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VOTER CONFIDENTIALITY

by

Jane Carroll
Supervisor of Elections
Broward County, Florida

**RETURN TO RESOURCE CENTER
INTERNATIONAL FOUNDATION
FOR ELECTORAL SYSTEMS
1101 15th STREET, NW 3rd FLOOR
WASHINGTON, DC 20005**

1101 15th Street, N.W., Third Floor, Washington, D.C. 20005



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Jane Carroll
Supervisor of Elections
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*F. Clifton White Resource Center
International Foundation
for Election Systems
1101 15th Street, NW
Washington, DC 20005*

Good afternoon. It is nice to be here to represent the local election officials and to be able to share with you some of our varied procedures. The question is, does the public's right to know outweigh a voter's right to privacy? Or vice versa?

Our country was built on certain rights and a sense of freedom; therefore, we are very protective of these. But there is a balance – a balance between our rights and our freedom. Achieving that balance can be difficult, but the fact of the matter is that we strive to achieve this each and every day of our lives.

Voting is a right that most of us protect greatly but exercise too infrequently. Our country depends upon citizens participating in the government by electing officials to represent them in office and voting on issues that affect them and their loved ones. They must have confidence in these officials as well as the system. Jeopardizing the people's rights and freedoms could cause the

system to fail; therefore, the federal and state governments have passed laws pertaining to voting and protecting a voter's rights. Specifically, I will address how to provide voter confidentiality in voter registration systems. Since we have fifty states, all with the right to control to some degree, their own election laws, I will try to summarize but emphasize differences.

Now with the National Voter Registration Act (NVRA), in Florida, my home state, applicants are only required to provide four items in order to be registered to vote: name, address, date of birth and signature. Other information such as sex, race and party affiliation are desirable to obtain but if not provided, the applicant must be registered to vote. Other information on the form is marked as "optional". This includes Social Security number and telephone number. These items are marked as optional because they are not a factor in determining a applicants eligibility to register to vote and the information is considered by many as personal. These items are only used by the voter registration office. For instance, we use telephone numbers, if provided, to contact the applicant if there is a question or problem with his registration application. We simply call him to get the proper information and process his application accordingly. It never becomes part of the public

record. It is entered into our data base for our use. We do not release this information on any lists.

Our office does not use the Social Security number for anything, but if the applicant provides it to us we will enter it into his record. Basically this is due to the fact that we may soon have a statewide system and that Privacy laws may someday allow this Social Security number as a universal identifier. Some offices may use the Social Security number to detect duplicate registrations. We do not use this since only 13% of our voter registration records have Social Security numbers attached to them. A duplicate search using this number, in this case, would not be absolute. Florida law states that if the Social Security number is provided, it is done so voluntarily and is available for public inspection. Florida has a public record law which requires that all information in my office is open for public inspection; however, there are limitations on what information can be copied and provided to individuals. I will be discussing that a little later.

Several states such as Connecticut, Arkansas and Missouri request that the applicant provide a Social Security number but will withhold it from public

inspection. Still other states require the Social Security number in order to register to vote. These states include, Virginia, New Mexico and Louisiana. Most of these states will not disseminate the applicant's Social Security number to the public.

In Virginia, the law requires an applicant to provide his Social Security number to register to vote. Prior to 1993, the Social Security number was available to the public. It wasn't until a person sued the state stating that requiring a Social Security number to register to vote was a violation of his privacy. After the initial case the state prevailed; however, on appeal, the plaintiff prevailed and in 1993 the State of Virginia passed legislation providing for two voter registration lists - one with the Social Security number and one without the number. The list with the Social Security numbers would be used internally by the registration office and by the courts for jury administration purposes. The public, candidates and campaigns would only be permitted to obtain the list without Social Security numbers. In a brief written to the court, Computer Professionals for Social Responsibility stated "that misuse of the Social Security number is a risk to public safety and a threat to personal privacy." They went on to cite examples of unethical uses of the Social Security

number, which include obtaining a person's credit history, grocery store purchases, medical records and history and genetic makeup. They state that "this raises fears that in the near future unregulated companies will serve as national identity bureaus collecting and dispersing an individuals most private information." The Boston Globe has reported that "there are more than 300 cases of fraud in Massachusetts each year involving the Social Security number. These cases involve such things as, obtaining a person's welfare benefits, Social Security benefits, paychecks and credit cards."

It is widely known that providing a Social Security number can lead to obtaining other information if it is acquired by an unethical individual; therefore, people are not willing to provide their Social Security number for fear of their privacy being violated. This was the basis for the United States Court of Appeals decision in the Virginia case. Virginia responded by passing legislation to provide for confidentiality of voter information while retaining the Social Security number as a unique identifier.

In states where this information is not required applicants must "balance" the pros and cons of providing such "personal" information when completing the

registration form. Should they jeopardize their privacy for the right to vote?

In accordance with the NVRA registration officials are not permitted to disclose the place or manner in which the person registered to vote; however, we must keep records as to the number of applications from each one of these sources. This was a major challenge to implementing the NVRA. The source information cannot be attached to the voter's record for reference by anyone, including office personnel. We must record the source of the applications as they arrive in my office for statistical reporting purposes only. Other states must follow the same NVRA guidelines but may vary on their procedure. The NVRA was strict in maintaining the confidentiality of where or how a person registers to vote. There was concern that recording the location or manner in which a person registers to vote would lead unethical individuals to other information about the applicant. For instance, would a person be able to obtain medical records of an applicant if that applicant registered to vote in an office that provided Medicare/Medicaid coverage? If the wrong person obtained this information it might be used against the applicant whenever he applies for insurance, a job or credit. Just simply knowing that an applicant receives food stamps because his voter registration

record indicates that he registered to vote at the food stamp office could be dangerous. Would your neighbors treat you differently if they knew you received food stamps? Maybe not, but quite possibly someone could use this information in a negative way.

In addition, the NVRA requires that a person not wanting to register to vote at an NVRA site, must complete a declination. This form is used to record that the person was asked to register to vote (as required by the law) but refused the opportunity. These declinations must be filed but must remain confidential. In Florida, the NVRA sites keep these forms in their possession. We never see them.

Once registered, how should the registrar treat the information to maintain voter confidentiality? Well, we already heard of Virginia's solution, provide for two separate lists. In California, they have a different approach. Their law provides for two levels of confidentiality. The first way is any voter who can show that there is a life-threatening situation to her or a member of her household can file with the court to have her information remain confidential. In 1993, out of 15 million voters, only 288 were labeled confidential in this

manner. Interestingly, the California law requires these people to vote by absentee ballot. They do not have the choice of going to their polling place to vote. If they insist, they can no longer be a confidential voter. Otherwise, this designation is permanent unless directed differently by the court. These registration cards must be kept entirely separate from the other registration cards and they must be under lock and key. The second way a person can become a confidential voter was to complete a form and request semi-confidentiality. These were usually law enforcement agents and judges. Voters designated as "semi-confidential" only have their name, party affiliation, birthplace and date of birth available. Their residence or phone number will not be made available (California does not use Social Security numbers). On the other hand, when a candidate or campaign orders a list, they will get all information about these people including their address. In addition, all this information will be printed in the roster at the precinct. In 1995, California passed legislation that all voters are to be semi-confidential. There is no longer a need to complete a separate form to request this confidentiality; your address and phone number are automatically kept from public inspection.

Florida has a similar provision in the law whereas certain voters can have their addresses withheld from public inspection. The law specifically identifies these individuals. They include law enforcement officers, firefighters, Health & Rehabilitation Services employees and judges. They must, however, request that their information be "withheld" from public inspection in writing. It is not done automatically by our office. Once their record is flagged in this manner, their address will not be disclosed on our computer system. Whenever a person orders a list from our office, these people will not be included on it. The order must specially ask for the "withheld" information to be included with the voter's name and other information. If they do so, the person's address will not be printed on the list. The poll registers sent to the precinct on election day will contain all pertinent information except for their address. Currently, we have 176 voters with their addresses withheld out of 760,000 total registered voters.

Florida law requires that all government business must be open to all citizens. This includes the voter registration rolls. There are, however, a few exceptions. The law does not permit me to provide anyone with a copy of a document that contains the voter's signature. They are permitted to examine

the document, but it cannot be copied unless subpoenaed by the court. In addition, Florida Statutes specifically list the people or groups eligible to receive lists of the voter registration rolls. These are: the courts for the purpose of jury selection, municipalities, other government agencies, candidates, political committees, committees of continuous existence, political parties and incumbent officeholders. No one else is permitted to receive these lists; however, anyone can examine the information in my office. There have been several lawsuits brought forth because of the limitations in the law. For example, if a referendum is on the ballot and a political committee wants to lobby the voters to vote "for" the referendum, they can obtain a list or labels of the registered voters. On the other hand, if the average voter wants to lobby other voters to vote "against" the referendum, he cannot obtain a list from our office. Personally, I feel the ordinary voter should be allowed to obtain the list if he wishes to inform the voters. Has confidentiality gone too far?

In another example, Texas does not require the Social Security numbers to register to vote but if it is provided voluntarily it will be entered into the computer for duplicate search purposes. This information will be open for

public inspection. Texas does not have any mechanism for a voter to keep his address, Social Security number or phone number confidential. Any information provided to the registration office will be made public.

How much information should a voter registration office divulge over the telephone? With the tremendous growth in communications, more business is being conducted via the telephone and fax machines. What did we ever do without fax machines? In my office, we have a standing policy that we will only verify voter information over the telephone. If the voter himself calls our office, he must first verify items in his record before any information is given. Items such as date of birth, address, middle initial are items we request before we discuss a record with the caller. If it is not the voter himself (and we can never be completely sure that it is) we will only verify to the caller information that he provides us.

So where do we go from here? With the possibility of state-wide voter registration systems throughout this country, a single identifier needs to be used to search system-wide for duplicate registrations. Should Social Security be that identifier? If so, should it be part of the voter's public record?

These are all questions that will be difficult to answer but will need to be addressed.

Technology has provided our society to do more with telephones and computers than ever before and now we have the Internet. How do we maintain voter confidentiality within these technologies and how much do the voters want us to keep confidential? I understand that "Rock the Vote" and MCI have teamed up to develop an on-line voter registration on the Internet. It is designed so that a person interested in registering to vote can do so on the computer. The person just clicks on a button for his home state and a computerized registration form (specific for that state) pops up on the computer. After the person fills in the necessary information, he transmits it to the Rock the Vote office in Minnesota. They then send the form, with all the information pre-printed on it, to the person. He then signs it and sends to his Secretary of State for processing. What confidentiality questions does this raise. Will Rock the Vote use this information for any type of analysis? Can someone access this information? These are all questions that will need to be addressed in the coming years as we advance through the new communications era.

Years ago, people did business face to face and trust and building a relationship was a big part of doing business. Today, there isn't a need to do business in this manner, all you need is a computer, fax machine, telephone and even a cellular telephone. There is little opportunity to develop relationships and trust with the people with whom you are doing business; therefore, you must remain cautious. The public feels this way now about certain information. Their Social Security number, their phone number, credit card numbers -- these are all things they try to protect. But so many aspects of business require that people provide this information. Should the right to vote be one of these? The public should not feel cautious about registering to vote. They should do it willfully, freely and honorably.

I want to thank you for allowing me the opportunity to speak to you today. It has been my pleasure to address this receptive audience and I thank IFES for inviting me. I will be pleased to answer questions now about this topic or to discuss other aspects of my job with you during our free time here in our capital, Washington, D.C.