

Date: November 15, 2000
To: FDP Lawyer
From: Mark Herron
Subject: Overseas Absentee Ballot Review and Protest

State and Federal law provides for the counting of "absentee qualified electors overseas" ballots for 10 days after the day of the election or until November 17, 2000. Sections 101.62(7)(a), Florida Statutes defines as "absentee qualified elector overseas" to mean members of the Armed Forces while in the service, members of the merchant marine of the United States and other citizens of the United States, who are permanent residents of the states and are temporarily residing outside of the territories of the United States and the Districts of Columbia. These "absent qualified electors overseas" must also be qualified and registered as provided by law.

You are being asked to review these overseas absentee ballots to make a determination whether acceptance by the supervisor of elections and/or the county canvassing board is legal under Florida law. A challenge to these ballots must be made prior to the time that the ballot is removed from the mailing envelope. The specific statutory requirement for processing the canvass of an absentee ballot including of overseas absentee ballot, are set forth in Section 101.62(2)(c)2. Florida Statutes:

If any elector or candidate present believes that an absentee ballot is illegal due to a defect apparent on the voter's certificate, he or she may at anytime before the ballot is removed from the envelope, file with the canvassing board a protest against the canvass of the ballot specifying the precinct, the ballot, and the reason he or she believes the ballot to be illegal. A challenge based upon a defect in the voter's certificate may not be accepted after the ballot has been removed from the mailing envelope.

The form of the voter's certificates on the absentee ballot is set forth in section 101.64(1), Florida Statutes. By statutory provisions, only overseas absentee ballots mailed with an APO, PPO, or foreign postmark shall be considered a ballot. See Section 101.62(7)(c). Florida Statutes.

In reviewing these ballots you should focus on the following:

1. Request for overseas ballots: Determine that the voter affirmatively requested an overseas ballot, and that the signature on the request for an overseas ballot matches the signature of the elector on the registration books to determine that the elector who requested the overseas ballot is the elector registered. See Section 101.62(4)(a), Florida Statutes.
2. The voter's signature: The ballot envelope must be signed by the voter. The signature of the elector as the voter's certificate should be compared with the signature of the elector of the signature on the registration books to determine that the elector who voted by ballot is the elector registered. See Section 101.68(c)x, Florida Statutes.
3. The ballot is properly witnessed: The absentee ballot envelope must

be witnessed by a notary or an attesting witness over the age of eighteen years. You may note that these requirements vary from the statutory language from the Section 101.68(2)(c)1, Florida Statutes. Certain statutory requirements in that section were not proclaimed by the Justice Department pursuant to Section 5 of the Voting Rights Act, Sec. DE 98-13.

4. The ballot is postmarked: With respect to absentee ballots mailed by absolute qualified electors overseas only those ballots mailed with an APO, PPO, or foreign postmark shall be considered valid. See Section 101.62(7)(c), Florida Statutes. This statutory provision varies from rule 15-2.013(7), Florida Administrative Code, which provides overseas absentee ballots may be accepted if "postmarked or signed and dated no later than the date of the federal election."

5. The elector has not already voted (duplicate ballot). In some instances, an absent qualified elector overseas may have received two absentee ballots and previously submitted another ballot. No elector is entitled to vote twice. (Please insert appropriate Fl. xxx.)

To assist your review, we have attached the following:

1. A review Federal Postal regulations relating to FPO's and PPO's.
2. A protest form to be completed with respect to each absentee ballot challenged.
3. Overseas Ballot Summary of Definitions.

Revised
Overseas Ballot Summary of Definitions

There are 3 different types of overseas ballots that are valid for return at the counties provided they are postmarked on or before November 7th.

1. Federal Write-In ballot

- Must be an overseas voter and must be eligible to vote and be registered under State law.
- Must have affirmatively requested an absentee ballot in writing and completely filled out request (including signature)
- Must comply with State laws applying to regular absentee ballots (such as registration requirements, notification requirements, etc.)
- Ballot contains only Federal races, and is considered to be a "backup" system if the regular state absentee ballot fails to arrive.
- The intent of the voter in casting the ballot should govern. In other words, minor variations in spelling candidate or party names should be disregarded in ballot

counting so long as the intention of the voter can be ascertained.

- Must be postmarked as an APO, FPO, or MPO in a foreign country or at a foreign post office.

2. Florida Advance Ballot

- Sent out in advance of a regular General Election ballot with state and Federal candidates listed.
- Must be an overseas voter and must be eligible to vote and be registered under State law.
- Must comply with State laws applying to regular absentee ballots (such as registration requirements, notarization requirements, etc.)
- Must have affirmatively requested an absentee ballot in writing and completely filled out request (including signature)
- Sent prior to the second (or October) primary elections to all permanent overseas registered voters.
- Must comply with all State laws regarding signatures, witness requirements, etc.
- Must be postmarked at the APO, FPO or MPO in a foreign country or at a foreign post office.

3. Regular Overseas Ballot

- Sent after the second (or October) primary elections to all permanent overseas registered voters and voters requesting an overseas ballot from the county.
- Must be an overseas voter and must be eligible to vote and be registered under State law.
- Must comply with State laws applying to regular absentee ballots (such as registration requirements, notarization requirements, etc.)
- Must have affirmatively requested an absentee ballot in writing and completely filled out request (including signature)
- Full ballot with all candidates listed.
- Likely would take precedence over any advance or federal ballot also returned.
- Must comply with all State laws regarding signatures, witness requirements, etc.
- Ballot is designed by the county.
- Must be postmarked at an APO, FPO, or MPO in a foreign country or at a foreign post office.

Below are the definitions for points of origin and postmark that are

valid for military overseas ballots:

1. APO (Army Post Office) -- A branch of the designated USPS civilian post office, which falls under the jurisdiction of the postmaster of either New York City or San Francisco, that serves either Army or Airforce personnel.
2. FPO (Fleet Post Office) -- A branch of the designated USPS civilian post office, which falls under the jurisdiction of the postmaster of either New York City or San Francisco, that serves Coast Guard, Navy, or Marine Corps personnel.
3. MPO (Military Post Office) -- A branch of a U.S. civil post office, operated by the Army, Navy, Airforce, or Marine Corps to serve military personnel overseas or aboard ships.
4. Military Post Office Cancellation -- A postmark that contains the post office name, state, ZIP Code, and month, day, and year that the mail was cancelled.

Protest of Overseas Absentee Ballot

As provided in Section 101.68(2)(c)(2), Florida Statutes. I, as an elector in _____ County, Florida, hereby protest against the canvass of the overseas absentee ballot described below:

County: _____

Precinct: _____

The Ballot: _____

Name of Voter: _____

Address of Voter: _____

Reason for rejection: _____

Lack of voter signature

Lack of affirmative request for absentee ballot

Request for absentee ballot not fully filled out

Signature on absentee ballot request does not match signature on registration card or on ballot

Voter signature on envelope does not match signature on registration card

Inadequate witness certification

Late postmark (indicate date of actual postmark)

Domestic postmark (including Puerto Rico, Guam, etc.)

No postmark

Voter had previously voted in this election

Other

Signature of Person Filing Protest

Print Name

11/15/00
