



FLORIDA DEPARTMENT OF STATE

RICK SCOTT
Governor

KURT S. BROWNING
Secretary of State

MEMORANDUM

FROM: Kurt S. Browning *KSB*
Florida Secretary of State

TO: Supervisors of Elections

DATE: January 13, 2012

SUBJECT: Directive 2012-01 – Provisional Ballot Verification

In my capacity as the Chief Elections Official of the State of Florida and pursuant to my authority in section 97.012, Florida Statutes, I hereby issue this directive for the purpose of ensuring that supervisors of elections uniformly interpret and implement the Florida Election Code regarding their duties with respect to the verification of provisional ballots. Furthermore, this directive will ensure that elections are conducted in a fair and impartial manner so that no eligible voter is disenfranchised.

I. Standards for Canvassing Provisional Ballots

First, it should be emphasized that the procedures and standards for canvassing a provisional ballot were not changed by the 2011 elections bill. Under section 101.048, Florida Statutes, a county canvassing board must “examine each Provisional Ballot Voter’s Certificate and Affirmation to determine if the person voting that ballot was entitled to vote at the precinct where the person cast a vote in the election **and that the person had not already cast a ballot in the election.**” § 101.048(2)(a), Fla. Stat. (emphasis supplied). In determining whether a person casting a provisional ballot is entitled to vote, the county canvassing board shall review the information provided in the Voter’s Certificate and Affirmation, any written evidence provided by the person casting the ballot, any other evidence presented by the supervisor of elections, and, in the case of a challenge, any evidence presented by the challenger. § 101.048(2)(a), Fla. Stat. As discussed below, this statute places a clear and express duty on the county canvassing board to make a determination regarding whether a person casting a provisional ballot had already cast a ballot. In making this determination, the county canvassing board is required to consider evidence presented by the supervisor of elections.

Second, I want to be very clear regarding the evidentiary burden that applies to the canvassing board’s review of provisional ballots. All provisional ballots “**shall be counted** unless the canvassing board determines by a preponderance of evidence that the person was **not** entitled to vote.” § 101.048(2)(a), Fla. Stat. (emphasis supplied). This means that the canvassing board may

only reject a provisional ballot where the evidence presented to the board shows, more likely than not, that the person casting the ballot was not entitled to vote at the precinct where the person cast a vote or that the person had already cast a ballot in the election.

II. Out-of-county Address Changes at the Polling Place

Under section 101.045(2)(b), Florida Statutes, voters who have changed their legal residence from one Florida county to another county but who have not notified the supervisor of elections regarding the change of residence before arriving at the polling place are entitled to vote a provisional ballot.¹ An exception exists for active uniformed services voters and their family members, who may vote regular ballots provided they execute an affirmation or complete a voter registration application update.

Canvassing boards and supervisors of elections have a duty to faithfully execute the laws of Florida. The Florida Election Code is clear that the canvassing board must make a good faith effort to verify that a provisional ballot voter has not already cast a ballot in the election before the canvassing board can rely upon the voter's oath or affirmation on the provisional ballot certificate that he or she has not already voted in the election. In the context of a voter who votes a provisional ballot due to an out-of-county address change, section 101.048(2)(a), Florida Statutes, would require the canvassing board (usually acting through the supervisor of elections) to contact the supervisor of elections' office in the voter's prior county of residence to determine whether the person had already cast a ballot in the election. Therefore, supervisors of elections must be prepared to contact other supervisors of elections' offices immediately following an election and throughout the period for canvassing provisional ballots. Upon being contacted by other supervisors of elections inquiring whether the person casting a provisional ballot had already voted in the former county, supervisors of elections also must be prepared to check the precinct registers within their counties. As constitutionally elected officers and statutorily mandated members of county canvassing boards, each supervisor of elections has discretion to develop procedures on how this contact and verification will occur in each county. However, I hereby direct that supervisors of elections cooperate with each other in this provisional ballot verification process and timely respond with accurate information concerning a voter who is the subject of another supervisor of elections' provisional ballot verification request. I also encourage the adoption of verification procedures in each county and the use of a system that provides a paper trail for provisional ballot verification contacts received and made within each county.

This directive remains in effect until such time as it is superseded or revoked by subsequent directive, law, or final court order.

¹ Until precleared, this section does not apply in Collier, Hardee, Hendry, Hillsborough, and Monroe counties.