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Obtaining the Records

Texas Election Codes Process and Gameplan Auditable Information

State Constitution Articles on Suffrage

Article 6, 2, c *The privilege of free suffrage shall be protected by laws regulating elections and prohibiting under adequate penalties all undue influence in elections from power, bribery, tumult, or other improper practice.*

Article 6, 4 ELECTIONS BY BALLOT; PURITY OF ELECTIONS; REGISTRATION OF VOTERS. *In all elections by the people, the vote shall be by ballot, and the Legislature shall provide for the numbering of tickets and make such other regulations as may be necessary to detect and punish fraud and preserve the purity of the ballot box; and the Legislature shall provide by law for the registration of all voters.*

Texas Election Codes

66.058 PRESERVATION OF PRECINCT ELECTION RECORDS.

(a) *Except as otherwise provided by this code, the precinct election records shall be preserved by the authority to whom they are distributed for at least 22 months after election day.*

(b) *For a period of at least 60 days after the date of the election, the voted ballots shall be preserved securely in a locked room in the locked ballot box in which they are delivered to the general custodian of election records.*

On the 61st day after election day, the general custodian of election records may: (1) require a person who has possession of a key that operates the lock on a ballot box containing voted ballots to return the key to the custodian; and (2) unlock the ballot box and transfer the voted ballots to another secure container for the remainder of the preservation period.

(b-1) *Except as permitted by this code, a ballot box or other secure container containing voted ballots may not be opened during the preservation period.*

(c) *If during the preservation period an authorized entry is made into a ballot box or other secure container containing voted ballots, when the purpose for the entry is fulfilled, the box or container shall be relocked or resecured, and the box and key or secure container returned to the custodian.*

(d) *A custodian of a ballot box or secure container containing voted ballots commits an offense if, during the preservation period prescribed by Subsection (a), the custodian:*

(1) *makes an unauthorized entry into the box or container; or*

(2) *fails to prevent another person from handling the box or container in an unauthorized manner or from making an unauthorized entry into the box or container.*

(e) *An offense under Subsection (d) is a Class A misdemeanor.*

(f) *The records in ballot box no. 4 may be preserved in that box or by any other method chosen by the custodian. If the records are removed from the box, they may not be commingled with any other election records kept by the custodian.*

(g) *Electronic records created under Chapter 129 shall be preserved in a secure container.*

(h) *For the preservation of precinct election records in an election involving a federal office, the secretary of state shall instruct the affected authorities on the actions necessary to comply with federal law and otherwise implement this section.*

66.059 RETRIEVING ERRONEOUSLY PLACED ELECTION RECORDS. (a) *On written application by the presiding officer of the local canvassing authority or the presiding judge of the election precinct, a district judge of the county in which a ballot box containing voted ballots is in custody may order the box opened to retrieve an election record that was erroneously placed in the box.*

(b) *If the political subdivision holding the election is not a county or is a county that does not maintain an Internet website, the district judge shall post a notice of the date, hour, and place for opening the box on the bulletin board used for posting notices of the meetings of the governing body of the political subdivision*

served by the general custodian of election records. The notice must remain posted continuously for the 24 hours immediately preceding the hour set for opening the box.

(b-1) If the political subdivision holding the election is a county that maintains an Internet website, the district judge shall post a notice of the date, hour, and place for opening the box on the county's Internet website. The notice must remain posted continuously for the 24 hours preceding the hour set for opening the box.

(c) Any interested person may observe the opening of the box.

(d) The district judge shall issue the orders necessary to safeguard the contents of a ballot box opened under this section.

211.001 ELECTIONS IN WHICH RECOUNT MAY BE OBTAINED. A recount may be obtained as provided by this title in any election.

211.003 CHANGE IN OUTCOME OF ELECTION. In this title, a change in the outcome of an election occurs if, as a result of a recount in the precincts included in a recount document:

(1) a candidate who was shown by the previous vote count to be nominated, elected, or entitled to a place on a runoff ballot or to be tied for nomination, election, or entitlement to a place on a runoff ballot loses that status;

(2) in a presidential general election, the presidential candidate who was shown by the previous vote count to have received the most votes in this state loses that status;

(3) in an election on a measure, the winning side becomes the losing side; or

(4) in a presidential primary election, entitlement to delegate representation at the political party's national presidential nominating convention on behalf of a candidate or an uncommitted delegation is changed.

211.006 PROMPT PERFORMANCE OF RECOUNT FUNCTIONS. (a) Each authority responsible for performing a function in a recount shall perform the function diligently and shall take prompt action at every stage of the proceeding.

(b) This section is enforceable by writ of mandamus.

211.007 PRESERVATION OF RECOUNT PAPERS. (a) In this section, "recount papers" means the documents requesting a recount, amendments to those documents, records of notices given, records of costs of the recount, and file copies of statements of costs.

(b) A recount coordinator shall retain the recount papers in the coordinator's possession for the longest of the following periods:

(1) the period for preserving the precinct election records;

(2) 60 days after the date the canvass of the recount is completed;

(3) 30 days after the date assessed costs are finally settled; or

(4) 30 days after the date an amount owed by a person against whom costs are assessed is

referred for collection.

(c) If a recount supervisor is also the recount coordinator for a recount, the papers accumulated in the officer's capacity as supervisor shall be retained for the same period as those accumulated in the officer's capacity as coordinator.

(d) A recount supervisor who is not the recount coordinator shall retain the recount papers in the supervisor's possession for the longest of the following periods:

(1) the period for preserving the precinct election records;

(2) 60 days after the date recount costs for payment of claimants are certified; or

(3) if costs in the supervisor's jurisdiction are assessed against a person, six months after the date a statement of costs incurred in the supervisor's jurisdiction is delivered to the recount coordinator.

(e) Subsections (b), (c), and (d) do not apply to recount papers delivered to the authority to whom an amount owed by a person against whom costs are assessed is referred for collection.

Application to Judge

Process - What are We Asking to Do?

Make a plan for how you intend to handle the ballots per the above Texas Election Codes so as to display how you will comply with state law. This will help the District Judge with their decision to allow access to the records.

Gameplan

Data - What are We Looking For?

Make a list of what data you will be seeking, as well as what discovery of this data will mean for the results, election procedures, or auditability of the records.