



## Voter Challenges

### *DE Reference Guidelines 0009 (Updated 08/2014)*

*These guidelines are for reference only. They are not to be construed as legal advice or representation. For any particular set of facts or circumstances, refer to the applicable state, federal law, and case law, and/or consult a private attorney before drawing any legal conclusions or relying upon this information.*

In the event of a voter challenge, the law (Section 101.111, Florida Statutes) should be applied as follows:

- **ANY FLORIDA ELECTOR OR POLL-WATCHER CAN CHALLENGE A REGISTERED VOTER'S RIGHT TO VOTE.**
  - The challenger can only challenge a voter in the challenger's own county.
- **CHALLENGES CAN BE FILED AT THE POLLS OR IN ADVANCE AT THE SUPERVISOR OF ELECTIONS' OFFICE WITHIN THE 30-DAY PERIOD BEFORE ELECTION DAY**
  - A challenge is election specific. It applies only to the election in which it is filed.
- **CHALLENGES MUST BE WRITING.**
  - The challenger signs a statutory oath.
  - Each challenge must be separately completed.
  - A challenger commits a 1<sup>st</sup> degree misdemeanor if challenge is frivolous.
- **A PERSON WHO IS CHALLENGED MUST BE PROVIDED WITH A COPY OF THE CHALLENGE BEFORE VOTING.**
  - A challenge made at the polls is to be given to the election board of the challenged voter's precinct.
  - The Supervisor of Elections must provide a copy of an advance challenge to the election board of the challenged voter's precinct.
- **A CHALLENGED VOTER AT THE POLLS SHALL BE ALLOWED TO VOTE PROVISIONALLY.**
  - Once a voter is challenged at the polls, the voter can only vote a provisional ballot with a few exceptions:
    - If a challenge is based on the voter's residential address, the challenged voter may still be able to vote a regular ballot if the: (1) voter is only making an in-county address change, (2) the precinct to which the voter has moved his or her legal residence is within a county that uses an electronic database as a precinct register at the polling place, or (3) the voter is an active uniformed services member or family member. The voter must first execute an address change affidavit.
    - If the challenge is based on the voter's signature, the challenged voter must first execute a signature affidavit before voting a regular ballot.
- **A CHALLENGED VOTER WHO VOTES A PROVISIONAL BALLOT HAS UNTIL 5 P.M. OF THE SECOND DAY FOLLOWING THE ELECTION TO PROVIDE ANY ADDITIONAL EVIDENCE TO SUPPORT HIS OR HER ELIGIBILITY. (SECTION 101.048, FLORIDA STATUTES)**
  - A provisional ballot voter must be given (at the time he or she votes a provisional ballot) written notice of the right to present additional proof of eligibility.
  - The notice must instruct the voter about what to do to have his or her provisional ballot count.
- **A PROVISIONAL BALLOT IS TO BE COUNTED UNLESS IT IS MORE LIKELY THAN NOT THAT THE BALLOT SHOULD NOT COUNT.**
  - The statutory presumption is for the canvassing board to count a provisional ballot UNLESS a preponderance of the evidence shows that the person is otherwise not entitled to vote (*i.e.*, not registered, not eligible (felon, adjudicated mentally incompetent, *etc.*), voted in the wrong precinct, already voted, or evidence of fraud).

- The decision is based on review of the challenged person's provisional ballot certificate and affirmation, the challenger's written oath, and any other evidence provided either by the challenged person, the challenger and/or the supervisor of elections.

➤ ***THE VOTER CHALLENGE LAW DOES NOT ADDRESS CHALLENGES TO ABSENTEE BALLOT VOTERS.***

- Any attempt to apply Section 101.111, Florida Statutes, to absentee ballot voters should ensure that they are accorded the same due process as challenged voters at the polls (*i.e.*, timely notice of the challenge, copy of the written challenge, and written of right to present additional evidence to the supervisor).
- Section 101.68(1) and (2), Florida Statutes, allows an elector or candidate present at a canvassing meeting to file a protest or challenge with the canvassing board. The challenge must be based on a defect of the absentee ballot certificate and must occur before the absentee ballot has been removed from the envelope.

➤ ***THE VOTER CHALLENGE PROCESS SHOULD NOT INTERFERE WITH THE VOTING PROCESS FOR OTHER VOTERS AND THE ORDERLY OPERATION OF THE POLLING PLACE.***