



**June 1, 2010**

## **LEGISLATIVE REFORMS TO REMOVE BARRIERS TO VOTING IN FLORIDA**

Florida's 2010 mid-term, general election is only five months away. Prior to and on Election Day, voters will be required to navigate complicated voter registration rules and appear to vote with necessary identification. Election officials may close or consolidate polling places, which may confuse voters about the location of their precinct and create long lines at the polls. Voters may also face challenges to their eligibility to vote, and, if they appear in the wrong precinct to vote, they will be required to vote by provisional ballot, which in turn will be rejected.

Notwithstanding the efforts of some state lawmakers to advance election reform bills in recent legislative sessions, the legislature has failed to enact comprehensive election reform to correct provisions of the election code that impede the ability of voters to participate in elections. To the contrary, legislators enacted H.B. 131, which would harm voters with disabilities by delaying the replacement of touch screen voting machines from 2012 to 2016. The bill also endeavors to remove discretion from county supervisors of elections to interpret and administer the state election code. As a result of legislators' failure to address barriers to voting, serious flaws in Florida's election code that burden the right to vote persist.

### **LIMITATIONS ON EARLY VOTING**

Florida law currently requires county supervisors of elections to offer early voting in their main and branch offices. § 101.657, Fla. Stat. Supervisors may also designate a city hall or permanent public library facility as an early voting site. If any additional sites are designated, they must be geographically located so as to provide all voters in the county an equal opportunity to cast a ballot, "insofar as is practicable." *Id.* Nevertheless, the law does not require a minimum number of early voting sites per county or minimum ratio of sites to registered voters. As to the hours of early voting, the law provides that early voting must commence 15 days before an election and be offered eight hours during weekdays and an aggregate of eight hours on the weekends. *Id.*

In the 2008 general election, Floridians cast a total of 8.45 million ballots, and over 2.6 million of those ballots were cast in person at early voting sites.<sup>1</sup> The number of early voting sites varied widely by county. While Duval County had fifteen sites for 536,588 registered voters and Hillsborough had thirteen sites for 701,464 registered voters, Pinellas County, with 643,424 registered voters, offered

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<sup>1</sup><https://doe.dos.state.fl.us/fvrscountyballotreports/FVRSAvailableFiles.aspx>.

early voting at only three sites. These variances in the number of early voting sites may have affected turnout during early voting: Duval County voters cast more than 183,000 ballots and Hillsborough County voters cast more than 146,000 ballots, whereas Pinellas County voters cast only 46,368 ballots.<sup>2</sup>

As was widely reported, voters who attempted to vote during the early voting period, particularly in South Florida, were forced to wait in lines of up to eight hours to cast their ballot.<sup>3</sup> Early voters waited two and a half hours or longer at several Broward County early voting locations, four hours or longer at many Miami-Dade County locations, and two hours at several Palm Beach County locations.<sup>4</sup> The long lines likely stemmed from high turnout, limitations on hours of availability of early voting and the number of early voting sites, or delays created by printing ballots on demand. Due to the long lines, Governor Crist issued an executive order proclaiming that a state of emergency existed due in part to record turnout and long lines, and ordered the extension of voting hours during early voting.<sup>5</sup>

During the 2009 and 2010 legislative session, several bills related to early voting were introduced. During the 2010 session, Senator Nan Rich introduced a bill, SB 828, that would increase flexibility in the types of facilities that may be used for early voting, ensure adequate, uniform access to early voting across counties, and increase voter access to early voting to meet demand. SB 828 would provide supervisors of elections with flexibility in designating a broad array of facilities, including any city hall, public library facility, courthouse, place of worship, civic center, convention center, community center, county government center, conference center, community college facility, university or college, fairgrounds, or any other location designated by the supervisor meeting the requirements of this section, as early voting sites. In addition, SB 828 would establish a minimum number of early voting sites per county based on the number of registered voters (one site plus one additional site for every 65,000 registered voters) or the number of sites employed during the 2008 general election, whichever is greater. Finally, SB 828 would expand early voting hours from eight hours to 12 hours during weekdays and from eight to 12 hours in the aggregate on weekends.

SB 828, if enacted, would likely increase the percentage of voters who vote during the early voting period and correspondingly decrease the percentage of voters who vote on Election Day. Consequently, the strain and pressures of Election Day on election officials and poll workers would be reduced, and poll workers would have additional hands-on training in advance of Election Day. Moreover, increasing access to early voting would also likely reduce the use of provisional ballots, including provisional ballots cast outside of the voters' precinct and subsequently rejected.

Unfortunately, the Florida Senate did not pass, or even hold a hearing, on SB 828. During the 2011 session, legislation should be enacted to increase flexibility in the types of facilities that may be used for early voting, ensure adequate, uniform access to early voting across counties, and increase voter access to early voting to meet demand.

## **THE BURDENSOME “NO-MATCH, NO-VOTE” LAW**

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<sup>2</sup> *Id.*

<sup>3</sup> See, e.g., Pew Center on the States, *Election 2008 in Review* 7 (Dec. 2008),

<http://www.pewcenteronthestates.org/uploadedFiles/ElectionInReviewPDF%20Final.pdf>.

<sup>4</sup> [http://www.palmbeachpost.com/state/content/local\\_news/epaper/2008/10/23/1023browardvote.html](http://www.palmbeachpost.com/state/content/local_news/epaper/2008/10/23/1023browardvote.html);

<http://www.miamidade.gov/elections/wait-times.asp>; [http://weblogs.sun-sentinel.com/news/politics/palm/blog/2008/10/latest\\_early\\_voting\\_wait\\_times.html](http://weblogs.sun-sentinel.com/news/politics/palm/blog/2008/10/latest_early_voting_wait_times.html).

<sup>5</sup> Executive Order 08-217, <http://www.flgov.com/release/10320>.

Florida's "no-match, no vote" law, § 97.053(6), Fla. Stat.,<sup>6</sup> is one of the most restrictive voter registration requirements in the country. The law prohibits the registration of voter applicants whose identification number cannot be matched with a record in the Florida Department of Highway Safety and Motor Vehicles database or the Social Security database. *Id.* To become registered, unmatched applicants must provide a copy of their Florida driver's license, Florida ID, or Social Security card to their supervisor of elections. *Id.*

During 2006 and 2007 when the "no-match, no-vote" law was first in effect, it prevented 16,000 voter applicants from being added to the rolls. The citizens affected were disproportionately from minority communities; while Latino applicants were 15% of the applicant pool, they were 39% of those blocked by the law, and though African-American applicants were 13% of the applicant pool, they were 26% of those blocked by the law.

Due to ongoing litigation, the "no-match, no-vote" law was not enforced for most of 2008, but it nevertheless prevented thousands of applicants from being added to the voter rolls. Between September 8, 2008, when Secretary Browning resumed enforcing the law and late October, it prevented more than 11,000 voter applicants from becoming registered. These unmatched voter applicants were disproportionately Latino and African-American. While Latino applicants represented 17% of the total applicants who submitted applications from September 8, 2008 to the registration deadline of October 6, 2008, they accounted for 24% of the unmatched applicants from that period. Similarly, African-American applicants represented 23% of the total applicants during that period but 30% of the unmatched applicants. In contrast, white applicants represented 42% of the total applicants, but only 19% of those who were unmatched.

In the weeks prior to the 2008 general election, some county supervisors of elections announced that they would permit unmatched voters to correct their matching deficiency by providing a copy of their identification (driver's license, Florida ID card, or Social Security card) at the polls on Election Day. There were no reported difficulties in implementing this procedure. Other county supervisors, following the Secretary's guidance, announced that they would not permit unmatched voters to correct their matching deficiency at the polls and that if unmatched voters did not return to the supervisor's office with identification during the two-day period following Election Day, their provisional ballot would be rejected.

To ensure that the "no-match, no-vote" law no longer prevents eligible voters from being added to the rolls, the law should be amended to ensure that unmatched voter applicants who present themselves on Election Day or during early voting, and who satisfy Florida's voter identification law, § 101.043, Fla. Stat., become registered and are permitted to vote by regular ballot. This amendment is similar to the practice that many supervisors of elections adopted during the 2008 general election, except that it provides a broader range of identification with which unmatched voters could correct their matching deficiency.

## **UNNECESSARY CHECKBOXES ON FLORIDA'S VOTER REGISTRATION APPLICATION**

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<sup>6</sup> Advancement Project and other counsel represented plaintiffs, the Florida State Conference of the NAACP, the Haitian-American Grassroots Coalition, and the Southwest Voter Registration and Education Project, in a lawsuit challenging the "no-match, no-vote" law. *Fla. State Conf. of the NAACP v. Browning*, Case No. 4:07-cv-402-SPM-WCS (N.D. Fla. 2007).

Florida's election code requires voter registration applicants to check boxes on their registration application to indicate that they do not have a felony conviction or have been adjudicated mentally incapacitated as to voting, or if they do, that their voting rights have been restored. § 97.052(2), Fla. Stat. Due to these confusing check boxes, tens of thousands of voter applications have been deemed incomplete in recent years and eligible applicants have not been added to the voter rolls.

According to data produced by the secretary of state's office, between January 1, 2008 and the present, 9,088 applications were deemed incomplete because the applicant had not checked the mental incapacity box, and 5,160 were deemed incomplete because the applicant had not checked the felon box. Likewise, in 2004, over 14,000 applications were deemed incomplete because the checkboxes for felony, mental incapacity, and/or citizenship were left blank.

Requiring voter applicants to provide information regarding felony convictions and mental incapacity through the marking of checkboxes imposes a confusing and unnecessary burden on eligible Floridians; the information elicited by the checkboxes may be obtained through alternative, less burdensome means.

The Florida voter registration application should be modified to eliminate the felon and mental incapacity checkboxes and require, in lieu of those checkboxes, that applicants swear or affirm that they do not have a felony conviction or have been adjudicated as having a mental incapacity as to voting, or if they do, that their voting rights have been restored.

## **INSUFFICIENT RESTRICTIONS ON PRIVATE CHALLENGES TO VOTERS' REGISTRATION**

Florida's election code permits private individuals to challenge the eligibility of other voters in their county, prior to or on Election Day, and thereby force the challenged voter to vote by provisional ballot. § 101.111, Fla. Stat. Historically and in recent elections, private parties have challenged voters' eligibility for the purpose of intimidating African-American voters and interfering with their voting rights. While challenges were not widespread in Florida in 2008, thousands of challengers registered in advance of the 2004 presidential election.

Florida's current challenger law does not provide voters with sufficient protection from unwarranted challenges that may burden, or even deny, their right to vote. A challenger need only satisfy a very low standard—"reason to believe" that a voter is ineligible—to challenge a voter, and if challenged, a voter must vote by provisional ballot, which in turn may be rejected for administrative reasons unrelated to the voter's eligibility. Additionally, Florida law permits challenges to be entered on Election Day, which may exacerbate voter lines and thereby deter voters from casting a ballot.

H.B. 131 makes a modest reform to the challenger law by allowing voters whose registration has been challenged for appearing to vote in the wrong precinct to execute a change of residence and vote by regular ballot. The bill further provides that if the voter's new address is located in another precinct, the voter must be directed to that precinct. While this is an incremental improvement to the law, fundamental reforms are needed to protect voters from unwarranted challenges.

Short of repealing Florida's challenger statute altogether, the law should be amended to establish that: (1) challenges must be based on personal knowledge of the challenger; (2) challenges must be entered not later than 25 days before an election; (3) the supervisor of election for the county in which a challenge is filed must afford the challenged voter notice of the challenge and an opportunity to be heard

at a hearing; (4) cancellation of a voter's registration must be supported by clear and convincing evidence that the voter is ineligible; (5) any voter who enters a challenge must be registered to vote in the precinct in which he or she enters the challenge; and (6) any person who files a frivolous challenge commits a felony.

## **REJECTION OF PROVISIONAL BALLOTS CAST IN THE WRONG PRECINCT**

Florida's election code requires the rejection of provisional ballots cast outside of the voter's correct precinct. § 101.048 (2)(b)(2), Fla. Stat. According to data provided in response to the U.S. Election Assistance Commission's 2008 survey, Floridians cast 35,635 provisional ballots in the 2008 general election, of which roughly 51%, or 18,321, were rejected. Ten thousand of those provisional ballots were rejected because the voter was not registered in the state. Nearly 1,300 of those provisional ballots were rejected because the voter cast the ballot in the wrong precinct.

Advancement Project's review of provisional ballot envelopes from ballots cast in several counties in the 2008 general election reveals that in some instances, poll worker error—i.e. inability or failure to determine a voter's proper precinct or directing a voter to the wrong precinct—resulted in voters casting provisional ballots in the wrong precinct, which in turn were rejected. Unfortunately, poll workers often failed to direct voters to the correct precinct, or issued provisional ballots to voters whose name they could not locate in that precinct's poll book without verifying whether voters were in the correct precinct. One county's provisional ballot envelopes from rejected ballots include notes from poll workers indicating that the voter had recently moved or was in the wrong precinct. One voter, for example, arrived at the correct precinct, but a poll worker redirected the voter to the wrong precinct, where she cast a provisional ballot that was rejected. This poll worker had examined the voter's new ID and concluded it was "too new" for her to cast a ballot at the precinct for her new address. In another instance, a voter was issued a provisional ballot because the voter refuted the supervisor's office assertion that he was not registered and eligible. In fact, this voter was registered, but at the wrong precinct. His provisional ballot was also rejected.

Because the casting of provisional ballots in the wrong precinct is often attributable to poll worker error, Florida's provisional ballot law should be amended to require the counting of provisional ballots cast by registered voters in the wrong precinct for contests in which the voter is eligible to vote.

## **CONCLUSION**

Comprehensive reform of Florida's election code is needed to remove barriers to the franchise and ensure that eligible Floridians are able to participate in elections. Once again, state legislators failed to enact necessary reforms in the 2010 legislative session. 2011 will offer legislators another opportunity to correct flaws in the code in advance of the 2012 presidential elections.

This year, voter registration drives are gearing up to register voters for the fall elections. In light of current law, voter registration drives and voter applicants alike should confirm that all checkboxes on voter registration applications are complete and all information supplied on the applications is accurately conveyed to reduce the likelihood that a voter registration application will be delayed or denied under Florida's "no-mach, no-vote" law. Prior to the registration deadline, voters should confirm that their application was accepted and they are on the rolls. Voters should also confirm the hours and location of their closest early voting site, if they choose to vote early, or the location of their precinct if they choose to vote on Election Day.