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## **LEGAL UPDATE**

**From: Ron Labasky, Esquire**

**Date: July 3, 2012**

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Yesterday afternoon, a Petition to Determine the Validity of Existing Rules was filed with the State of Florida Division of Administrative Hearings (attached). The Petition was filed by Senator Arthenia Joyner, the ACLU, and the National Council of La Raza against the Secretary of the State of Florida. Senator Joyner's district is in Pinellas, Hillsborough (preclearance), and Manatee counties. The Petitioners challenge, as improper rules, what they style as "two unadopted rules"; those being the unwritten policy establishing a "dual system" of election laws and the Directive 2011-01, issued by the Department on May 19, 2011. The essence of the Petition is that five Florida counties are proceeding through preclearance and 62 counties are not, which has resulted in different processes in early voting and polling place address changes in these counties. The Plaintiffs argue that the Department has not undertaken rule-making to establish the procedures that it suggests in Directive 2011-01 and the "dual system" rule and, as such, the policies established by the Secretary of the Department of State are legally improper. Section 97.012, F.S., creates a responsibility for the Secretary of State to obtain

and maintain uniformity in the implementation of the election laws and in order to provide uniformity, the Department of State is required to adopt rules and has not done so.

The Petition points out that previous advisory opinions issued by the Department concerning implementation of election laws pending preclearance have taken the position that, pending preclearance, changes to Florida election laws would not be implemented statewide and the newly adopted statutes would be held in abeyance. Petitioners request that the dual system, unwritten rule policy, and Directive 2011-01 be declared invalid exercises of delegated legislative authority. An Administrative Law Judge cannot enter an injunction so, at this point, it is unclear what the final result may be if these DOS policies are declared illegal (since proper rulemaking clearly has not been implemented), and the statute always takes precedence.

The Petitioners request an expedited hearing. I will further evaluate this Petition and advise.