

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA**

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

Civil No. 4:07cv402 SPM/WCS

vs.

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

Defendant.

**PLAINTIFFS' SUPPLEMENTAL EVIDENTIARY SUBMISSION
IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

INTRODUCTION

The expedited discovery taken so far already confirms the grounds on which plaintiffs moved for a preliminary injunction to halt Florida's "matching" statute, § 97.053(6), Fla. Stat. ("Subsection 6"). The voter registration records and deposition testimony provided by both State and county elections officials prove that thousands of Florida citizens have been and will continue to be left off the registration rolls because of administrative and computer errors that have nothing to do with their identity or their eligibility to vote.

Indeed, discovery has revealed that an un-matched voter can present irrefutable proof of her identity and eligibility, and she still will be excluded from the registration rolls and voting polls. All that matters under Subsection 6 is verification *of the number* on the application -- and that clerical task has now become an obstacle to exercising the most fundamental right in America.

The discovery record shows that Subsection 6 will unduly burden and disenfranchise eligible Florida voters if not enjoined before the January 2008 Presidential Primary:

- Since implementing the matching law in January 2006, the State has failed to "match" more than 31,000 registration applicants -- delaying registration for 31,000 individuals who submitted otherwise complete and timely forms -- for reasons including typos, data entry errors, misspellings, name changes, dropped hyphens, and other sorts of trivial mistakes and database discrepancies.

- For the watershed federal elections in November 2006, nearly 13,000 applicants submitting complete and timely forms were “un-matched” and excluded from the registration rolls.

- For the coming elections in 2008, there already are at least 6,000 “un-matched” applicants excluded from the rolls -- and that is before the huge surge in voter registration applications that always precedes a presidential election.

- The error-riddled process is disproportionately rejecting the applications of Latino, Haitian American and African American citizens.

- The efforts of the counties to notify un-matched registrants and “correct” their applications before the registration books close puts eligible citizens through an obstacle course they should not have to navigate at all; moreover, these efforts are ineffectual and, worse, mislead and discourage citizens who want to vote.

- The “provisional ballots” offered to those un-matched voters who do go to the polls on Election Day are just another barrier to voting, requiring the voters to make unnecessary, extraordinary and often impossible efforts to get their votes counted.

The discovery record not only shows *how* the matching law is interfering with the right to vote, but *who* it is hurting. Plaintiffs have submitted Declarations from six eligible Florida voters who were plagued by pointless “matching” problems. The registration documents identify many others who have been rejected from the rolls and denied the right to vote. Subsection 6 disproportionately impacts racial minorities: Hispanic Americans, who comprise 15% of the overall voter applicant population in Florida, constitute 34% of the un-matched applications; African Americans, comprising

13% of the voter applicant population, account for 22% of the un-matched applications. By contrast, Whites, who comprise 66% of all applicants, account for 29% of the un-matched applications.¹

As for *why* Florida would erect a brand new obstacle to voting, the testimony from the Secretary of State's office and the Supervisors of Elections provides no comfort and no legal justification. Though the Secretary casts Subsection 6 as an "anti-fraud" measure, none of the election officials who testified even tried to defend the failed matches as preventing registration fraud. The Chief Deputy of the Palm Beach County Supervisor of Elections testified that she has no evidence that any of the un-matched voters examined in her deposition were attempting to commit fraud. Kelly Dep. Tr. 127:16-19. Likewise, the Broward County Supervisor of Elections could not testify that any of the individuals on the un-matched applicant list were trying to commit fraud. Snipes Dep. Tr. 84:1-9.

The absence of any such evidence is not surprising. After all, the object of "matching" under Subsection 6 is to verify the number on a form, not the identity of new

¹ These calculations are based upon the number of applications received from January 1, 2006. The data calculations and tables provided herein are the result of analyzing the "Florida Voter Registration System" (the "FVRS") database, voter registration applications and other documents obtained from the State and various counties through discovery. All of the underlying data, documents and other records underlying each data calculation and table submitted herein have been produced by or provided to the Secretary in discovery. To the extent feasible in this submission, plaintiffs include the specific data and documents relating to each data calculation and/or table in the attached appendices. Because such underlying data and records are voluminous and cannot be conveniently examined in court nor set forth in toto here, they are available for inspection by the Secretary upon reasonable notice. *See* FED. R. EVID. 1006.

voters. That is why un-matched Florida voters cannot get registered even if they prove their identity with a military I.D. Thus, the factual record reveals in myriad ways the misadventure of making matching a pre-condition to registration: eligible voters are rejected from the rolls for meaningless reasons; African Americans and Latinos are disadvantaged because of their naming conventions and punctuations; elections officials are frustrated by a bureaucratic exercise that creates voter confusion rather than confidence; and votes are not counted because of data-entry errors and typos.

The evidence demonstrates that plaintiffs are more than likely to succeed on the merits and that there is a real and irreparable harm to the franchise. The denial of the right to register and vote due to immaterial errors in the matching and number verification process violates the Voting Rights Act and the Help America Vote Act. And, the undue and unequal burden on the right to vote violates the Constitution.

THE SCOPE OF THE MATCHING PROBLEM

The problems caused by the State's "matching" law have now been quantified. The number of potentially disenfranchised voters is enormous.

According to the Secretary's own calculations, during the registration period for the 2006 election cycle, January 1, 2006 through October 10, 2006, the State failed to match at least 21,854 voters. Of those un-matched voters, 12,804 -- 58.6% of the total failed matches -- remained un-matched as of the election and, therefore, were not permitted to vote a regular ballot in the 2006 national election.

It goes without saying in Florida, even beyond the harm to individual voters, that thousands of votes could far exceed the deciding margin in elections. And in 2008, the

problem will be multiplied many times over. *First*, the number of voter registration applications is consistently higher in presidential election years -- often nearly twice as high -- than in off-years. *See Voter Registration Statistics, Change in Voter Registration* (attached to the Supplemental Declaration of Glenn Burhans, Jr. ("Burhans Supp. Ex.") as Ex. A). The number of new registrations in the last presidential year (1,591,451) was nearly three times the number of new registrations reported for 2006 (547,455). *See id.* Thus, the number of voters impacted by Subsection 6 in 2008 will increase substantially.

Second, the number of failed matches in 2008 will increase because the flood of new applicants will arrive just when State and county election staff are at their busiest. In the last five presidential elections, Florida logged between 7 and 19 percent of the total annual registrations in *the final week* before book closing. *See Motion for Preliminary Injunction* at 9. There are already 6,000 un-matched applicants.²

Beyond the sheer size of the matching problem are the individual stories of rejected applicants and disenfranchised voters. By way of example and as discussed below, we include the Declarations of six eligible Florida citizens whose voting rights were impaired by Subsection 6. Registration applications are being rejected and citizens are being excluded from the rolls *not* because they are ineligible or lie about their identity, but because of clerical slip-ups, typos, use of nicknames, data-entry glitches, and other meaningless mistakes.

² The 6,000 figure may understate the number of un-matched applicants in certain counties. For example, it includes only eight un-matched applicants in Miami-Dade County and three in Hillsborough County. *See App. 1*. On their face, those figures are suspect given the size of those counties. In fact, Miami-Dade County produced a list containing thousands of unmatched applicants. *See Sola Dep. Tr. 50:9-51:10*.

The evidence submitted in support of Plaintiffs' Motion for Preliminary Injunction, and discussed herein, is organized as follows:

Appendix 1 - Summary of Data from Defendant on Un-Matched Applicants.

Appendix 2 - Declarations of Florida Citizens Impacted by Subsection 6.

Appendix 3 - Tables Summarizing Examples of Typical Data Entry Errors, filed under seal pursuant to the Protective Order dated Oct. 23, 2007.

Appendix 4 - Plaintiffs' Designation of Deposition Testimony and Transcripts.

To demonstrate how Subsection 6 continues to adversely impact Florida citizens, we summarize the evidence below in the sequence of the registration and voting process:

I. The processing of voter registration applications, where the immaterial errors endemic to matching begin.

II. The database matching of registration applications by the State, where thousands of eligible voters are first rejected.

III. The return of those rejected "un-matched" applications to the counties, with no useful information or instructions from the State.

IV. The misleading, confusing and discouraging notice letters from the counties to the un-matched applicants, which are not always sent or received.

V. The provisional ballots given to those un-matched applicants who try to vote on election day, which are not counted unless the voter makes an out-of-the-way trip to the Supervisor of Elections and presents very particular evidence to "verify" the number on their original application -- a heavy and often insurmountable burden not imposed on any other voters in the State.

VI. The County Canvassing Boards, where the fate of the provisional ballots from un-matched voters is decided with no clear or consistent standard.

I. PROCESSING THE VOTER REGISTRATION APPLICATIONS

Pursuant to the Help America Vote Act of 2002 (“HAVA”), as implemented by Florida law, new voter registration applicants must provide their driver’s license number or the last four digits of their Social Security number, or state that they have neither number. 42 U.S.C. § 15483(a)(5)(A); § 97.053(5)(a), Fla. Stat. Applicants also must provide the information relating to their eligibility to vote under the Florida Constitution: that they are a citizen of the United States, at least 18 years old, a permanent resident of the state, and that they have not been convicted of a felony or adjudicated mentally incapacitated without restoration of their voting rights. *Id.*; Art. VI, §§ 2, 4, Fla. Const.

Before the registration of an eligible voter can be completed, however, Subsection 6 requires the State to “verify” a particular number on the voter’s registration application. The statute provides: “A voter registration application may be accepted as valid only after the department [of state] has verified the authenticity or nonexistence of the driver’s license number, the Florida identification card number, or the last four digits of the social security number provided by the applicant.” § 97.053(6), Fla. Stat.

This process, and all its problems, begins with the submission of applications to, and their handling and processing by, elections officials. Here is how that works:

Registration applications are submitted to county election officials, who are responsible for entering the data from the applications into electronic records that are added to the statewide registration database called the “Florida Voter Registration

System” (the “FVRS”). A relatively small number of applications are submitted directly to State offices and are processed by the Bureau of Voter Registration Services (the “BVRS”) within the Department of State.³

The process of transferring and entering data from the applications into the FVRS is fraught with typographical and other errors. For example, Jose Lopez-Sandin, a 20-year old eligible voter from Broward County, states that his 2006 registration application was rejected as a failed match apparently because his first name was input as “Joseph.” As a result, he never received a voter information card confirming his registration and he believed he was unable to vote. *See* Jose Lopez-Sandin Decl. ¶¶ 1-9 (App. 2.)

From a sample of State and county records obtained through discovery, plaintiffs have already identified dozens of such clerical errors that keep eligible voters off the registration rolls. Table 1 shows the results of a side-by-side comparison of registration applications from Orange County with the electronic records in the FVRS database for a sample of un-matched applicants. The reason the State failed to “match” these aspiring voters is that their names were mis-typed when they were entered into the FVRS:

³ Unless they submit registration applications through the Department of Highway Safety & Motor Vehicles (“HSMV”), applicants in Florida fill out voter registration applications by hand.

Table 1
Typographical Errors: Registrant Names
 Examples from Orange County⁴

Application	FVRS Database
Gladice	Gladier
Alexandra	Alejandra
Morehead	Moorehead
Mario	C
Jamal	Jamel
Jean Yves	Jean Yvas
Leonard	Leanoard
Toledo	Toldedo
Crews	Crew
Brooke	Brroke
Slater	Sutter
Osdael	Osdeal

The same kinds of data-entry errors are found throughout the State. Miami-Dade County records, for example, reflect a variety of typographical discrepancies between the names as they appear on the handwritten applications and in the database of un-matched applications. *See* Sola Dep. Tr. 55:16-79:16⁵ and Burhans Supp. Ex. C. As Lester Sola, the Miami-Dade County Supervisor of Elections, testified, these errors range from clear typographical mistakes, Sola Dep. Tr. 58:19-59:13 (Alejandro Dominguez listed as A_eandro Dominguez), to simple misspellings, *id.* at 57:9-22 (Millisa Bell entered as Mellisa Bell), to the replacement of letters with numbers, *id.* at 66:11-67:23 (Shekama Jones entered as Shekama Jones); from the placement of names in the wrong fields, *id.* at

⁴ This is just a sample of the typographical errors found amongst the Orange County applications. This table and the underlying handwritten voter applications and FVRS data appear in Appendix 3, filed under seal.

⁵ True and correct copies of all cited deposition transcripts are attached at Appendix 4.

55:25-57:6 (Last Name: Avellan McRea, First Name: Bunner entered as Last Name: Avellan, First Name: McRea Bunner), to the entry of an applicant's date of birth in his name field, *id.* at 67:24-68:17 (Gracieuse Jason entered as Gracieuse 06141949 Jason).

The data-entry errors and typos that lead to failed matches are not limited to the names of applicants. The same types of mistakes are made in transferring and entering driver's license and Social Security numbers. Eugene McKenna, a 68-year-old eligible voter from Fort Lauderdale, tried to register after moving to Florida from New York. His application failed to match -- though the county never informed him in time for him to fix it -- because two digits in his Social Security were transposed when they were entered in the system. McKenna Decl. ¶¶ 1-7 (App. 2). Tables 2 and 3 show the results of a side-by-side comparison of the numbers on applications from Orange County with the numbers as they appear in the FVRS database for a sample of un-matched applicants.

Table 2
Typographical Errors: Social Security Digits
Examples from Orange County⁶

Application	Database
XX58	XX59
58XX	38XX
XX97	XX47

⁶ An unredacted version of table 2 and table 3, as well as the underlying handwritten voter applications appear and corresponding FVRS records, appear in Appendix 3, filed under seal.

Table 3
Typographical Errors: Driver's License Numbers
 Examples from Orange County

Application	Database
XXXXXXXX752680	XXXXXXXX75260
XXXXXXXX883450	XXXXXXXX883460
B6560XXXXXXXX	B6566XXXXXXXX
XXXXXXXX894580	XXXXXXXX804580
C45043XXXXXXXX	C40543XXXXXXXX
XXXXXXXX95040	XXXXXXXX90040
XXXXXXXX97490	XXXXXXXX97990
XXXXXXXX81890	XXXXXXXX81880
XXX078583XXX	XXX078883XXX
XXXXXXXX842630	XXXXXXXX862630
M5205XXXXXXXX	H5205XXXXXXXX

Failed matches also are caused when data is entered in the wrong fields. Compound last names, for example, are split into middle and last names. The State's official polling place procedures manual acknowledges as much, warning poll workers that compound names will not uniformly be entered into the registration system correctly: "Be careful of multiple forms of one name. For example, you should look for 'Mary Smith-Collins' under 'Smith Collins', 'Smith-Collins' and 'Collins.'" *Polling Place Procedures Manual* at 5 (Burhans Supp. Ex. D); *see also Florida Voter Registration System HSMV Processing, FSASE Conference* (May 23, 2007) ("*FSASE Presentation*") at 18 (Burhans Supp. Ex. E) (identifying hyphenated and married names on the HSMV and Social Security Administration databases as a "current issue" for FVRS); Kelly Dep. Tr. 137:11-15 (testifying that matching hyphenated and married names with the Social Security Administration database is a known problem).

It should be stressed: in all of the above examples, the voters filled out their applications completely. The reason they failed to "match" was not because the voters

were ineligible, but because of data-entry errors. And elections officials are well aware of the errors in the Department of Highway Safety and Motor Vehicles (“HSMV”) and Social Security Administration (“SSA”) databases. *See, e.g.*, Roberts Dep. Tr. 30:15-23; Taff Dep. Tr. 44:25-45:3.

Conscious of this threat to the franchise, the State and some counties have tried to implement a proofreading process before the records are submitted into the FVRS database. *See, e.g.*, Bryant Dep. Tr. 38:6-22; Cowles Dep. Tr. 22:10-13; Kelly Dep. Tr. at 44:14-20, 45:17-21. This well-meaning exercise highlights the problem but does not cure it. Representatives of the Secretary of State acknowledged that even where proofreading is done, they do not catch all data entry errors. *See* Roberts Dep. Tr. 31:13-16 (typographical errors are possible even with careful review of applications); Taff Dep. Tr. 44:25-45:11 (typographical errors “linger” even when several individuals from BVRS review the same data entry); Sola Dep. Tr. 33:9-12. Moreover, some counties have no proofreading policies in place and the State does not require the counties to follow *any* proofreading procedure. *See* Bryant Dep. Tr. 38:6-19; Taff Dep. Tr. 34:24-35:18.

II. THE APPLICATIONS ARE SENT TO THE STATE FOR MATCHING

The existence of clerical and computer errors is undisputed and unavoidable. But that does not violate the law. Rather, plaintiffs’ complaint is that Florida -- virtually alone among the states -- unlawfully conditions an eligible applicant’s registration status on these typos and other inconsequential errors. That process is described below.

After the information on an application has been entered into the FVRS -- including the typos and errors -- the registration record for each applicant is transmitted

to the HSMV. The HSMV is the State agency charged with attempting to “match” data in the registration records with data contained in the HSMV database or the SSA database.

HSMV will only consider an application “verified” if every character in the first name, last name, date of birth, and driver’s license or Social Security number fields of the registration record is an exact match with the data in the corresponding fields of a HSMV or SSA record. If every character and digit matches exactly, “the application record is transformed into an active voter record and the FVRS sends a ‘notification’ to the county to send” the applicant a voter registration card. Fla. Dep’t of State, Div. of Elections, Bureau of Voter Registrations Servs., *Procedures Manual* at 58 (Aug. 7, 2007) (Burhans Supp. Ex. F). If the match is unsuccessful, the application is deemed “incomplete,” and notice is sent to the county for follow-up. *See FSASE Presentation* at 7 (Burhans Supp. Ex. E).⁷

⁷ The process of matching works as follows: If an applicant provides a driver’s license number on her application, the HSMV generates a target driver’s license number from data in the registration record. *See Roberts Dep. Tr.* 41:13-42:23. The registration record is then compared with the record associated with the generated driver’s license number, and if the names match exactly, the applicant becomes a registered voter. *See Burhans Supp. Ex. E* at 6.

If an applicant without a driver’s license provides the last four digits of a Social Security number, the registration record is sent to the Social Security Administration (“SSA”) “for verification.” *Id.* If SSA successfully matches the registration record through an exact match of the Social Security digits, first name, last name, month of birth and year of birth, the applicant becomes an active voter. *See id.*; *see also Burhans Supp. Ex. G* at 25-28. If not, the application is deemed “incomplete.”

A. Applicants Who Do Not “Match” Are Not Registered To Vote

The State’s own database, documents, and deposition testimony demonstrate that there are thousands and thousands of failed matches. Tellingly, the State does not contend that these un-matched applicants are frauds or ineligible voters. Rather, as the evidence shows, these failed matches and rejected applications are due in large part to ministerial mistakes, misspellings, misplaced information and trivial discrepancies between the registration records and the HSMV and SSA databases. The default treatment of any of these failed matches is to treat the application as “incomplete” and the citizen as unregistered.

First, the numbers. Data directly from the FVRS show that, in total, there have been 31,506 failed matches at some point between January 1, 2006 and October 1, 2007. *See* App. 1. By the State’s own count, there were 21,854 failed matches before registration closed for the 2006 general election. *See* Defendant Browning’s Amended Response to Interrogatory No. 4 at 2 (Burhans Supp. Ex. H). As of the 2006 election, 12,804 applicants remained un-matched and were not permitted to cast a regular ballot. *See id.* As of today, some 6,000 applicants remain un-matched -- well before the increase in voter registration activity expected to coincide with the 2008 election cycle. App. 1.

The reasons behind all these failed matches are largely undisputed. Because “an exact match on names” is required, a discrepancy between a single character or digit in an applicant’s registration record and the target database record will prevent a successful match. Roberts Dep. Tr. 86:22-23; *see also* FSASE Presentation at 7 (Burhans Supp. Ex. E) (“Data is verified” only if “[n]ame matches exactly.”). As explained by expert

Andrew Borthwick, these failed matches are “false negatives” -- the records appear to relate to different individuals when, in fact, they relate to the same individual. *See* Borthwick Decl. ¶¶ 45-54 (docket no. 7).

B. The Reasons for Failed Matches

Many of the failed matches are due to data-entry errors of the types documented above: *e.g.*, a data field containing the name “Gladier” does not exactly match a government record containing the name “Gladice.”

Conversely, even when the information is entered in the FVRS database precisely as it appears on the registration application, typos and other mistakes already imbedded in the HSMV and SSA databases may result in a failed match. It is well-established -- and certainly not contested by the State -- that the SSA database is full of errors. As the former Commissioner of the Social Security Administration testified in explaining the frequency of failed matches with the SSA database:

There are many reasons [for failed matches:] name change after a marriage or divorce, . . . incomplete, transposed or missing names or social security number in SSA records[,] . . . a discrepancy created by [the] use of multiple or compound names. It is extremely common for foreign-born and female workers to be the subject of a discrepancy. Workers from Latin American countries, for example, may use compound last names, a portion of which may be inadvertently reflected on SSA records as a middle name.

American Federation of Labor v. Chertoff, No. 07-4472, Declaration of Kenneth S. Apfel in Support of Temporary Restraining Order and Preliminary Injunction, ¶ 7 (N.D. Cal Aug. 29, 2007) (Burhans Supp. Ex. I). The SSA itself reported that of 2.6 million voter registration records submitted to the SSA through February 2007, nearly half -- 46.2% -- resulted in a failed match. *See* Borthwick Decl., Ex. E (docket no. 7).

The evidence shows that of the total number of failed matches from January 2006 to the present, 68% were applications with Social Security digits. *See* App. 1. Of the 12,804 un-matched applicants rendered ineligible by matching problems through the 2006 election, 86% had provided Social Security digits. *See id.*

Eligible applicants also fail to match because the FVRS database may handle hyphenated names, compound names and names with apostrophes or other punctuation differently than the HSMV or SSA databases. *See* Roberts Dep. Tr. 86:20-87:1. Peggy Taff, the Chief of the BVRs, also acknowledged that voters who “use hyphenated names” may be listed differently in different electronic records. Taff Dep. Tr. 43:9-25; *see also* Kelly Dep. Tr. 137:11-25.

A few examples from the discovery record illustrate this problem:

- In Osceola County, Bethzaida Morales Rivera was entered into the FVRS database as “Bethzaida Moralesrivera.” She was un-matched. *See* Burhans Supp. Ex. J.
- In Polk County, applicant Neida Liz Reyes filled out an application, but was un-matched, because HSMV records listed her as “Neydaliz Reyes Narvaez.” When the Polk County Registration Services Coordinator sought assistance in resolving the failed match, the suggested solution was not to activate Ms. Reyes’ existing application, but instead to make her fill out an application with “her name as it appears on her DL.” July 27 2006 e-mail from BVRSHelp to Vi Thornburg (Burhans Supp. Ex. K). State data shows that although Ms. Reyes submitted her application well before the 2006 registration deadline, and despite the fact that the State *understood* the source of the matching error, she not only was unregistered by the November 2006 elections, but remains unregistered today.
- In Pasco County, a voter who registered as Tiffany A. Medina and supplied her Social Security digits was not matched. “Through research,” Pasco County’s Lead Voter Services Specialist discovered a HSMV record for a “Tiffany Angely Medina-Algarin” with the same Social Security digits. But despite “knowing that it is the same person,” the Voter Services Specialist was prevented from making Ms. Medina an active voter, because her application

could not be matched with the SSA database. *See* August 30, 2006 e-mail from Tina Norris to BVRSHelp (Burhans Supp. Ex. L). And despite the fact that Ms. Medina submitted her application well before the 2006 registration deadline, and despite the fact that the State *understood* the source of the matching error, she too was unregistered by the November 2006 elections.

Failed matches are also the result of simple -- and immaterial -- differences in names recorded in different databases. For example, Oke Uwechue, an eligible voter from Coral Springs who failed to match, explains in his declaration that he registered with the first name he frequently uses, Oke, but his Social Security card lists him as Okechukwu. Uwechue Decl. ¶¶ 3-6 (App. 2). Similarly, any time an applicant uses a different name on her application than the name in certain government records -- *e.g.*, registering in a married name while the SSA database reflects a maiden name -- there will be no match, and the application will not be “verified.” At his deposition, the Secretary of State’s representative, Don Roberts, confirmed that there are problems matching individuals whose names have changed. Roberts Dep. Tr. 87:2-12

C. Failed Matches Have a Disproportionate Impact Based upon Race and Ethnicity

The data produced by the State proves that failed matches occur at a disproportionately high rate among African Americans and Latinos, as shown on Table 4.

Table 4
Percentages of Applications and Un-matched Applications
 African-American, Latino and White Voters⁸

Group	% of All Applications	% of Un-matched Applicants
African Americans	13%	22%
Latinos	15%	34%
Whites	66%	29%

As expert Andrew Borthwick testified, matching problems involving hyphenated and compound names disproportionately impact Latino and Haitian-American citizens. *See* Borthwick Decl., ¶ 39 (docket no. 7). Discovery has confirmed this to be the case in Florida: while Hispanic applicants account for only 15% of the applications since January 1, 2006, they make up 34% of the applicants who have been un-matched at some point in that time. *See* App. 1.

Deposition testimony from State and county officials confirms the disproportionate impact of Subsection 6 on Latino citizens. Charmaine Kelly, Chief Deputy in the Palm Beach Supervisor Elections office, noted “problems with matching” involving “some Hispanic names” in which “[t]hey might have two last names like the mother and the father’s name, and sometimes they will reverse it on the application.” Kelly Dep. Tr. 137:16-25. Donna Bryant, the Supervisor of Elections for Osceola County, described matching problems involving Hispanic citizens, and offered the explanation that these problems were based on “their tradition. It is nothing specific pertaining to voter registration I am not knowledgeable as to their reason for doing it, but I do know that the maiden name in the Hispanic community is very important.”

⁸ The data underlying this table are found in Appendix 1.

Bryant Dep. Tr. 52:3-12. Supervisor Bryant acknowledged that these naming conventions have caused problems with matching and “verification” of voter applications. *Id.* 52:11.

Dr. Borthwick also testified that matching problems associated with unique names and derivative spellings of common names will be common, such as when an applicant whose name is spelled “Millisa” is entered into FVRS as “Mellisa.” *See supra* at 9; *see also* App. 3. Dr. Borthwick explained that these problems will disproportionately impact African American voters. *See* Borthwick Decl., ¶ 40 (docket no. 7). Again, discovery proved this to be true in Florida: although African American voters account for only 13% of the total applicants since January 1, 2006, they make up 22% of those whose applications have been un-matched at some point in the application process. *See* App. 1.

D. The State’s Efforts to Correct Failed Matches Are Limited

For the majority of un-matched applicants, the State does nothing to investigate or trouble-shoot the failed matches. As discussed in Section III below, the State sends most of the rejected applications back to their county of origin -- with scant information and direction as to how to resolve the failed matches.

There is only one exception: a subset of un-matched applications with driver’s license numbers are routed to the State’s BVRS to look for obvious mistakes like the use of a nickname. This does not apply to any applications submitted with Social Security numbers -- which make up well more than 65% of the un-matched applications. *See* App. 1. And it only applies to those applications with driver’s license numbers where the

first four letters of the first name and the first four letters of the last name “match exactly.” *See FSASE Presentation* at 7 (Burhans Supp. Ex. E).

But even with this capability, BVRS is unable to resolve every un-matched application, even within the small set of applications they review. *See Taff Dep. Tr.* 44:1-45:11. The State produced no information to demonstrate the effectiveness of the BVRS in correcting failed matches.

III. UN-MATCHED APPLICATIONS ARE SENT TO THE COUNTIES WITH LITTLE USEFUL INFORMATION OR GUIDANCE

Most of the un-matched applications are sent directly by the State to the counties for follow-up. However, the State provides the counties with virtually no information about the failed matches and even less guidance about what to do with them. In turn, the counties have no uniform, comprehensive system for investigating and correcting rejected applications themselves. Instead, as discussed in Section IV below, the counties try to send notices to the un-matched applicants.

In the vast majority of cases, the counties are not told anything about why the applications failed to match. Whether the applicant provided her driver’s license number or Social Security digits, if the application fails to match, the applicant’s name is transmitted from the FVRS and logged on the county’s “search hold” list, and the record marked as “incomplete.” *Sola Ex. 2, Burhans Supp. Ex. M.* In other words, the only message sent to the county is “no match.” *See, e.g., Smith Dep. Tr.* at 27:16-18:6. The counties are not notified, for example, if the failed match was due to a spelling discrepancy, or a compound last name, or the use of a nickname. *Id.*

In fact, when an application fails to match with the SSA database, neither the State nor the county is given any explanation for the failed match, and thus have no information that could assist them in resolving it. *See Roberts Dep. Tr. 65:8-12; 66:6-20.* Enterprising county officials can call or e-mail the BVRS to make inquiries about individual applicants, but the BVRS does not have the personnel or resources to help solve all the matching problems. Only a single BVRS employee is assigned to process queries logged into the BVRS help-line, and over the winter holidays -- precisely during the period when registration for the 2008 presidential primaries will be heaviest -- resources are even further strained. *See Taff Dep. Tr. 48:17-20; Burhans Supp. Ex. N.* And the BVRS has no responsibility for helping counties sort out problems with individual voters. *See Taff Dep. Tr. 45:18-46:13, 47:16-22, 48:17-49:12; see also Sola Dep. Tr. 52:2-53:25* (describing this limited assistance).

An experience from Sumter County illustrates the frustration and futility faced by the counties. In April 2006, the Sumter County Supervisor of Elections Office contacted the BVRS to try to help "a person who filled out an application in March [2006] at a nursing home. After several attempts to enter her she keeps getting rejected for her SSN. I made contact with her family and the home to verify the number and all the information is what I have." April 20, 2006 e-mail from Marie Ogilvie to Sandy Brill (Burhans Supp. Ex. O). Thus, the county confirmed that the elderly voter had supplied the correct Social Security digits on her application. But because it had no information about what caused the failed match -- *e.g.*, a spelling difference between the records, a maiden name

in the SSA database, a birth date recorded in the European format -- the county was powerless to help and the voter was kept off the registration rolls.

IV. THE NOTICES FROM THE COUNTIES TO UN-MATCHED APPLICANTS ARE MISLEADING, CONFUSING AND DISCOURAGING

The counties' primary responsibility upon receiving failed matches from the State is to try to notify the un-matched applicants, ostensibly to give the applicants a chance to "correct" their applications. Subsection 6 requires that an un-matched "applicant shall be notified that the application is incomplete and that the voter must provide evidence to the supervisor sufficient to verify the authenticity of the number provided on the application." § 97.053(6), Fla. Stat. (emphasis added). Thus, when a county is notified by the FVRS system of a failed match, the voter registration systems used by the counties automatically generate a letter intended to inform the un-matched applicant that their application is "incomplete." Sola Dep. Tr. 38:18-21; Smith Dep. Tr. 31:1-7.⁹

A. The Notification Letters Mislead Un-Matched Applicants and Provide Inadequate Information to Allow Voters to Become Registered

Following the dictate of Subsection 6, the notices that many of the counties send to un-matched applicants state that their applications were "incomplete" or "incorrect." That is misleading to most un-matched applicants because their problem is not that they failed to provide complete or correct information. On the contrary, the information is often complete and correct, but fails to match because of one of the immaterial errors or

⁹ Some counties wait to send the letter out until they have reviewed the application at issue for simple data entry errors, but do not otherwise research the reason for the failed match. Sola Dep. Tr. 38:13-39:2, 40:6-12. Other counties simply send the letter without any further investigation. Smith Dep. Tr. 31:5-7.

discrepancies catalogued above. The notices are also confusing and discouraging to applicants because they do not say in what way the applications were “incomplete,” what precisely needs to be done to fix the problem, what the consequences are of failing to fix it, and by what deadline it needs to be resolved in order to be able to cast a regular ballot in the upcoming elections. For example:

- In Miami-Dade County, the “Incomplete Notice” states: “Please be advised that the Voter’s registration application form you recently submitted cannot be processed until the required information noted below is included on the new application form.” For applicants who have not yet been matched, a check mark is placed next to one of the following: “Valid Florida Driver’s License, Valid Florida Identification, or Last 4 digits of the Social Security Number. Florida Driver’s License must be provided if you have one.” Sola Dep Tr. 41:9-14 and Burhans Supp. Ex. P.
- In Hillsborough County, the notice states: “This notice is to inform you that the voter registration application you recently submitted was incomplete because it did not include the minimum information required by Florida law Your application was incomplete because you did not enter either the last four digits of your Social Security number or your Florida drivers license (or ID) number or it was incorrect.” Smith Dep. Tr. 57:14-59:9 and Burhans Supp. Ex. P (emphasis added).
- In Palm Beach County, the notice states: “Unfortunately, either the driver’s license or Social Security number provided is incorrect.” Kelly Dep. Tr. 145:23-25 and Burhans Supp. Ex. P (emphasis added).
- In Osceola County, the notice states: “Your application has been classified by the state as incomplete.” A check is then placed next to a statement that the “Social Security Number provided is incorrect” or the “Driver’s License Number provided is incorrect.” Bryant Dep. Tr. 79:24-80:25 and Burhans Supp. Ex. P (emphasis added).

The deficiencies and hazards in these notices are many.

First, they confuse applicants by telling them that their applications were “incomplete,” when in fact the voters submitted completed applications. The notices provided by Miami-Dade County are particularly misleading. Miami-Dade tells

applicants that a driver's license, Florida ID, or Social Security number "must be provided," as though one was never provided in the first place. Sola Dep Tr. 40:13-42:20 and Burhans Supp. Ex. P.

Second, by stating that the driver's license or Social Security Number are "incorrect," these letters imply that the voter wrote the number down incorrectly, when that often is not true. Alaina Fotiu-Wojtowicz, a 26 year old eligible voter from Ft. Lauderdale, explains in her declaration that her application was rejected as "incorrect" when, in fact, she provided a correct Social Security number. Fotiu-Wojtowicz Decl. ¶¶ 4-6 (App. 2). Other fields may have been input incorrectly; or there are errors in the HSMV or SSA databases; or the applicant used a nickname or married name. Even the notices that state that there was a "verification" problem do not explain the multiple matching problems. *See, e.g.*, Snipes Dep. Tr. 92:5-7 and Burhans Supp. Ex. P.

Third, the notices do not tell voters how to "correct" their application. For instance, an individual who applies using a nickname or shortened name -- Bill rather than William -- has no idea that it was his name that made his application "incomplete" or "incorrect." Thus, he has no idea that using the same name on the second try will cause another failed match, and trigger another "incomplete" notice. The Supervisor of Elections in Miami-Dade gave this testimony:

Q: Do you think that an individual who wrote a nickname down on their application and was not being matched because it didn't match the record using their full name, do you think that this form would indicate to that person that that would be what they would need to change on their next application?

A: No, I don't believe it addresses the nickname.

Q: Do you think that this would inform an individual that the reason why their application is not being processed is because there is a matching or verification issue?

A: The form does not address the mismatches between our data bases and the state's.

Sola Dep. Tr. 43:18-44:11; *see also* Bryant Dep. Tr. 88:8-89:7.

None of these notices says that the application information did not “match” other government records, which would at least give un-matched applicants a clue about what happened. Instead, the notices suggest that the applicants either forgot to include some information or gave erroneous information. Thus, if they try to cure the problem by re-submitting the complete and correct information -- *i.e.*, the same information as the first time -- their application will just be rejected again. Oke Uwechue of Broward County states in his declaration that after registering with his Social Security digits, he received a letter stating that his application was rejected because there was a problem with his Social Security number. He and his wife both checked and confirmed that the number he put on the application (a copy of which was sent to him) was correct. Since he had no idea what to do (other than to re-submit the same rejected number) he was unable to register and did not believe he could vote. Uwechue Decl. ¶¶ 6-9 (App. 2).

Applicants are likely to be caught in a vicious cycle where they submit multiple applications with the same correct information, only to be rejected again. In Miami-Dade County, Victor Enriquez and Crescencia Gil -- born in 1909 -- each submitted two applications that were not verified. Burhans Supp. Ex. C; Q. Individuals such as Carlos R. Montano filled out *eight* virtually identical applications. Burhans Supp. Ex. C. Miami-Dade Supervisor Lester Sola acknowledged this problem:

Q: So, despite receiving notification from your office that there was a problem with this application, Mr. Enriquez second application was not able to be matched or verified. Is that right?

A: That appears to be the case.

Q: Do you believe that individuals could possibly be dissuaded from voting if they keep filling out applications that are not being verified?

[A:] That's a possibility, yes.

Sola Dep. Tr. 61:10-21.

Fourth, the notices do not say what the deadline is for fixing the problem. No reference is made to the book closing deadline, so voters are unaware that unless they are able to get to the bottom of the matching problem by a certain date, they will be unable to cast a regular ballot in any upcoming election. Snipes Dep. Tr. 93:2-4; Kelly Dep. Tr. 145:5-18.

Fifth, these letters make no mention of what the consequences will be if the applicant fails to take action. A statement that an application is “incomplete” does not convey to the recipient that unless and until the FVRS system produces a match, an eligible voter will lose his or her right to cast a regular ballot. *See* Cowles Dep. Tr. 78:12.

B. Sometimes the Notice Letters are Never Sent

Many un-matched applicants will receive no notification at all. A “rough survey” conducted by a vendor of election software noted that in Broward County, there was a “pretty steady” pattern of three individuals per day who were deemed “incomplete,” but who did not receive notice letters. April 27, 2006 e-mail from Sandy Brill to Marie Ogilvie (Burhans Supp. Ex. R). The vendor estimated that two months after the implementation of Subsection 6, between 2,000 and 4,000 Florida voters who had

applications rejected as “incomplete” had not received notice that their application had not been accepted, including 360 Broward applicants. *Id.*

Eugene McKenna, a Broward County resident, attempted to register to vote in person at the Broward County Supervisor of Elections Office in March, 2006. McKenna Decl. ¶ 4 (App. 2). Since he is blind in one eye, Mr. McKenna was assisted in completing his application by a Broward County clerk, who entered his name, address, date of birth, and Social Security digits. *Id.* Mr. McKenna never received a notice that there was a problem with his application. *Id.* at ¶ 5. Rather, he was only alerted to a potential matching problem because he had still not received a voter registration card in the mail in the period just prior to election day. *Id.* When he called the Supervisor of Elections Office, Mr. McKenna was told that he would not be able to correct the error because the deadline had already passed. *Id.* Moreover, this individual did not inform him that he could try to vote a provisional ballot. *Id.* As a result, Mr. McKenna did not vote in 2006, although he would have done so had he received notice in time to correct his application (which was rejected because his Social Security digits were incorrectly input by a Broward County Employee), or had he been informed that he could have cast a provisional ballot. *Id.* at ¶¶ 6-7.

Eligible Florida voters Amrita Hansra and Stephen Leinen likewise were never informed that their applications had been rejected because of failed matches. *See* Hansra Decl. ¶ 4; Leinen Decl. ¶ 4 (App. 2.) Unaware that they were not registered, both went to the polls in November 2006 and cast provisional ballots -- which were never counted.

C. The Notice Letters Often Are Not Received

Even when the notice letters are mailed, they do not always reach the applicant. Letters are routinely returned to the counties because of typographical errors in the addresses. *See, e.g.*, Smith Dep. Tr. 31:14-24; Sola Dep. Tr. 48:20-23. Some counties may attempt to call applicants, but phone numbers are not always available. Bryant Dep. Tr. 39:4-6; Snipes Dep. Tr. 89:5-12. Telephone communications with voters are not standard operating procedure. Kelly Dep. Tr. 134:9-22; Sola Dep. Tr. 45:18-46:11; Smith Tr. 32:12-35:2. And in the run-up to election day, even the counties that wish to contact these applicants are inundated with other election related activities and will not necessarily have time to place the calls. *See* Kelly Dep. Tr. 132:7-134:22; Sola Dep. Tr. 26:25-28:14; Bryant Dep. Tr. 100:17-101:3; *see also* McCormack Decl., ¶¶15-18, 20-21 (docket no. 8).

D. Some Notice Letters Are Written In a Language the Recipient Cannot Understand

The Supervisor of Elections in Hillsborough County boasted that his county has the “original Hispanic community in Florida” and has “a large Latino population.” Johnson Dep. Tr. 88:8-12. Despite this fact, Hillsborough County’s notices to unmatched applicants so far were written in English only. Smith Dep. Tr. 31:8-13. While the county claims to be “looking at technology where it will print on both sides [with Spanish on the other side],” to date, the county has not done so. *Id.*

V. THE PROVISIONAL BALLOTS FOR UN-MATCHED APPLICANTS CREATE EVEN MORE BARRIERS TO VOTING THAT ARE HARD OR IMPOSSIBLE TO OVERCOME

Not only do matching errors deter voters from even going to the polls, but un-matched applicants who attempt to vote face an array of other obstacles. As a result, few provisional ballots cast because of a verification issue are ever counted. *See* Cowles Dep. Tr. 106:2-10. Subsection 6 does not permit un-matched voters to vote by regular ballot. They are permitted only to cast a provisional ballot. Then, to have any chance of that ballot being counted by the counties' canvassing boards, the un-matched voter must make a trip to the county supervisor's office within two days and bring sufficient evidence to "verify" the number written on the application. § 97.053(6), Fla. Stat. If an applicant initially registered to vote with a driver's license, he may only present that license; if an applicant initially registered to vote with a social security number, she must present a Social Security card. No other form of evidence will do.¹⁰ Absent that precise evidence, Orange County Supervisor William Cowles testified, "The ballot will not be counted." Cowles Dep. Tr. 77:9-23; *see also* Bryant Dep. Tr. 140:9-13.

¹⁰ *See* June 16, 2006 e-mail from Amy Woodward to County Supervisors of Elections (Burhans Supp. Ex. T) (an un-matched applicant "may provide to the supervisor of elections the current and valid underlying document (or a copy) as evidence to verify the authenticity of the number provided on the application. For example, if a social security number was provided on the application, the applicant must present a social security card If the number is the same, the supervisor may activate the override feature in FVRS, process the application, and make the voter active. . . . If the number is not the same, the supervisor may not activate the override feature"). *See also* Taff Dep. Tr. 61:19-63:18; Cowles Dep. Tr. 89:2-7. Moreover, if a voter happens to transpose two digits of a driver's license number or Social Security number on her own application, once the book-closing deadline has passed, there is absolutely nothing that the voter can do to cast a ballot that will be counted. *See* § 97.053(6), Fla. Stat.; Taff Dep. Tr. 79:5-14.

When asked whether requiring voters to make such a special trip to present additional evidence “could present a problem” for voters, Miami-Dade County Supervisor Lester Sola admitted: “Of course, yes.” Sola Dep. Tr. 103:10-104:8. The Supervisors of Elections from Broward, Orange and Miami-Dade counties each testified that not a single voter has come in to present additional written evidence to support their provisional ballot. Cowles Dep. Tr. 106:2-10; Snipes Dep. Tr. at 99:23-100:2; Sola Dep. Tr. 107:4-15. *See also* Burhans Supp. Ex. U (no one has provided additional written evidence in Duval County).

That is not surprising given the unreasonable burdens imposed on un-matched voters. As explained by Jean-Robert Lafortune, the CEO of plaintiff Haitian-American Grassroots Coalition, “[w]ithin our community . . . a lot of people . . . are first time voters and do not even know about the existence of an election [canvassing] board. It is the sophisticated voter . . . who knows how to navigate into that spiral, into that universe of elections of how to get your ballot to be counted because in our community once you vote . . . they would believe the system would take care of that.” Lafortune Dep. Tr. at 37:20-38:4.

No other Florida voters, whether they cast a regular or a provisional ballot, are required to make a special trip and make a special evidentiary showing. If a voter casts a provisional ballot for another reason -- *e.g.*, her name does not appear on the precinct register at the polling place -- the ballot will be counted if the Supervisor of Elections confirms that the voter was properly registered and that her signature matches. *See* Burhans Supp. Ex. V; § 101.048(2), Fla. Stat. Even if an un-matched voter is told about

the extra efforts required of her, many people do not have the time, freedom or transportation during the work week to make a long trip -- *e.g.*, it is an 80 mile round-trip from Lithia to the county office in Tampa. Burhans Supp. Ex. W.

Despite this one-of-a kind and onerous burden, un-matched voters are largely left in the dark. There are no written materials or poll worker instructions to inform un-matched voters that (a) their ballot will not count unless they travel to the Supervisor of Elections, (b) they must then present very specific forms of evidence to “verify” the number on their application, and (c) their ballot will not count if they show up with ironclad proof of their identity -- *e.g.*, a passport, Military I.D., or other citizenship papers -- that does not verify the number on their application. *See* Reed Dep. Tr. 32:3-15; Sola Dep. Tr. 85:12-25, 91:11-21; 109:13-23; Kelly Dep. Tr. 78:5-15; Taff Dep. Tr. 11:18-26; 74:4-16; Burhans Supp. Ex. X.

Eligible Florida voters Amrita Hansra (who lives in Cooper City and became an American citizen in 2006) and Stephen Leinen (who recently moved from New York to Hollywood) both cast provisional ballots in November 2006 because their registration applications were un-matched. *See* Hansra Decl. ¶¶ 5-6; Leinen Decl. ¶ 5 (App. 2). Neither was told before the election that there was any matching problem. Hansra Decl. ¶ 4; Leinen Decl. ¶ 4 (App. 2). Neither was told on election day that they would have to make an extra effort and present special evidence for their provisional ballot to be counted. Hansra Decl. ¶7; Leinen Decl. ¶5 (App. 2). Their provisional ballots were not counted.

Neither the state nor the county poll worker manuals have any instructions whatsoever regarding what is to be said to un-matched voters, much less a specific instruction to tell the voters that the presentation of additional written evidence is mandatory in order for that person's vote to count. *See* Reed Dep. Tr. 28:16-29:3; Sola Dep. Tr. 84:19-85:11; Kelly Dep. Tr. 78:5-15; Taff Dep. Tr. 11:18-26; 74:4-16; Burhans Ex. X. The Supervisors of Elections conceded that their poll workers are not equipped to provide voters with detailed instructions that differ from the written guidelines, and in particular that they are not equipped to advise voters regarding the specific requirements of Florida election law or Subsection 6. *See* Cowles Dep. Tr. 80:25-81:6; Reed Dep. Tr. 31:20-32:2. Poll workers are not trained in how to answer specific questions from voters about matching because "we don't want them interpreting or saying too much to the voter." Reed Dep. Tr. 32:2-12. *See also* Snipes Dep. Tr. 63:21-64:1.

Many voters are not even told the reason why they were given a provisional ballot -- *i.e.*, they were not matched -- and therefore will have no idea that they have to make an extra effort to be counted. *See* Reed. Dep. Tr. 46:9-47:21; 38:5-39:18. As Charmaine Kelly, Chief Deputy in the Palm Beach Supervisor Elections office, testified:

Q: So because the poll workers won't know why a person's name would not appear on the voter registration, the poll worker is not able to tell a person why their name is not on the list?

A: Right. I mean how could they?

Kelly Dep. Tr. 74:11-21.

What may be even worse, the only instructions these voters are likely to get -- the standard instructions on the tear-off card affixed to the provisional ballot -- are

misleading. The instructions state that a voter “*may* provide written evidence” or that a voter has “*the right* to present written evidence.” Burhans Supp. Ex. Y (emphasis added). That creates the false impression that presenting evidence is optional; that un-matched voters are not required to present evidence.

Moreover, these instructions state that a voter may provide evidence supporting his “eligibility” -- evidence pertaining to age, citizenship, residency, etc. Yet no such evidence will suffice if it does not verify the particular number on his application. Many voters will be confused, and understandably so, when having arrived at the polls with a current photo identification card and proof of signature in hand -- as required by law, § 101.043, Fla. Stat. -- they discover that they cannot use the same identification to cast a regular ballot at the polls, or to ensure that a provisional ballot is counted later.

VI. THE COUNTY CANVASSING BOARDS HAVE THE FINAL SAY

The ultimate determination of whether a provisional ballot cast by an un-matched voter will count resides with the county canvassing boards. *See* Taff Dep. Tr. 12:1-12; Bryant Dep. Tr. 118:3-8. Although there are no clear rules governing the boards’ exercise of discretion -- and no witness could adequately explain how and why the boards make their decisions -- discovery revealed this much: an un-matched voter who casts a provisional ballot and then presents evidence to verify her *identity*, will not have her vote counted. Subsection 6 requires the verification of the *number* on the application.

In Osceola County, for example, Odile Perez registered to vote on October 10, 2006, and wrote down the last four digits of her Social Security Number as “4067.” Burhans Supp. Ex. Z. She failed to match because she had inadvertently jumbled her

number: the correct digits are actually “6740.” Ms. Perez did, however, go to vote and cast a provisional ballot on November 7, 2006, and she even went to the Supervisor of Elections office with her Social Security card. *Id.* Though she clearly proved her identity -- which she also did at the polls with the required photo I.D. -- there was no way Ms. Perez could have “verified” her number on her application because it had been written down incorrectly. Her provisional ballot was not counted. *Id.*¹¹

Beyond that nonsensical and draconian rule, no firm principles or policies could be found. The State does not establish criteria for the county canvassing boards to use in determining whether a provisional ballot cast by an un-matched voter should or should not be counted. The State provides no relevant guidance or standards to the canvassing boards at all. *See* Taff Dep. Tr. 11:18-12:6. The Florida State Association of Supervisors of Elections put together a Canvassing Board Manual, which provides a list of “Guidelines For Counting/Not Counting.” *Burhans Supp. Ex. V.* However, it simply reiterates the words of the statute.

The practical implementation of Subsection 6 is so unclear and unpredictable, that the Supervisor of Elections in Hillsborough County testified that it is “virtually impossible” to say whether the canvassing board would or would not count a provisional ballot. *Johnson Dep. Tr. 111:8-21.* Likewise, the Supervisor of Elections of Broward

¹¹ Ms. Perez’ vote failed to count despite Osceola County Supervisor of Elections Donna Bryant’s personal belief that an individual such as Ms. Perez, who comes to the Supervisor’s office with a correct number, and fills out a new application with that correct number, should have her vote counted. *Bryant Dep. Tr. 138:3-140:8.*

County, Brenda Snipes, testified that the question of whether she, as a canvassing board member, would accept a provisional ballot if an individual registered under a married name but brought in an ID bearing a maiden name, called for “speculation.” Snipes Dep. Tr. 100:5-16.

CONCLUSION

The evidence demonstrates that plaintiffs are likely to succeed in proving that Subsection 6 -- which bars voter registration until a particular number on her application is verified -- will prevent eligible voters from registering and voting due to immaterial errors, (ii) operate as an undue burden on the right to vote, and has disenfranchised and will disenfranchise thousands of Florida voters. It also shows that the State has no sufficient reason for a law allowing a clerical error to interfere with the registration process. As the State admitted, the fact that a number on a form may be either incorrect or “un-matched” to another source provides no incremental useful information about whether the voter is a U.S. citizen, over 18, a Florida resident, or otherwise eligible to vote. Taff Dep. Tr. 63:19-64:23; 80:16-22. Individuals who have no driver’s license number or Social Security number at all can be registered simply and efficiently. Taff Dep. Tr. 70:20-71:9; Smith Dep. Tr. 40:13-42:17. Only those citizens unfortunate enough to have a driver’s license or Social Security number are subjected to the vagaries of Subsection 6’s error-prone matching regime and unnecessary number verification.

Dated: November 14, 2007

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