

1987

## Session Law 87-363

Florida Senate & House of Representatives

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**LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT**

Sess. Law # <b>87-363</b>		Sec. #	LOF cite
Prime Bill #		Comp./Sim. Bills	
JLHC Hist. Cites	Senate	Comms. of Ref.	Senate
	House		House

**COMMITTEE RECORDS**

H/S	Committee	Year	Record Series: Folder title, etc.	Loc. Cite	✓
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**Senate/House Journals**

Page #	?	Date	Page #	?	Date

**Committee/Floor Tapes**

H/S	c/f	Committee/subcommittee name	Date	#	Location Cite

**Other Documentation**

Record Series Title, folder title, etc.	Location Cite



STORAGE NAME: 87 sa HB 148

Date: April 2, 1987

Revised: \_\_\_\_\_

Final: \_\_\_\_\_

HOUSE OF REPRESENTATIVES  
COMMITTEE ON ETHICS AND ELECTIONS  
STAFF ANALYSIS

BILL #: HB 148

RELATING TO: Solicitation at polling places

SPONSOR(S): Representative Simone

EFFECTIVE DATE: January 1, 1988

COMPANION BILL(S): SB 9, SB 5, SB 97

OTHER COMMITTEES OF REFERENCE: (1) None

(2) \_\_\_\_\_

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I. SUMMARY:

Section 101.121, F.S., currently restricts the area within 50 feet of a polling place to those persons in line to vote, designated poll watchers and election officials. This restriction does not apply to commercial businesses or privately owned homes or property which are located within 50 feet of a polling place.

HB 148 exempts members of the press conducting legitimate newsgathering activities from the restrictions of s. 101.121.

Section 102.031, F.S., currently sets the guidelines for maintaining order at the polls, including solicitation of voters at polling places.

Currently, anyone intending to solicit voters within 100 feet of a polling place on election day must give to the supervisor of elections certain notice at least 3 days prior to the election. Anyone may solicit voters outside of the 100 foot area without prior notice.

The bill amends s. 102.031 by eliminating the notice provision for persons intending to solicit voters, prohibiting solicitation within 150 feet of the polling place and defining "solicit." Also, the supervisor of elections in each county is to determine the area around each polling place where solicitation is to be prohibited based on the characteristics of that polling place.

HB 148 repeals s. 104.36, F.S., which prohibits solicitation within 100 yards of a polling place. This section was found to be unconstitutionally overbroad on its face in Clean-Up '84 v. Heinrich, 759 F. 2d 1511 (11th Cir. 1985).

II. ECONOMIC IMPACT:

A. Public:

None

B. Government:

None

III. STATE COMPREHENSIVE PLAN IMPACT:

None

IV. COMMENTS:

During the 1986 Second Primary, a photographer from the Fort Myers News-Press was denied access to the polling place under the authority of s. 101.021, F.S. The newspaper received a temporary injunction against the election officials prohibiting them from enforcing s. 101.121, F.S., against members of the news media until further order of the Court. The issue of the constitutionality of s. 101.121, F.S., is still pending in the Twentieth Judicial Circuit.

In order to provide access to the polling place by the news media and to maintain order, it might be advisable to limit access to the polling place to a "pool" person for each of the types of media -- print, radio and television.

V. AMENDMENTS:

None

VI. PREPARED BY: Sarah Jane Bradshaw *SJB*

VII. STAFF DIRECTOR: Wayne R. Malaney *WRM*

Date: April 21, 1987

Revised: \_\_\_\_\_

Final: \_\_\_\_\_

HOUSE OF REPRESENTATIVES  
COMMITTEE ON ETHICS AND ELECTIONS  
STAFF ANALYSIS

1222

BILL #: HB 148

RELATING TO: Solicitation at polling places

SPONSOR(S): Representative Simone

EFFECTIVE DATE: January 1, 1988

COMPANION BILL(S): ID SB 726, SB 9, SB 5, SB 97, HB 1041

OTHER COMMITTEES OF REFERENCE: (1) None

(2) \_\_\_\_\_

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B. Government:

None

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In order to provide access to the polling place by the news media and to maintain order, it might be advisable to limit access to the polling place to a "pool" person for each of the types of media -- print, radio and television.

V. AMENDMENTS:

Amendment #1 - Deletes Section 1 of the bill. This is a result of a recent ruling in the Twentieth Judicial Circuit which held current law is constitutional. This would reinstate current law which would prohibit members of the press from going inside of the polling place, except to vote.

Amendment #2 - Title amendment

VI. PREPARED BY: Sarah Jane Bradshaw *STB*

VII. STAFF DIRECTOR: Wayne R. Malaney *WRM*

STORAGE NAME: 87 sa CS/HB 148

Date: April 24, 1987

Revised: April 24, 1987

Final: \_\_\_\_\_

HOUSE OF REPRESENTATIVES  
COMMITTEE ON ETHICS AND ELECTIONS  
STAFF ANALYSIS

BILL #: CS/HB 148

RELATING TO: Solicitation at polling places

SPONSOR(S): Ethics and Elections and Rep. Simone

EFFECTIVE DATE: January 1, 1988

COMPANION BILL(S): SB 726, SB 9, SB 5, SB 97, HB 1041

OTHER COMMITTEES OF REFERENCE: (1) None

(2) \_\_\_\_\_

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Section 102.031, F.S., currently sets the guidelines for maintaining order at the polls, including solicitation of voters at polling places.

Currently, anyone intending to solicit voters within 100 feet of a polling place on election day must give to the supervisor of elections certain notice at least 3 days prior to the election. Anyone may solicit voters outside of the 100 foot area without prior notice.

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II. ECONOMIC IMPACT:

A. Public:

None

B. Government:

None



III. STATE COMPREHENSIVE PLAN IMPACT:

None

IV. COMMENTS:

None

V. AMENDMENTS:

None

VI. PREPARED BY: Sarah Jane Bradshaw *SJB*

VII. STAFF DIRECTOR: Wayne R. Malaney *WMM*

Date: April 24, 1987

Revised: April 24, 1987

Final: June 5, 1987

HOUSE OF REPRESENTATIVES  
COMMITTEE ON ETHICS AND ELECTIONS  
STAFF ANALYSIS

19 102

BILL #: CS/HB 148

RELATING TO: Solicitation at polling places

SPONSOR(S): Ethics and Elections and Rep. Simone

EFFECTIVE DATE: January 1, 1988

COMPANION BILL(S): SB 726, SB 9, SB 5, SB 97, HB 1041

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II. ECONOMIC IMPACT:

A. Public:

None

B. Government:

None

III. STATE COMPREHENSIVE PLAN IMPACT:

None

IV. COMMENTS:

This bill passed the Legislature in HB 549 (Chapter 87-184, Laws of Florida) and in SB 209 (Chapter 87-363, Laws of Florida).

V. AMENDMENTS:

None

VI. PREPARED BY: Sarah Jane Bradshaw *SJB*

VII. STAFF DIRECTOR: Wayne R. Malaney *WMM*



FLORIDA STATE ASSOCIATION OF  
SUPERVISORS OF ELECTIONS, INC.

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1987

LEGISLATIVE PROPOSALS

FLORIDA SUPERVISORS OF ELECTIONS

1987 LEGISLATIVE PRIORITY CONCEPTS

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CONCEPT NUMBER 1

FLORIDA SUPERVISORS OF ELECTIONS

ESTABLISH MAIL BALLOT ELECTION ACT TO ALLOW MAIL REFERENDUMS  
IN NON-CANDIDATE ELECTIONS.

17		
18	Be It Enacted by the Legislature of the State of Florida:	1:enc
19		
20	Section 1. Sections 101.6101, 101.6102, 101.6103,	1.13
21	101.6104, 101.6105, 101.6106, and 101.6107, Florida Statutes,	
22	are created to read:	1.14
23	<u>101.6101 Short title.--Sections 101.6101-101.6107</u>	1:1us
24	<u>shall be known as the "Mail Ballot Election Act."</u>	1.15
25	<u>101.6102 Mail ballot elections; limitations.--</u>	1:1us
26	<u>(1) An election may be conducted by mail ballot if:</u>	1.13
27	<u>(a) The election is a referendum election at which all</u>	1:1us
28	<u>or a portion of the qualified electors of one of the following</u>	1.20
29	<u>subdivisions of government are the only electors eligible to</u>	1.2.
30	<u>vote:</u>	
31	<u>1. Counties;</u>	1:1us

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1	<u>2. Cities;</u>	1:1us
2	<u>3. School districts covering no more than one county;</u>	1:25
3	<u>or</u>	
4	<u>4. Special districts covering no more than one county;</u>	1:1us
5	<u>(b) The governing body responsible for calling the</u>	1:1us
6	<u>election and the supervisor of elections responsible for the</u>	1:28
7	<u>conduct of the election authorize the use of mail ballots for</u>	1:29
8	<u>the election; and</u>	
9	<u>(c) The Secretary of State approves a written plan for</u>	1:1us
10	<u>the conduct of the election, which shall include a written</u>	1:32
11	<u>timetable for the conduct of the election, submitted by the</u>	1:33
12	<u>supervisor of elections.</u>	1:34
13	<u>(2) The following elections may not be conducted by</u>	1:1us
14	<u>mail ballot:</u>	1:36
15	<u>(a) An election at which any candidate is nominated,</u>	1:1us
16	<u>elected, retained, or recalled; or</u>	1:37
17	<u>(b) An election held on the same date as another</u>	1:1us
18	<u>election, other than a mail ballot election, in which the</u>	1:38
19	<u>qualified electors of that political subdivision are eligible</u>	1:39
20	<u>to cast ballots.</u>	1:40
21	<u>(3) The supervisor of elections shall be responsible</u>	1:41
22	<u>for the conduct of any election held under this act.</u>	1:42
23	<u>(4) The cost of a mail ballot election shall be borne</u>	1:1us
24	<u>by the jurisdiction initiating the calling of the election,</u>	1:43
25	<u>unless otherwise provided by law.</u>	
26	<u>101.6103 Mail ballot election procedure --</u>	1:1us
27	<u>(1) Except as otherwise provided in subsection (6),</u>	1:45
28	<u>the supervisor of elections shall mail all official ballots</u>	1:48
29	<u>with a secrecy envelope, a return mailing envelope, and</u>	1:50
30	<u>instructions sufficient to describe the voting process to each</u>	
31	<u>elector entitled to vote in the election not sooner than the</u>	1:51

1	<u>20th day before the election and not later than the 10th day</u>	1.52
2	<u>before the date of the election. All such ballots shall be</u>	1.53
3	<u>mailed by first class mail. Ballots shall be addressed to</u>	1.55
4	<u>each elector at the address appearing in the registration</u>	1.57
5	<u>records and placed in an envelope which is prominently marked</u>	
6	<u>"Do Not Forward."</u>	1.58
7	(2) <u>Upon receipt of the ballot the elector shall mark</u>	1:1us
8	<u>the ballot, place it in the secrecy envelope, sign the return</u>	1.60
9	<u>mailing envelope supplied with the ballot, and comply with the</u>	1.61
10	<u>instructions provided with the ballot. The elector should</u>	1.63
11	<u>mail, deliver, or have delivered the marked ballot so that it</u>	
12	<u>reaches the supervisor no later than 7 p.m. on the day of the</u>	1.64
13	<u>election. The ballot must be returned in the return mailing</u>	1.66
14	<u>envelope.</u>	
15	(3) <u>The return mailing envelope shall contain a</u>	1:1us
16	<u>statement in substantially the following form:</u>	2.2
17	<u>VOTER'S CERTIFICATE</u>	1:1us
18	<u>I, (Print Name), do solemnly swear (or affirm) that I</u>	2.3
19	<u>am a qualified voter in this election and that I have not and</u>	2.4
20	<u>will not vote more than one ballot in this election.</u>	2.5
21	<u>I understand that failure to complete the information</u>	1:1us
22	<u>below will invalidate my ballot.</u>	2.6
23	<u>(Signature)</u>	1:1us
24	<u>(Residence Address)</u>	1:1us
25	(4) <u>If the ballot is destroyed, spoiled, lost, or not</u>	1:1us
26	<u>received by the elector, the elector may obtain a replacement</u>	2.9
27	<u>ballot from the supervisor of elections as provided in this</u>	
28	<u>subsection. An elector seeking a replacement ballot shall</u>	2.10
29	<u>sign a sworn statement that the ballot was destroyed, spoiled,</u>	2.11
30	<u>lost, or not received and present such statement to the</u>	
31	<u>supervisor of elections prior to 7 p.m. on the day of the</u>	2.12



1	<u>election. The supervisor of elections shall keep a record of</u>	2.13
2	<u>each replacement ballot provided under this subsection.</u>	2.14
3	<u>(5) A ballot shall be counted only if:</u>	2.15
4	<u>(a) It is returned in the return mailing envelope;</u>	1:1us
5	<u>(b) The elector's signature has been verified as</u>	2.18
6	<u>provided in this subsection; and</u>	2.19
7	<u>(c) It is received by the supervisor of elections not</u>	2.20
8	<u>later than 7 p.m. on the day of the election.</u>	2.22
9		
10	<u>The supervisor of elections shall verify the signature of each</u>	1:1us
11	<u>elector on the return mailing envelope with the signature on</u>	2.23
12	<u>the elector's registration records. Such verification may</u>	2.24
13	<u>commence at any time prior to the canvass of votes. The</u>	2.25
14	<u>supervisor of elections shall safely keep the ballot unopened</u>	2.26
15	<u>in his office until the county canvassing board canvasses the</u>	2.27
16	<u>vote. If the supervisor of elections determines that an</u>	2.29
17	<u>elector to whom a replacement ballot has been issued under</u>	
18	<u>subsection (4) has voted more than once, the canvassing board</u>	2.30
19	<u>shall determine which ballot, if any, is to be counted.</u>	2.31
20	<u>(6) With respect to absent electors overseas entitled</u>	1:1us
21	<u>to vote in the election, the supervisor of elections shall</u>	2.33
22	<u>mail an official ballot with a secrecy envelope, a return</u>	
23	<u>mailing envelope, and instructions sufficient to describe the</u>	2.34
24	<u>voting process to each such elector on a date sufficient to</u>	2.35
25	<u>allow such elector time to vote in the election and to have</u>	
26	<u>his marked ballot reach the supervisor by 7 p.m. on the day of</u>	2.36
27	<u>the election.</u>	
28	<u>101.6104 Challenge of votes.--If any elector present</u>	1:1us
29	<u>for the canvass of votes believes that any ballot is illegal</u>	2.39
30	<u>due to any defect apparent on the Voter's Certificate, he may</u>	
31	<u>at any time before the ballot is removed from the envelope,</u>	2.40

1	<u>file with the canvassing board a protest against the canvass</u>	
2	<u>of such ballot, specifying the reason he believes the ballot</u>	2.41
3	<u>to be illegal. No challenge based upon any defect on the</u>	2.43
4	<u>Voter's Certificate shall be accepted after the ballot has</u>	
5	<u>been removed from the return mailing envelope.</u>	2.44
6	<u>101.6105 Absentee voting.--The provisions of the</u>	1:1us
7	<u>election code relating to absentee voting and absentee ballots</u>	2.46
8	<u>shall apply to elections under this act only insofar as they</u>	
9	<u>do not conflict with the provisions of this act.</u>	2.48
10	<u>101.6106 Application of other election laws.--All laws</u>	1:1us
11	<u>that are applicable to general elections are applicable to</u>	2.50
12	<u>mail ballot elections to the extent applicable.</u>	
13	<u>101.6107 Department of State to adopt rules.--The</u>	2.52
14	<u>Department of State shall promulgate rules governing the</u>	2.53
15	<u>procedures and forms necessary to implement this act.</u>	2.55
16	Section 2. This act shall take effect January 1, 1988.	2.55
17		

1	*****	1:hbs
2	HOUSE SUMMARY	1:hbs
3	Creates the Mail Ballot Election Act to authorize	2.58
4	referendum elections by mail ballot for electors of	2.59
5	specified political subdivisions. Requires the	2.60
6	supervisor of elections to submit a written plan prior to	
7	such an election to the Secretary of State for approval.	2.61
8	Requires the jurisdiction calling such an election to	2.62
9	bear its cost, unless otherwise provided by law.	2.63
10	Provides procedures for the conduct of such elections.	2.64
11	Provides for challenge of votes. Provides applicability	2.66
12	of general election and absentee voting laws to the	
13	extent applicable. Requires the Department of State to	3.1
	promulgate rules to implement the act.	

CONCEPT 2

FLORIDA SUPERVISORS OF ELECTIONS

Do away with the need for a separate form to be signed by the elector to cancel a previous registration when registering absentee.

97.063 Eligibility for absentee registration.-

(6) If the elector is registered in any other county of Florida, or in any other state, the supervisor ~~shall~~ may also have the elector complete a separate form, signed by the elector, to be mailed by the supervisor to the registering official in the jurisdiction in which such elector was last registered for the purpose of advising such official to cancel the elector's former registration.

REASON: Many supervisors now send a computer generated cancellation to other jurisdictions to cancel an electors former registration and a separate form is not needed.

Note: Supervisors will still be required to send a cancellation of some form to the former jurisdiction pursuant to 97.051

CONCEPT NUMBER 3

FLORIDA SUPERVISORS OF ELECTIONS

DEFINE "POLLING PLACE" AND "POLLING ROOM"

97.021 Definitions.- *create*

(24) "Polling Room" means the actual room in which ballots are cast.

(25) "Polling Place" means the building which contains the polling room where ballots are cast.

CONCEPT NUMBER 4

FLORIDA SUPERVISORS OF ELECTIONS

PROPOSAL TO HAVE THE STATE COMPENSATE COUNTIES WHEN  
INITIATIVE PETITIONS ARE VERIFIED FOR UNDUE BURDEN PETITIONERS

99.097 Verification of signatures on petitions.-

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

Reason: In July, 1984, in the Case of Clean Up '84 vs. Walter F. Heinrich, etc., United States District Court, the Middle District of Florida the Court enjoined all supervisors of elections from enforcing the provisions of this section requiring any person or organization submitting a petition to have an issue placed on the ballot to pay for the verification if such person or organization certifies its inability to pay without imposing an undue burden on its resources or the resources available to it. The Judge wrote "The harm suffered by Plaintiffs far exceeds the possible additional administrative expenses to be borne by the State".

This change will ensure that the cost in such circumstances is borne by the state rather by the respective counties.

CONCEPT NUMBER 5

FLORIDA SUPERVISORS OF ELECTIONS

PROPOSAL TO PROVIDE FOR A UNIFORM METHOD FOR ELECTORS TO  
UPDATE THEIR REGISTRATION INFORMATION.

97.1071 Notice of change of residence or name;  
Uniform change procedures.

(1) When an elector moves from the address named on his voter registration records, it is the duty of such elector to notify the office of the supervisor of elections in writing of such change and obtain a voter identification card reflecting the new residence address.

(2) When the name of an elector is changed by marriage or other legal process, it is the duty of such elector to notify the office of the supervisor of elections in writing of such change and obtain a voter registration card reflecting the name change.

(3) In the case of a change of party affiliation, the elector shall make a written request for such change and obtain a voter registration card reflecting the new party affiliation. A registration form or federal postcard application signed by the elector and bearing a party affiliation differing from that on file for the elector shall be considered a request for a change of party affiliation.

(4) The supervisor shall make the necessary changes in the elector's records as soon as practical upon receipt of such notice of a change of residence, or name, or party affiliation, except that, in regard to a change in party affiliation, such change shall not be made nor shall such card be issued while the registration books are closed pursuant to s.98.051. All requests for changes of party affiliation shall be retained on file by the supervisor.

Repeal section 97.072(2).

CONCEPT NUMBER 6

FLORIDA SUPERVISORS OF ELECTIONS

Allow registration by Federal Application Form (FFCA)

To avoid a constitutional amendment, the Federal Government has been asked to redesign the Federal form to comply with voter registration requirements prescribed in the Florida Constitution.

CONCEPT NUMBER 7

FLORIDA SUPERVISORS OF ELECTIONS

Delete notification to solicit at the polls.

107.031 Maintenance of good order at polls: authorities:  
solicitation of voters.-

(3) ~~(a) No~~ Any person, political committee, committee of continuous existence, ~~member of the press, or other group or organization that intends to~~ may solicit voters within 100 feet of any polling place on the day of any election, shall notify the supervisor of elections at least 3 days prior to the day of the election of such intent. The notice shall include:

~~(a) The name of the person, committee, group, or organization soliciting;~~

~~(b) The issue on which persons will be solicited;~~

~~(c) The polling places where soliciting will occur;~~

~~(d) The time soliciting will occur; and~~

~~(e) The nature of the soliciting activity, including, but not limited to, distribution of pamphlets, flyers, or other materials; requesting signatures on a petition form; and requesting voter opinions on candidates and issues.~~

Reason: Form proved to be useless.



FLORIDA SUPERVISORS OF ELECTIONS

**PROPOSAL TO REQUIRE CANDIDATES (OTHER THAN STATEWIDE), WHO FILE WITH THE DIVISION OF ELECTIONS, TO SUBMIT A COPY OF THEIR APPOINTMENT OF CAMPAIGN TREASURER TO THE SUPERVISOR OF ELECTIONS IN THE COUNTY IN WHICH THEY RESIDE**

**106.021 Campaign treasurers; deputies, primary and secondary depositories.--**

*(1)(a) Each candidate for nomination or election to office and each political committee shall appoint a campaign treasurer. Each person who seeks to qualify for nomination or election to, or retention in, office shall appoint a campaign treasurer and designate a primary campaign depository prior to qualifying for office. Any person who seeks to qualify for election or nomination to any office by means of the petitioning process shall appoint a treasurer and designate a primary depository on or before the date he obtains the petitions. Each candidate shall at the same time he designates his campaign depository and appoints his treasurer also designate the office for which he is a candidate. Nothing in this subsection shall prohibit a candidate, at a later date, from changing the designation of the office for which he is a candidate and using the campaign funds for that candidacy. No person shall accept any contribution or make any expenditure with a view to bringing about his nomination, election, or retention in public office, or authorize another to accept those contributions or make such expenditure on his behalf, unless such person has appointed a campaign treasurer and designated a primary campaign depository. A candidate for an office voted upon on a statewide basis may appoint not more than 15 deputy campaign treasurers, and any other candidate or political committee may appoint not more than three deputy campaign treasurers. The names and addresses of the campaign treasurer and deputy campaign treasurers so appointed shall be filed with the office before whom such candidate is required to qualify or with whom such political committee is required to register pursuant to §106.03. Each candidate for other than a statewide office shall also file a copy of the name and address of the campaign treasurer so appointed with the supervisor of elections in the county in which the candidate resides.*

Reason for change to 106.021(1)(a) To have information on who has opened campaign accounts for legislative and judicial offices available at the local level.

FLORIDA SUPERVISORS OF ELECTIONS

**PROPOSAL TO ESTABLISH A 30-DAY PERIOD BETWEEN SUBMISSION OF CONSTITUTIONAL AMENDMENT PETITIONS AND CERTIFICATION AND TO ALLOW VERIFICATION BY RANDOM SAMPLE**

*Florida Constitution, Article XI*

*Section 3. Initiative.--The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment shall embrace but one subject and matter directly connected therewith. It may be invoked by filing with the secretary of state a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each of one-half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen. The legislature may provide by law for the method of verification of the petitions.*

*Section 5. Amendment or revision election.--*

*(a) A proposed amendment to or revision of this constitution, or any part of it, shall be submitted to the electors at the next general election held more than ninety days after the joint resolution, initiative petition or report of revision commission or constitutional convention proposing it is filed with the secretary of state, and in the case of an initiative petition, 120 days after the initiative petition is submitted to each appropriate county supervisor of elections for verification, unless, pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the legislature and limited to a single amendment or revision, it is submitted at an earlier special election held more than ninety days after such filing*

Reason for changes to Article XI

- Section 3     The change will permit the legislature to enact legislation providing for initiative petitions to be verified by the random sample method. This will result in a cost savings for both petitioners and election offices
  
- Section 5     The change will provide for a cutoff date for initiative petitions to be turned in to the supervisors of elections 30 days prior to the deadline for certification to the Secretary of State

CONCEPT NUMBER 10

FLORIDA SUPERVISORS OF ELECTIONS

ALLOW SUPERVISORS TO APPOINT ANY QUALIFIED COUNTY ELECTOR AS  
A POLLWORKER REGARDLESS OF PRECINCT

100.010 Inspectors and clerks to conduct elections-

100.012(7) Each member of the election board shall be able to read and write the English language and shall be a registered qualified elector of the county the precinct in which he is appointed, ~~and in the event no such elector can be found to serve in any precinct, an elector may be appointed from any other precinct within the county.~~...

REASON: To allow Supervisors to better use citizens interested in working at the polls in order to meet the needs of an election.

CONCEPT NUMBER 11

FLORIDA SUPERVISORS OF ELECTIONS

MAKE ALLOWANCE TO REGISTER "HOMELESS VOTERS" WHO ARE RESIDENTS  
OF COUNTY IN COURTHOUSE PRECINCT

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

(1) No person shall be permitted to vote in any election precinct or district other than the one in which he has his permanent place of residence and in which he is registered. However, a person temporarily residing outside the county, or otherwise without a permanent residence within the county, shall be registered in the precinct in which the county courthouse is located ~~when he has no permanent address in the county and~~ if it is his intention to remain a resident of Florida and of the county in which he is registered to vote. Such persons who are registered in the precinct in which the county courthouse is located and who are residing outside the county or with no permanent address in the county shall not be registered electors of a municipality and therefore shall not be permitted to vote in any municipal election and therefore shall not be permitted to vote in municipal election.

REASON: To allow supervisors to register citizens desirous of registering if they are a resident of the county and the state even if the citizen has no permanent address.

CONCEPT NUMBER 12

FLORIDA SUPERVISORS OF ELECTIONS

DELETE REQUIREMENT TO PURCHASE SET NUMBER OF VOTING BOOTHS  
IF BOOTHS ARE NOT AN INTEGRAL PART OF THE VOTING SYSTEM

101.25 Booths

In any county in which voting booths are compartments are used, the supervisor of elections shall provide at least one voting booth or compartment for each 125 registered electors in the county if the booth is an integral part of the voting system.

REASON: To give the County some flexibility in the purchase of booths when a booth is not actually needed for the an elector to cast his ballot.

CONCEPT NUMBER 17

FLORIDA SUPERVISORS OF ELECTIONS

DELETE PROHIBITION OF CHANGING OR ADDING PRECINCTS DURING FOUR YEARS IN EACH DECADE.

98.071 Registration and election districts, precincts, and polling places; boundaries.-

98.071(3)(a)1. (Delete)

No election precinct or district shall be created, divided, subdivided, or consolidated, or the boundaries therein changed, during the period between January 1 of any year the last date of which is 7 and December 1 of any year the last date of which is 6.

2. (Delete)

3 (b). (Delete)

REASON: Florida is growing too fast to provide for a prohibition of changing district lines 40% of the time and still meet the electoral needs of its people. If this statute is not changed, there is no way that Supervisors can adequately provide for the voters during the 1988 presidential election much less the 1990 elections.

## FLORIDA SUPERVISORS OF ELECTIONS

## PROPOSED CONSTITUTIONAL AMENDMENT ON APPORTIONMENT

Article III, Section 16 of the Florida State Constitution deals with legislative apportionment and prescribes that the legislature reapportion the state at its regular session in the second year following each decennial census. Following this requirement are other constitutional procedures dealing with all possible situations which might occur if reapportionment is not successfully accomplished in the regular session (see attached chart).

**PROPOSAL:** TO DELETE FROM THE STATE CONSTITUTION THE REQUIREMENT THAT THE LEGISLATURE WAIT UNTIL ITS REGULAR SESSION IN THE SECOND YEAR FOLLOWING THE DECENNIAL CENSUS TO REAPPORTION. TO REVISE THE DETAILED CONSTITUTIONAL PROCEDURES DEALING WITH REAPPORTIONMENT IN ORDER TO ALLOW REAPPORTIONMENT TO BE ACCOMPLISHED IN OR AFTER THE REGULAR SESSION IN THE FIRST YEAR AFTER THE CENSUS, BUT WITH AN EFFECTIVE DATE AFTER THE LEGISLATURE ADJOURNS IN THE SECOND YEAR AFTER THE CENSUS.

RATIONALE FOR BEGINNING REAPPORTIONMENT IN THE FIRST YEAR AFTER THE CENSUS:

On April 1, 1990 the Bureau of the Census will perform the census throughout the U.S. By April 1, 1991 they are required to provide the population data by census blocks to each state. The Florida Constitution, however, restricts the reapportioning of the legislature to the regular legislative session in the second year following the decennial census (1992).

This constitutional provision was included when the state constitution was revised in 1968. At that time the change was also made from biennial sessions to annual sessions of the legislature. It undoubtedly made good sense at the time to target reapportionment for the even-numbered year after the census. The even-numbered year is the second year of a House member's two year term and therefore reapportionment would occur just before elections would be held for legislative seats for the next biennium.

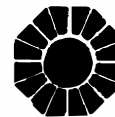
Since that time, however, portions of Florida have fallen under the jurisdiction of the Voting Rights Act and state reapportionment plans must receive clearance by the Justice Department before they can be implemented. Receiving clearance involves submitting a detailed report and allowing Justice sixty days for review, under normal circumstances. There is also an increased tendency on the part of individuals and groups to challenge reapportionment plans in court. By restricting the adoption of a reapportionment plan to the regular session of the legislature in the even-numbered year after the census, the time period for adoption, challenge and approval is restricted to less than nine months at most, assuming the legislative session begins in early

In addition, there are a number of other procedures that suffer when reapportionment is not finalized until close to the elections. Some of these are:

1. Under Florida law candidates are allowed to qualify for office by obtaining petition signatures within their district from early January to early June. Lack of district boundaries inhibits this procedure.
2. Legislative qualifying is held in July. If the district boundaries are delayed, candidates have problems making plans.
3. In a federal election, absentee ballots must be mailed 30 days before the first primary, i.e., the Congressional Districts must be set and approved and candidates certified for the ballot in sufficient time to print the absentees and have them in the mail by early August.
4. Once legislative lines are established, precinct boundaries often need to be moved to the district boundaries in order to avoid split ballots and voter confusion. Changes in precinct boundaries, in those counties under the Voting Rights Act, must be submitted to the Justice Department for approval before they can be implemented.
5. 1992 is a presidential election year. During the March Presidential Preference Primary, the precinct committee members in both parties run for office. State law and party rule determine how many committee members are elected from each precinct. To change precinct boundaries immediately after the once-in-every-four-year's election could cause some committee members to be disqualified immediately after election.

**Conclusion:** Amending the Florida Constitution to permit the legislature to consider reapportionment in the odd-numbered year after the census would allow for more orderly implementation of the reapportionment and less confusion for the voters and candidates. After the last decennial census, twenty-eight of the states began their redistricting procedures in 1981. Florida began staff work and held hearings but was unable to officially consider the product till the regular session in 1982 and only a very expeditious handling of the reapportioning process enabled the fall elections to be held on time.





OFFICE OF THE SUPERVISOR OF ELECTIONS  
SUITE 1910  
111 N W 1st STREET  
MIAMI, FLORIDA 33128-1962  
(305) 375-5553

Mailing Address:  
P O Box 012241  
Miami, Florida 33101-2241

December 16, 1986

Representative George Crady, Chairman  
Committee on Ethics and Elections  
Florida House of Representatives  
207 House Office Building  
Tallahassee, Florida 32301

19 1823

Dear Representative Crady:

The following is in response to your memorandum regarding soliciting at polling places.

- 1. Dade County lost 23 polling places during 1986 which were a direct result of soliciting at the polls. Correspondence from a few of those facilities are enclosed for your information.

	<u>First Primary</u>	<u>Second Primary</u>	<u>General Election</u>
Candidates	38	9	37
Political Committees	4	0	4
Petitioners	6	4	5
News Media	8	6	14

Approximately 400 of Dade County's 489 precincts actually experienced solicitation within 100 feet during the November 4, 1986 General Election.

- 3. There was virtually no solicitation beyond 100 feet since we mailed all candidates, political committees, petition groups, and news organizations a solicitation request form, a copy of which is enclosed. Therefore, those who wished to solicit voters returned a completed form to us.

12/18/86

4. The problems we experienced with soliciting were as follows:
  - a. We had a few disputes among those soliciting, but this was not a major problem.
  - b. We also experienced some disputes between the polling place officials and solicitors as to what was 50 feet from the polling place. These disputes were settled by troubleshooters dispatched from our main office.
  - c. Many voters expressed their displeasure with the "harrassment" they encountered. An editorial comment which appeared in The Miami Herald, enclosed, is typical of what we heard.
  - d. When the 50 feet mark was close to a street, some of the solicitors stood in the middle of the thoroughfare waving signs and handing out literature, thus causing traffic problems.
  - e. The noise created by the solicitation activities disrupted the normal operations of some of the facilities in which we have polling places. For example, one campaigner was using a blowhorn outside of a school which made it very difficult for teachers to control classes.
  - f. A significant problem was the amount of litter which was left outside of the polling place facilities. In addition, a lot of the campaign materials which were handed to voters as they entered the polling places was left in the voting booths.
  - g. Lastly, campaign signs were posted, taped and nailed to buildings, trees, etc., which greatly upset the owners of the facilities we are using.

As a result of our experience these past three elections, I recommend that:

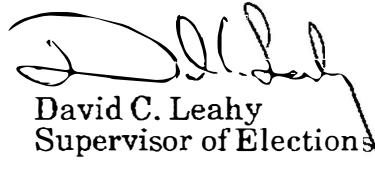
1. The distance that solicitation can occur be measured from the building in which the polling place is located instead of from the area in which voting takes place. This change would prohibit solicitation inside facilities such as schools. It would also prohibit the posting of campaign signs on the building in which the polling place is located.
2. Do away with the noticing requirement and have one distance, whether it be 50 or 100 feet, where all solicitation can occur. The noticing requirement, in my opinion, is an expensive administrative nightmare which benefits no one. In addition, our emphasis on election day should be insuring that all eligible voters get to vote and not policing which solicitors can be 50 feet away and which must be 100 feet away.

Representative George Crady, Chairman  
Committee on Ethics and Elections  
December 16, 1986  
Page 3

3. If it is determined that the noticing requirements are still desirable, I urge that the submission deadline be a minimum of 7 days prior to the election to permit us time to disseminate complete information to the precinct clerks prior to election day. The present deadline does not give us enough time to distribute a complete list to the precinct clerks prior to election day, thus generating numerous calls from the precincts on election day for those solicitors which were not included on the list.

I hope this information is useful to you and the Committee as it prepares for the upcoming session. Please contact me if you have any questions in this regard or if I can be of any additional assistance to you.

Sincerely,



David C. Leahy  
Supervisor of Elections

DCL/aga  
Enclosures  
cc: Honorable Buddy Irby  
FSASE Legislative Chairman



MARY W. MORGAN  
*Supervisor of Elections*  
COLLIER GOVERNMENT COMPLEX  
3301 TAMiami TRAIL EAST  
NAPLES, FLORIDA 33962  
TELEPHONE: 813/774-8450

December 2, 1986

Hon. George Crady, Chairman  
Committee on Ethics & Elections  
Florida House of Representatives  
207 House Office Building  
Tallahassee, FL 32301

Dear Representative Crady:

SUBJECT: POLLING PLACES AND SOLICITATION

This is in response to your questionnaire regarding the polling site and the problem created by solicitation of petition signatures and/or exit interviews.

1. The number of polling places lost (if any) as a direct consequence of soliciting at polling places. Please provide copies of any available correspondence or other documentation relating to these lost polls.

Collier County had 74 polling sites during the 1986 election cycle. Our voter population has not been sufficient in years past to attract groups collecting petition signatures.

We did not lose any polling sites; however, attached is a copy of a letter received from one site. Thirty-three other churches called to advise me that if casino gambling forces showed up at their churches, we would be evicted. The methodist churches indicated that we would be evicted if any petition groups showed up as they felt they could not show favoritism among any groups seeking to collect petition signatures.

2. a. The number of notices filed with you under F.S. 102.031(3), to solicit within 50-100 ft. of poll site.

TWO but we didn't publicize the change in the distance requirements.

- b. The number of such notices from
  - (1) candidates--ONE but too late
  - (2) Political Committees--One but for 6 polling sites
  - (3) News Networks-- TWO--CBS and NBC (usually CBS, NBC, & ABC)

- c. The number of polling places actually experiencing solicitation within 100 ft. and the total number of polling places within the county.

74 polling sites; 5 (five) polling sites where members of the English only PAC circulated petitions for signatures.

3. The number of polling places experiencing solicitation beyond 100 ft. (in addition to 2.c.)

One precinct had a local group concerned about the solid waste recovery plant slated for construction in Collier County proceeded to conduct an opinion survey of area residents.

4. An explanation of any problems you experienced with the soliciting -- disruptions of operations, disputes among those soliciting, harassment of voters, etc.

An attaching a copy of an injunction served upon the Supervisors of the 20th Judicial Circuit regarding access to the polls by the press for the November 4, 1986 election.

With respect to my suggestions for improving the election process, they are as follows:

1. Eliminate the need for a run-off (2nd) primary as we are caught in the position of having to mail absentee ballots to military and overseas Americans before the run-off election is held and then an update with the winners of the run-off.
2. Require ALL special districts whether created by general law (such as mosquito control) or special acts to adhere to the current provisions of the election code with respect to qualifying, method of election, and assumption of office. Especially make sure that the initial election held for such districts MUST adhere to the election code-- that is, qualify by seat designation.
3. Require that all municipal charters clearly require that election of council members at the initial election must also qualify by seat designation.
4. Provide for the "Mail Ballot" option for single issue local referendum (bill to be introduced by Representative Mary Ellen Hawkins).


5. Provide that all special district elections or initial municipal elections must pay the cost associated with such election. We have a community that has voted 4 times on whether or not to incorporate. Each time the measure is defeated but the proponent (namely a small group) begins the new move for incorporation the day after the defeat of the measure.
6. Provide a measure that would prohibit an area from continually seeking to have elections on the issue of incorporation once defeated. Something to the effect that a similar measure could not be again considered for a period of 4 years.
7. Collier County, along with 4 other counties, are required to make submissions for "pre-clearance" to the U. S. Department of Justice on any change affecting voting--including candidate residency requirements, etc. It would be most helpful if any election code changes, therefore, ~~would not~~ be made effective until the Florida Attorney General has made a submission and received pre-clearance.

This year, I made the local submission on an incorporation issue as required so that the matter would be properly pre-cleared prior to the actual election date of 11/4/86 and the date for mailing absentees to military and overseas Americans in mid September. Unfortunately, at the expiration of the 60 day limit the U. S. Dept. of Justice has to review the material, they advised me that they could not pre-clear the issue (although I had provided every single item that was needed) because the Florida Attorney General's Office had not made the submission required as a result of the action of the Legislature.

Thanks for listening to my comments. I too shall look forward to working with you for the next two years.

Incidentally, one other suggestion is that no Legislative committee attempt to conduct surveys or questionnaires during the course of the primary and general election cycle. Along that line, Please accept my appreciation for waiting until now to send your questionnaire.

Sincerely,

  
Mary W. Morgan  
Supervisor of Elections

P.S. Initiative petitions circulated within the 5 pre-clearance counties should be in both English and Spanish.

Golden Gate Presbyterian Church  
PRESBYTERIAN CHURCH (USA)

HILLAN M. GARNER  
PASTOR

4631 SUNSET ROAD SW  
NAPLES, FLORIDA 33999

CHURCH PHONE  
(813) 455-1400

October 23, 1986

Mrs. Mary Morgan, Election Supervisor  
Collier County Government Bldg.  
3301 East Tamiami Trail  
Naples, Fl 33962

Dear Mrs. Morgan,

This is to advise you that the Session of the Golden Gate Presbyterian Church in it's September stated meeting voted the following "that with the inception of the new law which allows electioneering within 50 feet of the polling place, should this present or create any problems for us, at election times, we will be withdrawing our facility from it's use as a polling place."

Sincerely yours,

Jeanne Noble

Jeanne Noble, Clerk *JN*

JMN/cb

cc: to all Elders

NEWS-PRESS PUBLISHING CO., INC. )  
d/b/a FORT MYERS NEWS-PRESS, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
GEORGE FIRESTONE, et. al )  
 )  
Defendants. )

CASE NO. 86-5946 CA

INTERIM ORDER GRANTING TEMPORARY RELIEF

This cause came on to be heard upon the Plaintiff's Prayer for Temporary Injunction on the basis that Section 101.121, Fla. Stats. (1985) is unconstitutionally vague and overbroad, both facially and as applied to Plaintiff under the First Amendment, and the Court having heard the testimony of the parties' witnesses, and having considered the affidavit filed by Plaintiff and other documentary evidence introduced by the parties, and finding that:

(a) The Plaintiff, as a member of the news media, would appear to have a right of access to polling places similar in nature and extent as its right of access to the Courts, and, for the purpose of this Order only, the Court so finds;

(b) The Defendants are charged by law with insuring peace and order at the polls and the secrecy of the vote and with enforcing the provisions of Florida's Election Code;

(c) Competing interests exist between the Plaintiff's First Amendment rights to access to polling places in order to gather the news and Defendants' duty to enforce the laws to insure orderly elections and the secrecy of the vote;

(d) Because of the imminence of the November 4, 1986 general election and the complexity of the constitutional and other issues before the court, the Court will not be able to rule on the issue of the constitutionality of Section 101.121, Fla. Stats. (1985) or whether Plaintiff is entitled to have Defendants wholly enjoined from enforcing the statute prior to the election;

(e) In order to temporarily best serve the aforesaid competing interests of the parties and the interests of justice



until such time as the Court may rule on such issues, and without ruling on the constitutionality of the statute at this time, a balancing of such competing interests should be made for the accommodation of all of the parties before the Court and other persons bound by this Order, it is, therefore,

ORDERED AND ADJUDGED that:

1. Defendants, GEORGE FIRESTONE, as Secretary of State, DOROTHY GLISSON, as Deputy Secretary of Elections, ENID EARLE, as Lee County Supervisor of Elections, and FRANK WANIKA, as Sheriff of Lee County, be and are hereby enjoined during the pendency of this action from enforcing the prohibitive provisions of Section 101.121, Fla. Stats, against Plaintiff or other members of the news media, their employees and agents, until further order of the Court, subject to the following terms and conditions:

(a) The print and broadcast media shall be permitted to photograph or videotape in and about the polling places located within the 5 Counties of the Twentieth Judicial Circuit through a pooling arrangement similar in nature to that in force in the courtrooms of the Circuit. The radio and television media may each select one (1) representative from each of such media and the print media may select as representatives one (1) photographer and one (1) reporter to perform the newsgathering function for such media at the various polling places in the Circuit. While the media may designate as many such representatives as they deem necessary to cover the number of polling places they desire, no more than one such team of representatives shall be allowed to enter the polling place or come within 50 feet of any particular polling place.

(b) Upon selection of such representatives, the representatives so selected shall give notice to the Supervisor of Elections in the County where the polling place(s) are located of the identity of the representatives and the polling place(s) to be covered. Upon giving such notice, the Supervisor of Elections, or his or her designated agent, shall issue written authorization to each such representative to come within 50 feet of the specified polling place(s).

(c) Upon presentation of such written authorization to the Clerk of the polling place, or other designated election official, the Clerk shall allow the media representative to photograph or videotape the voting process in a manner and from a location which reasonably allows the media to perform its function, but so not as to unreasonably interfere with the election process, cause disruption or disorder at the polls, or invade the secrecy of the vote.

2. This Order shall be binding upon the parties hereto, their officers, agents, servants, employees and attorneys and on those persons in active concert or participation with them who receive actual notice of this Order, pursuant to Fla.R.Civ.P. 1.610(c). A copy of this Order shall be mailed to each Supervisor of Elections in Charlotte, Collier, Hendry and Glades Counties, Florida, and shall be binding upon them.

3. Any person bound by the terms of this Order may seek to modify or vacate its terms, pursuant to Fla.R.Civ.P. 1.610(d).

4. Nothing contained in this Order shall be construed as a prohibition against the enforcement of Section 101.121, except as specifically set forth herein. For such reason, the Court is of the opinion that no bond is required under the provisions of Fla.R.Civ.P. 1.610(b); however, in the event any person enjoined by this Order disagrees with the Court on this issue, the Plaintiff, upon receipt of notice of such disagreement, shall post a bond, or cash in lieu thereof, in the amount of \$100.00, conditioned upon the matters set forth in such Rule, within five (5) days of such notice.

DONE AND ORDERED in Chambers in Fort Myers, Lee County, Florida, this 28th day of October, 1986.

/s/ William J. Nelson  
JUDGE OF THE CIRCUIT COURT

Copies furnished to:

Steven Carta, Attorney for Plaintiff  
Terrence Lenick, Attorney for Defendant Enid D. Earle  
Barry Hillmyer, Attorney for Defendant Frank Wanika  
James W. Sloan, Attorney for Defendants Firestone & Glisson

1986 APR -4 AM 11: 09

WBR:SSC:VNT:dvs  
DJ 166-012-3

MARY W. MORGAN  
SUPERVISOR  
OF ELECTIONS  
Washington, D C. 20530

Ms. Mary W. Morgan  
Supervisor of Elections  
Collier Government Complex  
3301 Tamiami Trail East  
Naples, Florida 32962

MAR 31 1986

Dear Ms. Morgan:

This refers to your December 30, 1985, letter concerning initiative petition for Collier County, Florida.

Your letter of December 30th, raises the question as to whether initiative petitions require preclearance under Section 5 of the Voting Rights Act of 1965, as amended. While laws governing initiative petitions and elections resulting from such petitions likely are subject to Section 5 preclearance, the petitions themselves do not have to be submitted for Section 5 review.


In response to your question as to whether the petitions need to be printed in Spanish, we note that Collier County implemented bilingual election procedures which were precleared under Section 5 and which may require that the petitions be printed in Spanish as well as in English.

If you have any questions about this matter, please feel free to contact Sandra S. Coleman, Director of Section 5 Unit (202)724-6718.

Sincerely,

Wm. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division

By:

  
for Gerald W. Jones  
Chief, Voting Section

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MARY W. MORGAN

*Supervisor of Elections*

COLLIER GOVERNMENT COMPLEX  
3301 TAMiami TRAIL EAST  
NAPLES, FLORIDA 33962  
TELEPHONE: 813/774-8450

December 30, 1985

Mr. Gerald W. Jones  
Chief, Voting Rights Section  
U. S. Department of Justice  
Washington, D. C. 20530

Dear Mr. Jones:

SUBJECT: OPINION AS TO NECESSITY TO "PRE-CLEAR" INITIATIVE PETITIONS

The requirements pertaining to the initiative petition process for proposing amendments to Florida's Constitution are contained in the Constitution itself, Article XI, Section 3, and Florida Statutes 99.097, 100.371, 101.161, 102.031 and 104.185.

My question is this: Since Collier County, Florida is one of five Florida jurisdictions required to preclear items under Section 5 of the Voting Rights Act, as amended, would initiative petitions [which are statewide in scope and effect] circulated within Collier County be required to be:

- (1) printed in both English and Spanish; and
- (2) pre-cleared thru the U. S. Department of Justice?

Specifically, would the initiative petition wording be a "covered change" as referenced in Section 51.12 (c) or (k) of the Procedures for the administration of the Voting Rights Act of 1965, as amended?

Thank you for your response.

Sincerely,

Mary W. Morgan  
Supervisor of Elections

mmw

Enclosures:

Article XI, Sec. 3, Florida Constitution  
Florida Statutes 99.097  
Florida Statutes 100.371  
Florida Statutes 101.161  
Florida Statutes 102.031  
Florida Statutes 104.185

ions of coverage will be published in the FEDERAL REGISTER.

#### § 51.5 Termination of coverage.

A covered jurisdiction may terminate the application of Section 5 by obtaining the declaratory judgment described in Section 4(a) of the Act.

#### § 51.6 Political subunits.

All political subunits within a covered jurisdiction (e.g., counties, cities, school districts) are subject to the requirement of Section 5.

#### § 51.7 Political parties.

Certain activities of political parties are subject to the preclearance requirement of Section 5. A change affecting voting effected by a political party is subject to the preclearance requirement: (1) If the change relates to a public electoral function of the party and (2) if the party is acting under authority explicitly or implicitly granted by a covered jurisdiction or political subunit subject to the preclearance requirement of Section 5. For example, changes with respect to the recruitment of party members, the conduct of political campaigns, and the drafting of party platforms are not subject to the preclearance requirement. Changes with respect to the conduct of primary elections at which party nominees, delegates to party conventions, or party officials are chosen are subject to the preclearance requirement of Section 5. Where appropriate the term "jurisdiction" (but not "covered jurisdiction") includes political parties.

#### § 51.8 Computation of time.

(a) The Attorney General shall have days in which to interpose an objection to a submitted change affecting

Except as specified in §§ 51.35, and 51.41 the 60-day period shall be upon receipt by the Department of Justice of a submission

90-day period shall mean 60 days, with the day of receipt of a submission not counted. If the period should fall on a day, any day designated by the President or Congress of the United States, or any

other day that is not a day of regular business for the Department of Justice, the Attorney General shall have until the close of the next full business day in which to interpose an objection. The date of the Attorney General's response shall be the date on which it is mailed to the submitting authority.

#### § 51.9 Requirement of action for declaratory judgment or submission to the Attorney General.

Section 5 requires that, prior to enforcement of any change affecting voting, the jurisdiction that has enacted or seeks to administer the change must either: (1) Obtain a judicial determination from the U.S. District Court for the District of Columbia that denial or abridgment of the right to vote on account of race, color, or membership in a language minority group is not the purpose and will not be the effect of the change or (2) make to the Attorney General a proper submission of the change to which no objection is interposed. It is unlawful to enforce a change affecting voting without obtaining preclearance under Section 5. The obligation to obtain such preclearance is not relieved by unlawful enforcement.

#### § 51.10 Right to bring suit.

Submission to the Attorney General does not affect the right of the submitting authority to bring an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change affecting voting does not have the prohibited discriminatory purpose or effect.

#### § 51.11 Scope of requirement.

Any change affecting voting, even though it appears to be minor or indirect, even though it ostensibly expands voting rights, or even though it is designed to remove the elements that caused objection by the Attorney General to a prior submitted change, must meet the Section 5 preclearance requirement.

#### § 51.12 Examples of changes.

Changes affecting voting include, but are not limited to, the following examples:

(a) Any change in qualifications or eligibility for voting.

(b) Any change concerning registration, balloting, and the counting of votes and any change concerning publicity for or assistance in registration or voting.

(c) Any change with respect to the use of a language other than English in any aspect of the electoral process.

(d) Any change in the boundaries of voting precincts or in the location of polling places.

(e) Any change in the constituency of an official or the boundaries of a voting unit (e.g., through redistricting, annexation, deannexation, incorporation, reapportionment, changing to at-large elections from district elections, or changing to district elections from at-large elections).

(f) Any change in the method of determining the outcome of an election (e.g., by requiring a majority vote for election or the use of a designated post or place system).

(g) Any change affecting the eligibility of persons to become or remain candidates, to obtain a position on the ballot in primary or general elections, or to become or remain holders of elective offices.

(h) Any change in the eligibility and qualification procedures for independent candidates.

(i) Any change in the term of an elective office or an elected official or in the offices that are elective (e.g., by shortening the term of an office, changing from election to appointment or staggering the terms of offices).

(j) Any change affecting the necessity of or methods for offering issues and propositions for approval by referendum.

(k) Any change affecting the right or ability of persons to participate in political campaigns which is effected by a jurisdiction subject to the requirement of Section 5.

#### § 51.13 Recurrent practices.

Where a jurisdiction implements a practice or procedure periodically or

upon certain established contingencies, a change occurs: (1) The first time such a practice or procedure is implemented by the jurisdiction, (2) when the manner in which such a practice or procedure is implemented by the jurisdiction is changed, or (3) when the rules for determining when such a practice or procedure will be implemented are changed. The failure of the Attorney General to object to a recurrent practice or procedure constitutes preclearance of the future use of the practice or procedure if its recurrent nature is clearly stated or described in the submission or is expressly recognized in the final response of the Attorney General on the merits of the submission.

#### § 51.14 Enabling legislation and contingent or nonuniform requirements.

(a) The failure of the Attorney General to interpose an objection to legislation (1) That enables or permits political subunits to institute a voting change or (2) that requires or enables political subunits to institute a voting change upon some future event or if they satisfy certain criteria does not exempt the political subunit itself from the requirement to obtain preclearance when it seeks or is required to institute the change in question, unless implementation by the subunit is explicitly included and described in the submission of such parent legislation.

(b) Such legislation includes for example: (1) Legislation authorizing counties, cities, or school districts to institute any of the changes described in § 51.12, (2) legislation requiring a political subunit that chooses a certain form of government to follow specific election procedures, (3) legislation requiring or authorizing political subunits of a certain size or a certain location to institute specified changes, (4) legislation requiring a political subunit to follow certain practices or procedures unless the subunit's charter or ordinances specify to the contrary.

[46 FR 872, Jan 5, 1981, Order No 921a-8; 46 FR 9571 Jan 29, 1981]

# Florida House of Representatives

James Harold Thompson, Speaker Elaine Gordon, Speaker pro tempore  
Committee on Ethics & Elections

George Crady

~~XXXXXXXX~~

Chairman

~~XXXXXXXX~~

Vice Chairman

## MEMORANDUM

TO: All Supervisors of Elections

FROM: George Crady, Chairman *GC*

RE: Soliciting at Polling Places; 1987 Session

DATE: November 18, 1986

---

As we prepare for the 1987 legislative session and with the 1986 elections behind us, I would like to request some information from you on soliciting at polling places. There have been numerous stories in the media about the effect the 1985 law has had on polling places and supervisors. Much of the information in those stories is too general or vague to prepare revisions to that statutory provision. Therefore, it would be very helpful if you would provide the following information to us:

1. The number of polling places lost (if any) as a direct consequence of soliciting at polling places. Please provide copies of any available correspondence or other documentation relating to these lost polls. *NONE, BUT all 33 churches advised that if Casino gambling petitioners*
2. a. The number of notices filed with you under s. 102.031(3), Florida Statutes, to solicit within 50-100 feet of a polling place.  
b. The number of such notices from
  - (1) candidates
  - (2) political committees

- c. The number of polling places actually experiencing solicitation within 100 feet, and the total number of polling places in the county.
3. The number of polling places experiencing solicitation beyond 100 feet (in addition to 2.c.)
4. An explanation of any problems you experienced with the soliciting -- disruptions of operations, disputes among those soliciting, harassment of voters, etc.

This information will be helpful to us as we look for ways to improve the effectiveness of the present law.

In addition, we would like to receive any other suggested changes to the election code. The Florida State Association of Supervisors of Elections will provide its recommendations at a later date, but we can get an early indication of those recommendations from you individually at this time and take appropriate steps to prepare for the session.

I am looking forward to working with you and F.S.A.S.E. during the next two years. I welcome your input and pledge the cooperation of the committee and the staff.

GC:Hc



# ETTA M. PETERSON

Supervisor of Elections • Flagler County

P.O. Box 901 • Bunnell, Florida 32010

904/437-3421

December 2, 1986

Florida House of Representatives  
207 House Office Building  
Tallahassee, FL 32301

Attention : George Crady, Chairman

1a

182 ↓

Re : Soliciting at Polling Places; 1986 Elections

Dear Mr. Crady:

Thank you for your request for information in regards to solicitation at polling places. Flagler County experienced the following:

1. No existing polling places lost because of solicitation.
- 2(A)+(B). Total number of notices filed to solicit within 50-100 feet were: 1st Primary - Candidates 4, Political Committees 1  
General Election - Candidates 3.
- 2(c). Total number of polling places experiencing solicitation within 100 feet : 13.
3. Number of polling places experiencing solicitation beyond 100 feet : 13.
4. Solicitation within 50-100 feet of the polling place resulted with reports from voters that campaign workers were trying to force acceptance of campaign literature and poll workers reported that campaign literature was left in the voting booths and polling places.

Solicitation outside the 100 feet generated as many complaints and disruptions as the 50-100 feet. Complaints received in this office from outside the 100 feet area were:

Obstructing driveway into polling place, causing traffic problems in 2 precincts.

Posting campaign signs on property near the polling places without permission. This was never a problem before.

Parking area was used for vehicles with political signs on them. This space was needed for the voters.

12/3/86



(2)

It is my contention that a candidate or committee has ample time from the qualifying period for campaigning and soliciting before election day, whereby election day should be for our voters.

Thank you for your consideration and cooperation in helping to delete F.S. 102.031(3). If I can be of further assistance at anytime, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Etta M. Peterson". The signature is written in a cursive style with a long horizontal flourish at the end.

Etta M. Peterson  
Supervisor of Elections  
Flagler County, Florida

Columbus



# Florida House of Representatives

James Harold Thompson, Speaker Elaine Gordon, Speaker pro tempore  
Committee on Ethics & Elections

George Crady

~~XXXXXXXX~~

Chairman

~~XXXXXXXX~~

Vice Chairman

## MEMORANDUM

TO: All Supervisors of Elections

FROM: George Crady, Chairman *GC*

RE: Soliciting at Polling Places; 1987 Session

DATE: November 18, 1986

As we prepare for the 1987 legislative session and with the 1986 elections behind us, I would like to request some information from you on soliciting at polling places. There have been numerous stories in the media about the effect the 1985 law has had on polling places and supervisors. Much of the information in those stories is too general or vague to prepare revisions to that statutory provision. Therefore, it would be very helpful if you would provide the following information to us:

1. The number of polling places lost (if any) as a direct consequence of soliciting at polling places. Please provide copies of any available correspondence or other documentation relating to these lost polls.
- 2.a. The number of notices filed with you under s. 102.031(3), Florida Statutes, to solicit within 50-100 feet of a polling place.
  - b. The number of such notices from
    - (1) candidates 2
    - (2) political committees

12/11/86

Memorandum  
Page 2

- c. The number of polling places actually experiencing solicitation within 100 feet, and the total number of polling places in the county. (28) of (28)
3. The number of polling places experiencing solicitation beyond 100 feet (in addition to 2.c.) *see 28*
- \* 4. An explanation of any problems you experienced with the soliciting -- disruptions of operations, disputes among those soliciting, harassment of voters, etc.

This information will be helpful to us as we look for ways to improve the effectiveness of the present law.

In addition, we would like to receive any other suggested changes to the election code. The Florida State Association of Supervisors of Elections will provide its recommendations at a later date, but we can get an early indication of those recommendations from you individually at this time and take appropriate steps to prepare for the session.

I am looking forward to working with you and F.S.A.S.E. during the next two years. I welcome your input and pledge the cooperation of the committee and the staff.

GC:Hc

# Cárolyn D. Kirby

SUPERVISOR OF ELECTIONS

COLUMBIA COUNTY

P O Box 1285

Lake City, Florida 32056-1285

Phone (904) 755-4100

#4.

Complaints of voters who resented the signs and people supporting candidates, even if it was legal. Feelings of the voters are that it is still too close. There was not harassment, but much dislike to the change in the law to come closer to polls.

I do not like the change and believe people have their minds made up by election day and should not be subjected to the solicitation near the polls, or entrance to the polls.

*Lake*



# Florida House of Representatives

James Harold Thompson, Speaker Elaine Gordon, Speaker pro tempore  
Committee on Ethics & Elections

George Crady

~~XXXXXXXX~~

Chairman

~~XXXXXXXX~~

Vice Chairman

## MEMORANDUM

TO: All Supervisors of Elections

FROM: George Crady, Chairman *GC*

RE: Soliciting at Polling Places; 1987 Session

DATE: November 18, 1986

19 18 1986

As we prepare for the 1987 legislative session and with the 1986 elections behind us, I would like to request some information from you on soliciting at polling places. There have been numerous stories in the media about the effect the 1985 law has had on polling places and supervisors. Much of the information in those stories is too general or vague to prepare revisions to that statutory provision. Therefore, it would be very helpful if you would provide the following information to us:

1. The number of polling places lost (if any) as a direct consequence of soliciting at polling places. Please provide copies of any available correspondence or other documentation relating to these lost polls. *(none)*
- 2.a. The number of notices filed with you under s. 102.031(3), Florida Statutes, to solicit within 50-100 feet of a polling place.
  - b. The number of such notices from
    - (1) candidates - 104 Names filed(3 Candidates) for City Election in two precincts
    - (2) political committees - 1 in one Precinct  
CBS NEWS - Two Precincts  
7 names filed in three precincts "Stall 5"

- c. The number of polling places actually experiencing solicitation within 100 feet, and the total number of polling places in the county. 6 - 61 Total
3. The number of polling places experiencing solicitation beyond 100 feet (in addition to 2.c.) NONE
4. An explanation of any problems you experienced with the soliciting -- disruptions of operations, disputes among those soliciting, harassment of voters, etc. (SEE BELOW)

This information will be helpful to us as we look for ways to improve the effectiveness of the present law.

In addition, we would like to receive any other suggested changes to the election code. The Florida State Association of Supervisors of Elections will provide its recommendations at a later date, but we can get an early indication of those recommendations from you individually at this time and take appropriate steps to prepare for the session.

I am looking forward to working with you and F.S.A.S.E. during the next two years. I welcome your input and pledge the cooperation of the committee and the staff.

GC:Hc

I had approximately 30 calls from voters who were upset. They were very much opposed to these people being there. One of the candidates parked motor home within 50 feet and gave out hot dogs and cold drinks. Most of our complaints on Election Day were about this problem.

CBS-NEWS asked voters leaving the polling place how they voted, etc.- (Questionnaire) I would like to see this law changed. We would like for our voters to go to their polling places without harassment.

*Ernest Stegall*  
*Sup. of Elections Lake Co*

12/11/86



# Florida House of Representatives

James Harold Thompson, Speaker Elaine Gordon, Speaker pro tempore  
Committee on Ethics & Elections

George Crady

~~MEMBER~~

Chairman

~~MARY WIGG~~

Vice Chairman

## MEMORANDUM

TO: All Supervisors of Elections  
FROM: George Crady, Chairman *GC*  
RE: Soliciting at Polling Places; 1987 Session  
DATE: November 18, 1986

As we prepare for the 1987 legislative session and with the 1986 elections behind us, I would like to request some information from you on soliciting at polling places. There have been numerous stories in the media about the effect the 1985 law has had on polling places and supervisors. Much of the information in those stories is too general or vague to prepare revisions to that statutory provision. Therefore, it would be very helpful if you would provide the following information to us:

- NONE* 1. The number of polling places lost (if any) as a direct consequence of soliciting at polling places. Please provide copies of any available correspondence or other documentation relating to these lost polls.
- ONE* 2.a. The number of notices filed with you under s. 102.031(3), Florida Statutes, to solicit within 50-100 feet of a polling place.
  - b. The number of such notices from
    - ONE* (1) candidates
    - (2) political committees

12/3/86

*NONE* c. The number of polling places actually experiencing solicitation within 100 feet, and the total number of polling places in the county.

*NONE* 3. The number of polling places experiencing solicitation beyond 100 feet (in addition to 2.c.)

4. An explanation of any problems you experienced with the soliciting -- disruptions of operations, disputes among those soliciting, harassment of voters, etc.

This information will be helpful to us as we look for ways to improve the effectiveness of the present law.

In addition, we would like to receive any other suggested changes to the election code. The Florida State Association of Supervisors of Elections will provide its recommendations at a later date, but we can get an early indication of those recommendations from you individually at this time and take appropriate steps to prepare for the session.

I am looking forward to working with you and F.S.A.S.E. during the next two years. I welcome your input and pledge the cooperation of the committee and the staff.

GC:Hc



Shirley P. Baccus  
Supervisor of Elections  
Brevard County

400 South Street  
Titusville, Florida 32780

Telephone  
(305) 269-8172

January 19, 1987

Florida House of Representatives  
George Crady, Chairman  
Committee on Ethics & Elections  
207 House Office Building  
Tallahassee, FL 32301

19 122

Dear Rep. Crady:

This is in response to your request of November 18, 1986, regarding soliciting at polling places. I apologize for the delay in responding; however, I hope the information will be helpful to you. Responses have been numbered to correspond to your numbered questions.

1. Brevard County has lost three polling places due to the problem of soliciting at the polling place. Two polling places were Methodist churches and it is anticipated that more may withdraw as the year goes on. We currently use six Methodist churches as polling places. One of our 5 Baptist Churches also withdrew.
2. a. The number of notices filed with us under section 102.031(3), F.S., is as follows:

First Primary	8 Notices
Second Primary	3 Notices
General Election	18 Notices

- b. The number of notices were from:

	<u>Candidates</u>	<u>Pol. Comm.</u>	<u>Exit Polls</u>
First Primary	6	2	
Second Primary	3		
General Election	13	1	4

- c. We received requests to solicit at all 115 polling places in Brevard County. The schools (13 precincts) did not allow solicitation on their property and some churches made requests to not solicit on church property (39 precincts are churches).

3. All 115 precincts experienced solicitation beyond 100 feet.

January 19, 1987

4. No special problems were reported to the Supervisor of Elections Office due to soliciting during the 1986 elections.
5. Suggested changes would be that solicitation not be allowed closer than 100 feet. If requests for solicitation are required, it should be submitted to our office at least 10 days prior to election day so that we would have time to notify the election board during the schools of instruction.

Thank you for your interest in this problem and for giving us the opportunity to add our input.

Sincerely,

A handwritten signature in cursive script, appearing to read "Shirley P. Baccus".

Shirley P. Baccus  
Supervisor of Elections

Enclosures



Port St. John First United Methodist Church  
Reverend Shelby Wilson

Church Address:  
1165 Fay Boulevard  
Cocoa, Florida 32927  
Phone 305-631-0183

Pastors Address:  
P.O. Box 614  
Mims, Florida 32754  
Phone 305-383-0337

Dec 14 9 39 AM '86  
RECEIVED  
SECRETARY

Shirley Baccus  
Supervisor of Elections  
400 South Street  
Titusville, Florida 32780

Dear Ms. Baccus:

We had a conversation recently about the use of the Port St. John First United Methodist being used as a polling place. I regret to inform you that we are no longer available for use as a voting precinct. As you know I was very concerned about the lottery being a part of this election, especially since I am opposed to it. Casino Gambling will be sure to come up again, and I will not be caught supporting it even by the use of our building.

Billing for elections held in 1986 .

First Primary- Sept. 2	\$ 35.00
Second Primary - Sept. 30	\$ 35.00
General Election- November 4.	\$ 35.00
	<hr/>
	\$ 105.00

Sincerely,

*Rev. Shelby Wilson*

Copy of this letter in Confirmation file.

Pct. 93



# Rockledge United Methodist Church

P.O. BOX 353  
ROCKLEDGE, FLORIDA 32955

David W. Herman  
~~XXXXXXXXXXXX~~  
Minister

July 24, 1986

Church: 305/632-7387  
Residence: 305/636-5148

Shirley P. Baccus  
Supervisor of Elections  
400 South Street  
Titusville, Florida 32780

87  
JUL 25 1 48 PM '86  
SB  
ET

Dear Mrs. Baccus:

Since the Casino Gambling and Lottery Referendums have gained positions on the ballot for the General Election, there should not be a need for solicitation by these supporting organizations at the polls later this year. On this basis the Board of Trustees of Rockledge United Methodist Church has agreed to continue use of this church as a polling place for Precinct 93 for the remainder of 1986.

Future use of our church facilities into 1987 cannot be granted unless or until the present law permitting close-in solicitation is changed to the satisfaction of the United Methodist Church.

Yours truly,

Robert A. Selle  
Chairman  
Board of Trustees

RAS/rb



# Florida House of Representatives

Jon Mills, Speaker  
Committee on Ethics & Elections

George A. Crady  
Chairman

Peter Deutsch  
Vice Chairman

March 11, 1987

The Honorable Dorothy Sample  
Representative, District 54  
3110 First Avenue North  
St. Petersburg, Florida 33713

HB 148

Dear Representative Sample:

Pursuant to our conversation in your office on Thursday, March 5 and by telephone Monday, March 9, I reviewed the Clean-Up 84 v. Heinrich case as it relates to your bill. I also reviewed the letter to you from Mr. Jim Lowe, a copy is enclosed.

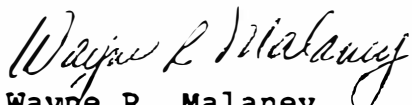
Please note Mr. Lowe's reference to numbered paragraph 1 regarding conformity with s. 101.121, F.S. The addition of this language, I believe, is pertinent to meet the constitutional test.

However, s. 101.121, F.S., does not conform with your proposed bill. Specifically, s. 101.121, F.S., prohibits anyone from coming within 50 feet of the polling place if they are not in line to vote. Section 102.131, F.S., prohibits persons, political committees, committees of continuous existence or other groups or organizations from soliciting voters within 100 feet.

Representative Simone has filed a bill (HB 148) which, among other things, changes the soliciting distance in s. 102.131, F.S., to 150 feet. Your bill changes the soliciting distance in s. 104.36, F.S.. However, Representative Simone's bill seeks to repeal s. 104.36, F.S. I believe your proposed bill and Representative Simone's bill (HB 148) need to conform. You may wish to contact Representative Simone and discuss a compromise.

Finally, my review of the case (cited above) leads me to believe the court placed time, place and manner restrictions in considering the significant interest test. The court's concern is not the distance, but rather a consideration of the chilling effect on an individual's rights of expression versus the states need to run an orderly election. Because gathering signatures at a private home and commercial business imposes no threat to the voting process these areas are excluded.

Sincerely,

A handwritten signature in cursive script that reads "Wayne R. Malaney".

Wayne R. Malaney  
Staff Director

WRM:pc

Enclosure



**FLORIDA HOUSE OF REPRESENTATIVES**  
**HOUSE BILL DRAFTING SERVICE**

February 26, 1987

**James Lowe**  
Director

**James V. Morrison**  
**Dianne Mellon**  
**Lynn Considine Cobb**  
**Karen F. A. Hunter**

Representative Dorothy Sample  
3110 First Avenue North  
St. Petersburg, FL 33713

**Phyllis E. Barkley**  
Administrative Assistant

HB-148

Dear Representative Sample:

In response to your request we are pleased to enclose two copies of draft #136-204B, relating to solicitation near polling places. (We are also returning your file on this subject which includes copies of the two previous drafts.)

I have reviewed the present statute, the relevant court decisions, and have further discussed the draft with David Savelle.

As you know, the U.S. Court of Appeals for the Eleventh Circuit has permanently enjoined the enforcement of s. 104.36, F.S. (Clean-up '84 v. Heinrich, 759, F.2d 1511 (1985)), holding that it "is unconstitutionally overbroad on its face." The court went on to suggest that: "The significant interest which the state seeks to protect must be gained through a statute more narrowly drawn as to time, place, and manner."

The enclosed draft seeks to "narrow" the prohibition in two respects:

1. by exempting its application to commercial businesses and privately owned homes which may be within the 100-yard distance. This is in conformity with s. 101.121, F.S., which relates to persons who may be admitted to the actual polling place; and
2. by clarifying that the prohibition applies only during those hours of the election day when the polls are open.

I should remind you that our original draft also narrowed the prohibition by reducing the 100-yard distance to 100 feet. This would have brought the section in line with s. 102.031, F.S., which requires those who intend to solicit voters near the polling place to give the supervisor of elections certain 3-day written notice. However, at your direction we reinstated

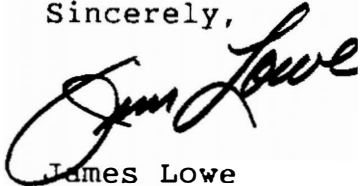
Representative Dorothy Sample  
February 26, 1987  
Page Two

the 100-yard distance and have left it at that figure in the current revised draft.

It is my understanding that the purpose of your proposal is to amend s. 104.36, F.S., in such a way as to overcome the federal court's objections and to make it once again enforceable. We have attempted to achieve that end. Whether or not we have been successful is a matter for further consideration by the House Committee on Ethics and Elections and, thereafter, the courts.

We will be happy to make any changes to this draft or to jacket it for introduction in accordance with your further instructions.

Sincerely,

A handwritten signature in black ink, appearing to read "James Lowe". The signature is written in a cursive style with a large, looping initial "J".

James Lowe

JL/pb  
Encs.



*Case files  
SJB  
FYI*

**CLEAN-UP '84, a Registered Political  
Committee, Plaintiff-Appellee,**

v.

**Walter C. HENRICH, et al., Defendants,**  
and

**George Firestone, Secretary of the  
State of Florida,  
Defendant-Appellant.**

No. 84-3581.

United States Court of Appeals,  
Eleventh Circuit.

May 8, 1985.

*10  
#5748*

Registered political action committee brought suit challenging constitutionality of Florida statute prohibiting solicitation of signatures on petitions within 100 yards of a polling place on election day. The United States District Court for the Middle District of Florida, William J. Castagna, J., found the statute unconstitutional, and appeal was taken. The Court of Appeals, Hatchett, Circuit Judge, held that statute was unconstitutionally overbroad on its face.

Affirmed.

**1. Constitutional Law ⇐90(1)**

Challenge to a statute on First Amendment grounds requires that Court of Appeals first consider whether the speech or conduct is protected by the United States Constitution; if answer is affirmative, court then considers whether statute is unconstitutional on its face, and, if applied, whether it is unconstitutional as applied. U.S.C.A. Const Amend 1.

**2. Constitutional Law ⇐35, 82(4)**

Facial invalidity exists where either a statute is unconstitutional in every conceivable application, or it seems to prohibit such a ~~range~~ of protected conduct that it is overbroad.

**3. Constitutional Law ⇐82(4)**

For a court to find that a statute is overbroad, it must find existence of a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the court. U.S.C.A. Const Amend 1.

**4. Constitutional Law ⇐5, 82(8)**

Florida statute prohibiting the solicitation of signatures on petitions to amend Constitution within 100 yards of a polling place on election day is unconstitutionally overbroad on its face. West's F.S.A. § 104.36; U.S.C.A. Const. Amend. 1.

Appeal from the United States District Court for the Middle District of Florida.

Before GODBOLD, Chief Judge, HATCHETT, Circuit Judge, and TUTTLE, Senior Circuit Judge.

HATCHETT, Circuit Judge:

In this case we review the district court's ruling that Fla.Stat. § 104.36, which prohibits the solicitation of signatures on petitions within 100 yards of a polling place on election day, is unconstitutional. We affirm.

Synopsis, Syllabus and Key Number Classification  
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The Synopsis, Syllabus and Key Number Classification constitute no part of the opinion of the court.

## FACTS

Clean-Up '84 is a registered political action committee seeking to use the initiative procedure provided by Fla. Const. art. XI, § 3.<sup>1</sup> During the March, 1984, presidential preference primary, Clean-Up '84 sought to use the initiative amendment process to obtain signatures for a proposed environmental rights amendment to the Florida

Constitution. On March 5, 1984, Clean-Up '84 sought and obtained a preliminary injunction against the enforcement of Fla. Stat. Ann. § 104.36 (West Supp. 1985) (as amended Laws 1984, ch. 84-302, § 25 effective July 1, 1984).<sup>2</sup> *Clean-Up '84 v. Heinrich*, 582 F.Supp. 125 (M.D. Fla. 1984). Clean-Up '84 also obtained a preliminary injunction against enforcement of Fla. Stat. Ann. § 99.097(4) (West Supp. 1985).<sup>3</sup>

## 1. Fla. Const. art. XI, § 3 provides:

## § 3. Initiative

The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment shall embrace but one subject and matter directly connected therewith. It may be invoked by filing with the secretary of state a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen.

## 2. Fla. Stat. Ann. § 104.36 provides:

## 104.36. Solicitation near polling places

Any person who, within 100 yards of any polling place on the day of any election, distributes or attempts to distribute any political or campaign material; solicits or attempts to solicit any vote, opinion, or contribution for any purpose; solicits or attempts to solicit a signature on any petition; or, except in an established place of business, sells or attempts to sell any item is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In determining the area in which solicitation is prohibited, the 100-yard distance from the polling place shall be measured from the entrance to the room or other area in which the voting equipment or pollworkers are housed.

## 3. Fla. Stat. Ann. § 99.097(4) provides:

99.097. Verification of signatures on petitions

(4) The supervisor shall be paid the sum of 10 cents for each signature checked or the

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

The injunctions as to this section have not been appealed.

The preliminary injunction prohibited the enforcement of the 100-yard provision on the primary preference date, March 13, 1984. The district court found that the state failed to show that the statute was a necessary or even reasonable way of ensuring order at the polls. Additionally, it found the statute overbroad and not drawn in the least restrictive manner. On March 27, 1984, the district court modified its March 5 preliminary injunction extending its prohibitions to "all municipal elections held throughout the state of Florida." On July 19, 1984, the court permanently enjoined enforcement of Fla. Stat. Ann. § 104.36 declaring it to be a restriction of speech and association lacking sufficient justification, overbroad, and not the least restrictive means to achieve the purpose of ensuring a orderly election process.

The state contends that the statute is constitutional. The state argues that it may impose restrictions on first amendment rights if the time, place, and manner of the restrictions are reasonable, if the restrictions serve a significant state interest, and if the restrictions are narrowly drawn to serve that interest.

Our sole issue is whether the district court erred in holding unconstitutional the provision of the Florida Election Code prohibiting solicitation of signatures on petitions within 100 yards of a polling place.

[1] A challenge to a statute on first amendment grounds requires that we first consider whether the speech or conduct is protected by the United States Constitution. If the answer is affirmative, we then consider whether the statute is unconstitutional "on its face." *City Council v. Tax*

4. The defendants in the district court were Walter C. Heinrich, Sheriff of Hillsborough County, a nominal party representing all of the sheriffs

*payors for Vincent*, — U.S. —, —, 104 S.Ct. 2118, 2124, 80 L.Ed.2d 772, 781 (1984). Where the statute has been applied, an additional question is whether the statute is unconstitutional as applied. *City Council*, — U.S. at —, —, 104 S.Ct. at 2124, 2128, 80 L.Ed.2d at 781, 786. Either finding of unconstitutionality invalidates the statute's operation on first amendment freedoms.

The parties agree that the activity encompassed by the statute, the soliciting of signatures for petitions within 100 yards of a polling place on election day, is first amendment activity. Further, we agree with the district court that "asking a voter to sign a petition" is protected "speech" and "gathering at the polls to solicit signatures" is protected association. Both activities involve the communication of ideas to voters. See *Brown v. Hartlage*, 456 U.S. 45, 53-54, 102 S.Ct. 1523, 1523-1529, 71 L.Ed.2d 732 (1982).

The First Amendment protects political association as well as political expression. The constitutional right of association explicated in *NAACP v. Alabama*, 357 U.S. 449, 460, 78 S.Ct. 1163 [1170], 2 L.Ed.2d 1488 (1958), stemmed from the Court's recognition that "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association."

*Buckley v. Valeo*, 424 U.S. 1, 15, 96 S.Ct. 612, 632-633, 46 L.Ed.2d 659 (1976).

[2,3] Facial invalidity exists when either a statute is "unconstitutional in every conceivable application," or it "seeks to

in the state of Florida, and Robin Kurvanek, also a nominal party, representing all of the supervisors of election in the state of Florida.

prohibit such a broad range of protected conduct that it is "overbroad." *City Council*, — U.S. at —, 104 S.Ct. at 2124, 80 L.Ed.2d at 781. A claim of substantial overbreadth seeks to invalidate statutes that may infringe protected expressions of third parties. *Thornhill v. Alabama*, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940).

It matters not that the words appellee used might have been constitutionally prohibited under a narrowly and precisely drawn statute. At least when statutes regulate or proscribe speech and when 'no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution,' *Dombrowski v. Pfister*, 380 U.S. 479, 491, 85 S.Ct. 1116 [1123], 14 L.Ed.2d 22, 31 (1965), the transcendent value of all society of constitutionally protected expression is deemed to justify allowing 'attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity,' *id.*, at 486 [85 S.Ct. at 1121]. . . . This is deemed necessary because persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions provided by a statute susceptible of application to protected expression.

*Gooding v. Wilson*, 405 U.S. 518, 520-21, 92 S.Ct. 1103, 1105, 31 L.Ed.2d 408 (1972) (citations omitted). For a court to find that a statute is overbroad, it must find the existence of a "realistic danger that the statute itself will significantly compromise recognized first amendment protections of

5. Florida has a number of other laws which prohibit interference with the election process and prohibit disorderly conduct. Fla.Stat.

parties not before the court." *City Council*, — U.S. at —, 104 S.Ct. at 2126, 80 L.Ed.2d at 784.

[4] Among other reasons, the district court found the statute overbroad because the 100-yard radius at some polling sites included private homes and businesses, "where the gathering of signatures could impose no threat to the voting process." The state's answer to this ruling is that although it is conceivable a sheriff or supervisor of elections might seek to enter a private home or business within 100 yards of a polling place and attempt to prevent a person from soliciting signatures, no evidence was presented that any sheriff or supervisor has ever done so, and it is unlikely an elected official would use the power of his or her office in such an abusive manner.

The state misconceives the overbreadth inquiry. The danger in an overbroad statute is not that actual enforcement will occur or is likely to occur, but that third parties, not before the court, may feel inhibited in utilizing their protected first amendment ~~constitutional~~ <sup>rights</sup> because of the existence of the overly broad statute. *City Council*, — U.S. at —, 104 S.Ct. at 2126, 80 L.Ed.2d at 784. It is no answer, therefore, to this facial challenge that the statute has not been enforced against persons in private homes or businesses within the 100-yard radius.<sup>5</sup>

We hold, therefore, that Fla.Stat. Ann. § 104.36 is unconstitutionally overbroad on its face. We express no opinion on whether a more narrowly drawn statute would pass constitutional muster. We recognize that the state has a significant interest in

§§ 877.03, 104.11, 104.051, 104.061, 104.091, 104.185, 104.23, and 104.41.

protecting the orderly functioning of the election process. It must ensure its voters that they may exercise their franchise without distraction, interruption, or harassment. The significant interest which the state seeks to protect must be gained through a statute more narrowly drawn as

to time, place, and manner. Further, because of its facial invalidity, and because the statute has not been applied to Clean-Up '84, we find it unnecessary to determine whether the statute is also unconstitutional as applied.

**AFFIRMED.**