

ELECTION INTEGRITY

LOUISIANA DEPARTMENT OF STATE



PERFORMANCE AUDIT SERVICES
MARCH 9, 2022

**LOUISIANA LEGISLATIVE AUDITOR
1600 NORTH THIRD STREET
POST OFFICE BOX 94397
BATON ROUGE, LOUISIANA 70804-9397**

LEGISLATIVE AUDITOR
MICHAEL J. "MIKE" WAGUESPACK, CPA

FIRST ASSISTANT LEGISLATIVE AUDITOR
ERNEST F. SUMMERVILLE, JR., CPA

DIRECTOR OF PERFORMANCE AUDIT SERVICES
KAREN LEBLANC, CIA, CGAP, MSW

**FOR QUESTIONS RELATED TO THIS PERFORMANCE AUDIT, CONTACT
CHRIS MAGEE, PERFORMANCE AUDIT DATA ANALYTICS MANAGER,
AT 225-339-3800.**

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LOUISIANA LEGISLATIVE AUDITOR
MICHAEL J. "MIKE" WAGUESPACK, CPA

March 9, 2022

The Honorable Patrick Page Cortez,
President of the Senate
The Honorable Clay Schexnayder,
Speaker of the House of Representatives

Dear Senator Cortez and Representative Schexnayder:

This report provides the results of our performance audit of Louisiana's election processes and procedures. The purpose of this audit was to determine whether existing controls related to election integrity are sufficient.

Overall, we found that the Louisiana Department of State (DOS) has procedures and practices in place to ensure election integrity. However, we identified additional ways DOS could strengthen its activities, as well as revisions to the state Election Code that the legislature may wish to consider.

Specifically, we found that DOS conducts data matches as required by federal and state law and conducts additional activities to help ensure the accuracy of the voter registration list. DOS could further improve the accuracy of its voter registration list by annually conducting its data match that identifies registered Louisiana voters who registered to vote in another state or obtained a driver's license in another state.

In addition, DOS implemented a cure process in calendar year 2020 to assist voters in ensuring that information on their absentee affidavits is complete, which contributed to a reduction in the percentage of absentee ballots rejected. However, state law could be clarified so that absentee ballots with missing information are handled consistently across all parishes. For example, we observed that one parish rejected all absentee ballots for the November 2021 election where the affidavit was missing the mother's maiden name, while two other parishes did not present absentee ballots with the same issue for a vote by the Parish Board of Election Supervisors (PBES).

We also found that while DOS has implemented some Election Assistance Commission guidelines related to pre-election testing of voting machines, it could improve its process by ensuring that DOS staff and/or election officials consistently verify test results, document the verification, and review the documentation. While DOS procedures for testing voting machines

The Honorable Patrick Page Cortez,
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state that the test results should be verified, we found inconsistencies in the two parishes where we observed the test process. The test results were reviewed by election officials or members of the PBES in one parish but not the other. In addition, we found that 130 (55.3%) of 235 test vote reports for early and election day voting machines for the November 2021 election were not signed by election officials or the PBES, meaning it is unclear whether the test results were reviewed.

DOS conducts post-election verification activities to ensure that the number of votes cast does not exceed the number of eligible voters and matches actual voter turnout. However, Louisiana's current in-person voting systems do not produce a voter-verified paper record, which prevents DOS from conducting post-election tabulation audits. In addition, DOS does not currently conduct post-election tabulation audits on absentee ballots, which do produce a voter-verified paper record. However, state law requires that any new voting system procured by DOS must have an auditable voter-verified paper record. Once a new system is implemented, DOS will be able to do post-election tabulation audits for all voting methods.

DOS' Elections Compliance Unit received 501 election-related complaints during fiscal years 2017 through 2021, with the most common type of complaint related to campaign practices. We found DOS could improve its complaints process by consistently categorizing complaints, tracking the status of complaints, and making the information available to the public.

The report contains our findings, conclusions, recommendations, and matters for legislative consideration. I hope this report will benefit you in your legislative decision-making process.

We would like to express our appreciation to the Louisiana Department of State for its assistance during this audit.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Mike Waguespack', with a stylized flourish at the end.

Michael J. "Mike" Waguespack, CPA
Legislative Auditor

MJW/aa

Louisiana Legislative Auditor

Michael J. “Mike” Waguespack, CPA

Election Integrity

Louisiana Department of State

March 2022



Audit Control # 40210018

Introduction

We evaluated Louisiana’s election processes and procedures¹ to determine whether existing controls related to election integrity are sufficient. We conducted this audit, in part, in response to House Concurrent Resolution (HCR) 81 of the 2021 Regular Legislative Session, which directed the Louisiana Legislative Auditor (LLA) to audit the Louisiana Department of State’s (DOS) policies, procedures, and practices regarding the integrity of elections in Louisiana to provide assurance as to whether the elections process in Louisiana is sufficient to provide for the integrity and security of all elections held within the state.

According to the National Conference of State Legislatures (NCSL), **election integrity** relates to the accuracy of election results and confidence in the process and is essential for the functioning of democracy. NCSL further states that it is important for members of the legislature, media, and general public to know the safeguards that are in place to feel confident about the elections process and results.

States are required to adhere to federal elections laws² such as mandates related to voter registration and voting methods. Louisiana’s Election Code³ incorporates these federal mandates, outlines election procedures, and assigns responsibilities to various entities involved with elections. The Secretary of State (SOS) is the chief elections officer of the state, the clerks of court (COC) are the chief election officers in their parish and administer election day voting, and the registrars of voters (ROV) are responsible for voter registration and administer early and absentee voting in their parish. Appendix C provides more detail about the entities involved in the elections process and a description of their responsibilities.

Louisiana manages elections through a top-down approach, meaning that elections processes are designed at the state level. According to DOS staff, this approach promotes consistency in the process throughout the state and offers state support to local officials who perform election duties. Some states have a bottom-up approach in which the elections process is designed and administered by individual jurisdictions such as counties or cities. While this approach allows local election officials to have more control over the elections process in their jurisdictions, it means that elections processes can vary within those states by jurisdiction.

¹ Our scope covered July 1, 2016 through December 31, 2021.

² 52 United States Code (U.S.C.)

³ Louisiana Revised Statute (La. R.S.), Title 18

Louisiana uses the following three methods of voting:

- **Early voting** is in-person voting that is available to all registered voters and takes place beginning 14 days prior to and ending seven days before election day.
- **Absentee voting** is mail-in voting for registered voters who meet specific criteria, such as members of the military who will be out of state on election day, voters age 65 and older, and disabled voters.
- **In-person, election day voting** is available to all registered voters and takes place on the day of the election.

Voter turnout varies by year based on the election cycle. As shown in Exhibit 1, voter turnout during our scope was highest for the 2016 and 2020 fall primary elections, which included presidential and congressional races. The lowest voter turnout during our scope was in 2017 and 2021, when there were no presidential, gubernatorial, or congressional races.

| Exhibit 1 Election Statistics 2016 through 2021 Fall Primary Elections | | | | | | |
|---|------------------|------------------|------------------|------------------|------------------|------------------|
| Category | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 |
| Absentee Votes | 63,016 | 27,028 | 44,581 | 45,984 | 168,471 | 72,896 |
| Early Votes | 468,539 | 69,714 | 271,192 | 340,484 | 817,957 | 75,514 |
| Election Day Votes | 1,517,976 | 327,755 | 1,203,632 | 973,501 | 1,182,973 | 277,388 |
| Total | 2,049,531 | 424,497 | 1,519,405 | 1,359,969 | 2,169,401 | 425,798 |
| <i>Registered Voters</i> | <i>3,023,241</i> | <i>2,974,434</i> | <i>2,992,170</i> | <i>2,963,012</i> | <i>3,093,004</i> | <i>3,027,457</i> |
| <i>Turnout %</i> | <i>67.8%</i> | <i>14.3%</i> | <i>50.8%</i> | <i>45.9%</i> | <i>70.1%</i> | <i>14.1%</i> |
| Source: Prepared by legislative auditor's staff using information from the DOS website. | | | | | | |

For this audit, we evaluated controls and procedures related to election integrity in the following areas:

- Accuracy of the voter registration list
- Completeness of absentee by mail affidavits
- Pre-election testing of voting machines
- Post-election verification activities
- Elections Compliance Unit election-related complaints

To evaluate these controls and procedures, we conducted physical observations, obtained and tested election-related data, reviewed federal and state laws, reviewed policies and procedures, and reviewed best practices from the United States Election Assistance Commission (EAC).⁴ In addition, to determine local election officials' perception of election integrity in Louisiana, we surveyed COCs and ROVs from each parish. Of the 79 responses we received, 63 (79.7%) stated that they perceived Louisiana's election integrity as "excellent" and 14 (17.7%)

⁴ The United States Election Assistance Commission (EAC) was established by the Help America Vote Act (HAVA) of 2002 to provide guidance to states in their efforts to comply with federal election requirements.

perceive Louisiana's election integrity as "good." Additionally, when asked if there were any *existing* problems which posed a threat to election integrity in Louisiana, 40 (50.6%) respondents felt that there were currently no such problems. However, 26 (32.9%) COCs and ROVs most often identified misinformation/disinformation as a current threat to election integrity in the state.

Based on our survey, 97.4% of responding COCs and ROVs perceive election integrity in Louisiana as "excellent" or "good."

See Appendix D for COC and ROV concerns related to election integrity. The objective of this audit was:

To evaluate Louisiana's election processes and procedures to determine whether existing controls related to election integrity are sufficient.

Our results are summarized on the next page and discussed in detail throughout the remainder of the report. Appendix A contains a summary of management's response, and Appendix B contains our scope and methodology. Appendix C shows a list of entities involved in elections in Louisiana. Appendix D shows areas of concern related to election integrity identified by COCs and ROVs in an LLA survey. Appendix E shows a description of verification activities and data matches performed by frequency. Appendix F shows all categories of election-related complaints received by DOS' Election Compliance Unit.

Objective: To evaluate Louisiana's election processes and procedures to determine whether existing controls related to election integrity are sufficient.

Overall, we found DOS has procedures and practices to ensure election integrity, including using state and national data to ensure the accuracy of the voter registration list, implementing a cure process to ensure voters have an opportunity to fix incomplete absentee affidavits, implementing various Election Assistance Commission guidelines related to pre-election testing of voting machines, conducting post-election verification activities, and investigating complaints related to elections. However, we identified additional ways DOS could strengthen these activities, as well as revisions to the state Election Code that the legislature may wish to consider. Specifically, we found:

- **DOS conducts data matches as required by federal and state law and conducts additional activities to help ensure the accuracy of the voter registration list. DOS could further improve the accuracy of the voter registration list by annually conducting its data match that identifies registered Louisiana voters who registered to vote in another state or obtained a driver's license in another state.** In addition, Louisiana is one of 17 states that asks in-person voters to present photo identification to confirm their identity. If a voter does not present photo identification when voting in-person, the voter must sign an affidavit and provide additional identifying information, such as their date of birth, in order to vote.
- **DOS implemented a cure process in calendar year 2020 to assist voters in ensuring that information on their absentee affidavits is complete, which contributed to a reduction in the percentage of absentee ballots rejected. However, state law does not provide clear guidance regarding absentee affidavits with missing information, which has led to inconsistencies across the state.** For example, one parish we observed in the November 2021 election rejected all absentee ballots where the affidavit was missing the mother's maiden name, while the other two parishes we observed did not present absentee affidavits missing the mother's maiden name for a vote by the Parish Board of Election Supervisors (PBES).
- **While DOS has implemented some Election Assistance Commission guidelines related to pre-election testing of voting machines, it could improve its process by ensuring that DOS staff and/or election officials consistently verify test results, document the verification, and review the documentation.** While DOS procedures for testing voting machines state that the test results should be verified, we observed the test process in two parishes and saw that the test results were reviewed by election officials or members of the PBES in one parish but were not reviewed in the other parish. In addition, we found that 130 (55.3%) of 235 test vote reports for early and election day voting machines for the

November 2021 election were not signed by election officials or the PBES, meaning it is unclear whether the test results were reviewed.

- **DOS conducts post-election verification activities to ensure that the number of votes cast does not exceed the number of eligible voters and matches actual voter turnout. However, Louisiana's current in-person voting systems do not produce a voter-verified paper record, which prevents DOS from conducting post-election tabulation audits. In addition, DOS does not currently conduct post-election tabulation audits on absentee ballots, which do produce a voter-verified paper record.** State law requires that any new voting system procured by DOS must have an auditable voter-verified paper record. Once this new system is implemented, DOS will be able to perform post-election tabulation audits for all voting methods.
- **DOS' Elections Compliance Unit received 501 election-related complaints during fiscal years 2017 through 2021, with the most common type of complaint related to campaign practices. DOS could improve its complaints process by consistently categorizing complaints, tracking the status of complaints, and making this information available to the public.** Best practices state that complaints should be categorized to identify areas that require further attention or action. For example, an increase in complaints against election commissioners may reveal a need to assess policies and procedures related to election duties or to provide additional training to commissioners.

Our findings and our recommendations are discussed in more detail in the sections below.

DOS conducts data matches as required by federal and state law and conducts additional activities to help ensure the accuracy of the voter registration list. DOS could further improve the accuracy of the voter registration list by annually conducting its data match that identifies registered Louisiana voters who registered to vote in another state or obtained a driver's license in another state.

According to NCSL, the goals of maintaining an accurate voter registration list are to ensure that eligible voters are able to cast ballots, to keep track of who has voted so that voters are not able to vote multiple times, and to decrease the time needed during the voter check-in process at polling places by reducing inaccuracies. To register and be eligible to vote in Louisiana you must: (1) be a United States citizen, (2) be at least 17 years old to register and 18 years old to vote, (3) be a bona fide

Three ways to ensure accuracy of the voter registration list:

1. Verify a new voter registration applicant's information
2. Update information on the list
3. Remove no-longer-eligible voters from the list

Source: NCSL

resident⁵ of Louisiana, (4) not have a qualifying felony,⁶ and (5) not be under a judgement of full or limited interdiction⁷ where the individual's right to vote has been suspended.

When registering to vote, individuals are required to attest to these requirements and submit their first and last name, date of birth, gender, driver's license number or Louisiana special ID card,⁸ parish of residence, zip code, address, city, state, place of birth, and mother's maiden name. All voter registration information is stored in DOS's Elections Registration and Information Network (ERIN). This information is used to create the lists of all eligible voters for each precinct which must be signed by voters prior to voting.

We analyzed the voter registration list as of August 18, 2021, and found that all voter registration records had complete information in the first and last name fields. In addition, we found that only 192 (0.0063%) of 3,030,967 voter registration records did not include the last four digits of their SSN or their driver's license number as required by federal law.⁹ These individuals may have submitted alternative proof of ID such as a utility bill,⁸ which is allowed by federal law. In addition, we analyzed the voter registration list for duplicates and found that only 27 (0.0009%) of the 3,030,967 records on the voter registration list as of August 18, 2021, were duplicates.¹⁰ According to DOS staff, a review of voting records confirmed that none of the 27 duplicates voted twice in any election and the 27 duplicate registrations are now resolved.

DOS conducts a variety of verification activities and data matches with state and federal databases to verify information submitted on registrations for new voters, to identify information that may need to be updated for current voters, and to identify individuals who should no longer be on the voter registration list. For example, DOS communicates with the Office of Motor Vehicles (OMV) to verify the information submitted by an individual who completes an online voter registration form. DOS and ROVs receive information regarding changes to a voter's address, and ROVs read obituaries to proactively identify deceased voters. These activities seek to prevent fraud by helping to ensure that only eligible voters can cast a ballot.

As required by federal and state law, DOS conducts data matches using state data sources to help ROVs ensure the accuracy of the voter registration list. The Help America Vote Act (HAVA) of 2002 required states to develop a computerized, statewide list for voter registration and to coordinate voter records with those from state departments of corrections, vital statistics, and other state agencies to keep voter records current. Specifically, HAVA

⁵ Means the resident is a citizen who resides in Louisiana and the parish, municipality, or precinct where he is registering to vote, with intention to reside there indefinitely. If the individual has more than one residence in state, he must choose the residence where the homestead exemption is claimed, if any.

⁶ The individual cannot be under an order of imprisonment for conviction of a felony or, if under such an order, not have been incarcerated pursuant to the order within the last five years and not be under an order of imprisonment related to a felony conviction for election fraud or any other election offense pursuant to La. R.S. 18:1461.2.

⁷ Interdicted after being judicially declared to be mentally incompetent.

⁸ If an individual does not have a driver's license, special Louisiana ID, or social security number, the individual may provide a picture ID, a utility bill, payroll check, or government document that includes the individual's name and address.

⁹ We found an additional 44,769 voter registration records that were missing this information, but these individuals initially registered to vote prior to this information being required and are exempt from this requirement.

¹⁰ We identified that these records were duplicates due to them having the same first name, last name, social security number, and date of birth.

requires states to obtain death data, felony incarceration data, and driver's license data.¹¹ State law¹² also requires that DOS conduct an annual canvass to identify voters who changed their address. We found that DOS conducts these data matches and its annual canvass. For example, DOS identified 19,671 individuals with a change of address from October 16, 2018, through October 13, 2020, through its annual canvasses. In addition, DOS conducts a data match for the removal of voters who do not respond to an address confirmation mailing¹³ and subsequently fail to vote during the period comprising two federal general elections per federal law.¹⁴ See Appendix E for a summary of the verification activities and data matches performed by frequency.

In addition to the data matches required by federal and state law, DOS has implemented or attempted to implement additional procedures to further ensure the accuracy of the voter registration list. Federal and state law lists the data matches described above as the minimum activities a state must implement to ensure the accuracy of the voter registration list, but it also allows states to establish additional measures. In Louisiana, DOS has implemented or attempted to implement additional measures such as:

- Louisiana is one of 31¹⁵ states that have joined the Electronic Registration Information Center (ERIC),^{16,17} which assists states in improving the accuracy of voter registration lists through data sharing. Each member state submits data, such as voter registrations and driver's license information, and receives information regarding voters within their state who have moved, who may be deceased according to the Social Security Administration (SSA), and who may be registered to vote in another state or obtained a driver's license in another state. DOS staff receive results from ERIC and communicate them to the ROVs who are responsible for updating the voter registration lists.
- DOS uses date of birth, driver's license number, last four of the social security number, name, and address information from driver's licenses to identify individuals who are potentially eligible to vote but who are not yet registered. For example, from October 16, 2018, through October 13, 2020, DOS identified approximately 114,371 individuals potentially eligible to vote but who were not yet registered. As a result of outreach from the ROVs, approximately 12,981 of those individuals are now registered to vote.
- DOS supported Act 364 of the 2021 Regular Legislative Session, which requires LDH to send DOS additional identifying information, such as the place of birth, mother's maiden name, and alias name, to allow DOS to more effectively identify deceased voters.

¹¹ DOS obtains death data from the Louisiana Department of Health (LDH), felony conviction data from the Louisiana Department of Corrections (DOC), and driver's license data from OMV.

¹² La. R.S. 18:192

¹³ Per La. R.S. 18:193, an address confirmation card is sent when an ROV has reason to believe that a registrant no longer is qualified to be registered or has changed his address.

¹⁴ 52 U.S.C., 21083

¹⁵ As of October 2021. The District of Columbia is also a member.

¹⁶ ERIC is governed and managed by the states who choose to join.

¹⁷ As of January 27, 2022, DOS suspended its participation in ERIC due to concerns about improper access by outside parties to Louisiana's voter information.

- Louisiana is one of 17 states that asks in-person voters to present photo identification to confirm their identity. If a voter does not present photo identification when voting in-person, they must sign an affidavit and provide additional identifying information such as their date of birth. According to DOS staff, election commissioners¹⁸ compare this information to information from ERIN to help ensure the voter is eligible to vote in that particular precinct and/or race and is who they claim to be. Neither DOS nor local election officials are required to track the number of voters who vote with an affidavit instead of photo identification. However, according to COCs and ROVs who responded to our survey, 81 (98.8%) of 82 indicated that in-person voting with an affidavit instead of photo identification does not happen often.¹⁹ In addition, according to state law,²⁰ any individual who votes without photo identification is subject to challenge,²¹ which helps to ensure that individuals who vote in-person are registered, eligible voters.

Also, House Bill 138²² of the 2021 Regular Legislative Session would have allowed DOS to conduct a supplemental annual canvass to identify individuals on the registration list who have neither voted nor performed other various election activities²³ in the last 10 years and then attempt to determine whether these individuals have moved, which could be an explanation for the long period of inactivity. At the time the legislation was proposed, DOS stated that there were over 50,000 registered voters in Louisiana who had not voted in the last 20 years. While DOS' annual canvass identifies individuals who changed their address with the United States Postal Service (USPS), the supplemental annual canvass would have allowed DOS to identify individuals who potentially moved but did not update their address with the USPS. According to DOS staff, this would have given them another tool to help ensure the accuracy of the voter registration list by making a reasonable effort to remove the names of ineligible voters from the voter registration list due to a change in residence, as required in federal law.²⁴ According to NCSL, as of October 2021, at least 20 states have a process for flagging voters based on inactivity and for removing certain voters placed on inactive lists. However, according to the Governor's veto message, he vetoed the bill because it was repetitive, unnecessary, and provided an unfunded mandate on DOS.²⁵

DOS could further improve the accuracy of the voter registration list by annually conducting its ERIC data match that identifies registered Louisiana voters who registered to vote in another state or obtained a driver's license in another state. DOS procedure is to conduct this data match annually; however, DOS only conducted this data match twice in the last

¹⁸ Election commissioners work at polling locations on election day and assist with other aspects of elections.

¹⁹ One survey respondent stated that it never occurs, 59 respondents stated that it rarely occurs, 21 respondents stated that it sometimes occurs, one respondent stated that it often occurs, and three did not answer this question.

²⁰ La. R.S. 18:562

²¹ La. R.S. 18:565 provides that commissioners, watchers, or qualified voters may challenge an individual if they believe that he is not eligible to vote in the election or at a given precinct or is not who he claims to be. Commissioners must then determine by majority whether the challenge is valid. If the challenge is determined to be valid, the individual will not be allowed to cast a vote

²² <http://www.legis.la.gov/legis/ViewDocument.aspx?d=1232985>

²³ Includes making an application for voter registration; receiving an absentee ballot; validly signing a petition submitted to the ROV for certification pursuant to law; change a name, address, or party affiliation or non-affiliation; make any other change in registration; or participate in the nursing home program.

²⁴ 52 U.S.C., 20507

²⁵ <https://gov.louisiana.gov/assets/docs/2021session/vetoes/SchexnayderLtr20210629VetoHB138.pdf>

six years. The last match was conducted in June 2019, and it identified 10,501 Louisiana voters who registered to vote in another state or obtained a driver's license in another state, which means they may no longer be eligible to vote in Louisiana. According to DOS staff, it has not conducted this match annually because of time constraints and the manual review process required of the ROVs for any matches identified. Additionally, HAVA²⁶ does not allow voters to be removed from the voter registration list 90 days prior to an election, which prevents DOS from being able to resolve matches during or closely approaching election cycles.

See Appendix E for information regarding the required state data matches and the various additional activities DOS uses to verify information submitted on new voter registrations, to identify information that may need to be updated for current voters, and to identify individuals who should no longer be on the voter registration list.

Recommendation 1: DOS should conduct its data match to identify Louisiana registered voters who register to vote in another state or obtain a driver's license in another state annually to ensure it makes timely updates to the voter registration list if it remains in ERIC.

Summary of Management's Response: DOS agrees with this recommendation and stated that ensuring voter registration is accurate and regularly updated is a priority. DOS stated that it will continue to be proactive in working with federal, state, and local partners on verifying voter registration rolls as well as working with the legislature in developing additional legislative tools in the Louisiana Election Code. See Appendix A for DOS's full response.

Matter for Legislative Consideration 1: The legislature may wish to consider requiring a supplemental annual canvass to help ensure accuracy of the voter registration list.

²⁶ 52 U.S.C., 20507

DOS implemented a cure process in calendar year 2020 to assist voters in ensuring that information on their absentee affidavits is complete, which contributed to a reduction in the percentage of absentee ballots rejected. However, state law does not provide clear guidance regarding absentee affidavits with missing information, which has led to inconsistencies across the state.

To vote absentee, individuals must meet specific criteria and request²⁷ a ballot. For example, members of the military, voters over 65, and voters with disabilities are eligible to vote absentee. The number of absentee voters varies from year to year. As shown in Exhibit 2, voter turnout and the percentage of total absentee voters during fall primary elections held in 2016 through 2021 ranged from 2.9% to 17.1%.

| Exhibit 2 Absentee Voting as Percentage of Total Voting 2016 through 2021 Fall Primary Elections | | | | |
|--|--|----------|-----------|------------|
| Year | Election Type | Absentee | Total | Percentage |
| 2016 | Presidential and Congressional | 63,016 | 2,049,531 | 3.1% |
| 2017 | No Presidential, Congressional, or Gubernatorial | 27,028 | 424,497 | 6.4% |
| 2018 | Congressional | 44,581 | 1,519,405 | 2.9% |
| 2019 | Gubernatorial | 45,984 | 1,359,969 | 3.4% |
| 2020 | Presidential and Congressional | 168,471 | 2,169,401 | 7.8% |
| 2021 | No Presidential, Congressional, or Gubernatorial | 72,896 | 425,798 | 17.1% |
| Source: Prepared by legislative auditor's staff using information from DOS. | | | | |

²⁷ La. R.S. 18:1307 allows some voters such as those with disabilities and senior citizens to remain valid indefinitely upon request of the applicant, unless an absentee by mail ballot that has been sent to the applicant is returned to the registrar as undeliverable. This means that these individuals receive an absentee ballot for each election without having to make a new request for each election.

Absentee voters may return their voted ballots by mail, by fax, or hand-deliver them to the ROV. Unlike other states, Louisiana law does not allow the use of drop boxes for absentee ballots. According to state law,²⁸ if an absentee ballot is hand-delivered by an individual other than the voter, he must certify that he has the authorization and consent of the voter to do so. However, no person except the immediate family of the voter can hand deliver more than one absentee ballot.

Absentee ballots are returned in a sealed envelope, which includes a detachable absentee affidavit. State law²⁹ requires absentee voters to fill in all blanks on the absentee affidavits (see Exhibit 3), which includes the election date, voter's full name and signature, address, and mother's maiden name, as well as the name and signature of a witness. ROVs, who administer absentee voting, receive the absentee ballots and review the absentee affidavit for completeness. The Parish Board of Election Supervisors (PBES) (see Appendix C for a description of the PBES) votes to accept or reject³⁰ absentee ballots presented to them by the ROV due to missing information on the absentee affidavit.

DOS implemented a cure process in calendar year 2020 to assist voters in ensuring that the information on their absentee affidavits is complete, which contributed to a reduction in the percentage of absentee ballots rejected. Prior to June 2020, ROVs were not required to allow voters to fix absentee affidavits that were missing information. However, an emergency rule effective in June 2020 and subsequently promulgated into the administrative code in 2021³¹ allowed voters the opportunity to cure the absentee affidavit by going to the ROV office and adding the missing information, such as missing signatures. As shown in Exhibit 4, this contributed to the reduction in the percentage of absentee ballots rejected by the PBES due to missing information.

Exhibit 3: Sample Absentee Affidavit

DO NOT DETACH THIS AFFIDAVIT FLAP

Instructions: Voter must fill in all blanks that apply, sign, and have their signature witnessed by one person.

Section 1: Election Date and Voter Information

Date of Election: _____

I, _____ (Last) (First) (Middle)

do solemnly swear that I am a resident of

_____, Louisiana
(Parish of Registration)

(Residential Street Address)

(City or Town) (Ward and Precinct)

My mother's maiden name is _____

Section 2: Certification and Signatures

• I applied for and marked the enclosed ballot(s) myself or they were marked for me according to my instructions and in my presence. (If registered for assistance and received assistance in voting, person assisting must sign the Assistance Acknowledgment below.)

• I am entitled to vote in the above listed precinct and hereby authorize the parish board of election supervisors to open this envelope and count my ballot. (See return address label on complete ward/precinct above.)

• I CERTIFY that the statements made herein by me are true and correct, and I am aware that the penalties for knowingly making a false statement herein are a fine of not more than \$2,000 or imprisonment with or without hard labor, for not more than two years, or both.

VOTER SIGNATURE OR MARK:

(Signature)

(Printed Name)

WITNESS SIGNATURE:

(Signature)

(Printed Name)

Section 3: Assistance Acknowledgment

If this voter is entitled to assistance in voting, I have assisted and/or marked the ballot in the manner dictated by the voter.

SIGN AND PRINT NAME:

(Signature)

(Printed Name)

(Relationship to Voter)

Source: Prepared by legislative auditor's staff using information from DOS.

²⁸ La. R.S. 18:1308

²⁹ La. R.S. 18:1310

³⁰ A rejected absentee ballot means that the absentee ballot will not be included in the vote count. The PBES is required to notify the voter by mail that the absentee ballot was rejected along with the reason why the absentee ballot was rejected. The voted absentee ballot is not unsealed unless the absentee ballot is accepted and the absentee affidavit is detached.

³¹ LAC 31: Part I, 301-305

| Exhibit 4 Rejected Absentee Ballots as Percentage of Total Absentee Votes November 2016, 2018, and 2020 Elections | | | |
|---|--------------|----------------|---------------------|
| Year* | Rejected | Total | Percentage Rejected |
| 2016 | 2,201 | 59,676 | 3.69% |
| 2018 | 2,596 | 43,959 | 5.91% |
| 2020 | 2,364 | 163,656 | 1.44% |
| Total | 7,161 | 267,291 | 2.68% |
| * We analyzed the 2016, 2018, and 2020 elections because the Election Administration and Voting Survey (EAVS) Comparison report is created only for each federal election cycle. Source: Prepared by legislative auditor's staff using information from DOS and the EAVS Comparison Report. | | | |

State law does not specify if ROVs must present absentee affidavits with missing information to the PBES. When voters do not correct missing information prior to election night through the cure process described above, the ROV may present these absentee affidavits to the PBES for a vote on whether to accept or reject the absentee ballot based on the completeness of the absentee affidavit. However, the PBES only votes on those absentee affidavits identified by the ROV as needing a vote.

We observed the process of voting on absentee affidavits in three parishes on election night and saw that absentee affidavits missing the mother's maiden name were presented to the PBES for a vote in an inconsistent manner. The ROV of one parish stated that they do not bring absentee affidavits that are missing the mother's maiden name to the attention of the PBES. In another parish, the ROV attempted to verify the voter's signature if the mother's maiden name was missing, but no absentee affidavits missing this information were presented for a vote by the PBES. In the third parish we observed, absentee affidavits missing mother's maiden name were presented to and voted on by the PBES and all were ultimately rejected.

State law does not specify whether the PBES should accept or reject an absentee ballot if there is incomplete information on the absentee affidavit. To determine how incomplete absentee affidavits were handled by the ROV and PBES throughout the state, we requested five absentee affidavits from each of the 64 parish ROVs for the November 2020 election (320 total absentee affidavits) and identified 43 (13.4%) accepted absentee affidavits that were missing information. In addition, one parish was unable to locate the five absentee affidavits even though they were supposed to be retained for 22 months.³² Exhibit 5 summarizes the results of our review.

³² La. R.S. 18:403 requires that election officials retain election records for presidential elections for 22 months.

| Exhibit 5 Absentee Affidavit Review November 2020 Election | | | |
|---|------------|------------|---|
| Category | Number | Percentage | Description |
| Accepted and Complete | 269 | 84.1% | The absentee affidavit was accepted and all blanks were fully filled out. |
| Rejected and Incomplete | 3 | 0.9% | The absentee affidavit was rejected and the witness signature and printed name was missing. |
| Accepted but Incomplete | 43 | 13.4% | The absentee affidavit was accepted but was missing information. This includes 27 absentee affidavits with no election date, 17 with no mother's maiden name, four with no voter's printed name, one with no witness signature, one with no address, and one with no printed witness name.* |
| Missing | 5 | 1.6% | The absentee affidavits could not be located by one ROV who is new to the position and was not the ROV at the time of the November 2020 election. |
| Total Analyzed | 320 | | |
| * Some of the 43 absentee affidavits in this category had multiple incomplete fields, so the sum of the identified issues (51) is more than the number in this category. Source: Prepared by legislative auditor's staff using information from 64 parish ROVs. | | | |

We found that absentee affidavits missing information are presented to the PBES in an inconsistent manner, and the PBES does not consistently accept or reject these absentee affidavits. As a result, an absentee affidavit with missing information may be accepted in one parish but rejected in another parish.

Matter for Legislative Consideration 2: The legislature may wish to consider requiring that ROVs present all incomplete absentee affidavits to the PBES.

Matter for Legislative Consideration 3: The legislature may wish to consider adding criteria to the Election Code on whether the PBES should accept or reject absentee affidavits that are incomplete.

While DOS has implemented some Election Assistance Commission guidelines related to pre-election testing of voting machines, it could improve its process by ensuring that DOS staff and/or election officials consistently verify test results, document the verification, and review the documentation.

The United States Election Assistance Commission (EAC) was established to provide guidance to states in their efforts to comply with HAVA requirements. EAC developed a set of non-binding election management guidelines to assist state and local election officials in effectively managing and administering elections.³³ According to EAC, pre-election testing is the act of testing every component of the voting system prior to the election. The purpose of pre-election testing is to ensure that the voting system records and tabulates the election results in a manner that reflects the voter's intent. According to NCSL, pre-election testing is generally conducted in public which increases voter confidence, and nearly all jurisdictions test their voting systems and ballots before every election, including Louisiana.

Pre-election testing involves:



1. Setting up the voting system for each voting location
2. Loading the election into voting machines
3. Casting a known pattern of votes (the test vote)
4. Printing the results of the test vote
5. Comparing the printed results with the expected pattern of votes

Source: EAC

According to DOS staff, in addition to conducting pre-election testing, election officials take many steps to ensure accurate election results. For example, election officials ensure that the count of votes on voting machines is zero prior to opening the polls and allowing people to cast votes, and voting machines are sealed with numbered, tamper evident seals during an election. See Exhibit 6 for a picture and description of voting machines used in Louisiana.

³³ EAC Election Management Guidelines, https://www.eac.gov/election_management_resources/election_management_guidelines.aspx.

States are not required to implement the practices contained in the election management guidelines; the guidelines are solely designed to serve as a source of information for election officials.

| Exhibit 6 Voting Machines Used in Louisiana | |
|---|---|
| Early Voting Machines | Election day Voting Machines |
|  |  |
| As of 2019, all voters have used touch screen ICX voting machines for early voting. | As of 2006, all voters have used AVC Advantage voting machines for election day voting. |
| Source: Prepared by legislative auditor's staff using information from DOS. | |

DOS has implemented some³⁴ EAC guidelines related to pre-election testing of voting machines. State law³⁵ requires that DOS prepare and test all machines required for each election. State law³⁶ further requires that a test vote report (see Exhibit 7 on the following page) be produced by each machine and allows candidates and Louisiana citizens to observe the preparation process and inspect and review the test vote report. EAC provides guidelines for conducting pre-election testing, and DOS has implemented some of the guidelines.

To determine if DOS implemented EAC guidelines related to pre-election testing of voting machines, we met with DOS staff and election officials including COCs and ROVs to discuss the process for testing voting machines prior to each election, obtained documents related to the process, observed the pre-election testing process in two parishes, and analyzed a selection of test vote reports from early voting machines and election day machines for the November 2021 election. See Exhibit 8 on page 17 for pre-election testing guidelines that have been implemented by DOS.

³⁴ There are additional EAC guidelines related to pre-election testing that we were not able to fully evaluate, such as testing audio ballots, manually testing voting machines, working in teams of two, and testing all components of the voting system. We were not able to fully test these because of resource and time constraints as they would require in-person observations in each parish.

³⁵ La. R.S. 18:1353 and 1373

³⁶ La. R.S. 18:1373

Exhibit 7 Sample Test Vote Report

*** TEST SUMMARY REPORT ***
=====

██████████
2021-08-09 | Saturday | 12:00PM

Machine Number
██████████

Netting Location
████████████████████

Ballot Style(s)
██████████

Public Counters : 3

Activation Code: ██████████
Total Voters : 3

=====

TOTALS for all Ballots
Public Counters : 3

Constitutional Amendment 1 (1)

| | |
|----------------------|---|
| YES | 1 |
| NO | 2 |
| Total Votes | 3 |
| Number of Undervotes | 0 |

Constitutional Amendment 2 (1)

| | |
|----------------------|---|
| YES | 1 |
| NO | 2 |
| Total Votes | 3 |
| Number of Undervotes | 0 |

Constitutional Amendment 3 (1)

| | |
|----------------------|---|
| YES | 1 |
| NO | 2 |
| Total Votes | 3 |
| Number of Undervotes | 0 |

Constitutional Amendment 4 (1)

| | |
|----------------------|---|
| YES | 1 |
| NO | 2 |
| Total Votes | 3 |
| Number of Undervotes | 0 |

Unit Model: ██████████
Unit Serials ██████████

Interactive Counter: 3982
Software Version: ██████████

Certification

WE, THE UNDERSIGNED ELECTION OFFICIALS,
HEREBY CERTIFY THAT THE ABOVE ELECTION WAS
HELD IN ACCORDANCE WITH THE LEGAL AUTHORITY
ELECTION ACT AND REGULATIONS OF THIS
JURISDICTION.

Election Official

Election Official

Election Official

Election Official

Election Official

Poll closed
2021-08-02 | Monday | 03:30...

Source: Prepared by legislative auditor's staff using information from DOS.

| Exhibit 8 Implemented Pre-Election Testing Guidelines* | |
|---|--|
| Guidelines | Louisiana |
| Written policy and procedures | Implemented. DOS has written procedures for the pre-election testing process. |
| Test every ballot style | Implemented for Early Voting Machines.** We found that 121 (100%) of 121 test vote reports we analyzed from early voting machines included a test for every ballot style. Ballot style means the specific set of candidates and questions that a voter is eligible to vote on based on their precinct, and during a presidential primary election based on party affiliation. |
| Test should include at least one vote for each candidate | Implemented. We found that 47 (100%) of 47 test vote reports for ballot styles that included candidate races had a vote for each candidate. |
| Test should include at least one yes and no vote for each question | Implemented. We found that 233 (99.6%) of 234 test vote reports included a yes and no vote for each question, such as constitutional amendments and propositions. For one election day machine, DOS was not able to provide a copy of the test vote report. |
| Document pre-election testing | Implemented. We received at least one test vote report printout from each parish for early voting and election day machines. In addition, we observed pre-election testing in two parishes and saw test vote reports being printed for each machine tested. |
| <p>* We received copies of test vote reports from 121 early voting machines and 130 election day machines for a total of 251. However, not all guidelines apply to each test vote report. For example, not every ballot included candidate races.</p> <p>** According to DOS, warehouse staff test all ballot styles for election day machines. However, we did not analyze this for election day machines due to time constraints.</p> <p>Source: Prepared by legislative auditor's staff using information from DOS.</p> | |

DOS could improve its pre-election testing of voting machines by ensuring that DOS staff and/or election officials consistently verify test results, document the verification, and review the documentation. Early voting machines are tested at ROV offices prior to the start of early voting, and election day voting machines are tested at DOS warehouses prior to election day. After running the test vote, a test vote report should be printed from each machine. While DOS procedures for testing voting machines state that the test results should be verified, we found that test vote results are not consistently verified. In addition, EAC encourages preparing detailed reports of the test vote process, which document any discrepancies and should be reviewed and approved by officials as specified by the state election code.³⁷ Louisiana's election code requires that a test vote report be produced by each machine, but does not specify that the test results should be verified, does not specify who is responsible for verifying the results, and does not require documentation or review of the verification.

We observed the test process in two parishes and saw that the test results were reviewed in one parish but were not reviewed in the other. In addition, we found that 130 (55.3%) of 235 test vote reports³⁸ for early and election day voting machines for the November 2021 election

³⁷ *Pre-Election Logic and Accuracy Testing and Post-Election Audit Initiative*, (2013), <https://www.eac.gov/voting-equipment/managing-election-technology>

³⁸ There were 16 test vote reports that were not clear or cut-off so we could not determine if the report was signed.

were not signed by election officials or the PBES. While state law does not require a signature, the absence of signatures makes it unclear whether the test results were reviewed and verified. Lastly, of the 84 COCs and ROVs who responded to questions related to test votes on our survey, 8 (9.5%) stated that the results of the test vote were not compared to the expected results, and 29 (34.5%) responded that they could not recall or were unsure if the test vote was compared.

Recommendation 2: DOS should ensure that test vote results match expected results by verifying test vote results, documenting the verification, and reviewing this documentation.

Summary of Management's Response: DOS agrees with this recommendation and stated that it recognizes that the verification process would benefit from more consistent documentation to demonstrate that the department does have thorough checks and balances in place prior to and following the election and that it will adjust its policy to include documenting the verification. See Appendix A for DOS's full response.

Matter for Legislative Consideration 4: The legislature may wish to consider including requirements in Louisiana's Election Code that the test vote results be verified, specify who is responsible for conducting the verification, and require that the verification be documented and reviewed.

DOS conducts post-election verification activities to ensure that the number of votes cast does not exceed the number of eligible voters and matches actual voter turnout. However, Louisiana's current in-person voting systems do not produce a voter-verified paper record, which prevents DOS from conducting post-election tabulation audits. In addition, DOS does not currently conduct post-election tabulation audits on absentee ballots, which do produce a voter-verified paper record.

On election night, all absentee, early, and election day votes are tabulated/counted, and the results are uploaded by COCs to ERIN. According to DOS staff, the equipment used to tabulate votes such as voting machines and scanners are never connected to the internet, and the lines used to transmit results are secure. In addition, time-stamped printouts of election results are posted at voting locations where candidates and members of the public may inspect the results and compare to the results from ERIN posted on DOS' website. After the results are uploaded to ERIN, election officials begin post-election verification activities in which they account for every vote cast and ensure that each valid vote is included in the official election results. This process allows officials to resolve discrepancies and take any remedial actions necessary to ensure completeness and accuracy before certifying and promulgating the election. In addition, other states also use post-election tabulation audits to verify that the equipment and

procedures used for counting votes worked properly and produced the correct results. For example, election results and a review of actual ballots cast should match. If they do not match, there may have been a problem with the equipment or procedures used in the original tabulation of election results.

DOS conducts post-election verification activities to ensure that the number of votes cast does not exceed the number of eligible voters and matches actual voter turnout.

However, DOS does not require that this analysis be formally documented or reviewed.

According to EAC, it is important to have procedures in place for the documentation and review of all aspects of election administration, including post-election activities. According to DOS staff, it performs an analysis after each election to verify that the number of votes cast is consistent with registration data and election data. Specifically, the number of votes cast in a given precinct should never exceed the number of eligible voters for that precinct. Additionally, the number of votes cast should match the number of voters who participated³⁹ in the election. According to DOS staff, the results of the analysis are communicated between staff verbally and through emails. However, they are not required to formally document the results of this analysis, and DOS does not have policies or procedures to ensure that the results of the analysis are formally reviewed.

After election night, DOS and local election officials generate reports from ERIN that identify precincts with any inconsistencies between the number of votes and the number of voters who participated in or were eligible to participate in the election and analyzes those results. DOS staff stated that it works with COCs and ROVs to resolve any issues identified. According to DOS staff, while discrepancies are rarely detected, the most common type of discrepancy is that a greater number of voters signed-in to vote than the number of votes actually cast in the election due to an individual leaving the polling place after signing-in to vote but prior to casting their vote. Commissioners are instructed to document these instances so that these discrepancies can be reconciled after the election. According to DOS staff, there has never been an instance where any unresolved discrepancies identified by the analysis would have affected the outcome of a race.

Louisiana's current in-person voting systems do not produce a voter-verified paper record for each in-person vote cast, which prevents DOS from conducting post-election tabulation audits on in-person votes. In addition, DOS does not conduct post-election tabulation audits on absentee ballots which do produce a voter-verified paper record. Limited time between primary and general elections may prevent DOS from performing these audits. A voter-verified paper record is a paper document that the voter can review and verify before officially casting his vote.⁴⁰ The voter-verified paper record creates an auditable paper trail that allows election administrators to perform post-election tabulation audits to verify that the voting equipment tabulated each vote correctly. EAC recommends conducting post-election tabulation audits which according to NCSL, as of October 2019, were required in at least 37 states and the District of Columbia. Louisiana's current in-person voting machines do

³⁹ The number of voters who signed-in to vote in-person as well as the number of absentee ballots that are accepted are added to ERIN and combined to create a count of voters who participated in the election.

⁴⁰ La. R.S. 18:1351

not create a voter-verified paper record. However, state law⁴¹ requires that any new voting system procured by DOS must have an auditable voter-verified paper record. Once this new system is implemented, DOS will be able to perform post-election tabulation audits for all voting methods. However, there is currently no law requiring DOS to perform post-election tabulation audits once the new voting system is implemented. According to DOS staff, the limited time between primary and general elections in Louisiana would limit its ability to conduct these audits.

In addition, although absentee ballots cast in Louisiana are voter-verified paper records, there is no requirement for DOS to perform audits of them. According to DOS staff, it does not perform these audits and is prevented from doing so by the limited time between primary and general elections. Legal requirements for other states such as Georgia and Maryland specify audits of absentee ballots. In Louisiana, state law⁴² requires recounts of absentee and early voting ballots upon request if the number of those ballots could make a difference in the outcome of an election. However, the candidate or voter who requests the recount is responsible for the associated costs if the results of the recount confirm that the original count was correct or that any errors would not have changed the result of the election. Proactively auditing paper ballot results rather than relying on recount requests could help to ensure that absentee ballots are accurately counted.

Recommendation 3: DOS should establish policies to require formal documentation and review of the post-election verification activities it currently conducts.

Summary of Management's Response: DOS agrees with this recommendation and stated that it will continue implementation of its post-election verification activities by updating its policies and procedures. See Appendix A for DOS's full response.

Recommendation 4: DOS should establish policies to conduct post-election tabulation audits of voter-verified paper records.

Summary of Management's Response: DOS agrees with this recommendation and stated that policies and procedures will be updated as the state procures a new voting system. DOS further stated that additional time between primary and general elections, as well as additional funding and manpower, would be needed to conduct the post-election tabulation audits. See Appendix A for DOS's full response.

Matter for Legislative Consideration 5: The legislature may wish to consider a requirement in Louisiana's election code that DOS develop procedures for and implement post-election tabulation audits of voter-verified paper records.

Matter for Legislative Consideration 6: The legislature may wish to consider extending the time between primary and general elections to ensure adequate time for DOS to conduct post-election audits.

⁴¹ La. R.S. 18:1366

⁴² La. R.S. 18:1313

DOS' Elections Compliance Unit received 501 election-related complaints during fiscal years 2017 through 2021, with the most common type of complaint related to campaign practices. DOS could improve its complaints process by consistently categorizing complaints, tracking the status of complaints, and making this information available to the public.

The Elections Compliance Unit (ECU) was established by state law⁴³ in June 2004 to initiate independent inquiries and respond to complaints related to elections. While ECU conducts investigations into allegations of election irregularities, it does not have the legal authority to prosecute complaints or issue legal penalties. Instead, if ECU determines that criminal violations may have been committed, it forwards the complaint to the appropriate prosecutorial authority, such as a district attorney, who may further investigate or prosecute the complaint. Members of the public file an election-related complaint by calling the complaint hotline listed on the DOS website. Local election officials also contact ECU to report instances of election irregularities that they have personally witnessed or that have come to their attention through complaints received at the parish level. See Exhibit 9 for the number of election-related complaints received each year.

| Exhibit 9 Election-Related Complaints Fiscal Years 2017-2021 | |
|--|----------------------|
| Fiscal Year | Number of Complaints |
| 2017 | 108 |
| 2018 | 68* |
| 2019 | 110 |
| 2020 | 116 |
| 2021 | 99 |
| Total | 501 |
| * According to DOS staff, fewer complaints were received in 2018 because it was a less active election cycle with fewer races. Source: Prepared by legislative auditor's staff using information from DOS. | |

During fiscal years 2017 through 2021, ECU received 501 election-related complaints and forwarded 19 (3.8%) to district attorneys. We analyzed and categorized the 501 complaints received by ECU during fiscal years 2017 through 2021 and found that the most common types of complaints were related to campaign practices (156, or 31.1%) and allegations of fraud (134, or 26.7%). Complaints about campaign practices included allegations of campaigning within 600 feet of a voting location⁴⁴ and vote buying. Complaints related to fraud included allegations that fraudulent registration or voting was attempted or completed. For example, in fiscal year 2018, ECU investigated a complaint which alleged fraudulent absentee voting. According to testimonies provided during the investigation, multiple individuals performed various steps of the absentee voting process and submitted an absentee ballot in the name of another voter. ECU compiled the testimonies and forwarded the complaint to a district attorney, and two of the individuals pled guilty to second-degree injuring public records. See Exhibit 10 for the three categories with the highest number of complaints, and see Appendix F for all categories of complaints.

⁴³ La. R.S. 18:49.1

⁴⁴ Campaigning within 600 feet of a voting location is prohibited by La. R.S. 18:1462.

| Exhibit 10 Most Common Election-Related Complaints Received by ECU Fiscal Years 2017 through 2021 | | | |
|---|---|---------------|-------------------|
| Category* | Description | Number | Percentage |
| Campaign Practices | Includes complaints related to campaign practices such as electioneering, vote buying, intimidation from candidates/campaigners, campaign signs, and campaign finance rules. | 156 | 31.1% |
| Alleged Fraud | Includes complaints alleging that fraudulent registration or voting was attempted or completed such as individuals attempting to register to vote in a parish where they do not reside. | 134 | 26.7% |
| Election Officials/Workers | Includes complaints that election officials or election workers did not properly execute election duties or that they demonstrated rude or questionable behavior. | 57 | 11.4% |
| * LLA created categories of complaints based on the summary of the complaint details. Source: Prepared by legislative auditor's staff using information from DOS. | | | |

Of the 501 complaints received by ECU during fiscal years 2017 through 2021, ECU forwarded 19 (3.8%) to prosecutorial authorities after gathering evidence that indicated criminal violations. At least four individuals involved with three of these complaints were prosecuted and convicted.⁴⁵

DOS could improve its complaints process by consistently categorizing complaints, tracking the status of complaints, and making this information available to the public. While ECU has a system for tracking complaints, it does not consistently categorize the complaints or track their status. Best practices⁴⁶ state that complaints should be categorized to identify areas that require further attention or action. For example, an increase in complaints against election commissioners may reveal a need to assess policies and procedures related to election duties or to provide additional training to commissioners. According to ECU staff, it does not categorize complaints unless they directly relate to potential criminal violations. For example, none of the complaints that related to equipment issues or outdated voter registration records were categorized if criminal violations were not suspected, making it difficult for DOS to identify the prevalence of different types of administrative issues.

Best practices⁴⁷ also suggest that the status of the complaints should be tracked so that the receiving entity can ensure that all complaints are addressed appropriately. While ECU maintains electronic complaint data, there are no fields that indicate the status of a complaint, such as whether it was closed due to insufficient evidence or was forwarded to a prosecutorial

⁴⁵ We contacted district attorneys associated with these but did not receive responses for all 19 of them.

⁴⁶ Sunset Licensing Regulation Model includes best practices for the handling of complaints.

<https://www.sunset.texas.gov/public/uploads/files/Sunset%20Licensing%20Model%208.28.2019%20%28for%20the%20web%29.pdf>

⁴⁷ "Carrying Out a State Regulatory Program", A National State Auditor's Association Best Practices Document, 2004.

https://www.nasact.org/files/News_and_Publications/White_Papers_Reports/NSAA%20Best%20Practices%20Documents/2004_Carrying_Out_a_State_Regulatory_Program.pdf

authority. Best practices further recommend publicly releasing statistics on complaints. While DOS reports the number of complaints received each fiscal year as part of its performance measures in the annual proposed budget, there are no statistics about the types of complaints received or the status of the complaints, such as the number of complaints referred to appropriate DOS staff, referred to prosecutorial authorities when there is evidence that indicates a criminal violation may have occurred, or closed due to insufficient evidence.

Recommendation 5: DOS should consistently categorize complaints, track the status of complaints, and make this information available to the public at least annually.

Summary of Management's Response: DOS agrees with this recommendation and stated that it would add categories of complaints to its annual performance indicator reporting.

APPENDIX A: MANAGEMENT'S RESPONSE

SECRETARY OF STATE
STATE OF LOUISIANA

R. KYLE ARDOIN
SECRETARY OF STATE



P.O. Box 94125
BATON ROUGE, LA 70804-94125

March 7, 2022

Michael J. "Mike" Waguespack, CPA
Legislative Auditor
P.O. Box 94397
Baton Rouge, LA 70804-9397

RE: Department of State Performance Audit

Dear Mr. Waguespack,

The Department of State ("DOS") is in receipt of your performance audit evaluating Louisiana's election processes and procedures. We appreciate the hard work by your team in working with our office on this audit. As your report finds, DOS does have procedures and practices in place to ensure election integrity. This letter serves as a response to the five recommendations made to DOS. We agree with each of those recommendations and this office is committed to ensuring that these additional procedures and policies will continue to maintain the public's confidence in the election process.

Finding 1: DOS conducts data matches as required by federal and state law and conducts additional activities to help ensure the accuracy of the voter registration list. DOS could further improve the accuracy of the voter registration list by annually conducting its data match that identifies registered Louisiana voters who registered to vote in another state or obtained a driver's license in another state.

Recommendation 1: DOS should conduct its data match to identify Louisiana registered voters who register to vote in another state or obtain a driver's license in another state annually to ensure it makes timely updates to the voter registration list if it remains in ERIC.

DOS agrees with Recommendation 1. Ensuring voter registration is accurate and regularly updated is a priority for the Department.

DOS ensures that it is in compliance with state and federal law. Through daily, monthly, and annual reporting, the information in ERIN is routinely and systematically reviewed by working closely with the ROVS at the local level, state agencies such as the OMV, and federal partners to verify registration data is accurate.

DOS has always been innovative and proactive in maintaining current and accurate voter registration rolls, including through the development of the Elections Registration and Information Network ("ERIN"). Louisiana was one of the first states, if not the first, in the nation to develop such a system. From the intake

of voter registration and required documentation, there are checks in place to ensure that voter rolls are accurate.

While Louisiana runs certain reports daily and monthly, other reports are often difficult to run due to rescheduled and emergency elections, given the fact that the timeline does not permit such reports to be worked within those quick timelines prior to an election. Additionally, the canvass process does identify out of state moves if they fill out a national change of address form.

Legislation has continued to empower the DOS with additional tools and flexibility in maintaining voter rolls by authorizing the removal of deceased persons, pursuant to Act 364 of the 2021 Regular Session. Unfortunately, HB 138 of the 2021 Regular Legislative Session was vetoed which would have provided DOS an additional layer of review in conducting a supplemental canvass.

The report recognizes the accuracy of DOS data by noting that 99.9991% of voter registration lists did not contain duplicative information. DOS will continue to be proactive in working with federal, state, and local partners on verifying voter rolls as well as working with the legislature in developing additional legislative tools in the Louisiana Election Code.

Finding 3: While DOS has implemented some Election Assistance Commission guidelines related to pre-election testing of voting machines, it could improve its process by ensuring that DOS staff and/or election officials consistently verify test results, document the verification, and review the documentation.

Recommendation 2: DOS should ensure that test vote results match expected results by verifying test vote results, documenting the verification, and reviewing this documentation.

DOS agrees with Recommendation 2. DOS is thorough in its pre-election testing of machines, exceeding what is required in law. DOS does comply with current law by providing a test vote report from each machine.

DOS recognizes that the verification process would benefit from more consistent documentation to demonstrate that the department does have thorough checks and balances in place prior to and following the election. DOS is currently verifying the reports but will adjust the policy to include documenting the verification.

DOS is committed to ensuring that as we continue to conduct the verification process and the public has evidence that this process does take place for each machine. We want to ensure that the public has the utmost trust in our early voting and election day equipment. DOS is committed to working with local election officials on this. In response to Recommendation 2, the department will internally make changes to the policies and procedures as determined by the Secretary of State beginning at such time when the state procures a new voting system.

Finding 4: DOS conducts post-election verification activities to ensure that the number of votes cast does not exceed the number of eligible voters and matches actual voter turnout. However, Louisiana's current in-person voting systems do not produce a voter-verified paper record, which prevents DOS from conducting post-election tabulation audits. In addition, DOS does not currently conduct post-election tabulation audits on absentee ballots, which do produce a voter-verified paper record.

Recommendation 3: DOS should establish policies to require formal documentation and review of the post-election verification activities it currently conducts.

DOS agrees with Recommendation 3. DOS complies with current law and will continue implementation of this. While it is limited in the post-election tabulation audit review of in-person voting, the DOS does routinely and systematically conduct reviews following each election.

As the report points out, DOS staff does conduct a review to ensure that the votes cast do not exceed eligible voters and that the number of votes cast matches the number of voters who participated as well as other systematic reviews following the election.

DOS will continue implementation of these activities by updating our policies and procedures to ensure voter confidence in the processes as we procure a new voting system. DOS also commits to continued work with local election officials to ensure that this process is maintained.

Recommendation 4: DOS should establish policies to conduct post-election tabulation audits of voter-verified paper records.

DOS agrees with Recommendation 4, noting that this audit could not be done without additional time between the primary and general elections as well as additional funding and manpower to conduct the post-tabulation audit.

While current law does not require the audit of absentee ballots, unless a recount is requested and certain conditions are met required by law, DOS is willing to provide any additional oversight or processes to ensure voter integrity is maintained. However, as the state procures a new voting system this process and any other corresponding policies and procedures will be updated.

DOS requires additional time between the primary and general elections to be able to conduct the post-election tabulation audit, also requiring additional legislation. DOS will also need increased personnel and funding to conduct such an audit. However, any changes to this timeline will require a substantive and comprehensive overhaul of the Election Code. This process will also require the input of all election stakeholders.

Finding 5: DOS' Elections Compliance Unit received 501 election-related complaints during fiscal years 2017 through 2021, with the most common type of complaint related to campaign practices. DOS could improve its complaints process by consistently categorizing complaints, tracking the status of complaints, and making this information available to the public.

Recommendation 5: DOS should consistently categorize complaints, track the status of complaints, and make this information available to the public at least annually.

DOS agrees with Recommendation 5.

While the Elections Compliance Unit currently categorizes and tracks complaints, DOS agrees to add categories of complaints to the annual performance indicator reporting.

The ECU performs a critical role in oversight of the elections operations, and DOS supports transparency of the work that is currently being done by the ECU. We share the view that an informed public is critical and necessary to the election process so we are willing to ensure that what is already being done is made available.

Again, we appreciate your hard work with our office on this endeavor. As your report states DOS has procedures and practices to ensure election integrity and we are in compliance with existing law and policy. With your recommendations, DOS will continue to uphold election integrity as we work to make improvements to existing policies and procedures.

Sincerely,



R. Kyle Ardo
Secretary of State

APPENDIX B: SCOPE AND METHODOLOGY

This report provides the results of our performance audit of the Louisiana Department of State (DOS). We conducted this performance audit under the provisions of Title 24 of the Louisiana Revised Statutes of 1950, as amended. This audit covered existing DOS processes and procedures related to election integrity and election-related complaints investigated by the DOS' Election Compliance Unit (ECU). Our audit scope covered July 1, 2016 through December 31, 2021. Our audit objective was:

To evaluate Louisiana's election processes and procedures to determine whether existing controls related to election integrity are sufficient.

We conducted this performance audit in accordance with generally accepted *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide reasonable basis for our findings and conclusions based on our audit objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. To answer our objective, we reviewed internal controls relevant to the audit objective and performed the following audit steps:

- Researched relevant federal and state laws, regulations, and policies related to voter registration, voter registration list maintenance, election administration, and election-related complaints.
- Researched best practices related voter registration, voter registration list maintenance, election administration, and management of complaints. The following information from the National Conference of State Legislators (NCSL) was also used to inform our report:
 - <https://www.ncsl.org/research/elections-and-campaigns/election-security-state-policies.aspx>
 - <https://www.ncsl.org/research/elections-and-campaigns/voter-list-accuracy.aspx>
 - <https://www.ncsl.org/research/elections-and-campaigns/post-election-audits635926066.aspx>
- Met with DOS management, DOS elections staff, DOS Information Technology staff, and election officials including Registrars of Voters (ROVs) and Clerks of Courts (COCs) to understand processes and procedures related to voter registration, voter registration list maintenance, election administration, and election-related complaints.

- Observed various stages of the elections process for the November 2021 election, including the following:
 - Test and seal process for early and election day voting machines, including programming the machines, confirming zero counts, and conducting pre-election testing.
 - Early voting preparation and verification process for absentee affidavits and ballots.
 - PBES board meeting for acceptance or rejection of absentee affidavits.
 - COC election results from precincts uploaded to ERIN upon poll closure on election night.
 - Inspection of election day voting machines following the election.
 - Post-election verification activities.
- In November 2021, we sent a survey to the COC and ROV in each parish asking a range of questions related to voter registration, voter registration list maintenance, election administration, and election-related complaints. While 85 (66.4%) of 128 COCs and ROVs responded to at least one question in the survey, not all responded to every survey question.
- To analyze DOS procedures for ensuring an accurate voter registration list, we obtained and analyzed current voter registration data from DOS; obtained information about data matches conducted by DOS; and conducted testing to identify individuals with duplicate voter registrations or missing information. We met with DOS staff to review the results of our analysis.
- To analyze mail-in absentee affidavits, we first identified those voters who voted in this manner for the November 2020 election. We then pulled a selection of five mail-in absentee voters from each of the 64 parishes in Louisiana, for a total of 320 voters. We requested absentee affidavits associated with these 320 voters from each of the 64 parish Registrar of Voters (ROV). We received 315 absentee affidavits from ROVs and analyzed them to determine whether or not the required elements were included on the affidavit and compared that with the determination made by the 64 Parish Board of Election Supervisors (PBES). Our intent is not to project the results of the analysis to the entire population of absentee voters. We also researched legal requirements related to the cure process for absentee affidavits.
- To analyze whether pre-election testing was performed and worked as intended during the test process for both early voting machines and election day voting machines, we requested test vote reports for two early and two election day voting machines from each of the 64 parishes and compared them to the expected test vote outcome. Specifically:

- We requested and analyzed test vote results for early voting machines for the November 2021 election from each of the 64 parish ROVs where early voting machines are stored and tested. We requested the lowest and highest machine number used in the election, since the number of machines varies by parish based on population. We compared the actual results with the expected results of the test vote.
- We requested and analyzed the test vote results for election day voting machines for the November 2021 election from each of the 64 parish warehouses where election day voting machines are stored and tested. We requested the lowest and highest machine number used in the election, since the number of machines varies by parish based on population. We compared the actual results with the expected results of the test vote.
- To analyze post-election verification activities, we met with DOS staff and election officials to understand the activities conducted after an election; we researched activities conducted in other states; we researched best practices related to post-election verification activities and post-election audits; and we researched recent legislation. In addition, we requested and reviewed examples of reports that are used to verify election results from DOS.
- To evaluate the ECU's policies and procedures for investigating election-related complaints, we met with ECU staff to understand the process and requested all complaints received by ECU during our scope. We analyzed and categorized the complaints related to elections. We contacted district attorneys to determine the outcome of cases that had been forwarded to them by ECU. In addition, we researched best practices related to managing complaints.

APPENDIX C: ENTITIES INVOLVED IN ELECTIONS IN LOUISIANA

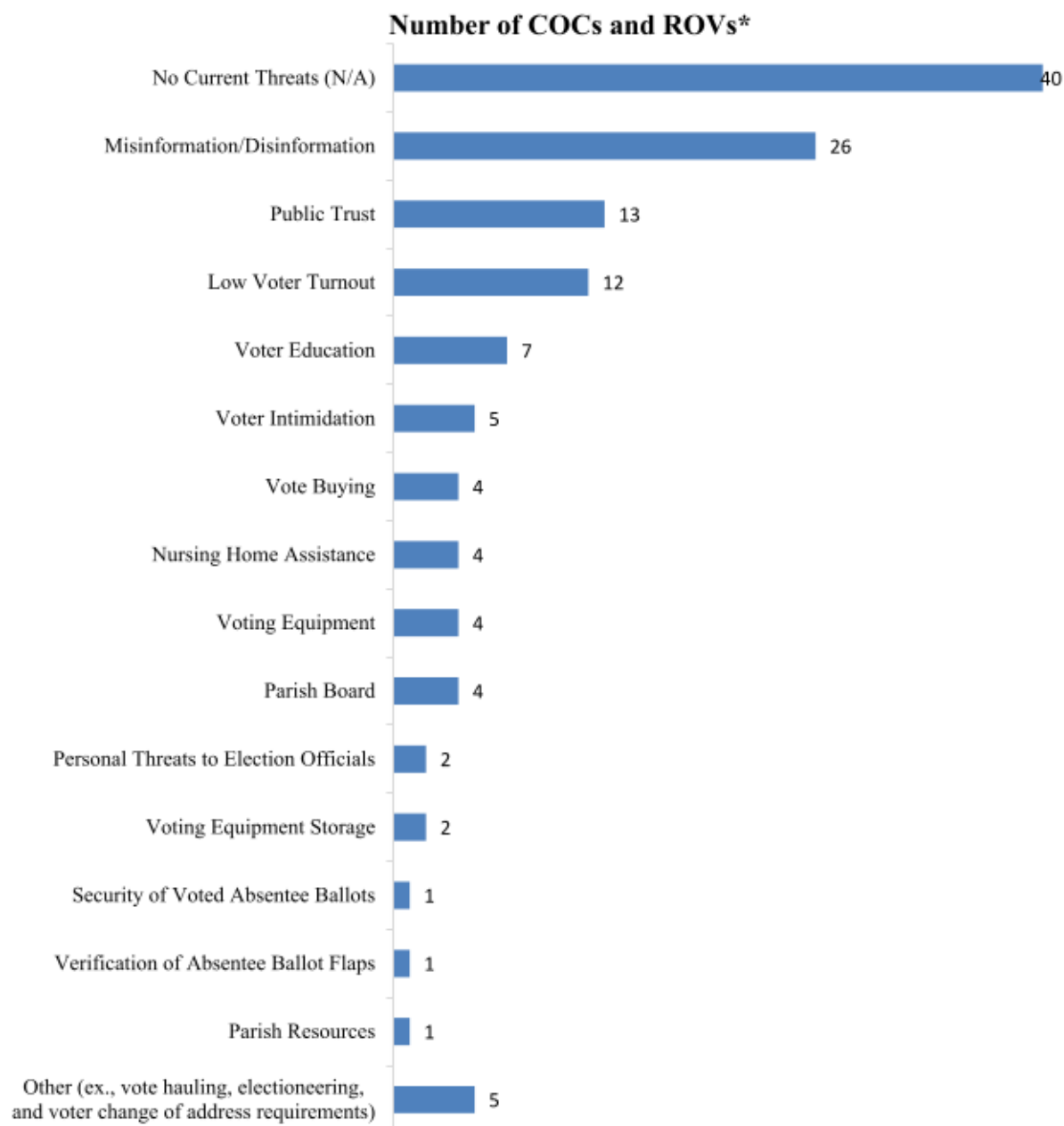
Various individuals and entities in Louisiana are involved in the elections process. The chart below provides a description of their responsibilities. This chart is not exhaustive in its list of entities nor in its description of each entity's responsibilities.

| Entity | Description of Responsibilities |
|---|---|
| Department of State (DOS) | The Secretary of State (SOS) is the chief election officer for Louisiana. DOS is responsible for developing rules and documents for elections and voter registration. DOS is also responsible for promulgating election results and works in conjunction with local officials to ensure that elections are properly conducted and that results are accurate. DOS also has an Elections Compliance Unit which investigates allegations of election irregularities. |
| Clerk of Court (COC) | COCs are the chief elections officers in their parish and are responsible for administering election day voting and receiving all election results within their parish. COCs train election commissioners* and work with Registrars of Voters to ensure the accuracy of voter registration information. |
| Registrar of Voters (ROV) | ROVs are responsible for the registration of voters in their parish and for conducting early voting and absentee voting. |
| Parish Board of Election Supervisors (PBES) | PBES supervises the preparation for and the conducting of all elections held in the parish. PBES members include the parish ROV, the parish COC, the chairman of the parish executive committee of each recognized political party or his designee,** and one member appointed by the governor. |
| State Board of Election Supervisors (SBES) | The SBES regularly review all election laws and procedures and annually report findings, observations, and recommendations for changes to the legislature. The SBES members include the Lieutenant Governor, SOS, Attorney General, DOS Commissioner of Elections, a COC association member, an ROV association member, an individual appointed by the governor from a list of nominees submitted by various colleges, and a policy jury association member. |
| Other Entities | Other entities are involved in various aspects of elections, such as the Attorney General, the Louisiana State Board of Ethics, Parish District Attorneys, the Office of Motor Vehicles, Public Assistance Agencies, Parish Governing Authorities, and others. |
| <p>* Election commissioners work at polling locations on election day and assist with other aspects of elections.</p> <p>** According to DOS staff, this currently includes a member of the Democratic Party and Republican Party in all 64 parishes.</p> <p>Source: Prepared by legislative auditor's staff using information from state law.</p> | |

APPENDIX D: COC AND ROV CONCERNS RELATED TO ELECTION INTEGRITY

In November 2021, we sent a survey to the COC and ROV in each parish. While 85 (66.4%) of 128 COCs and ROVs responded to at least one question in the survey, not all responded to every survey question.

- We asked COCs and ROVs to rate the integrity of Louisiana's elections based on their own perceptions. Of the 79 responses we received, 63 (79.7%) stated that they perceived Louisiana's election integrity as "excellent," and 14 (17.7%) perceive Louisiana's election integrity as "good." One respondent selected a rating of "acceptable," and one respondent selected "unable to gauge." However, no respondents selected the ratings of "poor" or "very poor."
- We asked if there were any existing problems that posed a threat to election integrity in Louisiana, and 40 (50.6%) of 79 COCs and ROVs felt that there were currently no such problems. However, 26 (32.9%) of 79 COCs and ROVs most often identified misinformation/disinformation as a current threat to election integrity in the state. See the following chart for other existing threats to election integrity identified by COCs and ROVs who responded to the survey. The chart only includes items that were selected by respondents. For example, no respondents selected the following items, and these items were therefore excluded from the chart: DOS Resources, DOS Assistance, Transmission of Results, Cybersecurity, Tabulation of Votes, Security of Blank Absentee Ballots, Management of Voter Registrations Records, Testing and Sealing of Voting Machines, and Fraud.



* The total number of threats listed above is more than the number of respondents because each respondent could have selected more than one threat.

Source: Prepared by legislative auditor's staff using survey responses from COCs and ROVs.

APPENDIX E: DESCRIPTION OF VERIFICATION ACTIVITIES AND DATA MATCHES PERFORMED BY FREQUENCY

This summarizes the verification activities and data matches performed by frequency during the scope of October 16, 2018, through October 13, 2020.

| Data Match Type | Source | Frequency | Description | Approximate Number Changed* |
|--|----------|------------|---|-----------------------------|
| Deceased Voters | LDH | Monthly | Uses death data to identify potentially deceased individuals on the voter registration list. | 72,493 |
| | ERIC/SSA | Monthly | | |
| | Other | Ongoing | Uses obituaries, death certificates, etc. to identify potentially deceased individuals on the voter registration list. | |
| Duplicate Voters | ERIC | Monthly | Used to identify individuals who are listed multiple times on the voter registration list. | 5,680 |
| | ERIN | Nightly | | |
| Felons | DOC | Monthly | Uses incarceration data to identify felons who may not be eligible to vote. | 14,817 |
| | Other | Ongoing | Uses Sheriff, District Attorney, and United States Attorney conviction reports. | |
| Out of State Voters and/or Driver's Licenses | ERIC | Annually | Uses voter registration data and driver's license information from other ERIC states to identify individuals who may not be eligible to vote. | 10,501 |
| Annual Canvass | ERIC | Annually | Uses United States Postal Service change of address information to identify individuals who may not be eligible to vote. | 19,671 |
| Inactive Two Federal General Elections | ERIN | Biennially | Uses vote history and inactive voter list to cancel registrations. | 44,926 |

* These numbers correspond to the 2020 Election Administration and Voting Survey (EAVS) report. The same voter can appear multiple times.

Source: Prepared by legislative auditor's staff using information from DOS.

APPENDIX F: CATEGORIES OF ELECTION-RELATED COMPLAINTS RECEIVED BY ECU

During fiscal years 2017 through 2021, ECU received 501 election-related complaints. We analyzed and categorized these complaints and found that the most common types of complaints were related to campaign practices and allegations of fraud. See the chart below for all categories of election-related complaints received by the ECU during fiscal years 2017 through 2021.

| Category | Description | Number | Percentage |
|--|--|------------|------------|
| Campaign Practices | Includes complaints related to campaign practices such as electioneering, vote buying, intimidation from candidates/campaigners, campaign signs, and campaign finance rules. | 156 | 31.1% |
| Alleged Fraud | Includes complaints alleging that fraudulent registration or voting was attempted or completed. | 134 | 26.7% |
| Election Officials/Workers | Includes complaints that election officials or election workers did not properly execute election duties or that they demonstrated rude or questionable behavior. | 57 | 11.4% |
| Vague | Includes complaints that were too vague to categorize. Specific examples include voters feeling intimidated by other voters based on race and the receipt of anonymous flyers. | 37 | 7.4% |
| Candidate Qualifications | Includes complaints that a candidate does not meet the requirements to qualify to run for office, such as a candidate not residing in the required district. | 34 | 6.8% |
| Voter Registration | Includes complaints related to voter registration that were not related to fraud, such as deceased voters on the voter registration list and complaints about voter registration drives. | 33 | 6.6% |
| Voting Equipment | Includes complaints related to voting equipment including voting machines and ballot scanners, such as a voting machine not allowing a voter to make the desired selection. | 19 | 3.8% |
| Election Process | Includes complaints about general election processes such as absentee ballot rejection, poll line assembly, and composition of sample ballots. | 11 | 2.2% |
| Prohibited Assistance | Includes complaints related to assisting voters while completing absentee ballots or while voting on election day. | 11 | 2.2% |
| Petitions | Includes complaints related to petitions, such as questionable signatures. | 9 | 1.8% |
| Total | | 501 | |
| Source: Prepared by legislative auditor's staff using information from DOS. | | | |