

VIA FACSIMILE

October 23, 2008

Hon. Buddy Johnson
Supervisor of Elections, Hillsborough County
601 East Kennedy Blvd, 16th Floor
Tampa, FL 33602

Dear Supervisor Johnson:

We write to urge you to join several other Florida counties which have adopted procedures that will allow “un-matched” voters to present evidence on Election Day to resolve any verification issues. Doing so will ensure that these voters may cast a regular ballot and leave the polling site knowing their votes will be counted.

Supervisors of elections have the authority — indeed, the responsibility — to minimize the likelihood that any eligible voter has their vote go uncounted. And there is no justification for not adopting an Election Day solution for “no match” voters: counsel for the Florida State Association of Supervisors of Elections has recently opined that supervisors can verify voters on Election Day, and Secretary of State Browning has publicly stated that supervisors can do so. We therefore urge you in the strongest terms to adopt an Election Day solution that will ensure eligible citizens’ votes are counted; reduce duplicative and unnecessary bureaucratic burdens on voters and election administrators; and protect your office from legal action from voters whose votes are unnecessarily — and unconstitutionally — rejected.

As you know, in recent weeks there has been a great deal of public attention to Florida’s “no match, no vote” law, Fla. Stat. § 97.053(6), and the possibility that it will result in eligible Florida citizens being denied the right to have their votes counted in this election. Avoiding this unfortunate result, however, is readily attainable: the plain text of the law permits supervisors of elections to establish procedures that allow un-matched voters to present evidence verifying their driver’s license or Social Security numbers at the polling place, just before such a voter “present[s] himself or herself to vote.”¹ By establishing such a procedure, supervisors will ensure that they comply with § 98.045(1), Fla. Stat, which provides that supervisors “must ensure that any eligible applicant for voter registration is registered to vote”

¹ The relevant portion of the “no match” law, § 97.053(6), Fla. Stat., provides as follows:

If the applicant has not provided the necessary evidence or the number has not otherwise been verified prior to the applicant presenting himself or herself to vote, the applicant shall be provided a provisional ballot. The provisional ballot shall be counted only if the number is verified by the end of the canvassing period or if the applicant presents evidence to the supervisor of elections sufficient to verify the authenticity of the applicant’s driver’s license number, Florida identification card number or last four digits of the social security number no later than 5 p.m. of the second day following the election.

As you know, counsel for the Florida State Association of Supervisors of Elections issued a legal opinion on October 21, 2008 concluding that supervisors had the responsibility “to establish procedures in your County that will allow for contact with the applicant who has not been verified, thereby allowing the applicant to provide the information prior to the time that the applicant presents to vote.” Oct. 21, 2008 Memorandum from Ronald A. Labasky to FSASE (attached hereto), at 2.

As the FSASE legal opinion confirms, § 97.053(6), Fla. Stat., permits supervisors to establish these procedures at the polling place, thus ensuring that voters can resolve any verification issues at the precinct before presenting themselves to vote. By establishing such procedures, supervisors will allow voters to resolve verification problems before voting; vote regular ballots; and leave the polls knowing that their votes will be counted. As the FSASE legal opinion also notes, establishing polling-place procedures for accepting verifying evidence from voters will “obviate[e] any need for the voter to take any further action,” reducing unnecessary burdens not only on voters, but also on the supervisor and canvassing board, who will not need to process duplicative paperwork or determine whether to count these voters’ provisional ballots in the days immediately following the election. Secretary of State Browning’s recent public statements indicate his agreement that supervisors have the discretion to develop polling-place solutions that will protect unverified voters. *See* Catherine Dolinski, “State Urges Uniform Voting,” Tampa Bay Online, Oct. 11, 2008, *at* <http://www2.tbo.com/content/2008/oct/11/na-state-urges-uniform-voting/>.

It is imperative that you implement a policy allowing previously unverified voters to verify their identity at the polls and vote by regular ballot — particularly now that Secretary Browning and legal counsel for the FSASE have publicly agreed that such a policy is appropriate. Such a solution will ensure that voters are not disenfranchised by typos or other bureaucratic errors, and will protect the integrity of the election by ensuring that all eligible voters have their votes counted. Such a solution may also reduce the risk that your office will be subject to legal action immediately after the election from voters who are needlessly — and unconstitutionally — disenfranchised.

If you elect to permit unverified voters to verify their identity at the polls on Election Day — as we urge you to do — we request that you conduct public education through your website, public service announcements, and other means of communication to apprise unverified voters of this policy and steps that unverified voters may take on Election Day to ensure that they will be permitted to vote by regular ballot.

We thank you for your continuing efforts to ensure a smooth election in which all eligible citizens can cast a ballot that counts. Please do not hesitate to contact us if you have any questions. We would also request that you inform us when you have in place a program to allow polling-place fixes for previously unmatched voters. We would ask that you contact Adam Skaggs at 212.992.8976 or adam.skaggs@nyu.edu. Many thanks again for your efforts on behalf of Florida voters.

Sincerely,

The Brennan Center for Justice
at NYU School of Law

Advancement Project