

Florida “General Election Readiness” Memo

September 28, 2020

Compared to other battleground states, Florida is relatively well-positioned to administer a smooth—if unprecedented—pandemic-era general election: state elections officials and voters have substantial vote-by-mail experience, as about a third of voters who participate in Florida elections typically cast their ballots by mail. While Florida’s August 2020 primary saw no major problems, challenges remain to ensure that all Floridians’ votes are counted. Certain statewide vote-by-mail rules—in particular, Florida’s strict ballot return deadline, which requires that a voter’s ballot be received, not merely postmarked, by 7:00 PM on Election Day—led to rejected ballots, both in the August 2020 primary and in previous Florida elections. Procedures surrounding in-person voting also posed challenges for some voters in August, as unpublicized consolidations of polling places and poll worker cancellations due to COVID-19 created confusion and delay. Further, a significant number of Florida counties that applied for election-related CARES Act funding have yet to receive any disbursements, and have paid out of pocket for COVID-19-related election protections in the absence of federal funding. Recognizing that Florida’s August primary provides a less-than-precise forecast of the problems that might arise in the general election given higher expected turnout in November, this memo details the relatively minor complications that arose in Florida’s August 2020 primary and the state’s preparedness for the November presidential election.

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Introduction

Florida saw significant vote-by-mail turnout in its 2020 primaries. [46% of ballots cast in the March presidential primary were sent by mail, compared to around 30% in 2016's primary](#). About [60% of voters voted absentee](#) in this year's August primary. For the most part, there is a [sense among local elections officials](#) that Florida's "[primary elections went smoothly](#)," as [no major election administration issues](#) arose. However, Florida's primaries might not serve as perfect indicators of the state's preparedness for November's general election, given that turnout will likely be significantly higher in November: [In 2016, 75% of registered Florida voters cast ballots in the presidential race](#), while about 28% of registered voters participated in this August's primary.

Even with increased levels of vote-by-mail (VBM) use, Florida's primaries demonstrate that there remain barriers to ensuring that all mailed ballots are counted. Florida law requires that [VBM ballots sent domestically be received by 7:00 PM on Election Day](#) (ballots sent from overseas have ten extra days to arrive). Further, because each of Florida's 67 counties exercises discretion in determining whether to allow for extra in-person early voting (in addition to the state-mandated minimum of one week), require mail postage, or install VBM drop boxes, voting procedures can differ across counties. Changes in polling locations, such as unpublicized consolidations of polling places and the possibility that early voting polling locations will be closed on Election Day itself, could compound voter confusion. Finally, it is difficult to predict how many poll workers will show up on Election Day and how many reserves are required. Because the August primary went "smoothly," Governor DeSantis and the Florida government are unlikely to institute major changes to election procedures requested by Florida Supervisors of Elections (SOEs) in [April](#) and [May](#).

I. Elections for the August Primary

Despite the absence of a United States Senate or Governor's race on the ballot, Floridians set turnout records in their August 2020 primary. Voting rates were the [highest seen in a presidential-year primary since 1992](#). Around 3.9 million Floridians voted in the primary, [which exceeded turnout in 2018 and 2016](#). A staggering 60.14% of those who participated in the August primary voted by mail ([2,343,504](#) total; [808,309 Republican](#); [1,182,928 Democrat](#); [17,249](#) other; [335,053 no-party](#)). By comparison, [1,280,066](#) voters in 2016's August primary and [1,351,185](#) voters in 2018's August primary cast their votes by mail. Usually, mail ballots approximate 30% of the vote in Florida.

Offices up for election in this year's August primary included multi-county and district offices such as state attorney and public defender, county offices such as school board and board of county commissioners, and nonpartisan judicial positions. In Miami-Dade County, for example, candidates for mayor, county commissioners, and state attorneys were among those who appeared on the ballot.

II. Evaluating the Primary

A. Vote by Mail

Florida's August 18 primary election saw record-high primary turnout and VBM ballot requests. More than 28% of Florida voters cast ballots, giving the August 18 primary the highest state turnout in 18 years, and beating 2016 primary turnout by almost one million votes. 2.3 million VBM ballots were submitted, representing around 59% of all votes cast. Florida Democrats requested about [302,000](#) more mail-in ballots than Republicans, who typically make more VBM requests than their Democratic counterparts. This may be due to an [aggressive VBM marketing campaign](#) by the Florida Democratic Party that continues to widen the partisan gap in requests.

In preparation for the August primary, state and local officials scaled up VBM operations. For example, on June 17, Governor DeSantis issued Executive Order 20-149, granting the state's 67 Supervisors of Elections the ability to begin canvassing mail ballots earlier than allowed under Florida law because of concerns about an influx of VBM ballots close to the return deadline. Many counties, such as [Orange County](#) and [Broward County](#), increased the number of ballot drop boxes and the hours during which they were available in order to accommodate increased VBM requests and account for concerns over U.S. Postal Service (USPS) delays.

Further voter education about Florida's strict ballot receipt deadline might improve election administration. While Florida's Election Day deadline is not new, nor expressly COVID-related, the risk of rejected ballots caused by the 7:00 PM deadline is a particularly relevant concern for voters during a year with unusually high VBM reliance. Since Governor DeSantis has yet to allow an exception to or a loosening of Florida's ballot receipt deadline, it is crucial that voters are aware of the possibility that their ballots might be rejected as a result of minor postal delays. Effective communication with voters regarding the strict receipt deadline could allow voters to plan accordingly, either by mailing their ballots earlier than they might otherwise or by turning in their ballots to a drop box.

B. In-Person Voting

Of the approximately 40% of votes cast in person in Florida’s August primary, [about one third of those voters voted early, while the remainder \(about 26% of all primary voters\) voted on Election Day](#). While more Democrats than Republicans voted by mail, the opposite was true for in-person early voting, with 298,314 Republicans casting early votes, compared to 221,701 Democrats, [according to the Florida Division of Elections](#). On the day of the primary election, Florida Secretary of State Laurel Lee [told The Miami Herald that “close to 6,000 precincts across the state opened without issue,”](#) adding that, prior to the election, the state government collaborated with election workers and other stakeholders to provide PPE and implement safety measures across all precincts. Various in-person voters in South Florida corroborated this claim, [telling The Miami Herald](#) that they did not experience long wait times or large crowds, and that they felt safe while casting their votes.

There were few reports of shortages of poll workers, which had been a challenge in other states. However, the South Florida Sun Sentinel [wrote](#) that, according to Palm Beach County’s Supervisor of Elections Wendy Link, “about 100 Palm Beach County poll workers canceled over the past few weeks because they showed symptoms of COVID-19 or flu-like illnesses.”

Even though the majority of polling places appear to have operated smoothly on August 18, some locations were closed and consolidated. For example, [SOE Shirley Anderson closed five polling sites in Hernando County and is expecting some of those sites to stay closed in November](#). Similarly, weeks before the election, [WINK News reported that Lee County in Southwest Florida was “down about a thousand poll workers,” forcing them to reduce their number of polling locations from 125 to 96](#). [According to the Miami Herald](#), Broward County had to consolidate polling sites, decreasing its number of precincts from approximately 420 to 385. These consolidations were a source of confusion for voters and drew criticism from community organizers and activists, who said that South Floridians were unsure of where to cast their ballots on Election Day, and as a result, some were unable to vote before the polls closed. Local activists also took issue with the fact that three Broward precincts ran out of ballots and [asked voters to return at a later time](#), instead of following protocol and using the County’s back-up electronic voting system.

C. Communications with Voters

Voters did not appear to be confused by COVID-related policies, as Governor DeSantis’s most recent [election-related executive order](#)—issued two months before the primary—did not institute changes directly affecting voters. Instead, the order allowed for earlier tabulation of mail-in ballots and encouraged state employees to serve as poll workers.

However, there was some confusion around polling places, particularly in Broward County. According to [news reports](#), unpublicized polling place closures and location changes created confusion, with [“voters bouncing from location to location and seeking drop boxes for their vote-by-mail ballots, only to find their voting precinct had been combined with another, closed due to COVID-19 or was simply an early voting site that was never meant to be open on Election Day at all.”](#) Poll workers’ lack of knowledge about how to use electronic voting kiosks also contributed to the problem, as at least three precincts in Broward County turned away voters after running out of paper ballots. However, [according to a spokesperson](#) for the Broward supervisor of elections, poll workers should have directed voters to use electronic kiosks once paper ballots ran out.

D. Election Funding

Less than two weeks before Florida’s August 18 primary, [Florida counties had yet to receive their requested disbursements](#) from Florida’s CARES Act funding. [Some counties footed bills](#) for personal protective equipment—including [“masks, sanitizing wipes and, in some cases, even enough pens so that no one ha\[d\] to share at a polling location”](#)—and printing and postage associated with increased vote-by-mail interest using money they had [“already allotted elsewhere.”](#) Florida’s [Division of Elections officials reportedly notified county supervisors of elections](#) on Monday, August 10 that CARES Act funding would arrive within a few days. [“No explanation was given for the month-long delay.”](#) However, some Florida counties had still not received CARES Act funding for their elections by late September: [according to news reports](#), as of September 23, only 28 of the 43 Florida counties that applied for election-related CARES Act funding had received their requested disbursements.

III. Looking Ahead to November

Perhaps the most pressing concern moving forward is ensuring that VBM ballots arrive back to SOEs on time. Florida must continue to scale up VBM operations, as [election officials](#) predict VBM participation will double in the November election. USPS delays remain a primary concern as Florida law requiring mail-in ballots to be received—not just postmarked—by 7:00 PM on Election Day caused up to [15,000 ballots](#) to be rejected in the 2018 election. In [Broward County, 2,584 ballots arrived after the August 18 deadline for the 2020 primary.](#)

This problem is likely to be exacerbated in November with higher VBM participation and potential cuts to the USPS. In a [letter](#) to Florida Secretary of State Laurel Lee, Thomas Marshall, general counsel for the USPS, warned Florida officials that state election laws may cause ballots to be

delayed and therefore not counted if received late. The letter recommended that all mail-in ballots be sent back no later than Tuesday, Oct. 27, a week before Election Day.

This is not expected to be a challenge for many voters in Florida, as Florida law requires that SOEs send ballots between 33 and 40 days prior to an election to those voters who requested VBM ballots in a previous election. Under Florida law, if a voter requests a VBM ballot, she will automatically receive VBM ballots for a limited number of subsequent elections—specifically, [for those elections that fall before or in the same calendar year as the second general election following the voter’s initial VBM request](#). However, [Floridians can still request a VBM ballot 10 days before the election; SOEs must mail the ballot within two days of the request](#). Despite complying with those VBM request deadlines, voters whose ballots are not received by Election Day will not have their votes counted. An ongoing [lawsuit](#) against Governor DeSantis, Secretary of State Lee, and all 67 SOEs challenges the Florida law requiring that all VBM ballots arrive by 7:00 PM on Election Day. [Plaintiffs in the suit are arguing that ballots cast by domestic voters should get the same 10-day grace period allowed for overseas ballots](#) to arrive and be counted.

VBM ballots going uncounted for signature defects is also a commonly cited concern as counties scale up VBM operations. Voters who voted [in person in 2016 and 2018 were twice as likely to have their ballot rejected](#) compared to those who also voted by mail in 2016. Although most rejections are due to lateness, University of Florida professors Daniel A. Smith and Michael Herron also blame rejections on [two different signature standards—one for VBM ballots, and another for in-person voting](#). [A signature on an ID used by a poll worker to verify an in-person voter’s identity may be nothing like the signature on a voter’s registration file](#) to verify a VBM ballot. However, Broward Supervisor of Elections Peter Antonacci said in an interview before the August primary that concern regarding ballots discounted on the basis of missing or mismatched signatures is a “[misdirected anxiety](#).” For instance, in the August 2020 primary election, [0.36% of 183,268 ballots cast in Palm Beach County were not counted because of signature defects](#). In Broward County, [303, or 0.14%, of 212,985 VBM ballots were not counted because of a signature defect](#). Ballots received late represent a much greater cause of lost votes than ballots rejected for signature defects.

Finally, a lawsuit that could have posed difficulties for election officials has been delayed. A suit filed against Governor DeSantis, Secretary of State Laurel Lee, and SOEs to force SOEs to keep digital images of ballots that pass through scanners in case of a recount has ended in a stipulation to put the case on hold until after the general election. The SOEs and Secretary of State agreed to preserve the digital images for the general election, but still contend that preserving the paper ballots complies with public record laws. 32 of the state’s 67 counties were already in the practice of preserving images. The delayed suit pushes any potential complications posed by digital image preservation until after the election.

IV. Conclusion

Despite a general sense that no major problems arose during Florida's August primary, some issues remain as the state prepares for November. Challenges for election administration exist both at the statewide level—such as the strict Florida-wide ballot receipt deadline—and at the county level. For instance, because each Florida county has autonomy in establishing election procedures, many South Florida counties pay for return postage, but not every county has followed suit. Voters might not know that their county requires them to have postage. In addition, many early voting locations are often not open on Election Day itself, which caused confusion in Broward County's August 2020 primary when voters arrived at the wrong polling locations. Further, not every county has drop-boxes where voters can drop off completed VBM ballots. In some precincts, [voters could hand deliver a mail-ballot during the early voting period](#), but were required to go to a drop box to submit ballots on Election Day. And if poll workers continue to cancel with short notice, the number of in-person voting locations might shrink.

As in other states, delays in the postal service's delivery of the mail could lead to late delivery of ballots. Florida law requires domestic VBM ballots to *arrive* at their respective SOEs office by 7:00 PM on Election Day, regardless of when the ballot is postmarked. Floridians can request VBM ballots up to ten days before the election, and SOEs must send them to voters no later than eight days before the election. However, even if voters send their ballot a week before the election, there is no guarantee that it will arrive in time to be counted.

Data show that voter outreach to encourage VBM likely played a role in the huge spike in Floridians who voted by mail in the 2020 primaries. At this point, [it seems unlikely that Governor DeSantis](#) or the rest of Florida's government will enact the more substantive legal and procedural changes [requested by the Florida Supervisors of Elections in April](#) and [May](#). Any further changes in voting procedures and rules will likely come via voter education and litigation.