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LEGAL UPDATE

From: Ron Labasky, Esquire

Date: June 29, 2012

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

On Wednesday afternoon, following the hearing in the above case before Judge Hinkle, I sent you a Legal Update advising that the Court had concluded that it would not issue a temporary restraining order or injunction. The Court entered its written Order yesterday afternoon, denying the temporary restraining order and it is attached. I would note the following statements from the written Order:

- The Order denies the Motion primarily because the Secretary has abandoned the program.
- The Court discusses the methodology used by the Department of State, specifically noting that the instructions sent to the Supervisors along with the list suggested a proposed letter include a statement that if the person failed to respond within 30 days, the person might be removed from the voter rolls.
- The Court notes the major flaws in the program adopted by the Department of State, which identifies persons improperly and specifically notes the assertion that there are 180,000 improperly registered non-citizens is wrong.
- The Court concludes that non-citizens can be removed from the voter rolls within 90 days of a federal election and such is not a violation of the NVRA.

- The NVRA also requires that any type of program of this nature must be uniform and non-discriminatory.
- The program adopted by the Department of State is not uniform and non-discriminatory and when it was being pursued ran afoul of those provisions. The program identified many properly registered citizens and was likely to have a discriminatory impact on new citizens.
- The Court did not proceed to consider any type of injunctive relief based upon the Department of State stating that the program had been abandoned.
- If the Secretary or the Supervisors of Elections go forward with the program the Secretary says has been abandoned, the issue can be revisited.

The Court's written Order adds clarity to its oral statements from the bench on Wednesday. The Order states that the Department of State's proposal to send letters requiring a response and documentation is likely to have a discriminatory effect on new naturalized citizens. The Court notes that a Supervisor of Elections is a constitutional officer who operates not entirely within the Secretary's control. I continue to be of the opinion that the removal of a non-citizen by a Supervisor who has documentation or proof, beyond a reasonable doubt, is legal within the 90 day period. However, the Court's comments in its Order may put in question the removal of individuals from voter registration rolls solely upon the basis of failure to respond to a letter that was generated on the Department of State's flawed list.