New Mexico that may qualify for a recount is required per Section 1-14-24 NMSA 1978.⁹ In New Mexico, automatic recounts are triggered when races are particularly close, and at different thresholds, depending on the type of race and the size of the county. A recount is triggered when the margin of outcome is less than the following percentages of the total votes cast for that office:

- One fourth percent (.25%) for federal or statewide office
- One fourth percent (.25%) on a state ballot initiative
- One fourth percent (.25%) on a nonpartisan judicial retention election in the case of the supreme court or the court of appeals
- One half percent (.5%) for public education commissioner, district attorney or any office elected countywide in a county with more than 150,000 voters
- One half percent (.5%) on a local ballot initiative
- One half percent (.5%) on a nonpartisan judicial retention election in the case of a district court or the metropolitan court
- One percent (1%) for any other office

⁹ [Election Handbook of the State of New Mexico, 2021 edition](#), p. 197

What are election contests?

An election contest is a lawsuit filed by a voter or candidate claiming that the election suffered from such sufficient defects that it should be overturned.

- All states provide opportunities to contest elections. All but six (ME, MI, NY, RI, WI, and WY) provide for [election contests in state law](#). These laws describe who can challenge results, the grounds for such challenges, where to file the claims, and the procedures to follow. In the six states without these provisions, courts will still hear challenges based on other sources of law or equitable principles.
- Election contests can also be brought in federal court should there be a violation of federal law or the US Constitution. In the past, some election contests, based on the same set of alleged facts and election results, have been filed both in state and federal courts.

How are election contests brought?

- In general, any elector can bring an election contest. The person bringing the contest must have standing to bring the lawsuit; for example, a voter from one state will probably not be able to challenge the result in a different state.
- States vary in terms of when election contests may be brought. Typically, state law specifies timelines by which new officeholders must be sworn in. Election contests must therefore be resolved before this deadline.
- Most states describe several grounds on which a contest can be based. The most common grounds include:
 - Official misconduct;
 - Candidate ineligibility for the office;
 - Illegal votes;
 - Miscounted votes;
 - Legal voters being denied the ability to vote; and
 - Bribery or coercion.
- Usually, the contestant will have to show that the irregularities actually changed the outcome. If they allege that 100 illegal votes were cast in a contest won by several thousand votes, then that will not be sufficient.
- Many states require certain specific evidence for particular claims. For example, if illegal votes are alleged, the contestant may need to show exactly how many illegal votes were cast.

What principles underlie election contests?

- Those contesting elections have the same rights as any other person or entity bringing a lawsuit in non-election contexts: They may present evidence, file motions, cross-examine witnesses, and appeal to a higher court if they lose.
- If a contestant brings credible and reliable evidence, and if they prove that the election result was wrong, then the court may annul the election and order a new one or may declare a different winner.

- When a court rejects an election contest and confirms the election, the contestant may appeal to a higher court, as far as the highest court in the state or even the U.S. Supreme Court.
- In practice, most claims of fraud do not withstand scrutiny in court and very few election contests result in a decision to change results.

Of note

Voters concerned about the topic of contested elections can take reassurance in the fact that this year several hundred candidates from all political parties and states have signed onto statements of principle that include a commitment to acknowledge the legitimacy of the election outcome after the results have been certified and all contestations decided. For more information, see [The Candidate Principles for Trusted Elections](#), led by The Carter Center and the Gerald R Ford Presidential Foundation, and The [Safe and Fair Election Pledge](#) led by Team Democracy.

Experts and Contacts

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- [Mario Jimenez](#) - Executive Director, Common Cause of New Mexico, mjimenez@commoncause.org, 575-571-8507
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- [Gabe Sanchez](#) - UNM Professor, political scientist, election expert, sanchezg@unm.edu, 505-903-0944
- [ElectionSOS- American Press Institute](#) & [ElectionSOS](#) network of trusted election experts
- Bob Perls, NM Open Elections; bob@nmopenelections.org
- [Heather Balas](#), Vice President of Programs, Election Reformers Network, hbalas@electionreformers.org, 505-715-3693
- Judy Williams, League of Women Voters, jkwilliams24@gmail.com

Additional NM Resources

Official Resources

[County Clerk Information | Maggie Toulouse Oliver - New Mexico Secretary of State](#)
[Election Results | Maggie Toulouse Oliver - New Mexico Secretary of State](#)
[New Mexico Election Code](#), updated 2021

Nonprofits Engaged in Governance Policy

[New Mexico First](#)
[Think NM](#)

[League of Women Voters NM](#)

[Common Cause NM](#)

[NM Black Leadership Council-Black Voters Collaborative](#)

[NM Foundation for Open Government](#)

[New Mexico Open Elections](#)

National Organizations

[AARP](#) voting guide

[Vote411](#)

[Brennan Center for Justice](#)

[Harvard Kennedy School](#) election resource list

About the NM Local News Fund

The nonpartisan [New Mexico Local News Fund](#) aims to grow the ecosystem of local news across our state to better serve the information needs of all New Mexicans. To accomplish that ambitious goal, it works with both existing newsrooms and trusted community organizations.

About ERN

The nonpartisan, nonprofit [Election Reformers Network](#) aims to modernize the United States' election ecosystem against growing polarization through research-driven policy change. Its work draws on what works in this country and around the globe – so that elections are fair and trusted.