

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

SENATOR ARTHENIA L. JOYNER,  
AMERICAN CIVIL LIBERTIES  
UNION, AND NATIONAL COUNCIL  
OF LA RAZA

Petitioners,

CASE NO.: 12-2295RU

v.

SECRETARY OF STATE OF FLORIDA,

Respondent.

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**JOINT PRE-HEARING STIPULATION**

In accordance with the Order of Pre-Hearing Instructions, Petitioners Senator Arthenia Joyner, American Civil Liberties Union, and National Council of La Raza and Respondent Secretary of State of Florida (the "Secretary") hereby submit the following pre-hearing stipulation.

**A. CONCISE STATEMENT OF THE NATURE OF THE CONTROVERSY**

**Joint Statement**

Whether the Secretary of State has established two unadopted rules, as defined by section 120.52(16) and (20), Florida Statutes (2012), that are identified in the Petition as the following:

A. The largely unwritten policy by which the Secretary of State has established and enforced a dual system of election laws in violation of section 97.012(1), Florida Statutes, and,

B. Directive 2011-01, issued by the Secretary of State on May 19, 2011, as it relates to early voting and the ability of a voter to simultaneously change his or her address at the polling precinct and vote a regular ballot.

**Petitioners' Statement**

If the answer to either or both is in the affirmative, whether the rule(s) is invalid under Section (8)(a), (b), (c) or (e), Florida Statutes.

**Respondent's Statement**

The Secretary believes that the Notice of Hearing issued by the Administrative Law Judge on July 6, 2012, accurately sets out the sole issue to be determined in this proceeding under section 120.56(4), Florida Statutes: whether the Secretary of State has established two unadopted rules as alleged in the Petition.

**B. A BRIEF STATEMENT OF EACH PARTY'S POSITION**

**Petitioners' Statement**

The Secretary, as the chief election officer of the State, has the “responsibility to...[o]btain and maintain uniformity in the interpretation and implementation of the election laws.” § 97.012(1), Fla. Stat. (the “Uniformity Statute”). The Secretary failed to carry out that responsibility when he issued the unadopted rules at issue here, which directed the Supervisors of Elections in the Non-Covered Counties to immediately implement the Two Sets of Voting Changes despite the five Covered Counties’ inability to implement those same voting changes pending preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. The Secretary’s actions have created a dual election system in violation of Florida Law – the Uniformity Statute and the Administrative Procedure Act. As such, this Agency should invalidate the Secretary’s unadopted rules.

**Respondent's Statement**

As stated in the Secretary’s Motion for Summary Final Order, the Secretary denies that he has made any statements, written or unwritten, that must be adopted through rulemaking under

section 120.54(1)(a), Florida Statutes. The statements identified in the Petition do not meet the definition of a “rule” under the Florida Administrative Procedure Act; they merely provide an accurate summary of existing state and federal laws.

**C. A LIST OF ALL EXHIBITS TO BE OFFERED AT THE HEARING, NOTING ANY OBJECTIONS THERETO AND THE GROUNDS FOR EACH OBJECTION**

**Joint Exhibits**

1. Directive 2011-01
2. A Compilation of the Election Laws of the State of Florida (September 2011)
3. Chapter 2011-40, Laws of Florida
4. Division of Elections Index of Adopted Rules

**Petitioners’ Exhibits<sup>1</sup>**

DE 98-12.

DE 98-13.

Memorandum to Supervisors of Elections from Maria Matthews (December 24, 2007)

Florida Senate Issue Brief 2012-222 (September 2011)

Deposition of Maria Matthews, in *State of Florida v. United States of America, et. al.*, U.S.D.C. Dist. Of Col., Case No. 1:11-cv-01428-CKK-MG-ESH, at pp. 77-84.

Division of Elections Schedule of Early Voting Sites by County (August 14, 2012)

**D. A LIST OF THE NAMES AND ADDRESSES OF ALL WITNESSES INTENDED TO BE CALLED AT THE HEARING BY EACH PARTY, WITH EXPERT WITNESSES BEING SO DESIGNATED**

None.

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<sup>1</sup> The Secretary objects to each of Petitioners’ exhibits on the grounds that these documents are irrelevant to whether the alleged statements at issue in this proceeding are unadopted rules.

**E. A CONCISE STATEMENT OF THOSE FACTS WHICH ARE ADMITTED AND WILL REQUIRE NO PROOF AT HEARING, TOGETHER WITH ANY RESERVATIONS DIRECTED TO SUCH ADMISSIONS**

The parties have submitted a Joint Factual Stipulation on July 30, 2012, and additionally stipulate to the following facts set forth in the Petition:

1. Petitioner Arthenia L. Joyner is a resident of Hillsborough County, a registered voter, and the elected representative for Florida's Senate District 18, which comprises parts of Hillsborough, Pinellas, and Manatee counties.
2. Senator Joyner challenges the Secretary's rules, initially, as a registered voter in Hillsborough County, Florida. Senator Joyner also brings this action as an elected member of the Florida Senate. District 18, which she represents, is composed of parts of a county that is covered under the VRA (Hillsborough) and two counties (pinellas and Manatee) that are not covered.
3. Petitioner the American Civil Liberties Union of Florida, Inc. ("ACLU") is a Florida non-profit corporation with its principal place of business at 4500 Biscayne Boulevard, Suite 340, Miami, FL 33137. It is a membership organization with approximately 15,000 members in Florida, eighteen chapters throughout the state, and is the Florida affiliate of the American Civil Liberties Union, a nonpartisan, nationwide organization with approximately 500,000 members.
4. The ACLU challenges the Secretary's rules on behalf of those among its approximately 15,000 Florida members who are eligible to vote. The ACLU also brings this action in its own right as an organization dedicated to the principles of liberty and equality embodied in the Constitution and in the nation's civil rights laws. As part of that commitment, the ACLU conducts litigation and advocacy activities before Florida courts, legislative bodies, and administrative agencies to secure fair treatment and non-discrimination for all voters, and to eliminate unlawful impediments to voting. It is within the express purposes of the ACLU to challenge such measures, as evidenced by the organization's long record of activities aimed at defending the right to vote. Moreover, the ACLU conducts voter education projects in Florida in both VRA-covered and non-covered counties.
5. Petitioner the National Council of La Raza ("NCLR") is a non-profit corporation and the largest national Hispanic civil rights and advocacy organization in the United States. Its nonpartisan civic engagement and voter education arm, previously known as Democracia USA and now part of NCLR's Civic Engagement Team, has two field offices in Florida at 3915 Biscayne Boulevard, Suite 10, Miami, FL 33157 and 5449 Semoran Boulevard, Suite 233, Orlando, FL 32822
6. NCLR is active in Florida in advocating for the rights of Hispanic citizens. Its Civic Engagement Team, active in Florida, is specifically concerned with securing the rights of Hispanic voters and encouraging the participation of Hispanic citizens in

the electoral process. In order to accomplish this, NCLR engages in extensive outreach efforts to educate Hispanic voters about early voting and voting by registered voters who change their residence within Florida, and has a robust Get-Out-The-Vote ("GOTV") program. The organization canvasses neighborhoods door-to-door and contacts voters by telephone to educate Hispanic voters regarding the early voting process and to encourage use of early voting. The organization also deploys monitors at polling places in Florida on Election Day who provide information and support to voters who encounter problems at the polls, including problems relating to a change of address.

**F. A CONCISE STATEMENT OF THOSE ISSUES OF LAW ON WHICH THERE IS AGREEMENT**

**Jurisdiction/Governing Law**

1. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding.
2. A petition seeking an administrative determination must include the text of the statement or a description of the statement and state with particularity facts sufficient to show that the statement constitutes a rule and that the agency has not adopted the statement by the rulemaking procedure provided by section 120.54, Florida Statutes.
3. Petitioners have the burden of establishing by a preponderance of the evidence that the challenged statements constitute unadopted rules.

**G. A CONCISE STATEMENT OF THOSE ISSUES OF FACT WHICH REMAIN TO BE LITIGATED**

1. Whether the statements in Directive 2011-01 regarding early voting or out-of-county address changes at the polling place require rulemaking under section 120.54(1)(a), Florida Statutes.
2. Whether the "Sections Awaiting Preclearance" notice contained in the September 2011 "Compilation of the Election Laws of the State of Florida" requires rulemaking under section 120.54(1)(a), Florida Statutes.

**H. A CONCISE STATEMENT OF THOSE ISSUES OF LAW WHICH REMAIN FOR DETERMINATION BY THE JUDGE**

1. Whether Petitioners or their members are substantially affected by any agency statement;
2. Whether the alleged policies identified in the Petition constitute agency statements;
3. Whether the alleged agency statements identified in the Petition are "rules" under the Florida Administrative Procedure Act;

4. If Petitioners prevail as to the first three issues, whether rulemaking was feasible and practicable.

**I. A CONCISE STATEMENT OF ANY DISAGREEMENT AS TO THE APPLICATION OF THE RULES OF EVIDENCE**

None known at this time.

**J. A LIST OF ALL MOTIONS OR OTHER MATTERS WHICH REQUIRE ACTION BY THE JUDGE**

Secretary of State's Motion for Summary Final Order

**K. AN ESTIMATE AS TO THE LENGTH OF TIME REQUIRED FOR THE HEARING**

Pursuant to the Order Re-Scheduling Hearing, the final hearing is scheduled for August 10, 2012, at 1:00 p.m. The parties anticipate that no more than two hours will be required for the hearing.

Respectfully submitted,

/s/ Daniel E. Nordby

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