

WORST TO FIRST

*Why Election Day Still
Means Something in Florida*





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Below: Election Night 2022 in Florida



Above: Election Season in California, Nevada

REMEMBER ELECTION NIGHT?

For generations, after casting votes, Americans have gathered to hear election results. We met at courthouses to see tallies chalked on boards. We hosted watch parties in living rooms like it was the Super Bowl. We filled hotel ballrooms rented by candidates. We packed the Javitz Center and could not wait to see its glass ceiling metaphorically shattered.¹ No matter the time period or means of gathering, election night meant learning election results.

In 2020, everything changed.



Since the lead-up to the 2020 Presidential Election, legacy media news outlets and some election officials have tried to convince the public that it is “not normal”² to know who won on election night. They say Americans should be “OK”³ with waiting for days and even weeks to know who won an election. These assertions require voters to forget our shared experiences where we know who won on election night.

Americans are now expected to wait out the process counting piles of mail ballots. Love or hate them, elections with increasing amounts of mail are here to stay unless the popularity of mail ballots suddenly reverses. Determining control of the White House, Congress, and other offices will require more patience than ever before -- unless you want to know how Florida voted.



HARRIS COUNTY REPUBLICAN PARTY HEADQUARTERS ELECTION WATCH PARTY IN HOUSTON ON NOV. 8, 2016

Cotera, Marjorie Kamys. Trump Supporters at the Harris County Republican Party Headquarters Election Watch Party in Houston on Nov. 8, 2016, 8 Nov. 2016, www.texastribune.org/2017/03/06/analysis-political-fishing-guide-2018-elections-texas/. Accessed 14 Mar. 2023. Photograph captured for The Texas Tribune.

Florida. In 2000, Florida was the laughing stock of the nation. Now, Florida gets the job done.

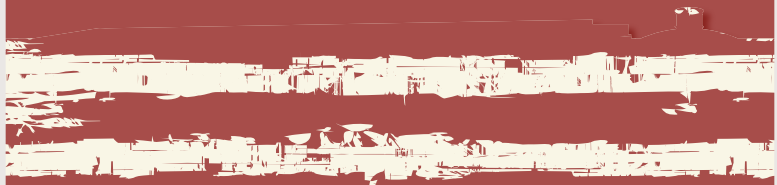
How is it that a state that uses millions of mail and polling place ballots can generally tell you who won on Election Day – especially with races ending in hairline margins? Worst to First runs down answers to that question.

The Public Interest Legal Foundation (PILF) studied Florida election laws and interviewed local and state officials to identify why Election Day still means Election Day in the Sunshine State. Why do Florida elections work? Why do we know the results on Election Day?

PILF discerned a list of eight core policies in Florida that seem to make it happen. Some may not work in every state. But this report catalogs why Florida’s system works.

THE FLORIDA EIGHT

- ★ Early Canvass for Absentee Ballots
- ★ Mail Ballots Must Arrive by Election Day
- ★ Voter ID for Absentee Voters
- ★ Ballot Verification
- ★ Paper Ballots Read Electronically
- ★ Audits
- ★ Ban on Ranked Choice Voting
- ★ Electronic Poll Books



WHAT A FLORIDA ELECTION LOOKS LIKE

Florida’s elections are big but fast. Secretary of State Cord Byrd’s office prides itself on providing voting options which “afford flexibility for when the unexpected occurs.” Residents will of course have precinct voting available on Election Day⁴, but they can also appear early 10 days beforehand to cast an early vote.⁵ During this period, voters taking advantage of absentee balloting⁶ can hand-deliver their voting materials to designated “Secure Ballot Intake Stations” set inside county election offices.⁷ Recent election turnout and voting method figures show clearly the scale in which the Sunshine State operates.

2022 GENERAL ELECTION

Ballots cast on Election Day at Polling Places ⁸:
2,725,864

Early Ballot Total:
2,285,465

Absentee Ballots Total:
2,773,948 ⁹

Grand Total:
7,785,277 ¹⁰

2020 GENERAL ELECTION

Ballots cast and Counted:
11.1 MILLION ¹¹

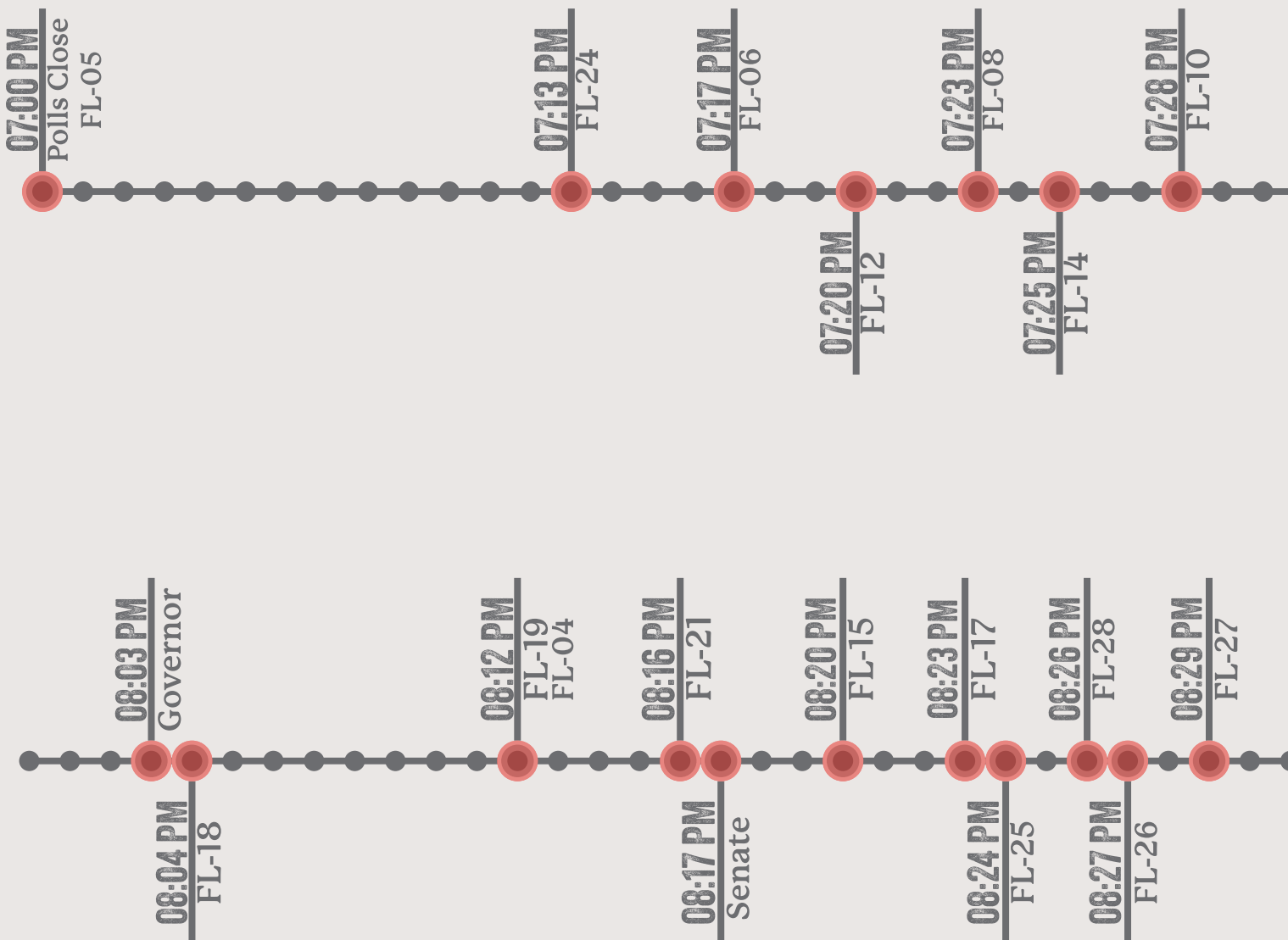
2020 Marked the Highest Voter Turnout Since 1992 ¹²

Early Ballots:
4,332,221 ¹³

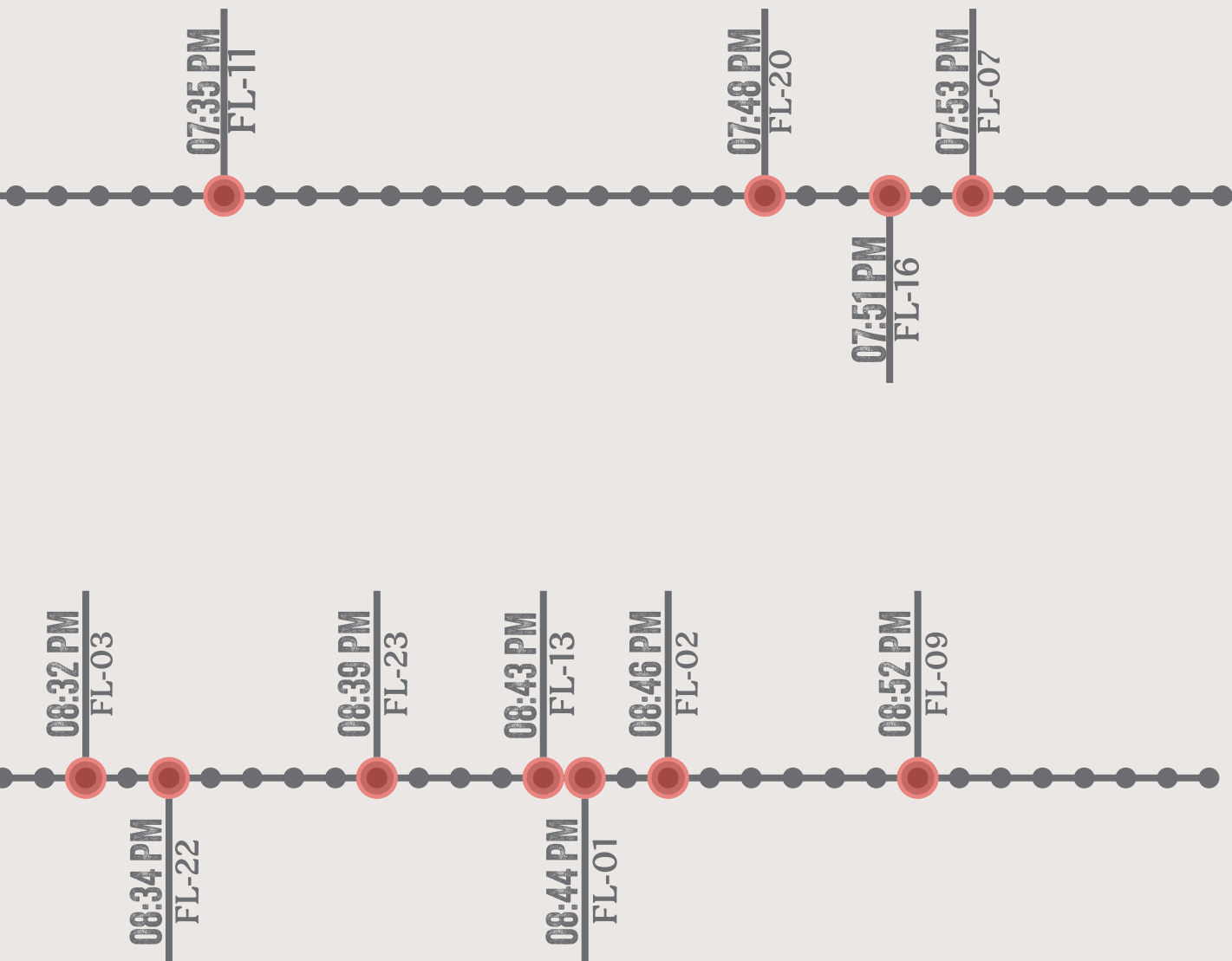
Absentee Ballots Voted:
4,855,677 ¹⁴

FLORIDA'S ELECTION NIGHT 2022

The Associated Press was confident enough with Florida's election night returns that it managed to call all U.S. House, Senate, and Gubernatorial races within two hours of polls closing at 7 pm Eastern.¹⁵ The final race called was the 9th Congressional District at 8:52 pm – eight minutes after all counties reported precinct-level results.

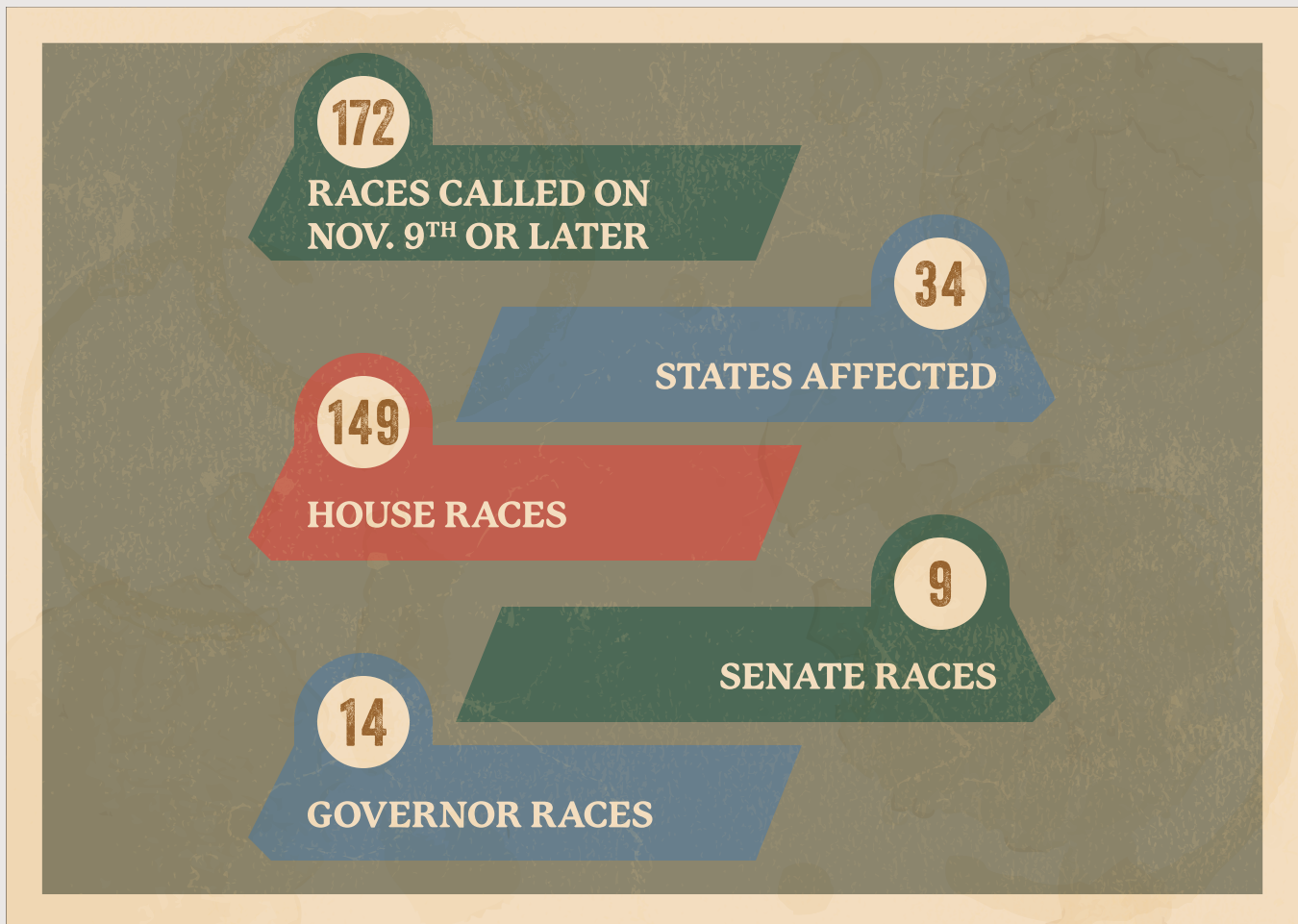


67 Counties
1 Senate Race
28 House Races
1 Governor's Race
8:44pm – Last Ballot Count Report



ELECTION 'SEASON' IN THE REST OF THE COUNTRY

The Associated Press cannot call races without election returns being available soon after polls close. While Florida's races were largely called on election night, the last federal or statewide race in the rest of the country was not called until December 13 in Colorado's 3rd Congressional District. California led the nation last fall with 51 delayed election results.



NOVEMBER 12, 2022

*AP Declares Senate Control*¹⁶

NOVEMBER 16, 2022

*AP Declares House Control*¹⁷

ABSENTEE VS. MASS MAIL VOTING

It may seem like semantics, but there is a significant difference between Florida's absentee voting system and mass-mail elections in California and other states. In Florida and California during the 2022 Midterms, anyone could vote via mail ballot. But that is where the similarities between the two systems ended.

FLORIDA

- ✓ Anyone may Apply
- ✓ Application Requires Voter ID Element
- ✓ Application Signature must Match file
- ✓ Secure Ballot Intake Stations
- ✓ Ballots Opened, Counted Before Election Day
- ✓ Ballots must Arrive by Election Day

CALIFORNIA

- ✗ No Application – Auto-Mailed Ballots for All
- ✗ No Voter ID Element Needed
- ✗ No Application, no Signature
- ✗ Outdoor Dropboxes Everywhere
- ✗ Ballots Opened Election Day
- ✗ Ballots Accepted up to Seven Days Late

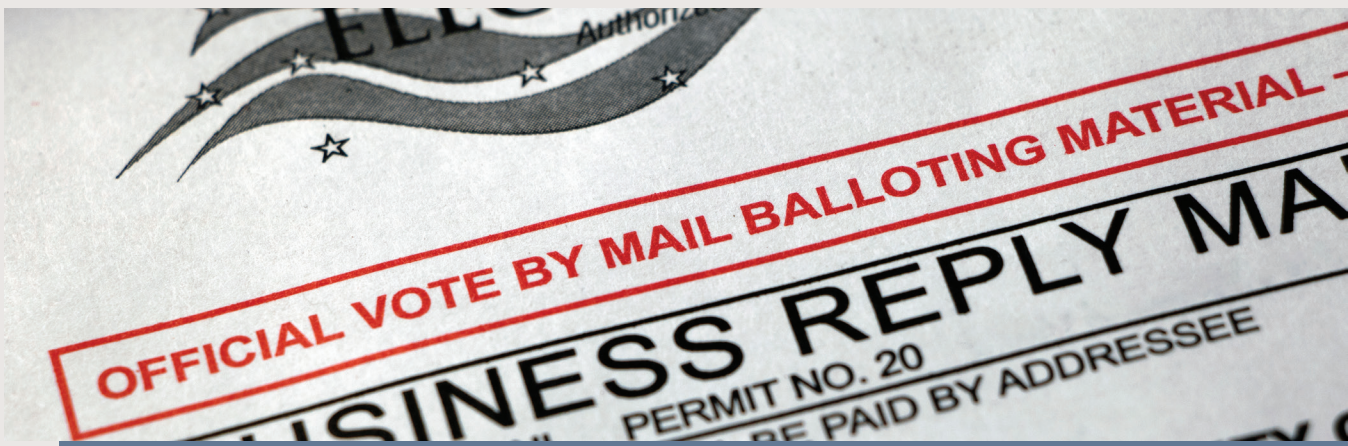
EIGHT ELEMENTS FOR **ELECTION DAY IN FLORIDA**

Florida's combination of policies to ensure the count is completed on Election Day draws from a variety of best practices used elsewhere around the country. No other state matches Florida exactly, but Arizona, Colorado, Georgia, Minnesota, Montana, and Tennessee each use six of the eight election functions that make Florida elections work. Of course, similar laws alone will not deliver election night results – states must have good people and procedures in place for effective execution.

POLICY I: EARLY CANVASSING OF ABSENTEE BALLOTS

Opening Ballots Before Election Day: If you want to know how millions of Floridians voted via absentee ballots on election night, you can start opening envelopes before Election Day. State law creates a framework for county supervisors of elections to open ballots as early as 40 days before the big day, depending on scheduling and pre-election audit completion.¹⁸ Whether or not you support ballots being opened and counted before election day, one thing is for sure: the policy produces earlier results.

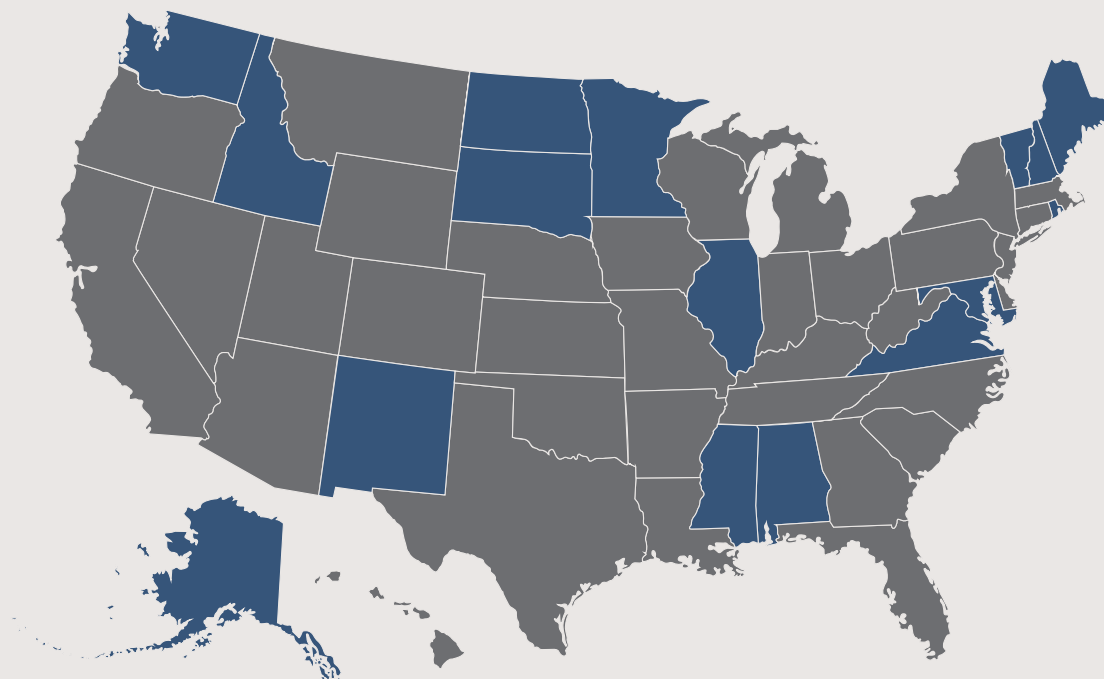
How It Works in Florida: A canvass, whether it's post- or pre-election, means a jurisdiction accounts for all ballots and corresponding votes to state the outcome of the races with certainty. In Florida, absentee ballots are opened, verified, sorted, read, and reported essentially as they are delivered by the Postal Service. For those who follow Florida politics closely, they may already recognize this process. Local news outlets commonly report totals among early and absentee voters before Election Day. Though the public does not know for whom the ballots voted, data on how many registered Republicans, Democrats, and unaffiliateds cast ballots by county is easily accessible and often given on a cumulative basis.¹⁹



The idea of opening mail ballots early may make some uneasy and see opportunities for abuse in the process without protections in place. Shortly before the 2022 Midterms, this became a flashpoint in Pennsylvania as a similar policy was debated.²⁰ But Florida lawmakers have implemented four separate safeguards to prevent abuse. Florida law prevents release of any information related to the pre-canvass count. Revealing election returns of mail votes counted before election day by anyone in a county supervisor of elections (SOE) office is a third-degree felony.²¹ Observers are also invited into the process of the pre-Election Day canvass.²² Furthermore, Florida also requires that SOEs stand for re-election every four years, synced with the U.S. presidential cycle. The Florida Governor is also vested with power to suspend a county SOE for cause, and any leaks of pre-canvass counts would certainly satisfy the cause requirement. Governor Ron DeSantis has used this power to remove a county prosecutor,²³ school board members,²⁴ and Palm Beach County SOE Susan Bucher.²⁵

Other States: Pre-election day canvassing is relatively rare across the country, but is becoming more popular if safeguards are in place. During the 2022 midterm elections, 10 states including Florida had such systems available for use.²⁶ It is noteworthy that despite having substantially similar laws, Arizona and Nevada infamously lagged behind in counting, largely due to Nevada's later ballot return deadline and other significant administration errors in Arizona on Election Day.²⁷ Some states forbid the counting of ballots before polls close on Election Day.

 States with Laws Requiring Ballots to be Counted After Election Day Polls Close



POLICY 2: ABSENTEE BALLOTS MUST ARRIVE BY ELECTION DAY

Election Day Deadline: Election Day is the end of voting in Florida. This means the millions of absentee ballots must be returned by Election Day.²⁸ Military and civilians living overseas are given 10 extra days for general elections under federal law.²⁹

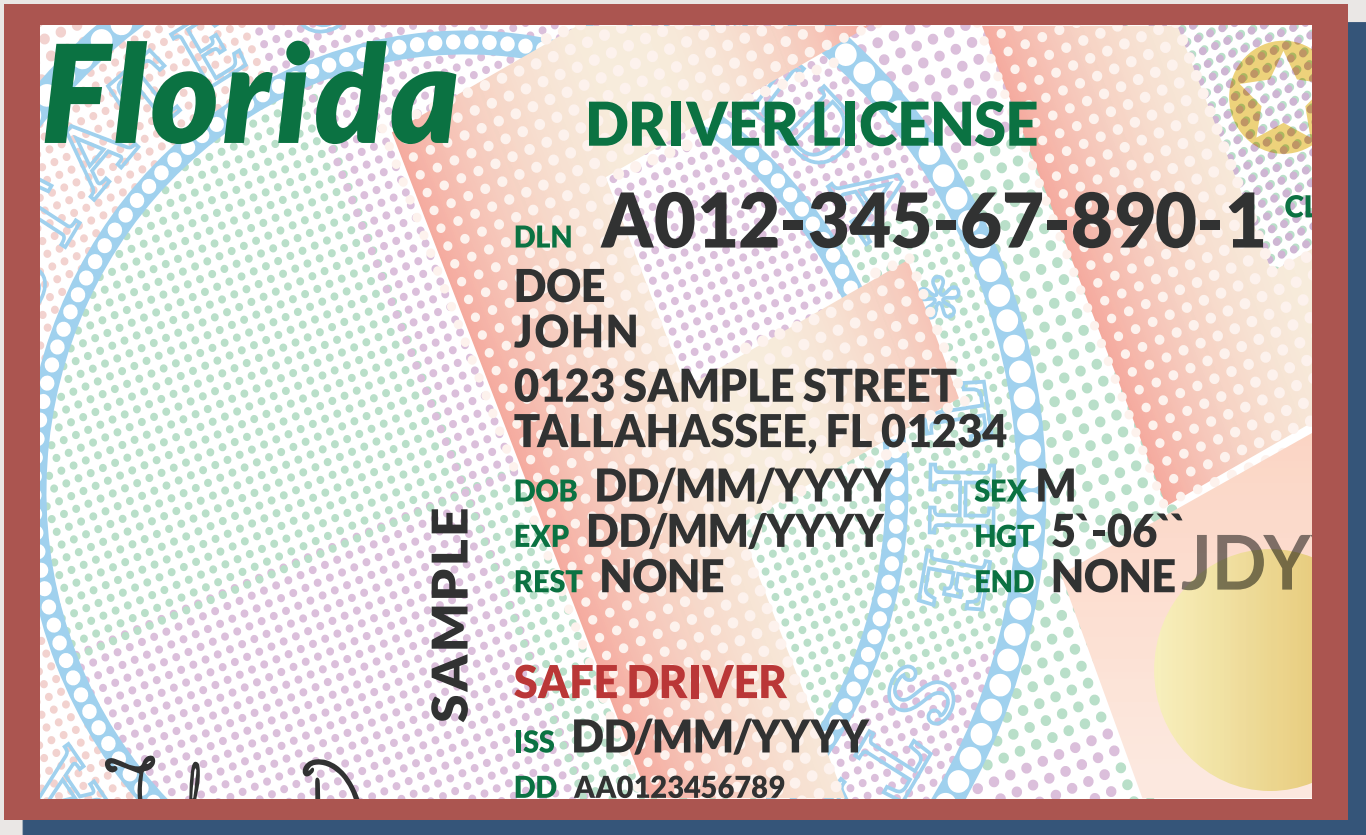
How It Works in Florida: This straightforward requirement keeps elections running smoothly in part because, as the Florida Secretary of State explains, great efforts are made to communicate deadlines well in advance with public outreach campaigns. Once ballots are issued via mail, voters are instructed to promptly mail them back or hand-deliver them to “Secure Ballot Intake Stations” set inside county SOE offices or within early voting locations.³⁰

Florida also has restrictions on hand-delivery ballots by individuals other than the voter. During 2022 and going forward, a person could only carry two signed and sealed ballot envelopes in addition to their own – unless they were helping immediate family members.³¹

Other States: Florida’s ballot return deadline by Election Day is not unique. During the 2022 General Election, 30 states including Florida operated under similar laws. States with expanded ballot return windows naturally led to delayed election results.



POLICY 3: VOTER ID WITH ABSENTEE



Requirement for Absentee Application: When Floridians choose to vote absentee, they are required on the application to provide the corresponding numbers for their Florida driver license, Florida identification card, or last four digits of Social Security number.³²

How It Works in Florida: The identification numbers given on applications are checked against Florida voting records to see if the identification numbers match.³³ Recent legal changes allowed election officials to draw Social Security and other personally identifying information (PII) from the Department of Highway Safety and Motor Vehicles' customer profiles to better validate claims of identity. Florida has essentially built voter ID into the absentee request process. In 2023, new law came into force requiring that absentee ballot subscribers renew their statuses every two years, down from four.³⁴ Floridians also have the option to request an absentee ballot for a single election.

Other States: Nineteen other states had similar systems in place for the 2022 Election where unique ID data was utilized in the absentee process at some point.

POLICY 4: ABSENTEE BALLOT VERIFICATION BEFORE COUNTING

Verification of Absentee Ballots: When Florida voters complete their absentee ballots, they are required to provide a signature on the documents that substantially matches a signature already on file with that voter.³⁵

How It Works in Florida: Florida law relies on the signature match process to validate identity when voting absentee. If a canvassing official concludes that the signatures do not substantially match, the ballot will face additional scrutiny. The absentee ballot materials also request additional contact information from the voter to include telephone numbers and email addresses to attempt to cure the ballot before the deadline.³⁶

Other States: Most states have some sort of verification process upon return for ballots. In 2022, 34 states had a similar or even more strict policy than Florida's in place. Signature match processes are most common among these states. Other states have requirements that ballots are notarized or have other voter ID elements accompanying the paperwork. Voter ID elements can mean actual photo copies or unique identification numbers written on forms. The remaining 15 states typically required a signature, but laws only required that a signature be provided to avoid rejection.

Only four states require a voter identification component in the return ballot process, such as a copy of the ID or unique numbers printed on the card. Given that signature verification is a more subjective process, states could see greater reliability and efficiency processing ballots if they move toward the identification number model. In 2024, Florida is scheduled to join this group of states due to a 2023 law signed by Gov. DeSantis.³⁷ The election reform will require the same ID numbers given in the ballot request process be provided with the ballot return documents.³⁸

States Requiring Voter ID with Mail Ballots:

ARKANSAS

GEORGIA

MINNESOTA

OHIO

POLICY 5: PAPER BALLOTS COUNTED ELECTRONICALLY

Marking and Counting Paper Ballots: Florida has come a long way from the hanging chad³⁹ in 2000. Florida has moved beyond the punch card paper ballot. The uniform paper ballot system requires that candidate or option choices are marked by a proper writing instrument or machine, especially for those requiring accessibility options due to disability.⁴⁰

How It Works in Florida: Florida Secretary of State Cord Byrd's office maintains that the electronic reading of paper ballots is an effective protection against "hacking" threats. In practice, a paper ballot is issued to the voter in either a polling place or mail. A completed ballot at the polling place is fed by the voter through a certified⁴¹ optical scanner or, in the case of absentee, a high-speed digital scanner. Both electronic and paper records of tabulated votes are kept.

Other States: Voting system between and even within same states can vary. According to available research reflecting the 2022 elections, 13 other states had substantially similar voting systems to Florida.⁴²



POLICY 6: PRE- AND POST-ELECTION AUDITS

Mandatory Testing of Machinery: Florida law requires county supervisors of elections to complete audits of election administration hardware and results before and after each election. Legislators did not want equipment put into use without first testing that it was functional and accurate. Election Day mishaps can cascade into significant delays, as seen in 2022 in Arizona.⁴³

How It Works in Florida: Before county supervisors of election can begin the early canvass period, they must first complete a pre-election audit⁴⁴ of tabulation hardware. This process is often referred to as “logic and accuracy testing⁴⁵.” In practice, county supervisors of election characterize the pre-election testing as a miniature election with fictitious candidates before the election. If a batch of paper ballots fed into a tabulator did not electronically register as intended by each marked ballot, the audit would fail and appropriate adjustments would be made to the equipment. This process also allows officials to gauge the size of batches of ballots that are suitable for feeding (in terms of page count) through a tabulator as well.

After votes are initially tabulated, a crucial element of the post-election canvass is the post-election audit.⁴⁶ As an example, all 67 counties conducted audits after the 2020 General Election. State law gives a choice between re-checking two percent of precincts within a single race, or, a review of each race occurring in at least 20 percent of precincts chosen randomly. All equipment tests are subject to public viewing.⁴⁷

Other States: Other states use logic and accuracy tests in local jurisdictions.⁴⁸ Forty-one states have post-election audits required by law.



POLICY 7: BAN ON RANKED CHOICE VOTING

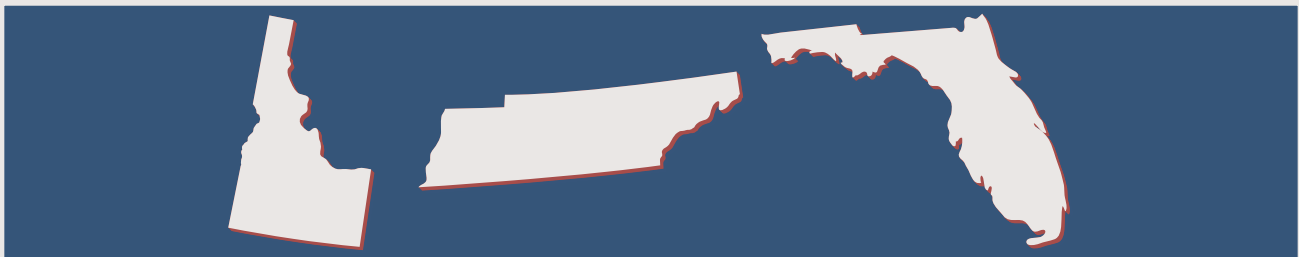
No Multi-Round, Confusing Voting Schemes: Florida banned ranked choice voting (RCV) methods of election in 2022.⁴⁹ No political jurisdiction is allowed to pilot a program under this ban. Ranked choice voting would delay election results. Elections are harder to tabulate quickly when each ballot ranks a list of candidates in each contest.

How It Works in Florida: The new law is an unambiguous ban on rank choice voting systems and was enacted prior to the adoption of the method of election in any Florida municipality.⁵⁰ In 2021, the Clearwater City Council proposed a ranked choice voting ballot proposition, but it was dashed by the 2022 ban. In 2007, Sarasota enacted a municipal election ranked choice voting procedure, but the Secretary of State did not certify the necessary software to conduct the ranked choice voting election.

Other States: Only Tennessee and Florida banned ranked choice voting in the 2022 Elections.⁵¹ Idaho joined with a similar ban in April 2023.⁵² Currently, 30 states' election codes are completely silent on the matter of ranked choice voting.

In the 2022 General Election, some of the last elections to be concluded used ranked choice voting. Not surprisingly, their results were delayed. In Alaska, the gubernatorial, United States Senate, and House District 1 outcomes were not known until November 23. Maine's gubernatorial race, another ranked choice voting state, was not called until November 9.

Ranked Choice proponents suffered a significant public relations blunder in 2022 because of a school board race in Alameda County, California. The results were bungled because of the confusing system. During the Oakland School Board Seat 4 contest, a candidate finishing third was later declared the victor after "an error in the tabulation process" was discovered. Local election officials blamed misconfigured tally systems and promised to work with its vendor to identify safeguards for future elections.⁵³ Ranked choice voting was at fault.



POLICY 8: ELECTRONIC POLL BOOKS

Digitized Check-In at Polling Places: When a voter reaches the check-in table at a polling place, they can expect a quick lookup of their information to ensure they are at the correct location and are then assigned a ballot.

How it Works in Florida: Florida poll books are typically electronic.⁵⁴ This allows quick check in for voters. The voter presents their required identification, and if the identification is the Florida issued driver's license, a bar code on the back of the license is scanned and the voter file is retrieved, including the photograph of the voter.⁵⁵ This ensures that the voter is who they say they are, but does something else important. It speeds election results. Anyone in line when polls close are eligible to vote in Florida. But electronic poll books shrink those lines because they speed the check-in process throughout the day. If lines are short, or nonexistent, when polls close, election results are tabulated and finalized quicker.

The real genius of the electronic poll book in Florida affects absentee balloting. Requesting and receiving an absentee ballot does not prevent a person from changing their mind and voting at the polls. Citizens are allowed to surrender their ballot at the poll in any condition and vote a fresh ballot in the booth. If the Floridian appears at the precinct empty-handed, the electronic poll book shows if the absentee ballot has already been returned for counting.⁵⁶ If the ballot does not show as returned, they will cast a provisional ballot to be counted or "blended" once the county canvassing board performs a final reconciliation.

Other States: Recent comparative research⁵⁷ shows that 41 states offer a legal framework or do not ban electronic pollbooks at voting locations. Within this group, some states leave purchasing decisions to locales while other states pre-select hardware.

The logo for EViD electronic pollbook is displayed in white text on a dark blue background. The text "EViD" is in a large, bold, sans-serif font, with a white star symbol to its right. Below "EViD" is the word "electronic" in a smaller, lowercase, sans-serif font, followed by "pollbook" in the same font size and style. The background of the logo area shows a blurred image of a tablet or laptop screen displaying a pollbook interface.

EViD★
electronic pollbook

REFORM OPTIONS

The numbers do not lie: Florida has an effective balance between voting options and deadlines without making it hard to vote. Policy reforms that would help speed the announcement of results include:

Electronic Poll Books – States should implement electronic poll books to reduce lines and speed the voting and tabulation process.

Ballots Must Arrive by Election Day – At present, 14 states require that ballots be postmarked by Election Day, and allow delivery up to at least four -plus days after that day. Illinois and Utah lead the nation with 14 days apiece. A more effective policy is to have all ballots arrive by Election Day. To compensate for the needed statutory changes, states could shift forward the deadlines for the requesting and sending of ballots.

Bolster the Absentee Ballot Request Model – Western states like California and Nevada have taken the wrong approach – automatically mailing unrequested ballots to everyone. These models create immense postage waste, not to mention rejected and unaccounted-for mail ballots.⁵⁸ Instead, any absentee ballots should be requested, not mailed automatically.

Pre-Election Canvass – A pre-election canvass of mail ballots will speed the tabulation process. Observers should be given clear rights to observe the process. Election officials should be strictly prohibited from releasing pre-election canvass results before election day. Florida knows how to do this, and other states should adopt the same practices.



ENDNOTES

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- 6 Fl. Stat. § 101.62
- 7 Fl. Stat. § 101.69(2)
- 8 FLSOS; Florida Election Watch – Election Day Turnout (November 8, 2022), <https://floridaelectionwatch.gov/ElectionDayTurnout>
- 9 FLSOS Early Voting and Vote-by-Mail Statistics for 2022 General, <https://files.floridados.gov/media/706191/2022-ge-rptstatus-countsarchive-ev-vbm.pdf>
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- 19 WFLA; Florida, Tampa Bay vote numbers ahead of Election Day 2022 (November 7, 2022), <https://www.wfla.com/news/politics/florida-tampa-bay-vote-numbers-ahead-of-election-day-2022/>
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