

Voter Challenges

In the event of any challenges under section 101.111, Florida Statutes, the law is to be applied as follows:

- *Any Florida elector or poll-watcher can challenge a registered voter's right to vote.* The challenge can only challenge someone's right to vote in the challenger's own county.
- *Challenges can be filed at the polls or with 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 in writing.* The challenge must contain a signed statutory oath and each challenge must be separately completed.
- *A person who is challenged must be provided with a copy of the challenge.* A challenge made at the polls is to be given to the election board of the challenged voter's precinct. A challenge made in advance must be filed with the Supervisor of Elections who in turn must give a copy of that challenge to the election board of the challenged voter's precinct. Regardless of when it is filed, the challenged person must be given a copy of the challenge before he or she votes.
- *A challenged voter at the polls shall be allowed to vote provisionally.* Once a person is challenged at the polls, the person does not have a choice (with one exception) but to vote a provisional ballot if he or she chooses to vote. The **exception** is that if a challenge is based on the voter's residential address, the challenged voter may still be able to vote a regular ballot if he or she first corrects or updates his or her residential address provided it is only an in-county address change, or the voter is an active uniformed services member or family member. In that case, the voter may vote regular vote after the executed affidavit or application, provided the person is voting in the corresponding proper precinct. Otherwise, all other voters who move in from another county (challenged or not) must vote provisional ballot.
- *A challenged voter who votes a provisional ballot has until 5 p.m. of the second day to provide any additional evidence to support his or her eligibility vote.* Under state law and rule, the 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 written notice will contain instructions about what the provisional ballot voter must do, if anything, to have his or her ballot count.
- *The canvassing board determines by a preponderance of the evidence whether to count the provisional ballot.* The statutory presumption is to count a provisional ballot UNLESS the canvassing board determines by a preponderance of the evidence (more likely than not) 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 this law 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). Note that the law does allow for an elector or candidate can file a protest or challenge with the canvassing board based on a defect of the absentee ballot certificate prior to canvassing of the absentee ballot. See s.101.68(1) and (2), Fla. Stat. It must be made 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.*