July 6, 2004

VIA FACSIMILE TRANSMISSION AND FIRST CLASS MAIL

Glenda E. Hood, Secretary of State
Florida Department of State
R. A. Gray Building
500 S. Bronough
Tallahassee, FL 32399-0250

Re: re-registration requirement

Dear Secretary Hood:

We are writing in an attempt to resolve an issue without the need for litigation. The Miami Herald reported on Saturday, July 3, 2004, that your office issued a news release on Friday indicating that any ex-felon who had his or her right to vote restored by clemency, and who had been registered to vote at the time clemency was granted, must be removed from the Central Voter Database and would be required to re-register in order to vote. Those individuals have been flagged in the voter database as “CAR” – clemency after registration. It is our understanding that you believe that this position is required by Florida Statute 98.093(4).

We believe that this interpretation of Florida law is incorrect and that any person currently registered to vote is entitled to remain on the registration books regardless of the timing of the granting of clemency. In addition, we believe that even if Florida law could be read to require re-registration, Federal law would prohibit the removal and re-registration requirement. Thus, we call upon your office to either revise the Felon Matching Component of the Central Voter Database to eliminate individuals who have been granted clemency or to notify the Supervisors of Elections that there is no re-registration requirement for individuals within the CAR category. Following is our legal analysis.

Section 98.093 is a statute that requires state and local officials (Department of Health, Department of State, clerks of circuit courts) to notify county supervisors of elections when official records reflect that an individual has died, been adjudicated mentally incapacitated with respect to voting, or who was convicted of a felony. §98.093 (1), (2), and (3).
The next section of the statute then requires the supervisor of elections to act on that information by removing “from the registration books the name of any person listed who is deceased, convicted of a felony, or adjudicated mentally incapacitated with respect to voting.” §98.093(4). The same section then requires that a “person who has had his or her mental capacity with respect to voting restored or who has had his or her right to vote restored after conviction of a felony shall be required to re-register to have his or her name restored to the registration books.” These two sentences of the same paragraph must be read together. Clearly, if a supervisor of elections, pursuant to this statute, has removed an individual from the registration books, such individual is required to re-register in order to get his or her name back on the books. This provision does not require a supervisor of elections to remove an individual who is currently qualified to be a registered voter.

Simply put, whether an individual who received clemency after registration is on the voter rolls because of the failure of a supervisor of elections to remove him or her at the time of the conviction or registered to vote prior to obtaining clemency, no action is required by the voter “to get his or name back on the books” – it is already there. Regardless of the source of the error which placed a voter on the registration books prior to having been granted clemency, his or her prior status is immaterial to whether that person is currently a qualified voter. There is no legitimate purpose to be served by removing such a person from the records and then turn around and put him or her back on those same records. Indeed, unless that were accomplished automatically, there is a serious possibility that a fully qualified voter will be disfranchised because of an administrative error.

Federal law prohibits state or county officials from denying “the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election.” 42 U.S.C. §1971(a)(2)(B). Clearly, ex-felons who have been granted clemency are qualified to vote in Florida and their prior status is not material to their current registration. If in fact the Department of State interprets Fla. Stat. 98.093(4) to hold otherwise, Federal law prevails. The Eleventh Court of Appeals determined just last year that 42 U.S.C. §1971 is enforceable by individual voters, leaving both your office and the individual Supervisors of Elections open to a federal lawsuit unless you not take any action to require individuals designated “CAR” to re-register in order to vote in the upcoming elections.

For the above reasons, we call upon your office to either revise the Felon Matching Component of the Central Voter Database to eliminate individuals who have been granted clemency or to notify the Supervisors of Elections that there is no re-registration requirement for individuals within the CAR category. Please let us know what you intend to do with this request.
Sincerely,

[Signature]

Randall C. Marshall, Legal Director
American Civil Liberties Union of Florida, Inc.

[Signature]

Randall C. Berg, Jr., Executive Director
Florida Justice Institute, Inc.

cc: Supervisors of Elections