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VIA MAIL, E-MAIL, AND FAX

June 2, 2011

The Honorable Kurt Browning, Secretary of State
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Florida Department of State
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Dear Secretary Browning:

On behalf of the undersigned organizations, we write to urge you to reconsider Directive 2011-01, directing Florida Supervisors of Elections immediately to implement the provisions of House Bill 1355, which was signed into law on May 19, 2011 [H.B. 1355]. This Directive is inconsistent with Florida law and longstanding Florida practice as confirmed by formal rulings of the Florida Division of Elections. Under Florida statute § 97.012 and prior advisory opinions by the Division, the Secretary of State has a duty to ensure uniformity in the application, operation, and interpretation of the state's election laws. Applying HB 1355's extensive changes to the voting and voter registration process only in certain counties, but not in the five counties for which preclearance is required under the federal Voting Rights Act before implementing voting changes, clearly conflicts with this legal mandate.

We therefore request that you immediately advise all Supervisors of Elections that the provisions of H.B. 1355 are unenforceable until they can be applied uniformly in all Florida counties, as state law requires.

Discussion

Directive 2011-01 fails to take into account the fact that H.B. 1355 must be precleared by either the Department of Justice or the United States District Court for the District of Columbia before it can be implemented in counties covered by Section 5 of the Voting Rights Act [VRA].[1] The

[1] Five of Florida's counties qualify under section 5 of the Voting Rights Act as "covered jurisdictions:" Collier, Hardee, Hendry, Hillsborough, and Monroe. Any implementation in the five jurisdictions covered by Section 5 of the VRA before the required preclearance process is finalized would clearly violate federal law.

Directive does not specify whether your office has ordered that immediate implementation be limited to those counties not covered by the VRA's preclearance provisions, but your public statements indicate that the Directive applies only in those 62 counties.[2] We believe that such piecemeal implementation violates Florida state law.

Florida law requires the Secretary of State to "[o]btain and maintain uniformity in the interpretation and implementation of the election laws" and "[p]rovide uniform standards for the proper and equitable implementation of the registration laws." Fla. Stat. § 97.012(1). By calling for non-uniform implementation of Florida election laws, Directive 2011-01 conflicts with the plain language of Fla. Stat. § 97.012(1), and frustrates the legislative intent to ensure that voters in all Florida counties know how to cast a ballot that counts.

The Florida Division of Elections has previously had the occasion to apply Fla. Stat. § 97.012 in the context of implementing a Florida law subject to the VRA's federal preclearance process. Based on the statutory requirement that Florida election law must be implemented uniformly, the Division prohibited the implementation, in *any* county, of a state law that has not yet been precleared in *every* county. Florida Division of Elections Opinion 98-12 (Aug. 6, 1998) (rescinded in part on other grounds by Florida Division of Elections Opinion 98-13) (recommending the Secretary of State to advise all supervisors of elections to halt all enforcement of a law until preclearance is given by the Justice Department); Florida Division of Elections Opinion 98-13 (Aug. 19, 1998) (finding that prior to preclearance of various provisions of an election law, "because the State of Florida cannot maintain a dual voting system . . . these provisions should not be implemented in any county at this time").

Like the changes considered in the advisory opinions, the provisions of H.B. 1355 make dramatic changes to the election laws that would indeed require a "dual voting system," i.e., one set of procedures in the five preclearance counties and another in the rest of the state. First and foremost, H.B. 1355's provisions now require third-party voter registration organizations to register with the state. Both Florida law and precedent regulate statewide groups operating among Florida's many counties as umbrella organizations containing affiliates, employees, and volunteers throughout the state. *See League of Women Voters of Florida v. Browning*, 575 F. Supp. 2d 1298, 1317 (S.D. Fla. 2008); Fla. Stat. § 97.0575(3) (applying fines to any "person, entity, or agency acting on [an organization's] behalf").

The application of H.B. 1355 to only *some* Florida counties would lead to the absurd result that the same third party voter registration organization is subject to two wholly separate sets of law depending on the counties in which it is working, making compliance with the law impossible. Would, for example, the League of Women Voters of Florida be subject to the law's requirements if it engaged in voter registration activity only in the five counties covered by the VRA, or would such activity subject it, as a statewide organization, to the penalties contained in H.B. 1355? Your office is charged with providing uniform standards for voter registration laws

[2] Statements in the media have indicated that immediate implementation of HB 1355 will only move forward in counties not covered by the preclearance provision of the VRA. *See, i.e., Travis Pillow, "Browning: Elections bill outrage based in part on 'misinformation',"* The Florida Independent (May 20, 2011), *available at* http://floridaindependent.com/30901/browning-elections-bill-outrage-based-on-misinformation#p4 (last checked May 25, 2011).

under Fla. Stat. § 97.012(1); partial application of H.B. 1355's provisions impacting voter registration organizations is incompatible with this required statewide uniformity.

Second, the change of address provisions in H.B. 1355 prevent voters who move out of the county in which they are registered from casting a regular ballot at the polls on Election Day. If one or more counties implement this section prior to preclearance, the right of a voter who has recently moved between counties to cast a regular ballot on Election Day will depend on the county to which the voter has moved.

Third, H.B. 1355's provisions affecting early voting reduce the days available for early voting and establish the third day before an election as the last day for early voting, eliminating any opportunity for early voting on the last Sunday before an election. If a county enforces early voting changes before H.B. 1355 may be enforced statewide, voters in one county who come to the polls on the Sunday before an election will find the polls closed at the same time as voters in other counties will be allowed to cast a ballot. This is precisely the type of dual voting system that Florida law, and prior Elections Division opinions, prohibit.

In accordance with Florida law, and in order to maintain uniform application of the election laws, the Secretary of State should instruct county supervisors of elections not to enforce the provisions of H.B. 1355 until it may be applied lawfully and uniformly in all of Florida's counties. Partial county-based implementation of H.B. 1355 will result in disparate election laws and unequal treatment of voters across the state in violation of Florida law.

Thank you for your prompt attention to this matter. If you have any questions or would like further information, please feel free to contact us at the number below.

Sincerely,

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