

1S-2.051 Standards for Determining Voter's Choice on a Federal Write-In Absentee Ballot.

(1) Application. The standards in this rule apply to determine whether the voter has clearly indicated a definite choice for purposes of counting a vote cast on a Federal Write-in Absentee Ballot (FWAB) during a recount under Section 102.166(4), F.S., and during the canvassing and duplication of the FWAB under Section 101.5614(5), F.S. The FWAB is issued by the Federal Voting Assistance Program (FVAP) as a back-up ballot, and is available by download from the FVAP's webpage at: <http://www.fvap.gov/uploads/FVAP/Forms/fwab2013.pdf>.

(2) Use. Section 101.6952(2), F.S., governs when a federal write-in absentee ballot may be used in an election and by whom it may be used.

(3) Manual review and tabulation. Subject to Sections 102.166(4)(b) and (c), F.S., a vote shall count when it is determined to be a valid vote pursuant to this rule.

(4) Standards. The following standards supplement the applicable standards already set out in Sections 101.6952(2)(b)-(e), F.S., for determining whether there is a clear indication that the voter has made a definite choice, whether the vote shall be counted, and for whom or what issue.

(a) The following standards apply and will constitute clear indications of a definite choice for which the vote shall count:

1. Except for judicial merit retention races (see subparagraph (4)(a)6.), if the voter writes the candidate's local or state office under the column "Office/Ballot Initiative," and in close proximity either on the same line, directly below or above the line, or on the line directly opposite in the next column, the voter writes a qualified candidate's name or party, the vote shall count for the qualified candidate regardless of party affiliation, or for the qualified candidate associated with the party written, whichever is applicable.

2. Except for judicial merit retention races (see subparagraph (4)(a)6.), if the voter writes the qualified candidate's first or last name and no other qualified candidate in the race or on the ballot has the same or similar first or last name, the vote shall count for that qualified candidate regardless of proper or improper office designation.

3. If the voter uses symbols, marks, or words, such as "same" or "ditto," or arrows, or quotation marks to indicate the same political party for all offices voted, the vote shall count for each qualified candidate of that political party, except in those races in which more than one candidate of the same political party may properly be nominated or in which two or more candidates may properly be elected.

4. If the voter fails to include any district or other numbered designation associated with the office but designates the correct office name, the vote shall count for that office.

5. If the voter writes a candidate's partial or full name, but incorrectly writes the political party, the vote shall count for that candidate.

6. For a judicial merit retention race, if the voter writes the candidate's first or last name or current office under the column "Office/Ballot Initiative" or "Candidate Name, Party Affiliation, or Initiative Vote," and in close proximity either on the same line, directly below or above the line, or on the line directly opposite in the adjacent column, the voter writes "yes" or "no," the vote shall count as a vote for or against retention, respectively. A voter may use symbols, marks, or words, such as "same" or "ditto," or arrows, or quotation marks to indicate a yes or no vote, as applicable, for a subsequent judicial merit retention race after indicating a "yes" or "no" vote for a preceding race.

7. For a ballot measure, if the voter writes the name of the ballot measure in any identifiable form under the column "Office/Ballot Initiative," and in close proximity either on the same line, directly below or above the line, or on the line directly opposite in the next column, the voter writes "yes" or "no," the vote shall count as a vote for or against the ballot measure, respectively. A voter may use symbols, marks, or words, such as "same" or "ditto," or arrows, or quotation marks to indicate a yes or no vote, as applicable, for a subsequent ballot measure after indicating a "yes" or "no" vote for a preceding ballot measure.

(b) The following standards apply and will constitute instances where clear indications of a definite choice cannot be determined and for which the vote shall not count:

1. If the voter writes a candidate's first or last name, or both, but incorrectly designates the office for which the candidate has qualified.

2. If the voter writes in a candidate's name that is not on the official primary ballot of any political party.

3. If the voter designates a qualified candidate's partial or full name that is the same or similar to an opposing candidate's partial or full name in the same race without some additional mark or wording to indicate clearly that the voter has made a definite choice. (Such additional marks or wording may consist of a candidate's nickname, first name and first initial, middle name(s) and middle

initial(s), other commonly known name or names, generational suffix, or professional title such as doctor, professor, counselor or judge).

4. If, in a primary election or special primary election, a voter writes in the name or abbreviation of a political party without associating the political party designation with the name of a qualified candidate.

5. In a judicial retention race, if the voter writes an entry other than one specified in subparagraph (4)(a)6., the vote shall not count as either a vote for or against retention.

6. For a ballot measure, if the voter writes an entry other than one specified in subparagraph (4)(a)7., the vote shall not count as either a vote for or against the ballot measure.

(c) Unless the writing of the candidate's or political party's name clearly indicates otherwise (*e.g.*, the voter writes the first and last name of the candidate or the full name of the political party on the ballot), the following standards apply when the abbreviation, initials, or name of a candidate is the same as the abbreviation or name of a political party:

1. If the political party does not have a candidate in the applicable race, the vote shall count for the candidate.

2. If the political party has only one candidate in the applicable race and the candidate is a member of the political party whose abbreviation or name is the same as the candidate, the vote shall count for the candidate.

3. If the political party has more than one candidate on the ballot, the vote shall not count for either the candidate or the party.

(d) If the voter writes in or otherwise indicates more choices than there are positions or choices for that office, it shall be considered an overvote and none of the designations by the voter are valid for that race.

Rulemaking Authority 20.10(3), 97.012, 102.166(4)(b) FS. Law Implemented 101.5614(5)(b), 101.6952, 102.166(4)(c) FS. History--New 11-28-13, Amended 8-23-15.