

# **BREWTON PLANTE P.A.**

PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW  
SUITE 250  
225 SOUTH ADAMS STREET

**TALLAHASSEE, FL 32301**

TELEPHONE 850-222-7718  
FACSIMILE 850-222-8222

MAILING ADDRESS:  
POST OFFICE BOX 10369  
TALLAHASSEE, FL 32302-2369

E-MAIL ADDRESS:  
RONALD A. LABASKY, ESQUIRE  
rlabasky@bplawfirm.net

## **LEGAL UPDATE**

**To: Supervisors of Elections**

**From: Ron Labasky, Esquire**

**Date: October 4, 2012**

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Just a brief update on two matters that are currently ongoing in Federal Court in Florida. Each relates to the Department of State's efforts to continue implementation of the non-citizen voter removal process, now using the SAVE database.

- Karla Vanessa Arcia v. Florida Secretary of State  
*U.S. District Court, Southern District of Florida; Case No. 1:12-cv-22282-WJZ*

This case, in the United States District Court, Southern District of Florida, is poised to have a decision made by Judge Zloch. The Court had an evidentiary hearing on Monday, and yesterday directed the State to respond to an Order the Court had previously entered, in which it indicated that it would only rule on the Plaintiffs' Motion for Preliminary Injunction in the case, and not on a Motion for Summary Judgment. The Plaintiffs have argued that the Motion for Summary Judgment should be considered by the Court. The Department's Response was due yesterday but has not yet appeared on the docket.

This case challenges the State's efforts to remove any individual (non-citizen) during the 90-day "quiet time" that is specified in the NVRA. Of course, this argument has been previously

ruled on by Judge Hinkle in the Northern District of Florida in June, when he concluded that the removal of improperly registered non-citizens could take place during the 90-day time frame before the federal election and that the NVRA does not create an impediment. In light of that decision, it is difficult to believe that the Plaintiffs have a legitimate argument, other than that Judge Hinkle was wrong and that Judge Zloch should rule otherwise.

- Mi Familia, et al. v. Detzner  
*U.S. District Court; Middle District of Florida; Case No. 8:12-cv-01294-JDW-MAP*

This case is before a Three-Judge Panel in the United States District Court, Middle District of Florida in Tampa. The Plaintiffs have recently filed an Amended Complaint, which argues that the State is required to submit any plan to remove voters in a preclearance county prior to initiating that effort. The Plaintiffs had originally argued that the applicable provisions of the NVRA and Section 5 should extend to all counties in the state; however, the Court has decided that such a claim can only be extended to the preclearance counties.

The issue in this case is whether Section 5 covers the database matching program and whether the approval requirements for the 5 preclearance counties has been met. The Court file does not reflect that a time has been set for a determination in this case.