

# The Legal Nuts and Bolts of County Canvassing Boards

# Composition of Canvassing Board

- Statutory members and chairperson
- Substitutes and alternates
  - The chair decides which of the two alternates will serve as a temporary member in place of a permanent member from meeting to meeting.
  - If not serving, the alternates may observe and communicate with the 3 members serving, but they may not vote.

# Composition of Canvassing Board

- Inability to serve due to a conflict
  - A candidate who has opposition in an election being canvassed; or
  - An active participant in the campaign or candidacy of any candidate who has opposition in the election being canvassed.

# Composition of Canvassing Board

- There are only two ways for an Active Canvassing Board Member to be removed from the Board.
  - Voluntary removal
  - Court Order
- A Canvassing Board Member cannot be removed by a majority vote of the Canvassing Board. (see Dept. of Elections Advisory Opinion 15-03)

# Canvassing in the Sunshine

- Canvassing Board meetings are subject to Florida Sunshine Laws
  - Notice
  - Opportunity for public to attend
  - Minutes of meeting and recordings
- Recent rules
  - Name tags, stronger notice, shorter recess

# Canvassing in the Sunshine

- Must follow the statutes that apply
- Must abide by Sunshine Law the entire time canvassing board is in session
- Penalty for violation of Sunshine Law
  - Noncriminal infraction punishable by fine of \$500
  - Misdemeanor for knowingly attending a meeting not held in accordance with Sunshine Law

# Canvassing Board Legislation

- 2022 changes to Canvassing Board duties contained in SB 90
  - Ballot duplication (s. 101.5614(a))
    - Must allow for observer to see duplicated ballots
    - Must be at least one Canvassing Board Member present
    - Canvassing Board must resolve objections and document unique serial number in minutes
  - Public Inspection of Ballots (s. 101.572)
    - Candidate, party official, committee official, or authorized designee shall be granted reasonable access to review ballot materials (voter certificates, cure affidavits, signatures of voters, duplicate ballots, etc.) prior to canvassing or tabulation
  - May start canvassing vote-by-mail ballots upon the completion of the public test of the automatic tabulation equipment (s. 101.68(2)(a))
  - Each political party and each candidate may have one watcher able to view signature matching and other processes (s. 102.141(2)(a))

# Logic and Accuracy Test

- Logic and accuracy test guarantees accuracy of equipment
  - Programming of equipment, definition of election, functioning of equipment and accurate vote counting
- Predetermined ballots must match predetermined outcome
- Open to the public
- Requires quorum of canvassing board members or an appointee to attend



# Canvassing Vote-by-Mail Ballots

- Vote-by-mail balloting (along with early voting) has become the most prominent method of voting
  - A Covid bump or a permanent trend?
- Canvassing starts upon the completion of the public test of the automatic tabulation equipment
- Must canvass vote-by-mail ballots on election night

# Canvassing Vote-by-Mail Ballots

- Primary responsibility of canvassing vote-by-mail ballots
  - Compare signature to voter records if supervisor has not already done so
    - Must have signature training
    - Standard to reject is beyond a reasonable doubt
  - Determine legality of ballot (right precinct, right party, legal voter, timely receipt, and more)

# Canvassing Vote-by-Mail Ballots

Vote-by-Mail Ballots	Accept	Reject	Notes
VBM returned timely, no other vote cast by voter, ballot certificate signed, and signature matches signature on file for registration books or precinct register. <b>F.S. § 101.68(2)(c)1</b>	X		
UNSIGNED VBM CERTIFICATE Ballot certificate not signed and no cure affidavit received by 5 p.m. on the 2nd day after the election. <b>F.S. § 101.68(2)(c)1, (4)(b)</b>		X	If before deadline then presumptively reject pending cure
Unsigned ballot certificate; cure affidavit timely received; signature does <u>not</u> match signature on file <u>but</u> voter provided required Tier 1 ID which confirms identify. <b>F.S. § 101.68(c)(1), (4)(d)(3)(a)</b>	X		
Unsigned ballot certificate; cure affidavit timely received; signature matches signature on file <u>and</u> supporting Tier 1 or 2 ID confirms voter's identity. <b>F.S. § 101.68(c)(1), (4)(d)(3)(b)</b>	X		

# Canvassing Vote-by-Mail Ballots

Vote-by-Mail Ballots	Accept	Reject	Notes
<p>MISMATCHED VBM CERTIFICATE SIGNATURE</p> <p>Signature on ballot certificate does <u>not</u> match signature on file and no cure affidavit received by 5 p.m. on the 2nd day after the election. Mismatch finding must be beyond a reasonable doubt.</p> <p><b>F.S. § 101.68(c)1</b></p>		X	If before deadline, then presumptively reject pending cure
<p>Signature mismatch; cure affidavit timely received; signature does <u>not</u> match signature on file but voter submitted Tier 1 ID which confirms his/her identify.</p> <p><b>F.S. § 101.68(c)(1), (4)(d)(3)(a)</b></p>	X		
<p>Signature mismatch; cure affidavit timely received; signature matches signature on file <u>and</u> voter has also provided Tier 1 or 2 ID which confirms his/her identity.</p> <p><b>F.S. § 101.68(c)(1), (4)(d)(3)(b)</b></p>	X		
<p>Signed by Power of Attorney or someone else on behalf of voter. Treat as signature mismatch.</p> <p><b>F.S. § 101.68(c)</b></p>		X	If before deadline, then presumptively reject pending cure

# Canvassing Vote-by-Mail Ballots

Vote-by-Mail Ballots	Accept	Reject	Notes
OTHER ISSUES			
Voter deceased after ballot signed; signature matches; ballot postmarked prior to date of death. F.S. §§ 101.68(2)(c)2, F.S. 101.68(1)	X		
Late return ballot. F.S. § 101.65		X	
Voted early or at the polls. F.S. § 101.69		X	
Voter's right to vote has been challenged. F.S. § 101.11			Determined on case-by-case basis

# Canvassing Vote-by-Mail Ballots

- Signature cure and mismatch affidavits
  - Allows voters to cure failures to sign and bad signatures
  - Supervisors must notify voters
  - Must be received by 5 p.m. the 2<sup>nd</sup> day after the election

# Canvassing Vote-by-Mail Ballots

- Tier 1 identification - gold standard
  - Does not require voter signature match
  - Identification must be current and valid
- Tier 2 identification - other documents
  - Requires voter signature match
  - Does not permit use of voter identification card

# Provisional Ballots

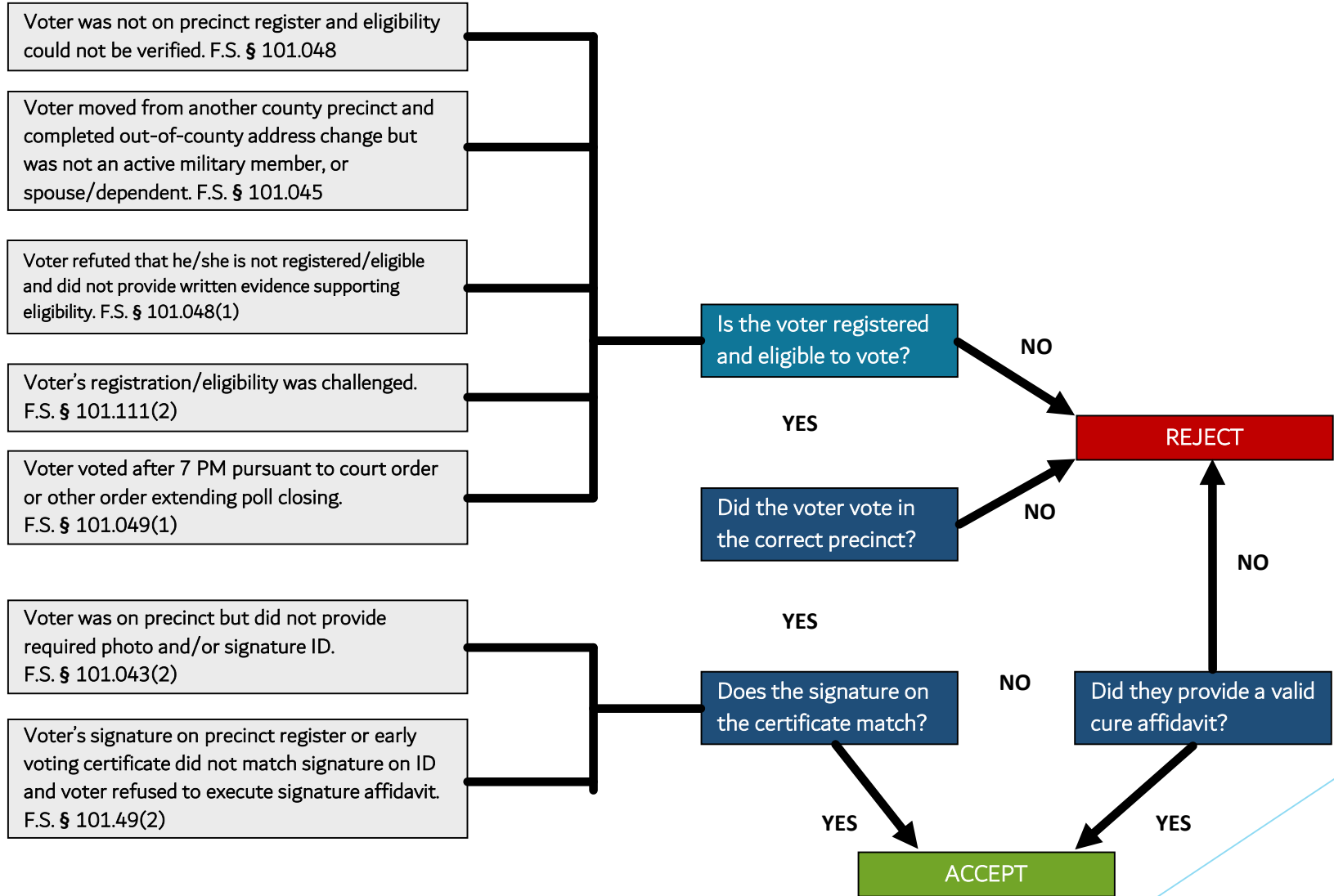
- Allows voters who are told they are ineligible to vote at polls a process of preserving their vote for canvassing board review
- Common reasons: No registration record, wrong precinct, signature at polling place does not match, already voted, incomplete registration, voted after 7:00 on election day
- Voter has until 5 p.m. the 2<sup>nd</sup> day after the election to present evidence of validity.



# Provisional Ballots

- Reject provisional ballots only if a preponderance of the evidence requires rejection
- Signature mismatches on provisional ballots still require proof beyond a reasonable doubt
- Missing and mismatched cure affidavits available in same manner as vote-by-mail ballots

# Provisional Ballots



# Voter Intent

- During ballot duplicated or a manual recount canvassing board may be called upon to determine voter intent
- A voter may vote for a candidate, overvote the race or undervote the race
- Look for consistency first and follow Rule 2.027

# Voter Intent - Examples

## Consistency

<p><b>For Attorney General</b> (Vote for one)</p> <p><input type="radio"/> Lucille Ball</p> <p><input checked="" type="radio"/> Jack Benny</p> <p><input type="radio"/> Desi Arnaz</p> <p><input type="radio"/> Lenny Bruce</p>	<p><b>For Attorney General</b> (Vote for one)</p> <p>Lucille Ball <input checked="" type="radio"/></p> <p>Jack Benny <input type="radio"/></p> <p>Desi Arnaz <input type="radio"/></p> <p>Lenny Bruce <input type="radio"/></p>
<p><b>For Commissioner of Agriculture</b> (Vote for one)</p> <p><input type="radio"/> Jack Ritter</p> <p><input type="radio"/> Audra Lindley</p> <p><input checked="" type="radio"/> Francis Bavier</p> <p><input type="radio"/> Jack Dodson</p>	<p><b>For Commissioner of Agriculture</b> (Vote for one)</p> <p>Jack Ritter <input type="radio"/></p> <p>Audra Lindley <input type="radio"/></p> <p>Francis Bavier <input type="radio"/></p> <p>Jack Dodson <input checked="" type="radio"/></p>
<p><b>For State Representative</b> (Vote for one)</p> <p><input checked="" type="radio"/> Don Nichols</p> <p><input type="radio"/> Michael Ross</p> <p><input type="radio"/> Bernie West</p>	<p><b>For State Representative</b> (Vote for one)</p> <p>Don Nichols <input type="radio"/></p> <p>Michael Ross <input checked="" type="radio"/></p> <p>Bernie West <input type="radio"/></p> <p>Norman Fell <input type="radio"/></p>

## Intent of the Voter

<p><b>For Attorney General</b> (Vote for one)</p> <p><input checked="" type="radio"/> Lucille Ball</p> <p><input type="radio"/> Jack Benny</p> <p><input type="radio"/> Desi Arnaz</p> <p><input type="radio"/> Lenny Bruce</p>	<p><b>For Attorney General</b> (Vote for one)</p> <p><input checked="" type="radio"/> Lucille Ball</p> <p><input type="radio"/> Jack Benny</p> <p><input type="radio"/> Desi Arnaz</p> <p><input type="radio"/> Lenny Bruce</p>
<p><b>For Commissioner of Education</b> (Vote for one)</p> <p><input checked="" type="radio"/> Lucille Ball</p> <p><input checked="" type="radio"/> Jack Benny</p> <p><input checked="" type="radio"/> Desi Arnaz</p> <p><input checked="" type="radio"/> Lenny Bruce</p>	<p><b>For Attorney General</b> (Vote for one)</p> <p><del><input type="radio"/> Lucille Ball</del></p> <p><input type="radio"/> Jack Benny</p> <p><input type="radio"/> Desi Arnaz</p> <p><input type="radio"/> Lenny Bruce</p>
<p><b>For State Senator</b> (Vote for one)</p> <p><input type="radio"/> Lucille Ball</p> <p><input type="radio"/> Jack Benny</p> <p><input type="radio"/> Desi Arnaz <i>This one</i></p> <p><input type="radio"/> Lenny Bruce</p>	<p><b>For Attorney General</b> (Vote for one)</p> <p><input checked="" type="radio"/> Lucille Ball</p> <p><input checked="" type="radio"/> Jack Benny</p> <p><input type="radio"/> Desi Arnaz</p> <p><input type="radio"/> Lenny Bruce</p>

# Election Night

- Canvassing board must report all early voting and tabulated vote-by-mail ballot results within 30 minutes of poll closing
- All other results must be reported every 45 minutes until completely reported
- Canvass until there is nothing left to canvass

# Recounts

- Machine recount
  - Only when a candidate is defeated or eliminated by .5% or less of the total votes cast or a referendum is defeated by that margin
  - Notify affected candidates and public of recount
  - Start with logic and accuracy test of all equipment
  - Run all ballots through tabulating machine and outsource overvotes and undervotes only
  - Recounts are open but limited in participation

# Recounts

- Manual recount
  - Only when ballots counted in machine recount show a candidate is defeated or eliminated by .25% or less of the total votes cast or a referendum is defeated by that margin
  - Notify affected candidates and public of recount
  - Recounts are open but limited in participation
  - Review all outsourced ballots to determine voter intent
  - Can use counting teams

# Post Election Audits

- A public, manual tally or an automated, independent audit (new) of the votes cast
  - Canvassing Board randomly selects between one and two percent of the races and precincts
  - Two person teams that do a manual tally of all ballots
  - Two canvassing board members must be present
  - Report results to state but no effect on outcome of election
  - No audit if a manual recount was required