



Florida Fair Elections Center

112 W. New York Avenue, Suite 211, DeLand, FL 32720
(386)736-8086 www.ffe.org August 31, 2009

Comments on proposed rule 1S-2.041 FVRS Address and Records Maintenance Activities

Problem #1

Several requirements in the proposed rule absolutely and unequivocally violate both state and federal law. If approved in its current form, this rule will permit officially sanctioned caging (vote suppression) with no accountability. The rule permits voters to be placed on the inactive list without proper procedures being followed, and the signatures of inactive voters, by law, will not be counted on any petition. This will potentially throw tens of thousands of signatures off the redistricting petition. The rule also permits the cancellation of absentee ballots without proper procedures being followed, setting up a scenario for confusion and disenfranchisement for the 2010 election.

Explanation:

The rule allows *any third party* to inform a Supervisor of Elections that a voter *might* have moved, apparently without verification or restrictions. Once the supervisor has been informed that a voter *might* have moved, the rule states that the supervisor *shall* [must] send a notice to the voter at the *new* address. But if the voter didn't move, he/she will not receive any notice at the new address because he/she did not move.

This flies in the face of logic. Why would you send a notice to the *new address* when the new address has not yet been confirmed? Logic dictates that the notice be sent by forwardable mail to the voter's *old* address to ask the voter if he/she has actually moved. Additionally, addresses should not be changed in the FVRS (Florida Voter Registration System) until confirmation of the new address has been received. Information regarding a new address for a voter must come from credible, verifiable sources. There must be penalties for the wrongful or frivolous reporting of an address change, just as there are penalties for traditional caging.

Sending a notice to a voter's unconfirmed new address, reported by an unknown third party, sets up a scenario for caging, as explained in the example below.

Example:

Someone could falsely report that Secretary of State Kurt Browning had moved to a new address within Leon County. The supervisor of elections would then be required to send a confirmation notice to Mr. Browning at the *new address*, which he would never receive because he never moved. Then a final notice would be sent to Mr. Browning at the new address. He would never receive the final notice at the new address either, because he never moved. Since he never received the final notice he obviously couldn't respond to it within 30 days. Mr. Browning would then be placed on the inactive voters list. If Mr.

Browning were placed on the inactive list, his signature could not be counted on any petition, including the redistricting petition. Voila...the perfect caging scenario.

In addition, according to the proposed rule, Mr. Brownian's absentee ballot would be cancelled, setting up a scenario of utter confusion and voter disenfranchisement for the 2010 election. And all this would happen without Mr. Brownian's knowledge while he was happily living at his old address. He would think that his signature counted on any petition he signed. He would wait expectantly for his absentee ballot to arrive. He would be oblivious to any problem because he never received a notice at his old (current) address.

Whether or not these notices are forwardable is a moot point if the notice is sent to the new address. Mail to a person's new address can't be forwarded if the person doesn't live at the new address and never has.

Problem #2

A third party could get away with falsely reporting an address change for one voter or address changes for multiple voters.

Explanation:

There is no requirement in this rule that third-party information be credible or verifiable. Additionally, this rule specifically exempts information about third-party sources from being recorded in the FVRS.

It seems obvious to us that this has the potential for thousands of voters to be wrongfully removed from the voter rolls. Third-party information could come from partisan sources who wish to disqualify or confuse voters based on their partisan affiliation or their support or opposition to particular issues. False information could also be promulgated by parties who simply bear a grudge against other individuals. Exempting these parties from being identified in the FVRS also deprives individuals of their right to know the source of information that potentially affects their right to vote and sign petitions. In the event that a voter is deprived of his or her right to sign a petition based on false information, we are sure that the voter and the voter's attorney will want to know the source of that information. The court is unlikely to accept the argument that the supervisor of elections took such actions based on information from an unknown source, or a source about whom information has not been retained.

It is suggested that the following language or something similar be added to this rule: "Supervisors of elections must enter, track and maintain all information in the FVRS about a third-party source that has provided address-change information for a voter or voters."

Example:

Someone could report that Secretary of State Kurt Browning had moved when he didn't actually move. That person would apparently get away with doing this because any correspondence from that person, or any information identifying that person, would not be tracked in the FVRS.

Problem #3

There is never a reason to send nonforwardable address notices. Nonforwardable address notices violate federal law and set up the possibility of caging.

Explanation:

The proposed rule defines an “Address Change Notice” as being sent by forwardable mail and an “Address Confirmation Request” as being sent by nonforwardable, return-service-requested mail, but these definitions don’t explain why one would be used instead of another. All notices regarding a voter’s address should be sent by forwardable mail to the voter’s last confirmed address so that the voter actually receives the notice. An Address Confirmation Request is still a notice, and federal law requires that all notices pertaining to a voter’s address be sent by forwardable mail.

We understand that absentee ballots should not be sent by forwardable mail. But what is the purpose of sending other correspondence, including notices, by nonforwardable mail? If the notice is sent by forwardable mail, then the voter will receive it even if he is no longer at his residence, either permanently or temporarily. If he has moved, he can confirm that fact. If he is merely away temporarily, as is often the case with Florida voters, he will have a chance to respond. If the voter is no longer at the given address because he is deceased or has long ago moved, then there will be no forwarding order and the mail will be returned as undeliverable.

Example:

If Secretary of State Kurt Browning were to take a one-month leave of absence out-of-state and had his mail forwarded while he was away, a nonforwardable notice would never reach him. The return of his nonforwardable notice to the supervisor of elections would trigger further steps towards placing him on the inactive list, causing his signature to be invalidated on any petition, including the redistricting petition. His absentee ballot would be cancelled. It would eventually lead to Mr. Browning being removed from the voter rolls without his awareness or knowledge that any notice had ever been sent.

Problem #4

The proposed rule never mentions the prohibition in federal and state law against conducting voter list maintenance activities within 90 days of a federal election.

Explanation:

Federal and state law both prohibit voter list maintenance activities within 90 days of a federal election. This is to protect voters and prevent disenfranchisement and voter confusion just before an election. This prohibition has been violated on numerous occasions by Florida supervisors of elections. It needs to be mentioned in this rule to prevent further violations and further disenfranchisement of voters.

Example:

Volusia County sent over 29,000 Address Confirmation Requests by nonforwardable mail on September 13, 2008, just 51 days before the 2008 federal general election, and thousands of Final Notices were then sent to voters. Miami-Dade County sent 29,350 Final Notices in September 2008 (as shown on the NVRA monthly reports posted on the Division of

Elections website), again less than 90 days before the federal general election. These activities are serious violations of state and federal law that must be addressed in this rule to prevent further violations.

Summary

It is critical that proposed rule 1S-2.041 *FVRS Address and Records Maintenance Activities*, meticulously follow the mandates of state and federal law in its instructions to supervisors of elections. The mailings of notices are the steps towards placing a voter on the inactive list, which prevents that voter's signature from counting on any petition. List maintenance notices are also the steps for eventually removing a voter completely from the voting rolls. The proposed rule fails to provide proper instruction in several critical ways, by omission and by commission.

NOTE: Due to time considerations, we have not referenced specific laws that support our commentary but are happy to do so upon request.

Thank you for the opportunity to comment on this rule.

Susan Pynchon, Executive Director
Executive Director
Florida Fair Elections Center
Florida Fair Elections Coalition
112 W. New York Ave., Suite 211
DeLand, FL 32720
Cell: 386-804-3131
Email: susanpynchon@yahoo.com