

ANALYSIS OF ABSENTEE (“VOTE-BY-MAIL”) BALLOTS CAST IN FLORIDA

BY DR. DANIEL A. SMITH

I. Background and Qualifications

I am Dr. Daniel A. Smith, Professor of Political Science and University of Florida Research Professor (2010-2012). I received my Ph.D. in Political Science from the University of Wisconsin-Madison in 1994. For five academic years (2007-2011), I served as the Director of UF's Political Campaigning Program, which offers a Master of Arts degree in political science with a special emphasis on political campaigning and practical politics. This past summer I stepped down as the UF Department of Political Science Graduate Coordinator, overseeing the M.A. and Ph.D. programs. I am also President of ElectionSmith, Inc., a political consulting firm based in Gainesville, FL, specializing in empirical research on electoral processes in the American states.

For more than two decades I have conducted research on electoral politics in the American states, focusing on the effect of political institutions on political behavior. I have written extensively on electoral process in the American states, including articles on early in-person voting in the American states, and have published more than 80 articles and book chapters, including many that have appeared in the discipline's top peer-reviewed journals, such as the *American Political Science Review*, many of which deal with voting and elections in Florida. I have also published two academic books on politics in the American states, and I am the coauthor of a leading textbook, *State and Local Politics: Institutions and Reform*, 4th ed (2014). I have taught graduate seminars on State Politics, American Political Parties, The Politics of Direct Democracy, The Politics of Campaign Finance, and The Politics of Reform, and I also regularly teach a large undergraduate survey course, State and Local Politics. Several of my courses have readings on voting and elections in the American states, particularly in Florida. I am a former Senior Fulbright Scholar, and I have testified before the U.S. Senate and the Florida Legislature on voting and election issues in Florida. I have received numerous grants and awards for my work on campaigns and elections, including from the U.S. Department of State and the American Political Science Association. I am past-President of the State Politics and

Policy Section of the American Political Science Association. I have served as an expert witness in election-related litigation in several states, including Florida, hired by both plaintiffs and defendants (including the state of Florida). In 2010, I was the lead author of the “Direct Democracy Scholars” *amicus brief* in *Doe v. Reed*, which was successfully argued by the Attorney General of the state of Washington before the U.S. Supreme Court, and my scholarship has been cited by the U.S. Supreme Court. Finally, I have been quoted by hundreds of journalists over the past two decades on state politics, voting, and electoral processes, including in *The Economist*, *The New York Times*, *The Wall Street Journal*, *USA Today*, *The Washington Post*, *Politico*, *National Public Radio*, *Fox News*, *Voice of America*, the *Miami-Herald*, the *Tampa Bay Times*, the *Orlando Sentinel*, and the *Times-Union*.

My curriculum vitae is provided in Appendix A. I have worked with Dr. Michael C. Herron (Dartmouth College) in compiling the data used in this report. I am being paid \$300 an hour for work in this case, plus related expenses.

II. Absentee (“Vote-by-Mail”) Voting in Florida

I have been directed by counsel for the Plaintiffs in this matter to examine in Florida the treatment of absentee ballots (now known as “vote-by-mail” ballots), specifically in the 2012 General Election, including rejection rates of absentee ballots across the state’s 67 counties and by party registration. In conducting my analyses I draw on publicly available data sources and use standard social science methods.

As background, in the 2012 General Election, more than 2.3 million Floridians cast absentee ballots (out of the more than 8.5 million votes cast). According to the statewide voter file, which provides individual-level information of the votes cast (by method and whether or not they were

accepted or rejected) of every registered voter in Florida at a given time,¹ over 23,000 of all the absentee ballots cast by electors and received by the state's 67 SOEs were rejected by county canvassing boards in the 2012 General Election.

III. Total Absentee Ballots Cast and Rejected, 2012 General Election, by County

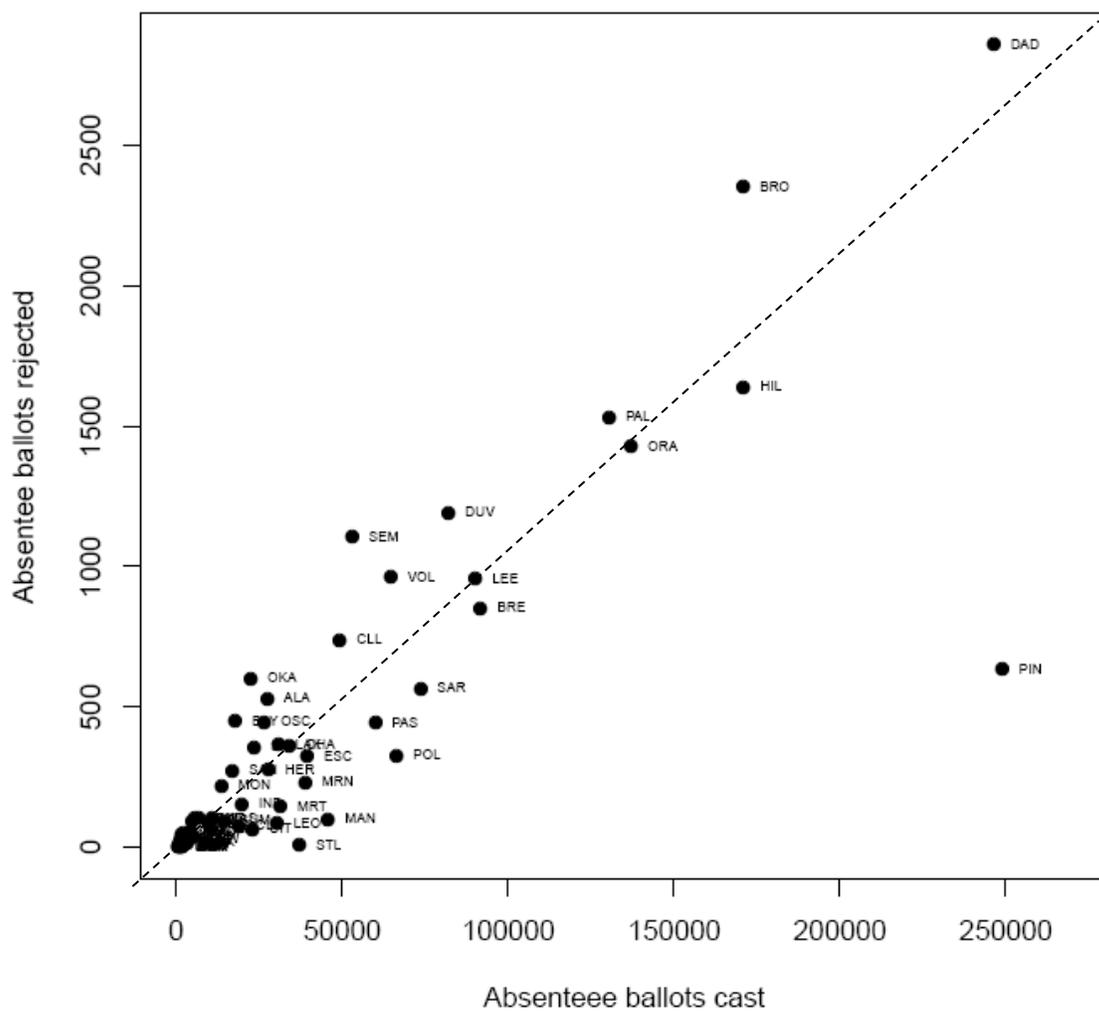
Figure 1 plots the total number of absentee ballots cast in the 2012 General Election (horizontal, x-axis) with the total number of absentee ballots rejected (vertical, y-axis) for each county, according to the individual-level vote history data in the statewide voter file. As can be seen in Figure 1, there is considerable variance in both the overall number of absentee ballots cast as well as the number of absentee ballots rejected across Florida's 67 counties. This suggests that the standards used by county Supervisors of Elections (SOEs) and their respective county canvassing boards, which are responsible in Florida for adjudicating whether absentee and ballots should be counted, may not be uniform.

For visual reference, if all 67 counties had a 1% absentee ballot rejection rate (which was approximately the statewide total in the 2012 General Election), all the counties would align along the 45 degree dashed line in Figure 1. According to the statewide voter file, several of the 67 counties had higher than a 1% rejection rate of absentee ballots received; others had less than a 1% rejection rate of absentee ballots they received. For example, Pinellas County (PIN) received more

¹ All registered voters who cast ballots in a given election receive a voting code in the state's official registered voter database, and this database is often called a voter file. Voter files in Florida are public records. I regularly obtain from the Florida Division of Elections monthly copies of the statewide voter file. Due to issues with the individual-level vote history data from a handful of counties in the Florida Voter Registration System (FVRS) from the December 31, 2012 statewide voter files, a hybrid statewide voter file was created using the corrected March 31, 2013 individual-level vote history data for registered voters in these affected counties. (For a detailed discussion of Florida's statewide voter files, see Herron and Smith 2014, p. 649). The FVRS is the centralized statewide computerized voter registration list maintained by the Florida Division of Elections. Throughout this report, as shorthand, I refer to this hybrid *December 2012 and March 2013) statewide file generically as the statewide voter file.

than 248,000 absentee ballots in the 2012 General Election but the county canvassing board “rejected as illegal” less than 600 absentee ballots that it received, or roughly a .25% rejection rate. Other counties, such as Seminole (SEM) and Broward (BRO), rejected absentee ballot at a considerably higher rate, as shown in Figure 1.²

**Figure 1:
Total Absentee Ballots Cast and Total Absentee Ballots Rejected,
by County, 2012 General Election**



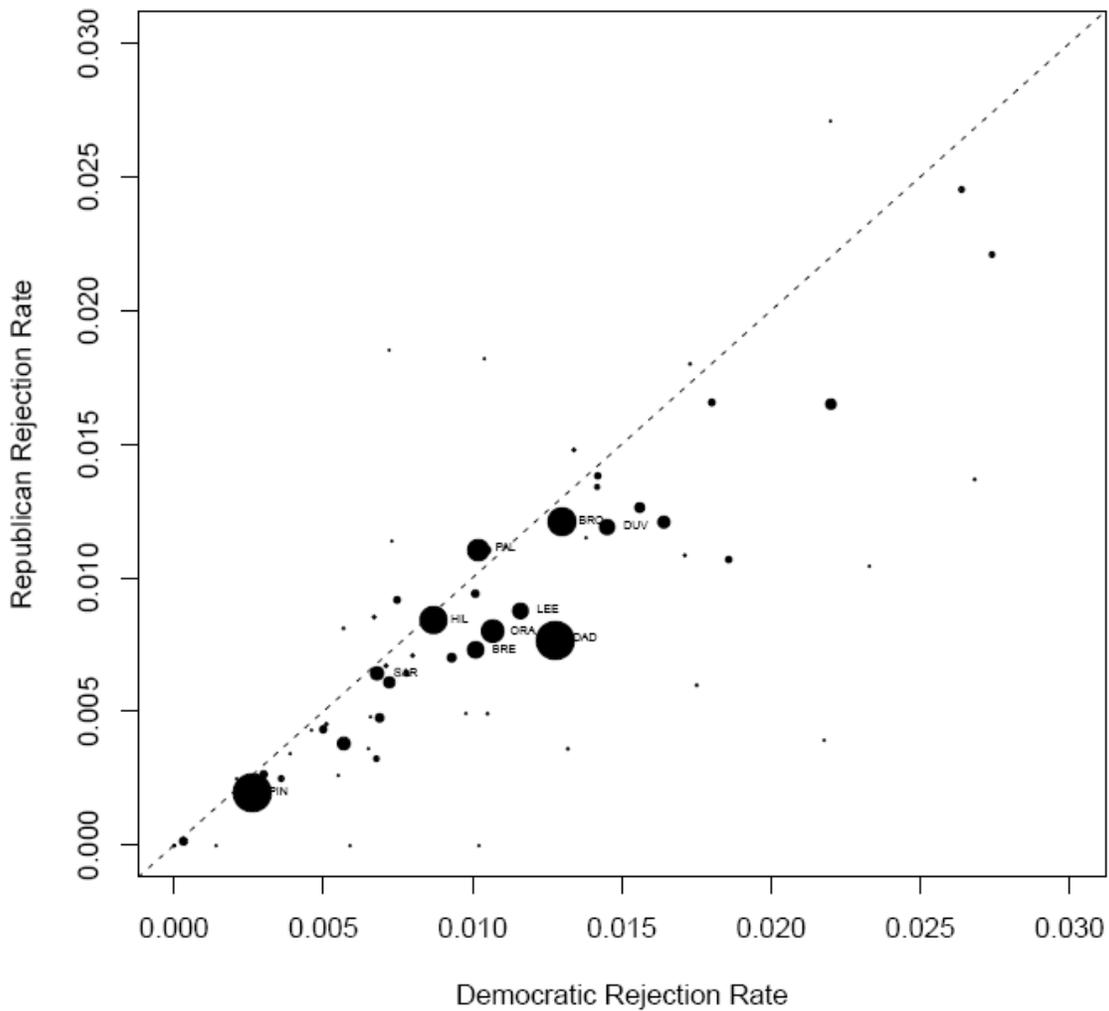
IV. Rejection Rates of Absentee Ballots Cast, 2012 General Election, by County and Party

Figure 2 plots the absentee ballot rejection rates (number of rejected ballots / total number of absentee ballots cast) across the 67 counties in the 2012 General Election, by party.³ The horizontal (x-axis) is the rejection rate of Democrats who cast absentee ballots and the vertical (y-axis) is the rejection rate of Republicans who cast absentee ballots for each county, according to the vote history data provided in the statewide voter file. If the rejection rates of absentee ballots cast by Republicans and Democrats were the same in each of the 67 counties, the counties (black dots) would fall along the 45 degree line in Figure 2. However, as Figure 2 displays, there is considerable variance in the absentee ballot rejection rates for registered Democrats and Republicans across the 67 counties.

In Miami-Dade (DAD), Brevard (BRE), Orange (ORA), Lee (LEE), and Duval (DUV) counties (as well as a smattering of smaller counties, not labeled, falling below the 45 degree line), Democratic absentee ballot voters had substantially higher absentee rejection rates than their Republican counterparts. For example, in Miami-Dade County, roughly 1.3% of absentee ballots cast by Democrats were rejected, but only .8% of those cast by Republicans were rejected by the SOE and the canvassing board in the 2012 General Election.

³ The size of the dots representing each county in Figure 2 are proportionate to the total number of absentee ballots cast in each county in the 2012 General Election.

Figure 2:
Rejection Rate of Absentee Ballots Cast by Republican and Democratic Registered Voters,
by County, 2012 General Election



V. Reasons for Absentee Ballot Rejections

In the upcoming November 8, 2016 General Election, not all vote-by-mail ballots that each of the state’s 67 SOEs and canvassing boards initially determine to be “rejected as illegal” will be treated equally with regard to the ability of an elector to “cure” his or her absentee ballot.⁴

⁴ According to Florida Statutes 101.68 (4)(a), county Supervisors of Elections must notify each elector whose ballot has been “rejected as illegal” by the canvassing board, including the reason why

Specifically, if they are informed in a timely matter, Florida electors who returned a vote-by-mail ballot without their signature on the Voter's Certificate on the return envelope will have until 5 p.m. on November 7, 2016, to complete and submit an affidavit to their SOE in order to "cure" their unsigned vote-by-mail ballot. This "cure" window, however, is not afforded to electors who have returned their vote-by-mail ballot, but who signed the Voter's Certificate on the back of their vote-by-mail return envelope with a signature that does not match the elector's signature on file with the SOEs' registration books.

As such, the following analysis differentiates between the rejection rates of what were the two most common types of rejected absentee ballots in the 2012 General Election: those without a signature and those with a signature that did not match the signature of the elector on file in county's the registration books, as determined by the SOE and the county canvassing board. In all, the analysis examines rejected absentee ballots from 11 counties from which data was obtained from SOEs detailing the reasons why an elector's absentee ballot was rejected in the 2012 General Election, as determined by the SOE and the canvassing board.⁵ The 11 counties are: Alachua (ALA); Broward (BRO); Collier (CLL); Miami-Dade (DAD); Hillsborough (HIL); Leon (LEO); Osceola (OSC); Palm Beach (PAL); Pinellas (PIN); Sarasota (SAR); and Seminole (SEM). A total of more than 1.22 million absentee ballots were cast by electors across these 11 counties, or nearly half of all absentee ballots cast in the 2012 General Election.

The public records from the 11 SOEs provide the reason why the SOEs and the canvassing boards "rejected as illegal" each of the thousands of absentee ballots cast by electors in in the

their ballot was rejected. In my opinion, judging by conversations I have had with SOEs, there is considerable variation in both the method and the timeliness of how SOEs, "on behalf of the county canvassing board, notify each elector whose ballot was rejected as illegal and provide the specific reason the ballot was rejected."

⁵ The rejected absentee data were obtained via a series of public records requests made to county SOEs over the past several years.

election. This includes 3,118 rejected absentee ballots that were coded as having “no signature” and 2,608 absentee ballots coded as “signature does not match” by the SOEs and canvassing boards.

Overall, .25% of the total absentee ballots cast in the 11 counties were classified by county canvassing boards as having no signature, and .21% were classified as having a signature that did not match.⁶

VI. Total Absentee Ballots Cast and Percent Absentee Ballots Rejected Because “Signature Does not Match”

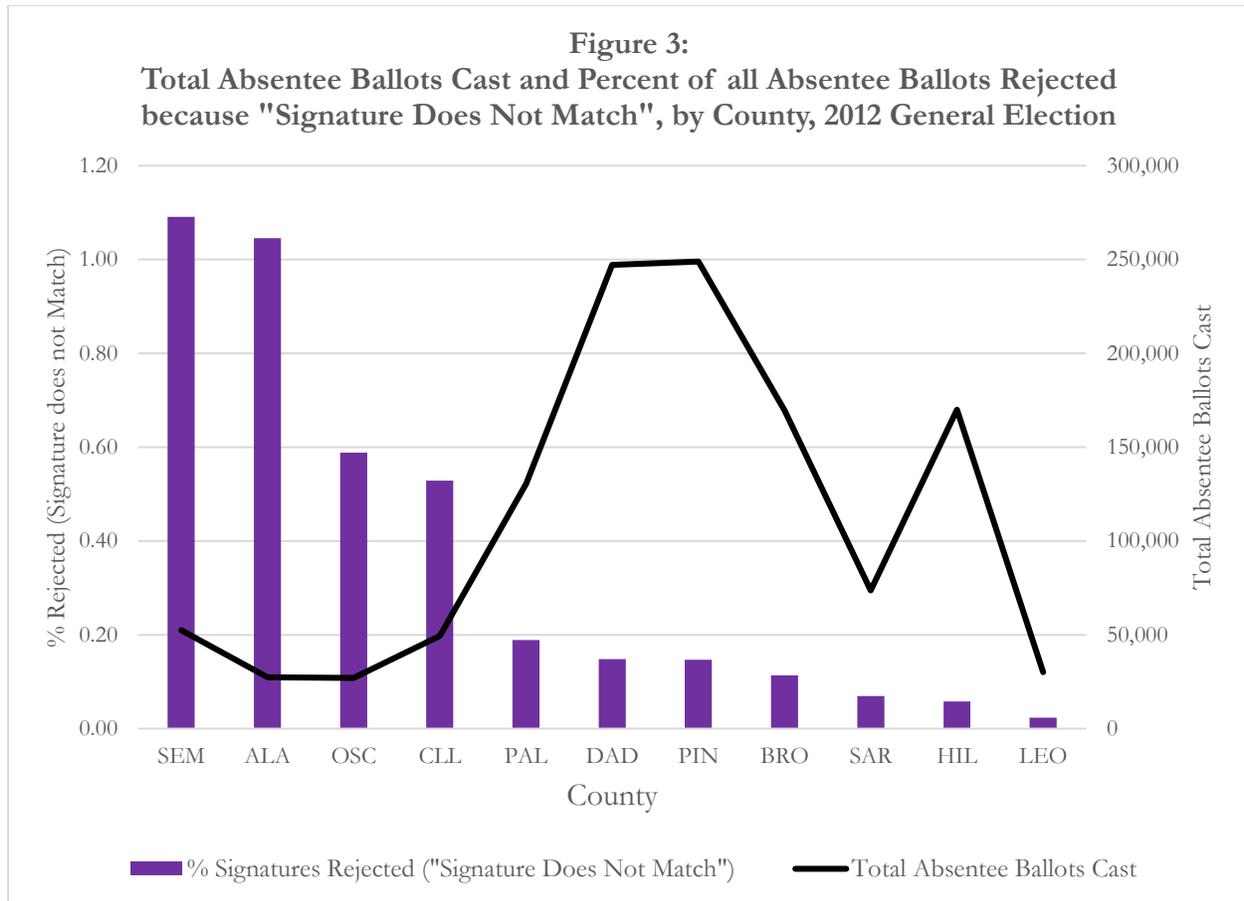
Figure 3 graphs the total number of absentee ballots cast in the 2012 General Election in the 11 counties, as well as the percent of absentee ballots rejected in the 11 counties because an elector’s signature on the Voter’s Certificate on back of the absentee ballot mailing envelope was determined by the canvassing boards not to match the elector’s signature on-file with the SOE.⁷ The black line (associated with the right-side vertical y-axis) displays the total number of absentee ballots cast in each of the 11 counties in the 2012 General Election. The dark (purple) bars (associated with the

⁶ The coding that the 11 SOEs used in the 2012 General Election to designate the status of an absentee ballot determined by the county’s canvassing board to be “rejected as illegal” varies considerably. The two most common designations of a rejected absentee ballot were “no signature” and “signature does not match.” In cases in which a SOE used slightly different language to code a ballot that was rejected because the signature was deemed not to match an elector’s signature on file—for example, “signed by other than voter”—they are grouped with the category “signature does not match.” For example, Broward County has two designations for rejected absentee ballots: 962 “no signature” and 193 “signature does not match”. In contrast, Osceola County has 8 designations for rejected absentee ballots: 4 “Invalid mailing certificate” [sic]; 3 “MARG Voter”; 19 moved out of county; 241 “no signature”; 613 “Returned Undeliverable”; 159 “signature does not match”; 28 “Signed Wrong Ballot”; and 2 “Voter Wrong Ballot”. For the purposes of calculating the percent of rejected absentee ballots with the designation “signature does not match,” the denominator includes the following categories: Misc Variations; Invalid mailing certificate [sic]; MISCELLANEOUS VARIATIONS; Signed Wrong Ballot; signature does not match; and no signature.

⁷ According to Florida Statutes 101.65, “A vote-by-mail ballot will be considered illegal and not be counted if the signature on the voter’s certificate does not match the signature on record. The signature on file at the start of the canvass of the vote-by-mail ballots is the signature that will be used to verify your signature on the voter’s certificate.”

left-side vertical y-axis) displays the percentage of absentee ballots received by SOEs that were “rejected as illegal” by the 11 SOEs and canvassing boards because the “signature does not match.”

Note the variation in both the line and bar graphs across the 11 counties.



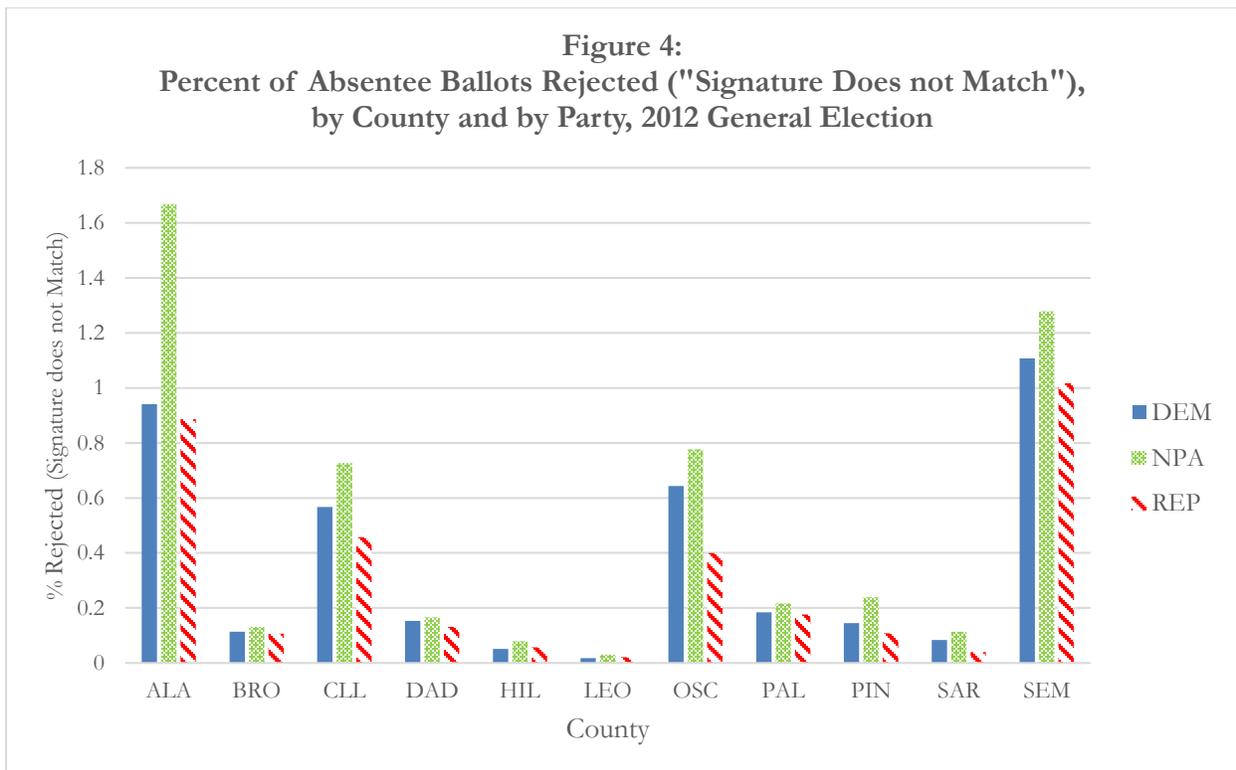
The county variation in the height of the black line (the total number of absentee ballots) is related to the total number of registered voters in each county, but it is not a perfect correlation. For example, more registered voters in Pinellas County (PIN) cast absentee ballots in the 2012 General Election than in Broward (BRO), Palm Beach (PAL), Hillsborough (HIL), and even Miami-Dade (DAD) counties, despite these counties having more total registered voters than Pinellas. Pinellas County typically leads the state in the percentage of its voters who cast absentee ballots.

More importantly, there is considerable variation across the 11 counties with regard to the dark (purple) bars, that is, the rate of rejected absentee ballots for which an elector's signature on the Voter's Certificate on the return envelope did not match the elector's signature on file, as determined by the SOE and the county canvassing board. The variation in rejection rates of absentee ballots cast due to a Voter's Certificate signature not matching the signature on record with the SOEs is striking. In Seminole (SEM) and Alachua (ALA) counties, for example, over 1% of all absentee ballots cast in the 2012 General Election were "rejected as illegal" because the SOE and the county canvassing board determined that the elector's Voter's Certificate signature on the absentee ballot envelope did not match the elector's signature on file. In contrast, in Sarasota (SAR), Hillsborough (HIL), and Leon (LEO) counties, less than one-tenth of 1% of all absentee ballots cast were "rejected as illegal" for having a signature mismatch. In other words, in the 2012 General Election, the rejection rate of absentee ballots due to a mismatched elector's signature was 10 times higher in Seminole (SEM) and Alachua (ALA) counties than in Sarasota (SAR), Hillsborough (HIL), and Leon (LEO) counties.

VII. Party Registration and the Percent of Absentee Ballots Rejected Because "Signature Does not Match"

Figure 4 displays, broken down by county and party registration, the percent of all absentee ballots that the 11 SOEs and canvassing boards determined had Voter Certificate signatures on the return envelope that did not match the signature on file of the elector. For space considerations, party registrations are limited to those electors registered as Republican (REP), Democrat (DEM), and No Party Affiliation (NPA). As is clear in Figure 4, across the 11 counties NPAs were more likely than Republicans and Democrats to have their absentee ballots rejected because their signature on the Voter's Certificate did not match the signature on file with the SOE. In nine of the 11

counties, a higher percentage of absentee ballots cast by Democrats were rejected due to electors' signatures not matching than those of Republican electors (with Hillsborough (HIL) and Leon (LEO) counties the two exception). Most strikingly is the .25 percentage point gap in Osceola (OSC) County between absentee ballots rejected due to mismatched signatures cast by Democrats as compared to those cast by Republicans.



In Alachua County, some 155 registered Democratic cast absentee ballots that were “rejected as illegal,” with 86% of these electors having a signature that did not match their signature on file. In Seminole County, 81% of the 223 rejected absentee ballots cast by Democrats were rejected because they lacked a signature. In contrast, in Hillsborough County, less than 17% of the 216 rejected absentee ballots cast by Democrats was because the elector’s Voter’s Certificate signature did not match the signature on file with the SOE, and in Broward County, also less than

17% of the 647 rejected absentee ballots cast by Democrats was due to the elector's signature not matching the signature on file with the SOE.

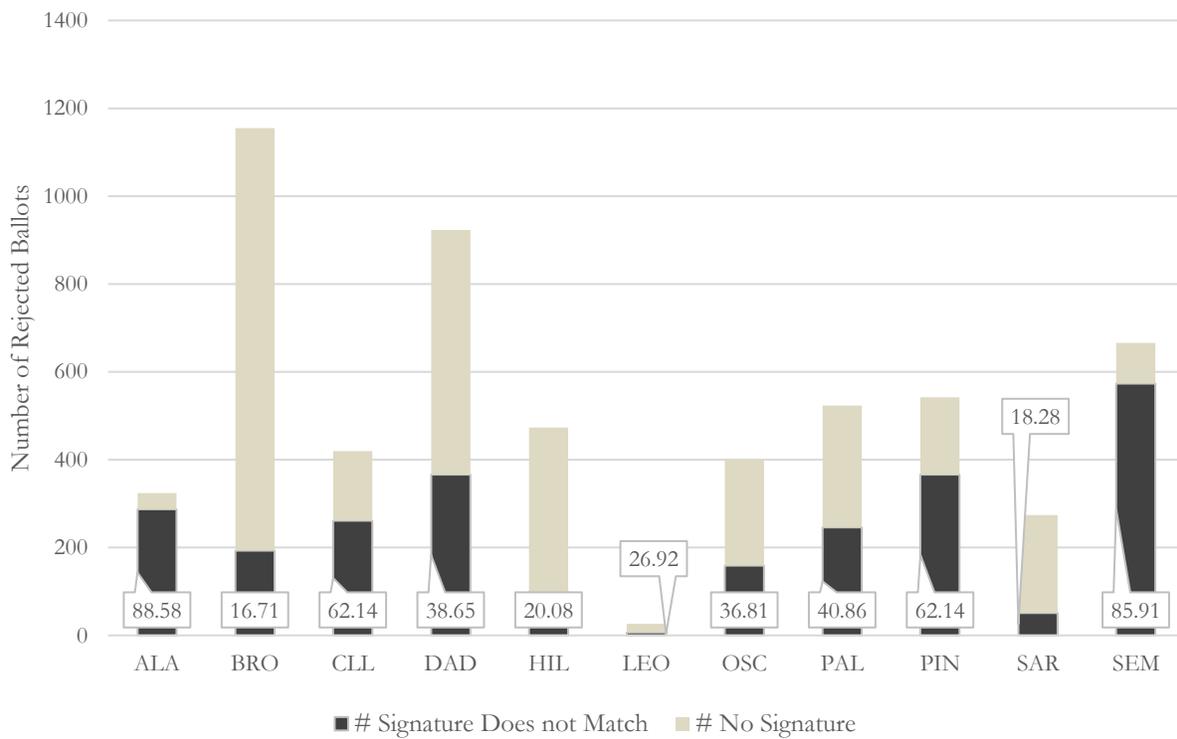
VIII. Comparing Rejected Absentee Ballots across Counties: “Signature Does not Match” versus “No Signature”

SOEs and canvassing boards reject absentee ballots for reasons other than the signature on the Voter's Certificate not matching the elector's signature on the voter file. One of the most common reasons absentee ballots are rejected is because an elector neglects to sign the Voter's Certificate on the back of the absentee ballot return envelope. In the 2012 General Election, over 3,100 absentee ballots were rejected in the 11 counties because the return envelope lacked the elector's signature.

Data from the 11 counties indicates that absentee ballots rejected because of a missing signature, compared to those rejected because the signature did not match, were not consistent across counties in the 2012 General Election. Each column in Figure 5 combines a county's count of rejected absentee ballots if the signature did not match (darker portion of the column) and the county's count of rejected absentee ballots if the elector failed to sign the Voter's Certificate on the return envelope (lighter portion of the column). In some counties, the number of absentee ballots that had signatures that the SOEs and canvassing boards determined did not match far exceeded the number of absentee ballots that electors did not sign. In Seminole (SEM) and Alachua (ALA) counties, over 80% of the absentee ballots rejected were due to the SOEs and canvassing boards determining that the signature on the Voter's Certificate did not match the elector's signature on file (as indicated by the call-out boxes on each bar). None of the more than 550 electors in Seminole County and none of the more than 275 electors in Alachua County were permitted to “cure” their signature on the Voter's Certificate prior to Election Day. In contrast, had current Florida law

been in place in 2012, 82% of the more than 1,100 electors who cast rejected absentee ballots would have had the opportunity to “cure” their missing signature on the Voter’s Certificate. In contrast, even under current Florida law, roughly only one-in-seven electors in Alachua and Seminole counties in 2012 would have had the opportunity to “cure” their rejected absentee ballots.

**Figure 5:
Total Absentee Ballots Rejected
("Signature Does Not Match" versus "No Signature"),
2012 General Election**



IX. Conclusion

In my opinion, there is clear evidence that in the 2012 General Election there was considerable non-uniformity in the rate of rejected absentee ballots cast across Florida’s 67 counties. Some SOEs and canvassing boards rejected absentee ballots at a much higher rate than other

counties, suggesting that the standards to “reject as illegal” absentee ballots may not be uniform across the counties.

However, there was considerable uniformity across Florida counties in the 2012 General Election when it comes to the partisan impact of absentee ballots that are rejected by the county SOEs and their canvassing boards. In my opinion, there is clear evidence that across the state’s 67 counties a higher rate of absentee ballots cast by Democratic electors were rejected than absentee ballots cast by Republican electors.

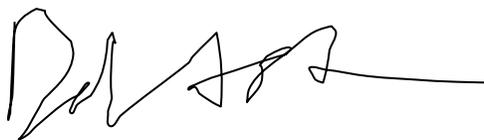
In my opinion, when it comes to the documented reasons county SOEs and canvassing boards provide for rejecting absentee ballots, there is much variance across counties. With respect to the 2012 General Election data obtained from the 11 counties analyzed herein, in two counties (Alachua and Seminole) over 1% of *all* the absentee ballots received and process by the SOEs were rejected because an elector’s signature on the Voter’s Certificate on the return envelope did not match the elector’s signature on file, as determined by the SOEs and canvassing boards. In contrast, in three other counties (Sarasota, Hillsborough, and Leon), the percent of rejected absentee ballots due to a signature issue was only one-tenth of 1% of all absentee ballots cast, again, suggesting tremendous variation in how SOEs and canvassing boards interpret valid absentee ballot signatures.

Across the 11 counties in the 2012 General Election that I examined, NPA electors were more likely than their Republican and Democrat counterparts, and Democrat electors were more likely than Republicans, to have their absentee ballots rejected because their signature on the Voter’s Certificate on the return envelope did not match the signature on file with the SOE. In my opinion, the thousands of electors who had their absentee ballots rejected for this reason in the 2012 General Election is likely to persist in the 2016 General Election, but unlike electors who failed to sign their absentee ballots, electors whose signatures do not match will have no option to “cure” their “rejected as illegal” ballots.

Finally, in my opinion the lack of uniformity by SOEs and canvassing boards in rejecting absentee ballots is clear when comparing the rejection rates of absentee ballots on which the return envelope lacked the elector's signature to those on which the elector did not sign the return envelope. In some of the 11 counties examined, the number of absentee ballots with signatures that did not match far exceeded the number of absentee ballots that electors did not sign. In other counties, the reverse was true. Despite the apparently different standards used by county SOEs and canvassing boards to determine a valid absentee ballot signature, as was the case in the 2012 General Election, the thousands of Florida electors who will their ballots "rejected as illegal" in the 2016 General Election will not be permitted to "cure" their signature on the Voter's Certificate prior to Election Day.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 30 Sept 2016

A handwritten signature in black ink, appearing to read 'D.A. Smith', written over a horizontal line.

Daniel A. Smith, Ph.D.