Capitol Report
Government Affairs and Lobbying

Lessons Learned from the 2008 Primary Election

What Has and Hasn't Changed in Florida's Elections

While the recent August 2008 Primary Election allowed many voters the chance to try new voting machines and procedures, the trial-run raised several concerns for Floridians, political committees, and candidates who remember the national spotlight the state endured in 2000. This issue of Capitol Report looks at what occurred in the primary and the resulting potential issues.

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While the 2008 August Primary Election allowed many voters in Florida the chance to try new voting machines and procedures, this trial-run raises several concerns for Florida citizens, political committees, and candidates who remember the national spotlight the state endured in 2000. The human errors and management concerns raised over the last decade continue to cause problems in parts of the state and were clearly demonstrated during the Primary Election.

Vote-Casting Technology
Following changes passed by the 2007 Florida Legislature and signed into law by Governor Charlie Crist, the 15 counties who adopted touch-screen

technology after the 2000 election were required to change their voting systems. The counties involved include a large number of the state's most urban and population-dense regions. Counties that changed systems were: Broward, Charlotte, Collier, Duval, Hillsborough, Indian River, Lake, Lee, Martin, Miami-Dade, Palm Beach, Pasco, Pinellas, Sarasota, and Sumter. These counties had previously been required to abandon their punch card voting systems after the 2000 election. By 2007, the other 52 Florida counties were already utilizing some form of optical scan voting system and did not have to change systems.

The 15 counties that changed voting systems this year adopted optical scan technology from various vendors shifting the voters' experience from touch-screens to paper ballots. This technology generally involves the voter filling in a bubble next to the printed candidate of their choice on a paper ballot. After the voter makes his or her selection, the voter places the ballot into a scanning device at the precinct and the results are later tabulated at a central location. The public's reaction to these new paper ballots has been generally positive, although media reports have highlighted reoccurring concerns that voters, political committees, and candidates should anticipate during the Presidential and General Election this November.

Issues raised in various media reports were:

➢ Ballot design confusion in several counties, and some voters were surprised that at least one county ballot had vote choices on both sides of the ballot page. If the ballot design is misunderstood by voters, under-votes and delays at the precinct can occur.

➢ Paper jams and problems with the location of the perforated edge on the ballot caused counting machine errors and delay at the precincts.

➢ The resemblance of the new ballots to a "scantron" high school multiple choice test put off some voters who had grown accustomed to the more "modern" appearance of the touch-screen machines. This perception could impact turnout if voters reject the change in systems.

➢ Humidity in some precinct sites caused paper ballots to curl resulting in delays and errors in the ballot counting process.

Voter turnout for the Primary was very low, especially in comparison to what is expected in November. Increases in turnout could magnify the problems encountered if local offices do not take steps to correct them. Furthermore, voters generally took more time to complete their individual ballot, either because of unfamiliarity with the new system, or the amount of time now necessary to fill in each oval. If not anticipated, this change in time requirements could lead to long lines at the voting precincts in November if there is not enough physical space and poll-workers at each voting location.

Vote-Counting Problems
Beyond the vote-casting concerns, an accurate and efficient means of vote-counting and reporting continues to challenge some county offices. For example, a computer error caused a multi-hour delay in reporting election results in Hillsborough and Sarasota counties while Broward County took 21 hours to count all of its precincts' votes. Indian River County found it counted several of its precincts' votes twice while in Sumter County, phone line issues delayed vote results from being issued timely.

Most serious of all, Palm Beach County could not find all of its ballots when it sought to conduct a recount. According to reports that have gained national attention, a judicial race was determined by a margin of only 17 votes, resulting in an automatic recount. While records showed 102,523 ballots were cast, the elections office determined it only had 98,775 ballots on hand. As of the date of this *Capitol Report*, the situation was still unresolved in Palm Beach County and is politically complicated by the fact that the incumbent Supervisor of Elections lost his reelection bid in his party's primary and now will be a "lame duck" for the General Election.

Lessons Learned

The "lessons learned" from the 2008 Primary Election are ones of organization and training, and less of the technology used. Voters, political committees, and candidates have been reminded that the election process continues to be imperfect and problems at the local level could have statewide or even national impact. Voters must be prepared for the type of ballot they will encounter on Election Day and the process for casting their ballot. Political committees and candidates must have an understanding of the ballot design chosen by their local supervisor of elections and the process used by that supervisor to count and report votes. It is clear that candidates must engage in early and detailed involvement with their local elections officials. This involvement is often the most effective means of ensuring the final result accurately reflects the decision of the electorate.

Closing Information

The lawyers and government consultants of Carlton Fields' Government Law and Consulting practice are highly experienced in dealing with all levels of government on behalf of our clients. We have a thorough understanding of government's inner workings – and an extensive network of personal and professional relationships within government to address effectively a wide variety of legislative, administrative, procedural, and political issues, including issues related to election law. If you have any questions or need our assistance, feel free to call us.

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Ken's practice focuses on a variety of state and local government law issues including land use law, election law and environmental permitting.

Prior to joining Carlton Fields, Ken's past experience included representation of government agencies and officials, including county government and constitutional officers. He also has expertise in Public Records & Sunshine Law, Parliamentary Procedure, Florida County Home-Rule Charters, and Election Law, including Voting Rights Act issues.

He maintains a personal online blog on Florida Election Law issues at www.floridaelectionlaw.com.

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