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# **The Recount Primer**

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## Early Election Night Check List

This Check List may be started election night *before* a call is made to an election attorney. Its information helps the election attorney decide the types of problems which may exist, and what specific actions (if any) should immediately be taken.

- ✓ **Name and telephone number of election attorney.**
- ✓ **Modes of voting used in election, where used, and number of votes for each mode.**
- ✓ **Number of Absentee Voter (AV) envelopes rejected and unopened,**
- ✓ **Number of AV votes for each candidate.**
- ✓ **Number and type of votes remaining to be counted.**
- ✓ **Description of serious incidents (if any).**

*Please note: If it appears a recount may be in the offing, contact an election attorney as soon as possible.*

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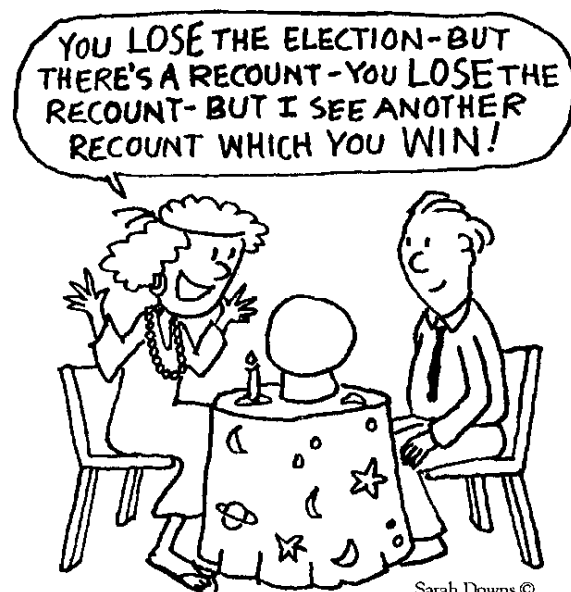
# The Recount Primer

## *Introduction*

**R**ecounts have played a decisive role in countless elections over the years, some even changing the course of history. Lyndon Johnson secured his 87 vote win in the controversial 1948 Texas Senate race as much on the strength of his post-election strategy as by his aggressive election campaign. Jimmy Carter's decision to challenge the returns of his apparent 1962 loss for a Georgia State Senate seat forced another election, allowing him to win the seat and launch his career in politics.

More than a half dozen current members of Congress and two sitting governors have faced recounts on their way to winning office. Election recounts are common in close elections because errors are inevitable in tabulating the returns and because candidates and campaigns have invested so much time and money in an effort to win that they want to be certain of the results.

Yet, a recount is justified only when the election is truly close. No plan, no amount of preparation, will change the outcome unless the votes are actually there. While recounts often turn up dozens, sometimes hundreds, of election night mistakes, the net change is usually very small — usually a handful of votes. Therefore, a campaign should proceed with a recount only if the outcome is genuinely in doubt and the



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campaign is prepared to commit the same effort and resources to protect its votes as it did to win them.

This manual is designed to assist candidates, their campaigns and their lawyers in preparing for and conducting a recount. It is not a substitute for legal advice prior to and during a recount. No candidate should consider whether to undertake a recount without first consulting an attorney with recount experience.



## The Purpose of a Recount

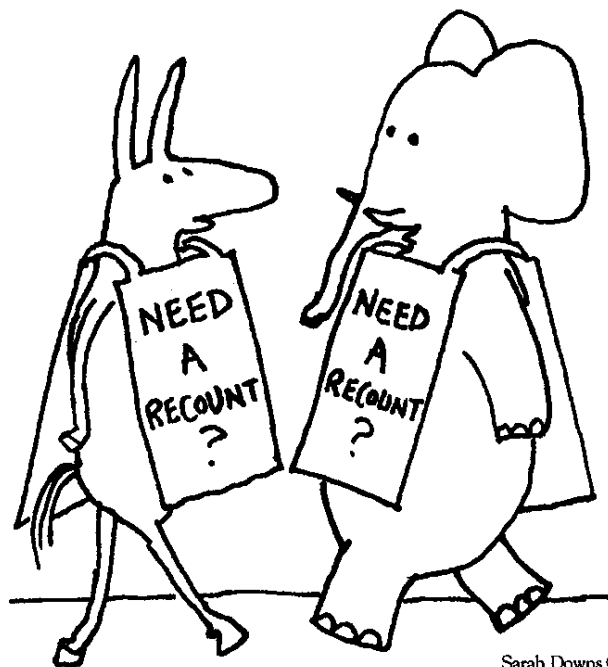
The public purpose of a recount is to audit the election process so as to produce a result deserving of the electorate's fullest confidence. Election officials are concerned with accuracy, not outcome. Candidates are concerned with outcome. Election officials may (and should) conduct a recount innocent of the outcome effects of their procedures and operational decisions. Not so partisan representatives.

Partisan representatives should be concerned with achieving one of three goals: a) preserving a margin of victory, b) identifying election night mistakes which will turn a narrow loss into a win, or c) creating doubt as to the outcome sufficient to require a new election.

The gathering and organizing of information is the most critical work in moving toward any one of the those goals. The information to be sought and its organization are the same for all parties, whether ahead or behind. Positions supported by the materials will vary according to interest.

An election produces literally hundreds of thousands of separate bits of information. The challenge is to simplify the gathering process so that the same type of information is acquired and organized consistently throughout the district.

The need for consistency and accuracy outweighs the competing interest of scope of information. That is, it is more important to limit inquiry to a few items that can be accurately

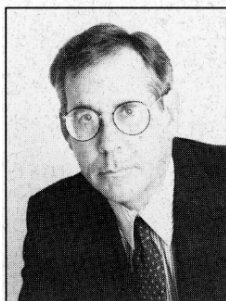


answered for all precincts, than to ask for “everything” and risk inconsistency and inaccuracy.

Therefore, a common theme of all following recommendations is simplicity of format and width of scope of inquiry. The more pressure or time constraints likely to be present at the time of gathering particular data, the simpler and more concise the format.

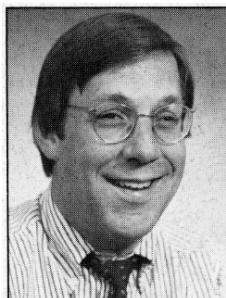
## About the Authors

**Timothy Downs** has had extensive experience as a recount attorney, starting in association with his father, Tom Downs, a pioneer recount counsel in Michigan. During more than twenty-five years of preserving or overturning elections he has had the opportunity to work with most current recount practitioners in virtually every state, and has acted as lead counsel in major recounts of the last decade, including the 1990 recount for the office of Attorney General, State of Ohio; the 1989 recount for the office of Governor, State of Virginia; and the 1984 recount for the office of U.S. Representative from the 8th District of the State of Indiana. He is based in Bethesda, Maryland, and is a member of the Michigan and District of Columbia Bars.



four-vote recount victory. He has also served as special counsel to the Democratic National Committee, advising the DNC Chairman on campaign finance reform legislation. As a Legal Services lawyer in the late 1970's and early 1980's, Sautter successfully brought landmark cases in the areas of housing, prison, and civil rights law. He is a member of the Indiana Bar.

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**John Hardin Young** is State Party Counsel to the Democratic Party of Virginia and a member of its Steering Committee. In 1989 Mr. Young was counsel for Governor L. Douglas Wilder in the first statewide recount in Virginia. Mr. Young has been involved as state counsel in each Presidential and statewide campaign since 1980, and in statewide elections since 1969. He has served as Counsel to the State Board of Elections of the Commonwealth of Virginia and as an intern to United States Senator William B. Spong, Jr. Mr. Young is currently General Counsel and Secretary of the Smoot Corporation and Of Counsel in the law firm of Porter, Wright, Morris and Arthur. Mr. Young is a member of the Virginia and District of Columbia Bars. He received his law degrees from the University of Virginia and Oxford University.

