

OUTLINE OF TESTIMONY OF DOUG CHAPIN

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Regarding Project on Recounts, Contests

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- I. Putting recounts and contests in context – interests at work in the election process
 - a. Individual interest – channeling *vox populi* through ballots
 - b. Societal interest - choosing winners as part of self-government process
 - c. Balancing interest – reconciling individual votes and election outcomes to achieve “consent of the governed”

- II. Recounts
 - a. Multiple purposes – both generally related to societal interests
 - i. Outcome-related: “re-counting” ballots to confirm result
 - ii. Process-related: auditing vote totals to assess election system
 - b. Timing: precedes final certification of result
 - c. Triggers
 - i. Close election (margin of victory)
 - ii. By request
 - iii. Automatic
 - d. Procedural variation
 - i. Who can request?
 - ii. Who bears costs and how?
 - iii. How are materials obtained/secured?
 - iv. What is the forum?
 1. Administrative
 2. Judicial
 - v. What votes are counted?
 - vi. Who can observe?
 - vii. How are votes re-totaled?
 - viii. What is the effect of recount outcome?

- III. Contests
 - a. Multiple purposes – more mixed interests
 - i. Outcome-related: assess potential effect of errors on results
 - ii. Process-related: evaluate health of system through challenges
 - iii. Individual-related: offer a forum for voters to question process
 - b. Timing: Generally follows final certification of result
 - c. Triggers:
 - i. By request – usually with conditions – higher threshold
 1. Allegation of error, mis- or malfeasance
 2. Affecting identifiable votes
 3. Likelihood of affecting outcome
 - ii. As result of recount/audit
 - d. Procedural variation
 - i. Who can request?
 - ii. Who bears costs and how?
 - iii. How are materials obtained/secured?
 - iv. What is the forum?
 1. Administrative
 2. Judicial
 - v. What votes are counted?
 - vi. Who can observe?
 - vii. How are votes re-totaled?
 - viii. What is the effect of contest outcome?

- IV. Recounts and Contests interests at work in the “real world”
 - a. Tension between fairness and certainty
 - i. Fairness – individual focus – did my vote count?
 - ii. Certainty – societal focus – is the result sound?
 - iii. Challenge is to balance the two
 - b. Complication: pressure on all concerned to “wind up” election
 - i. Danger to candidates of “sore loser” tag
 - ii. Danger to election offices of potentially costly, labor-intensive process
 - iii. Danger to society in loss of voter confidence in result
 - iv. Problem of conflicting dates (e.g. Presidential “safe harbor”)
 - c. Current dilemma in post-election litigation
 - i. Political environment
 - 1. Sharp partisan divide leading to more narrow outcomes
 - 2. Increase in willingness to question results
 - ii. Frustration
 - 1. with narrow scope of recount process
 - 2. with timing and threshold for contests
 - iii. Result
 - 1. “Contest-like” recount requests seeking accountability
 - 2. Friction regarding timing, cost and process
 - iv. Challenge
 - 1. Increase accountability to individual voters without relying solely on recounts
 - 2. Create opportunities for assessments of process without relying solely on contests
- V. EAC project
 - a. Will be analyzing and evaluating recount/contest procedures
 - b. Values
 - i. Transparency
 - ii. Accountability
 - iii. Flexibility
 - iv. Cost-effectiveness
 - v. Adaptation/evolution of election process based on outcome
 - c. Results will inform development of best practices on recounts/contests
- VI. Questions/answers