

YOUNG VANASSENDERP, P.A.

ATTORNEYS AT LAW

ATTORNEYS:

TASHA O. BUFORD
DAVID S. DEE
RONALD A. LABASKY
JOHN T. LAVIA, III
PHILIP S. PARSONS
TIMOTHY R. QUALLS
KENZA VANASSENDERP
ROBERT SCHEFFEL WRIGHT
ROY C. YOUNG

GALLIE'S HALL
225 SOUTH ADAMS STREET
SUITE 200
POST OFFICE BOX 1833
(ZIP 32302-1833)
TALLAHASSEE, FLORIDA 32301

TELEPHONE: (850) 222-7206
TELECOPIER: (850) 561-6834

OF COUNSEL ATTORNEYS:

DANIEL H. COX
DAVID B. ERWIN
JOSEPH W. LANDERS, JR.

GEORGE ANN C. BRACKO
EXECUTIVE DIRECTOR

MEMORANDUM

TO: FSASE

FROM: Ronald A. Labasky *RL*

DATE: October 21, 2008

RE: Unverified Voters

There has been considerable discussion and comment from various sources concerning the application of Section 97.053(6), F.S., dealing with voter registration applications which have not been verified due to the applicant's information not matching a driver's license number, Florida identification card number or last four digits of the social security number. Various county attorneys or city attorneys have provided opinions to supervisors and political campaigns have provided comments to supervisors on what they feel should be done. Last week the Florida Voter's Coalition issued a letter to the Supervisors suggesting that Secretary of State Browning's uniformity plea not be accepted.

In June 2008, United States District Court Judge Stephen P. Mickle issued an Order Denying a Motion for Preliminary Injunction sought by various plaintiffs concerning the implementation of the amended provisions of Section 97.053, F.S., in the case of Florida State Conference of the NAACP v. Browning, U.S. District Court, Northern District, Case No. 4:07CV-402-SPM/WCS. Section 97.053(6), F.S., provides that a voter registration application will not be accepted as valid until the Department has verified the authenticity or non-existence of the driver's license number, Florida identification card number or the last four digits of the social security number provided by the applicant. If the application is received by the book-closing deadline and those items cannot be

verified, the applicant is to be notified that the numbers could not be verified and the applicant must provide evidence to the supervisor to verify the numbers' authenticity. A notification is to be sent to the applicant by the supervisor seeking follow-up information on the verification concern.

Subsection (6) provides that this information can be provided up to the time the applicant presents himself or herself to vote. The portion of Section 97.053(6), F.S., provides as follows:

If the applicant has not provided the necessary evidence or the number has not otherwise been 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 number 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 applicant's driver's license number, Florida identification card number, or last four digits of the social security number no later than 5 p.m. of the second day following the election.

Therefore, it is clear from the language in the statute that if the applicant presents himself or herself to vote and has not had the information verified prior to that time, he or she is to be provided with a provisional ballot.

As supervisors, you are required to establish procedures in your County that will allow for contact with the applicant who has not been verified, thereby allowing the applicant to provide the information prior to the time that the applicant presents to vote. In the event that an individual presents to vote and has the information available to assist the supervisor in verifying the information (driver's license number, Florida identification card number or last four digits of social security number), the statute does not preclude the applicant from providing that information at that time, thereby obviating any need for subsequent contact with the supervisor, assuming that information is documented.

I believe it is important to recognize that Judge Mickle, in issuing his opinion in the NAACP case, on several occasions pointed out that those applicants whose numbers cannot be

verified, are not required to travel to the supervisor's office to validate their numbers. He states that the supervisor may accept the evidence of the applicant's identifying number in any visible form, however conveyed--whether by personal delivery, mail, facsimile, or email transmission. Therefore, the verification could be accomplished at the polling place, thereby obviating any need for the voter to take any further actions. Further, since the non-verified applicants have been isolated and sent a request for information, you know how many you have and who they are. Therefore, procedures could be established which simplify this process because of that information being in existence on election day.

As Supervisor of Elections in your County, you are responsible to establish procedures, which will allow applicants to verify their information and vote in the election. There is no specification in the statute that establishes a single methodology for that to be accomplished. You have the authority to establish reasonable procedures to allow for verification of the applicant, providing documentation for the canvassing board and allowing the voter to cast his or her vote.