

TITLE 34  
ELECTIONS

CHAPTER 20

ELECTION CONTESTS OTHER THAN LEGISLATIVE AND STATE EXECUTIVE OFFICES

34-2001. GROUNDS OF CONTEST. The election of any person to any public office, the location or relocation of a county seat, or any proposition submitted to a vote of the people may be contested:

1. For malconduct, fraud, or corruption on the part of the judges of election in any precinct, township or ward, or of any board of canvassers, or any member of either board sufficient to change the result.

2. When the incumbent was not eligible to the office at the time of the election.

3. When the incumbent has been convicted of felony, unless at the time of the election he shall have been restored to civil rights.

4. When the incumbent has given or offered to any elector, or any judge, clerk or canvasser of the election, any bribe or reward in money or property for the purpose of procuring his election, or has committed any violation as set out in [chapter 23, title 18](#), Idaho Code.

5. When illegal votes have been received or legal votes rejected at the polls sufficient to change the result.

6. For any error in any board of canvassers in counting votes or in declaring the result of the election, if the error would change the result.

7. When the incumbent is in default as a collector and custodian of public money or property.

8. For any cause which shows that another person was legally elected.

[(34-2001) 1890-1891, p. 57, sec. 132; reen. 1899, p. 33, sec. 119; reen. R.C. & C.L., sec. 5026; C.S., sec. 7274; I.C.A., sec. 33-1701; am. 1982, ch. 209, sec. 1, p. 573.]

34-2001A. BOND ELECTION AND MILL LEVY CONTESTS -- TIME FOR FILING -- VALIDATION OF ELECTIONS AND BONDS. A. The provisions of this chapter with respect to the contest of elections shall be applicable to bond elections conducted by cities, counties, school districts and water and sewer districts, and to elections conducted by school districts for mill levy increases as authorized by sections [33-802](#), [33-803](#) and [33-804](#), Idaho Code. Any such contest shall be regarded as one contesting the outcome of the vote on the bond or mill levy proposition, rather than election to office, and the public entity calling the election rather than a person declared to have been elected to office, shall be regarded as the defendant.

B. When the validity of any bond or mill levy election is contested upon any of the grounds enumerated in section [34-2001](#), Idaho Code, or upon any other grounds whatsoever the plaintiff or plaintiffs must, within forty (40) days after the votes are canvassed and the results thereof declared, file in the proper court a verified written complaint setting forth, in addition to the other requirements of this chapter, the following:

(1) The name of the party contesting the bond or mill levy election, and that he is an elector of the public entity conducting the bond or mill levy election.

(2) The proposition or propositions voted on at the election which are contested.

(3) The particular grounds of such contest.

C. No such election contest shall be maintained and no bond or mill levy election shall be set aside or held invalid unless a complaint is filed as permitted hereunder within the period prescribed in this section. As to bond or mill levy elections which have been held prior to the effective date of this act, no such contest shall be maintained wherein it is alleged that the election should be set aside or held on any ground enumerated in section [34-2001](#), Idaho Code, or on any other ground, unless such election contest be filed as herein provided within forty (40) days from and after the effective date of this act.

D. All bond elections conducted by cities, counties, school districts and water and sewer districts prior to the effective date of this act, and all proceedings had in the authorization and issuance of the bonds authorized thereat, are hereby validated, ratified and confirmed and all such bonds are declared to constitute legally binding obligations in accordance with their terms. Nothing in this section shall be construed to affect or validate any bond election, or bonds issued pursuant thereto, the legality of which is being contested at the time this act takes effect, or any election the legality of which is contested within the forty (40) day period from and after the effective date of this act.

[I.C., sec. 34-2001A, as added by 1969, ch. 208, sec. 1, p. 604; am. 1976, ch. 291, sec. 1, p. 1008.]

34-2002. TERM INCUMBENT DEFINED. The term "incumbent" in this chapter means the person whom the canvassers declare elected.

[(34-2002) 1890-1891, p. 57, sec. 133; reen. 1899, p. 33, sec. 120; reen. R.C. & C.L., sec. 5027; C.S., sec. 7275; I.C.A., sec. 33-1702.]

34-2003. MISCONDUCT OF JUDGES. When the misconduct complained of is on the part of the judges of election, it shall not be held sufficient to set aside the election, unless the vote of the precinct, township or ward would change the result as to that office.

[(34-2003) 1890-1891, p. 57, sec. 134; reen. 1899, p. 33, sec. 121; reen. R.C. & C.L., sec. 5028; C.S., sec. 7276; I.C.A., sec. 33-1703.]

34-2004. JURISDICTION -- CONTESTS OVER JUDICIAL OFFICES. The Supreme Court shall hear and determine contests of the election of judges of the Supreme Court and appellate court and judges of the district courts, and in case they shall disagree, the governor shall act with them in determining the contest, but no judge of the Supreme Court shall sit upon the hearing of any case in which he is a party. The appropriate district court shall hear and determine contests of the retention election of judges of the magistrate courts.

[(34-2004) 1890-1891, p. 57, sec. 137; am. 1899, p. 33, sec. 124; reen. R.C. & C.L., sec. 5029; C.S., sec. 7277; I.C.A., sec. 33-1704; am. 1982, ch. 209, sec. 2, p. 574.]

34-2005. JURISDICTION -- REMOVAL OF COUNTY SEATS AND SPECIAL QUESTIONS. The district courts of the respective counties shall hear and determine contests of election in regard to the removal of county seats, and in regard to any other subject which may by law be submitted to the vote of

the people of the county, and the proceedings therein shall be conducted as near as may be hereinafter provided for contesting the election of county officers.

[(34-2005) 1890-1891, p. 57, sec. 138; reen. 1899, p. 33, sec. 125; reen. R.C. & C.L., sec. 5030; C.S., sec. 7278; I.C.A., sec. 33-1705.]

34-2006. JURISDICTION -- COUNTY AND PRECINCT OFFICERS. The district courts shall hear and determine contests of all other county, township and precinct officers, and officers of the cities and incorporated villages within the county.

[(34-2006) 1890-1891, p. 57, sec. 139; reen. 1899, p. 33, sec. 126; reen. R.C. & C.L., sec. 5031; C.S., sec. 7279; I.C.A., sec. 33-1706.]

34-2007. WHO MAY CONTEST ELECTIONS. The election of any person declared elected to any office, other than executive state officers and members of the legislature, may be contested by any elector of the state, judicial district, county, township, precinct, city or incorporated village in and for which the person is declared elected.

[(34-2007) 1890-1891, p. 57, sec. 148; reen. 1899, p. 33, sec. 135; reen. R.C. & C.L., sec. 5032; C.S., sec. 7280; I.C.A., sec. 33-1707.]

34-2008. COMPLAINT AND SECURITY FOR COSTS. The contestants shall file in the proper court, within twenty (20) days after the votes are canvassed, a complaint setting forth the name of the contestant, and that he is an elector competent to contest such election; the name of the incumbent, the office contested, the time of the election, and the particular causes of contest, which complaint shall be verified by the affidavit of the contestant, that the causes set forth are true as he verily believes. The contestant must also file a bond, with security to be approved by the clerk of the court or district judge, as the case may be, conditioned to pay all costs in case the election be confirmed, the complaint dismissed, or the prosecution fail.

[(34-2008) 1890-1891, p. 57, sec. 149; reen. 1899, p. 33, sec. 136; reen. R.C. & C.L., sec. 5033; C.S., sec. 7281; I.C.A., sec. 33-1708.]

34-2009. COMPLAINT -- SPECIFIC ALLEGATIONS. When the reception of illegal or the rejection of legal votes is alleged as a cause of contest, the names of the persons who so voted, or whose votes were rejected, if known, with the precinct, township or ward where they voted or offered to vote, shall be set forth in the complaint.

[(34-2009) 1890-1891, p. 57, sec. 150; reen. 1899, p. 33, sec. 137; reen. R.C. & C.L., sec. 5034; C.S., sec. 7282; I.C.A., sec. 33-1709.]

34-2010. ISSUANCE OF SUMMONS. Upon the filing of such complaint summons shall issue against the person whose office is contested, as prescribed in the Idaho Rules of Civil Procedure.

[(34-2010) 1890-1891, p. 57, sec. 151; reen. 1899, p. 33, sec. 138; reen. R.C. & C.L., sec. 5035; C.S., sec. 7283; I.C.A., sec. 33-1710; am. 1982, ch. 209, sec. 3, p. 574.]

34-2011. TIME FOR TRIAL. The cause shall stand for trial at the expiration of thirty (30) days from the time of service of the summons and complaint, if the court shall then be in session; otherwise, on the first day of the next term thereafter.

[(34-2011) 1890-1891, p. 57, sec. 152; reen. 1899, p. 33, sec. 139; reen. R.C. & C.L., sec. 5036; C.S., sec. 7284; I.C.A., sec. 33-1711.]

34-2012. POSTPONEMENT OF TRIAL. The trial shall proceed at the time appointed, unless postponed for good cause shown by affidavit, the terms of which postponement are in the discretion of the court.

[(34-2012) 1890-1891, p. 57, sec. 153; reen. 1899, p. 33, sec. 140; reen. R.C. & C.L., sec. 5037; C.S., sec. 7285; I.C.A., sec. 33-1712.]

34-2013. PROCEDURE IN GENERAL. The proceedings shall be held according to the Idaho Rules of Civil Procedure so far as practicable, but shall be under the control and direction of the court, which shall have all the powers necessary to the right hearing and determination of the matter; to compel the attendance of witnesses, swear them and direct their examination; to punish for contempt in its presence or by disobedience to its lawful mandate; to adjourn from day to day; to make any order concerning immediate costs, and to enforce its orders by attachment. It shall be governed by the rules of law and evidence applicable to the case.

[(34-2013) 1890-1891, p. 57, sec. 154; reen. 1899, p. 33, sec. 141; reen. R.C. & C.L., sec. 5038; C.S., sec. 7286; I.C.A., sec. 33-1713; am. 1982, ch. 209, sec. 4, p. 574.]

34-2014. TESTIMONY -- SUBPOENA FOR WITNESSES. The testimony may be oral, or by depositions taken pursuant to the Idaho Rules of Civil Procedure. Subpoenas for witnesses may be issued pursuant to the Idaho Rules of Civil Procedure.

[(34-2014) 1890-1891, p. 57, sec. 155; reen. 1899, p. 33, sec. 142; reen. R.C. & C.L., sec. 5039; C.S., sec. 7287; I.C.A., sec. 33-1714; am. 1982, ch. 209, sec. 5, p. 574.]

34-2015. AMENDMENTS. The proceedings shall not be dismissed for want of form, if the particular causes of contest are alleged with such certainty as will sufficiently advise the incumbent of the real grounds of contest. If any part of the causes are held insufficient they may be amended, but the incumbent will be entitled to an adjournment if he state on oath that he has a matter to answer to the amended causes, for the preparation of which he needs further time. Such adjournment shall be upon such terms as the court deems reasonable; but if all the causes are held insufficient, and an amendment is asked the adjournment shall be at the cost of the contestant. If no amendment is asked for or made, or in case of entire failure to prosecute, the proceedings may be dismissed.

[(34-2015) 1890-1891, p. 57, sec. 156; reen. 1899, p. 33, sec. 143; reen. R.C. & C.L., sec. 5040; C.S., sec. 7288; I.C.A., sec. 33-1715.]

34-2016. FORM AND SERVICE OF PROCESS. The style, form and manner of service of process and papers, and the fees of officers and witnesses shall be the same as in other cases in the court where the cause is tried.

[(34-2016) 1890-1891, p. 57, sec. 157; reen. 1899, p. 33, sec. 144; reen. R.C. & C.L., sec. 5041; C.S., sec. 7289; I.C.A. sec. 33-1716.]

34-2017. VOTERS TO TESTIFY AS TO QUALIFICATIONS. (a) The court may require any person called as a witness, who voted at such election, to answer touching his qualifications as a voter; and if he was not a qualified voter in the county where he voted, then to answer for whom he voted; and if the witness answer such questions no part of his testimony on that trial shall be used against him in any criminal action.

(b) No testimony shall be received as to any illegal votes unless the party contesting the election delivers to the opposing party at least three (3) days before trial, a written list of the number of illegal votes and by whom given, which he intends to prove on such trial. No testimony shall be received as to any illegal votes, except as to such as are specified in this list.

[(34-2017) 1890-1891, p. 57, sec. 158; reen. 1899, p. 33, sec. 145; reen. R.C. & C.L., sec. 5042; C.S., sec. 7290; I.C.A., sec. 33-1717; am. 1982, ch. 209, sec. 6, p. 575.]

34-2018. INSPECTION OF BALLOTS AND POLL BOOKS. If an inspection of the ballots or poll books of any election district in this state shall become necessary for the determination of any election contest before any court, the presiding judge thereof may, by order naming the district or districts, require the proper officer to procure the same from the county auditor, or other person in whose possession or custody the same may be, and such clerk or person shall deliver the same to said officer, who shall deliver them unopened to such presiding judge.

[(34-2018) 1890-1891, p. 57, sec. 159; reen. 1899, p. 33, sec. 146; reen. R.C. & C.L., sec. 5043; C.S., sec. 7291; I.C.A., sec. 33-1718.]

34-2019. BALLOTS AND POLL BOOKS -- RETURN TO COUNTY AUDITOR. The presiding officer shall open and inspect the same in open court, in the presence of the parties or their attorneys, and immediately after such inspection shall again seal them in an envelope and return them, by mail or otherwise, to the office of the county auditor in which they were at first required to be filed.

[(34-2019) 1890-1891, p. 57, sec. 160; reen. 1899, p. 33, sec. 147; reen. R.C. & C.L., sec. 5044; C.S., sec. 7292; I.C.A., sec. 33-1719.]

34-2020. LIABILITY FOR COSTS. (a) The contestant and the incumbent are liable to the officers and witnesses for the costs made by them respectively. But if the election be confirmed, or the complaint be dismissed, or the prosecution fail, judgment shall be rendered against the contestant for costs, and if the judgment be against the incumbent, or the election be set aside, it shall be against him for costs.

(b) If the election is set aside or annulled on the grounds of fraud or error by the election officials in conducting the election or in canvassing

the returns, the contest costs shall be a charge against the county or political subdivision where the election was held.

[(34-2020) 1890-1891, p. 57, sec. 161; reen. 1899, p. 33, sec. 148; reen. R.C. & C.L., sec. 5045; C.S., sec. 7293; I.C.A., sec. 33-1720; am. 1982, ch. 209, sec. 7, p. 575.]

34-2021. FORM OF JUDGMENT. The judgment of the court in cases of contested election shall confirm or annul the election according to the right of the matter; or, in case the contest is in relation to the election of some person to an office, shall declare as elected the person who shall appear to be duly elected or, in the alternative, order the office to be filled according to [chapter 9, title 59](#), Idaho Code, or order a new election to be held at a time and place as determined by the court.

[(34-2021) 1890-1891, p. 57, sec. 162; reen. 1899, p. 33, sec. 149; reen. R.C. & C.L., sec. 5046; C.S., sec. 7294; I.C.A., sec. 33-1721; am. 1982, ch. 209, sec. 8, p. 575.]

34-2022. DETERMINATION OF TIE VOTE. If it appears that two (2) or more persons have--or would have had if the legal ballots cast or intended to be cast for them had been counted--the highest and an equal number of votes for the same office, the persons receiving such votes shall decide by lot, in such manner as the court shall by written order direct, which of them shall be declared duly elected, and the judgment shall be entered accordingly.

[(34-2022) 1890-1891, p. 57, sec. 163; reen. 1899, p. 33, sec. 150; reen. R.C. & C.L., sec. 5047; C.S., sec. 7295; I.C.A., sec. 33-1722.]

34-2023. ORDER FOR POSSESSION. When either the contestant or incumbent shall be in possession of the office by holding over, or otherwise, the court shall, if the judgment be against the party so in possession of the office and in favor of his antagonist, issue an order to carry into effect the judgment of the court, which order shall be under the seal of the court, and shall command the sheriff of the county to put the successful party into possession of the office without delay, and to deliver to him all books and papers belonging to the same; and the sheriff shall execute such order as other writs.

[(34-2023) 1890-1891, p. 57, sec. 164; reen. 1899, p. 33, sec. 151; reen. R.C. & C.L., sec. 5048; C.S., sec. 7296; I.C.A., sec. 33-1723.]

34-2024. ELECTION DECLARED VOID. When the person whose election is contested is found to have received the highest number of legal votes, but the election is declared null by reason of legal disqualification on his part, or for other causes, the person receiving the next highest number of votes shall not be declared elected, but the election shall be declared void.

[(34-2024) 1890-1891, p. 57, sec. 165; reen. 1899, p. 33, sec. 152; reen. R.C. & C.L., sec. 5049; C.S., sec. 7297; I.C.A., sec. 33-1724.]

34-2025. APPEAL AND SUPERSEDEAS. (a) The party against whom judgment is rendered in cases tried in the district court may appeal to the Supreme Court, and if the appellant be in possession of the office, such appeal shall not supersede the execution of the judgment of the court, as provided in

the preceding section, unless he give a bond with security, to be approved by the court, in a sum to be fixed by the court, and which shall be at least double the probable compensation of such officer for six (6) months, which bond shall be conditioned that he will prosecute his appeal without delay, and that if the judgment appealed from be affirmed he will pay over to the successful party all compensation received by him while in possession of said office after the judgment appealed from was rendered, and such bond shall contain the express consent that judgment may be rendered against the sureties on the appeal as provided in the following section.

(b) All appeals to the Supreme Court shall be brought within ten (10) days of the judgment by the district court.

[(34-2025) 1890-1891, p. 57, sec. 166; reen. 1899, p. 33, sec. 153; reen. R.C. & C.L., sec. 5050; C.S., sec. 7298; I.C.A., sec. 33-1725; am. 1982, ch. 209, sec. 9, p. 576.]

34-2026. JUDGMENT OF AFFIRMANCE. If upon the appeal the judgment be affirmed, the appellate court shall render judgment against the appellant and the sureties on his bond, or either of them, for the amount which the appellee is entitled to recover from the appellant on account of such contest, together with the costs; but in such case the sureties, or either of them, shall be entitled to produce and examine witnesses concerning the amount of such recovery.

[(34-2026) 1890-1891, p. 57, sec. 167; reen. 1899, p. 33, sec. 154; reen. R.C. & C.L., sec. 5051; C.S., sec. 7299; I.C.A., sec. 33-1726.]

34-2027. COST OF BOND ON APPEAL. If upon appeal the appellant shall not be in possession of the office, he shall give bond, with security to be approved by the court where the judgment is rendered, conditioned to pay all costs that may be adjudged against him upon such appeal.

[(34-2027) 1890-1891, p. 57, sec. 168; reen. 1899, p. 33, sec. 155; reen. R.C. & C.L., sec. 5052; C.S., sec. 7300; I.C.A., sec. 33-1727.]

34-2028. CONTEST OF NOMINATION AT PRIMARIES. A candidate at a primary election may contest the nomination of any candidate for the same office based upon the grounds as set out in this chapter.

[34-2028, added 1982, ch. 209, sec. 10, p. 576.]

34-2029. JURISDICTION OVER PRIMARY CONTEST. The district court in the respective county in which the alleged error or omission occurred shall be the court in which jurisdiction shall rest.

[34-2029, added 1982, ch. 209, sec. 11, p. 576.]

34-2030. FILING OF AFFIDAVIT. A candidate wishing to contest a primary election shall file an affidavit with the appropriate court within five (5) days of the completion of the canvass of the election. The affidavit shall set forth information as required in section [34-2008](#), Idaho Code. The affidavit shall be served on all necessary parties in the same manner as a complaint and summons are served pursuant to the Idaho Rules of Civil Procedure.

[34-2030, added 1982, ch. 209, sec. 12, p. 576.]

34-2031. SECURITY FOR COSTS. Upon filing of the affidavit the contestant shall file with the court a bond, in the amount of five hundred dollars (\$500), to be used to pay costs of the contestee in the event the primary election be confirmed or the prosecution fail.

[34-2031, added 1982, ch. 209, sec. 13, p. 577.]

34-2032. FRAUD OR ERROR BY THE ELECTION OFFICIAL. If the primary election is set aside or annulled on the grounds of fraud or error by the election officials in conducting the election or in canvassing the election returns, the contest costs shall be a charge against the county or city where the election was held.

[34-2032, added 1982, ch. 209, sec. 14, p. 577.]

34-2033. DISCOVERY. The court may order the production of such evidence as it deems necessary for the proper disposition of the primary contest pursuant to the Idaho Rules of Civil Procedure. The election contest shall be given priority on the court's calendar.

[34-2033, added 1982, ch. 209, sec. 15, p. 577.]

34-2034. REMEDIES. The court shall render an opinion in a primary contest as soon as is reasonably possible and shall prescribe such remedies as provided in this chapter as it deems just.

[34-2034, added 1982, ch. 209, sec. 16, p. 577.]

34-2035. APPEALS. (a) In primary election contests, the party against whom judgment is rendered on cases filed in the district court may appeal to the Supreme Court. The appeal shall be taken within ten (10) days of the judgment by the district court.

(b) The Supreme Court shall give the primary contest appeal priority on its calendar.

[34-2035, added 1982, ch. 209, sec. 17, p. 577.]

34-2036. COST ON APPEAL. The appellant shall file a bond sufficient to cover the cost of appeal of a primary contest. Costs shall be awarded to the prevailing party on appeal. The amount of the bond on appeal shall be set by the court.

[34-2036, added 1982, ch. 209, sec. 18, p. 578.]