



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

August 12, 2003

Paul W. Craft
Division of Elections
Florida Department of State
Room 231, The Collins Building
107 West Gaines Street
Tallahassee, Florida 32399-0250

Dear Mr. Craft:

This is in response to your recent inquiry to the Civil Rights Division concerning the ongoing design of Florida's Central Voter Registration System for compliance with the Help America Vote Act of 2002, 42 U.S.C. §§ 15301-15545 ("HAVA"). Your two questions relate to whether a "paperless" voter registration system would be consistent with the requirements of federal law.

The Attorney General has assigned to the Civil Rights Division the Department of Justice's enforcement responsibilities under Section 401 for the uniform and nondiscriminatory election technology and administration requirements of Sections 301, 302, and 303 of Title III of HAVA, 42 U.S.C. 15511. The Division also has responsibility for enforcement of other voting-related statutes, including the National Voter Registration Act ("NVRA"). Although the Department states its formal positions with respect to statutes it enforces only through case-by-case litigation, the Department does on occasion offer its general views on the manner in which it intends to enforce a particular statute or set of laws. Therefore, while we cannot issue a formal advisory opinion, we will attempt to answer the questions you have posed to the extent we can based on the Department's responsibilities to enforce Title III of HAVA, the NVRA and other pertinent federal laws. The opinions expressed in this letter are not binding and would not prevent the Department from taking a different position in any future litigation under HAVA or other federal voting rights statutes.

It is our understanding the State envisions a statewide voter registration system completely integrated with the State's driver's license system, where data validation would occur during voter contact with an office of the State Motor Vehicles Department. Approximately 63% of the State's voter registration applications come through such offices. The State's current driver's license system is a paperless design, with photographs, information and signatures

captured digitally so that an applicant does not have to complete a paper application form. To fully integrate the voter registration system with this system, paperless voter registration applications would be used with signature images captured on a digital signature pad. This paperless system would be used in both driver's license offices and other NVRA-covered voter registration offices. It is our further understanding that no paper of any kind would be generated during this process.

You have posed two questions. First, for applications taken in driver's license offices, or in other voter registration offices covered by the NVRA, is there any federal law prohibition on acceptance of paperless voter registration applications with the use of a digital signature pad? Second, for voter registration applications received by mail, does federal law prohibit scanning such documents upon receipt, making the digital image the official record and destroying the original paper form?

As to your first question, we are aware of no federal law requirement that voter registration applications must be on paper or that paper copies of electronic voter registration applications be generated or maintained. Thus, it would appear that implementing a paperless electronic voter registration system would be consistent with federal law. However, in deciding whether to deploy such a paperless system for voter registration, we have been advised by the Public Integrity Section of our Criminal Division that you may wish to take into consideration that current forensic methods for confirming the bona fides, or lack thereof, of handwriting in a form that is admissible as evidence may require that the control signature be manually subscribed. Deploying an entirely paperless system may jeopardize the ability to perform handwriting analyses on challenged signatures in a manner that can be used in court. You may want to review this issue with Florida law enforcement officials to confirm the particular requirements under Florida law.

The answer to your second question is more complicated. The federal law on retention and preservation of election records in federal elections, 42 U.S.C. §1974, requires election officials to "retain and preserve, for a period of twenty-two months from the date of [a federal election], all records and papers" related to voter registration in that election. Thus, to the extent that any paper is generated during the state voter registration process, that paper must be preserved for the prescribed period. This would appear to apply to any paper applications received by mail, as well as to any paper applications received by non-driver's license NVRA offices, if those offices are not operating under a paperless registration application system. While the State would be required to preserve these paper (as well as electronic) records, we are aware of no federal law which would prohibit the State at the same time from scanning these papers and making the digital images the State's official records.

We hope that the above responds to your inquiries and is of assistance in your efforts. Please feel free to contact us if you would like to discuss this matter further.

Sincerely,

A handwritten signature in black ink that reads "Hans A. von Spakovsky". The signature is written in a cursive style with a large, sweeping flourish at the end.

Hans A. von Spakovsky
Counsel to the Assistant Attorney General