

FSASE LEGAL UPDATE

From: Ron Labasky, Esquire

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Yesterday, several legal issues were decided or occurred which need to be addressed immediately.

Non-Citizen Voters: Late yesterday, the Department of State sent a memo to all the Supervisors advising on the status of their efforts with respect to developing a list of voters who may have issues with respect to their citizenship. At approximately the same time, the Department of State received a letter from the United States Department of Justice questioning the development of that list and the implementation of this program to review the status of those voters and remove them. The Department of Justice questions the propriety of that action by the Department under the provisions of the National Voter Registration Act of 1993 and questions whether the Department's program is in violation of the NVRA in light of the fact that we are within 90 days of the date of the Primary Election and whether preclearance is necessary. Section 8 of the NVRA prohibits states from implementing any program, with the purpose to systematically remove names of ineligible voters from the official list of eligible voters within 90 days of a federal election. There are exceptions to that 90-day window for persons who request their registration be cancelled, persons who are determined to have committed a criminal conviction or have suffered a mental incapacity, or for persons who have died. Based upon the failure to be within the list of the exceptions in the NVRA, the Department of Justice submits that this program needs to stop.

The Department of Justice requested the Department of State to advise it, not later than June 6, whether, under the circumstances, the state intends to cease its practice.

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My advice under these circumstances, and based upon the previous issues that have been presented concerning the list, as well as the fact that the Department has indicated its intent to take further actions to review its list to determine its validity, I recommend that Supervisors of Elections cease any further action until the issues were raised by the Department of Justice are resolved between the parties or by a Court.

League of Women Voters of Florida v. Browning, et al.: This case was a challenge by several parties to the 2011 revisions to Section 97.0575, Florida Statutes, and implementing portions of that statute in Rule 1S-2.042, F.A.C. The Plaintiffs challenged various revisions placed upon third-party registration organizations. The U.S. District Court found in favor of the Plaintiffs on several claims and ruled against the Plaintiffs on several others. With respect to the challenged revisions that the Court found to be unconstitutional or improper, the Court enjoins the State of Florida from enforcing revisions in Section 97.0575(1)(c), F.S., which requires these organizations to provide names and addresses of agents registering persons to vote on behalf of the organization; Section 97.0575(1)(d), F.S., requiring sworn statements from registration agents indicating that they will comply with all state laws and rules, subject to criminal penalties; and Section 97.0575(3)(a), F.S., to the extent that it requires delivery of an application within 48 hours, or any period less than 10 days.

The Court enjoins the enforcement of provisions of Rule 1S-2.042(3)(a), (c), (d) and (e); and 1S-2.042(5)(6)(b)(c) and (7)(a).

The primary effect of the Court's decision is that the provision adopted by the Legislature last year creating the 48-hour time frame for submission of voter registration forms is invalidated. Forms will be required to be submitted within 10 days by the voter registration organization.