



**LAWYERS' COMMITTEE FOR  
CIVIL RIGHTS  
U N D E R L A W**

1401 New York Avenue, NW  
Suite 400  
Washington, DC 20005-2124

Tel: 202.662.8600  
Fax: 202.783.0857  
www.lawyerscommittee.org

October 18, 2004

Via U.S. Mail & Facsimile

**Co-Chairs**

John S. Skilton  
Marjorie Press Lindblom

**Secretary**

Robert A. Murphy

**Treasurer**

William L. Robinson

**Counsel**

Nicholas T. Christakos

**Executive Director**

Barbara R. Arnwine

Joseph D. Rich  
Chief, Voting Section  
Civil Rights Division  
Room 7254 - NWB  
United States Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, DC 20530

**Regional Vice-Chairs**

**Midwest Region**

Fay Clayton  
Teresa J. Kimker

**Northeastern Region**

Gregory P. Hansel  
Neil V. McKittrick

**Mid-Atlantic Region**

Jay Cohen  
Marsha E. Simms

**Southeastern Region**

Robert E. Harrington  
William E. Hoffmann, Jr.

**Western Region**

Jack W. Londen  
Bradley S. Phillips  
Paul F. Eckstein

**Chesapeake Region**

Jonathan L. Greenblatt  
Patricia A. Brannan

Re: Rejecting New Voter Registrations for Failure to "Double Affirm"  
Citizenship

Dear Mr. Rich:

We represent organizations working to protect voters' rights. We write out of a concern that the Department of Justice is abdicating its responsibility to ensure that states do not misapply federal law with the effect of disenfranchising voters. Specifically, we are concerned about the Department of Justice's failure to respond to certain states' directives requiring voter registration applicants to affirm their United States citizenship twice on registration forms. Such states, including Florida, Arizona and Iowa, appear to be confused as to what the law is in this regard. For the reasons discussed in detail below, we respectfully request that your office notify the State of Florida and all other states with similar requirements that the rejection of voter registration applications based upon the applicants' failure to "double affirm" citizenship status contravenes federal law. We also request that your office initiate litigation against those states that persist in denying the right to register and vote on this basis.

Recently, the General Counsel for the Florida Department of State issued an opinion letter in which he stated that the State of Florida would continue to reject voter registration applications wherein prospective voters signed their applications affirming their U.S. citizenship, but did not double affirm their citizenship by also checking a box on the forms asking the same question (see enclosed letter from Richard A. Perez, dated September 28, 2004, hereinafter the "Opinion"). The failure of Florida election officials to accept the aforementioned voter registration applications is a direct violation Section 1971 of the Civil Rights Act of 1964 and misinterprets the requirements of both Section 303 of the Help America Vote Act ("HAVA") and Section 9 of the National Voter Registration Act ("NVRA").

## LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

Joseph D. Rich  
October 18, 2004  
Page 2 of 4

As you are aware, Section 1971(a)(2)(B) of the Civil Rights Act of 1964 deems it unlawful for any official acting under color of state law to "deny the right of any individual to vote in any election because of an error or omission on any paper record or paper relating to any application, registration or other act requisite to voting, if such error is not material in determining whether such individual is qualified under State law to vote in such election." A failure to check a box attesting to U.S. citizenship where the prospective voter has provided a signature attestation to his or her citizenship is patently immaterial in determining whether such individual is qualified to vote under State law. Florida has adopted the untenable position that an individual applying to vote must "double affirm" his or her citizenship in order to be registered. We respectfully request that your office inform the State of Florida that its position is a violation of Section 1971.

The State of Florida appears to be basing its opinion, at least in part, upon a misinterpretation of HAVA. Specifically, the General Counsel for the Florida Department of State believes that "Section 303(a) does not speak to the issue of whether or not the citizenship box needs to be checked before an application is deemed complete." Opinion at 2. Therefore "in the absence of applicable federal law the state should apply their [sic] background state law." *Id.* Although the General Counsel is correct in noting that Section 303 does not speak to whether the citizenship box must be checked, he is incorrect in assuming that the State of Florida is thus entitled to reject voter registration applications that arrive without the box checked.

HAVA requires that prospective voters be asked on their mail-in registration forms, "Are you a citizen of the United States of America?" 42 U.S.C. § 15483(b)(4)(A)(i). Consequently, "[i]f an applicant for voter registration fails to answer the question included on the mail registration form pursuant to subparagraph (A)(i) the registrar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner. . . ." *Id.* at § 15483(b)(4)(B).

Failing to check a box does not equate with failing to answer the question. A prospective voter who has provided attestation elsewhere on the form that he or she is a citizen has answered the question regarding his or her citizenship. Any interpretation of HAVA that would preclude the acceptance of voter registration applications for failure to check a box where the potential voter has otherwise affirmed his or her citizenship is contrary to both the letter and the spirit of HAVA – the *Help America Vote Act*. *See, e.g.,* 149 Cong. Rec. S10,4889 (Oct. 16, 2002) (Statement of HAVA's principal co-sponsor Sen. Bond) (noting that HAVA's twin purposes are making it harder to cheat in voting and to "make it easier to vote") (emphasis supplied).

Moreover, HAVA expressly incorporated the NVRA. *See, e.g., Sandusky Democratic Party v. Blackwell*, \_ F. Supp.2d \_ n.5, 3:04cv7582 (N. D. Ohio Oct. 14,

## LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

Joseph D. Rich  
October 18, 2004  
Page 3 of 4

2004) (“[T]he term . . . in HAVA has the same meaning as the term . . . in the NVRA.”). NVRA Section 9, Paragraph (b)(1) provides that the mail-in form to register to vote for federal elections “require only such identifying (including the signature of the applicant) and other information (including data relating to previous registrations by the applicant) as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process.”

Requiring a signature from a voter applicant accompanying an attestation of citizenship would be sufficient to comply with the NVRA requirements. Requiring a double affirmation, in the form of a check box, may also be a violation of the NVRA.

At least five other states with similar voter registration forms – Colorado, Ohio, Michigan, Washington, and Wisconsin – have already concluded that the failure to check the citizenship box should not prevent a voter registration from being processed for all federal, state and local elections, so long as the applicant signs the oath swearing that he or she is a U.S. citizen. Along with Florida, some Iowa election officials have asserted that they cannot accept voter registration forms as valid for federal elections without the double affirmation of citizenship. These Iowa election officials are treating such voters as validly registered for state and local elections, but not for federal elections. They are sending registration forms back to voters for them to check the appropriate boxes to establish eligibility for federal elections. We are also advised that Arizona may be adopting such a policy. It is not clear what position the other forty-two (42) states have taken, if any. This issue requires clarification and leadership from the federal law enforcement authorities.

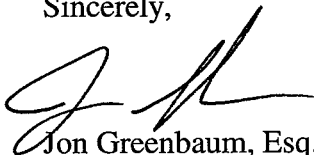
Based upon the foregoing, we respectfully request that your office notify the State of Florida and all other states that the rejection of voter registration applications based upon the applicants’ failure to “double affirm” citizenship status contravenes Section 1971 of the Civil Rights Act of 1964 and reflects a misinterpretation of both HAVA and the NVRA. Since HAVA requires that all state voter registration forms include the “Are you a citizen of the United States of America?” question, the potentiality for other states to enforce the double affirmation requirement is great. Thus, your office needs to clarify this requirement not only for Florida, but also for the other forty or more states that could be enforcing this illegal practice.

We look forward to your prompt response.

**LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW**

Joseph D. Rich  
October 18, 2004  
Page 4 of 4

Sincerely,

A handwritten signature in black ink, appearing to be 'J. Greenbaum', written over the printed name.

Jon Greenbaum, Esq.  
Lawyers' Committee for  
Civil Rights Under Law

Brenda Wright, Esq.  
National Voting Rights Institute

cc: Richard A. Perez, General Counsel, Florida Department of State (w/o encl.)  
Honorable Tom Miller, Attorney General, State of Iowa (w/ encl.)

(Enclosure)



STATE OF FLORIDA  
DEPARTMENT OF STATE

JEB BUSH  
Governor

GLEND A. E. HOOD  
Secretary of State

September 28, 2004

Judith Browne, Esq.  
Advancement Project  
1730 M Street, NW  
Suite 910  
Washington, DC 20036

Dear Ms. Browne:

It was a pleasure to speak to you last Friday and I am grateful that you have accepted my invitation to contact my office about issues that the Advancement Project has with Florida's system for registering voters. As I indicated to you, we remain committed to working with all interest groups to ensure a fair and legal elections process. The following are the answers to your questions:

1. You indicated that many of the incomplete applications reviewed by the Advancement Project are missing a check mark in the citizenship box. You indicate that Section 97.053(a), Florida Statutes, requires the applicant to indicate whether they are U.S. citizens by checking the appropriate box on the form. You state that this "indication" requirement is met by the signing of the sworn statement at the bottom of the voter registration application. Moreover, you point to a recent opinion of the Federal Elections Assistance Commission ("EAC") that you state requires Florida to deem complete any application that does not include a check in the citizenship box.

We conclude that Section 97.053(5)(a), Florida Statutes, requires that the citizenship box on Florida's voter registration application be checked by the applicant prior to the application being deemed complete. Before a voter registration application is deemed complete, Section 97.053(5)(a), Florida Statutes, requires that the applicant complete eight (8) separate elements on the voter registration application, including (i) providing an "indication that the applicant is a citizen of the United States" and (ii) furnishing the "[s]ignature of the applicant swearing or affirming under penalty" the oath required by Section 97.051, Florida Statutes. The oath contains the affirmation that the registrant is "a citizen of the United States and a legal resident of Florida." Because the "indication" of U.S. citizenship and the affirmation of the oath are listed as two separate requirements in the statute, the Department of State can not construe the affirmation in the oath as a sufficient indication of citizenship to comply with Section

97.053(5)(a). The legislature -- by creating two separate requirements -- clearly intended that the registrant both check off the box and sign the oath.

The EAC opinion you have provided to us is inapplicable. The EAC opinion discusses only the status of Section 303(a) and, specifically, Section 303(a)(5) of HAVA -- Verification of Voter Registration Information. Section 303(a) does not speak to the issue of whether or not the citizenship box needs to be checked before an application is deemed complete. At best, the EAC opinion can be read as indicating that in the absence of applicable federal law the states should apply their background state law. As indicated above, unlike Ohio, the background law in Florida requires an applicant to check the citizenship box prior to the application being considered complete.

Notwithstanding, the Department of State intends to work with our supervisors of elections to ensure that each applicant filing an incomplete application is given an opportunity to complete such application prior to book closing. This is not only a self-imposed obligation of each of our supervisors of elections, but state law (Section 97.073, Florida Statutes) and HAVA compels each supervisor of elections to provide each applicant an opportunity to complete the voter registration application.

2. You indicate that HAVA requires applicants to provide on the voter registration application a driver's license number or last four digits of a social security number. If the applicant has neither, then you indicate that HAVA requires the state to assign the applicant an identification number for voter registration purposes. You suggest that Florida law does not comply with HAVA.

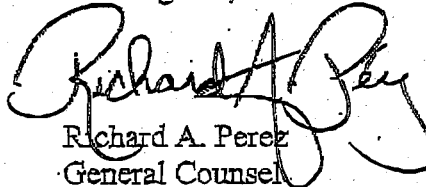
**HAVA does not require the State of Florida to provide voter registration applicants with an alternative identification number until January 2006.** Although not applicable to the prior issue, the EAC opinion you provided clearly indicates that Section 303(a)(5) of HAVA is deemed waived until January 2006. Section 303(a)(5) of HAVA is the provision that requires the state to provide alternative identification numbers for purposes of voter registration. Absent such a federal requirement, the Supervisors of Elections must apply the applicable provisions of state law, which require applicants to provide such identification numbers in their voter registration applications before such application may be deemed complete. Florida, of course, intends to comply with the HAVA requirements by January 2006 and a copy of our HAVA Compliance Plan can be downloaded from our website.

You have also separately provided me with a copy of a proposed agreement with the Supervisors of Elections office in Duval County. You request in that document that the Duval Supervisor of Elections provide your clients with access to incomplete and invalid voter registration applications. In addition, you have requested photocopies and electronic copies of such incomplete applications. Please note that Section 98.095, Florida Statutes, limits those persons or entities who can receive copies of voter registration records. In order for your clients to be eligible to receive copies, in whatever format, your clients would first need to register as a political committee in

Florida. Otherwise, your clients will only be eligible to view the applications, but they may not photocopy or create any exemplars of such records.

I look forward to continue working with you on this and other matters.

Best regards,

A handwritten signature in dark ink, appearing to read "Richard A. Perez". The signature is fluid and cursive, with the first name "Richard" being the most prominent.

Richard A. Perez  
General Counsel  
Florida Department of State

cc: Supervisors of Elections  
Juliet Thompson, General Counsel, FEAC  
Han von Spakovsky, Department of Justice



Honorable Chet Culver  
Secretary of State  
State of Iowa  
105 State Capitol  
Des Moines, IA 50319  
[sos@sos.state.ia.us](mailto:sos@sos.state.ia.us)

Honorable Tom Miller  
Attorney General  
State of Iowa  
1305 E. Walnut  
Des Moines, IA 50319  
[Webteam@ag.state.ia.us](mailto:Webteam@ag.state.ia.us)

Dear Secretary Culver and Attorney General Miller:

We write on behalf of the League of Women Voters, the League of Women Voters of Iowa, the National Voting Rights Institute, the Lawyers' Committee for Civil Rights Under Law, and the Southern Regional Office of the American Civil Liberties Union to request your immediate attention to several deficiencies in Iowa election procedures that threaten to unlawfully disenfranchise thousands of Iowa voters on November 2. We would like to work with you cooperatively to resolve these problems and assure that the right to vote is fully protected in Iowa.

### **Summary of Action Requested**

To summarize, two separate problems require attention. First, we understand that some citizens who register to vote in Iowa are being granted the right to vote only in state and local elections, and not in federal elections, even though such voters are fully qualified to vote in all elections. This is because some voters who sign the oath on their voter registration form