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Election Transparency Rules for Texas
Current as of October 28, 2020

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OVERVIEW

Texas is not an exceptionally transparent state. Poll watchers must be affiliated with a political party or ballot measure, and members of the media are not allowed into polling places. Exit polling is allowed as long as it is non-disruptive.

There are two forms of early voting: early voting by mail, which requires an excuse, and early voting by personal appearance, which is available to all Texans. Both kinds of early ballots are counted together; approved poll watchers may observe the process but it is not open to the general public. Information about who voted early by mail is not available until after the election, although it then becomes available. Voter registration and voting history records are available. The Texas Election Code is available online [here](#).

ELECTION DAY ACCESS TO POLLING LOCATIONS

1. Rules concerning access to polling places generally

Generally, no one, including members of the media, is allowed in a polling place unless they are voting or have official business there. Tex. Election Code § [61.001](#).

It is a third degree felony to be in a polling place for a purpose other than voting and to knowingly communicate to another person information received there about how a voter has voted. For instance, to report on how someone voted. Tex. Election Code § [61.006](#).

Poll watchers

Poll watchers are allowed into polling places; such poll watchers must be appointed by a candidate, a political party, or a ballot measure. Tex. Election Code § [33.001](#).

2. Rules concerning exit polling or newsgathering at polling places

Texas law prohibits “loitering” within 100 feet of a polling place, [Tex. Elec. Code § 61.003\(a\)\(1\)](#), the Texas Secretary of State’s Office permits “non-disruptive” exit polling within this protected area, [Tex. Elec. Advisory No. 2018-11 \(2018\)](#):

“The policy of our office is to permit non-disruptive exit polling within the 100-foot boundaries surrounding each early voting and election day polling place. We note that the early voting clerk or presiding judge at each polling place, as appropriate, must determine that such exit polling does not constitute either (1) “loitering” in violation of Section 61.003(a) of the Code or (2) a disruption of order or a contribution to a breach of the peace at the early voting or election day polling place”

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

Texas law prohibits the use of cell phones, cameras, and other recording devices within 100 feet of a polling place. [Tex. Elec. Code §§ 61.014\(a\)](#). There are not criminal penalties for violating this prohibition, but an election judge may ask the violator to turn off the device or leave. There is no exception for media or for ballot selfies.

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

The Election Code does not have any prohibitions on this subject.

5. Content restrictions on speech at or near polling places

There is no electioneering or loitering within 100 feet of polling places; exit polling is permitted. [Tex. Elec. Advisory No. 2018-11 \(2018\)](#).

6. Who controls physical access to a polling place?

Texas Election Code allows for the appointment of peace officers and gives the presiding judge “the power of a district judge to enforce order and preserve the peace, including the power to issue an arrest warrant.” Tex. Election Code § [32.075](#).

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

The presiding judge is the first point of entry for raising an issue at the polls. Tex. Election Code § [32.075](#). Issues with voting can be escalated to the Secretary of State’s office at (800) 252-VOTE.

ACCESS TO VOTE COUNT & TABULATION/VOTE COUNT PROCESS

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

Poll watchers are allowed to observe at all early voting and Election Day polling locations and at the central counting or accumulation station where ballots are being counted or vote totals accumulated. Tex. Election Code § [33.007](#).

A notice of the number of voters who have voted must be posted at an outside door to the polling place every two hours, beginning at 9:30 a.m. and running through 5:30 p.m. Tex. Election Code § [61.007\(c\)](#)

No one connected with the conduct of the election may reveal any of the following information while the polls are open:

1. The names of voters who have or have not voted in the election. Tex. Election Code § [61.007\(a\)\(4\)](#).
2. The number of votes cast that have been received by individual candidates and/or for or against propositions. Tex. Election Code § [61.007\(a\)\(1\)](#).
3. A candidate's position relative to other candidate's in the tabulation of the votes or whether a measure is passing or failing. Tex. Election Code § [61.007\(a\)\(2\) and \(3\)](#).

Until the first business day after the election, a copy of an application for a ballot to be voted by mail is not available for public inspection, except to the voter seeking to verify that the information pertaining to the voter is accurate. Originals of the applications and carrier envelopes are not available for public inspection until those materials are delivered to the general custodian of election records after the election. Tex. Election Code § [86.014](#)

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

Poll watchers may watch the vote count, but the code does not provide access for journalists.

3. Rules concerning the taking of photographs and videos of the vote counting process

Poll watchers may watch the vote count, but the code does not provide access for journalists.

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

A judge may order the examination of ballots for a grand jury (Tex. Election Code § [273.041](#)) or in a [civil action](#).

ELECTION TRANSPARENCY INFORMATION

1. Voting day basics

When do the polls open, when do they close?

Early voting runs Oct. 13-30. These hours vary by location.
On Election Day, polls are open 7 am - 7 pm. Tex. Election Code § [41.031](#).

Must voters in line when polls close be allowed to vote?

Yes. A voter who has not voted before the time for closing the polls is entitled to vote after that time if the voter is inside or waiting to enter the polling place at 7 p.m. Tex. Election Code § [41.032](#).

Who do you call when something goes wrong at a polling location?

- The person in charge at each polling place is the election judge.
- Additional queries can be directed to the Elections Division 1-800-252-VOTE(8683)
- Additional help is available via the Reporter's Committee for Freedom of the Press hotline.

What kind of voting machines are being used?

The election machines available in Texas are described by the [state website](#).

What documents and training/procedure manuals will poll workers have access to?

There is a handbook on qualifying voters available [here](#). The [online training](#) purports to mirror the contents of the handbook.

2. Vote counting rules and procedures

What are the rules and procedures for the vote count? Where are they located?

There are two options:

In a **traditional polling place setup**, precinct returns are generated at each precinct polling place and all early ballots are counted by the early voting ballot board. The returns are then delivered to the general custodian of election records and the unofficial tabulation of election results is generated in accordance with Tex. Election Code § [66.056](#).

In a **central counting station setup**, the authority ordering the election must create a central counting station and appoint a central counting station manager, tabulation supervisor, and presiding judge. The central counting station counts all early voting by mail ballots. The precinct records, voted ballots, and electronic media from the precinct ballot counters used for early voting in person and election day are delivered to the central counting station where the electronic media would be read in a central accumulator. The central counting station is responsible for creating both precinct returns and the unofficial tabulation of election results in accordance with Tex. Election Code § [66.056](#).

Who controls the vote count process?

The election judge oversees the vote count process from a legal standpoint. The custodian is directly in charge of tabulating results – they open the returns of the precincts, tabulate the results, and ‘periodically’ announce the current state of the tabulation. Tex. Election Code § [66.056](#).

3. Vote counting timing

What rules govern when information about the vote count can and should be made public?

The custodian of election records tabulates the returns from each polling place and makes a public announcement of the state of the tabulation ‘periodically’. Tex. Election Code § [66.056](#).

The precinct election records shall be delivered to the appropriate authorities immediately after the precinct returns are completed. If the presiding judge determines that the ballots will not be counted in time to allow delivery of the precinct election records by 2 a.m. of the day after election day, the presiding judge, between midnight of election day and 1 a.m. of the following day, shall notify the general custodian of election records by telephone of:

- (1) the total number of voters who voted at the polling place as indicated by the poll list;
 - (2) the vote totals tallied for each candidate and for and against each measure at the time of notification; and
 - (3) the expected time of finishing the count.
- (c) The precinct election records shall be delivered not later than 24 hours after the polls close in each election.

Tex. Election Code § [Sec. 66.053](#).

The roster of who has participated in early voting by personal appearance must be available by 11 a.m. the morning after they are entered on the roster. Information about who has applied for early

voting by mail is not available until the day after Election Day. This information must be released the first business day after the election, and the roster must be available by 11 the next morning, including on the internet. Tex. Election Code § [87.121](#).

4. Mail-in ballots and absentee ballots

Summary of the 'flow' of mail in ballots from mailing to release of tabulated votes

All early ballots are counted by the early voting ballot board, with one exception. Some of the early voting ballots may be counted by a voting machine; if so, the ballots and the remainder of the return get sent to the centralized counting station

Before they go to the early voting ballot board (EVB), mail-in ballots may go to the signature verification committee (SVC). The early voting clerks give the SVC the ballots and it verifies the signatures and reasons for early voting. The EVB then generates a return for all the early ballots for the precinct.

If the SVC decides a ballot has matching signatures, the EVB cannot overturn that decision. If the SVC decides the signatures do not match, the EVB may overturn it. To reject a ballot, it takes a majority of the SVC. In the past, voters were not provided with an opportunity to cure their ballots; as of September, a (Clinton-appointed) judge ruled there must be a procedure to do so, but in late October, that ruling [was overturned](#). There will probably be no ballot curing provisions in the November 2020 election.

The times of meeting of the SVC must be posted continuously for at least two days before they meet. Tex. Election Code § [87.027\(h\)](#). The SVC may also meet after election day to verify late ballots.

Ballots that are postmarked by 7 p.m. on Election Day are counted as long as they're received by 5 p.m. the next day. Tex. Election Code § [86.007](#).

Unlike other states, Texas still requires an excuse to vote by mail. In Texas, voters are eligible to vote by mail if they fulfill one of a handful of acceptable excuses: Being at least 65, disabled, out of the county (on both Election Day and the entire early voting period) or “confined in jail, but otherwise eligible.”

Where are mail-in and absentee ballots stored?

They are delivered to the early voting clerk and then by the early voting clerk to the early voting ballot board. Tex. Election Code § [87.021](#). In counties with over 100,000 people available ballots may be delivered to the board up to nine days early. Tex. Election Code § [87.0222](#)

When are they counted?

Preprocessing: Mail ballots in large counties are processed and qualified up to 12 days before election day. In small counties, mail in ballots can start to be qualified after polls close for in-person voting.

Counting: In larger counties, early votes can be tallied after the end of early personal appearance voting. In smaller counties, counting may begin when polls open on Election Day. Results may not be released until the polls close on Election Day.

[Election Advisory 2020-20](#)

The early voting board posts notice of each delivery of materials before the time for opening the polls on election day. The notice is posted at the main early voting polling place continuously for at least 24 hours immediately preceding the delivery. Tex. Election Code § [87.021](#)

Ballots must be counted by the presiding judge plus at least two people of different parties with candidates on the ballot – in 2020 this includes members of the Democratic, Republican, Libertarian, and Green parties. Tex. Election Code § [87.002](#)

Where are they counted?

The early voting clerk must post where the delivery will be made at the main early voting polling place continuously for at least 24 hours before delivery. Tex. Election Code § [87.023](#). At the early ballot board they may be counted and a return generated, or they may be recoded for acceptance by a machine. If they are counted, the return is sent to the central counting station along with the ballots; if they are just recoded, the ballots alone are sent and the central counting station generates the return.

The early voting clerk delivers ballots to the early voting ballot board.

They also deliver a box containing

1. the early voting ballots voted by personal appearance and the clerk's key to each box;
2. the jacket envelopes containing the early voting ballots voted by mail, regardless of the ballot type or voting system used;
3. the poll lists prepared in connection with early voting by personal appearance;
4. the list of registered voters used in conducting early voting; and
5. a ballot transmittal form that includes a statement of the number of early voting ballots voted by mail. Tex. Election Code § [87.021](#).

Who releases mail-in results?

The early ballots and any returns from hand-counting are delivered by the early ballot voting board to a central counting station. Tex. Election Code § [87.101](#). Any returns generated by machine at the central counting station are tabulated separately from the ballots cast at precinct polling places and are separately reported on the returns. The hand-counted returns are also separately reported.

When are the mail-in results released?

By 2 am the day after election day. If they will not be available by then, the current count is still released. Tex. Election Code § [Sec. 66.053](#).

Who confirms the authenticity of the mail-in ballots and how?

Early votes are verified by the early ballot voting board. The early voting ballot board confirms the envelope is properly executed, the voter signed the ballot, there's a legal ground for early voting, the voter is registered, the address is outside the registered address if the ground was absence from county of residence.

What data is generated on mail-in ballots and by whom?

Applications for mail-in ballots are available immediately after the first election the application was for. Tex. Election Code § [86.014](#).

The originals of the applications and carrier envelopes are available after delivery to the general custodian of election records. Tex. Election Code § [86.014](#).

A variety of documents are delivered to the early voting ballot board by the early voting clerk including a ballot transmittal form that includes a statement of the number of early voting ballots voted by mail. Tex. Election Code § [87.021](#)

The roster of what votes were counted and whether they were accepted must be posted by the early voting clerk by 11 am the day after the vote was entered on the roster. Tex. Election Code § [87.121](#)

Who can be in the room?

In addition to the counters, official poll watchers can be in the room.

No one else can be in the room except as provided by law. Tex. Election Code § [87.026](#).

5) Recount Access

Recounts are accessible to whoever petitioned for them, and the relevant parties. They are entitled to have watchers. The press is not entitled to access. Tex. Election Code § [213.015](#).

PUBLIC ACCESS TO INFORMATION

1. How can reporters access information about who voted?

Texas election laws provide that, once the polls for a particular election are closed, a list of registered voters who cast ballots is public. [Tex. Att'y Gen. ORD-38 \(1974\)](#).

Applications to register to vote that are on file with a county registrar constitute public information. [Nixon v. Slagle, 885 S.W.2d 658, 661](#) (Tex. App.—Tyler 1994, no writ).

Voted ballots from a primary election become public records available for inspection after a 22-month retention period required by state law, but public copying of the computer programs used to tabulate the votes would violate federal copyright law. [Tex. Att'y Gen. ORD-505 \(1988\)](#).

2. Are individual ballots accessible through FOIA or court order?

Voting history, including whether provisional ballots were counted, is available along with registration information [through this form](#). They are not available in real time.

3. Privacy of individual voters

The record of which elections an individual participated in and whether their vote was counted is also available through the above form.

4. Is it possible to FOIA governmental communication regarding election security and systems breakdowns.

Under [Texas Open Records laws](#), emails are public documents with some exceptions. One that may be relevant is Tex. Gov't Law [552.108](#) which exempts “information the release of which would interfere with the detection, investigation, or prosecution of crime or law enforcement”. A trade secret exception might also apply.

The plan for counting station operation must be available to the public on request not later than 5 pm on the fifth day before the date of the election. Tex. Election Code § [127.007](#).

5. Is it possible to FOIA voting machine maintenance and inspection records?

Yes. By statute all machines must be inspected at most 48 hours before the election. Tex. Election Code § [127.093](#). This is a public record (though they might try to deny some part of it as a trade secret)

ACTIVE/RECENT LITIGATION

A judge had [ordered](#) that, before rejecting a mail-in ballot for a signature mismatch, the voter must be given a ‘significant opportunity’ to correct the mistake. But an appeals court [overruled it in late October](#), and it is unlikely that they will be reversed.

ADDITIONAL RESOURCES

- [Election Security Best Practices](#)
- [Handbook for Election Judges and Clerks](#)

COVID-19 RELATED INFORMATION

Unlike nearly every other state, Texas has not extended mail-in voting to everyone. It has extended early voting by personal appearance by six days.