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Committee on Ethics and Elections

Senator Bill Posey, Chair

REVIEW OF EARLY VOTING IN 2004 ELECTION CYCLE

SUMMARY

Early voting in Florida has enjoyed popularity among voters. In the 2004 General Election, almost 18 percent of all votes were cast during the early voting period, a greater number than cast by absentee ballot.

During the 2005 session, the Legislature dealt with many of the problems experienced during early voting in the 2004 election cycle.

The expansion of available early voting sites remains to be addressed.

The sites currently permitted for early voting under statute limit the ability of many supervisors of elections to adequately provide sufficient locations for electors to easily and conveniently utilize early voting.

While early voting is relatively new in Florida, the idea of an elector casting a ballot in person prior to election day is not a new concept. In 1998, the Legislature provided an opportunity for persons casting absentee ballots to do so in person at the supervisor of elections office. This form of early voting was discretionary for each supervisor of elections.³ Early voting, as we know it now, did not exist until 2004 when the Legislature amended §101.657, Fla. Stat., and introduced a standardized and mandatory process for early voting. This new statute took effect on July 1, 2004.⁴ Section 101.657 allows a Florida elector to vote early at the main office of the supervisor of elections or at a branch office if the supervisor's branch office has been a full service facility for at least one year prior to the election. A Florida elector may also vote early at a public library or city hall that has been designated as an early voting site by the supervisor.⁵

Currently, early voting begins on the fifteenth day prior to an election and ends the second day before an election. For special elections, early voting begins on the eighth day prior to the election and ends the second day before the election. Electors are given eight hours each week day and a total of eight hours each weekend to vote early. The eight hours for early voting on these days must fall between the hours of 7 a.m. and 7 p.m.⁶ Persons in line at the closing of an early voting site are allowed to vote.⁷

In order to combat fraud, each elector must produce identification and complete an early voting certificate certifying they are a qualified elector and registered voter of the county in which they are voting. The

BACKGROUND

History of Early Voting

Early voting began in Texas in 1991.¹ Currently, twenty-three states provide electors with the opportunity to cast their votes prior to election day through early voting.²

¹ HANSEN, JOHN MARK, TASK FORCE ON THE FEDERAL ELECTION SYSTEM, EARLY VOTING, UNRESTRICTED ABSENTEE VOTING, AND VOTING BY MAIL 1 (July 2001).

² NATIONAL CONFERENCE OF STATE LEGISLATURES, ABSENTEE AND EARLY VOTING, last updated on Oct. 27, 2004, available at <http://www.ncsl.org/programs/legman/elect/absentearly.htm> (Site accessed on 16 Sept., 2005). (Of the twenty-three states providing early voting to electors, North Dakota is the only state where early voting is offered at the discretion of the county election officer).

³ § 101.657, Fla. Stat. (1998).

⁴ § 101.657, Fla. Stat. (2004); FLA. DEP'T OF STATE-DIV. OF ELECTIONS, EARLY VOTING, available at <http://election.dos.state.fl.us/earlyvoting.shtml> (Site accessed on 12 Sept., 2005).

⁵ § 101.657, Fla. Stat. (2005).

⁶ *Id.*

⁷ § 101.657(c), Fla. Stat. (2005).

certificate requires the early voter to certify that he or she is the same person listed on the voter registration rolls of the particular county in which he or she seeks to vote early and that he or she resides at the address listed. The certificate also contains a clause explaining that if fraud is committed, the elector understands that he or she could be fined up to \$5000 and serve up to five years in prison. Failure to sign the certificate automatically nullifies the elector's ballot.⁸

Benefits of Early Voting

According to a study in 2004, 28% of early voters identified convenience as their primary reason for casting an early ballot, while 30% said they wanted to avoid the rush on election day.⁹ Early voting gives busy people or those with special needs an opportunity to vote at their leisure. Election officials and voting rights advocates favor early voting because they believe it has a positive impact on voter turnout, although there is no empirical data to support their assertion. Early voting has been touted as enhancing the values of democratic decision-making by giving voters time to consider their options and make more informed decisions. Early voting has also been credited with improving campaigns by allowing campaign staff to more efficiently direct "get out the vote" efforts toward persons who have not yet cast their ballot.¹⁰

Early Voting Participation in 2004 General Election

In 2004, Florida had over ten million registered voters.¹¹ Over seven and a half million Floridians voted in the general election. Over 36% percent of those casting ballots voted either early or by casting an absentee ballot. While a significant number of voters utilized early voting, the numbers differed significantly from county to county. For instance, in Miami-Dade County, 31.3% of electors who voted in the general election cast their ballot early, while only 9.1% of

electors who voted in Palm Beach utilized early voting. In Bay County, 24.7% of electors who voted in the general election cast their ballot early, whereas 28% of Indian River County voters voted early.¹² According to exit poll data conducted in Miami-Dade county by the University of Miami, Cuban-Americans voted early at higher rates than African-Americans and Caucasians. However, the exit poll study attributed this difference to the fact that Cuban-Americans are "the oldest, wealthiest, best organized, and most politically active of Miami's ethnic groups." Also, leadership in the Cuban-American community advocated early voting as a way to ensure that votes were accurately counted. With regard to the age of early voters, the exit poll concluded that early voters are generally older electors. As for gender, the exit poll identified that women were more likely to vote early than men. The exit poll study attributed the age and gender findings to the fact early voting provides more opportunities and available times to cast a ballot.¹³

METHODOLOGY

The Committee staff met with the Division of Elections, supervisors of elections, and other interested parties to discuss the problems that arose in connection with early voting during the 2004 election. Staff also reviewed media reports and articles in order to identify areas of problem and concern.

FINDINGS

Early Voting Issues of Concern

While voters gave high marks for the convenience of early voting,¹⁴ Florida's first statewide attempt at mandatory early voting was not without its problems. Reports of voter intimidation, harassment, and a shortage of early voting sites grabbed headlines across the state as early voting began. In fact, voters recommended more locations, more machines, and longer hours be provided for early voting.¹⁵

⁸ *Supra* note 6.

⁹ Dr. Mark S. Pritchett and Dr. Susan A. MacManus, *Florida Voters Rate the 2004 Election*, FLA. DEP'T OF STATE-DIV. OF ELECTIONS, Jan. 13, 2005, available at <http://election.dos.state.fl.us.com> (Site accessed on 28 Sept., 2005).

¹⁰ Paul Gronke, Benjamin Bishin, Daniel Stevens, and Eva Galanes, *Early Voting in Florida, 2004*, REED COLLEGE EARLY VOTING INFO. CTR. Sept. 1, 2004, available at <http://earlyvoting.net> (Site accessed on 29 Sept., 2005).

¹¹ FLA. DEP'T OF STATE – DIV. OF ELECTIONS, COUNTY VOTER REGISTRATION BY PARTY (2004), available at <http://election.dos.state.fl.us.com> (Site accessed on 28 Sept., 2005).

¹² FLA. DEP'T OF STATE-DIV. OF ELECTIONS, ANALYSIS AND REPORT OF OVERVOTES AND UNDERVOTES FOR THE 2004 GENERAL ELECTION, (Jan. 31, 2005), NOVEMBER 2004 GENERAL ELECTION BALLOTS CAST (Feb. 18, 2005), available at <http://election.dos.state.fl.us.com> (Site accessed 28 Sept., 2005).

¹³ Gronke, *supra*, note 10.

¹⁴ Nick Mason, *The Early Returns*, BRADENTON HERALD Aug. 24, 2004, available at <http://www.bradenton.com> (Site accessed on 24 Aug., 2004).

¹⁵ Pritchett, *supra* note 9 at 2.

Intimidation and Harassment

Reports were received that poll observers were “entering voting booths” and “even moving voters aside to cast ballots.” It was also reported that observers were harassing voters while they were waiting in line to vote. The harassment involved “unwanted solicitations for particular candidates and offers to ‘assist’ voters.” In order to combat this problem at the statewide level, the Division of Elections Director sent out a memorandum to all county election offices addressing poll observers. The Secretary of State sent out a “best practices” memorandum to all county election offices, advising them to protect voters from campaign harassment while waiting in line at early polling locations.¹⁶ The Governor also issued the following statement in a letter addressing the harassment situation: “Although there are no specific restrictions on soliciting and observers in the early voting provisions, it is obvious that for the right to cast an early vote to mean anything, it must be protected as zealously as one’s right to cast a vote on the official Election Day.” Governor Bush instructed county elections supervisors to maintain order by “among other things, directing observers, solicitors and the press into appropriate special locations.” The Governor also encouraged supervisors to caution, and if needed, remove “persons who are intimidating voters through rough language, screaming, or menacing actions.”¹⁷

In Palm Beach County, supervisor of elections Theresa LePore threatened to close early voting sites after reported incidents of staff members suffering harassment by campaign partisans and unruly voters. Several temporary workers quit their jobs due to the alleged abuse.¹⁸ In 2004, Florida law only prohibited solicitation of voters within 50 feet of the entrance to a polling place on election day.¹⁹ Supervisor LePore decided to implement this law during early voting so media and campaign solicitors could not interfere with voters standing in line. She interpreted the 50-foot zone as beginning at the end of the line of voters, greatly expanding the no solicitation buffer. This

¹⁶ Brittany Wallman, *Governor Urges Order At Polls Harassment Complaints Prompt Action*, SOUTH FLORIDA SUN-SENTINEL, Oct. 26, 2004, at 5B.

¹⁷ *Id.*

¹⁸ Dara Kam & Larry Keller, *Early Vote Sites Besieged by Chaos*, PALM BEACH POST, Oct. 25, 2004, available at <http://www.palmbeachpost.com> (Site accessed on 25 Oct., 2004).

¹⁹ §102.031(c), Fla. Stat. (2004).

decision resulted in the well-publicized arrest of a freelance journalist for photographing voters standing in line. Supervisor LePore was subsequently sued by People for the American Way.²⁰ However, the circuit court denied the requested relief in ruling that “[t]he ‘cone of privacy’ should extend to the last voter in line.”²¹

Since the 2004 election, steps were taken to curb voter harassment and intimidation. Legislators in 2005 addressed the uncertainty with the applicability of the 50-foot no solicitation zone by specifically applying election day laws to early voting and also expanding the zone to 100 feet. Currently, early voters may not be solicited inside or within 100 feet of the entrance to an early voting site.²² However, the success of this law in eliminating voter harassment and intimidation will not be known until completion of the next election cycle.

Early Voting Sites

Reports chronicling complaints about early voting sites mainly focused on the geographical location and number of provided sites. For instance, in Volusia County, the NAACP sued the supervisor of elections over the number of early voting sites. The only early voting site designated was the county elections office located in DeLand, twenty miles from Daytona Beach. Groups, including the NAACP, expressed the view that the lack of early voting sites in Daytona Beach disenfranchised voters wanting to participate because they were not able to travel the twenty miles to the only early voting location. The Supervisor of Elections and the County Commission pointed to an insufficient time in which to train workers and their difficulty to manage the details involved with implementing new sites. However, several days later, Volusia County agreed to open early voting sites in Daytona Beach, New Smyrna Beach, and Deltona.²³

²⁰ Tal Abbady, Peter Franceschina, and Luis Perez, *Arrest at Polls Spurs Free-Speech Suit Group Targets Rule Creating Buffer Zones*, SOUTH FLORIDA SUN-SENTINEL, Nov. 2, 2004, at 1B.

²¹ *Law Should Protect Voters and Free Speech*, MIAMI HERALD, Nov. 3, 2004, available at <http://www.miami.com> (Site accessed on 3 Oct., 2005).

²² §102.031, Fla. Stat. (2005).

²³ *NAACP Sues Florida County to Open Another Early Voting Site*, ASSOCIATED PRESS, Oct. 8, 2004, available at <http://www.9wsyr.com> (Site accessed on 28 Sept., 2005); Ludmilla Lelis, *Early Voting is Issue in Daytona Beach*, ORLANDO SENTINEL, Oct. 5, 2004; *Volusia Agrees to Open Three More Early Voting Sites*, ASSOCIATED PRESS, Oct. 12, 2004, available at

In Duval County, a county with over 500,000 registered voters, only one early voting site was initially provided for the 2004 general election.²⁴ Religious and civil rights groups demanded additional sites, especially in the predominantly black areas of the county.²⁵ The Supervisor of Elections office claimed it was too late to add additional sites due to time constraints and legal concerns, and that the suggestion of additional sites was never discussed.²⁶ However, on the Wednesday before early voting began, the Jacksonville City Council unanimously voted to urge the supervisor to add four additional early voting sites and provided the office with \$100,000 to fund implementation. Nevertheless, the city attorney opined that the plan did not rise to the level of “an emergency situation or other unforeseen circumstance” under state law and asserted that the action was unauthorized.²⁷ On October 19, 2004, the Supervisor of Elections, John Stafford, resigned, and Governor Bush appointed Bill Scheu to the post.²⁸ Governor Bush and Secretary of State Glenda Hood called for more early voting sites. Scheu subsequently announced that four additional early voting sites would open on Saturday, October 23, 2004.²⁹ Afterward, the Jacksonville Coalition for

Voter Protection requested a Federal judge add eight additional early voting sites,³⁰ but the request was denied.³¹

In Palm Beach County, African-American elected officials and Democratic Party officials criticized supervisor of elections, Theresa LePore, for opening only eight early voting sites for the general election and complained the predominately black areas did not have an early voting site.³²

In Miami-Dade County, the elections office received complaints concerning the absence of an early voting site in Hialeah. The county responded by placing five voting machines at a public library in that city. After complaints of long lines, the number of voting machines was increased to thirteen by the next day. This number was eventually increased to twenty-four by October 21, 2004, due to continued complaints of long lines.³³

Many have argued that smaller counties are adequately served by the limited number of possible sites the statute provides for early voting and that expansion of available sites is not necessary for smaller counties. However, in smaller counties, city halls and public libraries are often not large enough to accommodate the number of voters who wish to participate in early voting and the days and hours of operation are not always coincident with early voting days and times. Moreover, holding early voting at the supervisor of elections office may impede election office workers from performing normal supervisor functions and

<http://ap.tbo.com/ap/florida/MGBOTTPO80E.html> (Site accessed on 13 Oct., 2004).

²⁴ Matt Galnor, *Council OKs Early Voting Funds; Too Late, Attorney Says*, FLORIDA TIMES-UNION, Oct. 14, 2004, available at http://www.jacksonville.com/tu-online/stories/101404/met_16907958.shtml (Site accessed on 14, Oct., 2004).

²⁵ Jo Becker, *Pushing to Be Counted in Fla.*, WASHINGTON POST, Oct. 13, 2004 at A01, available at <http://www.washingtonpost.com> (Site accessed on 9 Sept., 2005).

²⁶ David Decamp, *Group Demands More Early Vote Sites*, FLORIDA TIMES-UNION, Oct. 7, 2004, available at http://www.jacksonville.com/tu-online/stories/100704/met_16841884.shtml (Site accessed on 7 Oct., 2004).

²⁷ Galnor, *supra* note 24.

²⁸ David Decamp, *New Elections Chief Vows Fairness, Access*, FLORIDA TIMES-UNION, Oct. 20, 2004, available at http://www.jacksonville.com/tu-online/stories/102004/met_16963869.shtml (Site accessed on 27 Sept., 2005).

²⁹ David Decamp, *Duval Will Add Sites to Vote Early*, FLORIDA TIMES-UNION, Oct. 19, 2004, available at http://www.jacksonville.com/tu-online/stories/101904/met_16953278.shtml (Site accessed on 27 Sept., 2005); David Decamp, *New Elections Chief Vows Fairness, Access*, FLORIDA TIMES UNION, Oct. 20, 2004, available at http://www.jacksonville.com/tu-online/stories/102004/met_1693869.shtml (Site accessed on 27 Sept., 2005); Ron Word, *Groups Seek More Early*

Voting Sites, THE ONLINE LEDGER, Oct. 23, 2004, available at <http://www.theledger.com> (Site accessed on 27 Sept., 2005).

³⁰ David Decamp, *Group Wants 8 More Sites for Early Voting*, FLORIDA TIMES UNION, Oct. 22, 2004, available at http://www.jacksonville.com/tu-online/stories/102204/met_16985068.shtml (Site accessed on 22 Oct., 2004).

³¹ *Judge Refuses to Add More Early-Voting Sites*, NEWS4JAX.COM, Oct. 25, 2004, available at <http://www.news4jax.com> (Site accessed on 27 Sept., 2005).

³² Anthony Man, *Palm Beach County Slammed for Lack of Early Voting Sites in Black Communities*, SOUTH FLORIDA SUN-SENTINEL, Oct. 7, 2004, available at <http://www.sun-sentinel.com> (Site accessed on 7 Oct., 2004).

³³ David Royse, *Florida Officials Deny Bias in Siting Early Voting Locations*, HERALD TRIBUNE, Oct. 20, 2004, available at <http://www.heraldtribune.com> (Site accessed on 21 Oct., 2004).

detract and interfere with their preparation for election day. Franklin County Supervisor of Elections Doris Gibbs noted that in many small counties early voting is conducted from a counter only three to four feet in length. Elections staff utilize this same counter to register voters, deal with candidates, and conduct every day election business. Specifically in Franklin County, the supervisor has only two rooms for the entire elections office, limiting the space in which to hold early voting, and limiting the ability to provide early voters with the amount of reasonable privacy necessary to cast their ballot.³⁴

David Stafford, Escambia County Supervisor of Elections, pointed to problems in some counties, especially his own county, where storm damage to the city hall and county annex building affected the full use of those locations for early voting. The county's only alternative was public libraries, whose hours of operation did not coincide with early voting hours, and a city hall located on the Florida-Alabama border some 42 miles from Pensacola, which had limited hours of operation. While he was not the supervisor of elections during the 2004 election, from his perspective as current supervisor, he strongly believes the limitations on early voting site selection impacts a supervisor's ability to fully serve the voters during early voting.³⁵

According to a report on the Florida election of 2004, Florida, like Georgia and North Carolina, failed to anticipate the popularity of early voting and, as a result, provided too few early voting sites. This shortage of voting sites resulted in more travel to voting site locations by voters and longer lines for those participating.³⁶

In preparation for election day, supervisors of elections throughout Florida are charged with designating "a polling place at a suitable location" within each voting precinct created by the respective boards of county commissioners. There is some irony that these same supervisors of elections are not granted the same latitude to select "suitable" early voting sites within the county. The lack of empirical data regarding the

demographics of early voting may lead to skepticism of the process. Affected parties point to the need for adequate safeguards to insure that the placement of early voting sites is designed to afford the greatest access to the electors in any county in Florida.

To that end, it is difficult to devise a fair early voting site distribution scheme that will work both in the most populous counties in Florida and also the smallest. Florida's rich diversity extends beyond ethnicity and culture. Limiting available early voting sites to a list of specific locations, whatever that list might include, does not always work in the context of the demographic diversity existing in Florida counties. "One size *does not* fit all." Our Florida experience with early voting bears out that cliché. Supervisors of elections and voters should be afforded a site availability scheme that offers flexibility coupled with adequate safeguards to insure early voting sites adequately and fairly serve the needs of the electorate.

RECOMMENDATIONS

If the early voting experience is to be a convenient and efficient manner for an elector to cast a vote prior to election day, then the supervisor of elections must be given the flexibility to designate suitable locations to conduct early voting to ensure a fair and equitable distribution of these sites.

Method of Selection of Early Voting Sites

If a county supervisor of elections, after careful analysis of that county's previous early voting experience, concludes that voters in that jurisdiction have been well-served with the use of the existing statutorily permitted early voting sites, the supervisor may continue to use these locations without any action on their part, so long as those locations are designated 30 days prior to an election.

If, however, a supervisor of elections for any county determines, from their experience and the demographics of their county, the utilization of the statutorily approved sites is not sufficient to provide adequate voter opportunity for convenient use of early voting, then the supervisor of elections may apply to the Secretary of State for approval to add other early voting sites to properly serve their constituents.

³⁴ Letter from Doris Gibbs, Supervisor of Elections, *Franklin County, Fla.* to Wayne L. Rubinas, Staff Director, *Fla. Senate Committee on Ethics and Elections*, (Aug. 23, 2005).

³⁵ Interview with David Stafford, Supervisor of Elections, *Escambia County, Fla.* by Wayne L. Rubinas, Staff Director, *Fla. Senate Committee on Ethics and Elections*, (Aug. 17, 2005).

³⁶ Gronke, *supra*, note 10 at 2.

Application for Exception to Existing Statutory Scheme

At least 180 days prior to the next election at which early voting is to take place, the supervisor of elections should file with the Secretary of State a request for an exception and file a plan for use of alternative early voting locations designated within the county. These sites should be geographically located to provide all voters in the county an equal opportunity to cast a ballot, insofar as is practicable. Such request should include: a) the rationale for the supervisors' request for exception, together with supporting documentation; b) a detailed description of the location and premises requested for use as an alternative early voting site; and c) a map of the county identifying the requested placement of early voting sites.

Affected parties within the county should be given 30 days after submission of the request for exception to provide public comment to the Department of State. The department should review and approve the sites in whole, or in part, not later than 60 days after submission of the request. (In the 2006 election cycle, if this site exception alternative is adopted by the Legislature, the above schedule should be abbreviated to provide for identification of early voting sites at least 30 days prior to the primary election.)