NASS National Association of Secretaries of State

NASS Survey on Cast Ballots as Open Records
Responses received as of March 29, 2007

State	Are Cast Ballots Open Records, Open to Public	If yes, at what point are ballots accessible to public	If no, is there a procedure in place for the public to gain access
AS	No		We do not have any procedures for the public to view ballots except a court order and we want to reinforce this standard.
DE	No		No
FL	Ballots are open to public inspection and examination while in the custody of the supervisor of elections or county canvassing board; however, no person other than a supervisor of elections or his or her employees and the county canvassing board may touch the ballots. .	The official ballots and ballot cards received from election boards and removed from absentee ballot mailing envelopes shall be open for public inspection or examination while in the custody of the supervisor of elections or the county canvassing board at any reasonable time, under reasonable conditions; however, no persons other than the supervisor of elections or his or her employees or the county canvassing board shall handle any official ballot or ballot card. If the ballots are being examined prior to the end of the contest period in s. 102.168, the supervisor of elections shall make a reasonable effort to notify all candidates whose names appear on such ballots or ballot cards by telephone or otherwise of the time and place of the inspection or examination. All such candidates,	

		or their representatives, shall be allowed to be present during the inspection or examination	
GA	No		The only way to obtain them would be through a court order
GU	No		A member of the public must obtain a court order.
ID	Yes	Idaho does treat ballots as open records available to the public after the time for a recount or challenge has run.	
IN	No		The only access to ballots is during a recount or election contest (under Indiana's recount procedures). I assume a court could order it, but I don't recall that ever happening.
KS	No		After canvass and certification
KY	No		No, unless there is a recount or contest lawsuit filed
LA	Yes, paper ballots cast are public records and stored as an election record for 6 months for state elections and 22 months for federal elections.	Yes, Our counting process on election night of paper ballots is open to the public. If they make a public records request anytime during our retention of such ballots, they would be made available.	
MD	Maryland law does not treat ballots as records for which inspection is mandatory under the Public Information Act.	However, we have allowed the public and press to review each ballot but only after the canvass and time for recount had passed and an election official/staff is present at all time.	
ME	No.		Maine election law makes voted ballots confidential (Title 21-A MRSA section 22.2), and provides that they may only be inspected in accordance with the law (during a recount or appeal of a disputed election).
MN	No		The public can view the ballots through a recount or if the election was contested. Individuals could also view ballots in those precincts selected for mandatory post-election

			audits which are open to the public. There is no procedure for the public to gain access by demonstrating "reasonable grounds".
MS	No		At any time within twelve (12) days after the canvass and examination of the box and its contents by the election commission or executive committee, as the case may be, any candidate or his representative authorized in writing by him shall have the right of full examination of said box and its contents upon three (3) days' notice of his application therefore served upon the opposing candidate or candidates, or upon any member of their family over the age of eighteen (18) years, which examination shall be conducted in the presence of the circuit clerk or his deputy who shall be charged with the duty to see that none of the contents of the box are removed from the presence of the clerk or in any way tampered with. Upon the completion of said examination the box shall be resealed with all its contents as theretofore. And if any contest or complaint before the court shall arise over said box, it shall be kept intact and sealed until the court hearing and another ballot box, if necessary, shall be furnished for the precinct involved.
NC	No		Voted ballots and paper records of individual voted ballots shall be treated as confidential, and no person other than elections officials performing their duties may have access to voted ballots or paper records of individual voted ballots except by court order or order of the appropriate board of elections as part of the resolution of an election protest or investigation of an alleged election irregularity or violation. Voted ballots and paper records of individual voted ballots shall not be disclosed to members of the public in such a way as to disclose how a particular voter voted, unless a court orders otherwise.

ND	No		The ballots become available through court order. The procedure is relatively simple, if the court orders the ballots to be made available because of a contest of the election, the county recorder, the one given the responsibility for the security of the ballots during the 22-month retention period, would provide the ballots for review in his or her presence.
NE	No		The precinct sign-in register, the record of early voters, and the official summary of votes cast are subject to the inspection of any person who may wish to examine them after the primary, general or special results have been canvassed. The voted ballots are kept in sealed containers and not reopened after canvassing unless a recount is required or the election is contested and the official is ordered to do so. There are statutes in place for a losing candidate to request a recount of the ballots or to contest an election, whereby the court may issue a writ to the election official to open, count, and examine the voted ballots and to certify the results of such count comparison and examination to the court. Voted ballots <u>not involved in a contested election</u> involving federal offices, candidates and issues are destroyed after 22 months
NH	No		Aside from recounts, ballots cannot be accessed by the public in New Hampshire without a court order.
NM	No		By court order
OK	No		The most common situation in which cast ballots become open to the public is during a recount or a contest alleging irregularities. Otherwise, a member of the public would have to have a court order to gain access to ballots.
TN	No		It would take a court order for someone to get access to them.

VA	No. Ballots are sealed and remain at the Clerk of Courts office for a period of two years after an election at which time they are destroyed.		Currently, sealed ballots may only be unsealed for very specific circumstances which include: Upon the approval of the Secretary of the State Board of Elections in order to ensure the accuracy of the election prior to the certification of the election. 2. Upon the request of the local electoral board if the number of paper ballots used does not equal the number of paper ballots as shown as being issued on the pollbook. 3. Upon the order of a court presiding over a recount.
VT	No		We do not permit the ballots to be inspected except by court order
WA	No. Once counted, the ballots are sealed and kept for 60 days for state elections and 22 months for federal elections		It would require a court order for anyone in the public to gain access within the retention period. When the retention period ends, the ballots remain sealed until they are destroyed.
WI	Yes Wisconsin has treated ballots as an open record for several years. The matter was litigated under our public records law and the courts found in favor of making ballots available for public inspection. Our position is that once the period for a recount or election contest has past the ballots are subject to public inspection.	We advise the custodian, either the municipal or county clerk, that someone must be present when the ballots are inspected. The custodian must make a record in the chain of custody and the custodian must take steps to protect against any possibility of tying a voter to a ballot. This can happen with challenged ballots or absentee ballots counted centrally which have been labeled with a voter number that can be linked to the poll list and the voters' name. In addition, for the few municipalities that have all DRE's we advise that the paper record must be separated by cutting the paper roll if the voters' ballots are in the same order as on the poll list. This is highly	

		unlikely.	