

**DE 02-02 - March 8, 2002**

**Universal Primary**  
**§ 46, Ch. 2001-40, L.O.F. Art. VI, S. 5(b), Florida Constitution**

*To: The Honorable David C. Leahy, Supervisor of Elections, Miami-Dade County Elections Office,  
111 NW 1 Street, Suite 1910, Miami, Florida 33128-1962*

*Prepared by: Division of Elections*

Dear Mr. Leahy:

This is in response to your request for an advisory opinion regarding the Universal Primary contest in the 2002 election cycle. You are the Supervisor of Elections for Miami-Dade County and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has authority to issue an opinion to you. You essentially ask the following:

Since the Legislature has eliminated the 2002 Second Primary, does the runoff for a Universal Primary contest move to the General Election or is the candidate who receives the highest number of votes in the primary elected to office?

The answer to your question is the candidate who receives the highest number of votes in the primary is nominated, not necessarily elected, to office.

Article VI, Section 5(b), Florida Constitution, addresses the issue of what is now being referred to as a "universal primary." This provision reads:

"If all candidates for an office have the same party affiliation and the winner will have no opposition in the general election, all qualified electors, regardless of party affiliation, may vote in the primary elections for that office."

This provision allows all voters to vote in such a primary election contest but does not change the fact that it is still a primary contest. Each political party is allowed only one nominee to represent them in the general election pursuant to section 100.051, Florida Statutes.

The 2002 election cycle is new for Florida, as there is no second primary. Section 46, Chapter 2001-40, Laws of Florida, provides that "[t]he candidate receiving the highest number of votes cast in each contest in the primary election shall be declared nominated for such office." Therefore, the candidate who receives the most votes, not the majority of votes, in the only primary election contest in 2002 will be declared the party nominee. If there is no further opposition in the general election, that nominee will be deemed to have voted for himself and will therefore be the winner pursuant to section 46, Chapter 2001-40, Laws of Florida.

## SUMMARY

p>The elimination of the 2002 Second Primary allows for the candidate who receives the highest number of votes in the 2002 Primary to be nominated for that office.

Sincerely,

L. Clayton Roberts  
Director, Division of Elections

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