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LEGAL UPDATE

From: Ron Labasky, Esquire

Date: June 19, 2012

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

Yesterday, United States District Judge Robert Hinkle held a phone conference hearing in the above case. The purpose of the status hearing was to determine from the attorneys what they believe should take place in the short-term and thereafter concerning the complaint filed by the United States seeking a temporary restraining order directing that the State take no further action concerning any systematic verification of voters and removal of those individuals within 90-days prior to the August 14 primary election. As Judge Hinkle noted, the 90 days will soon be approaching as it relates to the general election.

The Justice Department indicated that it felt that all the documents which were necessary had already been filed with the Court, and those would establish the grounds for the issuance of the temporary restraining order. It indicated that prior to any final hearing in this case, it may request documents and would need to take some depositions, which may include Supervisors of Elections. The Justice Department indicated that seven agencies in the state of Florida have access to the SAVE program based “upon taking the appropriate steps to access the system.” Finally, the U.S. indicated that a final hearing in late July would be reasonable.

Dan Nordby, the General Counsel for the Department of State, indicated that the Department was attempting to retain an attorney to represent them in this case and that they would like two weeks to respond to the complaint, setting an argument thereafter. He indicated

that the Department of State was now obtaining the necessary alien identification numbers from other agencies in the state and was prepared to use those numbers to access the SAVE database, thereby allowing it to have better information in its search for non-citizens. Of course, access to the SAVE database is not part of the issue in this case, but is part of the issues in the case filed in Washington, D.C. by the Department of State.

In discussing the issues in the case, Judge Hinkle noted that an issuance of a temporary restraining order would not extend to Supervisors of Elections who would be removing individuals from the list provided by the Department of State. Since the Supervisors of Elections are not parties, any order issued by the Judge would not extend to the Supervisors. The Department of Justice responded by indicating that the NVRA makes the State a party and that they felt the Supervisors would comply with whatever decision was reached by the Court. In response to those statements, Judge Hinkle indicated that since it appeared that a few counties may be, in fact, currently removing people from the rolls, that a hearing as quickly as possible is necessary. Because there are oral arguments set in the Washington preclearance case at the end of this week, the parties felt that they could not complete any filings requested by the Court prior to Friday. Based upon the foregoing, Judge Hinkle has set a hearing on June 27, 2012 in Tallahassee, on the request for the temporary restraining order and directed the Department of State to file any papers, briefs, and any other documents it felt was necessary to be considered at the hearing, by the end of business on Monday, June 25, 2012.

There apparently will be another lawsuit filed in Miami by various activist groups concerning these same issues today. It is unclear, in light of this suit, what the purpose of that suit will be. I would speculate that one or a number of Supervisors may be named defendants in that case. I will keep you up to date on these issues.