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## **MEMORANDUM**

**To: Supervisors of Elections**

**From: Ron Labasky, Esquire**

**Date: October 10, 2012**

**Re: Voter Challenges**

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On August 9, Maria Matthews, Chief of the Bureau of Voter Registration Services at the Department of State, sent an email letter in conjunction with a public records release of the list of individuals who were flagged as potential non-citizens by the Department (letter attached). That memo reiterated previous statements by the Department that the document (list) was a preliminary and unverified working document, and had not been vetted for credibility or reliability by the Department of State. It was outdated, obsolete, and it should not be used for any purpose. There has been some concern expressed that voter challenges will be filed based upon an individual's name being contained on that list.

Section 101.111, Florida Statutes, deals with voter challenges. That statute provides the procedure for filing the challenge in writing, and the execution of the oath by the person making that challenge. The statute and the oath contained requires the person to swear to the information in the oath and to specify the reason for the challenge. Section 101.111(1)(b)(1), F.S., provides

that if the challenge is for any other reason than the legal residence of the individual, the Clerk shall immediately deliver, to the challenge person, a copy of the oath, and allow that person to cast a provisional ballot. There does not appear to be, and I don't believe there is, any authority for the clerk, or other precinct personnel, to evaluate the quality of the challenge that has been submitted and reject it. The Canvassing Board will evaluate the basis of the challenge, pursuant to Section 101.048, F.S.

Section 101.111(2), F.S., provides for a possible frivolous challenge being reviewed subsequent to the election. In the event that the challenge was predicated upon someone's name being contained solely on the list of individuals previously mentioned, and in light of the Department's disclaimer, a challenge based solely upon that list might be considered frivolous. However, under no circumstance do I find any authority for a rejection of the challenge at the polling place based upon a challenge being based upon alleged citizenship, even if the Department's list is specifically enumerated as the predicate.