

PUBLIC COMMENTS

October 10, 2023

Copies to: County Judge + County Elections Administrator (2)
County Commissioners (4)
County Attorney (1)
County Clerk (1)
County Auditor (1)

Good morning. Claire Nybro, Burnet County voter and taxpayer.

Today, October 10th, is the last day to register to vote for the upcoming November election. While voters must observe election laws, it seems that the elected and appointed county officials who supervise our elections are still failing to observe some election laws.

I have many questions regarding the maladministration surrounding Burnet County's voting system:

1. If the Hart InterCivic version 6.2.1 voting machines were purchased using federal HAVA Act funding, how can the voting machines be legal if they have not been tested to the terms of the HAVA contract, a federally funded purchase?
2. Why is there no record in the Commissioners Court Minutes documenting when Burnet County adopted the Hart 6.2.1 upgrade? (Annual written confirmation of 'conditional' compliance is required by the Texas Secretary of State for the voting machines used in Burnet County; <https://www.sos.texas.gov/elections/forms/sysexam/hart621cert.pdf> (attached))
3. When will Burnet County motion to adopt a voting system for the November 2023 election?
4. When will Burnet County motion to use "consolidated precincts" in the November 2023 election?
5. When will Burnet motion to use countywide polling for the November 2023 election?
6. Why has the County ignored a directive from the Secretary of State that more than one ballot style cannot be used in consolidated precincts?
7. Why has the County ignored a directive from the Secretary of State that central count cannot be used with countywide polling on direct recording electronic machines?

Please stop forcing us to vote with all these legal deficiencies in place. It's such a travesty - on a constitutional election, no less. There is a legal remedy available: Chapter 65.

We must work together to ensure we run the best election possible in November 2023.

Thank you.

The State of Texas

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REPORT OF REVIEW OF HART INTERCIVIC'S VOTING SYSTEM 6.2.1

PRELIMINARY STATEMENT

On January 17th and 18th, 2008, Hart InterCivic (the "Vendor") presented the Hart Voting System 6.2.1 for examination and certification. The examination was conducted in Austin, Texas. Pursuant to Sections 122.035(a) and (b) of the Texas Election Code, the Secretary of State appointed the following examiners:

1. Mr. Stephen Berger, an expert in electronic data communication systems;
2. Mr. Tom Watson, an expert in electronic data communication systems;
3. Mr. Brandon Hurley, an expert in election law and procedure; and
4. Mr. Paul Miles, an expert in election law and procedure.

Pursuant to Section 122.035(a) of the Code, the Texas Attorney General appointed Dr. Jim Sneeringer, an expert in electronic data communication systems and Texas Attorney General's employee, Katherine Cary.

On January 17th, 2008, Secretary of State staff and two of the examiners witnessed an install of the Hart Voting System software received directly from the Independent Testing Authority. A test deck of sample ballots was processed on each voting device and the results were verified for accuracy. The findings were presented verbally to all the examiners on January 18th and the test ballots and printed reports were made available for their review.

The Vendor then demonstrated the system; the examiners further examined its accuracy and security features by processing more ballots on each device and questioning the Vendor. Examiner reports on the system are attached hereto and incorporated herein by this reference.

BRIEF DESCRIPTION OF HART INTERCIVIC VOTING SYSTEM 6.2.1

Hart InterCivic's Voting System 6.2.1 supports both paper ballots and electronic voting. The systems' applications execute on a standard PC configured with a Windows 2000 Professional Operating System, Service Pack 4. Below is a list of all certified components of the system:

Component	Version	Description
BOSS	4.3.13	Ballot Origination Software System used to define the election.
Ballot Now	3.3.11	Paper ballot management system.
Rally	2.3.7	Application used to send election results from satellite locations.
Tally	4.3.10	Application used to tabulate election results.
eCM	1.1.7	Electronic Crypto Module Manager.
SERVO	4.2.10	Election-records and recount-management system.
JBC	4.3.1	Judges Booth Controller. The controller unit for up to 12 eSlate/DAU units. The controller unit is used to generate access codes for the voter.
eSlate	4.2.13	Direct recording electronic voting system (DRE).
eScan	1.3.14	Precinct-based scanner used for election day and absentee voting.

NATIONAL ASSOCIATION OF STATE ELECTION DIRECTORS (NASED)
QUALIFICATION NUMBER

Hart InterCivic's Voting System 6.2.1 was qualified by NASED on August 7, 2006, under the designation N-1-04-22-22-006.

FINDINGS

The following are the findings, based on written evidence submitted by the Vendor in support of its application for certification, oral evidence presented at the examination, Texas voting system examiner reports and comments received at the public hearing held on April 3, 2008.

Hart InterCivic Voting System 6.2.1:

1. Preserves the secrecy of the ballot;
2. Is suitable for the purpose for which it is intended;
3. Operates safely, efficiently, and accurately;
4. Is safe from fraudulent or unauthorized manipulation;
5. Permits voting on all offices and measures to be voted on at the election;
6. Prevents counting votes on offices and measures on which the voter is not entitled to vote;
7. Prevents counting votes by the same voter for more than one candidate for the same office or, in elections in which a voter is entitled to vote for more than one candidate for the same office, prevents counting votes for more than the number of candidates for whom the voter is entitled to vote;
8. Prevents counting a vote on the same office or measure more than once;
9. Permits write-in voting;
10. Is capable of permitting straight-party voting;
11. Is capable of providing records from which the operation of the system may be audited; and
12. Is capable of reporting undervotes.

The Verified Ballot Option ("VBO") was presented and reviewed during the exam. Due to the lack of state and federal legislation that requires the use of a Voter Verified Paper Audit Trail ("VVPAT"), the lack of state standards, and concerns about secrecy of the ballot, the optional VBO is not approved for use in Texas elections at this time.

CONDITIONS

During the examination for this system, examiners identified two potential security concerns that are mitigated and/or eliminated if certain procedural security protocols are followed. First, examiners discovered that if existing security protocols are not followed, then it is theoretically possible to access the operating system and run or delete other programs while Tally is tabulating results. Under Election Advisory 2008-09, Section 5(f)(i-iii), issued by this office, users are required to: (1) restrict usage of the voting system to the sole purpose of election administration, and (2) restrict what software is loaded onto the voting system computer/server. In addition, Section 5(d)(i)(1-3) of the Advisory requires users to limit access to the systems through passwords and encryption keys, certain menus and software modules. Compliance with Election Advisory 2008-09 will ensure that this potential unauthorized access can be prevented and detected.

Second, examiners expressed concern that Version 6.2.1 does not have a secure OS configuration. To address this concern, the State of California required the Windows 2000 "Hardened" Operating System Security Setting be used.

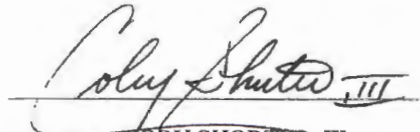
Accordingly, based on the generally positive findings of the examiners and examiner suggestions, certification of Hart InterCivic Voting System 6.2.1, is conditioned on a political subdivision employing the following procedures:

- 1) Two-person access for all Version 6.2.1 computers and servers is required: one person to log on to start the Windows 2000 OS and a second person to log on to start the specific application (e.g., BOSS, Tally, Ballot Now, eCM Manager).
- 2) A two person control team must be present any time the Tally application is open.
- 3) Version 6.2.1 Application Logs and Windows 2000 Audit Logs, which track user log-ons and log-on attempts, must be regularly reviewed by the local election officer. The Office of the Secretary of State may inspect these logs or may require the logs to be copied and mailed to this office.
- 4) Hart Windows 2000 "Hardened" Operating System Security Settings is required. Hart Windows 2000 "Hardened" Operating System Security Settings presents a table of Win2K system settings installed to achieve the "hardened" configuration. The format of the settings closely approximates that used in the applicable NIST checklist.
- 5) Each political subdivision which adopts Version 6.2.1 must file an initial written confirmation with the Office of the Secretary of State that they are in compliance with Condition Numbers 1 through 4, above, and subsequent to the initial confirmation filing, must file annual, updated confirmations.

CONCLUSION

Accordingly, based upon the foregoing, I hereby certify the Hart InterCivic Voting System 6.2.1 for use in elections in Texas, subject to the above conditions.

Signed under my hand and seal of office, this 30th day of April, 2009.


COBY SHORTER, III
DEPUTY SECRETARY OF STATE

The State of Texas

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Jane Nelson
Secretary of State

October 6, 2023

Summary of Legal Requirements, Procedures, and Considerations **Regarding Hand-Counting of Ballots in Texas Elections**

This purpose of this document is to outline the legal requirements, procedures, and necessary considerations for conducting an election in which votes will be tabulated through a hand count.

All statutory references in this document are to the Texas Election Code ("the Code"), unless otherwise indicated.

Authority that Determines Counting Method

The authority responsible for adopting a voting system for an election will determine whether an electronic voting system will be used to tabulate the results or whether the results will be tabulated through a hand count. (Sec. 123.001).

- For the **general election for state and county officers**, an election ordered by the governor, or an election ordered by a county authority, the commissioners court is the authority responsible for adopting the voting system. (Sec. 123.001).
- For an **election ordered by a political subdivision other than a county**, the political subdivision's governing body is the authority responsible for adopting the voting system. (Sec. 123.001).
- For a **separate primary election**, each party's county executive committee is the authority responsible for adopting the voting system for that party's primary. (Sec. 123.001).
- For a **joint primary election**, the county election officer is the authority responsible for adopting the voting system for the joint primary. (Sec. 172.126(f)).

As a reminder, the county election officer is either the county clerk, the county elections administrator, or the county tax assessor-collector, depending on the actions of the county commissioners court. (Secs. 31.031, 31.071, 31.091).

Polling Location Requirements

For an election in which ballots are hand-counted, polling locations (election precincts) are based on voter registration precincts. On election day, precinct returns are prepared at each individual polling location. (Sec. 65.014). Therefore, polling locations shall be based on voter registration precincts.

In certain elections, precincts may be combined or consolidated according to the procedures outlined in Chapter 42 of the Election Code. Combining election precincts and consolidating election precincts are two distinct procedures that impact the manner in which precinct returns are prepared in different ways.

Consolidating Precincts (Secs. 42.008, 42.009)

- The consolidation of precincts is only available in a special election that requires the use of county election precincts, such as a constitutional amendment election or an election to fill a legislative or congressional vacancy (Sec. 42.008), or in a primary election (Sec. 42.009).
- County election precincts cannot be consolidated in a general election for state and county officers.
- The consolidated precinct is treated as a single precinct and is subject to the requirements applicable to a single precinct under Sections 42.005, 42.006, and 42.007 of the Code.
- In a primary election, under Section 42.005 of the Code, consolidation is only possible if the consolidated precinct does not contain territory from more than one commissioners precinct, justice precinct, congressional district, state representative district, state senatorial district, or State Board of Education district. In practice, this means that an entity may not have more than one "ballot style" per precinct.
- Voter check-in paperwork is completed for the consolidated precinct as a single precinct.
- Precinct returns are prepared for the consolidated precinct as a single precinct.
- The consolidation of precincts is performed by the following authority, depending on the election:
 - Commissioners court, on recommendation of the county election board, in a special election. (Sec. 42.008).
 - The party's county executive committee, in a separate primary. (Sec. 42.009).
 - The county election officer, in a joint primary. (Sec. 172.126(b)).

Combining Precincts (Sec. 42.0051)

- County election precincts may only be combined in a general election or a special election. It is not permissible to combine county election precincts in a primary election. (Sec. 42.0051(a-1)).
- The combining of precincts is only available in counties with a population of less than 1.2 million that do not participate in the countywide polling place program. (Sec. 42.0051(a)).
- Precincts may only be combined if the commissioners court cannot secure a suitable polling location for the precinct under Section 43.031 of the Code and the combined

polling location adequately serves the voters of the combined precinct. (Sec. 42.0051(a-1)).

- Voter check-in paperwork is completed separately for each individual precinct contained in the combined precinct.
- Precinct returns are prepared separately for each individual precinct contained in the combined precinct.
- The combination of precincts is performed by the commissioners court, on recommendation of the county election board.

As an example, for the primary election, if a county had 100 voter registration precincts which resulted in 100 unique ballot styles, the county would be required to have 100 polling locations.

For more information on the rules related to consolidating and combining precincts, please see [Texas Secretary of State Election Advisory No. 2023-11](#).

Countywide Polling Places Are Not Permitted in a Hand Count

Because precinct returns are prepared at each polling place, it is not permissible to utilize countywide polling places for hand-counted elections. In a primary election, the county may establish countywide polling places only if: (a) the county chair or county executive committee of each political party participating in a joint primary election under Section 172.126 of the Code agrees to the use of countywide polling places; or (b) the county chair or county executive committee of each political party required to nominate candidates by primary election agrees to use the same countywide polling places. (Sec. 43.007(a)(4)). Therefore, if one party is conducting a hand count for that party's primary election, both parties are required to conduct precinct-based voting. Neither party would be permitted to use countywide polling places for its individual primary election.

Requirements for Accessible Voting Equipment

State and federal law require the entity conducting the election to provide at least one unit of accessible voting system equipment at each election day polling location and each early voting location to allow voters with disabilities to independently mark a secret ballot. (Sec. 61.012).

Although the Election Code provides limited exemptions to this requirement for entities located in counties with a population less than 20,000, those exemptions are only available for elections in which there is no federal office on the ballot. (Sec. 61.013).

Ballot Arrangement Requirements for a Hand Count

The Texas Election Code outlines the requirements for the format of a ballot in Chapter 52, Subchapter C of the Texas Election Code.

Below is the sample ballot for the November 8, 2022 General Election for State and County Officers. This is formatted in the manner required for a hand-count ballot with party affiliation requirements.

[illegible]

Ballot Arrangement with No Party Affiliations on the Ballot (Primary Elections, Local Political Subdivisions)

For an election in which no party nominee is to appear on the ballot, the ballot shall be arranged as provided by Section 52.066 of the Code. Each title of an office to be voted on shall be listed in a vertical column with the name of each candidate listed below the appropriate office title. (Sec. 52.066(b)). If write-in votes are permitted by law in the election, a space underscored by a

broken or solid line shall be provided for a write-in vote below the names of the candidates for each office. If more than one candidate is to be elected to an office, write-in spaces shall be provided in a number equal to the number of candidates to be elected. (Sec. 52.066(c)). If the length of the ballot arranged as one column would exceed 18 inches, the office titles may be arranged in parallel vertical columns. (Sec. 52.066(d)).

Voting System Equipment

The Secretary of State may prescribe the form and content of a ballot for an election using a voting system, including an electronic voting system or a voting system that uses direct recording electronic voting machines or ballot marking devices, to conform to the formatting requirements of the system. Ballot format modifications for ballot marking devices are approved during the certification process for electronic voting systems and may vary slightly from the requirements dictated above. (Sec. 52.075).

Ballot Marking Methods in a Hand Count

In a hand count, there are several ways that a ballot may be marked by a voter.

Pre-Printed Ballots

The entity conducting the election may choose to use pre-printed ballots that are marked by the voter with an indelible marking instrument. (Sec. 62.015). Each person who prints ballots or other election supplies for a primary election or general election must file a statement with the Secretary of State. (Sec. 51.013). A list of registered printers can be accessed on the Secretary of State's [website](#). Vendors that wish to be identified on the Secretary of State's website may contact the SOS at elections@sos.texas.gov to complete the necessary paperwork.

Ballot on Demand Systems

The entity conducting an election may choose to use a ballot on demand system that allows the polling place worker to select the ballot style that corresponds with the voter's precinct and print the ballot from the device at the polling location. These ballots are then marked by the voter with an indelible marking instrument. (Sec. 62.015).

Ballot Marking Devices

The entity conducting the election may choose to use ballot marking devices for all ballots. In this scenario, the voter would insert blank ballot stock into the ballot marking device. The voter would make selections on the screen of the ballot marking device and the voter's choices would be printed on the ballot. These ballots would then be deposited into a ballot box for hand tallying at the appropriate time.

Polling Place Requirements for Ballots in a Hand Count

At the polling location, election officers shall follow the procedures outlined in Chapter 62 related to setting up the polling location. These provisions include the following requirements:

- Examining ballot boxes prior to the start of voting (Sec. 62.007)
- Signing of ballots by presiding judge for election day (Sec. 62.008)
 - **NOTE:** For early voting, the early voting clerk's initials shall be placed on each ballot or the deputy early voting clerk shall stamp a facsimile of the initials on each ballot. (Sec. 85.0311).
- Disarranging ballots for voters' selections (Sec. 62.009)
- Placing indelible marking instruments in voting stations (Sec. 62.015)
- Providing voting booths that assure privacy for voters while marking their ballots. (Sec. 51.032)
 - **NOTE:** A voting booth may be used without prior approval from the Secretary of State if the booth complies with the requirements outlined in Section 51.032 of the Code.

Officers Who Perform Counting

In a hand count, the ballots are counted by one or more team(s) of election officers assigned by the presiding judge. Each team must consist of two or more election officers. (Sec. 65.001).

- For **election day ballots**, a hand count of ballots is performed by the presiding judge, alternate judge, and clerks at each of the election day polling locations. (Sec. 65.001).
- For **early voting in person ballots**, the hand count is performed by the presiding judge, alternate judge, and members of the early voting ballot board (EVBB). (Sec. 87.061).
- For **ballots by mail**, the hand count is performed by the presiding judge, alternate judge, and members of the EVBB. (Sec. 87.061).

Chapter 65 of the Texas Election Code provides that a member of a counting team may not be replaced after vote tallying is begun unless each existing discrepancy among the three tally lists is corrected before the replacement is made. (Sec. 65.006). (Tallying procedures are described in further detail below.) Although additional clerks may be brought in to supplement or replace counting team members, there is no legal authority to replace the appointed presiding judge. Because the presiding judge must be present to resolve voter intent questions and sign the precinct returns, the presiding judge must be present throughout the entire counting process.

Counting While the Polls are Open on Election Day

The Election Code does not provide specific space and distance limitations for the arrangement of the polling place when counting is occurring during voting hours. However, the Code contains general guidelines for the setup of the polling place and the availability of certain results information that impacts the options for setting up a polling place.

Counting activities should occur in a separate room in the polling place. It is important to physically separate the area in which the ballots are counted from the area in which voters are voting to prevent counting activities from interfering with voting activities and to prevent the release of results before the time the polls close. It is a Class A misdemeanor for an election officer, watcher, or other person serving at a polling place in an official capacity to reveal information about the results of the election before the polls close or the last voter has voted, whichever is later. (Sec. 61.007).

If it is impossible to conduct counting activities in a separate room at the polling place, the counting should at least be conducted in a separate area that is out of the sight range or hearing range of the voters at that location. However, the voting stations and ballot boxes at the polling place must still remain within plain view of one or more election officers at the polling location, who must be able to continue processing voters while other election officers are conducting the counting process. The counting process should occur in a manner that does not interfere with voters in the polling place and which prevents the release of results before the time the polls close. Because the Election Code requires a member of the counting team to verbally announce the name of a candidate for whom a vote has been received or whether a vote has been received for or against a measure, the counting area must be situated in a manner that prevents a voter from seeing or hearing the activities of the counting team when the voter is located in the polling place. (Secs. 61.007, 62.004, 62.006, 65.005).

The ballots and ballot boxes in the polling place must remain in plain view of at least one election officer from the time the polls open for voting until the precinct returns have been certified. If counting is occurring while the polls are open, at least one election officer must be able to monitor the ballots and ballot boxes in the counting area and in the voting area during that timeframe. (Sec. 61.005).

If it is not possible to organize the polling place in this manner, counting at that location should occur after the time that the polls have closed or the last voter has voted, whichever is later.

Time for Counting

The time for counting ballots is strictly controlled by the Texas Election Code. Election day ballots are counted on election day. (Sec. 65.002). In a primary election in which ballots are hand-counted, early voting in person ballots and early voting by mail ballots may not be counted until

the polls open on election day. (Sec. 87.0241(b)). NOTE: In a county with a population of 100,000 or more where the county executive committee contracts with the county election officer to run the election, the early voting ballot board may only count ballots early if the county is using an electronic voting system. (Sec. 87.0241(c); 1 Tex. Admin. Code § 81.36).

The counting of ballots shall be conducted continuously until all ballots are counted. (Secs. 65.002, 87.062). Upon completion of counting, the presiding judge shall prepare the precinct returns. The precinct returns MUST be delivered to the general custodian of election records no later than 24 hours after the polls close. (Sec. 66.053). An election officer commits a Class B misdemeanor if the officer fails to make the delivery of the precinct returns to the general custodian or if the officer fails to make the delivery by the prescribed 24-hour deadline. (Secs. 66.054, 87.062(b)).

There is no legal authority to count ballots beyond the 24-hour deadline for delivering precinct returns. If counting has not been completed and precinct returns have not been delivered to the general custodian by 24 hours after the polls close, the authority conducting an election would need to seek a court order to extend the authorized time for counting ballots so that the election officers who are counting ballots are not subject to potential criminal charges.

Below are certain specific rules related to the timing of hand-counting ballots:

- **Election Day Ballots:** For election day ballots, the presiding judge of the polling place may direct the counting of ballots to occur at any time after the polls have been open for one hour. If counting at the election day polling location begins while the polls are open, the ballot box may not be opened for the purpose of counting those ballots unless there are at least 10 ballots in the box. (Sec. 65.002). If counting begins while the polls are open, two ballot boxes shall be used on a rotating basis. When one ballot box is delivered to the counting teams at the polling place, the other box must be made immediately available for the deposit of voted ballots by voters. Before the ballot box is positioned for the receipt of marked ballots, an election officer must examine it, remove its contents, and lock the box. (Sec. 65.003).
- **Early Voting In-Person Ballots and Ballots by Mail:** For early voting in person and ballot by mail, the early voting ballot board may begin counting once the polls open on election day. (Sec. 87.0241(b)(1)). On the direction of the presiding judge, the EVBB shall open the containers containing the early voting ballots that are to be counted, remove the contents from each container, and remove any ballots contained in ballot envelopes from their envelopes. The EVBB shall count the ballots and prepare the returns in the same manner as hand-counted ballots on election day. Early voting in-person ballots shall be tabulated and stored separately from ballots by mail and shall be separately reported on the returns. (Sec. 87.062).

- For late-arriving mail ballots, provisional ballots, and mail ballots that were corrected through the corrective action process after election day, the EVBB must convene to count those ballots no later than the 9th day after election day (for most elections) or the 13th day after election day (for the general election for state and county officers). (Sec. 87.125).

Procedures for Hand-Counting

The procedures for hand-counting are dictated by Chapter 65 of the Texas Election Code. There is no legal authority to hand-count ballots using a method that is inconsistent with, or different from, the procedures prescribed by the Texas Election Code.

- **Tallying Procedures**

- On each counting team, one member will act as a “caller,” while the other members of each counting team will act as “talliers.” The caller will clearly announce the name of each candidate for whom a vote has been received or whether a vote has been received for or against a measure. The talliers will record the votes on the tally list as they are announced. (Sec. 65.005(a)).
 - Three tally lists will be maintained for each counting team. The counting team will periodically compare the tally lists to determine whether there are any discrepancies between them. If a discrepancy is discovered, then the ballots must be recounted and the necessary corrections must be made on the lists. (Sec. 65.005(b)).
 - After the completion of the count, each tallier will compute the total number of votes tallied on the member’s list and enter the totals on the tally list. After verifying that the three tally lists are in agreement, each counting officer must sign the tally list that the officer has kept. (Sec. 65.005(c)).
- **Write-In Votes:** In an election where write-in voting is permitted, the name of a write-in candidate shall be entered on the tally list and votes for that candidate will be tallied in the same manner as votes for a candidate whose name appears on the ballot. Unless the race is one in which open write-in voting is authorized, the write-in candidate’s name must appear on the list of declared write-in candidates for votes to be counted for that candidate. (Secs. 65.008, 146.022, 146.051, 146.081).
 - **Irregularly Marked Ballots – Resolving Voter Intent:** A voter’s failure to mark the ballot in strict conformity with the Election Code does not invalidate the ballot. If the voter’s ballot is irregularly marked, the ballot must be counted according to the voter’s intent. (Sec. 65.009). The presiding judge is responsible for resolving any ambiguous questions of voter intent. (Sec. 65.009).
 - The Election Code provides that a voter’s intent may be determined by:

- A distinguishing mark adjacent to the name of a candidate or political party or a voting choice associated with a proposition;
 - An oval, box, or similar marking clearly drawn around the name of a candidate or political party or a voting choice associated with a proposition;
 - A line drawn through the names of all candidates in a manner that indicates a preference for the candidates not marked if the names of the candidates not marked do not exceed the number of persons that may be elected to that office;
 - A line drawn through the name of each political party except one in a manner that clearly indicates a preference for the political party not marked;
 - A line drawn through a voting choice associated with a proposition in a manner that clearly indicates a preference for the other voting choice associated with the proposition; or
 - Any other evidence that clearly indicates the intent of the voter in choosing a candidate or political party or deciding on a proposition.
- If the voter marks the ballot for more candidates for an office than the number of persons to be elected for that office, that is treated as an overvote and none of the votes for that office may be counted on the voter's ballot. (Sec. 65.011).

Additional guidelines and examples for resolving voter intent questions can be found in the Secretary of State's [Election Judges and Clerks Handbook](#).

Preparing Precinct Returns

The presiding judge of the election day polling location is responsible for preparing precinct returns for that precinct. (Sec. 65.014). The presiding judge of the early voting ballot board is responsible for preparing precinct returns for early voting in person and early voting by mail. (Sec. 87.062).

- **Election Day Ballots:** On completion of the vote count, the presiding judge shall prepare the returns for the precinct.
 - Those precinct returns must state:
 - The total number of voters who voted at the polling place (as indicated by the poll list);
 - The total number of votes counted for each candidate; and
 - The total number of votes counted for and against each measure.
 - The returns must be prepared as an original and three copies. On completing the returns, the presiding judge shall sign the original and the copies of the returns to certify their accuracy. (Sec. 65.014).

- **Early Voting In-Person Ballots and Ballots by Mail:** On completion of the vote count, the presiding judge of the EVBB shall prepare the returns for each precinct. Early voting in-person ballots shall be tabulated and stored separately from ballots by mail and shall be separately reported on the returns. (Secs. 87.062, 87.1231).
 - Those precinct returns must state:
 - The total number of voters who voted at the polling place, if applicable (as indicated by the poll list);
 - The total number of votes counted for each candidate; and
 - The total number of votes counted for and against each measure.
 - The returns must be prepared as an original and three copies. On completing the returns, the presiding judge shall sign the original and the copies of the returns to certify their accuracy. (Secs. 65.014, 87.062).
 - The EVBB shall prepare the returns in the same manner for late-arriving mail ballots, provisional ballots, and mail ballots that were corrected through the corrective action process after election day. Provisional ballots should be reported as election day or early voting in-person results, depending on the date on which the voter cast the provisional ballot. These returns shall be provided to the canvassing authority in the same manner as the other precinct returns. (Secs. 65.014, 87.062; 1 Tex. Admin. Code § 81.37).

Delivery of Precinct Returns to the General Custodian

The precinct returns and other precinct election records must be delivered to the appropriate authorities immediately after the precinct returns are completed. (Sec. 66.053(a)). This delivery must occur within two hours after the closing of the polls or the last voter has voted, whichever is later, or as soon as practicable after the two-hour deadline. (Sec. 68.032).

If the presiding judge determines that the ballots will not be counted in time to allow delivery of the precinct election records by 2:00 a.m. of the day after election day, the presiding judge must contact the general custodian of election records between midnight and 1:00 a.m. to inform the general custodian of the following information by telephone:

- The total number of voters who voted at the polling place as indicated by the poll list;
- The vote totals tallied for each candidate at the time of the notification;
- The vote totals tallied for and against each measure at the time of the notification; and
- The expected time of finishing the count. (Sec. 66.053(b)).

The precinct election records **MUST** be delivered no later than 24 hours after the polls close. (Sec. 66.053). An election officer commits a Class B misdemeanor if the officer fails to make the delivery of those records or if the officer fails to do so by the 24-hour deadline. (Sec. 66.054).

The presiding judge must deliver the original precinct returns to the presiding officer of the local canvassing authority with the other records contained in Envelope #1. If the presiding officer of the local canvassing authority is unavailable, the envelope shall be delivered to the general custodian of election records, who shall deliver it to the local canvassing authority before the canvass. (Sec. 66.051(a)).

The presiding judge must deliver a copy of the precinct returns to the general custodian of election records with the other records contained in Envelope #2. The presiding judge must also place a copy of the precinct returns in Ballot Box #3, which is delivered to the general custodian of election records with the other materials in that ballot box. (Sec. 66.051(b)).

The presiding judge will retain a copy of the precinct returns with the other records contained in Envelope #3. (Sec. 66.051(c)).

Election Night Tabulation and Reporting

On election night, the general custodian prepares an **unofficial** tabulation that contains vote totals of all votes cast during early voting in person, early voting by mail, and election day ballots. (Sec. 66.056(a)). The official tabulation comes from the canvass that occurs after the election has concluded and all late-arriving mail ballots, provisional ballots, and corrected mail ballots have been processed. On election night, the general custodian shall periodically make a public announcement of the current state of the tabulation. (Sec. 66.056(b)).

The type of election dictates who serves as the general custodian of election records for that election:

- For an **election ordered by the governor or by a county authority**, the general custodian is the county clerk.
- For a **primary election**, the general custodian is the county clerk.
- For an **election ordered by a city authority**, the general custodian is the city secretary.
- For an **election ordered by an authority of a political subdivision other than a county or city**, the general custodian is the secretary of the political subdivision's governing body.

The general custodian prepares the unofficial tabulation from the precinct returns that are delivered to the general custodian on election night. Upon receipt of the precinct returns, the general custodian shall open the envelopes containing the returns and prepare a tabulation stating:

- The total number of votes received in each precinct for each candidate;
- The total number of votes received in each precinct for and against each measure;
- The sum of the precinct totals for each candidate; and
- The sum of the precinct totals for and against each measure. (Sec. 66.056(a)).

Rosters and Voting History Submission

The early voting clerk for the general election for state and county officers and for a primary election shall submit to the Secretary of State, for posting on the Secretary of State's website, the roster containing the name, precinct, and voter registration number of the voters who voted on election day. This roster shall be posted not later than 11:00 a.m. on the day after the election. (Sec. 87.121(k)).

In a hand count, if the counting of ballots at a polling location extends into the next morning after election day, the early voting clerk may be unable to comply with the above requirement as precinct returns and the accompanying records (including the signature roster and poll list) are not to be delivered until the counting is finished and precinct returns have been completed.

Poll Watchers

Poll watchers are entitled to observe the activities of the counting team in the polling place and the early voting ballot board. At the polling place, poll watchers should be allowed to move freely between the voting area and the counting area. (Sec. 33.056). However, if the watcher is present at the polling place when ballots are counted, the watcher may not leave until the counting is complete. (Sec. 33.052).

Poll watchers do not have poll watching capabilities when the general custodian of election records is creating the unofficial tabulation of results on election night. This is not a defined area in which poll watchers may be present; nor is there a presiding judge present who can receive the certificate of appointment from a poll watcher.

It is a Class A misdemeanor for a watcher to reveal any information about the results of the election before the polls close or the last voter has voted, whichever is later. (Sec. 61.007).

Logistical Considerations for Hand-Counting Elections

An entity that is considering a hand count for an election should consider the following factors:

- Number of election precincts (election day polling places) required for the election
 - For the general election for state and county officers and the primary election, this figure can be determined by looking at the number of county voter registration precincts.
- Number of election workers and availability of workers required for the hand count

- Each election day polling location must have a minimum of three election workers. The presiding judge and election clerks who are appointed for each polling location are the only persons authorized to tally election ballots at that polling location. Although election workers may be replaced or additional workers may be brought in, it is imperative that workers understand the time commitment involved in a hand tally. The presiding judge, in particular, must be available to continue performing duties as a presiding judge until the counting of ballots has been completed at the election day polling location. This will generally result in the presiding judge working in excess of 12-14 hours on election day.
- Locations used as polling places
 - Every election precinct must have a polling place. When securing voting locations, the authority that controls the building must be informed of the time commitment required for use of that building during a hand count. If counting is conducted after the time the polls close, the locations may be needed overnight and into the next day depending on the length of the ballot for the given election. The authority conducting the election may need to secure additional rooms or space within each polling location for the hand count, if counting is to occur while the polls are open.
- Necessary supplies for a hand count
 - Each election day polling place will need four ballot boxes, tables and chairs for the counting team(s), and an adequate number of tally sheets, marking instruments, and seals for ballot boxes. (Sec. 51.031, 51.033, 51.034).
 - For early voting, only one box per location is necessary but the box must be equipped with two locks, each with a different key. (Sec. 85.032). The early voting ballot board will need ballot boxes and storage cases for the storage of accepted and rejected ballots. (Sec. 87.062).
 - ADA-accessible voting system equipment must be provided in each election day or early voting polling place.

EXAMPLE: A county that has 100 election day polling locations will require a minimum of 400 ballot boxes for election day.
- Length of time necessary for tallying votes
 - It is necessary to estimate the amount of time required to conduct a hand count to accurately determine the number of workers needed and the expected number of hours that each individual will work. These calculations will help the entity in determining the expected personnel costs associated with an election.
 - The SOS recommends that an entity considering a hand-count look to a recent similar election to calculate these figures and provide a proper estimate. When calculating an estimate, the entity should also consider the length of the ballot and the voter turnout from the most recent similar election.

Frequently Asked Questions

Q: Can we appoint election workers specifically to conduct the hand count?

A: In general, anyone who will be performing the hand count will need to be appointed as a presiding judge, alternate judge, or member of the EVBB (for ballots by mail or early voting in person ballots), or as an election judge or clerk for the election day precinct in which the count will be performed (for election day ballots). (Secs. 65.001, 87.061).

With regard to election day workers, the presiding judge of the polling place shall designate the working hours and duties of the clerks serving at the polling place, and the judge may assign the clerks to work for different lengths of time or to begin work at different hours. (Sec. 32.072).

However, the presiding judge and clerks who are on duty at the polling place at the time of any hand count of ballots before the polls close must remain on duty without leaving the polling place while the polls are open. The presiding judge may allow temporary absences for meals or must permit meals to be brought or delivered to those workers at the polling place. In general, when the presiding judge is assigning duties, setting working hours, or authorizing temporary absences, the judge must treat all workers uniformly. (Sec. 32.073).

Q: Can we replace members of the counting teams after counting has begun?

A: Yes, but specific procedures must be followed when a member of the counting team is replaced after counting has begun. A member of the counting team may not be replaced after vote tallying is begun unless each existing discrepancy among the three tally lists is corrected before the replacement is made. After any discrepancy between the tally lists is resolved, the officer who is being replaced must certify the accuracy of the tally list kept by that officer, as of the time of the replacement, by signing the tally list. (Sec. 65.006).

Q: Can poll watchers participate in counting activities?

A: There is no legal authority for a poll watcher to participate in the tallying and counting of votes. Additionally, poll watchers are only permitted to observe the election process; they should not be used to verify that votes are tallied and read correctly.

Q: Can student election clerks participate in hand-counting activities?

A: A person may be appointed as a student election clerk if the person: is at least 16 years of age; has the consent of the student's principal (or parent or legal guardian, if the student is home-schooled); is a U.S. citizen; and has completed any training required by the entity holding the election. In general, nothing in the Election Code prohibits a student election clerk from serving as a member of a counting team, as the student is generally authorized to perform the duties

that an election clerk would normally perform at the polling place. For precinct-based counties, the maximum number of student election clerks who may be appointed at each polling place is two. (Sec. 32.0511).