

# Issues for Conducting Multiple May Elections

February 2024



## Topics to Discuss

- Possible Ballot By Mail Scenarios
- Notice of Elections
- Which Equipment can be reused



## Elections in May

- May 4, 2024 Cities, Schools, and Other Political Subdivisions
- May 28, 2024 Primary Runoff



# Calendars for Each Election

- May 4, 2024 Election Calendar
  - [Advisory 2023-25](#)
- May Primary Runoff Calendar
  - [Advisory 2023-21](#)



# Mail Ballot Deadlines

- May 4, 2024 Election
  - March 20, 2024 – Deadline to mail or email ballots to all FPCA voters
  - April 23, 2024 – Deadline to receive FPCAs and ABBMs
- May 28, 2024 Primary Runoff Election
  - Saturday, April 13, 2024 - Deadline to mail or email ballots to ALL FPCA voters.
  - Friday, May 17, 2024 - Deadline to Receive FPCAs and ABBMs



# Common Mail Scenarios for Multiple May Elections



## Scenario 1

- The early voting ballot board (“EVBB”) for the May 4, 2024 election is meeting to count ballots. They open a ballot secrecy envelope and there is a primary runoff ballot inside. As the ballot secrecy envelope would have been separated from the carrier envelope, there would be no way to determine which voter’s ballot this is.



## Procedure for Scenario 1

- This ballot cannot be counted nor retained in a carrier envelope to be forwarded to the EVBB for the runoff primary election. We suggest that the EVBB presiding judge make a notation on the ballot to explain the situation and why the ballot was not counted. The ballot should be stored in the envelope that contains the other rejected ballots (which will still be in their carrier envelopes). Tex. Elec. Code § 87.043.
- As there is no way to know which voter submitted this ballot, no notice of rejection can be sent to the voter. There is no authority in the Code to store a voted ballot outside of the jacket or carrier envelope.
- Additionally, while the EVBB qualified the voter's ballot with respect to the May 4, 2024 election, the EVBB did not qualify the runoff primary ballot.
- The May 4, 2024 EVBB does not have the authority to qualify a ballot for the runoff primary.





## Scenario 2a

- The EVBB for the May 4, 2024 election reviews a carrier envelope (that is marked to show it is a carrier for the May 4, 2024 election) and determines it will accept the ballot. The EVBB proceeds to open the carrier envelope to remove the ballot secrecy envelope, but the ballot is not in a secrecy envelope. The EVBB is able to immediately determine that the ballot inside the carrier is a primary runoff ballot. In this scenario, the ballot is tied to a particular voter as the carrier envelope is still effectively with the ballot.



## Procedure for Scenario 2a

- We recommend that the EVBB immediately put the ballot back in the carrier envelope and seal the envelope. The EVBB should deliver the carrier envelope to the early voting clerk, who should then place the carrier envelope in the jacket envelope for that voter for the primary runoff, ready to be forwarded to the EVBB for that election at the appropriate time.
- We also suggest that the presiding judge of the EVBB write a memo to detail what occurred, what actions were taken, and the date those actions were taken. The presiding judge and at least one other member of the EVBB should sign off on the memo.
- A copy of the memo should be placed in the voter's May 4, 2024 jacket envelope and a copy provided to the early voting clerk for placement in the voter's primary runoff jacket envelope. When the EVBB for the primary runoff election convenes and sees a carrier envelope for the May 4, 2024 election in the jacket envelope for the primary runoff, the memo will serve to inform that EVBB of what has occurred.



## Scenario 2b

- As a corollary to Scenario 2a, as the voter's May 4, 2024 carrier envelope contained the primary runoff ballot, it is possible that the primary runoff carrier contains the May 4, 2024 ballot. Can the early voting clerk take the primary runoff carrier and provide it to the May 4, 2024 EVBB for processing?



## Procedure for 2b

- As we can identify the voter under these scenarios, and hopefully contact the voter, the chain of custody can be well established.
- Regarding the carrier envelope for the runoff, which presumably contains the May 4, 2024 entity ballot, we suggest that the early voting clerk call the voter (if possible) to see if the voter can confirm that the May 4, 2024 ballot is probably in the runoff carrier envelope.
- If the voter confirms that he/she believes the ballot in the primary runoff carrier envelope is in fact the May 4, 2024 ballot (or if the early voting clerk is unable to reach voter), the early voting clerk may forward that carrier envelope to the May 4, 2024 EVBB to process as normal, if able to do so in a timely manner.



## Cont.

- We do not recommend that the early voting clerk open the carrier envelope, with or without the voter's permission, to determine whether the carrier actually contains the May 4, 2024 ballot.
- Only the EVBB should open this carrier envelope, once the EVBB has determined that the carrier envelope was properly processed (signature comparison completed, voter eligibility determined, etc.).
- We suggest that the early voting clerk write a memo to detail what occurred, what actions were taken, and the date of those actions, and place a copy of the memo in the voter's May 4, 2024 jacket envelope.
- Another copy should be placed in the voter's primary runoff jacket envelope.



## Scenario 3a

- The EVBB for the May 4, 2024 election qualifies the carrier envelope and finds two ballots, each inside a separate ballot secrecy envelope or neither ballot in a ballot secrecy envelope.



## Procedure for Scenario 3a

- Under this limited circumstance, the EVBB may open the ballot secrecy envelopes, if used by the voter. (The EVBB has the discretion to open a ballot secrecy envelope in limited circumstances, such as to see if there is a Statement of Residence included in the secrecy envelope rather than the carrier envelope. It is also not a requirement for a ballot to be in the secrecy envelope.)
- If one of the ballots is for the May 4, 2024 election and one is for the primary runoff election, the May 4, 2024 ballot may be counted. The primary runoff ballot cannot be counted.
- There is no authority for the EVBB to, for example, copy the carrier envelope for the May 4, 2024 election and place the runoff ballot back in the carrier envelope for forwarding to the primary runoff EVBB



## Cont.

- We suggest that the presiding judge of the EVBB make a notation on the primary runoff ballot to explain the situation and why the ballot was not counted. The primary runoff ballot should be stored in the envelope that contains the rejected ballots (which will still be in their carrier envelopes). Tex. Elec. Code § 87.043.
- We recommend sending this voter a written notification which explains why the voter's runoff ballot will not be counted, even though this EVBB is not the proper ballot board for the May 28, 2024 primary runoff ballot.
- The written notification issued by the EVBB for the May 4, 2024 election should also inform the voter that he/she may cast a provisional primary runoff ballot in person if they wish.
- Recommend that a memo be written and signed by the EVBB presiding judge to detail the actions taken. A copy of the memo should be placed in the voter's May 4, 2024 jacket envelope and a copy provided to the early voting clerk for placement in the voter's primary runoff jacket envelope.





## Scenario 3b

- The EVBB for the May 4, 2024 election qualifies the carrier envelope, but later discovers that the ballot secrecy envelope contains both a May 4, 2024 ballot and a primary runoff ballot.



## Procedure for 3b

- As in Scenario 3a, the May 4, 2024 ballot may be counted, but the May 28, 2024 primary runoff ballot cannot be counted. No notice can be sent to the voter as the identity of the voter cannot be determined by the time the error (2 ballots in one secrecy envelope) is discovered.
- Again, we suggest that the presiding judge of the EVBB make a notation on the rejected primary runoff ballot and store it with the rejected May 4, 2024 ballots.



## Scenario 4

- The early voting clerk receives two carrier envelopes from a voter. One carrier envelope is for the May 4, 2024 ballot and was properly executed by the voter, which includes the personal identification information required from the voter. The other carrier envelope is for the May 28, 2024 primary runoff and does not include the voter's personal identification information. Can the carrier envelope for the May 4, 2024 election be used by the EVBB for the primary runoff to qualify the voter's primary ballot?



## Procedure for Scenario 4

- There is no authority for the EVBB for the primary runoff election to copy the carrier envelope from the May 4, 2024 election. Similarly, there is no authority for the EVBB in the primary runoff election to copy the carrier envelope from the May 4, 2024 election and use it to qualify the voter's primary runoff ballot. If the early voting clerk timely receives the defective carrier envelope for the May 28, 2024 primary runoff election.



# Notice of Elections



## Notice Deadlines

- May 4, 2024
  - April 13, 2024 – Deadline to post notice for all political subdivisions
- May 28, 2024
  - May 7, 2024 – Deadline to post notice of the primary runoff on the county's website



# Notice Requirements

- The type and date of the election;
- The location of the main early voting polling place, including the street address, room number, and building name. The notice must designate which location is the main early voting polling place;
- The location of each polling place, including the street address, room number, and building name;
- The hours the polls will be open;
- The regular dates and hours for early voting by personal appearance;
- The dates and hours of any Saturday or Sunday early voting;
- The early voting clerk's official mailing address or street address at which the clerk may receive delivery by common or contract carrier, if different, phone number, e-mail address, and the Internet website, if the early voting clerk has an Internet website;
- We recommend that the information regarding branch early voting locations be included as part of your notice; and
- Any other information required by law. (Secs. 4.004, 83.010, 85.004, 85.007).



# What Equipment Can be Reused?





# Re-Using Equipment

| Equipment                           | Can be reused between the two elections?  |
|-------------------------------------|---|
| Scanners                            | Yes   |
| Ballot Markers                      | Yes   |
| Pollbooks                           | Yes   |
| Media Storage Devices for L&A Tests | No, Texas Election Code 127.152(c) sets out that the testing materials must be preserved for at least one year after election day or for at least 22 months after election day for an election involving a federal office.  |
| Ballot Boxes                        | No, Texas Election Code 66.058 sets out that for a period of at least 60 days after the date of the election, the voted ballots shall be preserved in a locked room in the locked ballot box. On the 61 <sup>st</sup> day the boxes can be opened and transferred to a more permanent storage.  |
| Media Storage Devices with Ballots  | No, For electronic media containing cast vote records, those cast vote records and other information contained on the drive must be retained on that original drive for the initial 60-day period. After that initial 60-day period has ended, you can transfer the information on those drives to another backup storage drive for the remainder of the 22-month preservation period. Once the drive has been backed up after that 60-day period, you can reuse the drive for other elections. |

# Logic and Accuracy Testing

- **Reminder**
  - Equipment being reused still has to comply with Logic and Accuracy tests as required by Chapter 129 of the Texas Election Code.
- **May 4, 2024 Election**
  - Recommended day to conduct L&A Test is March 19, 2024
  - Last Day to Conduct the Public L&A test is April 19, 2024
- **May 28, 2024 Primary Runoff**
  - Recommended to complete L&A testing by April 10, 2024
  - Last day to conduct the Public L&A test is May 17, 2024



Questions?

[elections@sos.texas.gov](mailto:elections@sos.texas.gov)

