



February 3, 2020

Ashley E. Davis
Elections Division
Florida Department of State
Room 316, R. A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399-0250

Re: Proposed Rule 1s-2.032, Uniform Design for Election Ballots

Dear Ms. Davis:

On behalf of the Brennan Center for Justice at NYU School of Law¹ and the Center for Civic Design, we write to provide comment on proposed Rule 1S-2.032, Uniform Design for Election Ballots.

We strongly support the main purpose of the rule, which is to “require statewide use of Spanish language ballots because the state’s Puerto Rican American population has increased since the devastation of Hurricane Maria in September 2017.” It should be easy for voters to exercise their rights, and providing ballots in the languages best understood by voters is an important means of ensuring that the right to vote is available to all eligible voters on an equal basis.

Another necessary component of ensuring that voters can exercise their rights is to ensure that ballot designs are accessible and usable for all voters, without being prone to confusion and mistakes. For years, the Center for Civic Design has been on the forefront of promoting best practices in ballot design and policy, which simplify the process of voting and reduce the chance that voters’ choices are not accurately reflected in their ballot selections. Through good design practices, unnecessary worries about whether vote counts truly reflect voters’ real intent — a problem with which Floridians are all too familiar — can be avoided. As we highlight in our recent series on ballot design,² despite the promotion of these practices, ballots all too often

¹ This comment does not reflect the views, if any, of the NYU School of Law.

² Andrea Córdova McCadney, Lawrence Norden, and Whitney Quesenbery, *Common Ballot Design Flaws and How to Fix Them*, Brennan Center for Justice, 2020, <https://www.brennancenter.org/our-work/research-reports/common-ballot-design-flaws-and-how-fix-them>; Gowri Ramachandran and Whitney Quesenbery, *Ballot Design Guidance for Election Officials*, Brennan Center for Justice, 2020, <https://www.brennancenter.org/our-work/research->

exhibit poor design that leads to confusion and mistakes on the part of voters, as evidenced by unusual rates of undervotes, overvotes, and the like.

Many of the changes made in the proposed Uniform Design are excellent improvements for ballot designs in Florida. For instance, directing that voters make their selections by filling in ovals is an excellent design principle. Voters' familiarity with filling in ovals, perhaps from childhood standardized testing, reduces error rates on "fill in the oval ballots" as compared to other forms, such as "complete the broken arrow" ballots.³ In our observations of voters, ovals are also easier for voters to fill in completely than either arrows or boxes. Similarly, not placing contests below ballot instructions, where they may be missed by voters, is another improvement,⁴ although we have suggested some clarifying amendments to this section below.

However, some further improvements can still be made to the Uniform Design Rule.

- The rule recommends the use of single language ballots unless a county has been otherwise ordered to provide multi-language ballots. However, the rule permits deviation from this recommendation when a supervisor "determines [that] is appropriate to accommodate the respective electorate." We do not propose any change to this language, as the flexibility may help counties properly resource polling places with sufficient ballots for voters on election day. But we do note that single language ballots are easier to read for voters. Ballots containing three or more languages can be particularly difficult for voters to use and tend to cause design difficulties such as lengthy instruction sections or issue contests that must be split across multiple columns. Thus, these should be avoided where sensible, which may be the case at vote centers using ballot on-demand printers.
- The rule prescribes minimum and maximum font sizes. We do not propose any amendments to these limits, but do note that in general, larger font sizes are easier for voters to use.
- The rule prescribes left-aligned text in general but permits centered text for instructions. We do not propose changing this language, given that some voting systems may require centered instructions. But we do note that left-aligned instructions are easier for voters to use.
- The rule caps the number of columns that may appear on a paper ballot page. We recommend capping that number at 3, not 4 columns. On visual display ballots, we recommend a single column for all contests and no more than two columns on a review page. Fewer columns for voters to visually process makes it easier for voters to navigate the ballot and identify the boundaries of each contest for better usability. On electronic machines, there is no need to save space/printing costs by placing multiple columns on a screen. And on paper ballots, 4 columns is too large of a number for voters to visually process.

[reports/ballot-design-guidance-election-officials](https://www.brennancenter.org/our-work/research-reports/how-design-better-ballots); *How to Design Better Ballots*, Center for Civic Design, <https://www.brennancenter.org/our-work/research-reports/how-design-better-ballots>.

³ Larry Norden et al., *Better Ballots*, Brennan Center for Justice, 2008, 30–31, https://www.brennancenter.org/sites/default/files/2019-08/Report_Better-Ballots.pdf.

⁴ Andrea Córdova McCadney, Lawrence Norden, and Whitney Quesenbery, *Common Ballot Design Flaws and How to Fix Them*.

- Although we commend the idea of permitting deviation from default rules when necessary, such as the default rule that all candidates in a contest must appear in a single column, steps should be taken in these situations to minimize errors and usability impacts on voters.⁵ We recommend a requirement that in these situations, reasonable efforts be made to alert voters to the presence of more candidates or text than they might be expecting. Instructions at the end of the columns but before the end of contest information can help, such as “more candidates in the next column” or “see more in the next column.” Signage and cooperation with voter rights and candidate campaigns for voter education may help reduce errors as well.
- It is also important that candidates be treated fairly. For instance, all candidates’ names in a single contest should be presented in the same size font. We have proposed language, below, that would ensure that when deviations are necessary, ballots remain fair to all candidates and easy for voters to use.
- For accessible devices, such as ballot marking devices that produce a paper output, the rule permits ballot instructions to be displayed in the voting booth. However, blind and low-vision voters would not be able to read these instructions. Therefore, the rule should require that ballot instructions be provided via the device being used for accessibility. Then voters will be able to listen to the audio version of the instructions or enlarge the display to make it easier to read. Similarly, the rule should ensure that instructions are available in alternate languages and that the ability to choose the desired language should come first in the instructions, as this has been shown to make navigation of visual display ballots easiest for voters using them.
- The proposed rule permits more than one contest per screen on electronic machines. When each screen contains one contest, voters find ballots much easier to navigate.
- Placing vote targets to the left of candidate names is a best practice and should be encouraged where possible.
- The standard ballot forms provided in the rule include a hybrid voting system printout. This printout appears to be from an ExpressVote machine. By including this printout as the standard with which all printouts must be “substantially in accordance,” the rule implies that only this style of printout is acceptable from hybrid voting systems, or ballot marking devices. However, there is no evidence that this style of printout is more readable or usable by any group of voters than other printouts. We recommend not including this standard printout in the rule, so as to avoid the implication that certain printout styles are more or less preferred than others without evidence.

Below, we have suggested amendments to the rule’s language that should accomplish these goals and have additionally suggested a few amendments that we believe should reduce confusion on the part of election officials tasked with implementing the ballot design rule.

⁵ *Id.*

Beyond these specific amendments, the state should recommend that counties create sample ballot designs and release them publicly for review by voters, candidates, and local advocacy groups. This practice will help ensure that problems are identified in advanced and addressed before printing.⁶

We appreciate the opportunity to provide these suggestions that should build on the proposed rule's progress in helping all voters in Florida exercise their rights without unnecessary confusion or risk or error.

Sincerely,

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⁶ Gowri Ramachandran and Whitney Quesenbery, *Ballot Design Guidance for Election Officials*, Brennan Center for Justice.

APPENDIX: SPECIFIC SUGGESTED AMENDMENTS TO RULE 1S-2.032

Suggested additions appear in bold.

~~Suggested deletions appear in strikeout.~~

Section (4)(b)8

8. The appropriate three-letter party affiliation or no party affiliation (NPA) for candidates shall be in all capital letters.

(b) Alignment. Unless otherwise indicated herein, all type on a ballot shall be aligned to the left of the page or column, as applicable. The ballot title and the ballot instructions may be centered or aligned to the left on the page or column. If the instructions appear in a the leftmost column, there shall be no individual races below the column instructions.

Section (4)(c)

(c) Columns.

1. A paper ballot page shall contain no more than four columns.
2. A visual display ballot shall contain no more than two columns.
3. All candidates for the same race shall appear on the same page and in the same column on a paper ballot or entirely on one screen page of the default setting for a visual display ballot, except as otherwise specified within this rule. **When necessary to deviate from this rule, reasonable efforts shall be made to alert voters to the presence of additional candidates in the race.** A voter may magnify the default setting of a visual display ballot so that all candidates in the same race may not appear on one screen page.
4. No issue or public measure choices of Yes and No shall be split between columns or pages. **When necessary to deviate from this rule, reasonable efforts shall be made to ensure voters can make an informed selection.**
5. No judicial merit selection and retention question on the ballot shall **be split between columns or pages of the ballot.** ~~appear in more than one column, span more than one column, or extend onto another side or page of the ballot.~~ However, each separate retention question relating to the same or different category of judicial retention may be split.

Section (11)(c)

(c) Ballot instructions. The visual display ballot instructions may appear at any point before the **first** ~~contest choices or may be posted separately and prominently in each voting booth.~~ The instructions on a visual display ballot shall inform the voter how to:

1. Select a language other than English for the ballot and have the remainder of the visual display ballot displayed in the selected language. This instruction is only required if two or more language choices are offered or required in the county for its voting system. **Language selection should be made visible as the first step in navigating the ballot. Once a language is chosen, instructions must be in the selected language.**
2. Start voting the ballot.

3. Mark a choice and how that choice will be reflected or appear on the screen, to include how to vote for a write-in candidate.
4. Vote for a qualified write-in candidate whose name is not printed on the ballot. This instruction is to be added in which one or more write-in candidates have qualified for an office.
5. Change or undo a choice if the voter changes his or her mind on a particular candidate or issue.
6. Proceed to the next ballot page.
7. Go back a screen.
8. Review **their** ~~his or her~~ choices before casting the ballot.
9. Cast the ballot in order for his or her vote to be recorded.

Section 11(f)

(f) Contest choices.

1. Below the contest title, the ballot shall direct the voter about the choices in each contest as specified in subsection (8).
2. Each screen of a visual display ballot may have one ~~or more~~ contests on the screen, **though an option to navigate to the review screen is permissible.**
3. Each screen of the visual display ballot shall display all candidates in a contest, but if not all candidates can be displayed at the ~~minimum~~ **default** font size on one screen, the visual display shall indicate that additional candidates are on a following display or on a scroll display.
4. **If possible, ~~the~~ the vote target shall be flush or indented on either on the left or right side of the candidate or selection text. Otherwise, the vote target shall be on the right side.**
5. The selection of choice may be made at the vote target or anywhere on the line containing the vote target.
6. For any public measures, the text may be displayed on as many screens as necessary to accommodate the text. ~~Any coding~~ **Formatting** of the text, **such as bold, strikeout, and the like,** shall be ~~displayed~~ **the same as** on paper ballots.

Section 11(h)

(h) Final instructions before casting the ballot.

1. The visual display shall indicate to the voter if the voter is about to cast a blank ballot and that no vote on the ballot will be counted.
2. The visual display shall allow the voter to review the ballot and make any desired changes. **Where possible, the option to go to the review screen should be available at any point in the ballot marking process.**
3. The visual display shall provide a clear instruction how to cast the ballot and confirm whether the voter desires to cast the ballot.
4. The visual display shall visually display that the ballot was cast and voting is complete.

Section (12) Hybrid voting system.

- (a) Electronic display requirements. The electronic display for a hybrid voting system shall comply with the requirements for a visual display ballot contained in this rule.

(b) Paper output requirements. The font of the paper output must be no less than 10-point type and the paper output itself may be of any size and format so long as it includes all contests and **the voter's selections or indication that no selection was made**, and the output can be properly tabulated. The paper output must contain:

1. Human readable text without abbreviations or shortened text for the ballot title, except dates may be in all numeric text, for example, 08/26/2014;
2. Human readable text identical in content as displayed on the visual display ballot for each contest title for which the voter made a selection;
3. Human readable text identical in content as displayed on the visual display ballot for the voter's selections in each contest; and,
4. If the paper output is designed for the tabulator to read the barcode or optical label, a corresponding barcode or other machine-readable optical label for each of the voter's selections.

Section (14) Deviation from the rule.

A supervisor of elections may reasonably deviate from those ~~the~~ requirements ~~of this rule~~ to the extent necessary for any of the following reasons:

- (a) There are more candidates for a contest than will fit in one column or screen.
- (b) The candidate's name is longer than will allow the party abbreviation to fit to the right of the candidate's name. **Reducing the font size of the candidate's name below the font size to a smaller font size than of other candidate's names in the same contest is not a permitted deviation.**
- (c) A candidate's name is too long to fit on one line in the minimum font size. **Reducing the font size of the candidate's name below to a smaller the font size of than the other candidate's names in the same contest is not a permitted deviation.**
- (d) The party abbreviation cannot be printed in the minimum font size without going onto a second line.
- (e) Printing the (Vote for 1) or (Vote for up to [enter number to be elected]) designations in the minimum font size will require an additional ballot card.
- (f) The voting system will not permit the suppression of party abbreviations on ballots when a universal primary contest exists.
- (g) Any other extraordinary circumstances which cannot reasonably be accommodated except by deviation from the requirements of the rule.