

For Immediate Release

September 17, 2007

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Voting Rights Advocates Challenge Florida Registration Law in Federal Court

Typos Could Disenfranchise Thousands of Florida Voters if Not Struck Down

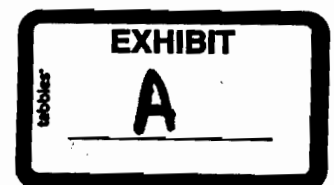
FLORIDA – Today voting rights advocates filed suit in a US District Court to strike down a statewide election law that could disenfranchise tens of thousands of eligible citizens from registering and voting in the 2008 elections.

The law bars any Florida citizen from registering to vote if the state cannot match or otherwise validate the driver's license or Social Security number on a registration form, an error-laden practice struck down in 2006 by a federal judge in Washington State. Plaintiffs bringing today's suit, including the Florida branch of the NAACP and the Haitian-American Grassroots Coalition, contend that this matching law unduly delayed or denied registrations for thousands of Florida voters in 2006, and will jeopardize many more voters in 2008 if not blocked.

Florida and a handful of other states refuse to place eligible citizens on the rolls unless they clear a series of extra bureaucratic hurdles largely dependent on "matching" registration information on a new statewide voter list with information in the state motor vehicle or Social Security systems. Common database errors, however, make "matching" unreliable, jeopardizing the status of up to 30% of new voters. A 2006 study by the Brennan Center for Justice, one of the voting rights groups that brought today's suit, found that such a procedure misinterpreted the federal Help America Vote Act (HAVA), which told states to create the statewide lists.

Plaintiffs today argued that there are several ways the bureaucratic process, embodied in Florida's state law (Subsection 6 of Section 97.053), will disenfranchise tens of thousands of eligible voters in the 2008 election cycle, especially in trying to match registration forms with Social Security information. A citizen registering as "Bill" might not "match" if his Social Security number is issued under "William"; a woman's married name might not match against a database that has her maiden name. Common data entry errors also cause matches to fail. According to court documents in a 2006 Washington State case, in which the Brennan Center challenged a similar state law, one woman was barred from the rolls when her birthday was mistakenly entered into the system as "1976" instead of "1975".

Plaintiffs and advocates were especially concerned that Florida's law would affect Latino voters who use maternal and paternal surnames, which may be entered differently in different databases. Gabriel García Márquez, for example, if listed in one system with "Márquez" as a last name and in another system with "García Márquez" as a last name, would be affected by the Florida law. And an eligible voter who happens to swap two digits of her driver's license number will be blocked at the polls, no matter what kind of other documentation she can show.



“With the elections approaching, we should be doing everything we can to ensure that eligible citizens can register to vote and have it count – but Florida’s draconian registration law won’t give many citizens that chance,” said Adora Obi Nweze, President of the Florida State Conference of the NAACP. “We are particularly concerned about the impact of this law on African Americans with unique names and spellings. After all that Florida has been through, isn’t it time we got this right?” she said.

“Unless the State of Florida rescinds its no-match, no-vote policies, thousands of Haitian-American voters and other ethnic language minorities in the State stand to be disenfranchised in the upcoming presidential election in 2008, as they were in 2000. The trauma of the 2000 Presidential election is still vivid in the collective memory, and must not be repeated,” said Jean-Robert Lafortune of the Haitian-American Grassroots Coalition.

Florida’s law is very similar to the one blocked by a federal court in the state of Washington in August 2006, when Judge Ricardo S. Martinez ruled that the state’s matching requirement was an unconstitutional obstacle to voter registration.

Since that ruling, several other states have scrapped “no match, no vote” policies, including California, Maryland, North Carolina, Pennsylvania and Texas. Florida is now one of few states left that continues to incorrectly apply the law and disenfranchise voters because of common but meaningless errors.

“This statute poses a particular problem to registration applicants in communities of color. For example, many Latinos and Haitian Americans use two names which may lead to a mismatch,” said Jennifer Maranzano, Advancement Project Staff Attorney.

“Florida’s ‘no match, no vote’ law is a bureaucratic nightmare that will unlawfully deny thousands of Floridians the right to vote in the next Presidential election,” said Justin Levitt, Counsel at the Brennan Center and author of [Making the List: Database Matching and Verification Processes for Voter Registration](#). “There may still be time to fix the problem before the Presidential primaries – if we act now,” he stated.

“Project Vote and Advancement Project confronted Pennsylvania over similar matching procedures and it agreed to follow the law,” said Brian Mellor, Senior Counsel for Project Vote. “We hope that Florida will do the same.”

The suit was filed by the Florida branch of the NAACP and the Haitian-American Grassroots Coalition.

The plaintiffs were represented by The Brennan Center for Justice at NYU School of Law; Advancement Project; Project Vote; Paul, Weiss, Rifkind, Wharton & Garrison LLP; and Greenberg Traurig LLP.

The Brennan Center for Justice at NYU School of Law and Advancement Project were co-counsel to the plaintiffs in a separate voter registration suit in August, 2006, *League of Women Voters v. Cobb*, in which a federal court in Miami blocked enforcement of a Florida state law that would have imposed exorbitant fines on voter registration groups according to a punishing and tiered regime of deadlines and fines for groups engaged in non-partisan voter registration.

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state law (Subsection 6 of Section 97.053), will disenfranchise tens of thousands of eligible voters in the 2008 election cycle, especially in trying to match registration forms with Social Security information. A citizen registering as "Bill" might not "match" if his Social Security number is issued under "William"; a woman's married name might not match against a database that has her maiden name. Common data entry errors also cause matches to fail. According to court documents in a 2006 Washington State case, in which the Brennan Center challenged a similar state law, one woman was barred from the rolls when her birthday was mistakenly entered into the system as "1976" instead of "1975".

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Publications

Making the List: Database Matching and Verification Processes for Voter Registration
3/1/2006

Policy Brief on Using Databases to Keep Eligible Voters Off the Rolls

Policy Brief on Voter Verification and Database Matching

Court Cases

Florida State Conference of the NAACP v. Browning
9/17/2007

Washington Association of Churches v. Reed
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BY FACSIMILE & FIRST-CLASS MAIL

September 20, 2006

Sue Cobb
Secretary of State
Florida Department of State
R. A. Gray Building
500 S. Bronough St.
Tallahassee, FL 32399-0250

Dear Secretary Cobb:

We, the undersigned groups, are committed to increasing democratic participation and removing voting barriers in low-income communities of color throughout the state of Florida. We write to express our concern about Florida statute § 97.053(6), which (1) prohibits acceptance of a voter registration application unless the applicant's identification number matches a number in a statewide database or the applicant does not have an identification number; and (2) requires that an applicant whose identification number has not been verified prior to presenting herself at the polls vote by provisional ballot. We believe that Florida's law is inconsistent with the Help America Vote Act (HAVA), and in fact is prohibited by both HAVA and the Voting Rights Act.

We write to request that you advise us, in writing, of your policies and procedures related to Section 97.053(6) and that we meet prior to **October 6, 2006** to discuss our recommendations on minimizing the number of eligible voters who will be wrongfully disenfranchised by this statute.

Florida Statute § 97.053(6) and its Implementation

Florida statute § 97.053(6) prohibits acceptance of a voter registration application unless the applicant's identification number (i.e., the driver's license number, social security number, or Florida identification card number) matches a number in a statewide database or the applicant does not have an identification number, and requires that an applicant whose identification number has not been verified prior to presenting herself at the polls vote by provisional ballot.¹

¹ Fla. Stat. ch. 97.053(6)(2006) provides:

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



While verifying whether applicants have become registered voters, we have noticed a lack of consistency between Supervisors handling of applications with unverified identifying numbers. It is our understanding that when a Supervisor of Elections receives a voter registration application on which the applicant has provided the last four digits of her social security number, the Supervisor compares that number with the Social Security Administration's database. From the thousands of names generated out of this initial comparison, the system then attempts to match the name, address, and date of birth of the registration record to the name, address, and date of birth of the applicant in the database. The matching process used by Florida requires each character in the registration record match each character in the social security administration's database. If the applicant's number does not match, she is placed on "hold" status. Likewise, for the limited number of our applicants who have a driver's license, the state's failure to match the applicant's driver's license number to the motor vehicles database is also used as a bar to registration.

It is our understanding that the Division of Elections has recommended that when the state cannot verify the applicant's identifying number, (1) the applicant may, prior to voting, present to the Supervisor of Elections a copy of the underlying documentation; (2) the Supervisor should verify the number on the card with the number on the voter registration application; (3) if the number is an exact match, the Supervisor should make and retain a copy of the identification and can override the applicant's hold status and process the registration; (4) if the number does not match, the applicant must fill out a new registration application with the correct number on the application. Please confirm in your written response that these are your recommended procedures and if they are not, please explain what your procedures are.

It is unclear how Supervisors will implement this procedure on Election Day if a voter who is on hold brings to the polls identification that verifies her identifying number on her application. Needless to say, a voter will be significantly burdened if she is not permitted to verify her number and vote by showing her identification at the polls. While the statute precludes her voting by regular ballot under such circumstances, it permits voting by provisional ballot. As it is, it appears that this voter's provisional ballot would not be counted without her making extraordinary efforts to present identification.

Impact of Florida's Matching Procedures on Voter Registration and Voting

Although Florida's third party voter registration requirements² have reduced voter registration activity during this registration cycle, Supervisors have refused to register a large percentage of eligible registrants based on the state's purported inability to verify the applicant's identifying number. In a sample of 606 registration applications submitted to the Miami Dade Supervisor's office, we found that 135 applicants had not been

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.

² Fla. Stat. ch. 97.021 (36); 97.0575 (2006).

registered. According to the codes in the statewide voter registration database, approximately 63 percent of those 135 applicants had not been registered because the state was unable to verify their identification number. Considering only the applicants subject to the matching requirement (i.e., first-time registrants) in this sample of 606 applicants, approximately 27 percent were not added to the registration rolls because the state was unable to match their identification number.³

Requiring an Identification Match as a Precondition to Registration is Inconsistent with the Help America Vote Act ("HAVA")

Requiring a voter registrant's identification number to match a statewide database as a condition of registration is arbitrary, inconsistent with HAVA, and violates the Voting Rights Act. As a preliminary matter, matching an applicant's registration number with information in a database is an error prone and unreliable process. Both human and computer errors are endemic in the inputting, maintaining, transferring, storing, and matching of data.⁴ For example, a study by Abt Associates determined that in a Florida social services database, as many as 26 percent of the records included city names spelled incorrectly, including 40 different spellings of Fort Lauderdale.⁵ Moreover, Florida's matching procedures not only disenfranchise numerous eligible voters but they likely have a disproportionate impact on certain racial and ethnic groups.

While HAVA requires every state to obtain a unique identifying number for voter registration applicants,⁶ it does not require identification verification to supplant state-based eligibility requirements for prospective voters. In other words, HAVA does not make the "verification" of one's identification number a pre-requisite for one's eligibility to vote.

Identification-matching should not be required as a *precondition* to becoming a registered voter. Rather, HAVA's identification requirements should be interpreted as a mechanism to eliminate duplication in the production of identifications. This interpretation is supported by the fact that HAVA permits a first-time voter who registers by mail to *either* submit a copy of her identification along with her application, or if she does not, to present her identification at the polls—and vote by regular ballot.⁷

³ The Social Security Administration has itself reported that of 143,000 voter registration records submitted to it through January 2006, 28.5 percent resulted in a failed match. Presentation by Peter Monaghan, Social Security Administration, on the Social Security Administration's HAVA Verification (Feb. 6, 2006).

⁴ Justin Levitt, Wendy Weiser, and Ana Munoz, *Making the List: Database Matching and Verification Processed for Voter Registration*, The Brennan Center for Justice at NYU School of Law (March 24, 2006), available at: <http://www.brennancenter.org/resources/index.html>.

⁵ Nancy Cole & Elie Lee, *Feasibility and Accuracy of Record Linkage to Estimate Multiple Program Participation*, Abt Associates, Inc. (Nov. 2004), at 29, available at: <http://www.abtassociates.com/reports/DataLink-Vol3.pdf>.

⁶ This number can be either a driver's license number, a social security number, or a unique identifier created by the state; See e.g.: 42 U.S.C.S. § 15483(a)(1)(A)(iii).

⁷ 42 U.S.C.S. § 15483(b)(1) & (2) (requiring certain individuals who register by mail to submit a copy of a HAVA-approved ID with their application but noting that where such copy is not provided in advance, the registrant may present the HAVA-approved ID when she votes in person.).

Recognizing that Florida has the discretion to interpret HAVA's purpose broadly to enfranchise voters, we strongly encourage and support the exercise of such discretion in favor of the voter registration applicants and voters. We note that if Florida continues down the current path of requiring an identification match as a precondition to registration, a close examination of the intersection between Florida's current approach and federal laws will be in order.

For example, the Voting Rights Act (VRA) clearly prohibits denying any individual the right to vote based on any error or omission on a voter registration application that is immaterial to determining if the individual is qualified to vote under state law.⁶ Rejecting a voter registration application because it did not produce an identification match is a clear violation of the plain language of the VRA. And while we recognize that Florida does not outright reject applications that fail to produce an identification match, giving the applicant time to surpass a hurdle which she should not be facing in the first place does not bring Florida into compliance with the VRA.

Recommendations for Minimizing the Unlawful Disenfranchisement of Eligible Voters

While we do not attempt to argue that your office may unilaterally reverse the operation of a state statute, unlawful as it is, you do have discretion to direct its implementation so as to ameliorate its unfair and regressive impact on voter registrants. The current recommended procedure of requiring a voter to supply her identification to the Supervisor prior to voting by regular ballot or having her provisional ballot counted is extremely burdensome on the voter. At a minimum, we recommend that the State allow the voter whose identification number has not been verified to verify her number at the polls by showing a poll worker her identification. The voter would then vote a provisional ballot that would be counted because her identification number had been verified. The voter would also become, through this process, a registered voter because the verification of her identifying number was the only factor keeping her from becoming registered. Further, we recommend that well in advance of the election you notify all voters who are on "hold" because of the state's inability to verify their identification number of their right to present identification at the polls.

Furthermore, we request that your office post immediately on your website a list of all the individuals who are on "hold" status, including their names, addresses and the reason they have been placed in this category. Given that this information is public record, there should not be privacy concerns with making this information widely available.

In light of the upcoming elections on November 7, 2006 and the voter registration book closing deadline on October 10, 2006, we request a response to this letter by

⁶ 42 U.S.C. § 1971(a)(2)(B) ("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...").

September 27, 2006. In the interim, we will follow up with your office to schedule a meeting to discuss the State's policies and procedures. We look forward to discussing these issues with you.

Sincerely,

Advancement Project

Center for Civic Participation

Clean Water Fund

Florida ACORN

Florida Common Cause

Florida Consumer Action Network

Florida Public Interest Research Group

League of Women Voters of Florida
Education Fund

People For the American Way
Foundation

Project Vote

Southwest Voter Registration Education
Project

United States Student Association



STATE OF FLORIDA
DEPARTMENT OF STATE

JEB BUSH
Governor

September 29, 2006

SUE M. COBB
Secretary of State

Via Facsimile and U.S. Mail

Advancement Project, et al.
1730 M Street N.W.
Suite 910
Washington, DC 20036

To Whom It May Concern:

We are in receipt of your letter dated September 20, 2006, in which you express concerns regarding the implementation of section 97.053(6), Florida Statutes. We hope this response will address concerns and correct some of your misunderstandings pertaining to federal and state law requirements and Florida's procedures for accepting and processing voter registration applications when identification numbers cannot be verified.

We note from the outset that your underlying issue is actually with the letter of state and federal laws, and not the Department of State's compliance with such laws which you have acknowledged. Your proposal to allow unverified applicants to present supporting documentation to authenticate the identification numbers provided on applications for verification by poll workers so that such persons can become registered voters at that time and vote a regular ballot is simply not permitted under Florida law, nor is it required by the Help America Vote Act or the Voting Rights Act.

First, we bring your attention to the fact that the 2005 Election Reform package was precleared by the U.S. Department of Justice in July 2006 pursuant to Section 5 of the Voting Rights Act. Section 97.053(6), Florida Statutes, was a part of that legislative package. See chapters 2005-277 and 2005-278, Laws of Florida.

Second, section 97.053(6), Florida Statutes, is consistent with section 303(a)(5)(A) of the Help America Vote Act. Section 97.053(6), Florida Statutes, states that a voter registration application cannot be accepted or processed as valid until the State has verified the authenticity of an identification number (i.e., a driver's license number, Florida identification card number or last 4 digits of the social security number) that has been provided by an applicant or the nonexistence of such an identification number. The Help America Vote Act directs the State to conduct verification of identification numbers provided on voter registration applications.

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In accordance with section 303(a)(5)(A)(iii) of the Help America Vote Act, the Florida Department of Highway Safety and Motor Vehicles (DHSMV) and the Florida Department of State were required to enter into an interagency agreement to conduct the initial verification of the identification numbers on all voter registration applications before they can be accepted or processed. It is not the supervisor of elections or any other election official who conducts this verification at this point. If a person has submitted a driver's license number or state identification card number that cannot be verified by DHSMV, the application is forwarded to the applicant's respective county supervisor of elections. The Supervisor is then required to notify the applicant of the requirement for further information or documentation to confirm the authenticity of the driver's license number or state identification card number provided by the applicant in order to process the application.

In the event that the applicant has provided the last 4 digits of his or her social security number in lieu of a driver's license number or state identification card number, the DHSMV submits the applicant's last 4 digits of the social security number to the Social Security Administration (SSA) for verification if previously unverified. Once again, in accordance with the requirements of section 303(a)(5)(B) of the Help America Vote, the DHSMV has entered into a formal agreement with the SSA through the American Association of Motor Vehicle Administrators (AAMVA) to conduct verifications of applicants' last 4 digits of the social security number. If the applicant's number cannot be verified by the SSA, the applicant's application is forwarded to his or her respective county supervisor of elections. The Supervisor is then required to notify the applicant that further information is required to confirm the authenticity of the 4 digits of the social security number provided in order to process the application.

When the DHSMV notifies election authorities of a possible match that cannot be verified through the automated process, the application is forwarded to the Bureau of Voter Registration Services. The Bureau manually reviews the application information against information in available databases in order to attempt to verify the applicant's identity (e.g., if a possible match is resulting from a change in a legal name or a difference in a nickname). If the applicant's identity can be verified, the application is accepted and processed. If the applicant's identity cannot be verified after this review, the application is forwarded to the supervisor of elections to notify the applicant that further information is required. The Bureau's process for reviewing and forwarding, if necessary, occurs within one business day.

None of the aforementioned procedures is an impediment to registration. The process allows ample time between the timely submission of an application by book closing and the start of the early voting period to verify an identification number and provide the unverified applicant notice and opportunity to verify the authenticity of his or her identifying number with supporting documentation.

Even if the verification cannot or does not occur by the time a person presents to vote, state law permits such person to vote a provisional ballot. This is once again in

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accordance with the Help America Vote Act and the Voting Rights Act. Section 97.053(6), Florida Statutes, provides that if the identification number provided is verified by the end of the canvassing period or the applicant presents evidence to the *supervisor of elections* and the evidence is sufficient to verify the authenticity of the identification number, the person's provisional ballot will be counted.

Florida law does not permit, nor is it required under federal law to provide for, your suggested option of allowing an unverified applicant to present such evidence to a pollworker for verification so that such person becomes a registered voter and can vote a regular ballot at that time. Once again, state law does not present a bar to voting. If a person declares that he or she is eligible to vote but does not appear on the official list of eligible voters, such person is still permitted to vote a provisional ballot. Such provisional ballot voter must be provided written notice and instructions at the time of voting that he or she has until 5 p.m. of the third-day following the election to provide supporting documentation that verifies the authenticity of the number provided on the application. These procedures are set out in section 101.048(5), Florida Statutes, and expanded upon in detail in Rule 1S-2.037, Florida Administrative Code. Both the state law and the rule have been precleared by the U.S. Department of Justice.

Third, all of these verification procedures are consistent with the Voluntary Guidance on Implementation of State Voter Registration Lists issued in July 2005 by the United States Election Assistance Commission. (hereinafter "BAC Guidance"). As you know, the EAC is tasked under section 201 of the Help America Vote Act, in serving as a national clearinghouse and resource regarding election information and procedures including providing information and guidance relating to federal laws, procedures, and technologies affecting the administration of federal elections. The EAC Guidance clearly recognizes the state's role in verifying the identification number provided on the voter applicant's application. As excerpted below, the document states,

"HAVA requires States to match information received on voter registration forms against driver's license and social security databases for the purpose of verifying the accuracy of the information received from all new voter registrants."

In the EAC Guidance, the EAC cautioned states to make every effort to ensure that a voter registration application is not rejected as unverifiable until the State has given the person an opportunity to correct the information and attempt to validate the accuracy of the government information in its database. As outlined above, Florida's law and procedures clearly provide this opportunity to applicants. However, the EAC also stated that "this does not mean that States should accept or add unverified registration applications to the statewide list." The EAC also recommended that in the event a state cannot verify the information, the applicant must be notified of that fact, provided an opportunity to respond or provide the correct information and explain the consequences of failing to reply.

Furthermore, should an unverified applicant vote a provisional ballot, both section 101.048(5), Florida Statutes, and Rule 1S-2.037, Florida Administrative Code, require

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that the applicant be given notice and instructions regarding his or her right to provide the supervisor of elections with evidence as to his or her eligibility to vote. This information is provided at the same time that the provisional ballot voter is required to receive information regarding the free access system pursuant to section 101.048(6), Florida Statutes, whereby such voter is entitled to determine whether his or her ballot was counted, and if not, the reason why.

In furtherance of the policy underlying the EAC Guidance to afford applicants the opportunity to correct or attempt to validate the accuracy of the identifying number provided, the Department provided an override feature in the Florida Voter Registration System that allows a Supervisor of Elections to follow the same verification process in pre-election as is contemplated in state law for post-election. That is, an applicant who receives advance notice that his or her application cannot be accepted or processed because of the inability to verify the respective identification number need not wait until after he or she goes to vote to provide evidence to the Supervisor of Elections authenticating the identification number provided. A memo detailing this process was sent to the Supervisors of Elections via an e-mail on June 16, 2006. Therefore, as to your suggestion that such pending applicants be given notice "well in advance of the election," this process is already in place.

We are committed to ensuring full participation of all eligible voters in the electoral process consistent with state and federal law.

Respectfully,

Sue M. Cobb

Secretary of State

Enclosures: EAC's Voluntary Guidance on Implementation of State
Voter Registration Lists
June 16, 2006 Memo to Supervisors of Elections Regarding
FVRS Override Feature (e-mail)

- cc: Center for Civic Participation
- Clean Water Fund
- Florida ACORN
- Florida Common Cause
- Florida Consumer Action Network
- Florida Public Interest Research Group
- League of Women Voters of Florida Education Fund
- People for the American Way Foundation
- Project Vote
- Southwest Voter Registration Education Project
- United States Student Association

BY FIRST-CLASS MAIL & EMAIL

October 11, 2006

Sue Cobb
Secretary of State
Florida Department of State
R. A. Gray Building
500 S. Bronough St.
Tallahassee, FL 32399-0250

Dear Secretary Cobb:

We write in response to your letter of September 29, 2006. We respectfully disagree with your view that the implementation of section 97.053(6), Florida Statutes, complies with federal election laws, and we reiterate our request that you consider our recommendations, outlined below, that, if implemented, will minimize the risk that eligible voters will be disenfranchised in the upcoming elections. Because the November 7th elections are only weeks away, we request that you respond to our letter no later than **Monday, October 16, 2006.**

As a preliminary matter, we were interested to learn that a manual review is included in Florida's verification process. It is our experience that many applicants whom the state is unable to verify should, with a thorough manual review, be identified as matching an entry in the database. We commend your office for this procedure and ask that you provide us, at your earliest convenience, with the specific standards and procedures used in your manual review, the number and percentage of unverified applicants subject to a manual review, and the number and percentage of applicants who, after the manual review, are successfully registered.

We strongly disagree with your view that Section 97.053(6) and Florida's procedures related to ID matching comply with federal election laws. First, your assertion that the U.S. Justice Department precleared Section 97.053(6) under §5 of the Voting Rights Act (VRA) has no bearing on whether this law violates the Help America Vote Act (HAVA), the National Voter Registration Act (NVRA), or even other sections of the VRA.¹

Second, your argument that section 97.053(6) and practices related to matching ID numbers do not impede registration, nor do they violate HAVA, is wrong on the facts and wrong on the law. As set forth in our letter of September 20, section 97.053(6) appears to violate HAVA and the VRA. Your conclusion that Florida's law and practices

¹ *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1355 n. 6 (11th Cir. 2005) ("preclearance has no bearing on the legitimacy of a given rule, procedure or action with regard to other federal electoral laws.")



related to ID matching does not violate these statutes is contrary to the conclusions of a federal district court in Washington State, which enjoined the enforcement of a state statute similar to Florida's based on its likely violation of HAVA and the VRA. Specifically, the court held that the statute violated HAVA's plain language and legislative history because "HAVA's matching requirement was intended as an administrative safeguard for storing and managing the official list of registered voters and not as a restriction on voter eligibility."² The court noted that because HAVA lays out a procedure for registering individuals who do not possess a driver's license, Florida identification card, or social security number, it would make no sense to interpret HAVA as requiring a successful match as a precondition for registration.³ The court further held that the provision in HAVA exempting first-time registrants by mail whose identifying number is successfully matched from particular identification requirements also demonstrates that HAVA did not intend matching to be a precondition of registration.⁴ Similarly, the court found a likely violation of the VRA because there was no evidence that matching was material to determining whether the applicant was qualified to vote.⁵

As to the impact of Florida's statute and practices on citizens' access to the franchise, our previous letter describes the staggering percentage of eligible voters whose applications have been denied because of Florida's matching requirements. Your argument that applicants have ample opportunity to verify their ID number is irrelevant. Florida's statute and practices violate HAVA, the VRA, and the NVRA; no amount of time afforded applicants to verify their ID number makes Florida's statute and practices lawful.

Third, we disagree with the Election Assistance Commission's (EAC) suggestion, set forth in their Voluntary Guidance on Implementation of State Voter Registration Lists, that a successful match must serve as a precondition to registration. This EAC interpretation is unfounded and contrary to the plain language and legislative intent of HAVA. Further, as the EAC itself recognizes, its guidance is voluntary but HAVA's requirements are mandatory. Therefore, Florida's reliance upon the EAC's voluntary suggestions cannot properly support Florida's unlawful policies.

Fourth, contrary to the suggestion in your letter, we did not request that an unverified applicant be permitted to show her verifying identification at the polls and vote by regular ballot, which would violate Section 97.053(6) on its face. To the contrary, although we maintain that Florida's statute is unlawful, we recommended measures that you may adopt, notwithstanding Section 97.053(6). In particular, we requested that the state adopt procedures to permit an unverified applicant to verify her ID number at the polls by showing a poll worker her underlying identification document. This voter should then be relieved of taking any additional steps prior to the canvassing board counting her provisional ballot. Given that Supervisors of Elections may override

² *Wash. Ass'n of Churches, et. al. v. Sam Reed*, C06-0726RSM, Order Granting Mot. for Prelim. Inj. (Aug. 1 2006), 4-5.

³ *Id.* at 5.

⁴ *Id.* at 5-6.

⁵ *Id.* at 6-8.

a registrant's hold status, poll workers, as agents of Supervisors, should be authorized to do the same. As a practical matter, implementing this proposed procedure would entail either providing poll workers with access to the statewide voter registration database to verify the number on the voter's identification with the number written on the registration application, or access to the Supervisor in order to forward the ID number to the Supervisor for verification. In short, when a voter produces at the polls identification that validates the number that she wrote on her registration application, Florida should not force her to undergo any additional steps in order to have her ballot counted.

Moreover, this voter, after she has presented verifying identification, should become a registered voter, given that the verification of her number was the only factor preventing Florida from processing her registration application. This is entirely consistent with Florida's statutes because this voter's registration application, once verified, is complete and the voter is entitled to become a registered voter. If you disagree with this interpretation, please explain your legal reasoning. Please additionally confirm that a Supervisor may override an applicant's hold status at any time prior to the applicant presenting herself at the polls as long as her underlying identification matches the number on her application — i.e. that the Supervisor need not confirm an exact match of the applicant's name and date of birth.

Fifth, even assuming that Section 97.053(6) is lawful, which it is not, the notice provided to applicants whose ID cannot be verified is inadequate and misleading. Notwithstanding your contention that Supervisors have provided applicants whose ID cannot be verified notice of this issue well in advance of the election, many notices appear to presuppose that the applicant wrote the incorrect number on her application and needs to re-register prior to the book closing deadline. We suggest that you issue a directive to all Supervisors with guidelines for the notices sent to this classification of applicants. In particular, we request that this notice explain: (1) the location of their polling place; (2) their option to vote provisionally; and (3) how to ensure their provisional ballot will be counted. If you do not follow our request to automatically count provisional ballots when the voter has provided verifying identification at the polls, we request that, at a minimum, you provide these voters with notice that they must show their ID to their Supervisor of Elections to guarantee that their ballot will be counted.

Finally, although we believe that Section 97.053(6) is unlawful, we request that you provide additional training to poll workers, particularly to clerks and deputy clerks, on that provision. It is critical that poll workers fully understand this law so that they can explain to voters why they must vote by provisional ballot and what steps they must take to ensure that their ballot is counted.

As we mentioned above, we request that you respond to our letter no later than **Monday, October 16, 2006**. We continue to hope that we can work with you on this issue to maximize the meaningful participation of all eligible voters in Florida.

Sincerely,

Advancement Project

Center for Civic Participation

Clean Water Fund

Common Cause Florida

Florida ACORN

Florida AFL-CIO

Florida Consumer Action Network

Florida Public Interest Research Group

League of Women Voters of Florida
Education Fund

NAACP Florida State Conference

People for the American Way Foundation

Project Vote

Southwest Voter Registration Education
Project

Matthews, Maria I.

From: Roberts, Dawn K.
Sent: Thursday, January 25, 2007 10:29 AM
To: Matthews, Maria I.; Tuck, Amy K.; Bradshaw, Sarah
Cc: Bishop, Shelby L.
Subject: FW: HAVA matching correspondence
Attachments: Coalition matching letter.doc; coalition matching response.doc; WashingtonOrderGrantingMotionForPreliminaryInjunction.pdf

We will need to get copies of our responses to the Secretary and then set up a meeting to discuss this with him. Thanks.

Dawn

From: Browning, Kurt S.
Sent: Wednesday, January 24, 2007 5:57 PM
To: Tuck, Amy K.; Roberts, Dawn K.
Subject: FW: HAVA matching correspondence

FYI...please take a look at this and let me know your opinion...Thanks...ksb

From: Woodward, Amy
Sent: Wednesday, January 24, 2007 5:12 PM
To: Browning, Kurt S.
Subject: FW: HAVA matching correspondence

FYI

From: McDuffie, Doris **On Behalf Of** Secretary of State
Sent: Wednesday, January 24, 2007 4:08 PM
To: Woodward, Amy
Subject: FW: HAVA matching correspondence

Amy,
Email for the Secretary

Department of State
Office of the Secretary
500 S Bronough Street
Tallahassee, Florida 32399-0250
Telephone: (850) 245-6500
Facsimile: (850)245-6125

-----Original Message-----

From: Jennifer Maranzano [mailto:JMaranzano@advancementproject.org]
Sent: Wednesday, January 24, 2007 4:03 PM
To: Secretary of State
Subject: HAVA matching correspondence

9/17/2007



Secretary Browning,

I enjoyed meeting you at the public meeting on the 2006 elections held by the Ethics and Elections Committee yesterday. I am attaching the correspondence I referred to yesterday that a coalition of groups sent to Secretary of State Cobb this past fall. This correspondence outlines some of the ways in which we believe Florida's matching statute (Fla. Stat. ch. 97.053(5)) contradicts federal law and disenfranchises numerous eligible voters. I am also attaching a decision by a federal district judge in Washington that endorses our reading of HAVA. These attachments address some of the points you made yesterday in your testimony. I would be happy to discuss them with you in more detail at your convenience.

Sincerely, Jennifer

Jennifer Maranzano

Staff Attorney

Advancement Project

1730 M Street, N.W., #910

Washington, D.C. 20036

(202) 728-9557 ext. 315

(202) 728-9558 fax

<http://www.advancementproject.org>

<http://justdemocracyblog.org>

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9/17/2007



FLORIDA DEPARTMENT of STATE

CHARLIE CRIST
Governor

KURT S. BROWNING
Secretary of State

14 February 2007

Jennifer Maranzano, Esq.
Advancement Project
1730 M Street, N.W. #910
Washington, D.C. 20036

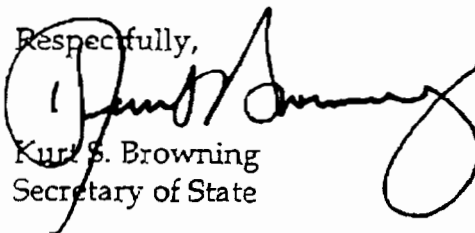
Dear Ms. Maranzano:

This letter is in response to your e-mail dated January 24, 2007, in which you expressed concerns with section 97.053, Florida Statutes, relating to the verification process of voter-provided identification numbers on voter registration applications. Advancement Project (AP) asserted similar concerns in September 2006, that this law violated federal law including the Help America Vote Act. In response, then-Secretary Sue M. Cobb set forth in detail the Department's position that Florida's state law and practices regarding verification are in compliance with federal law.

After further review and discussion of the issue and the correspondence exchanged, it is still the position of the Department that Florida is in compliance with state and federal law requirements. Moreover, consistent with a previously stated opinion of the Department of Justice, for a State not to undertake the process for verification of voter-provided identification numbers prior to accepting and processing the registration application would actually result in violation of HAVA.

As stated before, we remain committed to ensuring full participation of all eligible voters in the electoral process consistent with state and federal law.

Respectfully,


Kurt S. Browning
Secretary of State



Attachments: Letter from Secretary Cobb to Advancement Project (Sep. 29, 2006)
Letter from Dept. of Justice to Counsel J. Arnold, Baltimore, MD (Sep. 8, 2003)

cc: Dawn K. Roberts, Assistant Secretary of State/Chief of Staff
Lynn Hearn, General Counsel
Amy Tuck, Director, Division of Elections

R. A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250
Telephone: (850) 245-6500 • Facsimile: (850) 245-6125
www.dos.state.fl.us

BY EMAIL & FIRST-CLASS MAIL

March 12, 2007

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

Dear Secretary Browning:

Thank you for your February 14, 2007 response to our email regarding Florida statute § 97.053(6). We write to reiterate our request for a meeting with you and your counsel to discuss in more detail this statute and its implementation.

As you know, we are concerned that during the 2006 elections, many eligible Floridians were wrongfully disenfranchised because Supervisors of Elections placed them on a "hold" status pursuant to Section 97.053. We further believe that absent your intervention, thousands of eligible voters will be unnecessarily denied the franchise during the 2008 voter registration cycle, without meaningfully increasing the security of the system and contrary to federal law. We expect that as a former Supervisor of Elections, you share our commitment to ensuring that eligible registrants have access to meaningful participation in the electoral process. Furthermore, we hope that productive dialogue with you and your staff will mitigate the need for more cumbersome means to protect the voting rights of eligible Floridians. Therefore, we hope that your schedule will permit a discussion of Florida statute § 97.053(6) with us at your earliest convenience. If you are unavailable to meet with us, please advise us by **March 16, 2007**.

Sincerely,

Advancement Project

Florida State Conference, NAACP

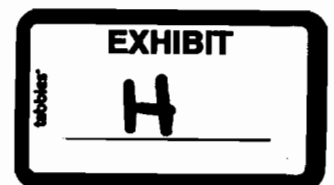
The Brennan Center for Justice at NYU
School of Law

League of Women Voters of Florida
Education Fund

Project Vote

cc: Maria Mathews
Assistant General Counsel
Division of Elections
Florida Department of State
R.A. Gray Building
500 S. Bronough Street
Tallahassee, FL 32399

Robert A. Atkins
Partner
Paul, Weiss, Rifkind, Wharton and
Garrison LLP
1235 Avenue of the Americas
New York, NY 10019





Department of State

Interoffice Memorandum

Office of the General Counsel

TO: Note to File/Correspondence/Advancement Project

FROM: Maria Matthews, Assistant General Counsel

DATE: 20 March 2007

RE: Advancement Project's Request for Meeting with SOS

The Advancement Project sent a letter on March 12, 2007 renewing its request for a meeting with the Secretary of State to discuss section 97.053(6), Florida Statutes, relating to the verification of identifying numbers (DL, SSN or state identification number) for purposes of registration. This letter follows a series of letters and e-mails in which we have already responded to the Advancement Project regarding our construction of the law and our procedures under the law.

A determination by the General Counsel's Office and the Chief of Staff, Dawn Roberts, has been made that an additional meeting at would not yield any meaningful or more fruitful dialogue.

There is also pending a public records request that Advancement Project made requesting a list of persons who were or are in pending status (i.e., applications complete) for which driver's license numbers/SSNs could not be verified.





September 7, 2007

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

Dear Secretary Browning:

Pursuant to Florida Open Records law, Fla. Stat. §119.01 et. seq., I write to request copies of the following public documents:

1. All documents concerning the criteria used to (a) determine whether Registration Records match information maintained in the DHSMV Database or SSA Database, or (b) determine that an Applicant does not have a driver's license number, Florida identification number, or Social Security number, pursuant to Fla. Stat. § 97.053(6).
2. All documents sufficient to identify the number of voter registration applications received from January 1, 2006 to date.
3. All documents concerning policies and procedures for corresponding with Applicants, including documents (a) concerning the policies and procedures for informing Applicants that their Registration Records have not been matched with information contained in the DHSMV Database and/or SSA Database; (b) allowing Applicants to provide additional or missing information or to confirm the information contained in their Applications; and (c) evaluating Applicants whose Registration Records you, your employees, agents, or representatives are unable to match in light of information received as a result of correspondence.
4. All documents concerning policies and procedures related to Fla. Stat. § 97.053(6), including policies and procedures concerning (a) imputing, processing, transferring, and maintaining Applications; (b) matching Registration Records with information maintained in the DHSMV Database or SSA Database; (c) determining that no match can be made; and (d) determining the nonexistence of a driver's license number, Florida identification number, or Social Security digits of an Applicant pursuant to Fla. Stat. § 97.053(6).

1730 M Street, NW • Suite 910 • Washington, DC 20036 • 202.728.9557 • 202.728.9558 (fax)

ap@advancementproject.org • www.advancementproject.org

LA Office: 1545 Wilshire Boulevard • Suite 800 • Los Angeles, CA 90017 • 213.989.1300 • 213.989.1301 (fax)

EXHIBIT

J

Secretary Browning
September 7, 2006
Page 2

5. All documents concerning instructions from you, your employees, agents, or representatives to local or county election officials regarding (a) the results of attempts to match information contained in Registration Records; (b) the policies and procedures, guidelines, and standards relating to the content of the notices counties are required to provide unmatched applicants; and (c) for corresponding with Applicants for whom you, your employees, agents, or representatives are neither able to verify their driver's license number, Florida identification card number, or Social Security digits nor determine that they have no such number.

6. All documents concerning the determination of whether a provisional ballot cast by an Applicant whose driver's license number, Florida identification card number, or Social Security digits have not been verified, will be counted, including, to the extent not otherwise produced, all documents concerning instructions from you, your employees, agents, or representatives to local or county officials regarding the determination of whether a provisional ballot cast by an Unmatched Applicant will be counted.

I request that this information be sent to me by **September 21, 2007**. If you do not have the information described in this public records request, or refuse to provide it, Chapter 119 requires you to advise me in writing, indicating the applicable exemption within the Public Records Act on which you rely. Also, please state with particularity the reasons for your decision not to provide copies of documents, as required by Section 119.07(d). If the exemption you are claiming only applies to a portion of the requested records, please redact that portion and provide copies of the remaining records, pursuant to Section 119.07(1)(b).

I request that if possible these documents be produced electronically. Furthermore, if producing these documents will cost more than \$100, please verify with me prior to incurring these costs. I can be reached at jmaranzano@advancementproject.org or at 202-728-9557 ext. 315.

Sincerely,

Jennifer Maranzano
Staff Attorney*

* Not admitted to practice law in the State of Florida.

cc: Susan S. Smith
Public Information Officer
Office of the General Counsel
R.A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399-0250

Peter Antonacci and Allen Winsor
Gray Robinson, P.A.
P.O. Box 11189
Tallahassee, FL 32302-3189



STATEMENT OF JENNIFER MARANZANO, STAFF ATTORNEY,¹ ADVANCEMENT PROJECT
FOR THE COMMITTEE ON ETHICS AND ELECTIONS OF THE
FLORIDA STATE SENATE on 23 JANUARY 2007

Thank you for giving Advancement Project an opportunity to share with you our thoughts about potential areas of election reform in Florida. Advancement Project works with community groups and election officials in Florida and other states to eliminate barriers to democratic participation. Unfortunately, we often find ourselves in conflict with Florida laws and policies that suppress voter participation. In an era where even presidential races can turn on several hundred votes, the importance of creating a fair and accessible electoral system is apparent. Given the obstacles that potential voters face at every step of the way, election reform must be holistic to be meaningful. Without comprehensive reforms many voters will not even make it to their polling places, let alone meaningfully participate. We appreciate this opportunity to discuss with you some of these barriers to participation.

Registration by third parties

Although third party registration groups play a vital role in increasing the numbers of registered voters, Florida's recently enacted restrictions on these groups² severely hindered non-partisan registration activity in 2006. The potential of staggering fines imposed by Florida's law led many civic minded groups across the state to halt or significantly curtail voter registration drives, which often focused on low income neighborhoods and communities of color. In fact, although the League of Women Voters had been registering voters in Florida since 1939, they issued a moratorium in 2006 on registration rather than face the potential financial liability imposed by this law. A federal district court has currently barred enforcement of this law based on its "demonstrated impact" to "limit the means of voter registration in Florida, contradict the longstanding tradition of not discriminating against non-political parties with respect to voter registration and burden...protected speech and association."³ Florida, which ranks 39th in the nation in terms of voter registration rates with only 76.6% of its voting age citizens registered to vote, should assist, rather than hinder, third party registration groups.

Database matching:

Florida's law prohibiting the state from registering a new voter until the state has verified her identification number (driver's license number, social security number, or Florida identification card

¹ Not admitted to practice law in the state of Florida.

² Fla. Stat. ch. 97.021(36), 97.0575 (2006).

³ League of Women Voters v. Cobb, 447 F. Supp. 2d 1314, 1379 (S.D. Fla. 2006)



number) with a corresponding statewide database⁴ also violates federal law and suppresses voter participation. Further, this matching process is error prone and unreliable.

Both human and computer errors are endemic in the inputting, maintaining, transferring, storing, and matching of data. For example, a study by Abt Associates determined that in a Florida social services database, as many as 26 percent of the records included city names spelled incorrectly, including 40 different spellings of Fort Lauderdale.⁵ In African-American communities it is common to modify spellings of names spelled differently in other communities, which can easily lead to data entry errors and cause matching problems. Many Latino citizens use both their maternal and paternal last names, which frequently causes matching problems. Additionally, a woman's married name might not match against an outdated database containing her maiden name.

Florida's law effectively creates a "no match, no vote" rule that will disenfranchise numerous eligible voters. While it is important to have accurate voter rolls, we need to balance this goal with the possibility of preventing eligible voters from registering.

Poll Worker Training

Additionally, Florida needs to devote more resources to recruiting and training poll workers. Poll workers are the last defense between a well-run democracy and an unstable, ineffective political system. Unfortunately, counties have significant trouble recruiting sufficient numbers of poll workers and adequately training them. The security and integrity of our elections depend on poll workers who serve long days for little pay, in intense and complex situations. Evidence of recurring poll worker errors that often lead to disenfranchising eligible voters suggests a dire need for improved training.

In 2006 Advancement Project created a briefing paper on this issue and produced palm cards that poll workers could use as a reference tool on Election Day. I would like to submit both the briefing paper and the Florida poll worker palm card into the record. Furthermore, Advancement Project would like to commend Jerry Holland, Duval County Supervisor of Elections, who distributed these palm cards to his poll workers to use in the 2006 federal general election. However, more steps need to be taken on a statewide level. Florida should immediately and aggressively reform the poll worker program.

Identification Requirements

Florida's identification law requiring all voters to show photo and signature identification at the polls burdens most significantly those who already face barriers to participation. Voter identification requirements disproportionately impact the elderly, the disabled, the poor, and people of color.⁶ Although a voter without identification in Florida may have her provisional ballot counted, these voters might be chilled from participating at all.

⁴ Fla. Stat. ch. 97.053(6)(2006).

⁵ Nancy Cole & Elie Lee, *Feasibility and Accuracy of Record Linkage to Estimate Multiple Program Participation*, Abt Associates, Inc. (Nov. 2004), at 29, available at: <http://www.abtassociates.com/reports/DataLink-Vol3.pdf>.

⁶ The Brennan Center for Justice at NYU School of Law, *Cast Out: New Voter Suppression Strategies 2006 and Beyond* (Oct. 2006), available at: http://www.brennancenter.org/dynamic/subpages/download_file_37892.pdf.

Challenges and Provisional Ballots

Florida's recent changes to the law on challenges and provisional ballots also suppress participation. Under the new system, anyone who is challenged votes by a provisional ballot and is allowed to submit only written evidence to support the counting of this ballot.⁷ We submit that voters who are challenged but can immediately provide adequate support for their eligibility should vote by a regular ballot. Only if the eligibility issue is unable to be resolved should the voter be given a provisional ballot. Further, requiring that any evidence in support of a provisional ballot be written disproportionately impacts individuals with limited English proficiency.

Purging

Because all Supervisors of Elections are required to conduct routine voter list maintenance in all odd numbered years,⁸ we request that the legislature closely monitor election officials in 2007 to ensure that their purging activities fully comply with federal and state law. Given Florida's history with voter list purges, the legislature needs to be especially vigilant about overseeing this process and ensuring that election officials do not purge eligible voters from the rolls.

Conclusion

The right of all eligible voters to cast a ballot that will be counted is a cornerstone of our democracy. While monitoring the 2006 federal election in Florida, we received complaints from voters about machines, precinct location changes, and poll workers. In spite of these and other glitches, we have noticed some improvements in Florida's electoral administration. However, the job is far from done. The spotlight that has been on Florida since the election of 2000 presents an opportunity for this state to be on the forefront of election reforms that remove barriers to voting and maximize participation in our elections. We look forward to working with you on such reforms.

⁷ Fla. Stat. ch. 101.111, 101.048 (2006)

⁸ Fla. Stat. ch. 98.065 (2006)