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LEGAL UPDATE

From: Ron Labasky, Esquire

Date: June 27, 2012

**Re: U.S.A. v. State of Florida
U.S. District Court – Northern District of Florida**

The hearing in the above case took place this morning. The request by the United States Department of Justice for a temporary restraining order with respect to the Department of State's non-citizen voter list was considered. The Court concluded that it would not issue the temporary restraining order, which it characterized more properly as a preliminary injunction. After receiving arguments from both the Department of Justice and the Department of State, the Court provided a background which it felt was relevant to its conclusion. Both in the argument and in the Court's comments, Judge Hinkle questioned what the State can require a Supervisor of Elections to do in light of the Constitutional Officer status. There was some discussion as to what counties may be doing with respect to the removal of voters following receipt of the list. However, the Court noted that since neither a Supervisor of Elections nor all of the Supervisors of Elections were before the Court, it could not direct any actions to take place by any county.

The predicate for the temporary restraining order is to stop something immediately and to keep that same thing from occurring in the very immediate future. The Department argued that the issuance of the Order was not legally proper because it had ceased taking any actions that were being complained of. The attorney for the Department indicated that the Department of State would be doing nothing further with respect to non-citizens until it was able to access the federal SAVE system. The State acknowledged deficiencies with the information it provided to

the Supervisors of Elections concerning the citizenship status of the individuals on that list, however asserted there was no evidence that any citizen had been removed. Based upon the theory of cessation, the Court concluded, in addition to the balancing of interest test, it would not issue a restraining order or injunction. The presumption is in favor of the State when it indicates that it has ceased the actions being complained of (cessation). The Court indicated that in the event the State was to resume some type of non-citizen list in the future, it would be available to consider any challenges.

The Court decided that there is no prohibition in the NVRA on removing individuals who are not citizens from a voter registration roll within 90 days of a federal election. The Court noted that non-citizens were never properly on the rolls to begin with. The Court expressed concerns (relative to information in the file) related to the uniformity of the implementation of the removal process and whether the list, as created, was discriminatory in nature. However, those were not issues before the Court at this time.

Based upon the decision of the Court and the statements of Judge Hinkle, it would be my advice that if you have a name and believe you have sufficient documentation concerning someone's potential ineligibility based on citizenship, the procedures of 98.075(7), F.S., are available for contacting and removing an individual from the voter roll. If you conclude, by preponderance of evidence, that a person is not a citizen and improperly on the registration roll, the removal of that person, pursuant to the provisions of the statute, is appropriate, legal, and not barred by the NVRA.