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Committee on Ethics and Elections

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REVIEW OF FLORIDA'S "NEW MILLENNIUM" EXECUTIVE ELECTION ADMINISTRATION RULES

SUMMARY

The election administration rules adopted by Florida's Division of Elections ("the division") in the wake of the 2000 U.S. Presidential election recount, along with proposed changes to those rules, go a long way toward shoring up prior weaknesses in the system. There are, however, at least two *major* issues which merit further attention:

- **"Proxy" Balloting for "Fled" Voters:** The division's rules direct poll workers to cast ballots for voters who abandon their uncast ballots and leave the polling room.
- **Increasing Complexity of the Voter Intent Determination (Optical Scan Ballots):** The division's rule for determining voter intent on optical scan ballots during a recount is complex, and likely to become increasingly difficult to administer if changes to the voting system are not made.

In the event of an extremely tight race in Florida in 2004 or beyond, either or both of these issues could result in the type of legal chaos and uncertainty that was visited upon the State in 2000.

BACKGROUND

The 2000 U.S. Presidential general election and recount in the State of Florida was the catalyst for a nationwide review of election administration systems and procedures. This event has been reported on, documented, and memorialized to such a degree that no further enumeration of facts or circumstances would be beneficial or is necessary here.

The Florida Election Reform Act of 2001¹ eliminated punch card balloting in Florida and authorized the use of touch screen voting systems² for the first time --- subject to certification by the division.³ It also granted the division broad rulemaking authority in many areas of election administration. Some of the subjects on which the division has adopted rules include: Voter Intent (what markings constitute a valid vote in an optical scan ballot recount);⁴ Recount Procedures;⁵ Polling Place Procedures,⁶ and, Uniform Ballot Design.⁷

The September 2002 *primary* election was the initial proving ground for the new law and the division's implementing rules, as well as for new technology in 41 counties that had to do away with punch cards and other antiquated voting systems. By and large, the law and rules performed admirably, but there were some significant and well-documented problems with the *implementation of new and unfamiliar voting*

¹ Ch. 2001-40, LAWS OF FLA.

² Touch screen voting machines present the voter with an electronic ballot on a screen. The voter then selects candidates or choices by simply touching the screen. After completing the ballot, a voter may review and/or modify some or all of their choices prior to actually casting the ballot.

³ Shortly after the Act was enacted, the division certified two separate touch screen voting systems --- one manufactured by Sequoia and the other by ES & S. Fifteen Florida counties purchased these touch screen voting systems and used them during the 2002 elections, including some of Florida's largest counties. The division is currently reviewing a third touch screen voting system for certification (manufactured by Diebold).

⁴ Rule 1S-2.027, F.A.C.

⁵ Rule 1S-2.031, F.A.C.

⁶ Rule 1S-2.034, F.A.C.

⁷ Rule 1S-2.032, F.A.C. The rule includes primary and general election ballot designs for each certified voting system.

technologies in a few counties.⁸ While never acceptable, such growing pains should have come as no great surprise: the 2001 Election Reform Act required almost two-thirds of Florida's counties to completely overhaul their voting systems in a little over a year's time.

Overall, the November 2002 *general* election went relatively smooth. The counties that had major difficulties in the September primary election marshaled tremendous resources so as to not revisit those difficulties in the general election.

Earlier this year, Governor Jeb Bush signed into law House Bill 29-B (2003)⁹ [*hereinafter*, "HAVA Implementing Bill"], which retrofits the Florida Election Code to comply with the substantive election administration provisions of the federal Help America Vote Act of 2002 ("HAVA").¹⁰ HAVA is an omnibus federal election bill that was drafted largely in response to problems that Florida encountered statewide during the 2000 Presidential general election (and in certain counties during the 2002 primary election). The HAVA Implementing Bill:

- Grants the division new rulemaking authority over automatic machine recounts, recounts that are triggered if the winning margin after the initial vote count is one-half of one percent or less.
- Requires changes to existing rules over which the division already has rulemaking authority, such as ballot design and polling place procedures.

METHODOLOGY

Committee staff reviewed the division's existing and proposed¹¹ election administration rules, attended rulemaking workshops and hearings, and provided

⁸ The most widely-reported problems occurred in Miami-Dade and Broward counties, where significant voting delays prompted Governor Bush to issue an executive order extending election night voting throughout the State for two additional hours. Some relatively minor tabulating problems were also reported in Orange, Duval, and Union counties.

⁹ Ch. 2003-415, LAWS OF FLA.

¹⁰ H.R. 3295 (2002) [Enrolled].

¹¹ The division is currently in the process of revising several of their existing election administration rules. It expects to finalize many of these changes by late November 2003.

input on the development of proposed rules, where appropriate. Committee staff met informally with division staff and individual supervisors of elections throughout the rulemaking process. In addition, committee staff met with representatives of the Florida Association of Supervisors of Elections.

FINDINGS

Staff's review of the division's election administration rules indicates that they are in fairly good shape for the 2004 election cycle. The existing rules appear sound, and will be further fortified by the proposed changes that shore up loopholes identified by the supervisors of elections, legislative staff,¹² and other interested parties. In addition, the rules incorporate the new requirements dictated by the HAVA implementing bill, including new procedures for conducting automatic machine recounts.

There are, however, a few *major* issues that should be considered and debated to insure that everything that can be done at the *state level*¹³ in anticipation of the 2004 elections is done.

*Polling Place Procedures Manual*¹⁴

The division's *Polling Place Procedures Manual*, for the most part, adequately addresses many of the basic issues necessary to insure smooth poll operations for the 2004 elections. However, there is a provision which causes staff serious concern and which may require legislative intervention.

¹² Some examples of problems identified by Senate staff that the proposed rules correct include: a glitch in the recount procedures rule (1S-2.031) that would preclude certain candidates with a material interest in the outcome of a first primary recount from having representatives in attendance for the recount proceedings; and, a potential ambiguity in determining voter intent on an optical scan ballot (Rule 1S-2.027), relating to whether a line drawn on the ballot constitutes an underline that affirmatively selects a candidate or a strike-through indicating disdain for a particular candidate.

¹³ Historically and today, the administration of elections in Florida is essentially a shared partnership between the *State* and *local* governments --- between the Division of Elections and Florida's 67 county supervisors of elections. Thus, even if the right formula is in place at the state level, the ultimate success or failure of any election will hinge on the professionalism and expertise of *each* local supervisor in organizing their resources and executing the game plan.

¹⁴ Rule 1S-2.034, F.A.C. (adopted by reference).

The *Manual* currently directs poll workers to cast unvoted ballots for voters who walk away from the touch screen voting machines without pressing the "CAST" or "VOTE" button, or who leave an optical scan ballot in the voting compartment or room without placing it in the precinct tabulator (so-called "fled" voters).¹⁵ In the case of touch screens, two poll workers of *unspecified party affiliation* must cast the ballot; for optical scan ballots, any *single poll worker* can put the ballot through the tabulator. The proposed *Manual* modifies this implied "proxy" voting procedure to provide that two poll workers of different party affiliation, where possible,¹⁶ shall cast abandoned touch screen and optical scan ballots.¹⁷ This change should serve to alleviate some of the partisan concerns surrounding proxy voting.

In order to get a handle on the scope of the potential problem, staff looked at the total number of touch screen ballots cast by poll workers on behalf of voters in the September 2002 primary election. Six hundred five (605) proxy ballots were cast in 11 touch screen counties¹⁸ with a combined voter turnout of 808,272,¹⁹ or about three quarters of one-tenth of one percent (about 0.075 percent) of all votes cast. (Counts from the 52 optical scan counties were not available.)

In an era where recounts in Florida are determined by tenths of a percent, a 0.075 percent proxy voting rate is

¹⁵ Florida Division of Elections, *Polling Place Procedures Manual*, p. 10.

¹⁶ The inclusion of the phrase "where possible" is designed to take account of the fact that in some precincts, particularly rural precincts in heavily Republican or Democratic counties, all the poll workers at a polling site may be registered with the same party affiliation. Hopefully, supervisors of elections will allocate their poll workers in a way that minimizes these occurrences of single-party affiliation polling places, *but the Manual does not so direct them*.

¹⁷ Florida Division of Elections, *Polling Place Procedures Manual*, p. 10 (10/06/03 Draft) [noticed by reference in Florida Administrative Weekly, p. 4121-22 (Oct. 17, 2003)].

¹⁸ Touch screen counties from which staff received proxy ballot information (via the legislative liaison for the Florida Association of Supervisors of Elections) were: Broward (143); Charlotte (34); Collier (44); Lake (12); Martin (38); Nassau (24); Pasco (73); Sarasota (123); and, Sumter (23). Pinellas County (44) and Hillsborough County (47) reported proxy ballots directly to staff.

¹⁹ Combined voter turnout calculated from the individual county turnout figures posted in the Official Results for the September 10, 2002 Primary Election, reported at elections.dos.state.fl.us.

statistically significant.²⁰ Even in a prior elections era, this rate would have been determinative. It would have resulted in **2464 proxy votes** being cast in Florida's 15 touch screen counties in the 2000 U.S. Presidential election:²¹ that race was decided by a mere **537 votes**.

Irrespective of the number of total proxy ballots being cast, the number of poll workers required to cast them, or the party affiliation of those poll workers, having poll workers cast ballots for fled voters may violate current Florida election law prohibiting a person from voting more than one ballot per election.²² Notwithstanding this legal issue, the rule is problematic for a variety of pragmatic reasons.

First, it presumes that **all** voters who abandon their ballots and leave the polling place actually intended to cast their ballot. Second, relatively simple procedures can be implemented (at least for optical-scan systems and for two of the three touch screen systems) to reduce or eliminate the problem of voters inadvertently walking away from the voting machines without taking the final step to cast their ballot. Third, if the margin of victory in a race is less than the number of proxy ballots cast by poll workers and a court were to invalidate those proxy ballots, the only apparent remedy would be to order a new election: "proxy" votes on ballots cast by poll workers cannot technologically be separated from "non-proxy" votes on ballots cast by voters.²³ Fourth, having poll workers

²⁰ The 2001 Florida Election Reform Act changed the rules for recounts: a mandatory manual recount now occurs when the margin of victory in a race is .25 percent or less; an automatic machine recount occurs where the margin is .5 percent or less; where the margin is between .25 and .5 percent, the runner-up candidate has the right to request a manual recount. Ch.2001-40, LAWS OF FLA., sections 41 and 42 (codified at 102.141(6) and 102.166(1), (2), F.S.).

In the 2002 Democratic gubernatorial primary, there was no recount because the unofficial results indicated Bill McBride defeated Janet Reno by 8,196 votes, about **.6 percent** of the total votes reported (8,196/1,350,178). E-mail from Janet Modrow, Florida Division of Elections to Jonathan Fox, Senate Ethics and Elections Committee (October 17, 2003) (containing unofficial results).

²¹ 3,285,940 (U.S. Presidential ballots cast in the 15 touch screen counties) multiplied by .00075 (proxy balloting rate). [Official Results for 2000 U.S. Presidential General Election, reported at elections.dos.state.fl.us.]

²² Sec. 104.18, F.S.

²³ The touch screen voting systems tabulate the total number of proxy ballots cast by poll workers in the election, but cannot separate out from the overall results the individual votes on each proxy ballot.

cast ballots for voters gives the appearance of impropriety and could provide the ammunition for lawsuits contesting the election results in close races.

It is staff's understanding that many supervisors of elections lobbied the division to include the proxy ballot rule in the *Polling Place Procedures Manual* when it was originally adopted in 2002.²⁴ There was apparent concern that many voters would inadvertently walk away from the touch screen voting machines without taking the final, ultimate step to cast their ballots; thus, their votes would not count. If this had occurred, it would also have reflected poorly on the supervisors' efforts to educate the voters on the proper use of the new touch screen voting machines.

The circumstances for the 2004 elections, however, will be very different from those that presented themselves in 2002. Instead of the voters being faced with brand new technology, many voters in 2004 will have used the voting machines in two separate state elections --- and, in some counties, in other local elections as well. Instead of an abbreviated six-month time frame to educate voters on the proper use of the equipment, voters in 2004 will have had two additional years to learn how to properly cast their ballot. Instead of supervisors being pre-occupied with the implementation of brand new voting technology, their efforts through 2004 can focus more fully on insuring that voters are prepared and knowledgeable about how to cast a valid vote.

Do these changes guarantee that no one will mistakenly walk away from a voting booth without casting their ballot? No. But, voting is a shared partnership between the voters and their government. The government can provide the tools necessary for making choices and casting ballots: it is up to the voter to use those tools properly.

Having the government in the voting booth in any capacity, *unless absolutely necessary for the effective administration of an election*, is inherently dangerous and sends the wrong signal. Florida balloting in the 2004 U.S. Presidential race will undoubtedly be the focus of intense international, national, and statewide media scrutiny: it is an opportunity for Florida to begin re-building its elections image. Proxy balloting poses an unnecessary threat to this rehabilitation process.

²⁴ An earlier proposed draft of the *Manual* directed poll workers to *cancel* abandoned voter ballots instead of casting them. Notice of Changes to Proposed Rule 1S-2.034, p. 2310, F.A.W. (April 19, 2002) (Item 6).

Therefore, the Legislature should consider clarifying the law to explicitly provide that poll workers cannot cast proxy ballots for "fled" voters. Conversely, should the Legislature decide to sanction the current practice, staff recommends that the division rule be adopted in statute and that the current prohibition against any person casting a ballot on behalf of someone else be amended to allow for such voting.

On a related subject, the *Manual* contains *no uniform procedures* to safeguard against *voters* casting more than one ballot. Unless a poll worker is required to inspect each touch screen voting machine immediately after a voter exits the voting compartment, the subsequent voter could encounter an active ballot, modify it, and cast it before proceeding to bring up and vote his or her own ballot.²⁵ Under the current scheme, poll workers presumably are relying on *voters* to let them know there is an unvoted ballot on the screen. At a minimum, the rule should specifically direct poll workers operating touch screen systems to inspect the screens for unvoted ballots after *each* voter leaves the voting compartment and *before* allowing access to a subsequent voter.²⁶

This simple oversight suggests that the division might want to review with the supervisors how each type of touch screen system is *actually being used in the polling places*, and revise the *Manual* to include more explicit procedures for *each* system, if necessary.

²⁵ Only one touch screen voting system requires a poll worker to bring the ballot up on the screen for the voter. The other two allow the voter to access their ballot by inserting a card without poll worker supervision.

²⁶ The same procedure could be put in place for optical scan ballots left in the voting compartment. Since this problem reportedly appears with much less frequency with optical scan systems, however, the administrative burdens would have to be weighed against the potential benefits.

*Voter Intent Rule*²⁷

One of the principal lessons from the 2000 U.S. Presidential recount odyssey was that there must be uniform, objective recount standards for determining which votes count and which do not.²⁸ In 2000, this determination was a subjective one --- left to the virtually unbridled discretion²⁹ of each county's local canvassing board.³⁰

The 2001 Election Reform Act sought to redress this shortcoming by: clarifying the statutory "voter intent" standard; and, authorizing the division to adopt specific rules for each certified voting system, identifying which specific markings constituted a valid vote and which did not.

Under the new statutory standard,³¹ a vote counts for a candidate or ballot measure if there is:

1. A *clear* indication;
2. On the *ballot*;
3. That the voter has made a *definite* choice.

The division adopted the voter intent rule to implement the new standard and to provide objective guidelines for local canvassing boards dealing with markings on optical scan ballots. The rule has become a model for other states' efforts in this area, and is probably the most detailed law/rule in the country on this subject.

However, staff cannot help but note that the rule is necessarily highly-detailed, cumbersome, and complex.³² For that reason, staff has informally

suggested that the rule include ballot illustrations and examples to provide canvassing boards with some graphic guidance. Division staff appears receptive to the idea, although at the time of this writing the rule draft is in flux; it is unclear precisely what form the final rule will take.

The current rule performed fairly well in the few, limited manual recount scenarios that occurred in the 2002 elections;³³ no *major* problems were reported. However, supervisors and canvassing boards around the State reported that some voters came up with new and ingenious ways to indicate their choices that would *apparently qualify as a valid vote under the statutory standard, but not the division rule*. For example, this past election saw ballots with a line drawn to connect the name of a candidate or issue choice to the selection oval, a marking that does not constitute a vote under the division rule but would appear to satisfy the statutory criteria (clear indication; on the ballot; definite choice). Whether a court in an election contest would count such a ballot or reject it and uphold the strict letter of the division rule is not clear. Also, problem *hybrid* ballots were noted --- ballots where markings in one type of race differ from markings in other types of races.³⁴ Again, how a court would handle such ballots in an election contest is unknown.

This circumstance is a cause for concern, as it points to some potential problems should Florida face a very tight recount scenario like we saw in the 2000 U.S. presidential race. If the number of such ballots were to exceed the margin of victory in a race, litigation by the losing candidate should be expected. How a court would treat such ballots, and what remedy it would fashion if it ruled that they contained valid votes, is unclear.

marked or the choices in all other races are marked in the same manner:

(f) There is a diagonal or vertical line that intersects an imaginary line extending from the center of the head of a single arrow to the center of the tail of the same arrow, provided the diagonal or vertical line does not intersect the imaginary line joining the head and tail of any other arrow.

Rule 1S-2.027(1)(f), F.A.C.

³³ There was a manual recount involving optical scan ballots in the Democratic primary for Florida Senate District 39 and the general election for Florida House District 22.

³⁴ Examples of hybrid ballots included instances where voters colored over or circled the party abbreviation of a candidate, but properly designated the "yes" or "no" in issue races by coloring in the selection oval.

²⁷ Rule 1S-2.027, F.A.C.

²⁸ See generally, *Bush v. Gore*, 121 S.Ct. 525 (2000).

²⁹ The statute provided only that the "voter's intent" shall be determined and effectuated during a manual recount. Section 102.166(7), F.S. (2000). Some local canvassing boards had no other guidance. Others relied on past practice and precedent of previous canvassing boards in determining voter intent. This resulted in the differing treatment of virtually identical ballot markings from county-to-county.

³⁰ Each county canvassing board is composed of the supervisor of elections, a county judge, and the chair of the board of county commissioners. Section 102.141(1), F.S. The law also provides for substitutions in the event any of the foregoing is unable to serve. *Id.*

³¹ Section 102.166(5)(a), F.S.

³² This small excerpt illustrates the technical nature of the rule:

(1) ... The following marks constitute a valid vote for a candidate, ... provided no other race on the ballot is

In response, the division has tentative plans to expand the scope of markings that constitute a valid vote to include:

- The situation where a voter colors over or fills-in the party abbreviation adjacent to a candidate's name, thereby obscuring it (circling and underlining the party abbreviation counts as a vote for the candidate under the current rule).
- Lines drawn by a voter from the name of a candidate, an issue choice, or a judicial retention choice to the selection oval.
- Check marks "✓" and other symbols located proximate to or marking through the name of a candidate, issue choice, or judicial retention choice.

The division also plans to modify the rule to permit certain types of markings on hybrid ballots to count as a valid vote.

While committee staff concurs with the division's proposed expansion of the rule, this course of action represents only a short-term solution. The rule, by its very nature, will always be incomplete: the creativity of voters to invent new, unexpected methods of indicating a definite choice appears virtually limitless. Amending the rule *after the fact* to incorporate *actual voter markings* from a prior election --- marks that themselves may have served as the catalyst for contesting an election outcome --- is a self-defeating approach.

The rule appears destined to become more convoluted and unwieldy as additional, unanticipated expressions of voter intent in succeeding elections are incorporated. An extreme example is the circumstance where a voter punches a hole through a single selection oval or arrow for each race on the ballot. Neither the current rule nor any discussions on the new proposed rule have taken account of such a situation, which would appear to meet the statutory standard (clear indication; on the ballot; definite choice) but would not be considered a valid vote under the rule.³⁵ Another example is a ballot

³⁵ Presumably, the precinct tabulator would initially reject the ballot as completely undervoted and the poll worker would give the voter an opportunity to correct the mistakes by completing another ballot. However, the ballot could still wind up in the manual recount bin in a number of ways. The voter has the option to go ahead and submit the ballot even after the poll worker informs him or her of the problem. (In such a case, the poll worker is

with a square or "box" around the political party abbreviation of a candidate. This also does not appear to qualify as a valid vote under a strict reading of the division rule ("circling" the party abbreviation is a valid vote), but would probably meet the statutory criteria.

For this reason, the division should explore creative alternative ballot designs, polling place procedures, and/or new voting equipment that can be retrofitted with existing optical scan systems to reduce or eliminate extraneous voter markings and allow for drastic simplification of the voter intent rule.³⁶

Following the 2000 U.S. Presidential election recount, the Senate Ethics and Elections Committee published a Report that served as the blueprint for many of the core changes ultimately adopted in the Election Reform Act of 2001.³⁷ The Senate Report identified poor optical scan ballot design as a major factor contributing to voter confusion in the 2000 election.³⁸ In addition to recommending that the division adopt rules for uniform ballot design and instructions, the Report encouraged the division to explore "experimental" ballot concepts and to test them with various demographic groups. No such attempts were ever made by the division.

trained to push the override button so the tabulator accepts the ballot.) Also, the poll worker could get the procedure wrong --- not inform the voter of the error and hit the override button automatically whenever a ballot is initially rejected by the precinct tabulator. This situation has already occurred on at least one occasion.

³⁶ It does not appear that any additional rulemaking authority is necessary to affect changes; the division can already adopt rules for uniform ballot design, polling place procedures, and voting system certification. Sections 101.015, 101.151(8), 101.5605, 101.5606, 101.5608, and 102.014(5), F.S. However, more explicit statutory direction might ultimately be warranted.

³⁷ The Florida Senate, Committee on Ethics and Elections, *Review of the Voting Irregularities of the 2000 Presidential Election*, Report No. 2001-201 (March 2001). (http://www.flsenate.gov/data/Publications/2001/Senate/reports/interim_reports/pdf/2001-201eeLONG.PDF).

³⁸ *Id.* at p. 30.

Reverse Ballot

The Senate Report identified one such experimental ballot for further consideration --- the *Reverse Ballot* or "*RB*." A reverse ballot is best described as a photo negative of the current ballot; the background is black, the lettering is white.³⁹ The Senate Report stated in 2001:

Optical scan ballots, *as currently designed*, allow voters to undervote by making a host of *errant marks indicating voter intent* which are not recorded by the tabulating equipment. Put another way, current optical scan ballot design offers voters so many opportunities to vote improperly that they are limited only by their own imaginations.⁴⁰ (emphasis added)

Initial conversations at the time with voting system manufacturers indicated that such a ballot design might be technologically feasible, but that issues relating to ballot printing and cost-per-ballot would need to be investigated further. If nothing else, paper RBs might prove feasible for the absentee balloting component of any of the following systems (Template, Template RB and Optical Scan Vote Recorder).

Template

Another possible fix for the problem of errant voter markings might involve the use of an acrylic/plastic ballot template.⁴¹ Each ballot page could be secured in a clear, stencil-like, single-or double-sided template with columns of cut-out ovals/arrows that correspond precisely to the selection ovals/arrows on the printed ballot. The template design could be versatile enough to cover and close off ovals/arrows that do not correspond to valid selection ovals/arrows on the ballot paper, preventing the voter from making errant marks in these areas.⁴²

³⁹ The Florida Senate, Committee on Ethics and Elections, *Review of the Voting Irregularities of the 2000 Presidential Election*, Report No. 2001-201, at Appendix D (March 2001) (sample reverse ballot). (http://www.flsenate.gov/data/Publications/2001/Senate/reports/interim_reports/pdf/2001-201eeLONG.PDF).

⁴⁰ *Id.* at p. 30.

⁴¹ Cardboard or paper templates might be utilized with absentee ballots.

⁴² This flexibility will allow the templates to be used from election-to-election, resulting in a significant cost savings.

The template would also have to include some form of cut-out to allow for write-in voting (identifying the name of the candidate and office), perhaps designating a small corner of the ballot page for this purpose.⁴³ Another option might be to fashion a ballot stub for write-in voting, similar to the one used with punch card systems.

One of the main problems with both the RB and the Template system is that the ballot page still includes the names of candidates, issues and retention choices, party affiliations, etc. This appears to be the root cause of voter confusion and errant voter markings. Separating these things from the paper selection ballot would probably go a long way toward solving the problem. The following two designs (Template RB and Optical Scan Voter Recorder) do just that. They utilize a paper ballot consisting solely of columns of numbered ovals (and timing marks).⁴⁴

Template RB

This design is a variant on the Template system that utilizes the Reverse Ballot concept in a new way.⁴⁵ In order to prevent the voter from thinking that marking on a clear template (i.e., circling the party affiliation of a candidate, placing a check mark on the name of a candidate, etc.) is sufficient to cast a valid vote, a Reverse Ballot design could be printed *on each template instead of on the ballot paper*. The template would be completely black, except for the words, letters, and any symbols used in the instructions --- which would be clear on the template but appear white when the ballot page is inserted. The white ballot page itself would consist solely of parallel columns of numbered ovals/arrows and the necessary timing marks.

This could dramatically reduce ballot printing costs, since ballots from election-to-election would be standardized and could be purchased in bulk. Of course, there would be a cost to print the templates in each election. But since the number of templates required would be one per voting compartment instead of one per voter, counties may realize an overall cost savings per election.

⁴³ While this would create some white space on which a voter could make errant marks, such marks would be *physically removed from the selection areas of each race*.

⁴⁴ Timing marks on the ballot are necessary to allow the precinct tabulators to accurately record votes.

⁴⁵ As with the Template system, cardboard or paper templates could be utilized with absentee balloting.

Printing the RB on the template in much smaller quantities than printing the ballot design on paper would also resolve one of the potential problems raised with the paper design in 2001 --- there may not be enough time in Florida's tight nine-week election cycle for all that black ink to dry on all those paper ballots. Of course, paper RBs might still be practical as absentee ballots.

Optical Scan Vote Recorders

A different approach might be to design and develop vote recorders for optical scan ballots -- similar to those used in the old punch card ballot voting systems. The difference this time would be that the division would by rule prescribe uniform ballots (no lepidopterous ballot styles) and there would be no direction to voters to punch or pierce the ballot (no chads to deal with). Essentially, take the things that worked with the punch card systems and use them to improve the optical scan systems.

Each optical scan voting compartment could be retrofitted with a vote recorder into which an optical scan ballot is precisely secured. The optical scan ballot page itself would consist solely of columns of individually numbered selection ovals or arrows, like a standardized test form that comes with a separate test booklet.⁴⁶ The races would be presented to voters in booklet form with pages that flip and present voters with a new, narrow strip of selection ovals/arrows to choose from with each turn of the page. The selection ovals/arrows that appear with each flip could be housed under an acrylic/plastic template that corresponds to each individual selection oval/arrow, thereby further preventing the voter from making extraneous marks.

While there would be an initial expenditure for the design and purchase of new vote recorders, much of this cost might be offset in a relatively short time in decreased paper ballot costs per election. The ballots themselves --- containing only pre-printed, numbered ovals/arrows and the necessary timing marks --- could be standardized and ordered in bulk. Of course, there would be a printing cost in each election for vote recorder ballot booklets. But since the number of vote recorders required would be one per voting compartment instead of one per voter, the overall costs to run an election may decrease.

⁴⁶ Also, the ballots would have to include the necessary timing marks for the precinct tabulators and a separate area, either on the ballot page itself or on a ballot stub, for casting write-in votes.

The foregoing concepts (Reverse Ballot, Template, Template RB, and Optical Scan Vote Recorder) are meant to foster creative debate: they are not intended as comprehensive proposals for change. They are merely a catalyst to commence an inquiry that must occur, sooner or later. And, in this case, sooner is better.

To that end, the division should be directed to investigate feasible alternatives leading to the eventual simplification of the voter intent rule. The Legislature should require the division to provide a written report of its efforts by December 31, 2004.

RECOMMENDATIONS

Based on the foregoing, staff recommends that the Legislature consider:

- 1) Statutorily clarifying whether a poll worker may or may not cast "proxy" ballots for voters who leave the polling room without casting their ballot.
- 2) Requiring the division (by December 31, 2004) to submit a written report discussing the feasibility of alternative optical scan ballot designs, polling place procedures, and/or modifications to current optical scan voting systems, or any combination thereof, that will result in a consistently clear expression of the voter's intent on the ballot and a simplification of the voter intent manual recount rule.

(As an interim measure, the division should revisit the voter intent rule for the purpose of including ballot illustrations and examples to assist local canvassing boards in applying the rule.)