

Election Transparency Rules for Florida

Current as of October 28, 2020

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Overview

In Florida, media access to polling locations is limited to the area outside. However, the media has easy access to voter registration and history in the public record. Additionally, the public may watch the canvassing process for mail-in ballots in each county.

Election Day Access to Polling Locations

1. Rules concerning access/transparency at polling places generally

The only individuals *allowed inside* the polling place during voting hours are supervisors of elections, deputy supervisors of elections, voters (and individuals in voters' care), poll workers, poll watchers, and election observers.¹ Fla. Stat. §102.031(3)(a). In addition, any person who is in the care of the voter or who is assisting the voter may also be allowed to enter the polling place. *Id.*

Members of the media, candidates, and law enforcement or emergency service personnel are *not allowed inside* the polling place. *Id.* The only exception is for law enforcement and emergency service personnel when permitted by the clerk or a majority of the election board. *Id.*

2. Rules concerning journalists' approaches to voters at or near polling places, for exit polling or newsgathering

Around the entrances of the polling places, the clerk or supervisor of elections will mark a 150-foot no-solicitation zone. Fla. Stat. §102.031(4). Before 2006, Florida law prohibited exit polling within the 150-foot no-solicitation zone; however, in *CBS v. Cobb*, a federal district court held that the restriction on exit polling violated the First Amendment. 470 F. Supp. 2d 1365, 1371 (S.D. Fla. 2006). Florida law now clarifies that exit polling does not constitute prohibited "solicitation." Fla. Stat. §102.031(4)(b). Thus, exit pollsters may approach voters inside the no-solicitation zone when those voters are leaving the polling place.

3. Rules concerning the taking of photographs and videos at or near polling places

Florida allows voters to take a "ballot selfie." Voters are permitted to photograph only their own ballot. Fla. Stat. §102.031(5). Other than the "ballot selfie," no photography is allowed in the polling room, including operational security cameras within the polling place. *Id.*; *see also* Polling Place Procedures Manual, Florida Department of State Division of Elections, at 12 (Apr. 2020),

https://dos.myflorida.com/media/703005/adopted-clean-de11_pollplaceprocmanual.pdf.

In 1989, a photographer was ejected from a polling place after attempting to take a photo of a candidate at the polls in violation of a statute prohibiting nonvoters from being within fifty feet of the polling place. *Firestone v. News-Press Publishing Co.*, 538 So. 2d 457, 458 (Fla. 1989). The Florida Supreme Court held that the statute's prohibition on nonvoters being within

¹ Poll workers include clerks, inspectors, equipment managers, ballot managers, and assistants.

fifty feet outside of the polling place was unconstitutional, but upheld the statute’s prohibitions on conduct within the polling place. *Id.* at 459–60. Under that precedent, Florida’s current restrictions on photographs and videos of the inside polling places are lawful.

4. Rules concerning privacy/ identification of voters and voting officials at polling places

See supra section 3.

5. Content restrictions on speech at or near polling places

Florida law prohibits “solicitation” within 150 feet of a polling place, which includes:

[S]eeking or attempting to seek any vote, fact, opinion, or contribution; distributing or attempting to distribute any political or campaign material, leaflet, or handout; conducting a poll except as specified in this paragraph; seeking or attempting to seek a signature on any petition; and selling or attempting to sell any item.

Fla. Stat. §102.031(4)(b). “Solicitation” does not include exit polling. *Id.* *See also supra* section 2.

Consistent with this regulation, voters may bring in pre-marked sample ballots for personal use,² but may not use these to campaign inside the polling place or within 150 feet of the entrance to the polling place. Fla. Stat. §102.031(4).

Nonetheless, voters may wear campaign buttons or campaign apparel in compliance with *Minnesota Voters Alliance v. Mansky*, 138 S. Ct. 1876 (2018).

6. Who controls physical access to a polling place?

For each precinct, the clerk maintains control of the polling place and marks the no-solicitation zone surrounding the polling place. Fla. Stat. §§102.031(4)(a), (4)(c). The clerk, along with the inspectors and other poll workers, are appointed by the Supervisor of Elections for each precinct in the county at least 20 days before the election. Fla. Stat. §102.012(1)(a). The clerk is in charge of ensuring that the election board carries out its duties and responsibilities. *Id.*

² Polling Place Procedures Manual, Florida Department of State Division of Elections, 11 (Apr. 2020), https://dos.myflorida.com/media/703005/adopted-clean-de11_pollplaceprocmanual.pdf.

7. What state official is responsible for correcting improper denials of access or application of laws at polling places?

If there are any issues at the polling place, ask to speak with either the clerk or the Supervisor of Elections. Fla. Stat. §102.031. Each polling place has a clerk that is tasked with maintaining order at the precinct and each county has a Supervisor of Elections who supervises all the precincts within his or her assigned county. *Id.*

The contact information for each Supervisor of Elections can be found on the [Florida Divisions of Elections website](#).

Access to Vote Count & Tabulation/Vote Count Process

Election Transparency Information

1. Voting day basics

Poll locations are open on election day from 7:00 AM to 7:00 PM. Polling Place Procedures Manual, Florida Department of State Division of Elections, at 6 (Apr. 2020), https://dos.myflorida.com/media/703005/adopted-clean-de11_pollplaceprocmanual.pdf. When the polling location closes, a procedure should be in place to clearly mark the end of the line, such as a deputy will stand behind the last person, and all eligible voters standing in line shall be allowed to vote. *Id.* at 31. However, in the *rare* event that a court or other order extends the polling hours, any eligible voter entering the line after the deputy, the voter will be allowed to cast a provisional ballot that is kept separate from the other provisional ballots cast during the day. *Id.*; *see also* Fla. Stat. § 101.049.

If a voter needs any assistance with voting, a voter may call the Voter Assistance Hotline within the State's Division of Elections. The phone number is 1-866-308-6379 and is available Monday through Friday from 8:00 AM to 5:00 PM, with extended hours during statewide elections.

2. Vote counting rules and procedures

After the voting devices have been locked against further voting and the polls have been closed, the inspectors and the clerk at each precinct compare the number of voted ballots to the number of ballots cast as indicated by the precinct tabulator. Polling Place Procedures Manual, Florida Department of State Division of Elections, at 32 (Apr. 2020), https://dos.myflorida.com/media/703005/adopted-clean-de11_pollplaceprocmanual.pdf. Any discrepancies trigger a recount at the polling place. *Id.* The clerk must report unresolved discrepancies in writing to the Supervisor of Elections for the county. *Id.* The ballots having been counted, the clerk and the inspectors then “post at the polls, for the benefit of the public, the results of the voting

for each office,” certify the results, and send the sealed certificate to the supervisor for immediate publication. Fla. Stat. §102.071.

A voter may be presented with a provisional ballot for any number of reasons including, as discussed, arriving after the polling location closes, as well as issues with identification, absence of voter’s name from the precinct database, indication in the database that the voter has voted early, or inability of the poll worker to verify eligibility to vote upon consulting the Supervisor of Elections. Fla. Stat. §101.048. If a voter is given a provisional ballot, the voter may present written evidence that supports the individual’s eligibility to vote in the election by 5:00 PM on the second day following the election. *Id.* However, the provisional ballots are not tallied through the equipment at the polling place. *Id.* The provisional ballots are sealed and sent to the county’s Supervisor of Elections after the polls close. *Id.* The provisional ballots are not included in the final tally for the polling place’s certificate of results and are tallied separately. *Id.*

3. Control of the vote count process

For individual polling places, please see the discussion above regarding the voting counting rules and procedures.

For canvassing of vote-by-mail ballots and compiling votes across precincts, the Florida Election Code created a county canvassing board, composed of the supervisor of elections, a county judge, and the chair of the board of county commissioners. Fla. Stat. §102.141. After the county has certified results, the final canvassing is certified by a board composed of the Governor and two members of the cabinet selected by the Governor or the Elections Canvassing Commission. *Id. See also* Fla. Stat. §102.111.

In the event that a candidate is defeated by 0.25% or less in overall percentage of votes cast for the office, or the number of overvotes and undervotes exceeds the number of votes needed to change the outcome of the election, the Secretary of State must order a manual recount, which must be open to the public. Fla. Stat. §102.166. Additionally, the statute lays out detailed procedures for manual recount, including granular standards for analyzing the voter’s intent. *Id.*

4. Mail-in ballot transparency and control

For mail-in ballots, the Supervisor of Elections gathers the ballots and verifies the signature of the ballot in order for the ballot to be counted. Fla. Stat. §101.68(1). If there is an issue with a ballot (no signature or the signature does not match), the Supervisor of Elections is required to notify the voter as soon as it is practical. Fla. Stat. §101.68(4). At this point, the voter will be able to correct the issue. *Id.* The canvassing board for the county may begin canvassing the ballots “at 7:00 AM on the 22nd day before the election, but not later than noon on the day following the election” at a location that is accessible to the public. Fla. Stat. §101.68(2)(a); §102.141(2)(a). During the canvassing process, the canvassing board may also verify the signatures on the mail-in ballot if the supervisor of elections had not verified it yet. Fla. Stat. §101.68(2)(c). While the results may not be released to the public until

after 7:00PM on election day, the public may watch the canvassing process take place. Fla. Stat. §101.6103(6); §102.141(2).

For vote-by-mail, reports are processed daily, but the count is not available to the public until after the election. Only the canvassing board, a political party official, a candidate, or registered political committees can view it in real time. The final report is released on the [Florida Divisions of Elections website](#).

Access to information issues

Both voting registration and voting history information is public record under Florida law.³ Fla. Stat. §119.01. The Division will provide a disk with information regarding voter registration and voting information on all voters registered up to the last day of the month prior to the date the disk generated. Anyone may email or mail a request before 4:00 PM on the following dates to receive a disk: October 14, 2020; October 30, 2020; December 9, 2020.

The contact information needed to receive the disk is listed below:

Email: DivElections@dos.my.florida.com
Address: The R.A. Gray Building
500 South Bronough Street, Room 316
Tallahassee, FL 32399-0250

Additionally on the Florida Division of Elections website, the certification status and test schedule for election systems and software is available. It includes the voting system in use by each county. <https://dos.myflorida.com/elections/contacts/media-room/>.

COVID-19-Related Rules

In Florida, the COVID-19 response is handled by each county and its Supervisor of Elections. Thus, it will vary from county to county how COVID restrictions are handled for the election and polling locations. To find out individual county's policies, the information can be found on the Supervisor of Elections website, which is contained in the excel sheet located on the [Florida Divisions of Elections website](#).

In Leon County, the Elections Office has installed plastic barriers at the early voting sites, supplied hand sanitizer at the polling locations, changed the layout of the polling location to promote social distancing, and instituted a mask mandate for those voting in person. *Official Election Updates COVID-19 Response: Leon County, Florida*, Leon County Supervisor of Elections (Aug. 8, 2020), <https://app.smartsheet.com/b/publish?EQBCT=b42ed920fc5743e0897695fa2eed69d9>.

³ The records can be requested on the [Florida Divisions of Elections website](#).

However, in other counties, the COVID restrictions are much less stringent or not even stated on their website. For example in Alachua county, the Supervisor of Elections encourages individuals to use masks and receive services remotely, but the county does not have a comprehensive guide to voting in the pandemic. *Coronavirus (COVID-19) Response Information*, Vote Alachua, <https://www.votealachua.com/Outreach-Media/Coronavirus-Response-Information>.

As to Baker county, there is no mention of any COVID response plans for election day or polling places. Baker County: Supervisor of Elections, <https://www.bakerelections.com>.

On September 25th, Governor DeSantis issued a new executive order transitioning the state to Phase 3 of the Reopening Plan. Fla. Exec. Order No. 2020-244 (Sept. 25, 2020). In Phase 3, the social distancing restrictions have been mostly lifted. *Id.* While other businesses such as movie theaters and bowling alleys are allowed to reopen with limited social distancing, restaurants and bars are allowed to fully open. Carl Lisciandrello, *Florida's Reopening In Phase 3: What Does It Mean?*, Health News Florida (Sept. 27, 2020), <https://health.wusf.usf.edu/post/floridas-reopening-phase-3-what-does-it-mean#stream/0>. Governor DeSantis still recommends that the elderly and high-risk population continue social distancing practices to protect their own health. *Id.* The lifted restrictions on businesses are important to keep in mind as the election approaches due to their probable impact on COVID-19 precautions for polling places.

Recent Relevant Litigation

Nielsen v. DeSantis, Case No. 4:20cv236-RH-MJF (N.D. Fla. 2020): The plaintiffs brought a suit in the federal district court for the Northern District of Florida, alleging that Florida mishandled the election during the pandemic by failing to provide prepaid postage for mail-in ballots, requiring that mail-in ballots be received by 7PM on election day, and prohibiting the use of paid organizers to assist voters in collecting ballots. On July 19, 2020, the parties filed a joint notice of settlement after assurances state officials will take affirmative steps to educate voters on the option to vote-by-mail, to maximize the use of ballot drop-off locations at polling places, and to increase the accessibility of mail-in ballots in Spanish. *See* John Haughey, *Vote-By-Mail Lawsuit in Florida Dropped with Both Sides Claiming Victory*, The Center Square: Florida, July 20, 2020, https://www.thecentersquare.com/florida/vote-by-mail-lawsuit-in-florida-dropped-with-both-sides-claiming-victory/article_ac0a5d78-cab2-11ea-aa66-b317b9146c99.html.

Websites, guides and other key sources of information

- The State of Florida has compiled a list of resources for the media relating to elections on its website here: <https://dos.myflorida.com/elections/contacts/media-room/>
- The Supervisor of Elections for each county and his or her contact information can be found at this link: <https://dos.elections.myflorida.com/supervisors/>
- Information relating to election results data and voter registration statistics can be found at this link: <https://dos.myflorida.com/elections/data-statistics/>
- How to connect with the Division of Elections, Elected Officials, Supervisors of Elections, and other important resources can be found at this link: <https://dos.myflorida.com/elections/contacts/>