

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 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

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.")

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 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

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.

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

Florida Public Interest Research Group

Center for Civic Participation

League of Women Voters of Florida
Education Fund

Clean Water Fund

Common Cause Florida

Florida ACORN

Florida AFL-CIO

Florida Consumer Action Network

NAACP Florida State Conference

People for the American Way Foundation

Project Vote

Southwest Voter Registration Education
Project