



Most Frequently Asked Questions Election Contests

(Disclaimer. The following information is provided for informational purposes only and may not be relied upon as legal precedent or as the official position of the Secretary of State on any issues discussed. The legal standards for election contests are set forth in state law and cases and are subject to court interpretation.)

Q: What is an election contest?

An election contest is an opportunity for any registered voter to challenge the results of an election in a lawsuit.

Q: Who may bring an election contest and how does it work?

Any registered voter may bring an election contest lawsuit.

The process for bringing an election contest lawsuit is set forth in Chapter 29A.68 RCW entitled "Election Contests."

Typically, election contests begin by a registered voter filing a lawsuit in Superior Court.

- The registered voter bringing the action must file an affidavit containing specific information. This information includes the candidate who's right to hold office is contested, the office sought, and the particular reasons for the election contest.

Other requirements and procedures are set forth in chapter 29A.68 RCW.

Q: When may an election contest be initiated?

An election contest must be filed no later than 10 days after the issuance of a certificate of election.

In the Governor's race, assuming the certificate of election will be issued to the Governor January 12, the day the Governor is scheduled to be sworn into office, the last day to file a contest of this election is January 22, 2005.

Q: What are the grounds for an election contest?

The statutes provide a number of grounds for contesting an election, including the following:

- misconduct by a precinct election board;
- ineligibility of the candidate to serve in the office;
- prior felony conviction of the candidate, unless civil rights are restored;
- giving a bribe or reward to a voter or election official to procure the election; or
- illegal votes.

Q: What remedies are available to the courts in an election contest?

RCW 29A.68.050 provides that a court has the following remedies in an election contest:

- dismiss the proceedings if the statement of the cause or causes of contest is insufficient, or for lack of prosecution;
- confirm the election;
- annul and set aside the election; and/or
- “if in any such case it shall appear that another person than the one returned has the highest number of legal votes, the court shall declare such person duly elected.” RCW 29A.68.050

Q: How many votes need to be affected to change the outcome of the election?

The person bringing the election contest must establish that enough votes are affected to change the outcome of the election.

Q: What is the burden of proof in an election contest?

The burden of proof is a legal question to be determined by the courts and the following should not be considered authoritative information.

Generally speaking, courts in other states have established a heavy burden against invalidating the results of an election.

To illustrate this point, various courts have made the following statements about the burden of proof in an election contest case.

- “Courts should be reluctant to upset an election absent some compelling reason to do so.” Buonanno v. DiStefano, 430 A.2d 765 (R.I. 1981)
- “The expression of the will of the voters. . . will not be overturned lightly.” Schmitt v. McLaughlin, 275 N.W.2d 587, 592 (Minn. 1979)

- “Unless an election is clearly invalid, when the people have spoken, their verdict should not be disturbed by the courts.” Dumas v. Gagner, 137 Wn.2d 268 (1999)
- “Indeed, the voiding of a state election is a ‘drastic, if not staggering’ remedy.” Soules v. Kauaians for Nukolii Campaign Committee, 849 F.2d 1176, 1180 (9th Cir. 1988)

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