

AO 88 (Rev. 1/94) Subpoena in a Civil Case

**United States District Court
MIDDLE 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.*,

Plaintiffs,

vs.

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

Defendant.

**SUBPOENA IN A CIVIL CASE
NORTHERN DISTRICT OF FLORIDA
CASE No: 4:07cv402 SPM/WCS**

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

YOU ARE COMMANDED to appear in the United District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY:	DATE AND TIME:
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YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF TESTIMONY: 601 East Kennedy Blvd, 16th Floor Tampa, FL 33602	DATE AND TIME: October 18, 2007, 9:00 a.m.
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): SEE ATTACHED EXHIBIT "A"

PLACE OF PRODUCTION: same as above	DATE AND TIME: same as above
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES:	DATE AND TIME:
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE  COUNSEL FOR PLAINTIFFS	DATE: October 4, 2007
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ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER:	GLENN T. BURHANS, JR. ESQ. Greenberg Traurig 101 E. College Ave. Tallahassee, FL 32301 (850) 222-6891
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PROOF OF SERVICE

SERVED:	DATE	PLACE
SERVED ON (PRINT NAME) MANNER OF SERVICE		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

EXECUTED ON _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim

Exhibit A

DEFINITIONS

- A. The singular form of a word shall include the plural, and the plural shall include the singular.
- B. The use of the present tense includes the past tense and vice versa.
- C. "AAMVA" refers to the American Association of Motor Vehicle Administrators.
- D. "All" shall be construed to include "any" and "each," "any" shall be construed to include "all" and "each," and "each" shall be construed to include "all" and "any," in each case as is necessary to bring within the scope of these requests documents that might otherwise be construed as outside their scope.
- E. "And" and "or" shall be construed conjunctively or disjunctively, in each case as is necessary to bring within the scope of these requests documents that might otherwise be construed as outside their scope.
- F. The term "Applicant" refers to a person who has submitted or caused to be submitted an Application to a State or county office or officer that accepts registration forms and for whom there is a Registration Record.
- G. The term "Application" refers to a voter registration form submitted by an Applicant.
- H. "Bureau" or "BVRS" refers to the Bureau of Voter Registration Services within the Division of Elections of the Florida Department of State.
- I. The term "communication" means any occurrence whereby data, expression, facts, opinions, thought or other information of any kind is transmitted in any form, including

without limitation any conversation, correspondence, discussion, e-mail, meeting, memorandum, message, note or posting or any other display on the Internet or World Wide Web.

J. “Complaint” refers to the complaint filed by Plaintiffs in this action, and any amendment(s) thereto.

K. The term “concerning” means referring or relating to and includes without limitation analyzing, commenting on, comprising, connected with, constituting, containing, contradicting, describing, embodying, establishing, evidencing, memorializing, mentioning, pertaining to, recording, regarding, reflecting, responding to, setting forth, showing, or supporting, directly or indirectly.

L. The terms “correspondence” or “corresponding” refers to communications made between you and/or the Florida Secretary of State and/or Applicants.

M. “County supervisor” refers to any of Florida’s 67 county supervisors of elections or other election officials in the State’s 67 counties, and any of their employees, agents, or representatives.

N. “DHSMV” means the Florida Department of Highway Safety & Motor Vehicles.

O. “DHSMV Database” refers to the database maintained by the Florida Department of Highway Safety & Motor Vehicles, which contains information related to individuals with State driver’s licenses and is used in the matching or verifying process.

P. The term “document” is used herein in the broadest sense permissible under Rule 34 of the Federal Rules of Civil Procedure, and includes, but is not limited to, any written, recorded or tangible graphic matter, or any other means of preserving data, expression, facts, opinions, thought, images, or other information of any kind, including without limitation all non-

identical copies, drafts, out takes, subsequent versions, worksheets and proofs, however created or recorded, including without limitation audio tapes, annotations, calendars, correspondence, data or information of any kind recorded on compact discs, digital video diskettes, or any other type or form of diskettes for use with computers or other electronic devices, or any hard drive, diary entries, electronic recordings of any kind, e-mail, memoranda, notes, photographs, reports, telephone slips and logs, video cartridges and videotapes, and sites, databases, or other means of information storage or retrieval on the Internet or the World Wide Web.

Q. "Driver's license" means a Florida driver's license or a Florida identification card.

R. "FVRS" means the Florida Voter Registration System, Florida's uniform, official, centralized, interactive computerized statewide voter registration list.

S. "Identify" means:

- i) with respect to an individual, to produce documents containing that person's home and business address and phone and fax numbers;
- ii) with respect to any entity other than a natural person, to produce documents containing its full name, present or last known address, form of organization (*e.g.*, general partnership, corporation), and state of incorporation or other organization;
- iii) with respect to a test, study, analysis, audit or evaluation, to produce documents concerning its circumstances, purposes and results, methods and protocols used, or concerning each person or entity with knowledge concerning the test, study, analysis, audit or evaluation; and
- iv) with respect to an event, to produce documents containing the date, location, and participants in those events.

T. The term "including" means including without limitation.

U. The term "person" means any natural person or business, legal, or governmental entity or association. References to any person or entity shall include that person or entity and its officers, directors, employees, partners, agents, representatives, corporate parents, predecessors, successors, subsidiaries, and affiliates.

V. "Registration Record" refers to the electronic record containing data from an Application concerning an Applicant's identity that you will use to attempt to verify an Applicant's driver's license number or Social Security digits, or to determine that the Applicant has no such number, pursuant to § 97.053(6), Fla. Stat.

W. "Social Security digits" refers to the last four digits of the social security number provided by an Applicant.

X. "SSA Database" refers to the United States Social Security Administration's database containing information related to individuals with Social Security numbers and used in the verification or matching process pursuant to § 97.053(6), Fla. Stat.

Y. "State" refers to the State of Florida.

Z. "Unmatched Applicant" means an Applicant with a driver's license number or Social Security digits on the Application, whose driver's license number or Social Security digits on the Application have not been verified.

AA. The terms "verify," "verified" or "verifying" refer to the process prescribed by § 97.053(6), Fla. Stat., by which the State seeks to verify the authenticity of the driver's license number or the Social Security digits provided by an Applicant, and is used interchangeably herein with the terms "match" or "matching".

BB. "You" and "your" refers to the County Supervisor of Elections, Hillsborough County, and any of your employees, agents, or representatives, whether or not employed directly by the County supervisor.

INSTRUCTIONS

A. If any request herein for a document cannot be complied with in full, it shall be complied with to the extent possible, with an explanation as to why full compliance is not possible.

B. The requests for documents herein are continuing in nature. If at any time documents are obtained in addition to those that have previously been produced to Plaintiffs, prompt supplementation of such responses to these requests is required.

C. These requests apply to all documents in your possession, custody or control, regardless of the location of such documents, and include documents within the possession, custody or control of your employees, agents or representatives, wherever located.

D. Each document is to be produced (along with all drafts thereof) in its entirety, without abbreviation, expurgation, or redaction. In the event that a copy of a document, the production of which is requested, is not identical to any other copy thereof, by reason of any alterations, marginal notes, comments, or material contained therein or attached thereto, or otherwise, all such non-identical copies shall be produced separately.

E. The documents requested herein shall be produced as they are kept in the usual course of business, or shall be organized and labeled to correspond to each document request herein. All documents that are physically attached to each other when located for production shall be left so attached. Documents that are segregated or separated from other documents, whether by use of binders, files, sub-files, or by dividers, tabs, or any other method, shall be left so segregated or separated. All labels or other forms of identification contained, placed, attached, or appended on or to any binders, files, sub-files, dividers, or tabs shall be produced.

F. A request for documents shall be deemed to include a request for any or all transmittal sheets, cover letters, exhibits, enclosures, or attachments to the documents, in addition to the document itself, without abbreviation or expurgation.

G. No request shall be read as limiting any other request.

H. If, in responding to these requests, you claim any ambiguity in interpreting a request, or a definition or instruction applicable thereto, such claim shall not be utilized by you as a basis for refusing to respond, but instead you shall set forth as part of your response the language deemed to be ambiguous and the interpretation that you used in responding to the request.

I. If any document requested herein that was formerly in your possession, custody or control has been destroyed, discarded, or otherwise lost, the document shall be identified by stating: (a) the nature of the document, the number of pages (if applicable), its subject matter and its contents, including but not limited to any attachments or appendices; (b) the author or creator of the document and all persons to whom it was sent, including but not limited to cover copies or blind copies (if applicable); (c) the date on which the document was prepared or transmitted; (d) the date on which the document was lost, discarded, or destroyed; (e) the person who authorized and carried out the destruction; and (f) the name of any custodian of any existing copies of the document; (g) the manner in which You can modify, change or correct information regarding Applicants submitted to by county supervisors or other officials.

J. In the event that any responsive material is maintained in electronic format, such material shall be produced in a reasonably usable and electronically searchable form, consistent with the requirements of Rule 34(b)(ii) of the Federal Rules of Civil Procedure.

K. If any document responsive to these requests or any part thereof is withheld under a claim of attorney-client privilege, attorney work product immunity, or any other claim of privilege or immunity, provide a list of all such documents, identifying, with respect to each document: (a) the type of document; (b) the general subject matter of the document; (c) the date of creation of the document; (d) the creator/author of the document; (e) each recipient of the document; (f) the present custodian of the document; (g) the number of pages, attachments, and appendices in the document (if applicable); and (h) the specific privilege or immunity claimed.

L. If no documents exist that are responsive to a particular paragraph of these requests, so state in writing.

REQUESTS FOR PRODUCTION

1. Documents sufficient to show policies and procedures (including all initiatives, instructions, guidelines, forms (including form letters), agreements or standards) relating to the County's compliance with or implementation of § 97.053(6), Fla. Stat., as well as any rules or regulations thereunder. This request includes, but is not limited to, documents sufficient to show all policies and procedures (including all initiatives, instructions, guidelines, forms (including form letters), agreements or standards) relating to:

- (a) The statewide voter registration system, including the entry of Applications into the system;
- (b) The format, entry, receipt, submission or transfer of information, whether electronic or otherwise, from an Application to the FVRS or to any county voter registration system;
- (c) Verifying or matching the driver's license number or Social Security digits on an Application pursuant to 97.053(6), Fla. Stat.;
- (d) The processes or procedures applied to any Registration Record corresponding to an Application with a driver's license number or Social Security digits that the State has not been able to verify or match;

- (e) Notifying Applicants that information on their Application has not been verified or matched, and responding to correspondence from such Unmatched Applicants;
- (f) Placement of Unmatched Applicants in the pollbooks for an election;
- (g) Training pollworkers in the proper processing of Unmatched Applicants and providing them with instructions, including the most recent draft of any pending update to such instructions;
- (h) Identification or other means of identity or eligibility verification required of voters at the polls;
- (i) Casting provisional ballots, including, but not limited to any instructions provided to persons who cast a provisional ballot;
- (j) The provision to a County supervisor of evidence supporting the eligibility of an Unmatched Applicant who cast a provisional ballot; and
- (k) The canvassing board's determination of the validity of a provisional ballot, including but not limited to the validity of a provisional ballot cast by an Unmatched Applicant.

2. All Applications of any person who has been, at any time since January 1, 2006, an Unmatched Applicant.

3. All Registration Records of any person who has been, at any time since January 1, 2006, an Unmatched Applicant.

4. Documents sufficient to indicate the number of your employees, agents, and representatives who are currently involved in corresponding with Unmatched Applicants or collecting and processing information necessary to verify or match the driver's license number or Social Security digits of such Unmatched Applicants, and the number of such persons you plan to involve in these activities between now and January 29, 2008.