

**THE BATTLE OVER ELECTION REFORM IN THE SWING  
STATE OF FLORIDA**

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*“After dueling allegations that it was either a protection against voting fraud or a disenfranchisement act, Florida lawmakers on May 5 [2011] approved a 157-page overhaul of the state’s elections code [CS/CS/HB 1355].”*

James L. Rosica, Associated Press.

*“This [HB 1355] is a mean-spirited attempt to disenfranchise Democratic-leaning voters and no more.”* Rep. Franklin Sands, D-Weston

*“This is a great country. Our vote is precious, and we’re going to protect it.”*  
Rep. Dennis Baxley, R-Ocala, sponsor of HB 1355.

### Florida's Growing Political Clout and Partisan Competitiveness

Florida, with its 29 Electoral College votes (an increase of 2 after the 2010 Census), is considered the nation's premier battleground state. It has held that position since the 2000 election when a mere 537 votes separated Republican George W. Bush from Democrat Al Gore in the nation's most contentious and controversial presidential election of modern times. The Republican's ultimate victory after a divided U.S. Supreme Court decision virtually guaranteed that future challenges regarding the integrity of state and local election systems would end up in the courtroom. Predictably, the *Bush v. Gore* 5-4 ruling was and is seen by Florida Democrats as highly partisan in nature. Following that ruling and other close statewide races, election reform in the Sunshine State has increasingly taken on a much sharper partisan edge, particularly with regard to voter eligibility and access (as opposed to election technology).

**Table 1 Florida's Votes in Presidential Elections: 1952-2008**

Year	Republican	Republican (%)	Democrat	Democrat (%)	Third Party	Third Party (%)
1952	Eisenhower	55.0	Stevenson	45.0		
1956	Eisenhower	57.3	Stevenson	42.7		
1960	Nixon	51.5	Kennedy	48.5		
1964	Goldwater	48.9	Johnson	51.1		
1968	Nixon	40.5	Humphrey	30.9	Wallace	28.5
1972	Nixon	71.9	McGovern	27.8		
1976	Ford	46.6	Carter	51.9		
1980	Reagan	55.5	Carter	38.5	Anderson	5.1
1984	Reagan	65.3	Mondale	34.4		
1988	Bush	60.1	Dukakis	38.0		
1992	Bush	40.9	Clinton	39.0	Perot	19.8
1996	Dole	42.3	Clinton	48.0	Perot	9.1
<b>2000</b>	<b>Bush</b>	<b>48.8</b>	<b>Gore</b>	<b>48.8</b>	<b>Nader</b>	<b>1.6</b>
2004	Bush	52.1	Kerry	47.1		
2008	McCain	48.2	Obama	51.0		

Source: Florida Division of Elections.

Close statewide elections in 2008 and 2010 prompted each party to focus on election law changes that broaden (Democrats) or protect (Republicans) their base constituencies. Each party

has proclaimed that *its* reforms are integral to improving the overall integrity of the election system. In 2008, Democrat Barack Obama defeated Republican John McCain by just 2.8% of the vote—the fifth closest vote in the nation. In 2010, Republican Rick Scott won the governor’s race over Democrat Alex Sink by 1.2%—the smallest margin in Florida history.

### **Fears of a Repeat of 2000 Politicize Recent Election Reforms**

The highly controversial 2011 Election Reform Bill<sup>1</sup> politicized the reform process and immediately stirred Democrats’ bad memories of the 2000 presidential race and strengthened their resolve to prevent a repeat in 2012. On the heels of the bill’s passage, the Democratic Governors’ Association ran a Web ad titled “Voter Suppression in Florida” with the language “FL Republicans robbed Al Gore. Now they’re planning to steal the Presidency again, Stop Them today. Sign the Petition” (Leary 2011, May 19). Conversely, Republicans pushing for the 2011 reforms saw them as essential to preventing groups like ACORN (Association of Community Organizations for Reform Now, a collection of community organizing groups from across the U.S.) from fraudulently inflating voter registration rolls with ineligible voters as had allegedly been done in the 2008 presidential election cycle (Hassan 2008, Corbin 2009).

With early prognostications of another “nail-biter” presidential election in 2012, *each* major political party has been focused on positioning itself for contesting or defending the election results should a repeat recount be in the cards. Such a possibility is not as far-fetched as it may seem. Bill Daley, Obama’s former White House Chief of Staff, and a key figure in the 2000 recount battle, has warned the Obama campaign to prepare for a possible recount in key

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<sup>1</sup> Laws of Florida, Chapter 2011-40, [http://laws.flrules.org/files/Ch\\_2011-040.pdf](http://laws.flrules.org/files/Ch_2011-040.pdf)

battleground states like Florida in 2012 (Jackson 2012). Republican legal strategists have issued similar warnings to their party and candidates.

### **Focus of this Analysis**

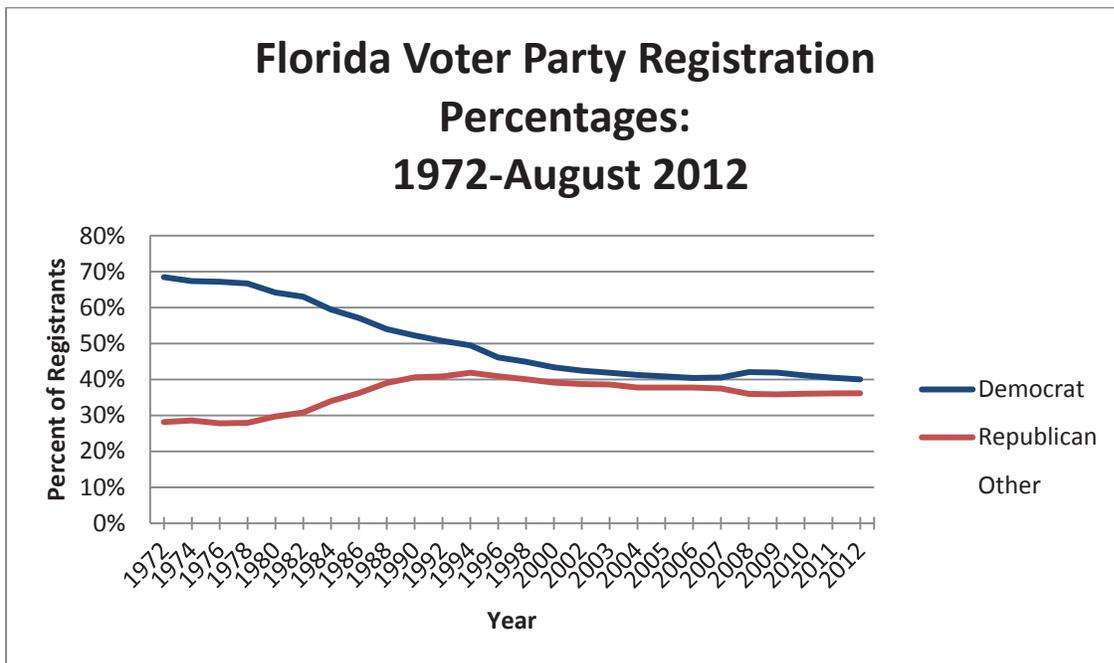
Election reforms adopted over the past two years have altered some of the election reforms enacted in Florida in the decade following the 2000 election meltdown. This article details how increasingly election law proposals have ended up in the crosshairs of partisan politics in this vital swing state. Specifically, this overview of recent election reforms in Florida will show that:

- Party views of what is the biggest threat to the integrity of the election system are strikingly different; for Democrats, it is voter suppression; for Republicans, it is fraud.
- Strong one-party control of both the state legislature and the governor's office enhances the likelihood of the "out" party's use of litigation to challenge the majority party's reforms.
- The closeness of major statewide elections (presidential, gubernatorial) prompts parties to pay more attention to election system reforms. Intense partisanship set in when the Republican-controlled state legislature passed contentious election reforms during its 2011 sessions and the Florida Cabinet reversed the state's procedures to restore the rights of non-violent felons. It hardened even more in 2012 when the Republican governor supported a purge of the voter rolls to cull out non-citizens.
- In a swing state, well-publicized incidences of breaches to the integrity of the electoral system serve to reinforce partisan perspectives, as each side brings real life examples and supporting statistical evidence to the table.

**Florida’s Electorate in 2012: Divided Politically, Diverse Racially/Ethnically**

The escalation in partisan conflict over election reform in Florida parallels the state’s gradual transition from a once solidly Democratic Deep South state to a highly competitive swing state and a key player on the national political stage (see Figure 1). The state’s politics began to change with the end of World War II. It was the beginning of a decades-long population boom that continued into the 2000s. The influx of newcomers from the northeast, Midwest, and Latin and South America markedly transformed Florida demographically, economically, and politically.

**Figure 1. Florida’s Evolution From a Solidly Democratic to a Highly Competitive State**

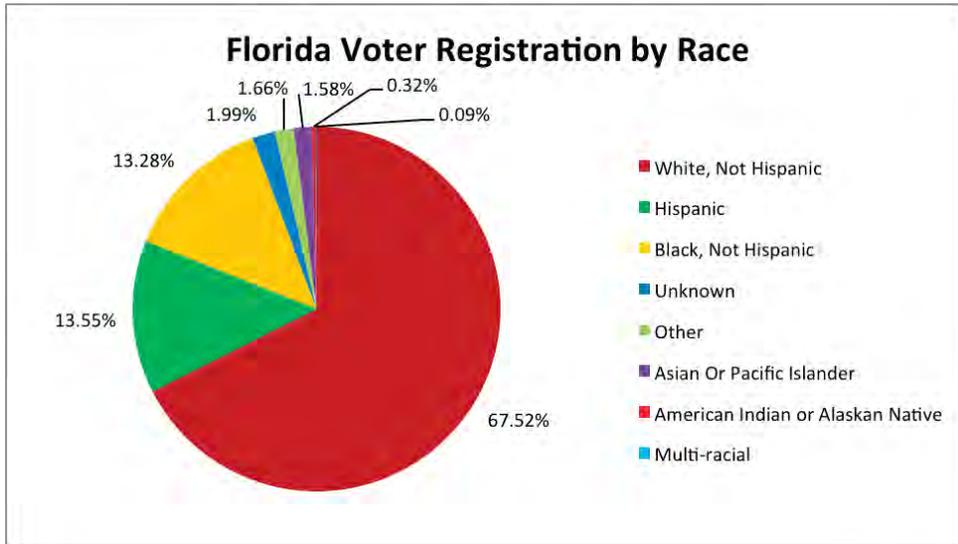


Source: Florida Division of Elections.

In 2012, Democrats comprise 40% of Florida’s registered voters, 36% are Republicans, 20% are registered as independents (no party affiliation), and 4% are affiliated with a minor party. Racial and ethnic minorities make up over one-fourth of all registrants. The proportion of Hispanic and black registrants is virtually identical: Hispanics, 13.55%; blacks, 13.28% (see

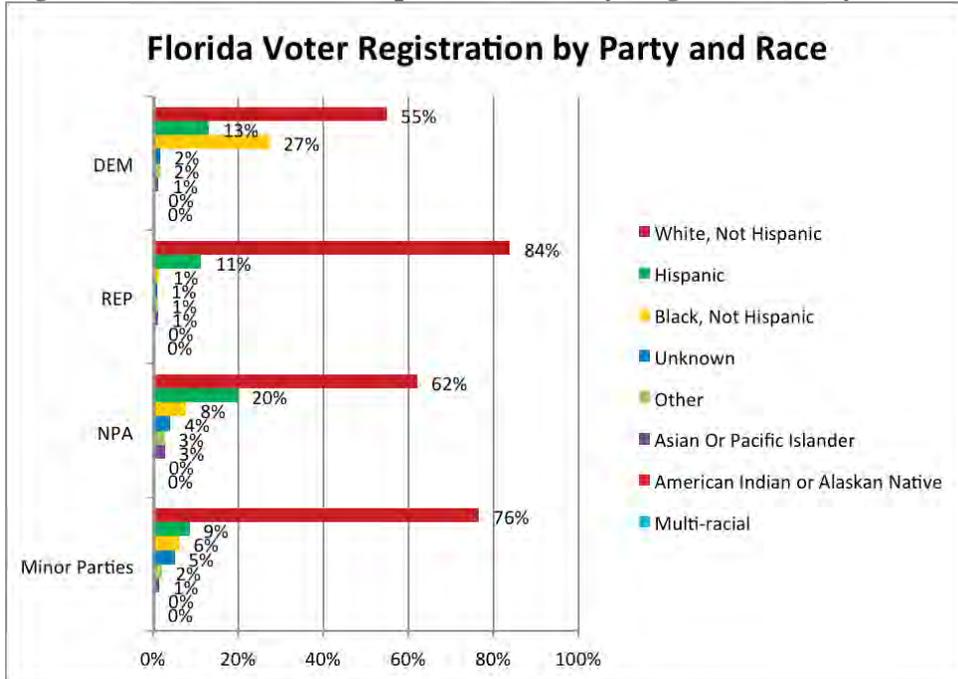
Figure 2). As is true nationally, Florida Democrats are more racially and ethnically diverse than Florida Republicans (Figure 3) but the state’s Hispanics are more politically diverse than Latinos in other large swing states.

**Figure 2. Voter Registration Data: Racial/Ethnic Breakdowns, July 2012**



Source: Calculated from August 1, 2012 data; Florida Division of Elections.

**Figure 3. Racial/Ethnic Composition of Party Registrants, July 16, 2012**



Source: Calculated from August 1, 2012 data; Florida Division of Elections.

### **Historical Context: Partisan *Consensus* Immediately after the 2000 Election Chaos<sup>2</sup>**

The 2000 election put Florida into the national spotlight in a less-than-flattering way. By the end of the 36 days of post-election chaos, the whole world knew of Florida's problems with punch card ballots and their chads, Palm Beach County's oddly-formatted butterfly ballot, spoiled ballots disproportionately cast by uneducated and first time voters, the difficulties of determining voter intent, the lack of a uniform standard for recounts, registration and absentee ballot fraud, the consequences of actions by poorly-trained poll workers, and controversies surrounding the counting of military and overseas voters' absentee ballots. It was clear that the crisis was not merely a function of a close election (a 537 vote, 0.009 percent margin of victory for George W. Bush), but also of antiquated and inadequate election laws and flawed voting equipment.

### **Reforms Easiest Immediately After Chaotic 2000 Election**

Election reforms were fairly easy to push through the Florida Legislature in the two years following the chaotic 2000 election. There was bipartisan support for getting rid of the punch card voting systems that produced the infamous "hanging" chads, particularly since public support for fixing Florida's election system was strong and federal funds were available under the newly-passed Help American Vote Act (HAVA). The pleas to "do something" from constituents back home were heard loud and clear by state legislators from both parties.

Floridians clearly wanted the election system reformed as soon as possible. The results of a statewide public opinion survey<sup>3</sup> were released just as the 2001 Florida legislative session was drawing to a close. Eighty-one percent of those surveyed agreed that Florida's election system needed revamping to make it fairer and more accurate. Three-fourths said it was "very

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<sup>2</sup> Much of this discussion is from MacManus (2001, 2004, 2007, 2010).

<sup>3</sup> The survey of 600 Floridians was conducted April 3-8, 2001. It was jointly sponsored by the Collins Center For Public Policy, Inc. and the James Madison Institute.

important” for the state legislature to tackle reform before Election 2002. Half identified the state legislature as the entity they would hold most responsible for failure should no election reforms be put in place before the next statewide election (2002). What specific reforms did they want? A 2001 statewide survey showed that first and foremost they wanted standardization and uniformity—of voting machines, ballot layout and design, recounting rules (for close elections and for absentee ballots), rules for counting overseas absentee ballots, and poll closing times. There was also significant support for the creation of a statewide voter registration list to help reduce fraudulent voting by ineligible persons, better voter education, better training of poll workers, and an improved voter registration system. State officials responded to the citizens’ demands by enacting reforms in the 2001 and 2002 legislative sessions—prior to passage of the federal Help America Vote Act (HAVA)—and in the 2003 and 2004 sessions after its passage.

### **Legislative Reforms: 2001-2003**

The Florida Election Reform Act of 2001 addressed many of the deficiencies identified by the Governor’s Task Force on Election Procedures, Standards, and Technology<sup>4</sup> and the public at-large. Subsequent reforms passed in 2002 and 2003 further strengthened the election code by making it more compliant with various federal access requirements. The 2002 election reforms were aimed at incorporating suggestions made by the Select Task Force on Voting Accessibility as to how to improve disabled voters’ experiences at the polling place (privacy, accessibility, voting equipment; more sensitive poll workers) and at bringing Florida into

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<sup>4</sup> The glaring deficiencies identified by The Governor’s Task Force on Election Procedures, Standards, and Technology were: A poor voter registration system; No minimum standards for voter education; No minimum standards and hourly requirements for training poll workers; No uniform polling place manual to guide poll workers on Election Day procedures; No unified, user-friendly voting system; No uniformity in ballot designs or voting systems (there were five different systems certified for use); No conditional, or provisional, ballot procedure; No clear timing for certifying election results; No clear statutory guidelines to determine when to grant recounts; No uniformity across counties for contesting an election; and No clear standard for contesting an election.

statutory compliance with the Americans with Disabilities Act.<sup>5</sup> Reforms passed by the Florida Legislature in 2003 focused on refining election laws to secure funding for the state under the Help America Vote Act passed by Congress in late 2002.

### **A Decade of Reforms Yields Calls for More Reforms as Partisanship Intensifies**

Election reform continued throughout the decade following the infamous 2000 election in response to new technologies, new federal mandates, and calls for action by various citizen advocacy and good government groups. As the two major political parties came closer to parity, partisan competition replaced consensus. The list below summarizes the major reforms that took place between 2000 and 2010. The new controversies surrounding some of the earlier reforms are italicized and will be discussed in more detail later in the article.

#### **More Uniformity**

Laws were passed that ensure uniformity across the 67 counties with regard to recount procedures,<sup>6</sup> determination of voter intent, ballot design (type size, placement, etc.), poll worker training—length and content, logic and accuracy testing of equipment, post-election audits, and the distribution and counting of absentee ballots for overseas and military voters. The lack of uniformity between the 5 counties covered under the federal Voting Rights Act pre-clearance requirements and the other 62 counties became an issue in 2012 with regard to early voting days and hours and third-party registration practices. This was a totally unexpected development, especially in light of the fact that unequal treatment of Florida voters in the recount process was what prompted the U.S. Supreme Court ruling that ultimately defeated Democrat Al Gore.

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<sup>5</sup> There is still work to be done. The Florida Legislature voted to delay the requirement for paper-based voting systems for the disabled until 2016, although some counties have already put such systems in place. Others still have disabled voters using electronic touch screens due to the high costs of purchasing paper-based voting systems which many counties say are prohibitive in the current economic downturn.

<sup>6</sup> The authority for ordering statewide or multi-jurisdiction recounts used to be done by the Elections Canvassing Commission (the Secretary of State plus two other state officials). Difficulties in convening the ECC in 2008 led to passage of a new law that now gives the Secretary of State authority for ordering these types of recounts.

## **New Voting Equipment**

Since 2000, the state has abandoned two voting equipment systems. Touch screens, which replaced the much maligned punch cards, were, in turn, replaced by optical scan systems. (July 1, 2008 was the deadline for removal of electronic touch screen machines in the 15 counties that used them.) The **touch screen voting machines** were controversial from the start. Critics attacked them for two major reasons—lack of a paper trail which inhibited manual recounts and fears of partisan-based tampering with election results. The currently used **paper-based optical scan systems** permit more accurate recounts and determination of voter intent should such a question arise. If used at a polling site (as opposed to voting absentee), optical scan systems can inform a voter if he/she has under-voted and will not count an over-voted race. A voter can ask for a replacement ballot in either situation and may also get another ballot should he/she have mistakenly marked the first. There is also now a **ballot-testing law** requiring supervisors to fill in the ovals to test ballots that will be used by voters to ensure that the ballots can be read by the voting equipment. Florida still does not have HAVA mandated voting equipment for some disabled voters in every county; purchase has been delayed, meaning that some disabled citizens have to vote on the now-abandoned electronic touch screen machines. In general, many supervisors are frustrated about the lack of Florida certified accessible equipment for voters with disabilities. There are few choices coming from the election equipment industry.

### **Early (Convenience) Voting—Absentee Ballot or In-Person at Selected Locations**

Early in-person voting gives the voter more choice as to the day and time he/she votes and reduces long lines on Election Day that might deter a voter from casting a ballot. It also makes Election Day less stressful for election officials and poll workers. And, if there are

problems at the polling place (e.g., with identification), the voter still has other times he/she can vote, thereby reducing incidences of disenfranchisement.

Early voting, regardless of its form, is wildly popular among both voters and county election supervisors. Changes in **absentee voting** rules mean that:(1) voters no longer have to give a reason for voting absentee, (2) they may ask to be put on a list of voters to whom absentee ballots are automatically mailed every election<sup>7</sup>; (3) they no longer must have a witness sign their return envelope; (4) they are offered clear instructions reminding them to sign the outside of the return envelope containing their absentee ballot. For **early in-person voting** put in place in 2004, there was uniformity in the length of time set aside for it—beginning and ending dates, types of polling locations to be utilized, and total hours of operation. (The law did give county supervisors of election some flexibility with regard to the specific hours of operation, e.g. on Saturdays and Sundays.) The election reforms of 2011 changed early voting days, times, and procedures, resulting in litigation challenging the changes.

### **More Effective Voter Education**

County supervisors of elections are now required to prepare and use a Voter Guide and make it available on his or her website and at a variety of locations and events. Each supervisor's website must include detailed voter and voting information such as a sample ballot and notice of any change of polling place location. Supervisors are required to conduct voter registration, education, and training programs. For example, they must conduct voter registration/education programs in each public high school and on each college campus in the county. Good government and voting rights advocacy groups challenged the new registration law adopted in 2011 limiting the time by which registration forms gathered by third-party groups had to be

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<sup>7</sup> That law was later changed. Now, voters can ask to automatically receive absentee ballots for two election cycles in a row.

turned in to election official officials and requiring registration groups to register before conducting activities. They feared such restrictions would suppress registration drives by third-party organizations and some groups initiated litigation against the requirement.

### **Centralized Voter Registration System (Florida Voter Registration System—FVRS)**

The federal Help America Vote Act of 2002 required all states to create an official, uniform and nondiscriminatory statewide computerized voter registration list that is centralized and interactive by January 2006 which Florida did. The FVRS allows local election officials to enter information into the state's election database, while maintaining access to their local data. It does, however, require that the Secretary of State be given the overall responsibility and authority for the uniform voter registration list. The centralized voter registration file has helped eliminate duplicate registrations. However, the state's efforts to purge non-citizens from voter registration rolls led to litigation challenging the procedure. It also created tensions between the state Division of Elections and county elections supervisors over the accuracy of the state's non-citizen voter lists.

### **Better Protection against Disenfranchisement at the Polls**

The Voter's Bill of Rights and Responsibilities must be posted at each polling place and at the county supervisor's office during the early voting period and on Election Day. Voters who cast provisional ballots at a polling place must receive a written notice of their rights which includes information about how to certify their eligibility and informing them of their right to find out if their ballot was counted and if not, the reason why. To make sure that poll workers properly implement election procedures and laws, a Polling Place Procedures Manual must be made available. Certain aspects of provisional ballots were under attack in 2012, namely requiring their use by voters who move to a new county, then ask to change (update) their

address at their new polling place on Election Day. Previously, these movers could vote using a regular ballot rather than a provisional ballot which had to be validated later by a county canvassing board.

### **A Better System for Protecting the Voting Rights of Military and Overseas Civilian Voters Who Need to Vote Absentee**

In 2010, the state legislature passed legislation implementing key provisions in the federal Military and Overseas Voter Empowerment (MOVE) Act. The legislation requires that absentee ballots for all elections be sent at least 45 days before an election to all military and overseas voters. It mandates an email transmission of blank absentee ballots to all military and overseas voters for any election upon their request. The MOVE Act also requires that these voters be able to track the status of their absentee ballot—when a request for an absentee ballot is received, when it is mailed, and when it is returned. These voters have the option of returning their ballot by mail or by fax, but not via email. Information about the process is posted on supervisors' websites. County election supervisors can communicate directly with these voters via email which is faster and more efficient than via regular mail.

### **A Better System for Checking Voter Ineligibility Due to Mental Incapacity or a Felony Conviction**

In 2005, Florida Department of State established a new Bureau of Voter Registration Services that is charged with conducting research to determine a person's potential ineligibility on the basis of a court order of mental incapacity or a felony conviction. In 2009, the Bureau began checking the legal status of thousands of alleged felons to determine whether they should be removed from voter registration rolls. Data from the Department of Corrections, Department of Highway Safety and Motor Vehicles, Florida Department of Law Enforcement, and the county Clerks of the Circuit Courts are used to verify ineligibility.

Procedures are in place that must be followed by local supervisors of elections in notifying felons, giving them a hearing if requested before removing them from the voter roll, and informing them of how to request restoration of their voting rights from the Office of Executive Clemency. A huge backlog of felon-status determinations was pared down considerably in the mid-2000s, although some backlog still exists. In 2011 and 2012, Democrats and voting rights advocacy heavily criticized the state's restoration of felons' rights and the notification process. In 2010, the Florida Cabinet reversed a prior Cabinet's decision to automatically restore voting rights for non-violent felons.

### **Election Reforms of 2011 and 2012: Partisan Conflicts Escalate and Dominate**

Florida's current election reform controversies mirror those identified in a widely-cited study by the Brennan Center for Justice (Weiser and Norden 2011). Partisan-based differences have erupted over laws and executive orders regarding voter registration processes, early voting, proof of citizenship, and felons' voting rights.

### **The Election Reform Act of 2011 (HB 1355): The Intense Partisan Battle Begins**

In May, 2011, the GOP-controlled Florida Legislature passed a sweeping election reform bill, (HB1355) signed into law by Republican Governor Rick Scott. (See overview in Table 2.) The law's most controversial components are those related to registration of voters by third-party groups and organizations (Sec. 4), early voting (Sec. 39), the process for voters with changes of address on Election Day at polling precincts (Sec. 26), and the length of time voter signatures on constitutional amendment petitions are considered valid (Sec. 23).

The partisan battle heated up immediately after passage of HB 1355. Democrats saw it as the GOP stacking the deck for the 2012 election:

## **Table 2. Most Contested (Litigated) Elements of 2011 Major Election Bill**

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CS/CS/HB 1355 was an omnibus elections bill consisting primarily of the Secretary of State's election administration and campaign finance packages, along with numerous other significant changes to the Florida Election Code. The most highly contested and litigated portions of the bill were:

- **Early Voting:** providing for a more compressed, 8-day early voting period that's closer to Election Day — from the 10<sup>th</sup> to the 3<sup>rd</sup> day before the election — while maintaining the current 96 total hours of early voting should supervisors deem it necessary in their counties; requiring early voting at each site to be open for a minimum of 6 hours and a maximum of 12 hours per day.
- **Third-Party Voter Registration Organizations:** requiring such groups to submit voter registration applications within 48 hours of receipt instead of 10 days, identify and register registration agents collecting applications, and act as a fiduciary to voters whose applications have been collected; requiring registration forms to contain certain identifying information; mandating that the Florida Division of Elections maintain a database of forms issued to third-party voter registration groups; applying the provisions of this section retroactively to existing third-party voter registration groups.
- **Address Changes at the Polls:** allowing voters to continue to change their addresses on Election Day and still vote a regular ballot, provided the elector is: 1) voting in the same county in which they originally registered to vote; or, 2) an active military member or in the same family with an active military member. Other electors making inter-county address changes at the polls would now be required to vote a provisional ballot.
- **Citizen Initiative Petitions:** reducing the shelf-life of initiative petition signatures proposing constitutional amendments from 4 years to 2 years.

*Vote: Senate 25-13; House 77-38; Vote in Senate: Yes-25 Rs; No-11Ds, 2Rs; Vote in House: Yes-79Rs; No: 39 Ds, 4 not voting. These provisions took effect after being signed into law by Gov. Rick Scott (R) on May 11, 2011.*

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Note: Less controversial portions of the bill addressed Joint Resolutions, Reporting Election Results, Presidential Preference Primary Date, State Primary Date, Party Switching, Binding Directives, Absentee Ballots, Election Law Violations, Voter Information Cards, Poll Watchers, Random Audits, Campaign Finance Automatic Fines, County Candidates/Reapportionment)

Source: The Florida Senate; <http://www.flsenate.gov/Committees/BillSummaries/2011/html/1355EE>; accessed August 3, 2012.

If I didn't know better, I'd swear our elected leaders in Tallahassee are more fixated on Nov. 6, 2012 than July 1, 2011, the start of Florida's new budget year. If the GOP thinks Florida's still in play in the upcoming presidential election, they can rest easy. Florida Republicans are doing their part with a variety of political parlor tricks that will

undermine efforts to replicate the 2008-sized turnout that put our state in the Democratic win column (Lyons 2011).

Republicans saw it in large part as protecting the elections system against fraud.

Legal challenges to each of the four controversial parts of the legislation have been filed at the state and federal levels by Democratic Party officials, activists, and voting rights advocacy groups in anticipation of another very close presidential election in 2012. Similar challenges have been made to the purging of non-citizens from voter rolls ordered by the Governor and administered by the Department of State's Division of Elections,<sup>8</sup> and to a reversal of the criteria for restoring felons' voting rights by the state's Clemency Board.

### **Registration of Voters by Third-Party Organizations**

One of the most contentious changes under HB 1355 imposed stricter requirements on groups that register new voters. They are required to register with the state, file regular reports, and turn in completed voter registration forms to county supervisors of elections within 48 hours. There is a \$50 fine for each late form, with an annual cap of \$1,000 in fines per group. Lawsuits against these new provisions were immediately filed in both state and federal court and registration-oriented groups like the League of Women Voters and Rock the Vote halted their registration drives. When several high school teachers were cited for violating the 48-hour rule by registering high school seniors, public outrage toward the law intensified (Bousquet 2011, December 13; Bousquet 2012, January 27).

Not surprisingly, Democrats cast the law as “politically motivated and designed to curtail voting by Democrats.” State officials countered that “the law was intended to make sure voters

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<sup>8</sup> At the time the legal challenges were made, the “purge” had simply been the state sending lists of potential non-eligible voters to the local supervisors, triggering the requisite notice and hearing processes, rather than the actual removal of a voter from the registration roll.

had their registrations handed in quickly and that outside groups did not overwhelm local elections officials by delivering piles of registration forms all at once” (Cooper and McGinty 2012). Some Republicans argued “that it was meant to halt fraud at the polls and to stop groups like the now-defunct ACORN from conducting massive and controversial voter-registration drives” (Kennedy 2011). Other Republicans reminded opponents that Democrats had promoted similar legislation in 2008 to stop “voter registration caging” by Republicans. Once the federal district court in Tallahassee put a temporary halt to the new procedure (May 31, 2012), groups like the League of Women Voters of Florida resumed registering voters (A. Smith 2012). The halt was made more permanent by order of the same federal judge on August 28 (Giunta 2012a).<sup>9</sup> The order effectively restored the 10-day deadline for submitting completed voter registration applications to local election officials. The deadline to register to vote in the 2012 presidential election is October 9.

The court-ordered restoration of the 10-day window has not totally appeased voter advocacy groups. Several widely-cited reports of new registration totals, including one by the *Florida Times-Union*, found a larger drop-off in Democratic than Republican registrations between July 2011 and August 2012 (*Tampa Bay Times* 2012b, Stockfish 2012b). This, in turn, sparked claims that the now-rejected law had already suppressed minority votes (Carpenter 2012). However, another analysis found that “the registration law hasn’t disproportionately

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<sup>9</sup> Technically, the ruling was a final indicative ruling. (It was an “indicative ruling” because the judge was unable to issue his definitive ruling until the U.S. Court of Appeals for the Eleventh Circuit returned the case back to the judge. The state terminated its appeal and the plaintiffs agreed not to appeal it in the future.) The same ruling reversed the judge’s earlier ruling that temporarily prohibited the state from implementing a statutory requirement (Section 97.0575(1)(c), Florida Statutes) that voter-registration organizations provide to the Division of Elections “[t]he names, permanent addresses, and temporary addresses, if any, of each registration agent registering persons to vote in this state on behalf of the organization.” But the judge left in place the earlier prohibition against the statute’s requirement that such information be required of “volunteer registration agents or employee registration agents who solicit but do not collect or handle voter registration applications.” State election officials saw the requiring of names of those officially registering voters as an essential mechanism to ensuring “that third-party voter registration organizations are held accountable for the applications’ accuracy and validity” (Giunta 2012a).

impacted minorities as much as advertised. Since the law's passage, Democrats made up ground in regions with the most blacks and Hispanics," specifically Broward, Miami Dade, and Palm Beach counties (Carpenter 2012). State election officials also cautioned against concluding that the law was the sole reason for a drop-off in Democratic registrants: "It's very misleading to suggest third-party groups are the reason for an increase or decrease [in the number of new voters registered]. Voter enthusiasm and proximity to a major election are much more significant factors" (Dixon 2012, August 29). The controversy will no doubt continue and may reappear as an issue in any post-election litigation.

### **Early Voting.**

HB 1355's changes in early voting have been highly controversial, particularly changes in the days and hours of operation. In general, "proponents say it is a money-saving move. Critics say it's aimed at suppressing Democratic votes because statistics show more Democrats take advantage of early voting than Republicans" (Rosica 2011). The law reduces early voting days from 14 to 8, but does allow local election officials to extend voting hours to a maximum of 12 hours per day.<sup>10</sup> Perhaps the most controversial aspect of the law is the elimination of early voting on the Sunday before Election Day. Minority leaders, Democrats, and voting rights groups have labeled it as discriminatory because historically it has been a day that black churches have taken groups of people from church to the polling place (a practice known as the "Souls to the Polls"). Republicans have, in turn, "questioned whether churches busing people to the polls could legally retain their nonprofit status" and argued that "nothing in the new law includes any reference to race, gender, or country of origin" (Kennedy 2011).

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<sup>10</sup> County election supervisors were given the discretion to open the polls for as many as 96 hours or as few as 48 over those eight days. Ultimately, Governor Scott urged all counties, including the five Voting Rights Act-covered counties, to provide 12 hours of early voting on each of the eight days, for a total of 96 hours (Hamilton 2012).

The early voting changes were still in the courts by the time of the state's August 14, 2012 primary. For that election, early voting days/hours for the five counties requiring preclearance by the federal government (either DOJ or federal district court in DC) differed from those for the other 62 counties. The pre-clearance counties operated under the old law, the others under the new. It was the first time the state had moved forward with implementing election law changes before the changes had been approved (pre-cleared) by federal officials for the five VRA Section 5 counties. Instead, the state ordered the changes to be implemented immediately in the 62 non-pre-clearance counties, while leaving the old laws in place in the five preclearance counties until approved by federal officials. This lack of uniformity in the state's election laws garnered considerable attention, prompting former Governor and U.S. Senator Bob Graham to warn of a possible repeat of the 2000 election chaos (Graham 2012). "We [could] have 60-plus systems operating in Florida—and as we learned in 2000—one of the things that makes you vulnerable to litigation, is if your election is not consistent and equal throughout the state" (Scicchitano and Backman 2012).

On August 17, the U.S. District Court for the District of Columbia refused to pre-clear the portion of the new election law reducing the number of early voting days, ruling that it could adversely affect African Americans' turnout in the five VRA counties (Fineout 2012c) and was "analogous to closing polling places in disproportionately African-American precincts" (Bousquet 2012e). However, the three-judge panel did suggest a way for the state to put an early-voting plan in place that the court *would* approve: "In sum, the record evidence persuades us that, if the covered counties offer the maximum available early voting hours each day on a standard 7 a.m. to 7 p.m. schedule, the negative effect of reducing the number of days from 12 to 8 would likely be offset by the ameliorative effects of adding non-working weekday hours, a

Sunday, and additional weekend hours” (Tinkler 2012a). State minority elected officials strongly urged Governor Scott to take action to standardize early voting procedures in all 67 counties to avoid confusion (Call 2012a, 2012b). The state responded by filing papers with the D.C. court arguing that 96 hours of early voting from 7 am to 7 pm for 8 days, including a Sunday (October 28) would make the state compliant with the federal Voting Rights Act (Bousquet 2012f). Four of the five VRA county supervisors of elections agreed to the state’s plan, while one (Monroe) initially did not, but ultimately did so.<sup>11</sup> (It is important to note that the supervisor filed a statement with the court arguing that the 12-hour 8-day fix probably would result in lower minority turnout.) On September 12, the U.S. Department of Justice formally accepted the state’s proposal and pre-cleared the law in the five VRA counties (Fineout 2012e). The need for uniformity was on the minds of many (Rathgeber 2012). But the DOJ approval was not the end of the early voting controversies.

On September 11, U.S. Congresswoman Corrine Brown, D-Jacksonville, an African American, filed a lawsuit in federal court in Jacksonville seeking a return to the old 14-day early voting schedule, including the Sunday immediately preceding Election Day. Immediately, three county Republican Party leaders (in Broward, Clay, and Sarasota counties) filed a statement with the court opposing the return to the 14-day period, arguing that it “would be disruptive and siphon precious volunteers away from get-out-the-vote activities.” “The additional four days of early voting that would be allowed would cause significant prejudice to the Republican Party of [my] county and divert valuable resources away from other projects that the party had previously planned to undertake and use them to recruit, train, and oversee employees and volunteers for the

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<sup>11</sup>Some Democrats accused Governor Scott of “bullying” the Monroe Supervisor of Elections into accepting the proposal (Larrabee 2012c). The supervisor, Harry Sawyer, felt badgered himself (Fineout 2012b). He criticized the state’s 96-hour requirement, 8 day- requirement as an unfunded mandate because it will necessitate overtime pay (Call 2012c). He also was skeptical that that minority turnout would be as high as it has been over a longer early voting period.

additional early voting days.” Brown responded with a news release stating “This motion confirms what we already know. Republicans don’t want people to vote. There’s no other explanation for their repeated attempts to restrict early voting” (Bousquet 2012b). The hearing on Brown’s case was held on September 19.

On September 24, U.S. District Judge Timothy Corrigan denied Brown’s request to issue an injunction against the reducing the number of early voting days ahead of the November 6 election: “Because Florida’s Early Voting Statute allows early voting during non-working hours, as well as voting during the weekend, including one Sunday, voting times which are important to African-American voters, as well as to (get out the vote) efforts, the court cannot find that the 2011 Early Voting Statute denies equal access to the polls” (Larrabee 2012b). While the decision technically does not end the lawsuit, it almost certainly assures that no reversal back to the 14-day early voting period will occur in time for the 2012 presidential election.<sup>12</sup> But it does *not* address the bigger concern—the lack of uniformity across Florida’s 67 counties with regard to the total number of hours early voting will be conducted during the 8 days stretching from October 20 to 27. With the exception of the 5 pre-clearance counties which are bound to offer the full 96 hours, the other 62 counties can provide anywhere from 48 to 96 hours of early voting. Some of the state’s rural counties will not offer the full 96 hours of early voting for a variety of reasons, including limited funding from their county commissions. But as Brown noted in a post-judicial ruling interview, most of the state’s urban counties in northeast Florida, Orange, and South Florida, as well as several counties with large concentrations of students, have told the state they will be open the full 96 hours authorized under the law (Fineout 2012d).

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<sup>12</sup> The parties to the lawsuit do not have to inform Judge Corrigan whether they want to continue the litigation until December, 2012—after the election (Larrabee 2012b).

### **Changes of Address on Election Day at Polling Precincts**

Another extremely controversial portion of HB 1355 (also challenged in court) requires voters who have moved from one Florida county to another and want to update their name or address at their new polling place on Election Day to vote using a *provisional* ballot instead of a regular ballot. For provisional ballots to count, the person must later provide proof of their eligibility to vote. Democrats say this new process “will hurt voters who try to make changes at the polls, such as students, those at the poverty level, military people and minorities who tend to move more” (Kennedy 2011). Republicans argue the requirement is meant to halt fraud at the polls and that provisional ballots *are* counted when cast by an eligible voter. (Gov. Scott acknowledged that he once had to cast a provisional ballot and was confident his vote was counted; Caputo 2012b.)

This portion of the new election law, like that affecting early voting, had not yet been cleared by DOJ or the federal district court at the time of the August 14 primary, thereby creating a dual system of voter address changes and type of ballot to be cast at voting precincts on Election Day. Later, the three judge federal district court in DC ultimately upheld the new law requiring voters who move from one county to another, then change their address on Election Day, to cast a provisional ballot. They must then confirm their new address within two days (Magoc 2012).

### **Length of Time Voter Signatures Valid on Constitutional Amendment Petitions**

Florida is a state where constitutional amendments are often used as voter mobilization tools by both parties (MacManus, Jewett, Dye, and Bonanza 2011). HB 1355’s reduction of the time petition signatures are valid from four year to two years was seen as highly partisan by opponents. Democrats perceived that “Republicans in the Legislature [were] cranking out a slew

of constitutional amendments giving their already ginned-up base more reasons to vote in 2012—as if the chance to oust President Barack Obama wasn’t enough” (Lyons 2011). Republicans argued that the change was necessary because “people may feel coerced into signing [a petition] and then change their minds” (Rosica 2011). Another criticism of the new limits on signatures is that it “will make it harder for low-budget advocacy groups to collect signatures for petition drives, while big-money interest groups...should not be impacted by the tighter deadlines” (Dunkelberger 2012). This component of HB 1355, like the three previously discussed, was challenged by a number of groups first in the U.S. Department of Justice (DOJ), then in the federal district court in D.C.

### **GOP Executive Officials’ Action Further Enrage Democrats; Raise Concerns among County Supervisors of Elections**

Partisan battles over actions taken by Republican executive branch officials have been in the spotlight in 2012, although one took place in March 2011 (change in policy regarding the restoration of felons’ voting rights), while the other created a storm in the summer of 2012 (Gov. Scott suggested that the Florida Division of Elections begin the process of purging the names of non-citizens from the voter registration rolls). Each action roiled Democrats both in Florida and in Washington.

### **Restoration of Felons’ Voting Rights**

Florida is one of four states that does not automatically restore a felon’s voting rights upon completion of the terms of his/her sentence. Here, felons who have paid restitution and who have not been convicted of a certain class of offenses may have their civil rights restored by petitioning the state’s Board of Executive Clemency. Once the Board has restored a person’s rights, the individual can register to vote. The Florida Parole Commission's Web site enables a

felon to determine whether or not their rights have been restored. This is a rather complex and time consuming process, one that has become more difficult again since 2011.

For years, the Clemency Board, comprised of the Governor and the three-member Cabinet, had a huge backlog of requests for reinstatement of civil rights. Lawsuits and threats from groups like the ACLU routinely asserted that the law disproportionately impacts African Americans because a higher percentage of that population has been convicted of felonies. In 2007, in response to complaints from civil rights groups, the Office of Executive Clemency, led by then Governor Charlie Crist, a socially-moderate Republican, voted to amend the state's voting rights restoration procedure to automatically approve the reinstatement of rights for many persons who were convicted of non-violent offenses. This decision was reversed in March 2011 by a much more conservative governor (Scott) and an all Republican Cabinet. (The previous Clemency Board had a Democratic member—Alex Sink, the state's Chief Financial Officer.)

Now persons seeking rights restoration must wait at least five years after completion of their sentence.<sup>13</sup> They must also have completed any probation they were serving and paid any restitution that was owed. The state's new Republican Attorney General campaigned on the issue, arguing that “out of fairness to law-abiding citizens and the victims of crime, it is reasonable to ask felons to apply to have their rights restored and to demonstrate rehabilitation by living crime-free during a waiting period after the completion of their sentences” (Call 2012e). But felons' rights advocacy groups, including the NAACP, ACLU, and Florida League of Women Voters, vehemently objected to the more stringent policy and are still pressing hard for automatic restoration of felon voting rights. They saw the reversal in policy as a highly partisan (and discriminatory) move: “The new five-year waiting period before applying for

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<sup>13</sup> The Sentencing Project, “Felony Disenfranchisement Laws in the United States,” March, 2011. Available at [http://www.sentencingproject.org/doc/publications/fd\\_bs\\_fdlawsinusMar11.pdf](http://www.sentencingproject.org/doc/publications/fd_bs_fdlawsinusMar11.pdf).

restoration impacts a disproportionate share of African Americans at a time when the nation's first black president is seeking re-election. What a coincidence" (Lyons 2011).

The Sentencing Project estimates that Florida has the highest rate of ex-felons not registered to vote (Call 2012e). Data obtained from the Florida Parole Commission by the American Civil Liberties Union show that more than 13,000 ex-felons may be eligible to vote but do not know it. They never received notification of the restoration of their voting rights mailed to them by the Parole Commission because it was sent to their last-known address provided by the Florida Department of Corrections (Peltier 2012). In a close statewide contest, the number of these disenfranchised voters might be sufficient to contest the outcome of the 2012 presidential election.

### **Purging of Non-Citizens from Voter Rolls**

The voter suppression versus fraud prevention partisan divide has been quite evident in the state's efforts to remove (purge) non-citizen registrants from the voter rolls. As noted by *The Miami Herald*, "The state's effort to clean the voter rolls [is] unfolding in a presidential election year in which perceptions of voting problems and potential fraud break down along partisan lines—especially after the Republican-led Legislature last year cracked down on voting registration groups and early voting on the Sunday before Election Day" (Caputo and Bousquet 2012). Numerous lawsuits and counter-lawsuits over "the purge" have been the pattern thus far, with the federal government suing the state and the state suing the federal government.

Of all the election reforms being challenged in 2012, the purge controversy has been the most widely publicized. The issue first surfaced in 2011 when Governor Scott had a discussion with then Secretary of State Kurt Browning about whether there were non-citizens on the voter rolls and if so, were they voting. (Fineout, 2012f). The inquiry prompted state election officials

to begin trying to identify non-U.S. citizen registrants. The first list generated by Division of Elections was compiled by matching driver's license information from the Department of Safety and Highway Motor Vehicles (DSHMV) with the state voter registration file (FVRA). The match yielded over 182,000 registered voters who were potentially ineligible to vote. However, it quickly became apparent within the Division of Election staff that the driver's license list was far from perfect.

Upon the realization that the data were flawed, the state then began trying to get access to the U.S. Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE) data base but had little luck until July 14, 2012 when DHS notified the state that Florida would be provided access to the citizenship data base.<sup>14</sup> (Florida had sued the department on June 11, 2012 for its failure to provide Florida with access to the database.) Earlier, in April, 2012, the state had sent county supervisors of elections a list of 2,625 registered voters gleaned from the 182,000-name list and instructed them to verify whether those on the list were citizens and, if not, had they voted. By June, most of the supervisors had stopped the purge because "they believed the data was flawed and because the Justice Department said the process violated federal voting laws" (Kam 2012b). The actual list of 180,506 names was not released to the public by the Division of Elections until August 9, 2012 after Chapter 119 public records requests by the media.

In May, 2012, the ACLU of Florida and the Lawyers Committee for Civil Rights Under Law, along with the U.S. Department of Justice, sued the state asking the court to halt the voter purge, claiming it was discriminatory against minorities, especially Hispanics (Stockfisch and March 2012). DOJ also argued that the purge violated the National Voter Registration Act,

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<sup>14</sup> It was not until August 16 that Florida election officials signed a formal agreement with the U.S. Department of Homeland Security to let the state use the SAVE data base to determine whether some registered voters were, in fact, non-U.S. citizens (Fineout 2012g).

which “prohibits major changes to voter list administration within 90 days of a federal election” (Kromm 2012). Opponents argued that the information and time required of a voter to prove he/she was a citizen also put an undue burden on the aforementioned groups.

On June 27, 2012, a federal judge refused to stop the voter purge “noting that no *federal* laws prevented the state from making last-ditch efforts to eliminate non-citizens from its voter rolls” (Gentilviso 2012, July 31), but he did not totally dismiss the case challenging the purge process. In fact, on August 8, 2012, U.S. District Judge Robert Hinkle ordered the state to turn over documents like the 180,000 name list to the federal government by August 17. One week prior, the federal government had issued subpoenas to nine county elections supervisors<sup>15</sup> in search of information about the list and voters who had been removed from the rolls<sup>16</sup> (News Service of Florida, August 8, 2012). The state countered that it was not using the old list and that it would use the SAVE database to check “whether any of the voters removed from the rolls pursuant to the process challenged in the case were, in fact, citizens.” It pledged that “[i]n the event that any eligible voters were wrongfully removed, the secretary will ensure that they are immediately restored to the rolls and notified that any prior notice of ineligibility was in error.” [Note: The state finally released the list of 180,506 voters that was initially created by matching driver’s license data with the state’s voter registration file<sup>17</sup>.]

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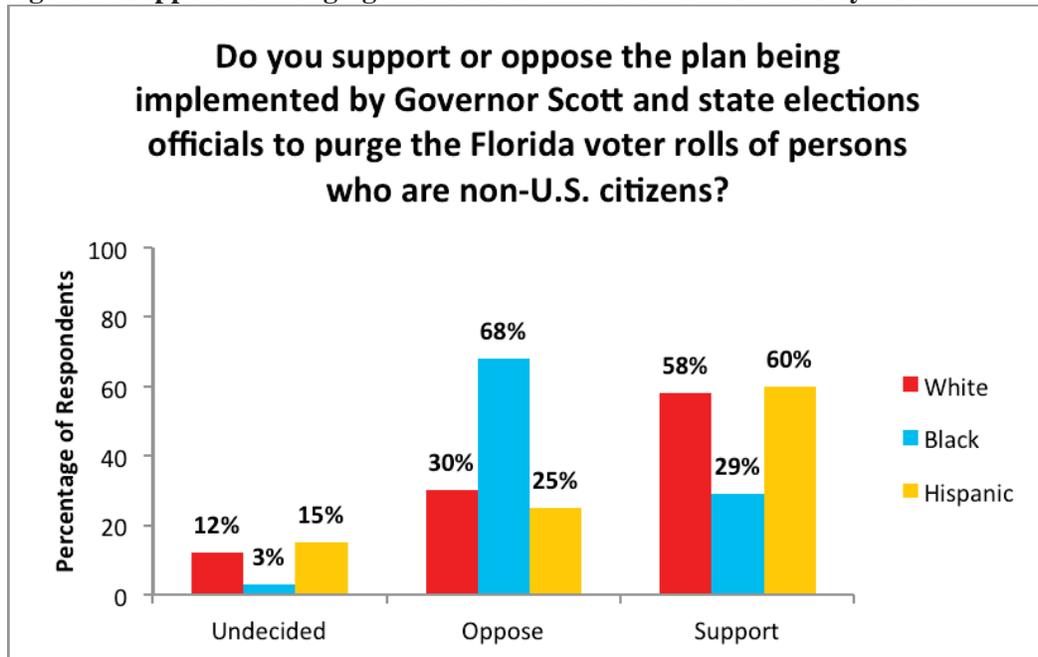
<sup>15</sup> The nine counties were: Miami-Dade, Pinellas, Hillsborough, Broward, Palm Beach, Orange, Collier, Lee, and Bay.

<sup>16</sup> The subpoenas to the nine counties instructed the supervisors to provide information “Generated, provided or transmitted by Florida to [your] county that identify registered voters, including [your] county registered voters, as potential non-citizens based on Florida’s data matching procedures using the Florida Voter Registration System (“FVRS”) and the Florida Department of Highway Safety and Motor Vehicles’ (“DHSMV”) Driver and Vehicle Information (“FAVID”) database.” They were also instructed to “include all documents reflecting the date and the voter was removed, and, if applicable, the date the voter was reinstated.” (Caputo and Bousquet, 2012, August 9).

<sup>17</sup> The list included voters’ names, dates of birth, and their nine-digit voter ID numbers. Information on voters’ race, party affiliation, and home address were excluded. The state said those pieces of information were never part of the data set used to create the list (Bousquet, 2012, August 9.)

In July, 2012, prior to the judge’s August ruling, the U.S. Department of Justice filed a statement of interest in federal court as part of the lawsuit filed earlier by ACLU of Florida and the Lawyers Committee for Civil Rights under Law against the State of Florida seeking to halt any further purging. The DOJ statement alleged that the purge was still unlawful, regardless of the SAVE database, because the state had not yet gotten the requisite federal permission (pre-clearance) to use the matching process in the five counties covered under Section 5 of the federal Voting Rights Act—Collier, Hardee, Hendry, Hillsborough, and Monroe (Kam 2012b).<sup>18</sup>

**Figure 4. Support for Purging Florida Voter Rolls of Non-Citizens by Race**



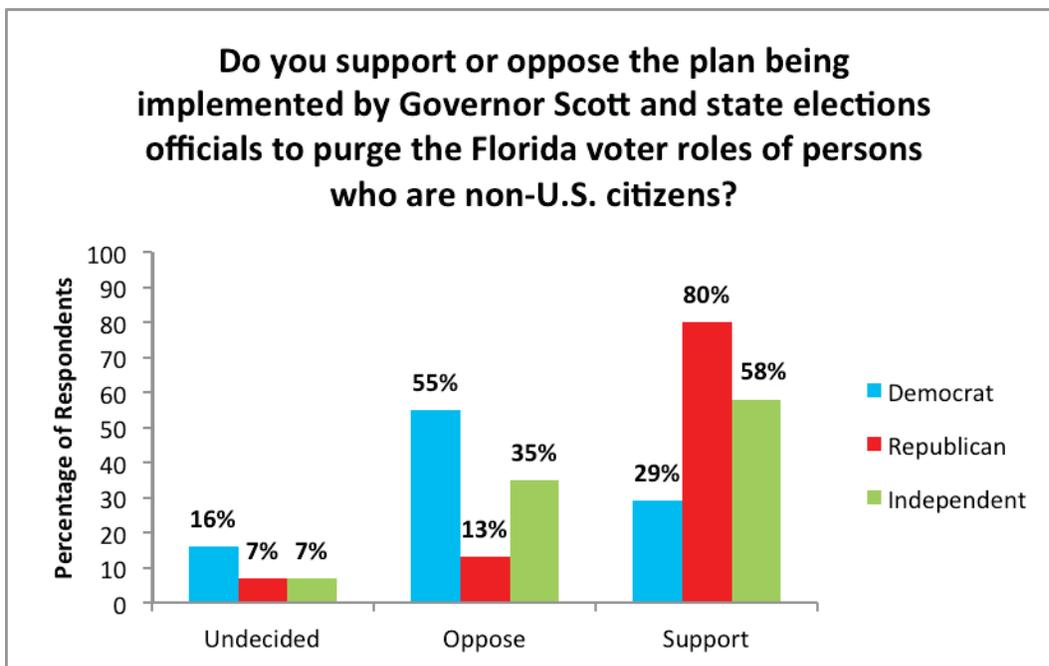
Source: Mason-Dixon telephone poll of 800 registered Florida voters likely to vote in the November general election, conducted from July 9–July 11, 2012, margin of error +/-3.5 percent.

The controversy over the purge was still ongoing at the time of the August 14<sup>th</sup> primary, with little hope for closure by the November 6 general election. Governor Scott has shown an unwavering commitment to removing non-citizens from the voter rolls. Polls show a sizable portion of the Florida electorate, including a majority of Hispanics, agree with him (see Figure

<sup>18</sup>As of the submission of this article (September 25, 2012), this issue had yet to be resolved.

4). There is, however, a partisan divide, with 80% of the Republicans favoring the Governor’s efforts and 55% of the Democrats opposing the purge (Figure 5.) Documented evidence of illegals voting uncovered by county supervisors and making statewide headlines is enough to convince Republicans that such efforts are essential to eliminating fraud (Pierrotti 2012, Tillison 2012). And newspaper analyses showing that “Hispanic, Democratic and independent-minded voters are the most likely to be targeted in a state hunt to remove thousands of noncitizens from Florida’s voting rolls” continue to embolden Democrats to keep fighting against the purge, which they see as voter suppression (Blow 2012, August 1).

**Figure 5. Support for Purging Florida Voter Rolls of Non-Citizens by Party**



Source: Mason-Dixon telephone poll of 800 registered Florida voters likely to vote in the November general election, conducted from July 9-July 11, 2012, margin of error +/-3.5 percent.

Once the state began using the federal immigration data base (SAVE), some 207 noncitizen voters (8% of the initial list) were to be removed from the voter rolls (Mitchell 2012). However, most of the others initially on a list of potentially ineligible voters remained on the voter registration rolls as part of a settlement with the coalition of voting rights groups that in

June had sued to stop the purge as discriminatory, particularly of Hispanics (Associated Press, 2012, September 12). They agreed to drop the suit if the state would send notices to all the others on the initial list who had been informed that they might be kicked off the rolls. Specifically, county supervisors were instructed to send out letters to them verifying that they are still registered and eligible to vote (Mitchell 2012). Those voters will also be allowed to cast regular ballots instead of provisional ballots in November (Kam 2012c).

The battle over voter list maintenance, which began in Florida, quickly became a “flashpoint in the national debate over voter rights and voter fraud” (Caputo and Bousquet 2012, National Conference of State Legislatures 2012). As one election specialist describes it:

In the world of elections, one person’s purge is another person’s list maintenance. The linguistic spat over removing names from voter registration lists represents a classic debate in the elections world: which is more important, ballot access for all or the integrity of the vote? Basically, the GOP seems willing to inconvenience valid voters in an effort to strike invalid voters from the voter rolls. Democrats on the other hand are so worried about the impact on valid voters of list maintenance that they appear to be willing to halt all efforts, even those that would strike clearly invalid voters (Doug Chapin quoted in NCSL 2012).

List maintenance controversies in Florida in 2012 have not been limited to the removal of non-citizens from the voting rolls. True The Vote groups have actively been examining voter rolls in many of the state’s large urban counties for months on end (PR Newswire, 2012, Huffington Post 2012, August 27). They have generated lists of alleged ineligible registrants currently on voter rolls, namely felons whose voting rights have not been restored, non-citizens, and deceased persons, and submitted these lists to state and county election officials. To date,

many of these alleged ineligibles, mostly the felons, have not been confirmed by state election officials as either felons or illegally registered, leaving many county election officials in limbo.

Voter list maintenance is required under the Help America Vote Act of 2002—the biggest controversies are over how and when to do it. The voter suppression versus fraud detection and elimination debate is at the heart of these battles. The concern now is that the actual polling place will be the new battleground, as poll-watching groups on both sides of the issue engage in efforts to challenge voters at voting sites across the state (Mock 2012b).

### **Local Level Controversies: Absentee Ballot Fraud, Voter IDs, Technology, Polling Locations, County Supervisors of Election Authority**

While most of the *legal* battles have focused on legislative and executive actions by state officials, a number of other election-related disputes have arisen at the local level. They have generated more policy debates between local and state election officials than lawsuits, although the potential for litigation is certainly there, especially to the degree to which each conflicts with laws requiring uniformity across counties.

#### **Absentee Ballot Fraud**

Historically, election officials and citizens alike have identified absentee balloting as the most vulnerable to fraud both in requesting and completing ballots. As one columnist for *The Miami Herald* wrote: “Wanna commit absentee-ballot fraud? Well, all you need is a computer, a telephone and a dummy address. Armed with that, there’s a good chance you can request and vote another person’s absentee ballot....Chances are you won’t get caught because it can be done anonymously” (Caputo 2012a).

Nearly every election cycle there are arrests for such illegalities. In 2011, eight individuals were arrested for illegalities surrounding absentee balloting in a Madison County School Board contest (FDLE 2012; Turner 2011). The governor ended up removing both the

county supervisor of elections and the school board member. The fraud issue has taken on more significance and media coverage this year as part of the broader debate about the integrity of the voter rolls. That debate has prompted various local news media and conservative citizens groups across the state to investigate and publicize incidences of deceased persons and non-citizens on their county's voting rolls. (Caputo and Madan 2012, June 2; Tillison 2012).

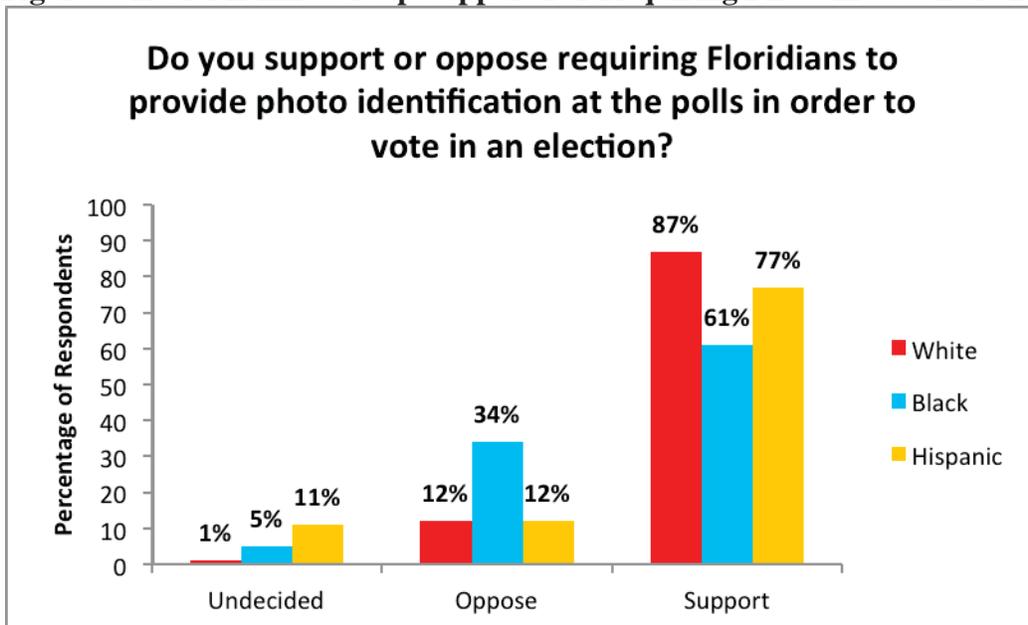
The uncovering of significant absentee ballot fraud in heavily populated Miami-Dade County just prior to the 2012 August primary election reinforced Republicans' fears of fraud in the voting process come November. Absentee ballot "brokers" ("boleteras") were caught with multiple ballots in their possession, which is illegal under Florida law; signatures had already been forged onto them. One arrestee had filled in two ballots for a local mayoral race (City of Hialeah) with his own choices rather than those of the voter, one of whom was a woman with dementia (Mazzei, 2012b). The absentee voter fraud scandal is especially significant in light of the fact that in 1998, the courts overturned a Miami mayoral contest due to rampant absentee balloting fraud (CNN Politics 1998). Predictably, the arrests reignited discussions of the link between fraudulent voter registrations and unlawfully acquired or completed absentee ballots being cast by unscrupulous groups like the now-defunct ACORN whose activities garnered a lot of attention during the 2008 presidential election (Corbin 2009, McMahon, 2009, September 9).

On the other hand, voter protection activists see the potential for vote suppression in the absentee balloting process since voters who cast absentee ballots do not have the same opportunity to correct an error as those voting in person. This leaves the determination of whether the ballot will be counted to county canvassing boards checking signatures on absentee ballots. Activists fear bias in the validation process as the canvassing boards include partisan elected officials.

**Voter Photo IDs**

Photo ID laws have not been as big an issue in Florida as in other battleground states. (For a history of the voter ID in Florida, see Tinkler 2009). The Brennan Center does not label Florida’s law as a “highly restrictive photo ID law that requires citizens to produce specific types of government-issued documents to vote.”

**Figure 6. Racial/Ethnic Group Support For Requiring Photo IDs at the Polls**



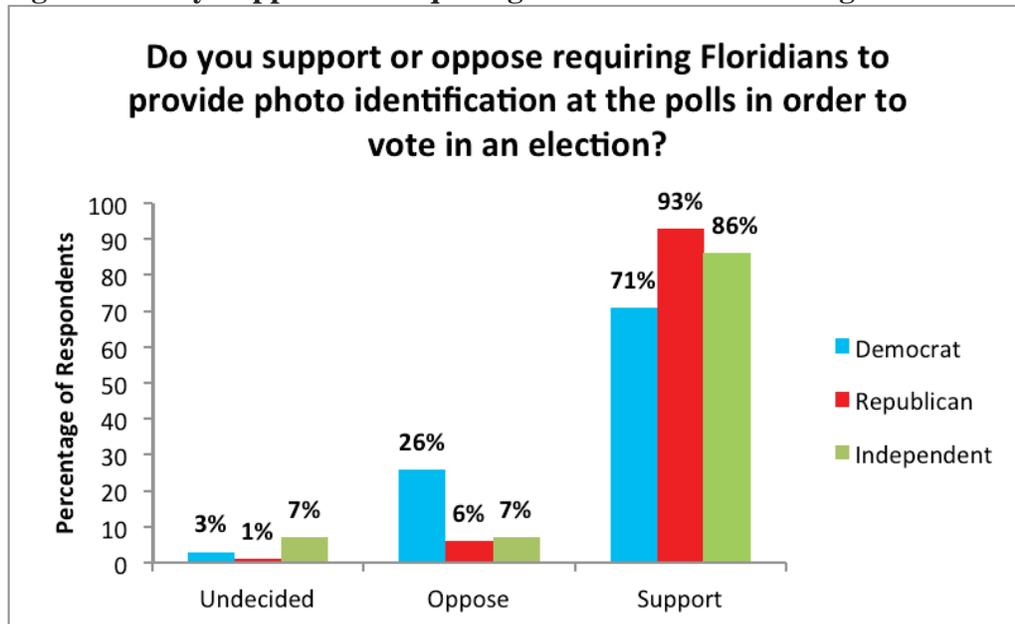
Source: Mason-Dixon telephone poll of 800 registered Florida voters likely to vote in the November general election, conducted from July9-July 11, 2012, margin of error +/-3.5 percent.

A wide array of photo IDs are lawful in the Sunshine State. A valid ID is one that is current, with a picture and a signature.<sup>19</sup> Approved forms of picture identification include a: Florida driver's license; Florida identification card issued by the Department of Highway Safety and Motor Vehicles; United States passport; debit or credit card; military identification; student

<sup>19</sup> Florida Statutes 101.043 detailing photo IDs: The clerk or inspector shall require each elector, upon entering the polling place, to present a current and valid picture identification as provided in s. 97.0535(3)(a). If the picture identification does not contain the signature of the voter, an additional identification that provides the voter's signature shall be required. If the elector fails to furnish the required identification, the elector shall be allowed to vote a provisional ballot. The canvassing board shall determine the validity of the ballot by determining whether the elector is entitled to vote at the precinct where the ballot was cast and verifying that the elector had not already cast a ballot in the election. Florida uses signature matching: the voter signs the provisional ballot envelope. That signature is compared to the signature in the voter registration records. If they match, the ballot is counted.

identification; retirement center identification; neighborhood association identification; or public assistance identification. Polls have shown that a majority of Florida's voters are in favor of a photo ID, regardless of race/ethnicity (Figure 6) or party (Figure 7), although levels of opposition are highest among Democrats and African Americans.

**Figure 7. Party Support for Requiring Photo IDs at the Polling Place**



Source: Mason-Dixon telephone poll of 800 registered Florida voters likely to vote in the November general election, conducted from July 9–July 11, 2012, margin of error  $\pm 3.5$  percent.

Voters in both primary and general elections must present identification at the polling precinct in which they are registered in order to cast a ballot, although voters who have lost their identification may vote a provisional ballot.<sup>20</sup> But for those who register by mail or vote absentee, there is no photo identification requirement—just a signature.<sup>21</sup> This differential is alarming to those fearing vote fraud and having witnessed it in Hialeah. An editorial in the *Tampa Bay Times* urged GOP leaders to focus their reform efforts on mail-in ballots (2012a). For

<sup>20</sup> Florida has required some form of voter identification at the polling place since 1977. In 2003, a law was passed requiring voters who did not bring proper identification to the polling place to vote a provisional ballot. The local County canvassing board then determines whether the voter is eligible to vote in the precinct in which they attempted to vote by checking whether signatures on their voter registration form and the provisional ballot match (Tinkler 2009, 27–28).

<sup>21</sup> The first time someone votes by mail, they must provide a copy of a photo ID, but not thereafter.

some voting rights groups, an equally big concern is biased counting of provisional ballots cast at the polls on Election Day by those without the proper photo identification.

### **Voting Technology: The Disabled Still Vote on Touch Screen Voting Machines**

Accessible machines for disabled voters—one per polling place—were one of the federal mandates on state and local election offices included in the Help America Vote Act of 2002. “Inclusion of this provision was widely seen a victory for the advocates for disabled voters. But controversies surrounding direct recording electronic (DRE) voting machines shortly after the legislation and the cost of the machines have greatly delayed implementation which, to the present, is incomplete” (Chapin 2012). Even where the equipment is available, the proportion using it is very small raising questions about the viability of the requirement. A two-county study of voter use of the disabled-accessible-voting machines in Miami-Dade and Orange County during the 2012 GOP presidential primary found that just 49 voters (0.03%) used the accessible DRE iVotronic touch-screen voting system in the 2012 primary (Pew Center For the States, 2012).

Advocacy groups for disabled voters in Florida are still quite dissatisfied with the delay in fully meeting the HAVA requirement. Election officials at the state and county levels, particularly those in poorer counties, cite prohibitive costs as the reason, along with the problems with DRE touch screen machines. At present, disabled voters in some counties who choose to vote in person are still required to vote on electronic touch screen systems that have been outlawed for non-disabled voters. In a close election, the issue could become part of any voter suppression litigation challenging the fairness of the state’s election system on the basis of unequal access. Some studies have found that voter turnout for the disabled is lower than for others, in part because of technology (Korte 2012).

### **Precinct Consolidation & Location: Fiscal Necessity or Voter Suppression?**

The growing popularity of early voting and the rising costs related to sustaining large numbers of voting precincts during a recession have prompted a number of county supervisors of elections to consolidate precincts in 2012. Collier County's elections officials identified several key reasons for consolidation: (1) Early voting—most voters are now voting prior to Election Day; (2) county use of electronic poll books (EViDs) on Election Day allowing for faster processing of voters; (3) fewer Election Day workers needed; (4) improved election administration and logistics; and (5) cost savings (Durham 2011). Similar reasons are behind the push for consolidation in other counties.

Precinct consolidations in some counties have evoked cries of voter suppression from voting rights advocates. A high profile dispute about consolidation occurred in Sarasota County where the elections supervisor proposed reducing the number of precincts from 156 to 98 for two major reasons: low turnout rates in some precincts due to higher rates of early in-person and absentee voting and estimated cost savings around \$100,000 (Wells 2012, Hackney 2012). Minority opponents speaking at the session argued the consolidation will create undue hardships on their communities and depress voter turnout, i.e. voter suppression, particularly in tandem with changes in early voting. The president of the Sarasota branch of the NAACP saw the two as connected and having a negative impact on the 2012 election: "It's calculated. This is too big of an election year to have these kinds of changes" (Wells 2012). The County Commission ultimately approved the precinct consolidation by a 4-1 vote. The "no" vote was from the Commission's lone African American, a Republican, as are her four fellow commissioners.

Precinct consolidation is an on-going challenge for local election officials who are separately-elected countywide but rely on their respective county commissions for their budgets.

Naturally in an economic downturn, it has made the supervisors quite cost-conscious. Looking ahead, many election supervisors are strongly pushing for Vote Centers. The concept calls for fewer, but larger, voting facilities and multiple days of continuous voting, allowing any registered voter in the county to vote at any of the centers rather than being restricted to a neighborhood location (Durham 2011). Vote centers are already in place for use during the early in-person voting period, but they have yet to be approved by the state legislature for use on Election Day. While economic realities and a GOP-controlled legislature may eventually authorize Vote Centers on that day, too, it would likely be opposed by the same groups as have criticized precinct consolidation and for the same reason—minority voter suppression.

### **County Supervisors of Election: On-Going Legal Authority Battles with the State**

Florida's election system is more decentralized (see Table 3) than in many other states although the Florida Legislature has given more power to the Secretary of State (the state's chief election official) in recent years. Rather than easing tensions between state and local election officials, the authority shift has created more friction. Nothing dramatizes that more than the supervisors' halting of the state-ordered purge of non-citizens from county voter rolls. It sparked an insurrection of sorts. One supervisor was quite vocal about the poor timing of the purge: "You don't do things 90 days prior to an election. You just don't do that unless you want to cause concern or the perception that there's concern, there's chaos, there's perceived inaccuracies, there's all of these other issues" (Kam 2012, May 21). Other supervisors have pointed to the higher-than-usual staff turnover in the Division of Elections as weakening their confidence in the state elections office. When the chief of the Florida Division of Elections resigned just weeks ahead of the August 14, 2012 primary, there was some speculation that the purge controversy

prompted her resignation though she and the Secretary of State both denied it (Bousquet 2012, July 30).

**Table 3. The Complexity of Florida’s State and Local Election Administrative Structure**

<p><b>Secretary of State</b></p> <ol style="list-style-type: none"> <li>1. Chief election officer – Appointed by the Governor beginning January 2003</li> <li>2. Provides guidance to 67 Supervisors of Elections, but does not supervise them</li> <li>3. Provides technical assistance to Supervisors of Elections</li> <li>4. Prescribes voter registration forms and procedures</li> <li>6. Maintains the statewide voter registration system</li> <li>7. Prescribes rules concerning voting systems</li> <li>8. Qualifies federal, state and multi-county candidates</li> <li>9. Prepares election abstract</li> </ol>
<p><b>Election Canvassing Commission</b></p> <ol style="list-style-type: none"> <li>1. Governor and two members of the Florida Cabinet</li> <li>2. Canvasses all federal and state election returns</li> </ol>
<p><b>County Supervisor of Elections</b></p> <ol style="list-style-type: none"> <li>1. Local chief election official; elected*; a 4-year term—no term limits.</li> <li>2. Appoints other local election officials; qualifies county and local candidates; mails and receives financial disclosure statements</li> <li>3. Administers voter registration; prepares ballots</li> <li>4. Administers absentee voting, early in-person voting, Election Day voting</li> <li>5. Conducts poll worker training</li> <li>6. Prepares and distributes election materials to each precinct</li> </ol>
<p><b>County Canvassing Board</b></p> <ol style="list-style-type: none"> <li>1. Supervisor of Elections, County Court Judge, Chair of the Board of County Commissioners</li> <li>2. Tabulates county vote and prepares abstracts for transmittal to Secretary of State</li> </ol>
<p><b>Election Day Officers</b></p> <ol style="list-style-type: none"> <li>1. Election Board: inspectors and clerks (appointed by county Supervisor of Elections)</li> <li>2. Administers elections at precincts</li> </ol>

Note: \*The Miami-Dade County Supervisor of Elections is appointed.  
 Sources: Federal Elections Commission and Federal Statutes; 2002 Governor’s Select Task Force on Election Procedures, Standards, and Technology. Tallahassee: Office of the Governor, December 30, 2002, 26; Florida Secretary of State update, July 22, 2011.

The authority of the Secretary of State also came under attack in the courtroom of an administrative law judge (ALJ) in early August. The ALJ heard arguments in a complaint brought against the state by the ACLU, National Council of La Raza, and Tampa Sen. Arthenia Joyner-D for a directive issued by former Secretary of State Kurt Browning. The plaintiffs argued that the “two-system” directive regarding implementation of HB 1355, especially with

regard to early voting days and hours, should have first gone through the state's rule-making process, thereby allowing opponents to challenge it before codification.<sup>22</sup> The argument is part of the broader legal challenge to the dual system of voting laws which critics see as in violation of the state's election uniformity statute.

The duality under attack in the administrative law case is the directive's (rule's) instructions which differ for pre-clearance and non-pre-clearance counties. Specifically, non-preclearance counties were instructed to immediately implement the 2011 election reforms established under HB1355, while preclearance counties were told to delay implementation until the federal government had officially pre-cleared the election system changes (Kaczor 2012a). The attorney representing Browning's successor, Secretary of State Ken Detzner, disagreed with the characterization of Browning's directive as a "rule," and instead cast it as simply a statement as to what is required by federal and state laws. Disagreements aside, "Both sides acknowledged the supervisors for years have questioned what authority, if any, secretaries of state have over them. The supervisors are independently-elected constitutional officers in all except Miami-Dade County (appointed). The secretary of state is appointed by the governor" (Kaczor 2012b).

To put things in perspective, county supervisors of elections have the toughest job in politics in 2012. At the same time they have to implement highly controversial and difficult election reforms, they must also seek re-election themselves. Most supervisors must run in partisan elections even though many would prefer that supervisor races be nonpartisan. In fact, the Florida State Association of Supervisors of Elections (FSASE) has long lobbied the state legislature for such a change to no avail. But nothing tells the story of the pressures on these

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<sup>22</sup> The plaintiffs dropped the challenge in late September, 2012 (Larrabee, 2012, September 24) after: (1) the state agreed in court to a uniform 8-day early voting schedule, including a Sunday, for all 67 counties and a full 96 hour voting period for the five federal pre-clearance counties; and (2) the U.S. Justice Department then removed its opposition to the state's plan to cut the number of early voting days from 14 to 8 in pre-clearance counties.

local officials better than the fact that by May 2012 at least 16 supervisors had announced they would not be running for re-election (Kam 2012, May 21).

At the end of the day, election officials and voters alike want no repeat of the 2000 election...ever! In the words of one supervisor of elections who lived through those stressful days: "Please, no recount...They always get ugly." As this article has shown, the fear of a repeat in 2012 is what has driven many of the actions and reactions of both political parties insofar as post-2010 election reforms are concerned, with each party and its allied groups positioning themselves for what promises to be a very close 2012 presidential election in Florida.

### **Challenges Ahead to Election Reforms if 2012 is a Close Election**

Florida's election officials have been under the microscope ever since the 2000 presidential election. They have come to expect challenges *every* election cycle and to be cross-pressured to provide greater voter access while protecting the integrity of the voting process against fraud.

Party positions on each of the hotly contested reforms examined here have been remarkably consistent. Democrats see the biggest threat to the integrity of the election system as voter suppression (limiting access); for Republicans, it is fraud. With Republicans controlling the state legislature and executive branch (governor, Cabinet), Democrats in both Florida and at the federal level have had to turn to the courts (federal, state) to challenge the reforms.

If the results of the 2012 presidential election ultimately end up being contested, the challenges will most likely focus on the lack of uniformity of the state's voting system. Specifically, challenges are likely to emanate from Democrats' allegations of Republicans' differential treatment of different classes of voters—minorities v. whites; absentee v. in-person voters; disabled v. non-disabled voters; rural v. urban voters (early voting hours); and felons

whose voting rights have been restored v. those still caught up in the Clemency Board's backlog. Ironically, in 2000 the GOP successfully challenged the lack of uniformity of Democrat Al Gore's recount process (his focus on a limited number of counties rather than the state as a whole). Republican challenges to the results would almost certainly focus on the duality created by preclearance requirement under Section V of the federal Voting Rights Act and the lack of uniformity of actions by county supervisors of elections in removing ineligible from the voting rolls.

The partisan divide in this critical swing state remains deep and wide on any election reform that is perceived as advantaging one party over the other. The party not in control of the state legislature and the governor's mansion is quick to turn to the courts to resolve the conflicts. Election meltdowns and chaos can create partisan consensus—but only momentarily. Soon it's back to competition and party-line voting in the state legislature on a wide range of issues, including election reform.

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