

**IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT OF FLORIDA**

FLORIDA CAUCUS OF BLACK STATE )  
LEGISLATORS, INC. d/b/a )  
FLORIDA CONFERENCE OF BLACK )  
STATE LEGISLATORS, et al., )

Appellants-Petitioners, )

v. )

Case No. 1D03-3370

JAMES CROSBY, in his official capacity )  
as Secretary of the Florida Department of )  
Corrections, )

Appellee-Respondent. )

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Appeal from the Circuit Court for Leon County  
Case Number 01-659  
Kevin Davey, Judge

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**APPELLANTS' INITIAL BRIEF**

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Randall Marshall, Esq.

Randall C. Berg, Jr., Esq.  
Peter M. Siegel, Esq.

ACLU of Fla. Foundation, Inc.  
4500 Biscayne Blvd., #340  
Miami, Florida 33137  
305-576-2337

Florida Justice Institute, Inc.  
2870 Wachovia Financial Center  
200 South Biscayne Boulevard  
Miami, Florida 33131-2310  
305-358-2081

Attorneys for Appellants

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## STATEMENT OF THE CASE AND FACTS

1. **Nature of the Case.** This lawsuit seeks a writ of mandamus, or injunctive and declaratory relief, to compel the Secretary of the Florida Department of Corrections' (hereinafter "the Secretary") to comply with § 944.293, Fla. Stat. (2002), which provides:

**Initiation of restoration of civil rights.**---With respect to those persons convicted of a felony, the following procedure shall apply: Prior to the time an offender is discharged from supervision, an authorized agent of the department shall obtain from the governor the necessary application and other forms required for the restoration of civil rights. The authorized agent shall assist the offender in completing these forms and shall ensure that the application and all necessary material are forwarded to the governor before the offender is discharged from supervision.

2. **Course of the Proceedings and Disposition Below.** This case is proceeding on Plaintiffs' First Amended Complaint, filed May 8, 2001, R1-37, and Defendant's Answer, filed May 14, 2001. R1-71.<sup>1</sup>

The Secretary's Motion to Dismiss the Complaint as to the Writ of Mandamus, and a Motion for Summary Judgment as to the Complaint for Injunctive and Declaratory Relief, was filed on April 24, 2002. R1-94. On July 24, 2002, Plaintiffs

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1. Citations to the record include the volume designation and then the page number. If the page number is followed by a colon, it refers to the line in a transcript. Thus, for example, the citation: "R1-16:15" refers to the Record volume number one, page 16, and line 15. "SR1-17:20" refers to the Supplemental Record volume number one, page 17, and line 20.

filed their Cross Motion for Summary Judgment. R3-435.

On August 27, 2002, the circuit court entered an Order dismissing Plaintiffs' Petition for a Writ of Mandamus, granting in part and denying in part Defendant's Motion for Summary Judgment, denying in part Plaintiffs' Motion for Summary Judgment, and Reserving Jurisdiction on the Remaining Issues. R3-487 (Appendix A).

A Final Order was entered July 25, 2003, granting retroactive relief to 124,769 offenders who were released from prison or supervision between 1992 and 2001 for whom the Defendant admitted he did not provide assistance as required by § 944.293, Fla. Stat. (2002). R3-536 (Appendix B). Because the Court had previously dismissed the mandamus portion of Plaintiff's Complaint, no prospective relief was granted. This appeal followed. R3-548.

3. **Facts.** Article VI, section 4 of the Florida Constitution provides that “[n]o person convicted of a felony . . . shall be qualified to vote or hold office until restoration of civil rights.”<sup>2</sup>

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2. Two statutes repeat this prohibition on voting by convicted felons. The Florida Voter Registration Act, § 97.041(2)(b), Fla. Stat. (2002), provides that “[a] person who has been convicted of any felony by any court of record and who has not had his or her right to vote restored pursuant to law” is not entitled to register and vote even if otherwise qualified. Section 944.292(1), Fla. Stat. (2002), states that “[u]pon conviction of a felony as defined in s. 10, Art. X, of the State Constitution, the civil rights of the person convicted shall be suspended in Florida until such rights

Restoration of civil rights is part of the governor's clemency power. Article IV, section 8 of the Florida Constitution authorizes the governor to "suspend collection of fines and forfeitures, . . . and, with the approval of two members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses," except in cases of treason or where impeachment results in conviction. A person convicted of a felony "may be entitled to the restoration of all the rights of citizenship" if he or she receives a full pardon, has served his or her maximum sentence, or been granted final release by the parole board. § 940.05, Fla. Stat. (2002).

The Rules of Executive Clemency set out the eligibility requirements for restoration of civil rights. R1-133 (Exh. B); [the current Rules are set out in Appendix C (6/20/03)].<sup>3</sup> The simplest and quickest procedure exists when a felon qualifies for "Restoration of Civil Rights . . . Under Florida Law Without a Hearing" pursuant to Rule 9.A., Rules of Executive Clemency. Id.<sup>4</sup> For those who do not meet

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are restored by a full pardon, conditional pardon or restoration of civil rights granted pursuant to s. 8, Art. IV of the State Constitution."

3. The Rules of Executive Clemency are established by the Governor and the Cabinet and may be amended by them. R1-133 (Exh. B at §§1 & 2)(App. C).

4. Felons can be considered for restoration *without* a hearing so long as none of the restrictive criteria listed in Rule 9.A., Criteria for Eligibility, apply to them, and 2 or more members of the Clemency Board do not object pursuant to Rule 9.B. R1-133 (Exh. B); (App. C).

Rule 9.A.'s stringent requirements, the path to restoration requires a written application and a formal hearing.<sup>5</sup> See Rules 6 & 10, Rules of Executive Clemency. App. C.

Approximately 30% of those discharged from supervision qualify for consideration for restoration *without* a hearing. R2-397 (Exh. 5). However, only about half of those who initially qualify for restoration without a hearing will actually have their civil rights restored in that manner. SR2-761 (Exh. 6). The other half, if they are to obtain restoration of their civil rights, will only be able to do so after a hearing. R2-353:14; R2-386 (Exh. 1).

After the case *sub judice* was filed, the Secretary instituted a “paperless” procedure to process all offenders leaving the Department’s supervision. R2-340:7. A computer-generated list of all offenders who have completed their sentences is now sent by the Secretary to the Parole Commission just prior to an offender’s discharge

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5. If the offender does not qualify for “Restoration of Civil Rights...Under Florida Law Without a Hearing” under Rule 9.A., the offender must apply for a restoration of civil rights *with* a hearing pursuant to the Rules of Executive Clemency, Rule 5(E). R2-386 (Exh. 1). The Executive Clemency Review Board requires that an offender file an application, form ADM 1501A, if the offender wishes to apply for restoration of civil rights under Florida law *with* a hearing once determined ineligible for Restoration of civil rights *without* a hearing. R2-315:22-316:5.

and again on the 20th of the month following discharge. R2-344:22-345:12.<sup>6</sup>

That is all the Secretary does.

The Secretary knows, or can easily determine, from the same databases used by the Parole Commission and Florida Department of Law Enforcement (FDLE), which offenders fall into the 30% who may qualify for restoration of civil rights without a hearing and which fall into the 70% who can only obtain restoration of civil rights after a hearing; a hearing which cannot occur until the offender has first submitted an application for clemency on form ADM 1501A (App. D). R2-313:13-22.<sup>7</sup>

Despite this knowledge, the Secretary does not inform 70% of the offenders he knows are unqualified for restoration of civil rights *without* a hearing of the application process necessary to obtain a hearing. R2-212. He does not notify the

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6. The Parole Commission then processes the list of offenders just as was done prior to the change to the electronic procedure. The Commission's initial review is usually not completed until many months, and in many instances over a year, after an offender is released from prison or supervision. R2-353:14-354:12. On June 1, 2003, the Parole Commission reported to the legislature a backlog of 38,606 ex-offenders who had still not been processed. R3-529.

7. During this lawsuit, the Secretary and the Parole Commission posted links to the Rules of Executive Clemency and the various application forms on the Internet at <http://www.state.fl.us/fpc/clemencyapp.htm> and <http://www.dc.state.fl.us/index.html>. But prisoners are not allowed computers, much less Internet access. See, Henderson v. Crosby, Case No. 1D03-2367 (Fla. 1st DCA) (appeal pending).

30% of offenders who may qualify for restoration of civil rights *without* a hearing that half of them will not qualify and that their path to restoration also will require a hearing, which can only be obtained after filing an application. He does not provide any offender with form ADM 1501A, the form which is absolutely necessary in order to request restoration *with* a hearing. R2-213; R2-362. Nor does he assist any offender in the completion of form ADM 1501A. And assistance is essential because the Department estimated in 1999-2000 that 70% of its inmates were assessed as having less than functional literacy skills (less than a 9<sup>th</sup> grade level) and 50% were classified as having only basic literacy skills (4<sup>th</sup> to 8<sup>th</sup> grade levels). See, <http://www.dc.state.fl.us/orginfo/programs/index.html>.

Months, or even years after their discharge from supervision, the Parole Commission determines which felons are ineligible for restoration of civil rights *without* a hearing and sends a form letter to their last known address notifying them of their ineligibility for restoration *without* a hearing and telling them that if they wish to request a hearing, they must contact the Office of Executive Clemency to proceed further. R2-353:1-355:11. Those who contact the Office of Executive Clemency will be told that they need to complete and submit application form ADM 1501A. Id.

Since notice is sent so late, both the Parole Commission and the Secretary know that attempting to contact discharged offenders by mail using their time of

release address is unlikely to be successful. SR1-572:13-573:1. For example, during the course of this lawsuit, the Secretary initially admitted that 113,000 offenders [later increased to 124,769 offenders] were not provided the restoration assistance required by § 944.293 prior to their release from supervision from 1992 until 2001. R3-533. In 2001, the Secretary mailed notice to 113,000 individuals that civil rights restoration assistance may not have been provided and asked whether they would like to have their civil rights restoration eligibility reviewed. R2-322:5. Consistent with prior findings of the Parole Commission that mailing to an ex-offender's forwarding address given upon discharge is ineffective, many envelopes were returned as undeliverable and only 4,000 individuals responded. R2-322.

Form ADM 1501A is "the" application required by the governor to initiate the restoration of civil rights process *with* a hearing and a request for restoration will not be processed unless this application form is completed. R2-378:12-15.

The Secretary knows which offenders will need to complete form ADM 1501A. Moreover, the information which must be provided on form ADM 1501A is information known to the Department of Corrections at the time of discharge. R2-356:13-357:10.

In summary, more than 85% of all offenders must request a hearing if they want the governor and cabinet to restore their civil rights. And, in order to request

a hearing, each must complete the one page application that is form ADM 1501A. The failure of the Secretary to provide this one page application to the 70% of offenders the Secretary knows cannot qualify for restoration of civil rights without a hearing, as well as to the other 30% of offenders who may qualify for restoration of civil rights *without* a hearing, is at the core of the Secretary's failure to comply with § 944.293.

### **STANDARD OF REVIEW**

The circuit court's decision on a pure question of law is subject to *de novo* review. Armstrong v. Harris, 773 So.2d 7, 11 (Fla. 2000).

## SUMMARY OF ARGUMENT

This is a straight forward case. Section 944.293, Fla. Stat. (2002), mandates that an authorized agent of the Department “shall assist” all offenders in completing any “necessary application and other forms” and “shall ensure” that “the application and all necessary material are forwarded to the governor before the offender is discharged from supervision.”

The language of § 944.293 could not be plainer. In § 944.293, the legislature has clearly and unequivocally imposed a duty on the Secretary to assist felons to begin the process of seeking to restore their civil rights. The circuit court’s finding that “the restoration of civil rights assistance required by § 944.293 to be provided by the Secretary of the Florida Department of Corrections is not a ministerial act” is clearly wrong. Likewise, the finding that the “nature of the defendant’s statutory obligation is not clearly stated in § 944.293, is also clearly wrong. The conclusion that “there is discretion to be exercised under this statute” and that, therefore, “mandamus will not lie” is fundamentally wrong.

The command of § 944.293 is clear. The Secretary must obtain “the necessary application and other forms for the restoration of civil rights” and must “assist the offender in completing these forms and shall ensure that the application and all necessary material are forwarded to the governor . . . “

Where is the discretion? There is but one form, form ADM 1501A. In what way is the Secretary's obligation not clearly stated? He must get the form (which he and the Parole Commission have now posted on the web), he must assist the offender's completion of the form, and he must forward the form to the governor.

The Secretary admitted that for ten years he failed to meet his obligation under § 944.293 by failing to provide any assistance to at least 124,769 offenders. Having failed in his duty, he now asks this court to sanction the easy way out — let the Parole Commission do all the work. And, the Secretary takes this position despite his knowledge that a mere 15% of offenders will have their civil rights restored based solely on their names being sent to the Parole Commission. The other 85%, which the Secretary ignores, must complete form ADM 1501A in order to seek restoration of their civil rights. The Secretary's duty is not discretionary. It is fully appropriate that mandamus issue to compel the Secretary to assist the 85% of offenders who must complete and submit a one page application in order to request a hearing to have their civil rights restored.

## ARGUMENT

**THE SECRETARY FAILS TO COMPLY WITH SECTION 944.293, MANDATING ASSISTANCE TO ALL OFFENDERS IN THE COMPLETION OF ANY FORMS REQUIRED FOR THE RESTORATION OF THEIR CIVIL RIGHTS AND TO FORWARD THEM TO THE GOVERNOR — BECAUSE THE SECRETARY DOES NOT PROVIDE THE MANDATED ASSISTANCE, A WRIT OF MANDAMUS SHOULD ISSUE**

The only way that 85% of all offenders must have their civil rights restored is by submitting application form ADM 1501A, as a condition precedent to seeking a hearing before the governor and cabinet. With full knowledge of these facts, the Secretary asks this court to ratify his sham compliance with the statutory mandate of § 944.293, Fla. Stat. (2002).

There was no principled basis on which the circuit court could rule that the assistance required by § 944.293 was something other than a ministerial act or that the Secretary's obligation was not clearly stated. The statute could not be plainer:

**Initiation of restoration of civil rights.**---With respect to those persons convicted of a felony, the following procedure *shall* apply: Prior to the time an offender is discharged from supervision, an authorized agent of the department *shall* obtain from the governor the necessary application and other forms required for the restoration of civil rights. The authorized agent *shall* assist the offender in completing these forms and *shall* ensure that the application and all necessary material are forwarded to the governor before the offender is discharged from supervision. (Emphasis supplied).

In one paragraph, the statute uses the word “shall” four times.

Under the normal and usual rules of statutory construction, the word “shall” means “must.” Thus, the Secretary must follow the procedure set out in § 944.293. He must obtain from the governor “the necessary application and other forms required for the restoration of civil rights.” He must then assist “the offender in completing these forms.” And, finally, he must ensure that the application and all necessary material are forwarded to the governor . . . .”

“When the language of a statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion of resorting to the rules of statutory construction; the statute must be given its plain and obvious meaning.” M.W. v. Davis, 756 So.2d 90, 101 (Fla. 2000), citing McLaughlin v. State, 721 So.2d 1170, 1172 (Fla. 1998). The language of § 944.293 is clear and definite. The statute mandates that the Department of Corrections, through an authorized agent, “**shall**” obtain the necessary application and forms *prior* to the offender’s discharge and forward such necessary material to the governor. The language is clearly mandatory. There is simply no basis to read it as discretionary.

An action is considered ministerial when it is arrived at as a result of the performance of a specific duty arising from legislatively designated facts and is to be performed at a time and manner or upon conditions specifically designated by the law

itself absent any authorization of discretion to the agency. Solomon v. Sanitarians' Registration Board of the State of Florida, 155 So.2d 353, 356 (Fla. 1963) citing First National Bank of Key West v. Filer, 145 So. 204 (Fla. 1933).

The Secretary is required under § 944.293 to exercise a purely ministerial function. It is a mandated duty owed offenders by the Secretary to provide assistance with the application and other forms in initiating the restoration of their civil rights. This assistance must occur *prior* to the offender's discharge from supervision. There is no discretion. There is only one form. Offenders must be provided the form. Offenders must be provided assistance in completing the form. The form must then be submitted to the governor.

The circuit court erred in accepting the Secretary's argument that the only "necessary" application is the computer-generated list of names forwarded to the Parole Commission. For the Secretary admits that Rule 9.A. of the Executive Rules of Clemency "enumerates criminal history disqualifiers for which time sensitive individual offender applications can be reasonably determined." R1-109. Then the Secretary defeats his own argument by stating that the computer-generated list is the "necessary" application, while readily admitting that there are disqualifiers for which offenders may need to use alternative applications for initiation of restoration of their civil rights. He cannot have it both ways.

The circuit court's abdication to the Appellee's argument that a "one application fits all" is clearly erroneous. By the Secretary's own admission, not every offender's civil rights will be restored without a hearing. Eighty-five per cent (85%) will need an application form to request a hearing for civil rights restoration. The very fact that the Rules of Executive Clemency recognize two different procedures depending upon the particular offender's circumstances proves that the "one application fits all" argument is false. The Secretary must assist offenders to complete "the" necessary application form. And in all instances, form ADM 1501A is the application. For if an offender does not qualify for restoration without a hearing and have one's civil rights restored (which "after all is said and done" account for only 15% of those discharged), filling out application ADM 1501A is essential.

It is hornbook law that mandamus is available to force the performance by public officers of a duty required by law. Hatten v. State, 561 So.2d 562 (Fla. 1960). Mandamus is an appropriate remedy to enforce a right that is clear and certain. Florida League of Cities v. Smith, 607 So.2d 397 (Fla. 1992); accord Florida Parole Commission v. Criner, 642 So.2d 51, 52 (Fla. 1st DCA 1994). Because all the criteria for establishing a right to mandamus have been met in this case, this court should

reverse the decision of the circuit court and remand for the relief sought.<sup>8</sup>

Florida courts have long recognized that statutes similar to § 944.293 create a clear entitlement to mandamus relief. The Supreme Court in Gallie v. Wainwright, 362 So.2d 936 (Fla. 1978), specifically held that mandamus would be an appropriate remedy to enforce a similar statute, former § 940.06, Fla. Stat. (1975), which required the Department of Corrections to forward the plaintiff's name to the governor.<sup>9</sup> Similarly, in Greer v. Florida Parole and Probation Commission, 403 So.2d 1000 (Fla. 1st DCA 1981), this court read the statutory language of § 947.16(1), Fla. Stat.

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8. In the alternative, since all the criteria for injunctive and declaratory relief were similarly met, prospective injunctive relief would also be proper. For when an action is plead to affirmatively order a public officer to comply with a statutory obligation in an action for a mandamus, it may be combined with declaratory and injunctive relief. See, Webb v. Town Council of Town of Hillard, 766 So.2d 1241 (Fla. 1st DCA 2000)(action for mandamus combined with declaratory relief to challenge illegal zoning action); West v. Board of County Commissioners, Monroe County, 373 So.2d 83, 86 n. 4 (Fla. 3rd DCA 1979)(in action to require County to reinstate employee “the form of action chosen by the plaintiff, that is, mandatory injunction rather than mandamus, should not affect the relief to which he is entitled.”)

In the case at bar, Appellants sought and were denied both forms of relief. Furthermore, this court has specifically approved of the combination of an action for mandamus and for a mandatory injunction in the same proceeding. Volusia County v. Eubank, 151 So.2d 37, 50-51 (Fla. 1st DCA 1963).

9. In Gallie the Supreme Court declined to issue the mandamus because it believed that plaintiff would still have been required to “apply” for relief and could accomplish that on his own. Here, however, the Department’s agent is statutorily mandated to assist the offender with the application forms and all necessary paperwork.

(1981), stating that a prisoner “shall have an initial interview” as imposing a mandatory duty to interview the prisoner to establish a parole release date within the time period specified. Moreover this court held that mandatory duty to be enforceable by mandamus. This court reaffirmed that finding in Oishi v. Florida Parole and Probation Commission, 418 So.2d 329 (Fla. 1st DCA 1982). In Wade v. Florida Parole and Probation Commission, 457 So.2d 575 (Fla. 1st DCA 1984), this court held that mandamus is the appropriate remedy to challenge the commission’s violation of a regulation prohibiting consideration of certain allegations in determining parole. In Harrison v. State of Florida, 667 So.2d 382 (Fla. 1st DCA 1995) this court held that a prisoner could use mandamus to force the defendant to comply with the mandatory requirements regarding the calculation of gain time. In Osterback v. Singletary, 679 So.2d 43, (Fla. 1st DCA 1996), this court interpreted § 944.28(c), Fla. Stat. (1995) which states: “the prisoner shall be present” as imposing a mandatory obligation that prisoners be present at disciplinary hearings, enforceable by mandamus. Again, in Graham v. Vann, 394 So.2d 176 (Fla. 1st DCA 1981), this court held that mandamus was an appropriate means to challenge the duty of the Department of Corrections to correct conditions that daily imperiled the lives and safety of prisoners. See also, Hargrove v. Florida Department of Corrections, 676 So.2d 63 (Fla. 1st DCA 1996) (due process violations remedied by mandamus).

In each of these cases this court and the Supreme Court looked to a mandatory obligation, imposed generally by statute, in language virtually identical to the mandatory language at issue here. This near identical language mandates an identical response, viz., that this court order the Secretary to fully comply with the statutory mandate, and ensure that all eligible offenders are provided with all necessary assistance.

Appellants agree that the power to grant clemency is exclusively the governor's, subject only to the consent of two members of the cabinet, and cannot be exercised or regulated by the legislature. See, In re Advisory Opinion of the Governor, In re: Administrative Procedure Act, 334 So.2d 561 (Fla. 1976). But the power of the governor is not at issue in this litigation.<sup>10</sup> None of the relief sought by the Appellants will either expand or restrict the ability of the governor to restore one's civil rights. Section 944.293 simply has no impact on who is eligible for, and who is not eligible for, restoration of civil rights. All it does is require the Department of Corrections to assist offenders to apply for restoration of their civil rights.

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10. At times, restoration or civil rights was virtually automatic for almost all ex-felons. Gallie v. Wainwright, 362 So.2d 936, 938 (Fla. 1978). Currently, however, only 30% of all offenders are found eligible for restoration *without* a hearing. The remaining 70% must pursue the lengthy process of individual application and investigation in order to obtain restoration *with* a hearing. The process begins form ADM 1501A.

In that regard, it is similar to a number of statutes which have helped offenders to recover their civil rights. In 1969 the legislature enacted § 940.06, Fla. Stat. (1969). That section, repealed in 1988, required that “the parole and probation commission *shall submit to the governor* and cabinet the names of persons who qualify for the restoration of civil rights in accordance with Section 940.05.” See, State v. Hadden, 370 So.2d 849, 851 (Fla. 3d DCA 1979) (emphasis supplied).<sup>11</sup> In 1996, § 940.061, Fla. Stat. (2002) was enacted. It requires the Department of Corrections to inform and educate inmates and offenders placed on community supervision about the restoration of civil rights and to “assist eligible inmates and offenders on community supervision with the completion of the application for the restoration of civil rights.” Finally, § 944.293, Fla. Stat. (2002), first enacted in 1974, and the subject of this lawsuit, obligates the Department of Corrections to “assist” offenders, prior to their discharge, in completing the necessary application and other forms and to “ensure that the application and all necessary material be forwarded to the governor. . .”

These statutes underscore the clear legislative statement of policy, i.e., that the restoration of civil rights should proceed as simply and expeditiously as possible. This policy was eloquently stated in Justice Ervin’s dissent in In Re Advisory Opinion of

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11. The legislature contemporaneously with § 940.06 passed § 940.03, Fla. Stat. (1969), setting forth the application procedure.

the Governor Civil Rights, 306 So.2d 520, 524 (Fla. 1975) in which the Supreme Court overturned a legislative enactment attempting to automatically restore civil rights to ex-felons:

It is *pro forma* for the Pardon Board now to restore civil rights when applied for and the applicant is entitled to them. The Legislature thought it more expeditious and salutary in its enactment to blanketly restore civil rights when they were so entitled rather than require the individual to go through the delay and expense and red tape of applying for and securing them with the concomitant bureaucratic routine and expense to the state in granting them.

It is this same legislative mandate, as embodied in particular in § 944.293, Fla. Stat. (2002), that Appellants seek to enforce here.

The Secretary argued below that the issuance of a writ of mandamus would create public confusion and disorder by burdening taxpayers, requiring those not even entitled to restoration of civil rights to be assisted, and create unnecessary and unproductive paper forms for offenders who may not have any interest in the restoration of their civil rights. R1-105. There is no legal authority which supports this excuse for failing to comply with the clear statutory mandate of § 944.293. As previously argued, there is a clear legislative mandate that the Secretary assist all offenders leaving his supervision. If the Secretary's parade of horrors is true, it is an issue to be resolved by the legislature and not by the Secretary.

In State ex rel. v. Gay, 35 So.2d 403, 407 (Fla. 1948), the Florida Supreme

Court stated:

Under modern practice the use of writ of mandamus has been very generally expanded far beyond the ancient limitations of matters to be justiciable in mandamus, and the writ has been frequently employed where,...the speedy determination of the purely legal questions involved will not only put the dispute between the parties at rest but also will furnish an authoritative guide for conduct of the [defendant] in respect of like matters in the future.

Issuance of a writ of mandamus to settle the purely legal questions between the parties would put a speedy end to this dispute and provide Appellants with the assistance owed them by the Secretary. It would also establish the guidelines by which that assistance is to be provided thereby ensuring Appellants receive assistance and aiding the Appellee in his role in providing such assistance. This would aid the Appellee in avoiding similar disputes in the future.

A writ of mandamus may be enforced upon principles of equity. Fasemeyer v. Wainwright, 230 So.2d 129, 130 (Fla. 1969). Equitable principles exist here. The failure of the Secretary to even minimally comply with § 944.293 has had astounding consequences for ex-offenders seeking restoration of their civil rights. Florida now leads the nation in the number of disenfranchised felons. On December 31, 2000, it was estimated there were 827,207 disenfranchised felons in Florida, or 7.03% of the voting-age population. Christopher Uggen & Jeff Manza, Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States, 67 Amer.

Soc. Rev. 777, 797 (2002)(Appendix Table A). This figure includes 71,233 who were incarcerated, 131,186 who were on probation, 6,046 on parole, 5,228 jail inmates, and 613,514 ex-felons who have completed their sentence and supervision requirements. Id. Indeed, seventeen and sixty-five hundredths per cent (17.65%) of all disenfranchised ex-felons in the United States live in Florida and that number is rapidly increasing. The racial impact is highly disproportionate: 256,392 of these disenfranchised felons, or 30.99%, are African American. Id. at 798 (Appendix Table B). Sixteen and two hundredths per cent (16.02%) of the African American voting-age population in Florida cannot vote as a result of felon disenfranchisement. Id.

While the Secretary may suggest that the offenders can complete the application forms themselves, the statute clearly does not contemplate this. It clearly and unambiguously states the Secretary **shall** assist offenders. And offenders can not complete a form which the offender is not informed exists and not made available .

The Secretary may also maintain his position below that simply submitting 100% of the names satisfies his obligation. Such a position is untenable since it ignores the needs of 85% of those prisoners for whom submitting their name is meaningless. And, by so doing, it ignores the express words of the statute. By failing to obtain and assist offenders to complete application form ADM 1501A, the Secretary fails to “obtain from the governor the necessary application and other forms

required for the restoration of civil rights.” By failing to assist offenders to complete form ADM 1501A, the Secretary fails to “assist the offender in completing these forms” and, the Secretary shows total disregard of the law by failing to “ensure that the application and all necessary material are forwarded to the governor before the offender is discharged from supervision.”

In the end, sending a computer-generated list of offenders being discharged to the Parole Commission as the basis for compliance with § 944.293 is a sham. A computer-generated list of names and minor identifying data is not “assistance,” particularly given the knowledge that some 85% of all offenders will need to complete and submit application form ADM 1501A.

### **CONCLUSION**

For the foregoing reasons, Appellants respectfully requests that this court reverse the lower court’s order dismissing the petition for a writ of mandamus, and order that the lower court issue the writ requiring full compliance with § 944.293, including providing every offender with application form ADM 1501A and assisting every offender to complete application form ADM 1501A, and to forward same to the governor.

Respectfully submitted,

Randall C. Berg, Jr., Esq.

Peter M. Siegel, Esq.

Florida Justice Institute, Inc.  
2870 Wachovia Financial Center  
200 South Biscayne Boulevard  
Miami, Florida 33131-2310  
305-358-2081  
305-358-0910 (FAX)

Randall Marshall, Esq.

ACLU of Fla. Foundation, Inc.  
4500 Biscayne Blvd., #340  
Miami, Florida 33137  
305-576-2337

Attorneys for Appellants

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By: Randall C. Berg, Jr., Esq.  
Florida Bar No. 0318371

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing document and appendices have been served on James A. Peters, Esq., Special Counsel, Department of Legal Affairs, The Capitol, Suite PL 01, Tallahassee, Florida 32399-1050, attorney for the Appellee, and Deborah Goldberg, Esq., and Jessie Allen, Esq., Brennan Center for Justice, New York University School of Law, 161 Avenue of the

Americas, 12th Floor, New York, New York 10013, counsel for *Amicus Curiae*, by  
First Class United States Mail and e-mail on November 25, 2003

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Randall C. Berg, Jr.

**CERTIFICATE OF FONT**

I hereby certify that, pursuant to Rule 9.210(a)(2), Fla.R.App.P., this brief was prepared in Times New Roman, 14 point, a font that is proportionately spaced.

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Randall C. Berg, Jr., Esq.

## **INDEX TO APPENDICES**

- A. ORDER, entered August 27, 2002
- B. FINAL ORDER, entered July 25, 2003
- C. RULES OF EXECUTIVE CLEMENCY (6/20/03)
- D. FORM ADM 1501A (3/02)