

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR MIAMI/ DADE COUNTY,
FLORIDA GENERAL JURISDICTION
DIVISION

JOE CAROLLO
Plaintiff,

vs.

2020-14475-CA-01

ROBERT F. PIPER, III, individually and
As Chair of TAKE BACK OUR CITY, Et. Al.
Defendants.

DEFENDANT'S MOTION TO DISMISS AND
RESPONSE TO MOTION FOR INJUNCTION

INTRODUCTION

Comes now, JOE CAROLLO¹, before the Third District has issued a mandate in his other case, more than five months after the Political Committee to recall him was formed and more than four months after the petitions were turned in to the City of Miami Clerk and finally files an action designed to challenge his recall. This proverbial "Hail Mary pass" that could best be characterized as an "everything but the kitchen sink" defense is both too late and legally insufficient. After, what was undoubted collusion with the very City of Miami Officials he now names in his lawsuit,

¹ CAROLLO illegally brings this case in his "Official Capacity" in a failed attempt to ask the residents of the City of Miami to pay for his legal defense. This is improper for several reasons. First, municipal recalls, by statute, are electoral matters and thus do NOT involve his official duties as a Commissioner. Second, while some cases have ordered municipalities to reimburse elected officials who were wrongly recalled for merely casting unpopular votes, CAROLLO is NOT being recalled for any official duty, but for violating the law and abusing his power in a manner not allowed by the City of State Law. Lastly, if CAROLLO has brought suit in his "official capacity," he is also thus represented by the City Attorney, regardless of the fact that a private attorney filed the suit. The City Attorney, however, also represents the Clerk, a Defendant in this action. Accordingly, CAROLLO should be treated as any other candidate in an election litigation, without the protection of his official capacity.

JOE CAROLLO has already lost three rounds in the courts and merely seeks to delay the inevitable. For reasons stated below, the Court should dismiss his case and deny any injunction.

RELEVANT FACTS

CAROLLO makes unsubstantiated allegation of fraud and improprieties by the recall committee but provides no credible allegations or anything resembling actual evidence. As such, even CAROLLO'S signature argument on the timing of the petitions contains no factual evidence. CAROLLO falsely states that the first petition was "collected" on January 30th when the recall committee was formed and even provided a video link to what he purports was that first signed petition in previous filings on the mandamus action but has yet to offer any actual evidence. A video by TV news of a purported signing is evidence of nothing in a court of law when no actual document has been submitted. There is no actual evidence that what was done for the TV camera was an authentic petition meant to be turned in or merely a demonstration for a news cycle. Even the improperly obtained affidavit of the City Clerk presented in the previous case is evidence of nothing, as the Clerk cannot testify as to the intent of that signature in front of a television camera. As it relates to this matter, both the TV news footage and the Clerk's testimony is irrelevant as there is NO petition with the January 30, 2020 date on it regardless of what the Clerk or any other witness claim they saw. Accordingly, any false timetable placed on the collection of petitions was erroneous from its inception. What is known, is that even before the recall committee had formed, CAROLLO was already having the City Attorney find a way to stop the recall.

As was detailed in the recall committee's pleadings in Piper v. Miami, Case No. 2020-4799-CA-13, it was evident that the City of Miami, no doubt at CAROLLO'S insistence, was attempting

to circumvent the recall process to the benefit of their Commissioner. [See Composite Exhibit “A”, Reply to City’s Response with Exhibits] Not coincidentally, many of the cases researched by the City Attorney’s Office and cited in their pleadings, are now cited here by JOE CAROLLO, himself.

Regardless of CAROLLO’S attempt to distort the facts, five important facts are undisputed and already in evidence. (1), Piper and the Committee presented a sufficient number of petitions, over the amount required to recall CAROLLO. (2), The petitions presented all fell within the statutory time frame with the first petition dated January 31, 2020 and the last dated February 29, 2020. (3), The Committee electronically delivered the petitions to the City Clerk on the evening of Saturday, February 29, 2020 and the Clerk, upon receiving the email, did NOT ask the Committee to come in person that night or the next day. (4), While the 30th day after the first petition was signed was March 1, 2020, that day was a Sunday and the Miami Clerk’s office was closed. The Clerk must have seen the petitions on his computer that Saturday night or Sunday morning and yet did NOT ask the Committee to come in on the ACTUAL 30th day as he tried to do on the falsely assumed 30yth day. (5), On Monday Morning, March 2, 2020, Piper and the Committee hand delivered all the petitions to the City Clerk.

In a move that clearly violates Florida Ethics Laws, agencies within the City of Miami, conspired to unlawfully involve themselves in an electoral matter, and unlawfully rejected the petitions. Piper and the Committee immediately filed a mandamus action. At that time, JOE CAROLLO filed NO action of his own. Instead, he tried to file a memorandum with the court without seeking to intervene. Realizing that simply seeking to be admitted as an interested party did not afford him equal rights in the matter, CAROLLO moved to intervene during the hearing on mandamus and was admitted as a full party Defendant into the case. Upon granting a Writ of

Mandamus, the Court indicated that it expected CAROLLO to then present a Motion for Injunction regarding the timing of the petitions. That Motion, as part of that case, NEVER CAME.

The City of Miami appealed the decision. CAROLLO appealed as well, as his own separate party. At no time did CAROLLO file any other independent action nor did he counter sue as was his right and responsibility at that time as a full party Defendant. Although the trial court essentially encouraged him to file his separate Motion on the timing and any other issue he may have had with the recall, he refused to do that, instead seeking to merely delay the proceedings with an appeal. The Appellate Court had the ability to rule on the timing of the petitions and stop the recall process but refused to do so. The entire time that the 3rd DCA was contemplating the mandamus issue, CAROLLO continued to sit on his rights and do nothing. It was then AFTER the 3rd District ruled against him and AFTER they denied rehearing, that CAROLLO now presents these issues in a grossly untimely fashion after essentially having waived the right to bring many of his arguments up.

ARGUMENT

CAROLLO FAILED TO BRING HIS CLAIMS IN A TIMELY MANNER AND NOW HIS CLAIMS ARE BARRED BY FAILURE TO BRING A COMPULSORY COUNTERCLAIM AND BY THE DOCTRINE OF LACHES

CAROLLO was admitted into the mandamus action by the Court as a full party Defendant. As such, he had all the rights and responsibilities of a litigant in that matter and had a duty to raise all of his issues in compulsory counterclaim. He failed to do so and has now waived his right to raise the issue he does. “A pleading must state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, provided it arises out of the

transaction or occurrence that is the subject matter of the opposing party's claim” *Wilson v. Kade*, 215 So.3d 632 (Fla. 3d DCA, 2017) Citing Fla. R. Civ. Pro. 1.170. CAROLLO entered the previous litigation and rather than file a proper compulsory counterclaim against Piper and the Committee, he chose to join the City in its fruitless appeal of the mandamus. “The purpose of the compulsory counterclaim is to promote judicial efficiency by requiring defendants to raise claims arising from the same “transaction or occurrence” as the plaintiff's claim.” *Londono v. Turkey Creek, Inc.*, 609 So.2d 14, 19 (Fla. 1992) Failure to raise a compulsory counterclaim in the first suit will result in a waiver of your claim. *Id.* CAROLLO did just that. The claim CAROLLO now brings forth involves the same operative facts as the mandamus action brought by Piper and the Committee, the recall of JOE CAROLLO and its legality. The failure to bring his counterclaim at that time now waives all issues he now seeks to address.

CAROLLO is also barred from bringing his claim by the doctrine of laches as he sat on his rights since the recall started and failed to raise any of the issues regarding the petitions or the recall committee for the past six months. As established in the mandamus action, recalls are election matters. Courts are generally hesitant to intervene in election cases when litigants have not acted diligently as “there is no constitutional right to procrastinate.” *Dobson v. Dunlap*, 576 F. Supp. 2d 183 (D. Ma 2008); see also *Fulani v. Hogsett*, 917 F. 2d 1028, 1031 (7th Cir. 1991) (Laches “in the context of elections...means that any claim against a state electoral procedure must be expressed expeditiously”). “The test of laches is whether there has been a delay which has resulted in the injury, embarrassment or disadvantage of any person, but particularly the persons against whom relief is sought.” *City of Eustis v. Firster*, 113 So.2d 260 (Fla. 2nd DCA,1959) citing *Stephenson v. Stephenson*, 52 So.2d 684 (Fla.1951). The recall petition was signed by voters who want CAROLLO removed from office for misfeasance and malfeasance. These voters have a right

to have their petitions counted and a right to move this recall forward. While the actions of the City that forced the mandamus action were always seen as dilatory, CAROLLO benefitted from that delay to the detriment of the voters who signed the petition. CAROLLO could have very easily filed suit on these issues while the mandamus issue was litigated at the appellate level but did not do so. Now, the law bars this action because the citizens have a right to have their petitions verified after a long delay while CAROLLO sat on his rights. Accordingly, this entire action should be dismissed with prejudice for waiver and laches and because he fails to establish a proper cause of action for injunctive relief as described below.

CAROLLO FAILS TO STATE A PROPER CASE FOR INJUNCTION

To obtain a temporary injunction, a plaintiff must establish: 1) The likelihood of irreparable harm; (2) the unavailability of an adequate remedy at law; (3) substantial likelihood of success on the merits; and (4) considerations of the public interest. *Genchi v. Lower Florida Keys Hosp. District*, 45 So.3d 915, 919 (Fla. 3D DCA, 2010) The threshold in this Motion to Dismiss, is not just that CAROLLO can't legally meet these elements, he doesn't even properly plead them. The law requires that the Plaintiff substantially allege factual basis for each of the elements. CAROLLO fails to do so. As such, his Complaint and Motion for Injunction must be dismissed.

Even assuming *arguendo* that the Court could infer from CAROLLO'S factual allegations that some of these elements were properly plead, it is important to go through all to show how CAROLLO'S claim fails.

No Irreparable Harm

CAROLLO neither properly alleges in his Complaint, nor could ever show, even if he amended his Complaint, that he has irreparable harm. First, the recall is a lawful process. The voters are undertaking this as per the statutes. Accordingly, CAROLLO is not suffering any “harm” at all. Second, even if he were suffering harm, it is not irreparable. The Florida Recall statute, F.S. § 100.361 requires three steps in the recall process. First, a recall petition must be circulated and signed by at least 10% of the registered voters in the district and those petitions are then certified by the Supervisor of Elections. Second, the subject of the recall then submits a Statement of Defense of the recall which is added to a new petition and then 30% of the registered voters in the district must sign THAT new petition. Third, if ALL those previous requirements are met, then there is a recall election. CAROLLO is attempting to seek an injunction in the middle of the first step by seeking to stop the verifications of the petitions already collected. Even if the petitions are verified by the Supervisor of Elections, CAROLLO has the ability to campaign against citizens signing the second round of petitions based on his defense. Ultimately, the issue goes to the voters. There is NO WAY CAROLLO can claim or prove that he would suffer irreparable harm by having petitions, in the first step of a three-step process, be certified.

No Other Remedy at Law

CAROLLO also has to allege and show that he has no other adequate remedy at law. This is also impossible for CAROLLO to prove as he has two other steps of the recall including an election in which he can participate in. THAT is his remedy at law and he is thus not entitled to an injunction.

No Likelihood of Success on the Merits of the Case

CAROLLO must next allege and prove that he has a likelihood of success on the merits. As mentioned above, he has waived the issues regarding the language of the petition, the petition gatherers being paid and the timing of the filing of the petitions. CAROLLO had an opportunity to raise these issues and failed to do so. However, assuming *arguendo*, that CAROLLO had presented these properly, he would still fail because he is incorrect on the law and cannot prove he can succeed on the merits.

a) Petition Language

CAROLLO argues the Petition language violates the statute as the grounds for recall of misfeasance and malfeasance are improperly stated. This argument was waived when CAROLLO failed to file his compulsory counterclaim. However, assuming his action is still valid, the argument is absurd. First, CAROLLO is correct that these terms are defined, he is just incorrect that the definition doesn't apply. In *Moultrie v. Davis*, 498 So.2d 993 (Fla. 4th DCA 1986), the Fourth District identified malfeasance as the performance of a completely illegal or wrongful act, while that misfeasance was the performance of a legal act in an improper or illegal manner. *Id* at 995 (citing *Wolfson v. Work*, 326 So. 2d 90 (Fla. 2d DCA 1976); *Bent v. Ballantyne*, 368 So. 2d 351 (Fla. 1979)). The recall petition alleges CAROLLO abused his official position by targeting private businesses with code enforcement and that he used public money to campaign for his Commission colleague when that individual ran for County Commission. In sum, the petition alleges CAROLLO committed illegal and wrongful acts in the use of City funds to aid in a campaign and performed a legal act in an illegal manner in abusing his position to use code enforcement as a weapon against a business. Accordingly, misfeasance and malfeasance are properly stated as grounds for a recall.

b) *Paid Petition Gatherers*

CAROLLO alleges that the petitions are invalid because he claims the Statutes prohibit paid petition gatherers. This is a nonsensical argument for several reasons. First, this is the “criminal penalties²” section of the statute with no civil cause of action. Second, this section of the statute is vague. The statutory provision states at § 100.361(10)³:

10) OFFENSES RELATING TO PETITIONS.—No person shall impersonate another, purposely write his or her name or residence falsely in the signing of any petition for recall or forge any name thereto, or sign any paper with knowledge that he or she is not a qualified elector of the municipality. No person shall employ or pay another to accept employment or payment for circulating or witnessing a recall petition. Any person violating any of the provisions of this section commits a misdemeanor of the second degree and shall, upon conviction, be punished as provided by law.

If the Legislature intended for there to be an express prohibition of paid petition gatherers in a recall, they would have clearly stated it. They did not. This is not accidental as allowing candidates to pay petition gatherers to put a candidate’s name on the ballot is legal, so therefore it would violate the equal protection section of the US and Florida Constitutions if it were illegal to pay petition gatherers in a recall.

Most important, nothing in the statute commands or even suggests that a violation of this subsection voids the true signature of a voter who was uninvolved in the circulation process. Other courts have taken similar views. In *Dockery v. Hood*, 922 So. 2d 258 (Fla. 1st DCA 2006), the First District stated that while the omission of the names of paid petition gatherers in the petitions

² Upon commencement of the recall, a memorandum was sent to the office of the Miami-Dade State Attorney, informing them that the recall effort was paying petition gatherers and explaining why even if the statutes did expressly state such a prohibition of paying petition gatherers, it would be unconstitutional and unenforceable. Despite the admission to the authorities, there has been no prosecution nor enforcement action by the authorities. [See Exhibit “B”]

³ CAROLLO strangely argues that the Miami-Dade Charter somehow also bars paid petition gatherers. First, the Miami-Dade County Charter bears no authority in the City of Miami where recalls are governed strictly by state statute. Second, the Miami-Dade Charter does not bar paid petition gatherers in recalls anyway as the Charter Review Commission was advised such a prohibition would be unconstitutional as stated above.

could incur a civil infraction, no statutory language allowed for the invalidation of petitions that did not have such information. Therefore, the possible misdemeanor penalties for any action described in the statute does not invalidate the bona fide signature of a voter seeking to recall CAROLLO. Any interpretation of the statute in that manner would lead to the absurd results disfavored by the courts. *See Palm Beach County Canvassing Bd. v. Harris*, 772 So. 2d 1273 (Fla. 2000); *Amente v. Newman*, 653 So. 2d 1030 (Fla. 1995).

c) *Timing*

CAROLLO is also wrong on his argument that the petitions were presented in an untimely manner. First, as indicated above, the City attempted to hamstring the deadline for submitting the petitions by creating an artificial deadline based on when they ASSUMED the first petition was signed. They had no factual basis to make this assumption. Second, the City and CAROLLO conspired to truncate the time in which to collect the petitions in a manner not allowed by statute and in violation of the State's Ethics Laws. As argued in the mandamus action, there is no other way than to interpret the intent of the Legislature in creating the Municipal recall provision of the Statutes, other than to conclude that recalls are purely election matter. As documented by where precisely this section is located in the Statutes, recalls of municipal officials are electoral matters. As such, all other relevant statutes regarding other elections apply. Florida Courts have all mandated that all elections statutes be read in *pari materia*⁴ with each other. *See Florida Dept. of State, Div. of Elections v. Martin*, 916 So.2d 763, 768 (Fla. 2005). This is important because not

⁴ The City has incorrectly attempted to argue in the past that the Committee's interpretation of *pari materia* is incorrect. It was they who are incorrect. The purpose of the election statutes is to promote democratic institutions and not create any scheme by which rights are taken away from electors. Accordingly, if campaign finance report due dates are moved to the following workday when they fall on a weekend or holiday, so are petitions for recall when they are due on a weekend or holiday so long as all petitions are dated within a 30-day period. Additionally, as the courts have interpreted the statutes to provide leeway to voters, the draconian remedy suggested by CAROLLO is also not allowed as any violation of the "30 days" would merely void the oldest of the petitions, not all of them. Furthermore, because we are arguing over the rights of voters, any vagueness in the law would require the court to resolve any doubt on the side of the voter, thus allowing the petitions.

only do most election deadlines revert to the next business day if the deadline falls on a weekend or holiday, but the election laws do not create the draconian penalties CAROLO is seeking to enforce.

First, the doctrine of *pari materia* highlights why the CAROLLO is incorrect in his assertion on the computation time in the filing of the recall petitions⁵. As indicated F.S. § 106.07, campaign finance reports due on a weekend or holiday have their deadlines rolled over to the following day that is NOT a weekend or holiday. Courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another. *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So.2d 452 (Fla. 1992.) This interpretation follows the same one offered by the City of Miami in its first ‘Cheat Sheet’ when it cited the Florida Rules of Judicial Administration that requires judicial filings with the same deadlines as the campaign finance filings and stated the petitions would be due on the Monday AFTER the City had calculated the time based on their incorrect assertion to when the first petition was collected. The City’s original research cited Fla. R. Jud. Admin. sec. 2.514 *Computing and Extending Time* and correctly concludes that Florida law is well-settled that if a statute sets forth a period of days in which an act must be done and the last day of such period falls on a Saturday, Sunday or holiday such period

⁵ Although there are multiple arguments to show the City’s computation of time is wrong, no other argument is more persuasive than the fact that the City actually had the proper method first and then tried to artificially condense it. Truth be told, there is no other lawful computation of time that is legally acceptable other than to have petitions due on the next workday after the 30th day. In this case, the Plaintiffs did not even ask for or expect more than 30 days in which to turn in petitions, they electronically filed them on the 29th day and did NOT even collect petitions on the Sunday after the email filing. Even if the City was correct that Sunday March 1st was the 30th day, the Plaintiffs would still get the entire day to collect petitions and it wouldn’t change the fact that the City was NOT open that Sunday. This interpretation by the City would reduce the days allowed to gather petitions and would wrongly lead to an absurd reading of the recall statute that courts have been reluctant to approve in electoral issues. See *Palm Beach County Canvassing Bd. v. Harris*, 772 So.2d 1273 (Fla. 2000); and *Amente v. Newman*, 653 So.2d 1030 (Fla. 1995).

is extended until the next regular business day. See also *Stockslager v. Daly Aluminum Products, Inc.*, 246 So. 2d 97 (Fla. 1971).⁶

After the City's "cheat sheet" correctly cited the law⁷ in when petitions would be filed with the City, other's in the City decided that the time for voters to collect petitions should be truncated unlawfully. This led to the chain of events causing the Clerk to illegally reject the petitions and the subsequent mandamus action in which the voters prevailed. The voters should rightfully prevail in this action as well as the petitions were constructively given to the City on Saturday night, February 29, 2020. The City did NOT ask the Committee to come in person that night when they were electronically submitted, nor did they ask the Committee to come in that Sunday, the actual 30th day. They did not need to as both the electronic submission that Saturday evening was legal as was the physical submission the Monday after the deadline. As such, not only are the petitions timely, the City and CAROLLO have failed to properly make their case with this argument in several rounds of litigation. This argument is not only invalid, it was also waived by the Doctrine of Laches as CAROLLO failed to raise it separately in the past three months.

⁶ Interestingly, the City's own Code provides for a method of calculating time that is consistent with both *Fla. R. Jud. Admin.* sec. 2.514 and *Stockslager*. Sec. 1-14 - *Computation of time* provides that

"In computing any period of time prescribed or allowed by this Code, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation."

⁷ The City attempted in its argument in the previous case to step back this conclusion by citing Division of Elections Advisory Opinion DE 88-41 (Sept. 29, 1988) that was later rescinded by the Division of Elections, while expressly not disagreeing with its conclusion, because it relied on the Florida Rules of Civil Procedures, which govern only court proceedings, for guidance in interpretation. Importantly, as noted by the City in its Reply, the opinion acknowledged, however, that there was no set rule for the computation of time. Of course, *Fla. R. Jud. Admin. sec. 2.514 Computing and Extending Time, applies not only to court proceedings, but also to any "statute that does not specify a method of computing time."*

Granting This Injunction is Against Public Interest

The final threshold CAROLLO needs to show in seeking an injunction is his most challenging. CAROLLO cannot prove that giving him injunctive relief serves the public interest when it is so obvious that the reverse is the case. Establishing a precedent where a municipality and a Commissioner can truncate the timeline for recall petitions can be turned in or provide for a draconian remedy of merely throwing out all petitions for timeliness when the Legislature never expressly stated that. What benefits the public interest is that if there is any ambiguity on the timeliness of petitions, the issue must be resolved in favor of the voters, not in favor of the official they seek to recall.

Furthermore, CAROLLO has been a disrupting force in the City of Miami since his return to City Hall. The very wording of the petitions detail precisely why. The municipal recall statutes set a high burden to remove an official, yet the committee easily met the first hurdle because the voters were well informed that CAROLLO was violating the law. The petition language is proper and the petitions were lawfully collected and presented in a timely manner despite CAROLLO unlawfully using his public position to have the City reject them unlawfully. Granting CAROLLO'S injunction would give license to ALL municipal officials to operate in the same unlawful manner and would be completely against the public interest.

CONCLUSION

CAROLLO is out of time and options. He asserted his influence over the City staff in an unlawful manner and had them improperly reject the petitions. They lost. In the meantime, CAROLLO waived his arguments by failing to bring a compulsory counterclaim despite being an independent party Defendant to the action. Rather than file a Motion for injunction at that time, CAROLLO appealed the mandamus action and sat on his rights for over three months. Now, he

seeks a last-ditch effort to derail this recall. The Court should see past his deceptions. Even if his action was timely, CAROLLO also fails to properly plead his case for injunction. Even CAROLLO HAD filed a timely action and HAD properly plead his case for injunction, the law would STILL reject his claim because he is incorrect in ALL his arguments. The petition language is correct, the petitions were timely submitted, his allegations of fraud are nonexistent and the fact that canvassers were paid to circulate petitions is neither illegal nor relevant. This claim is improper and the petitions must be immediately presented to the Miami-Dade Supervisor of Elections to be certified.

WHEREFORE, the Defendants hereby move that the Court deny any Motion for Injunction, order that the Recall Petitions of JOE CAROLLO be immediately delivered to the Supervisor of Elections for Miami-Dade County and dismiss the above titled action with prejudice, as well as any and other such relief the Court deems necessary.

Respectively submitted this 16th day of July 2020 by:

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Florida E-Filing Portal and I have effectuated service through the portal in compliance with Fla. R. Jud. Admin. 2.516(f) on the service list below this 16th Day of July 2018.

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EXHIBIT “A”

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR MIAMI/ DADE COUNTY,
FLORIDA GENERAL JURISDICTION
DIVISION

**ROBERT F. PIPER, III, individually and
As Chair of TAKE BACK OUR CITY,
A Miami Political Committee**

Plaintiff,

vs.

2020-4799-CA-13

**THE CITY OF MIAMI and
TODD HANNON, in his official
capacity as CLERK OF THE
CITY OF MIAMI.**

Defendants.

PLAINTIFFS' REPLY TO THE CITY'S REPOSE TO PETITON FOR MANDAMUS

INTRODUCTION

The City of Miami responds to the Petition for Mandamus by attempting to defend the rejection of the petitions by the Clerk based on their calculation of time for their rejection of the filing of the recall petitions as well as attacking other procedural issues regarding the petitions. While their argument on the time required to file the signed recall petitions would be incorrect even if it had been made by the subject of the recall, Commissioner Joe Carollo himself, the fact that the City is making the argument should be the primary focus of these proceedings.

Florida Statutes prohibit the use government resources in electoral matters. In other words, it is unlawful and often criminal, for a City government to interfere with an election. As recalls of

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municipal officials are, in fact, elections, the City of Miami, specifically the office of the City Attorney, has broken the law by its coordinated effort to derail and defeat the recall of Joe Carollo.

The City's very response to this legal action, as well as their entire handling of this matter, is unlawful and likely criminal and should be subject to a law enforcement investigation. While the City attempts to argue that it was the City Clerk, Hannon, that rejected the petitions, Hannon was merely acting at the behest of the City Attorney who has coordinated the entire effort to defeat the recall (likely at the behest of Joes Carollo, himself) from its inception. As evidenced by recently obtained emails¹ from the City Attorney to her subordinates (made publicly available several days after the filing of this underlying action), the City Attorney² has engaged in a coordinated effort to use the power of her office and the financial resources of the City of Miami to unlawfully intervene in an electoral issue to the benefit of Commissioner Joe Carollo.

The City Attorney's efforts are not only an attempt to silence the voices of the voters that signed the recall petitions but a betrayal of the very people she swore to represent, the residents of the City of Miami. For a better understanding of how the City Attorney has betrayed her true clients, it is best to review the emails between the various attorneys in chronological order to get a clear picture.

¹ In the off chance that the City were to attempt to assert some sort of privilege on these emails, they would not be entitled to such. First, the emails were released to a local blogger under a public records request. Second, any communications or work product that either were created in the furtherance of a crime or cannot be otherwise procured to show evidence of the unlawful activity are discoverable and admissible and not subject to any privilege. *See Liberty Mut. Fire Ins. Co. v. Kaufman*, 885 So.2d 905 (Fla. 3d DCA, 2004) See also, *Anderson v. State*, 297 So.2d 871 (Fla. 2d DCA, 1974) Accordingly, even emails between the City Attorney and any Commissioner on this subject would also be discoverable and admissible.

² The signers on this pleading, in our combined almost 50 years in the practice of law, would like to point out that this is only the second time either of us have had to call out an opposing counsel by name in a pleading. It is sadly unavoidable. While opposing counsel should never be named in a pleading, all opposing counsel are mentioned in emails that were made publicly available and these emails show a conspiracy in the Office of the City Attorney to unlawfully involve themselves in a recall of a Commissioner. Accordingly, the naming of the different individuals is required in this instance. Additionally, as government officials, these attorneys had a higher standard of ethics imposed on them and unfortunately failed to meet it.

RELEVANT FACTS BASED ON THE CITY ATTORNEY EMAILS

1. On January 29, 2020, before the recall committee had even registered with the city and before first petition had even been collected, the City Attorney asked for a review of the recall process by her top lieutenants and her assistant. Mendez's executive assistant researches data on the recall of former Miami-Dade County Mayor, Carlos Alvarez. The response from Assistant City Attorney, Kerri McNaulty, created what Mendez would eventually refer to as the City's "Cheat Sheet" on recalls. In this first "Cheat Sheet," McNulty actually correctly states the timing for filing of recall petitions but fails to acknowledge that this entire exercise by the City Attorney is in complete violation of the law. [See Composite Exhibit "A", Email from McNaulty and first "Cheat Sheet" by the City along with other related documents and email from Mendez Executive Assistant Marta Gomez]
2. Later that evening, obviously not content with giving her clients, the residents of the City of Miami, the full 30 days in which to sign recall petitions as required by law, City Attorney Victoria Mendez asks her subordinates to discuss the computation of time. [See Exhibit "B," email of Victoria Mendez]
3. Interestingly enough, earlier on the evening of January 29th, Assistant City Attorney, John Greco, emails his colleagues with two cases about defeating recalls. Not only does this show the City Attorney was actively now conspiring to defeat the recall, but the cases themselves that Greco cites, are based on the subject of the recall themselves being the ones to challenge a recall effort, NOT the municipality. As early as January 29, 2020, the City knew that it was up to Carollo to defend himself in the recall and NOT the City. [See Exhibit "C," email by John Greco]

4. On January 30, 2020, a day before the first petition is collected, as further evidence of the forming conspiracy to derail the recall effort to benefit Joe Carollo, Assistant City Attorney George Wysong, again wanting to deprive his clients, the residents of the City of Miami, of the full 30 days in which to sign recall petitions, responds to McNulty and Mendez email with a suggestion that the City reject the applicable law cited by McNulty and adopt a stricter standard on the computation of time in which to file recall petitions. Not only is he incorrect in his analysis as the election code read in *pari materia* signifies that McNulty was correct in her first calculation of time, it shows once again that the City Attorneys are not merely trying “to call balls and strikes,” but are purposely trying to influence the recall process in violation of the statutes. [See Exhibit “D,” email from George Wysong]
5. Later that evening on January 30th, City Attorney Mendez agrees with Wysong’s suggestion that they violate the law to deny the voters the full 30 days to sign recall petitions. [See Exhibit “E,” Mendez reply]
6. The next day, January 31, 2020, City Attorney Mendez asks McNulty if she can agree with Wysong’s interpretation of limiting the days in which voters (again, their clients) can sign recall petitions. She asks McNulty to then add this new time limitation to the City’s “Cheat Sheet.” [See Exhibit “F,” email from Mendez]
7. The following Monday, February 3, 2020, McNulty replies with the newly updated “Cheat Sheet,” detailing the City Attorney’s plan for interfering with the electoral process to the benefit of Joe Carollo and the detriment of the very residents they are supposed to represent. [See Exhibit “G.” response to Mendez with updated “Cheat Sheet”]
8. On the afternoon of February 3rd, Assistant City Attorney John Greco is obviously tasked with finding an insurance policy if there are multiple recall attempts against Joe Carollo.

Greco pulls up a City of Doral ordinance passed in 2013 that limits recall efforts. This Doral City Ordinance was the product of Joe Carollo, himself, who was City Manager in Doral and had a Commissioner sponsor the ordinance to protect then City Mayor, Luigi Boria from a recall attempt in that City³. Greco then emails George Wysong and others and instructs them to open a new legislative file in order to introduce this as an ordinance in the City of Miami. The fact that the ordinance is sponsored by Commissioner Alex Diaz de la Portilla, a Carollo ally and the person Carollo is accused to have illegally helped in the recall petition is suspicious of either a direct Sunshine Law violation by Carollo and Diaz de la Portilla, or worse, having the City Attorney's Office as the conduit for the Sunshine Law violation. [See Composite Exhibit "H," email to Greco by Municode on Doral Ordinance and email by Greco to Wysong and staff]

9. On February 6, 2020, Assistant City Attorney John Greco researches an issue on Westlaw and sends a case to himself and Keri McNulty. *City of Miami Beach v. Smith*, 251 So.2d 290 (Fla. 3d DCA, 1971), which Greco pulled, had nothing to do with a recount, but rather for the very need for this underlying action. *Smith* deals with residents who collected petitions to amend the City of Miami Beach Charter having to wait 9 months for the City to process their petitions and THEN seeking MANDAMUS. It was at this point that the City came to the conclusion that Carollo (for some reason still unknown) could not or would not file suit himself on the recall petitions. Knowing by this point that they would not have standing either, they began to develop a strategy as to what would be required to

³ The then Sponsor of the Doral Ordinance, State Representative Ana-Maria Rodriguez, has verbally confirmed to counsel that it was Carollo who provided her the Ordinance to sponsor. As she is currently in Tallahassee for the Legislative Session, she was unavailable to execute an affidavit but can verify this information if necessary. Likely not coincidentally, this is one of the few 2013 ordinances that are "mysteriously" missing from the archives of the City of Doral website.

force them to turn over the petitions to the elections department for verification. As such, the conspiracy within the City of Miami Attorney's office to illegally affect the outcome of an election on behalf of Joe Carollo was furthered. [See Exhibit "I," email and case]

10. By February 11, 2020, the City Attorney's Office was in such lock-step with Joe Carollo, that the assistant to the City Attorney, rather than working on actual legal matters, was following the press of the recall and sending articles to attorneys in the office. [See Exhibit "J," Article sent by staff to attorneys.]
11. By February 12th, with the recall in high gear, the City Attorney's Office was still looking for ways to legitimize their illegal interference. Greco at this point starts to research ways in which the City could reimburse Carollo for his legal bills on the recount. This was proof once again that the City of Miami Attorney's Office was once again working as Joe Carollo's personal law firm rather than representing their true clients, the voters that were signing petitions. [See Composite Exhibit "K," Greco research.]
12. By February 16, 2020, the recall effort had gained steam and the City was ready to proceed with the ordinance that Carollo had previously brought to Doral. There was one problem, the State Statutes prohibited any ordinance on recall that was not uniform to the recall statute. This was confirmed to Victoria Mendez by Kerri McNulty when she emailed her a copy of the Florida Attorney General Opinion that had been provided to former Miami City Attorney George Knox. This opinion basically stated that Miami was prohibited from having a recall statute that deviated from the Florida Statutes. Mendez eventually crafted her own opinion letter, likely at the behest of Carollo, that basically ignored this Florida Attorney General Opinion. What is interesting is that McNulty had looked up this opinion back on January 28th but had not sent it to Mendez until it looked like the recall committee

was starting all over again and they needed to see if they could defend their new ordinance. Once again, the City Attorney was acting as Joe Carollo's personal lawyer rather than representing her real clients, the voters signing petitions. [See Composite Exhibit "L," email to Mendez and Knox Opinion.]

13. On February 24, 2020 Three City Commissioners (All Carollo allies) voted for an ordinance on first reading that would limit recalls in direct violation of the Florida Statutes which requires uniformity in all municipalities. Mendez attempted to defend the ordinance stating that the City could speak on items silent in the recall statute. She is incorrect in how the statute is to be applied. [See Exhibit "M," Article on Miami Recall Ordinance]

ARGUMENT

Electoral issues in the State of Florida are governed by Title IX of the Florida Statutes, entitled Electors and Elections. This part of the Florida Statutes contains all provisions dealing with any election required in the state. Chapter 100 of the Statutes, located in Title IX, is entitled, General, Primary, Special, bond, and Referendum Elections. As evidenced by the title, this Chapter goes into detail of the different types of elections in the State of Florida. It is in the Chapter, precisely, that we find F.S. § 100.361, entitled Municipal Recall.

As the Florida Statutes creates a completely separate Chapter for municipal issues and local governments, there is no other way than to interpret the intent of the Legislature than to conclude that recalls are purely election matter⁴. As documented by where precisely this section is located in the Statutes, recalls of municipal officials are electoral matters. As such, all other relevant

⁴ As evidence of this, See Composite Exhibit "N", a brief history of Bills and staff analysis of Omnibus Election Bills of the Florida Legislature dealing with municipal recall. A review of the legislative history of the Recall Statute also indicates that it has ONLY been amended in past omnibus election bills, BECAUSE A RECALL IS AN ELECTION MATTER..

statutes regarding other elections apply. Florida Courts have all mandated that all elections statutes be read in *pari materia* with each other. See *Florida Dept. of State, Div. of Elections v. Martin*, 916 So.2d 763, 768 (Fla. 2005). That the election statutes should all be read together, is important for TWO specific reasons.

First, the doctrine of *pari materia* highlights why the City of Miami is incorrect in its assertion on the computation time in the filing of the recall petitions⁵. As indicated F.S. § 106.07, campaign finance reports due on a weekend or holiday have their deadlines rolled over to the following day that is NOT a weekend or holiday. Courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another. *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So.2d 452 (Fla. 1992.) This interpretation follows the same one offered by McNulty in her first ‘Cheat Sheet’ when she cited the Florida Rules of Judicial Administration that requires judicial filings with the same deadlines as the campaign finance filings and stated the petitions would be due on the Monday AFTER the City had calculated the time based on their incorrect assertion to when the first petition was collected. McNulty’s memo cites Fla. R. Jud. Admin. sec. 2.514 *Computing and Extending Time* and correctly concludes that Florida law is well-settled that if a statute sets forth a period of days in which an act must be done and the last day of such period falls on a Saturday, Sunday or holiday such period is extended

⁵ Although there are multiple arguments to show the City’s computation of time is wrong, no other argument is more persuasive than the fact that the City actually had the proper method first and then tried to artificially condense it. Truth be told, there is no other lawful computation of time that is legally acceptable other than to have petitions due on the next workday after the 30th day. In this case, the Plaintiffs did not even ask for or expect more than 30 days in which to turn in petitions, they electronically filed them on the 29th day and did NOT even collect petitions on the Sunday after the email filing. Even if the City was correct that Sunday March 1st was the 30th day, the Plaintiffs would still get the entire day to collect petitions and it wouldn’t change the fact that the City was NOT open that Sunday. This interpretation by the City would reduce the days allowed to gather petitions and would wrongly lead to an absurd reading of the recall statute that courts have been reluctant to approve in electoral issues. See *Palm Beach County Canvassing Bd. v. Harris*, 772 So.2d 1273 (Fla. 2000); and *Amente v. Newman*, 653 So.2d 1030 (Fla. 1995). {00054364. 1 }

until the next regular business day. See also *Stockslager v. Daly Aluminum Products, Inc.*, 246 So. 2d 97 (Fla. 1971).⁶

After McNulty correctly cited the law⁷ in when petitions would be filed with the City, Assistant City Attorney, George Wyson, then suggested that a literal reading of the statute would reduce the filing deadline. Obviously Wyson was attempting to limit the ability of the recall committee, but he was also WRONG about the law regarding the filing deadline for the petitions. Because the election statutes are to be read together, the same deadline rules that are used for campaign finance report filings are also used for filing of recall petitions. As such, the petitions are timely.

The recall statute creates no such authority for the City or its clerk to compute the timeline of the petitions or to even reject them. This is for good reason, as the municipal clerk is often an employee of the entity of which the subject of the recall is likely a member who can therefore assert undue influence upon the clerk. The City Clerk, by making a decision (likely at the insistence of the City Attorney) on the petitions, has now violated this important part of the statutes. There is also one other important application of the election statutes that suggests the City's

⁶ Interestingly, the City's own Code provides for a method of calculating time that is consistent with both *Fla. R. Jud. Admin. sec. 2.514* and *Stockslager*. *Sec. 1-14 - Computation of time* provides that

"In computing any period of time prescribed or allowed by this Code, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation."

⁷ The City attempts in its Reply to step back this conclusion by citing Division of Elections Advisory Opinion DE 88-41 (Sept. 29, 1988) that was later rescinded by the Division of Elections, while expressly not disagreeing with its conclusion, because it relied on the Florida Rules of Civil Procedures, which govern only court proceedings, for guidance in interpretation. Importantly, as noted by the City in its Reply, the opinion acknowledged, however, that there was no set rule for the computation of time. Of course, *Fla. R. Jud. Admin. sec. 2.514 Computing and Extending Time, applies not only to court proceedings, but also to any "statute that does not specify a method of computing time."*

conduct in this matter is not only illegal, but perhaps even criminal. While it had first been assumed from the initial rejection of the petitions by the City, that the City had merely just impulsively moved to calculate the time themselves and then reject the petitions, the discovery of the email chain between the City Attorney, Victoria Mendez and the cabal of assistants, dating back to before even the first petition was collected, demonstrates a nefarious attempt by the City Attorney from the inception of this process to interfere with an election.

As stated above, it is well established that the recall statute is located in the section of the statutes dealing with elections. This is for good reason. Not only can the subject of the recall face a possible election to remove them from office, the actual collection of petitions is an election in and of itself. For this purpose, the recall committee is to register as a political committee according to Chapter 106 of the Statutes. More important, because this is an election, it must be free from government interference. F.S. § 104.31 reads in pertinent part:

Political activities of state, county, and municipal officers and employees.—

(1) No officer or employee of the state, or of any county or municipality thereof, except as hereinafter exempted from provisions hereof, shall:

(a) Use his or her official authority or influence for the purpose of interfering with an election or a nomination of office or coercing or influencing another person's vote or affecting the result thereof.

Not only is the City's computation of time in filing the petitions incorrect, it, along with the "Cheat Sheet" and the other emails back and forth show a pattern by the City Attorney to derail the recall effort, in turn interfering with an election involving a City Commissioner. The back and forth emails conspiring to rob citizens of their ability to recall a City Commissioner is prohibited by law as the illegal interference by a municipal official in an election. The City Attorney did just

what the statute prohibited, she interfered in an election. Worse, she conspired with her subordinates to interfere. The pattern of emails shows the nefarious intent to deprive the very voters they represent of their lawful ability in a clear violation of the oath she took as the City Attorney. As he accepted her help, and likely directed it, Carollo as well has criminally violated the statute by using his influence over the City Attorney to secure help in his recall.

By Definition, the City Attorney is NOT the attorney for the Commissioners. Section 21 of the City of Miami Charter lists the actual City as the actual first client of the position and then mentions officers. It is the obvious that the position is created to be a neutral representative to all branches and needs of the City of Miami, including its residents. By acting for the benefit of one Commissioner facing a recall, Attorney Mendez has not only illegally intervened in an electoral matter in violation of State Statute, she has betrayed her oath to represent the vary people that signed the recall petitions. It is that precise violation that has also caused Mendez to violate F.S. § 112.313. Because the City Commissioners appoint the City Attorney, it is obvious by the pattern of emails, that the City Attorney was doing everything possible to help a Commissioner seen as the one who can most help her keep her job.

Subsection (6) of F.S. 112.313 specifically states: “(6) MISUSE OF PUBLIC POSITION.—No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. 104.31.” Attorney Mendez has done just that, she has used her official position as City Attorney to secure her continued employment as City Attorney by violating her oath of office as well as illegally interfering with an election.

CONCLUSION

There is a very good reason why the statute does NOT task the City Clerk with the power to make legal judgments on the recall petitions. As the Clerk is often an employee hired and fired by a group consisting of the person being recalled, the Legislature did not want undue pressure on a municipal clerk to act in a manner that displeases a supervising entity. As such, this is a purely ministerial act and Mandamus is proper. What cannot be ignored, however, is that the City Attorney, by injecting herself into this milieu has now done what the Legislature tried to avoid and has now involved the Clerk as well. What was first brought as a simple action for mandamus, to require the City of Miami to follow the law, has now erupted into a larger issue based on the recent revelations of the nefarious conduct of the City Attorney in likely unlawful coordination with a Commissioner subject to a recall. While the City could never successfully answer why: 1)The statute gives them any legal authority over the acceptance of the recall petitions, 2) Why their computation of the timing of the petitions is accurate under the law and 3)Why they should not just be held to their ministerial role under the statute and forced to submit the petitions to the Supervisor of Elections, they now have much more serious questions to answer. Why did they assist a Commissioner in a recall when the law forbids such involvement by a government entity in an election matter? Why did they decide to limit the days in which their own residents, those they represent, could collect and sign recall petitions? Why are they illegally attempting to violate the Florida Recall Statute by passing their own ordinance when a previous City Attorney was given an opinion by the Florida Attorney General that stated it was against the law?

Sadly, the answer is that the City Attorney⁸ was trying to gain favor with the Commissioner she most considered responsible for the three-vote majority on the City Commission in order for her to keep her job. As such, she turned her office in Joe Carollo's legal team and proceeded to develop a strategy by which Carollo would prevail in his election and the residence who signed his recall petition would be silenced. She violated her oath of public office and failed to represent the City voters in order to preserve her appointed titles as City Attorney.

All of the counsel mentioned in this Reply knew or should have known that a recall is an election matter (after all, it was in the statutes) and as such, they could not use the power of their office to affect the outcome. They ignored the law and did it anyway. They knew they were improperly computing the time for the filing of the petitions and even researched what the remedy would be if they failed to properly turn in the petitions to the Supervisor of Elections. They unlawfully ordered the Defendant, Hannon to reject the petitions even though they knew the statute did not provide for him to do so. This clear and purposeful violation of the law cannot go unanswered by the Court. The Plaintiffs have had to secure legal counsel and file suit to enforce their rights when the City Attorney's Office had all along been concocting a scheme to deprive the signers of the petitions of their rights. As such, the City should be forced to cover the fees and cost associated with bringing this action.

⁸ As stated in the first notation, it brings the undersigned no pleasure to call out opposing counsel by name within the pleading, but the circumstances of the argument necessitated it. As public officials, they should all have been aware of their need to maintain the public trust. They have failed to meet their burden.
{00054364. 1 }

RELIEF REQUESTED

WHEREFORE, the Plaintiffs respectfully request this honorable Court grant their request for Mandamus and:

1. Order the City Clerk to turn over to the Miami-Dade County Supervisor of Elections for immediate verification.
2. Prohibit the City Attorney from further involvement in the recall of Joe Carollo.
3. Order the City to reimburse the Plaintiffs for all legal fees and costs associated with the bringing of this lawsuit under this court's inherent authority to sanction bad faith. (*Moakley v. Smallwood*, 826 So. 2d 221, 226 (Fla. 2002) "We thus hold that a trial court possesses the inherent authority to impose attorneys' fees against an attorney for bad faith conduct.")
4. Any and other relief this Court deems reasonable.

Respectively submitted this 9th day of March 2020 by:

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Florida Court's E-Filing Portal, and that as a registered participant of the Portal, I have effectuated service through the Portal in compliance with Fla. R. Jud. Admin. 2.516 on Victoria Mendez, Esq., John Greco, Esq., Keri McNulty, Esq. and Gerorge Wysong, Esq. City of Miami Attorney, Office of the City Attorney 444 S.W. 2nd Avenue, Suite 945, Miami, Florida 33130, at the associated emails registered through the portal this 9th day of March 2020 by:

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EXHIBIT “A”

Subject: Recall Questions



McNulty, Kerri L. <klmcnulty@miamigov.com>

Wed, Jan 29, 6

to Mendez, Victoria, Greco, John A., Wysong, George, Gomez, Marta

Good Evening Victoria,

Attached, please find some initial responses to the questions you sent. I have also attached some pertinent statute sections, etc. We will follow up on any of these issues, as required.

Thank you,

Kerri

Kerri L. McNulty, Senior Appellate Counsel

Appellate Division



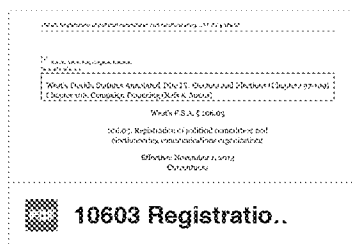
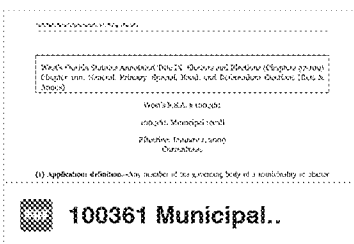
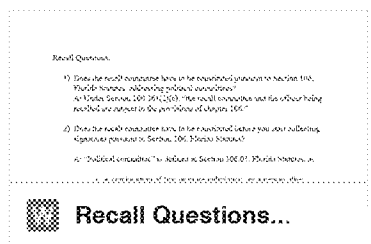
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6 Attachments



Recall Questions:

- 1) Does the recall committee have to be constituted pursuant to Section 106, Florida Statutes, addressing political committees?

A: Under Section 100.361(2)(c), “the recall committee and the officer being recalled are subject to the provisions of chapter 106.”

- 2) Does the recall committee have to be constituted before you start collecting signatures pursuant to Section 106, Florida Statutes?

A: “Political committee” is defined in Section 106.03, Florida Statutes, as

1. A combination of two or more individuals, or a person other than an individual, that, in an aggregate amount in excess of \$500 during a single calendar year:

- a. Accepts contributions for the purpose of making contributions to any candidate, political committee, affiliated party committee, or political party;

- b. Accepts contributions for the purpose of expressly advocating the election or defeat of a candidate or the passage or defeat of an issue;

- c. Makes expenditures that expressly advocate the election or defeat of a candidate or the passage or defeat of an issue; or

- d. Makes contributions to a common fund, other than a joint checking account between spouses, from which contributions are made to any candidate, political committee, affiliated party committee, or political party.

§ 106.011, Fla. Stat. Under Section 106.03(1)(a), Florida Statutes, “[e]ach political committee that receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding \$500 or that seeks the signatures of registered electors in support of an initiative shall file a

statement of organization as provided in subsection (3) within 10 days after its organization.” § 106.03(1)(a), Fla. Stat.

Section 106.03(3)(c) provides: “A political committee which is organized to support or oppose only candidates for municipal office or issues to be voted on in a municipal election shall file a statement of organization with the officer before whom municipal candidates qualify.” § 106.03(3)(c), Fla. Stat.

Pursuant to the above, and section 100.361(2)(c), which dictates that recall committees are subject to chapter 106, a recall committee would be required to file a statement of organization within ten days of organizing. It would be highly improbable that a committee would be able to collect signatures prior to the statutory deadline to file the statement of organization.

- 3) Is it thirty days to turn in the signatures, inclusive or is it the 31st day? If the last day falls on a weekend, when is the petition due?

A: Under Florida Rule of Judicial Administration 2.514,

The following rules apply in computing time periods specified in any rule of procedure, local rule, court order, or statute that does not specify a method of computing time.

(1) Period Stated in Days or a Longer Unit. When the period is stated in days or a longer unit of time:

(A) begin counting from the next day that is not a Saturday, Sunday, or legal holiday;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, or falls within any period of time extended through an order of the chief justice under Florida Rule of Judicial Administration 2.205(a)(2)(B)(iv), the period continues to run until the end of the next day that is not a

Saturday, Sunday, or legal holiday and does not fall within any period of time extended through an order of the chief justice.

Fla. R. Jud. Ad. 2.514. Under this rule, and in the absence of any other statutory authority as to how to calculate the deadline at issue here, the deadline for the petition would be calculated by starting to count the day after the first signature is collected and moving to the next non-weekend or legal holiday, if the thirtieth day were to fall on any such day.

4) Can you keep on recalling? Or is there a limit on the amount of recalls?

There does not appear to be any limit on the number of recalls in the statutory text.

5) Can recalls be declared unconstitutional?

A: Recall petitions can be challenged in court. See, e.g., Garvin v. Jerome, 767 So. 2d 1190, 1193 (Fla. 2000) (“As the statutory scheme for recall elections presently stands, it is apparent that recall is treated as an extraordinary proceeding with the burden on those seeking to overturn the regular elective process to base the petition upon lawful grounds or face the invalidation of the proceedings. In our view, the present legislative scheme protects public officials from being ousted when illegal grounds provide the basis for recall. Since we place enormous value on the regular elective process, this legislative scheme is certainly not unreasonable. Accordingly, public officials should not face removal from the office they were lawfully and properly elected to on a ballot that contains illegal grounds for recall in express violation of the statute.”); Sanchez v. Lopez, 219 So. 3d 156, 159 (Fla. 3d DCA 2017) (“Since the City Charter does not require that the mayor attend commission meetings, then it stands to reason that there cannot be a violation of such duty because the duty does not exist. Finally, because one of the grounds for recall advanced in the petition, neglect of duty for failure to attend city commission meetings, is legally insufficient, the entire petition is legally insufficient. See Garvin v. Jerome, 767 So.2d 1190 (Fla. 2000).”).

6) When do you figure out who is on the committee? Only when the petition is submitted to the clerk?

A: Under Section 100.361(2)(c),

Electors of the municipality or district making charges contained in the statement of grounds for recall, as well as those signing the recall petition, shall be designated as the recall committee. A specific person shall be designated in the petition as chair of the committee, and this person shall act for the committee.

§ 100.361, Fla. Stat. As was explained above, the recall committee will be required to file a statement of organization fairly early on under Section 106.03, Florida Statutes. However,

The statement of organization shall include:

(a) The name, mailing address, and street address of the committee or electioneering communications organization;

(b) The names, street addresses, and relationships of affiliated or connected organizations, including any affiliated sponsors;

(c) The area, scope, or jurisdiction of the committee or electioneering communications organization;

(d) The name, mailing address, street address, and position of the custodian of books and accounts;

(e) The name, mailing address, street address, and position of other principal officers, including the treasurer and deputy treasurer, if any;

(f) The name, address, office sought, and party affiliation of:

1. Each candidate whom the committee is supporting;

2. Any other individual, if any, whom the committee is supporting for nomination for election, or election, to any public office whatever;

(g) Any issue or issues the committee is supporting or opposing;

(h) If the committee is supporting the entire ticket of any party, a statement to that effect and the name of the party;

(i) A statement of whether the committee is a continuing one;

(j) Plans for the disposition of residual funds which will be made in the event of dissolution;

(k) A listing of all banks, safe-deposit boxes, or other depositories used for committee or electioneering communications organization funds;

(l) A statement of the reports required to be filed by the committee or the electioneering communications organization with federal officials, if any, and the names, addresses, and positions of such officials; and

(m) A statement of whether the electioneering communications organization was formed as a newly created organization during the current calendar quarter or was formed from an organization existing prior to the current calendar quarter. For purposes of this subsection, calendar quarters end the last day of March, June, September, and December.

§ 106.03(2), Fla. Stat. Although certain members of the recall committee—specifically the custodian of the books and other principal officers of the organization—must be reported, not every member of the committee will be identified through the filing of a statement of organization. Specifically, as Section 100.361 defines the recall committee as including “those signing the recall petition,” there would be no way to identify all of those members of the committee until the petition was submitted.

7) What constitutes a recall committee?


A: Under Section 100.361(2)(c),

Electors of the municipality or district making charges contained in the statement of grounds for recall, as well as those signing the recall petition, shall be designated as the recall committee. A specific person shall be designated in the petition as chair of the committee, and this person shall act for the committee.


§ 100.361, Fla. Stat.

8) Are committee reports required pursuant to Section 106, Florida Statutes?

A: Under Section 100.361(2)(c), “[t]he recall committee and the officer being recalled are subject to the provisions of chapter 106.” § 100.361, Fla. Stat. There is a robust reporting requirement for political committees under Section 106.07, Florida Statutes.

 KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Prior Version Held Unconstitutional by *McArthur v. Smith*, S.D.Fla., Apr. 03, 1989

 KeyCite Yellow Flag - Negative Treatment Proposed Legislation

West's Florida Statutes Annotated Title IX. Electors and Elections (Chapters 97-109)
Chapter 106. Campaign Financing (Refs & Annos)

West's F.S.A. § 106.07

106.07. Reports; certification and filing

Effective: November 1, 2013

Currentness

(1) Each campaign treasurer designated by a candidate or political committee pursuant to s. 106.021 shall file regular reports of all contributions received, and all expenditures made, by or on behalf of such candidate or political committee. Except as provided in paragraphs (a) and (b), reports shall be filed on the 10th day following the end of each calendar month from the time the campaign treasurer is appointed, except that, if the 10th day following the end of a calendar month occurs on a Saturday, Sunday, or legal holiday, the report shall be filed on the next following day that is not a Saturday, Sunday, or legal holiday. Monthly reports shall include all contributions received and expenditures made during the calendar month which have not otherwise been reported pursuant to this section.

(a) A statewide candidate or a political committee required to file reports with the division must file reports:

1. On the 60th day immediately preceding the primary election, and each week thereafter, with the last weekly report being filed on the 4th day immediately preceding the general election.
2. On the 10th day immediately preceding the general election, and each day thereafter, with the last daily report being filed the 5th day immediately preceding the general election.

(b) Any other candidate or a political committee required to file reports with a filing officer other than the division must file reports on the 60th day immediately preceding the primary election, and biweekly on each Friday thereafter through and including the 4th day immediately preceding the

general election, with additional reports due on the 25th and 11th days before the primary election and the general election.

(c) Following the last day of qualifying for office, any unopposed candidate need only file a report within 90 days after the date such candidate became unopposed. Such report shall contain all previously unreported contributions and expenditures as required by this section and shall reflect disposition of funds as required by s. 106.141.

(d) 1. When a special election is called to fill a vacancy in office, all political committees making contributions or expenditures to influence the results of such special election or the preceding special primary election shall file campaign treasurers' reports with the filing officer on the dates set by the Department of State pursuant to s. 100.111.

2. When an election is called for an issue to appear on the ballot at a time when no candidates are scheduled to appear on the ballot, all political committees making contributions or expenditures in support of or in opposition to such issue shall file reports on the 18th and 4th days before such election.

(e) The filing officer shall provide each candidate with a schedule designating the beginning and end of reporting periods as well as the corresponding designated due dates.

(2)(a) 1. All reports required of a candidate by this section shall be filed with the officer before whom the candidate is required by law to qualify. All candidates who file with the Department of State shall file their reports pursuant to s. 106.0705. Except as provided in s. 106.0705, reports shall be filed not later than 5 p.m. of the day designated; however, any report postmarked by the United States Postal Service no later than midnight of the day designated is deemed to have been filed in a timely manner. Any report received by the filing officer within 5 days after the designated due date that was delivered by the United States Postal Service is deemed timely filed unless it has a postmark that indicates that the report was mailed after the designated due date. A certificate of mailing obtained from and dated by the United States Postal Service at the time of mailing, or a receipt from an established courier company, which bears a date on or before the date on which the report is due, suffices as proof of mailing in a timely manner. Reports other than daily reports must contain information on all previously unreported contributions received and expenditures made as of the preceding Friday, except that the report filed on the Friday immediately preceding the election must contain information on all previously unreported contributions received and expenditures made as of the day preceding that designated due date; daily reports must contain

information on all previously unreported contributions received as of the preceding day. All such reports are open to public inspection.

2. This subsection does not prohibit the governing body of a political subdivision, by ordinance or resolution, from imposing upon its own officers and candidates electronic filing requirements not in conflict with s. 106.0705. Expenditure of public funds for such purpose is deemed to be for a valid public purpose.

(b) 1. Any report that is deemed to be incomplete by the officer with whom the candidate qualifies must be accepted on a conditional basis. The campaign treasurer shall be notified by certified mail or by another method using a common carrier that provides a proof of delivery of the notice as to why the report is incomplete and within 7 days after receipt of such notice must file an addendum to the report providing all information necessary to complete the report in compliance with this section. Failure to file a complete report after such notice constitutes a violation of this chapter.

2. Notice is deemed complete upon proof of delivery of a written notice to the mailing or street address of the campaign treasurer or registered agent of record with the filing officer.

(3) Reports required of a political committee shall be filed with the agency or officer before whom such committee registers pursuant to s. 106.03(3) and shall be subject to the same filing conditions as established for candidates' reports. Incomplete reports by political committees shall be treated in the manner provided for incomplete reports by candidates in subsection (2).

(4)(a) Except for daily reports, to which only the contributions provisions below apply, and except as provided in paragraph (b), each report required by this section must contain:

1. The full name, address, and occupation, if any, of each person who has made one or more contributions to or for such committee or candidate within the reporting period, together with the amount and date of such contributions. For corporations, the report must provide as clear a description as practicable of the principal type of business conducted by the corporation. However, if the contribution is \$100 or less or is from a relative, as defined in s. 112.312, provided that the relationship is reported, the occupation of the contributor or the principal type of business need not be listed.

2. The name and address of each political committee from which the reporting committee or the candidate received, or to which the reporting committee or candidate made, any transfer of funds, together with the amounts and dates of all transfers.
3. Each loan for campaign purposes to or from any person or political committee within the reporting period, together with the full names, addresses, and occupations, and principal places of business, if any, of the lender and endorsers, if any, and the date and amount of such loans.
4. A statement of each contribution, rebate, refund, or other receipt not otherwise listed under subparagraphs 1. through 3.
5. The total sums of all loans, in-kind contributions, and other receipts by or for such committee or candidate during the reporting period. The reporting forms shall be designed to elicit separate totals for in-kind contributions, loans, and other receipts.
6. The full name and address of each person to whom expenditures have been made by or on behalf of the committee or candidate within the reporting period; the amount, date, and purpose of each such expenditure; and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made. However, expenditures made from the petty cash fund provided by s. 106.12 need not be reported individually.
7. The full name and address of each person to whom an expenditure for personal services, salary, or reimbursement for authorized expenses as provided in s. 106.021(3) has been made and which is not otherwise reported, including the amount, date, and purpose of such expenditure. However, expenditures made from the petty cash fund provided for in s. 106.12 need not be reported individually. Receipts for reimbursement for authorized expenditures shall be retained by the treasurer along with the records for the campaign account.
8. The total amount withdrawn and the total amount spent for petty cash purposes pursuant to this chapter during the reporting period.
9. The total sum of expenditures made by such committee or candidate during the reporting period.

10. The amount and nature of debts and obligations owed by or to the committee or candidate, which relate to the conduct of any political campaign.
11. Transaction information for each credit card purchase. Receipts for each credit card purchase shall be retained by the treasurer with the records for the campaign account.
12. The amount and nature of any separate interest-bearing accounts or certificates of deposit and identification of the financial institution in which such accounts or certificates of deposit are located.
13. The primary purposes of an expenditure made indirectly through a campaign treasurer pursuant to s. 106.021(3) for goods and services such as communications media placement or procurement services, campaign signs, insurance, and other expenditures that include multiple components as part of the expenditure. The primary purpose of an expenditure shall be that purpose, including integral and directly related components, that comprises 80 percent of such expenditure.
 - (b) Multiple uniform contributions from the same person, aggregating no more than \$250 per calendar year, collected by an organization that is the affiliated sponsor of a political committee, may be reported by the political committee in an aggregate amount listing the number of contributors together with the amount contributed by each and the total amount contributed during the reporting period. The identity of each person making such uniform contribution must be reported to the filing officer as provided in subparagraph (a)1. by July 1 of each calendar year, or, in a general election year, no later than the 60th day immediately preceding the primary election.
 - (c) The filing officer shall make available to any candidate or committee a reporting form which the candidate or committee may use to indicate contributions received by the candidate or committee but returned to the contributor before deposit.
- (5) The candidate and his or her campaign treasurer, in the case of a candidate, or the political committee chair and campaign treasurer of the committee, in the case of a political committee, shall certify as to the correctness of each report; and each person so certifying shall bear the responsibility for the accuracy and veracity of each report. Any campaign treasurer, candidate, or political committee chair who willfully certifies the correctness of any report while knowing that such report is incorrect, false, or incomplete commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6) The records maintained by the campaign depository with respect to any campaign account regulated by this chapter are subject to inspection by an agent of the Division of Elections or the Florida Elections Commission at any time during normal banking hours, and such depository shall furnish certified copies of any of such records to the Division of Elections or Florida Elections Commission upon request.

(7) Notwithstanding any other provisions of this chapter, in any reporting period during which a candidate or political committee has not received funds, made any contributions, or expended any reportable funds, the filing of the required report for that period is waived. However, the next report filed must specify that the report covers the entire period between the last submitted report and the report being filed, and any candidate or political committee not reporting by virtue of this subsection on dates prescribed elsewhere in this chapter shall notify the filing officer in writing on the prescribed reporting date that no report is being filed on that date.

(8)(a) Any candidate or political committee failing to file a report on the designated due date is subject to a fine as provided in paragraph (b) for each late day, and, in the case of a candidate, such fine shall be paid only from personal funds of the candidate. The fine shall be assessed by the filing officer and the moneys collected shall be deposited:

1. In the General Revenue Fund, in the case of a candidate for state office or a political committee that registers with the Division of Elections; or

2. In the general revenue fund of the political subdivision, in the case of a candidate for an office of a political subdivision or a political committee that registers with an officer of a political subdivision.

No separate fine shall be assessed for failure to file a copy of any report required by this section.

(b) Upon determining that a report is late, the filing officer shall immediately notify the candidate or chair of the political committee as to the failure to file a report by the designated due date and that a fine is being assessed for each late day. The fine is \$50 per day for the first 3 days late and, thereafter, \$500 per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by the late report. However, for the reports immediately preceding each special primary election, special election, primary election, and general election, the fine is \$500 per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by the late report. For reports

required under s. 106.141(8), the fine is \$50 per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by the late report. Upon receipt of the report, the filing officer shall determine the amount of the fine which is due and shall notify the candidate or chair or registered agent of the political committee. The filing officer shall determine the amount of the fine due based upon the earliest of the following:

1. When the report is actually received by such officer.
2. When the report is postmarked.
3. When the certificate of mailing is dated.
4. When the receipt from an established courier company is dated.
5. When the electronic receipt issued pursuant to s. 106.0705 or other electronic filing system authorized in this section is dated.

Such fine shall be paid to the filing officer within 20 days after receipt of the notice of payment due, unless appeal is made to the Florida Elections Commission pursuant to paragraph (c). Notice is deemed complete upon proof of delivery of written notice to the mailing or street address on record with the filing officer. In the case of a candidate, such fine is not an allowable campaign expenditure and shall be paid only from personal funds of the candidate. An officer or member of a political committee is not personally liable for such fine.

(c) Any candidate or chair of a political committee may appeal or dispute the fine, based upon, but not limited to, unusual circumstances surrounding the failure to file on the designated due date, and may request and shall be entitled to a hearing before the Florida Elections Commission, which shall have the authority to waive the fine in whole or in part. The Florida Elections Commission must consider the mitigating and aggravating circumstances contained in s. 106.265(2) when determining the amount of a fine, if any, to be waived. Any such request shall be made within 20 days after receipt of the notice of payment due. In such case, the candidate or chair of the political committee shall, within the 20-day period, notify the filing officer in writing of his or her intention to bring the matter before the commission.

(d) The appropriate filing officer shall notify the Florida Elections Commission of the repeated late filing by a candidate or political committee, the failure of a candidate or political committee to file a report after notice, or the failure to pay the fine imposed. The commission shall investigate only those alleged late filing violations specifically identified by the filing officer and as set forth in the notification. Any other alleged violations must be separately stated and reported by the division to the commission under s. 106.25(2).

(9) The Department of State may prescribe by rule the requirements for filing campaign treasurers' reports as set forth in this chapter.


Credits

Laws 1973, c. 73-128, § 7; Laws 1974, c. 74-200, §§ 5, 15, 17; Laws 1975, c. 75-8, §§ 1, 2; Laws 1975, c. 75-139, § 2; Laws 1977, c. 77-174, § 1; Laws 1977, c. 77-175, § 46; Laws 1979, c. 79-164, § 23; Laws 1979, c. 79-365, §§ 7, 8; Laws 1979, c. 79-378, § 4; Laws 1979, c. 79-400, § 58; Laws 1981, c. 81-259, § 52; Laws 1981, c. 81-304, § 27; Laws 1982, c. 82-143, § 2; Laws 1983, c. 83-251, § 11; Laws 1984, c. 84-302, § 37; Laws 1985, c. 85-226, § 6; Laws 1986, c. 86-134, § 1; Laws 1987, c. 87-224, § 13; Laws 1989, c. 89-256, § 9; Laws 1990, c. 90-315, § 31; Laws 1990, c. 90-338, § 2; Laws 1990, c. 90-502, § 18; Laws 1991, c. 91-107, § 7. Amended by Laws 1995, c. 95-140, § 2, eff. July 10, 1995; Laws 1995, c. 95-147, § 640, eff. July 10, 1995; Laws 1995, c. 95-280, § 15, eff. July 10, 1995; Laws 1997, c. 97-13, § 7, eff. Jan. 1, 1998; Laws 2001, c. 2001-75, § 6, eff. May 29, 2001; Laws 2002, c. 2002-197, § 2, eff. July 1, 2002; Laws 2002, c. 2002-17, § 29, eff. April 11, 2002; Laws 2003, c. 2003-1, § 8, eff. July 1, 2003; Laws 2004, c. 2004-252, § 17, eff. July 1, 2004; Laws 2004, c. 2004-252, § 18, eff. Jan. 1, 2005; Laws 2005, c. 2005-286, § 24, eff. Jan. 1, 2006; Laws 2006, c. 2006-300, §§ 5, 10, eff. July 1, 2006; Laws 2008, c. 2008-95, § 29, eff. Jan. 1, 2009; Laws 2011, c. 2011-40, § 59, eff. May 19, 2011; Laws 2012, c. 2012-5, § 6, eff. May 8, 2012; Laws 2013, c. 2013-37, § 9, eff. Nov. 1, 2013.


Notes of Decisions (43)

West's F. S. A. § 106.07, FL ST § 106.07

Current through the 2019 First Regular Session of the 26th Legislature.

 KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Prior Version Held Unconstitutional by *McArthur v. Smith*, S.D.Fla., Apr. 03, 1989

 KeyCite Yellow Flag - Negative Treatment Proposed Legislation

West's Florida Statutes Annotated Title IX. Electors and Elections (Chapters 97-109)
Chapter 106. Campaign Financing (Refs & Annos)

West's F.S.A. § 106.07

106.07. Reports; certification and filing

Effective: November 1, 2013

Currentness

(1) Each campaign treasurer designated by a candidate or political committee pursuant to s. 106.021 shall file regular reports of all contributions received, and all expenditures made, by or on behalf of such candidate or political committee. Except as provided in paragraphs (a) and (b), reports shall be filed on the 10th day following the end of each calendar month from the time the campaign treasurer is appointed, except that, if the 10th day following the end of a calendar month occurs on a Saturday, Sunday, or legal holiday, the report shall be filed on the next following day that is not a Saturday, Sunday, or legal holiday. Monthly reports shall include all contributions received and expenditures made during the calendar month which have not otherwise been reported pursuant to this section.

(a) A statewide candidate or a political committee required to file reports with the division must file reports:

1. On the 60th day immediately preceding the primary election, and each week thereafter, with the last weekly report being filed on the 4th day immediately preceding the general election.

2. On the 10th day immediately preceding the general election, and each day thereafter, with the last daily report being filed the 5th day immediately preceding the general election.

(b) Any other candidate or a political committee required to file reports with a filing officer other than the division must file reports on the 60th day immediately preceding the primary election, and biweekly on each Friday thereafter through and including the 4th day immediately preceding the

general election, with additional reports due on the 25th and 11th days before the primary election and the general election.

(c) Following the last day of qualifying for office, any unopposed candidate need only file a report within 90 days after the date such candidate became unopposed. Such report shall contain all previously unreported contributions and expenditures as required by this section and shall reflect disposition of funds as required by s. 106.141.

(d) 1. When a special election is called to fill a vacancy in office, all political committees making contributions or expenditures to influence the results of such special election or the preceding special primary election shall file campaign treasurers' reports with the filing officer on the dates set by the Department of State pursuant to s. 100.111.

2. When an election is called for an issue to appear on the ballot at a time when no candidates are scheduled to appear on the ballot, all political committees making contributions or expenditures in support of or in opposition to such issue shall file reports on the 18th and 4th days before such election.

(e) The filing officer shall provide each candidate with a schedule designating the beginning and end of reporting periods as well as the corresponding designated due dates.

(2)(a) 1. All reports required of a candidate by this section shall be filed with the officer before whom the candidate is required by law to qualify. All candidates who file with the Department of State shall file their reports pursuant to s. 106.0705. Except as provided in s. 106.0705, reports shall be filed not later than 5 p.m. of the day designated; however, any report postmarked by the United States Postal Service no later than midnight of the day designated is deemed to have been filed in a timely manner. Any report received by the filing officer within 5 days after the designated due date that was delivered by the United States Postal Service is deemed timely filed unless it has a postmark that indicates that the report was mailed after the designated due date. A certificate of mailing obtained from and dated by the United States Postal Service at the time of mailing, or a receipt from an established courier company, which bears a date on or before the date on which the report is due, suffices as proof of mailing in a timely manner. Reports other than daily reports must contain information on all previously unreported contributions received and expenditures made as of the preceding Friday, except that the report filed on the Friday immediately preceding the election must contain information on all previously unreported contributions received and expenditures made as of the day preceding that designated due date; daily reports must contain

information on all previously unreported contributions received as of the preceding day. All such reports are open to public inspection.

2. This subsection does not prohibit the governing body of a political subdivision, by ordinance or resolution, from imposing upon its own officers and candidates electronic filing requirements not in conflict with s. 106.0705. Expenditure of public funds for such purpose is deemed to be for a valid public purpose.

(b) 1. Any report that is deemed to be incomplete by the officer with whom the candidate qualifies must be accepted on a conditional basis. The campaign treasurer shall be notified by certified mail or by another method using a common carrier that provides a proof of delivery of the notice as to why the report is incomplete and within 7 days after receipt of such notice must file an addendum to the report providing all information necessary to complete the report in compliance with this section. Failure to file a complete report after such notice constitutes a violation of this chapter.

2. Notice is deemed complete upon proof of delivery of a written notice to the mailing or street address of the campaign treasurer or registered agent of record with the filing officer.

(3) Reports required of a political committee shall be filed with the agency or officer before whom such committee registers pursuant to s. 106.03(3) and shall be subject to the same filing conditions as established for candidates' reports. Incomplete reports by political committees shall be treated in the manner provided for incomplete reports by candidates in subsection (2).

(4)(a) Except for daily reports, to which only the contributions provisions below apply, and except as provided in paragraph (b), each report required by this section must contain:

1. The full name, address, and occupation, if any, of each person who has made one or more contributions to or for such committee or candidate within the reporting period, together with the amount and date of such contributions. For corporations, the report must provide as clear a description as practicable of the principal type of business conducted by the corporation. However, if the contribution is \$100 or less or is from a relative, as defined in s. 112.312, provided that the relationship is reported, the occupation of the contributor or the principal type of business need not be listed.

2. The name and address of each political committee from which the reporting committee or the candidate received, or to which the reporting committee or candidate made, any transfer of funds, together with the amounts and dates of all transfers.
3. Each loan for campaign purposes to or from any person or political committee within the reporting period, together with the full names, addresses, and occupations, and principal places of business, if any, of the lender and endorsers, if any, and the date and amount of such loans.
4. A statement of each contribution, rebate, refund, or other receipt not otherwise listed under subparagraphs 1. through 3.
5. The total sums of all loans, in-kind contributions, and other receipts by or for such committee or candidate during the reporting period. The reporting forms shall be designed to elicit separate totals for in-kind contributions, loans, and other receipts.
6. The full name and address of each person to whom expenditures have been made by or on behalf of the committee or candidate within the reporting period; the amount, date, and purpose of each such expenditure; and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made. However, expenditures made from the petty cash fund provided by s. 106.12 need not be reported individually.
7. The full name and address of each person to whom an expenditure for personal services, salary, or reimbursement for authorized expenses as provided in s. 106.021(3) has been made and which is not otherwise reported, including the amount, date, and purpose of such expenditure. However, expenditures made from the petty cash fund provided for in s. 106.12 need not be reported individually. Receipts for reimbursement for authorized expenditures shall be retained by the treasurer along with the records for the campaign account.
8. The total amount withdrawn and the total amount spent for petty cash purposes pursuant to this chapter during the reporting period.
9. The total sum of expenditures made by such committee or candidate during the reporting period.

10. The amount and nature of debts and obligations owed by or to the committee or candidate, which relate to the conduct of any political campaign.

11. Transaction information for each credit card purchase. Receipts for each credit card purchase shall be retained by the treasurer with the records for the campaign account.

12. The amount and nature of any separate interest-bearing accounts or certificates of deposit and identification of the financial institution in which such accounts or certificates of deposit are located.

13. The primary purposes of an expenditure made indirectly through a campaign treasurer pursuant to s. 106.021(3) for goods and services such as communications media placement or procurement services, campaign signs, insurance, and other expenditures that include multiple components as part of the expenditure. The primary purpose of an expenditure shall be that purpose, including integral and directly related components, that comprises 80 percent of such expenditure.

(b) Multiple uniform contributions from the same person, aggregating no more than \$250 per calendar year, collected by an organization that is the affiliated sponsor of a political committee, may be reported by the political committee in an aggregate amount listing the number of contributors together with the amount contributed by each and the total amount contributed during the reporting period. The identity of each person making such uniform contribution must be reported to the filing officer as provided in subparagraph (a)1. by July 1 of each calendar year, or, in a general election year, no later than the 60th day immediately preceding the primary election.

(c) The filing officer shall make available to any candidate or committee a reporting form which the candidate or committee may use to indicate contributions received by the candidate or committee but returned to the contributor before deposit.

(5) The candidate and his or her campaign treasurer, in the case of a candidate, or the political committee chair and campaign treasurer of the committee, in the case of a political committee, shall certify as to the correctness of each report; and each person so certifying shall bear the responsibility for the accuracy and veracity of each report. Any campaign treasurer, candidate, or political committee chair who willfully certifies the correctness of any report while knowing that such report is incorrect, false, or incomplete commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6) The records maintained by the campaign depository with respect to any campaign account regulated by this chapter are subject to inspection by an agent of the Division of Elections or the Florida Elections Commission at any time during normal banking hours, and such depository shall furnish certified copies of any of such records to the Division of Elections or Florida Elections Commission upon request.

(7) Notwithstanding any other provisions of this chapter, in any reporting period during which a candidate or political committee has not received funds, made any contributions, or expended any reportable funds, the filing of the required report for that period is waived. However, the next report filed must specify that the report covers the entire period between the last submitted report and the report being filed, and any candidate or political committee not reporting by virtue of this subsection on dates prescribed elsewhere in this chapter shall notify the filing officer in writing on the prescribed reporting date that no report is being filed on that date.

(8)(a) Any candidate or political committee failing to file a report on the designated due date is subject to a fine as provided in paragraph (b) for each late day, and, in the case of a candidate, such fine shall be paid only from personal funds of the candidate. The fine shall be assessed by the filing officer and the moneys collected shall be deposited:

1. In the General Revenue Fund, in the case of a candidate for state office or a political committee that registers with the Division of Elections; or

2. In the general revenue fund of the political subdivision, in the case of a candidate for an office of a political subdivision or a political committee that registers with an officer of a political subdivision.

No separate fine shall be assessed for failure to file a copy of any report required by this section.

(b) Upon determining that a report is late, the filing officer shall immediately notify the candidate or chair of the political committee as to the failure to file a report by the designated due date and that a fine is being assessed for each late day. The fine is \$50 per day for the first 3 days late and, thereafter, \$500 per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by the late report. However, for the reports immediately preceding each special primary election, special election, primary election, and general election, the fine is \$500 per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by the late report. For reports

required under s. 106.141(8), the fine is \$50 per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by the late report. Upon receipt of the report, the filing officer shall determine the amount of the fine which is due and shall notify the candidate or chair or registered agent of the political committee. The filing officer shall determine the amount of the fine due based upon the earliest of the following:

1. When the report is actually received by such officer.
2. When the report is postmarked.
3. When the certificate of mailing is dated.
4. When the receipt from an established courier company is dated.
5. When the electronic receipt issued pursuant to s. 106.0705 or other electronic filing system authorized in this section is dated.

Such fine shall be paid to the filing officer within 20 days after receipt of the notice of payment due, unless appeal is made to the Florida Elections Commission pursuant to paragraph (c). Notice is deemed complete upon proof of delivery of written notice to the mailing or street address on record with the filing officer. In the case of a candidate, such fine is not an allowable campaign expenditure and shall be paid only from personal funds of the candidate. An officer or member of a political committee is not personally liable for such fine.

(c) Any candidate or chair of a political committee may appeal or dispute the fine, based upon, but not limited to, unusual circumstances surrounding the failure to file on the designated due date, and may request and shall be entitled to a hearing before the Florida Elections Commission, which shall have the authority to waive the fine in whole or in part. The Florida Elections Commission must consider the mitigating and aggravating circumstances contained in s. 106.265(2) when determining the amount of a fine, if any, to be waived. Any such request shall be made within 20 days after receipt of the notice of payment due. In such case, the candidate or chair of the political committee shall, within the 20-day period, notify the filing officer in writing of his or her intention to bring the matter before the commission.

(d) The appropriate filing officer shall notify the Florida Elections Commission of the repeated late filing by a candidate or political committee, the failure of a candidate or political committee to file a report after notice, or the failure to pay the fine imposed. The commission shall investigate only those alleged late filing violations specifically identified by the filing officer and as set forth in the notification. Any other alleged violations must be separately stated and reported by the division to the commission under s. 106.25(2).

(9) The Department of State may prescribe by rule the requirements for filing campaign treasurers' reports as set forth in this chapter.


Credits

Laws 1973, c. 73-128, § 7; Laws 1974, c. 74-200, §§ 5, 15, 17; Laws 1975, c. 75-8, §§ 1, 2; Laws 1975, c. 75-139, § 2; Laws 1977, c. 77-174, § 1; Laws 1977, c. 77-175, § 46; Laws 1979, c. 79-164, § 23; Laws 1979, c. 79-365, §§ 7, 8; Laws 1979, c. 79-378, § 4; Laws 1979, c. 79-400, § 58; Laws 1981, c. 81-259, § 52; Laws 1981, c. 81-304, § 27; Laws 1982, c. 82-143, § 2; Laws 1983, c. 83-251, § 11; Laws 1984, c. 84-302, § 37; Laws 1985, c. 85-226, § 6; Laws 1986, c. 86-134, § 1; Laws 1987, c. 87-224, § 13; Laws 1989, c. 89-256, § 9; Laws 1990, c. 90-315, § 31; Laws 1990, c. 90-338, § 2; Laws 1990, c. 90-502, § 18; Laws 1991, c. 91-107, § 7. Amended by Laws 1995, c. 95-140, § 2, eff. July 10, 1995; Laws 1995, c. 95-147, § 640, eff. July 10, 1995; Laws 1995, c. 95-280, § 15, eff. July 10, 1995; Laws 1997, c. 97-13, § 7, eff. Jan. 1, 1998; Laws 2001, c. 2001-75, § 6, eff. May 29, 2001; Laws 2002, c. 2002-197, § 2, eff. July 1, 2002; Laws 2002, c. 2002-17, § 29, eff. April 11, 2002; Laws 2003, c. 2003-1, § 8, eff. July 1, 2003; Laws 2004, c. 2004-252, § 17, eff. July 1, 2004; Laws 2004, c. 2004-252, § 18, eff. Jan. 1, 2005; Laws 2005, c. 2005-286, § 24, eff. Jan. 1, 2006; Laws 2006, c. 2006-300, §§ 5, 10, eff. July 1, 2006; Laws 2008, c. 2008-95, § 29, eff. Jan. 1, 2009; Laws 2011, c. 2011-40, § 59, eff. May 19, 2011; Laws 2012, c. 2012-5, § 6, eff. May 8, 2012; Laws 2013, c. 2013-37, § 9, eff. Nov. 1, 2013.


Notes of Decisions (43)

West's F. S. A. § 106.07, FL ST § 106.07

Current through the 2019 First Regular Session of the 26th Legislature.

 KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Prior Version's Validity Called into Doubt by *Scott v. Roberts*, 11th Cir.(Fla.), July 30, 2010

 KeyCite Yellow Flag - Negative Treatment Proposed Legislation

West's Florida Statutes Annotated Title IX. Electors and Elections (Chapters 97-109)
Chapter 106. Campaign Financing (Refs & Annos)

West's F.S.A. § 106.011

106.011. Definitions

Effective: July 1, 2014

Currentness

As used in this chapter, the following terms have the following meanings unless the context clearly indicates otherwise:

- (1) “Campaign fund raiser” means an affair held to raise funds to be used in a campaign for public office.
- (2) “Campaign treasurer” means an individual appointed by a candidate or political committee as provided in this chapter.
- (3) “Candidate” means a person to whom any of the following applies:
 - (a) A person who seeks to qualify for nomination or election by means of the petitioning process.
 - (b) A person who seeks to qualify for election as a write-in candidate.
 - (c) A person who receives contributions or makes expenditures, or consents for any other person to receive contributions or make expenditures, with a view to bring about his or her nomination or election to, or retention in, public office.
 - (d) A person who appoints a treasurer and designates a primary depository.

(e) A person who files qualification papers and subscribes to a candidate's oath as required by law.

However, this definition does not include any candidate for a political party executive committee. Expenditures related to potential candidate polls as provided in s. 106.17 are not contributions or expenditures for purposes of this subsection.

(4) "Communications media" means broadcasting stations, newspapers, magazines, outdoor advertising facilities, printers, direct mail, advertising agencies, the Internet, and telephone companies; but with respect to telephones, an expenditure is deemed to be an expenditure for the use of communications media only if made for the costs of telephones, paid telephonists, or automatic telephone equipment to be used by a candidate or a political committee to communicate with potential voters but excluding the costs of telephones incurred by a volunteer for use of telephones by such volunteer; however, with respect to the Internet, an expenditure is deemed an expenditure for use of communications media only if made for the cost of creating or disseminating a message on a computer information system accessible by more than one person but excluding internal communications of a campaign or of any group.

(5) "Contribution" means:

(a) A gift, subscription, conveyance, deposit, loan, payment, or distribution of money or anything of value, including contributions in kind having an attributable monetary value in any form, made for the purpose of influencing the results of an election or making an electioneering communication.

(b) A transfer of funds between political committees, between electioneering communications organizations, or between any combination of these groups.

(c) The payment, by a person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate or political committee without charge to the candidate or committee for such services.

(d) The transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, and the term includes interest earned on such account or certificate.

Notwithstanding the foregoing meanings of “contribution,” the term may not be construed to include services, including, but not limited to, legal and accounting services, provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or editorial endorsements.

(6) “Division” means the Division of Elections of the Department of State.

(7) “Election” means a primary election, special primary election, general election, special election, or municipal election held in this state for the purpose of nominating or electing candidates to public office, choosing delegates to the national nominating conventions of political parties, selecting a member of a political party executive committee, or submitting an issue to the electors for their approval or rejection.

(8)(a) “Electioneering communication” means communication that is publicly distributed by a television station, radio station, cable television system, satellite system, newspaper, magazine, direct mail, or telephone and that:

1. Refers to or depicts a clearly identified candidate for office without expressly advocating the election or defeat of a candidate but that is susceptible of no reasonable interpretation other than an appeal to vote for or against a specific candidate;
2. Is made within 30 days before a primary or special primary election or 60 days before any other election for the office sought by the candidate; and
3. Is targeted to the relevant electorate in the geographic area the candidate would represent if elected.

(b) The term “electioneering communication” does not include:

1. A communication disseminated through a means of communication other than a television station, radio station, cable television system, satellite system, newspaper, magazine, direct mail, telephone, or statement or depiction by an organization, in existence before the time during which

a candidate named or depicted qualifies for that election, made in that organization's newsletter, which newsletter is distributed only to members of that organization.

2. A communication in a news story, commentary, or editorial distributed through the facilities of a radio station, television station, cable television system, or satellite system, unless the facilities are owned or controlled by a political party, political committee, or candidate. A news story distributed through the facilities owned or controlled by a political party, political committee, or candidate may nevertheless be exempt if it represents a bona fide news account communicated through a licensed broadcasting facility and the communication is part of a general pattern of campaign-related news accounts that give reasonably equal coverage to all opposing candidates in the area.

3. A communication that constitutes a public debate or forum that includes at least two opposing candidates for an office or one advocate and one opponent of an issue, or that solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum, provided that:

a. The staging organization is either:

(I) A charitable organization that does not make other electioneering communications and does not otherwise support or oppose any political candidate or political party; or

(II) A newspaper, radio station, television station, or other recognized news medium; and

b. The staging organization does not structure the debate to promote or advance one candidate or issue position over another.

(c) For purposes of this chapter, an expenditure made for, or in furtherance of, an electioneering communication is not considered a contribution to or on behalf of any candidate.

(d) For purposes of this chapter, an electioneering communication does not constitute an independent expenditure and is not subject to the limitations applicable to independent expenditures.

(9) “Electioneering communications organization” means any group, other than a political party, affiliated party committee, or political committee, whose election-related activities are limited to making expenditures for electioneering communications or accepting contributions for the purpose of making electioneering communications and whose activities would not otherwise require the group to register as a political party or political committee under this chapter.

(10)(a) “Expenditure” means a purchase, payment, distribution, loan, advance, transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, or gift of money or anything of value made for the purpose of influencing the results of an election or making an electioneering communication. However, “expenditure” does not include a purchase, payment, distribution, loan, advance, or gift of money or anything of value made for the purpose of influencing the results of an election when made by an organization, in existence before the time during which a candidate qualifies or an issue is placed on the ballot for that election, for the purpose of printing or distributing such organization's newsletter, containing a statement by such organization in support of or opposition to a candidate or issue, which newsletter is distributed only to members of such organization.

(b) As used in this chapter, an “expenditure” for an electioneering communication is made when the earliest of the following occurs:

1. A person enters into a contract for applicable goods or services;
2. A person makes payment, in whole or in part, for the production or public dissemination of applicable goods or services; or
3. The electioneering communication is publicly disseminated.

(11) “Filing officer” means the person before whom a candidate qualifies or the agency or officer with whom a political committee or an electioneering communications organization registers.

(12)(a) “Independent expenditure” means an expenditure by a person for the purpose of expressly advocating the election or defeat of a candidate or the approval or rejection of an issue, which expenditure is not controlled by, coordinated with, or made upon consultation with, any candidate, political committee, or agent of such candidate or committee. An expenditure for such purpose by

a person having a contract with the candidate, political committee, or agent of such candidate or committee in a given election period is not an independent expenditure.

(b) An expenditure for the purpose of expressly advocating the election or defeat of a candidate which is made by the national, state, or county executive committee of a political party, including any subordinate committee of the political party, an affiliated party committee, a political committee, or any other person is not considered an independent expenditure if the committee or person:

1. Communicates with the candidate, the candidate's campaign, or an agent of the candidate acting on behalf of the candidate, including a pollster, media consultant, advertising agency, vendor, advisor, or staff member, concerning the preparation of, use of, or payment for, the specific expenditure or advertising campaign at issue;
2. Makes a payment in cooperation, consultation, or concert with, at the request or suggestion of, or pursuant to a general or particular understanding with the candidate, the candidate's campaign, a political committee supporting the candidate, or an agent of the candidate relating to the specific expenditure or advertising campaign at issue;
3. Makes a payment for the dissemination, distribution, or republication, in whole or in part, of a broadcast or a written, graphic, or other form of campaign material prepared by the candidate, the candidate's campaign, or an agent of the candidate, including a pollster, media consultant, advertising agency, vendor, advisor, or staff member;
4. Makes a payment based on information about the candidate's plans, projects, or needs communicated to a member of the committee or person by the candidate or an agent of the candidate, provided the committee or person uses the information in any way, in whole or in part, either directly or indirectly, to design, prepare, or pay for the specific expenditure or advertising campaign at issue;
5. After the last day of the qualifying period prescribed for the candidate, consults about the candidate's plans, projects, or needs in connection with the candidate's pursuit of election to office and the information is used in any way to plan, create, design, or prepare an independent expenditure or advertising campaign, with:

a. An officer, director, employee, or agent of a national, state, or county executive committee of a political party or an affiliated party committee that has made or intends to make expenditures in connection with or contributions to the candidate; or

b. A person whose professional services have been retained by a national, state, or county executive committee of a political party or an affiliated party committee that has made or intends to make expenditures in connection with or contributions to the candidate;

6. After the last day of the qualifying period prescribed for the candidate, retains the professional services of a person also providing those services to the candidate in connection with the candidate's pursuit of election to office; or

7. Arranges, coordinates, or directs the expenditure, in any way, with the candidate or an agent of the candidate.

(13) "Issue" means a proposition that is required by the State Constitution, by law or resolution of the Legislature, or by the charter, ordinance, or resolution of a political subdivision of this state to be submitted to the electors for their approval or rejection at an election, or a proposition for which a petition is circulated in order to have such proposition placed on the ballot at an election.

(14) "Person" means an individual or a corporation, association, firm, partnership, joint venture, joint stock company, club, organization, estate, trust, business trust, syndicate, or other combination of individuals having collective capacity. The term includes a political party, affiliated party committee, or political committee.

(15) "Political advertisement" means a paid expression in a communications medium prescribed in subsection (4), whether radio, television, newspaper, magazine, periodical, campaign literature, direct mail, or display or by means other than the spoken word in direct conversation, which expressly advocates the election or defeat of a candidate or the approval or rejection of an issue. However, political advertisement does not include:

(a) A statement by an organization, in existence before the time during which a candidate qualifies or an issue is placed on the ballot for that election, in support of or opposition to a candidate or

issue, in that organization's newsletter, which newsletter is distributed only to the members of that organization.

(b) Editorial endorsements by a newspaper, a radio or television station, or any other recognized news medium.

(16)(a) "Political committee" means:

1. A combination of two or more individuals, or a person other than an individual, that, in an aggregate amount in excess of \$500 during a single calendar year:

a. Accepts contributions for the purpose of making contributions to any candidate, political committee, affiliated party committee, or political party;

b. Accepts contributions for the purpose of expressly advocating the election or defeat of a candidate or the passage or defeat of an issue;

c. Makes expenditures that expressly advocate the election or defeat of a candidate or the passage or defeat of an issue; or

d. Makes contributions to a common fund, other than a joint checking account between spouses, from which contributions are made to any candidate, political committee, affiliated party committee, or political party;

2. The sponsor of a proposed constitutional amendment by initiative who intends to seek the signatures of registered electors.

(b) Notwithstanding paragraph (a), the following entities are not considered political committees for purposes of this chapter:

1. National political parties, the state and county executive committees of political parties, and affiliated party committees regulated by chapter 103.

2. Corporations regulated by chapter 607 or chapter 617 or other business entities formed for purposes other than to support or oppose issues or candidates, if their political activities are limited to contributions to candidates, political parties, affiliated party committees, or political committees or expenditures in support of or opposition to an issue from corporate or business funds and if no contributions are received by such corporations or business entities.

3. Electioneering communications organizations as defined in subsection (9).

(17) “Public office” means a state, county, municipal, or school or other district office or position that is filled by vote of the electors.

(18) “Unopposed candidate” means a candidate for nomination or election to an office who, after the last day on which a person, including a write-in candidate, may qualify, is without opposition in the election at which the office is to be filled or who is without such opposition after such date as a result of a primary election or of withdrawal by other candidates seeking the same office. A candidate is not an unopposed candidate if there is a vacancy to be filled under s. 100.111(3), if there is a legal proceeding pending regarding the right to a ballot position for the office sought by the candidate, or if the candidate is seeking retention as a justice or judge.

Credits

Laws 1973, c. 73-128, § 1; Laws 1974, c. 74-200, § 1; Laws 1977, c. 77-174, § 1; Laws 1977, c. 77-175, § 39; Laws 1979, c. 79-157, § 2; Laws 1979, c. 79-365, §§ 6, 17; Laws 1979, c. 79-378, § 1; Laws 1981, c. 81-304, § 22; Laws 1984, c. 84-302, § 34; Laws 1985, c. 85-226, § 4; Laws 1989, c. 89-256, § 2; Laws 1989, c. 89-537, § 1; Laws 1990, c. 90-315, § 24; Laws 1991, c. 91-107, § 9. Amended by Laws 1995, c. 95-147, § 636, eff. July 10, 1995; Laws 1997, c. 97-13, § 2, eff. Jan. 1, 1998; Laws 1999, c. 99-355, § 7, eff. Jan. 1, 2000; Laws 2002, c. 2002-197, § 1, eff. July 1, 2002; Laws 2004, c. 2004-252, § 2, eff. July 1, 2004; Laws 2006, c. 2006-300, § 1, eff. July 1, 2006; Laws 2010, c. 2010-167, § 19, eff. May 28, 2010; Laws 2011, c. 2011-6, § 4, eff. March 24, 2011; 2011 First Regular Session, HJR 7105; Laws 2011, c. 2011-40, § 52, eff. May 19, 2011; Laws 2012, c. 2012-5, § 5, eff. May 8, 2012; Laws 2013, c. 2013-37, § 3, eff. Nov. 1, 2013; Laws 2014, c. 2014-17, § 9, eff. July 1, 2014.

Notes of Decisions (57)

West's F. S. A. § 106.011, FL ST § 106.011

Current through the 2019 First Regular Session of the 26th Legislature.

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21 Fla. Jur 2d Elections § 239

Florida Jurisprudence, Second Edition | November 2019 Update

Elections

Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; and Lisa A. Zakolski, J.D.

XIV. Initiative, Referendum, and **Recall Elections**

B. **Recall Elections**

§ 239. Judicial review of **recall**—Enjoining **recall election**

Topic Summary Correlation Table References

West's Key Number Digest

- West's Key Number Digest, Public Employment ¶¶165, 166

While it is a general rule that equity will not restrain the holding of an **election**,¹ this rule does not apply to special and extraordinary **elections** to oust those already **elected**.² Thus, where a bill sets up sufficient facts, if proved, to show that **recall** proceedings do not rest upon substantial compliance with the statutes providing therefor, in that, among other things, the **petition** blanks for the proposed removal are not on printed forms furnished as required by statute, the allegations of the bill entitle the complainant, the officer subject to the **recall**, to an injunction against holding the **recall election**.³ Similarly, a trial court may enjoin **recall** proceedings where it determines that three of the four grounds for **recall** set out in the **recall petition** are legally insufficient, and it was undisputed on the record that a substantial number of voters indorsed the **petition** on the basis of all four charges because it was impossible to determine whether those voters would have indorsed the **petition** in the absence of the three invalid charges.⁴

Observation:

Interference with such unusual and extraordinary **elections** by injunction or otherwise will have no other effect than to delay a particular **recall** effort until such **time** as the court is satisfied that the proceedings for the invocation of the desired **recall** are in sufficient compliance with the law to warrant the calling and holding of an **election** for that purpose.⁵

An officer against whom a **recall petition** is launched has a sufficient interest to entitle them to maintain an action in equity upon good cause to enjoin the proceedings upon such **recall**, and while such officer cannot claim exemption from removal by **recall**, they have the right to demand that the proceedings therein do not substantially depart from the statutory mode prescribed and to insist that the officers do not perpetrate a legal fraud by acting upon an illegal **petition**.⁶ An officeholder has a property right in their office, and such right may not be unlawfully taken away or illegally infringed upon.⁷ Thus, a bill in equity to restrain **recall** proceedings alleged to be carried out without substantial compliance with the mode prescribed is an appropriate remedy to prevent the wrong and will be available to the officer sought to be **recalled** if no other tribunal is authorized to judicially determine the sufficiency of the **recall** proceedings.⁸

Caution:

The defects in connection with a **recall election** as grounds for enjoining the holding of such **election** must be taken advantage of by appropriate procedure in equity in advance of the holding of the **election**; after the holding of the **election**, however, many matters that would otherwise be grounds for objection with regard to it are deemed waived where they are not essentially of jurisdictional character or essential to the validity of the **election** as a whole.²

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Footnotes

- ¹ § 202.
- ² State v. Tedder, 106 Fla. 140, 143 So. 148 (1932).
- ³ Platt v. Ross, 112 Fla. 596, 150 So. 716 (1933).
- ⁴ Davis v. Friend, 507 So. 2d 796 (Fla. 4th DCA 1987).
As to grounds for **recall**, see § 236.
- ⁵ State v. Tedder, 106 Fla. 140, 143 So. 148 (1932).
- ⁶ State v. Tedder, 106 Fla. 140, 143 So. 148 (1932).
- ⁷ Gilbert v. Morrow, 277 So. 2d 812 (Fla. 1st DCA 1973).
- ⁸ State v. Tedder, 106 Fla. 140, 143 So. 148 (1932).
- ⁹ State v. Tedder, 106 Fla. 140, 143 So. 148 (1932).

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Subject: recall



Gomez, Marta <martagomez@miamigov.com>

Wed, Jan 29, 4

to Mendez, Victoria, Alvarez, Valentin J, Wysong, George, Greco, John A., McNulty, Kerri L.

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Wikipedia:

An effort to recall Alvarez began in October 2010, backed by billionaire businessman Norman Braman, a owner of the Philadelphia Eagles, over Alvarez's simultaneous tax increases and pay raises for upper ech county workers.^[1] Braman spent more than \$1 million of his own money on the effort. Alvarez was recalled March 15, 2011, election. More than 88% of the voters (some 176,000 people) voted for recalling Alvarez. election was the largest municipal recall vote in United States history,^[3] and the 2nd largest in the U.S. of kind, after the 2003 recall election of California governor Gray Davis.^[2] He officially left office on March 18 when the county canvassing board certified the results.

[https://www.csmonitor.com/USA/Politics/2011/0316/As-recall-wave-builds-Miami-Dade-Mayor-Carlos-Alvarez-first-](https://www.csmonitor.com/USA/Politics/2011/0316/As-recall-wave-builds-Miami-Dade-Mayor-Carlos-Alvarez-first)

[https://ballotpedia.org/Carlos_Alvarez_and_Natacha_Seijas_recall,_Miami-Dade_County,_Florida_\(2011\)](https://ballotpedia.org/Carlos_Alvarez_and_Natacha_Seijas_recall,_Miami-Dade_County,_Florida_(2011))

<https://www.reuters.com/article/us-usa-florida-election-result/angry-voters-oust-miami-dade-mayor-in-special-vote-idUSTRE72F0EC20110316>

<https://www.theledger.com/article/LK/20101211/News/608117749/LL>

<https://www.miamiherald.com/news/natacha-seijas-files-lawsuit-to-block-recall-election-6555609>

<https://www.bizjournals.com/southflorida/news/2011/03/16/alvarez-seijas-ousted-in-miami-dade.html>

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**Assistant to Victoria Méndez, City Attorney
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Subject: county recall legislation



Gomez, Marta <martagomez@miamigov.com>

Wed, Jan 29, 6

to Mendez, Victoria, Alvarez, Valentin J, Wysong, George, Greco, John A., McNulty, Kerri L.

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<http://www.miamidade.gov/govaction/matter.asp?matter=110829&file=false&fileAnalysis=false&yearFolder=Y2011>

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EXHIBIT “B”

Subject: Re: Recall Questions



Mendez, Victoria <VMendez@miamigov.com>

Wed, Jan 29, 11

to McNulty, Kerri L., Greco, John A., Wysong, George, Gomez, Marta

It's great!!! Thx. Could we discuss computation of time tomorrow. Thx.

Victoria Méndez, City Attorney

Board Certified, City, County and
Local Government



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Telephone: 305-416-1892

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Assistant: Marta Gomez (305) 416-1844

On Jan 29, 2020, at 6:36 PM, McNulty, Kerri L. <kimcnulty@miamigov.com> wrote:

Good Evening Victoria,

Attached, please find some initial responses to the questions you sent. I have also attached some pertinent statutory sections, etc. We will follow up on any of these issues, as required.

Thank you,

Kerri

Kerri L. McNulty, Senior Appellate Counsel

Appellate Division

City of Miami Office of the City
Attorney

<image001.png> Telephone: 305-416-1891

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klmcnulty@miamigov.com

Assistant: Christina Santos 305-416-1862

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EXHIBIT “C”

Subject:



Greco, John A. <jagreco@miamigov.com>
to McNulty, Kerri L.

Wed, Jan 29, 6

Recall petitions can be challenged in court. See, e.g., Garvin v. Jerome, 767 So. 2d 1193 (Fla. 2000) (“As the statutory scheme for recall elections presently stands, it is apparent recall is treated as an extraordinary proceeding with the burden on those seeking to overturn the regular elective process to base the petition upon lawful grounds or face the invalidation of the proceedings. In our view, the present legislative scheme protects public officials from being recalled when illegal grounds provide the basis for recall. Since we place enormous value on the regular elective process, this legislative scheme is certainly not unreasonable. Accordingly, public officials should not face removal from the office they were lawfully and properly elected to on a ballot that contains illegal grounds for recall in express violation of the statute.”); Sanchez v. Lopez, 219 So. 3d 156, 159 (Fla. 3d DCA 2017) (“Since the City Charter does not require that the mayor attend city commission meetings, then it stands to reason that there cannot be a violation of such duty because the duty does not exist. Finally, because one of the grounds for recall advanced in the petition, neglect of duty for failure to attend city commission meetings, is legally insufficient, the entire petition is legally insufficient. See Garvin v. Jerome, 767 So.2d 1190 (Fla. 2000).”).

John A. Greco, Deputy City Attorney



Board Certified, Appellate Practice
City of Miami Office of the City
Attorney
Telephone: 305-416-1850
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jagreco@miamigov.com

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EXHIBIT “D”

Subject: RE: Recall Questions



Wysong, George <GWysong@miami-police.org>

Thu, Jan 30, 6

to McNulty, Kerri L., Mendez, Victoria, Greco, John A., Gomez, Maria

You are viewing an attached message. Law Office of Juan-Carlos Planas,
P.A. Mail can't verify the authenticity of attached messages.

Hi Kerri, et al,

I wanted to comment on the petitioner's time frame for submitting the required signatures to the City Clerk. I believe a strict reading of Section 100.361(2)(f), Fla. Stat. is in order. That section provides:

(f) Filing of signed petitions.—All signed petition forms shall be filed at the same time, no later than 30 days after the date on which the first signature is obtained on the petition. The person designated as chair of the committee shall file the signed petition forms with the auditor or clerk of the municipality or charter county, or her equivalent, hereinafter referred to as “clerk.” The petition may not be amended after it is filed with the clerk. *Sec 100.361, Fla. Stat. (2019).*

According to the statute the petition must be filed with the City Clerk no later than 30 days after the date on which the first signature is obtained on the petition. We have been informed that the first signature on the petition was obtained on January 30, 2020. Thirty (30) days from today is Saturday February 29, 2020. The City Clerk's Office maintains no business hours of 8:00AM to 5:00PM. Therefore, the petitioner must file the petition with the City Clerk before the end of business on Friday, February 28, 2020 in order to meet the statutory deadline.

The petitioner may argue that they will lose a day if they file the petition on Friday, February 28, 2020, however I believe the statute is pretty clear on this point. If the legislature had intended for the filing date to roll over to the next business day they would have indicated thusly. The Florida Election Code is comprised of Chapters 97-106 of the Florida Statutes. There are examples in the Florida Election Code where the legislature provided that the date for filing campaign treasurer reports rolls to the next day. For example, in Section 106.07 (1) the Florida Election Code provides: “...E as provided in paragraphs (a) and (b), reports shall be filed on the 10th day following the end of each calendar month from the time the campaign treasurer is appointed, except that, if the 10th day following the end of a calendar month occurs on a Saturday, Sunday, or legal holiday, the report shall be filed on the next following day that is not a Saturday, Sunday, or legal holiday...”emphasis added. Since the legislature did not provide for the rolling of the date in Section 100.361, Fla. Stat. it should be presumed that they intended for thirty (30) days to mean thirty (30) days.

Until legislatively or judicially determined otherwise I believe the petitioner must file the petition with the City Clerk within thirty (30) days, but no more than thirty days from the date on which the first signature is gathered. In this instance the date is the end of business on Friday, February 28, 2020. It is important to note that the timing of the start of the petition period was entirely up to the Chairperson and the Committee that gathered the first signature. The fact that the petitioner's poor planning may cost them a day of petition gathering is on them.

George K. Wysong III

Division Chief-General Government Division



City of Miami Office of the City

Attorney

Telephone: 305-603-6110

Facsimile: 305-372-4609

george.wysong@miami-police.org

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EXHIBIT “E”

Subject: Re: Recall Questions



Mendez, Victoria <VMendez@miamigov.com>

Thu, Jan 30, 6

to Wysong, George, McNulty, Kerri L., Greco, John A., Gomez, Marta

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Thank you. I read this 30 day time frame as Wysong did.

Victoria Méndez, City Attorney

Board Certified, City, County and
Local Government



City of Miami Office of the City Attorney

Telephone: 305-416-1832

Facsimile: 305-416-1801

victoriamedez@miamigov.com

Assistant: Marta Gomez (305) 416-1844

On Jan 30, 2020, at 5:50 PM, Wysong, George <GWysong@miami-police.org> wrote:

Hi Kerri, et al,

I wanted to comment on the petitioner's time frame for submitting the required signatures to the City Clerk. I believe that a strict reading of Section 100.361(2)(f), Fla. Stat. is in order. That section provides:

(f) Filing of signed petitions.—All signed petition forms shall be filed at the same time, no later than 30 days after the date on which the first signature is obtained on the petition. The person designated as chair of the committee shall file the signed petition forms with the auditor or clerk of the municipality or charter county, or his or her equivalent, hereinafter referred to as "clerk." The petition may not be amended after it is filed with the clerk. *Sec 100.361, Fla. Stat. (2019)*.

According to the statute the petition must be filed with the City Clerk no later than 30 days after the date on which the first signature is obtained on the petition. We have been informed that the first signature on the petition was obtained today, January 30, 2020. Thirty (30) days from today is Saturday February 29, 2020. The City Clerk's Office maintains normal business hours of 8:00AM to 5:00PM. Therefore, the petitioner must file the petition with the City Clerk before the end of business on Friday, February 28, 2020 in order to meet the statutory deadline.

The petitioner may argue that they will lose a day if they file the petition on Friday, February 28, 2020, however I believe the statute is pretty clear on this point. If the legislature had intended for the filing date to roll over to the next business day they would have indicated thusly. The Florida Election Code is comprised of Chapters 97-106 of the Florida Statutes. There are examples in the Florida Election Code where the legislature provided that the date for filing campaign treasurer reports rolls to the next day. For example, in Section 106.07 (1) the Florida Election Code provides: "...Except as provided in paragraphs (a) and (b), reports shall be filed on the 10th day following the end of each calendar month from the time the campaign treasurer is appointed, except that, if the 10th day following the end of a calendar month occurs on a Saturday, Sunday, or legal holiday, the report shall be filed on the next following day that is not a Saturday, Sunday, or legal holiday..."emphasis added. Since the legislature did not provide for the rolling of the date

EXHIBIT “F”

Subject: Re: Recall Questions



Mendez, Victoria <VMendez@miamigov.com>

Fri, Jan 31, 2020

to Wysong, George, McNulty, Kerri L., Greco, John A., Gomez, Marta

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Kerri

If you agree can you add this interpretation in your cheat sheet.

Victoria Méndez, City Attorney

Board Certified, City, County and
Local Government



City of Miami Office of the City Attorney

Telephone: [305-416-1832](tel:305-416-1832)

Facsimile: [305-416-1801](tel:305-416-1801)

victoriamedez@miamigov.com

Assistant: Marta Gomez (305) 416-1844

On Jan 30, 2020, at 9:25 PM, Mendez, Victoria <VMendez@miamigov.com> wrote:

Thank you. I read this 30 day time frame as Wysong did.

Victoria Méndez, City Attorney

Board Certified, City, County and
Local Government



City of Miami Office of the City Attorney

Telephone: [305-416-1832](tel:305-416-1832)

Facsimile: [305-416-1801](tel:305-416-1801)

victoriamedez@miamigov.com

Assistant: Marta Gomez (305) 416-1844

On Jan 30, 2020, at 5:50 PM, Wysong, George <GWysong@miami-police.org> wrote:

Hi Kerri, et al,

I wanted to comment on the petitioner's time frame for submitting the required signatures to the City Clerk. I believe that a strict reading of Section 100.361(2)(f), Fla. Stat. is in order.

That section provides:

- (f) Filing of signed petitions.—All signed petition forms shall be filed at the same time, no later than 30 days after the date on which the first signature is obtained on the petition. The person designated as chair of the committee shall file the signed petition forms with the auditor or clerk of the municipality or charter county, or his or

EXHIBIT “G”

Subject: RE: Recall Questions



McNulty, Kerri L. <klmcnulty@miamigov.com>

Mon, Feb 3, 2

to Mendez, Victoria, Wysong, George, Greco, John A., Gomez, Marta

You are viewing an attached message. Law Office of Juan-Carlos Planas,
P.A. Mail can't verify the authenticity of attached messages.

Good Afternoon Victoria,

I completely agree with George's analysis. Updated cheat sheet, attached.

Thank you,

Kerri

Kerri L. McNulty, Senior Appellate Counsel

Appellate Division



City of Miami Office of the City
Attorney
Telephone: 305-416-1891
Facsimile: 305-416-1801
klmcnulty@miamigov.com

Assistant: Christina Santos 305-416-1862

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From: Mendez, Victoria <VMendez@miamigov.com>

Sent: Friday, January 31, 2020 3:02 PM

To: Wysong, George <GWysong@miami-police.org>

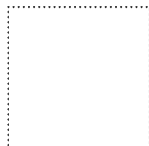
Cc: McNulty, Kerri L. <klmcnulty@miamigov.com>; Greco, John A. <jagreco@miamigov.com>; Gomez, Marta <martagomez@miamigov.com>

Subject: Re: Recall Questions

Kerri

If you agree can you add this interpretation in your cheat sheet.

Victoria Méndez, City Attorney



Board Certified, City, County and
Local Government
City of Miami Office of the City
Attorney
Telephone: [305-416-1832](tel:305-416-1832)
Facsimile: [305-416-1801](tel:305-416-1801)

Recall Questions:

- 1) Does the recall committee have to be constituted pursuant to Section 106, Florida Statutes, addressing political committees?

A: Under Section 100.361(2)(c), “the recall committee and the officer being recalled are subject to the provisions of chapter 106.”

- 2) Does the recall committee have to be constituted before you start collecting signatures pursuant to Section 106, Florida Statutes?

A: “Political committee” is defined in Section 106.03, Florida Statutes, as

1. A combination of two or more individuals, or a person other than an individual, that, in an aggregate amount in excess of \$500 during a single calendar year:

- a. Accepts contributions for the purpose of making contributions to any candidate, political committee, affiliated party committee, or political party;

- b. Accepts contributions for the purpose of expressly advocating the election or defeat of a candidate or the passage or defeat of an issue;

- c. Makes expenditures that expressly advocate the election or defeat of a candidate or the passage or defeat of an issue; or

- d. Makes contributions to a common fund, other than a joint checking account between spouses, from which contributions are made to any candidate, political committee, affiliated party committee, or political party.

§ 106.011, Fla. Stat. Under Section 106.03(1)(a), Florida Statutes, “[e]ach political committee that receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding \$500 or that seeks the signatures of registered electors in support of an initiative shall file a

statement of organization as provided in subsection (3) within 10 days after its organization.” § 106.03(1)(a), Fla. Stat.

Section 106.03(3)(c) provides: “A political committee which is organized to support or oppose only candidates for municipal office or issues to be voted on in a municipal election shall file a statement of organization with the officer before whom municipal candidates qualify.” § 106.03(3)(c), Fla. Stat.

Pursuant to the above, and section 100.361(2)(c), which dictates that recall committees are subject to chapter 106, a recall committee would be required to file a statement of organization within ten days of organizing. It would be highly improbable that a committee would be able to collect signatures prior to the statutory deadline to file the statement of organization.

- 3) Is it thirty days to turn in the signatures, inclusive or is it the 31st day? If the last day falls on a weekend, when is the petition due?

A: Section 100.361(2)(f), Florida Statutes, provides:

(f) Filing of signed petitions.—All signed petition forms shall be filed at the same time, no later than 30 days after the date on which the first signature is obtained on the petition. The person designated as chair of the committee shall file the signed petition forms with the auditor or clerk of the municipality or charter county, or his or her equivalent, hereinafter referred to as “clerk.” The petition may not be amended after it is filed with the clerk.

Under this provision, therefore, the petition must be filed with the City Clerk *no later* than 30 days after the date on which the first signature is obtained on the petition. We have been informed that the first signature on the petition was obtained on January 30, 2020. Thirty (30) days from January 30, 2020, is Saturday, February 29, 2020. The City Clerk’s Office maintains normal business hours, Monday through Friday, 8:00AM to 5:00PM. Therefore, the petitioner must file the petition with the City Clerk before the close of business on Friday, February 28, 2020 in order to meet the statutory deadline.

If the legislature had intended for the filing date to roll over to the next business day, they could have indicated such, as they have done in other sections of the election code. For example, in Section 106.07(1), the Florida Election Code provides: "...Except as provided in paragraphs (a) and (b), reports shall be filed on the 10th day following the end of each calendar month from the time the campaign treasurer is appointed, except that, if the 10th day following the end of a calendar month occurs on a Saturday, Sunday, or legal holiday, the report shall be filed on the next following day that is not a Saturday, Sunday, or legal holiday..."(emphasis added). Because the legislature did not include similar language in Section 100.361, the language in that section can be reasonably read as requiring strict compliance with the "no later than 30 days" language. Although the petitioners may assert that they reading will unfairly deprive them of a day to collect signatures, they controlled the timing of the date on which they commenced collecting signatures, and could have easily avoided this situation.

4) Can you keep on recalling? Or is there a limit on the amount of recalls?

There does not appear to be any limit on the number of recalls in the statutory text.

5) Can recalls be declared unconstitutional?

A: Recall petitions can be challenged in court. See, e.g., Garvin v. Jerome, 767 So. 2d 1190, 1193 (Fla. 2000) ("As the statutory scheme for recall elections presently stands, it is apparent that recall is treated as an extraordinary proceeding with the burden on those seeking to overturn the regular elective process to base the petition upon lawful grounds or face the invalidation of the proceedings. In our view, the present legislative scheme protects public officials from being ousted when illegal grounds provide the basis for recall. Since we place enormous value on the regular elective process, this legislative scheme is certainly not unreasonable. Accordingly, public officials should not face removal from the office they were lawfully and properly elected to on a ballot that contains illegal grounds for recall in express violation of the statute."); Sanchez v. Lopez, 219 So. 3d 156, 159 (Fla. 3d DCA 2017) ("Since the City Charter does not require that the mayor attend

commission meetings, then it stands to reason that there cannot be a violation of such duty because the duty does not exist. Finally, because one of the grounds for recall advanced in the petition, neglect of duty for failure to attend city commission meetings, is legally insufficient, the entire petition is legally insufficient. See Garvin v. Jerome, 767 So.2d 1190 (Fla. 2000).”).

- 6) When do you figure out who is on the committee? Only when the petition is submitted to the clerk?

A: Under Section 100.361(2)(c),

Electors of the municipality or district making charges contained in the statement of grounds for recall, as well as those signing the recall petition, shall be designated as the recall committee. A specific person shall be designated in the petition as chair of the committee, and this person shall act for the committee.

§ 100.361, Fla. Stat. As was explained above, the recall committee will be required to file a statement of organization fairly early on under Section 106.03, Florida Statutes. However,

The statement of organization shall include:

- (a) The name, mailing address, and street address of the committee or electioneering communications organization;
- (b) The names, street addresses, and relationships of affiliated or connected organizations, including any affiliated sponsors;
- (c) The area, scope, or jurisdiction of the committee or electioneering communications organization;
- (d) The name, mailing address, street address, and position of the custodian of books and accounts;

(e) The name, mailing address, street address, and position of other principal officers, including the treasurer and deputy treasurer, if any;

(f) The name, address, office sought, and party affiliation of:

1. Each candidate whom the committee is supporting;

2. Any other individual, if any, whom the committee is supporting for nomination for election, or election, to any public office whatever;

(g) Any issue or issues the committee is supporting or opposing;

(h) If the committee is supporting the entire ticket of any party, a statement to that effect and the name of the party;

(i) A statement of whether the committee is a continuing one;

(j) Plans for the disposition of residual funds which will be made in the event of dissolution;

(k) A listing of all banks, safe-deposit boxes, or other depositories used for committee or electioneering communications organization funds;

(l) A statement of the reports required to be filed by the committee or the electioneering communications organization with federal officials, if any, and the names, addresses, and positions of such officials; and

(m) A statement of whether the electioneering communications organization was formed as a newly created organization during the current calendar quarter or was formed from an organization existing prior to the current calendar quarter. For purposes of this subsection, calendar quarters end the last day of March, June, September, and December.

§ 106.03(2), Fla. Stat. Although certain members of the recall committee—specifically the custodian of the books and other principal officers of the organization—must be reported, not every member of the committee will be

identified through the filing of a statement of organization. Specifically, as Section 100.361 defines the recall committee as including “those signing the recall petition,” there would be no way to identify all of those members of the committee until the petition was submitted.

7) What constitutes a recall committee?

A: Under Section 100.361(2)(c),

Electors of the municipality or district making charges contained in the statement of grounds for recall, as well as those signing the recall petition, shall be designated as the recall committee. A specific person shall be designated in the petition as chair of the committee, and this person shall act for the committee.

§ 100.361, Fla. Stat.

8) Are committee reports required pursuant to Section 106, Florida Statutes?

A: Under Section 100.361(2)(c), “[t]he recall committee and the officer being recalled are subject to the provisions of chapter 106.” § 100.361, Fla. Stat. There is a robust reporting requirement for political committees under Section 106.07, Florida Statutes.

EXHIBIT “H”

Subject: Here is your 1 link from Doral, FL Code of Ordinances in the Municode Library.



Municode <noreply@municode.com>
to Greco, John A.

Mon, Feb 3, 5

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- [DIVISION 4 - RECALL OF ELECTED OFFICIALS](#)

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The Municode Team

Please disregard if they were sent in error.

DIVISION 4. - RECALL OF ELECTED OFFICIALS

Footnotes:

--- (4) ---

Editor's note— Ord. No. 2013-13, § 1, adopted April 26, 2013, set out provisions intended for use as 2-88. For purposes of clarity, and at the editor's discretion, these provisions have been included as § 2-81.

Sec. 2-81. - Recall of elected officials.

- (a) The City of Doral adopts and incorporates by reference F.S. § 100.361, entitled "Municipal Recall" as may be amended from time to time, as the procedural requirements that must be adhered to in order to recall a City of Doral elected official.
- (b) In addition to the requirements set forth above, no recall petition may be certified for the recall of an elected official in the City of Doral within one year after the failure to certify such a petition against the same or the failure of the petition following an election of the electors of the City of Doral.

(Ord. No. 2013-13, § 1, 4-26-2013)

Secs. 2-82—2-99. - Reserved.

ORDINANCE #2013-13

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL, FLORIDA CREATING DIVISION IV OF CHAPTER 2 ENTITLED "RECALL OF ELECTED OFFICIALS"; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CITY CODE; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the electors of the City of Doral (the "City") are empowered by the laws of the State of Florida to initiate the recall of their elected officials; and

WHEREAS, Section 100.361, Florida Statutes, sets forth the procedures by which the City's municipal electors may initiate such recalls; and

WHEREAS, the City Council wishes to respect the rights of the people, the interests of the City as a whole must also be considered when establishing procedures by which to recall an elected official; and

WHEREAS, Section 8.02 of the Miami-Dade County Charter prohibits the certification of a petition to recall an elected official within one year of the defeat of any like petition to recall the same elected official; and

WHEREAS, Florida Courts have held that elected officials are entitled to public funds in order to defend against petitions to recall them; and

WHEREAS, the City wishes to limit the amount of public dollars expended on such recalls and ensure that the City's business is conducted by its duly elected officials without the threat of constant recall when such recall petitions have previously failed.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA AS FOLLOWS:

Section 1. Section 2-88 of the City Code of the City of Doral is hereby created to read as follows:

Sec. 2-88. – Recall of Elected Officials.

- (a) The City of Doral adopts and incorporates by reference Section 100.361, Florida Statutes, entitled “Municipal Recall” as may be amended from time to time, as the procedural requirements that must be adhered to in order to recall a City of Doral elected official.
- (b) In addition to the requirements set forth above, no recall petition may be certified for the recall of an elected official in the City of Doral within one year after the failure to certify such a petition against the same or the failure of the petition following an election of the electors of the City of Doral.

Section 2. Repeal of Conflicting Provisions. To the extent any provisions of the Code conflict with this Chapter, those provisions are repealed in their entirety.

Section 3. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Inclusion in the Code. It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Doral, Florida; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word “Ordinance” shall be changed to “Section” or other appropriate word.

Section 5. Effective Date. This Ordinance shall be effective upon adoption on second reading.

The foregoing Ordinance was offered by Councilmember Rodriguez who moved its adoption. The motion was seconded by Vice Mayor Rodriguez Aguilera and upon being put to a vote, the vote was as follows

Mayor Luigi Boria	Yes
Vice Mayor Bettina Rodriguez Aguilera	Yes
Councilwoman Christi Fraga	Absent
Councilwoman Ana Maria Rodriguez	Yes
Councilwoman Sandra Ruiz	Yes

PASSED AND ADOPTED on FIRST READING this 10th day of April, 2013.

PASSED AND ADOPTED on SECOND READING this 26th day of April, 2013.

Luigi Boria, Mayor

ATTEST:

Barbara Herrera, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Joe Jimenez, City Attorney

Subject: FW: Here is your 1 link from Doral, FL Code of Ordinances in the Municode Library.



Greco, John A. <jagreco@miamigov.com>

Mon, Feb 3, 4

to Wysong, George K., Stubbs, Shakeria, Mendez, Victoria, Miri, Barnaby, Gomez, Marta

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Please open new Legislative matter for assignment to George.

George, please draft proposed ordinance for first reading on second meeting in February. see link below. Follow up the CA.

John A. Greco, Deputy City Attorney



Board Certified, Appellate Practice
City of Miami Office of the City
Attorney
Telephone: 305-416-1850
Facsimile: 305-416-1801
jagreco@miamigov.com

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From: Municode <noreply@municode.com>

Sent: Monday, February 3, 2020 3:59 PM

To: Greco, John A. <jagreco@miamigov.com>

Subject: Here is your 1 link from Doral, FL Code of Ordinances in the Municode Library.

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- DIVISION 4. - RECALL OF ELECTED OFFICIALS

Regards,
The Municode Team

EXHIBIT “I”

Subject: City of Miami Beach v. Smith



Westlaw@westlaw.com <Westlaw@westlaw.com>
to Greco, John A., McNulty, Kerri L.

Thu, Feb 6, 2020

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Item: City of Miami Beach v. Smith
Citation: 251 So.2d 290
Sent On: Thursday, February 6, 2020
Sent By: John Greco
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251 So.2d 290
District Court of Appeal of Florida, Third District.

CITY OF MIAMI BEACH et al., Appellants,
v.
Harry B. SMITH and William E. Shockett,
Appellees.

No. 71-274.

June 29, 1971.

Rehearing Denied Sept. 2, 1971.

Synopsis

Action in **mandamus** to compel action by **city** council on petition for amendment to **city** charter. The Circuit Court, Dade County, Grady L. Crawford, J., granted **mandamus** and **city** appealed. The District Court of Appeal, Carroll, J., held, inter alia, that proposed amendment to **city** charter providing for election of **city** council members by districts was not unconstitutional or prohibited by law on theory that one-man one-vote rule would have been violated nor on theory that councilmen presently serving could not be replaced under such procedure.

Affirmed.

West Headnotes (6)

- ^[1] **Municipal Corporations**
⊕-Amendment of Charter or Special Act

Proposed amendment to **city** charter providing for election of **city** council members by districts was not unconstitutional or prohibited by law on theory that one-man one-vote rule would have been violated nor on theory that councilmen presently serving could not be replaced under such procedure.

1 Cases that cite this headnote

⊕-Amendment of Charter or Special Act

Trial court may reject petition for amendment of **city** charter if it appears from petition on its face that matter to be enacted by amendment if accepted by electorate would be unconstitutional or prohibited by law.

- ^[2] **Constitutional Law**
⊕-Electoral Districts

Single-member districting is not improper and does not violate one-man one-vote rule.

- ^[3] **Mandamus**
⊕-Laches

Where nine-month **delay** between submission of petition for **city** charter amendment and commencement of action in **mandamus** to compel action on petition resulted from failure of **city officials** to proceed as required by law, **delay** did not preclude grant of **mandamus**.

- ^[4] **Municipal Corporations**
⊕-Amendment of Charter or Special Act

Where proposed amendment to **city** charter relating to election of councilmen by districts provided for redistricting at two-year intervals, failure of amendment to accurately reflect current population distribution did not invalidate amendment.

2 Cases that cite this headnote

- ^[5] **Municipal Corporations**

¹⁶¹ **Municipal Corporations**
↔Amendment of Charter or Special Act

City council was under duty to provide for certification of petition for amendment to city charter, and failure of petition itself to provide for certification procedure did not invalidate it.

Attorneys and Law Firms

*291 Joseph A. Wanick, City Atty., and Chase Adams, Asst. City Atty., for appellants.

Paul & Thomson, Miami, for appellees.

Before CHARLES CARROLL, BARKDULL and HENDRY, JJ.

Opinion

CARROLL, Judge.

This appeal is by the respondents below from a judgment granting a peremptory writ of mandamus.

On April 14, 1970, the appellees petitioned the circuit court of Dade County for a writ of mandamus, naming as respondents the City of Miami Beach, its mayor, councilmen and clerk, and an alternative writ of mandamus was issued thereon.

By incorporation of the allegations of the petition, it was alleged by the alternative writ that the petitioner-plaintiffs had submitted to the city council at a formal meeting thereof a petition for an amendment to the charter of the City of Miami Beach, signed by the number or percentage of qualified electors of the city sufficient to require submission of the proposed charter amendment to the electors on an election, pursuant to provision therefor in the Home Rule charter of Metropolitan Dade County, that the governing body of the city, *292 contrary to their clear legal duty, had failed and refused to so proceed. Attached to the alternative writ (by its incorporation of the petition) was a copy of the circulated amendment petition, which proposed amendment of the charter of the City of Miami Beach to provide six designated districts in

the city with provision for election of one councilman from each of the districts. Appended thereto was a map or chart of the city showing the respective areas thereof which the six districts would comprise. The alternative writ commanded the respondents to accept the petition for amendment, and if ten percent or more of the qualified electors of the city were certified to have signed the same, to submit the proposed amendment to the electors of the city at an election to be held as provided by law, or show cause on or before a return date therein fixed why a peremptory writ of mandamus so commanding should not issue.

A motion of respondents to quash the alternative writ was heard and denied. Thereupon the respondents answered, in general denying the allegations of the alternative writ. By an amendment to the answer respondents submitted as a defense the assertion that the feature of the proposed amendment to the charter, which would operate to replace councilmen currently serving by those to be elected pursuant to the amendment, would in effect constitute a recall of the former, without there having been followed the steps and procedure contained in the city charter for a recall election.

Following trial before the court the judgment here appealed was entered in favor of the plaintiffs on January 21, 1971. Therein the trial court granted a peremptory writ of mandamus.²

The contentions presented by the appellants are that the trial court erred in entering the judgment for the plaintiffs and in issuing a peremptory writ of mandamus, and that the court erred in sustaining objections of plaintiffs to certain evidence offered by respondents, and in rejecting respondents' contentions of invalidity and insufficiency of the amendatory petition.

Upon examination of the record and briefs and with the benefit of argument of counsel for the parties we conclude that the contentions presented by the appellants are without merit, and that the judgment appealed from should be affirmed.

¹¹ ¹² ¹³ The trial court was not in error in rejecting the respondents' contention that the amendatory petition was insufficient or invalid. While it would have been proper for the trial court to have rejected the petition as a basis for amendment if it had appeared by the petition on its face that the matter to be enacted by the amendment, if accepted by the electorate, would have been unconstitutional or prohibited *293 by law,³ it did not appear from this petition on its face that the amendment proposed would be unconstitutional or otherwise prohibited by law. Single-member districting is not improper and does not violate the one man one vote rule.⁴

The feature of the amendment that if it should become effective councilmen elected thereunder would replace those then so serving, does not render the proposed amendment invalid.⁵

¹⁴ The city argued that the failure to file the **mandamus** more promptly should have caused the trial court to reject the action because it must be assumed there have been population changes and shifts within districts during the period. We do not regard that argument to be conclusive.

The lapse of time between submitting the signed petitions to the governing body of the city and the filing of **mandamus** to compel action thereon (approximately nine months) should not operate to deprive the plaintiffs of a right to resort to the court for such relief. As pointed out by the appellees, the **delay** was on the part of the respondents, by their refusal to proceed as required by law following receipt of the petitions; and also that the plaintiffs as proponents of the petitions had continued to seek action thereon by the city council in the interval of time in question.

¹⁵ As to a change in population, the allocation of the districts was based on the population fixed by the 1960 federal census. At the time of this action, including the time of judgment, the 1970 federal census had not been certified or made **official**. To the extent that a recent change in population may have occurred, and be such as to indicate a need for revision or reapportionment of such districts, the proposed amendment provides for such action to be taken by the city at two year intervals.

¹⁶ A further argument advanced by the respondents was

that the trial court should have denied **mandamus** because in making provision for amendment of charters of municipalities within the county by such a petition of electors, the Metropolitan Dade County charter did not (in s 5.03 or elsewhere) specify the board or **official** of the city which should make the certification of the petition as having been signed by ten percent or more of the qualified electors of the city. That argument is unsound. Upon presentation to it of the signed petition for amendment of the city charter, the city council as the governing body of the city was under a clear legal duty to proceed, without undue **delay**, itself or through its clerk or such other **official** of the city as it should designate for the purpose, to so certify the petition or petitions (if the required signatures were appended thereto) and thereupon to provide for an election thereon as called for in s 5.03 of the Metropolitan Dade County charter in such circumstance.

We hold, therefore, that the trial court was correct in granting judgment in **mandamus** in favor of the plaintiffs, and in its issuance of the peremptory writ of **mandamus**.

Affirmed.

All Citations

251 So.2d 290

Footnotes

1 Section 5.03 of the charter of Metropolitan Dade County provides:
'Municipal charters.'

(A) Except as provided in Section 5.04, any municipality in the county may adopt, amend, or revoke a charter for its own government or abolish its existence in the following manner. Its governing body shall, within 120 days after adopting a resolution or after the certification of a petition of ten per cent of the qualified electors of the municipality, draft or have drafted by a method determined by municipal ordinance a proposed charter, amendment, revocation, or abolition which shall be submitted to the electors of the municipalities. Unless an election occurs not less than 60 nor more than 120 days after the draft is submitted, the proposal shall be submitted at a special election within that time. The governing body shall make copies of the proposal available to the electors not less than 30 days before the election. Alternative proposals may be submitted. Each proposal approved by a majority of the electors voting on such proposal shall become effective at the time fixed in the proposal.

(B) All municipal charters, amendments thereto, and repeals thereof shall be filed with the Clerk of the Circuit Court.'

2 The peremptory writ granted was as follows:

'Defendants are hereby peremptorily directed and commanded to accept for certification all petitions introduced in evidence in the cause by plaintiffs and are directed and commanded forthwith to canvass within a period not to exceed 30 days from the date of this Judgment and Writ the signatures on such Petitions to determine if the number of qualified electors of the City of Miami Beach who have signed such Petitions is equal to 10% Or more of the qualified electors of the City of Miami Beach as of the close of the voter registration books of the City of Miami Beach on October 4, 1969 and if 10% Or more of the qualified electors of the City of Miami Beach as of such date are certified to have signed such Petitions, to submit in the manner provided by Section 5.03 of the Dade County Home Rule Charter the proposed amendments set forth in such Petition to the electors of the

City of Miami Beach v. Smith, 251 So.2d 290 (1971)

City of Miami Beach at an election held as provided by law.’

- 3 Dade County v. Dade County League of Municipalities, Fla.1958, 104 So.2d 512, 514—515; Dulaney v. **City** of Miami Beach, Fla.App.1957, 96 So.2d 550, 551; Adams v. Gunter, Fla.1970, 238 So.2d 824.
- 4 See Perkins v. Matthews, 400 U.S. 379, 91 S.Ct. 431, 27 L.Ed.2d 476; Cf. Whitcomb v. Chavis, 403 U.S. 124, 91 S.Ct. 1858, 29 L.Ed.2d 363 (decided June 7, 1971).
- 5 **City** of Jacksonville v. Smoot, 83 Fla. 575, 92 So. 617, 620; Hall v. Strickland, Fla.1964, 170 So.2d 827.

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EXHIBIT “J”

Subject: ch. 10 article



Gomez, Marta <martagomez@miamigov.com>
to Mendez, Victoria, Min, Barnaby, Greco, John A.

Tue, Feb 11, 2

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Christina Vazquez, Reporter

Published: **February 11, 2020, 2:09 pm**

14 MINUTES AGO

Recall effort of Miami City Commissioner Joe Carollo begins 'in earnest,' organizers say

Recall effort of Miami City Commissioner Joe Carollo begins 'in earnest,' organizers say

Carollo says 'Take Back Our City' political committee comprised of 'socialist radicals'

MIAMI – Organizers of the political committee “Take Back Our City” amended their Jan. 30 filing on Tuesday morning to specifically state that the purpose of the organization is for the “recall of Commissioner Joe Carollo.”

The filing also included a change in treasurer.

Carollo, who represents District 3, has been an outspoken critic of Miami Mayor Francis Suarez and City Manager Emilio Gonzalez, the latter of who resigned last month.

LIVE

LOCAL NEWS

Recall effort of Miami City Commissioner Joe Carollo begins 'in earnest,' organizers say

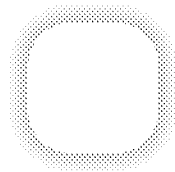
Carollo says 'Take Back Our City' political committee comprised of 'socialist radicals'

Christina Vazquez, Reporter

Published: February 11, 2020, 2:09 pm

Updated: February 12, 2020, 11:49 am

Tags: Miami, Miami-Dade County, Joe Carollo



MIAMI – Organizers of the political committee “Take Back Our City” amended their Jan. 30 filing on Tuesday morning to specifically state that the purpose of the organization is for the “recall of Commissioner Joe Carollo.”

The filing also included a change in treasurer.

Carollo, who represents District 3, has been an outspoken critic of Miami Mayor Francis Suarez and City Manager Emilio Gonzalez, the latter of who resigned last month.

Members of “Take Back Our City” said in the absence of a specific city law related to recall procedures they are following state legal guidelines.

Former District 1 candidate and “Take Back Our City” volunteer spokesman Eleazar Meléndez told Local 10 News that the group is working to secure just over 1,500 signatures over the next 30 days.

In a news release he stated that “former elected and public officials, including former Miami-Dade County Commission Chair Bruno Barreiro, former Miami City Manager Joe Arriola and former Miami Mayor Manny Diaz” were some of the community leaders behind the recall effort.

Arriola confirmed to Local 10 News that he is funding the recall effort to the tune of \$100,000 of his personal money. He said he anticipates that others will also pitch in.

In a statement Carollo stated in part, “The vast majority of this small group do not live in District 3 and is comprised of socialist radicals, as well as others that want to do business with the Cuban dictatorship and corrupt politicians that want to be relevant again.”

EXPLOSIVE CITY HALL MEETING:

City Manager Emilio Gonzalez's resignation came in the wake of an explosive Jan. 9 city commission meeting that led to an early adjournment before any city business could be done. On Tuesday morning, some of the recall organizers referenced that meeting in their reasons for beginning a recall effort.

Related Link: <https://www.local10.com/news/local/2020/01/09/spat-between-miami-commissioners-leads-to-meeting-being-adjourned-early/>

There was a plethora of items on the agenda for the meeting that led to a power struggle regarding what would be discussed first, who would get to decide and who was making the rules, which led to utter chaos, the adjournment of the meeting and then a fiery exchange between Carollo and the commission Chair Keon Hardemon.

Related Link: <https://www.local10.com/news/local/2020/01/16/miami-city-manager-resigns/>

After a failed vote to fire Gonzalez in December, Carollo moved to have him investigated -- a move the mayor vetoed.

.....

Gonzalez stepped down amid tension with some city commissioners, like Carollo, who accused Gonzalez of doctoring documents to secure a work permit on his home and using his authority to fast track the process.

"Our city commission meetings have devolved into a circus," Gonzalez wrote in his resignation letter. "Personal discussions have given way to the politics of personal destruction."

.....

PEDROSA: THE RED HERRING?

On Tuesday, Carollo also made reference to Rene Pedrosa, the former communications director for Suarez, who now faces several charges related to a sex crimes case involving a

minor.

Related Link: <https://www.local10.com/news/local/2020/02/08/miami-mayors-former-top-aide-walks-out-of-jail-friday-night/>

Carollo alleges that "Pedrosa was one of the original organizers of this anti-Democratic recall."

This would be the second time the commissioner has worked to leverage the sex crimes case involving a minor. On Friday, after inviting himself to a police news conference about the case, Carollo said Pedrosa should never have been hired in the first place in light of an amended employment application that shows two DUI convictions in 2002 and 2009.

On Tuesday, Suarez disputed Carollo's allegation, telling Local 10 News reporter Christina Vazquez that Pedrosa was not an "original organizer" of the recall effort as far as he is aware.

In a written statement Tuesday afternoon, Meléndez told Local 10 News: "This is a shameless lie by a cornered and wounded career politician. Joe is desperate. Realizing now that this surging recall effort caught him unprepared, he is trying to discredit us. As he has done through his career, he'll try to change the subject from his abuse of power and broken promises with outrageous and false statements. Joe Carollo lies. All the time. About everything. This is no different."

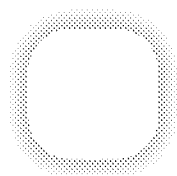
City clerk records show the original petition by "Take Back Our City" was filed Jan. 30, prior to Pedrosa's arrest last Friday.

A former Spanish-language local television reporter, Pedrosa was hired a year ago. When he told his boss early last week he had personal "misconduct" issues, the mayor asked for his resignation.

In a statement Friday, Suarez told Local 10 News in part, "The residents of Miami deserve the highest standards from municipal employees. I will always work to ensure that my

administration delivers accountability and takes action to uphold those standards.”

“MIAMI POLITICS IS NO STRANGER TO DRAMA”



Vazquez caught up with District 2 Commissioner Ken Russell during a Miami Parking Authority news conference announcing the launch of “Revels,” a new shared electric moped company.

She asked him about morale in the City of Miami in light of back-to-back drama from the January city commission meeting that ended abruptly due to bickering, the resignation of the city manager, the arrest of the mayor’s former communications director, and now the Carollo recall efforts.

“Miami politics is no stranger to drama,” Russell said. “This city is very resilient.”

Russell believes gains in addressing issues of affordable housing, transit and sea level rise are now being overshadowed by some of these negative developments.

He added that he is looking forward to working on selecting a new city manager who the commission can work with.

Vazquez also tried speaking on camera with the mayor, but he left the press event without giving any comment on camera.


According to a City of Miami spokeswoman, no commissioner or mayor in Miami has ever been recalled.

Carollo was elected in November 2017 and will be up for re-election in November 2021.


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ABOUT THE AUTHOR:

Christina Vazquez

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to Greco, John A.

Wed, Feb 12, 6

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1989 Fla. Op. Atty. Gen. 193 (Fla.A.G.), Fla. AGO 89-69, 1989 WL 431663

Office of the Attorney General

State of Florida
AGO 89-69
October 6, 1989

*1 Mr. Charles Ian Nash
City Attorney
City of Sebastian
930 South Harbor City Boulevard
Suite 505
Melbourne, Florida 32901

Dear Mr. Nash:

You ask on behalf of the city council and city clerk of the City of Sebastian substantially the following question: Is a city council member entitled to be reimbursed by the municipality for reasonable attorney fees incurred by the council member in successfully challenging a petition for recall pursuant to s. 100.361, F.S., or for obtaining declaratory relief, where the sole grounds for recall were based on the actions of the council member performed in the course of his legislative duties while serving a municipal purpose?

In sum, I am of the opinion:

A city council member is entitled to be reimbursed for reasonable attorney fees incurred by the council member in challenging and in seeking declaratory relief against a recall petition which was based on actions performed in the course of his legislative duties while serving a municipal purpose.

Section 100.361, F.S., sets forth the statewide uniform recall procedures for the removal from office of any member of the governing body of a municipality by the electors of the municipality. You ask about the reimbursement of attorney fees incurred by a city council member in successfully challenging a recall petition brought under the authority of s. 100.361, F.S., or in obtaining declaratory relief that the petition was not in compliance with the provisions of s. 100.361, F.S.

In *Ferrara v. Caves*,¹ the district court considered the obligation of a municipality to pay reasonable attorney's fees for a suit by the mayor and two council members seeking declaratory and injunctive relief against a recall petition precipitated by their votes on proposed ordinances. The court relied on its earlier decision in *Lomelo v. City of Sunrise*² in holding that the city was under an obligation to pay such fees:

[T]his court said in [Lomelo] that a public officer is entitled to a defense at the public expense in defending suits or misconduct charges while performing his public duties and while serving a public purpose.... The present case is different from *Lomelo* and cases cited therein in that here the misconduct charges against the plaintiffs/cross appellants [mayor and city council members] were in the form of recall petitions, and the court action was instituted by the public officers rather than against them. Nevertheless, their action for declaratory and injunctive relief was an effort to defend against charges of misconduct and that in the spirit of *Lomelo* the town is required in line with case law to pay reasonable attorney's fees the cross appellants incurred.

As cross appellants point out, the recall petitions were precipitated by their vote on a proposed rent stabilization ordinance. Thus, they were being taken to task for official actions they took in their roles as commissioners and mayor. While their vote made an insufficient basis for recall, it was nonetheless the cause of the recall attempt.³

*2 According to your letter, the recall petition was based upon the actions of the city council member "performed in the course of his legislative duties while serving a municipal purpose." Under the rationale of the court's decision in *Ferrara v.*

Caves, supra, the city council member's challenge of the petition or action seeking declaratory relief was an effort to defend himself against charges of misconduct. The city, therefore, is required to pay the reasonable attorneys fees incurred by the council member in such efforts.⁴

Sincerely,

Robert A. Butterworth
Attorney General

Footnotes

¹ 475 So.2d 1295 (4 D.C.A.Fla.,1985).

² 423 So.2d 974 (4 D.C.A.Fla.,1982), petition for rev. den., 431 So.2d 988 (Fla.1983).

³ 475 So.2d at 1299-1300.

⁴ See generally, AGO's 87-46 (special master appointed by circuit court to hear child support enforcement matters entitled to defense at public expense in civil action); 86-35 (county commissioners entitled to defense at expense of public in defending against unfounded allegations of official misconduct, arising from performance of official duties and while serving a public purpose).

Subject: Ferrara v. Caves



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to Greco, John A.

Wed, Feb 12, 6

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Declined to Follow by *Stone v. Town of Irasburg*, Vt., April 25, 2014

475 So.2d 1295
District Court of Appeal of Florida,
Fourth District.

Phillip FERRARA, Appellant/Cross Appellee,
v.

J. Paige CAVES, Daniel J. Hoffman and Dottie
Johnston, Appellees/Cross Appellants,
and

Town of Pembroke Park, Appellee/Cross Appellee,
and

Barbara R. Powell, as Deputy Town Clerk of the
Town of Pembroke Park, Appellee.

No. 84-2502.

Sept. 18, 1985.

Rehearing Denied Oct. 23, 1985.

Synopsis

Following stipulation and entry of judgment in favor of town mayor and town commissioners seeking declaratory and injunctive relief against recall petitions, plaintiffs moved for attorney fees. The Circuit Court, Broward County, Robert C. Scott, J., entered order awarding attorney fees as to some parties and denying fees as against other parties to the action. Appeals were taken. The District Court of Appeal, Glickstein, J., held that: (1) mere fact that one defendant was intervenor rather than named defendant did not in itself protect him from invocation of penalty of attorney fee statute; (2) trial court erroneously awarded attorney fees against instigator of recall petitions who offered to intervene and who stipulated within short time of being admitted as a party that the recall petitions were deficient; and (3) town was required to pay reasonable attorney fees incurred by mayor and town commissioners.

Reversed.

West Headnotes (7)

[1] Costs

↔Bad faith or meritless litigation

In order for attorney fee statute [West's F.S.A. § 57.105] to be applied, trial court must make finding that the action was frivolous or completely lacking in any justiciable issue of law or fact; this does not mean that the finding must have been made at earlier time than the order awarding attorney fees, but only means that such finding must explicitly be made.

1 Cases that cite this headnote

[2] Costs

↔Interveners

Mere fact that defendant was intervenor rather than named defendant did not in itself protect him from invocation of penalty of attorney fee statute [West's F.S.A. § 57.105].

[3] Costs

↔Bad faith or meritless litigation

Conduct in connection with court proceeding in question, e.g., stonewalling by defendant who had no glimmer of meritorious defense, not conduct long before there is a court proceeding, can be grounds for attorney fee award under attorney fee statute [West's F.S.A. § 57.105].

[4] Costs

↔Bad faith or meritless litigation

Trial court erroneously awarded fee under attorney fee statute [West's F.S.A. § 57.105] against instigator of recall petitions who offered to intervene in suit by three town officials who were subject of the recall petitions where, within relatively short time of his being admitted as a

party, he recognized that the petitions were indeed deficient, as contended by the plaintiffs, and through counsel so stipulated, and where there was no basis for charging intervenor with stonewalling a defense or in any way dragging his feet.

commissioners seeking declaratory and injunctive relief against recall petitions which were precipitated by their votes on proposed ordinance.

2 Cases that cite this headnote

3 Cases that cite this headnote

[6]

Costs

◆Evidence as to items

For purpose of attorney fee statute [West's F.S.A. § 57.105], trial court's finding that position advanced by losing party is virtually frivolous must be supported by substantial competent evidence presented at the hearing on the attorney fees or otherwise before the court.

Attorneys and Law Firms

*1296 Jerome L. Hall of Jerome L. Hall, P.A., Fort Lauderdale, for appellant/cross appellee.

Edward Paul Kreiling of Rosen, Rosen, Kreiling & Bornstein, P.A., Miramar, for appellees/cross appellants.

Opinion

GLICKSTEIN, Judge.

This is an appeal of an order awarding attorney's fees under section 57.105, Florida Statutes (1983), in a civil action in the Broward County circuit court, and a cross appeal of denial of attorney's fees as against other parties to the action. We reverse in both instances.

The facts show that Dottie Johnston was mayor and J. Paige Caves and Daniel J. Hoffman were commissioners of the Town of Pembroke Park. Phillip Ferrara was head of a self-constituted recall committee that sought the removal of those three officials, by collecting signatures on recall *1297 petitions and filing the petitions with the town clerk.

On April 25, 1984, the three officials filed a complaint for declaratory and injunctive relief against Barbara R. Powell, deputy town clerk, and the Town of Pembroke Park. They served the two defendants on May 15, 1984. The plaintiffs alleged the recall petitions were legally insufficient and therefore void. They obtained a temporary restraining order against the defendants' proceeding further under the recall statute on the basis of the petition, and moved for a preliminary injunction. Ferrara obtained leave on May 9, 1984, to join as an indispensable party, and was given twenty days to file responsive pleadings. On May 22, 1984, the plaintiffs filed an amended complaint, principally adding a prayer for reasonable attorney's fees. Ferrara was not named as a party defendant in either the original or the amended complaint.

[6]

Costs

◆Parties of Record

Costs

◆Representative or official capacity

Costs

◆Particular Actions or Proceedings

Attorney fee statute [West's F.S.A. § 57.105] was not applicable against town or deputy town clerk who were defendants in suit challenging legal sufficiency of recall petitions filed with town clerk, in that they were parties not by choice but because of peculiarities of the recall statute, and had to defend as best they could once they were named as parties and noticed of the proceedings and claims.

1 Cases that cite this headnote

[7]

Municipal Corporations

◆Costs

Town was required to pay reasonable attorney fees for suit by town's mayor and two town

I

On or about August 1, 1984, attorneys for all parties entered into a stipulation that the recall petitions failed to meet statutory requirements, and signaled the court that it could enforce the stipulation and final judgment. On August 22, 1984, the court by final judgment found the petitions legally insufficient and permanently enjoined the town and deputy town clerk and others from taking further steps based on the petitions. The court reserved jurisdiction to enforce the stipulation and final judgment and to adjudicate any appropriate motions as to attorney's fees and costs.

Plaintiffs/appellees Caves, Hoffman and Johnston filed on August 22, 1984, a motion for attorney's fees. The motion incorporated by reference a memorandum filed May 2, 1984, in which the plaintiffs/appellees contended they were entitled to attorney's fees from the town, based on the holding in *Lomelo v. City of Sunrise*, 423 So.2d 974 (Fla. 4th DCA 1982); and from both Ferrara and the town, on authority of section 57.105, Florida Statutes (1983), because there was no justiciable issue of law or fact raised by Ferrara or the town. The court issued its order on attorney's fees on November 14, 1984. It held the town and Ms. Powell were not to be taxed because they were merely nominal parties but that Ferrara should pay reasonable attorney's fees because his conduct, namely the recall activity, gave rise to the court action and he was the losing party within the meaning of section 57.105. Notice of appeal by Ferrara of the order granting attorney's fees against him and notice of cross appeal by the plaintiffs/appellees of the denial of fees against the town were timely filed. On proper motion of the appellees/cross appellants this court determined this was a proceeding to review a non-final order under rule 9.130.

There are two issues on appeal:

I. WHETHER THE TRIAL COURT ERRED WHEN IT AWARDED ATTORNEY'S FEES AGAINST THE INTERVENING DEFENDANT PURSUANT TO SECTION 57.105, FLORIDA STATUTES. We conclude that it did.

II. WHETHER THE TRIAL COURT ERRED WHEN IT DENIED ATTORNEY'S FEES AGAINST THE MUNICIPALITY, TO THE PUBLIC OFFICIALS WHO WERE THE PLAINTIFFS IN THE ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF. We conclude that it did.

Section 57.105, Florida Statutes (1983), provides:

57.105 Attorney's fee.—The court shall award a reasonable attorney's fee to the prevailing party in any civil action in which the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party.

Appellant Ferrara contends the trial court erred in granting the plaintiffs/appellees' attorney's fees at his expense, pursuant to the statute, because (1) Ferrara never filed a cause of action but was merely an intervenor in an action entered by the appellees, (2) the court did not find the action frivolous until the date of the order assessing *1298 attorney's fees, and (3) the Ferrara position was not frivolous in terms of the statute.

¹¹ We can quickly dispose of Ferrara's second argument. It is true the trial court must make a finding the action was frivolous or completely lacking in any justiciable issue of law or fact in order for the statutory section to be applied. *Apgar & Markham Construction of Florida, Inc. v. Macasphalt, Inc.*, 424 So.2d 41 (Fla. 2d DCA 1982). This does not mean, as appellant seems to believe, that the finding must have been made at an earlier time than the order awarding attorney's fees, but only that such a finding must explicitly be made. Clearly the finding may be made in the very order awarding attorney's fees. See also dictum in *Whitten v. Progressive Casualty Insurance Co.*, 410 So.2d 501, 506 (Fla.1982).

¹² Appellant's first argument raises a matter that is apparently one of first impression. There seems to be no case law involving award of attorney's fees under section 57.105 against an intervenor. There is nothing about the language of the statute that excludes an intervening party from its applicability, and one could envision a case where one intervened as a defendant and then stonewalled in the face of uncontrovertible facts presented by the plaintiffs. In such a case the statutory section ought to be applicable against the intervenor. It is similarly conceivable that one might intervene as a plaintiff on allegations, for example, of an interest in a res, and for it to become clear in time that by no stretch of the imagination did this plaintiff have the faintest glimmer of such an interest. Such an intervenor ought also to be able to be subjected to the penalty of this statute. Thus we

think the mere fact Ferrara was an intervenor rather than a named defendant does not in itself protect him from invocation of the statute.

Whitten tells us most clearly the purpose of section 57.105 and the circumstances in which it applies:

The purpose of section 57.105 is to discourage baseless claims, stonewall defenses and sham appeals in civil litigation by placing a price tag through attorney's fees awards on losing parties who engage in these activities. Such frivolous litigation constitutes a reckless waste of judicial resources as well as the time and money of prevailing litigants. *Sachs v. Hoglund*, 397 So.2d at 448. See also *Executive Centers of America, Inc. v. Durability Seating & Interiors, Inc.*; *Parkway General Hospital, Inc. v. Stern*, 400 So.2d 166 (Fla. 3d DCA 1981); *T.I.E. Communications, Inc. v. Toyota Motors Center, Inc.*; *Hernandez v. Leiva*.

While the statute serves a salutary purpose, it may not be extended to every case and every unsuccessful litigant. *City of Deerfield Beach v. Oliver-Hoffman Corp.*, 396 So.2d at 1188. Not every party that prevails in a motion for summary judgment, motion to dismiss for failure to state a cause of action, judgment on the pleadings, evidentiary hearing or trial is automatically entitled to attorney's fees under section 57.105. *Hernandez v. Leiva*, 391 So.2d at 294. See also *Executive Centers of America, Inc. v. Durability Seating & Interiors, Inc.*; *Denes & Denes & Associates, Inc. v. Walter E. Heller & Co.*; *Allen v. Estate of Dutton*; *MacBain v. Bowling*, 374 So.2d 75 (Fla. 3d DCA 1979). Merely losing, either on the pleadings or by summary judgment, is not enough to invoke the operation of the statute. *City of Deerfield Beach v. Oliver-Hoffman Corp.*, 396 So.2d at 1188; *Allen v. Estate of Dutton*, 384 So.2d at 175.

In this case, the trial judge granted a summary judgment and awarded attorney's fees in favor of appellee. A summary judgment is rendered upon a showing that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fla.R.Civ.P. 1.510(c). This standard is not equivalent to the finding of frivolousness required by section 57.105 for an award of attorney's fees.

The position asserted by appellants was erroneous on the merits. However, *1299 their claims were not frivolous or entirely devoid of even arguable substance. Since a justiciable issue of law was raised, the trial court should not have assessed attorney's fees against appellants. *Trexler v. Fiat Motor Co.*; *Buckner v.*

Allergan Pharmaceuticals, Inc.; Parkway General Hospital, Inc. v. Stern; *Braden River Civic Association v. Manatee County*; *Appenfeldt v. Quinn*; *City of Deerfield Beach v. Oliver-Hoffman Corp.*; *Denes & Denes & Associates, Inc. v. Walter E. Heller & Co.*; *Hernandez v. Leiva*; *Allen v. Estate of Dutton*.

410 So.2d at 505-06.

In the instant case the trial court said "It was Mr. Ferrara who instigated the events gave [sic] rise to this action [sic] namely, the recall action. Whereupon, the court finds it appropriate and equitable to award a reasonable attorney's fee for plaintiff's fee for plaintiffs, the prevailing parties, against [sic] PHILLIP FERRARA, the intervenor who was the losing party."

^[3] As we understand the above excerpt from the trial court's order, in its view the legal insufficiency of the recall petition made for the absence of any justiciable issue of law or fact, the finding of which the court announced two paragraphs earlier. That cannot be. It is conduct in connection with the court proceeding, e.g., stonewalling by a defendant who has no glimmer of a meritorious defense, not conduct long before there is a court proceeding, that can be grounds for an attorney's fee award under this statute. To interpret the law as the trial court appears to have done is to chill the constitutional and statutory privilege belonging to Florida electors to attempt to bring about the recall of elected municipal officials. The legislature surely had no intention to chill such activity, particularly in light of the historical inartfulness of recall petitions, none of which are prepared by Philadelphia lawyers and most of which appear to be prepared in the hurried, angry fallout of a controversial vote.

^[4] While we have only appendices and not the entire record of this case, there is no basis for charging Mr. Ferrara with stonewalling a defense or in any way dragging his feet. He was quite right to offer to intervene, as he was the "instigator" of the recall petitions. Within a relatively short time of his being admitted as a party he recognized that the petitions were indeed deficient, and through counsel so stipulated. Surely there is no ground this court has been made aware of for punishing him for his role in this case—and, candidly, punishment is what the subject statutory section is about.

^[5] A trial court's finding that the position advanced by the losing party is virtually frivolous must be supported by substantial competent evidence presented at the hearing on the attorney's fees or otherwise before the court. *E.g., Strathman v. Henderson Mental Health Center, Inc.*, 425 So.2d 1185 (Fla. 4th DCA 1983). Here, nothing indicates

any imposition on either court or counsel once it became clear the petitions were legally insufficient. See *Greenberg v. Manor Pines Realty Corp.*, 414 So.2d 260 (Fla. 4th DCA 1982).

II

¹⁶¹ ¹⁷¹ The trial court is correct in not applying section 57.105 against the town or the deputy town clerk. They were parties not by choice but because of peculiarities of the recall statute, and had to defend as best they could once they were named as parties and noticed of the proceedings and claims. However, the plaintiffs/cross appellants appeal on a different ground; namely, the principle of law stated in *Lomelo v. City of Sunrise*. In a somewhat indirect way this court said in that opinion that a public officer is entitled to a defense at the public expense in defending suits or misconduct charges while performing his public duties and while serving a public purpose. 423 So.2d at 976. The present case is different from *Lomelo* and cases cited therein in that here the misconduct charges against the plaintiffs/cross appellants were in the form of recall petitions, *1300 and the court action was instituted by the public officers rather than against them. Nevertheless, their action for declaratory

and injunctive relief was an effort to defend against charges of misconduct and that in the spirit of *Lomelo* the town is required in line with case law to pay reasonable attorney's fees the cross appellants incurred.

As cross appellants point out, the recall petitions were precipitated by their vote on a proposed rent stabilization ordinance. Thus, they were being taken to task for official actions they took in their roles as commissioners and mayor. While their vote made an insufficient basis for recall, it was nonetheless the cause of the recall attempt.

Cross appellants are also correct in saying the language of the order belies the trial judge's grasp of the significant circumstances. The court's reference to the town and its deputy clerk as nominal defendants is appropriate in the context of award of attorney's fees pursuant to section 57.105, but such circumstance is irrelevant to the applicability of the principle stated in *Lomelo*.

DELL and WALDEN, JJ., concur.

All Citations

475 So.2d 1295, 10 Fla. L. Weekly 2179

EXHIBIT “L”

Subject: 82 AGO



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Sun, Feb 16, 3

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2 Attachments

1982 Fla. Op. Atty. Gen. 26 (Fla.A.G.), Fla. AGO 082-11, 1982 WL 174158

Office of the Attorney General

State of Florida

AGO 082-11

March 2, 1982

Re: MUNICIPALITIES—MUNICIPAL RECALL—DADE COUNTY—effect of municipal recall provisions in state election code on charter of municipality in Dade County. § 100.361, F.S.; Art. VIII, § 6(e), State Const. 1968; Art. VIII, § 11, State Const. 1885.

*1 Mr. George F. Knox, Jr.
City Attorney
City of Miami
174 E. Flagler Street
Miami, Florida 33131

Attention: Mr. Robert F. Clark, Deputy City Attorney

Dear Mr. Knox:

This is in response to a request from your office for an opinion on the following question:
WHAT IS THE EFFECT OF THE LANGUAGE IN § 100.361(8) AND (9), F.S., RELATING TO 'UNIFORM STATEWIDE' MUNICIPAL RECALL PROCEDURES UPON THE CITY OF MIAMI, A SPECIAL CHARTER MUNICIPALITY WITHIN DADE COUNTY, WHOSE MUNICIPAL CHARTER CONTAINS DISSIMILAR RECALL PROCEDURES?

According to the information supplied to this office, the City Attorney's Office for the City of Miami has generally taken the position in the past that the Miami City Charter and the Dade County Charter have 'placed the City in the position where neither the provisions of Chapter 166, F.S. nor other general laws applicable to municipalities directly impact upon the City of Miami Charter.' Your office, however, has expressed a willingness to recognize the overall applicability of § 100.361, F.S., due in part to Art. VI, § 6, State Const., which states that registration and elections in municipalities shall be provided by law, and the provisions of § 100.361(8), F.S., stating that it is the intent of the Legislature that the recall procedures provided within § 100.361 shall be uniform statewide. The Division of Elections of the Secretary of State's Office, which is charged with the administration and interpretation of the state election code, in response to a request from your office as to whether the recall procedures contained in the Miami City Charter

take precedence over the procedures set forth in § 100.361, referred your office to DE 078–48 wherein the division concluded that the provisions of § 100.361 were applicable to municipalities regardless of whether municipalities had adopted recall provisions. DE 078–48, however, was issued to a municipality located in a noncharter county and the issue as to whether a municipality located in Dade County would be subject to the provisions of § 100.361 was not considered therein. According to your letter, your office has been informed that the city clerk is presently following the procedures set forth in § 100.361 to the exclusion of the provisions in the Miami City Charter. In subsequent conversations with the Division of Elections by your office, it was suggested that in light of AGO's 079–38 and 076–167 the opinion of this office should be requested as to the effect of the state statute regarding municipal recall on the City of Miami whose charter contains 'dissimilar' recall procedures. See AGO 076–167 wherein this office concluded that as there is a constitutional provision (Art. VIII, § 11[1] [g], State Const. 1885, carried forward by Art. VIII, § 6[e], State Const. 1968), prohibiting the Legislature from amending or repealing the charter of any municipality in Dade County, section 100.361 did not have the effect of amending or repealing any charter provision of a Dade County municipality relating to municipal recall. Accord: AGO 079–38.

*2 Article VIII, § 11(1)(g), State Const. 1885, granted to the electors of Dade County the power to adopt (and revise and amend) a home rule charter for the county which charter '[s]hall provide a method by which each municipal corporation in Dade County shall have the power to make, amend or repeal its own charter.' Subsection (1)(g) further provides that '[u]pon adoption of this home rule charter by the electors this method shall be exclusive and the Legislature shall have no power to amend or repeal the charter of any municipal corporation in Dade County.' Article VIII, § 11(6), State Const. 1885, however, states:

Nothing in this section shall be construed to limit or restrict the power of the Legislature to enact general laws which shall relate to . . . any municipality in Dade County and any other one or more municipalities of the State of Florida relating to . . . municipal affairs and all such general laws shall apply to . . . all municipalities [in Dade County] to the same extent as if this section had not been adopted and such general laws shall supersede any part or portion of the home rule charter provided for herein in conflict therewith . . . and shall supersede any provision of any charter of any municipality in Dade County in conflict therewith.

And see Art. VIII, § 11(9), State Const. 1885, which states in part that 'it is further declared to be the intent of the Legislature and of the electors of the State of Florida that the provisions of this Constitution and general laws which relate to . . . any municipality in Dade County and any other one or more municipalities of the State of Florida enacted pursuant thereto by the Legislature shall be the supreme law in Dade County, Florida, except as expressly provided herein and this section shall be strictly construed to maintain such supremacy of this Constitution and of the Legislature in the enactment of general laws pursuant to this Constitution.' Article VIII, § 11, State Const. 1885, was carried forward in full force by Art. VIII, § 6(e), State Const. 1968.

In *Dade County v. Dade County League of Municipalities*, 104 So.2d 512 (Fla. 1958), the Florida Supreme Court held that the provisions of Art. VIII, § 11(1)(g), State Const. 1885, read in conjunction with the language of § 11(5) and (6) of Art. VIII, which preserved to the state Legislature the power to enact general laws which would be applicable to the municipalities of Dade County, denied to the state Legislature the power to regulate or control municipalities in Dade County by special or local acts. Compare *Seminole Rock Products, Inc. v. Town of Medley*, 180 So.2d 457, 460 (Fla. 1965), in which the Court stated that it could see no express authorization in the provisions of § 11(1)(e) of Art. VIII, State Const. 1885, which authorized the Dade County Charter to provide ‘a method for establishing new municipal corporations (and other governmental units) in Dade County . . . and provide for their government and prescribe their jurisdiction and powers,’ that could be taken to immunize the Dade County Home Rule Charter or the charters of Dade County municipalities from the operation of the Constitution or of general law; rather, the Court saw only a general authorization to provide for the establishment of municipalities which would be subject to the Constitution and valid general laws then in existence or thereafter passed. In interpreting the language of § 11(6) and (9) of Art. VIII, State Const. 1885, the courts have held: *3 [I]n matters which affect only Dade County, and which are not the subject of specific constitutional provisions or valid general acts pertaining to Dade County and at least one other county, the electors of Dade County may ‘govern themselves autonomously and differently than the people of other counties of the state.’ *S & J Transportation, Inc. v. Gordon*, 176 So.2d 69 (Fla. 1965). In the cited opinion we announced the view that a reasonable construction of the constitutional scheme formulated for the government of Dade County alone suggests that the Legislature ‘no longer has authority to enact laws which relate only’ to the affairs of Dade County. *Dickinson v. Board of Public Instruction of Dade County*, 217 So.2d 553, 555 (Fla. 1968).

Cf. *Board of County Commissioners of Dade County v. Wilson*, 386 So.2d 556, 561 (Fla. 1980), wherein the Court held that while Art. VIII, § 11 of the 1885 Constitution, authorizes the Dade County home rule charter, the section also mandates that general laws enacted subsequent to adoption of the home rule charter shall apply to Dade County and to all municipalities therein to the same extent as if the section had not been adopted; the Court thus concluded that ‘it is the general law which supersedes the Home Rule Charter.’ Recently, the Third District Court of Appeal considered the applicability of a provision in the state election code, § 99.012, F.S., the Resign-to-Run Law, to a municipality within Dade County whose charter contained a conflicting provision. The court, specifically referring to Art. VIII, § 11(6), State Const. 1885, concluded that where there is a conflict between a charter of a Dade County municipality and the general law of the state, the general law prevails. See *City of Hialeah v. Martinez*, 402 So.2d 602 (3 D.C.A. Fla., 1981). And see *State v. City of Miami Springs*, 245 So.2d 80 (Fla. 1971), wherein the Florida Supreme Court stated that as § 169.021, F.S., related to all municipalities in Florida, it clearly complied with the constitutional restriction contained in Art. VIII, § 11, State Const. 1885, carried forward by Art. VIII, § 6(e), State Const. 1968, requiring that legislation affecting any municipality

in Dade County must also relate to at least one other municipality in Florida; thus the general law controlled over a conflicting provision in the City of Miami Springs Charter.

Based upon the foregoing decisions, I must therefore conclude that when the Legislature enacts a general law which is applicable not only to a municipality in Dade County but also to one or more municipalities outside Dade County, such provision will prevail over a conflicting provision in a charter of a Dade County municipality. In addition, with regard to the instant inquiry, section 100.361(8), F.S., expressly states that it is the intent of the Legislature that the recall procedures provided therein shall be uniform statewide and that all municipal charters and special law provisions which are contrary are repealed to the extent of such conflict. See also § 100.361(9), F.S., stating that the provisions of § 100.361 are applicable to cities and charter counties which have adopted recall procedures. In view of the foregoing, I am of the opinion that the provisions of § 100.361, F.S., are applicable to municipalities within Dade County and will prevail over any conflicting provisions in such municipalities' charters to the extent of the conflict. To the extent that previous opinions of this office are to the contrary, they are hereby modified or superseded.

Sincerely,

*4 Jim Smith
Attorney General

Prepared By:

Joslyn Wilson
Assistant Attorney General

1982 Fla. Op. Atty. Gen. 26 (Fla.A.G.), Fla. AGO 082-11, 1982 WL 174158

EXHIBIT “M”

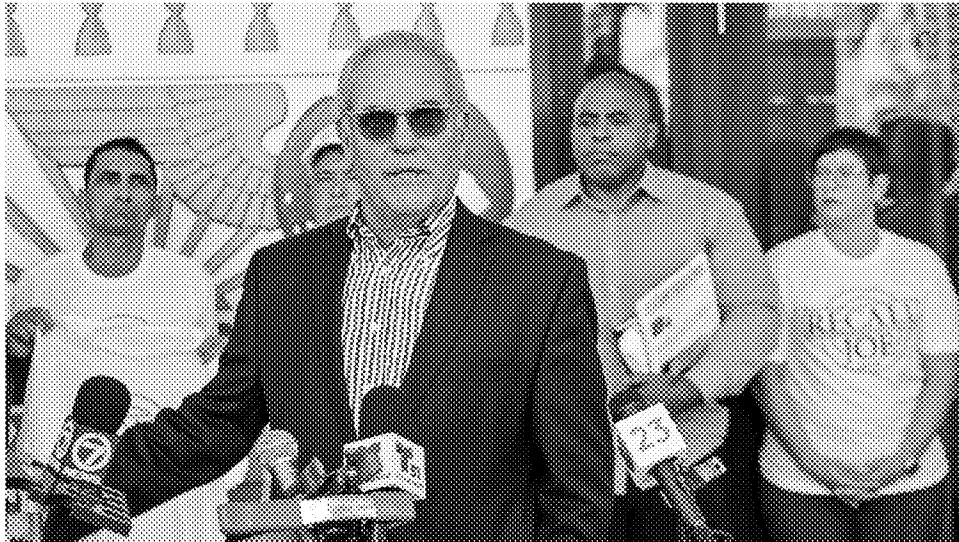
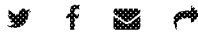


DOWNTOWN MIAMI

Miami commissioners want to make it harder for residents to remove them from office

BY AARON LEIBOWITZ

FEBRUARY 25, 2020 06:30 AM



Past public official and former city manager, Joe Arriola, explains his support for the recall of Miami Commissioner Joe Carollo during a press conference by recall petition organizers outside City Hall in Miami, Florida on Feb. 11, 2020. BY [CARL JUSTE](#)

Three Miami commissioners voiced support Monday for a measure that would make it tougher to recall elected officials accused of wrongdoing, despite resistance from some residents who say the move would weaken the public's power to hold their leaders accountable.

The ordinance would force residents to wait a full year before pursuing the recall of an elected official after an initial recall effort fails. The move comes weeks after a recall effort was launched against Commissioner Joe Carollo, although it was not immediately clear whether the new legislation would apply to that petition. City Attorney Victoria Méndez declined to comment after Monday's meeting.

The three commissioners who voted for the ordinance on first reading — Carollo, Manolo Reyes, and the measure's sponsor, Alex Díaz de la Portilla — all said the ongoing effort against Carollo had nothing to do with their views on this proposal. The measure still needs a second vote to be approved.

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“My approval of this resolution has nothing to do with Mr. Carollo and it will not affect Mr. Carollo’s recall initiative,” Reyes said, adding that the current system subjects officials to the prospect of “double jeopardy,” or being tried twice for the same offense. “This legislation protects the rights of the elected officials. We have rights, too.”

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Carollo suggested the measure would also protect the rights of voters by honoring their picks for the commission and for mayor. As it currently stands, newly elected officials can’t be recalled within a year of their first election, but they can theoretically be subject to recall drives repeatedly without time limits after that.

“It’s not the American way,” Carollo said. He said Miami-Dade County has language in place that’s similar to what the Miami commission could adopt. “I do not understand why there is a problem with this here, and there’s not a problem with the county law that’s been here for some time,” he said.

But Commissioner Ken Russell said he sees it differently, preferring to err on the side of protecting residents’ power.

“I can’t support it at the expense of residents having the ability to [have] accountability over us,” Russell said.

The measure passed on first reading, 3-1, with Russell opposed and Keon Hardemon absent from the dais when the vote took place. The commission will take a final vote at a future meeting.

A local attorney, David Winker, raised several questions about the legislation that largely went unanswered Monday. For one, he argued, the city charter prevents the commission from limiting residents’ recall rights without holding a referendum.

“Any ordinance passed by the city commission that limits this right will be null and void as being contrary to the rights reserved to residents in the Charter,” Winker wrote in a letter to the commission. “I believe a court would see this for exactly what it is — a cynical and undemocratic

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~~But Méndez, the city attorney, said state law doesn't speak to whether residents should be limited~~
 in how often they can pursue recall petitions, leaving municipalities free to do so. The city of Miami's laws do not outline a procedure for recall, so residents defer to state law.

"If the state wanted a continuous recall process, they would have said so," Méndez said during Monday's meeting. The city, she said, would merely be "clarifying an area of state law that has not been dealt with."

Winker suggested that the ordinance, if passed on second reading and signed by Mayor Francis Suarez, could offer a loophole for officials to shield themselves from future recalls. All it would take, he said, is a political operative intentionally filing a recall petition against an official that doesn't get enough signatures to move forward. Then, the official would be safe for a year.

"I think that shows the absurdity and the illegality of it," he said.

On Jan. 30, a group of activists filed paperwork to begin a recall petition against Carollo. The petition states that Carollo should be recalled as the District 3 commissioner "for committing misfeasance and malfeasance," referencing his well-publicized efforts to identify and push for enforcement of code violations at the Little Havana nightclub Bail and Chain.

The petition also cites an incident where Carollo hosted a paella luncheon for seniors in his district, and Díaz de la Portilla, then a County Commission candidate, was present and greeted residents. Both Carollo and Díaz de la Portilla, who lost the county election but was elected to represent the city of Miami's District 1 in November, have denied any wrongdoing since prosecutors began an inquiry in June 2018.



A truck outside Miami City Hall promoting the recall of Miami Commissioner Joe Carollo during a press conference by petition organizers on Feb. 11. Carl Juste
 CJUSTE@MIAMIHERALD.COM

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ARTICLE SAID HE HAS COMMITTED \$100,000 TO THE EFFORT.

Mounting a municipal recall is a tall order due to state laws that require the use of volunteers and two stages of gathering signatures. The petitioners have 30 days from the day the first signature is collected to gather signed petitions from at least 5% of the district's registered voters. In District 3, which has 31,536 voters, the recall effort would need 1,577 signatures to move forward.

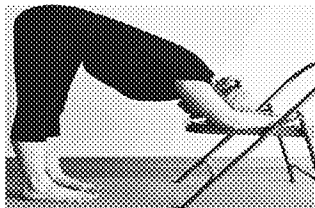
If the requisite number of signatures are verified, Carollo would have the right to write a 200-word statement defending himself against a recall. This statement would then be included on the petition for a second round of signature-gathering, where the recall campaign would need to collect petitions from 15% of District 3's voters, or 4,730 signatures.

If the recall effort reached this point with enough verified signatures, Carollo could either resign or go to a recall election, where voters would decide whether he should be removed from office.



A truck outside Miami City Hall promoting the recall of Miami Commissioner Joe Carollo during a press conference by petition organizers on Feb. 11, 2020. CARL JUSTE CJUSTE@MIAMIHERALD.COM

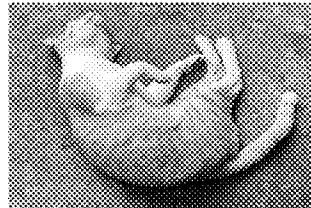
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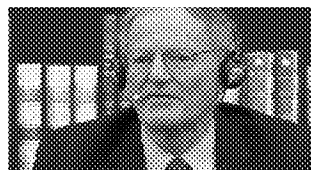
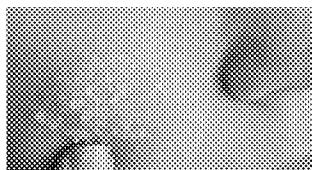
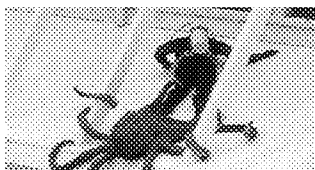
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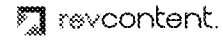


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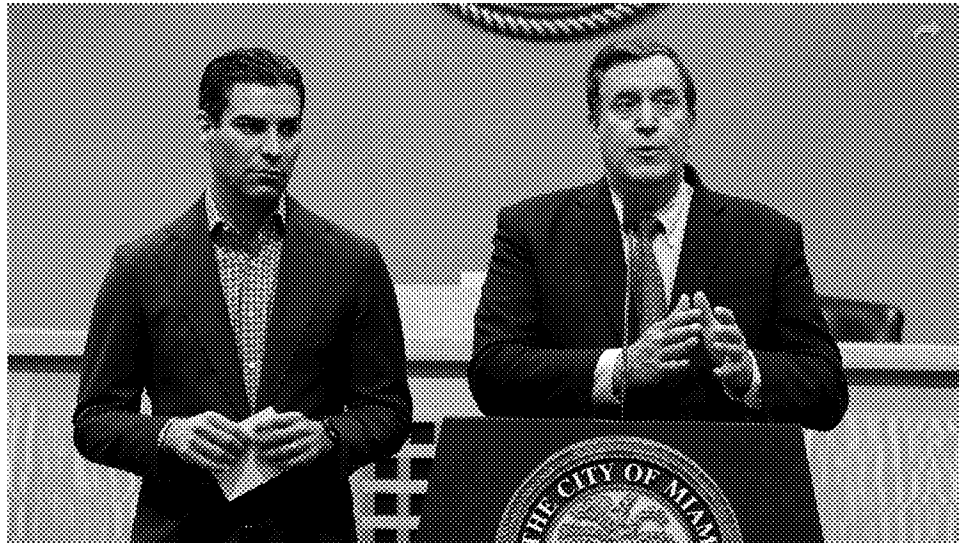
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Miami mayor announces cancellation of Ultra, Calle Ocho over coronavirus fears



Miami elected officials want to postpone Ultra Music Festival due to coronavirus fear

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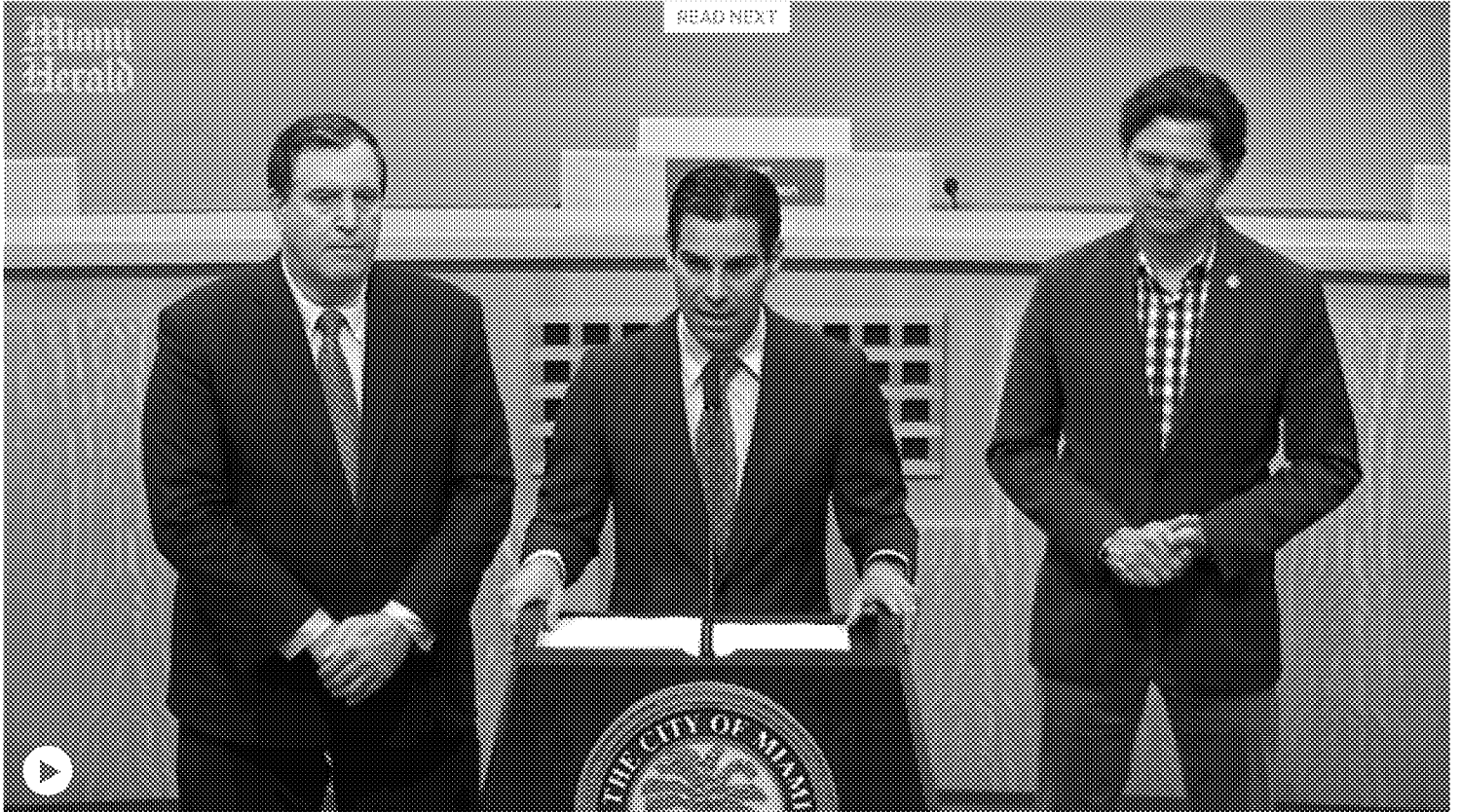
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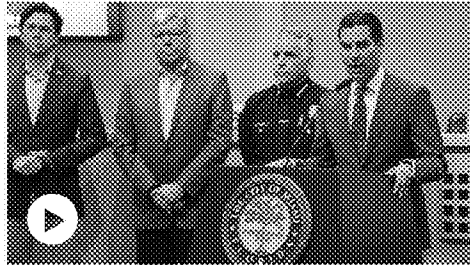
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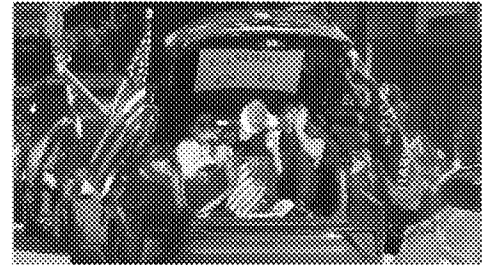
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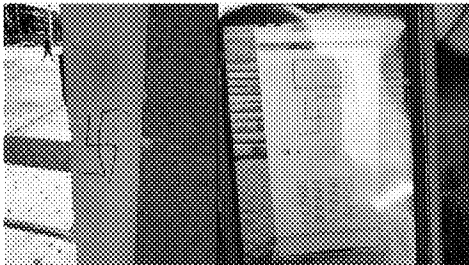
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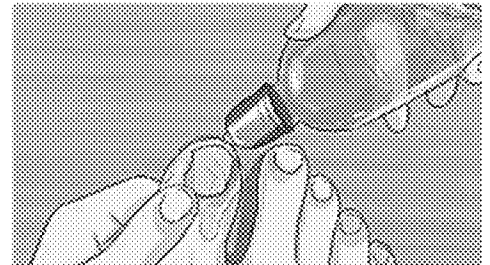
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EXHIBIT “N”

1989 Fla. Sess. Law Serv. 89-338 (West)

FLORIDA

1989 GENERAL LAWS AND PROPOSED CONSTITUTIONAL AMENDMENTS

Eleventh Legislature, First Regular Session

Additions are indicated by <<+ UPPERCASE +>>

Deletions by <<- Lowercase ->>

Chapter 89-338

Committee Substitute for Committee Substitute for House Bill No. 1362
ELECTIONS

AN ACT relating to elections; amending s. 97.021, F.S.; modifying definitions used in The Florida Election Code; amending s. 97.041, F.S.; requiring legal residency in this state for voter registration; providing for preregistration of 17 year olds; amending s. 97.063, F.S.; providing for cancellation of previous registration; amending s. 97.0631, F.S.; providing for notice to overseas electors when possible; amending s. 97.091, F.S.; requiring a person to have his legal residence in the precinct in which he votes; amending s. 98.051, F.S.; revising the hours and days a supervisor may keep his office open; amending s. 98.111, F.S.; revising the registration form; amending s. 99.061, F.S.; revising the federal qualifying period; amending s. 99.081, F.S.; providing for election of U.S. Senators; amending s. 99.092, F.S.; providing an election assessment; creating 99.093, F.S.; providing an election assessment for municipal candidates; amending s. 99.095, F.S.; providing procedures for candidates qualifying by petition; amending s. 99.0955, F.S.; providing technical changes; amending s. 99.096, F.S.; providing technical changes; amending s. 99.097, F.S.; providing that persons or organizations wanting to have an issue placed on the ballot by the petition process may have certain charges and fees waived; amending s. 100.041, F.S.; deleting obsolete language; amending s. 100.111, F.S.; revising provisions relating to vacancies in office; providing procedures for filling a vacancy in nomination which occurs less than 21 days prior to an election; amending s. 100.151, F.S.; prohibiting the governing authority of a municipality from calling any special election without notice; amending s. 100.361, F.S.; prescribing procedures and requirements for municipal recall petitions; providing clarifying language; amending s. 101.131, F.S.; providing time for designating poll watchers; amending ss. 101.141, 101.151, F.S.; deleting obsolete language amending s. 101.252, F.S.; providing that a candidate for party executive committee member shall have his name printed on the first primary ballot; amending s. 101.253, F.S.; allowing supervisor to reprint certain ballots; amending s. 101.254, F.S.; requiring candidate to provide certain information on his qualifying papers; amending s. 101.31, F.S.; providing technical changes; amending s. 101.5609, F.S.; allowing the use of alternative procedures to record issuance of ballots; amending ss. 101.58, 101.6102, F.S.; providing technical changes; amending s. 101.62, F.S.; providing for the advanced mailing of absentee ballots to overseas electors; amending s. 102.031, F.S.; providing restrictions on access to polling rooms and polling places; providing exceptions; creating s. 102.112, F.S.; revising procedures for canvassing of county election returns; providing a penalty; amending ss. 102.151, 103.021, F.S.; providing technical changes; providing clarification; amending s. 103.101, F.S.; providing procedures for having a presidential candidate's name placed on the ballot; amending s. 104.071, F.S.; allowing candidates to furnish complimentary tickets and make certain contributions from personal or business funds; amending s. 105.031, F.S.; providing an election assessment for judicial candidates; amending s. 105.035, F.S.; providing conforming language; repealing s. 101.121, F.S., relating to persons allowed in polling room; amending s. 106.26, F.S.; creating the Elections Commission Trust Fund; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

FL ST § 97.021

Section 1. Subsections (1) and (21) of section 97.021, Florida Statutes, are amended to read:

97.021. Definitions

The following words and phrases when used in this code shall be construed as follows:

(1) "Absent elector" means any registered and qualified voter who:

(a) Is unable without another's assistance to attend the polls.

(b) Is an inspector, a poll worker, a deputy voting machine custodian, a deputy sheriff, a supervisor of elections, or a deputy supervisor who is assigned to a different precinct than that in which he is registered to vote.

(c) On account of the tenets of his religion, cannot attend the polls on the day of a general, special, or primary election.

(d) Has changed his residency to another county in this state within the time period during which the registration books are closed for the election for which the ballot is requested.

(e) Will not be in the county of his residence during the hours the polls are open for voting on the day of an election<<-, except that any person confined in prison shall not be entitled to vote absentee->>.

(f) Has changed his residency to another state and is ineligible under the laws of that state to vote in the general election; however, this shall pertain only to presidential ballots.

(21) "Public office" means any federal, state, county, <<+ MUNICIPAL,+>> <<-or->> school<<+,+>> or other district office or position which is filled by vote of the electors.

FL ST § 97.041

Section 2. Subsection (1) of section 97.041, Florida Statutes, is amended to read:

97.041. Qualifications to register or vote

(1)(a) Any person at least 18 years of age who is a citizen of the United States and a <<+LEGAL+>> <<-permanent->> resident of Florida and of the county where he wishes to register is eligible to register with the supervisor when the registration books are open. Upon registration, such person shall be a qualified elector of that county.

(b) Any person who <<-will become 18 years of age on or before the date of any election and who->> is otherwise qualified shall be entitled<<-, within 180 days preceding his 18th birthday,->> to preregister <<+ON OR AFTER HIS 17TH BIRTHDAY +>> with the supervisor for any election occurring on or after his 18th birthday, when the registration books are open.

FL ST § 97.063

Section 3. Subsection (6) of section 97.063, Florida Statutes, are amended to read:

97.063. Eligibility for absentee registration

(6) If the elector is registered in any other county of Florida, or in any other state, the supervisor shall<<+, UPON THE RETURN OF THE ABSENTEE REGISTRATION FORM, NOTIFY+>> <<-also have the elector complete a separate form, signed by the elector, to be mailed by the supervisor to->> the registering official in the jurisdiction in which such elector was last registered for the purpose of advising such official to cancel the elector's former registration.

FL ST § 97.0631

Section 4. Section 97.0631, Florida Statutes, is amended to read:

97.0631. Citizens residing overseas; notice of elections

A citizen of this state who is residing overseas may notify the supervisor of elections in the county where he is registered of his overseas address; and, thereafter, the supervisor shall notify such citizen at least 90 days prior to regular primary and

general elections and <<+WHEN POSSIBLE+>> <<-as soon as possible->> prior to any special election so that such citizen may follow the procedures for absentee voting provided by law.

FL ST § 97.091

Section 5. Subsection (1) of section 97.091, Florida Statutes, is amended to read:

97.091. Electors must be registered in precinct; provisions for residence or name change

(1) No person shall be permitted to vote in any election precinct or district other than the one in which he has his <<+LEGAL+>> <<-permanent place of->> residence and in which he is registered. However, a person temporarily residing outside the county shall be registered in the precinct in which the <<+MAIN OFFICE OF THE SUPERVISOR OF ELECTIONS, AS DESIGNATED BY THE SUPERVISOR,+>> <<-county courthouse->> is located when he has no permanent address in the county and it is his intention to remain a resident of Florida and of the county in which he is registered to vote. Such persons who are registered in the precinct in which the <<+MAIN OFFICE OF THE SUPERVISOR OF ELECTIONS, AS DESIGNATED BY THE SUPERVISOR,+>> <<-county courthouse->> is located and who are residing outside the county with no permanent address in the county shall not be registered electors of a municipality and therefore shall not be permitted to vote in any municipal election.

FL ST § 98.051

Section 6. Section 98.051, Florida Statutes, is amended to read:

98.051. Registration books for permanent registration system; when open or closed

(1)(a) The office of the supervisor of elections shall be open Monday through Friday, excluding legal holidays, for a period of not less than 8 hours per day, beginning no later than 9 a.m.

(b) A supervisor may keep his office and any branch offices open on any weekday <<+INCLUDING+>> <<-excluding->> legal holidays, for 10 hours in addition to the 8 hours specified in paragraph (a), provided notice of the <<+DAYS, HOURS,+>> <<-time->> and place is published at least once, not less than 1 day prior <<+THERETO+>> <<-to such extension of time->>, in a newspaper of general circulation in the county in which such offices are to be located. However, if the publication deadline for such notice cannot be met, the public notice shall be posted at the courthouse and may be advertised in the news media. Upon approval by the supervisor of elections, any state, county, or municipal agency is authorized to provide voter registration services and may be deemed a branch office location as provided in s. 97.021(5).

(c) During the 30-day period prior to the closing of the registration books for any statewide or federal election, the supervisor, in addition to the requirements of paragraphs (a) and (b), shall provide for registration each weekday, <<+AND MAY PROVIDE FOR REGISTRATION ON+>> <<-excluding->> legal holidays, for a period not less than 8 hours per day.

(d) Notwithstanding any other provision of this section, a supervisor of elections may authorize registrations to be taken on <<+A LEGAL HOLIDAY AT LOCATIONS OTHER THAN THE MAIN OR BRANCH LOCATIONS+>> <<-the Fourth of July, except when that date falls on a Sunday,->> provided proper notice of the time and place is given pursuant to paragraph (b).

(2) When registration books are open, voter registration and changes in registration shall be accepted in the office <<-or branch office->> of the supervisor <<+OR ANY BRANCH OFFICE LOCATION+>> when such office <<+OR LOCATION+>> is open as provided by law.

(3)(a)1. The registration books shall close for the first and second primary elections at 5 p.m. on the 30th day before the first primary election and shall remain closed until after the second primary election, during which time no registration or party change shall be accepted for such elections.

2. The provisions of any special act to the contrary notwithstanding, when special district officers are to be elected during any given first or second primary election, the registration books shall close at 5 p.m. on the 30th day before the first primary election and shall remain closed until after the second primary election, during which time no registration or party change shall be accepted for such elections.

3. For any other election, the books shall close at 5 p.m. on the 30th day before such election and shall remain closed until after such election, during which time no registration or party change shall be accepted for such election.

(b) When the books are closed for an election, registration and party changes shall be accepted for all subsequent elections. For purposes of this subsection, however, a first and second primary shall be considered one election.

(c) In computing the 30-day period for closing of the registration books, the election day shall be excluded, but all other holidays and Sundays shall be included. Registration shall be conducted on weekdays only; and, should the 30th day preceding an election fall on <<+A+>> Sunday or a legal holiday, then the registration books shall close at 5 p.m. on the immediately <<+ SUCCEEDING+>> <<-preceding->> day which is not a Sunday or legal holiday.

(d) When a district, municipal, or special election is called at a time when the books are open, the supervisor shall close the books to further registration or party changes for such district, municipal, or special election on the 30th day before such election, or immediately in the event the date of the election is less than 30 days away, but the books shall remain open for all subsequent elections. However, if a district, municipal, or special election is called at the same time as a regularly scheduled election, the books shall close for such district, municipal, or special election on the day designated for the books to close for the regularly scheduled election.

FL ST § 98.111

Subsections (1) and (2) of section 98.111, Florida Statutes, is amended to read:

98.111. Registration form; information required

(1) The Department of State shall prescribe the registration form, and the form shall be prepared to elicit the following information:

(a) Registration number;

(b) Date of registration;

(c) Full name;

(d) Sex;

(e) Party affiliation;

(f) Date of birth;

(g) Race;

(h) State or country of birth;

(i) Residence address at time of registering;

(j) Post-office mailing address at time of registering;

<<+(K) WHETHER THE REGISTRANT IS PERMANENTLY DISABLED;+>>

<<+(L)+>><<-(k)->> Precinct number;

<<+(M)+>><<-(l)->> Whether or not the registrant is able to write his name or mark his ballot and, if not, the reason therefor; and

<<+(N)+>><<-(m)->> Other information deemed necessary by the Department of State.

(2) The registrant is responsible for providing the information required under paragraphs (1)(c) through <<+(K)+>><<-(j)->>, and the supervisor of elections shall fill in the other information at the time the registration form is being processed.

FL ST § 99.061

Subsections (1) and (2) and paragraph (b) of subsection (3) of section 99.061, Florida Statutes, are amended to read:

99.061. Method of qualifying for nomination or election to federal, state, county, or district office

(1) The provisions of any special act to the contrary notwithstanding, each person seeking to qualify for nomination or election to a federal, state, or multicounty district office, other than a judicial office as defined in chapter 105, shall file his qualification papers with, and pay the <<+ QUALIFYING+>> <<-qualification->> fee<<+, WHICH SHALL CONSIST OF THE FILING FEE AND ELECTION ASSESSMENT,+>> and party assessment, if any has been levied, to, the Department of State, or qualify

by the alternative method with the Department of State, at any time after noon of the 1st day for qualifying, which shall be as follows: the <<+120TH+>> <<-57th->> day prior to the first primary, but not later than noon of the <<+116TH+>> <<-53rd->> day prior to the date of the first primary, for persons seeking to qualify for nomination or election to federal office; and noon of the 50th day prior to the first primary, but not later than noon of the 46th day prior to the date of the first primary, for persons seeking to qualify for nomination or election to a state or multicounty district office. However, the <<+QUALIFYING+>> <<-qualification->> fee, if any, paid by an independent candidate or a minor party candidate shall be refunded to such candidate by the qualifying officer within 10 days from the date that the determination is made that such candidate or minor party failed to obtain the required number of signatures.

(2) The provisions of any special act to the contrary notwithstanding, each person seeking to qualify for nomination or election to a county office, or district or special district office not covered by subsection (1), shall file his qualification papers with, and pay the <<+QUALIFYING FEE, WHICH SHALL CONSIST OF THE FILING FEE AND ELECTION ASSESSMENT,+>> <<-qualification fees->> and party assessment, if any has been levied, to, the supervisor of elections of the county, or shall qualify by the alternative method with the supervisor of elections, at any time after noon of the 1st day for qualifying, which shall be the 50th day prior to the first primary or special district election, but not later than noon of the 46th day prior to the date of the first primary or special district election. However, if a special district election is held at the same time as the second primary or general election, qualifying shall be the 50th day prior to the first primary, but not later than noon of the 46th day prior to the date of the first primary. Within 30 days after the closing of qualifying time, the supervisor of elections shall remit to the secretary of the state executive committee of the political party to which the candidate belongs the amount of the filing fee, two-thirds of which shall be used to promote the candidacy of candidates for county offices and the candidacy of members of the Legislature.

(3)

(b) Any person who is seeking election as a write-in candidate shall not be required to pay a filing fee<<+, ELECTION ASSESSMENT,+>> or party assessment. A write-in candidate shall not be entitled to have his name printed on any ballot; however, space for his name to be written in shall be provided on the general election ballot. No person may qualify as a write-in candidate if he has also otherwise qualified for nomination or election to such office.

FL ST § 99.081

Section 7. Section 99.081, Florida Statutes, is amended to read:

99.081. United States Senators elected in general election

United States Senators from Florida shall be elected at the general election held <<-next->> preceding the expiration of <<+THE PRESENT TERM+>> <<-their terms->> of office, and such election shall conform as nearly as practicable to the methods provided for the election of state officers.

FL ST § 99.092

Section 8. Subsections (1) and (3) of section 99.092, Florida Statutes, are amended to read:

99.092. <<+QUALIFYING+>> <<-Filing->> fee of candidate; notification of Department of State

(1) Each person seeking to qualify for nomination or election to any office, except a person seeking to qualify pursuant to s. 99.095 and except a person seeking to qualify as a write-in candidate, shall pay a <<+QUALIFYING FEE, WHICH SHALL CONSIST OF A+>> filing fee <<+AND ELECTION ASSESSMENT+>> to the officer with whom he qualifies and any party assessment levied, and shall attach the original or signed duplicate of the receipt for his party assessment or pay the same, in accordance with the provisions of s. 103.121, at the time of filing his other qualifying papers. The amount of the filing fee is 3 percent of the annual salary of the office. <<+THE AMOUNT OF THE ELECTION ASSESSMENT IS 1 PERCENT OF THE ANNUAL SALARY OF THE OFFICE SOUGHT. THE ELECTION ASSESSMENT SHALL BE DEPOSITED INTO THE ELECTIONS COMMISSION TRUST FUND.+>> The amount of the <<+PARTY+>> <<-committee->> assessment is 2 percent of the annual salary. The annual salary of the office for purposes of computing the filing fee<<+, ELECTION

ASSESSMENT,+++ and party assessment shall be computed by multiplying 12 times the monthly salary, excluding any special qualification pay, authorized for such office as of July 1 immediately preceding the first day of qualifying. No qualifying <<+ FEE+++>> <<-fees-->> shall be returned to the candidate unless he withdraws his candidacy before the last date to qualify. If a candidate dies prior to an election and has not withdrawn his candidacy before the last date to qualify, his qualifying fee shall be returned to his designated beneficiary, and, if the filing fee or any portion thereof has been transferred to the political party of the candidate, the Secretary of State shall direct the party to return that portion to the designated beneficiary of the candidate.

(3) Each candidate for the office of Governor and each candidate for the office of Lieutenant Governor shall pay a separate <<+QUALIFYING+++>> fee for his office in accordance with this section.

FL ST § 99.093

Section 9. Section 99.093, Florida Statutes, is created to read:

<<+99.093. MUNICIPAL CANDIDATES; ELECTION ASSESSMENT+++>>

<<+(1) EACH PERSON SEEKING TO QUALIFY FOR NOMINATION OR ELECTION TO A MUNICIPAL OFFICE SHALL PAY, AT THE TIME OF QUALIFYING FOR OFFICE, AN ELECTION ASSESSMENT. THE ELECTION ASSESSMENT SHALL BE AN AMOUNT EQUAL TO 1 PERCENT OF THE ANNUAL SALARY OF THE OFFICE SOUGHT. WITHIN 30 DAYS AFTER THE CLOSE OF QUALIFYING, THE QUALIFYING OFFICER SHALL FORWARD ALL AMOUNTS COLLECTED PURSUANT TO THIS SECTION TO THE DEPARTMENT OF STATE FOR DEPOSIT IN THE ELECTIONS COMMISSION TRUST FUND.+++>>

<<+(2) ANY PERSON SEEKING TO QUALIFY FOR NOMINATION OR ELECTION TO A MUNICIPAL OFFICE WHO IS UNABLE TO PAY THE ELECTION ASSESSMENT WITHOUT IMPOSING AN UNDUE BURDEN ON HIS PERSONAL RESOURCES OR ON RESOURCES OTHERWISE AVAILABLE TO HIM SHALL, UPON WRITTEN CERTIFICATION OF SUCH INABILITY GIVEN UNDER OATH TO THE QUALIFYING OFFICER, BE EXEMPT FROM PAYING THE ELECTION ASSESSMENT.+++>>

FL ST § 99.095

Section 10. Subsection (1) of section 99.095, Florida Statutes, is amended to read:

99.095. Alternative method of qualifying

(1) A person seeking to qualify for nomination to any office who is unable to pay the <<+QUALIFYING+++>> <<-filing-->> fee and party assessment prescribed by <<+S. 106.46+++>> <<-s. 99.092-->> without imposing an undue burden on his personal resources or on resources otherwise available to him may qualify to have his name placed on the ballot for the first primary election by means of the petitioning process prescribed in this section. A person using this petitioning process shall file an oath with the office before whom the candidate would qualify for the office stating that he intends to qualify for the office sought and stating that he is unable to pay the <<+ QUALIFYING+++>> <<-filing-->> fee and party assessment for that office without imposing an undue burden on his personal resources or on resources otherwise available to him. <<+IF THE PERSON IS RUNNING FOR AN OFFICE WHICH WILL BE GROUPED ON THE BALLOT WITH TWO OR MORE SIMILAR OFFICES TO BE FILLED AT THE SAME ELECTION, THE CANDIDATE MUST INDICATE IN HIS OATH FOR WHICH GROUP OR DISTRICT OFFICE HE IS RUNNING. THE+++>> <<-Such-->> oath shall be filed at any time after the first Tuesday after the first Monday in January of the year in which the first primary is held, but prior to the 92nd day prior to the date of the first primary election. The Department of State shall prescribe the form to be used in administering and filing such oath. No signatures shall be obtained by a candidate on any nominating petition until he has filed the oath required in this section. <<+IF THE PERSON IS RUNNING FOR AN OFFICE WHICH WILL BE GROUPED ON THE BALLOT WITH TWO OR MORE SIMILAR OFFICES TO BE FILLED AT THE SAME ELECTION AND THE PETITION DOES NOT INDICATE THE GROUP OR DISTRICT OFFICE FOR WHICH HE IS RUNNING, THE SIGNATURES OBTAINED ON SUCH PETITION WILL NOT BE COUNTED.+++>>

FL ST § 99.0955

Section 11. Subsections (1) and (3) of section 99.0955, Florida Statutes, are amended to read:

99.0955. Independent candidate for office; name on general election ballot

(1) Any registered elector seeking to have his name placed on the ballot at the general election as an independent candidate for an office may have his name printed on the general election ballot in which election such office is to be filled, provided he is otherwise qualified to hold the office that he seeks and provided a petition requesting that he be assigned a position on the general election ballot is signed by the required number of registered electors. Such person shall obtain the signatures on a petition form prescribed by the Department of State and furnished by the appropriate qualifying officer. Such forms may be obtained from the qualifying officer at any time after the first Tuesday following the first Monday in January preceding the general election<<-, but prior to the 49th day prior to the date of the first primary election->>.

(3)(a) Each candidate for a federal, state, or multicounty district office shall submit a separate petition for each county from which signatures are sought. Each petition shall be submitted, prior to noon of the <<+LAST DAY OF THE QUALIFYING PERIOD PRESCRIBED IN S. 99.061(1) FOR THE OFFICE SOUGHT+>> <<-49th day preceding the first primary election->>, to the supervisor of elections of the county for which such petition was circulated. Each supervisor to whom a petition is submitted shall check the names and shall, upon payment of the cost of checking the petitions or filing of the oath as prescribed in s. 99.097, certify to the Department of State, within 30 days of the last day for qualifying, the number shown as registered electors of said county. The Department of State shall determine whether or not the required number of signatures has been obtained and shall notify the candidate. If the required number of signatures has been obtained and the candidate has, during the time prescribed for qualifying for office, filed his qualifying papers with the Department of State, paid his <<+QUALIFYING +>> <<-filing->> fee, and taken the oath provided in s. 99.021, such candidate shall be entitled to have his name printed on the general election ballot. However, any candidate who is unable to pay such fee without imposing an undue burden on his personal resources or upon resources otherwise available to him shall, upon written certification of such inability given under oath to the Department of State, be exempt from paying the <<+QUALIFYING FEE+>> <<-filing fees->>. The name of each candidate who is entitled pursuant to this paragraph to have his name printed on the general election ballot shall be certified to the supervisor of elections of each county affected by such candidacy by the Department of State at the time the names of other candidates to be printed on the general election ballot are certified to each supervisor.

(b) Each candidate for a county office, or district office not covered by paragraph (a), shall submit his petition, prior to noon of the <<+LAST DAY OF THE QUALIFYING PERIOD PRESCRIBED IN S. 99.061(2)+>> <<-49th day preceding the first primary election->>, to the supervisor of elections of the county for which such petition was circulated. The supervisor shall determine whether the required number of signatures has been obtained and shall, within 30 days of the last day for qualifying, notify the candidate. If the required number of signatures has been obtained for the name of the candidate to be placed on the ballot and the candidate has, during the time prescribed for qualifying for office, filed his qualification papers with the supervisor of elections, paid his <<+QUALIFYING+>> <<-filing->> fee, and taken the oath prescribed in s. 99.021, such candidate shall be entitled to have his name printed on the general election ballot. However, any candidate who is unable to pay such fee without imposing an undue burden on his personal resources or upon resources otherwise available to him shall, upon written certification of such inability given under oath to the supervisor, be exempt from paying the <<+ QUALIFYING+>> <<-filing->> fee. Upon paying the cost of checking the petitions or filing the oath required by ss. 106.51 and 99.097, such candidate shall be entitled to have his name placed on the general election ballot.

FL ST § 99.096

Section 12. Subsections (2), (3) and (4) of section 99.096, Florida Statutes, are amended to read:

99.096. Minor party candidates; names on ballot

(2) Petitions to have a slate of candidates printed on the ballot shall be provided by the Department of State. The form of the petitions shall be prescribed by the Department of State. A minor political party may obtain such petition forms at any time

after the first Tuesday after the first Monday in January preceding said general election<<-, but prior to the 49th day prior to the date of the first primary election->>.

(3) A separate petition shall be submitted from each county for which signatures are solicited. The petition shall be submitted to the supervisor of elections of the county prior to noon of the <<+LAST DAY OF THE QUALIFYING PERIOD PRESCRIBED IN S. 99.061(1) FOR CANDIDATES FOR STATE OFFICE+>> <<- 49th day preceding the first primary election->>, and the supervisor shall check the names and shall, upon payment of the cost of checking the petitions prescribed in s. 99.097, certify, within 30 days of the last day for qualifying, the number shown as registered electors of the county. The supervisor shall then forward the certificate to the Department of State which shall determine whether or not the percentage factor as required in this section has been met. When the percentage factor has been met, the Department of State shall notify the minor party executive committee that the party has secured a position on the general election ballot.

(4) The executive committee of the party shall, at the time of submitting the petitions to the various supervisors of elections, but no later than noon of the <<+LAST DAY OF THE QUALIFYING PERIOD PRESCRIBED IN S. 99.061(1) FOR CANDIDATES FOR STATE OFFICE+>> <<-49th day preceding the first primary election->>, submit to the Department of State an official list of the candidates nominated by that party to be on the ballot in the general election. If the minor party has qualified to have a slate of candidates for any offices for which candidates are required to qualify with a supervisor of elections, the Department of State shall notify such supervisor of the name of each candidate eligible to qualify for such an office. Candidates selected by a party pursuant to this section shall qualify with the Department of State or appropriate supervisor of elections, pay their <<+QUALIFYING FEE+>> <<- filing fees->>, and take and subscribe to the oath provided in s. 99.021 during the time prescribed for qualifying for office. Any candidate who is unable to pay such fee without imposing an undue burden on his personal resources or upon resources otherwise available to him shall, upon written certification of such inability given under oath to the Department of State or appropriate supervisor of elections, be exempt from paying the <<+QUALIFYING+>> <<-filing->> fee. The official list of nominated candidates may not be changed by the party after having been filed with the Department of State, except that candidates who have qualified may withdraw from the ballot pursuant to the provisions of this code.

FL ST § 99.097

Section 13. Subsection (4) of section 99.097, Florida Statutes, is amended to read:

99.097. Verification of signatures on

(4) The supervisor shall be paid the sum of 10 cents for each signature checked or the actual cost of checking such signature, whichever is less, by the candidate, minor party, or person authorized by such minor party submitting the petition or, in the case of a petition to have an issue placed on the ballot, by the person or organization submitting the petition. However, if a candidate<<+, PERSON, OR ORGANIZATION SEEKING TO HAVE AN ISSUE PLACED UPON THE BALLOT+>> cannot pay such charges without imposing an undue burden on his personal resources or upon the resources otherwise available to him, he shall, upon written certification of such inability given under oath to the supervisor, be entitled to have the signatures verified at no charge. If such candidate<<+, PERSON, OR ORGANIZATION+>> has filed the oath prescribed by s. 99.095(1), he shall not be required to file a second oath in order to have the signatures verified at no charge. However, an oath in lieu of payment of the charges shall not be allowed to verify the signatures on a petition to have a minor party's slate of candidates placed on the ballot or to have an issue placed on the ballot. In the event a candidate<<+, PERSON, OR ORGANIZATION SUBMITTING A PETITION TO HAVE AN ISSUE PLACED UPON THE BALLOT+>> is entitled to have the signatures verified at no charge, the supervisor of elections of each county in which the signatures are verified at no charge shall submit the total number of such signatures checked in the county to the Comptroller no later than December 1 of the general election year, and the Comptroller shall cause such supervisor of elections to be reimbursed from the General Revenue Fund in an amount equal to 10 cents for each name checked or the actual cost of checking such signatures, whichever is less. In no event shall such reimbursement of costs be deemed or applied as extra compensation for the supervisor. Petitions shall be retained by the supervisors for a period of 1 year following the election for which the petitions were circulated.

FL ST § 100.041

Section 14. Subsection (2) of section 100.041, Florida Statutes, is amended to read:

100.041. Officers chosen at general election

(2) Each county commissioner from an odd-numbered district shall be elected <<-in the county at large->> at the general election in each year the number of which is a multiple of 4, for a 4-year term commencing on the second Tuesday following such election, and each county commissioner from an even-numbered district shall be elected <<-in the county at large->> at the general election in each even-numbered year the number of which is not a multiple of 4, for a 4-year term commencing on the second Tuesday following such election.

FL ST § 100.111

Section 15. Paragraph (b) of subsection (4), and subsections (3) and (5) of section 100.111, Florida Statutes, are amended to read:

100.111. Filling vacancy

(3) Whenever there is a vacancy for which a special election is required pursuant to s. 100.101(1)-(4)<<+, THE GOVERNOR, AFTER CONSULTATION WITH THE SECRETARY OF STATE, SHALL FIX THE DATE OF A SPECIAL FIRST PRIMARY ELECTION, A SPECIAL SECOND PRIMARY ELECTION, AND A SPECIAL ELECTION. NOMINEES OF POLITICAL PARTIES OTHER THAN MINOR POLITICAL PARTIES SHALL BE CHOSEN UNDER THE PRIMARY LAWS OF THIS STATE IN THE SPECIAL PRIMARY ELECTIONS TO BECOME CANDIDATES IN THE SPECIAL ELECTION. PRIOR TO SETTING THE SPECIAL ELECTION DATES, THE GOVERNOR SHALL CONSIDER ANY UPCOMING ELECTIONS IN THE JURISDICTION WHERE THE SPECIAL ELECTION WILL BE HELD.+>> <<-and a special election is called by the Governor to fill the vacancy in such office, nominees of political parties other than minor political parties shall be chosen under the primary laws of this state in a special primary election which shall be called by the Governor who, after consultation with the Secretary of State, may fix the date of a primary election and, if necessary, a second primary election to select nominees of political parties other than minor political parties to become candidates in the special election.->> The dates fixed by the Governor shall be specific days certain and shall not be established by the happening of a condition or stated in the alternative. <<+THE DATES FIXED SHALL PROVIDE A MINIMUM OF 2 WEEKS BETWEEN EACH ELECTION. IN THE EVENT A VACANCY OCCURS IN THE OFFICE OF STATE SENATOR OR MEMBER OF THE HOUSE OF REPRESENTATIVES WHEN THE LEGISLATURE IS IN REGULAR LEGISLATIVE SESSION, THE MINIMUM TIMES PRESCRIBED BY THIS SUBSECTION MAY BE WAIVED UPON CONCURRENCE OF THE GOVERNOR, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, AND THE PRESIDENT OF THE SENATE.+>> If a vacancy occurs in the office of state senator and no session of the Legislature is scheduled to be held prior to the next general election, the Governor may fix the dates for any special primary and for the special election to coincide with the dates of the first and second primary and general election. If a vacancy in office occurs in any district in the state senate or house of representatives or in any congressional district, and no session of the Legislature, or session of Congress if the vacancy is in a congressional district, is scheduled to be held during the unexpired portion of the term, the Governor is not required to call a special election to fill such vacancy.

(a) The dates for candidates to qualify in such special election or special primary election shall be fixed by the Department of State, and candidates shall qualify not later than noon of the last day so fixed. <<+THE DATES FIXED FOR QUALIFYING SHALL ALLOW A MINIMUM OF 14 DAYS BETWEEN THE LAST DAY OF QUALIFYING AND THE SPECIAL FIRST PRIMARY ELECTION.+>>

(b) The filing of campaign expense statements by candidates in such special elections or special primaries shall be not later than such dates as shall be fixed by the Department of State, and in fixing such dates the Department of State shall take into consideration and be governed by the practical time limitations.

(c) The <<+QUALIFYING+>> <<-qualification->> fees and party assessments of such candidates as may qualify shall be the same as collected for the same office at the last previous primary for that office. The party assessment shall be paid to the appropriate executive committee of the political party to which the candidate belongs.

(d) Each county canvassing board shall make as speedy a return of the result of such special elections and primaries as time will permit, and the Elections Canvassing Commission likewise shall make as speedy a canvass and declaration of the nominees as time will permit.

(4)

(b) If the vacancy in nomination occurs later than September 15, or if the vacancy in nomination occurs with respect to a candidate of a minor political party which has obtained a position on the ballot, no special primary election shall be held and the Department of State shall notify the chairman of the appropriate state, district, or county political party executive committee of such party; and, within 7 days, the chairman shall call a meeting of his executive committee to consider designation of a nominee to fill the vacancy. The name of any person so designated shall be submitted to the Department of State within 14 days of notice to the chairman in order that the person designated may have his name printed or otherwise placed on the ballot of the ensuing general election, but in no event shall the supervisor of elections be required to place on a ballot a name submitted less than <<+21+>> <<- 14->> days prior to the election. <<+IF THE VACANCY OCCURS LESS THAN 21 DAYS PRIOR TO THE ELECTION, THE PERSON DESIGNATED BY THE POLITICAL PARTY WILL REPLACE THE FORMER PARTY NOMINEE EVEN THOUGH THE FORMER PARTY NOMINEE NAME WILL BE ON THE BALLOT. ANY BALLOTS CAST FOR THE FORMER PARTY NOMINEE WILL BE COUNTED FOR THE PERSON DESIGNATED BY THE POLITICAL PARTY TO REPLACE THE FORMER PARTY NOMINEE. IF THERE IS NO OPPOSITION TO THE PARTY NOMINEE, THE PERSON DESIGNATED BY THE POLITICAL PARTY TO REPLACE THE FORMER PARTY NOMINEE WILL BE ELECTED TO OFFICE AT THE GENERAL ELECTION.+>> For purposes of this paragraph, the term “district political party executive committee” means the members of the state executive committee of a political party from those counties comprising the area involving a district office.

(5) In the event of unforeseeable circumstances not contemplated in these general election laws concerning the calling and holding of special primary elections and special elections resulting from court order or other unpredictable circumstances, the Department of State shall have the authority <<-by emergency rule->> to provide for the conduct of orderly elections.

FL ST § 100.151

Section 16. Section 100.151, Florida Statutes, is amended to read:

100.151. County commissioners calling special election, notice

<<-The->> County commissioners <<+OR THE GOVERNING AUTHORITY OF A MUNICIPALITY+>> shall not call any special election until notice is given to the supervisor of elections and his consent obtained as to a date when the registration books can be available.

FL ST § 100.361

Section 17. Section 100.361, Florida Statutes, is amended to read:

100.361. Municipal recall

(1) Recall petition.—Any member of the governing body of a municipality or charter county, hereinafter referred to in this section as “municipality,” may be removed from office by the electors of the municipality. When the official represents a district and is elected only by electors residing in that district, only electors from that district are eligible to sign the petition to recall that official and are entitled to vote in the recall election. When the official represents a district and is elected at-large by the electors of the municipality, all electors of the municipality are eligible to sign the petition to recall that official and are entitled to vote in the recall election. Where used in this section, the term “district” shall be construed to mean the area or region of a municipality from which a member of the governing body is elected by the electors from such area or region. Members may be removed from office by the following procedure:

(a) A petition shall be prepared naming the person sought to be recalled and containing a statement of grounds for recall in not more than 200 words <<+ LIMITED SOLELY TO THE GROUNDS SPECIFIED IN S. 100.36(1)(B)+>>. If more than one

member of the governing body is sought to be recalled, whether such member is elected by the electors of a district or by the electors of the municipality at-large, a separate recall petition shall be prepared for each member sought to be recalled.

1. In a municipality or district of fewer than 500 electors, the petition shall be signed by at least 50 electors or by 10 percent of the total number of registered electors of the municipality or district as of the preceding municipal election, whichever is greater.

2. In a municipality or district of 500 or more but fewer than 2,000 registered electors, the petition shall be signed by at least 100 electors or by 10 percent of the total number of registered electors of the municipality or district as of the preceding municipal election, whichever is greater.

3. In a municipality or district of 2,000 or more but fewer than 5,000 registered electors, the petition shall be signed by at least 250 electors or by 10 percent of the total number of registered electors of the municipality or district as of the preceding municipal election, whichever is greater.

4. In a municipality or district of 5,000 or more but fewer than 10,000 registered electors, the petition shall be signed by at least 500 electors or by 10 percent of the total number of registered electors of the municipality or district as of the preceding municipal election, whichever is greater.

5. In a municipality or district of 10,000 or more but fewer than 25,000 registered electors, the petition shall be signed by at least 1,000 electors or by 10 percent of the total number of registered electors of the municipality or district as of the preceding municipal election, whichever is greater.

6. In a municipality or district of 25,000 or more registered electors, the petition shall be signed by at least 1,000 electors or by 5 percent of the total number of registered electors of the municipality or district as of the preceding municipal election, whichever is greater.

Electors of the municipality or district making charges contained in the statement of grounds for recall and those signing the recall petition shall be designated as the "committee." A specific person shall be designated in the petition as chairman of the committee to act for the committee. <<-Only qualified->> Electors of the municipality or district are eligible to sign the petition. Signatures and <<+OATHS+>> <<-affidavits->> of circulators shall be executed as provided in paragraph (c). All signatures shall be obtained within a period of 30 days, and the petition shall be filed within 30 days after the date the first signature is obtained on the petition.

(b) The grounds for removal of elected municipal officials shall, for the purposes of this act, be limited to the following <<+AND MUST BE CONTAINED IN THE PETITION+>>:

1. Malfeasance;
2. Misfeasance;
3. Neglect of duty;
4. Drunkenness;
5. Incompetence;
6. Permanent inability to perform official duties; and
7. Conviction of a felony involving moral turpitude.

(c) Each elector of the municipality signing a petition shall sign his name in ink or indelible pencil as registered in the office of the supervisor of elections and shall state <<+ON THE PETITION+>> his place of residence and voting precinct. Each <<-counterpart of the->> petition shall contain appropriate lines for <<+SIGNATURES AND ADDRESSES OF+>> <<-signature by->> electors and <<+AN OATH+>> <<-a form of affidavit->>, to be executed by the circulator thereof, verifying the fact that the circulator saw each person sign the counterpart of the petition, that each signature appearing thereon is the genuine signature of the person it purports to be, and that the petition was signed in the presence of the circulator on the date indicated.

(d) The petition shall be filed with the <<-city->> auditor or clerk <<+ OF THE MUNICIPALITY OR CHARTER COUNTY +>>, or his equivalent, <<+HEREINAFTER REFERRED TO AS CLERK,+>> by the person designated as chairman of the committee, and, when <<+A+>> <<-the->> <<+FACIALLY VALID+>> petition <<+MEETING THE REQUIREMENTS OF S. 100.361(1)(B)+>> is filed, <<+ THE CLERK+>> <<-city auditor or clerk, ->> shall submit such petition to the county supervisor of elections who shall, within a period of not more than 30 days <<+AFTER THE PETITION IS FILED WITH THE SUPERVISOR+>>, determine whether the petition contains the required valid signatures. <<+IF IT IS DETERMINED BY THE CLERK THAT THE PETITION DOES NOT MEET THE REQUIREMENTS OF S. 100.361(1)(B) AND THEREFORE IS NOT FACIALLY VALID, THE CLERK SHALL SO NOTIFY THE GOVERNING BODY OF THE MUNICIPALITY OR CHARTER COUNTY AND TAKE NO FURTHER ACTION. THE PETITION CANNOT BE

AMENDED AFTER IT IS FILED WITH THE CLERK. +>> The supervisor shall be paid by the persons or committee seeking verification the sum of 10 cents for each name checked.

(e) If it is determined that the petition does not contain the required signatures, the <<+CLERK+>> <<-city auditor or clerk, or his equivalent,->> shall so certify to the governing body <<+OF THE MUNICIPALITY OR CHARTER COUNTY+>> and file the petition without taking further action, and the matter shall be at an end. No additional names may be added to the petition, and the petition shall not be used in any other proceeding.

(f) If it is determined that the petition has the required signatures, then the <<+CLERK+>> <<-city auditor or clerk, or his equivalent,->> shall at once serve upon the person sought to be recalled a certified copy of the petition. Within 5 days after service, the person sought to be recalled may file with the <<+CLERK+>> <<-city auditor or clerk, or his equivalent,->> a defensive statement of not more than 200 words. The <<+ CLERK+>> <<-city auditor or clerk, or his equivalent,->> shall, within 5 days, prepare a sufficient number of typewritten, printed, or mimeographed <<+COPIES+>> <<-counterparts->> of the recall petition and <<-statement of grounds for recall and->> defensive <<+ STATEMENT+>> <<-statements thereto->>, as well as the names <<+ ADDRESSES, AND OATHS ON+>> <<-and affidavits upon->> the original petition, and deliver them to the person who has been designated as chairman of the committee and take his receipt therefor. <<+SUCH PREPARED COPIES+>> <<-The prepared counterpart->> shall be entitled "Recall Petition and Defense" and shall contain lines and spaces for signatures of registered electors, place of residence, election precinct number, and date of signing, together with <<+OATHS +>> <<-affidavits->> to be executed by the circulators which conform to the provisions of paragraph (c). The <<+ CLERK +>> <<-city auditor or clerk, or his equivalent,->> shall deliver forms sufficient to carry the signatures of 30 percent of the registered electors.

(g) Upon receipt of the <<+"RECALL PETITION AND DEFENSE"+>> <<- counterparts->>, the committee may circulate them to obtain the signatures of 15 percent of the electors. Any elector who signs a recall petition shall have the right to demand in writing that his name be stricken from the petition. A written demand signed by the elector shall be filed with the <<+ CLERK +>> <<-city auditor or clerk, or his equivalent,->> and upon receipt of the demand the <<+CLERK+>> <<-city auditor or clerk, or his equivalent,->> shall strike the name of the elector from the petition and place his initials to the side of the signature stricken. However, no signature may be stricken after the <<+CLERK HAS DELIVERED THE "RECALL PETITION AND DEFENSE" TO THE SUPERVISOR OF ELECTIONS FOR VERIFICATION+>> <<-city auditor or clerk, or his equivalent, has certified the total of electors to the governing body->>.

(h) Within 60 days after delivery of the <<+"RECALL PETITION AND DEFENSE"+>> <<-counterparts->> to the chairman, the chairman shall file with the <<+CLERK THE "RECALL PETITION AND DEFENSE" WHICH BEARS THE+>> <<-city auditor or clerk, or his equivalent, the counterparts that bear->> signatures of electors. The <<+CLERK+>> <<-city auditor or clerk, or his equivalent,->> shall assemble all signed <<+ PETITIONS+>> <<-counterparts->>, check to see that each <<+ PETITION+>> <<-counterpart->> is properly verified by the <<+ OATH+>> <<-affidavit->> of the circulator, and submit such petitions to the county supervisor of elections, who shall <<+DETERMINE THE NUMBER OF VALID SIGNATURES+>> <<-ascertain the number of different signatures upon the counterparts->>, purge the names withdrawn, certify within 30 days whether 15 percent of the qualified electors of the municipality have signed the petitions, and report his findings to the governing body. The supervisor shall be paid by the persons or committee seeking verification the sum of 10 cents for each name checked.

(i) If the petitions do not contain the required signatures, the <<+ CLERK+>> <<-city auditor or clerk, or his equivalent,->> shall report such fact to the governing body and file the petitions and the proceedings shall be terminated, and the petitions shall not again be used. If the signatures do amount to <<+AT LEAST+>> 15 percent of the qualified electors, he shall serve notice of that fact upon the person sought to be recalled and deliver to the governing body a certificate as to the percentage of qualified voters who signed.

(2) Recall election.—If the person designated in the petition files with the <<+CLERK+>> <<-city auditor or clerk, or his equivalent->>, within 5 days after the last-mentioned notice, his written resignation, the <<+ CLERK+>> <<-city auditor or clerk, or his equivalent->>, shall at once notify the governing body of that fact, and the resignation shall be irrevocable. The governing body shall then proceed to fill the vacancy according to the provisions of the appropriate law. In the absence of a resignation, the chief judge of the judicial circuit in which the municipality is located shall fix a day for holding a recall election for the removal of those not resigning. Any such election shall be held not less than 30 days or more than 60 days after the expiration of the 5-day period last-mentioned and at the same time as any other general or special election held within the

period; but if no such election is to be held within that period, the judge shall call a special recall election to be held within the period aforesaid.

(3) Ballots.—The ballots at the recall election shall conform to the following: With respect to each person whose removal is sought, the question shall be submitted: “Shall be removed from the office of by recall?” Immediately following each question there shall be printed on the ballots the two propositions in the order here set forth:

“..... (name of person) should be removed from office.”

“..... (name of person) should not be removed from office.”

Immediately to the right of each of the propositions shall be placed a square on which the electors, by making a crossmark (X), may vote either of the propositions. Voting machines <<+OR ELECTRONIC OR ELECTROMECHANICAL EQUIPMENT +>> may be used.

(4) Filling of vacancies; special elections.—

(a) If an election is held for the recall of members elected only at-large, candidates to succeed them for the unexpired terms shall be voted upon at the same election and shall be elected in the same manner as provided by the appropriate law for the election of candidates at general elections. Candidates shall not be elected to succeed any particular member. If only one member is removed, the candidate receiving the highest number of votes shall be declared elected to fill the vacancy. If more than one member is removed, candidates equal in number to the number of members removed shall be declared elected to fill the vacancies; and, among the successful candidates, those receiving the greatest number of votes shall be declared elected for the longest terms. Cases of ties, and all other matters not herein specially provided for, shall be determined by the rules governing elections generally.

(b) If an election is held for the recall of members elected only from districts, candidates to succeed them for the unexpired terms shall be voted upon at a special election called by the chief judge of the judicial circuit in which the districts are located not less than 30 days or more than 60 days after the expiration of the recall election. The qualifying period, for purposes of this section, shall be established by the chief judge of the judicial circuit after consultation with the <<+CLERK+>> <<-municipal or charter county election official->>. Any candidate seeking election to fill the unexpired term of a recalled district municipal official shall reside in the district represented by the recalled official and qualify for office in the manner required by law. Each candidate receiving the highest number of votes for each office in the special district recall election shall be declared elected to fill the unexpired term of the recalled official. Candidates seeking election to fill a vacancy created by the removal of a municipal official shall be subject to the provisions of chapter 106.

(c) When an election is held for the recall of members of the governing body composed of both members elected at-large and from districts, candidates to succeed them for the unexpired terms shall be voted upon at a special election as provided in paragraph (b).

(d) However, in any recall election held pursuant to paragraph (b) or paragraph (c), if only one member is voted to be removed from office, the vacancy created by the recall shall be filled by the governing body according to the provisions of the appropriate law for filling vacancies.

(5) Effect of resignations.—If the member of the governing body being recalled resigns from office prior to the recall election, the remaining members shall fill the vacancy created according to the appropriate law for filling vacancies. If all of the members of the governing body are sought to be recalled and all of the members resign prior to the recall election, the recall election shall be canceled, and a special election shall be called to fill the unexpired terms of the resigning members. If all of the members of the governing body are sought to be recalled and any of the members resign prior to the recall election, the proceedings for the recall of members not resigning and the election of successors to fill the unexpired terms shall continue and have the same effect as though there had been no resignation.

(6) When petition may be filed.—<<-Except as otherwise provided,->> No petition to recall any member of the governing body of a municipality shall be filed until <<+THE MEMBER+>> <<-he->> has served one-fourth of his term of office. No person removed by a recall, or resigning after a petition has been filed against him, shall be eligible to be appointed to the governing body within a period of 2 years after the date of such recall or resignation. The <<+CLERK+>> <<-city auditor or clerk, or his equivalent,->> shall preserve in his office all papers comprising or connected with a petition for recall for a period of 2 years after they were filed. This method of removing members of the governing body of a municipality is in addition to such other methods now or hereafter provided by the general laws of this state.

(7) Offenses relating to petitions.—No person shall impersonate another, purposely write his name or residence falsely in the signing of any petition for recall or forge any name thereto, or sign any paper with knowledge that he is not a qualified elector of the municipality. No expenditures for campaigning for or against an officer being recalled shall be made until the date on which the recall election is to be held is publicly announced. The committee and the officer being recalled shall be subject to chapter 106. No person shall employ or pay another to accept employment or payment for circulating a recall petition. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor of the second degree and shall, upon conviction, be punished as provided by law.

(8) Intent.—It is the intent of the Legislature that the recall procedures provided in this act shall be uniform statewide. Therefore, all municipal charter and special law provisions which are contrary to the provisions of this act are hereby repealed to the extent of this conflict.

(9) Provisions applicable.—The provisions of this act shall apply to cities and charter counties which have adopted recall provisions.

FL ST § 101.131

Section 18. Subsection (2) of section 101.131, Florida Statutes, is amended to read:

101.131. Watchers at polls

(2) Each party and each candidate requesting to have poll watchers shall designate, in writing, poll watchers for each precinct prior to noon of the <<+SECOND TUESDAY+>> <<-10th day->> preceding the election. The poll watchers for each precinct shall be approved by the supervisor of elections <<+ON OR BEFORE THE TUESDAY BEFORE+>> <<-at least 5 days prior to->> the election. The supervisor shall furnish to each precinct a list of the poll watchers designated and approved for such precinct.

FL ST § 101.141

Section 19. Subsection (4) of section 101.141, Florida Statutes, is amended to read:

101.141. Specifications for primary election ballot

In counties in which voting machines are not used, and in other counties for use as absentee ballots not designed for tabulation by an electronic or electromechanical voting system, the primary election ballot shall conform to the following specifications:

(4) The ballot shall have the headings, under which appear the names of the offices and the candidates for the respective offices alphabetically arranged as to surnames, in the following order: the heading “Congressional” and thereunder the offices of United States Senator and Representative in Congress; the heading “State” and thereunder the offices of Governor and Lieutenant Governor, Secretary of State, Attorney General, Comptroller, Treasurer, Commissioner of Education, Commissioner of Agriculture, <<-public service commissioner,->> state attorney, and public defender; the heading “Legislative” and thereunder the offices of state senator and state representative; the heading “County” and thereunder clerk of the circuit court, clerk of the county court (when authorized by law), sheriff, property appraiser, tax collector, district superintendent of schools, and supervisor of elections. Thereafter follows: members of the board of county commissioners, members of the district school board, and such other county and district offices as are involved in the primary election, in the order fixed by the Department of State<<-; the heading “Official Presidential Preference Primary Ballot,” as provided in s. 103.101;->> followed, in the years of their election, by “Party offices,” and thereunder the offices of state and county party executive committee members. Immediately following the name of each office on the ballot shall be printed, “Vote for One.” When more than one candidate is to be nominated for office, the candidates for such office shall qualify and run in a group or district. The group or district number shall be printed beneath the name of the office. The names of candidates in the respective group or district shall be arranged thereunder in alphabetical order as to surnames, and following the group or district number there shall be printed the words, “Vote for One.” The name of the office shall be printed over each numbered group or district and each numbered group or district shall be clearly separated from the next numbered group or district, the same as in the case of single offices. When two or more candidates running for the same office have the same or similar surname and one candidate is currently holding

that office, the word "Incumbent" shall be printed next to the incumbent's name. If in any primary election all the offices as above set forth are not involved, those offices to be filled shall be arranged on the ballot in the order named.

FL ST § 101.151

Section 20. Paragraph (a) of subsection (3) of section 101.151, Florida Statutes, is amended to read:

101.151. Specifications for general election ballot

In counties in which voting machines are not used, and in other counties for use as absentee ballots not designed for tabulation by an electronic or electromechanical voting system, the general election ballot shall conform to the following specifications:

(3)(a) Beneath the caption and preceding the names of candidates shall be the following words: "To vote for a candidate whose name is printed on the ballot, place a cross (X) mark in the blank space at the right of the name of the candidate for whom you desire to vote. To vote for a write-in candidate, write the name of the candidate in the blank space provided for that purpose." The ballot shall have headings under which shall appear the names of the offices and names of duly nominated candidates for the respective offices in the following order: the heading "Electors for President and Vice President" and thereunder the names of the candidates for President and Vice President of the United States nominated by the political party which received the highest vote for Governor in the last general election of the Governor in this state, above which shall appear the name of said party. Then shall appear the names of other candidates for President and Vice President of the United States who have been properly nominated. Votes cast for write-in candidates for President and Vice President shall be counted as votes cast for the presidential electors supporting such candidates. Then shall follow the heading "Congressional" and thereunder the offices of United States Senator and Representative in Congress; then the heading "State" and thereunder the offices of Governor and Lieutenant Governor, Secretary of State, Attorney General, Comptroller, Treasurer, Commissioner of Education, Commissioner of Agriculture, <<-public service commissioner,->> state attorney, and public defender, together with the names of the candidates for each office and the title of the office which they seek; then the heading "Legislative" and thereunder the offices of state senator and state representative; then the heading "County" and thereunder clerk of the circuit court, clerk of the county court (when authorized by law), sheriff, property appraiser, tax collector, district superintendent of schools, and supervisor of elections. Thereafter follows: members of the board of county commissioners, members of the district school board, and such other county offices as are involved in the general election, in the order fixed by the Department of State. When a write-in candidate has qualified for any office, a subheading "Write-in Candidate for ... (name of office) ..." shall be provided followed by a blank space in which to write the name of the candidate. With respect to write-in candidates, if two or more candidates are seeking election to one office, only one blank space shall be provided.

FL ST § 101.252

Section 21. Subsection (2) of section 101.252, Florida Statutes, is amended to read:

101.252. Candidates entitled to have names printed on certain ballots; exception

(2) Any candidate for party executive committee member who has qualified as prescribed by law is entitled to have his name printed on the <<+ FIRST+>> <<-official presidential preference->> primary ballot. However, when there is only one candidate of any political party qualified for such an office, the name of the candidate shall not be printed on the <<+ FIRST +>> <<-presidential preference->> primary ballot, and such candidate shall be declared elected to the state or county executive committee.

FL ST § 101.253

Section 22. Subsection (3) of section 101.253, Florida Statutes, is amended to read:

101.253. When names not to be printed on ballot

(3) In no case shall the supervisor be required to print on the ballot a name which is submitted less than <<+21+>> <<-14->> days prior to the election. In the event the ballots are printed <<+21+>> <<-14->> days or more prior to the election, the name

of any candidate whose death, resignation, removal, or withdrawal created a vacancy in office or nomination shall be stricken from the ballot with a rubber stamp or appropriate printing device, and the name of the new nominee shall be inserted on the ballot in a like manner. <<+THE SUPERVISOR MAY, AS AN ALTERNATIVE, REPRINT THE BALLOTS TO INCLUDE THE NAME OF THE NEW NOMINEE.+>>

FL ST § 101.254

Section 23. Section 101.254, Florida Statutes, is amended to read:

101.254. When nominated names to appear in groups or districts

When an office requires the nomination of more than one candidate, as many groups or districts shall be numerically designated as there are vacancies to be filled by nomination. Each candidate shall indicate <<+ON HIS QUALIFYING PAPERS+>> the group or district in which he desires his name to appear on the ballot. <<+IN ADDITION, ANY CANDIDATE QUALIFYING BY THE PETITION METHOD MUST INDICATE ON HIS PETITION PRIOR TO CIRCULATING SUCH PETITION, WHICH GROUP OR DISTRICT FOR WHICH HE IS ATTEMPTING TO QUALIFY.+>>

FL ST § 101.31

Section 24. Section 101.31, Florida Statutes, is amended to read:

101.31. Experimental use of voting <<+EQUIPMENT+>> <<-machines->>

The board of county commissioners of any county, or the governing body of any municipality, may provide for experimental use of any voting <<+EQUIPMENT+>> <<-machine or machines->> at any election in one or more precincts. The use of any voting <<+EQUIPMENT+>> <<-machine or machines->> on an experimental basis shall be valid for all purposes.

FL ST § 101.5609

Section 25. Paragraph (a) of subsection (7) of section 101.5609, Florida Statutes, is amended to read:

101.5609. Ballot requirements

(7)(a) Absentee ballots may consist of ballot cards, envelopes, or paper ballots voted in person in the office of the election official in charge of the election, voted by mail, or delivered as provided in s. 101.62(4). <<+ALTERNATIVE PROCEDURES MAY BE USED TO RECORD THE ISSUANCE OF A BALLOT IN LIEU OF THE REQUIREMENTS FOR INITIALING THE STUB AND ENTERING THE ELECTOR'S NAME AS PROVIDED IN S. 101.62(4).+>>

FL ST § 101.58

Section 26. Section 101.58, Florida Statutes, is amended to read:

101.58. Supervising and observing registration and election processes

The Department of State may, at any time it deems fit; upon the petition of 5 percent of the registered electors; or upon the petition of any candidate, county executive committee chairman, state committeeman or committeewoman, or state executive committee chairman, appoint one or more deputies whose duties shall be to observe and examine the registration and election processes and the condition, custody, and operation of voting machines in any county or municipality. The deputy shall have access to all registration books and records as well as any other records or procedures relating to the voting process. The deputy <<+MAY+>> <<-shall->> supervise preparation of the election machines and procedures for election, and it shall be unlawful for any person to obstruct the deputy in the performance of his duty. He shall file with the Department of State <<-a certificate that he personally examined the voting machines and with such certificate file->> a report of his findings and observations of the registration and election processes in the county or municipality, and a copy of the <<-certificate and->> report shall also be filed

with the clerk of the circuit court of said county. The compensation of such deputies shall be fixed by the Department of State; and costs incurred under this section shall be paid from the annual operating appropriation made to the Department of State.

FL ST § 101.6102

Section 27. Subsection (1) of section 101.6102, Florida Statutes, is amended to read:

101.6102. Mail ballot elections; limitations

(1) An election may be conducted by mail ballot if:

(a) The election is a referendum election at which all or a portion of the qualified electors of one of the following subdivisions of government are the only electors eligible to vote:

1. Counties;
2. Cities;
3. School districts covering no more than one county; or
4. Special districts covering no more than one county;

<<+(B) IN ADDITION, AN ANNEXATION REFERENDUM WHICH INCLUDES ONLY QUALIFIED ELECTORS OF ONE COUNTY MAY ALSO BE VOTED ON BY MAIL BALLOT ELECTION.+>>

<<+(C)+>><<-(b)->> The governing body responsible for calling the election and the supervisor of elections responsible for the conduct of the election authorize the use of mail ballots for the election; and

<<+(D)+>><<-(c)->> The Secretary of State approves a written plan for the conduct of the election, which shall include a written timetable for the conduct of the election, submitted by the supervisor of elections.

FL ST § 101.62

Section 28. Subsection (4) of section 101.62, Florida Statutes, is amended and subsection (7) is added to said section to read:

101.62. Request for absentee ballots

(4)<<+(A) TO EACH ABSENT QUALIFIED ELECTOR OVERSEAS WHO HAS REQUESTED AN ABSENTEE BALLOT, THE SUPERVISOR OF ELECTIONS SHALL, NOT FEWER THAN 35 DAYS BEFORE THE FIRST PRIMARY ELECTION, MAIL AN ABSENTEE BALLOT. NOT FEWER THAN 45 DAYS BEFORE THE SECOND PRIMARY AND GENERAL ELECTION, THE SUPERVISOR OF ELECTIONS SHALL MAIL AN ADVANCE ABSENTEE BALLOT TO THOSE PERSONS REQUESTING BALLOTS FOR SUCH ELECTIONS. THE ADVANCE ABSENTEE BALLOT FOR THE SECOND PRIMARY SHALL BE THE SAME AS THE FIRST PRIMARY ABSENTEE BALLOT AS TO THE NAMES OF CANDIDATES, EXCEPT THAT FOR ANY OFFICES WHERE THERE ARE ONLY TWO CANDIDATES, THOSE OFFICES AND ALL POLITICAL PARTY EXECUTIVE COMMITTEE OFFICES SHALL BE OMITTED. THE ADVANCE ABSENTEE BALLOT FOR THE GENERAL ELECTION SHALL BE AS SPECIFIED IN S. 101.151, EXCEPT THAT IN THE CASE OF CANDIDATES OF POLITICAL PARTIES WHERE NOMINATIONS WERE NOT MADE IN THE FIRST PRIMARY, THE NAMES OF THE CANDIDATES PLACING FIRST AND SECOND IN THE FIRST PRIMARY ELECTION SHALL BE PRINTED ON THE ADVANCE ABSENTEE BALLOT. THE ADVANCE ABSENTEE BALLOT OR ADVANCE ABSENTEE BALLOT INFORMATION BOOKLET SHALL BE OF A DIFFERENT COLOR FOR EACH ELECTION AND ALSO A DIFFERENT COLOR FROM THE ABSENTEE BALLOTS FOR THE FIRST PRIMARY, SECOND PRIMARY, AND GENERAL ELECTION. THE SUPERVISOR SHALL MAIL AN ADVANCE ABSENTEE BALLOT FOR THE SECOND PRIMARY AND GENERAL ELECTION TO EACH QUALIFIED ABSENT ELECTOR FOR WHOM A REQUEST IS RECEIVED UNTIL THE ABSENTEE BALLOTS ARE PRINTED. THE SUPERVISOR SHALL ENCLOSE WITH THE ADVANCE SECOND PRIMARY ABSENTEE BALLOT AND ADVANCE GENERAL ELECTION ABSENTEE BALLOT AN EXPLANATION STATING THAT THE ABSENTEE BALLOT FOR THE ELECTION WILL BE MAILED AS SOON AS IT IS PRINTED; AND, IF BOTH THE ADVANCE ABSENTEE BALLOT AND THE ABSENTEE BALLOT FOR THE ELECTION ARE RETURNED IN TIME TO BE COUNTED, ONLY THE ABSENTEE BALLOT WILL BE COUNTED.+>>

<<+(B)+>> <<-The supervisor of elections shall, not less than 30 days before the first primary election, not less than 24 days before the second primary election, and not less than 30 days before the general election, mail an absentee ballot to each absent elector overseas who has made a request for an absentee ballot; and,->> As soon as the remainder of the absentee ballots are printed, the supervisor of elections shall deliver or mail an absentee ballot to each elector by whom a request for such ballot has been made. Any elector may designate in writing a person to pick up the ballot for him; however, no candidate may be designated to pick up an absentee ballot for any elector other than a member of his immediate family. Upon presentation of such written authorization by such designee in person, the supervisor may give the ballot to such designee for delivery to the elector. The supervisor shall initial the stub attached to the absentee ballot and enter the name of the elector in the place indicated for the elector to sign. The supervisor shall then detach the ballot from the stub and mail or deliver the ballot. <<- Before mailing or delivering the ballot, the supervisor shall fill in the number of the precinct in which the voter is registered in the space provided for this purpose on the envelope.->> If an elector appears in person to cast an absentee ballot, the elector shall sign the stub, and the supervisor shall then detach the ballot from the stub and deliver the ballot to the elector.

<<+(7)(A) FOR THE PURPOSES OF THIS SECTION, "ABSENT QUALIFIED ELECTOR OVERSEAS" MEANS:+>>

<<+1. MEMBERS OF THE ARMED FORCES WHILE IN THE ACTIVE SERVICE WHO ARE PERMANENT RESIDENTS OF THE STATE AND ARE TEMPORARILY RESIDING OUTSIDE THE TERRITORIAL LIMITS OF THE UNITED STATES AND THE DISTRICT OF COLUMBIA;+>>

<<+2. MEMBERS OF THE MERCHANT MARINE OF THE UNITED STATES WHO ARE PERMANENT RESIDENTS OF THE STATE AND ARE TEMPORARILY RESIDING OUTSIDE THE TERRITORIAL LIMITS OF THE UNITED STATES AND THE DISTRICT OF COLUMBIA; AND+>>

<<+3. OTHER CITIZENS OF THE UNITED STATES WHO ARE PERMANENT RESIDENTS OF THE STATE AND ARE TEMPORARILY RESIDING OUTSIDE THE TERRITORIAL LIMITS OF THE UNITED STATES AND THE DISTRICT OF COLUMBIA,+>>

<<+WHO ARE QUALIFIED AND REGISTERED AS PROVIDED BY LAW.+>>

<<+(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THERE SHALL APPEAR ON THE BALLOTS SENT TO ABSENT QUALIFIED ELECTORS OVERSEAS, IN ADDITION TO THE NAMES OF THE CANDIDATES FOR EACH OFFICE, THE POLITICAL PARTY AFFILIATION OF EACH CANDIDATE FOR EACH OFFICE, OTHER THAN A NONPARTISAN OFFICE.+>>

<<+(C) WITH RESPECT TO MARKED BALLOTS MAILED BY ABSENT QUALIFIED ELECTORS OVERSEAS, ONLY THOSE BALLOTS MAILED WITH AN APO, FPO, OR FOREIGN POSTMARK SHALL BE CONSIDERED VALID.+>>

FL ST § 102.031

Section 29. Section 102.031, Florida Statutes, is amended to read:

102.031. Maintenance of good order at polls; authorities; <<+PERSONS ALLOWED IN POLLING ROOMS;+>> unlawful solicitation of voters

(1) 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.

(2) The sheriff shall deputize a deputy sheriff for each precinct who shall be present during the time the polls are open and until the election is completed, who shall be subject to all lawful commands of the clerk or inspectors, and who shall maintain good order. The deputy may summon assistance from among bystanders to aid him when necessary to maintain peace and order at the polls.

(3)(a) <<+NO PERSON MAY ENTER ANY POLLING ROOM OR POLLING PLACE WHERE THE POLLING PLACE IS ALSO A POLLING ROOM, DURING VOTING HOURS EXCEPT THE FOLLOWING:+>>

<<+1. OFFICIAL POLL WATCHERS;+>>

<<+2. INSPECTORS;+>>

<<+3. ELECTION CLERKS;+>>

<<+4. THE SUPERVISOR OF ELECTIONS OR HIS DEPUTY;+>>

<<+5. PERSONS THERE TO VOTE, PERSONS IN THE CARE OF A VOTER, OR PERSONS CARING FOR SUCH VOTER; OR+>>

<<+6. LAW ENFORCEMENT OFFICERS OR EMERGENCY SERVICE PERSONNEL THERE WITH PERMISSION OF THE CLERK OR A MAJORITY OF THE INSPECTORS.+>>

<<+(B) THE RESTRICTION IN THIS SUBSECTION DOES NOT APPLY WHERE THE POLLING ROOM IS IN AN AREA COMMONLY TRAVERSED BY THE PUBLIC IN ORDER TO GAIN ACCESS TO BUSINESSES OR HOMES OR IN AN AREA TRADITIONALLY UTILIZED AS A PUBLIC AREA FOR DISCUSSION.+>>

<<+(C)+>> No person, political committee, committee of continuous existence, or other group or organization may solicit voters within <<+ 50+>> <<-150->> feet of <<+THE ENTRANCE TO+>> any polling place, or polling room where the polling place is <<+ALSO+>> a <<+POLLING ROOM+>> <<-shopping center or mall->>, on the day of any election.

<<+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.+>>

<<+(D)+>><<-(b)->> For the purpose of this subsection, the term "solicit" shall include, but not be limited to, <<+SEEKING +>> <<- soliciting->> or attempting to <<+SEEK+>> <<-solicit->> any vote, <<+FACT,+>> opinion, or contribution <<-for any purpose->>; distributing or attempting to distribute any political or campaign material<<+, LEAFLET, OR HANDOUT; CONDUCTING A POLL; SEEKING+>><<-, soliciting->> or attempting to <<+SEEK+>> <<-solicit->> a signature on any petition; and selling or attempting to sell any item<<-, except within an established place of business->>.

<<+(E)+>><<-(c)->> Each supervisor of elections shall <<-determine and->> inform the clerk of each precinct of the area within which soliciting is unlawful, based on the particular characteristics of that polling place. The supervisor or the clerk may take any reasonable action necessary to ensure order at the polling places <<+WHICH SHALL INCLUDE+>> <<-affected by such soliciting, including->>:

1. Designating a specific <<-limited->> area for soliciting <<+PURSUANT TO PARAGRAPH (C) OF THIS SUBSECTION, OR+>><<-, and->>

2. Having disruptive and unruly persons removed by law enforcement officers from the <<+POLLING ROOM OR PLACE OR FROM THE 50-FOOT ZONE SURROUNDING THE+>> polling place.

FL ST § 102.112

Section 30. Section 102.112, Florida Statutes, is created to read:

<<+102.112. DEADLINE FOR SUBMISSION OF COUNTY RETURNS TO THE DEPARTMENT OF STATE; PENALTIES +>>

<<+(1) THE COUNTY CANVASSING BOARD OR A MAJORITY THEREOF SHALL FILE THE COUNTY RETURNS FOR THE ELECTION OF A FEDERAL OR STATE OFFICER WITH THE DEPARTMENT OF STATE IMMEDIATELY AFTER CERTIFICATION OF THE ELECTION RESULTS. IF THE RETURNS ARE NOT RECEIVED BY THE DEPARTMENT BY 5 P.M. ON THE 7TH DAY AFTER AN ELECTION, SUCH RETURNS MAY BE IGNORED AND THE RESULTS ON FILE AT THAT TIME MAY BE CERTIFIED BY THE DEPARTMENT.+>>

<<+(2) THE DEPARTMENT SHALL FINE EACH BOARD MEMBER \$200 FOR EACH DAY SUCH RETURNS ARE LATE, THE FINE TO BE PAID ONLY FROM THE BOARD MEMBER'S PERSONAL FUNDS. SUCH FINES SHALL BE DEPOSITED INTO THE ELECTION CAMPAIGN FINANCING TRUST FUND, CREATED BY S. 106.32.+>>

<<+(3) MEMBERS OF THE COUNTY CANVASSING BOARD MAY APPEAL SUCH FINES TO THE FLORIDA ELECTIONS COMMISSION, WHICH SHALL ADOPT RULES FOR SUCH APPEALS.+>>

FL ST § 102.151

Section 31. Section 102.151, Florida Statutes, is amended to read:

102.151. County canvassing board to issue certificates; supervisor to give notice to Department of State

The county canvassing board shall make and sign <<+DUPLICATE+>> <<- triplicate->> certificates containing the total number of votes cast for each person nominated or elected, the names of persons for whom such votes were cast, and the number of votes cast for each candidate or nominee. One of such certificates which relates to offices for which the candidates or nominees have been voted for in more than one county shall be immediately transmitted to the Department of State, <<- another to the clerk of the circuit court,->> and the <<+SECOND+>> <<-third->> copy filed in the supervisor's office. The supervisor shall transmit to the Department of State, immediately after the county canvassing board has canvassed the returns of the election, a list containing the names of all county and district officers nominated or elected, the office for which each was nominated or elected, and the mailing address of each.

FL ST § 103.101

Section 32. Subsection (2) of section 103.101, Florida Statutes, is amended to read:

103.101. Presidential preference primary

(2) There shall be a Presidential Candidate Selection Committee composed of the Secretary of State, who shall be a nonvoting chairman; the Speaker of the House of Representatives; the President of the Senate; the minority leader of each house of the Legislature; and the chairman of each political party required to have a presidential preference primary under this section.

(a) By December 31 of the year preceding the Florida presidential preference primary, each political party shall submit to the Secretary of State a list of its presidential candidates to be placed on the presidential preference primary ballot or candidates entitled to have delegates appear on the presidential preference primary ballot. The Secretary of State shall prepare and publish a list of the names of the presidential candidates submitted. The Secretary of State shall submit such list of names of presidential candidates to the selection committee on the first Tuesday after the first Monday in January each year a presidential preference primary election is held. Each person designated as a presidential candidate shall have his name appear, or have his delegates' names appear, on the presidential preference primary ballot unless all committee members of the same political party as the candidate agree to delete such candidate's name from the ballot. The selection committee shall meet in Tallahassee on the first Tuesday after the first Monday in January each year a presidential preference primary is held. The selection committee shall publicly announce and submit to the Department of State no later than 5 p.m. on the following day the names of presidential candidates who shall have their names appear, or who are entitled to have their delegates' names appear, on the presidential preference primary ballot. The Department of State shall immediately notify each presidential candidate designated by the committee. Such notification shall be in writing, by registered mail, with return receipt requested.

(b) Any presidential candidate whose name does not appear on the list submitted to the Secretary of State may request that the selection committee place his name on the ballot. Such request shall be made <<+IN WRITING TO THE SECRETARY OF STATE+>> no later than the second Tuesday after the first Monday in January.

<<+(C) IF A PRESIDENTIAL CANDIDATE MAKES A REQUEST THAT THE SELECTION COMMITTEE RECONSIDER PLACING THE CANDIDATE'S NAME ON THE BALLOT, THE SELECTION COMMITTEE WILL RECONVENE NO LATER THAN THE SECOND THURSDAY AFTER THE FIRST MONDAY IN JANUARY TO RECONSIDER PLACING THE CANDIDATE'S NAME ON THE BALLOT. THE DEPARTMENT OF STATE SHALL IMMEDIATELY NOTIFY SUCH CANDIDATE OF THE SELECTION COMMITTEE'S DECISION.+>>

FL ST § 104.071

Section 33. Subsection (1) of section 104.071, Florida Statutes, is amended, subsection (2) is renumbered as subsection (3), and a new subsection (2) is added to said section, to read:

104.071. Remuneration by candidate for services, support, etc.: penalty

(1) It is unlawful for any person supporting a candidate, or for any candidate, in order to aid or promote the nomination or election of such candidate in any election, directly or indirectly to:

(a) Promise to appoint another person, promise to secure or aid in securing appointment, nomination or election of another person to any public or private position, or to any position of honor, trust, or emolument, except one who has publicly announced or defined what his choice or purpose in relation to any election in which he may be called to take part, if elected.

(b) Give, or promise to give, pay, or loan, any money or other thing of value to the owner, editor, publisher, or agent, of any communication media, as well as newspapers, to advocate or oppose, through such media, any candidate for nomination in any election or any candidate for election, and no such owner, editor, or agent shall give, solicit, or accept such payment or reward. It shall likewise be unlawful for any owner, editor, publisher, or agent of any poll-taking or poll-publishing concern to advocate or oppose through such poll any candidate for nomination in any election or any candidate for election in return for the giving or promising to give, pay, or loan any money or other thing of value to said owner, editor, publisher, or agent of any poll-taking or poll-publishing concern.

(c) Give, pay, expend, or contribute any money or thing of value for the furtherance of the candidacy of any other candidate.

(d) Furnish, give, or deliver to another person any money or other thing of value for any purpose prohibited by the election laws.

<<+THIS SUBSECTION SHALL NOT PROHIBIT A CANDIDATE FROM FURNISHING COMPLIMENTARY TICKETS TO HIS CAMPAIGN FUND RAISER TO OTHER CANDIDATES.+>>

<<+(2) A CANDIDATE MAY GIVE HIS OWN PERSONAL OR BUSINESS FUNDS TO ANOTHER CANDIDATE, SO LONG AS THE CONTRIBUTION IS NOT GIVEN IN EXCHANGE FOR A PROMISE OR EXPECTATION THAT THE RECIPIENT WILL DIRECTLY OR INDIRECTLY DO ANYTHING TO AID OR PROMOTE THE CANDIDACY OF THE CONTRIBUTOR WHICH THE RECIPIENT WOULD NOT HAVE OTHERWISE DONE.+>>

FL ST § 105.031

Section 34. Subsection (3) of section 105.031, Florida Statutes, is amended to read:

105.031. Qualification; filing fee; candidate's oath

(3) Qualifying fee.—Each candidate qualifying for election to judicial office, except write-in judicial candidates, shall, during the time for qualifying, pay the Division of Elections a qualifying fee<<+, WHICH SHALL CONSIST OF A FILING FEE AND AN ELECTION ASSESSMENT+>> <<-of 3 percent of the annual salary of the office to which he seeks election->>, or qualify by the alternative method. <<+THE AMOUNT OF THE FILING FEE IS 3 PERCENT OF THE ANNUAL SALARY OF THE OFFICE SOUGHT. THE AMOUNT OF THE ELECTION ASSESSMENT IS 1 PERCENT OF THE ANNUAL SALARY OF THE OFFICE SOUGHT.+>> The Division of Elections shall forward all <<+FILING+>> <<-such qualifying->> fees to the Department of Revenue for deposit in the General Revenue Fund. <<+THE ELECTION ASSESSMENT SHALL BE DEPOSITED INTO THE ELECTIONS COMMISSION TRUST FUND.+>> The annual salary of the office for purposes of computing the qualifying fee shall be computed by multiplying 12 times the monthly salary authorized for such office as of July 1 immediately preceding the first day of qualifying. This subsection shall not apply to candidates qualifying for retention to judicial office.

FL ST § 105.035

Section 35. Subsection (2) of section 105.035, Florida Statutes, is amended to read:

105.035. Alternative method of qualifying for certain judicial offices

(2) The Division of Elections shall prescribe the form of the petitions and shall, upon receipt of a written oath from a candidate, provide the candidate with petition forms in sufficient numbers to facilitate the gathering of signatures pursuant to this section. No signature shall be counted toward the number of signatures required unless it is on a petition form prescribed pursuant to this subsection. <<+IF THE CANDIDATE IS RUNNING FOR AN OFFICE WHICH WILL BE GROUPED ON THE BALLOT WITH TWO OR MORE SIMILAR OFFICES TO BE FILLED AT THE SAME ELECTION, THE CANDIDATE'S PETITION MUST INDICATE PRIOR TO THE OBTAINING OF REGISTERED ELECTORS' SIGNATURES FOR WHICH GROUP THE CANDIDATE IS RUNNING.+>>

FL ST § 106.26

Section 36. Subsection (5) is added to section 106.24, Florida Statutes, to read:

106.26. Powers of commission; rights and responsibilities of parties; findings by commission

<<+(5) THERE IS HEREBY ESTABLISHED IN THE STATE TREASURY AN ELECTIONS COMMISSION TRUST FUND TO BE UTILIZED BY THE DIVISION OF ELECTIONS AND THE FLORIDA ELECTIONS COMMISSION IN ORDER TO CARRY OUT THEIR DUTIES PURSUANT TO SS. 106.24–106.28.+>>

FL ST § 101.121 Repealed

Section 37. Section 101.121, Florida Statutes, is hereby repealed.

Section 38. This act shall take effect January 1, 1990.

Approved by the Governor July 5, 1989.

Filed in Office Secretary of State July 5, 1989.

FL LEGIS 89-338

End of Document

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The Florida Senate

CS/HB 917: Elections

GENERAL BILL by Election Reform ; Stafford ; (CO-INTRODUCERS) Brown ; Boyd

Elections; provides for municipal recall petitions to be attested to by witness; removes determination of facial validity by clerk; provides alternative procedure for voting by absentee ballot; eliminates requirement that election boards be composed of three inspectors & a clerk & requirement that pollworkers be trained at formal classes; provides for deputy sheriff to be present at each polling place, etc. Amends 100.361, 101.657, 102.012,.021,.031.

Effective Date: 07/01/2000

Last Action: 6/7/2000 - Approved by Governor; Chapter

No. 2000-249

Bill Text: [Web Page](#) | [PDF](#)

Bill History

Date	Chamber	Action
1/31/2000	House	• Prefiled
2/10/2000	House	• Referred to Election Reform (PRC); Governmental Operations (PRC)
3/6/2000	House	• On Committee agenda-- Election Reform (PRC), 03/08/00, 1:00 pm, 24-H
3/7/2000	House	• Introduced, referred to Election Reform (PRC); Governmental Operations (PRC) -HJ 00062; On Committee agenda-- Election Reform (PRC), 03/08/00, 1:00 pm, 24-H
3/8/2000	House	• Comm. Action: CS by Election Reform (PRC); YEAS 7 NAYS 0 -HJ 00291
3/15/2000	House	• CS read first time on 03/15/00 -HJ 00288
3/14/2000	House	• Pending review of CS under Rule 113 -HJ 00291
3/20/2000	House	• Now in Governmental Operations (PRC) -HJ 00291
3/28/2000	House	• On Committee agenda-- Governmental Operations (PRC), 03/30/00, 9:15 am, 317-C
3/30/2000	House	• Comm. Action:-Favorable by Governmental Operations (PRC); YEAS 6 NAYS 0 -HJ 00417
3/31/2000	House	• Placed on calendar, available for General Calendar -HJ 00417
4/24/2000	House	• Placed on General Calendar • Placed on Special Order Calendar
4/20/2000	House	• Objection filed
4/26/2000	House	• Placed on Special Order Calendar
4/28/2000	House	• Placed on Special Order Calendar; Read second time -HJ 01118; Amendment(s) adopted -HJ 01118
5/3/2000	House	• Read third time -HJ 01457; CS passed as amended; YEAS 117 NAYS 0 -HJ 01457
5/3/2000	Senate	• In Messages
5/4/2000	Senate	• Received, referred to Ethics and Elections -SJ 01148; Immediately withdrawn from Ethics and Elections -SJ 01086; Substituted for <u>CS/SB 270</u> - SJ 01086; Read second time -SJ 01086
5/5/2000	Senate	• Read third time -SJ 01355; CS passed; YEAS 39 NAYS 0 -SJ 01356

Date	Chamber	Action
5/5/2000	House	• Ordered enrolled -HJ 02440
5/26/2000		• Signed by Officers and presented to Governor
6/7/2000		• Approved by Governor; Chapter No. <u>2000-249</u>

Related Bills

Bill Number	Subject	Filed By	Relationship	Last Action and Location
S 270 (c1)	Elections	Sebesta	Similar	Last Action: 5/4/2000 S Placed on Special Order Calendar -SJ 00994; Read second time -SJ 01086; Amendment(s) adopted -SJ 01086; House Bill substituted -SJ 01086; Laid on Table, Iden./Sim./Compare Bill(s) passed, refer to CS/HB 917 (Ch. 2000-249)

Bill Text

Version	Posted	Format
H 917 Filed	8/28/2000 9:14 AM	Web Page PDF
H 917 c1	8/28/2000 9:14 AM	Web Page PDF
H 917 e1	8/28/2000 9:14 AM	Web Page PDF
H 917 er	8/28/2000 9:14 AM	Web Page PDF

Committee Amendments

No Committee Amendments Available

Floor Amendments

H 917 c1

Amendments	Sponsor	Filed	Last Floor Action	Format
514333 - Amendment	Flanagan	4/25/2000 3:30 AM		Web Page PDF
↳ 801857 - Amendment to Amendment (514333)	Feeney	5/3/2000 3:45 AM		Web Page PDF

Bill Analyses

Type	Analysis	Author	Posted	Format
Bill Analysis	H 917	Election Reform (Post-Meeting)	3/6/2000 12:00 AM	PDF
Bill Analysis	H 917	Election Reform (Post-Meeting)	3/8/2000 12:00 AM	PDF
Bill Analysis	H 917	Election Reform (Post-Meeting)	6/21/2000 12:00 AM	PDF
Bill Analysis	H 917	Election Reform (Post-Meeting)	6/21/2000 12:00 AM	PDF
Bill Analysis	H 917	Governmental Operations (Post-Meeting)	3/22/2000 12:00 AM	PDF
Bill Analysis	H 917	Governmental Operations (Post-Meeting)	3/30/2000 12:00 AM	PDF

Vote History - Committee

No Committee Vote History Available

Vote History - Floor

Vote	Date	Chamber	Result
H 917 e1	5/3/2000 9:22 AM	House	117 Yeas - 0 Nays
H 917 e1	5/5/2000 3:47 PM	Senate	39 Yeas - 0 Nays

Citations - Statutes (5)

Citation	Catchline	Location in Bill	Location In Bill Help
100.361	Municipal recall.		
101.657	Voting absentee ballots in person.		
102.012	Inspectors and clerks to conduct elections.		
102.021	Compensation of inspectors, clerks, and deputy sheriffs.		
102.031	Maintenance of good order at polls; authorities; persons allowed in polling rooms; unlawful solicitation of voters.		

Citations - Constitution (0)

No Constitutional citations.

Citations - Chapter Law (0)

No Chapter Law citations.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes.

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STORAGE NAME: h0917s1a.go

DATE: March 30, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: CS/HB 917

RELATING TO: Elections

SPONSOR(S): Committee on Election Reform and Representative Stafford

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ELECTION REFORM YEAS 7 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS YEAS 6 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill provides an alternative method for in-person voting of an absentee ballot by allowing a voter the option of placing the voted ballot directly into a vote tabulation device in lieu of using the absentee mailing envelope. The absentee voter must present an acceptable form of picture identification, complete an In-Office Voter Certificate, vote the ballot, and place the ballot in a vote tabulation device. The results or tabulation may not be made before the close of the polls on election day.

The bill removes the requirement that the election board be composed of a certain number of persons.

Additionally, the bill requires a deputy sheriff to be present at each polling place in lieu of each precinct as currently required by law.

Finally, the bill eliminates the requirement that the supervisors of elections (supervisor) hold formal training classes for poll workers. This allows the supervisor the flexibility to provide training in a manner which would best serve the poll workers and provides compensation and traveling expenses to limited employees who are required to attend the training.

This bill does not have a fiscal impact on state or local governments.

This bill has an effective date of July 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Absentee Ballots

Current law provides a registered voter the opportunity to vote an absentee ballot in-person in the office, and under the supervision, of the supervisor of elections. The voter must present a valid picture identification card prior to receiving the absentee ballot [See generally, s. 101.657, F.S.]. The voter receives the ballot with a secrecy envelope and a mailing envelope, votes the ballot, encloses the ballot in the envelope provided, signs the Voter's Certificate and gives the ballot to the supervisor for presentation to the canvassing board.

Election Boards, Deputy Sheriffs, and Poll Worker Training

Section 102.012(1), F.S., requires the supervisor of elections to provide two election boards each consisting of three inspectors and one clerk for each precinct in which an election is to be conducted. Subsection (1) further grants the supervisor authority to provide for only one election board if the supervisor believes only one is necessary. Moreover, s. 102.012(5), F.S., provides that the supervisor shall appoint additional election boards necessary to conduct an election if a precinct has more than 1000 registered voters, while s. 102.012(6), F.S., requires the need for only one election board if the precinct has fewer than 300 registered voters.

Section 102.012(8), F.S., provides that each supervisor is required to provide poll worker training classes to inspectors, clerks, and deputy sheriffs. In addition, s. 102.031, F.S., provides that each precinct is required to have a deputy sheriff to maintain good order at each precinct's polls. Many counties, however, have several precincts located at one polling place, thereby having more deputy sheriffs than needed to fulfill this requirement.

C. EFFECT OF PROPOSED CHANGES:

Absentee Ballots

This bill provides an alternative means of voting an in-person absentee ballot. A person choosing to vote an absentee ballot in-person in the main or branch office of the supervisor of elections will have the option to place the voted ballot directly into a vote tabulation device in lieu of using the secrecy and mailing envelopes. The voter must provide photo identification and is required to fill out an "In-Office Voter Certificate" (certificate). The certificate must contain an affirmation that the voter is the person listed on the voter registration rolls, an acknowledgment of the penalties for fraudulent voting, the voter's signature and address, and a witness' name, signature and address. A voter must sign the certificate and have the certificate witnessed or the voter's ballot will be invalidated. Since the ballot is voted in-person and under the supervision of the supervisor, this bill allows the vote to be recorded on the vote tabulation device in lieu of being presented to the canvassing board. This follows the same process currently performed at the polling place. The results or tabulation of votes may not be made prior to the close of polls on election day. If an absentee ballot is challenged, it must be placed in a regular absentee ballot envelope and the canvassing board shall review the ballot and determine its validity by majority vote.

Election Boards, Deputy Sheriffs, and Poll Worker Training

This bill removes the requirement that the election board must be composed of a certain number of persons, thereby allowing the supervisor of elections to make this determination. Additionally, the supervisor of elections will have the flexibility to decide the best manner of training poll workers by removing the requirement that training *classes* be held. This bill also provides compensation and travel expenses to inspectors, clerks and deputy sheriffs serving at the precincts for attending poll worker training. Finally, the bill removes the requirement that a deputy sheriff be stationed at each precinct by instead requiring a deputy at each polling place.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 101.657, F.S., to provide an alternative means of voting an in-person absentee ballot at the supervisor's office. The voter may appear at the supervisor of election's office, and may, upon providing picture identification and signing an In-Office Voter Certificate, receive the ballot, vote the ballot, and place the ballot in a voting tabulation device. The results or tabulation of the votes may not be done before the close of the polls on election day. Challenges to in-person absentee voters are conducted in the same manner as challenges to voters at the polls during election day, except that the absentee ballot is submitted to the canvassing board for determination by majority vote of the ballot's validity.

Section 2. Amends s. 102.012(1), F.S., to remove the requirement that an election board be composed of three inspectors and one clerk. Also amends s. 102.012(8), F.S., to remove the requirement that poll workers receive training classes by allowing the supervisor of elections the discretion to decide the best means of providing training.

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Section 3. Amends s. 102.021(2), F.S., to provide compensation to inspectors, clerks, and deputy sheriffs serving at the precincts to receive compensation and travel expenses for attending the poll worker training.

Section 4. Amends s. 102.031(2), F.S., to require the presence of a deputy sheriff at the "polling place" instead of the "precinct."

Section 5. Provides an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Election laws are exempt from the mandates of Art. VII, s. 18, of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

See response above.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

See response above.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 8, 2000, the Committee on Election Reform considered HB 917 and reported it out favorably as a committee substitute. CS/HB 917 removes the requirement that an election board be composed of three inspectors and a clerk. Instead, the Supervisor of Elections will have the discretion to make this determination.

VII. SIGNATURES:

COMMITTEE ON ELECTION REFORM:

Prepared by:

R. Michael Paredes

Staff Director:

Dawn K. Roberts

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Amy K. Tuck

Staff Director:

Jimmy O. Helms

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/CS/SB 866

INTRODUCER: Judiciary Committee, Ethics and Elections Committee, and Senator Constantine

SUBJECT: Elections

DATE: April 18, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kruse	Rubinas	EE	Fav/CS
2.	Maclure	Maclure	JU	Fav/CS
3.			TA	
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill is an omnibus elections measure that contains numerous changes to the Florida Elections Code. Some of the significant provisions include:

- Allowing pre-registration upon a person's 16th birthday.
- Revising the notification procedures for the verification for voter registration applications.
- Removing buyer's club identification and employee badge identification from certain identification provisions to conform to legislation enacted in 2007.
- Allowing changes to a person's party affiliation for an upcoming election after the book closing deadline if the upcoming election is not a primary election.
- Revising registration list maintenance procedures and creating new list maintenance forms to facilitate these procedures.
- Allowing supervisors to remove the name of a deceased voter from the statewide voter registration system if presented with a copy of the voter's death certificate, but also requiring supervisors to send notice to the deceased voter notifying him or her of the ineligibility to vote.

- Revising the precinct-level reporting and voter information requirements to, among other changes, shorten the time frame in which supervisors must report voter history information to the Department of State from 75 days to 45 days after a general election.
- Providing that a person cannot run for a federal office and another office if the terms of those offices overlap.
- Clarifying that local governments do not have to offer early voting for a bond referendum if it is not held at the same time as a county or state election.
- Revising the municipal and charter county recall provisions.
- Providing that initiative petitions may not be bundled with other petitions when they are circulated among the public for signature.
- Providing that a person may submit a petition-revocation form directly to the supervisor.
- Removing the requirement that supervisors record initiative petition and initiative petition revocation information in the statewide voter registration system.
- Providing that in order to lodge a voter challenge, the elector or poll watcher must be from the same county as the challenged voter.
- Providing that if a challenge is filed in advance of Election Day, the supervisor must provide a copy of the challenger's oath to the election board in the challenged voter's precinct.
- Removing some election inspector duties that may conflict with a voter's ability to vote a provisional ballot.
- Removing some outdated references to ballot stubs.
- Giving authority to the Governor to call for a mail ballot election upon issuing an executive order declaring a state of emergency or impending emergency.
- Allowing municipalities to change, by ordinance, their election dates to coincide with a statewide or countywide election.
- Revising poll worker disability training requirements.
- Providing that, for purposes of the 100-ft. no-solicitation zone, the term "solicit" does not include exit polling.
- Providing that supervisors must compare rather than reconcile the number of persons who voted with the number of ballots counted.
- Streamlining the qualifying process for certain special district candidates in accordance with changes made legislation enacted in 2007.
- Allowing local governments to require electronic filing for local officers and candidates if those requirements do not conflict with the electronic filing requirements for candidates who must file with the Department of State.
- Providing that the expenditure of funds for such electronic filing is a valid public purpose.
- Eliminating a requirement for candidates to file a copy of their campaign treasurer information with the local supervisor of elections, when they have already qualified with the Department of State for an office other than a statewide office.
- Repealing a provision that prohibits Agriculture Commissioner candidates from accepting a contribution of more than \$100 from certain businesses.
- Providing for a shorter sponsorship disclaimer for telephone banks distributing electioneering communications, and exempting those communications from needing to have a candidate's written approval.

- Making the Florida Elections Commission the agency head of the commission for all purposes, instead of the commission director.

This bill creates section 98.0655, Florida Statutes, and substantially amends the following sections of the Florida Statutes: 97.012, 97.041, 97.██████████, 97.055, 98.065, 98.075, 98.0981, 99.012, 99.021, 100.221, 100.361, 100.371, 101.041, 101.045, 101.111, 101.23, 101.51, 101.5608, 101.6102, 101.6923, 101.733, 101.75, 102.014, 102.031, 102.112, 103.101, 106.021, 106.07, 106.147, 106.24, and 190.006. This bill repeals sections 101.573 and 106.082, Florida Statutes.

II. Present Situation:

Investigatory Authority of the Secretary of State

Currently, the Secretary of State has the responsibility and authority to “[c]onduct preliminary investigations” of fraud “involving voter registration, voting, or candidate or issue petition activities.”¹

Pre-Registration

An individual may register to vote in accordance with Florida law if he or she is at least 18 years old, a United States citizen, a legal resident of Florida, and a legal resident of the county in which he or she seeks to register. However, individuals who are otherwise qualified to register to vote but are not yet 18 may pre-register to vote on or after the individual’s 17th birthday or upon obtaining a valid Florida driver’s license.²

Voter Registration Applications

The Department of State is required to verify an applicant’s driver’s license number, Florida ID card number, or the last four digits of a social security number that the applicant provides on the voter registration application before accepting the application as valid. If a completed application is received by the book-closing deadline; but the identifier provided by the applicant cannot be verified before the applicant attempts to vote, the applicant must be notified that the application is incomplete and that he or she must provide evidence to verify the number. If the number is verified, the applicant becomes a registered voter. If the number is not verified prior to voting, the applicant must vote a provisional ballot, which is counted only if the application is verified by either the end of the canvassing period, or evidence is presented by the applicant to the supervisor that is sufficient to verify the number on the application. The applicant has until 5:00 p.m. of the second day after the election within which to present this evidence.³ In *Florida State Conference of the N.A.A.C.P. v. Browning*,⁴ a preliminary injunction was granted enjoining the Division of Elections (division) from enforcing these provisions on various grounds, including that these provisions conflict with the Help America Vote Act (HAVA).⁵ Recently, the

¹ Section 97.012(15), F.S.

² Section 97.041(1)(b), F.S.

³ Sections 97.053(6) and 101.048, F.S.

⁴ Case No. 4:07CV-402-SPM/WCS (N.D. Fla. December 18, 2007).

⁵ *Id.* at 10-13.

Eleventh Circuit Court of Appeals overturned the district court's ruling enjoining the division from enforcing these provisions, finding that the federal statutes at issue, including HAVA, do not conflict with s. 97.053(6), F.S.⁶

Identification

Last year, the Legislature passed Council Substitute for House Bill 537 (CS/HB 537), which was approved by the Governor on May 22, 2007. In CS/HB 537, two forms of identification were removed from the list of acceptable forms of identification to be presented at the polls: buyer's club identification and employee badge or identification.⁷ However, voter registration applicants who register by mail, have never previously voted in Florida, and have not been issued a current and valid Florida driver's license, Florida identification card, or social security number must present either a copy of their identification when they register, or present identification prior to voting in person or by absentee ballot. Buyer's club identification and employee badge or identification remain on the list of acceptable forms of identification for these voter registration applicants.⁸

Change of Name, Address, and Party Affiliation

Currently, only name, address, and signature changes are permitted after the book closing deadline for an upcoming election. Party affiliation changes and voter registration applications are still accepted; however, the change or application becomes effective for the next, subsequent election.⁹

Registration List Maintenance

For the purpose of maintaining accurate voter registration records, supervisors of elections must conduct a general registration list maintenance program, which must be uniform, nondiscriminatory, and must comply with several federal voting acts, including the Help America Vote Act of 2002.¹⁰ At least every odd numbered year,¹¹ a supervisor must incorporate one of the following methods in the supervisor's list maintenance program:

- Use of change of address information given by the United States Postal Service through its licensees to identify registered voters whose addresses might have changed;
- Use of change of address information that is known from returned nonforwardable return-if-undeliverable mail sent to all registered voters in the county; or
- Use of change of address information that is known from returned nonforwardable return-if-undeliverable address confirmation requests mailed to every registered voter

⁶ *Florida State Conference of the N.A.A.C.P. v. Browning*, No. 07-15932, 2008 WL 880569 *20 (11th Cir. April 3, 2008) (reversing the district court's decision granting plaintiffs a preliminary injunction and remanding for further proceedings).

⁷ See s. 26, ch. 2007-30, L.O.F.

⁸ Sections 97.0535(3)(a) and 101.6923(2), F.S.

⁹ Sections 97.055 and 101.045, F.S.

¹⁰ Section 98.065(1), F.S.

¹¹ Section 98.065(3), F.S.

who has not voted in the last two years and who did not make any written request to update his or her registration record during that two-year period.¹²

The program must be completed at least 90 days before any federal election, and all actions must be entered, tracked, and maintained in the statewide voter registration system.¹³

If a supervisor receives change of address information from one of the methods listed above, jury notices, the Department of Highway Safety and Motor Vehicles, or from other sources which reveals that a registered voter's legal address might have changed, the supervisor must send the voter an address confirmation notice by forwardable, return-if-undeliverable mail, to the old address. This notice must contain specific information as outlined in the statute so that the voter can send the notice back indicating if his or her legal residence has either moved outside the state, has moved inside the state, or has not changed. The form must be returned within 30 days after the date of the notice.¹⁴

Voters who are sent this notice and do not return the form within 30 days of receipt, along with voters for whom a notice has been returned as undeliverable, must be designated by the supervisor as inactive. Voters on the inactive list may not be used to calculate the number of signatures needed on a petition. An inactive list voter can be restored to active status by updating his or her voter registration, requesting an absentee ballot, or appearing to vote. If no update occurs, or no request for an absentee ballot is made, and the voter does not vote by the second general election after receiving inactive status, the voter's name will be removed from the statewide voter registration system. Thus, in order to vote again, the voter will have to reregister to vote.¹⁵

Deceased Electors

While the statutes authorize that a voter may be removed from the statewide voter registration system if the voter dies,¹⁶ the supervisor must wait to receive this information from the Department of State through the statewide voter registration system before removing the deceased voter.¹⁷ The Department of State receives this information from the Department of Health, which provides a list of information each month to the Department of State regarding deceased persons 17 years of age or older.¹⁸ The current procedure does not allow a supervisor to remove deceased voters from the voter registration system when he or she is presented with information from sources other than the Department of Health or the Department of State, such as a copy of the deceased voter's death certificate. Prior to January 1, 2006, a supervisor could remove the name of a deceased voter from the registration books if the supervisor received information of the voter's death from other sources and verified the information received.¹⁹

¹² Section 98.065(2), F.S.

¹³ Section 98.065(3), F.S.

¹⁴ Section 98.065(4), F.S.

¹⁵ Section 98.065(4)(c), F.S.

¹⁶ Section 98.045(2)(a), F.S.

¹⁷ Section 98.075(3), F.S.

¹⁸ Section 98.093(2)(a), F.S.

¹⁹ See s. 24, ch. 2005-278, L.O.F.; s. 98.093(5), F.S. (2004).

Qualification for Office

Federal Office

Council Substitute for HB 537 removed the resign-to-run law for persons seeking federal office. However, CS/HB 537 also removed the prohibition in s. 99.012(2), F.S. (2006), which prohibited persons seeking a federal office from qualifying for two offices at the same time when the offices have overlapping terms.²⁰ Thus, currently, persons seeking any federal public office may qualify for two offices at the same time even if the offices have overlapping terms.

Special District Office

Special district candidates must qualify for office pursuant to the provisions of s. 99.061, F.S., which requires a qualifying fee of \$25.00 or qualifying by the petition process in s. 99.095, F.S. The qualification process for special district office was standardized in CS/HB 537;²¹ however, the offices for a community development district's board of supervisors were not included in CS/HB 537. Currently, candidates for these offices must qualify by paying a qualifying fee of 3 percent of \$4,800 or the maximum annual compensation provided. The election assessment is 1 percent of the maximum annual compensation provided.²²

Initiative Petitions

Addresses on Petitions

Current law provides that, if a voter, when signing a petition, lists an address that does not correspond with the voter's legal residence address where the voter is registered to vote, the supervisor must treat the voter's signature as if the voter had listed his or her legal residence where he or she is registered to vote.²³

Recording Petition Information

The law requires the supervisor of elections to record in the statewide voter registration system certain information relating to initiative petitions, such as the date petition forms are received and the date the signature on each petition form is determined to be valid.²⁴ This recording requirement also exists for each valid and verified petition-revocation form.²⁵ The information recorded in the system is relied upon by the Secretary of State when making his determination if the required number and distribution of valid signatures has been obtained.²⁶ Within the past

²⁰ See s. 14, ch. 2007-30, L.O.F.; s. 99.012(2), (4), F.S. (2006).

²¹ Sections 16, 52, 53, and 54, ch. 2007-30, L.O.F.

²² Section 190.006, F.S.

²³ Section 99.097(3)(b), F.S.

²⁴ Section 100.371(3), F.S.

²⁵ Section 100.371(6)(d), F.S.

²⁶ Section 100.371(4), F.S.

year, problems were identified relating to the system's ability to accurately record petition signature information.²⁷

Petition Revocation

The law allows an elector's signature on a petition to be revoked within 150 days from the date the elector signed the petition by submitting a signed petition-revocation form to the supervisor. The law specifically provides that the manner in which petition-revocation form signatures are obtained, submitted, and verified must be subject to the same relevant requirements and timeframes as petition forms.²⁸

Petition Bundling

Currently, the Division of Elections (division) has a rule that prohibits the bundling of petitions.²⁹ However, in *Fairdistrictsflorida.org v. Dept. of State*,³⁰ an administrative law judge deemed this rule to be "an invalid exercise of delegated legislative authority." The division filed a notice of appeal in this case on March 28, 2008.

Early Voting and Bond Referenda

Section 100.221, F.S., specifies that the laws governing general elections are also applicable to bond referenda. However, s. 101.657(1)(e), F.S., specifically provides municipalities with the option of early voting for municipal elections that are not held in conjunction with county or state elections.

Charter County and Municipal Recall

Currently, municipal or charter county electors³¹ may choose to remove any municipal or charter county government official, respectively.³² However, a recall petition may not be filed until the municipal official has served at least one-fourth of his or her term of office.³³ The recall petition procedure is briefly summarized below:

Petitions

First, a recall petition must be prepared containing the name of the person sought to be recalled and a statement of grounds for recall,³⁴ which must be limited to the following: malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official

²⁷ See Paige St. John, *State warned of signatures glitch*, FLORIDATODAY.COM, Jan. 14, 2008, available at <http://www.floridatoday.com/apps/pbcs.dll/article?AID=/2008114/NEWS01/801140327/> (last visited Jan. 14, 2008).

²⁸ Section 100.371(6), F.S.

²⁹ Rule 1S-2.009(8), F.A.C., states: "Bundling. No initiative petition form circulated for signature may be bundled with or attached to any other petition form."

³⁰ Case No. 07-5665RX (Fla. Division of Administrative Hearings February 28, 2008).

³¹ A municipality or charter county is referred to as a "municipality." Section 100.361(1), F.S.

³² Section 100.361(1), F.S.

³³ Section 100.361(6), F.S.

³⁴ Section 100.361(1)(a), F.S.

duties, and conviction of a felony involving moral turpitude.³⁵ Upon request, the proponent of the petition should provide the content of the petition in alternative formats. The law specifically lists the number of signatures required for the petition based on the greater of either the municipality's current number of electors or the number of electors at the municipality's preceding municipal election. The electors making the charges in the statement of grounds for recall and the electors signing the petition are referred to as the "committee." A specific person must be designated in the petition to serve as chair of the committee.³⁶

Signatures

Section 100.361(1)(c), F.S., sets forth the requirements necessary for signatures and witness oaths. All signatures must be obtained within 30 days, and the petition must be filed within 30 days after the first signature is obtained.³⁷ The chair of the committee must file the petition with the municipality or charter county clerk. Once the petition is filed with the clerk, the petition and all subsequent papers and forms filed with the clerk must be made available in alternative formats upon request. The petition cannot be amended after it is filed with the clerk. The clerk must then give the petition to the supervisor of elections who must determine if the petition contains the required number of valid signatures within 30 days. The committee or persons seeking verification of the signatures must pay the supervisor 10 cents for each name checked.³⁸

Right to have Signature Removed

Any elector who signs a recall petition has the right to request in writing that his or her name be stricken from the petition. This written demand must be signed by the elector and must be filed with the clerk. The clerk shall then strike the elector's name from the petition and certify this change by placing his or her initials next to the name stricken. However, no signature may be stricken after the clerk delivers the "Recall Petition and Defense," described below, to the supervisor for signature verification.³⁹

Signature Determination

If a determination is made that the petition does not contain the required number of signatures, the clerk must certify this fact to the governing body of the municipality or charter county and file the petition. Any further action will not be taken, and additional names may not be added to the petition. The petition may not be used again.⁴⁰

Recall Petition and Defense

If a determination is made that the petition contains the required number of signatures, the clerk must serve a certified copy of the petition upon the official facing recall. The official has five days after service within which to file a defensive statement with the clerk. The clerk, within five

³⁵ Section 100.361(1)(b), F.S.

³⁶ Section 100.361(1)(a), F.S.

³⁷ *Id.*

³⁸ Section 100.361(1)(d), F.S.

³⁹ Section 100.361(1)(g), F.S.

⁴⁰ Section 100.361(1)(e), F.S.

days, must prepare a sufficient number of copies of the petition and defensive statement, and copies of the names, addresses, and oaths on the original petition. The clerk must deliver these copies to chair of the committee and obtain a receipt from the chair. The clerk's prepared copies are referred to as the "Recall Petition and Defense."⁴¹

The "Recall Petition and Defense" must be signed by at least 15 percent of the electors.⁴² The chair has 60 days from the delivery of the "Recall Petition and Defense" to obtain signatures and file the petition with the clerk. The clerk, after assembling the petitions and checking witness oaths, must deliver the petition to the supervisor, who verifies signatures, purges all names stricken, and certifies within 30 days if the petition contains the requisite number of signatures. The supervisor must report his or her findings to the governing body. The supervisor is also paid 10 cents for each name checked by the committee requesting verification.⁴³

If the required signatures are not obtained, the clerk must report this fact to the governing body, file the petitions, and terminate the proceedings. The petitions cannot be used again. If, however, the required signatures are obtained, the clerk must serve notice on the official being recalled and deliver to the governing body a certificate stating the percentage of qualified voters who signed.⁴⁴

Current law provides specific procedures for the recall election⁴⁵ and the filling of vacancies.⁴⁶ It also provides specific provisions that must be followed if an official being recalled resigns from office.⁴⁷ Prohibited offenses with regard to recall include impersonating another, forging names on a petition, providing false information on a petition, or signing any paper knowing you are not a registered elector of the municipality. Expenditures for campaigns for or against the officer being recalled cannot be made until the date the recall election is publicly announced. A person may not employ or pay someone else to accept employment or payment to circulate or witness recall petitions. Any person who violates any provision of s. 100.361, F.S., commits a second-degree misdemeanor.⁴⁸

Ballots

Section 101.041, F.S., currently provides for voting to be by secret ballot "printed and distributed." However, not all ballots are "printed and distributed." Also, s. 101.5608, F.S., currently makes outdated references to "ballot stubs."

Challenging Voters

Any elector or poll watcher may challenge the right of a voter to vote on election day. The challenger must file a completed oath with the clerk or inspector. Prior to election day, any

⁴¹ Section 100.261(1)(f), F.S.

⁴² Section 100.361(1)(g), F.S.

⁴³ Section 100.361(1)(h), F.S.

⁴⁴ Section 100.361(1)(i), F.S.

⁴⁵ Section 100.361(2), F.S.

⁴⁶ Section 100.361(4), F.S.

⁴⁷ Section 100.361(5), F.S.

⁴⁸ Section 100.361(7), F.S.

elector or poll watcher may challenge a voter if the challenge is made no earlier than 30 days prior to the election. The challenger must file a completed copy of the oath required for making such a challenge with the supervisor's office. The challenged voter must be given a copy of the completed oath registering the challenge, and may vote a provisional ballot. Electors or poll watchers who file challenges shall not be held liable for any good faith action; however, if the challenge is frivolous, the elector or poll watcher commits a first-degree misdemeanor.⁴⁹

Election Emergencies

The Governor has the power to suspend or delay elections upon the issuance of an order declaring a state of emergency or impending emergency.⁵⁰ "Emergency" is defined as any accidental, natural, or manmade accident, or threat of accident, which either results or may result in substantial injury or harm to the public or substantial damage to or loss of property to the extent it will prohibit an election official from conducting an election.⁵¹

The Governor must reschedule an election suspended or delayed due to an emergency within 10 days after the date of the original date of the election, or as soon as practicable. Notice of the election must be published at least once in a newspaper of general circulation in the affected area, and if possible, broadcast on radio and television as a public service announcement, at least one week prior to the election date.⁵²

Poll Workers: Duties and Training

Currently, election inspectors must prevent any person from voting if: the person is not a qualified elector, has become disqualified in the precinct to vote, or has already voted. Furthermore, they can prevent anyone from spending more than five minutes casting a ballot.⁵³

When an elector presents himself or herself to vote and no impediment to voting arises (such as a challenge or no evidence of the elector's name on the voting register) a poll worker must announce the name of the voter and allow him or her to enter the voting booth to cast a ballot.⁵⁴

Poll workers are required to receive mandatory training prior to working each election. This training must include at least one hour of disability training, which is designed to train poll workers on etiquette and sensitivity issues regarding disabled voters.⁵⁵

Exit Polling

Current law prohibits any individual or group from soliciting voters inside the polling place or within 100 feet of the entrance to any polling place. The term "solicit" is defined to include

⁴⁹ Section 101.111, F.S.

⁵⁰ Section 101.733(1), F.S.

⁵¹ Section 101.732(3), F.S.

⁵² Section 101.733(2), F.S.

⁵³ Section 101.23(2), F.S.

⁵⁴ Section 101.51(1), F.S.

⁵⁵ Section 102.014, F.S.

conducting polls.⁵⁶ However, in *CBS Broadcasting, Inc. v. Cobb*,⁵⁷ a federal court determined that the 100-foot no-solicitation zone was unconstitutional as applied to exit polling.

Presidential Preference Primary

Currently, a presidential preference primary candidate may request that the selection committee place his or her name on the ballot if it does not appear on the list submitted by the Secretary of State. If a request is made, the selection committee must reconvene to reconsider placing the candidate's name on the ballot.⁵⁸ This process was ruled unconstitutional in *Duke v. Smith*.⁵⁹

III. Effect of Proposed Changes:

This bill is an omnibus elections measure that contains numerous changes to the Florida Elections Code.

Investigatory Authority of Secretary of State (Section 1)

The bill clarifies that the Secretary of State has authority to conduct preliminary investigations into fraud or irregularities with regard to candidate petition activities.

Pre-Registration (Section 2)

The bill changes the triggering event for individuals otherwise qualified to pre-register to vote by allowing individuals to pre-register on or after the individual's 16th birthday, rather than the 17th birthday, or upon obtaining a valid Florida driver's license.

Voter Registration Applications (Section 3)

The bill amends the acceptance process of voter registration applications by providing that when a completed voter registration application is received by the book-closing deadline but the driver's license number, Florida ID card number, or the last four digits of the applicant's social security number cannot be verified, the applicant shall be notified that the number cannot be verified rather than receiving notification that his or her application is incomplete. Moreover, rather than the applicant providing verification of the authenticity of the number provided on the application, the applicant can provide verification of either his or her driver's license number, Florida ID card number, or the last four digits of his or her social security number regardless of which number was provided on the application. These changes are effective upon becoming law. Currently, a case is pending in federal court regarding s. 97.053(6), F.S., the subsection of law that these changes would affect. Recently, the division was enjoined from enforcing s. 97.053(6),

⁵⁶ Section 102.031(4), F.S.

⁵⁷ 470 F. Supp. 2d 1365 (S.D. Fla. 2006).

⁵⁸ Section 103.101(2), F.S.

⁵⁹ 13 F.3d 388 (11th Cir. 1994).

F.S.⁶⁰ However, on April 3, 2008, the Eleventh Circuit Court of Appeals overturned the district court's ruling enjoining the division from enforcing these provisions.⁶¹

Identification (Sections 4 and 23)

The bill removes employee badge or identification and buyer's club identification from the list of acceptable forms of identification that must be provided at the time of registering or prior to voting for voter registration applicants who wish to vote in-person or by absentee and who registered by mail, have never previously voted in Florida, and have not been issued a current and valid Florida driver's license, Florida identification card, or social security number. This change complies with CS/HB 537 (2007 Reg. Sess.), which removed these forms of identification from the list of acceptable forms of identification that must be presented to vote at the polls.⁶²

Change of Name, Address, and Party Affiliation (Sections 5 and 16)

The bill allows an elector to change his or her party affiliation after the book closing deadline for the impending election if the impending election is not a nominating election. If the impending election is a nominating election, the elector may submit the change; however, the change will not take effect until the next, subsequent election. **(Section 5)**

The bill makes technical changes to s. 101.045, F.S. **(Section 16)**

Registration List Maintenance (Sections 6 and 7)

The bill requires a supervisor, who receives information that a registered voter has changed his or her legal residence within the state, to change the registration records to reflect the new address. The supervisor must then send the registered voter an address change notice. The notice is sent by forwardable mail to the new address. This allows the supervisor to update the record first and then notify the voter instead of having to send notice to the voter and wait 30 days before updating the record. The new language also provides that if the supervisor receives information that a registered voter has moved his or her legal residence outside the state, the supervisor must send an address confirmation final notice by forwardable mail to the registered voter at his or her new address. Voters who are sent an address confirmation final notice who do not return the prepaid, preaddressed return form within 30 days or for whom the notice is returned as undeliverable are designated as inactive. **(Section 6)**

The bill requires the Department of State to develop registration list maintenance forms that must include an address confirmation request, an address change notice, and an address confirmation final notice. The bill requires the inclusion of specific information on the address request form

⁶⁰ *Florida State Conference of the N.A.A.C.P. v. Browning*, Case No. 07-00402-CV-1-SPM-WCS (N.D. Fla. December 18, 2008) (granting plaintiffs' request for a preliminary injunction enjoining the Division of Election from enforcing s. 97.053(6), F.S., on various grounds, including that subsection (6) conflicts with the Help America Vote Act (HAVA)).

⁶¹ *Florida State Conference of the N.A.A.C.P. v. Browning*, No. 07-15932, 2008 WL 880569 (11th Cir. April 3, 2008) (reversing the district court's decision granting plaintiffs a preliminary injunction and remanding for further proceedings).

⁶² See s. 26, ch. 2007-30, L.O.F.

and address confirmation final notice. It also requires that the notices be sent by forwardable mail. The address confirmation final notice instructs the voter to return the form included with the notice within 30 days after the date of the notice if his or her legal residence has not changed or has changed within the state. If the form is not returned, the voter will be designated as inactive. If the voter's legal residence has moved to a location outside the state, the voter should return the form because it serves as a request to be removed from the registration books. The bill also provides that the voter who has moved his or her legal residence outside the state will be provided with information on how to register to vote in his or her new jurisdiction. **(Section 7)**

Deceased Registered Electors (Section 8)

The bill gives supervisors of elections the authority to remove deceased, registered voters from the statewide voter registration system when supervisors receive a copy of a death certificate issued by a governmental agency authorized to issue such certificates. This change becomes effective on July 1, 2008. However, the supervisor must notify the registered voter of the action by mail within 7 days after receipt of the death certificate, thus giving the voter an opportunity to establish that the death certificate is for another person with the same or a similar name.

Voting History Information/Precinct-Level Results (Sections 9 and 21)

The bill amends s. 98.0981, F.S., to shorten the time frame in which supervisors must report voting history information to the department – to 45 days from 75 days after a general election. The report must be in a uniform electronic format specified by the department, with updated voting history information for each qualified voter who voted. The department then must transmit its report within 60 days after the general election to the President of the Senate, the Speaker of the House of Representatives, the Senate Minority Leader, and the House Minority Leader.

The bill repeals the existing statute governing precinct-level reporting (s. 101.573, F.S.) and prescribes revised requirements in s. 98.0981(2), F.S. Within 45 days (compared to 35 in current law) of an election, the supervisors shall submit to the department precinct-level election results in a uniform electronic format. The bill eliminates a requirement in existing law for such results to be submitted following a municipal election or runoff. The bill requires the data to include the aggregate total of all ballots cast.

Further, the department must compile statistical information regarding each precinct after the book-closing deadline. The bill specifies that the public may access the reports relating to voting history, precinct-level results, and precinct-level book-closing statistics.

Qualification for Office (Sections 10, 11, and 35)

Federal Office

The bill makes the provisions of s. 99.012, F.S., applicable to persons seeking federal office by removing an exception to this section for these persons. It also specifically prohibits persons seeking a federal office from qualifying for two offices at the same time when the offices have overlapping terms. **(Section 10)**

The bill removes language in the federal candidate oath that refers to a candidate's requirement to resign from an office pursuant to s. 99.012, F.S., since the resign-to-run law for federal candidates was removed in CS/HB 537.⁶³ **(Section 11)**

Special District Office

The bill removes the specific qualifying fee and assessment provisions for candidates seeking a position on a community development district's board of supervisors. Instead, candidates for these offices must pay a \$25 qualifying fee or qualify by the petition process in s. 99.095, F.S. This change is a continuation of the changes made in CS/HB 537 that standardized the qualifying process for special district candidates.⁶⁴ **(Section 35)**

Initiative Petitions (Section 14)

Petition Bundling

Effective July 1, 2008, the bill prohibits an initiative petition form circulated for signature from being attached to or coupled with another initiative petition form. Currently, the division has a rule that prohibits the bundling of petitions.⁶⁵ However, in *Fairdistrictsflorida.org v. Dept. of State*,⁶⁶ this rule was deemed to be "an invalid exercise of delegated legislative authority." The division filed a notice of appeal in this case on March 28, 2008.

Recording Petition Information

Given the recent problems with recording initiative petition information in the statewide voter registration system,⁶⁷ the bill removes the requirement that the supervisors record initiative petition information in the statewide voter registration system. Rather, it allows for the Department of State to prescribe the manner in which this information must be recorded. Since supervisors must no longer record this information in the statewide voter registration system, the bill removes the requirement that the Secretary of State base his or her determination of verified and valid signatures and the distribution of such signatures upon information contained in the statewide voter registration system. This change becomes effective July 1, 2008.

⁶³ See s. 14, ch. 2007-30, L.O.F.; s. 99.012(2), (4), F.S. (2006).

⁶⁴ Sections 16, 52, 53, and 54, ch. 2007-30, L.O.F.

⁶⁵ Rule 1S-2.009(8), F.A.C., states: "Bundling. No initiative petition form circulated for signature may be bundled with or attached to any other petition form."

⁶⁶ Case No. 07-5665RX (Fla. Division of Administrative Hearings February 28, 2008).

⁶⁷ Paige St. John, *supra* note 27.

Furthermore, the bill provides that an elector may complete and submit a standard petition-revocation form directly to the supervisor. This language clarifies any perceived ambiguity that a person must form a political committee before he or she can submit a petition-revocation form revoking his or her initiative petition. This change becomes effective July 1, 2008. **(Section 14)**

Early Voting and Bond Referenda (Section 12)

The bill provides that a county, district, or municipality does not have to offer early voting for a bond referendum if the election is not held in conjunction with a state or county election.

Charter County and Municipal Recall (Section 13)

The bill clarifies the charter county and municipal recall provisions of the election code. It provides that each signed and dated petition form must be filed simultaneously and no later than 30 days after the first signature is obtained. The supervisor of elections must verify signatures in accordance with s. 99.097, F.S. The bill clarifies that the supervisor must determine in writing if the requisite number of signatures is obtained for the purposes of the recall petition and the recall petition and defense. The bill clarifies that the clerk must make the petition and all subsequent forms and papers available in alternative formats when requested. The bill removes the prohibition from existing subsection (7) [subsection (10) under the bill] that prohibited any campaigning for or against the officer facing recall before the date of the election is announced to the public.

Ballots (Sections 15 and 20)

Since all ballots are no longer “printed and distributed,” the bill removes this phrase from s. 101.041, F.S. **(Section 15)**

The bill removes outdated references to ballot stubs in s. 101.5608, F.S. This change becomes effective July 1, 2008. **(Section 20)**

Voter Challenges (Section 17)

The bill gives registered electors and poll workers the right to challenge a voter in a specific county if the poll watcher or registered elector lodging the challenge is of that same county. The bill clarifies that a challenge can be lodged at either the polling place on the day of election or in advance with the supervisor. If the challenge is lodged in advance, the bill provides that the supervisor must provide a copy of the challenge to the election board in the challenged voter’s precinct.

Poll Workers (Sections 18, 19, and 26)

The bill removes language in s. 101.23(2), F.S., allowing an election inspector to keep a voter from spending more than five minutes casting a ballot. The bill also removes the following election inspector duties contained in s. 101.23(2), F.S., that appear to conflict with s. 101.048, F.S.:

- Preventing a voter from voting a second time when the inspector has a reasonable belief that the voter has already cast a ballot; and
- Preventing any person from voting if he or she is not qualified or has become disqualified to vote.

According to s. 101.048, F.S., if an election official determines that a voter is not eligible to vote or the voter's eligibility cannot be determined, the voter shall be allowed to cast a provisional ballot. **(Section 18)**

The bill revises the procedures of an election official when an elector votes. It removes the requirement that the election official determine if the voter's name is on the election register and that there are no sustained challenges regarding that elector before allowing that elector to vote. It also removes the requirement that the election official announce the name of the elector before allowing the elector to enter the voting booth. This change becomes effective on July 1, 2008. **(Section 19)**

The bill requires that each poll worker must complete disability training prior to working each election cycle, rather than prior to working each election. The bill removes the one-hour requirement for poll worker disability training. It also removes the requirement that each supervisor certify to the Department of State whether each poll worker has completed disability training. This change becomes effective on July 1, 2008. **(Section 26)**

Elections During an Emergency (Sections 22 and 24)

The bill makes a technical, conforming cross-reference change. **(Section 22)**

The bill changes the notice requirements for an election rescheduled due to an emergency. Currently, notice of an election suspended or delayed due to an emergency must be provided by publication in a newspaper and, where practicable, broadcast on radio and television as a public service announcement, at least one week before the election. The bill removes the mandatory language for publication, and allows notice to be provided in any reasonable manner, which can include if practicable, publication or a broadcasted public service announcement, at least one week prior to the election. This change becomes effective on July 1, 2008. **(Section 24)**

The bill also allows the Governor, instead of suspending or delaying an election, to hold an election by mail upon issuing an executive order of a state of emergency or impending state of emergency. This would allow the Governor to utilize a mail ballot election in situations where it would be a danger for persons to congregate in large crowds, such as a pandemic situation. The bill also gives the Department of State rulemaking authority to provide procedures for a mail ballot election when an emergency exists. This change becomes effective on July 1, 2008. **(Section 24)**

Municipal Elections (Section 25)

The bill gives municipalities the ability to change, by ordinance, election dates to correspond to any statewide or countywide election. The bill also removes date specific language regarding the

ability of municipalities to move any scheduled March 2008 election to concur with the presidential preference primary election. This change becomes effective on July 1, 2008.

Exit Polling (Section 27)

The bill provides that the terms “solicit” and “solicitation” are synonymous and that these terms shall not be construed to prohibit exit polling. This change is made in accordance with the ruling of *CBS Broadcasting, Inc. v. Cobb*⁶⁸ and becomes effective on July 1, 2008.

Canvassing Returns (Section 28)

The bill requires that the canvassing board “compare” rather than “reconcile” the number of persons who voted with the number of ballots counted. This change becomes effective on July 1, 2008.

Presidential Preference Primary (Section 29)

The bill removes the ability of a presidential candidate to request that the selection committee reconsider placing his or her name on the ballot when it does not appear on the list submitted by the Secretary of State. This change conforms to the 11th Circuit Court of Appeals’ decision in *Duke v. Smith*.⁶⁹

Candidate Electronic Filing (Section 31)

The bill allows local governments to develop electronic filing requirements for local officers and candidates that do not conflict with the current electronic filing process for candidates who file reports with the Division. The bill also provides that the expenditure of public funds for electronic filing requirements is a valid public purpose.

Campaign Treasurers (Section 30)

Currently s. 106.021, F.S., requires each candidate for nomination or election to office and each political committee to appoint a campaign treasurer. Each candidate who qualifies with the Department of State for an office that is not voted upon statewide (e.g., legislators, multi-county officers) shall file contact information for the campaign treasurer with the supervisors in the county where the candidate resides. The bill eliminates the requirement for those particular candidates to file the contact information.

Commissioner of Agriculture; Contribution Limits (Section 32)

Generally, a person may not make a contribution in excess of \$500 for an election candidate.⁷⁰ Section 106.082, F.S., however, provides that a business licensed as a food outlet or convenience store under ch. 500, F.S.; a director, officer, or lobbyist for such a business; or a committee of

⁶⁸ 470 F.Supp.2d 1365 (S.D. Fla. 2006).

⁶⁹ 13 F.3d 388 (11th Cir. 1994).

⁷⁰ Section 106.08(1)(a), F.S.

continuing existence representing the interests of such a business may not make a contribution in excess of \$100 to a campaign for the position of Commissioner of Agriculture. The bill repeals the \$100 limitation on these contributions to Commissioner of Agriculture candidates, thus subjecting them to the \$500 limit applicable to other candidates.

Telephone Solicitation (Section 33)

Under s. 106.147, F.S., a telephone call in support of or opposition to a candidate, elected public official, or ballot proposal must identify the sponsor of the call with a “paid for by” or “paid for on behalf of” statement. The bill amends this statute to include electioneering communication telephone calls within this requirement. The effect of this change is that telephone banks distributing electioneering communications will have a slightly shorter sponsorship disclaimer.⁷¹ In addition, the bill provides exempts these communications from needing to have written approval of the candidate that the call supports.

Florida Elections Commission (Section 34)

The Florida Elections Commission enforces the campaign finance laws. In addition, the Commission investigates alleged violations upon receipt of a legally sufficient, sworn complaint.⁷² The Commission is created as a separate budget entity within the Department of Legal Affairs, Office of the Attorney General. Section 106.24(1)(a), F.S., specifies that the Commission’s director is the agency head for all purposes. This bill makes the Commission the agency head rather than the director.

Effective Date (Section 36)

The bill specifies that – except as otherwise provided with specific provisions – the bill shall take effect January 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁷¹ Generally, electioneering communications are governed by s. 106.1439, F.S., which requires name *and* address information.

⁷² For additional information, see the Commission’s website, <http://www.fec.state.fl.us/>.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The ability of municipalities to change their election dates by ordinance to coincide with a statewide or countywide election may have some indeterminate cost savings for municipalities. Furthermore, providing that counties, municipalities, and special districts do not have to provide early voting for bond referenda not held in conjunction with a county or state election may also provide an indeterminate cost savings for local governments.

Supervisors of elections may incur expenses related to the provisions of the bill:

- Requiring supervisors to send certain registered voter an address change notice;
- Requiring supervisors to comply with registration list maintenance forms developed by the Department of State; and
- Requiring that voters who have moved out of the state be provided information on how they can register to vote in their new jurisdictions. (**Sections 6 and 7**)

The bill eliminates a requirement for supervisors to record initiative petition information in the statewide voter registration system. (**Section 14**)

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Judiciary on April 16, 2008:**

The committee substitute differs from the prior committee substitute by:

- Removing a provision that would have prevented a petition from being counted if the voter gave a different address on the petition other than his or her legal residence where he or she is registered to vote;

- Requiring that the supervisor of elections notify a voter if the supervisor receives information suggesting the person is deceased and the supervisor plans to remove the name of a deceased voter from the statewide voter registration system;
- Shortening the time frame in which supervisors must report voter history information to the Department of State;
- Repealing existing provisions governing precinct-level reporting and prescribing revised requirements;
- Eliminating a requirement for candidates to file a copy of their campaign treasurer information with the local supervisor of elections, when they have already qualified with the Department of State for an office other than a statewide office;
- Repealing a provision that limits Agriculture Commissioner candidates from accepting no more than \$100 from certain businesses;
- Providing for a shorter sponsorship disclaimer for telephone banks distributing electioneering communications, and exempting those communications from needing to have a candidate's written approval; Making the Florida Elections Commission the agency head of the commission for all purposes, instead of the commission director.

CS by Ethics and Elections on April 1, 2008:

The committee substitute is an omnibus elections measure that contains numerous changes to the Florida Elections Code, most of which were recommended by the Division of Elections (division). The committee substitute differs from the original bill (which was a "shell" bill expressing the intent of the Legislature to revise elections laws) in that it:

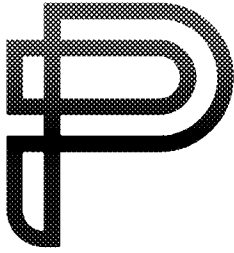
- Allows pre-registration upon a person's 16th birthday.
- Revises the notification procedures for the verification for voter registration applications.
- Removes buyer's club identification and employee badge identification from certain identification provisions in accordance with the removal of these forms of identification from the list of acceptable forms of identification for presentation at the polls in CS/HB 537 which passed last year.
- Allows changes to a person's party affiliation for an upcoming election after the book closing deadline if the upcoming election is not a primary election.
- Revises registration list maintenance procedures and creates new list maintenance forms to facilitate these procedures.
- Allows supervisors to remove the name of a deceased voter from the statewide voter registration system if presented with a copy of the voter's death certificate.
- Provides that a person cannot run for a federal office and another office if the terms of those offices overlap.
- Provides that a petition will not be counted if the voter gives a different address on the petition other than the legal residence where he or she is registered to vote.
- Clarifies that local governments do not have to offer early voting for a bond referendum if it is not held at the same time as a county or state election.
- Revises the municipal and charter county recall provisions.

- Provides that initiative petitions may not be bundled with other petitions when they are circulated among the public for signature.
- Provides that a person may submit a petition-revocation form directly to the supervisor.
- Removes the requirement that supervisors record initiative petition and initiative petition revocation information in the statewide voter registration system.
- Provides that in order to lodge a voter challenge, the elector or poll watcher must be from the same county as the challenged voter.
- Provides that if a challenge is filed in advance of election day, the supervisor must provide a copy of the challenger's oath to the election board in the challenged voter's precinct.
- Gives authority to the Governor to call for a mail ballot election upon issuing an executive order declaring a state of emergency or impending emergency.
- Allows municipalities to change, by ordinance, their election dates to coincide with a statewide or countywide election.
- Revises poll worker disability training requirements.
- Provides that, for purposes of the 100-foot no-solicitation zone, the term "solicit" does not include exit polling.
- Provides that supervisors must compare rather than reconcile the number of persons who voted with the number of ballots counted.
- Streamlines the qualifying process for certain special district candidates in accordance with changes made in CS/HB 537, which passed last year.
- Allows local governments to require electronic filing for local officers and candidates if those requirements do not conflict with the electronic filing requirements for candidates who must file with the Department of State.
- Provides that the expenditure of funds for electronic filing is a valid public purpose.
- Specifies that, except as specifically provided, the effective date is January 1, 2009.

B. Amendments:

None.

EXHIBIT “B”



JUAN-CARLOS PLANAS, ESQ.

MEMORANDUM

TO: Miami-Dade State Attorney’s Office
FROM: J.C. Planas, Esq.
SUBJECT: Paid Petition Gatherers in a Recall Process
DATE: February 11, 2020

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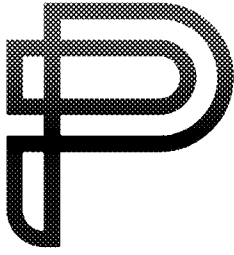
Several Years ago, I presented an argument to your office regarding the use of paid petition gatherers in a recall process. Because I am involved in a current recall in which we intend to pay petition gatherers, I have once again prepared a memo on the subject for your assistance. As we argued previously in a scenario where the State refused to prosecute any case, I have prepared the exact same memo for your assistance.

The Florida Statute that governs this matter is not entirely clear and states at § 100.361(10):

10) OFFENSES RELATING TO PETITIONS.—No person shall impersonate another, purposely write his or her name or residence falsely in the signing of any petition for recall or forge any name thereto, or sign any paper with knowledge that he or she is not a qualified elector of the municipality. No person shall employ or pay another to accept employment or payment for circulating or witnessing a recall petition. Any person violating any of the provisions of this section commits a misdemeanor of the second degree and shall, upon conviction, be punished as provided by law.

LAW FIRM OF JUAN-CARLOS PLANAS, P.A.

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JUAN-CARLOS PLANAS, ESQ.

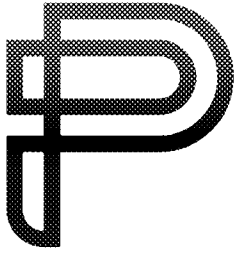
First, nothing in the statute commands or even suggests that a violation of this subsection voids the true signature of a voter who was uninvolved in the circulation process. The First DCA even stated in *Dockery v. Hood*, 922 So. 2d 258 (Fla. 1st DCA 2006) that these types of actions will not cancel out a petition signed by a voter in good faith.

First, a plain reading of the statute is unclear about what the statute is attempting to prevent. The language is cryptic and vague. If the Legislature intended to prevent the hiring of paid signature gatherers, they likely would have stated somewhere in the beginning of the section that all petition gatherers must be volunteers and that no person may accept compensation for circulating a petition. That language would have been clear while this is not. In fact, the vague nature of the language and its placement near the bottom of the statutes, likely suggests that it is language from an earlier version of the statute that was unintendedly left over from a previous amendment process. That was certainly the case in *Dockery*. Besides the vague language, any insistence that this conduct is illegal fails for a more important reason. Even if one were to believe that *assuming arguendo*, the language in the statute was meant to impose criminal penalties for the payment of paid petitions circulators, such penalties are likely unenforceable and may be unconstitutional.

Florida law is based on the foundation that all political power is inherent with the people. As such, the first sentence of the first section of the Article I of the Florida Constitution reads as so. Accordingly, the right of citizens to draft, collect and submit petitions to their government for a multitude of reasons is provided for in the Florida Statutes. Not only do citizens in Florida have the power to collect petitions to amend the state constitution, but to amend their county and

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JUAN-CARLOS PLANAS, ESQ.

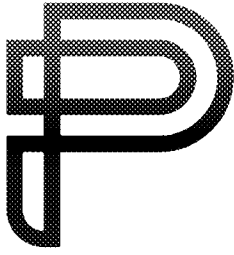
municipal charters as well and it is provided for in the respective petition processes detailed in several different statutes. For example, candidates are allowed to qualify to run for office by the petition process. In all of these aforementioned occurrences, the statutes have no prohibition or threatened criminal penalties for the use of paid petition gatherers. Paid campaign workers are liberally used to collect petitions in all of those uses.

Accordingly, all sections of the statutes that allow for citizen initiatives allow for paid petition gatherers. It would be unlikely, that the intent of the legislature was to create criminal penalties for an action that is allowed in all other political scenarios but one. Prosecutions would be impossible. The state would not meet the burden required to prosecute any individual for the payment of petition circulators in a municipal recall when the use of such campaign workers are not only allowed, but almost universal, in the process to amend the constitution, amend local charters and to place candidates on the ballot. As all of these petition related statutes involve the fundamental rights of voters, including that of free speech in seeking to oust an elected official whom the public believes is not doing his job, the state would have to survive strict scrutiny analysis in the application of such disparate treatment in any attempted prosecution.

In *Miles v. City of Edgewater Police Dept./Preferred Governmental Claims Solutions and State of Florida*, 190 So.3d 171 (Fla. 1st DCA, 2016), the First District stated that freedom of speech is “among the fundamental personal rights and liberties which are secured to all persons by the Fourteenth Amendment against abridgment by a state.” At 178, citing *Thornhill v. Ala.*, 310 U.S. 88, 95, 60 S.Ct. 736, 84 L.Ed. 1093 (1940). The court properly stated that strict scrutiny must be

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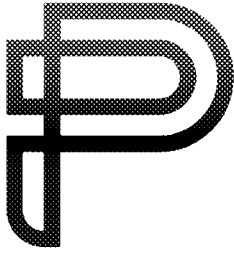
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applied in cases involving freedom of speech. *Id.*, citing *Jacobson v. Se. Pers. Leasing, Inc.*, 113 So.3d 1042, 1048 (Fla. 1st DCA 2013). To survive strict scrutiny, a law must be [a] necessary to promote a compelling governmental interest and [b] must be narrowly tailored to advance that interest,’ and ‘[c] accomplishes its goal through the use of the least intrusive means. *Id.* citing *Jacobson* and *State v. J.P.*, 907 So.2d 1101, 1110 (Fla.2004). There is no compelling state interest in preventing paid petition gatherers solely in a municipal recall when the process is not even prohibited in the Constitutional Amendment procedure. Constitutional amendments have far greater impact on citizens and their rights than a municipal recall ever could. The same is true for a local charter amendment. There is NO compelling government interest when paid petition gatherers can be used to place a candidate on the ballot but are barred in any process to remove that individual from office if they neglect the duties of that office.

As prohibitive as these criminal penalties even are by an equal protection analysis with the Florida Constitution, the general prohibitions of paid petition gatherers in other states have been found in violation of our constitutional free speech protection by the US Supreme Court. In *Meyer v. Grant*, 486 U.S. 414 (1988), the Supreme Court overturned a Colorado law that prohibited paid petition circulators in their initiative petition process. “The refusal to permit appellees to pay petition circulators restricts political expression in two ways: First, it limits the number of voices who will convey appellees’ message and the hours they can speak and, therefore, limits the size of the audience they can reach. Second, it makes it less likely that appellees will garner the number of signatures necessary. ” *Id.* at 423 The Court reasoned that “[L]egislative restrictions on

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advocacy of the election or defeat of political candidates are wholly at odds with the guarantees of the First Amendment.” *Id.* at 428, citing *Buckley v. Valeo*, 424 U.S., at 50, 96 S.Ct., at 650.

The same First Amendment protections are at issue in this matter and thus any law that would restrict the hiring of paid petition gatherers in a recall process, would just as quickly be overturned, especially in light of the fact that the practice is not barred in all other political activities.

While I am certain that you will come to the same resolution in this matter as you did in the Sweetwater recall, I am providing this memorandum in anticipation of our actions because if there is any indecisiveness on your part, it is imperative that we litigate this matter pre-emptively and include the State of Florida and the State Attorney General who must be brought in on any action that would challenge the interpretation and constitutionality of a statute. I welcome any opportunity to discuss this matter further but we will not be deterred and will litigate this if necessary.

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