

**Florida's 2012 General Election under HB 1355:
Early Voting, Provisional Ballots, and Absentee Ballots**

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Executive Summary

- The 2012 General Election was the first major election in Florida held after the passage of House Bill 1355, a controversial election law that among other things reduced the early voting period in Florida and altered the requirements for casting provisional ballots.
- By cutting early voting from 14 to eight days and eliminating early voting on the Sunday before the 2012 election, HB 1355 likely contributed to longer early voting lines at the polls, causing in-person early voting turnout to drop by more than 225,000 voters compared to 2008.
- The reduction in opportunities to vote early under HB 1355 disproportionately affected African American voters, insofar as nearly half of all blacks who voted in 2012 cast in-person early ballots. Although blacks made up less than 14 percent of the Florida electorate as of November/December 2012, they cast 22 percent of all the early votes in 2012, roughly the same percentage as in 2008.
- African Americans and Hispanic voters were more likely than white voters to cast provisional ballots and nearly twice as likely to have their provisional ballots rejected.
- Quite possibly due to well-founded fears of long lines at early voting and Election Day polling sites resulting from HB 1355, absentee ballots—a much less reliable form of voting a valid ballot—increased in 2012. Over 28 percent of all ballots cast in 2012 were absentee ballots, nearly six percentage points higher than in 2008. Almost one percent of these ballots were "rejected as illegal" in 2012 by county canvassing boards, and the African American absentee ballot rejection rate was nearly twice the absentee ballot rejection rate of white voters.

Overview of House Bill 1355 and the 2012 Election

In May, 2011, the Florida legislature passed, and Governor Rick Scott signed into law, House Bill 1355. In addition to restricting voter registration drives by individuals and civic organizations and requiring provisional ballots to be cast by registered voters who had moved across county lines in Florida but had not updated their addresses, HB 1355 truncated the state's early voting period from 14 to eight days and explicitly eliminated the possibility that Supervisors of Elections offer early voting on the final Sunday immediately preceding an Election Day. Despite the popularity of early voting in Florida, and despite a lack of evidence of fraud concerning mobile voters in need of updating their registration addresses on Election Day, HB 1355 signaled the end of the bipartisan expansion of voting rights in Florida signed into law in 2004 by Governor Jeb Bush.

Our brief analysis—which is based entirely on publicly available data from the Florida Division of Elections (December 31, 2012 voter file)—provides evidence that HB 1355 likely contributed to a decrease in early voting in 2012 compared to 2008; had differential effects on racial and ethnic minorities regarding the availability of early voting; and affected the rates at which provisional ballots and absentee ballots were rejected.

Early Voting

Despite the growing use across Florida of early voting, in the 2012 General Election fewer than 2.44 million in-person early votes were cast; this was down from the more than 2.66 million voters casting early in-person ballots in 2008. In 2008, nearly 32 percent of the 8.35 million Floridians who voted cast ballots at early voting sites.¹ In 2012, however, fewer than 29 percent of the 8.43 million total votes were cast during the eight-day early voting window, a window that HB 1355 had shortened from 14 to eight days

Of the more than 1.17 million total votes cast by African Americans in the 2012 General Election, nearly half—over 540,000—were cast during the election's eight day period of in-person early voting. Although African Americans made up slightly less than 14 percent of all voters in the 2012 General Election, they comprised over 22 percent of all the early voters. In contrast, both Hispanics, who made up 12.5 percent of all voters in the election but cast only 11 percent of the early votes, and whites, who made up 68 percent of all voters but cast only 61 percent of early votes, disproportionately cast ballots on Election Day and via absentee ballot. Only a quarter of all Hispanics and whites who voted in 2012 cast in-person early ballots over the eight day period.

Due to the shortened number of days and reduced number of hours during the early voting period in 2012 (which eliminated the final Sunday of early voting, a day African Americans in

¹ Summary data from the Florida Division of Elections on Election Day Ballots, Early Voting Ballots, and Absentee Ballots cast in the 2008 General Election, available at <http://election.dos.state.fl.us/reports/pdf/2008BallotsCast.pdf>.

2008 flocked to the polls), it is fair to say that black voters disproportionately bore the brunt of the well-documented long lines during early voting.

Provisional Ballots

There is also little question that HB1355, by requiring legally registered voters to cast provisional ballots if they moved from one county to another and had not updated their addresses (we have to say something like this since not all movers have to cast provisional ballots), exacerbated the capacity of elections clerks to carry out their duties processing other voters at the polls. Nearly 30,000 Floridians were required to cast provisional ballots in 2012; one-fifth of these, though, were determined not to be valid and were thus not tabulated towards the final election results. In 2012, the overall number of provisional ballots cast and the statewide provisional ballot rejection rate were comparatively lower than in the 2008 General Election.

African Americans were required disproportionately to cast provisional ballots in the 2012 General Election, and this may have contributed to greater delays processing voters in those polling stations. African American voters cast more than 6,700 provisional ballots in 2012, of which nearly one-quarter were rejected by county canvassing boards. Alternatively considered, this means that over 5,000 African Americans, who were legally registered voters and who dutifully cast ballots in their proper early voting stations or Election Day precincts, were required by a polling place clerk to fill out a lengthy provisional ballot sleeve.

Similarly, Hispanic voters were forced to cast more than 4,400 provisional ballots during the early voting period and Election Day. Slightly more than 27 percent of these provisional ballots were rejected. This means that over 3,200 Hispanic voters who the 67 Supervisor of Elections later determined to be eligible voters were required to cast provisional ballots. Most of these voters, anecdotal county data suggests, were legally registered voters who moved from one county to another and simply needed to update their addresses. Roughly 17 percent of the nearly 16,000 white voters who were forced to cast provisional ballots were rejected, meaning that over 80 percent of these voters were legally registered and eligible to vote.

Absentee Ballots

The long lines during early voting period and the well-founded fear of lengthy delays on Election Day itself in many counties may have encouraged many voters who otherwise might have cast regular ballots at the polls to instead vote via absentee ballot. Over 2.37 million absentee ballots were cast in 2012, up from the 1.85 million that were cast in the 2008 General Election. Over 28 percent of all ballots cast in 2012 were absentee ballots, close to six percentage points more than the election four years earlier. However, nearly one percent of these absentee ballots--more than 23,000--were "rejected as illegal" by county canvassing boards.

The rejection of absentee ballots cast in 2012 disproportionately affected minority voters, especially African Americans. Unbeknownst to many voters, a different standard of review of a voter's signature is used by Supervisors of Elections to verify absentee ballots compared to the standard of review required during early voting or on Election Day. Casting a valid absentee ballot--especially for legally registered voters whose signatures may have changed over the years since they registered to vote--is no sure bet. Indeed, of the more than 220,000 absentee ballot cast by African Americans in 2012, county canvassing boards rejected roughly 1.5 percent. Similarly, of the more than 250,000 absentee ballots cast by Hispanics in 2012, canvassing boards rejected more than 1.3 percent of the ballots. In contrast, only 0.8 percent of the 1.78 million absentee ballots cast by white voters were rejected by local canvassing boards.

Conclusion

HB 1355 had a negative effect on voter participation in Florida in the 2012 General Election, beginning with the restrictions placed on voter registration drives (later found to be unconstitutional) to the burden of provisional ballots required for registered voters wishing to update their addresses, to the elimination of the final Sunday of early voting and the reduction in days and hours during which voters could cast east ballots. Racial and ethnic minorities were not only more likely to have to cast provisional ballots at the polls, but they were also more likely to have their ballots rejected by county canvassing boards. Compounding these problems are the different standard used during early voting and on Election Day to verify the signatures of potential voters compared to the standard used by Supervisors of Elections and canvassing boards to evaluate the signatures on absentee ballots. Racial and ethnic minorities in the 2012 General Election were much more likely to have their absentee ballots rejected than the state average. In sum minority voters and African Americans in particular were most burdened in the 2012 General Election by recent legal changes in Florida's electoral environment.

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