
Election Redos: Extremely Rare and Legally Constrained, with Additional Obstacles at the Presidential Level

Election redos can be ordered by judges or other specifically empowered bodies to resolve legitimate election disputes, but should only be used when the legally correct winner of the election cannot be determined by any other remedy.

1. State laws allow election redos only under specific circumstances

In certain rare circumstances, courts or other governmental entities may order that the results of an election be declared void or otherwise set aside, and a new election be conducted. We refer to such an order as an “election redo.” Sometimes the same candidates remain eligible to participate in the new election; other times, new candidates are selected via a primary or other process. Most of the time when an election redo is ordered, it is the result of a special proceeding called an “election contest” authorized by state law. A federal court may also order an election redo, however, if it determines that a substantial violation of the U.S. Constitution or federal law has occurred that cannot otherwise be remedied.¹

Most states have statutes expressly regulating election contests.² They differ greatly in terms of the people authorized to initiate such contests, the officials responsible for adjudicating them, and the circumstances under which they may be filed. Depending on the state and office at issue, an election contest—including for the position of presidential elector—may be resolved by a trial court,³

¹ An election redo in this context differs from a special election ordered by a federal court because of a violation of federal law, such as an illegal congressional map, which occurred in an election where the results could be determined.

² See Joshua A. Douglas, *Procedural Fairness in Election Contests*, 88 IND. L.J. 1, 57-82 (2013).

³ See, e.g., ALASKA STAT. § 15.20.550; ARK. CODE § 7-5-801; CAL. ELEC. CODE § 16400; DEL. CODE tit. 15, § 5927; D.C. CODE § 1-1001.11(b); FLA. STAT. § 102.168(1); GA. CODE § 21-2-523(a).

state supreme court,⁴ the legislature,⁵ the Governor,⁶ board of elections,⁷ canvassing board, recount commission,⁸ or other special tribunal.⁹

In most jurisdictions, an election contest may be filed based on: “(1) misconduct, fraud, bribery, or corruption; (2) ineligibility of the person elected to hold the office; (3) illegal votes being counted; or (4) legal votes being rejected.”¹⁰ Even when valid grounds for a contest exist, however, the typical remedy is an order or other determination requiring that certain votes be counted or excluded from the officially certified tally.¹¹ While such an order may change an election’s ultimate result, the election itself remains valid and dispositive.

An order requiring an election redo, in contrast, is an extremely rare remedy, particularly for elections beyond the local level.¹² This remedy is generally disfavored since it requires disregarding potentially millions of votes that have already been cast. Section Three expands on the relative drawbacks of election redos.

Since 2000, there has been only one federal election where the results have been set aside and a new election required.¹³ Since approximately 468 federal races occur in each two year cycle, including elections for 435 U.S. House seats and approximately 33 U.S. Senate seats (along with a presidential election every four years), redos have occurred in less than 0.02% of federal races over the past quarter century. In contrast, redos of federal elections occurred somewhat more frequently in the late Nineteenth Century, before the rise of professional, trained election administrators and the development of modern voter databases.

⁴ See, e.g., COLO. REV. STAT. § 1-11-204; CONN. GEN. STAT. § 9-323; HAW. REV. STAT. § 11-174.5(a).

⁵ WYO. STAT. § 22-17-114.

⁶ TEX. ELEC. CODE § 221.002(e).

⁷ See, e.g., N.C. GEN. STAT. § 163-182.9(a); 26 OKLA. STAT. § 8-109; S.C. CODE ANN. § 7-17-260.

⁸ See, e.g., IND. CODE ANN. § 3-12-10-4(c)(3).

⁹ See, e.g., IOWA CODE § 60.1; MD. ELEC. L. CODE ANN. § 12-203(a)(2); TENN. CODE ANN. § 2-17-103(a). For U.S. Senate and House races, the chamber of Congress for which a candidate is running is the ultimate arbiter of any election contests. See U.S. CONST. art. I, § 5, cl. 1; see Kristen R. Lusk, Note, *The Resolution of Contested Elections in the U.S. House of Representatives: Why State Courts Should Not Help with the House Work*, 83 N.Y.U. L. REV. 1213 (2008). Most state constitutions contain similar provisions regarding state legislative races.

¹⁰ Douglas, *supra* note 1, at 38-39.

¹¹ See, e.g., *Womack v. Foster*, 8 S.W.3d 854, 872-76 (Ark. 2000); see also *Hunter v. Hamilton Cnty. Bd. of Elections*, 635 F.3d 219, 247 (6th Cir. 2011) (issuing order regarding disposition of various groups of contested ballots).

¹² See Steven F. Huefner, *Remedying Election Wrongs*, 44 HARV. J. LEGIS. 265, 283 (2007).

¹³ Alan Blinder, *New Election Ordered in North Carolina Race at Center of Fraud Inquiry*, N.Y. TIMES (Feb. 21, 2019). In 1974, the U.S. Senate voted to reject the results of New Hampshire’s Senate election, in which the leading candidate had won by two votes. ANNE BUTLER & WENDY WOLFF, U.S. SENATE ELECTION, EXPULSION AND CENSURE CASES FROM 1793 TO 1990, S. DOC. No. 103-33, at 421-25 (1st Sess. 1995).

The errors and other irregularities which periodically arise in elections seldom require that the results be completely set aside. An election is a complicated, costly, time-consuming process. A presidential election occurs as a separate election in each state and territory. To briefly consider the scale of those processes together:

over 130 million ballots will be cast across the nation by a sweepingly diverse array of voters, including people with language barriers, mental or physical disabilities, and limited experience with the electoral process Ballots are accepted and counted by tens of thousands of election officials throughout the nation. . . . Moreover, in a nation as vast as the United States, natural disasters or extreme weather that impact impending or ongoing elections are also reasonably likely.¹⁴

“In a complex process of this magnitude, with so many people and discrete tasks involved, numerous errors will inevitably occur.”¹⁵ These could include factors such as major weather events interfering with access to the polls, isolated issues with voting equipment, long waits to vote, or similar election administration challenges. Such inevitable “garden-variety irregularities” are seldom sufficient to warrant consideration of an election re-do.¹⁶

A court or other tribunal will vacate an election—requiring a completely new election—only in the rare case where other remedies are insufficient to address the statutory violations, fraud, or other serious irregularities that have been proven. The specific circumstances under which an election redo may occur is a matter of state law and states differ on the precise circumstances in which it may be ordered. Section Two offers more detail on the specific guardrails that further limit the availability of redos in presidential elections within a state. In many jurisdictions, a new election cannot be held unless the number of ballots impacted by the error, irregularity, or rule violation is large enough to potentially impact the outcome.¹⁷ Under this rule, new elections will not be ordered where the prevailing candidate’s margin of victory is larger than the number of affected ballots. Some states go even further, requiring a challenger to show that, had the problem at issue not arisen, they would have won the election.¹⁸ In such cases, however, the proper remedy would likely be to declare that candidate the winner, rather than ordering a new election.¹⁹

In several states, exceptions allow for election redos where widespread material violations or other irregularities make it impossible to ascertain the precise number of ballots impacted and,

¹⁴ Michael T. Morley, *The Framers’ Inadvertent Gift: The Electoral College and the Constitutional Infirmities of the National Popular Vote Compact*, 15 HARV. L. & POL’Y REV. 82, 124 (2020).

¹⁵ *Id.*

¹⁶ See *Griffin v. Burns*, 570 F.2d 1065, 1076 (1st Cir. 1978).

¹⁷ See, e.g., CAL. ELEC. CODE § 16402.5; 26 OKLA. STAT. § 8-120(2); *Whitley v. Crawford*, 119 S.W.3d 28, 30 (Ark. 2003); *Gonzalez v. Villareal*, 251 S.W.3d 763 (Tex. App. 2008).

¹⁸ See, e.g., ALA. CODE § 17-16-41; MD. ELEC. L. CODE ANN. § 12-204(b)(1).

¹⁹ Cf. ARIZ. REV. STAT. § 16-676(C).

accordingly, public confidence in the accuracy of the results cannot be reasonably assured.²⁰ Some jurisdictions will apply this exception only where intentional fraud or bribery has occurred.²¹ In short, election-related problems can almost always be corrected either during the election with appropriately tailored orders aimed at addressing the difficulties that have arisen, or following the election's completion by adjusting vote tallies without completely discarding its results.

2. Statutory and practical obstacles prevent a presidential election redo

Unique constitutional and federal statutory obstacles make it especially impracticable to hold a “redo” presidential election within any state.²² The Constitution gives Congress the authority to set the date of presidential elections.²³ The federal Presidential Election Day Act, as amended by the Electoral Count Reform Act (“ECRA”), enacted pursuant to that power, requires presidential elections to be held on Election Day: the first Tuesday after the first Monday in November.²⁴ This provision does not authorize states to completely invalidate or disregard all votes cast in a presidential election and conduct a new one from scratch, as is required for a redo. The only remedy expressly available to a state if “extraordinary and catastrophic” events interfere with the electoral process is to extend its period for voting.²⁵ This lack of statutory authorization weighs heavily against a court ordering an election redo, though it does not completely preclude it when an election's results within a state are completely indeterminate or when a redo is the only means to cure a substantial constitutional or federal statutory violation.²⁶

In any event, the time available for a presidential election redo to be conducted—or even for additional days of voting to be ordered in the original election—is very limited. The Uniformed and Overseas Citizen Absentee Voting Act (UOCAVA) requires absentee ballots to be mailed to military and overseas voters at least 45 days before an election, demanding substantial lead time before a redo election.²⁷ Moreover, the Constitution specifies that each state's presidential electors must cast their electoral votes on one specific day.²⁸ Federal law sets that uniform date for presidential electors to cast ballots as “the first Tuesday after the second Wednesday in December.”²⁹ In the 2024

²⁰ See, e.g., GA. CODE § 21-2-527(d); HAW. REV. STAT. § 11-174.5(b); MO. REV. STAT. § 115.593; N.C. GEN. STAT. § 163-182.13(a)(4); 26 OKLA. STAT. § 8-122; see also *Hammond v. Hickel*, 588 P.2d 256, 260 (Alaska 1978).

²¹ See, e.g., *Savage v. Edwards*, 722 So.2d 1004, 1004-08 (La. 1998).

²² See Michael T. Morley, *Postponing Federal Elections Due to Election Emergencies*, 77 WASH. & LEE L. REV. ONLINE 179, 193-98 (2020).

²³ U.S. CONST. art. II, § 1, cl. 4.

²⁴ 3 U.S.C. §§ 1, 21(1).

²⁵ *Id.* § 21(1).

²⁶ *Busbee v. Smith*, 549 F. Supp. 494, 526 (D.D.C. 1982) (three-judge court) *aff'd*, 459 U.S. 1166 (1983).

²⁷ 52 U.S.C. § 20302(a)(8)(A).

²⁸ U.S. CONST. art. II, § 1, cl. 4; *id.* amend. XII.

²⁹ 3 U.S.C. § 7.

presidential election cycle, that date is December 17, 2024. Any proceedings relating to a presidential election—including voting, canvassing, recounts, and post-election litigation—must be completed by then. In addition to these proceedings, each state has its own laws and regulations surrounding the chain of custody and storage of election equipment after an election, requirements for early voting processes, and other logistical considerations that inform whether a redo election could be held in such a short period.

If a state’s electors are chosen or cast their electoral votes after the mandated day, serious constitutional and statutory questions as to their validity would arise. About three weeks later, on January 6, Congress meets in joint session to count electoral votes and officially declare the winner.³⁰ Inauguration occurs shortly thereafter on January 20.³¹ Given these tight deadlines, it would be practically impossible for a state to conduct a completely new presidential election from scratch. Thus, these additional constraints greatly limit any state, as a practical matter, from holding a redo presidential election.

3. Redos are necessarily an option of last resort to resolve disputes

This section explains some of the drawbacks of redos as an election remedy relative to other options. We briefly introduce some alternative remedies that should be applied where relevant before a redo is considered. Only when no other options are available to resolve the election, and the other limited conditions described in Section One are met, can a redo serve as a meaningful guardrail to ensure voters determine the outcome of an election.

Redos have several relative drawbacks

Throwing out votes that have been legally cast, even when the reason is to re-run the full election, is a weighty decision that adds an additional barrier to each voter participating in the election. Such extraordinary relief raises two general types of concerns: fairness and administrative issues. For these purposes, we consider a fairness issue any aspect of a redo which could structurally advantage one candidate over another in a way that wasn’t true of the original contest. While no election remedy is perfectly fair, a redo is typically more likely than other remedies to arbitrarily advantage one candidate. Potential sources of fairness issues include:

Opportunity to vote: Voters may not always be able to make it to the polls a second time to cast a ballot in a redo election. Each voter in a redone election has to work twice as hard as

³⁰ *Id.* § 15; see U.S. CONST. art. II, § 1, cl. 3; *id.* amend. XII.

³¹ U.S. CONST. amend. XX, § 1.

voters in other jurisdictions to make their voice heard, which is a drawback of redos in its own right. The additional time burden of voting twice could disproportionately impact certain groups, such as those with rigid work schedules or mobility challenges. If groups who are disproportionately impacted also tend to support one candidate over another, a repeat election in close proximity to an initial vote, especially with limited advance notice, could provide an advantage to one candidate.

Campaign resources: Candidates and campaigns typically make spending decisions with election day in mind, and may not have resources available to continue campaigning past election day. Should a redo be ordered in the immediate aftermath of an election, candidates will likely seek to continue actively campaigning through the new election date. Campaigns with more immediate access to funds, such as those of incumbents, wealthy candidates, or candidates with connections to high-dollar donors, may be structurally advantaged over campaigns that lack those revenue sources, such as those who primarily rely on grassroots donations that accumulate over time.

Knowledge of other election outcomes: Voters going to the polls for a redo election will inevitably have information that was not available during the first round of voting, including how other contests conducted at the same time turned out. Partisan control of a legislative body may no longer be at stake if results from enough other races in an election are now known. This could negatively influence turnout for the candidate who is now in the minority party, creating a bias against them which did not exist in the original election.

Elections typically take months of planning and preparation. Holding a redo election, even for a single contest, is a major undertaking for election administrators that should not be taken lightly. Because redos are exceedingly rare, administrators typically don't have capacity to anticipate or prepare for them. When they are called for, every resource—whether time, effort, or money—used to make them happen has to be displaced from some other function. Three aspects of election redos make them particularly costly:

Time costs: Redos require a significant amount of time from election officials. Depending on the specifics of the situation, election staff may not have the resources to run a complete and secure redo without detracting from other priorities.

Financial costs: The materials, labor, and technology required to run an election can add up to significant dollar amounts. In most cases, there is no statute governing how election redos should be funded. This differs from remedies like recounts, where the requesting party is often responsible for the costs unless they uncover substantial problems. Redos can thus leave election officials with a significant, unexpected cost that must be met, potentially by diverting resources from other important functions.

Remaining or new problems: Depending on the election issue that required a remedy, it may not be possible to guarantee that the issue that impacted the original election will be

resolved in a redo. Along the same lines, there is always a possibility that new and, potentially, even more significant issues could arise in a redo election.

Alternative remedies should be prioritized when available

No election remedy is completely fair or without cost. Nonetheless, given the considerations outlined above, redos can be less fair and more expensive than alternative potential remedies. While a full review of these alternatives is outside the scope of this explainer and the specific remedies available vary by state, we will briefly touch on some examples:

Recounts and ballot challenges: Most states have laws that provide for recounts either when an election is sufficiently close, or when a specific party requests one and, often, is willing and able to pay the associated cost. Some recount processes include the ability to challenge the eligibility of specific ballots, which could be a sufficient remedy for some election issues.³² This remedy is significantly more fair than an election redo (provided that ballot challenges are based on legitimate evidence) and significantly less costly, especially when a third party is responsible for covering the cost of the recount.

Forensic determination: In some cases, such as a hardware malfunction that prevents votes from being recorded, election officials can determine the identities of the voters who were impacted by an election issue. Even if the candidates chosen by impacted voters are not known, a judge can sometimes offer an option that impacted voters sign a sworn statement testifying to who they voted for.³³ Thus, officials can determine who the legally correct winner of the election is. While this has the fairness downside of negatively impacting voter anonymity, it is significantly less costly than a redo election and more fair to the larger group of voters who successfully cast their ballots.

Determination of fault: In election disputes involving allegations of fraud, judges can sometimes find affirmative evidence that fraud occurred. In addition, judges have often sought to determine whether a candidate or campaign was actively involved in perpetrating the fraud. If so, some precedent supports assuming that all ballots impacted by fraud were cast for the candidate who was not involved in the fraudulent effort, and evaluating election results accordingly.³⁴ While this remedy has the fairness drawback of making assumptions about voter intent where fraud has occurred, it is significantly less costly than a redo and has the benefit of creating a strong incentive against campaigns participating in election fraud.

Each alternative remedy above, like most election remedies, is appropriate only under certain circumstances. The drawbacks discussed above are not intended to preclude consideration or use of any of these remedies. Rather, a court should assess the relative benefits and drawbacks of each

³² See Steven F. Huefner, *Remedying Election Wrongs*, 44 HARV. J. LEGIS. 278 (2007).

³³ *Id.* 279

³⁴ *Id.* 281

potentially applicable remedy in crafting relief. When no alternative methods to remedy an election problem exist, however, an election redo may well be the best, and only, solution. A redo may occasionally be the only way to allow voters to retain the final say on their leaders and facilitate democratic resolution of election issues.

4. Candidates and campaigns should generally avoid calling for redos

This section offers guidelines for candidates and campaigns which may be considering whether to seek an election redo. This guidance may also help observers contextualize and assess candidates' attempts to seek or oppose election redos.

Approach the availability of redos responsibly

As discussed above, the fairness and administrative drawbacks of an election redo mean that it should only be considered as an option of last resort. Nonetheless, the potential availability of a redo could lead candidates to attempt to baselessly challenge fair elections that they lost. This undermines legitimate results and threatens voter trust in elections.

Responsible candidates and campaigns will only call for a redo when legitimate, admissible evidence of significant problems with the election indicates that it is impossible to determine a correct winner through any other means. A redo should be sought only when any alternative remedies that may apply, such as forensic determination, would be insufficient to address the problem. Calling for a redo under other, inappropriate circumstances risks unfairly biasing supporters of the campaign against the election's ultimate resolution. As with refusing to concede a fair election that one lost, calling for an unjustified redo compromises the peaceful transition of power.

Journalists and the public should critically examine the evidence presented by campaigns or candidates calling for a redo. Generalized claims of election problems without specific, admissible evidence should be viewed skeptically. If the winner truly cannot be determined once all the facts have come to light, public observers should consider the costs and benefits of a redo, not in isolation, but relative to other potential solutions. Public understanding of the grounds for legitimate redos described above will reduce the likelihood of spurious claims and increase the chances that election disputes are resolved as fairly as possible and without overburdening election administrators.

Defer to pre-election laws and avoid calling for changes

Candidates and campaigns should only call for a redo according to the laws and procedures as they exist at the time of the election, before any outcomes are known. Calling for or encouraging changes to laws or rules in ways that impact the outcome of an election that has already happened, including by creating a greater possibility for a redo, is a serious threat to democracy. This includes lawsuits that challenge the validity of laws governing election disputes after the results of an election contest are known.

Legislators and judges should be aware of, and enforce, well-established precedent in their respective jurisdictions. A crucial distinction exists between applying existing law to adjudicate a dispute, which is legitimate and healthy, and reinterpreting or invalidating a legal provision based on a new legal theory in a manner that effectively changes the law that appears to govern an election, which is cause for concern. Similarly, legislatures should avoid changing election-related laws not just immediately after an election, but also in the immediate leadup to one. Pressure from candidates to ignore these norms and make eleventh-hour changes to the law should be vigorously resisted.

Journalists and the public should be highly skeptical of judicial or legislative action that impacts the laws governing election disputes once any results are known and even immediately before the election. Bearing in mind the distinction that judges will have to be involved in resolving disputes that arise according to existing laws, public pressure can help reduce the likelihood of improper changes to the rules.

Evaluate each race in an election independently

The criteria under which election redos are legally permissible, while varying across states as described above, should typically be applied separately to each individual race on the ballot, rather than across all races in an election. Candidates should consider the impact of an election issue on their own race before calling for a remedy, rather than calling for a redo because another race on the same ballot required a remedy.

Consider a scenario where 30 voters are impacted by a hardware issue that makes it impossible to tell who their ballots were cast for. Once all other ballots have been counted, the town council race for that district stands at a margin of 10 votes and the race for mayor stands at a margin of 150 votes. The candidate in the town council race could reasonably seek an election remedy, because the lost votes are sufficient to make the correct winner impossible to determine. The losing candidate in the mayoral race should not seek a remedy, because there is no chance that the missing votes would change the outcome of the race.

Journalists and the public should avoid jumping to the conclusion that a race must be redone—particularly a presidential election—simply because a redo was sought or ordered in another race on the same ballot. Observers should consider the circumstances surrounding each race individually.

This explainer is one in a series of documents published by the National Task Force on Election Crises related to potential developments during the 2024 election. You can read more explainers at [Electiontaskforce.org/Resources](https://electiontaskforce.org/Resources).

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