

2008

Florida Voter Protection Laws in a Nutshell



Just Democracy!



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INTRODUCTION

This publication is intended to distill complex election law for lawyers, advocates, voter registration campaigns and “Get Out the Vote” campaigns. It combines state election law with state regulations, rules, attorney general opinions and other election materials to provide a comprehensive interpretation of the law and practices that impact elections. While this publication does not cover every provision of state election laws, it highlights those provisions which in our experience have most impacted the voting rights of minority voters.

ACKNOWLEDGEMENTS

Advancement Project wishes to thank supporters of our Voter Protection Program, including the AFL-CIO, Arca Foundation, Bauman Foundation, Carnegie Corporation of New York, Election Administration Fund of Tides Foundation, Ford Foundation, Herb Block Foundation, Jeht Foundation, Mitchell Kapor Foundation, Open Society Institute, Rockefeller Foundation, SEIU, and several individual donors, for making this publication possible.

Also, a special thanks to attorney and Florida Bar member, JoNel Newman of the University of Miami School of Law, for her contributions to this legal guide.

VOTER REGISTRATION - GENERAL

Who may register to vote in Florida?

An individual may become a registered voter in Florida if she is:

- At least 18 years of age;
- A citizen of the United States;
- A legal resident of the State of Florida; and
- A legal resident of the county in which she would like to register.¹

A person may pre-register on or after her 17th birthday or receipt of a valid Florida driver’s license, whichever occurs earlier, and may vote in any election occurring on or after her 18th birthday.²

A person, who might otherwise be qualified, is not eligible to register to vote in Florida if she:

- Has been adjudicated mentally incompetent with respect to voting in Florida or any other state and has not had her right to vote restored; or
- Has been convicted of any felony by any court of record and has not had her right to vote restored.³

When will the primary and general election be held?

- The presidential preference primary will be held on **January 29, 2008**.
- The primary election will be held on **August 26, 2008**.
- The general election will be held on **November 4, 2008**.

What is the voter registration deadline for each election?

Under Florida law, the voter registration books must close (i.e. the deadline for registering to vote in a given election) the “29th day before each election.”⁴ The 29-day period is computed by excluding the day of the election and including all other days. If the 29th day before the election is on a Sunday or legal holiday, then the registration books will close on the next day that is not a Sunday or legal holiday.⁵

- **December 31, 2007** is the last day to register to vote in the January 29, 2008 presidential preference primary election.
- **July 28, 2008** is the last day to register to vote in the August 26, 2008 primary election.
- **October 6, 2008** is the last day to register to vote in the November 4, 2008 general election.

Where can a person apply for voter registration?

The National Voter Registration Act of 1993 (NVRA)⁶ and Florida law requires election officials to provide voter registration applications by mail, and at the following locations:⁷

- Department of Highway Safety and Motor Vehicles
- Public assistance agencies (e.g., Florida Department of Children and Families)
- Public libraries
- Agencies that serve persons with disabilities
- Centers for independent living

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- Armed forces recruitment offices
- Qualifying education institutions⁸
- Division of Elections or Supervisors of Elections offices⁹

A person can also download an application at: <http://election.dos.state.fl.us/index.html>. Applications require an original signature and can not be submitted online.

Additionally, upon request, election officials must provide voter registration applications to individuals or groups conducting voter registration drives. Election officials will charge one cent per application for a request of 10,000 or more applications. Otherwise, there is no charge to receive voter registration applications.¹⁰

What information must be provided on a voter registration application?

A voter registration application is complete if it contains the following information:¹¹

- Applicant's name
- Applicant's legal residence address
- Applicant's date of birth
- ID number such as the applicant's driver's license number, identification number from a Florida identification card, or last four digits of her social security number (If the voter has none of these ID numbers, she should write "none" in the ID box and the state will assign a unique ID number to the applicant). The voter registration application will only be accepted as valid after the number of nonexistence of such a number has been verified by the Department of State.¹²
- A mark in the checkbox affirming that the applicant is a U.S. citizen
- A mark in the checkbox affirming that the applicant has not been convicted of a felony or that, if convicted, has had her civil rights restored
- A mark in the checkbox affirming that the applicant has not been adjudicated mentally incompetent, or if she has, that her voting rights have been restored
- An original signature or a digital signature transmitted by the Department of Highway Safety and Motor Vehicles of the applicant affirming that the information is true and subscribing to the oath required by the Florida Constitution and Florida statutes¹³

An applicant who fails to designate a party affiliation must be registered without party affiliation. The Supervisor must notify the applicant so she can change her registration if she desires.¹⁴

How does a homeless person register to vote?

Florida statutes do not specify how homeless people register to vote. However, the law does state that individuals who temporarily reside outside the county may register in the precinct in which the main office of the Supervisor is located,¹⁵ provided that the person has no permanent address in the county and intends to remain a resident of Florida and of the county in which she is registering. Individuals who register to vote in this manner are not registered voters of the municipality and therefore are not permitted to vote in any municipal election.¹⁶

May a person register to vote by mail? If so, are there special requirements for first time voters who register to vote by mail?

Yes, a person may register to vote by mail. A first time Florida voter who registers by mail is required to produce additional identification. A current and valid driver's license number, Florida identification card number or last four digits of a social security number will be sufficient. If the Department of State ("State Department") determines that the voter has not been issued one of these forms of identification, the voter is required to provide a copy of current and valid identification or prove that she is exempt prior to voting.¹⁷ The types of identification that are sufficient for this type of registrant as well as the exemptions are described in the below section on identification requirements. The identification or proof of exemption may be provided at any time prior to voting for the first time in the state.¹⁸

If the applicant clearly provides information a registration official can use to determine that the applicant meets one of the exemptions to the identification requirements, the official makes a notation on the statewide record and the applicant is not required to provide identification.¹⁹ The voter registration official must determine if the applicant provided the required identification at the time of registering. If the required identification was not provided, the Supervisor notifies the applicant that she must provide the identification prior to voting the first time in the state.²⁰

Will mail-in voter registration applications be accepted if they are received by the registrar's/supervisor's office after the registration deadline?

A valid, initial mailed registration application will be accepted by the supervisor's office if it arrives after the book closing deadline, but the applicant will only be registered for the upcoming election if the registration date is prior to or on the book closing deadline. The registration date for an application that has been mailed to a driver's license office, a voter registration agency, an armed forces recruitment office, the division of elections, or the office of any Supervisor in the state is the date of the postmark. If the registration application does not have a clear postmark, the registration date is the date the application is received by any Supervisor or the division of elections. However, if the postmark is unclear and the application is received within five days after the book-closing date, excluding Saturdays, Sundays, and legal holidays, the registration date is the book-closing date.²¹ In other words, if the registration fails to bear a clear postmark and is received within five business days of book closing, the applicant will be validly registered.

May a person correct or complete a form after the deadline for voter registration if it was submitted before the deadline?

When the registration books are closed for an election, updates to a voter's name, address, and signature are the only changes permitted for purposes of the upcoming election.²² Voter registration applications and party changes must be accepted but only for the purpose of subsequent elections.²³

However, an individual or accompanying family member who has been discharged or separated from the uniformed services or the Merchant Marine, or from employment outside the territorial limits of the United States after the book closing deadline and who is otherwise qualified to vote may register to vote until 5:00 p.m. on the Friday before that election in the Supervisor's office. The voter must show sufficient evidence of qualifying for this exception.²⁴

Are there rules about assisting others with the completion of a voter registration application?

No, but the applicant must personally sign the form, affirming that everything on the application is true.²⁵

How many voter registration applications may individuals or groups conducting registration drives receive from the State Board of Elections or registrar offices?

Upon request, election officials must provide voter registration applications to individuals or groups conducting voter registration drives. Election officials must charge 1 cent per application for a request for 10,000 or more applications.²⁶ Otherwise, there is no charge to receive voter registration applications. State registration applications can also be downloaded from the Secretary of State's website at <http://election.dos.state.fl.us/regtovote/webappform.pdf>.

Are there any special rules pertaining to the federal registration application?

Florida statutes provide no special rules pertaining to the federal registration application.

May persons conducting voter registration drives make copies of completed voter registration applications before delivering them to the registrar's/supervisor's office?

Yes. While there appears to be no statute or definitive ruling by a Florida court that directly answers this question, the Office of the Florida Attorney General's rulings on related subjects seem to suggest that it would not violate Florida law for persons registering new voters to copy voter registration information prior to submission of the information to the Supervisors of Election. For more information, please see Appendix 1 – Legal Memorandum by Florida Attorney Mary Jill Hanson, Esq.²⁷

Are persons conducting voter registration drives required to deliver or mail completed voter registration applications to the Registrars'/Supervisors' offices within a certain time limit?

As of the date of publication, as of April 30, 2008, the state can impose fines on third party groups that collect applications and do not submit them to the Supervisor of Elections within certain timeframes.²⁸ The total maximum fine for any voter registration organization, including affiliate organizations, is \$1,000 per calendar year.²⁹ Fines are reduced if a group registers with the state.³⁰

Third party registration groups do not include individuals seeking to register or collect voter registration applications from that individual's spouse, child, or parent; or a person engaged in voter registration or collection of voter registration applications as an employee or agent of the division of elections, Supervisor of Elections, Department of Highway Safety and Motor Vehicles, or a voter registration agency.³¹

The third-party voter registration organization is liable for any fines.³² Fines will be waived in limited circumstances.³³

When voter registration applications are mailed or delivered to election officials, how long will it take for the applications to be processed?

Voter registration applications received by a voter registration official are entered into the statewide voter registration system within 13 days after receipt. Once entered, the application is immediately forwarded to the appropriate Supervisor of Elections.³⁴ Within 24 hours of receipt, the Department of Highway Safety and Motor Vehicles must electronically transmit completed voter registration applications to the statewide voter registration system. Within five days of receipt, the Department of Highway Safety and Motor Vehicles must also forward the completed paper voter registration applications to the Supervisor of the county where the office that processed or received that application is located.³⁵ Additionally, voter registration agencies must forward all complete and incomplete voter registration applications within five days of receipt to the Supervisor of the county where the agency that processed or received that application is located.³⁶

A Supervisor must notify the applicant of the disposition of her voter registration application. The Supervisor's notice must inform the applicant that the application has been approved, is incomplete, has been denied, or is a duplicate of a current registration.³⁷ If a voter registration application is incomplete, the Supervisor must notify by mail the applicant of the omission within five business days after the Supervisor has the information available in the voter registration system.³⁸ The applicant can supply the missing information using a voter registration application signed by the applicant until book closing and vote in the next election.³⁹ A voter information card sent to an applicant constitutes notice of approval of registration. A notice of denial must inform the applicant of the reason that the application was denied.⁴⁰

Can election officials delay the processing of a voter registration application or deny registration outright, based on their inability to match the applicant's HAVA ID number with a record in the Social Security Administration or state driver's license database?

Yes, but this law is currently being challenged in federal district court.⁴¹ Under Florida law, a voter registration application will be processed only after the department has verified the authenticity or nonexistence of the driver's license number, the Florida identification card number, or the last four digits of the social security number provided by the applicant. If the department is unable to verify the number, the applicant can be placed on the registration rolls if she provides evidence to the supervisor of elections to verify the authenticity of the number on her application. If the voter has not provided the necessary evidence or the number has not otherwise been verified prior to the applicant presenting herself to vote, she must vote with a provisional ballot. The provisional ballot will be counted only if the number on the application is verified by the end of the canvassing period or if the applicant presents evidence to the supervisor of elections sufficient to verify the authenticity of the number on her application no later than 5 p.m. of the third day following the election.⁴²

If election officials delay or deny processing a voter registration application because the applicant's HAVA ID number cannot be verified, will the applicant be notified?

Yes, if a completed voter registration application has been received by the book-closing deadline but the driver's license number, the Florida identification card number, or the last four digits of the social

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security number provided by the applicant cannot be verified, the applicant shall be notified that the application is incomplete and that she must provide evidence to the supervisor sufficient to verify the authenticity of the number provided on the application.⁴³ As described above, this law is currently being challenged in federal district court.⁴⁴

What can a person do if her application is denied?

An individual whose application is denied can as a preliminary matter contact the Supervisor of Elections office to determine the exact reason for denial. The individual can also submit a new application for the upcoming election (if before book closing) or future elections (if after book closing).

Further, an individual who believes that her voter registration application has been denied in violation of the National Voter Registration Act or Florida election law may file a written complaint with the State Department. The complaint must state the alleged violation and whether the department, a voter registration agency, a supervisor, the Department of Highway Safety and Motor Vehicles, or an Armed Forces Recruitment Center is responsible.⁴⁵ The State Department will attempt to resolve the complaint through an informal process that cannot last longer than 30 days or, if the complaint is filed within 120 days before an election, longer than 20 days.⁴⁶

If a person files a written complaint with the State Department, participates in an informal process, and an agreement is not reached or the alleged violation is not corrected within 90 days after the State Department receives the complaint, (or within 20 days if the error or violation occurred 120 days before an election), then the person may bring an action for declaratory or injunctive relief in the circuit court in the county where the alleged violation occurred.⁴⁷

If the alleged error or violation occurred within 30 days before the date of a state or federal election, and the violation will affect a person's right to vote, then the complaining party may immediately bring an action in the circuit court where the alleged violation occurred.⁴⁸

IDENTIFICATION REQUIREMENTS

What identification is required for voter registration?

Applicants are required to write on their voter registration application a current and valid driver’s license number, Florida identification card number, or the last four digits of the applicant’s social security number or indicate that they have not been issued one of these.⁴⁹ An applicant can obtain a Florida ID number and card from the Florida Department of Highway and Motor Vehicles.

When an applicant who has never voted in the state registers by mail, and the Division of Elections (“the Division”) has verified that the applicant has not been issued a current and valid Florida driver’s license, Florida identification card, or social security number, the applicant must provide a copy of one of the following proofs of identification, provided they contain the name and photograph of the applicant and have not expired: 1) United States passport, 2) employee badge or identification, 3) buyer’s club identification, 4) debit or credit card, 5) military identification, 6) student identification, 7) retirement center identification, 8) neighborhood association identification or, 9) public assistance identification.⁵⁰ The following documents, provided they contain the name and current residence address of the applicant, are also acceptable: 1) utility bill, 2) bank statement, 3) government check, 4) paycheck, or 5) other government document (excluding a voter identification card).⁵¹ If a first-time voter does not mail proof of identification with her application, she may present it at any time prior to voting.⁵²

Some first-time voters who register by mail are exempt from the proof of identification requirement. This identification is not required if the voter is 65 years of age or older; has a temporary or permanent physical disability; is a member of the uniformed service or Merchant Marines on active duty and by reason of active duty is absent from the county on Election Day; is the spouse or dependent of a member of the uniformed service or Merchant Marines who by reason of the active duty is absent from the county on Election Day; or currently resides outside the United States.⁵³ If the applicant clearly provides information a registration official can use to determine that the applicant meets one of the exemptions to the identification requirements, the official makes a notation on the statewide record and the applicant is not required to provide identification.⁵⁴

What are the identification requirements at the polling place?

Every voter must present at the polls one of the following valid picture identifications: 1) Florida driver’s license, 2) Florida identification card issued by the Department of Highway Safety and Motor Vehicles, 3) United States passport, 4) debit or credit card, 5) military identification, 6) student identification, 7) retirement center identification 8) neighborhood association identification, or 9) public assistance identification.⁵⁵ If this identification does not include a valid signature, additional identification that provides the signature will be required.⁵⁶ The clerk will compare the signature on the identification with the voter’s signature in the precinct register.⁵⁷ If the voter’s signature does not match, the voter can fill out an affidavit and vote by regular ballot.⁵⁸ If a voter does not have the proper identification or has registered by mail and has not provided the necessary identification, the voter can cast a provisional ballot.⁵⁹ Written evidence supporting eligibility to vote must be provided to the supervisor of elections no later than 5 p.m. on the second day following the election.⁶⁰ The canvassing board will determine the validity of the ballot.⁶¹

What identification is required to obtain or file an absentee ballot?

Most first-time voters who register to vote by mail and who have not provided the required proof of identification by the time they receive an absentee ballot must send with their absentee ballots a copy of photo identification (e.g., United States passport, debit or credit card, military identification, student identification, retirement center identification, neighborhood association identification, public assistance identification) or identification that shows the voters' name and current residence address (e.g., utility bill, bank statement, government check, paycheck, or other government document, excluding a voter identification card).⁶²

What identification is required to file a provisional ballot?

Any voter whose eligibility is in question can vote a provisional ballot, regardless of whether the voter has identification.⁶³

VOTER REGISTRATION LIST MAINTENANCE

For what reasons can a person’s name be removed from a list of registered voters?

Election officials can remove names from the voter registration list for the following reasons: 1) the written request of the voter, 2) the voter has been convicted of a felony, 3) the voter has been adjudicated mentally incompetent with respect to voting, 4) death of the voter, 5) information from an election official in another state indicating that the voter has registered in that state, or 6) in accordance with routine list maintenance proceedings (see below for more details).⁶⁴

Additionally, in Florida, if the Supervisor or State Department determines that a voter is not 18 years old, not a citizen of the United States, a fictitious person, or has listed a residence that is not her legal residence, the Supervisor can, upon giving the registered voter notice and the opportunity for a hearing, remove that person from the registered voter system.⁶⁵

Under what circumstances will a person’s name be placed on a list of inactive voters?

A person’s name will be placed on the list of inactive voters if the Supervisor receives information or has reason to believe that a voter has changed addresses, sends a confirmation, and receives no response. Specifically, when the Supervisor receives change-of-address information from: 1) the United States Postal Service, 2) returned non-forwardable return-if-undelivered mail sent to all registered voters in the county, 3) returned non-forwardable return-if-undelivered address confirmation requests mailed to all voters who have not voted in the last two years and did not request in writing that their registration records be updated, 4) jury notices signed by the voter and returned to the courts, 5) the Department of Highway Safety and Motor Vehicles, or 6) when the Supervisor has reason to believe that the voter has changed addresses, the Supervisor sends by forwardable return-if-undelivered mail an address confirmation notice to the voter’s last registered address.⁶⁶

The confirmation notice will contain a postage prepaid return form. If the form is returned in 30 days indicating the voter has moved to another state, the voter will be removed from the statewide voter registration system. If the form is returned in 30 days indicating the voter has moved to another address within the state, the voter registration system will be updated. The voter can also use the form to verify that the address of her legal residence has not changed. Anyone who does not return the form within 30 days or for whom the address confirmation has been returned as undeliverable will be deemed “inactive” and their names will be removed from the voter registration system if they do not vote, request an absentee ballot, or update their registration information by the second general election after being placed on the “inactive” list.⁶⁷

This list maintenance program must be conducted by each Supervisor, at a minimum, in every odd numbered year and must be completed by 90 days before any federal election.⁶⁸

How does the voter get her name back on the active list?

If a voter on the “inactive” list votes, requests an absentee ballot, or updates her registration information any time prior to the second general election after being placed on the “inactive” list, the

voter will be removed from the “inactive” list.⁶⁹

What should the voter do if she changes her address?

A voter who moves to another county in Florida should update her address on a signed Florida registration application.⁷⁰ A voter who moves within the same county can also update her address by calling, emailing, or writing to her Supervisor. Any notice other than signed and written notice should include the voter’s date of birth.⁷¹ The Supervisor will change the voter’s record as soon as practical and issue a new voter information card.⁷² A voter may change her address even after the registration books have been closed.⁷³

Additionally, a voter who moves from the precinct in which she is registered to vote and does not change her address on a voter registration form may still vote in the precinct in which she has her legal residence, provided that she completes an affirmation in substantially the following form:

*Under the penalties for false swearing, I, [Name of voter] affirm that the former address of my legal residence was [Address of legal residence] in municipality of [name of municipality] in [name of county] County, Florida, and I was registered to vote in the [precinct number] precinct of [name of County] County, Florida; that I have not voted in the precinct of my former registration in this election; that I now reside at [Address of legal residence] in the Municipality of [name of municipality] in [name of county] County, Florida, and am therefore eligible to vote in the [precinct number] precinct of [name of County] County, Florida; and I further affirm that I am otherwise legally registered and entitled to vote.
(Signature of voter whose address of legal residence has changed)⁷⁴*

This affirmation along with verification of the voter’s registration entitles her to vote. If her registration or eligibility can not be verified, the voter can cast a provisional ballot.⁷⁵

What are the procedures for removing the names of persons who have felony convictions?

The State Department identifies possible registered voters who have been convicted of a felony and whose voting rights have not been restored. If the State Department determines that this identification is credible and reliable, it notifies the Supervisor and provides the supporting documentation indicating the individual’s potential ineligibility to be registered.⁷⁶

Within seven days of receiving this information, the Supervisor must send that voter a notice stating that the Supervisor believes that the voter’s registration is invalid. The Supervisor must include along with the notice a copy of supporting documentation, a return form that requires the voter to admit or deny the information for a final determination of eligibility by the Supervisor, a statement that failure to respond within 30 days may result in a determination of ineligibility and removal from the voter list, a statement that if the voter contests the information she can request a hearing for purposes of determining eligibility, instructions for how to contact the Supervisor if she needs assistance resolving the matter, and instructions on how to restore civil rights after a felony conviction.⁷⁷

If the notification letter is returned as undeliverable, the Supervisor must publish notice in a newspaper of general circulation in the county in which the voter was last registered, containing 1) the voter's name and address, 2) a statement that the voter is potentially not eligible to vote, 3) a statement that failure to respond within 30 days may result in removal from the voter registration system, 4) instructions on how to contact the Supervisor's office to receive information on the potential ineligibility and how to resolve the matter, and 5) instructions to contact the Supervisor's office if further assistance is needed.⁷⁸ If the registered voter fails to respond to these notices, responds and confirms the accuracy of the information leading to the potential ineligibility, or denies the information but does not request a hearing, the Supervisor makes a final determination of the voter's eligibility. If the registered voter requests a hearing, the Supervisor sends notice as to the time and place of the hearing and after hearing all the evidence makes a final determination.⁷⁹

Any voter whose name is removed from the statewide voter registration system on the basis of a determination of ineligibility who subsequently becomes eligible to vote can reregister and have her name added to the statewide voter registration system.⁸⁰

May a person whose name has been removed because of a felony conviction have her right to vote restored?

Yes. Persons with felony convictions may seek the restoration of their right to vote by submitting a Restoration of Civil Rights application to the Office of Executive Clemency, 2601 Blairstone Road, Building C, Room 229, Tallahassee, FL 32399-2405, (850) 488-2952, or visit their website at <https://fpc.state.fl.us/Clemency.htm>. For assistance with navigating the application process, please contact the ACLU of Florida at (786) 363-2711.

What are the procedures for removing names of persons who have been found mentally incompetent?

The State Department identifies registered voters who may have been judged mentally incapacitated with respect to voting. The State Department follows the same procedure as with information they obtain about individuals who may have been convicted of felonies.⁸¹

What may a voter do if she learns her name has been removed from the registered voter's list in error?

If a voter realizes that her name has been wrongly removed from the registration list prior to the next election, she should provide proof that her name was removed in error to the Supervisor of Elections. The Supervisor is required to restore the voter's name upon receiving "satisfactory proof," even if the deadline for voter registration has passed.⁸²

On Election Day, if a voter is told that her name is not on the voter registration list, and she believes it has been removed in error, the voter should request a provisional ballot. A person casting a provisional ballot has the right to present written evidence supporting her eligibility to vote to the Supervisor of Elections by not later than 5:00 p.m. on the second day following the election.⁸³ (More information about provisional ballots is provided in Section IV).

Finally, she may file a written complaint with the Division of Elections at the State Department, as described above.⁸⁴

Who may obtain a list of registered voters?

Anyone may obtain a list of registered voters, pursuant to Florida's public records law.⁸⁵ However, the following information is exempt from disclosure in public records:

- All declinations to register to vote
- Information relating to where a person registered to vote or updated her registration to vote
- A voter's social security number, Florida identification number, and driver's license number
- A voter's signature⁸⁶

Additionally, there are particular exemptions from the public records law for certain individuals, including some victims of crime, state and municipal employees, current and former law enforcement personnel, firefighters, judges, state attorneys and prosecutors, federal prosecutors, guardians ad litem, and the spouses and children of these persons.⁸⁷

ABSENTEE AND EARLY VOTING

Who is permitted to vote by absentee ballot?

Any qualified registered voter may request an absentee ballot.⁸⁸

How may a person request an absentee ballot?

A qualified voter may request a ballot in person or in writing or, if directly instructed by the voter, a member of the voter’s immediate family or legal guardian may request an absentee ballot in writing or telephonically. The request must be made to the county Supervisor of Elections.⁸⁹ One request for an absentee ballot will be considered sufficient for a person to receive absentee ballots through the next two regularly scheduled general elections unless the voter indicates that the request is limited to a specific election.⁹⁰ Such a request may be cancelled when any first class mail that is sent to the voter is returned as undelivered.⁹¹

The person making a request for an absentee ballot must provide the name of the voter, the voter’s address, the voter’s date of birth, the requester’s name, the requester’s address, the requester’s driver’s license number (if available), the requester’s relationship to the voter, and the requester’s signature (for written requests only).⁹²

When qualified voters request an absentee ballot on a federal postcard application, the request is effective for all elections through the next two regularly scheduled general elections.⁹³ The Supervisor should mail an absentee ballot to all qualified voters who are overseas and requested an absentee ballot by at least 35 days prior to the primary and at least 45 days prior to the general.⁹⁴ If an overseas voter provides an email address, the Supervisor will inform the voter of the names of candidates who will be on the ballots via email by no later than 30 days before each election.⁹⁵

Upon receipt of a request for an absentee ballot, the Supervisor of Elections must provide an absentee ballot by: 1) forwardable mail to absentee voters who are entitled to vote under the Uniformed and Overseas Citizens Absentee Voting Act,⁹⁶ or 2) nonforwardable, return if undeliverable, mail to the address of the voter as it appears on file at the Supervisor’s office unless the voter indicates a different address because she is absent from the county and does not plan to return before the election, in a hospital, assisted-living facility, nursing home, short term medical facility or correctional facility, or can not occupy the residence due to natural disaster or other emergency in which case the Supervisor should mail the ballot to another address that the voter designates.⁹⁷ If the Supervisor is mailing the ballot, she must do so by no later than four days before the election.⁹⁸

Finally, a voter may pick up an absentee ballot at her Supervisor’s office through 7 p.m. on Election Day after providing identification.⁹⁹ A designee may also pick up the absentee ballot on Election Day or up to five days prior. The designee must provide photo identification and written authorization from the voter and must complete an affidavit provided by the Supervisor.¹⁰⁰ Furthermore, a designee can only pick up two absentee ballots per election in addition to the designee’s own ballot, unless the additional ballots are for immediate family, which includes the designee’s spouse or the parent, child, grandparent, or sibling of the designee or of the designee’s spouse.¹⁰¹

When is the deadline for requesting an absentee ballot?

The request for an absentee ballot must be received no later than 5:00 p.m. on the sixth day before the election.¹⁰²

May a first time voter cast an absentee ballot?

Yes, Florida law makes provisions for first time voters to cast absentee ballots. First-time voters who registered to vote by mail, and who have not provided the required proof of identification by the time they receive an absentee ballot and are not exempt from these requirements, must send with their absentee ballots a copy of photo identification or identification which shows the voters' name and current residence address (the full list of acceptable identifications and individuals who are exempt is listed above),¹⁰³ excluding a voter identification card.¹⁰⁴

The Supervisor must enclose with the absentee ballot three envelopes: a secrecy envelope, into which the voter will enclose her marked ballot, an envelope containing the Voter's Certificate, into which the voter will place the secrecy envelope, and a mailing envelope, which is addressed to the Supervisor and into which the absent voter places the envelope containing the Voter's Certificate and a copy of the required identification.¹⁰⁵

The Voter's Certificate requires first-time voters to certify that they are qualified and registered in a particular county, they have not and will not vote more than one ballot, and they understand that any voting related fraud can lead to a felony conviction, they understand that in order to have their ballot counted, they must provide a current and valid identification, as listed in the instructions that they receive, unless they are exempt from such requirement.¹⁰⁶

What steps must a voter take if she requests but does not receive an absentee ballot?

A voter who requests an absentee ballot but does not receive it can still go to the polls to vote. If the election officials are unable to determine whether the Supervisor has received that person's absentee ballot, the voter can cast a provisional ballot.¹⁰⁷

How must voters cast an absentee ballot to ensure that it will be counted?

To ensure that absentee ballots will be counted, the voter must return the completed ballot to the county Supervisor of Elections by no later than 7:00 p.m. on the day of the election.¹⁰⁸ The voter must mark her own ballot unless she is unable to do so because of blindness, inability to read or write, or disability.¹⁰⁹ If the voter needs assistance marking her ballot, then she may select a person of her choice, other than her employer, an agent of the employer, or an officer or agent of the voter's union, to mark her ballot.¹¹⁰

The voter must mark only the number of candidates of choice for a race as indicated on the ballot.¹¹¹ Voters must also sign their names on the absentee ballot on the line above "voter's signature."¹¹² Overseas voters must also provide the date on which the ballot is signed.¹¹³

The marked ballot must be inserted into the secrecy envelope, which is inserted into the mailing envelope that is addressed to the Supervisor. The voter must fill out the voter's certificate on the back of the mailing envelope. Although the voter's signature is required, the absentee ballot is not automatically disqualified if the signature of the voter does not cross the seal of the mailing envelope.¹¹⁴ An overseas voter must additionally include the date she signed the voter's certificate. The completed envelope must be mailed or delivered to the Supervisor.¹¹⁵ Prior to counting an absentee ballot, the Supervisor will verify the signature on the envelope with the signature in the registration records.¹¹⁶

When is the deadline for casting an absentee ballot?

All completed absentee ballots must be received by the Supervisor's office no later than 7:00 p.m. on Election Day in order to be counted.¹¹⁷

Are there any other requirements for casting an absentee ballot?

No.

When will absentee ballots be counted?

The county canvassing board may begin counting absentee ballots as early as 7:00 a.m. on the sixth day before the election, but no later than noon on the day after the election.¹¹⁸ The county canvassing board is comprised of the Supervisor of Elections, a county court judge who must serve as the chair of the board, and the chair of the board of county commissioners.¹¹⁹ No result is to be released until after the closing of the polls in that county on Election Day.¹²⁰

What is the procedure for determining if an absentee ballot will be counted?

The Supervisor compares the signature on the voter's certificate with the signature in the registration books to determine whether the voter is registered in the county. Once the Supervisor has received the voted ballot, she may record on the voter's registration certificate that the voter has voted. After an absentee ballot is received by the Supervisor, the ballot is deemed to have been cast, and changes or additions may not be made to the voter's certificate.¹²¹ Further, if the Supervisor determines that a voter who was issued a replacement ballot voted more than once, the canvassing board will determine which ballot, if any, to count.¹²²

The ballot of a voter who dies after casting an absentee ballot but on or before Election Day will be counted as long as the ballot was postmarked by the United States Postal Service, date-stamped with a verifiable tracking number by common carrier, or already in the possession of the Supervisor of Elections before the voter's death.¹²³

If any voter or candidate present at the canvass believes that an absentee ballot is illegal due to a problem on the voter's certificate, she may, at any time before the ballot is removed from the envelope, file with the canvassing board a protest against the canvass of that ballot, specifying the precinct, the ballot, and the reason she believes the ballot to be illegal. A challenge based on a voter certificate defect may not be accepted after the ballot has been removed from the mailing envelope.¹²⁴

The Supervisor of Elections, on behalf of the county canvassing board, notifies each voter whose ballot was rejected because of a difference between the voter's signature on the ballot and on the

voter registration record. When this occurs, the Supervisor also mails a voter registration application to the voter to be completed indicating the voter's current signature. The Supervisor can also put into place additional methods for updating a voter's signature.¹²⁵

What should a person do if she requested an absentee ballot but wants to vote in person on Election Day?

A voter who has returned a voted absentee ballot to the Supervisor is deemed to have cast her ballot and is not entitled to vote another ballot or to have a provisional ballot counted by the county canvassing board. A voter who has received an absentee ballot and has not returned the voted ballot to the Supervisor, but desires to vote in person, should return the ballot, whether voted or not, to the election board in the voter's precinct or to an early voting site. The returned ballot must be marked "canceled" by the board and placed with other canceled ballots.¹²⁶

However, if the voter does not return the ballot and the election official:

- Confirms that the Supervisor has received the voter's absentee ballot, the voter is not allowed to vote in person. If the voter maintains that she has not returned the absentee ballot or remains eligible to vote, the voter must be provided a provisional ballot.¹²⁷
- Confirms that the Supervisor has not received the voter's absentee ballot, the voter must be allowed to vote in person. The voter's absentee ballot, if subsequently received, is not counted and remains in the mailing envelope, and the envelope is marked "Rejected as Illegal."¹²⁸
- Cannot determine whether the Supervisor has received the voter's absentee ballot, the voter may vote a provisional ballot.¹²⁹

Is there early voting? If so, describe.

A Supervisor must allow early voting in the Supervisor's main office or in branch offices, provided they are permanent facilities and have been used as such for at least one year prior to the election. The Supervisor may also designate any city hall or permanent public library facility as early voting sites as long as to the extent practical they are geographically located so as to provide all voters in the county an equal opportunity to cast a ballot.¹³⁰ Furthermore, municipalities and special districts may provide early voting in municipal elections that are not held in conjunction with county or state elections.¹³¹

All early voting sites must be open on the same days for the same amount of time. Any person in line at the closing of an early voting site must be allowed to vote.¹³² The Supervisor designates early voting sites and the areas within these sites where the voting activities occur no later than the 30th day prior to an election.¹³³

Early voting occurs between the 15th day and second day before an election. For special elections, early voting occurs between the 8th day and second day before an election. Early voting must occur for eight hours on the weekdays and eight hours in the aggregate each weekend at each site during the applicable periods. Early voting sites open no earlier than 7:00 a.m. and close no later than 7:00 p.m. on each applicable day.¹³⁴

The Supervisor tracks the voter's precinct for each early voted ballot. The ballot of each person voting early is counted even if the voter dies on or before Election Day. The results or tabulation of votes cast during early voting may not be made before the close of the polls on Election Day. Results are reported by precinct but may not be tabulated before the close of the polls on Election Day.¹³⁵

During an early voting period, each Supervisor makes available the total number of voters casting a ballot at each early voting location during the previous day. Each Supervisor must prepare an electronic data file listing the individual voters who cast a ballot during the early voting period. The information must be updated and made available no later than noon of each day and provided to the division of elections contemporaneously.¹³⁶

The voter must provide identification and must complete an Early Voting Voter Certificate in substantially the following form:

I, (insert name), am a qualified elector in this election and registered voter of (insert county) County, Florida. I do solemnly swear or affirm that I am the person so listed on the voter registration rolls of (insert county) County and that I reside at the listed address. I understand that if I commit or attempt to commit fraud in connection with voting, vote a fraudulent ballot, or vote more than once in an election I could be convicted of a felony of the third degree and both fined up to \$5,000 and imprisoned for up to 5 years. I understand that my failure to sign this certificate invalidates my ballot.
(Voter's Signature)
(Address)
*(City/State)*¹³⁷

Any voter may challenge a voter seeking to vote early, in the same manner as with those who vote on Election Day. Any challenged voter must vote a provisional ballot. The canvassing board reviews the ballot and decides the validity of the ballot by majority vote.¹³⁸

Ballots cast early are counted in substantially the same way as ballots cast on Election Day.¹³⁹

POLLING PLACE LOCATIONS AND PROCEDURES

What hours are the polls open on Election Day?

Polls are open between 7:00 a.m. and 7:00 p.m.¹⁴⁰

When is the final list of polling place locations made available to the public?

Polling place locations are finalized no more than 30 days and no less than 7 days prior to an election.¹⁴¹

How are decisions about polling precincts and polling place locations made?

The board of county commissioners alters or creates polling places upon the recommendation and approval of the Supervisor of Elections. Each precinct must be, as nearly as practicable, composed of contiguous and compact areas. The Supervisor will designate a polling place, which meets all the requirements described throughout this publication, at a suitable location within each precinct. After its designation, the precinct should not be changed except with the consent of the Supervisor and a majority of the members of the board of county commissioners.¹⁴² Public tax-supported buildings must be made available for use as polling places at the Supervisor's request.¹⁴³

How and when will voters be notified about polling place changes?

Between thirty (30) days and seven (7) days before an election, county Supervisors of Elections must post notice of a change in polling places at least once in a newspaper of general circulation. Additionally, a Supervisor must send a notice of the change to every registered voter affected by the change, at least 14 days before the election. If there is an emergency or there is not sufficient time to give notice as provided above, that requires the changing of a polling place and there is not enough time to meet these notice requirements, the notice of polling place change and information about the new location must be posted at the original polling place location.¹⁴⁴

What activities are restricted at polling places on Election Day?

In addition to other restrictions listed throughout this publication, individuals, political committee, and other groups are prohibited from soliciting voters within 100 feet of the entrance to any polling place or early voting site, except that exit-polling is permitted.¹⁴⁵ Before the opening of the polling place or early voting site, the Supervisor designates the no-solicitation zone based on the particular characteristics of each polling place and the clerk or Supervisor marks the boundaries.¹⁴⁶ It is a misdemeanor for any person to solicit a voter in an effort to provide assistance at or within 100 feet of the entrance of a polling place or early voting site.¹⁴⁷

Each election board possesses full authority to maintain order at the polls and enforce obedience to its lawful commands during the election and canvassing period.¹⁴⁸ The Supervisor or the clerk may additionally take any reasonable action necessary to ensure order at the polling places, including, but not limited to, having disruptive and unruly persons removed by law enforcement officers from the polling room or place or from the 100-foot zone surrounding the polling place.¹⁴⁹

No photography is permitted in the polling room or early voting area.¹⁵⁰

What activities are permitted at polling places on Election Day?

In addition to other activities described throughout this publication, the State Department, or in case of municipal elections the governing body of the municipality must print, in large type on at least two cards per precinct, instructions for voters. The Supervisor provides these cards to the precincts and the election inspectors display them as information for voters.¹⁵¹

The cards contain information about how to vote and a list of rights and responsibilities afforded to Florida voters. The Voter's Bill of Rights states that each registered voter in the state shall have the right to:

1. Vote and have her vote accurately counted.
2. Cast a vote, if she is in line at the official closing of the polls in that county,
3. Ask for and receive assistance with voting.
4. Receive up to two replacement ballots if she makes a mistake prior to the ballot being cast.
5. Receive an explanation if her registration or identity is in question
6. Cast a provisional ballot, if her registration or identity is in question.
7. Receive written instruction to use when voting, and, upon request, oral instructions for voting from election officers.
8. Vote free from coercion or intimidation by election officials or any other person.
9. Vote on a voting system that is in working condition and that will allow votes to be accurately cast.¹⁵²

The Voter Responsibilities states that each registered voter in the state should:

1. Familiarize herself with the candidates and issues.
2. Maintain with the office of the Supervisor of Elections a current address.
3. Know the location of her polling place and its hours of operation.
4. Bring proper identification to the polling station.
5. Familiarize herself with the operation of the voting equipment in her precinct.
6. Treat precinct workers with courtesy.
7. Respect the privacy of other voters.
8. Report any problems or violations of election laws to the Supervisor of Elections.
9. Ask questions, if needed.
10. Make sure that her completed ballot is correct before leaving the polling station.

The Responsibilities also includes a statement that failure to perform any of these responsibilities does not prohibit a voter from voting.¹⁵³

A deputy sheriff is present at each polling place and early voting site, who is subject to the lawful instructions of the clerk or inspectors, and who is responsible for maintaining order.¹⁵⁴

Can voters request assistance with voting equipment at the polling place?

Yes, voters have the right to ask for and receive assistance in voting. A voter who requires assistance to vote because of blindness, disability, or inability to read or write may request the assistance of two election officials or some other person of the voter's choice, other than her employer, an agent of her employer, or an officer or agent of her union, to assist her in casting her vote.¹⁵⁵ If the voter has requested an absentee ballot, she may also choose such an individual to assist her with voting

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that ballot.¹⁵⁶ Further, any such voter may have the person assisting her read, without suggestion or interference, the titles of the offices to be filled, the candidates, and the issues on the ballot.¹⁵⁷

When a voter needs assistance, the clerk or one of the inspectors will require the voter to take an oath affirming that she needs assistance. Additionally, if the person providing assistance is not an election official, the clerk or one of the inspectors will require the assistor to take an oath stating that she has been requested to assist the voter, that she meets the qualifications to assist the voter, and that she did not solicit within 100 feet in an effort to provide assistance.¹⁵⁸

If any voter enters the polling place and needs further instructions, two election officials who are not both members of the same political party, if present, or, if not, two election officers who are members of the same political party, will give instructions to the voter. No officer or person assisting a voter shall in any manner request, suggest, or seek to persuade or induce a voter to vote for or against any particular ticket, candidate, amendment, question, or proposition. After giving the voter instructions and before the voter has voted, the officers or persons assisting the voter leave, and the voter will vote in secret.¹⁵⁹

Can a child /minor enter the voting booth with the voter?

A child or minor in the care of a voter may enter a polling place with the voter.¹⁶⁰ Florida statutes state that it is illegal for any person other than the voter to be in the voting booth with the voter unless the voter needs assistance.¹⁶¹ This statute would presumably apply to children since there is no explicit exception.

What accommodations must be made for non-English speakers or persons unable to read?

If a voter requires assistance because she is unable to read or write, she may request assistance as described above.¹⁶²

Also, the Voting Rights Act of 1965 requires some states to provide voting materials, including ballots, in English and other languages.¹⁶³ In Florida, the following counties are required to provide bi-lingual voting materials for the following persons:¹⁶⁴

Broward County	-	Spanish heritage, American Indian (Mikasuki, Muskogee)
Collier County	-	Spanish heritage, American Indian (Mikasuki)
Miami-Dade County	-	Spanish heritage, American Indian (Mikasuki)
Glades County	-	American Indian (Muskogee)
Hardee County	-	Spanish heritage
Hendry County	-	Spanish heritage, American Indian (Mikasuki, Muskogee)
Hillsborough County	-	Spanish heritage
Orange County	-	Spanish heritage
Monroe County	-	Spanish heritage

Also, the local laws of Miami-Dade County require, in precincts where a significant portion of the electorate is Haitian-American, that voting booths contain Creole translations in addition to Spanish

translations in county-wide elections and other appropriate elections determined by the county board of commissioners. Furthermore, where ballots are provided in Creole, those ballots should be advertised in a Creole language newspaper selected by the Supervisor of Elections.¹⁶⁵

What accommodations must be made for voters with disabilities?

HAVA requires states to have at least one voting machine at each polling place that is accessible to individuals with disabilities, including persons with visual disabilities.¹⁶⁶ All polling places in Florida are required to be accessible and usable by persons with disabilities, including, among other things:¹⁶⁷

- Parking spaces accessible to persons with disabilities.
- Adequate signs pointing to accessible paths of travel to the polling place.
- Level, stable, and slip-resistant surfaces.
- An unobstructed path to the polling place, and an unobstructed area for voting.
- Sufficient lighting along the accessible path of travel and inside the polling place.¹⁶⁸

If a polling place does not meet these requirements, the county Supervisor is required to change the polling place to one that does meet the requirements.¹⁶⁹

Also, if a person with disabilities requires assistance with voting, she may request assistance as described above.¹⁷⁰

If a voter is in line to vote at poll closing time but has not reached the voting machine may she still vote?

Yes. A voter may vote if she is in line at the official closing of the polls in that county.¹⁷¹

May voters who have moved to a new address in another precinct but who have not registered at their new address, be allowed to vote at the precinct for their old address?

Florida statutes state that no person will be permitted to vote in any election precinct or district other than the one in which the person has her legal residence and in which the person is registered.¹⁷²

A voter who moves from the precinct in which she is registered can vote in the precinct to which she has moved her legal residence, provided she completes a voter registration card or an affirmation certifying her change of legal residence and that her registration and eligibility is confirmed.¹⁷³ If a voter moves to another state after the registration books in that state have closed, she can vote absentee in the county of her former residence for the offices of President and Vice President of the United States.¹⁷⁴

Are poll-watchers or other non-voters permitted at the polling place?

Poll-watchers are permitted at the polling place. Only the following people may enter a polling room or polling place: official poll watchers, inspectors, election clerks, the Supervisor of Elections or

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her deputy, voters intending to vote, persons in the care of a voter or persons caring for a voter, law enforcement officers or emergency services personnel with permission of the clerk or a majority of the inspectors; a person, whether or not a registered voter, who is assisting with or participating in a simulated election for minors, as approved by the Supervisor of Elections.¹⁷⁵

CHALLENGES AND VOTER INTIMIDATION

Can a person’s right to vote be challenged at the polls?

Yes. A poll watcher or another voter may challenge a person’s right to vote at the polls. If this occurs, the challenger must complete a written “oath” outlining the reasons why she believes the voter should not be allowed to cast a ballot.¹⁷⁶ The challenger must give the completed oath to the poll clerk or inspector who will deliver it to the person being challenged.¹⁷⁷ The challenged person may vote by provisional ballot.¹⁷⁸

Who can challenge a person’s right to vote at the polls?

Any voter or any poll watcher may challenge any voter.¹⁷⁹

What can a person do if challenged at the polls?

A person who is challenged at the polls is entitled to cast a provisional ballot.¹⁸⁰ She has the right, as do all provisional voters, to present written evidence supporting her eligibility to vote to the Supervisor of Elections by not later than 5:00 p.m. on the second day following the election.¹⁸¹

What steps are taken if a voter’s name does not appear on the poll book?

A voter who claims to be properly registered but whose eligibility can not be determined is entitled to vote by provisional ballot.¹⁸²

What constitutes illegal intimidation of voters at the polls?

It is a felony in the state of Florida to directly or indirectly “intimidate, threaten, or coerce” anyone with the intent of interfering with their right to vote.¹⁸³ This includes, among other things, interfering with a voter’s right to vote for the candidate or ballot measure of the voter’s choice or interfering with a voter’s right not to vote in any election.¹⁸⁴ It is also a felony to use or threaten to use force, violence, intimidation, or any tactic of coercion to induce an individual to refrain from registering to vote or from acting as a legally authorized election official or poll watcher. An individual may not knowingly use false information to challenge a person’s right to vote.¹⁸⁵ As described above, most solicitation within 100 feet of a polling place or early voting site is illegal; exit polling, however, is permitted within the 100-foot boundary.¹⁸⁶

Other forms of illegal intimidation include efforts by government officials, including election officers, to deny someone the opportunity to vote because of a minor error in their registration or application record.¹⁸⁷ Additionally, government officials are prohibited from applying any standard, practice, or procedure different from the standards, practices, or procedures applied to other individuals within the same political subdivision who have been found to be qualified to vote.¹⁸⁸

It is a felony for an election official or any person assisting a voter to willfully disclose how a voter voted,¹⁸⁹ and for an employer to discharge, or threaten to discharge, an employee for voting or not voting in any election.¹⁹⁰

Are law enforcement officers allowed in a polling place during voting hours?

Yes, a deputy sheriff will be present at each polling place and each early voting site from the time they open until the election is completed. These deputy sheriffs are subject to all lawful commands

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of the clerk or inspectors and must maintain good order. The deputy may summon assistance from bystanders if necessary to maintain peace and order at the polls or early voting sites.¹⁹¹ Additionally, uniformed law enforcement officers or emergency service personnel are allowed in the polling place if they are voting or are there with permission of the clerk or a majority of the inspectors.¹⁹²

To whom should a person report acts of intimidation?

Persons who are victims of or witnesses to voter intimidation may contact a local state attorney or submit a sworn written complaint to the Florida Elections Commission, Suite 224 Collins Building, 107 West Gaines Street, Tallahassee, FL 32399-0250, (850) 922-4539.¹⁹³ If a sworn complaint is submitted to the Florida Elections Commission, it must state whether the same complaint has also been filed with any state attorney.¹⁹⁴

PROVISIONAL BALLOTS

What is a provisional ballot?

A provisional ballot is a conditional electronic or paper ballot that may be cast by a voter at a polling place on Election Day.¹⁹⁵

Who may request a provisional ballot?

Under HAVA and Florida law, any voter claiming to be properly registered and eligible to vote, but whose eligibility cannot be determined should request and be given a provisional ballot.¹⁹⁶ Additionally, if a court or other order extends the polling place hours, and a person votes in an election after the regular poll-closing time, then she must vote using a provisional ballot.¹⁹⁷ Voters have the right to request provisional ballots but in Florida a provisional ballot will not be counted in the wrong precinct.¹⁹⁸

Why and when will provisional ballots be provided to voters?

A voter may request a provisional ballot at the polls for all elections if she meets the requirements above.¹⁹⁹ Additionally, under HAVA, election officials should tell qualified individuals of their right to vote via a provisional ballot.²⁰⁰

Who decides whether a voter gets a provisional ballot?

If there is a question as to a voter’s eligibility to vote (i.e., her name is not on the books or her vote is being challenged) the voter is entitled to vote by a provisional ballot.²⁰¹ Election officials should tell qualified individuals of their right to vote via a provisional ballot.²⁰² A voter can also request a provisional ballot.

What can a voter do if she requests but does not receive a provisional ballot?

If there is a question regarding the voter’s eligibility to vote, a voter can insist on receiving a provisional ballot. If a voter is denied a provisional ballot she should call her Supervisor’s office.²⁰³

What information must be provided to voters who cast provisional ballots?

Florida law mandates that each person casting a provisional ballot be given written instructions regarding the person’s right to provide the Supervisor of Elections with written evidence of her eligibility to vote and regarding the free access system.²⁰⁴

The free access system allows each person who casts a provisional ballot to determine whether her provisional ballot was counted in the final vote count, and if not, the reasons for its denial. Information regarding provisional ballots must be available no later than 30 days following the election. Additionally, the system must restrict information regarding an individual ballot to the person who cast the ballot.²⁰⁵

The instructions given to the voter will contain information on how to access the free access system and the information the voter will need to provide to obtain information on her particular ballot. The instructions must also include the following statement: “If this is a primary election, you should contact the Supervisor of Elections’ office immediately to confirm that you are registered and can vote in the general election.”²⁰⁶

Does the voter who cast a provisional ballot have a right to present evidence or appear in court before the election officials evaluating whether it will count?

Yes, a person casting a provisional ballot has the right to present written evidence supporting his or her eligibility to vote to the Supervisor of Elections by not later than 5:00 p.m. on the second day following the election.²⁰⁷

How do election officials determine whether a provisional ballot will be counted?

The county canvassing board individually examines provisional ballots to determine whether the ballot should be counted. In making this determination, the county canvassing board reviews the information provided in the voter's certificate and affirmation, any written evidence provided by the person who voted provisionally, any other evidence presented by the Supervisor of Elections, and, in the case of a challenge, any evidence presented by the challenger. A provisional ballot will be counted unless the canvassing board determines by a preponderance of the evidence that the voter was not entitled to vote.²⁰⁸

If the canvassing board determines that the voter was registered and entitled to vote at the precinct where she cast her ballot, the canvassing board will compare the signature on the provisional ballot envelope with the signature on the voter's registration record and, if the two signatures match, will count the ballot.²⁰⁹ Florida law is not explicit about the consequences of a signature that does not match, but presumably the ballot will not be counted.

If the canvassing board determines that the voter was not registered or entitled to vote at the precinct where the provisional ballot was cast, then the provisional ballot will not be counted. Instead, the canvassing board marks the unopened provisional ballot "Rejected as Illegal."²¹⁰

When will provisional ballots be counted?

The Supervisor of Elections designates a time and publicly accessible place for the county canvassing board to meet and count the provisional ballots.²¹¹ Public notice of the time and place of the canvass must be given at least 48 hours prior to this meeting.²¹² Information on whether or not a provisional ballot has been counted is made available no later than 30 days following the election.²¹³

How can voters find out whether their provisional ballots have been counted?

As described above, the county Supervisor of Elections office is required under Florida law to provide a free and confidential access system for voters to determine whether or not their provisional ballot was counted, as is described above. If a voter's ballot was not counted, the system should provide a reason why it was not counted.²¹⁴

Does the voter have a right to appeal?

There is no explicit statutory provision in Florida law that provides for an appeal if a provisional ballot is not counted. However, as described throughout this publication, there are avenues to file complaints for particular violations, such as if an individual believes her name was incorrectly removed from the registration rolls.²¹⁵

ENDNOTES

- 1 Fla. Stat. ch. 97.041(1)(a) (2007)
- 2 Fla. Stat. ch. 97.041(1)(b) (2007)
- 3 Fla. Stat. ch. 97.041(2) (2007)
- 4 Fla. Stat. ch. 97.055(1) (2007)
- 5 Fla. Stat. ch. 97.055(2) (2007)
- 6 42 U.S.C. § 1973gg et. seq.
- 7 Fla. Stat. ch. 97.021(40); 97.052 (1)(b); 97.057; 97.058; 97.0583 (2007)
- 8 A qualifying educational institutions is a public or private educational institution that receives state financial assistance and has as its primary mission educating or training students who are at least 18 years of age, provided that it has more than 200 students enrolled in classes and that the student government organization has requested this designation in writing and filed the request with the supervisor's office in the county in which the institution is located. Each qualifying educational institution must provide each student enrolled in that institution the opportunity to register to vote or to update a voter registration record on each campus at least once a year. Qualifying educational institutions are also encouraged to provide voter registration services at other times and places. Fla. Stat. ch. 97.021(31), 97.0583 (2007).
- 9 Statewide Uniform Voter Registration Application, Fla. Admin. R 1S-2.040 (Jan. 1, 2008). The Division of Election is located at Room 316, R.A. Gray Building, Tallahassee, Florida 32399-0250 and can be reached by phone at (850)245-6200.
- 10 Fla. Stat. ch. 97.052(1)(b)(2) (2007)
- 11 Fla. Stat. ch. 97.053 (2007)
- 12 Advancement Project, along with its co-counsel from the Brennan Center for Justice at NYU School of Law; Project Vote; Paul, Weiss, Rifkind, Wharton & Garrison LLP, and Greenberg Traurig LLP, is challenging this law in federal district court. See *Florida State Conference, NAACP v. Browning*, Civ. No. 4:07cv402 SPM/WCS (N.D. Fla. 2007). If the application is timely received but the number can not be verified, the applicant will be notified that the application is incomplete and that she must provide evidence to the supervisor sufficient to verify the authenticity of the number provided on the application. If the voter provides the necessary evidence, she will be registered. If the number is not verified when the applicant presents herself to vote, the applicant must cast a provisional ballot. The provisional ballot will be counted if the application is verified by the end of the canvassing period or if the applicant presents evidence to the supervisor of elections sufficient to verify the authenticity of the number on the application by 5 p.m. on the second day after the election. Fla. Stat. ch. 97.053 (2007). First time registrants by mail who do not have the above forms of identification must show a "current and valid" identification or that they are exempt from this requirement prior to voting. Fla. Stat. ch. 97.0535 (2007). See Fla. Stat. ch. 97.0535(a)-(b) (2007) for list of acceptable identification; see Fla. Stat. ch. 97.0535(4) (2007) for list of exemptions.
- 13 A person registering to vote must subscribe to the following oath: "I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and the Constitution of the State of Florida, that I am qualified to register as an elector under the Constitution and laws of the State of Florida, and that all information provided in this application is true." Fla. Stat. ch. 97.051 (2007).
- 14 Fla. Stat. ch. 97.053(5)(b) (2007).
- 15 The Supervisor designates the main office. Fla. Stat. ch. 101.045(1) (2007)
- 16 *Id.*
- 17 Fla. Stat. ch. 97.0535(1)(2007)
- 18 *Id.*
- 19 Fla. Stat. ch. 97.0535(1)(2007)
- 20 Fla. Stat. ch. 97.0535(2) (2007)
- 21 Fla. Stat. ch.97.053 (2007)
- 22 Fla. Stat. ch.97.055 (2007)
- 23 *Id.*
- 24 Fla. Stat. ch.97.0555 (2007).
- 25 Fla. Stat. ch. 97.053 (2007)
- 26 Fla. Stat. ch. 97.052(1)(b)(2) (2007)

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- 27 Memorandum of Law, from Mary Jill Hanson, Fla. Bar No. 727369 to Eddie Hailes, Advancement Project (May 10, 2004). Although the law has changed, there have been no substantive changes that alter the effect of this memorandum of law. *See also* Fl. Stat. ch. 97.0585 (2007).
- 28 Fla. Stat. ch. 97.0575(3)(a)-(c) (2007). An organization will be liable for a fine of \$50 for each application received by the division or the supervisor of elections more than 10 days after the applicant delivered it to the third party voter registration organization or its agents; \$100 for each application received by the third party voter registration organization or its agents before book closing deadline and submitted after the book closing date for such election; and \$500 for each application received by the third party voter registration organization but not submitted. These fines will be increased to \$250, \$500, and \$1000 respectively for each application if the third party organization or its agents acted willfully. *Id.* The date an applicant signs the form is the presumptive date these calculations begin. Fla. Stat. ch. 97.0575(5)(2007). *See also League of Women Voters v. Cobb*, 447 F. Supp. 2d 1314 (S.D. Fla. 2006)(enjoining the previous version of this law).
- 29 Fla. Stat. ch. 97.0575(3) (2007)
- 30 *Id.*
- 31 Fla. Stat. ch. 97.021(36) (2007)
- 32 Fla. Stat. ch. 97.0575 (2007). The Division of Elections of the Department of State is authorized to develop rules to implement this provision. Fla. Stat. ch.97.0575(8) (2007).
- 33 Fla. Stat. ch. 97.0575 (2007). The secretary will waive the fines if the failure to meet the deadlines is based on force majeure or impossibility of performance.
- 34 Fla. Stat. ch. 97.053 (7) (2007)
- 35 Fla. Stat. ch. 97.057(4) (2007)
- 36 Fla. Stat. ch. 97.058(6) (2007)
- 37 Fla. Stat. ch. 97.073(1) (2007)
- 38 Fla. Stat. ch. 97.052 (6) (2007)
- 39 Fla. Stat. ch. 97.052(6) (2007)
- 40 Fla. Stat. ch. 97.073 (1) (2007)
- 41 *Florida State Conference, NAACP, surpa* note 12.
- 42 Fla. Stat. ch. 97.053(6)(2007)
- 43 *Id.*
- 44 *Florida State Conference, NAACP, surpa* note 12.
- 45 Fla. Stat. ch. 97.023 (2007), *see also* Complaint Process for Violations of the National Voter Registration Act of 1993 and the Florida Election Code, Fla. Admin. R. 1S-2.036 (Jan. 29, 2006)
- 46 Fla. Stat. ch. 97.023(2)(a) (2007)
- 47 Fla. Stat. ch. 97.023(2) (2007)
- 48 Fla. Stat. ch. 97.023(3) (2007)
- 49 Help America Vote Act of 2002 (HAVA), 42 U.S.C. 15483(a)(5); Fla. Stat. ch. 97.052(2) (l)-(n) (2007)
- 50 Fla. Stat. ch. 97.0535 (2007)
- 51 Fla. Stat. ch. 97.0535(3)(b) (2007)
- 52 Fla. Stat. ch. 97.0535(1) (2007)
- 53 Fla. Stat. ch. 97.0535(4)(2007)
- 54 Fla. Stat. ch. 97.0535(1)(2007)
- 55 Fla. Stat. ch. 101.043(1) (2007)
- 56 *Id.*
- 57 *Id.*
- 58 Fla. Stat. ch. 101.49 (2007). If the person refuses to fill out this affidavit, she is entitled to vote by provisional ballot. *Id.*
- 59 Fla. Stat. ch. 101.048 (2007)
- 60 Fla. Stat. ch. 101.048(1) (2007)
- 61 Fla. Stat. ch. 101.048(2)(a) (2007)
- 62 Fla. Stat. ch. 101.6923 (2007). The same categories of individuals who are exempt from identification required of first time registrants by mail prior to voting are also exempt from the identification requirements described here. *See supra* “What Identification is required for Voter Registration?”
- 63 Fla, Stat. ch. 101.048 (2007)
- 64 Fla. Stat. ch. 98.045 and 98.065 (2007); *See also* NVRA, 42 U.S.C. § 1973gg-6
- 65 Fla. Stat. ch. 98.075 (2007)
- 66 Fla. Stat. ch. 98.065 (2007)

- 67 *Id.*
- 68 *Id.* See also NVRA, 42 U.S.C. § 1973gg-6
- 69 Fla. Stat. ch. 98.065 (2007)
- 70 Fla. Stat. ch. 97.1031(2) (2007)
- 71 Fla. Stat. ch. 97.1031(1) (2007)
- 72 Fla. Stat. ch. 97.1031(3) (2007)
- 73 Fla. Stat. ch. 97.055(2007)
- 74 Fla. Stat. ch. 101.045 (2007)
- 75 *Id.*
- 76 Fla. Stat. ch. 98.075(5) (2007)
- 77 Fla. Stat. ch. 98.075(7) (2007)
- 78 *Id.*
- 79 *Id.*
- 80 Fla. Stat. ch. 98.075 (7)(b)(6) (2007)
- 81 Fla. Stat. ch. 98.075(4), (7) (2007)
- 82 Fla. Stat. ch. 98.081(2) (2007)
- 83 Fla. Stat. ch. 101.048(1) (2007)
- 84 See *supra* Voter Registration – General; “What can a person do if her application is denied?”
- 85 Fla. Stat. ch. 119.011, 119.07 (2007)
- 86 Fla. Stat. ch. 97.0585 (2007)
- 87 Fla. Stat. ch. 119.071(4) (2007) For further information about these particular exemptions, please call the Advancement Project at (202) 728-9557.
- 88 Fla. Stat. ch. 101.62 (1) (2007)
- 89 Fla. Stat. ch. 101.62 (1)(2007)
- 90 Fla. Stat. ch. 101.62 (1)(a) (2007)
- 91 *Id.*
- 92 Fla. Stat. ch. 101.62 (1)(b) (2007)
- 93 Fla. Stat. ch. 101.694 (2007)
- 94 Fla. Stat. ch. 101.62(4)(2007)
- 95 Fla. Stat. ch. 101.6952 (2007)
- 96 Fla. Stat. ch. 101.62(4)(b)(2) (2007)
- 97 Fla. Stat. ch. 101.62(4)(b)(1) (2007) Additionally, the Supervisor will provide supervised voting for absent voters residing in assisted living facilities or nursing homes in that county, provided that there are five or more voters who wish to vote absentee in that election and that the Administrator requests supervised voting at least twenty one days prior to the election. In the absence of such a request, the Supervisor may provide for supervised voting in the facility for those persons who have requested absentee ballots. Fla. Stat. ch. 101.655 (2007)
- 98 Fla. Stat. ch. 101.62(2)(2007)
- 99 Fla. Stat. ch. 101.62(4)(b)(3) (2007)
- 100 Fla. Stat. ch. 101.62(4)(b)(4) (2007)
- 101 *Id.*
- 102 Fla. Stat. ch. 101.62(2)(2007)
- 103 See *supra* Identification Requirements; “What identification is required for voter registration?”
- 104 Fla. Stat. ch. 101.6923 (2007)
- 105 Fla. Stat. ch. 101.6921(2) (2007)
- 106 Fla. Stat. ch. 101.6921(3) (2007)
- 107 Fla. Stat. ch. 101.69(3) (2007)
- 108 Fla. Stat. ch. 101.67(2) (2007)
- 109 Fla. Stat. ch. 101.661(1) (2007)
- 110 *Id.*
- 111 Fla. Stat. ch. 101.65(3) (2007)
- 112 Fla. Stat. ch. 101.65(7) (2007)
- 113 Fla. Stat. ch. 101.65(8) (2007)
- 114 Fla. Stat. ch. 101.68(2)(c)(1)(2007)
- 115 Fla. Stat. ch.101.65 (2007)
- 116 Fla. Stat. ch.101.6103(2007)

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- 117 Fla. Stat. ch.101.67(2) (2007)
- 118 Fla. Stat. ch. 101.68(2)(a) (2007)
- 119 Fla. Stat. ch. 102.141(1) (2007). If any member of the canvassing board is unable to serve, is an opposed candidate in the election being canvassed, or is an active participant in the campaign or candidacy of any candidate who has opposition in the election being canvassed, the member will be replaced, as set forth in Section 102.141, Florida Statutes. Fla. Stat. ch. 101.141 (2007).
- 120 Fla. Stat. ch. 101.68(2)(a) (2007)
- 121 Fla. Stat. ch. 101.68(1) (2007)
- 122 Fla. Stat. ch.101.6103(2007)
- 123 Fla. Stat. ch. 101.68(2)(c)(1)(2007)
- 124 Fla. Stat. ch. 101.68(2)(d)(2007)
- 125 Fla. Stat. ch. 101.68(4) (2007)
- 126 Fla. Stat. ch. 101.69 (2007)
- 127 Fla. Stat. ch. 101.69(1) (2007)
- 128 Fla. Stat. ch. 101.69(2) (2007)
- 129 Fla. Stat. ch. 101.69(3) (2007)
- 130 Fla. Stat. ch. 101.657(1)(a) (2007)
- 131 Fla. Stat. ch. 101.657(1)(e) – (f) (2007) If a municipality or special district provides early voting, it may designate as many sites as necessary. If a municipality or special district provides for early voting in a municipal election that is not held in conjunction with county or state elections, the Supervisor is not required to conduct early voting.
- 132 Fla. Stat. ch. 101.657(1)(c) (2007)
- 133 Fla. Stat. ch. 101.657(1)(b) (2007); Fla. Stat. ch. 97.021 (2007)
- 134 Fla. Stat. ch. 101.657(1)(d) (2007)
- 135 Fla. Stat. ch. 101.657(1),(3) (2007)
- 136 Fla. Stat. ch. 101.657(2) (2007)
- 137 Fla. Stat. ch. 101.657(4)(a) (2007)
- 138 Fla. Stat. ch. 101.657(4)(b) (2007)
- 139 Fla. Stat. ch. 101.657(4)(c) (2007)
- 140 Fla. Stat. ch. 100.011 (2007)
- 141 Fla. Stat. ch. 101.71(2) (2007)
- 142 Fla. Stat. ch. 101.001 (2007)
- 143 Fla. Stat. ch. 101.71(5) (2007)
- 144 Fla. Stat. ch. 101.71 (2007)
- 145 Fla. Stat. ch. 102.031; *CBS Broadcasting, Inc. v. Cobb*, 470 F. Supp. 2d 1365 (2006)(barring the Secretary of State from enforcing the 100 foot rule in regard to exit-polling). Under Florida law, solicitation includes seeking any vote, fact, opinion, or contribution, distributing political or campaign information, conducting a poll, seeking a signature on any petition, and selling any item; however, under *CBS Broadcasting*, exit polling is permitted. Fla. Stat. ch. 102.031(4)(a)-(b) (2007)
- 146 *Id.*
- 147 Fla. Stat. ch. 101.051 (2007)
- 148 Fla. Stat. ch. 102.031(1)(2007)
- 149 Fla. Stat. ch. 102.031(4)(c)(2007)
- 150 Fla. Stat. ch. 102.031(5) (2007)
- 151 Fla. Stat. ch. 101.031(1) (2007)
- 152 Fla. Stat. ch. 101.031(2) (2007)
- 153 *Id.*
- 154 Fla. Stat. ch. 102.031(2) (2007)
- 155 Fla. Stat. ch. 101.051(1) (2007)
- 156 Fla. Stat. ch. 101.051(3) (2007)
- 157 Fla. Stat. ch. 101.051(1) (2007)
- 158 Fla. Stat. ch. 101.051(4)-(6)(2007)
- 159 Fla. Stat. ch. 101.031(4) (2007)
- 160 Fla. Stat. ch. 102.031(3)(a) (2007)
- 161 Fla. Stat. ch. 101.051(2)(2007); Fla. Stat. ch. 101.51(2007)
- 162 Fla. Stat. ch. 101.051(1) (2007)
- 163 *See* Voting Rights Act of 1965, 42 U.S.C. 1973aa-1a, et. seq.

- 164 See 28 C.F.R. Pt. 55 Appendix (2008)
- 165 See Code of Metropolitan Dade County, Florida Sec. 12-16 (2007)
- 166 HAVA, *supra* note 50 at § 15481(a)(3).
- 167 Fla. Stat. ch. 101.715 (2007)
- 168 *Id.*
- 169 Fla. Stat. ch. 101.71(2) (2007)
- 170 Fla. Stat. ch. 101.051(2007)
- 171 Fla. Stat. ch. 100.011(1) (2007)
- 172 Fla. Stat. ch. 101.045(1) (2007)
- 173 Fla. Stat. ch. 101.045(2) (2007)
- 174 Fla. Stat. ch. 101.663 (2007)
- 175 Fla. Stat. ch. 102.031(3)(2007)
- 176 Fla. Stat. ch. 101.111 (2007)
- 177 *Id.*
- 178 Fla. Stat. ch. 101.111(2) (2007)
- 179 Fla. Stat. ch. 101.111(2007)
- 180 Fla. Stat. ch. 101.111(2) (2007)
- 181 Fla. Stat. 101.048(1) (2007)
- 182 Fla. Stat. ch. 101.048(1) (2007)
- 183 Fla. Stat. ch. 104.0515, 104.0615 (2007), *see also* Fla. Stat. ch. 104.061(2007)
- 184 *Id.*
- 185 Fla. Stat. ch. 104.0615 (2007)
- 186 Fla. Stat. ch 102.031 (2007); *CBS Broadcasting, Inc. v. Cobb, supra* note 146.
- 187 Fla. Stat. ch. 104.0515(2) (2007)
- 188 *Id.*
- 189 Fla. Stat. ch. 104.23 (2007)
- 190 Fla. Stat. ch. 104.081 (2007)
- 191 Fla. Stat. ch. 102.031(2) (2007)
- 192 Fla. Stat. ch. 102.031(3)(a) (2007)
- 193 Fla. Stat. ch. 106.25(2007)
- 194 *Id.*
- 195 Fla. Stat. ch. 97.021(28) (2007); *see also* Fla. Stat. ch. 101.048(2007)
- 196 Fla. Stat. ch. 101.048 (2007); *see also* HAVA, 42 U.S.C. 15482(a)
- 197 Fla. Stat. ch. 101.049 (2007)
- 198 Fla. Stat. ch. 101.048(2) (2007)
- 199 Fla. Stat. ch. 101.048 (2007)
- 200 HAVA, 42 U.S.C. 15482(a)(1)
- 201 Fla. Stat. ch. 101.048 (2007)
- 202 HAVA, *supra* note 201.
- 203 See Fla. Stat. ch. 101.048 (2007)(a voter whose eligibility is in question has a right to vote provisionally).
- 204 Fla. Stat. ch. 101.048(5) (2007)
- 205 Fla. Stat. ch. 101.048(6) (2007)
- 206 Fla. Stat. ch. 101.048(5) (2007)
- 207 Fla. Stat. ch. 101.048(1) (2007)
- 208 Fla. Stat. ch.101.048(2)(2007)
- 209 Fla. Stat. ch. 101.048(2)(b)(1) (2007)
- 210 Fla. Stat. ch. 101.048(2)(b)2 (2007)
- 211 Fla. Stat. ch. 102.141(2) (2007)
- 212 *Id.*
- 213 Fla. Stat. ch. 101.048(6) (2007)
- 214 Fla. Stat. ch. 101.048(2) (2007)
- 215 Fla. Stat. ch. 97.023(2007); *see supra* Voter Registration – General; “What can a person do if her application is denied?”