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# Appendix B



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Legislative Service Commission Library Law Room

## Procedures for Contested Elections

A Senator's or Representative's election may be contested by filing a petition with the appropriate court within 15 days after the election results are ascertained and announced or within ten days after the results of any recount are ascertained and announced. The petition must (1) set forth the grounds for the election contest, (2) be signed either by the losing candidate or by at least 25 persons who voted for the office being contested, (3) be verified by the oath of the losing candidate or at least two of the petitioners, and (4) be accompanied by a surety bond in a sum sufficient to pay all costs of the contest. (The person who files the petition is known as the "contestor.") The court causes a copy of the petition to be served upon the Senator or Representative whose election is being contested. (The Senator or Representative is known as the "contestee.") The Senator or Representative has ten days after receiving the petition to answer it. After the Senator or Representative answers, the contestor has five days to reply.


Not fewer than 15 or more than 30 days after the petition is filed, the court holds a trial of the contest at which evidence is taken. The trial

proceeds much as an ordinary civil trial and is heard expeditiously by the court without a jury. In order to prevail, the contestor must prove by clear and convincing evidence (1) that one or more election irregularities occurred and (2) that the irregularity or irregularities affected enough votes to change or make uncertain the result of the election. When

the election of someone other than a Senator or Representative is at issue, the court pronounces judgment at the conclusion of the trial. However, when a Senator's or Representative's election is contested, the court does not pronounce judgment because each house of the General Assembly has exclusive power to judge the election, returns, and qualifications of its


members. (The only limitation on the Senate and House in resolving a contest is that they cannot declare a person to be eligible if the person is ineligible under the Ohio Constitution.) After hearing the contest, the court transmits a transcript of the testimony and all other evidence presented in the case to the Clerk of the Senate or the Clerk of the House. The Senate or House then proceeds to resolve the contest.

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*If a Senate or House district is larger than a county, the appropriate court to hear an election contest arising with respect to the district is the Ohio Supreme Court. If a Senate or House district consists of one county or is smaller than a county, the appropriate court to hear an election contest arising with respect to the district is the court of common pleas of the county in which the contest arose.*

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# Statutory and Common Law

Statutes often are contrasted with another form of law, the common law. The General Assembly enacts statutes. Courts make common law as they decide cases that do not involve statutory interpretation. The doctrine of precedent (*stare decisis*) is the mechanism by which the courts apply the common law. Under this doctrine, when a court decides a case, it generally is required to follow prior decisions that deal with facts similar to the facts in the case under consideration (precedents). Additionally, in all cases, the courts are required to take notice of and apply relevant statutes. When a statute applies to a case, and its precise application is not plain, the courts interpret the statute in order to apply it to the case. The General Assembly may modify the common law by statute.

## Finding Statutes and the Common Law

Statutes are enacted in two forms: codified and uncoded. Statutes having a general and permanent nature are codified; statutes of a special nature are left uncoded. An example of a codified statute is section 5747.02 of the Revised Code, which levies the state income tax; the state income tax is a subject having a general and permanent nature. An example of an uncoded statute is one authorizing the sale of a parcel of state-owned real estate; because each parcel of land is unique and the authority to convey it is subject to specified conditions and a deadline, such a statute is special.

Acts of the General Assembly (and the codified and uncoded statutes they contain) are compiled and published in Ohio's "session laws," the *Laws of Ohio*. Codified statutes are compiled from the *Laws of Ohio* and organized according to subject matter in the Ohio Revised Code, which is published voluntarily by private publishers. In addition to their publication in *Laws of Ohio*, uncoded statutes may appear in the private publications of the Revised Code at the discretion of the editors.

Although the common law is sometimes said to be "unwritten," this assertion is not really accurate. The common law is written down, in large part, in opinions issued by the courts. When courts decide cases, they often write opinions to explain the reasoning by which they have reached their decisions. These opinions, when not based on statutory interpretation, state the common law. Court opinions often are compiled and published in volumes known as "reports" and then are available as precedents for future court decisions.

## Statutes and Common Law as Checks and Balances

Statutes and the common law interact with each other in such a way as to serve as checks and balances between the General Assembly and the courts. The power of the General Assembly to enact statutes that modify the common law, together with the duty of the courts to take notice of and apply statutes, is a check upon the power of the

courts. On the other hand, the General Assembly may only enact statutes within the scope of its constitutional power. If the General Assembly exceeds its constitutional authority in enacting a statute, the courts may invalidate the statute by declaring it unconstitutional. Under the principle of severability, such a decision makes the statute unenforceable to the extent of its unconstitutionality. To the extent that the statute is not unconstitutional, it remains enforceable.

Because the courts have no power to amend or repeal statutes, an unconstitutional statute “remains on the books” in spite of its unenforceability until the General Assembly amends or repeals it, as appropriate.