

**2011 Annual Summer Conference
Questions and Answers**

1. Address or Party Change by Voter.

a. **May a supervisor treat a request for a duplicate voter information card as an address change or party change or must it be on a voter registration application?** A registered voter now may submit a *party* change on any signed written notice which may be a letter or any document, which need not be a voter registration application. The only other requirement is that the written notice include the voter's date of birth or voter registration number. For *address* changes, any registered voter has the option to: (1) submit an address change by phone or other electronic means, either of which must include the voter's date of birth; or (2) by a signed written notice or a voter registration application; provided that whatever method the voter uses, the submission or contact is made directly to the county in which the voter is registered or to which the voter is making the address change. Otherwise, the address or party change has to be made on a voter registration application if submitting the change to any other registration official. Therefore, if the request for a duplicate voter information card includes a request for an address change or party change, the supervisor's office must ensure that it satisfies the requirements for making a change based upon the law discussed above.

b. **The law permits an active uniformed services voter or a member of his or her family to make a county-to-county change of address at the polling place and vote a regular ballot. How are the poll workers to know if a person is a member of the family of an active uniformed services voter?** Because the statute does not specify, it's essentially an honor system where the poll worker must take the voter's word that he or she is family member of the active uniformed services voter or that the uniformed services member is an active member.

c. **Will there be new provisional ballot envelopes to reflect the change in procedure for a voter making an address change from outside the county at the polls?** No. The Division of Elections will not be revising the provisional ballot rule or the ballot certificates currently incorporated by reference in the rule. The "Other" category is the appropriate place to insert the reason that the voter is voting provisionally because of a change in address from outside the county.

d. **At the polling place, how does a poll worker ask the voter to verify the voter's address?** Refer to Secretary of State Directive 11-01. You cannot ask the voter to recite his or her address, but the poll worker may read the voter his or her address. The voter may or may not respond. If the voter does not respond, proceed as if the address on record is correct. If the voter voluntarily responds with information, follow-up accordingly based upon the information the voter provides. Look for guidance in the future in the form of changes to the *Polling Place Procedures Manual*.

2. Campaign Finance.

a. Are political disclaimers required on campaign fund raiser tickets or advertising?

Not if the event satisfies the definition of “campaign fund raiser” in s. 106.011(11), Florida Statutes, -- “any affair held to raise funds to be used in a campaign for public office.”

b. May a candidate who is defending a challenge to his or her candidacy or defending an election contest use campaign account funds to defray legal expenses? Yes.

(1) While defending a challenge to the candidate’s qualifications, the candidate may use campaign funds to pay his or her legal costs since the expenditures are made to influence the results of an election. (2) While defending an election contest and subsequent appellate proceedings, a candidate may keep his or her campaign account open to collect contributions and make expenditures for the sole purpose of paying legal fees and costs associated with the litigation just like the candidate bringing the contest action may do. Once the election contest concludes which finally determines if the candidate was elected or eliminated, the candidate has 90 days to close the campaign account.

c. How does a political committee dispose of its surplus funds when the political committee terminates? When the political committee formed, it had to file a statement of organization with the filing office. The statement of organization had to indicate what the committee would do with residual funds in the event of dissolution. The political committee must dispose of such funds in accordance with its statement of organization.

3. Candidate Petitions.

a. Must a candidate petition still contain a street address on the petition to be verified as valid? Yes. The change in law is that a constitutional initiative petition need no longer contain a “street” address. This change has no effect on candidate petitions. To be valid, a candidate petition must contain a “street” address. Because of the provisions of s. 99.097(3)(b), Florida Statutes, the street address listed on a candidate petition can be different from the voter’s registration address; however, Rule 1S-2.045, Fla. Admin. Code, requires a candidate petition to have a street address listed before the petition may be verified as valid.

b. With the new provisions in s. 99.095, Florida Statutes, concerning candidate petitions in a year of apportionment for county or district offices, how many petition signatures are needed if a county commission has 3 at-large districts and 4 single-member districts? The Division interprets the new amendments to s. 99.095, Florida Statutes, as only applying to single-member districts since the boundaries for those districts in a year of apportionment would be unknown; however, the boundaries for the county would not change so at-large candidates must continue to obtain signatures of 1% of the registered voters in the county as shown for the immediately preceding general election. The single-member district candidates also may obtain signatures from any voter in the county, regardless of district boundaries. However, because there are 4 single-member districts, each candidate would be required to obtain at least the number of signatures equal to 1% of the registered voters in the county as shown for the immediately preceding general election, divided by 4 (representing the total number of districts of the office involved).

4. Candidate Qualifying.

a. **Are the candidates' oath forms being revised to eliminate the reference to the s. 876.05 loyalty oath?** Yes. Rule 1S-2.0001, which incorporates all the qualifying forms, is under rule development at this time. If qualifying periods occur before the rule is adopted, supervisors should ensure that candidates adapt the oath forms to conform to current law. (Contact Gary Holland at gjholland@dos.state.fl.us and he can provide you updated forms, if necessary). However, supervisors need to be aware that for judicial and school board candidates, Ch. 2011-40, Laws of Florida, eliminated the s. 876.05 language from the candidate oath for these candidates; however, the s. 876.05 oath is still required to be executed in order for judicial and school board candidates to be qualified (*see* s.105.031(5)(a)3, Florida Statutes).

b. **Who may “verify” a qualifying document?** The financial disclosure statement and the candidate oath now must be verified under oath or affirmation pursuant to s. 92.525(1)(a), Florida Statutes. That section requires the verification be accomplished by a person authorized to administer oaths as stated in s. 92.50, Florida Statutes, which essentially means that the verification must be done by a judge, clerk or deputy clerk of any court, or any notary public. (The section also states who can administer oaths in foreign countries and in other states, territories, and district of the United States). Note, however, that a supervisor of elections or a deputy supervisor is not able to verify these documents merely based upon his or her duty position, but he or she would have to be a notary public to do so.

c. **May a person qualify to run for office if that person has changed political parties within 365 days of the beginning of the qualifying period?** Not if the person wants to be a candidate for nomination of a political party. If seeking to be a nominee of a political party for any office, a person may not have been a registered member of any other political party for 365 days prior to the beginning of qualifying. The person who has switched political parties within that time period, however, may run as a non-party affiliated candidate or run for a nonpartisan office.

5. Constitutional Initiative Petitions (s. 100.371, Florida Statutes).

a. **The sponsor of a constitutional initiative petition is required to submit the petition to the county of residence listed by the person signing the petition and the supervisor must verify that the signer is a registered voter in the state at the time of verification. What does a supervisor do when it is determined that the signer is a registered voter in another county?** The supervisor should classify the petition as being misfiled, not verify the petition, and notify the petition sponsor of the misfiled petition. When the sponsor submits the petition to the county where the voter is registered, the supervisor there must determine whether to verify the petition as valid. So, ultimately, the petition will be verified in the county of residence regardless of what address is on the petition unless the voter affirmatively indicated in some manner on the petition that the address represents a change in address and also included his/her date of birth. In that event, the address on the petition should be treated by the supervisor as a change in address based upon the new provisions in s. 97.0131, Florida Statutes, relating to making county-to-county change of addresses by a signed written notice (with date of birth

included). The supervisor would process the petition as an address change and proceed to verify the petition.

b. Because the shelf-life of initiative petitions changed from 4 to 2 years, how does a supervisor submit certifications to the Division? The supervisor must carefully note the date of the signatures on petitions that the supervisor verifies. A separate certification must be done for any signature verifications that reflect a signature date on or before May 19, 2011, and such certification must clearly reflect that it is “For signatures on or before May 12, 2011.” This will allow the Division to determine which signatures are valid for 4 and 2 years.

c. Based upon the changes to s. 101.161, Florida Statutes, must we now place the full text of a proposed constitutional amendment on the ballot? All voting systems after December 31, 2013 must be capable of accommodating coded text (underlining and cross-throughs) of constitutional amendments or revisions proposed by joint resolution when directed by the legislature. There are currently seven legislatively proposed amendments slated to go on the 2012 ballot. At this time, none would require the full text of the amendment/revision to be printed on the ballot. The legislature’s joint resolution will specify whether the full text must be printed on the ballot.

6. Early Voting. Is early voting hours now at the discretion of the supervisor of elections? It is within the discretion of the supervisor to set the early voting hours for each early voting day (to include weekends) within the 8-day early voting period. The hours, however, have to be no less than 6 and no more than 12 hours a day for each early voting site.

7. Election Night Reporting. What does a supervisor do when the office cannot comply with the timelines? The new law is clear that within 30 minutes of the polls closing, the tabulated early voting and absentee votes must be reported, and thereafter, the precinct election results must be reported every 45 minutes until all results are completely reported, except provisional ballot results. If circumstances preclude compliance, the supervisor is to immediately notify the Department of State. The department will be prescribing the format to report the results to ensure uniformity and to ensure the search and sorting ability for precinct-level election results.

8. List Maintenance. Does a supervisor need a certified copy of a death certificate before removing a voter? A supervisor, who has received a copy of a death certificate issued by a governmental agency authorized to issue death certificates, may remove the deceased registered voter without further notice to the voter. The copy of the death certificate need not be certified or notarized.

9. Preclearance. Is Ch. 2011-40, Laws of Florida, currently in effect in the preclearance counties (Collier, Hardee, Hendry, Hillsborough, and Monroe)? No. Until preclearance is obtained, Ch. 2011-40, Laws of Florida, or any rule implementing the new provisions of law may not be implemented or enforced in the preclearance counties. The Department of State submitted the preclearance package on June 8, 2011. The U.S. Department of Justice has 60 days to issue any objections. The preclearance counties will be notified of the outcome of the preclearance review.

10. “Testing the Water” poll for potential candidate. Does anything need to be filed by the potential candidate? No. Section 106.17 now permits state and county executive committees and affiliated party committees to conduct political polls for the purpose of determining the viability of certain candidates (in other words, to “test the waters” for various people). Such activity does not make the potential person for which the poll is being conducted a “candidate” and the expenditures for such a poll or sharing the results with the potential candidate are not considered a contribution to the potential candidate. However, the law still does not authorize a person to conduct such a poll on his or her own without actually becoming a candidate.

11. Third-Party Voter Registration Organizations (s. 97.0575, Florida Statutes).

a. Is there a change in who must register as a third-party voter registration organization? No. Anyone who solicits or collects voter registration applications must register as a third-party voter registration organization, except (1) a person who seeks only to register to vote or collect applications from that person’s spouse, child, or parent; or (2) a person engaged in registering to vote or collecting voter registration applications as an employee or agent of the division, supervisor of elections, DHSMV, or a voter registration agency. The key is whether the person or group “solicits or collects.” If the person or group satisfies the common dictionary definition of either of those terms, then registration as a third-party voter registration organization is required.

b. Is there a penalty for not registering? It is a misdemeanor of the first degree for failing to register. (See s. 104.41, Florida Statutes.) This represents a change – previously, there were no criminal or civil penalties in failing to register as a third-party voter registration organization.

c. If someone asks for applications from a supervisor of elections’ office who is not registered as a third-party voter registration organization, may the supervisor deny providing the applications to the person? If the supervisor knows that the person or the group the person represents will solicit or collect applications, the supervisor’s office should not provide applications to the person since to do so would involve the supervisor’s office in knowingly assisting someone to commit a criminal offense. However, if the person (or group) merely desires to have the applications to place at a business or event and there is no soliciting or collecting applications from anyone, then the person (or group) is entitled to the applications without registering (or having a “3P” identification number on the application).

d. How do I place the “3P” identification number on the applications provided to a third-party voter registration organization? Any application provided to a third-party voter registration organization must have a “3P” identification number in the “Official Use Only” portion of the voter registration application. A suggested approach: Write the application on one form and then photocopy the form to provide the organization the number of copies it desires.

e. May the supervisor set limits on the number of applications that can be requested by a third-party voter registration organization at any given time? No. Section

97.052(1)(b)2., Florida Statutes, requires that applications be distributed, upon request, to individuals or groups conducting voter registration programs. The supervisor may charge 1 cent per application for requests for 10,000 or more applications. The supervisor has a reasonable amount of time to comply with requests for voter registration applications.

f. If a supervisor receives by mail a single application containing a “3P” identification number which clearly shows (e.g., return address) that the applicant is the person who mailed the application, should the supervisor report this application on the DS-DE 124 as being received from the third-party voter registration organization? No. Although the application has a “3P” identification number on it, it would not be reported as being received from the third-party voter registration organization on the DS-DE 124. If the supervisor can definitely tell that the application is coming directly from the voter, not the third-party voter registration organization, the supervisor should also code the application in FVRS as being received by mail from the voter applicant, not from the organization.

g. Why must the supervisor of elections submit a daily report when the supervisor’s office has not provided voter registration applications to or received any from a third-party voter registration organization for the reported day? The Division must update its database daily; therefore, it requires daily reporting, including “negative” reports, to ensure the integrity and timeliness of the database. Eventually, an entirely web-based reporting system will be implemented to ease the burden on organizations, supervisors, and the Division.

h. If high school teachers conduct voter registration and collect the applications, must they register as a third-party voter registration organization? Yes, because they satisfy the statutory definition of a third-party voter registration organization.

i. Who is responsible for administering the fines against third-party voter registration organizations? The enforcement for the fines rests with the Attorney General, based upon referrals by the Secretary of State. The Attorney General will also decide if any violation was “willful” to trigger the enhanced penalty provisions of the statute. If the supervisor of elections office discovers that the third-party voter registration organization has submitted applications untimely, the supervisor’s office may report the irregularity to the Division of Elections on an Elections Fraud Complaint form (DS-DE 34) and attach copies of the untimely registration applications. To determine if the application was submitted untimely, compare the date/time that the voter completed the application to the time the supervisor’s office received the application. The third-party voter registration organization or its registration agent is responsible for ensuring the date/time that the applicant completed the application is placed on the application – if not reflected on the form, the supervisor’s office should advise the organization of the requirement.

j. What does a supervisor’s office do when it receives voter registration applications from a group that is not registered as a third-party voter registration organization? The supervisor’s office should process the applications, but also advise the group of the law and its registration requirements. A violation is a misdemeanor of the first degree (possible one-year imprisonment and a \$100) fine. The supervisor may also file an Elections Fraud Complaint reporting the irregularity in the registration process.

12. Undue Burden Oaths. Based upon the changes to s. 99.097, Florida Statutes, must a supervisor's office monitor campaign finance reports for candidates who sign an undue burden affidavit and subsequently pay a petition signature gatherer or receive monetary contributions? The law places no obligation on the supervisor to monitor campaign finance reports to verify that a candidate has not paid a petition gatherer or has received monetary contributions after filing an undue burden oath. However, if a supervisor becomes aware of a candidate paying a signature gatherer or receiving contributions after filing an undue burden affidavit, the supervisor should inform the candidate of the law, seek payment of signature verification fees, and declare the undue burden oath invalid if the candidate paid a signature gatherer.

13. Voter Registration Applications. The law mandates notice to the voter regarding disposition of a voter registration applicant within 5 days. Does the new law affect how much time a supervisor has to enter the data concerning the applicant into the statewide voter registration system? No. Current law requires the voter registration official to enter voter information data into FVRS within 13 days of receipt. The new provision now additionally directs the supervisor to notify the applicant of the disposition of the application within 5 business days after the voter registration information is entered into FVRS.