Standards for

Determining

Voter Intent

REDRAFT for Rulemaking v 20231128 (uncoded)



DS-DE 420 (eff XX-XX) R1S – 2.027, Fla. Admin. Code

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| --- |
| Section A. General applicability |

1. The standards in this rule apply to determine whether the voter has made a definite choice for a candidate, issue choice, or judicial retention choice whenever a duplicate ballot is required to be made, a ballot requires adjudication in a manual recount, or a ballot is being examined as part of a post-election voting system audit.

2. References to the “General Rule” refer to the voter following the instructions on the ballot or machine to properly mark his or her choices.

3. Every overvote, undervote, blank vote, ambiguous mark, and write-in vote in the races or measures subject to the recount, or ballot duplication process, or post-election voting system audit must be reviewed in accordance with standards herein.

4. The standards in this rule apply in all instances where a contest is not marked as specified in the ballot instructions and a review of the voter’s markings on a ballot is required to determine whether there is a clear indication that the voter has made a definite choice in a race. A vote shall not otherwise count for any particular candidate, issue choice, or judicial retention choice in a contest unless determined to be a valid vote pursuant to this rule.

5. If a voter does not mark a choice for candidate, judicial retention or issue in a race, the valid votes for other candidates or issues on the same ballot shall still be counted.

6. The illustrated scenarios herein indicate when to count or not count a vote for any candidate, issue choice, or judicial retention choice in a race.

|  |
| --- |
| Section B. Digital scan voting system |

1. A vote cast on the voting system is valid for a particular candidate (printed or qualified write-in), issue choice, write-in, or judicial retention choice when the voter marks the ballot as specified in the ballot instructions.

2. A vote cast on the voting system is valid for a qualified write-in candidate when the voter marks the ballot and writes in the name of a candidate in the designated write-in space or next to the write-in candidate’s name.

|  |
| --- |
| Section C. Review for consistency |

1. The canvassing board must first review the entire ballot card for consistency in the way the voter marked the races. A ballot card consists of 2 sides (front and back). A ballot may consist of multiple ballot cards. Consistency is necessary to determine voter intent when the voter does not follow the General Rule as set forth in Section A.2. Sections D – G explain how to determine voter intent when a voter has marked his or her choice or choices in a manner other than prescribed in the ballot instructions.

2. The following is an example of valid vote after review for consistency:

|  |  |
| --- | --- |
| **Ballot Marking Scenario 1:**  | **Race for Commissioner of Agriculture** |
| Since the voter marked the Commissioner of Agriculture race in the same manner as in the other races on this ballot card, it can be determined that the voter has indicated a definite choice for Candidate H. |

|  |
| --- |
| **Attorney General** |
| Vote for One |
|  | Candidate A | REP |
|  | Candidate B | DEM |
|  | Candidate C | GRN |
| **Chief Financial Officer** |
| Vote for One |
|  | Candidate D | REP |
|  | Candidate E | DEM |
|  | Candidate F | NPA |
| **Commissioner of Agriculture** |
| Vote for One |
|  | Candidate G | REP |
|  | Candidate H | DEM |

 |

3. The following is an example of invalid votes after review for consistency:

|  |  |
| --- | --- |
| **Ballot Marking Scenario 2:**  | **Race for Chief Financial Officer** |
| The voter has marked the first two races on this ballot card in the same manner and following the General Rule. However, the voter marked differently for Candidate H, since this is inconsistent, it cannot be determined that the voter has indicated a definite choice for Candidate H.  |

|  |
| --- |
| **Attorney General** |
| Vote for One |
|  | Candidate A | REP |
|  | Candidate B | DEM |
|  | Candidate C | GRN |
| **Chief Financial Officer** |
| Vote for One |
|  | Candidate D | REP |
|  | Candidate E | DEM |
|  | Candidate F | NPA |
| **Commissioner of Agriculture** |
| Vote for One |
|  | Candidate G | REP |
|  | Candidate H | DEM |

 |

|  |  |
| --- | --- |
| **Ballot Marking Scenario:** |  |
| Since the voter did not mark the races on this ballot card in the same manner, it cannot be determined whether the voter has indicated a definite choice for any candidate.  |

|  |
| --- |
| **Attorney General** |
| Vote for One |
|  | Candidate A | REP |
|  | Candidate B | DEM |
|  | Candidate C | GRN |
| **Chief Financial Officer** |
| Vote for One |
|  | Candidate D | REP |
|  | Candidate E | DEM |
|  | Candidate F | NPA |
| **Commissioner of Agriculture** |
| Vote for One |
|  | Candidate G | REP |
|  | Candidate H | DEM |

 |

|  |
| --- |
| Section D. Determination of voter intent based on marks and/or words |

When a voter marks his or her ballot in a manner other than by following the General Rule set forth in Section A.2., the following illustrates examples a valid or invalid vote in a race based on a review for consistency and the voter’s marks and/or words used on the ballot card.

### 1. Circled or underlined vote target area

The voter circles or underlines the vote target area next to a candidate’s name, issue choice, or judicial retention choice.

|  |  |  |
| --- | --- | --- |
| **Valid vote for Candidate A** |  | **Valid vote for Candidate D** |
|

|  |
| --- |
| **Attorney General** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |  |

|  |
| --- |
| **Chief Financial Officer** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |

### 2. Circled or underlined name or choice

 The voter circles or underlines candidate’s name, issue choice or judicial retention choice.

|  |  |  |
| --- | --- | --- |
| **Valid vote for Candidate A** |  | **Valid vote for Candidate A** |
|

|  |
| --- |
| **State Senator District 1** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |  |

|  |
| --- |
| **Circuit Judge** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |

### 3. Circled or underlined party abbreviation

 The voter circles or underlines the party abbreviation associated with a candidate’s name.

|  |  |  |
| --- | --- | --- |
| **Valid vote for Candidate A** |  | **Valid vote for Candidate C** |
|

|  |
| --- |
| **Attorney General** |
| Vote for One |
|  | Candidate A | REP |
|  | Candidate B | DEM |
|  | Candidate C | NPA |
|  | Candidate D | GRN |

 |  |

|  |
| --- |
| **Board of County Commissioners**  |
| Vote for One |
|  | Candidate A | REP |
|  | Candidate B | DEM |
|  | Candidate C | NPA |
|  | Candidate D | GRN |

 |

4. Marks – X, check, cross, plus sign, asterisk, star

The voter marks an “X,” a check mark, a cross, a plus sign, an asterisk or a star, any portion of which is contained in a vote target. The marking must not enter into another vote target.

|  |  |  |
| --- | --- | --- |
| **Valid vote for Candidate A** |  | **Valid vote for Candidate D** |
|

|  |
| --- |
| **United States Senator** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |  |

|  |
| --- |
| **Chief Financial Officer** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |
| Regardless of consistency, the following are invalid because they are overvotes |
|  |  |  |
| **Invalid vote** |  | **Invalid vote** |
|

|  |
| --- |
| **School Board Member** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |  |

|  |
| --- |
| **State Senator District 8** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |

### 5. Marks – diagonal, horizontal, or vertical lines

The voter draws a diagonal, horizontal, or vertical line, any portion of which intersects two points on the vote target and which does not intersect another vote target at any two points. If it is a horizontal line, the line must not strike through the name of the candidate. If the line crosses through the name of the candidate or through two or more vote targets, the vote is not valid.

|  |  |  |
| --- | --- | --- |
| **Valid vote for Candidate A** |  | **Valid vote for Candidate B** |
|

|  |
| --- |
| **United States Senator** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |  |

|  |
| --- |
| **Attorney General** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |
| **Invalid vote** |  | **Invalid vote** |
|

|  |
| --- |
| **Chief Financial Officer** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |  |

|  |
| --- |
| **Circuit Judge** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |

### 6. Additional marks or clarification

The voter marks all the choices for a race but further clarifies a choice for a particular candidate, issue choice or judicial retention choice by placing an additional mark or marks showing support solely for that candidate, issue, or judicial retention choice.

|  |  |  |
| --- | --- | --- |
| **Valid vote for Candidate A** |  | **Valid vote for Candidate B** |
|

|  |
| --- |
| **Attorney General** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |  |

|  |
| --- |
| **United States Senator** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |
| **Valid vote to keep Justice in office** |
|

|  |
| --- |
| **Justice of the Supreme Court** |
| Vote for One |
| Shall Justice A. A. Apple of the Supreme Court be retained in office?  |
|  | Yes |
|  | No |

 |

### 7. Strikethroughs

The voter strikes through all the choices for candidates, issues, or judicial retention and leaves the write-in candidate space blank.

|  |  |
| --- | --- |
| **Invalid vote for Candidate D** | **Valid vote for Candidate D** |
|

|  |
| --- |
| **United States Senator** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |
|  | Write-In |

 |

|  |
| --- |
| **Attorney General** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate B |
|  | Candidate D |
|  | Write-In |

 |

### 8. Partially marked vote target

The voter fills in more than half of the vote target designating a particular candidate, issue choice, or judicial retention choice, regardless of how other races on the ballot are marked.

|  |
| --- |
| **Valid vote for Candidate C** |
|

|  |
| --- |
| **Attorney General** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |

### 9. Marginal Marks

If a voter marks the vote target area in its entirety or marks more than half of the vote target area, it shall be considered a valid vote for that race even if there is a pen rest, stray, or hesitation mark~~s~~ on another vote target area. However, Section F. regarding overvotes shall control.



**Valid vote for Candidate D Valid vote for Candidate C Valid vote for Candidate D**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|

|  |
| --- |
| **School Board Member** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |

|  |
| --- |
| **State Representative**  |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |

|  |
| --- |
| **State Senator** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |

### 10. Mark outside the vote target

If a voter marks outside the vote target such that the voter’s choice cannot be determined, it shall be considered an invalid vote.



**Invalid vote**

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|

|  |
| --- |
| **Attorney General** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |

### 11. Words

The voter writes words such as “Vote for [candidate’s name],” “Count this vote” or “Vote no on amendment or referendum,” or “I want this one,” provided there are no other markings in the race that would constitute a valid vote for a different candidate, issue choice, or judicial retention choice pursuant to rule. If there are other markings, Section F. regarding overvotes shall control.

|  |  |  |
| --- | --- | --- |
| **Valid vote for Candidate D** |  | **Valid “No” vote** |
|

|  |
| --- |
| **Attorney General** |
| Vote for One |
|  | Candidate A | REP |
|  | Candidate B | DEM |
|  | Candidate C | NPA |
|  | Candidate D | GRN |

` |  |

|  |
| --- |
| **No. 1 Constitutional Amendment****Article \_\_\_, Section \_\_** |
| An amendment to limit the increase in the assessed value of a taxpayer’s real property after a countywide reappraisal and to require a property tax credit. |
|  | Yes |
|  | No |

 |
|  |  |
|  |  |

### 12. Marks with words

The voter marks two or more choices similarly and additionally writes in comments such as “not this,” “ignore this,” “don’t want,” or “wrong,” or “Vote for [candidate’s name]” such that voter’s definite choice is clearly indicated.

|  |  |  |
| --- | --- | --- |
| **Valid vote for Candidate D** |  | **Valid vote for Candidate A** |
|

|  |
| --- |
| **Circuit Judge** |
| Vote for One |
|  | Candidate A | REP |
|  | Candidate B | DEM |
|  | Candidate C | NPA |
|  | Candidate D | GRN |

 |  |

|  |
| --- |
| **Attorney General** |
| Vote for One |
|  | Candidate A | REP |
|  | Candidate B | DEM |
|  | Candidate C | NPA |
|  | Candidate D | GRN |

 |
|  | **Valid vote for Candidate D** |
|  |

|  |
| --- |
| **School Board Member** |
| Vote for One |
|  | Candidate A | REP |
|  | Candidate B | DEM |
|  | Candidate C | NPA |
|  | Candidate D | GRN |

 |

|  |
| --- |
| Section E. Determination of voter intent for write-in votes  |

## 1. Last name of candidate or joint candidate

A voter is determined to have made a definite choice for a write-in vote for the joint office of President/Vice-President if the voter writes in either the last name of the qualified write-in candidate for President or Vice-President or the last name of a candidate for President or the last name of the candidate for Vice-President who is named on the ballot in that race. This standard similarly applies to constitute a valid write-in vote for the joint office of Governor/Lieutenant Governor if the voter writes in either the last name of the candidate for Governor or the last name of the candidate for Lieutenant Governor.

|  |
| --- |
| **Valid vote for joint qualified write-in President and Vice President Candidate E** |
|

|  |
| --- |
| **President and Vice President** |
| Vote for One |
|  | Candidate A Joint Candidate A | REP |
|  | Candidate B Joint Candidate B | DEM |
|  | Candidate C Joint Candidate C | NPA |
|  | Candidate D Joint Candidate D | GRN |
|  | Joint Candidate E .Write-In |

 |

## 2. Filled in vote target and write-in name

A voter is determined to have made a definite choice for a named candidate if the voter indicates a vote for a candidate named on the ballot and writes-in the name of that same candidate in the blank space for ‘write-in’ candidate.

|  |
| --- |
| **Valid vote for Candidate A** |
|

|  |
| --- |
| **Attorney General** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |
|  | Candidate A . Write-In |

 |

## 3. Name written in

A voter is determined to have made a definite choice for a candidate if the voter either writes in the name of a qualified write-in candidate or the name of a candidate who is named on the ballot in that race, whether the vote target designating the selection of a write-in candidate has been marked or not marked.

|  |  |  |
| --- | --- | --- |
| **Valid vote for Candidate E if Candidate E is a qualified write-in candidate** |  | **Valid vote for Candidate A** |
|

|  |
| --- |
| **United States Senator** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |
|  | Candidate E . Write-In |

 |  |

|  |
| --- |
| **Attorney General** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |
|  | Candidate A . Write-In |

 |

## 4. Abbreviation, misspelling, or variation

A voter is determined to have made a definite choice even if a voter abbreviates, misspells, or varies the form of the name of a candidate in the write-in candidate space.

|  |
| --- |
| **Valid vote for misspelled Candidate A** |
|

|  |
| --- |
| **Board of County Commissioners**  |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |
|  | Candata A . Write-In |

 |

|  |
| --- |
| Section F. Overvotes |

1. If a voter marks more choices than there are positions or choices for that office or issue, it shall be considered an overvote and none of the votes are valid for that race.

#

|  |  |  |
| --- | --- | --- |
| **Invalid vote - overvote** |  | **Invalid vote - overvote** |
|

|  |
| --- |
| **Chief Financial Officer** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |  |

|  |
| --- |
| **State Senator District 2** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |
| **Invalid vote - overvote** |  | **Invalid vote - overvote** |
|

|  |
| --- |
| **State Representative** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |  |

|  |
| --- |
| **Circuit Judge** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |

|  |  |  |
| --- | --- | --- |
| **Invalid vote - overvote** |  | **Invalid vote- overvote** |
|

|  |
| --- |
| **United States Senator** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |  |

|  |
| --- |
| **Attorney General** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |

2. If a voter marks a choice for a candidate named on the ballot and writes in a name of a different person in the write-in candidate space, it shall be considered an overvote and none of the votes are valid for that race.

|  |
| --- |
| **Invalid vote** |
|

|  |
| --- |
| **Governor and Lt. Governor** |
| Vote for One |
|  | Candidate A Joint Candidate A | REP |
|  | Candidate B Joint Candidate B | DEM |
|  | Candidate C Joint Candidate C | NPA |
|  | Candidate D Joint Candidate D | GRN |
|  | Candidate M .Write-In |

 |

3. If a voter marks the vote target area for a candidate named on the ballot and marks the vote target area next to the write-in candidate space but does not indicate a name in that space , it shall be considered an overvote and none of the votes are valid for that race.

|  |
| --- |
| **Invalid vote** |
|

|  |
| --- |
| **Attorney General** |
| Vote for One |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |
|  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Write-In |

 |

|  |
| --- |
| Section G. Undervote  |

If a voter marks fewer candidates than there are positions to be elected for those offices, then the votes for all the marked candidates shall count. For example, if the voter is allowed to vote for 5 candidates in a special district election (“Vote for 5”) and the voter marks 2 candidates, the votes for those two marked candidates shall count.

|  |  |  |
| --- | --- | --- |
| **Two of the three available valid votes (for Candidates A and B)** |  | **One of the three available valid votes (for Candidate B)** |
|

|  |
| --- |
| **County Commissioner At Large** |
| Vote for Three |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |  |

|  |
| --- |
| **School Board Member At Large** |
| Vote for Three |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |

 If a voter marks through a race in its entirety, even if candidates were chosen to be elected for those offices, then the votes for all the marked candidates shall not count.

|  |  |  |
| --- | --- | --- |
| **Invalid vote - undervote** |  | **Invalid vote - undervote** |
|

|  |
| --- |
| **County Water Management Committee At Large** |
| Vote for Two |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |  |

|  |
| --- |
| **School Board Member At Large** |
| Vote for Two |
|  | Candidate A |
|  | Candidate B |
|  | Candidate C |
|  | Candidate D |

 |