

By Mr. Hynes of Marshfield, petition of Frank M. Hynes relative to the judicial review of appeals of the results of election recounts. Election Laws.

The Commonwealth of Massachusetts

In the Year Two Thousand and Three.

AN ACT REGARDING ELECTION RECOUNTS AND JUDICIAL REVIEW.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Notwithstanding any general or special law to the contrary,
2 whenever any person who is a candidate for a state, county or
3 local elected office, or a candidate for a senator or representative
4 in congress, and who, after a recount in ballots in that election,
5 contests the results or declaration of the election as determined by
6 said recount to the court, said appeal to the court shall be con-
7 ducted in the following manner:—

8 1. All contested ballots shall be transmitted to the Office of the
9 Presiding Justice in containers sealed by the Clerks of the city and
10 towns affected, with the number of ballots recorded and affixed to
11 the outside of the sealed container.

12 2. Transportation of said containers shall be accompanied by
13 the city or town clerk or his designee and a police escort at all
14 times during transportation to the office of the Presiding Justice.
15 Said containers shall not be opened at any time during transporta-
16 tion.

17 3. The Presiding Justice shall cause the sealed containers to be
18 received and kept under lock and key in a secure place until such
19 time and place as the Judge hearing the petition causes the con-
20 tainers to be unsealed.

21 4. Whenever a Justice of the Court, hearing the appeal of a
22 recount, causes the contested ballots to be unsealed and examined,
23 said unsealing and examination shall take place in open court in
24 the presence of the candidates for that office or their designees.

25 When, in the examination of said ballots by the Justice, a deter-
26 mination is made that certain ballots should have been rejected or
27 accepted contrary to the determination made by the recount, said
28 Justice shall publicly announce that determination. When such a
29 determination has the appearance of altering the determination of
30 the recount for a candidate other than he determined by the
31 recount, said Justice shall publicly announce said result and shall
32 issue a public statement to the registrars of voters of the city and/
33 or town within the particular district. Such statement shall detail
34 specific guidelines for the acceptance and rejection of ballots.
35 Said Justice shall then require that the registrars of voters in every
36 city or town, of that electoral district, initiate a new count of all
37 ballots — not simply those which have been contested or chal-
38 lenged, using these newly declared guidelines.

39 In no case shall a Justice of the Court determine the outcome of
40 the election but shall be limited to 1) requiring a further district
41 wide recount in all cities and towns, within 10 days and 2) pro-
42 viding specific guidelines to the registrars of voters in said cities
43 and towns of that district for this additional recount, which shall
44 be conducted according to the salient provision of Sections 135
45 and 135A of Chapter 54 of the Massachusetts General Laws.

46 Any protest regarding the outcome and declaration of this fur-
47 ther and subsequent recount shall be made directly to the Supreme
48 Judicial Court and shall be based solely on the objection that the
49 specific guidelines of the Judge were consciously disregarded by
50 the Registrars.

51 Should the Supreme Judicial Court find that no substantial and
52 conscious disregard of the Judge's guidelines were made by the
53 registrars, the outcome of this further and subsequent recount
54 shall be recorded and the candidate determined to be elected by
55 such recount shall be declared.

56 Should the Supreme Judicial Court find that indeed a substan-
57 tial and conscious disregard of the Judge's guidelines was had,
58 then the Supreme Judicial Court shall call for a new Election to be
59 held on a specific date uniform to all cities and towns in the dis-
60 trict within 30 days of this finding . Said election shall only be for
61 that office which has been the subject of the court intervention

62 and the candidates for this new election shall be only those candi-
63 dates listed on the previously contested ballot and who have
64 received not less than one-fifth of the entire number of votes cast
65 in the previously contested election.

