



## FLORIDA DEPARTMENT OF STATE

RON DESANTIS  
Governor

LAUREL M. LEE  
Secretary of State

September 21, 2020

The Honorable Craig Latimer  
Supervisor of Elections, Hillsborough County  
601 E. Kennedy Blvd., 16th Floor  
Tampa, Florida 33602

Re: DE 20-01 No-Solicitation Zone – Private  
Property within Zone – § 102.031, Florida  
Statutes

Dear Supervisor Latimer:

This letter responds to your request for an advisory opinion regarding the authority of a supervisor of elections to control the use of private property falling within the 150-foot no-solicitation zone around a polling place. Because you are a supervisor of elections proposing to take action related to Florida's election laws, the Division of Elections is authorized to issue an opinion to you pursuant to section 106.23(2), Florida Statutes (2019).

### FACTS

Your request for an advisory opinion states that you are questioning what authority, if any, a supervisor of elections has to control the use of private property falling within the 150-foot no-solicitation zone around polling places under section 102.031, Florida Statutes. You give examples of instances where this issue could arise and where you are seeking to articulate your authority, to include when a private property owner whose property falls within the 150-foot zone of a polling place places campaign signs or allows individuals on the private property to solicit. Your request implies, but does not explicitly state, that private property is within the 150-foot no-solicitation zone of polling places or early voting locations in Hillsborough County.

### ANALYSIS

Section 102.031(4)(a), Florida Statutes, provides that:

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No person, political committee, or other group or organization may solicit voters inside the polling place or within 150 feet of the entrance to any polling place, a polling room where the polling place is also a polling room, an early voting site, or an office of the supervisor where vote-by-mail ballots are requested and printed on demand for the convenience of electors who appear in person to request them.

§ 102.031(4)(a), Fla. Stat. (2019). “Solicit” or “solicitation” is defined broadly to include, but not be limited to:

seeking or attempting to seek any vote, fact, opinion, or contribution; distributing or attempting to distribute any political or campaign material, leaflet, or handout; conducting a poll except as specified in this paragraph; seeking or attempting to seek a signature on any petition; and selling or attempting to sell any item.

§102.031(4)(b), Fla. Stat. (2019).

Some history of previous iterations and interpretations of the no-solicitation zone statutes helps inform the instant discussion. In *Florida Committee for Liability Reform v. McMillan*, 682 F.Supp. 1536 (Fla. M.D. 1988), the court addressed the history of the no-solicitation zone law and a related law prohibiting persons from coming within a certain zone of a polling room. In 1985, no person except an elector could come within a 50-foot zone of a polling place for any purpose, but the law explicitly excepted private property; and anyone wishing to solicit within a 100-foot zone would have to notify the supervisor of elections prior to the solicitation. *See id.* at 1539; § 101.121, Fla. Stat. (1985); § 102.031(3), Fla. Stat. (1985).

In 1987, the Legislature amended section 102.031 to create a 150-foot no-solicitation zone that did not except private property. *See Florida Committee*, 682 F.Supp. at 1539; § 102.031, Fla. Stat. (1987). This 1987 version of the statute was found unconstitutional, partly because the 150-foot zone did not except private property. *See Florida Committee*, 682 F.Supp. at 1541 (“The terms of § 102.031(3) stretch its application to a distance of 150 feet from a polling place regardless of the private or public status of the property so affected. As noted previously, many traditional public forums and private dwellings fall within the 150-foot radius from polling places throughout the state”) (emphasis added).

In 1989 (seemingly in response to the aforementioned case) the Legislature changed section 102.031 to create a 50-foot no-solicitation zone (down from 150 feet). The Legislature additionally added within 102.031(3)(c), the following exceptions to the zone, and an exception to the exceptions for obstructive or interfering behavior:

1. Solicitation shall not be restricted if:
  - a. Conducted from a separately marked area within the 50-foot zone so as not to disturb, hinder, impede, obstruct, or interfere with voter access to the polling place or polling room entrance; and

- b. The solicitation activities and subject matter are clearly and easily identifiable by the voters as an activity in which they may voluntarily participate; or
  - c. Conducted on property within the 50-foot zone which is a residence, established business, private property, sidewalk, park, or property traditionally utilized as a public area for discussion.
2. Solicitation shall not be permitted within the 50-foot zone on a public sidewalk or other similar means of access to the polling room if it is clearly identifiable to the pollworkers that the solicitation is impeding, obstructing, or interfering with voter access to the polling room or polling place.

See § 102.031(3)(c)1. and 2., Fla. Stat. (1989). Section 101.121, Florida Statutes was repealed at the same time. See Laws 1989, c. 89-338, § 37, eff. Jan. 1, 1990.

In 2005, the Legislature, reacting to supervisors of elections' complaints that the exceptions to the non-solicitation zone were so numerous that the exceptions nearly eviscerated the zone and did not give supervisors adequate authority to restrict solicitation around polling locations, removed the exceptions to the no-solicitation zone and enlarged it from 50 feet to 100 feet. See FL Staff An., H.B. 1567, 4/20/2005; Laws 2005, c. 2005-277, § 54, eff. Jan. 1, 2006. There is no indication in legislative history of difficulty of enforcement of the private property and business exceptions; nonetheless those specifically articulated exceptions were written out wholesale along with the other more subjective conduct-based exceptions. The result was that section 102.031 did not allow any solicitation within a 100-foot zone of the polling place and no exception was explicitly encoded for private property. See § 102.031, Fla. Stat. (2006).

This amended version of section 102.031 was found constitutional by the 11th Circuit Court of Appeals and remained essentially unchanged until 2019 when the zone was enlarged. See *Citizens for Police Accountability Committee v. Browning*, 572 F.3d 1213, 1221-22 (11th Cir. 2009) (“We stress the short time (a few days a year) and small areas (less than a football field) in which the Florida statute suppresses some political speech around the polls....”). The *Citizens* court did not at all address the issue of private property falling within the 100-foot zone as it was not an issue in the case. See generally, *id.* As noted, the Legislature in 2019 enlarged the zone from 100 feet to 150 feet. See § 102.031, Fla. Stat. (2019).

Thus, it appears an open question whether legally a court would allow the no-solicitation zone provisions of section 102.031 to be applied within the 150-foot zone against an owner of *private* property, where the private property itself has not been offered up to serve as a polling place.

The Division of Elections declines to advise the Hillsborough County Supervisor of Elections to attempt to impose the 150-foot non-solicitation zone against an owner of private property, where the private property itself has not been offered up to serve as a polling place. The

Division of Elections notes, however, that this inquiry was posed in the context of a broad question of authority and, as discussed further below, it may sometimes be necessary to assess specific facts and circumstances in order to harmonize the rights of voters and private property owners.

The Division of Elections finds that notwithstanding the aforementioned removal of specifically articulated exceptions for private property from section 102.031, Florida Statutes, over a decade ago, reading the provisions of section 102.031 as a whole, including section 102.031(e) added in 2019, and previously existing section 102.031(d), the statute can be interpreted in a manner that neither impinges upon the important rights and interests of voters to access polling locations in an unobstructed and unimpeded manner, nor upon owners of private residential and business properties who maintain property rights in such locations and who did not offer up such property for polling locations.

First, the statute recognizes that polling places are not structurally identical and have unique physical characteristics that come into play when delineating a no-solicitation zone. Section 102.031(4)(c) provides in pertinent part that: “Each supervisor of elections shall inform the clerk of the area within which soliciting is unlawful, based on the *particular characteristics* of that polling place.” “Polling place” is defined in section 97.021(28) as “the building which contains the polling room where ballots are cast.” This italicized language, which has resided in the statute for a number of years, recognizes that every polling place will be structurally distinct and have different substantive components. A downtown polling place, for example, may abut or even house (in the case of a large county building) a preexisting privately owned café physically removed from the supervisor of elections office both by walls and floors, but technically falling within the 150-foot no-solicitation zone. It would be unreasonable and likely unconstitutional to attempt to shut down an existing private café’s business operations during the timeframes implicated by section 102.031(4).

If not for interpreting the subsection (4) no-solicitation zone language within the larger context and purposes of the overarching section 102.031 under which it falls, the language of subsection (4) on its face could be taken to unintended extremes. This is apparent not only as in the above example of attempting to shutter an abutting private café or coffee shop, but as another example, to also potentially include the prohibition of the “sale” of items in a vending machine in the hallway of a county building housing the supervisor of elections office based on the broad statutory definition of “solicitation” in section 102.031(4)(b), Florida Statutes, to include selling or attempting to sell any item to voters.

Second, new language added to section 102.031 in 2019, as well as previously existing language, leads to an interpretation that the intent of the overall subsection is to primarily govern the property on which a polling place or early voting site is located and the owners, operators, or lessees of such property, as opposed to abutting (or even encased, as noted above) private property and its owners. More specifically, section 102.031(4)(d) applies to “any public or private *property used as a polling place or early voting site*” and provides that:

Except as otherwise provided in paragraph (a), the supervisor may not designate a no-solicitation zone or otherwise restrict access to any person, political committee, candidate, or other group or organization for the purpose of soliciting voters.

§ 102.031(4)(d), Fla. Stat. (2019) (emphasis added). Additionally, new paragraph (e) was added in 2019, and provides:

The owner, operator, or lessee of the *property on which a polling place or an early voting site is located*, or an agent or employee thereof, may not prohibit the solicitation of voters outside of the no-solicitation zone during polling hours.

§ 102.031(4)(d), Fla. Stat. (2019) (emphasis added). Paragraph (e) reiterates the same prohibition as paragraph (d) – disallowing the prohibition of solicitation on the property of a polling place beyond the 150-foot no-solicitation zone provided for under paragraph (a). The difference is that paragraph (e) enjoins the owner, operator, or lessee of the polling place property from prohibiting solicitation beyond the zone, while paragraph (d) enjoins the supervisor of elections from extending the zone. While these proscriptions specifically apply to bar extension of the no-solicitation zone *on polling place property*, as opposed to the instant inquiry of whether the original zone can be extended onto private property to begin with, it is noteworthy that there is discussion only of the rights and duties of owners, operators, or lessees of the property on which a polling place or early voting site is located, with no attention given to the rights or duties of adjacent private property owners, operators, or lessees, implying that the no-solicitation zone would not encroach upon part or all of such private property not offered as a polling place to begin with. Thus, while a narrow reading of 102.031(4)(a) might initially appear to require the supervisor of elections to apply the no-solicitation zone blindly and upon all parcels, even into an abutting lake perhaps, a more integrated and reasonable reading of the entirety of section 102.031, and especially paragraphs (c) through (e), requires attention be directed to the “*particular characteristics*” of each polling place or early voting location.

Without minimizing the aforementioned concerns of the federal district court over thirty years ago in the *Florida Committee* case as to the exercise of discretion, the Division of Elections finds that election laws do not operate in a vacuum and there are significant private property interests which cannot be ignored. *See Florida Committee*, 682 F.Supp. at 1541. When the rights of voters and private property owners can be harmonized in a reasonable manner in which neither suffers injury and elections proceed in an orderly fashion, such is the path to follow.

A supervisor of elections has other statutory authority to draw upon should activity on private property which would otherwise fall within the no-solicitation zone (if the zone were to be drawn in a perfect circle) begin to interfere with a voter’s right to access the polls in a peaceful and unencumbered manner or otherwise threaten the maintenance of order at the polls. Specifically, such authority, through the clerks and inspectors appointed to conduct an election, is found within section 102.031(1), which provides that:

Each election board shall possess full authority to maintain order at the polls and enforce obedience to its lawful commands during an election and the canvass of the votes.

§ 102.031(1), Fla. Stat. (2019).

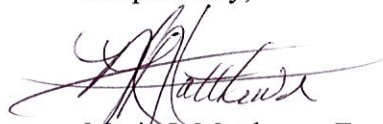
Finally, the Division of Elections would encourage the supervisor of elections to select, where possible, polling locations that do not contain unrelated private property within the bounds of the 150-foot no-solicitation zone. However, again, the Division of Elections is cognizant that in some locations, especially a downtown county building where an office of the supervisor is housed, such selection as to exclude outside private property interests, may not be possible. When not possible, the supervisor of elections should assess the particular characteristics of the polling place, taking into account any structural separation of the private property interest, in determining the proper course for harmonizing the interests of voters and private property owners. For example, a temporary barrier may properly be utilized to create such a separation at times.

The reality, and as is recognized in law, is that every polling place has “particular characteristics.” *See* § 102.031(4)(c), Fla. Stat. (2019). The Division is confident that a supervisor of elections, in exercising his or her duty under section 102.031(4)(c) to “inform the clerk of the area within which soliciting is unlawful based on the particular characteristics of that polling place,” will be able to achieve the compelling interests of allowing voters to access the polling place without confusion and undue influence and with the integrity of the election process intact. *See Burson v. Freeman*, 504 U.S. 191, 198-99 (1992) (recognizing and affirming those compelling interests supporting application of a no-solicitation zone); *Browning*, 572 fl. 3d at 1219 (accord).

#### SUMMARY

The Division of Elections declines to advise, without more facts and circumstances specifically at issue, the supervisor of elections to impose the 150-foot non-solicitation zone against an owner of private property, where the private property itself has not been offered up to serve as a polling place, unless activity on the private property begins to interfere with maintenance of order at the polls, in which case the supervisor of elections’ enforcement authority under section 102.031(1), Florida Statutes may be implicated.

Respectfully,



Marja I. Matthews, Esq.  
Director, Division of Elections