

# Update from SOS

August 1, 2022



# Litigation Update



# SB 1 Litigation

- Set for trial in Summer 2023
- Will keep you updated of further developments

August 2022



# Redistricting Litigation

- State and Federal cases challenging redistricting maps adopted by Legislature in 2021
- Federal case has trial set for September 2022
- Texas Supreme Court has dismissed most state claims and remanded the rest to be repleaded



# Constitutional Amendment Proposition 2 Contest

- Contest of Proposition 2 approved in November 2021 election
- Remains at pleading stage with no trial set



- Electioneering case (*Ostrewich*) remains on appeal
- Vote by mail cases have generally disappeared
- Interpreter case (*OCA Greater Houston*) revised prior injunction to disallow part of the new oath language from SB 1
- Several pro se cases challenging the use of electronic voting equipment in Texas

# Miscellaneous Updates



# Training for County Officials

**Senate Bill 231 (Seliger):** Provides that the Secretary of State shall provide a standardized training program and materials for county election officers in the same manner it provides such a program to election judges and clerks.

**NOTE:** The Secretary of State will issue an advisory outlining the details of this program. More details to come in this seminar.





# Ballot by Mail Tracker

**House Bill 1382 (Bucy):** Requires the Secretary of State to provide an online tool on the Secretary of State's website that enables a person who has submitted an application for a ballot by mail to track the location and status of the person's application and ballot.

**The mail ballot tracker has successfully been implemented. More to come in this seminar regarding how to optimize its usefulness to your voters and to you.**



# ERIC

- ERIC is a multi-state cross check of registered voters which is required by Texas law. Sec. 18.062
- The Legislature fully funded ERIC in 2019 and 2021.
- 30 states plus DC (soon to be joined by MA and NJ) share information from their DL and VR lists.
- SSA provides DMF information.
- NCOA provides updated address reports.
- ERIC provides information to the State regarding Deceased, Duplicates, In-State Movers and Cross State Movers.
- ERIC also provides information regarding potential double voters in Federal elections.



# ERIC

- ERIC also provides us a list of individuals who are eligible to register to vote but aren't registered.
- We send these EBU persons a postcard inviting them to register and pointing them to [VoteTexas.gov](https://VoteTexas.gov) for more information.
- So far ERIC has provided us with over 500,000 possible deceased, duplicates, in-state movers and cross-state movers.
- We have also mailed out approximately 4.3 million postcards to households containing eligible but unregistered persons.



# ERIC

- The goal of ERIC is to ensure that our voter rolls have current address information and that ineligible voters are removed.
- The information regarding movers will help to minimize limited ballots, statements of residence and provisional ballots.
- This will improve lines for November's election during early voting and election day.

# Voter Registration – Senate Bill 1113

**Senate Bill 1113:** Authorizes the SOS to withhold funds from a county voter registrar if the registrar fails to timely perform certain voter registration duties. Specifically, Section 16.039, as added by SB 1113, provides:

- a) If a registrar fails to timely perform a duty imposed on the registrar under this subchapter requiring the approval, change, or cancellation of a voter's registration, the secretary of state may withhold funds administered and distributed by the secretary under Chapter 19 or Section 31.009 from the registrar.
- b) Notwithstanding Subsection (a), the secretary of state shall distribute funds under Chapter 19 or Section 31.009 if the registrar performs the registrar's duty not later than 30 days after the funds are withheld.

# Voter Registration – Senate Bill 1113

The SOS will monitor each voter registrar's list maintenance activity on an ongoing basis for substantial compliance with their voter registration cancellation duties. This includes:

- individual list maintenance processes conducted through the statewide voter registration system,
- the generation of notices of examination for investigation of voter eligibility, and
- the resolution of notices within the 30-day response period specified in the Texas Election Code.

# Voter Registration – Senate Bill 1113

If the SOS determines that a voter registrar has failed to timely perform any cancellation duties imposed on the registrar under Chapter 16, Subchapter B, the SOS will deliver written notice of the non-compliance to the voter registrar.

Our office has issued an advisory with more detailed information related to the implementation of this legislative requirement. Please review the advisory.

Our office has worked with each of you regarding your task list and what is expected of you.

The goal of this statute and our activity is to ensure that our voter rolls are cleared of ineligible voters to the fullest extent possible. We are not seeking to punish counties. If you work with us in performing your list maintenance obligations, then you will not have your funds cut off.



# Corrective Action Process





## Key Points to Remember Regarding Changes to ABBMs

- Voters are **not** required to provide both types of identification numbers.
- If a voter provides both numbers, only one number has to match the VR record.
- **Do not delay in mailing rejection notices.**
- Voters are not required to use the Ballot by Mail Tracker to correct missing information. They can submit a new ABBM or a new VR application, whichever is applicable.
- County early voting clerks are **REQUIRED** to submit rejected ABBM information to TEAM (or through their vendor, if it provides data to TEAM). This is what populates the Ballot by Mail Tracker.



# Early Voting Clerk Notification of Defects

What defects can an early voting clerk provide notice about regarding a defective carrier?

- Missing signature
- Missing or incomplete witness information
- Missing assistant information
- If the early voting clerk is removing the secrecy flap before the ballot is sent to the SVC/EVBB:
  - Missing personal identification information
  - Incorrect personal identification information



## Comparison Requirements for the SVC/EVBB

- The EVBB shall only accept a ballot if the personal identification information (ex: SSN or TXDL) matches the voter registration record.
- The SVC/EVBB is matching the information on the carrier envelope to the VR record.
- **The number on the carrier envelope does not have to be the same number on the ABBM – it must only match the VR record.**

## Key Points to Remember Regarding the Carrier Envelope

- Voters are not required to provide both types of identification numbers.
- If a voter provides both numbers, only one number has to match the VR record.
- The secrecy flap may be opened by the early voting clerk's staff for processing.
- Be mindful with these carrier envelopes, as they have personally identifiable information that needs to be guarded.
- Carrier envelopes are not public information at this point in the election process.

## Rebuttable Presumption

- If the personal identification information provided matches the VR record, the signatures on the ABBM and the carrier envelope are rebuttably presumed to be those of the voter.
- The presumption may be rebutted by presenting other past signatures on file with the EVC or VR that would support a finding that the signatures on the carrier envelope and ABBM are not those of the voter.



## Forms for Use

- Notice of Rejected Ballot by Mail (6-2)
- Notice of Rejected ABBM-Missing or Incorrect Personal ID Numbers (6-3)
- Notice of Rejected ABBM-Required Personal ID Number not Associated with Voter Record (6-4)
- EVC Notice of Carrier Defect Mailed with Correction Action Form (6-11)
- EVC Notice of Carrier Defect Phone with Corrective Action Form (6-12)
- Roster of Voters with Defective Carrier Envelopes-Returned to the Voter by Mail (8-20)
- Roster of Voters with Defective Carrier Envelopes-Voter Notified by Phone or Email (8-21)
- Roster of FPCA Voters with Defective Carrier Envelopes-Notified by Phone or Email (8-22)
- Notice of Carrier Defect-Carrier Envelope Returned to Voter by Mail (8-23)
- Notice of Carrier Defect-Voter Notified by Phone or Email (8-24)
- Notice of Surrendered Ballot (6-13)
- Corrective Action form for Defective Carrier (6-14)
- Signature Sheet for FPCA Voters (6-37)
- Carrier Envelope (Regular ABBM) (6-15)

## Additional Resources

For additional information regarding the corrective action process, please see the following:

- **No. 2022-08** -NEW LAW: Senate Bill 1 – Opportunity to Correct Defects on Application for a Ballot by Mail and Carrier Envelope
- **No. 2022-12** - Additional Procedures Regarding Correction of Defects on Application for Ballot by Mail or Carrier Envelope
- All our forms can be found in our Forms Index here:

<https://www.sos.state.tx.us/elections/forms/pol-sub/index.shtml#photo-id>



# Results Tapes & Poll Watchers





# Results Tapes & Poll Watchers

- The results tapes from voting devices used during early voting by personal appearance shall not be printed at the early voting location(s). Printing results tapes results in the counting of votes, and there is no legal authority for counting of early voting results at the individual early voting location(s). Additionally, printing of results tapes during a time that is not authorized under Texas law may constitute unlawfully revealing the number of votes for or against a candidate or measure and is a Class A misdemeanor. (Tex. Elec. Code Sec. 61.007).
- Early voting by personal appearance ballots are authorized to be counted by either the early voting ballot board or the central counting station. (Secs. 87.062(b), 127.001). Results tapes from devices used during early voting by personal appearance may only be printed at the early voting ballot board or the central counting station, and those tapes may not be printed until the time that the polls open on election day. (Texas Administrative Code Rule 81.36). Once the last voter has voted, then the results tapes may be made available for public inspection.



# Results Tapes & Poll Watchers

- Per Section 33.055 of the Code, poll watchers may be present at the central counting station when the CCS is convened. Under Section 33.056 of the Code, a watcher is entitled to observe any activity conducted at the location at which the watcher is serving. Specifically, Section 33.056(c) provides that a watcher is entitled to inspect the returns and other records prepared by the election officers at the location at which the watcher is serving. Poll watchers are there to observe and watch the activities occurring at the CCS. They are entitled to inspect the records that are in use at that time the central counting station is convened.
- If a poll watcher wishes to inspect the early voting results tapes after they have been printed on election day and while the CCS is convened, the poll watcher may inspect the early voting results tapes once the tapes have been printed. However, per Section 33.055 of the Code, a watcher may not leave the central counting station during voting hours on election day without the presiding judge's permission if the counting of ballots at the central counting station has begun. Further, and as noted above, unlawfully revealing the number of votes for or against a candidate or measure before the polls close or the last voter has voted is a Class A misdemeanor.



# Results Tapes & Poll Watchers

- If a poll watcher wishes to inspect older records that were generated during a previous meeting of the CCS, because they are wanting to audit election records, they are permitted to do so under the Public Information Act. The poll watcher should present a request in writing to the county election officer for inspection or copies of these election records. However, if the Election Code provides that those records are publicly available at this time in the election process, then the county may choose to exercise its discretion to produce those records immediately rather than requiring the requestor to submit a public information request, though the county is not required to do so without such a request. For additional guidance on responding to public information requests, you may also wish to contact the Texas Attorney General's Office, as they have an Open Government Hotline that specializes in these issues. They can be reached at 877-673-6839.

# Inspectors vs. Trainers



# State Inspectors

- The Secretary of State **may** appoint one or more state inspectors for an election. (TEC 34.001(a))
- The secretary of state **shall** appoint one or more inspectors for an election if the secretary receives a written request for the appointment from 15 or more registered voters: (TEC 34.001(b))
  - of the county for which the inspector is requested, for an election ordered by the governor or a county authority or for a primary election; or
  - of the political subdivision in which the election specified by the request is held for an election ordered by an authority of a political subdivision other than a county.



# State Inspectors

- A state inspector is entitled to **be present** at and **observe** any function or activity at a polling place, central counting station, place of canvass, or other place at which official election or voter registration functions or activities take place. An inspector may take reasonable steps to obtain evidence of the manner in which a function or activity is being performed. (TEC 34.002)
- A state inspector **may not observe** the preparation of the ballot of a voter not being assisted by an election officer. (TEC 34.002)
- A state inspector shall **report** to the secretary of state any violation of law that the inspector observes. (TEC 34.002)

# Election Trainers

- An election trainer **may** be sent from the SOS to observe polling locations and elections processes as well to provide assistance to county election officials on election day.
- Trainers, through their onsite observation and interaction, gather information directly from county officials, election judges and poll workers in determining the **training needs** and requests from around the state.
- Trainers **may** make suggestions to county officials on methods to improve county procedures and practices.
- No formal report is written.

# What's Next?

## List Maintenance Activities





# List Maintenance

Sections 18.068 and 18.0681 require the SOS to conduct comparative reviews of the statewide voter registration list with information received under TEC Chapter 16. Following the identification of matched records, the SOS is required to send this information to county voter registrars for further review. It is the responsibility of the county voter registrar to review these records on the grounds of eligibility and/or to eliminate duplicative records to ensure the accuracy and integrity of the county voter list.

# County Role

- It is important that counties perform their role in list maintenance.
- The state provides the data, but the investigation, examination and potential cancellation are all the duty of the county voter registrar.
- SB 1113 reflects that the counties are expected to perform their list maintenance obligations.



# Cancellations

**Five categories of cancellation outlined in Chapter 16 (TEC):**

1. Cancellation on Official Notice of Ineligibility
2. Cancellation Following End of Suspense Period
3. Cancellation Following Investigation by Voter Registrar
4. Cancellation on Request by Voter
5. Cancellation due to Citizenship Status



# NVRA Moratorium

Any generalized program to remove voters from the voter rolls must stop 90 days prior to a federal election.

This moratorium does not include programs to remove deceased persons and felons. You may continue to perform these list maintenance activities during the moratorium.

The moratorium also does not apply to individual removals when the voter requests it or when the voter registrar has personal knowledge of an individual voter's change in circumstances.

## NVRA Moratorium

- Our office will not send list maintenance information to you, except for deceased and felon data, during the 90 days before the November 2022 election.
- We will resume sending the list maintenance information after the November election.
- We will not suspend any county's Chapter 19 or federal funding during the moratorium.
- We will resume monitoring after the November election.
- It is very important that we all maximize the opportunity during the odd numbered year to improve our voter rolls.

# Contact Us

## Legal Team

**(800)252-2216,  
Option 2**

## Voter Registration Team

**(800)252-2216,  
Option 1**

