



September 30, 2024

VIA EMAIL

Dear Florida Supervisors of Elections:

We write to provide you with information regarding how Florida Supervisors of Elections can properly adjudicate frivolous challenges to voter eligibility under F.S. § 101.111 to minimize the burden on election administration and protect the rights of voters. This letter contains important guidance on limitations imposed on the adjudication of mass challenges by state and federal law.¹ We urge you to share this letter with members of county Canvassing Boards, precinct captains, and other election workers involved in the processing and adjudication of voter eligibility challenges.

CLC is a nonpartisan, nonprofit organization working to protect and strengthen the U.S. democratic process across all levels of government through litigation, policy analysis, and public education. CLC seeks a future in which the American political process is accessible to all citizens, resulting in representative, responsive, and accountable government. Consistent with that mission, we have worked with election officials across the nation to improve their administrative policies, protect the freedom to vote of citizens within their jurisdictions, and strengthen the democratic process. To that end, CLC is concerned about the potential for frivolous mass eligibility challenges during the upcoming election, which have become increasingly common across the country.² As several organizations including CLC explained in an [earlier letter](#) to the Florida Department of State, these mass challenges are often generated using unreliable data sources and should be carefully scrutinized to ensure that eligible voters are not erroneously disenfranchised.

¹ This letter is not legal advice; it is intended to present a summary of relevant Florida and federal law.

² See, e.g., Nick Corasaniti & Alexandra Berzon, *Trump's Allies Ramp Up Campaign Targeting Voter Rolls*, N.Y. Times (Mar. 3, 2024), <https://www.nytimes.com/2024/03/03/us/politics/trump-voter-rolls.html> (noting the recent wave of voter eligibility challenges in states such as Georgia, Michigan, and Nevada); David Gilbert, *Election Deniers are Ramping Up Efforts to Disenfranchise Voters*, Wired (Jul. 31, 2024), <https://www.wired.com/story/election-deniers-efforts-disenfranchise-voters/>.

In recent election cycles, partisan actors have relied on faulty databases to bring hundreds of thousands of challenges to voter eligibility across the nation.³ These databases attempt to match voter registration records with publicly available information, but that information is almost always incomplete or out of date, making the database matches unreliable.⁴ They also often improperly flag registered voters with the same name as ineligible individuals, voters who are temporarily staying in another place but remain qualified at the address at which they are registered, and households where some but not all residents have moved.⁵ As a result, mass challenge lists almost always include significant numbers of eligible voters who should not be removed from the rolls.⁶

Mass eligibility challenges organized by partisan actors and submitted with insufficient evidence risk disenfranchising eligible voters and causing unnecessary disruption to the orderly administration of the 2024 elections. We recognize that many election offices have lost their most experienced officials because of threats and volatility in the wake of the 2020 election and that this will be the first presidential election for new staff. We hope this letter will assist you as you provide guidance to your staff and volunteers regarding the rules for voter challenges and their responsibilities in dismissing challenges without cause, allowing your office to ensure a fair and orderly election, safeguard voters from intimidation, and minimize administrative disruption.

To mitigate the potential harms to both voters and election administrators caused by baseless mass challenges and safeguard the right to vote as provided by the Florida Constitution,⁷ CLC urges the Supervisors and other county election officials to develop uniform processes for adjudicating voter eligibility challenges, in compliance with the following requirements of Florida and federal law.

I. Voter Challenges in Florida

As you are aware, Florida law does not permit general mass challenges to voters' eligibility. Florida law permits challenges only (1) to a voter's eligibility to cast a ballot in a particular election by a registered voter or poll watcher in their county within 30 days preceding the election,⁸ and (2) to the sufficiency of a voter's mail ballot during

³ See Robyn Sanders & Alice Clapman, *Protections Against Mass Challenges*, Brennan Ctr. for Just. (July 17, 2024), <https://www.brennancenter.org/our-work/research-reports/protections-against-mass-challenges-voter-eligibility>. One common database is Eagle AI, which experts have criticized for its frequent identification of eligible voters as ineligible. See Alice Clapman & Andrew Garber, *A New Antidemocracy Tool*, Brennan Ctr. For Just. (Sept. 5, 2023), <https://www.brennancenter.org/our-work/analysis-opinion/new-antidemocracy-tool>.

⁴ See Sanders & Clapman, *supra* note 3.

⁵ See *id.*

⁶ See *id.*

⁷ Fla. Const. Art. VI, § 2 (detailing the rights of Florida voters).

⁸ See Fla. Stat. § 101.111.

canvassing.⁹ Such challenges are election-specific¹⁰ and subject to various limitations and requirements under state and federal law, which we have detailed further below.

A. Pre-Election and Election Day Challenges

The Florida Election Code allows certain private parties to challenge a voter's eligibility to cast a ballot in a particular election.¹¹ Challenges may be made (1) with the supervisor of elections before the challenged voter has cast a ballot, or (2) at the polling place when the challenged voter attempts to vote.¹²

Florida law strictly regulates when and by whom a challenge may be made.¹³ Only a registered voter or designated poll watcher in the same county as the challenged voter may submit a challenge.¹⁴ Challenges to voter eligibility may only be made within 30 days preceding an election—or between October 6 and November 5, 2024 for challenges to eligibility in the 2024 General Election.¹⁵ Challenges made outside of this period or by any other person are invalid on their face and must be summarily rejected.¹⁶

The challenge must be made in writing and include: (1) the challenger's personal information; (2) a written oath; and (3) the specific bases for the challenger's belief that the challenged voter is ineligible to cast a ballot in that election.¹⁷ Mass challenges lacking this specific and individualized information for each voter are prohibited.¹⁸

Challenges must be based on specific evidence of the challenged individual's ineligibility to vote in that election, such as that the voter's legal residence is not in the county or precinct, or that the voter's signature does not match that on file.¹⁹ Challenges made on discriminatory grounds, such as because of a voter's race, color, or lack of English-language proficiency, are impermissible and should be summarily rejected.²⁰

⁹ See *id.* §§ 101.68(2)(c)(4), 101.6104.

¹⁰ Fla. Dep't of State, Div. Of Elections, *Voter Challenges Guide* at 1, <https://soe.dos.state.fl.us/pdf/DE-Guide-0009.Guidelines-for-Voter-Challenges.pdf> [hereinafter "*Voter Challenges Guide*"].

¹¹ See Fla. Stat. § 101.111.

¹² See *id.* § 101.111(1).

¹³ *Id.*

¹⁴ *Id.* Poll watchers must be designated in writing by candidates, political parties or committees, or ballot measure committees at least 14 days prior to the election—or no later than October 22, 2024 for the 2024 General Election. *Id.* § 101.131(2).

¹⁵ *Id.* § 101.111.

¹⁶ See *id.*

¹⁷ *Id.* § 101.111(1)(a).

¹⁸ *Voter Challenges Guide* at 1. See also Fla. Stat. § 101.111(2) ("Each instance where any elector or poll watcher files a frivolous challenge of any person's right to vote constitutes a separate offense.").

¹⁹ *Id.* § 101.043(1), (2).

²⁰ See U.S. Const. amend. XIV, XV; 52 U.S.C. § 10301.

1. Processing

The challenged voter must receive immediate notice and a copy of the challenge from the precinct clerk or inspector.²¹ The Supervisor must also promptly deliver a copy of the challenge to the election board of the challenged voter's precinct.²²

If the challenge is based on the voter's residency, the voter can execute a Change of Address form and vote a regular ballot if (1) they moved within their county, (2) they moved to a county that uses an electronic poll book at the polling place, or (3) they are an active uniformed service member or family member.²³

All other challenged voters have the right to vote a provisional ballot.²⁴ A challenged voter who casts a provisional ballot must also be provided with written notice and instructions describing when and how they can provide evidence of their eligibility and their right to do so until 5 P.M. on the second day following the election—or November 7 for the 2024 General Election.²⁵ A challenged voter also has the right to attend the Canvassing Board meeting at which their ballot is adjudicated.²⁶

A challenged voter is presumed eligible and their provisional ballot should be counted unless a preponderance of the evidence demonstrates their ballot was improperly cast.²⁷ In deciding whether there is sufficient evidence not to count a challenged ballot, the county canvassing board must review the information in the voter's provisional ballot certificate and affirmation, any information provided by the Supervisor, the challenger's oath, and any information provided by the challenged voter.²⁸

2. Consequences for Frivolous Challenges

Submitting a frivolous ballot challenge is a first-degree misdemeanor, punishable by up to one year in prison and a \$1,000 fine.²⁹ Additionally, a person filing a frivolous challenge may be found in violation of a Florida statute prohibiting intimidation, threats, or coercion of other voters at the ballot box, which is punishable by up to five years in prison and a \$5,000 fine.³⁰ And finally, any person "who willfully swears or affirms falsely to any oath or affirmation . . . in connection with or arising out of voting or elections commits a felony of the third degree."³¹ Each frivolous challenge constitutes a separate offense.³²

²¹ Fla. Stat. § 101.111(1)(b).

²² *Id.* § 101.111(1)(c).

²³ *Voter Challenges Guide* at 1.

²⁴ Fla. Stat. § 101.111(1)(b).

²⁵ *Id.* § 101.048(2)(a).

²⁶ *Id.* §§ 101.048(1), 102.141(2)(a).

²⁷ *Id.* § 101.048(2)(a).

²⁸ *Id.*; *Voter Challenges Guide* at 1.

²⁹ Fla. Stat. §§ 101.111(2); 775.082; 775.083.

³⁰ *Id.* § 104.0515.

³¹ *Id.* §§ 101.111(2); 104.011(1)

³² *Id.* § 101.111(2).

The voter challenge process must not interfere with the voting process for other voters and the orderly operation of the polling place.³³

B. Challenges to Mail Ballots

A registered voter or candidate present during canvassing can protest a mail ballot on the grounds that there is a defect in the voter's certificate (or cure affidavit, if an attempt has been made to cure a defect) on the outside of the envelope.³⁴ The challenge must be based on a defect in the vote-by-mail ballot certificate and must occur before the vote-by-mail ballot has been removed from the envelope.³⁵

Voters have the right to cure mail ballots challenged on the basis of a potential signature defect.³⁶ The Supervisor of Elections must notify every voter whose vote-by-mail ballot is challenged on the basis of a potential signature-related defect by various methods, including by email, text message, and phone.³⁷

Supervisors, inspectors, and other county election officials should ensure that challenged mail voters are afforded the same due process as voters challenged in person at the polls, including by providing timely notice, a copy of the written challenge, and an opportunity to present additional evidence of their eligibility to the supervisor.³⁸

II. Other Legal Requirements

As you know, both federal and Florida law provide robust protection against voter intimidation and other forms of infringement on the fundamental right to vote. The process for responding to voter challenges—especially those conducted in bulk—must therefore comply with all federal and state laws, as well as the U.S. Constitution. As such, all Florida election officials have the responsibility to protect Florida voters from baseless and discriminatory challenges and ensure that the adjudication of all voter challenges complies with both state and federal law.

A. Racially Discriminatory Challenges

Organized challengers frequently target voters from historically disenfranchised communities in an attempt to intimidate or deter members of those communities from voting.³⁹ Sustaining such discriminatory challenges could violate the U.S. Constitution and federal law. Taken together, the Equal Protection Clause of the

³³ *Voter Challenges Guide* at 2.

³⁴ Fla. Stat. §§ 101.68(2)(c)(4), 101.6104.

³⁵ *Id.*

³⁶ *Id.* § 101.68(2)(c).

³⁷ *Id.* § 101.68(4)(a).

³⁸ *Voter Challenges Guide* at 2.

³⁹ See, e.g., Nicolas Riley, *Voter Challenges*, Brennan Ctr. for Just. at 11-12 (2012), https://www.brennancenter.org/sites/default/files/legacy/publications/Voter_Challengers.pdf.

Fourteenth Amendment⁴⁰ and Section 2 of the Voting Rights Act⁴¹ prohibit the use of voting practices that result in citizens being denied equal access to the democratic process on account of “race, color, or membership in a language minority group.”⁴² Because these are often the exact groups targeted by mass challenges, local elections officials should consider carefully whether granting mass challenges brought before them would have the effect of unlawfully disadvantaging voters because of their race.

B. Voter Intimidation

Baseless mass challenges to voter eligibility could constitute voter intimidation, because such challenges are often made in bad faith to deter eligible citizens—including members of historically disenfranchised groups—from voting. Such voter intimidation is illegal under both federal and Florida law.

Federal law provides that anyone who “intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote” in a federal election has committed a federal crime.⁴³ Additionally, several federal statutes impose civil liability for voter intimidation. Section 11(b) of the Voting Rights Act makes it unlawful to “intimidate, threaten, or coerce” another person, or attempt to do so, “for voting or attempting to vote” or “for urging or aiding any person to vote or attempt to vote.”⁴⁴ In 2016, a federal court determined that voter challenges that intentionally target geographic areas with a large percentage of racial or ethnic minorities and that had the purpose or effect of deterring qualified members of those minority groups from voting violated a court order in a case involving claims under Section 11(b).⁴⁵ Further, the U.S. Department of Justice has cautioned that challenges made with the intention of or that have the effect of intimidating a reasonable voter can violate Section 11(b).⁴⁶ And the Ku Klux Klan Act of 1871 makes it unlawful for “two or more persons to conspire to prevent by force, intimidation, or threat,” any voter from casting a ballot for the candidate of their choice.⁴⁷

Under Florida law, it is a felony to directly or indirectly use or threaten to use force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel

⁴⁰ U.S. Const. amend XIV, § 1.

⁴¹ 52 U.S.C. § 10301.

⁴² See *Guidance Under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, for Redistricting and Methods of Electing Government Bodies*, U.S. Dept. of Justice (Sept. 1, 2021), <https://www.justice.gov/opa/press-release/file/1429486/download>.

⁴³ 18 U.S.C. § 594.

⁴⁴ 52 U.S.C. § 10307(b).

⁴⁵ See *Democratic Nat'l Comm. v. Republican Nat'l Comm.*, No. CV 81-03876, 2016 WL 6584915, at *2 (D.N.J. Nov. 5, 2016).

⁴⁶ See *Voter Registration List Maintenance: Guidance under Section 8 of the National Voter Registration Act, 52 U.S.C. § 20507*, U.S. Dept. of Justice at 3 (Sept. 2024), <https://www.justice.gov/crt/media/1366561/dl> [hereinafter “DOJ Guidance”].

⁴⁷ 42 U.S.C. § 1985(3).

an individual to vote or not vote at all or for a particular choice.⁴⁸ Violators of this provision are guilty of a third-degree felony.⁴⁹

To ensure that baseless mass challenges do not unlawfully intimidate voters, each county clerk should review their duties and responsibilities to ensure that only challenges made using the proper procedure and supported by sufficient evidence are considered and sustained. Precinct clerks should also not hesitate to refer incidents of voter intimidation, including baseless mass challenges, to the Florida Division of Elections,⁵⁰ Florida Voter Assistance Hotline,⁵¹ and U.S. Department of Justice (DOJ).⁵²

C. Uniform and Nondiscriminatory Standards

The U.S. Constitution and federal law require that each state and political subdivision use uniform, nondiscriminatory standards and processes for evaluating voter eligibility challenges.⁵³ Under the U.S. Constitution, counties in the same state are prohibited from “us[ing] varying standards to determine what [i]s a legal vote” when processing ballots in presidential elections.⁵⁴ Similarly, the National Voter Registration Act (NVRA) mandates that any voter registration list maintenance activity be “uniform, nondiscriminatory, and in compliance with the Voting Rights Act[.]”⁵⁵ including “any list maintenance activity based on third party submissions.”⁵⁶ The U.S. Department of Justice has advised that numerous list maintenance methods commonly used in mass voter eligibility challenges might violate the NVRA, including “comparing voter files to outdated or inaccurate records or databases, taking action that erroneously affects a particular class of voters (such as newly naturalized citizens), or matching records based solely on first name, last name, and date of birth.”⁵⁷

The NVRA further mandates that election officials may not “systematically remove” ineligible voters from voter registration rolls within 90 days preceding an election for federal office.⁵⁸ According to the U.S. Department of Justice, this restriction “applies

⁴⁸ Fla. Stat. § 104.0615(2).

⁴⁹ *Id.* § 104.0615.

⁵⁰ Reports of voter intimidation can be submitted to the Florida Division of Elections at <https://dos.elections.myflorida.com/>.

⁵¹ Voters may also contact the Florida Voter Assistance Hotline for assistance and their local state attorney to report voter intimidation to potentially be prosecuted at 1-866-308-6773.

⁵² The DOJ Civil Rights Division can be reached at 800-253-3931, and voter intimidation reports can be submitted online at <https://civilrights.justice.gov/report>. More information on DOJ's resources to protect voting access can be found at <https://www.justice.gov/opa/pr/justice-department-releases-information-efforts-protect-right-vote>.

⁵³ *See Bush v. Gore*, 531 U.S. 98, 104 (2000) (finding that the lack of uniform standards across counties for when to count a ballot violates the Constitution's Equal Protection Clause).

⁵⁴ *Id.* at 107.

⁵⁵ 52 U.S.C. § 20507(b).

⁵⁶ DOJ Guidance at 3.

⁵⁷ *Id.*

⁵⁸ 52 U.S.C. § 20507(b)(1).

to list maintenance programs based on third-party challenges derived from any large, computerized data-matching process.”⁵⁹

The Florida Department of State in their administrative code likewise recognizes voters’ rights to a uniform, statewide standard design for election ballots and a central system for counting and recounting votes accurately as provided by law. ⁶⁰

Precinct clerks should work to eliminate any meaningful divergence among the standards and processes used to evaluate voter challenges in different municipalities and replace them with uniform standards and processes. By doing so, Florida’s voter challenge processes can avoid the “arbitrary and disparate treatment” of challenged ballots that violates the Constitution.⁶¹

D. Removals Based on Change of Address

The NVRA strictly regulates the process for removing a registered voter from the voter registration rolls based on suspected change of address, including when removals are triggered by mass eligibility voter challenges.⁶² Election officials may only remove a voter from the list of registered voters based on change in residence when: (1) the voter confirms in writing that they have moved outside of the jurisdiction; or (2) election officials have satisfied the process outlined in Section 8(d)(2) of the NVRA.⁶³ The United States Department of Justice has cautioned that “[a] third-party submission—such as a submission of another individual’s information via an online portal or a challenge based solely on public database information—is not confirmation by the registrant of a change of address.”⁶⁴ Consequently, **removing individuals from the list of registered voters due to suspected change of address on the basis of mass voter eligibility challenges alone likely violates the NVRA.**⁶⁵

* * *

By ensuring compliance with the processes, requirements, and limitations of Florida’s voter challenge laws, you can mitigate the potential harm and disruption caused by frivolous voter eligibility challenges. Our hope is that this summary of the relevant law will help you to prepare proactively to develop written procedures and policies for adjudicating such challenges and train your staff, volunteers, and election inspectors on the requirements of Florida and federal law applicable to voter eligibility challenges.

⁵⁹ DOJ Guidance at 4.

⁶⁰ Fla. Admin. Code Ann. R. 1S-2.031; see Florida Division of Elections, *About Voting Systems* (Feb. 17, 2023), <https://dos.fl.gov/elections/voting-systems/about-voting-systems/>.

⁶¹ *Bush*, 531 U.S. at 104-05.

⁶² See 52 U.S.C. § 20507(b); DOJ Guidance at 4-6.

⁶³ See 52 U.S.C. § 20507(b)-(d); DOJ Guidance at 4. The DOJ Guidance also provides detailed information on the requirements of Section 8(d)(2). Election officials may only remove a voter under Section 8(d)(2) of the NVRA if that voter: (1) does not vote in any election between the date the notice was sent and the second general election following the notice; and (2) does not respond to the notice. 52 U.S.C. § 20507(d)(2).

⁶⁴ DOJ Guidance at 4.

⁶⁵ *Id.* at 4-5.

Please do not hesitate to reach out with any questions. We stand ready to assist you in upholding federal and state law and protecting Floridians' freedom to vote.

Sincerely,

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