



MEDIA
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Election Transparency Rules for Ohio *Current as of October 28, 2020*

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OVERVIEW

Members of the media are allowed “reasonable access” to polling locations on election day, so long as they do not interfere with the election or attempt to influence the vote. Exit polls are also permitted. Ohio’s election code neither explicitly permits nor prohibits photography, so there may be room for discretion in enforcement. Records of the boards of elections are open to the public under Ohio Sunshine Laws.

ELECTION DAY ACCESS TO POLLING LOCATIONS

1. Rules concerning access/transparency at polling places generally

Journalists are allowed “reasonable access” to polling places. Ohio Rev. Code (“RC”) § [3501.35 \(B\)\(2\)](#). Accordingly, they are exempt from the blanket prohibition on loitering within 100 feet of the polling location as listed in [RC § 3501.35 \(A\)\(1\)](#). *See Beacon Journal Publ’g Co. v. Blackwell*, 389 F.3d 683, 684 (6th Cir. 2004).¹

When determining what “reasonable access” means, a board of elections must consider several factors so as to ensure that voters are not disturbed or delayed, including:

- whether the media representative is credentialed (i.e., is the person from an accredited media source);
- the length of time the media is present at a polling location;
- the length of voter lines at the polling location;
- the size and layout of the polling location;
- protecting voter secrecy during the media’s presence;
- the conduct of the media representative; and
- the effect of the presence of the media on voters and election officials.

¹ In *Beacon Journal*, on First Amendment grounds, the Sixth Circuit ordered the Ohio Secretary of State “immediately and forthwith [to] permit Plaintiffs to have reasonable access to any polling place for the purpose of news-gathering and reporting so long as Plaintiffs do not interfere with poll workers and voters as voters exercise their right to vote.” 389 F.3d at 684.

Ohio Sec’y of State, [Election Official Manual](#) (Dec. 18, 2019), 2-60 (footnote omitted).²

Precinct election officials are encouraged to direct any requests for interviews to the board of elections. [Ohio Sec’y of State, Precinct Election Official Training Manual](#) (Sept. 15, 2020), 42.

Official election observers are also allowed inside polling locations in limited numbers. RC § [3501.35 \(B\)\(1\)](#). Observers are required to be qualified electors in the state of Ohio and be registered through either a political party or a group of five or more candidates. RC § [3505.21 \(B\)](#). Observers may not handle election materials, but are permitted to move freely around a polling location. Ohio Sec’y of State, [Election Official Manual](#) 7-19.

Reasonable access includes access to the inside of the polling station. RC § [3501.35 \(B\)\(2\)](#), 389 F.3d at 684.

2. Rules concerning exit polling and newsgathering at polling locations

Exit polling is permissible within 100 feet of the entrance to a polling location (*i.e.*, within the area marked by the placement of two small U.S. flags). *American Broadcasting Co. v. Blackwell*, 479 F. Supp. 2d 719, 744 (S.D. Ohio 2006), *See Election Official Manual* 2-56. Exit polling is not considered electioneering. *Id.* at 738.

According to the [Election Official Manual](#), people conducting exit polls may not enter a polling location, or interfere with or disrupt the election. [Election Official Manual](#) 2-61. The Manual also states that persons conducting exit polls at a polling location may not wear anything that may be construed as campaigning for or against any candidate or issue on the ballot. *Id.*

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

The [Election Official Manual](#) does not prohibit journalistic photography, though it states: “The media must respect a voter’s right to privacy by requesting the voter’s permission prior to recording the voter or the voter’s actions while in or about the polling location.” [Election Official Manual](#) 2-61. The depiction of a marked ballot is prohibited, however, under RC § [3599.20](#), so journalists should be careful that photographs do not contain any marked ballots, nor should they request this of voters.

Taking photographs at or near polling locations is neither expressly permitted nor prohibited by statute.³

² The Election Official Manual is in substantial part a compilation of directives from the Secretary of State issued under his statutory election rulemaking authority pursuant to RC § [3501.05 \(B\)](#).

³ There has been some [speculation](#) that the authority of election officials to enforce “peace and good order” under RC § [3501.33](#) might allow them to stop journalists from taking photographs, though this issue does not appear to have been litigated yet.

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

Electors may not allow others to see how they marked their ballot, nor may others induce them to show how they marked their ballot. RC § [3599.20](#). The media must respect a voter's right to privacy by requesting the voter's permission prior to recording the voter or the voter's actions while in or about the polling location. [Election Official Manual](#) 2-61.

5. Content restrictions on speech at or near polling places

Two American flags are to be placed 100 feet away from the entrance of the polling location. This denotes the zone where campaign activities, as well as "loitering or congregating," are prohibited. RC § [3501.35\(A\)\(1\)](#). If electors are lined up beyond the flags, then the regulated zone extends to within 10 feet of any elector in that line. RC § [3501.35\(A\)\(1\)](#). However, under RC § [3501.35\(B\)\(2\)](#), journalists are allowed to have "reasonable access" within this extended regulated zone.

There are few rules regarding what can be done outside the regulated zone. RC § [3501.35](#). Nothing in the law prohibits campaigning or other such activities outside the 100-foot zone. [Election Official Manual](#) 2-61.

6. Who controls physical access to a polling place?

Precinct election officials and police officers control access to polling places. RC § [3501.35\(D\)](#). They have the authority to eject any persons attempting to interfere with people's ability to vote, as well as to contact the police, the sheriff or other peace officers and order the arrest of anyone violating the state's election code. RC § [3501.33](#).

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

If a poll worker is responsible for the improper denial of access, ask for a precinct official. If a precinct official is responsible, contact the board of elections for the county. [Here](#) is the directory for the county board offices.

The county board of elections makes and issues guidance for both voters and election officers, though this guidance must be in accordance with the law. RC § [3501.11 \(E\)](#). The county board of elections also designates four officials per precinct to oversee the casting of ballots at the polls. RC § [3501.22](#). These officials have the authority to enforce "peace and good order." RC § [3501.33 \(see above\)](#). One of the precinct officials who is a member of the dominant political party is designated as the voting location manager, who has been designated to pick up election materials and opens and closes the polls. RC § [3501.22](#).

ACCESS TO VOTE COUNT & TABULATION/VOTE COUNT PROCESS

1. Rules concerning access/transparency at locations where votes are counted or vote counts aggregated

The count must be conducted in view of the board and those observers appointed pursuant to RC § [3505.21](#). RC § [3505.27](#). Only precinct election officials, observers, and other designated officials are allowed in the room during the tabulation process. RC § [3505.21 \(D\)](#). Observers are allowed in any area in a board of elections office where ballots are being cast, processed, counted, or recounted. RC § [3505.21 \(C\)](#). Members of the media are not allowed to watch the counting of votes. *Id.*

2. Rules concerning observation and taking photographs of the vote count for news reporting purposes

After the polls close, only precinct election officials, observers, and other designated officials may be admitted to the polling place or any room where votes are being counted. RC § [3505.21 \(D\)](#).

3. Rules concerning access to ballots during or after the vote count

Records of the boards of elections are open to public inspection, but certain records, such as ballots and pollbooks are not made immediately available to the public. RC § [3501.13](#); Ohio Attorney General Opinion 2011-012; [Ohio Attorney General Opinion 2004-050](#); .

- Ballots are public records, but they are kept in sealed containers and are not available for public inspection until after the last possible time for a recount has passed. Ohio Attorney General Opinion 2004-050, 2-422.
- Pollbooks are considered public records but are not open to public inspection until after the completion of the canvass. Ohio Attorney General Opinion 2004-050, 2-422.
- Provisional ballot envelopes are public records and are to be sealed until the last possible time for a recount, similarly to the ballots themselves. Ohio Attorney General Opinion 2011-012, 2-105.
- There can be exceptions to these rules if ordered by a court. Ohio Attorney General Opinion 2004-050, 2-428.

ELECTION TRANSPARENCY INFORMATION

1. Voting day basics

The polls will be open from 6:30 a.m. to 7:30 p.m. on election day. [RC § 3501.32](#). Voters waiting in line when polls close must be allowed to vote. [RC § 3501.32](#). The precinct election officials are in charge of maintaining peace and order at polling locations, and therefore are responsible for acting when things go wrong. [RC § 3501.33](#).

2. Vote counting rules and procedures

The official canvass must begin no earlier than November 14 (11 days after the election) and no later than November 18 (15 days after the election). [RC § 3505.32](#) (A). Prior to the start of the unofficial canvass, the board of elections must test its tabulating equipment. [RC § 3506.14](#). The count is conducted in an “appropriate office.” [RC § 3505.27](#).

The unofficial canvass includes all the ballots that are available after the close of the polls, [Election Official Manual](#), 8-10 (citing [RC § 3505.27-3505.28](#), [RC § 3509.06-3509.07](#); [RC § 3511.11-3511.13](#)). However, it does not include provisional ballots, absentee ballots rejected due to a statutory deficiency, and mail-in ballots that were mailed on time but did not arrive by the close of the polls. *Id.* at 8-11 (citing [R.C. § 3505.183\(F\) & \(G\)](#); [RC § 3505.32](#); [R.C. 3509.05\(B\)\(1\)](#)).

The official canvass includes all the votes eligible for count in the election, including the mail-in ballots that arrive after the close of the polls, but prior to the 13th of November. [Election Official Manual](#), 8-20.

3. Control of the vote count process

The board of elections determines vote counting procedures unless otherwise ordered by the secretary of state or the board of elections. [RC § 3505.27](#) (A). Precinct officials control the actual vote count and report the results to the board of elections. [RC § 3505.26](#) (E).

4. Mail-in ballot transparency and control

Who collects mail-in ballots?

The director of the board of elections receives mail-in ballots. [RC § 3509.05](#).

Where are they stored?

Mail-in ballots appear to be stored at the office of the board. When voters mail their ballots, they are returned to the same office for the director of elections for the county from which they applied for their

absentee ballot. RC § [3509.05](#) , RC § [3509.03](#). The board of elections determines where the absentee ballots should be delivered. RC § [3509.06](#) (A).

When are they counted?

Absentee [ballots](#) can be processed, but not counted after the last day of voter registration. RC § [3509.06](#) (F), [Election Official Manual](#) 8-1. Processing may include scanning, but only if the scanning mechanism does not count the ballots. [RC § 3509.06 \(F\)\(5\)](#). Counting of the ballots does not begin until after the polls close. RC § [3509.06](#) (F).

The official canvass cannot begin before the eleventh day after the election (November 14) or after the 15th day after the election (November 18). RC § [3505.32](#) (A). The general canvass of the election must be completed 21 days after the election (November 24). RC § [3505.32](#) (A). The results must be finalized by 81 days after the election, though the Secretary of State may designate an earlier deadline. RC § [3505.32](#) (A).

Where are they counted?

Mail-in ballots are counted at an “appropriate office” as designated by the board of elections, RC § [3505.27](#) (A), or at the office of the board, RC § [3509.06](#) (A). Offices for counting mail-in ballots are designated on a precinct-by-precinct basis. The relevant information for a specific precinct or county is available through the county board of elections website. [Here](#) is the directory of those boards of elections contact and websites.

5. Releasing the Results

Who releases mail-in results and when?

The board of elections receives the election returns. RC § [3501.11](#). During the canvass, the board must announce periodically to both the public and the Secretary of State the number of votes for each candidate. RC § [3505.27](#). Counties must provide preliminary results of the unofficial canvass to a secure portal by no later than 7:45 PM on Election night, or inform the Secretary of State of delays in counting. [Ohio Sec’y of State Directive](#) 2020-23. Counties should also report supplemental statistics including the ballots that have been counted and the ballots that remain. *Id.* Counties are given specific guidelines on the times at which they are to update their absentee ballot counts. *Id.*

Once the counts per precinct are finalized, the precinct election officials send the results to the board of elections “without delay.” RC § [3505.30](#). The board of elections then compiles an unofficial count that it must then send to the Secretary of State. This must be done no later than noon the day after the election. RC § [3505.30](#).

What data is generated on mail-in ballots and by whom? (E.g., How many absentee/mail-in ballots mailed out, how many completed ballots turned in?)

The Secretary of State [website](#) has, for the November 2016 General Election, the voter turnout by precinct and county, the absentee supplemental report, voter registration results by precinct and county and the breakdowns for the relevant races. There is also year-by-year historical [comparative](#) data on the Board of Elections website. Based on the Sunshine Laws (see below) the same data should be generated for the 2020 Election as well.

Who confirms the authenticity of mail in ballots and how?

The board of elections confirms the authenticity of the ballots per the procedure laid out in RC § [3509.06](#) (D). Elections officials examine the identification envelope and checks the signature, the date of birth in comparison to the date of birth listed in the voter registration database, and checks for a valid form of identification. RC § [3509.06](#) (D). Valid identification includes, among other things, the last four digits of the driver's license number or social security number, a copy of a current photo identification, or a bank statement or utility bill. RC § [3509.06](#) (D).

The aspect of the Ohio mail-in ballot verification process that has garnered the most attention (and is the subject of [litigation](#), see below) is signature verification. RC § [3509.06](#) (D)(1). This requires comparison between the signature on the ballot and that on the mail-in ballot request. When any mail-in ballot is challenged, the voter must be informed in writing and given a chance to fix the defect within seven days after the election. RC § [3509.06](#) (E)(2).

6. COVID-Related Rules

Early voting began on October 6. Ohio permits no-excuse absentee ballots. RC § [3509.02](#). Absentee ballots shall be counted if they are postmarked prior to the day of the election and arrive at the polling location prior to November 14 (the eleventh day after the election). RC § [3509.05](#) (B)(1).

Voters will not be required to wear a face covering in order to vote. However, if an elector refuses to wear a face covering, the election officials should offer them curbside voting. Every eligible voter must be allowed to vote. [Secretary of State Health Guidelines for the Election](#), See [Election Official Manual](#) 7-13 for curbside voting procedure.

RECENT/CURRENT VOTING LITIGATION

Ohio Democratic Party v. LaRose: The Ohio Court of Appeals reversed the lower court's issuance of a preliminary injunction enjoining the enforcement of a directive that boards of election accept delivery of applications for absentee ballots only as submitted in person or by mail and therefore not by electronic means such as email or fax. No. 20AP-421, 2020 WL 5798207 (10th Dist. Sept. 29, 2020). Applications could therefore not be submitted through email or fax.

Ohio Democratic Party v. LaRose: The Ohio Secretary of State issued guidance that each county have only one mail-in ballot drop box. The Ohio Democratic Party sought declaration that the statute does not limit the number of drop-boxes per county, allowing counties to provide more drop boxes. On October 2nd, the Court of Appeals determined that there was no requirement for any additional drop boxes. However, No. 20AP-432 (10th Dist. Oct. 2, 2020). However, the Secretary of State did issue guidance on Oct. 5, stating that a country could install more than one drop box, but they needed to be located at the board of elections. [Ohio Sec'y of State Directive](#) 2020-22.

League of Women Voters of Ohio v. LaRose: Challenging the signature-matching procedures and the lack of opportunity for voters to cure errors. The injunction was [denied](#) on September 27, and the signature-matching will continue as it had for November 3. 2:20-cv-3843 (S.D. Ohio Sept. 27, 2020).

A Philip Randolph Institute of Ohio v. LaRose: This lawsuit, which includes as a plaintiff the League of Women voters, challenges the signature-matching procedures for mail-in ballots, considering that those responsible for examining signatures have no expertise in handwriting analysis, and voters whose signatures are challenged have no chance to respond. The [complaint](#) was filed on August 26, 2020, and the District Court has yet to issue a ruling.

KEY ACCESS CASES AND LAWS

The board of elections is established by RC § [3501.06](#) and thus falls squarely within the definition of “public office,” meaning that the records of the board of elections are open to the public. Though there is little case law regarding public access to records, according to the statutory definition in RC § [149.43](#), “public record” means records kept by any “public office”. “Public office” as defined in RC § [149.011](#) “includes any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government.”

Ohio has “Sunshine Laws” that dictate access to public records. RC § [149.43 \(B\)\(1\)](#) states that “all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours.” All records are presumed to be public unless they are specifically exempted under RC § [149.43](#).

Courts have found, in the context of Ohio Public Records Requests, that “[w]hen statutes impose a duty on a particular official to oversee records, that official is the ‘person responsible’ under R.C. 149.43(B).” *State ex rel. Mothers Against Drunk Drivers v. Gosser*, 20 Ohio St. 3d 30, 33 (1985).

[Here](#) is a link to the necessary retention schedule for the board of elections, as provided in the Elections Manual.

[Here](#) is a link to the Ohio attorney general's manual on the Sunshine Laws.

Per RC § [3503.26](#), election registration forms and lists must be open to public inspection when they are not in official use. Names and addresses of electors may be copied from the registration lists only in the office of the board when it is open for business. However, in the period between 21 days before an election and eleven days after, the board may prohibit copying if its members believe copying will interfere with the board's work. RC § [3503.26](#).

In *State ex. rel. Gadell-Newton v. Husted*, 103 N.E.3d 809, 813 (Ohio 2018), the Supreme Court of Ohio declined to rule on whether or not the digital ballot images used to count absentee ballots were themselves a matter of public record, due to lack of mandamus jurisdiction over a prohibitory action to enjoin the state to refrain from deleting the electronic records.

WEBSITES, GUIDES AND OTHER KEY SOURCES OF INFORMATION

[Here](#) is the information regarding filing a complaint with the Ohio Elections Commission. It must be filed by mail and must describe the alleged statutory violation. The Commission's telephone number is (614) 466-2305.

[Here](#) is the Election Official Manual. Each relevant section cites a corresponding part of the Ohio State Code. Many of the guidelines have been lifted directly from the statutes, though parts that are interpretive have been so noted above.