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October 5, 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

Brenda Snipes, Supervisor of Elections
Broward County
115 South Andrews Avenue, Room 102
Fort Lauderdale, FL 33301

Re: rejection of voter registration form with citizenship box unchecked

Dear Secretary Hood and Supervisor Snipes:

I am writing in an attempt to resolve an issue without the need for litigation. *The Miami Herald* reported today that Broward County, following Secretary Hood's instructions, is rejecting voter registration forms if an applicant did not check the citizenship box (line 2), even though the applicant certified, under oath, on line 17 that he or she is a U.S. citizen. It is my understanding that you believe that this position is required by Florida Statute 97.053(5)(a).

I believe that this interpretation of Florida law is incorrect and that any person signing the oath on line 17 should not have the application rejected solely because of failure to check "yes" on line 2. Fla. Stat. 97.053(5)(a)(4) merely requires "An indication that the applicant is a citizen of the United States." Quite clearly, a sworn oath that includes "I am a U.S. citizen" is "an indication that the applicant is a citizen of the United States."

In addition, even if Florida law could be read to require line 2 to be filled out, Federal law would prohibit the rejection of the application solely for the failure to do so. 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, when an individual expressly certifies, under oath, that he or she is a U.S. citizen, the failure to have checked "yes" on line 2 is not material to ascertaining the individual's qualification to register to vote. If the Department of State, or Broward County interprets Florida law

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to hold otherwise, Federal law prevails. The Eleventh Circuit Court of Appeals determined just last year that 42 U.S.C. §1971 is enforceable by individual voters. Thus, individual Supervisors of Elections are open to a federal lawsuit for disqualifying applicants simply because they failed to check "yes" on line 2.

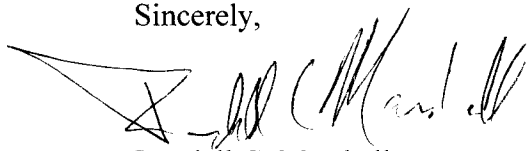
As you may recall, after the ACLU of Florida brought this same federal provision to the attention of the Secretary of State, she was persuaded to reverse course on her position in July that any ex-felon who had his or her right to vote restored by clemency, and who had been registered to vote at the time clemency was granted, must be removed from the Central Voter Database and would be required to re-register in order to vote.

In addition, it was also reported in *The Miami Herald* that Supervisors of Elections in Miami-Dade, Leon, and Orange counties are not rejecting applications for this reason, having concluded that signing the oath is sufficient. That applications are being correctly accepted from qualified individuals in other counties, while similarly situated applicants, providing the same information, are rejected in Broward County raises substantial equal protection issues.

Thus, the ACLU of Florida calls upon the Secretary's office to notify the Supervisors of Elections that applications should not be rejected solely for failure to check "yes" on line 2 when the oath on line 17 has been signed. We also call upon Supervisor Snipes, and all Supervisors of Elections, to not reject applications for that reason.

Please let us know what you intend to do with this request.

Sincerely,



Randall C. Marshall

cc: Supervisors of Elections