

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

FLORIDA STATE CONFERENCE OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE
(NAACP), as an organization and representative
of its members; *et al.*,

Civil No. 4:07cv402SPM/WCS

vs.

KURT S. BROWNING, in his official capacity as
Secretary of State for the State of Florida,

Defendant.

DECLARATION OF GLENN T. BURHANS, JR.
IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Pursuant to 28 U.S.C. § 1746, I, Glenn T. Burhans, Jr., hereby declare as follows:

1. I am over the age of 18 and competent to make this declaration. I am an attorney with the law firm of Greenberg Traurig, P.A., am admitted to practice law in the State of Florida and this District, and am an attorney for Plaintiffs in this action. I submit this declaration to provide the Court true and correct copies of certain documents submitted in support of Plaintiffs' Motion for Preliminary Injunction.
2. Attached as Exhibit A is a true and correct copy of the text of § 97.053(6), Fla. Stat., as amended effective January 1, 2008, and as effective until January 1, 2008.
3. Attached as Exhibit B is a true and correct copy of the Complaint filed in this action.

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NORTHEAST DIST. FLA.
TALLAHASSEE, FLA.

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4. Attached as Exhibit C is a true and correct copy of the "Voting Information" page available as of September 15, 2007, on the website of the Florida Department of State, Division of Elections, available at http://election.dos.state.fl.us/voterreg/voting_info.shtml.

5. Attached as Exhibit D is a true and correct copy of an e-mail dated June 16, 2006, from Amy Woodward on behalf of Dawn K. Roberts, Director, Division of Elections, Florida Department of State, to Pam Carpenter and other county supervisors of elections, regarding the override feature of the Florida Voter Registration System.

6. Attached as Exhibit E are true and correct copies of Plaintiffs' Exhibits 15, 16 and 18 submitted in *League of Women Voters of Florida, et al. v. Cobb*, No. 06-21265-CIV-SEITZ/MCALILEY (S.D. Fla. Sept. 19, 2006) (*see* docket no. 63).

7. Attached as Exhibit F is a true and correct copy of a report by the United States Government Accountability Office entitled *Additional Data Could Help State and Local Elections Officials Maintain Accurate Voter Registration Lists*, June 2005, available at <http://www.gao.gov/new.items/d05478.pdf>.

8. Attached as Exhibit G is a true and correct copy of the Stipulated Final Order and Judgment filed in *Wash. Ass'n of Churches, et al. v. Reed*, No. CV06-726RSM (W.D. Wash. Mar. 16, 2007).

9. Attached as Exhibit H are true and correct copy of letters from county supervisors of elections to voter registration applicants whose applications have been deemed "incomplete," including: a letter from Bill Cowles, Orange County Supervisor of Elections, to Amin Muhammad Walani, dated Feb. 2, 2007; a letter from Buddy Johnson, Hillsborough County Supervisor of Elections, to John Maines, dated Mar. 16, 2006; a

letter from Arthur Anderson, Palm Beach County Supervisor of Elections, to Irwin Wolf, dated Oct. 18, 2006; a letter from Brenda Snipes, Broward County Supervisor of Elections, to Irene Cameron; a form letter from Brenda Snipes, Broward County Supervisor of Elections, dated August 11, 2006; and a form letter from Jerry Holland, Duval County Supervisor of Elections.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this Declaration was executed on September 17, 2007 in Tallahassee, Florida.


GLENN T. BURHANS, JR.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that a copy of the foregoing *Declaration of Glenn T. Burhans, Jr.* was served via HAND DELIVERY this 17th of September, 2007 upon the following:

Kurt Browning, Defendant
Secretary of State
Florida Department of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399-0250

GREENBERG TRAUIG, P.A.



GLENN T. BURHANS, JR.
FLA. BAR NO. 605867
101 EAST COLLEGE AVENUE
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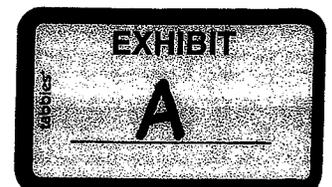
§ 97.053(6), Florida Statutes

Text of Subsection 6 effective as of January 1, 2008

(6) A voter registration application may be accepted as valid only after the department has verified the authenticity or nonexistence of the driver's license number, the Florida identification card number, or the last four digits of the social security number provided by the applicant. If a completed voter registration application has been received by the book-closing deadline but the driver's license number, the Florida identification card number, or the last four digits of the social security number provided by the applicant cannot be verified, the applicant shall be notified that the application is incomplete and that the voter must provide evidence to the supervisor sufficient to verify the authenticity of the number provided on the application. If the voter provides the necessary evidence, the supervisor shall place the voter's name on the registration rolls as an active voter. If the voter 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 application 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 driver's license number, Florida identification card number, or last four digits of the social security number provided on the application no later than 5 p.m. of the second day following the election.

Text of Subsection 6 effective until January 1, 2008

(6) A voter registration application may be accepted as valid only after the department has verified the authenticity or nonexistence of the driver's license number, the Florida identification card number, or the last four digits of the social security number provided by the applicant. If a completed voter registration application has been received by the book-closing deadline but the driver's license number, the Florida identification card number, or the last four digits of the social security number provided by the applicant cannot be 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 application 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 driver's license number, Florida identification card number, or last four digits of the social security number provided on the application no later than 5 p.m. of the third day following the election.



§ 97.053(6), Florida Statutes

Text of Subsection 6 effective as of January 1, 2008

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

FLORIDA STATE CONFERENCE OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE
(NAACP), as an organization and representative of
its members; and HAITIAN-AMERICAN
GRASSROOTS COALITION, as an organization
and representative of its members,

Civil No. _____

Plaintiffs,

vs.

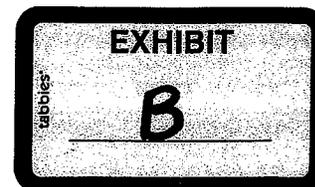
KURT S. BROWNING, in his official capacity as
Secretary of State for the State of Florida,

Defendant.

COMPLAINT

Plaintiffs, by their attorneys, Greenberg Traurig, P.A.; Paul, Weiss, Rifkind,
Wharton & Garrison LLP; the Brennan Center for Justice at NYU School of Law; the
Advancement Project; and Brian W. Mellor, as and for their Complaint against
Defendant, allege as follows:

GREENBERG TRAUIG, P.A.



INTRODUCTION

1. This is an action to strike down a provision of Florida election law that creates an illegal precondition to registering the State's voters and that will unlawfully disenfranchise thousands of Florida citizens in the 2008 election cycle.

2. This provision, Section 97.053(6), Florida Statutes ("Subsection 6"), prohibits the Secretary of State from completing the registration of perfectly eligible voters if the State cannot match or verify the identifying information on the voters' registration applications with existing driver's license or Social Security records. Applicants who are not "matched" will not be allowed to cast a valid ballot unless they overcome a series of burdensome bureaucratic hurdles that deprive them of their fundamental right to vote. Some will not have a chance to overcome those hurdles and will just be denied the right to vote.

3. This statutory obstacle to registration and voting will illegally disenfranchise thousands of eligible Florida voters during the 2008 election cycle. Matching information from one database with information in a different database is a process plagued with errors and is notoriously unreliable in the elections context. If not enjoined, Florida's matching system will exclude eligible voters from the registration rolls because of data entry errors, typos, meaningless spelling differences, imperfect handwriting, ministerial mistakes, computer glitches, and other factors having nothing to do with the voters' eligibility.

4. There are a multitude of ways in which the records of eligible voters, who submit truthful and accurate registration applications, will fail to "match." For example,

voters who register in their married names will not match if their driver's license or Social Security records are in their maiden names. Voters with compound last names (e.g., Gabriel Garcia Márquez) will not match if one database assigns part of the last name to a middle name position, but the other does not. And if a county computer operator reverses two digits in a driver's license number, the voter's records will not match.

5. Eligible voters also will fail to match if they make trivial and immaterial mistakes on their registration applications that would not otherwise preclude them from voting. Florida's driver's license numbers, for example, are at least 13 digits long. If a voter unwittingly reverses two digits in her driver's license number on her application, her records will not match. Worse still, since the errant number on the application cannot later be "verified" by election officials, the eligible voter will not be registered and will not be allowed to vote — all because she flipped two digits in her driver's license number.

6. This elevation of forms over substance is certain to violate the right to vote in Florida. In 2006, more than 20,000 voters found their applications unduly delayed or denied due to problems with the "matching" process.

7. In the two years leading up to the 2004 Presidential Election, Florida processed more than twice the number of registrations than it processed in 2005 and 2006, and the volume of new registrations is again expected to swell to several million new forms in 2008. Other jurisdictions using similar "matching" processes have

experienced error rates between 15 and 30 percent — and, in some cases, even higher. If Subsection 6 is allowed to stand, it is likely that thousands of Floridians will be disenfranchised in 2008.

8. This disenfranchisement-by-bureaucracy violates the very federal law that prompted Florida to adopt Subsection 6, the Help America Vote Act of 2002 (“HAVA”). Congress passed HAVA in the wake of the tumultuous 2000 Presidential Election to eliminate barriers to voting, not to erect new ones.

9. HAVA mandates that each state create a computerized voter registration list for the entire state to use in all federal elections. HAVA also requires the states to assign a unique identifying number to each registrant on this computerized list. For that purpose, new registrants are asked to provide their driver’s license number or the last four digits of their Social Security number. To ensure that the number is truly “unique” to each registrant, HAVA directs the states to check the identifying number against existing government databases. If the registrant has no existing number, the state simply assigns a unique number.

10. Florida is in a small minority of states that have misconstrued this ministerial list-making assignment and turned it into an unlawful prerequisite to voter registration. Washington State’s similar matching prerequisite was declared unlawful and its enforcement was enjoined last year. *See Wash. Ass’n of Churches v. Reed*, 492 F. Supp. 2d 1264 (W.D. Wash. 2006). A consent decree and final judgment permanently enjoining Washington State from enforcing the law was entered earlier this year. *Id.*,

Stipulated Final Order and Judgment (Mar. 16, 2007). As HAVA intended, and as in the vast majority of states, the Judgment provides that eligible voters whose application information cannot be matched will be placed on Washington's list of registered voters.

11. Like Washington State's invalidated statute, Subsection 6 transforms the matching and verification of a record keeping number into a precondition to registration and voting. It therefore also violates and undermines HAVA, as well as voters' rights protected by the Voting Rights Act, the National Voter Registration Act, and the First and Fourteenth Amendments to the United States Constitution.

12. Plaintiffs in this action are (1) organizations whose members include eligible but unregistered Florida voters who will attempt to register to vote prior to the registration deadline for the January 29, 2008 presidential preference primary election, the August 26, 2008 federal primary election, or the November 4, 2008 federal general election, but will be omitted from the official list of registered voters and, therefore, will be unable to cast a ballot that will be counted; and (2) organizations that seek to register voters and to reduce barriers to voter registration in Florida, especially for low-income voters or voters from certain ethnic communities, whose resources will be diverted and whose missions will be frustrated by Subsection 6.

13. Plaintiffs seek a declaratory judgment, a preliminary injunction and a permanent injunction that will take effect by December 31, 2007, the registration deadline for the upcoming presidential preference primary election, prohibiting the Secretary of State from implementing Subsection 6, and directing that — as in 2004 and

before — supervisors be allowed to accept otherwise eligible applicants as registered even if an administrative identifying number cannot be verified.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, as a case arising under the laws of the United States; under 28 U.S.C. § 1343(a)(4), as a case seeking equitable and other relief pursuant to an act of Congress providing for the protection of the right to vote; and under 42 U.S.C. § 1983, as a case seeking to enforce rights and privileges secured by the laws of the United States.

15. Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201(a) and 2202.

16. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because the defendant resides in this district and a substantial part of the events or omissions giving rise to the claim have occurred or will occur in this district.

PARTIES

17. Plaintiff Florida State Conference of the National Association for the Advancement of Colored People ("Florida NAACP") is the umbrella organization for the 60 Florida branches of the NAACP, the national civil rights organization. It maintains an office at 397 W. Church Street, Orlando, Florida 32801. The Florida NAACP's mission is to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination. To that end, and to encourage civic and electoral participation of traditionally underrepresented groups, the Florida NAACP engages in voter registration activities and public policy education and

advocacy related to education, health, housing, economic development, and criminal justice. The Florida NAACP coordinates the activities of the 60 NAACP branches and approximately 13,000 NAACP members throughout Florida, including their continuous efforts to register eligible voters, which will continue throughout 2008. Some NAACP members, and some of the citizens who will be recruited as new members, will be eligible to register and vote, and will want to register and vote in the 2008 election cycle, but will be unduly delayed or denied in registering because of Subsection 6. Subsection 6 will also force the Florida NAACP to divert resources to resolving registration problems encountered by citizens it registers, and will frustrate a core part of the Florida NAACP's mission by interfering with its ability to ensure that eligible Florida citizens can register and vote.

18. Plaintiff Haitian-American Grassroots Coalition ("HAGC") is an umbrella organization made up of approximately 700 members and 15 predominantly Miami-based organizations serving the Haitian American community, which work together on issues of common concern, especially those addressing low-income and otherwise underrepresented populations in Florida, including Haitian Americans. HAGC maintains an office at 4584 NE 2nd Avenue in Miami, Florida. HAGC engages in public policy advocacy and education and encourages citizen participation in public affairs by encouraging voting and conducting poll monitoring to ensure that their targeted populations, including Haitian Americans, can meaningfully participate in elections. It is critical to HAGC's advocacy efforts that its members and other constituents be registered to vote — and do vote — in support of candidates and initiatives that advance its core

concerns. If Subsection 6 is not enjoined before the 2008 election cycle, HAGC will experience frustration of its mission to ensure that its members and other individuals in the Haitian American community are registered and able to participate in elections. Moreover, HAGC will be forced to divert substantial resources to resolve unnecessary difficulties encountered by citizens who have not been registered because of Subsection 6 and who therefore encounter problems in attempting to vote. Finally, some of HAGC's members, and some of the citizens HAGC will recruit as new members, will be eligible to register and vote, and will want to register and vote in the 2008 election cycle, but will be unduly delayed or denied in registering because of Subsection 6.

19. The rights this suit seeks to vindicate are germane to the purposes of Plaintiffs, and the claims alleged herein do not require the participation of their individual members or clients in the lawsuit. Indeed, without the relief requested herein, these organizations will be harmed by the substantial diversion of their resources and the frustration of their organizational purposes.

20. A significant number of individual members, clients, and constituents of Plaintiffs who are over 18 years of age, United States citizens, and legal residents of Florida, who have not been convicted of a felony (or have had their civil rights restored) or adjudicated mentally incapacitated with respect to voting (or have had their right to vote restored), and who are eligible but not registered to vote at their current residence, will also be harmed. They will want to vote in the January 29, 2008 presidential preference primary election, the August 26, 2008 federal primary election, and/or the November 4, 2008 federal general election, and will attempt to register to vote. Florida's

matching requirement, however, will block them from becoming registered to vote — many without knowing their application was rejected until they show up at the polls. Without clearing burdensome bureaucratic obstacles, none of these eligible voters will be able to cast a valid vote.

21. Defendant Kurt S. Browning is sued in his official capacity as the Secretary of State of Florida. His official residence is at the R. A. Gray Building, located at 500 South Bronough Street in Tallahassee, Florida, 32399-0250. The Secretary of State is designated by law as the “chief election officer of the state,” Fla. Stat. § 97.012(1), and, as such, is responsible for supervising and administering election laws, *id.* §§ 97.012, 101.58. Among other things, the Secretary of State must ensure that federal election laws are interpreted and implemented in a uniform and nondiscriminatory manner throughout Florida. *See, e.g., id.* § 97.012; 42 U.S.C. § 15483(a)(1)(A); 42 U.S.C. § 1973gg-8 ; *Bush v. Gore*, 531 U.S. 98, 116 (2000). As such, the Secretary of State must coordinate the State’s responsibilities under the National Voter Registration Act (“NVRA”) and has the ultimate responsibility to ensure that every eligible applicant for voter registration is registered to vote. *See* Fla. Stat. § 97.012 (7); 42 U.S.C. § 1973gg-6(a)(1). It is his duty to ensure that all voter registration applications and forms prescribed or approved by the Division of Elections are in compliance with the NVRA and the Voting Rights Act. *See* Fla. Stat. § 97.012(9). The Secretary of State is also charged with “[c]reat[ing] and administer[ing] a statewide voter registration system as required by the Help America Vote Act of 2002.” *Id.* § 97.012(11). He must also oversee all administrative complaint procedures for violations of the NVRA, *see id.* §

97.023, and for violations of Title III of HAVA, *see id.* § 97.028. Finally, the Secretary of State has authority to issue rules adopting uniform standards for interpreting and implementing Florida statutes governing voter registration, *id.* § 97.012(2), including standards relating to the “single, uniform, official, centralized, interactive, computerized statewide voter registration system” mandated by HAVA, *id.* § 98.035.

THE FACTS

I.

FLORIDA’S “MATCHING” LAW

Overview

22. Article VI, Section 2 of the Florida Constitution imposes only three basic eligibility requirements on its citizens before they are permitted to exercise the right to vote. An individual is eligible to vote if he or she registers and is: (1) a citizen of the United States; (2) at least 18 years old; and (3) a permanent resident of the State.

23. Article VI, Section 4 of the Florida Constitution provides that eligible voters may be disqualified from voting in only two circumstances: if an individual is convicted of a felony, or adjudicated as mentally incompetent with respect to voting, she is not eligible to vote until her civil rights are restored.

24. To regulate voters’ ability to be included on the State’s new computerized voter registration list, Florida Session Laws Chapter 2005-278 created Subsection 6, which originally took effect on January 1, 2006, and has been subsequently amended effective January 1, 2008. Subsection 6 was adopted purportedly to comply with HAVA’s voter registration requirements.

25. Subsection 6 is part of Section 97.053, which generally governs voter registration applications. The statutory section requires, *inter alia*, that certain identifying information be provided on new voter registration applications. Specifically, Section 97.053(5) provides that a “voter registration application is complete if it contains,” among other information, “[t]he applicant’s current and valid Florida driver’s license number or the identification number from a Florida identification card,” or, “[i]f the applicant has not been issued a current and valid Florida driver’s license or a Florida identification card, the last four digits of the applicant’s social security number.” Fla. Stat. § 97.053(5)(a)(5). This Section further states that “[i]n case an applicant has not been issued a current and valid Florida driver’s license, Florida identification card, or social security number, the applicant shall affirm this fact in the manner prescribed in the uniform statewide voter registration application.” *Id.* (For purposes of this complaint, there is no difference between Florida’s use of the driver’s license and identification card numbers. Unless otherwise noted, all references hereafter to Florida driver’s license numbers apply equally to identification card numbers as if fully set forth in each such reference.)

26. Under Subsection 6, a voter registration application will not be accepted as “valid” unless and until the State performs a successful database match or otherwise verifies the number provided by the applicant. Thus, even if the applicant is eligible to vote, fills out all material elements of the application truthfully and completely, and does so before the book-closing deadline (*e.g.*, December 31, 2007), she will not be registered

and will not be allowed to cast a regular ballot on election day if the State fails to match or otherwise verify her identifying information.

27. Here is how Subsection 6, as amended effective January 1, 2008, works:

28. *First*, it requires the Secretary of State to match applications with other databases or otherwise verify the identifying number of all new applicants: “A voter registration application may be accepted as valid only after the department [of state] has verified the authenticity or nonexistence of the driver’s license number, the Florida identification card number, or the last four digits of the social security number provided by the applicant.” Fla. Stat. § 97.053(6). On information and belief, and as alleged below in paragraphs 45-47, Florida first will attempt to match information — including the identifying number, first name, and last name — on a voter registration application to corresponding information in records maintained by the Florida Department of Highway Safety and Motor Vehicles or U.S. Social Security Administration.

29. *Second*, if the Secretary of State fails to match the application, it is deemed “incomplete” and relegated to bureaucratic limbo, where the burden is shifted back to the applicant: “If a completed voter registration application has been received by the book-closing deadline but the driver’s license number, the Florida identification card number, or the last four digits of the social security number provided by the applicant cannot be verified, the applicant shall be notified that the application is incomplete and the voter must provide evidence to the supervisor sufficient to verify the authenticity of the number provided on the application.” *Id.*

30. *Third*, if the applicant is not reached or has not mustered the “necessary evidence” to verify her identifying number, she will not be placed on the registration rolls and will not be permitted to vote by regular ballot: “If the voter provides the necessary evidence, the supervisor shall place the voter’s name on the registration rolls as an active voter. If the voter 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.” *Id.*

31. *Fourth*, if such a non-matched voter seeks to vote and is given a provisional ballot, that ballot will *not* be counted unless, within two days after the election, the voter “presents evidence” to the county supervisor to “verify” her identifying number: “The provisional ballot shall be counted only if the application 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 driver’s license number, Florida identification card number, or last four digits of the social security number provided on the application no later than 5 p.m. of the second day following the election.” *Id.* On information and belief, many, if not all, election officials will only accept the official original source of a number — the driver’s license, identification card, or Social Security card itself — as evidence sufficient to verify that number.

32. If the number on the registration application was inadvertently mis-written or mis-typed in the first place, the number cannot be “verified” and the provisional ballot will not be counted. Likewise, on information and belief, if the other identifying information on the application does not “match” the evidence presented by the applicant

to “verify” the identifying number, that evidence will not suffice and the provisional ballot will not be counted. To take just one example, if after voting a provisional ballot an applicant submits her driver’s license to verify the driver’s license number on her application, but the license is in her maiden name and the application is in her married name, the license will not be sufficient to verify the number and the provisional ballot will not be counted.

33. Florida has thus transformed the administrative government function of assigning each voter a unique identifying number into a barrier to registration and voting. Perfectly eligible and truthful registration applicants whose information does not exactly “match” information in other databases suddenly become presumptively ineligible, and will have to struggle — often without knowing the problem and often unsuccessfully — to have their votes counted.

34. As alleged in detail below, the State will fail to match thousands of new applicants for reasons having nothing to do with their eligibility. Even assuming every such non-matched applicant actually receives timely notice — an unrealistic and impractical assumption given the crush of applications election officials will have to process in the weeks prior to election day and given the likelihood of typos in the applicant’s address, among other problems — many will have no idea why their application is deemed incomplete or how to fix the problem. When Social Security information does not match, neither the State nor the applicant is told the reason for the failed match. An applicant cannot cure a problem if he is not told what the problem is. The U.S. Government Accountability Office recently reported that with respect to

matching Social Security number information, “the biggest problem [state officials] are facing is that [the Social Security Administration] is not specifying what voter information was not matching (*i.e.*, was the mismatch in name, date of birth, or 4-digit Social Security number). Without this information they are not able to efficiently resolve the non-matching problems.”

35. If the problem has not been resolved by election day, eligible voters will have to overcome more unnecessary obstacles. As outlined above, non-matched applicants who never receive the notification of the failed match (or who mistakenly believe the problem has been resolved) and then show up at the polls on election day, are given “provisional” ballots. These ballots may not lawfully be counted by any supervisor of elections until further hurdles have been cleared. *First*, the poll worker must understand from the materials available to her at the polls that the voter’s identifying number has not been verified. *Second*, the poll worker must tell the voter that she must make a trip to the county supervisor’s office within two days and present evidence to verify her number. *Third*, the voter must be able to make the trip during business hours on a weekday. *Fourth*, the evidence the applicant presents must be deemed “sufficient.” If any one of these things doesn’t happen, the voter’s provisional ballot will not be counted.

36. Some non-matched applicants who manage to overcome all these bureaucratic barriers and present evidence of their identifying number will still be denied the right to vote because of immaterial errors or omissions. For example, if an applicant mistakenly transposed or dropped a digit in her driver’s license number when she filled

out the registration application, she can arrive at the county supervisor's office with valid identifying documentation — driver's license, military identification, Congressional ID, passport, etc. — but it will be to no avail. Because no evidence will be sufficient to “verify the authenticity” of the errant number on the application, her provisional ballot will not be counted.

37. Accordingly, Subsection 6 will create an electronic and bureaucratic obstacle course, imposing a series of unlawful, unconstitutional, and often impossible burdens on citizens seeking to exercise their fundamental right to vote.

38. Subsection 6 also is arbitrary: it impacts all new registrants *except* those who have no Social Security number or driver's license number, who may vote a regular ballot if they present one of several readily available identification documents well after the registration deadline.

39. The unlawful prerequisites also foster uneven treatment of voters depending on their county of residence, given that, as alleged below, there is no uniform standard for what notice counties are required to give non-matched applicants, what information poll workers must provide non-matched applicants who submit provisional ballots, or what evidence is sufficient for those ballots to count. They foster uneven treatment of voters depending on whether they submit Social Security digits or a driver's license number on their registration forms, given the different error rates involved in the relevant matching processes, as alleged below. And they foster uneven treatment of voters based on their race or ethnicity, given the distinct problems with matching faced by members of different racial or ethnic communities, as alleged below.

II.

“MATCHING”

40. To create its new computerized voter registration list, Florida, like most states and the District of Columbia, has embarked on an ambitious and complex project that will take many election cycles to complete. As experts and the vast majority of states recognize, and as the results of the first election cycle prove, this project will move in fits and starts, with errors inevitable.

41. Florida residents who are eligible to vote will fill out voter registration application forms by hand and submit them in person, by mail, or through a third party to an appropriate State or county office, including a State voter registration agency under sections 5 and 7 of the National Voter Registration Act (42 U.S.C. §§ 1973gg-3, 1973gg-5).

42. If an application is completed at an office of the Department of Highway Safety and Motor Vehicles, an official will manually input the information contained on the form into a statewide system, and the data will be transferred electronically to the appropriate county supervisor of elections (“supervisor”) for the county in which the voter resides. For all other applications, the form will be transferred to the custody of the appropriate supervisor, who will then manually input into the county voter registration database the information contained on the application, including name, address and identification number. The information on each application will be entered into its own electronic record containing a number of data fields.

43. The supervisor will then electronically transfer those records to the statewide voter registration database for “matching.”

44. On information and belief, starting January 1, 2006, the date the original version of Subsection 6 went into effect, the Secretary of State began attempting to match the record received from the county supervisors (called the “Registration Record”) with driver’s license information maintained by the Department of Highway Safety and Motor Vehicles (“DHSMV”) or Social Security information maintained by the Social Security Administration (“SSA”). On information and belief, this procedure was conducted even for voter registration applications completed at the DHSMV.

- (a) Driver’s Licensing Number Matching. The Secretary of State and the Director of the DHSMV have entered into an agreement to match information on registration applications with information in the DHSMV’s driver’s license database (“DHSMV Database”). See Fla. Stat. § 97.057(11) (state and DHSMV shall enter agreement “to match information in the statewide voter registration system with information in the database of the Department of Highway Safety and Motor Vehicles to the extent required to verify the accuracy of the driver’s license number, Florida identification number, or last four digits of the social security number provided on applications for voter registration”).
- (b) Social Security Number Matching. The Department of State and DHSMV has entered into an agreement with the Commissioner of Social Security to match information on registration applications with information in the SSA’s database (“SSA Database”). See Fla. Stat. § 97.057(12). On information and belief, the DHSMV has signed one contract with the American Association of Motor Vehicle Administrators (“AAMVA”) to facilitate the process of matching Social Security numbers against the SSA Database for the purpose of providing driver’s licenses. The DHSMV has also signed a contract with the AAMVA to facilitate the process of matching Social Security number digits against the SSA Database for the purpose of registering voters. On information and belief, AAMVA’s matching process for the purpose of providing driver’s licenses is meaningfully different from — and somewhat less likely to reject eligible

citizens than — its “matching” process for the purpose of voter registration.

45. For applicants who provide Social Security digits on the application form, the Secretary of State attempts to match applications with information collected by the SSA. On information and belief, after testing to determine whether the applicant in fact has a valid driver’s license number, the target Registration Record is submitted electronically through the DHSMV for comparison against SSA data. SSA systems first seek all records in the SSA Database for which the last four digits of the listed Social Security number exactly match the last four digits of the Social Security number of the target Registration Record. Given that approximately one in 10,000 Americans share the same last four digits of their Social Security numbers, there are thousands of such matches: the SSA recently stated that every “last four” digit combination returns approximately 40,000 Social Security numbers. The systems then attempt to match the first name, last name, month of birth, and year of birth of the target Registration Record to the first name, last name, month of birth, and year of birth of one or more of the records containing these matching Social Security number digits.

46. On information and belief, a successful match is reported only for records in which each character of each such data field in a target Registration Record matches precisely each character of each corresponding data field in the SSA Database. Thus, if LYDIA GONZALES is registered in the SSA Database, but an election worker enters her name as LYDIA GONZALEZ, the SSA will report “no match” even though her first

name, month of birth, year of birth, and the last four digits of her Social Security number all match.

47. For applicants who provide a driver's license number on the application form, the Secretary of State attempts to match their applications with information collected by the DHSMV. On information and belief, when a target Registration Record is submitted electronically to the DHSMV, DHSMV systems first seek all records in the DHSMV Database for which the driver's license number exactly matches the target Registration Record. The systems then attempt to match the first and last name of the target Registration Record to the first and last name of the records with a matching driver's license number; unless the names match exactly, the match is reported as unsuccessful. (If the first four characters of both the first and last name match exactly, the record may be held for further review, but the voter cannot at that point be registered.) On information and belief, Florida has not published specific criteria to "verif[y]" the "nonexistence" of a number under Subsection 6 — that is, whether registrants who do not submit a Social Security or a driver's license number on their voter registration form in fact have neither such number.

48. Numerous attempts to match information from voter registration applications with information in records of other State and federal databases will fail for reasons unrelated to the eligibility and identity of the voters.

A. Errors in Inputting, Maintaining and "Matching" Data in the Databases

49. On information and belief, beginning January 1, 2006, a significant number of attempts to match information of eligible voters in Registration Records,

including information of individual members, clients, and constituents of Plaintiffs, to information within records of the SSA Database or DHSMV Database resulted and will continue to result in false negatives — *i.e.*, matches that appear to fail even though the person who applied to register to vote is, in fact, the person listed in the SSA Database or DHSMV Database. The reasons for these false negatives are myriad, and very common.

1. Inputting the Data

50. Data entry operators make mistakes when they input information initially written down by hand into a computer database. On information and belief, the large sources of data at issue here — the Registration Records, DHSMV Database, and SSA Database — each contain errors due to such mistakes. Data entry errors made many years ago may result in a “no match” today.

51. Some of these mistakes are typographical errors, such as:

- misspellings (*e.g.*, “GRAHAM” becomes “GRAMM” or “LOPEZ” becomes “LOPES” OR “CARRERO” becomes “CARRERA”);
- omitting characters (*e.g.*, “LOCKE” becomes “LOCK” or “JOHN” becomes “JON”);
- adding characters (*e.g.*, “OWEN” becomes “OWENS”);
- transposing characters (*e.g.*, “SIERRA” becomes “SEIRRA”); and
- striking an adjacent key (*e.g.*, “SMITH” becomes “SMOTH”).
- confusing one character for another (*e.g.*, in a driver’s license number, “PØ14-233-80-034-1” becomes “PO14-233-80-034-1”).

52. Other mistakes are caused by the data entry operator’s incorrect use of the data fields. For instance, the data entry operator can fail to enter information provided

for a particular field. Or the data entry operator can enter information into the wrong field, as the following examples illustrate:

- transposing the surname and given name (*e.g.*, “BAO LU” becomes “LU BAO”);
- omitting fields (*e.g.*, “MARIE-MAUDE” becomes “MARIE”);
- adding fields (*e.g.*, “JAMES THOMAS” becomes “JAMES J THOMAS” or “MR JAMES THOMAS” or “CAPT JAMES THOMAS”);
- improperly separating fields, *e.g.*, a hyphenated last name is separated into a middle name and last name (“ILEANA” “ROS-LEHTINEN” becomes “ILEANA” “ROS” “LEHTINEN”), or a hyphenated first name is separated into first and middle names (“JEAN-CLAUDE” becomes “JEAN” “CLAUDE”); and
- improperly combining fields, such as the middle (or maiden) and last names (*e.g.*, “DEBBIE” “WASSERMAN” “SCHULTZ” becomes “DEBBIE” “WASSERMAN-SCHULTZ”).

53. Basic data entry errors such as these are common. One study by Abt Associates, a government and business research and consulting firm, found that as many as 26% of records listed in a Florida social service database included city names that were spelled differently from the same names on a master list. Among other errors, this database reflected more than 40 different spellings of Fort Lauderdale.

54. Data entry errors also affect eligible voters. On information and belief, there are or will be data entry errors involving the identifying number, name, or date of birth within individual records of databases maintained by State agencies, including the DHSMV Database and the Registration Records collected by Defendant, and federal agencies, including the SSA Database. On information and belief, the attempt to match

information of a significant number of eligible voters' Registration Records to information within records of the DHSMV Database and the SSA Database has failed and will continue to fail due in part to these data entry errors.

2. Errors in Maintaining, Storing, Transferring, and Transforming the Data

55. Once a Registration Record is created for an individual registrant, the State must maintain, store, transfer, and, often, transform the data contained in that record. Federal and State officials must periodically perform similar tasks with respect to data contained in the SSA and DHSMV Databases.

56. On information and belief, human error or computer malfunction — such as file corruption caused by computer viruses — made or occurring during the process of maintaining, storing, and transferring these computerized records will also cause relevant errors within individual records of databases maintained by State agencies, including the DHSMV Database and the Registration Records collected by Defendant, and federal agencies, including the SSA Database. For example, if the State updates the software it uses for one of its databases, but the new software does not recognize compound last names without hyphens and splits such names into middle and last name fields, the record will no longer be able to produce a match.

57. On information and belief, federal and State officials have engaged in or will engage in multiple types of data transfer and transformation with respect to the data contained in the Registration Records and the SSA and DHSMV Databases. An example of such actions includes transferring data electronically from the 67 county election

management systems to the Secretary of State, and then to an interface with the SSA or the DHSMV.

58. On information and belief, the attempt to match information of eligible voters within Registration Records to information within records of the DHSMV Database and the SSA Database will fail due in part to errors arising from the maintenance, storage, transfer, and transformation of this data.

3. Errors in Matching the Data

59. The errors described in the foregoing sections can occur in isolation, or in combination with other errors in individual records. But whether or not such errors exist, when an attempt is made to match information contained in the records of two or more large databases, superficial and other nonmaterial differences between those records can result in “false negative” results. A false negative occurs when a test incorrectly reports a negative result — *e.g.*, when a medical test fails to indicate that a patient has a specific disease or condition, or when radar fails to indicate the presence of an airplane within a scanned area. The rate of “false negatives” increases when there are errors within individual records — for example, where, as here, a Floridian is inputted at different times into the SSA Database and Registration Record, a data entry error in either will produce a false negative. However, false negatives are intrinsic to the process of matching and thus frequently occur even when the original data was inputted correctly.

60. Examples of the many trivial differences that can cause false negative matching results include:

- one record contains a nickname and the other contains the full given name (e.g., “MANNY” and “MANUEL,” or “LIZ” and “ELIZABETH,” would not match);
- one record contains one spelling of a transliterated foreign name or name using a diacritical mark, the other record contains an alternative spelling, and the matching algorithm does not recognize equivalences (e.g., “MUHAMMAD” and “MOHAMMED” or “DE LA CRUZ” and “DELACRUZ,” or “SCHRÖDER” and “SCHROEDER,” would not match);
- one record recognizes characters with diacritical marks, the other record does not, and the matching algorithm does not recognize equivalences (e.g., “RODRÍGUEZ” and “RODRIGUEZ” would not match);
- one record contains a first or middle initial and the other record contains the full name (e.g., “F. SCOTT FITZGERALD” and “FRANCIS S. FITZGERALD” would not match);
- one record contains punctuation within a name and the other record omits the punctuation (e.g., “O’BRIEN” and O BRIEN” would not match);
- one record contains a woman’s maiden name or her husband’s name and the other contains her own married name (i.e., “MRS. REBECCA JONES” and “MRS. REBECCA SMITH,” or “MRS. JOHN SMITH” and “MRS. REBECCA SMITH,” would not match); and
- one record contains an “Americanized” name used for some purposes and the other record contains a different given name used for some purposes (e.g., “GRACE KIM” and “HYUN KIM” would not match).

61. On information and belief, the attempt to match information contained in individual Registration Records to information contained in individual records of the DHSMV Database and the SSA Database has produced and will continue to produce a significant number of false negative results due to these and other apparent differences, and to errors in the protocol or systems for matching among the databases. Indeed,

defendant has already publicly admitted “[p]roblems with hyphenated names and married names” that may cause false negative results.

62. False negatives will arise more often when attempting to match the personal information of residents of certain racial and ethnic communities, including communities with substantial presence in Florida.

63. Examples of errors more likely among these racial or ethnic communities include:

- improper separation and combination of fields in names of Latinos and Hispanics, many of whom use both maternal and paternal last names, and in names of Haitian Americans, many of whom hyphenate their first two names (*e.g.*, Jean-Bertrand);
- incorrect spellings of unique names or derivatives of common names with unfamiliar spellings, which are particularly prevalent within the African-American community;
- transposed date and month of birth among recent immigrants, who may be accustomed to presenting dates in the day-month-year configuration standard in many countries;
- mismatched transliterated names of citizens whose primary language does not use the Roman alphabet or uses diacritical marks not found in English;
- transposition of the given name and surname of Asian Americans, many of whom present their surname first and their given name second; and
- inconsistent use of “Americanized” names and other given names of Asian Americans and others, many of whom use different names for different purposes, but regard both names as their own.

B. Error Rates Relevant to the Matching Process in Florida

64. Public institutions and private enterprises use several different methods to match information between databases. The strictest protocol involves the exact

character-by-character matching of all characters within one field or multiple fields. With character-by-character matching, one incorrectly entered character of one number or one name in a field targeted for matching will preclude a match between two otherwise identical records. EDUARDO DOMÍNGUEZ, born November 9, 1960, whose Social Security number ends in 2703, will not match EDUARDO DOMÍÑQUEZ, born November 9, 1960, whose Social Security number ends in 2703, because a single letter in his surname was typed incorrectly by a data entry operator.

65. Character-by-character “matches” are therefore extremely sensitive to all of the errors described above — both those that occur within individual databases and those that arise when comparing records between databases. The U.S. Census Bureau has reported, for example, that more than 25% of the same individuals reflected in a pre- and post-census analysis would not have been found by an exact character-by-character match.

66. On information and belief, the protocol used to match information on those Florida voter registration applications that are submitted with the last four digits of a Social Security number is an exact character-by-character match protocol developed in conjunction with the SSA. On information and belief, the AAMVA agreement with the SSA as it pertains to matching Social Security digits and other identifying information submitted with voter registration applications uses a *more* rigid match protocol than is used for verifying similar data submitted with driver’s license applications. The character-by-character protocol used for voter registration matching will not account for common typographical errors and other mistakes made when data entry operators input

the data into Registration Records and into the SSA Database, errors arising from the maintenance and storage of that data in both instances, or the false negative results that will occur when an attempt is made to match information within the two sets of records.

67. Evidencing the problem with using character-by-character matching, the Social Security Administration recently reported that, of 2.6 million voter registration records submitted to the SSA through February 2007, 46.2% — *nearly half of the records* — resulted in a failed match. On information and belief, the vast majority of the 46.2% failed matches represent false negatives — *i.e.*, eligible voters who do exist in the SSA Database, but whose records were not accurately matched.

68. Jurisdictions using a character-by-character match protocol similar to the protocol used for these Florida voters, as described in paragraphs 45-47 and 64, experience high rates of false negative matching results.

69. On information and belief, a character-by-character match protocol was used in New York City to match the driver's license numbers on voter registration applications to driver's license numbers on the state's motor vehicles file. In September 2004, the City Board of Elections sent 15,000 registration applications with driver's license numbers to the state Department of Motor Vehicles for matching. An audit revealed that of the total applications processed, a total of 2,951 — 19.6% — did not match due solely to data entry errors. Moreover, in this matching process, only the driver's license number itself was matched; if the matching required a comparison of additional information, such as name or date of birth, the error rate would have been higher.

70. On information and belief, Virginia used a character-by-character match protocol before the 2004 federal election in an attempt to match the Social Security number on 80,000 voter registration applications against the state's motor vehicles file. Of the 80,000 records processed, approximately 20% did not match. On information and belief, Virginia included all such registrants on its registration rolls, regardless of whether their information produced a match.

71. On information and belief, in early 2006, California used a character-by-character protocol in an attempt to match voter registration information against information in the state's motor vehicles file or the Social Security Administration's database. Of 64,673 records processed for Los Angeles County, approximately 18% were not matched, and another 7.5% were returned because of a system error, including a system "time out" or other system "down time."

72. On information and belief, in the first six months of 2006, Washington State's use of a character-by-character protocol for voter registration applications resulted in a statewide non-match rate of 16% – and a rate of as high as 30% in King County, the county that includes the most populous areas in the state, including Seattle.

C. Nonmaterial Errors or Omissions on Voter Registration Applications

73. Nonmaterial errors and omissions on voter registration applications themselves will also contribute to false negative results.

74. The audit of 15,000 New York City registration applications discussed in paragraph 69 consisted of a review of the scanned original of each of the 3,568 applications that did not produce a match. Of the failed matches, 82.9% were due to data

entry errors made by election officials. The other failed matches were due to a handful of errors made by the Department of Motor Vehicles and approximately 600 errors or omissions made by voters, such as filling in a Social Security number on the line provided for the driver's license number (the same type of error made by election officials inputting the data), which should not have affected the City's ability to verify the applicants' eligibility.

75. Such errors or omissions are not material in determining whether the applicant is qualified to vote.

76. On information and belief, nonmaterial errors and omissions on voter registration applications submitted by eligible Florida citizens have produced and will continue to produce a significant number of false negative results due to the data entry and matching errors described above.

III.

UNDUE BUREAUCRATIC HURDLES

77. When the State fails to match information on a voter registration application, the identifying number is deemed unverified and the application is declared "incomplete." No ballot will be counted if cast by a voter whose voter registration application is incomplete.

78. Each county is then responsible for attempting to notify such applicants. On information and belief, no State guidance makes this notification uniform, and the content of the notice will therefore depend on the county in which the voter attempts to register.

79. In many instances, the notification will not reach the applicant. In those instances in which it does, the notification will not always be adequate to allow the voter to remedy the problem because it will not adequately identify the problem. When Social Security information fails to match, for example, neither the State nor the applicant is told why — *e.g.*, if a digit has been mistyped or a married name in one source has not matched a maiden name in another, the State is informed only that no matching record has been found. As noted in paragraph 34, the biggest problem associated with matching Social Security digits is the SSA's failure to specify what causes mis-matches, which hinders efforts to resolve matching problems.

80. In many other instances, the notification will not be adequate to allow the voter to remedy the problem because it will not identify the solution required. In other cases, the notification will not be adequate because it will not be timely. A disproportionately high number of applications are submitted in the final week of the registration period. In 2004, 132,000 forms — nine percent of the total for the year — were submitted in the final week. On information and belief, given the large volume of these registration forms during the period most likely to strain the resources of county supervisors with other pre-election activities, there will be a delay in processing the forms of many applicants, a delay in attempting to match the identifying number of many applicants, a delay in reporting the resulting failed match of many applicants, and a delay in attempting to deliver notifications to applicants.

81. Those eligible citizens who are not able to remedy the State's failure to verify their identification number by election day will face additional barriers to voting.

Such eligible voters will only be permitted to vote provisional ballots, which will not lawfully be counted unless a series of further hurdles has been cleared. Within two days of casting a provisional ballot on election day, these voters must make a separate and unnecessary trip to the office of the supervisor of elections to present their driver's license or Social Security card in order to verify the identifying number listed on their applications. This is true even though many of these voters will already have shown their driver's license at the polls, since Florida law requires all voters to show one of various forms of photo identification — including driver's licenses — when voting in person. *See Fla. Stat. § 101.043.*

82. The ability of provisional ballot voters to make sure their ballots are counted depends on such voters being properly and fully advised of their rights at the polls on election day, which will not always be the case. On information and belief, in some counties, voters whose applications are deemed incomplete because of the State's failure to verify their driver's license number or Social Security digits will not be so designated on the pollbook. When these voters arrive at the polls, neither the poll worker nor the voter will know that the State has failed to verify the number on the registration form — or what must be done to complete the voter's registration and have the provisional ballot counted. Further, on information and belief, the State has not published guidance to ensure that poll workers uniformly inform unmatched voters that they must travel to the county supervisor's office within two days to present evidence sufficient to verify this number. On information and belief, poll workers at some locations will fail to inform such voters that they must travel to the county supervisor's

office within two days to present evidence sufficient to verify these numbers. Even if the poll workers inform such voters of the need to present evidence at the county supervisor's office, they may fail to inform the voters of the reason for the failed match or the evidence required to remedy the situation.

83. In addition, Florida does not provide a legal right for employees to take time off from work for voting, on election day or otherwise. A voter who discovers on election day that her identifying number has not been verified will have to take time off from work — if she is able to take time off from work without jeopardizing her employment — to travel to the office of the supervisor of elections, during business hours and within two days of the election, to present evidence to verify the number. The provisional ballots of such voters who are not able to take the time off from work will not be counted.

84. Moreover, for some voters, even prompt notice, abundant documentation, and adequate free time will not suffice. Any voter who has inadvertently submitted a driver's license number or Social Security digits with a single erroneous or omitted character will be barred, unless corrected before the voter registration deadline, from casting a valid ballot. Such voters who submit registration forms at or near the deadline will not be notified of their errors until it is too late, and will have no opportunity to present any evidence at all to correct the problem.

85. On information and belief, the bureaucratic hurdles described above will unduly burden eligible Florida citizens, and prevent many eligible Florida voters from casting a ballot that may lawfully be counted.

IV.

THE HELP AMERICA VOTE ACT OF 2002

86. The origins of the Florida matching law lay in the 2000 Presidential Election and a misinterpretation of the resulting legislation passed by Congress in 2002.

87. In the 2000 Presidential Election, thousands of registered voters in every state were turned away from the polls without casting a ballot due to administrative errors in the election administration process. As has been well documented in Florida and other states, many eligible voters were turned away simply because poll workers could not find their names on their lists of registered voters. In many cases, these rejected voters were eligible and properly registered, and in other cases, the names were improperly omitted from the registration rolls. To revive confidence in the electoral system, Congress passed the Help America Vote Act (“HAVA”), which was signed into law by President Bush on October 29, 2002.

88. The language and legislative history of HAVA make clear that the statute was passed in large part to ensure that eligible and registered voters would not be left off the voting rolls or turned away from the polls. HAVA seeks to accomplish this goal primarily through two provisions: (1) requiring each state to adopt a computerized statewide voter registration list and to ensure that the list is complete and accurate, and (2) permitting provisional balloting so that no eligible voter is denied the right to cast a ballot. The National Commission on Election Reform, chaired by former Presidents Ford and Carter, explained that these two policy goals were “connected” and that, “[i]n both we are motivated by a consistent goal: No American qualified to vote anywhere in her or

his state should be turned away from a polling place in that state.” National Commission on Election Reform, *To Assure Pride and Confidence in the Electoral Process* 35 (2001).

89. HAVA thus ensures that voting and election administration systems will “be the most convenient, accessible, and easy to use for voters” and will “be nondiscriminatory and afford each registered and eligible voter an equal opportunity to vote and to have that vote counted.” 42 U.S.C. §§ 15381(a)(1) and (3).

A. The Computerized Statewide Voter Registration List

90. One of the primary purposes of HAVA is to reduce the burdens on voting caused by sloppy and incomplete voter registration lists. For decades, voters have been turned away from the polls or discouraged from voting due to shoddy, decentralized, and poorly maintained voter registration lists, most of which varied from county to county.

91. To remove this bureaucratic barrier to voting, HAVA now requires the chief election official in each state to implement, in a uniform and nondiscriminatory manner, a “single, uniform, official, centralized, interactive computerized statewide voter registration list” that “contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State” 42 U.S.C. § 15483(a)(1)(A). This “computerized list” will be “the single system for storing and managing the official list of registered voters throughout the State.” *Id.* § 15483(a)(1)(A)(i).

92. HAVA further requires each State to ensure that “only voters who are not registered and who are not eligible to vote are removed from the computerized list” and

adopt “[s]afeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.” *Id.* §§ 15483(a)(2)(B)(ii) and (4)(B).

B. Identifying Numbers for List Maintenance

93. In Section 303(a) of HAVA (“Section 303(a)”), 42 U.S.C. § 15483(a), Congress provided a mechanism for states to assign a “unique identifying number” for each new registered voter to enable the state to engage in better list maintenance.

94. These unique identifiers were intended to ensure that each eligible voter is represented only once on the statewide voter registration list. The unique identifier would allow a state, for example, to reliably keep track of voters who move and re-register in a new location, and to ensure that such voters are not doubly registered.

95. For these list maintenance purposes, Congress sought to use unique identifying numbers already assigned to voters and maintained by the state, where possible. Therefore, HAVA provides that a new application for voter registration must include either the applicant’s driver’s license number or the last four digits of the applicant’s Social Security number. *Id.* §§ 15483(a)(5)(A)(i)(I) and (II). Florida enacted this requirement in Subsection 5 of its matching law, Fla. Stat. § 97.053(5)(a)(5)(a), as noted above in paragraphs 24 and 25.

96. HAVA goes on to provide that when an applicant does not have a driver’s license or Social Security number, “the State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes.” *Id.* § 15483(a)(5)(A)(ii). Accordingly, registrants with no driver’s license or Social Security

number will be given an “identifying number” and entered on the computerized voter list without any further effort or procedure. *See also* Fla. Stat. § 97.053(5)(a)(5)(b).

97. For new registrants who *do* provide a driver’s license number or Social Security digits, HAVA directs the states to “determine whether the information provided is sufficient to meet the requirements” of the computerized list. *Id.* § 15483(a)(5)(A)(iii). To that end, HAVA requires each state’s chief election official to make an agreement with the state’s motor vehicle authority to attempt “to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority,” *id.* § 15483(a)(5)(B)(i), and a parallel agreement for the state’s motor vehicle authority to make an agreement to match information with the Commissioner of Social Security, *id.* § 15483(a)(5)(B)(ii). In order to avoid conflicting entries in the state databases, to validate the unique identifiers provided, and to create a clean voter list, matching allows the states to “verify the accuracy of the information provided in applications for voter registration.” *Id.* § 15483(a)(5)(B)(i).

98. The states’ obligations to create and maintain the computerized list, to assign a “unique identifying number” for each voter, and to attempt to match information so that those numbers may be verified, are not preconditions to registering eligible voters. Rather, like all of the “Computerized statewide voter registration list requirements” set forth in Section 303(a), these are administrative obligations imposed on the states for the purpose of “storing and managing the official list of registered voters.” 42 U.S.C. § 15483(a)(1)(A)(i). That is why HAVA provides that “a unique identifier is assigned to each legally registered voter in the State,” not that a particular identifier must be matched

before a voter can be legally registered. *Id.* § 15483(a)(1)(A)(iii). New registrants with no current and valid driver's license or Social Security numbers – and voters in states collecting the full nine-digit Social Security number (which is what is truly “unique”) – need not be matched. *Id.* § 15483(a)(5)(A)(ii) and (D). Assigning one unique identifying number for each applicant, not the “match” or the reified number on the form itself, is the requirement.

99. Senator Christopher (“Kit”) Bond (R-MO), one of the chief Senate sponsors of HAVA, explained that the purpose of these provisions was to create useful and dependable voter lists, not brand new obstacles to registering or voting:

The conferees agree that a unique identification number attributed to each registered voter will be an extremely useful tool for State and local election officials in managing and maintaining clean and accurate voter lists. It is the agreement of the conferees that election officials must have such a tool. The conferees want the number to be truly unique and something election officials can use to determine on a periodic basis if a voter is still eligible to vote in that jurisdiction.

148 Cong. Rec. S10488-02, *S10490 (daily ed. Oct. 16, 2002). As voters are assigned these unique numbers, states will be able to identify with greater ease and certainty when a voter who has moved and applied to register in a new jurisdiction is still on the list in his or her old jurisdiction.

100. The House of Representatives, in its report on HAVA, confirms this legislative intent:

Creation of [a statewide voter registration database] will make the registration lists more accurate, and easier to update. It should reduce the incidence of voters appearing

at a polling place only to discover that no record of their registration can be found. When voters move from one jurisdiction to another within that state, the statewide system will be able to track that movement. . . .

It is likely that states will find it necessary to create a unique identifier to distinguish registered voters who happen to have the same name and/or birth date. The unique identifier so created will be used to assure that list maintenance functions are attributable to the correct voter; so as to avoid removing registrants who happen to have the same name and birth date as a felon, for example.

H.R. Rep. 107-329(I), at 36 (2001).

101. Congress recognized that it would be helpful if the unique number assigned to a registered voter were externally validated. 42 U.S.C. § 15483(a)(5)(B)(i) and (ii). But in tacit acknowledgment of the limitations of the matching process, Congress did not require that each number be validated before it is assigned. Indeed, Congress did not require that states even *attempt* to validate each number before it is assigned. Rather, HAVA requires states to attempt to match unique numbers only for new registrants (that is, new voters or those who move and register in new jurisdictions). Everyone else already on the rolls – the tens of millions of people who have been living in the same county and voting for years – may simply be assigned a unique identifying number for database maintenance purposes. The clear intention of HAVA is to create complete and clean voter rolls by putting in place a national standard for uniform statewide voter registration databases that, *over time*, will come to include a unique, externally validated identifying number for every registrant. But given the limitations of

matching technology and the fact that it will not even apply to current voters, it will take many years to meet this goal fully.

102. Each state has a responsibility to implement HAVA in a manner that preserves voters' access to registration and their ability to exercise the fundamental right to vote. In implementing the provisions that bear only on the maintenance by state bureaucracies of the voter registration list, Florida may not erect new barriers to voter registration.

C. Identifying Numbers for First-Time Voters Who Register By Mail

103. The companion provision of HAVA regarding "Requirements for voters who register by mail," 42 U.S.C. § 15483(b) ("Section 303(b)"), confirms that the computerized list and the matching provisions were intended by Congress to make voting easier, not harder.

104. In particular, HAVA uses the matching process to ease the burden on first-time voters who register by mail.

105. As a general rule, Section 303(b) requires that a first-time voter who registers by mail must show some form of documentary identification, specified in the statute, either at the time of registration or when that individual goes to the polls to vote a regular ballot. *Id.* § 15483(b)(2)(A). However, no documentary identification is required if the state or local election official matches the driver's license number or last four digits of the Social Security number of the registrant "with an existing State identification record bearing the same number, name and date of birth." *Id.* § 15483(b)(3).

106. In other words, a first-time mail-in registrant need *not* be “matched” in order to be registered and in order to vote. She is registered and can vote a regular ballot by submitting identification with her registration application or by showing identification at the polls. HAVA’s matching provisions merely provide a way to save first-time voters who register by mail from having to show documentary proof of identity when registering or voting.

107. HAVA’s “Fail-safe voting” provision stands as additional proof that registration cannot rise or fall on the success of matching under the federal law. That provision specifies that a first-time mail-in registrant who fails to submit or present identification, and has not been matched, has a right to cast a “provisional ballot.” *Id.* § 15483(b)(2)(B). These provisional ballots, however, can be counted only if the voter is validly registered. It cannot therefore be that the state’s failure to find a match precludes registration. Such an interpretation would render meaningless HAVA’s “Fail-safe voting” mechanism for first-time voters without identification: none of these provisional ballots would ever be counted because provisional ballots are only given to those citizens whose information has *not* been matched.

108. Subsection 6 perverts this structure by making the identifying number on the application the ultimate determinant of registration. Rather than using the identifying number as the unique identifier for the voter on the statewide registration list, as HAVA provides, Florida requires that if the number on the form cannot for some reason be verified, the application must be rejected. And rather than using the identifying number for first-time mail-in registrants as an alternative for identification, as HAVA provides,

Florida demands that voters whose numbers have not been matched show one piece of identification only: evidence to authenticate the number listed on the registration form.

CLAIMS

COUNT I

(VIOLATION OF THE HELP AMERICA VOTE ACT: IDENTIFICATION PROVISIONS)

109. Plaintiffs repeat and reallege paragraphs 1 through 108, as if fully set forth herein.

110. To the extent Subsection 6 prevents an applicant from being included on the official list of registered voters until the Secretary of State has matched the driver's license number or Social Security digits on the voter registration form with existing records of the DHSMV or SSA, the applicant has produced unspecified evidence deemed sufficient to authenticate the identifying number on the form, or it has been determined that the applicant has no such number, the statute violates the identification provisions of Section 303(b) of HAVA and interferes with federal rights secured by HAVA.

111. By refusing to permit the registration of voters until a match is made, an identifying number is authenticated, or it is determined that the voter has no identifying number to be matched, as alleged above, Subsection 6 violates HAVA, including the provision that permits a first-time voter who registers by mail to provide identification at the time of voting or registration to verify his or her identity. 42 U.S.C. § 15483(b)(2)(A).

112. The requirement that the Secretary of State match the driver's license number or Social Security number on an application form with existing records of the

DHSMV or SSA, otherwise validate the number, or determine that the applicant has no such number, is not a condition of eligibility to vote under the Florida Constitution.

113. A first-time voter who registered by mail, who is otherwise eligible to vote under the Florida Constitution, and who provides the identification required by HAVA, as set forth above, is entitled to cast a regular ballot.

114. Therefore, Subsection 6 conflicts with HAVA, a federal statute, and is preempted.

115. Subsection 6 creates a real and imminent threat that eligible Florida voters, including individual members of Plaintiffs, will be deprived of their federal rights to cast regular ballots and to have those ballots counted, thereby frustrating Plaintiffs' mission of registering their members to vote and encouraging their members to participate in the political process. Subsection 6 also creates a real and imminent threat that Plaintiffs will be forced to divert their resources to assist their members and prospective registrants in providing additional "evidence" to accomplish matching and ensuring that any provisional ballots cast by their members and other prospective registrants, as a result of Subsection 6, will be counted. Plaintiffs and their members are being deprived of federal rights guaranteed under HAVA and 42 U.S.C. § 1983.

116. Moreover, Subsection 6 threatens Plaintiffs' interests in ensuring that their members' rights to cast regular ballots in the January 29, 2008 presidential preference primary election, the August 26, 2008 primary election, and/or the November 4, 2008 general election, or to cast provisional ballots that are counted, are fully realized.

117. Absent this Court's intervention, Plaintiffs and their members will suffer irreparable injury through the interference of Subsection 6 with their federal rights.

118. Plaintiffs and their members have no adequate remedy at law for such deprivation of their rights.

119. Defendant's conduct must be preliminarily and permanently enjoined to prevent enforcement of Subsection 6 from interfering with federal rights and thereby causing irreparable injury to Plaintiffs and their members.

COUNT II

(VIOLATION OF THE HELP AMERICA VOTE ACT: PROVISIONAL BALLOT PROVISIONS)

120. Plaintiffs repeat and reallege paragraphs 1 through 119 as if fully set forth herein.

121. To the extent Subsection 6 prevents an applicant from being included on the official list of registered voters until the Secretary of State has matched the driver's license number or Social Security digits on the voter registration form with existing records of the DHSMV or SSA, the applicant has produced unspecified evidence deemed sufficient to authenticate the identifying number on the form, or it has been determined that the applicant has no such number, the statute violates the provisional ballot provisions of Section 303(b)(2)(B) of HAVA and interferes with federal rights secured by HAVA.

122. Specifically, by refusing to register voters until a match is made, an identifying number is authenticated, or it is determined that the voter has no identifying number to be matched, as described above, Subsection 6 violates HAVA's mandate that

any first-time voter who registers by mail but has not been matched by the state is entitled to cast a provisional ballot under Section 303(a) if that individual does not provide one of the forms of identification described in Section 303(b)(2)(A). *Id.* § 15483(b)(2)(B).

123. HAVA provides that a provisional ballot “shall be counted” where “the appropriate State or local election official . . . determines that the individual is eligible under State law to vote.” *Id.* § 15482(a)(4).

124. The requirement that the State match the driver’s license number or Social Security digits on an application form with existing records of the DHSMV or SSA, otherwise validate the number, or determine that the applicant has no such number, is not a condition of eligibility to vote under the Florida Constitution.

125. A voter otherwise eligible to vote under the Florida Constitution but who has not been matched and does not provide one of the forms of identification set forth in section 303(b)(2)(A) is entitled to cast a provisional ballot in Florida, but will not have his or her provisional ballot counted if the voter cannot be matched. Subsection 6 thereby renders HAVA’s provisional ballot “fail-safe” a nullity.

126. Therefore, Subsection 6 conflicts with HAVA, a federal statute, and is preempted.

127. Subsection 6 creates a real and imminent threat that eligible Florida voters, including individual members of Plaintiffs, will be deprived of their federal rights to cast provisional ballots and to have those ballots counted. Subsection 6 also creates a real and imminent threat that Plaintiffs will be forced to divert their resources to assist their members and prospective registrants to meet their burden of providing additional

“evidence” to accomplish matching and ensuring that any provisional ballots cast by their members and other prospective registrants, as a result of Subsection 6, will be counted. Plaintiffs and their members are being deprived of federal rights guaranteed under HAVA and 42 U.S.C. § 1983.

128. Moreover, Subsection 6 threatens Plaintiffs’ interests in ensuring that their members’ rights to cast provisional ballots in the January 29, 2008 presidential preference primary election, the August 26, 2008 primary election, and/or the November 4, 2008 general election, and to have their votes counted, are fully realized.

129. Absent this Court’s intervention, Plaintiffs and their members will suffer irreparable injury through the interference of Subsection 6 with their federal rights.

130. Plaintiffs and their members have no adequate remedy at law for such deprivation of their rights.

131. Defendant’s conduct must be preliminarily and permanently enjoined to prevent his enforcement of Subsection 6 from interfering with federal rights and thereby causing irreparable injury to Plaintiffs and their members.

COUNT III

(VIOLATION OF THE HELP AMERICA VOTE ACT: COMPUTERIZED STATEWIDE LIST REQUIREMENTS)

132 Plaintiffs repeat and reallege paragraphs 1 through 131 as if fully set forth herein.

133. To the extent Subsection 6 prevents an applicant from being included on the official list of registered voters until the Secretary of State has matched the driver’s license number or Social Security digits on the voter registration form with existing

records of the DHSMV or SSA, the applicant has produced unspecified evidence deemed sufficient to authenticate the identifying number on the form, or it has been determined that the applicant has no such number, the statute violates Section 303(a) of HAVA and interferes with federal rights secured by HAVA.

134. Specifically, by refusing to register voters until a match is made, an identifying number is authenticated, or it is determined that the voter has no identifying number to be matched, as described above, Subsection 6 violates the purpose and meaning of HAVA's "Computerized statewide voter registration list requirements," 42 U.S.C. § 15483(a), which make clear that the "matching" provision, *id.* § 15483(a)(5), was meant to be a means for state bureaucracies to carry out their responsibilities to create and maintain the computerized list, not impose a new, absolute precondition to registration.

135. Therefore, Subsection 6 conflicts with HAVA, a federal statute, and is preempted.

136. Subsection 6 creates a real and imminent threat that eligible Florida voters, including individual members of Plaintiffs, will be deprived of their federal rights to be placed on the registration lists, to cast valid ballots, and to have those ballots counted. Subsection 6 also creates a real and imminent threat that Plaintiffs' resources will be diverted by the attempt to remedy the fact that their members, clients, and constituents will be unable to be placed on the registration lists, to cast valid ballots, and to have those ballots counted. Plaintiffs and their members are being deprived of federal rights guaranteed under HAVA and 42 U.S.C. § 1983.

137. Moreover, Subsection 6 threatens Plaintiffs' interests in ensuring that their members' rights to be placed on the registration lists, to cast valid ballots in the January 29, 2008 presidential preference primary election, the August 26, 2008 primary election, and/or the November 4, 2008 general election, and to have their votes counted, are fully realized.

138. Absent this Court's intervention, Plaintiffs and their members will suffer irreparable injury through the interference of Subsection 6 with their federal rights.

139. Plaintiffs and their members have no adequate remedy at law for such deprivation of their rights.

140. Defendant's conduct must be preliminarily and permanently enjoined to prevent his enforcement of Subsection 6 from interfering with federal rights and thereby causing irreparable injury to Plaintiffs and their members.

COUNT IV

(VIOLATION OF THE VOTING RIGHTS ACT: MATERIALITY PROVISION)

141. Plaintiffs repeat and reallege paragraphs 1 through 140 as if fully set forth herein.

142. To the extent Subsection 6 prevents an applicant from being included on the official list of registered voters until the Secretary of State has matched the driver's license number or Social Security number on the voter registration form with existing records of the DHSMV or SSA, the applicant has produced unspecified evidence deemed sufficient to authenticate the identifying number on the form, or it has been determined

that the applicant has no such number, the statute violates the Voting Rights Act and interferes with federal rights secured by that law.

143. Specifically, by refusing to register voters until a match is made, an identifying number is authenticated, or it is determined that the voter has no identifying number to be matched, as described above, Subsection 6 violates the Voting Rights Act's mandate that "No person acting under color of law shall . . . deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election." 42 U.S.C. § 1971(a)(2)(B).

144. As detailed above, many errors or omissions on papers or records relating to voter registration — whether caused by the applicant or anyone else, including but not limited to State and local employees and volunteers of voter registration groups — that will impact the State's ability to match that applicant's driver's license number or Social Security number, or determine that no such number exists, will not be material to determining whether the applicant is qualified to vote under Florida law.

145. Many nonmaterial mistakes beyond the control of the applicant — such as data entry errors by election officials, difficulties in retrieving information outside of the State's voter registration system, or technical malfunctions in the matching algorithms, all of which may render election officials temporarily or permanently unable to verify the submitted information of an eligible voter — are likely to occur. Other nonmaterial

mistakes made by the applicants themselves in filling out their voter registration applications are also likely to occur.

146. Such nonmaterial errors or omissions, and others not set forth herein, present a real and imminent threat that Plaintiffs' members will not be registered to vote and that Plaintiffs and their members will thereby be irreparably injured.

147. Therefore, Subsection 6 conflicts with the Voting Rights Act, a federal statute, and is preempted.

148. Subsection 6 creates a real and imminent threat that eligible Florida voters, including Plaintiffs' individual members, will be deprived of their federal rights to vote because of nonmaterial errors or omissions. Subsection 6 also creates a real and imminent threat that Plaintiffs' resources will be diverted by the attempt to remedy the fact that their members, clients, and constituents will be unable to cast valid ballots and to have those ballots counted. Plaintiffs and their members are therefore being deprived of federal rights guaranteed under the Voting Rights Act and 42 U.S.C. § 1983.

149. Moreover, Subsection 6 threatens Plaintiffs' interests in ensuring that their members' rights to cast ballots in the January 29, 2008 presidential preference primary election, the August 26, 2008 primary election, and/or the November 4, 2008 general election, and to have their votes counted, are fully realized.

150. Absent this Court's intervention, Plaintiffs and their members will suffer irreparable injury through the interference of Subsection 6 with their federal rights.

151. Plaintiffs and their members have no adequate remedy at law for such deprivation of their rights.

152. Defendant's conduct must be preliminarily and permanently enjoined to prevent enforcement of Subsection 6 from interfering with federal rights and thereby causing irreparable injury to Plaintiffs and their members.

COUNT V

(VIOLATION OF THE VOTING RIGHTS ACT: DENIAL OR ABRIDGMENT ON ACCOUNT OF RACE OR COLOR)

153. Plaintiffs repeat and reallege paragraphs 1 through 152 as if fully set forth herein.

154. To the extent Subsection 6 prevents an applicant from being included on the official list of registered voters until the Secretary of State has matched the driver's license number or Social Security digits on the voter registration form with existing records of the DHSMV or SSA, the applicant has produced unspecified evidence deemed sufficient to authenticate the identifying number on the form, or it has been determined that the applicant has no such number, the statute violates Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, and interferes with federal rights secured by that law.

155. Section 2 of the Voting Rights Act, as amended, prohibits the use of a "voting qualification or prerequisite to voting or standard, practice or procedure" that results in a denial or abridgement of the right to vote on account of race or color. 42 U.S.C. § 1973.

156. Racial and ethnic minorities, including individuals with foreign-language surnames, Hispanic or Latino citizens with compound last names, African Americans with unique names and spellings, Haitian Americans with compound first names, and Asian Americans with "Westernized" given names, are likely to suffer a disparate impact

as a direct result of Subsection 6, resulting in denial or abridgement of the right to vote on account of race in violation of Section 2 of the Voting Rights Act.

157. Defendant's policy and practice of refusing to register to vote applicants whose identifying number cannot be verified will disproportionately impact Hispanic or Latino citizens, African-American, Haitian-American, and Asian-American applicants, as well as applicants who are members of other racial and ethnic groups, and will do so on account of their race or ethnicity.

158. Absent this Court's intervention, Plaintiffs, their members, and similarly situated voters will suffer irreparable injury through the deprivation of their right to vote on account of race.

159. Plaintiffs and their members have no adequate remedy at law for such deprivation of their rights, privileges and immunities.

160. Defendant's conduct must be preliminarily and permanently enjoined to prevent enforcement of Subsection 6 from interfering with federal rights and thereby causing irreparable injury to Plaintiffs and their members.

COUNT VI

(VIOLATION OF THE NATIONAL VOTER REGISTRATION ACT: REGISTRATION OF ELIGIBLE VOTERS)

161. Plaintiffs repeat and reallege paragraphs 1 through 160 as if fully set forth herein.

162. To the extent Subsection 6 prevents an applicant from being included on the official list of registered voters until the Secretary of State has matched the driver's license number or Social Security digits on the voter registration form with existing

records of the DHSMV or SSA, the applicant has produced unspecified evidence deemed sufficient to authenticate the identifying number on the form, or it has been determined that the applicant has no such number, the statute violates the National Voter Registration Act, or “Motor Voter Law,” and interferes with federal rights secured by that law.

163. Specifically, by refusing to register voters until a match is made, an identifying number is authenticated, or until it is determined that the voter has no identifying number to be matched, as described above, Subsection 6 violates the Motor Voter Law, including the mandate that “each State shall . . . ensure that any eligible applicant is registered to vote in an election . . . if the valid voter registration form of the applicant” is submitted, mailed or otherwise received within the state voter registration deadline. 42 U.S.C. § 1973gg-6(a)(1)(A)-(D).

164. The Motor Voter Law’s mandate that states accept and process valid voter registration forms remains in effect after the passage of HAVA. 42 U.S.C. § 15545(a).

165. Subsection 6 creates a real and imminent threat that eligible Florida voters, including individual members of Plaintiffs, will submit valid voter registration forms by the voter registration deadline, but will not be registered to vote. Subsection 6 also creates a real and imminent threat that Plaintiffs’ resources will be diverted by the attempt to remedy the fact that their members, clients, and constituents will submit valid voter registration forms but will not be registered to vote.

166. Therefore, Subsection 6 conflicts with the Motor Voter Law, a federal statute, and is preempted.

167. Absent this Court's intervention, Plaintiffs and their members will suffer irreparable injury through the interference of Subsection 6 with their federal rights.

168. Plaintiffs and their members have no adequate remedy at law for such deprivation of their rights.

169. Defendant's conduct must be preliminarily and permanently enjoined to prevent enforcement of Subsection 6 from interfering with federal rights and thereby causing irreparable injury to Plaintiffs and their members.

COUNT VII

(VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION: UNDUE BURDEN ON THE RIGHT TO VOTE)

170. Plaintiffs repeat and reallege paragraphs 1 through 169 as if fully set forth herein.

171. The First and Fourteenth Amendments of the United States Constitution protect the right to vote as a fundamental right. The First Amendment's guarantees of freedom of speech and association protect the right to vote and to participate in the political process. Moreover, the right to vote is a fundamental constitutional right incorporated into the Due Process Clause of the Fourteenth Amendment.

172. As detailed above, because Subsection 6 prevents an applicant from being included on the official list of registered voters until the Secretary of State has matched the applicant's driver's license number or Social Security digits on the voter registration form with existing records of the DHSMV or SSA, the applicant has produced unspecified evidence deemed sufficient to authenticate the identifying number on the

form, or it has been determined that the applicant has no such number, Subsection 6 imposes a severe burden on the fundamental right to vote of Plaintiffs' members by depriving thousands of voters of that right altogether. If enforcement of the statute is not enjoined, the Secretary of State's refusal to register voters based on an unlawful matching requirement will continue indefinitely to impose such severe burdens on the voters' right to vote, requiring Plaintiffs to divert resources in an attempt to remedy the deprivation. Subsection 6 is not narrowly drawn to advance any state interest of such compelling importance to justify the imposition of such severe burdens.

173. Moreover, even if the burdens imposed by Subsection 6 were considered less than severe, the Secretary of State has no sufficient justification for the refusal to permit county election officials to register applicants despite the lack of a match.

174. By reason of the foregoing, the Secretary of State, acting under color of state law, will deprive Plaintiffs and their members of the rights, privileges, and immunities secured to them by the First and Fourteenth Amendments to the United States Constitution and protected under 42 U.S.C. § 1983.

175. Plaintiffs and their members have no adequate remedy at law for such deprivation of their rights, privileges, and immunities.

176. No compelling or legitimate state interest justifies this severe and unequal burden upon Plaintiffs' and their members' fundamental right to vote and to participate in the political process.

COUNT VIII

(VIOLATION OF THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION: EQUAL PROTECTION)

177. Plaintiffs repeat and reallege paragraphs 1 through 176 as if fully set forth herein.

178. Because Subsection 6 prevents an applicant from being included on the official list of registered voters until the Secretary of State has matched the driver's license number or Social Security digits on the voter registration form with existing records of the DHSMV or SSA, the applicant has produced unspecified evidence deemed sufficient to authenticate the identifying number on the form, or it has been determined that the applicant has no such number, Subsection 6 burdens the fundamental right to vote by disenfranchising eligible voters. Moreover, Subsection 6 imposes, without sufficient justification, different burdens on the right to vote of similarly situated eligible voters.

179. If the Secretary of State is required to enforce the provisions set forth in Subsection 6, eligible Florida voters, including Plaintiffs' members, will be less likely than others to have their votes counted, based on the arbitrary distinction that they were the victim of errors beyond their control — such as faulty data entry, file maintenance, or file corruption — or that their registration applications contained nonmaterial errors or omissions.

180. If the Secretary of State is required to enforce the provisions set forth in Subsection 6, eligible Florida voters, including Plaintiffs' members, will be less likely than others to have their votes counted, based solely on the arbitrary distinction of their

residence in different counties. Because Subsection 6 imposes no uniform standards regarding the content of the notices counties are required to provide unmatched applicants, some counties will provide notices that give applicants insufficient information to allow them to resolve the mismatch. Because Subsection 6 imposes no uniform standards regarding what information poll workers must provide, and must be able to provide, unmatched applicants who submit provisional ballots, some counties will give applicants insufficient information to allow them to ensure that their provisional ballots are counted. Further, because Subsection 6 imposes no uniform standards regarding the evidence that is sufficient to resolve mismatches, some counties will enforce stricter requirements than will other counties. Thus, the enforcement of Subsection 6 will lead inexorably to arbitrary and disparate refusal to register and disenfranchisement of voters in Florida's different counties.

181. If the Secretary of State is required to enforce the provisions set forth in Subsection 6, eligible Florida voters, including Plaintiffs' members, will be less likely than others to have their votes counted, based solely on the arbitrary distinction of whether they submit driver's license numbers or Social Security digits on their registration forms. The Social Security Administration has reported that it has failed to match 46% of voter registration records submitted. On information and belief, the failure rate for eligible Florida voters, including Plaintiffs' members, is substantially higher for those who submit Social Security digits than for those who submit driver's license numbers. Further, because the Social Security Administration provides no information regarding the basis for a failed match to the State, eligible Florida voters, including

Plaintiffs' members, who submit Social Security digits will face substantially more difficulty in resolving failed matches than will similarly situated voters who submit driver's license numbers. Thus, the enforcement of Subsection 6 will lead inexorably to arbitrary and disparate refusal to register and disenfranchisement of voters based solely on whether the voters have submitted Florida driver's license numbers or Social Security digits.

182. Racial, ethnic, and language minorities, including those with foreign-language surnames, are more likely to be disenfranchised as a direct result of Subsection 6, depriving them of the equal protection of HAVA and the laws of the United States as protected under 42 U.S.C. § 1983.

183. Defendant has no sufficient interest that justifies this arbitrary, unreasonable, and unequal burden upon Plaintiffs' and their members' fundamental rights.

184. Absent this Court's intervention, Plaintiffs, their members, and similarly situated voters will suffer irreparable injury through deprivation of the equal right to vote.

185. The enforcement of Subsection 6's instruction not to register otherwise eligible voters until a match is made, an identifying number is authenticated, or it is determined that the voter has no identifying number to be matched must be preliminarily and permanently enjoined to protect Plaintiffs and their members from this real and imminent threat.

186. Plaintiffs and their members have no adequate remedy at law for such deprivation of their rights, privileges, and immunities.

COUNT IX

(VIOLATION OF THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION: DUE PROCESS)

187. Plaintiffs repeat and reallege paragraphs 1 through 186 as if fully set forth herein.

188. As detailed above, because Subsection 6 prevents an applicant from being included on the official list of registered voters until the Secretary of State has matched the driver's license number or Social Security digits on the voter registration form with existing records of the DHSMV or SSA, the applicant has produced unspecified evidence deemed sufficient to authenticate the identifying number on the form, or it has been determined that the applicant has no such number, Florida has sanctioned a flawed voting process that will arbitrarily deny otherwise eligible voters the right to vote and have that vote counted.

189. The process mandated by Subsection 6 will fail to provide sufficient and meaningful notice of actions and decisions affecting registration to many Florida residents and will fail to provide adequate or timely process for many Florida residents to challenge such actions and decisions. This failure creates an unreasonably high risk that Plaintiffs' members and others will be erroneously denied the right to vote.

190. Unless enjoined, Defendant will administer an election process that deprives eligible Florida residents, including Plaintiffs and their members, of their liberty interest in voting and does so without adequate pre- or post-deprivation process.

191. By reason of the foregoing, Defendant, acting under color of state law, will deprive Plaintiffs and their members of the rights, privileges, and immunities secured

to them by state and federal law, and therefore protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and protected under 42 U.S.C. § 1983.

192. Defendant has no sufficient interest that justifies this severe and unequal burden upon Plaintiffs' and their members' fundamental right to vote and to participate in the political process without adequate process.

193. Plaintiffs and their members have no adequate remedy at law for such deprivation of their rights, privileges, and immunities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ask this Court to enter an Order:

- (1) Declaring that the provisions of § 97.053(6), Fla. Stat., as currently enacted and as amended effective January 1, 2008, prohibiting election officials from registering eligible voters until the Secretary of State has matched the driver's license number or Social Security number on the voter registration form with existing records of the DHSMV or SSA, the applicant has produced unspecified evidence deemed sufficient to authenticate the identifying number on the form, or it has been determined that the applicant has no such number, violate rights granted to Plaintiffs and their members by, and conflict with preempting provisions of, the Help America Vote Act of 2002, 42 U.S.C. § 15301 *et seq.*, the Voting Rights Act, 42 U.S.C. §§ 1971(a)(2)(B) and 1973, the National Voter

Registration Act, 42 U.S.C. § 1973gg, and the First and Fourteenth Amendments to the United States Constitution;

- (2) Preliminarily and permanently enjoining Defendant, his employees, agents, representatives, and successors in office from refusing to place on the official statewide list of registered voters voter registration applicants solely because they cannot “verify the authenticity or nonexistence” of the applicants’ identifying numbers;
- (3) Awarding Plaintiffs their attorneys’ fees and costs in accordance with 42 U.S.C. § 1988; and
- (4) Granting Plaintiffs such additional relief as the interests of justice may require, together with their costs and disbursements in maintaining this action.

Dated: September 17, 2007.

GREENBERG TRAUIG, P.A.



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* *Pro Hac Vice* application to be filed

TAL 451433020v1 9/17/2007



Voting Information

Please take a few minutes to read the following about voting in Florida. It should answer your questions about voter registration, election dates, and the availability of absentee ballots. If you would like any additional information, please call your Supervisor of Elections office. We encourage you to participate in the process of deciding issues and electing our federal, state and local officials. (Please see Registration and Voting Guide for complete information.)

- Home
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- Election Information
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- Government Links
- Contact Your Elected Official
- Contact Us

- **Absentee Ballots**

The Supervisor of Elections may accept a request for an absentee ballot in person or in writing. Contact the office of your Supervisor of Elections to request an absentee ballot by mail no later than 5 p.m. on the sixth day before the election. When requesting an absentee ballot, whether by phone or by letter, you must provide your name, residence address, date of birth, driver's license number (if available) and signature, if it is a written request. Your request for an absentee ballot may be denied if you do not provide the required information. Specify the election(s) for which you wish to receive an absentee ballot and provide a mailing address. Check with your elections office if you need more information.

- **Book Closing Dates**

You can apply to register to vote at any time. However, to vote in an election, you must be registered in the state by the book closing date, which is normally the 29th day before each election. The book closing dates for the 2008 election cycle are:

Presidential Preference Primary : December 31, 2007
Primary Election July 28, 2008
General Election October 6, 2008

- **Election Dates**

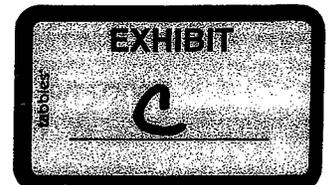
A General Election is held in November of every even-numbered year. The Primary Election, which precedes each November General Election, is 10 weeks before the General Election. Additionally, a Presidential Preference Primary is scheduled in January of Presidential election years. Special elections may be called at any time during the year. (See election dates for the year 2008.)

- **Florida Voter Registration Act**

A description of Florida's implementation of the National Voter Registration Act, better known as "Motor Voter", which provides for changes in voter registration procedures.

- **Party Affiliation**

Since Florida is a closed primary state, only voters who are registered members of the two major political parties (Republicans and Democrats) may vote for their respective party's candidates in a primary



election. Registered minor political party voters and voters without party affiliation are not eligible to vote for major party candidates in a primary election. However, a constitutional amendment adopted in 1998 states that IF all candidates for an office have the same party affiliation and the winner will have no opposition in the general election, all qualified voters, regardless of party affiliation, may vote in the primary election for that office. (See art. VI, s.5 of the Florida Constitution). Party changes must be made by the end of the 29th day before the Primary Election.

- **Poll Workers**

Poll workers are needed for every election. If you would like to become a poll worker, please call your Supervisor of Elections office.

- **Residence Address**

If you move within a county after you have registered to vote, please notify your Supervisor of Elections. You may provide a signed, written notice to your supervisor, call your supervisor, or send an email. If you call or send an email, you must also include your date of birth with your change of address. If you move to another Florida county, use the Florida Voter Registration Application to change your address, and mail the application to your Supervisor of Elections. Federal and State laws require you to vote in your precinct of residence.

- **Statistical Roadmap**

View a statistical roadmap of Florida voter registration, background information and voter registration in past elections.

- **Third Party Voter Registration Information**

ATTENTION: Pursuant to a federal court-ordered injunction issued on August 28, 2006, the Florida Department of State will not enforce the Third-Party Voter Registration Organization law (section 97.0575, Florida Statutes). Federal Court Order: League of Women Voters of Florida et al. v. Cobb, US Southern District Court of Florida

Therefore, pending further official notice to the contrary, third-party voter registration activities conducted by organizations, entities, or individuals are not subject to the Third-Party Voter Registration Organization law but are still governed by all other applicable provisions of the Florida Election Code.

This case is under appeal before the U.S. Court of Appeals for the 11th Circuit.

- **Voter Registration Changes**

If you want to change your party affiliation or change your name, you must submit a Florida Voter Registration Application to the office of your Supervisor of Elections.

- **Helpful Hints**

- Make sure all information on your voter information card is correct.
- If you do not know the location of your polling place, call the office of your Supervisor of Elections for directions **BEFORE** election day.
- Take your Florida Driver's License (or another form of picture

identification showing your signature) to the polls.

- On Election Day, the polls are open from 7:00 a.m. to 7:00 p.m. and are normally less busy during mid-morning and mid-afternoon.

- Early Voting will be available for voting prior to Election Day. Contact your Supervisor of Elections to obtain additional information on times and locations.

Experiencing problems or have questions? [Contact us](#).
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Matthews, Maria I.

From: Woodward, Amy on behalf of Roberts, Dawn K.
Sent: Friday, June 16, 2006 4:44 PM
To: Carpenter, Pam; Johnson, Althera; Barrett, Amber; Crawford, Nita; Leonard, Barbara; Barbara Osthoff; Barbara Solis; Anderson, Mark; Vaughan, Terry L.; Galey, Fred D.; Milton, Brenda; Brill, Sandy; Snipes, Brenda C.; Brown, Toshia; Laramore, Margie C.; CHA - Mac; Gill, Susan A.; Kirkman, Barbara A.; Howell, Jack; Edwards, Jennifer J.; Home, Elizabeth P.; Sola, Lester; Mann, Dave; Drury, David R.; Roberts, Dawn K.; DES - Mark; DIX - Mae; Miller, Donna; Holland, Jerry; Stafford, David H.; Faraj(EOG), Alia; Border, Peggy R.; Gibbs, Doris S.; Knight, Shirley G.; Bryant, Susan J.; Ginn, Lisa M.; Widdon, Holly; Griffin, Linda; Dees, Laura; Uesery, Jeffrey; Hughes, Heidi; Strickland, Lucretia A.; HER - Annie; HIG - Joe; Johnson, Buddy; Morris, Debbie W.; IND - Kay; Ivey, Sterling E.; Stephens, Sylvia D.; JEF - Marty; Nash, Jenny; Durbin, Joyce A.; Febres, Kella; Bronson, Kristi R.; Morgan, Lana B.; Stegall, Emogene W.; LEE - Sharon; LEO - Ion; LEV - Connie; Wood, Marcia; Howell, Linda T.; Sweat, Bob; Matthews, Maria I.; Sawyer, Harry L.; Brown, Dee; MRT - Vicki; Cannon, Vicki P.; Hollam, Patricia M.; OKE - Gwen; ORA - Bill; OSC - Connie; Bryant, Donna; Anderson, Arthur W.; Browning, Kurt S.; Taff, Peggy; PIN - Deborah; POL - Lori; McCool, Susan C.; Raines, Terry; Ron Labasky; SAN - Ann; Dent, Kathy; Bradshaw, Sarah; SEM - Mike; Larson, Sharon; Shiver, Susan J.; Halybuton, Penny; Walker, Gertrude; Elias, Sue E.; Krauss, Karen S.; Williams, Glenda B.; Lilliott, Molly H.; Montpetit, Babs R.; McFall, Ann; Crum, Sherida S.; Beasley, Bobby; Griffin, Carol F.; Woodward, Amy
Subject: Overrides

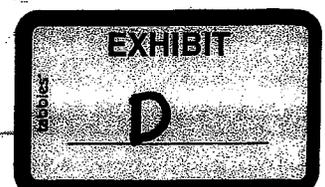
Supervisors:

The Division has been asked to provide an override feature to the Florida Voter Registration System to address situations in which an applicant's Florida driver's license number, identification card number, or social security number could not be automatically validated as part of the registration process prior to an election. This feature would allow a Supervisor of Elections to follow the same verification process used for post election verification. These procedures would apply when a voter responds to a notice that his or her registration is incomplete prior to the election due to the inability to verify the relevant identification number and then provides the Supervisor of Elections with evidence sufficient to verify the number.

Section 97.053(6), P.S., provides a procedure for an applicant who presents himself to vote prior to his driver's license number, identification card number, or social security number being validated. This procedure allows the applicant to vote a provisional ballot and present evidence to the supervisor of elections no later than 5 p.m. of the third day following the election to verify the authenticity of the number provided on the voter registration application. In order for the provisional ballot to be counted, the number on the application must be verified by the end of the canvassing period or the applicant must provide the necessary documentation.

The Division suggests using the same procedures when the Florida driver's license number, Florida identification card number or social security number provided on the application could not be automatically validated, but the applicant is able to present evidence sufficient to verify the authenticity of the number provided on his or her application before presenting himself to vote. Therefore, the Division suggests the following procedures be used in those situations where the Florida Voter Registration System indicates that the identifying number

12/7/2006



provided by the applicant on the voter registration application could not be validated by the Department of Highway Safety and Motor Vehicles or the Social Security Administration, as applicable, but the applicant provides proof of the number prior to election day in response to the notice that the registration could not be completed due to lack of validation.

- 1.A voter registration applicant whose Florida driver's license number, Florida identification card number, or social security number has come back as not validated may provide to the supervisor of elections the current and valid underlying document (or a copy) as evidence to verify the authenticity of the number provided on the application. For example, if a social security number was provided on the application, the applicant must present a social security card.
2. The supervisor of elections should verify that the number shown on the document provided is the same as the number provided on the voter registration application.
3. If the number is the same, the supervisor may activate the override feature in FVRS, process the application, and make the voter active. The supervisor should make and retain a copy of the documentation as part of the voter registration record of the applicant. The applicant may then vote a regular ballot when he presents himself to vote.
4. If the number is not the same, the supervisor may not activate the override feature. The applicant must fill out a new voter registration application with the number on the underlying document included. The new application must then go through the initial FVRS process of validation by the Department of Highway Safety and Motor Vehicles or the Social Security Administration, as applicable. Once the number on the application is validated and verified, the application may be processed and the applicant entered as an active voter. Until such time as the validation and verification process is completed, the applicant will have to vote a provisional ballot if he presents himself to vote.

In the event that you determine that a data entry error has been made by the registration official entering the application into FVRS, either before or after you have notified the applicant that the number provided was not or could not be validated, the error should be corrected by your office and the application should go back through the FVRS process of validation by the Department of Highway Safety and Motor Vehicles or the Social Security Administration, as applicable.

In order for the override feature to work in FVRS, the source field for the driver's license, Florida identification number or social security number must be changed to indicate that you have personally seen the document, the driver's license, identification card number, or social security number must be the same as originally provided to the Department of Highway Safety and Motor Vehicles, and the application must have been presented to the Department of Highway Safety and Motor Vehicles for validation.

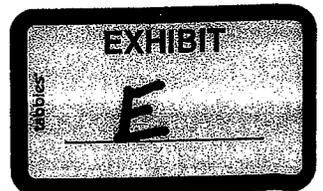
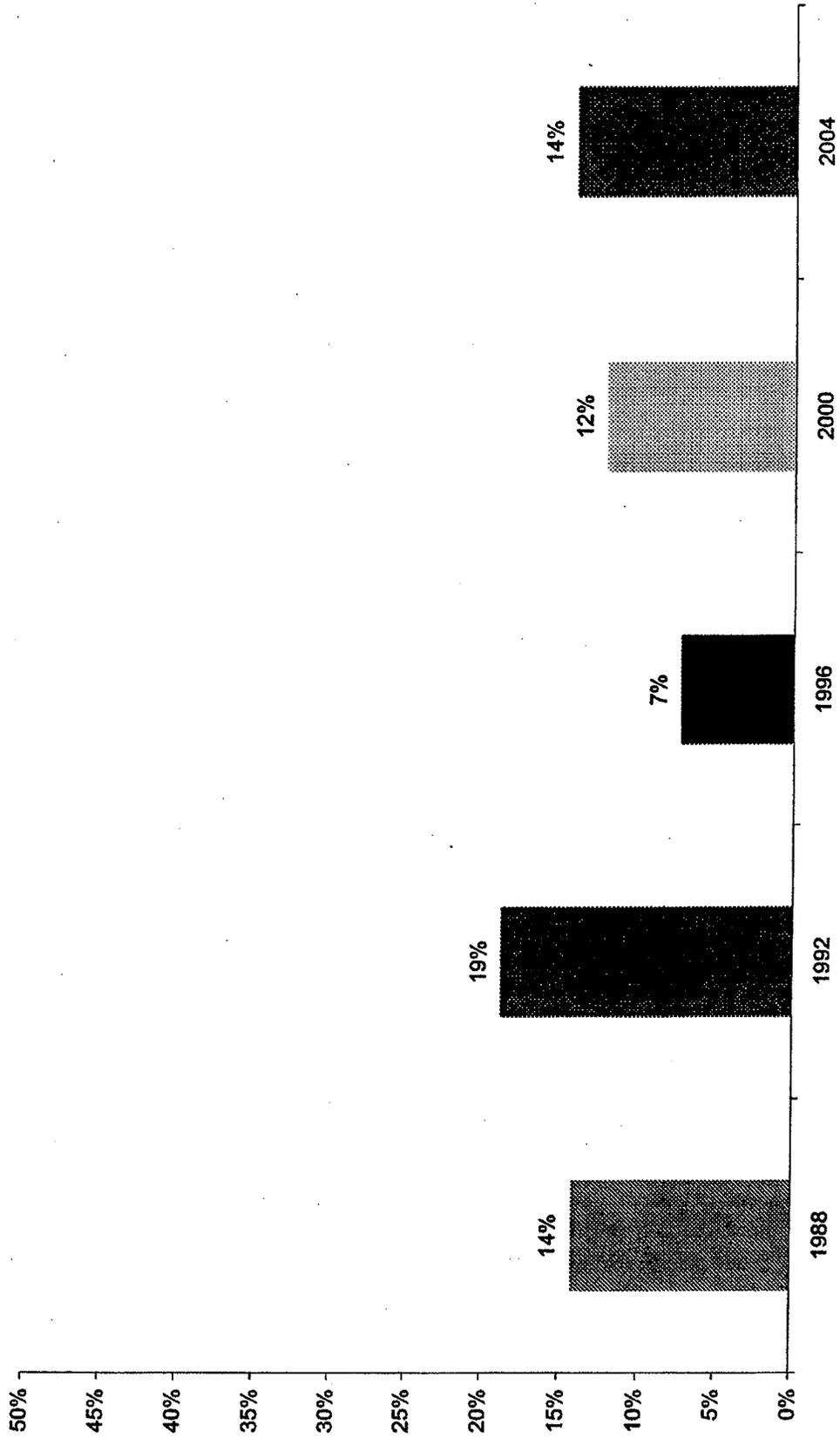
This function will be available in FVRS on Sunday, June 18.

Dawn Kimmel Roberts
Director of the Division of Elections

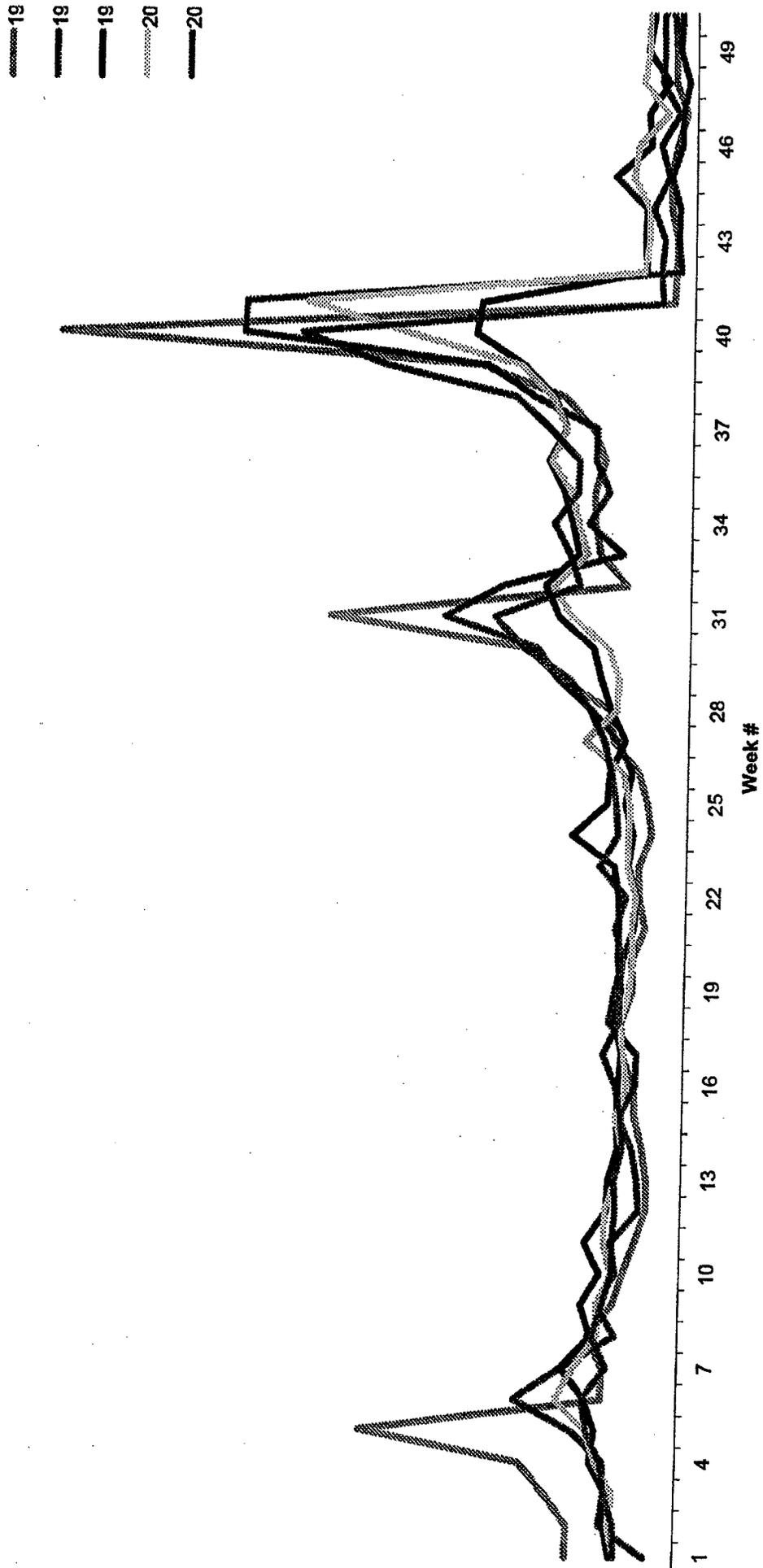
Florida Department of State
(850) 245-6200

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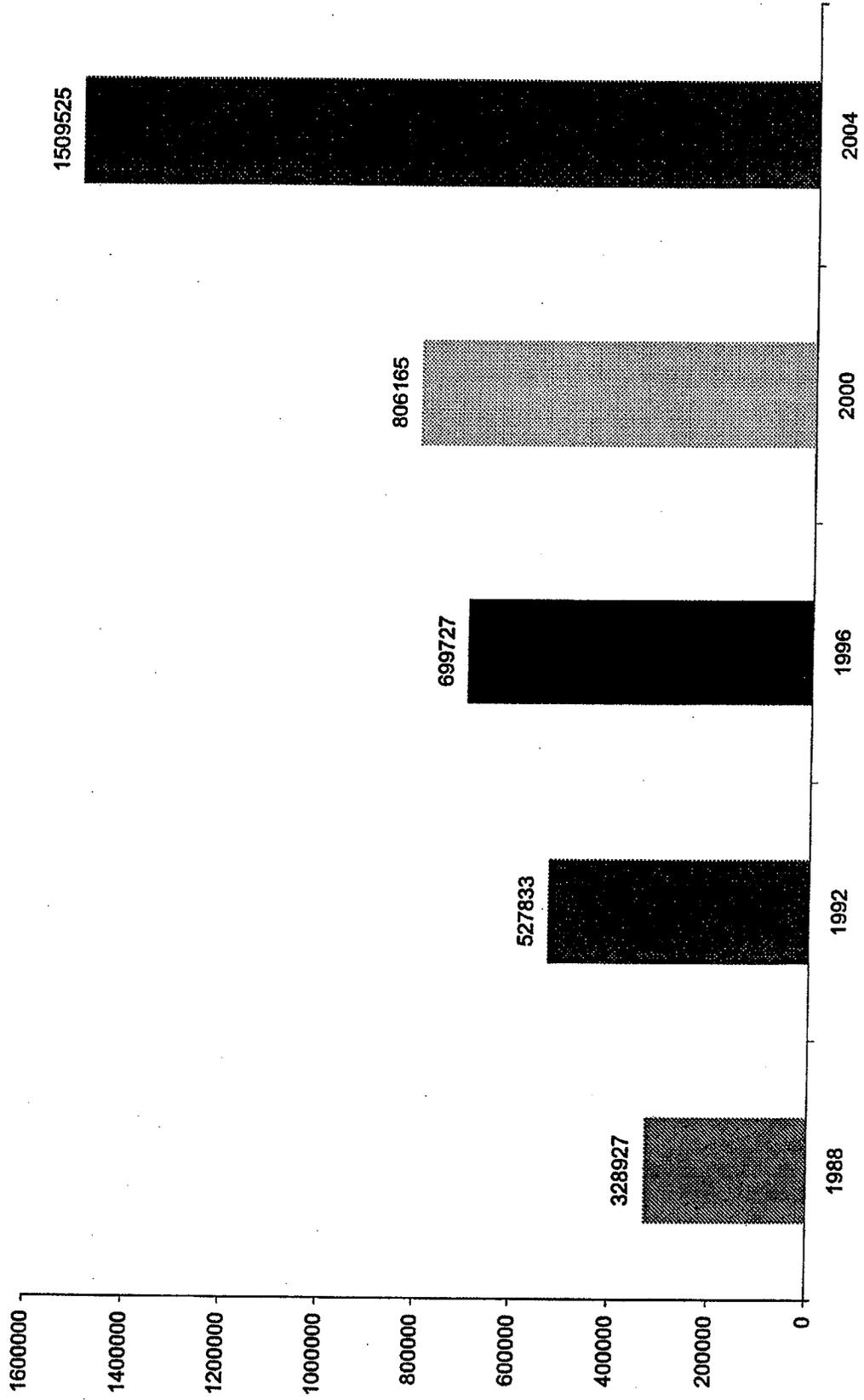
**Percentage of Yearly Registrations in Florida in 7 Days Before and Including Book Closing in
Last 5 Presidential Elections**



Percentage of Yearly Registrations Per Week in Florida in Past 5 Presidential Election Years



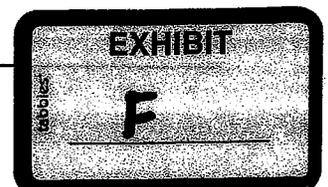
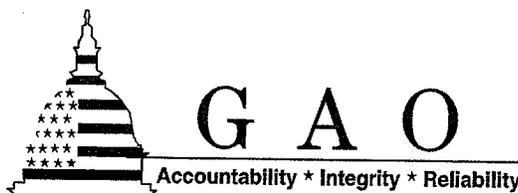
Total Number of New Registrations in Florida in Each of the Last 5 Presidential Election Years



June 2005

ELECTIONS

Additional Data Could Help State and Local Elections Officials Maintain Accurate Voter Registration Lists



GAO
Accountability Integrity Reliability
Highlights

Highlights of GAO-05-478, a report to congressional requesters

Why GAO Did This Study

Reports of ineligible persons registering to vote raised concerns about state processes for verifying voter registration lists. States base voter eligibility generally on the voter's age, U.S. citizenship, mental competence, and felon status. Although states run elections, Congress has authority to affect the administration of elections. The Help America Vote Act of 2002 (HAVA) sets a deadline for states to have a statewide voter registration list and list verification procedures. For this report, GAO selected seven states (AZ, CA, MI, NY, TX, VA, and WI) to represent a range of characteristics relevant to voter registrations, such as whether a statewide voter list existed prior to HAVA. This report discusses how these states verify voter registration eligibility, the challenges they face in maintaining accurate voter lists, the progress toward implementing HAVA registration requirements, and identifies federal data sources that might be used to help verify voter registration eligibility.

What GAO Recommends

To help assure voter lists are accurate, GAO recommends that U.S. Attorneys provide notices of federal felony conviction in a standardized format, and that the Administrative Office of the U.S. Courts study the feasibility of sharing certain citizenship-related U.S. district court juror information with state election officials. Officials at these federal agencies agreed with our recommendations.

www.gao.gov/cgi-bin/gettrpt?GAO-05-478

To view the full product, including the scope and methodology, click on the link above. For more information, contact William O. Jenkins, Jr., at (202) 512-3777 or JenkinsWO@gao.gov.

ELECTIONS

Additional Data Could Help State and Local Elections Officials Maintain Accurate Voter Registration Lists

What GAO Found

The methods used in seven selected states to verify voter eligibility and ensure accuracy of voter registration lists were varied and include relying on registrant self attestation, return mailings, and checking against lists of felony convictions or deceased individuals. Election officials from the selected states described some challenges that may be resolved when HAVA is fully implemented, such as reducing duplicates within the state. Other challenges—identifying duplicate registrations in other states or having insufficient information to match other data sources with voter registration lists—may continue to be issues.

The seven states are in different phases of implementing HAVA statewide voter registration lists and eligibility verification requirements. Arizona implemented its statewide voter list by the January 1, 2004, deadline, and the other six states applied for a January 1, 2006, waiver. Of those six states, Texas, Virginia, and Wisconsin awarded contracts to develop new voter lists that are designed to address HAVA requirements. Michigan has had a statewide list since 1998, and officials believe it is near HAVA compliant. California election officials are still considering how to meet these HAVA requirements, and in New York, legislation was passed in May 2005 to create the state voter registration lists.

Federal data sources have the potential to help state election officials identify registrants who may be convicted felons or non-citizens. While the potential number identified may be small, an election can be decided by a few votes. Regarding felons, U.S. Attorneys are required to notify state election officials of federal felony convictions, but the information was not always easy for election officials to interpret or complete. Federal jury services generally do not now, but might feasibly be able to notify elections officials when potential jurors drawn from local voter registration lists claim to be non-citizens.

Federal Juror Qualification Questionnaire

Source: U.S. District Court, Eastern District of Virginia.

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Abbreviations

AAMVA	American Association of Motor Vehicle Administrators
AOUSC	Administrative Offices of the U.S. Courts
DHS	Department of Homeland Security
DOJ	Department of Justice
DMF	Death Master File
EAC	Election Assistance Commission
FEC	Federal Election Commission
HAVA	Help America Vote Act
HAVV	Help America Vote Verification program
INS	Immigration and Naturalization Service
MVA	motor vehicle agency
NCOA	National Change of Address
NVRA	National Voter Registration Act of 1993
OIG	Office of the Inspector General
QVF	Qualified Voter File
SAVE	Systematic Alien Verification for Entitlements
SSA	Social Security Administration

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United States Government Accountability Office
Washington, DC 20548

June 10, 2005

The Honorable F. James Sensenbrenner
Chairman
Committee on the Judiciary
House of Representatives

The Honorable John N. Hostettler
Chairman
Subcommittee on Immigration, Border
Security and Claims
Committee on the Judiciary
House of Representatives

Reports of ineligible persons registering to vote raised concerns about state election administration and processes for verifying voter registration lists. In managing the voter registration process and maintaining voter registration lists, state and local election officials must balance two goals—(1) minimizing the burden on eligible persons of registering to vote and (2) ensuring that voter lists are accurate, i.e., limited to those eligible to vote and that eligible registered voters are not inadvertently removed from the voter registration lists. This report focuses on the second goal—the efforts of state and local election officials in seven states to ensure that voter registration lists are accurate.

In addition to this report, we also plan to issue reports this year on other specific election issues—voter access to the polls; how the nine states without Help America Vote Act (HAVA) waivers¹ have implemented voter registration requirements as of January 1, 2004; electronic voting security; and the Department of Defense's implementation of the Federal Voting Assistance Program for Overseas Military Personnel in 2004. These reports respond to congressional requests made prior to the November 2004 election. In addition, given concerns raised about the November 2004

¹While HAVA established a deadline of January 1, 2004, for states to have a statewide voter registration list and verification procedures, it also provided that states could request a waiver to extend the deadline to January 1, 2006. Nine states did not request a waiver, 40 states and the District of Columbia did request and receive waivers, and 1 state (North Dakota) is not covered by the HAVA requirement because it does not have a voter registration requirement for individuals voting in federal elections.

election process, we are undertaking a broader, more comprehensive study of election administration and processes related to the November 2004 general election. This more comprehensive study will address activities and challenges—people, processes, and technology—associated with each major stage of election administration to include registration, absentee and early voting; Election Day preparation and activities, and vote counting and certification, similar to a report we issued in October 2001.²

All states set certain eligibility requirements to register and vote. States establish voter eligibility requirements that generally include that the voter is at least 18 years of age on the day of the election, is a citizen of the United States, is mentally competent, and meets state requirements regarding felon status. Ensuring that only eligible persons are registered to vote is an ongoing challenge for election officials and is complicated by factors such as jurisdiction size, mobility of voters, and community diversity. In larger jurisdictions the task of identifying and removing registrants who have died can be substantial. For example according to Centers for Disease Control and Prevention records, almost 300 persons died in the first week of 2005 in the city of Los Angeles. Communities with large student or military populations must manage registrants constantly moving in or out of a jurisdiction, and communities with diverse populations must handle substantial numbers of new citizens and face language challenges in communicating voter registration requirements.

After the events surrounding the November 2000 election, HAVA was enacted.³ It requires states, among other things, to (a) implement an interactive computerized statewide voter registration list; (b) perform regular maintenance by comparing the voter list against state records on felons and deaths; (c) match applicant information on voter registration lists with information in state motor vehicle agency's records; and (d) match voter registration applicant information on voter registration lists with Social Security Administration (SSA) records, as appropriate.

This report addresses current and planned voter registration processes in seven selected states for verifying voter registration lists. Specifically, this report answers the following questions: (1) How do state election officials

²GAO, *Elections: Perspectives on Activities and Challenges across the Nation*, GAO-02-3 (Washington, D.C.: Oct. 15, 2001).

³Pub. L. No. 107-252, 116 Stat. 1666 (2002).

verify voter registration eligibility and ensure voter registration lists are accurate? (2) What challenges do they face in maintaining accurate voter lists? (3) What progress have these states made toward meeting HAVA requirements to have voter registration verification procedures? (4) What federal data sources, other than those identified in HAVA, might be used to help verify voter registration eligibility?

To address the first three objectives, we selected a nonprobability sample of seven states—Arizona, California, Michigan, New York, Texas, Virginia, and Wisconsin to represent a range of voter-registration factors. Our selection includes states in various stages of development of their statewide databases, variations in election administration, a range in the percent of the population of foreign born, and is geographically diverse. We also considered other characteristics that might affect the implementation of HAVA, such as same day registration in Wisconsin, or New York, with a large population who live in New York City who may not have driver's licenses for verification. Our goal was not to target a particular state, but rather to identify a range of issues facing states in implementing HAVA requirements and assuring accurate voter registration lists. In these seven states, we interviewed state election officials and election officials in 14 local voting jurisdictions—two in each of these states. Additional information on our scope and methodology is presented in appendix I.

In these seven states, we also interviewed motor vehicle agency (MVA)⁴ officials because voters can submit voter registration applications at MVA offices, and MVAs have a role under HAVA to assist states with verification of voter registration information. In addition, we reviewed relevant state voting laws, voter registration documents, and reports related to voting processes. We interviewed officials at the SSA and obtained documentation on how they are addressing SSA's HAVA verification requirements. To identify potential federal data sources to verify voter registration, we gathered information from state election and county jury administrators, and from officials at the Department of Homeland Security (DHS), the Department of Justice (DOJ), the Election Assistance Commission (EAC), and the Administrative Offices of the U.S. Courts (AOUSC), and we reviewed relevant reports. We also obtained information on voter fraud allegations from DOJ, from U.S. Attorneys in

⁴States may refer to their motor vehicle agencies by different names. For purposes of this report, we will generically refer to them as "motor vehicle agencies."

our selected states and from state and local election officials and District Attorneys for the local election jurisdictions we visited. See appendix I for additional information on our objectives, scope, and methodology. Our work was done between January 2004 and May 2005 in accordance with generally accepted government auditing standards.

Results in Brief

State and local election officials we interviewed in the seven states said they use a combination of methods and information to verify voter eligibility and ensure the accuracy of voter registration lists. These included using computer programs that only accept registrants of an eligible age and those who live at an address within the jurisdiction, confirmation mailings to registrants, and information from state vital statistics or court officials on persons who are deceased or have been convicted of a felony.

HAVA provisions, when fully implemented, should help address some challenges state election officials face in obtaining timely, accurate, and complete information to identify ineligible voter registrants, but other challenges may remain. Having a statewide voter registration list and matching the list with state vital statistics and felon data, as required by HAVA provisions, could reduce the number of duplicate registrations within a state and provide more timely identification of ineligible registrants. HAVA provisions may not affect other data challenges, such as identifying registration duplications or deceased individuals outside the state, or identifying non-citizens.

Progress to meet HAVA requirements in the seven states we visited varied. One state, Arizona, implemented its statewide voter list by the January 1, 2004, deadline, and the other six states applied for and received a waiver to defer their implementation of these provisions until January 1, 2006. Of those six states, Michigan has a statewide list that has been operational since 1998 and state officials believe they are near compliance with HAVA requirements. Texas, Virginia, and Wisconsin awarded contracts to develop the voter lists intended to encompass HAVA requirements. California and New York are working toward meeting the January 2006 deadline, but California is still evaluating its strategy for creating a statewide database that is HAVA compliant, and legislation approving the creation of New York's state voter registration list was not passed until May 2005. The extent to which states verified applicant information with state motor vehicle agencies and compared voter lists with state records for deaths and felons varied in that some had agreements to verify information and some did not. As of March 2005, six of the states we

visited still needed to sign an agreement with SSA to verify voter registrant information against Social Security records. The seventh state, Virginia, is not subject to this HAVA requirement because it is permitted to require voter registrants to provide their full social security number. This number can be used with SSA's online verification system.

We identified two federal data sources that have the potential to help state and local election officials ensure that their voter lists are accurate. The number of potentially ineligible voter registrants identified by these two federal sources may be small but could be important in determining the outcome of a close election.

First, U.S. Attorneys are, by law, to send notice to state election officials upon conviction of felonies in federal court. State officials, in turn, are to forward it to local election officials in the jurisdiction where the convicted offender resides. The law does not establish a standardized time frame or format for forwarding the federal felony conviction information. Of the 19 U.S. Attorneys' offices covering the seven states we visited, 16 reported that the notices were being sent to election officials but not in a standardized format and 3 reported that they were implementing or modifying their processes to provide this information on felony convictions in U.S. district courts. According to state and local election officials with whom we spoke in the seven states, federal felony information was not always provided in a standard format or timely, and the information was sometimes difficult to interpret, such as the length of the sentence, or incomplete.

Second, federal jury administrator questionnaires identify individuals who claim to be non-citizens when asked to serve as a juror in federal district court.⁵ The federal district courts are not required to provide election officials with this information, but 1 of the 14 federal district courts we surveyed does so. One source that the federal district courts use to draw the potential jurors' names is local voter registration lists that should only contain names of citizens. Federal jury administrators were mixed in their opinions on the feasibility of providing this information, some citing staff resource constraints.

⁵Potential jurors for a U.S. district court are chosen by federal jury administrators in each of the 94 district courts from a jury pool generated by random selection of citizens' names from lists of registered voters, or combined lists of voters and people with drivers' licenses, in the judicial districts. The potential jurors complete questionnaires to help determine whether they are qualified to serve on a jury. U.S. citizenship is a qualification to be a juror.

To assist state election officials in maintaining accurate voter registration lists, we are recommending that U.S. Attorneys provide information on felony convictions in U.S. district courts in a more standardized format to make it easier for election officials to interpret the conviction information, such as the length of the sentence, and help ensure that information is complete and timely. We also recommend that the Administrative Office of the U.S. Courts⁶ study the feasibility of sharing certain citizenship-related U.S. district court juror information with state election officials.

We provided a draft of this report to DOJ and AOUSC for review and comment. In their responses, officials at both DOJ and AOUSC acknowledged the importance of maintaining accurate voter registration lists, and agreed with our report recommendations. Sections of the report were also provided to other federal agencies and states we visited to confirm the accuracy of the information. Clarifications and specific technical comments on the draft were incorporated as appropriate into the final report.

Background

The constitutional framework for elections contemplates both state and federal roles. States are responsible for the administration of both their own elections and federal elections. States regulate various aspects of the elections process, including, for example, ballot access, registration procedures, absentee voting requirements, establishment of polling places, provision of election day workers, and counting and certifying the vote. The states in turn incur the costs associated with these activities. Although the states are responsible for running elections, Congress has authority to affect the administration of elections. Congress' authority to regulate elections depends upon the type of election. With regard to federal elections, Congress has constitutional authority over both congressional and presidential elections. In addition, with respect to federal, state, and local elections, a number of constitutional amendments authorize Congress to enforce prohibitions against specific discriminatory acts.

Congress has passed legislation regarding the administration of elections, both for federal elections and in certain cases at the state level. Most recently HAVA was enacted in 2002. HAVA established, among other

⁶The AOUSC is the administrative arm of the federal judiciary. The agency provides service to the federal courts in three essential areas: administrative support, program management, and policy development.

things: (1) a program to provide funds to states to replace punch card or lever voting systems used in federal elections, (2) the EAC to assist in the administration of federal elections and to otherwise provide assistance with the administration of certain federal election laws and programs, and (3) certain minimum election administration standards for states and units of local government with responsibility for the administration of federal elections. The act fixed enforcement authority on the Attorney General to bring a civil action against any state or jurisdiction as may be necessary to carry out the specified uniform and nondiscriminatory election technology and administration requirements under HAVA.⁷

Regarding the administration of elections, HAVA created federal mandates, staggered deadlines for implementing these mandates, and authorized about \$3.86 billion over several fiscal years in election reform appropriations. HAVA required that states create plans detailing how they will meet the requirements and guidelines of the act. Among the requirements, section 303 mandated a computerized statewide voter registration list to serve as the official voter registration list for conducting elections for federal office in each state. States and territories were to implement a computerized statewide voter registration database by January 1, 2004. States could apply to the EAC by January 1, 2004, for a waiver of the effective date until January 1, 2006. Nine states and one territory—Alaska, Arizona, Georgia, Hawaii, Kentucky, Minnesota, South Carolina, South Dakota, West Virginia, and Guam—did not apply for a waiver.

Section 303 also requires states to perform list maintenance on a regular basis by removing ineligible voters from the voter registration list. States are to coordinate the computerized list with state agency records on felony status and death. In addition, states are required to verify voter registration information. For federal elections, a voter registration application may not be processed or accepted by a state unless it contains the applicant's driver's license number, the last 4 digits of the social security number if there is no driver's license number, or the state must create a unique identification number if the voter has neither number. Certain state laws allow voter registration applications to require the

⁷These sections relate to voting system standards (section 301), provisional voting and voting information requirements (section 302), computerized statewide voter registration list requirements, and requirements for voters who register by mail (section 303).

applicant to provide their full social security numbers on applications.⁸ Voter registration information is to be matched with motor vehicle records or social security records, depending on the information provided by the applicant. The state motor vehicle authority must enter into an agreement with SSA to verify the applicant information when the last 4 digits of the social security number are provided rather than a driver's license or state identification number. SSA must develop methods to verify the accuracy of information provided and whether the name, date of birth, and the last 4 digits of a social security number match SSA records, including whether the individual is deceased.

HAVA is not the first federal legislation affecting the administration of elections. The National Voter Registration Act of 1993 (NVRA),⁹ for example, was enacted to establish registration procedures designed to "increase the number of eligible citizens who register to vote in elections for Federal office...", "protect the integrity of the electoral process..." and "ensure that accurate and current voter registration lists are maintained." NVRA contains provisions regarding what information is sought on the voter registration application for federal elections. To enable state election officials to assess the eligibility of the applicant and to administer voter registration and other parts of the election process, the act requires that the voter registration application include a statement about each eligibility requirement to be able to vote, specifically including citizenship. It further requires an attestation that the applicant meets each such requirement to vote and requires the signature of the applicant under penalty of perjury.

In addition, NVRA created requirements for how states maintain voter registration lists for federal elections. The act requires states to keep such voter registration lists accurate and current, such as identifying persons who have become ineligible due to death or change of residence to outside the jurisdiction. At the same time, the act requires list maintenance programs to incorporate specific safeguards, for example, that they be uniform, non-discriminatory, and in compliance with the Voting Rights Act. The removal of registrants for non-voting or for having moved can

⁸Seven states—Georgia, Hawaii, Kentucky, New Mexico, South Carolina, Tennessee, and Virginia—require full social security numbers on applications for voter registration. HAVA provides that for states using full social security numbers on applications in accordance with section 7 of the Privacy Act of 1974, the HAVA voter registration verification requirements are optional.

⁹Pub. L. No. 103-31, 107 Stat. 77 (1993).

only be done after meeting certain requirements provided in the act. The act also allows for removal of registrants from registration lists at their own request, when a registrant has been convicted of a disqualifying crime, or by reason of mental incapacity where such removals are allowed by state law.

Voter registration qualifications based on age, citizenship, criminal status, mental competence, and residence were established in all seven states we reviewed, except for Michigan, which does not have a mental competency requirement. Table 1 summarizes the eligibility qualifications in the selected states.

Table 1: Seven States' Voter Registration Eligibility Qualifications

	Age	Citizenship	Felon status^a	Mental competence	Reside in election jurisdiction
AZ	At least 18 years old on or before the next general election	U.S. citizen	Felony conviction will generally prohibit a person from being eligible to register or trigger the cancellation of the felon's pre-existing registration. 1 st time felons otherwise eligible may reregister when discharged, or probation is complete. With more than 1 felony conviction after an absolute discharge, a felon must have a judge reinstate voting rights.	Not be currently declared an incapacitated person by a court of law	State resident in county at least 29 days before election
CA	At least 18 years of age at the time of the next election	U.S. citizen	A person in prison or on parole for the conviction of a felony is not entitled to register and cancellation of the felon's pre-existing registration will be triggered. Once the sentence is complete, including parole, a felon who is otherwise eligible may reregister. Voting rights may also be restored by the governor.	Not currently judged mentally incompetent by a court of law	California resident and registered at least 15 days prior to an election
MI	* At least 18 years old by the next election	U.S. citizen	Persons confined in jail after conviction and sentencing are not eligible to register or vote. Prior to trial or conviction and sentence, persons confined in jail may register at their prior address. Upon release, person who is otherwise eligible may register or reregister. ^b	Not a state eligibility disqualification	Michigan resident and at least a 30-day resident of the city or township, by election day
NY	At least 18 years old by the date of the election	U.S. citizen	Felony conviction will generally prohibit a person from being eligible to register or trigger the cancellation of a pre-existing registration. Felons who are otherwise eligible may register or reregister after a pardon or restoration of rights by the governor of the state where such conviction took place (or the President for federal felony conviction), completing the maximum sentence of imprisonment, or when they are discharged from parole.	Not currently judged incompetent by order of a court of competent judicial authority	A resident of the state and of the county, city, or village for at least 30 days before an election

	Age	Citizenship	Felon status ^a	Mental competence	Reside in election jurisdiction
TX	At least 17 years and 10 months old to register and must be 18 to vote	U.S. citizen	Felony conviction will generally prohibit a person from being eligible to register or trigger the cancellation of a pre-existing registration. Felons who are otherwise eligible may reregister when their sentence has been fully discharged or have been pardoned or otherwise released from the resulting disability to vote.	Have not been declared incompetent by final judgment of a court of law	Be a resident of the county in which the application for registration is made
VA	At least 18 years old by the next general election	U.S. citizen	Felony conviction will generally prohibit a person from being eligible to register or trigger the cancellation of a pre-existing registration. Felons who are otherwise eligible may qualify to register or reregister if their civil rights have been restored by the governor or other appropriate authority.	Not currently declared mentally incompetent by a court of law	A resident of VA and of the precinct in which he/she wants to vote and registered no later than 29 days before the general election
WI	At least 18 years old	U.S. citizen	Persons convicted of a felony are disqualified from voting. Voting rights are restored upon completion of the term of imprisonment, probation, or parole, or through a pardon.	Not have been found by a court to be incapable of understanding the objective of the electoral process	A resident in an election district or ward of the state for at least 10 days before an election

Source: GAO summary of information verified by states.

^aThis table may not reflect the full range of possible measures available under state law. Other measures, such as reversals, set-asides, or pardons may be available under specific state laws to restore civil rights for convicted felons. In addition, this table does not reflect other non-felony convictions, such as bribery, that may serve to disenfranchise an individual under state laws.

^bThis provision of Michigan law applies not just to convicted felons who are confined in a jail but to all persons who are confined in a jail as a result of non-felony offenses for which they have been convicted and sentenced.

Registering more than once is explicitly addressed in some state laws. For example, under Virginia law, the intentional registration to vote at more than one residence address at the same time, whether such registrations are within Virginia or in Virginia and any other state or U.S. territory, is prohibited.¹⁰ In New York, it is illegal to register or attempt to register as an elector in more than one election district for the same election, or more than once in the same election district.¹¹ While federal law does not explicitly prohibit being registered to vote more than once, such as in more than one state, various federal laws could apply to certain types of

¹⁰Va. Code Ann. § 24.2-1004.

¹¹NY CLS Elec. § 17-104.

wrongful activities that might result in such multiple registrations related to a federal election. For example, knowingly or willfully providing false information (e.g., name, address, or period of residence) to establish eligibility to register to vote with respect to a federal election is prohibited.¹²

Voters are not now required to register in all jurisdictions in Wisconsin. Currently, only municipalities with a population of 5,000 or more are required to register voters.¹³ About 75 percent of the voting age population lives in the municipalities that have some form of voter registration. Voters may also register in Wisconsin on Election Day at the polling place. Under “same-day registration” potential voters are required to complete a registration form that includes a certification as to their eligibility¹⁴, and present an acceptable proof of residency. The municipal clerk for a jurisdiction is responsible for verifying that each person allowed to vote was properly registered, and sends a postcard confirming registration to the person, or a 1st class letter if the registration cannot be confirmed. If the letter is undelivered or an improper address was provided, municipal clerks are to notify the district attorney.¹⁵ In jurisdictions without registration, the voting officials enter the full name and address of voters on a poll list in the order they voted.

¹²42 U.S.C. § 1973i(c).

¹³Changes made in 2003 to Wisconsin’s election laws will require voter registration in every municipality, regardless of size. This registration requirement first applies to the 2006 spring primary election.

¹⁴Wisconsin has voters self-certify as follows: “I (name) hereby certify that to the best of my knowledge, I am a qualified elector, having resided at (address) for at least 10 days immediately preceding this election, and that I am not disqualified on any grounds from voting, and I have not voted, at this election.” In addition to Wisconsin, Idaho, Maine, Minnesota, New Hampshire, and Wyoming allow same day registration.

¹⁵The Wisconsin Joint Legislative Audit Committee has an ongoing audit of voter address verifications based on allegations of inappropriate election procedures in Milwaukee to verify same day voter registration eligibility in the November 2004 election. According to Joint Legislative Audit Committee official, the report is due for completion by the fall of 2005.

States Have Taken Steps to Verify Voter Registration Eligibility, but Methods Vary by State

State and local election officials in the seven states we reviewed reported that specific steps are taken to verify eligibility when an applicant applies to register and that voter registration lists are also reviewed periodically to identify registrants who may no longer be eligible, such as those who have moved, have been convicted of a felony, or are deceased. Officials in the seven states use a combination of methods, including computer programming, return mailings, and information from state vital statistics to identify registrants who should be removed from voter rolls.

Self-attestation is included in every voter registration application in the seven states we visited but varies by the terms used and format of the attestation. All voter registration application forms in the seven states we visited asked applicants to certify with their signature that the information provided is correct and true. The forms ask the applicant to attest to their age, citizenship, and residency. The format asking for additional information varied in the seven states.

Verification of age

To determine eligibility based on age, all states we reviewed, except Texas, required applicants to declare, swear, affirm, or attest on the voter registration application that they meet state age requirements. In addition, officials in Arizona, Texas, Virginia, and New York City said that their voter registration computer system is programmed to calculate the age of the applicant, based on the date of birth the registrant provides, and reject applications of individuals who will be younger than 18 years of age on the day of the next election. Michigan's computer system accepts registrations from voters who are at least 17-½ years of age; however, the names will not appear on a precinct list until the voter has reached the age of 18. In addition, Arizona and Michigan election officials match their voter registration applications against the state motor vehicle agency's records to verify the information.

California's MVA procedure manual instructs clerks to "flag" voter registration applications for election officials if they have concerns about a voter registration applicant's age. According to the MVA manual, if the birth date on the voter registration form does not agree with the birth date on documentation, clerks are to note "BD" on the voter registration form so election officials will know to verify the birth date. However, neither of the local election officials we spoke with in this state recalled having an application flagged by the MVA for closer review of an applicant's age. None of the officials in other states (excluding Wisconsin, which is not currently subject to the NVRA requirement to register voters at motor vehicle agencies because of certain NVRA exemption provisions for states

allowing voters to register on Election Day) reported having a policy for motor vehicle agency clerks to share eligibility concerns.

Verification of citizenship

All election officials we spoke with told us that non-citizens are not permitted to vote in elections, including non-federal elections.¹⁶ Citizenship eligibility was based on applicant self-attestation in all seven states, with application blocks that must be checked by the applicant specifically affirming U.S. citizenship. Five of the states require applicants to swear, affirm, or attest that they are U.S. citizens in addition to checking the block. In Texas applicants affirmed that they understood giving false information is perjury and a crime under state and federal law. In Wisconsin, applicants are to certify that they meet all the voter registration requirements, and, according to Wisconsin state law, the municipal clerk or board of election commissioners may require naturalized applicants to show their naturalization certificates. New York State election officials said that their state law entitles any voter to challenge a person's right to vote if they think that voter is not a citizen.

As with age, California's MVA procedure manual instructs clerks to "flag" voter registration applications if citizenship status is in question by writing "US" on the corner of the form. According to the manual, when immigration documents provided to a MVA staff do not confirm citizenship, the staff is to remind the customer of the voter registration eligibility requirements. If the customer still desires to submit a voter registration application, the staff places the notation on the form. No other state that we visited has this provision. Many of the motor vehicle officials we spoke with stated a view that it was up to state election officials to determine a registrant's eligibility to vote, not the motor vehicle agency, and that all applications are forwarded to election officials.

In Arizona, a ballot initiative passed in November 2004 that will require proof of citizenship to register to vote (and identification upon voting). The registration requirement does not apply to those who are currently registered, or when a registrant changes their registration address within a single county. Arizona's Secretary of State, as of March 4, 2005, was determining which forms of identification will be acceptable as proof.

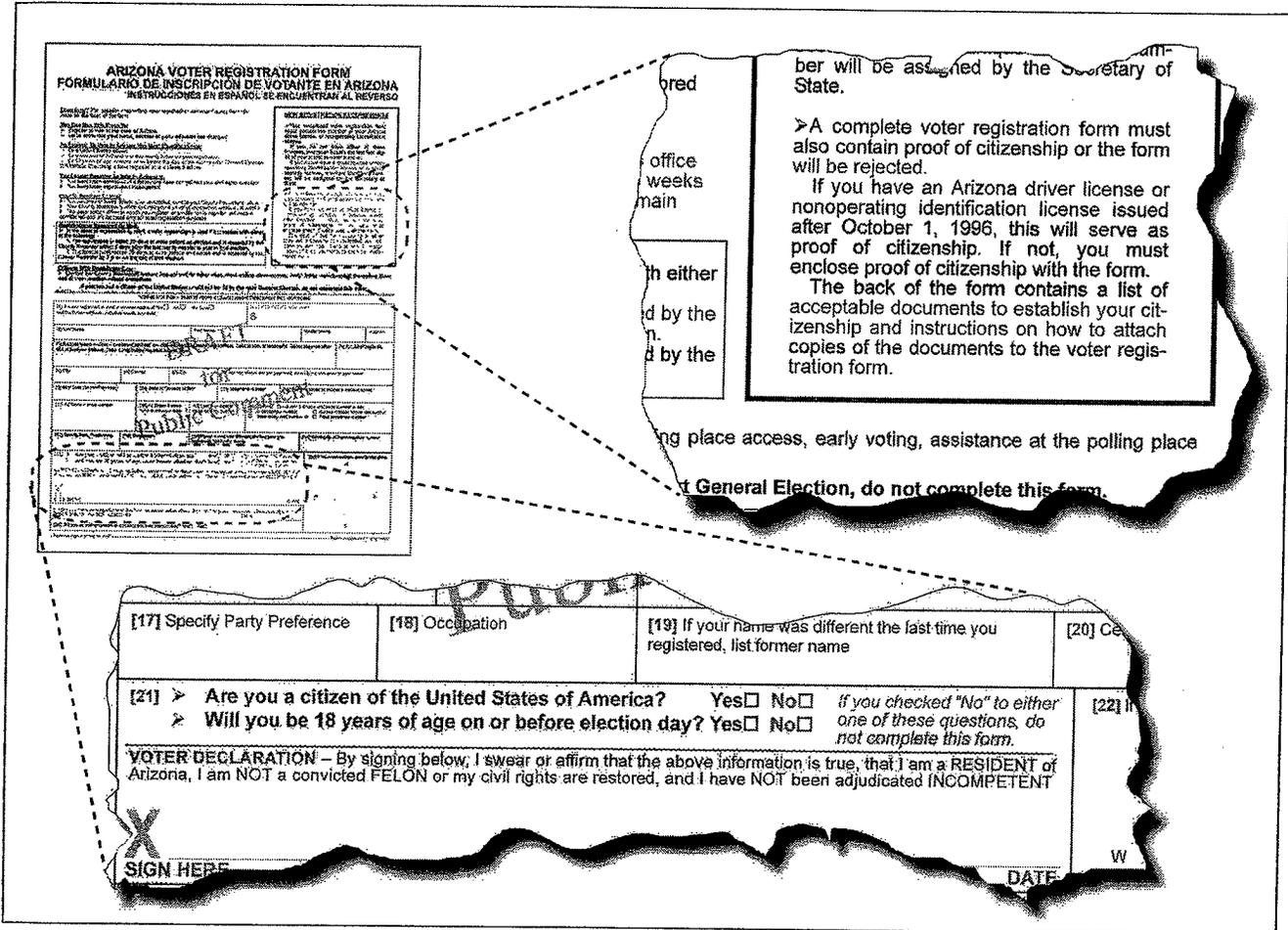
¹⁶New York state election officials said that until 2003, when the administration of school elections was transferred to the New York City Department of Education, non-citizens with a student in a New York City school were allowed to vote in school board elections.

According to Arizona draft procedures released for public comment, acceptable identification included

- a copy of a birth certificate that verifies citizenship,
- a copy of pertinent passport pages of a U.S. passport,
- a copy of naturalization documents,
- selected Bureau of Indian affairs documents, and
- Arizona driver's license or non operating license issued after October 1, 1996, or the equivalent government document from another state if the agency indicates on the applicant's driver license or nonoperating license that the person has provided satisfactory proof of U.S. citizenship.

Figure 1 shows sections of the draft proposed application requiring citizenship information that was made available for public comment. According to local election officials in one Arizona jurisdiction, mail applications will not be processed without citizenship documentation. The applicants will be sent a letter asking for documentation, and the letter will include a list of documents that are acceptable as proof of citizenship.

Figure 1: Arizona Draft Voter Registration Application Requiring Proof of Citizenship



Source: Arizona Secretary of State website (www.azsos.gov) for public comment.

Some local election jurisdictions receive information from county jury administrators to help identify potential non-citizens on voter registration lists. County jury pools are drawn from a variety of sources, which may include voter registration lists. In five of the states we visited, county jury administrators use voter registration lists, and potential jurors are asked to indicate citizenship status on jury service screening questionnaires. In 4 of the 10 local jurisdictions in those five states, election officials said they receive notification from county jury administrators when a potential juror claimed to be a non-citizen as a justification for being excused from jury

duty. None of the local election officials said that they receive notifications from federal jury administrators.

In addition to the state or local election jurisdiction efforts to help ensure registrants are eligible based on citizenship, Federal Election Commission (FEC)¹⁷ officials noted that some federal measures have been adopted to discourage non-citizens from registering to vote. Measures include:

- possible deportation, under immigration laws, for knowingly making a false statement about citizenship status to register;
- the NVRA requirement that applications list eligibility requirements (including citizenship);
- the prohibition in federal law on governmental use of a voter registration card for a federal election as proof of U.S. citizenship; and
- the HAVA requirement that a statement identifying eligibility requirements, including citizenship, be included on voter registration applications.

Nevertheless, the FEC officials noted that non-citizens may be encouraged to register to vote because the I-9 form used to provide proof of employment eligibility and its implementing regulations¹⁸ includes, among other documents, the voter registration card as an acceptable document for employment identity purposes.

Verification of criminal status

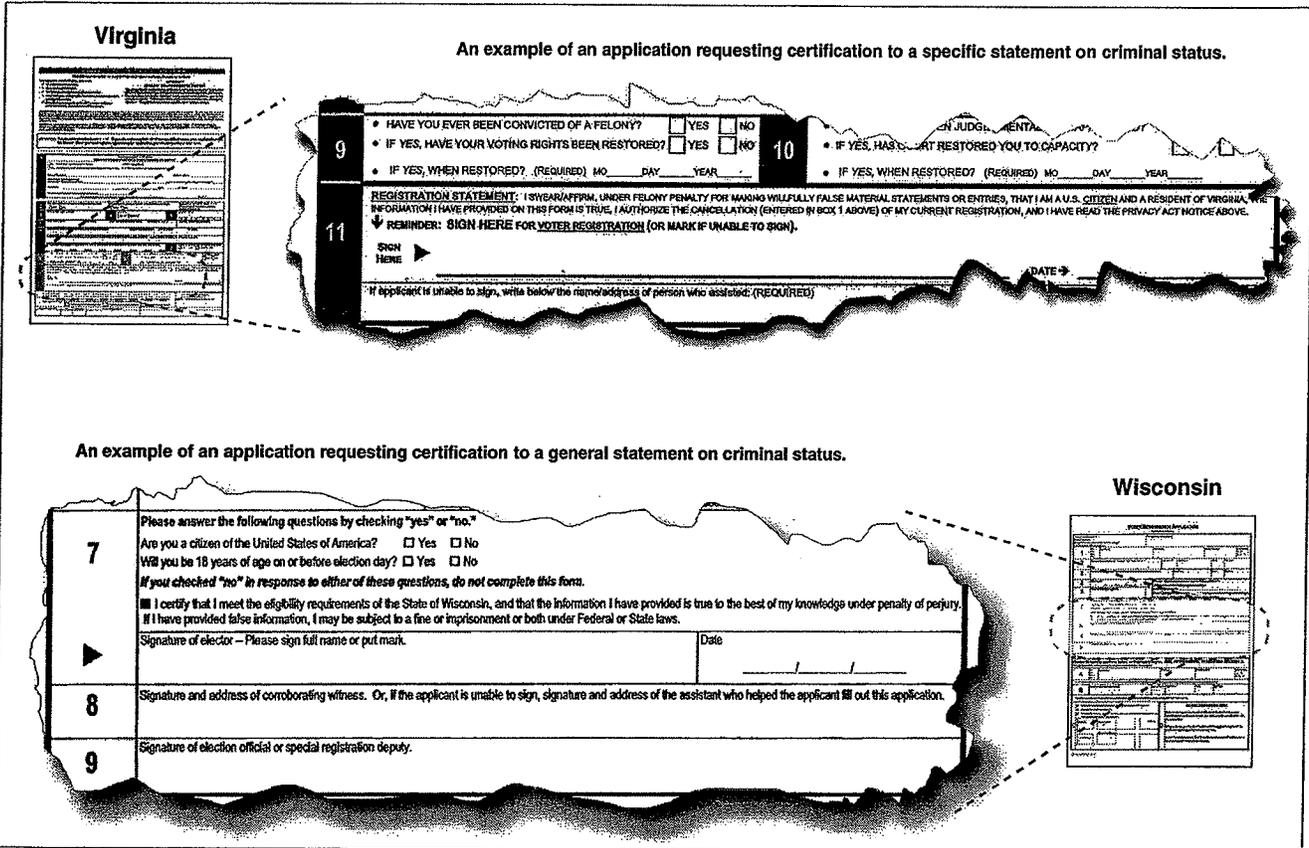
In six of the seven states we visited, the eligibility of applicants, in terms of criminal status, was based on the self-certification signed by registration applicants. In Arizona, Texas, and Virginia, the application includes language specifically certifying eligibility based on criminal status. In New York and Wisconsin, applicants certify to a general statement that they meet all the requirements to register for their state, which includes a restriction based on criminal status. California uses both specific and general attestations. Michigan applicants do not attest to their criminal status, but voting is prohibited only for those serving time in prison or jail.

¹⁷Prior to HAVA, the FEC's Office of Election Administration was the federal focal point for election administration issues. This office was transferred to the EAC as part of HAVA.

¹⁸8 C.F.R. § 274a.2-Verification of Employment Eligibility.

According to election officials, they do not accept voter registrations or absentee ballots from prison addresses. Examples of the at testation language used on voter registration applications are presented in figure 2.

Figure 2: Virginia and Wisconsin Voter Registration Attestations Regarding Criminal Status



Source: Voter registration forms provided by Virginia and Wisconsin election officials.

Officials in Arizona, California, New York, Texas, and Virginia said they receive state court information on felony convictions to remove voter registrants no longer eligible to vote based on a criminal conviction. Court information on felons in these states was provided to election officials in different formats and at different intervals. The data came in either paper or electronic format depending on the location. State election officials in two states said that the format varied by county within their states. Election officials in the five states reported receiving information at different intervals, such as weekly, monthly, intermittently, or biannually.

State election officials in six of the seven states and 9 of the 14 local election officials said that they received information on federal felony

convictions. Most election officials said the information was received on a sporadic or intermittent basis, in a paper format.

Michigan election officials do not receive information from state courts on felony convictions. Officials there told us that state felony conviction information was not needed because they only restrict the right to vote while the person is incarcerated. Local election officials in Wisconsin said they do not receive state felony conviction information. The Wisconsin state election official said that felon records are diffused and difficult to compare with voter lists. Wisconsin plans to create a statewide database that will consolidate criminal records from 17 different correctional databases, the state election official said. However, the system will not be available by the January 1, 2006, HAVA deadline, according to the state election official.

The laws in five of the states we visited (California, New York, Texas, Wisconsin, and Arizona), for first-time felony convictions, allow felons to gain eligibility to vote when a felony sentence is completed—which can include time on probation, parole, payment of fines, or supervision related to the conviction. States do not require proof that the non-incarcerated segments of a sentence be completed, according to all of the officials we spoke with and state regulations we reviewed in those states.

Verification of mental competence

Six of the seven states we visited have a state law that disqualifies persons legally declared to be mentally incompetent or incapacitated from registering to vote and cancels the voter's registration upon such adjudication. Michigan's constitution has provided that the legislature may, by law, exclude persons from voting because of mental incompetence, but no such law has been enacted. Wisconsin limits disqualifications based on mental incompetence to those where a court specifically determines that the registrant is incapable of understanding the objective of the electoral process. State and local election officials in Arizona, California, New York, Texas, and Virginia reported that courts notify registrars periodically when adjudications on mental incompetence are made. Two rural jurisdictions reported that family members or caretakers sometimes notify the registrar of mental competency adjudications. In one Texas jurisdiction, the election official said that the court sends a notice to the county elections office, which in turn sends a letter to the voter confirming the voter's removal from the registration list.

Verification of residency

Officials we spoke with in the seven states said that in addition to initially checking that an applicant resides in the jurisdiction (either by using an automated address file or manually checking), they also use a variety of sources to periodically verify their voter lists for registrants who may have moved. The National Change of Address (NCOA) list¹⁹ is used by Virginia state officials on a yearly basis and used in at least one of the local election jurisdictions we visited in Arizona, California, New York, and Virginia. How often the national list was checked varied, but of the eight jurisdictions using this source, five said they checked on an annual basis. Twice a year, New York county election officials send their voter lists to state officials for comparison with the NCOA list, according to a state election official. Election officials in every state said returned mail was used, either at the state or local election level—some on a daily basis, others intermittently, annually, or before a major election. Ensuring that registrants live in an election jurisdiction is generally a task for local election officials but can be part of a statewide system, as in Michigan, where the voter registration system electronically assigns the voter's jurisdiction based on the address provided by the registrant. Residency is further verified by the mailing of a non-forwardable voter identification card to each new registrant in Michigan.²⁰

Identification of duplicate registrations

For duplicate registrations, election officials said that existing voter lists are checked by election officials before adding a new registrant or are checked periodically. In the case of Arizona, Michigan, and Virginia, the statewide voter registration system enables jurisdictions to identify duplicates statewide. California and Texas state election officials said they compare local jurisdiction records and will notify local officials of potential duplicates. New York and Wisconsin primarily check for duplicates within the election jurisdiction. Some officials also reported periodically checking against other data sources, noted below. Officials reported using varying combinations of name, address, and other identifying information collected on the application to identify existing registrations, such as social security number in Virginia. In Michigan,

¹⁹The U.S. Post Office National Change of Address list is compiled from change of address forms filed by individuals who have moved and want their mail forwarded to their new address.

²⁰In Michigan, the address for a state identification card or license and voter registration must be the same. These files are linked to automatically update each file of the addresses changes.

election officials demonstrated how the states voter registration file has computer software with a search capability to identify similar names as potential duplicates. These similar names are researched manually to determine whether they are actually duplicates.

The data sources state and local election officials reported checking to identify duplications and ensure that registrants reside in the election district varied in terms of what information was used, and the frequency of use. Sources included

- National Change of Address List,
- return mailings of non-deliverable mail,
- individuals reporting an address change,
- notice from other election jurisdictions or state election officials of a change, and
- a check against state MVA records.

Identification of deceased registrants

State vital statistics offices in six of the seven states reported that they provide data periodically—from weekly to quarterly—to election officials to identify registrants who have died. In addition to state vital statistics, state and local officials said they use various sources of data to identify deceased voter registrants on their registration lists. Data sources included

- county Vital Statistics Office records,
- newspaper obituaries, and
- miscellaneous sources, such as family members, city vital statistics offices, funeral homes, the U. S. Postal Service, probate courts, and MVAs.

Wisconsin local and state election officials said that state vital statistics are not currently used to identify deceased registrants. Local election officials said they review obituaries to identify deceased persons.

Election Officials Identified Challenges to Verify Voter Registration Eligibility

Ensuring that voter lists are accurate is a task that has challenged election officials across the country for some time and was also a concern of election officials in the seven states we visited. Officials in one jurisdiction characterized voter registration lists as dynamic and constantly changing. In larger jurisdictions the task of identifying and removing registrants who died can be substantial; for example, according to Center for Disease Controls and Prevention records, almost 300 persons died in the first week of 2005 in the city of Los Angeles. If verification information is available to

officials at all, then quality considerations become a factor, such as the timeliness, accuracy, and completeness of the data. Some challenges faced by election officials, particularly identifying duplicates in other jurisdictions within the state, may be reduced with the implementation of the HAVA-required statewide, computerized voter registration lists; but the data availability and quality considerations may continue to be issues.

FEC reports have documented problems in maintaining accurate voter registration lists. The reports are mandated by Congress to document the impact of NVRA provisions, including provisions to ensure that voter lists are accurate by removing those who are no longer eligible.²¹ The number of states identifying problems has diminished since the NVRA was first implemented. The FEC reported in 1998 that officials in 26 states reported problems including duplicate registrations, inaccurate information for matching, and the difficulty of removing names without confirmation.²² The number of states identifying voter list maintenance challenges to FEC dropped from 26 in 1998 to 6 states in the 2001-2002 report, with the most commonly reported change being that states implemented or enhanced their computerized voter registration lists.

Some of the concerns highlighted below remain problems for election officials and may not be addressed by a statewide voter list. Based on a national survey of local election officials, we reported in 2001²³ on the challenge of continually updating and deleting information from voter registration lists, and the concerns of election officials in obtaining accurate and timely information to keep voter lists accurate.

Voter registration list maintenance challenges that were identified by officials in the seven states we visited, and in the prior reports are described below.

²¹Section 9 of the NVRA requires the FEC to report to Congress by June 30 of each odd-numbered year. *A Report to the 108th Congress: The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 2001-2002*, is the most recent report. HAVA transferred responsibility for the report to the EAC.

²²NVRA covers 44 states and the District of Columbia, according to DOJ. In the 1998 FEC survey, 43 of the 45 responded. The report was silent regarding whether similar issues existed beyond the 26 states' reporting problems.

²³GAO, *Elections: Perspectives on Activities and Challenges across the Nation*, GAO-02-3 (Washington, D.C.: Oct. 15, 2001).

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- *Deceased Persons:* The timeliness of death data was a concern identified by state level election officials in all but Wisconsin and Arizona and by local election officials in three of the jurisdictions we visited.²⁴ Concerns echoed many of the same issues raised in earlier reports. For example, Texas officials said that the health data they receive identifying deaths is about 3 to 4 months old, resulting in some deceased voters remaining on the voter registration list possibly through an election period. Another concern raised by a local Michigan official was the lack of birth dates on some state death records, resulting in difficulty identifying which voter of several with the same name actually passed away. Identifying deaths occurring outside of the state was a problem raised by election officials at the state and local levels in New York, and by local officials in one Arizona jurisdiction. Local New York officials said that when residents spend part of the year in other parts of the country and pass away there, they may not get a record of death in a timely manner. The 1998 FEC report highlighted this as an issue, noting the problem of identifying residents who die outside of the state or local jurisdiction because they may not be identified in vital statistics reports they receive.²⁵
 - *Citizenship:* The concern for election officials we spoke with regarding a registrant's eligibility based on citizenship was the reliance on self-attestation. As stated by the FEC, the challenge for states is to develop procedures that maintain the integrity of the election process without penalizing the majority of applicants, who are law abiding citizens.²⁶ Two types of standard sources of identification, such as a driver's license, state identification or social security numbers are not useful because neither are evidence of citizenship. Other sources, such as a passport or birth certificate more clearly indicate citizenship. However, these sources may not be available, or conveniently at hand for all who would like to register to vote, according to a review by election officials in Philadelphia.²⁷

²⁴Officials were asked in general terms about data considerations. We did not determine if the same issues existed in other jurisdictions if it was not mentioned.

²⁵*Implementing the NVRA: A Report to State and Local Election Officials on Problems and Solutions Discovered 1995-1996.*, Federal Election Commission, March 1998, pp.5 -19.

²⁶Federal Election Commission March 1998, pp 5 - 25.

²⁷*Administration of Voter Registration, Qualification of Applicants and Registrants Verification of Citizenship*, March 2001, City Commissioner's Office, Philadelphia County.

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- ***Criminal Information:*** Criminal information is often incomplete, not timely, or difficult to decipher. One state official and six local election officials we visited stated concerns about the timeliness or accuracy of the criminal information they receive for removing ineligible persons from the voter registration list. For example, New York officials said that the birth date on conviction notifications was sometimes not included, which meant there could be multiple matches on the same name. Wisconsin officials do not receive data from state courts on felony convictions, the state and local officials in one jurisdiction said. Lack of complete information is a concern that has been raised in jurisdictions outside the ones we visited. For example, a recent audit of the voter list in the City of St. Louis reported identifying over 900 possible voting felons on the City's voters list that were not identified by city election officials, primarily because the information they had to identify the felons was incomplete.²⁸ Auditors reported that a primary reason so many were not removed was that election officials only received conviction reports from the local court and not from other sources, such as the state or county. Other officials we interviewed stated that the information they did receive on felony convictions, particularly from federal sources, was not useful because it was old, had limited matching criteria, or was in different formats and hard to decipher.

In addition to a need for more complete or useful information on convictions, it may be difficult for election officials to determine when a convicted felon is eligible to reregister. In five of the seven states we visited, and many others around the country,²⁹ felons may reregister after serving their sentence, which could include parole or probation if applicable under that state's law. Arizona (for one felony conviction), California, New York, Texas, and Wisconsin officials cancel a voter's registration based on court notification of a felony conviction, but officials noted that they relied on an applicant's attestation of eligibility to reregister because no verification is required to document the

²⁸*Board of Election Commissioners, City of St. Louis.*, Office of the State Auditor of Missouri, May 26, 2004. Potential felons on the City of St. Louis voter list were identified by matching the voter list with convictions outside the City, based on matches of name, date of birth, and full or partial SSN where available. Auditors noted that each instance had to be investigated thoroughly before taking legal action or removing registrants from the voter list.

²⁹*Felony Disenfranchisement Laws in the United States.* The Sentencing Project, April 2005, identifies 35 states where felons may reregister after the completion of their sentence.

completion of a felon's sentence. Arizona (for persons convicted of two or more felonies) and Virginia require that felons have their rights restored before they can register to vote—by a judge in Arizona after more than one felony conviction and by the Governor in Virginia. Arizona does not require proof of restoration. Virginia's application asks specifically if voting rights have been restored and the date when they were restored. Arizona officials said they looked into the feasibility of the court system notifying the Secretary of State when someone was released from prison, completed probation, and paid any fine or restitution. However, all three events are not clearly defined according to these Arizona officials, and no workable solution was found. Michigan restores voting rights upon release from incarceration.

- *Duplicate Registrant:* Officials in 7 of the 21 state and local election jurisdictions we spoke with had some concern with the timeliness or accuracy of the data they receive to identify duplicate registrants or verify registrants reside within the jurisdiction. The matching and validation of names are complex and made more so when considering aliases and name changes, as are matches such as “Margie L. Smith” with “Margaret Smith” according to a Wisconsin study.³⁰ The study estimated that even a 1 percent error rate on a match validating names, driver license numbers, etc., could generate tens of thousands of bad matches. Officials from several states that do not have a statewide database noted that there was no way to identify duplicates outside their jurisdiction. New York state election officials said there is currently no way to systematically clear duplicates in the state. Officials rely on voters to identify if they have registered elsewhere. This problem was documented in the review of the City of St. Louis voter registration list, where auditors reported identifying about 13,600 potential duplicates on voter lists in other election jurisdictions in Missouri.³¹ Followup would be needed to determine which registrations were actual duplicates.

None of the officials we spoke with reported that they check for voter registration duplication in other states. Texas state election officials said they only received information from other states when the other state's application asks where the person was previously registered, the

³⁰*Project Charter: Statewide Voter Registration System* prepared for the Wisconsin State Election Board, May 15, 2003, by Virchow Krause and Company.

³¹Office of the State Auditor of Missouri, May 26, 2004.

person completes that portion of the form, and the information is forwarded to Texas. Texas does not forward information on new applicants from other states because the Texas application only asks for prior city and county in Texas. Local election officials in Arizona, Michigan, and Texas said they sometimes get reports of registrants relocating from other states. According to an EAC Commissioner in April 2005 (also the Chair for the EAC) making statewide voter registration systems compatible would be extremely costly, and HAVA does not address interactivity among states.³²

- *Residency of Registrants:* Election officials we contacted identified a number of challenges to ensuring voter registrants reside within an election jurisdiction, including matching problems based on missing information or variation in how an address is listed, no street numbers in rural areas, new streets, redistricting, or untimely forwarding of new addresses. Officials in one local Arizona jurisdiction said residency issues are complex because not all the properties in the county have addresses. In one Wisconsin jurisdiction, election officials said they may not get notice for 4 or 5 months that a registrant within their jurisdiction has moved to another jurisdiction and, therefore, no longer meets the residency requirement (during this time the voter could also be registered twice). Michigan officials are considering using a Geographic Information System to improve their ability to identify and map eligible addresses for specific jurisdictions. Election officials reported to the FEC in 1998 and 2002 that the process required for removing registrants who have moved from the jurisdiction was a problem, for example, citing the cost of confirmation mailings and people not providing forwarding addresses.³³ Furthermore, some state officials surveyed for our 2001 report stated that matches with the Postal Service's NCOA or information from state motor vehicle agencies had potential drawbacks, such as the verification costs or incomplete information. For example, the NCOA files may not identify registrants who have moved if the voter did not submit a change of address form. In addition, according to some of these state officials, the names of ineligible registrants remained on the list because officials could not obtain verification required to remove them.

³²EAC Commissioner and Chair Gracia Hillman, speaking at the Commission on Federal Election Reform hearing held on April 18, 2005, at American University, Washington, D.C.

³³Federal Election Commission, March 1998, pp.5 - 43; Federal Election Commission, 2001-2002, pp.19 - 20.

Four local election officials believed that self-certification is sufficient because of the penalties for falsely registering, or did not believe that ineligible voters were of concern. State and local election officials who we interviewed said that they have had few voter registration fraud³⁴ allegations pertaining to eligibility requirements. Many of the jurisdictions we visited said that they have reported instances of voter registration fraud allegations to appropriate agencies for investigation. We contacted District Attorneys covering election jurisdictions in the seven states, and they reported that they prosecuted some cases related to ineligible registrants or voter fraud. For example, in California, a state with an investigative unit dedicated to voter fraud issues, 15 cases of the 108 allegations for fraudulent voter registration opened from January 2001 to May 2004 were sent to the District Attorney for prosecution. Of the 15 cases, the outcome had been determined in 11 cases (6 cases declined for prosecution, 5 were prosecuted and the individuals were convicted). In four cases, the outcome is yet to be determined. See appendix III for additional information on allegations of voter registration fraud.

HAVA requirements for having a statewide voter registration list and matching with other state databases are expected to improve the accuracy of voter lists, particularly for identifying duplicates in other jurisdictions within the state. Election officials we spoke with for our 2001 report and those we spoke with recently for this report stated that statewide voter lists helped in solving some accuracy problems. Michigan officials stated that when its statewide database was first created in 1998, over 600,000 duplicate voter registration records were eliminated. Arizona local officials said that their concerns about the timeliness and accuracy were less, now that state election officials managed the process through the statewide voter list. For example, state Vital Statistics data are received more frequently so that registrants who have died can be more quickly removed. For some jurisdictions, such as those in Wisconsin that do not receive death or felony information, the HAVA requirements to match the statewide voter list with state records on felons and death are to provide information not now available for removing ineligible registrants.

³⁴Election fraud is conduct that corrupts the electoral processes for (1) registering voters; (2) obtaining, marking, or tabulating ballots; or (3) canvassing and certifying election results. Types of fraudulent conduct include, among others, voting by ineligible voters, voting more than once, voter impersonation, intentional disruption of polling process either physically or by corrupting tabulating software, or destroying ballots or voter registrations.

Some concerns, such as timeliness, accuracy, and completeness of the data used to match against voter lists, may continue to be issues, even after the HAVA requirements are fully implemented. For example, the 1998 FEC report noted that states making good faith attempts to remove from the registry the names of persons no longer eligible to vote (e.g., deceased persons, ineligible felons, and those who have moved) are stymied when they receive inaccurate, incomplete, or out-of-date information. These concerns might continue with the voter registration lists as, for example, Virginia officials stated that there is a 3-month delay in receiving vital statistics data on deceased persons because that is how long it takes for processing. Virginia officials also identified a need for state standards for the exchange of information from state to state regarding voters who move from one state to another.

Even in states with a statewide system for comparison, duplicate registrations can be added. As one local Michigan election official stated, if the system does not recognize that the registrant is already on the registration list, a new voter record is created. For example, Micky Jones and J. William Jones, Jr., might not be recognized as the same individual. A 2003 audit by the Michigan Office of the Auditor General identified approximately 24,000 potential duplicates in the state voter registration list, and about 10,000 registered voters with inaccurate birth dates. State agency officials attributed the duplicates as registrations that remain to be verified as the result of inaccurate or incomplete data received during the conversion of records to the state voter list in 1998, and the federal and state requirements that must be followed before records can be removed. Further, officials noted that tens of thousands of duplicates from voters moving within Michigan have been prevented by the voter registration system.

The Seven States Are in Different Phases of Implementing HAVA Statewide Voter Registration Lists and Eligibility Verification Requirements

In the seven states we visited, progress varied in carrying out HAVA requirements to (1) implement a computerized statewide voter registration list; (2) verify voter application information with state MVA or SSA records and (3) match the voter list with state records on deaths and felony convictions. Six of the seven states (except Arizona) applied for a waiver of these requirements until January 1, 2006. The six states that applied for a waiver said they plan to meet the 2006 requirements deadline; however, their progress varies.

Computerized Voter Registration List Completion Closer in Some States Than Others

Arizona, which did not request a waiver, implemented a statewide voter list which became operational in December 2003, prior to the HAVA January 1, 2004, deadline. Of the six states visited that requested a waiver until 2006, Michigan had a statewide voter registration database, called the Qualified Voter File (QVF) that has been operational since 1998. According to a state election official, Michigan has about 90 percent of the changes in place to meet HAVA requirements. Still remaining is a change to match QVF data to SSA data. Contracts have been awarded for development of statewide computerized voter registration lists in Texas, Virginia, and Wisconsin, with completion by the January 1, 2006, deadline as part of the contracts. Virginia currently has a statewide database but is replacing it to be fully compliant with all state and federal laws governing voter registration and elections, according to the request for proposals for the new system. States are eligible to receive federal payments to meet HAVA requirements (which may be used to develop or modify a statewide voter registration list) after complying with certain requirements, such as filing a state plan and appropriating funds to match up to 5 percent of the federal funding the state would receive. Table 2 details selected activities that the six states are to implement related to the statewide voter registration list.

Table 2: Selected Activities to Help Implement HAVA Voter Registration Requirements in Six States

States we reviewed that requested waiver from HAVA 2004 database deadline	EAC approved HAVA state plan in fiscal year 2004	State authorized "matching" funds to receive HAVA funding	State issued request for proposal to develop computerized list	State awarded contract (date of contract)
CA	Yes	Yes	To be determined	To be determined
MI	Yes	Yes	Not applicable (there will be no request for proposal)	Not applicable
NY	Yes	Yes	No	No
TX	Yes	Yes	Yes	Yes (Oct. 2004)
VA	Yes	Yes	Yes	Yes (Mar. 2004)
WI	Yes	Yes	Yes	Yes (Nov. 2004)

Source: GAO analysis.

The contracts in Texas, Virginia, and Wisconsin have been designed to help the states implement functions specified under HAVA for creating a unified statewide voter list, as well as other functions. For example, Virginia's contract for a new system supports the conduct of elections as well as voter registration functions. Texas' voter registration database is to include additional capabilities that can create jury summons, jury lists, and track jurors and jury payments. Wisconsin's contract includes poll worker

management requirements, including for example, poll worker training information, certification level, and attendance.

California may not meet the HAVA voter registration list deadline, according to the California State Auditor. A December 2004 state audit concluded that California is at risk of failing to meet certain HAVA requirements, for example, to provide a fully functioning statewide voter registration database by the HAVA deadline, and questioned the use of some HAVA funds.³⁵ Based on the state report, the EAC initiated a special audit in January 2005 to investigate potential misuse of HAVA funds in California.

California's Final HAVA Plan³⁶ identified a need to modify the existing statewide database or establish a new database to be in compliance with HAVA. The state issued a request for information in July 2004 to gather information on alternatives to replace the current statewide list "Calvoter" with a system that meets HAVA requirements. In late April 2005, the plan was to modify the Calvoter system rather than replace it. However, according to the state's new HAVA Coordinator, as of May 11, 2005, the new Secretary of State is revisiting the earlier HAVA plans and evaluating the approach they will take in meeting HAVA compliance. The administrator said they realize there is a January 1, 2006, deadline, and the statewide database is a priority.

In New York, legislation directing the creation of a statewide voter list was signed May 3, 2005. The next step, according to a state election office official, is to obtain consultant services to develop a request for proposal for a contractor to create the statewide voter list. The state board of elections is to establish rules and regulations needed for compliance by July 1, 2005. While state officials will give their best effort to meeting the January 1, 2006, deadline, it will be difficult, the official said. According to the legislation, New York's voter list will be created by combining the existing voter lists maintained by each local board of election into a single integrated list, and the state will update it regularly.

³⁵Office of the Secretary of State: Clear and Appropriate Direction Is Lacking in Its Implementation of the Federal Help America Vote Act, California State Auditor, December 2004, report number 2004-139.

³⁶My Vote Counts, California's Plan for Voting in the 21st Century, Secretary of State, September 2003.

Progress to Verify Voter Applications with MVA Has Been Made in Most of the Seven States We Visited, but Verification Has Not yet Taken Place with SSA

HAVA requires that voter registration applicants for federal elections provide an identification number that can be matched with other records for verification.³⁷ Applicants are to be asked for their state driver's license or state identification number obtained through state MVAs, or (if an applicant does not provide either state number) the last 4 digits of their social security number for this purpose. An eligible applicant who does not have a state driver's license, state identification card, or a social security card can still register to vote. In those cases, election officials are required to assign the registrant a unique identification number. Of the six states we reviewed that requested waivers, several have moved forward in arranging for verification of voter registration applicants with state MVA records. Election and MVA officials in Arizona, Michigan, and New York have agreements for voter registration applications to be verified with motor vehicle agency records. In Michigan, because both functions are under the Secretary of State, the agreement is between units within the Secretary of State's office and has been in place since 1997. Arizona election officials and the state MVA agreed in June 2002 to verify information from voter registration applicants. Depending on how the Arizona county decides to proceed, the entire voter list or just information on new applicants is to be sent to the Secretary of State and matched with MVA records on a daily basis. The match is sent back to each county to resolve any discrepancies. Each record is to be given a code indicating the type of follow-up needed, if any, for that voter registrant.

In fall 2004, election officials said that New York began matching voter registration applications under an interim process where counties send the information for verification to the MVA. According to these officials, when the statewide list is in operation the matching will be done by state officials, but the results will be sent to local election officials for resolving any discrepancies, as is the case now under the interim process. California's HAVA Administrator said the connectivity of the statewide database with other state agency records was part of the strategy being considered by the Secretary of State.

Texas, Virginia, and Wisconsin included matching with motor vehicle agency records as part of their database development contracts. Texas defines the validation of voter driver's license numbers by the MVA as a

³⁷HAVA section 303 (a)(5)(A). Section 303 (a)(5)(B) requires state election officials to verify the accuracy of the voter registration application information by matching it with the state motor vehicle agency database records.

key feature of their new system. Virginia's contract requires matching voter applicant information with the MVA records on a real-time basis. The MVA is 1 of 10 agencies that the Virginia system is to interface with. Wisconsin's voter registration system contract requires the contractor to prepare a document describing the interface strategy for matching the voter registration list with other state agencies' data.

HAVA requires that MVAs enter into an agreement with SSA to match selected voter registrant information with SSA records when a voter registration applicant provides their 4-digit social security number for verification purposes. Of the seven states we reviewed, Virginia is not subject to this HAVA requirement because of a HAVA exemption for certain states such as Virginia that require applicants to provide their full social security number on their voter registration application, and the state can decide to use SSA's online verification system.³⁸ None of the remaining six states have signed agreements with the SSA to verify voter applicant information. An Arizona motor vehicle agency official said that they expect the agreement with SSA will be signed in June 2005,³⁹ and the remaining five states requested a waiver from this requirement until January 2006. A Social Security administrator reported that, as of February 2005, only Iowa and Idaho had signed agreements.

To implement the HAVA verification requirement, SSA developed a new program using only 4 digits. This program—called the Help America Vote Verification program (HAVV)—receives voter registration “transactions” through an arrangement with the American Association of Motor Vehicle Administrators (AAMVA). All requests from states for voter registration verification are electronically sent to AAMVA, which then sends them to SSA.⁴⁰ For each transaction, SSA compares a voter registration applicant's name, date of birth, and last 4-digit social security number against SSA records. SSA records have a “death indicator” if SSA has been notified that

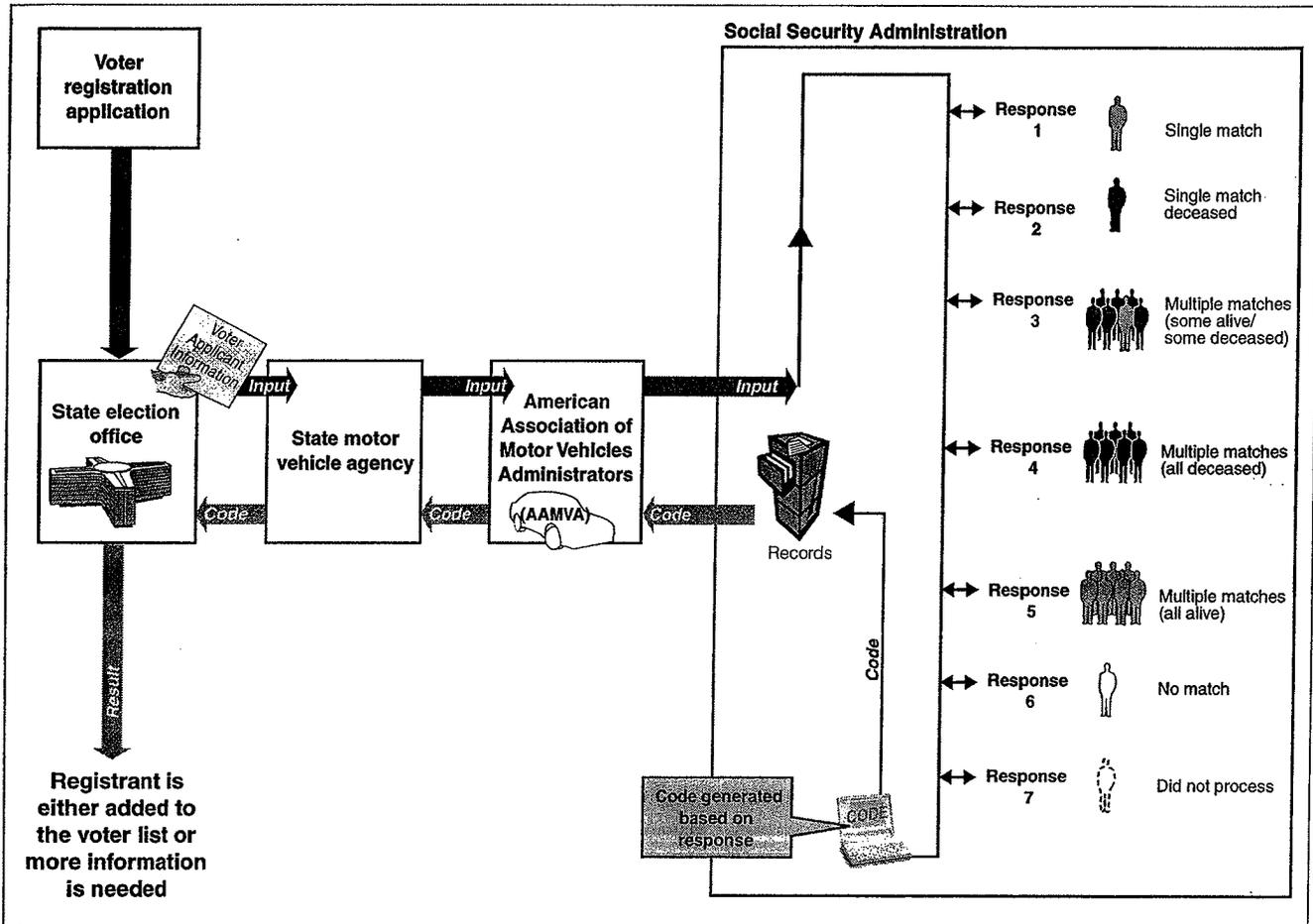
³⁸ Georgia, Hawaii, Kentucky, New Mexico, South Carolina, Tennessee, and Virginia require full social security numbers on voter registration applications and the state MVAs have existing agreements with SSA for verifying against SSA records using the complete number. The agreements would need to be modified to reflect use for voter registration verification purposes.

³⁹ An Arizona Department of Transportation official said the agency computer programmers needed to implement the Memorandum of Understanding and are working on other projects that they expect will be available in June 2005.

⁴⁰ With the exception of the covered U.S. territories, such as Guam and Puerto Rico, that do not have connections with AAMVA.

the person with that social security number is deceased. Based on the match, a result code is assigned for the transaction, and the result is returned to AAMVA, which forwards results to state motor vehicle agencies who, in turn, provide the results to election officials. Only one of the codes indicates a one-to-one match between the voter registrant information and SSA records. However, six other codes may be generated for the registrant indicating some combination of multiple matches with the registrant or that the matching records indicate at least one of the matches is deceased. Figure 3 graphically describes the HAVV process.

Figure 3: Process for Verifying Voter Registration Applicant Information with SSA



Source: GAO analysis of SSA data.

SSA stated that there were too many variables to predict the number of SSA verifications that might be processed, but based on the numbers in Iowa, the only state to use HAVV as of February 2005, about 1 percent of applicants provided the 4-digit number. The HAVV verification service is for new voter registration applicants, not for voters already on state voter registration rolls. Of the 7,231 voter registration transactions sent to SSA by Iowa in 2004 for verification, 4,631 (64 percent) were returned as "one unique match-no death indicator present," and another 14 transactions were "one unique match—death indicator." No unique match was found for the remaining 2,586 transactions, according to SSA records. According

to SSA, agency records and verification procedures are normally based on using the full 9-digit social security number. When that number is paired with specific individual information, the result is a unique match. With only the last 4 digits of the social security number, the match results may not be unique. Iowa officials said that the biggest problem they are facing is that SSA is not specifying what voter information was not matching, (i.e., was the mismatch in name, date of birth, or 4-digit social security number). Without this information they are not able to efficiently resolve the non-matching problems. An SSA official said that the HAVV system is not able to provide this detail.

Most state election officials we spoke with were still determining the process they would follow when a voter registration sent to SSA (or to their MVA) for verification was returned with something other than one live match (e.g., several live matches or a death indicator for the match). In Iowa, the only state to have used the SSA verification system as of February 2005, officials said they first tried reentering the data with variations of the name and date of birth (i.e., Bill for William) and ensuring numbers that can be mistaken are correct. Iowa officials said that they send a letter to registrants asking them to clarify or come in and reregister. Arizona and Wisconsin said that a matching protocol still needed to be worked out, but any inconsistent or questionable matches would be resolved by local election officials. AAMVA officials and some of its members identified the variation in names as a factor in finding no match with SSA records. For example, the Virginia MVA representative said that when the MVA matched its entire driver's license database with SSA using the full social security number, most of the 3 percent of mismatches were women who had registered using their married name but had not changed their name with the SSA.

SSA is to be reimbursed by the states and territories required to verify voter applicants with SSA for certain HAVV costs, which could include, for example development, start-up, and maintenance, as well as for voter registration applicant verifications.⁴¹ HAVV development and start-up costs estimated by SSA are approximately \$1.3 million, and yearly maintenance is estimated to be about \$200,000. Development and ongoing costs are divided among the entities based on the proportionate share of national HAVA funds received by the state or territory. For verification, SSA's current fee is \$0.0062 per record. In addition, a fee for AAMVA services is

⁴¹ 42 U.S.C. § 405(r).

to be added by AAMVA. SSA estimated HAVV development reimbursement costs for Arizona, California, Michigan, New York, and Wisconsin to be approximately \$25,000, \$163,000, \$49,000, \$95,000, and \$27,000, respectively. (States that collect full social security number for voter registration, including Virginia, are exempt from HAVV costs because they may take advantage of existing verification programs.)

Some States Already Meet HAVA Requirement to Match Registration List with State Records on Deceased Persons and Felons

Election officials in four of the states we visited—Arizona, Michigan, New York, and Texas—foresaw no need to change their processes to meet HAVA requirements regarding identifying registrants who are deceased.⁴² State officials in all of these states but Wisconsin reported receiving State Vital Statistics information on deceased individuals for matching against voter lists. Arizona reported that the State Department of Health Services provides monthly death data via computer-to-computer match of records to the statewide voter database. Arizona, California, Michigan, New York, and Texas state officials said the vital statistics information is forwarded to each jurisdiction for verification. Virginia officials said that, once the new database is in place, there will be an automated interface with state vital statistics and with the SSA Death Master File (DMF). Jurisdictions in Michigan receive information on deceased individuals from the county and state vital statistics offices.

In California and Wisconsin, officials reported that the match of state death records with the state voter registration list would be addressed when their statewide database was complete. California is still determining its strategy for database matching, according to a state official. Wisconsin's request for proposal states that information from the state vital statistics office will be integrated using a system the state recently implemented for integrating state databases, but the details are to be defined with input from the vendor selected to develop the voter registration database.

To identify ineligible registrants based on felon status, New York and Texas election officials said they already compare voter registration records and state information on felons. Michigan election officials said that they are in compliance because voting is restricted only for those who are incarcerated. Arizona election officials said they receive some felony

⁴²HAVA requires the state to coordinate the computerized list with state agency records on felony status and death.

information in a paper format now and are working with the Arizona State Supreme Court to obtain information on felonies electronically on a weekly basis. Similarly, Virginia has an electronic matching component in its statewide voter registration database contract. Wisconsin officials told us that records of felony convictions are diffused among 17 different correctional databases with some in paper form. A state official said that the state has plans to create a single state prison database that would be matched against the state voter registration list, but the database might not be complete by January 1, 2006. An election official in California said that the connectivity of state databases with a state voter list is part of what is currently being considered in planning for the state list.

Information from Federal Sources Could Assist Election Officials in Identifying Ineligible Felons and Non-Citizens on Voter Registration Lists

Some federal data sources may help election officials identify ineligible registrants. Although the number of ineligible registrants may be small, identifying these ineligible voters may be important when an election is close. To assist in identifying ineligible felons, federal law requires U.S. Attorneys to notify state election officials of felony convictions in district courts. In the district courts serving the seven states we visited, 16 U.S. Attorney offices report sending notices to election officials and 3 offices reported that they were implementing or modifying their processes to provide this information on felony convictions in U.S. district courts. According to state and local election officials with whom we spoke in the seven states, federal felony information was not always provided in a standard format and the information was sometimes difficult to interpret, untimely, or incomplete. A second source to identify ineligible voter registrants could be the federal jury administrators. Although not required to share information with election officials, the jury administrators could help identify potential voter registrants who are non-citizens on the basis of information potential jurors provide when identifying themselves as non-citizens on their jury service questionnaire. Other federal data sources—DHS databases and SSA's Death Master File—might identify additional ineligible voter registrants; however, the potential is limited because of difficulties such as matching information from these sources with voter registrant information.

U.S. Attorneys Are Required to Provide Information on Felons Convicted in Federal Court to Election Officials but Have Not Done So Consistently

Under federal law,⁴³ U.S. Attorneys are required to give written notice of felony convictions in federal district courts to the chief state election official of the offender's state of residence upon conviction of the offender. The law also requires the state election officials to notify the election officials of the local jurisdiction in which an offender resides of federal felony convictions. In the year ending March 31, 2004, 74,642 criminal defendants were convicted and sentenced in U.S. district courts. According to the U.S. Sentencing Commission, of the 69,023 federal offenders for whom sentencing data were available, 59,554 were sentenced to prison in fiscal year 2003.

The U.S. Attorney notification to state officials is required to include

- the name of the offender,
- the offender's age and residence address,
- the date of entry of the judgment,
- a description of the offenses of which the offender was convicted, and
- the sentence imposed by the court.

EOUSA provided us information on how 19 U.S. Attorneys' offices in the seven states we visited were implementing the law, which became effective in 1993. Sixteen of the offices reported that they were sending notices of certain felony convictions in U.S. district courts to state election officials. Officials in three U.S. Attorneys' offices reported that they were implementing or modifying their processes to provide this information on felony convictions in U.S. district courts. According to an EOUSA official, one U.S. Attorneys' office expects to have a fully functioning notification system in place in the future but no specific time frame was provided. A second U.S. Attorneys' office is instituting a policy to consistently provide conviction data, according to EOUSA. In the third U.S. Attorneys' office, EOUSA said the support staff person assigned to each felony case will e-mail required information to the state election official. This U.S. Attorneys' office reported to EOUSA that it has modified the criminal case intake form to include the defendant's state of residence to help ensure that the information is available upon conviction. The same office also reported that it is now working on new quality control procedures for case management data. When completed, a list of felons is to be created and

⁴³ 42 U.S.C. § 1973gg-6(g). This provision was enacted into law in 1993 in section 8 of the National Voter Registration Act.

felony conviction notices are to be sent to state election officials. In all of the above cases no timeframe for implementation was provided.

The law does not require standardized formats or time frames for reporting the federal felony conviction data. In the 16 U.S. Attorneys' offices that reported sending notices to state election officials, when the information was sent varied, for example monthly, bi-weekly (when there are a significant number of convictions to report), bi-monthly, quarterly, several times a year, upon receipt of the judgment and commitment order, and 6 months from the date of sentencing or later if the case is on appeal, according to these U.S. Attorney's office officials. What information was sent to election officials also varied (the judgment and commitment order or the judgment and commitment order with a notification letter) as did the process. For example:

- The designated paralegal prepares a monthly printout of the required information, which is forwarded to the responsible assistant U.S. Attorney to produce and send the information to the appropriate state officials.
- The supervisory legal assistant collects judgment and commitment orders and mails them to the appropriate state agency.
- The judgment and commitment order is copied and then routed to the first assistant U.S. Attorney, who reviews the order and then sends it to the secretary to the U.S. Attorney. The secretary forwards the judgment and commitment order directly to the election board of the secretary of state.
- The judgment and commitment orders are collated by month of imposition, sorted for approximately 6 months, and then compared to the appellate docket to determine whether a defendant has appealed. If the defendant has appealed, the judgment and commitment order is retained and periodically checked to determine the outcome of the appeal. If there is no appeal or when the appellate process is completed, the judgment and commitment order is sent to the state election authority for the state the defendant claims as his or her last residence.

State and local election officials in 7 of the 14 jurisdictions we visited told us that they had concerns about the timeliness or accuracy of the federal felony conviction notices they received. Election officials told us that notices are not easy for them to use, such as determining the length of

district court administrators said they use only voter registration lists, while the other 4 use voter lists in conjunction with other sources.⁴⁶

According to officials of the AOUSC, it would be under penalty of perjury to deliberately make false statements about citizenship on the questionnaire, although the extent to which the matter is pursued is up to each U.S. district court. Generally, districts we surveyed did not verify claims of non-citizenship; however, two districts verified prospective juror claims of non-citizenship. The Eastern District of Virginia called prospective jurors to gather verbal confirmation of citizenship status and the Eastern District of Michigan requires that immigration documentation be provided to verify non-citizen status.

AOUSC officials and federal jury administrators we spoke with generally did not have exact data on the number of people called for jury service that responded that they were non-citizens. Consequently, no information was available from federal jury administrators in six U.S. district courts, but federal jury administrators in eight U.S. district courts provided either exact numbers or estimates. Of the eight district courts, four federal jury administrators said no one had been disqualified from jury service because they were not U.S. citizens. In the other four district courts:

- a federal jury administrator in one U.S. district court estimated that 1 to 3 percent of the people out of a jury pool of 30,000 over 2 years (about 300 to 900 people) said they were not U.S. citizens;
- a federal jury administrator in a second U.S. district court estimated that less than 1 percent of the people out of a jury pool of 35,000 names each month (less than 350 people) said they were not U.S. citizens;
- a federal jury administrator in a third U.S. district court estimated that about 150 people out of a jury pool of 95,000 names over 2 years said they were not U.S. citizens; and

⁴⁶Of the remaining courts, three use both voter registration lists and MVA records. One uses voter registration, MVA, and state identification records. Officials in each of the four federal district courts that use more than one source for selecting jurors stated that they can identify from which source(s) a name is drawn. As currently configured, the jury pool lists do not specify sources, therefore, to determine whether a name was taken from a particular source, such as the voter registration list, would require manually comparing the jury pool list to each source.

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- a federal jury administrator in a fourth U.S. district court estimated that annually about 5 people typically claimed non-citizenship in a jury pool of about 50,000 individuals.

Of the 14 U.S. district courts contacted, only the jury administrator for the Eastern District of Virginia provided feedback to voter registration authorities if a prospective juror claimed not to be a U.S. citizen. Of the 13 U.S. district courts that do not currently provide feedback, none planned to do so in the future. However, the federal jury administrators' opinions on the feasibility of providing this form of feedback were mixed. For example, 7 of the 11 district officials who commented on feasibility indicated that providing feedback to election officials regarding non-citizens is currently possible while 4 other federal jury administrators claimed the responsibility would be difficult due to staffing resource constraints. According to an AOUSC official, there is no Judicial Conference⁴⁷ policy that instructs the courts to notify election officials when it is determined that a potential juror is not a U.S. citizen.

At the county level, some county jury administrators share information with election officials about people who ask to be excused from jury service because they are not U.S. citizens. Jurors for county courts are also drawn from a variety of sources, sometimes including voter registration lists. Other sources county officials cited for their jury pools included state drivers' licenses, state identification cards, social services department information, employment department information, and state tax rolls. Similar to federal district courts, county jury administrators determine if a person qualifies for jury service based on citizenship by specifically asking on a form if the person is a citizen. Jury officials in three county court jurisdictions in New York and Texas require people who claim non-citizenship to furnish proof in the form of immigration documents. One of those jurisdictions will allow a notarized statement in lieu of immigration papers, and another jurisdiction would accept a letter from an immigration attorney.

⁴⁷The fundamental purpose of the Judicial Conference is to make policy with regard to the administration of the U.S. courts. The Director of AOUSC implements the policies of the Judicial Conference as part of the performance of his duties as the administrative officer of the courts of the United States.

Of the 10 locations we visited where county jury administrators⁴⁸ draw the names of potential jurors from a pool that includes names taken from voter registration lists, five county jury administrators said they provided feedback to election officials when a potential juror claimed not to be a citizen as a reason to be excused from jury duty. With respect to county jury administrators who use more than one source for their jury pool, one county jury administrator said that she could not determine if the potential juror was drawn from the voter registration list or the other sources used for selection, and therefore could not provide feedback. However, a county jury administrator for another county court in the same state that also used multiple sources for the jury pool said they provide feedback to election officials on all people who claim non-citizenship as a reason to be excused from jury duty.

In one local election jurisdiction that receives feedback from county jury administrators, election officials estimated that they have removed about 500 people who were self-identified as non-citizens during jury selection from the voter registration lists since 2000. This jurisdiction had 889,000 registrants in 2004. For example, during 2003, the county jury administrator for this jurisdiction had 1,693 people ask to be excused from jury duty because they were not citizens. Of those, election officials sent letters requesting documentation of citizenship to 413 people. As a result of the process, they removed 83 people who were identified as non-citizens from the voter registration lists. Other examples include:

- A county jury administrator for one county court estimated they annually refer to election officials about 2,000 names of jurors who identified themselves as non-citizens to be excused from jury duty. The election officials in this jurisdiction said that they remove about 400 to 500 names a year from the voter registration list because the registrants are not citizens (out of between 3 and 4 million registrants).
- In another county court, a county jury administrator estimated that, annually, about 5 people at most who were drawn from the voter registration lists (which includes about 130,000 registrants in November 2004) claim non-citizenship as a reason to be excused from jury duty.

⁴⁸Jury services officials in the other four court jurisdictions in two states—Michigan and Wisconsin—said that the jury pool is drawn only from their state’s department of motor vehicles driver’s licenses and state identification cards, and they do not use voter registration lists.

In one jurisdiction, election officials receiving jury service information commented that they must follow up on each referral, and sometimes people may have wrongly claimed non-citizenship in order to be excused from jury duty. Election officials will generally mail a notification to the registrant asking them to verify the information to remain on the voter registration list. Those who do not reply are removed. Non-response on the part of a registrant does not necessarily mean that they are not citizens.

DHS Databases Contain Selected Information on Non-Citizens, but the Usefulness May Be Limited

Federal law provides a statutory framework that requires non-citizens entering or residing in the United States to provide certain identification information. This information was historically provided to the Immigration and Naturalization Service (INS), which when abolished, had its functions transferred to various components within DHS on March 1, 2003. DHS maintains multiple databases containing information on non-citizens within its component agencies: the U.S. Citizenship and Immigration Service, the U.S. Immigration and Customs Enforcement, and the U.S. Customs and Border Protection. Appendix II shows examples of the databases identified by DHS officials.

DHS officials said that the usefulness of their information to identify non-citizens on voter registration lists may be limited because of system constraints for commonly used data matching identifiers (such as name, birth date, address, social security number, and alien number) that are needed for a match and the need for law enforcement to verify the information. For example, the matching of databases may not always be reliable because matching on names alone may produce multiple matches on the same name, depending on whether there is middle initial, middle name, or simply the same common name. As an example of restrictions on usage for data matching identifiers, DHS officials said that address information on non-citizens in some DHS databases, which these officials believe is important for voter registration, was not always reliable in the databases because it was self-reported information and would require verification. We recently reported on the limited usefulness of self-reported address information by non-citizens in some DHS databases.⁴⁹ We reported that 16 of 17 Immigration and Customs Enforcement agents interviewed did not use the change of address data in one of the DHS

⁴⁹GAO, *Alien Registration: Usefulness of a Nonimmigrant Alien Annual Address Reporting Requirement Is Questionable*, GAO-05-204 (Washington, D.C.: January 2005).

databases to help locate the non-citizens as part of their investigations because the agents said that the change of address information, which is self-reported data, is often unreliable.

We identified two instances where DHS databases were used to help identify non-citizens for voter eligibility purposes. In the first instance, in the late 1990s, DHS officials noted that a match was performed between information on non-citizens in then INS files and voter registration records at the request of a House Committee that oversaw the results of a California congressional election being contested. The data-matching effort sometimes produced multiple name matches in INS databases for a single name from the voter registration list. For example, in documentation of the California matching effort, 1 name from the voter registration list matched with 44 names in the INS databases. According to DHS officials, the effort to investigate those matches was extremely labor intensive and required immigration officials to manually pull non-citizen records from around the world to determine the identity of the individual from the match. DHS officials said the initial matching of the database was unreliable because of the lack of common data identifiers, usually only name and date of birth, and the accuracy of those identifiers. Common names were especially problematic in producing multiple matches on the same name. Address information, which DHS officials believe is important for voter registration, was not always reliable in the databases on non-citizens, as mentioned previously.

In the second instance, California state election officials said that they tried a database-sharing pilot program with INS in the mid-1990s to investigate allegations of ineligible voters. At the time, the state election officials said that INS officials advised them that their data might not be reliable for their purposes. In a letter to the House Chairman regarding the matching of voter registration information and INS data, the INS Commissioner wrote that the data sharing was by names and date of birth, and there would be no match if the person's name on the state voter registration rolls is different than what it is in the INS system. In addition, the INS Commissioner wrote that a match does not necessarily mean the person is not eligible to vote. According to California state election officials, their experience confirmed that indeed the reliability of the data was poor for their purposes and that they could not use them.

While matching of voter registration lists with DHS databases could be problematic, the California Secretary of State's office has been exploring the possibility of using the DHS Systematic Alien Verification for Entitlements (SAVE) program to pursue specific allegations of voter

ineligibility. The SAVE Program was developed to allow federal, state, and local government agencies to obtain information they need on immigration status in order to determine an applicant's or recipient's eligibility for many public benefits. The SAVE Program also administers an employment verification pilot program, in cooperation with SSA, to help employers verify the work authorization of their newly hired employees. As proposed by the California Secretary of State, the use of SAVE would involve querying individual voter names on the basis of specific allegations or challenges that a registered voter was a non-citizen. This proposal does not involve matching entire voter registration lists with DHS databases.

SAVE is more inclusive than other databases (containing over 60 million alien records) and could provide election officials the means to identify some non-citizens; however, according to DHS officials, it has limitations. For example, DHS officials said that the SAVE Program is set up to query information based on the number on the alien's Arrival and Departure Record form (I-94) or an alien's DHS assigned "A" number. It is a web-based system, and records are normally queried one at a time, although processing multiple records using the SAVE program is possible. Because voter registration is limited to U.S. citizens, voter registration records would not contain alien or form I-94 numbers. The SAVE Program can be queried by a social security number, name, and date of birth if the alien's "A" number or I-94 number are unknown. However, DHS officials emphasized that the system is alien-number-driven. Also, DHS officials opined that using the SAVE Program would require additional verification of the person's identity, either automated or manual, as a precautionary measure before removing a person from a voter registration list based on a match.

To facilitate investigations of alleged non-citizens having registered to vote, the California Secretary of State's Office has proposed accessing the SAVE Program. An official in the State's Election Fraud Investigation Unit saw this as a time- and effort-saving tool. Rather than contacting a DHS agent to obtain information and waiting for a response that, according to this official, sometimes could be months in coming, the unit could make direct queries through the SAVE Program. DHS has provided the California Secretary of State with a memorandum of understanding to allow this process to proceed, but as of February 2005, California officials said that the Secretary of State had not signed the memorandum.

Use of SSA Database to Identify Deceased Registrants Has Matching and Timeliness Limitations

The DMF consolidates death records across the country and potentially could be used by election officials to identify voters on their registration lists that died in another state.⁵⁰ While about 2.7 million people die in the United States each year and about 2 million are SSA beneficiaries, matching difficulties and the timeliness and completeness of the data may lessen DMF's usefulness to election officials.

Matching voter registration records with DMF records requires that the sets of records contain at least some of the same identifiers for an individual. The social security number is the primary way to identify a unique individual in SSA's databases, but only seven states allow the full social security number to be collected for voter registration purposes. One of the states we visited (Virginia) collects the 9-digit social security number as part of the voter registration application, and election officials there said that they plan to use the DMF for verification when the statewide, computerized voter registration list has been developed. Even without the full social security number, matching can still be done with other identifiers in the DMF, such as name, date of birth, or address, but problems, such as people using different names for voter registration than on social security records, currency of addresses, and the number of people on a national basis with similar names, may make matching difficult. One study⁵¹ of the DMF suggested that without a correct social security number, researchers would need to consult other sources of mortality information.

Timeliness and completeness may also lessen the usefulness of the DMF for identifying deceased voter registrants. According to a 2001 SSA Office of the Inspector General (OIG) report, some states had been taking over 200 days to report.⁵² SSA officials told us that the information is untimely for a number of reasons, such as manual recordkeeping or outdated computer systems at the state level. Under SSA's ongoing Electronic Death Registration initiative, SSA plans to receive death reports within 5 days of

⁵⁰The DMF contains over 76 million records of deceased individuals enrolled in the U.S. Social Security program. For an individual, the DMF record can contain the person's social security number, name, date of birth, date of death, state or county and zip code of last payment residence, and zip code for the lump sum payment, if the information is available.

⁵¹Use of the Social Security Administration Death Master File for Ascertainment of Mortality Status Population Health Metrics: 2004; 2:2, March 5, 2004.

⁵²Effectiveness of the Social Security Administration's Death Termination Process (A-09-02-22023), September 2001. State and federal sources supply some death information to SSA, but most deaths are reported to SSA by friends, relatives, and funeral homes.

death. SSA estimates the initiative will be complete in 2012, but recent federal legislation may provide grants for computerizing state records that could affect SSA's ability to meet the completion date sooner. In addition to timeliness considerations, a 2003 OIG report stated that the completeness of the DMF is not consistent, citing research indicating younger deceased persons were less likely to be included.⁵³ The OIG report further stated that the DMF does not contain every deceased social security number holder and also includes individuals who are not actually deceased.

Conclusions

State and local election officials face many challenges in maintaining accurate voter registration records. Because voter registration lists are dynamic and constantly changing, officials turn to a variety of sources to identify registrants who may be ineligible to vote. HAVA included provisions directed at maintaining accurate voter registration lists that included, among other things, requirements for states to develop a computerized, interactive statewide voter registration list and to match that list against other state databases and records. However, after provisions are implemented, states will continue to face challenges to maintain accurate voter registration lists and verifying voter eligibility, particularly identifying out-of-state registration duplicates and deceased registrants. Thus, the effect of HAVA's voter registration reform initiatives is yet to be determined.

Election officials we contacted in seven selected states noted that they experienced specific problems verifying voter registration application information related to felony convictions and citizenship status. We found two federal information sources that could provide election officials information on federal felony convictions or citizenship status requirements. The number of potentially ineligible voter registrants identified by these two federal sources may be small but could be important in determining the outcome of a close election. One, the U.S. Attorneys, is already required to provide state election officials with information about felony convictions, but the information could be provided in a more standardized format to ensure that the information is easier for election officials to interpret and more complete and timely.

⁵³*The Social Security Administration's Efforts to Process Death Reports and Improve its Death Master File*, January 2003, Office of the Inspector General, Social Security Administration.

The second information source that could help identify potential ineligible voters is federal jury administrators. Although not required to share information with election officials, the jury administrators could help identify potential voter registrants who are non-citizens on the basis of information potential jurors provide when identifying themselves as non-citizens on their jury service questionnaire.

Recommendations for Executive Action

To assist state election officials in identifying individuals on voter registration lists who may be ineligible to vote because of their felon or non-citizen status, we are recommending the following two actions:

We recommend that the Attorney General direct the U.S. Attorneys to provide information on felony convictions in U.S. district courts in a more standardized format to make it easier for election officials to interpret the conviction information, such as the length of the sentence, and to help ensure information on felons is complete and timely.

We recommend that the Administrative Office of the U.S. Courts determine the feasibility and steps necessary to implement a requirement that U.S. district court jury administrators provide notice to state election officials of potential jurors who identify themselves as non-citizens on their jury qualification questionnaire.

Agency Comments and Our Evaluation

We provided a draft of this report to DOJ and AOUSC for review and comment. The Director of EOUSA in her comments agreed with our recommendation. She acknowledged that maintaining accurate voter lists is an important goal and that an EOUSA working group has been tasked to develop a standardized process for the 94 U.S. Attorneys' Offices to send felony conviction information in the best format for use by state election officials. AOUSC's Director agreed with our recommendation and stated that this matter would be brought to the attention of district courts. Despite resource shortages in the federal courts and the fact that most jurors are screened by local and state courts, the AOUSC Director acknowledged the public interest in ensuring that non-citizens are not afforded the privilege of voting. Written comments from AOUSC and DOJ are included in appendices IV and V. Sections of the report were also provided to SSA, DHS, and states we visited to confirm the accuracy of the information. Technical comments from the federal agencies and states that we reviewed were incorporated, as appropriate, in the report.

As we agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from the date of this letter. We then plan to provide copies of this report to the Attorney General, Department of Justice; Director, Administrative Office of U.S. Courts; Ranking Minority Members, House Committee on the Judiciary and Subcommittee on Immigration, Border Security and Claims; Chairman and Ranking Minority Member, Senate Committee Homeland Security and Governmental Affairs; Chairman and Ranking Minority Member, House Committee on Government Reform; Chairman and Ranking Minority Member, Senate Committee on Rules and Administration; and Chairman and Ranking Minority Member, House Committee on House Administration. Copies of this report will also be made available to others upon request. In addition, this report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staffs have any questions about this report, please contact me on (202) 512-8777 or at jenkinswo@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff contributing to this report are listed in appendix VI.



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Appendix I: Objectives, Scope, and Methodology

Our objectives were to describe: (1) the processes in selected states to verify that voter registration applicants met state eligibility criteria and to help ensure that voter registration lists are accurate; (2) the challenges officials face in maintaining voter lists; (3) the implementation status of the Help America Vote Act of 2002 (HAVA) voter registration verification procedures in selected states; and (4) potential data sources for verifying voter registration eligibility.

We selected the following states using a non-probability sample: Arizona, California, Michigan, New York, Texas, Virginia, and Wisconsin. Our selection of states took into consideration several voter registration-related factors. We sought to select states that represented differences in terms of the stage of development of their statewide databases and had unique characteristics that might affect the implementation of HAVA. For example, Wisconsin has same day registration; Arizona has on-line voter registration; Michigan has a reputation as a model for registration practices; and New York State may have to rely on social security number verification procedures more than other states because it has a large population who live in New York City and may not have driver's licenses for verification. We also selected states to provide geographic diversity and variation in election administration—some administer elections at the county level and others at lower levels such as city or townships. States also varied in the size of the immigrant populations, of interest because of the citizenship requirement for voter registration. Our goal was not to target a particular state, but rather to identify a range of issues facing states in implementing HAVA requirements and assuring accurate voter registration lists. Information from these seven states is not generalizable to all states. Table 3 describes characteristics in each state.

Appendix I: Objectives, Scope, and Methodology

Table 3: State Selection Factors

State	Voter registration-related characteristics
Arizona	<ul style="list-style-type: none"> • No statewide database prior to HAVA. • Did not request a waiver from HAVA database and verification requirements deadline of January 1, 2004. • Census 2000 percent of population foreign born: 12.8. • Voter registration administered at county level. • Has implemented an on-line voter registration process.
California	<ul style="list-style-type: none"> • Statewide database prior to HAVA that is compiled from local election lists. Local jurisdictions can access entire list. • Requested a waiver from HAVA database and verification requirements deadline of January 1, 2004. • Census 2000 percent of population foreign born: 26.2. • Voter registration administered at county level.
Michigan	<ul style="list-style-type: none"> • Unified statewide database. • Requested a waiver from HAVA database and verification requirements deadline of January 1, 2004. • Census 2000 percent of population foreign born: 5.3. • Voter registration administered at township, city, and village level. • Secretary of State responsible for election and motor vehicle licensing functions.
New York	<ul style="list-style-type: none"> • No statewide database prior to HAVA. • Requested a waiver from HAVA database and verification requirements deadline of January 1, 2004. • Census 2000 percent of population foreign born: 20.4. • Voter registration administered at county level. • Expected higher use of social security records for registrant verification due to fewer drivers in New York City.
Texas	<ul style="list-style-type: none"> • Statewide database prior to HAVA that is compiled from local election lists. Local jurisdictions do not have access to entire list. • Requested a waiver from HAVA database and verification requirements deadline of January 1, 2004. • Census 2000 percent of population foreign born: 13.9. • Voter registration administered at county level.
Virginia	<ul style="list-style-type: none"> • Unified statewide database. • Requested a waiver from HAVA database and verification requirements deadline of January 1, 2004. • Census 2000 percent of population foreign born: 8.1. • Voter registration administered at county level. • May use 9-digit social security number for voter registration verification (rather than 4 digits outlined by HAVA).
Wisconsin	<ul style="list-style-type: none"> • No statewide database prior to HAVA. Some jurisdictions currently do not maintain voter registration rolls. • Requested a waiver from HAVA database and verification requirements deadline of January 1, 2004. • Census 2000 percent of population foreign born: 3.6. • Voter registration administered at municipal level. • Allows Election Day voter registration.

Source: GAO.

Within each state, we selected two local jurisdictions using a nonprobability sample. Our selection criteria included population size, the proximity of the locations to our site visits with state election officials, suggestions by state election officials, and proximity to a motor vehicle office. Local jurisdictions included

- Mariposa County, Arizona;
- Gila County, Arizona;
- Los Angeles County, California;
- Yolo County, California;
- Detroit, Michigan;
- Delta Township, Michigan;
- New York City, New York;
- Rensselaer County, New York;
- Bexar County, Texas;
- Webb County, Texas;
- Arlington County, Virginia;
- Albemarle County, Virginia;
- Madison, Wisconsin; and
- Franklin City, Wisconsin.

To describe state voter registration processes and challenges (objectives 1 and 2), we conducted semi-structured on-site interviews with state and local election officials, and supplemented the interviews with phone and email updates. We are relying on testimonial evidence because most states (all but Arizona in our sample) obtained an extension for implementing HAVA and, therefore, data were not available to assess the status of implementation. Our interviews included questions on registration processes, any voter registration fraud allegations, and discussion of challenges identified by officials in maintaining voter roll accuracy. Because so many voter registrations originate with applications from motor vehicle agencies, interviews were conducted with motor vehicle agency officials in the same jurisdictions regarding their voter registration procedures. In Michigan, where we spoke only with Secretary of State officials, the Secretary of State's office is responsible for elections and driver's licenses. We also reviewed current HAVA plans, relevant reports, and documents related to the voter registration process in seven states.

State level election officials were provided an opportunity to verify the accuracy of information regarding their particular state. All but one state responded.

In addition to asking state election officials about allegations of voter registration fraud, we interviewed Department of Justice (DOJ) Criminal Division officials, and obtained a list of election fraud active matters from 2002-2004, filed by U.S. Attorneys and Public Integrity section attorneys (the section that handles election issues within DOJ). We also contacted U.S. Attorneys responsible for the states we reviewed for any additional cases handled locally by those offices. We contacted District Attorneys in the counties for the local election districts we visited and asked for information regarding actions related to ineligible voter registration. We also asked state and local election officials if they had referred any reported incidents of voter registration fraud or irregularities to county, state, or federal officials since January 2003. District attorney and state and local election official reports of fraud related to voter registration were based on the recall of the officials, except in California, where the state fraud unit routinely catalogs allegations and their disposition.

To describe the HAVA implementation status in the seven states (objective 3), we reviewed HAVA plans to develop a statewide voter registration database and to verify voter registration lists against motor vehicle agency and Social Security Administration records. We also included questions on the status of the database and verification procedures in the semi-structured interviews with state and local election, and state motor vehicle officials. We interviewed and obtained documents from the Social Security Administration on how that agency was addressing HAVA verification requirements.

To identify potential data sources for verifying voter registration eligibility (objective 4), we reviewed and summarized sources currently used for verification in the selected states and localities, and discussed potential verification sources with state and local election officials.

We then gathered additional information on the forwarding of federal felony convictions to state election officials from the Executive Office for U.S. Attorneys. We requested information from the 19 U.S. Attorney Offices corresponding to the seven selected states—Arizona, California, Michigan, New York, Texas, Virginia, and Wisconsin—we visited. The 19 U.S. Attorneys' Offices were the District of Arizona, the Central District of California, the Eastern District of California, the Northern District of California, the Southern District of California, the Eastern District of Michigan, the Western District of Michigan, the Eastern District of New York, the Northern District of New York, the Southern District of New York, the Western District of New York, the Eastern District of Texas, the Northern District of Texas, the Southern District of Texas, the Western

District of Texas, the Eastern District of Virginia, the Western District of Virginia, the Eastern District of Wisconsin, and the Western District of Wisconsin.

We contacted federal jury administrators by phone in the 14 U.S. court districts that covered those same local election jurisdictions and requested information on reporting between federal jury administrators and election officials. The 14 district courts were: District of Arizona, Central District of California, Eastern District of California, Eastern District of Michigan, Western District of Michigan, Eastern District of New York, Southern District of New York, Northern District of New York, Southern District of Texas, Western District of Texas, Eastern District of Virginia, Western District of Virginia, Eastern District of Wisconsin, and Western District of Wisconsin.

We also contacted 14 county court jurisdictions by phone that covered the same election jurisdictions and requested information on reporting between county jury administrators and election officials. The 14 local courts were: Superior Court of Arizona, Maricopa County; Gila County Superior Court; Superior Court of California, Los Angeles County; Superior Court of California, Yolo County; Third Judicial Circuit Court of Michigan; Eaton County Courts; New York County Courts; Rensselaer County Courts; Texas Office of Court Administration, Bexar County; Texas Office of Court Administration, Webb County; 17th Judicial District of Virginia; 16th Judicial Circuit of Virginia; Dane County Courts; and Milwaukee County Courthouse.

We requested information on data regarding citizenship from officials in the Department of Homeland Security's Customs and Border Protection, Immigration and Customs Enforcement, and U.S. Citizenship and Immigration Services. We also reviewed selected federal and local agency reports with relevant information.

Our work was performed between January 2004 and May 2005 in accordance with generally accepted government auditing standards.

Appendix II: Department of Homeland Security Automated Systems That Include Information on Non-Citizens

Name	Description
Asylum Pre-screening System	The Asylum Pre-screening System provides case tracking for asylum pre-screening credible fear claims that are presented during the expedited removal process.
Computer-Linked Application Management Information System, Version 3	The Computer-Linked Application Management Information System, Version 3, is a high-speed transaction processing system with client server and mainframe components. It is designed to support the processing (receipt, adjudication, and notification) pertaining to all U.S. Citizenship and Immigration Service benefits applications and petitions, except naturalization (see Computer Linked Application Information System, Version 4). Pertinent information is uploaded to the Central Index System.
Computer Linked Application Information System, Version 4	The Computer Linked Application Information System, Version 4, is a nationally-deployed Client-Server, workflow-driven case management system that supports the processing of naturalization applications. Pertinent information is uploaded to the Central Index System.
Central Index System	The Central Index System provides automated information on individuals of interest and identifies the location of an alien's hardcopy A-file. It also provides information for federal and state entitlement programs and is a single centralized source of data for many mission functions. Data is routinely captured in the Central Index System via daily data uploads from the Computer-Linked Application Management Information System, Versions 3 and 4.
Employment Authorization Document System	The Employment Authorization Document System is an antiquated stand-alone personal computer system used to capture data at U.S. Citizenship and Immigration Service field offices. In combination with Polaroid camera pictures, it generates a standardized identification document issued to aliens who are authorized to be temporarily employed in the U.S. Data is electronically consolidated from the stand-alone devices throughout each workweek and uploaded to the Computer-Linked Application Management Information System, Version 3, and subsequently to the Central Index System (see above) for nationwide terminal inquiry access.
Marriage Fraud Amendment Act System	A centralized, mainframe case tracking system that supports the adjudication of petitions covered by the Immigration Marriage Fraud Amendment Act of 1986.
Refugee, Asylum & Parole System	A centralized mainframe system that provides full case tracking and management capability for asylum casework.
Reengineered Naturalization Application Casework System	A centralized, mainframe system reengineered from the Naturalization Application Case-processing System. It no longer takes new naturalization applications (see Computer Linked Application Information System, Version 4), but continues to process applications for citizenship (N600), and applications for duplicate certificates (N565).
Deportable Alien Control System	One nationwide database of deportation and detention information that operates on computer hardware owned by the federal government and is accessible through the network of user terminal across the country. It automates many of the clerical docket control functions associated with the arrest, detention, and deportation of illegal aliens.
The Juvenile Alien Management System	This database tracked juvenile aliens in the removal process. This system is no longer used and supported. Juvenile case tracked in the Juvenile Alien Management System had been recorded in DACS.
Student and Exchange Visitor Information System	An internet-based system that provides tracking and monitoring functionality, with access to accurate and current information on nonimmigrant students and exchange visitors and their dependents and the approved schools and designated programs sponsor in the United States that host these individuals.

Appendix II: Department of Homeland Security Automated Systems That Include Information on Non-Citizens

Name	Description
The Student and School System	With the implementation of the Student and Exchange Visitor Information System , this database previously utilized by legacy Immigration and Naturalization Service fell into disuse. The data in this system has not been updated since the Student and Exchange Visitor Information System came online. The Student and School System was official retired on September 30, 2004, and is no longer available.
Arrival and Departure Information System	The Arrival and Departure Information System provides a Department of Homeland Security intranet accessible web-based browser application that correlates information from multiple sources to show the person's travel history, current immigration status, and overstay information. The Arrival and Departure Information System currently receives, filters, processes, matches and stores biographic and biometric border crossing information for all non-citizens, air and sea travelers entering and departing the United States and status update information for aliens within the United States.
Non-Immigrant Information System	An online, automated central repository of information designed to track and maintain the status of all foreign visitors and immigrants. This system provides information on arrivals and departures, to support the controlled admission of non-immigrants to the United States through ports of entry and to track non-immigrant departures for identifying information.
Enforcement Case Tracking System	An automated system that supports the Border and Transportation Security in the accomplishment of its law enforcement mission. The Enforcement Case Tracking System comprises numerous modules for specific processing needs—needs such as identifying, apprehending, detaining, and removing aliens illegally in the United States, filing administrative and criminal charges against aliens who commit illegal acts; and seizing contraband associated with illegal alien activity.
United States Visitor and Immigrant Status Indicator Technology ^a	An automated system that collects, maintains, and shares information, including biometric identifiers, on selected foreign nationals who travel to the United States. ^a Among other things, the program is designed to identify foreign nationals who (1) have overstayed or violated the terms of their visit; (2) can receive, extend, or adjust their immigration status; or (3) should be apprehended or detained by law enforcement officials. On January 5, 2004, Department of Homeland Security began operating the first stage of its planned United States Visitor and Immigrant Status Indicator Technology at 115 air and 14 sea ports of entry.
Systematic Alien Verification for Entitlements (SAVE)	An automated system responsible for administering programs involving customer access to information contained in the Department of Homeland Security's Verification Information System database. The Verification Information System database is a nationally accessible database of selected immigration status information on over 60 million records. The SAVE Program enables federal, state, and local government agencies to obtain immigration status they need in order to determine an applicant's or recipient's eligibility for many public benefits. The SAVE Program also administers, in cooperation with SSA, employment verification pilot programs that enable employers to quickly and easily verify the work authorization of their newly hired employees.

Source: GAO summary of Department of Homeland Security information provided by United States Citizenship and Immigration Service, Immigrations and Customs Enforcement, and Customs and Border Protection officials.

^aFor more information on this program, see GAO, *Homeland Security: First Phase of Visitor and Immigration Status Program Operating, but Improvements Needed*, GAO-04-586 (Washington, D.C.: May 11, 2004).

Appendix III: Voter Registration Fraud Allegations Identified at Selected States and at the Federal Level

In California, the only state with an investigative unit dedicated to voter fraud issues, 15 cases of the 108 allegations for fraudulent voter registration opened from January 2001 to May 2004 were sent to the District Attorney for prosecution. Of the 15 cases, the outcome had been determined in 11 cases (6 cases declined for prosecution; 5 were prosecuted and the individuals were convicted). In four cases, the outcome is yet to be determined. Similarly, the California investigative unit opened for investigation 29 allegations of non-citizens either registering or voting, 1 case of a non-citizen voting was sent to a District Attorney for prosecution, but the District Attorney declined it. At the federal level, DOJ attorneys initiated at least 61 election fraud investigations or matters (an alleged possible criminal occurrence that still has to be investigated) from 2000 to 2003. Of those cases, 15 involved voter registration or ineligible voters

Election officials in seven of the locations we visited reported that they have referred reported instances of voter registration fraud allegations to appropriate agencies, such as the District Attorney and the U.S. Attorney for investigation. Election officials referred allegations of voter registration fraud such as the following to the appropriate agencies for investigation:

- A Texas local jurisdiction referred to the State Board of Elections an allegation that state officials investigated where 27 people were registered at one address. The investigation revealed that the location was an orphanage, and the registrants were resident workers.
- Texas local jurisdictions reported referring to their local District Attorney instances of (1) an individual trying to register using the names of 42 deceased individuals, (2) the receipt of many voter registration applications from the same address, and (3) a non-citizen who incorrectly believed she could vote in a school board election if she was a property owner.
- One Arizona local jurisdiction reported that between 1997 and 2003, 23 cases had been prosecuted by local District Attorneys or the U.S. Attorney for election-related violations and petition forgeries. Eleven of the 23 cases were for petition forgery.
- Local jurisdictions in California and Michigan each reported instances of voter registration drive irregularities such as altering or falsifying registration forms. Election officials in California referred the matter to

**Appendix III: Voter Registration Fraud
Allegations Identified at Selected States and
at the Federal Level**

the Secretary of State's office for investigation and Michigan officials referred the matter to the local county prosecutor.

- One New York jurisdiction reported referring an allegation made by an ex-spouse to the U.S. Attorney that the former spouse was not a citizen.
- One Arizona local jurisdiction official referred to the District Attorney an instance of a person trying to vote before being officially sworn in as a U.S. citizen.

In deciding to investigate allegations of voter registration fraud given the competing demands for investigative and prosecutorial resources, local and federal prosecutors reported they take various factors into consideration. District Attorneys in jurisdictions we visited gave various reasons for not pursuing allegations. One District Attorney reported that they were unable to investigate the allegations of voter registration fraud because they could not compel a person to provide proof of citizenship based only on an allegation. A District Attorney in another jurisdiction reported that registration allegations are not pursued because they are victimless and non-violent crimes. Another District Attorney said that registration issues are not one of the county's priorities.

District Attorneys in the local jurisdictions we visited reported initiating matters or cases since January 1, 2004, pertaining to ineligible persons registering to vote. Three jurisdictions reported prosecuting one case each, two reported having matters still under investigation, and two reported that they did not prosecute the matter.

Within the Department of Justice, the U.S. Attorneys and the Public Integrity Section (PIN) are responsible for enforcing federal criminal laws applicable to federal election fraud offenses, among other things. PIN is also responsible for overseeing the U.S. Attorneys' investigations and prosecution of federal election fraud. A senior PIN official said the decision to pursue an allegation depends on a number of factors. When an allegation is received, it is evaluated in terms of factors such as quality of the witnesses, quality of evidence, historical problems in the area, resources, coordinating with state Attorney General's office priorities, and the priority of election crimes within the responsibilities of the Department of Justice. U.S. Attorneys and PIN attorneys initiated at least 61 election fraud matters, or investigations, related to election years 2000 through 2003. Most of the 61 matters related to elections held in 2002. (Matters were initiated in 28 states and 1 U.S. territory and ranged from 1 to 7 matters per state/territory over the 4-year period.) Of these election fraud matters, 15 related to voter registration or ineligible voters.

**Appendix III: Voter Registration Fraud
Allegations Identified at Selected States and
at the Federal Level**

According to PIN, many of the 61 matters resulted in indictments and subsequent convictions. A PIN official told us that 43 voter registration matters are currently under investigation and another 7 have been closed related to the November 2004 federal election. According to the Criminal Division, the information provided by PIN does not include all election fraud investigations that the U.S. Attorneys have initiated because (1) U.S. Attorneys are not required to consult with PIN for preliminary investigations as opposed to grand jury investigations, which require consultations; (2) PIN did not track election fraud investigations prior to October 2002; and (3) election fraud investigations are sometimes initiated under non-election statutes.

In addition to the PIN election fraud matters, we asked the 19 U.S. Attorney Offices that cover the seven states we visited the number of fraud matters or investigations they had in 2003 and 2004 relating to ineligible voter registration. Five offices reported investigating allegations. Three offices reported that among them there were four ongoing investigations. One office reported that they investigated a matter, but no prosecution arose from the investigation. Another office reported that they declined to prosecute a number of investigations (number not tracked) that involved aliens who registered to vote. Rather than prosecute, they allowed administrative procedures regarding deportation to occur.

Appendix IV: Comments from the Administrative Office of the United States Courts



LEONIDAS RALPH MECHAM
Director

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

CLARENCE A. LEE, JR.
Associate Director

WASHINGTON, D.C. 20544

May 31, 2005

Mr. William O. Jenkins, Jr.
Director, Homeland Security and Justice Issues
U.S. Government Accountability Office
441 G Street, NW, Room 6482
Washington, DC 20548

Dear Mr. Jenkins:

Thank you for the opportunity to review and comment on the draft report entitled *Elections: Additional Data Could Help State and Local Elections Officials Maintain Accurate Voter Registration Lists* (GAO-05-478).

We appreciate the public interest in ensuring that those who are not citizens and are ineligible to vote are not afforded that privilege. As the report indicates, the vast majority of potential jurors are screened in the state and local courts rather than in federal courts, and thus it is through their own court systems' juror pools that these courts are likely to identify registered voters who are not citizens. Nevertheless, despite resource shortages in the federal courts, as recommended, the Administrative Office of the U.S. Courts will bring this matter to the attention of the district courts and encourage them to identify and report to appropriate election officials instances when persons identify themselves to the federal courts as non-citizens through the juror qualification process.

Sincerely,

A handwritten signature in black ink, appearing to read "Ralph Mecham".

Leonidas Ralph Mecham
Director

A TRADITION OF SERVICE TO THE FEDERAL JUDICIARY

Appendix V: Comments from the U.S. Department of Justice



U.S. Department of Justice

*Executive Office for United States Attorneys
Office of the Director*

*RFK Main Justice Building, Room 2261
950 Pennsylvania Avenue, NW
Washington, DC 20530*

(202) 514-2121

Mr. William O. Jenkins, Jr.
Director, Homeland Security and Justice Issues
U.S. Government Accountability Office
441 G. Street, NW, Room 6482
Washington, DC 20548

Dear Mr. Jenkins

This letter provides comments from the Executive Office for United States Attorneys (EOUSA) on the Government Accountability Office's (GAO) report regarding the maintenance of accurate voter registration lists. We appreciate the opportunity to provide comments for publication in the final report.

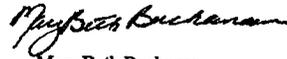
Maintaining accurate voter registration lists is an important goal. The United States Attorneys take seriously their obligations under Section 8(g) of the National Voter Registration Act, 42 U.S.C. § 1973gg-6(g), to provide felony conviction data and other information to appropriate state election officials. While your report correctly notes that the law does not require any standardized format or time frame for providing the conviction information, your report also notes that the sampling of United States Attorneys' Offices that were surveyed utilized a variety of data formats and time frames to provide conviction data to election officials. Each of the 94 United States Attorneys' Offices is unique, and they range in size from twenty to 350 lawyers. Therefore, it is not surprising that different offices may use different administrative procedures to comply with this obligation. However, we understand that some data formats may be more accessible to state election officials than others, and we appreciate that finding the best format to provide this data to state election officials is important. As a result, EOUSA has tasked a working group to develop a standardized process for the 94 United States Attorneys' Offices to provide complete and timely information to state election officials in order to ensure accurate voter registration lists.

Thank you for the opportunity to comment on the draft report. If you have any questions regarding the above, please contact David L. Smith, Legislative Counsel, Counsel to the Director's Staff, at (202) 514-2121.

**Appendix V: Comments from the U.S.
Department of Justice**

Mr. William O. Jenkins, Jr.
Page 2

Sincerely,



Mary Beth Buchanan
Director

Appendix VI: GAO Contact and Staff Acknowledgments

GAO Contact

William O. Jenkins, Jr., (202) 512-8777

Staff Acknowledgments

In addition to the contact mentioned above, Orin B. Atwater, Carla Brown, Grace Coleman, Michele Fejfar, Daniel Garcia, Richard Griswold, Geoffrey Hamilton, Monica Kelly, Jean McSween, Jean Orland, Emmy Rhine, Sandra Sokol, and Linda Watson contributed to this report.

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U.S. Government Accountability Office, 441 G Street NW, Room 7125
Washington, D.C. 20548

Public Affairs

Paul Anderson, Managing Director, AndersonP1@gao.gov (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, D.C. 20548

1 WHEREAS, the Court held oral argument on July 28, 2006; and
2 WHEREAS, on August 1, 2006, the Court issued an Order Granting Motion for
3 Preliminary Injunction; and

4 WHEREAS, pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure, the
5 evidence received by the Court at the hearing on Plaintiffs' motion for a preliminary
6 injunction, as subsequently supplemented by later court order, would be admissible upon a
7 trial on the merits and would become part of the record on such a trial; and

8 WHEREAS, following discussion and consideration, the parties mutually stipulate to
9 the entry of this Order;

10 NOW THEREFORE,

11 Pursuant to the stipulation of the parties, the Court hereby finds and ORDERS as
12 follows:

13 1. Defendant, his employees, agents, representatives and successors in office are
14 permanently enjoined from enforcing RCW 29A.08.107 in such a way that any application
15 for voter registration is denied solely on the basis of a failure to match a voter's driver's
16 license number, state identification card number, or last four digits of a social security
17 number with information on record with the state Department of Licensing or federal Social
18 Security Administration, including by enforcement of RCW 29A.08.107(2) and (3). This
19 Order does not require Defendant to tabulate ballots or count votes cast by such voters absent
20 the completion of a matching process or the receipt of alternative identification by no later
21 than the day before certification of election results by the county canvassing board.

22 In accordance with the foregoing:

23 a. If the Defendant matches an applicant's driver's license number, state
24 identification card number, or last four digits of his or her social security number
25 with the records of the state Department of Licensing or federal Social Security
26 Administration, with or without seeking additional information or clarification

1 from the voter, the voter shall be registered to vote, effective as of the date of the
2 submission or receipt of the original application, unless there exists a separate
3 basis for concluding that the voter is ineligible to vote independent of the
4 matching process;

5 b. If Defendant is unable to match an applicant's driver's license number, state
6 identification card number, or last four digits of his or her social security number,
7 but the applicant presents or submits to an election official an alternative form of
8 identification acceptable under RCW 29A.44.205, the voter shall be registered to
9 vote, effective as of the date of the submission or receipt of the original
10 application, unless there exists a separate basis for concluding that the voter is
11 ineligible to vote independent of the matching process;

12 c. If an applicant does not become registered to vote under either paragraph (1)(a) or
13 (1)(b) above, unless there exists a separate basis for concluding that the applicant
14 is ineligible to vote independent of the matching process, then the applicant shall
15 be provisionally registered to vote. All voters provisionally registered pursuant to
16 this paragraph shall be promptly notified in writing of this provisional status, of
17 the need to provide additional documents or information, and of the relevant
18 deadlines. They shall be included in the official rolls of registered voters
19 maintained by the state and in all electronic or paper copies used for election
20 administration purposes, but their provisional status may be flagged to indicate
21 that identification is still required before their votes may be counted. All voters
22 provisionally registered pursuant to this paragraph shall be permitted to cast a
23 ballot in any primary or election;

24 d. No ballot cast pursuant to paragraph (1)(c) above shall be tabulated or regarded as
25 containing valid votes for any office or measure until the Defendant receives
26 information or the voter presents or submits documentation sufficient to register

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the voter as described in paragraph (1)(a) or (1)(b) above. The Defendant is not required to tabulate votes cast pursuant to paragraph (1)(c) above, or treat them as properly cast votes for any office or measure unless the Defendant receives information or the voter presents or submits documentation sufficient to register the voter as described in paragraph (1)(a) or (1)(b). Upon receipt of such information or documentation by an election official, the ballot shall be tabulated and the voter shall be registered as a fully active registered voter, effective as of the date of the submission or receipt of the original application.

e. Nothing in this Order shall be construed to require the Defendant to maintain a voter in provisional status on the state's voter registration list after two federal general elections have been conducted since the date of the original application.

2. This Order constitutes a final order and judgment pursuant to Rule 54 resolving the merits of this action. The parties stipulate to the entry of this Order in full and final resolution of all claims and issues presented in this action, except claims for costs and attorney fees. The parties mutually agree that they will not appeal this Stipulated Final Order and Judgment to any court. This Court retains jurisdiction of this action to enforce the terms of this Order, and to adjudicate claims for costs and attorney fees.

IT IS SO ORDERED.

DATED this 16th day of March, 2007.


RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE

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SUBMITTED jointly this _____ day of March, 2007, by:

HILLIS CLARK MARTIN &
PETERSON, P.S.

ROBERT M. MCKENNA
ATTORNEY GENERAL

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AT NYU SCHOOL OF LAW

Wendy R. Weiser*
Justin Levitt*
161 Avenue of the Americas
12th Floor
New York, New York 10013
(212) 998-6730

* Admitted *pro hac vice*



Bill Cowles - Orange County Supervisor of Elections
P.O. Box 562001 - Orlando, Florida 32856-2001
Telephone - (407) 836-2070 FAX - (407) 254-8598
Visit our website at www.ocfelections.com

9000 02/27/2007 200708369 11

RE AMIN MUHAMMAD WALANI
APARTMENT 303
7511 SEURAT ST.
ORLANDO FL 32819

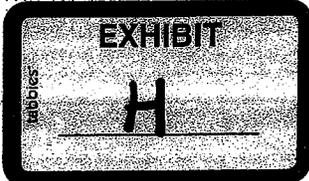
This letter is to notify you that your Orange County voter registration is in a pending status with the Florida Voter Registration System because the driver's license number and/or the Social Security number you provided can not be verified. Per Florida law, your voter registration is incomplete and you are unable to vote until this is resolved.

Please complete the enclosed registration application taking special care to give us your correct Florida Driver's License or Identification number and your complete Social Security number. A copy of these documents would be a tremendous help to us as we work to resolve this matter. If you prefer to handle this matter in person, please stop by our office located at 115 W. Riley Street.

If you have questions, please call our Customer Service Department at (407) 836-2070.

Yours sincerely,

*If this letter asks for your signature,
please sign here
and return this letter
in the enclosed envelope.*



March 16, 2006

Mr. John Maines
12810 Us Highway 301 S
Riverview FL 33569

Dear Mr. John Maines:

This notice is to inform you that the voter registration application you recently submitted was incomplete because it did not include the minimum information required by Florida law. You cannot be registered to vote until you provide the required information on a new voter registration application.

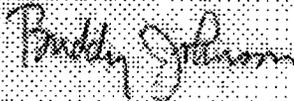
Your application was incomplete because you did not enter either the last four digits of your Social Security number or your Florida drivers license (or ID) number or it was incorrect.

For your convenience, we have enclosed a new application preprinted with the information you originally provided and a postage paid, preaddressed envelope. Please complete your new application by filling in any missing or erroneous information and verifying all existing information. The completed application must include your signature.

By law, we cannot complete your voter registration request until we receive a new application that includes all the required information. If you have questions, contact our office at (813) 272-5850.

Thank you for your assistance.

Sincerely,



Buddy Johnson
Supervisor of Elections



Palm Beach County

DR. ARTHUR ANDERSON
Supervisor of Elections

240 SOUTH MILITARY TRAIL
WEST PALM BEACH, FL 33415
POST OFFICE BOX 22308
WEST PALM BEACH, FL 33418

TELEPHONE: (561) 656-6200
FAX NUMBER: (561) 656-6287
WEBSITE: www.pbselections.org

October 18, 2006

Irwin Wolf
9289 Via Elegante
Wellington, FL 33411

Mr. Wolf:

We have received your Florida Voter Registration Application. Unfortunately, either the driver's license or Social Security number provided is incorrect. Please furnish us with a copy of your Florida driver's license or Florida ID Card. If you do not have either, please send a copy of your Social Security Card. If you prefer, you may come to any of our offices to present your identification.

Complete all the required information on the enclosed Florida Voter Registration Application, sign where indicated and follow the instructions for mailing or bringing it to this office.

After we receive the completed Application, we will process it. Once it is has been verified you will be mailed a Voter Information Card.

We apologize for any inconvenience this may have caused. If you have any questions, or if this office can be of further assistance, please do not hesitate to contact us.

**SUPERVISOR OF ELECTIONS
PALM BEACH COUNTY FLORIDA**

Phone: 561/656-6200
Fax: 561/656-6220

CAK/smc

Encl.



Dr. Brenda C. Snipes
Broward County Supervisor of Elections
Broward Governmental Center
115 S. Andrews Avenue, Room 102
Fort Lauderdale, FL 33301
(954) 357-7050

www.browardsoe.org

[115045677]

Dear Irene Cameron:

This notice is to inform you that the voter registration application which you previously submitted to our office could not be processed because it was incomplete and / or lacked information required by Florida Law. Florida Statutes require that you complete a new voter registration application. One is enclosed for your convenience.

Please be sure your application is complete and that the item(s) listed above are filled in. Your application will remain incomplete unless you provide the required information. You must respond to the questions relating to citizenship, felony status, and mental incompetence. Additionally, you must sign the application. Mail your completed application to the Broward County Supervisor of Elections at the address listed above.

If you have any questions pertaining to this matter, please call our office at 954-357-7050 or email us at snipes@browardsoe.org.

Sincerely,

Dr. Brenda C. Snipes
Broward Supervisor of Elections

Irene Cameron
1820 SW 81st Ave APT 3205
North Lauderdale FL 33068



WITH CONFIDENCE

Dr. Brenda C. Snipes
Broward County Supervisor of Elections
Broward Governmental Center
115 S. Andrews Avenue, Room 102
Fort Lauderdale, FL 33301
954-357-7050
www.browardsoe.org

August 11, 2006

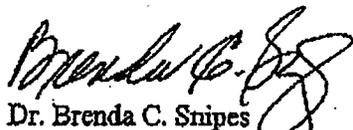
Dear Applicant:

This notice is to inform you that the voter registration application which you previously submitted to our office could not be processed. The driver license (or Florida I.D.) number or social security number could not be verified by Florida Highway Safety and Motor Vehicles or the Social Security Administration.

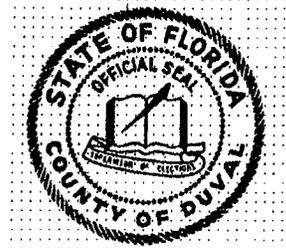
Please provide our office with a photocopy of your driver's license or government-issued social security card. Your application will become complete once you provide the required information. Please mail a photocopy of any one of the documents listed above to the Broward County Supervisor of Elections, 115 South Andrews Ave., Room 102, Ft. Lauderdale, Florida 33301. If you wish, you may fax the information to our office. Our fax number is 954-357-7070.

If you have any questions pertaining to this matter, please call our office at 954-357-7050.

Sincerely,


Dr. Brenda C. Snipes
Broward Supervisor of Elections

Jerry Holland
Supervisor of Elections
105 E. Monroe Street
Jacksonville, FL 32202
PH: (904) 630-1410
FX: (904) 630-2920



September 15, 2007

«Certificate»
«Voter_Name_FML»
«Mailing_Address» «Mailing_Address2»
«Mailing_City_State», «Mailing_Zip_Country»

Dear «First_Name» «Last_Name»,

NOTICE OF INCOMPLETE VOTER REGISTRATION APPLICATION

This notice is to inform you that your voter registration application could not be processed because it was missing the following required information:

«Reason_Text»

Please resubmit your application on the enclosed form and ensure that all required information is included. Sign the application and mail it to the **Duval County Supervisor of Elections**.

JERRY HOLLAND
SUPERVISOR OF ELECTIONS
105 E. MONROE STREET
JACKSONVILLE, FL 32202

Sincerely,

A handwritten signature in black ink that reads "Jerry Holland". The signature is written in a cursive style and is placed over a rectangular area with a dotted background.

Jerry Holland
Supervisor of Elections