

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 evidence to the supervisor of elections sufficient to verify the authenticity of the driver's license

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 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

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).

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

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

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.).

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.⁸ 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 **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,

⁸ 42 U.S.C.S. § 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...").

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