

Daily Business Review
October 24, 2011

MIAMI-DADE MONDAY, OCTOBER 24, 2011

Save the Date: November 3 @ 8 a.m.

Resorts and the Courts
Vacation, Resort and Recreational Liability Seminar

Presented by John Leighton

Serious Lawyers for Serious Cases.

LeightonLaw.com/resortorts

LAW | REAL ESTATE | FINANCE
DailyBusinessReview.com
An ALM Publication VOL. 86, NO. 94 \$2.00

dbhr
DAILY BUSINESS REVIEW

JUSTICE WATCH John Pacenti

Election law revisions face review by feds



Forty years ago, it was determined that non-English speaking voters were discriminated against in five Florida counties. As a result, the Voting Rights Act requires the state to get the approval of the Justice Department every time it changes election laws.

But the state asked instead for federal court review. Views on the new law are split mostly

along partisan lines. Democrats think Republicans are scheming to influence the 2012 elections.

Republican lawyers say the law requiring preclearance in five Florida counties is outdated and should be declared unconstitutional. Some are hoping for a deciding opinion from the U.S. Supreme Court.

SEE COLUMN, PAGE A3

JUSTICE WATCH John Pacenti



J. ALBERT DIAZ

Former state lawmaker J.C. Planas, an associate with Kurkin Forehand Brandes in Aventura, says changes made since the 2000 election recount debate have made the voting process in Florida more fair than it has ever been.

ELECTION LAW REVISIONS FACE REVIEW IN COURT

Battles for the 2012 elections aren't just on the campaign trail. They're already in courtrooms.

Even while Florida Republicans drag their feet on a redistricting plan with unwelcome directives from voters, they unsuccessfully fought in federal court against a constitutional amendment changing the ground rules for district boundaries.

Another court battle centers on state officials taking on the Voting Rights Act, arguing at least one provision is outdated. The lawsuit argues the state should no longer have to submit election law changes to the Justice Department for preclearance because five of its counties have a history of discrimination against non-English

WHAT'S AT STAKE?

Florida is looking to implement four election law revisions it says will prevent voter fraud without Justice Department review.

Florida argues the requirement for preclearance because five counties have a history of discrimination based on language is antiquated. Opponents say Florida's Republican leaders are trying to undermine the Voting Rights Act in anticipation of the 2012 elections.



Browning

changes and set new parameters for third-party registration. The law also shortened the signature-gathering time for proposed state constitutional amendment initiatives to two years from four years.

Secretary of State Kurt Browning, Florida's top election official, filed an amended federal lawsuit in Washington on Oct. 11 stating he had pulled those provisions from Justice Department preclearance review and wants them approved by courts.

speakers. The Florida Legislature on May 19 passed new requirements that affect early voting, address

SEE JUSTICE WATCH, PAGE A4

FROM PAGE A3

JUSTICE WATCH: Florida falls under preclearance provision

The lawsuit also wants the preclearance section of the Voting Rights Act on 1965 based on language demographics declared unconstitutional, calling it an irrational test.

Veteran election law attorney Ben Kuehne, who represented Democrats in the 2000 presidential recount, said the move is strategic, designed to benefit the entrenched political power structure of Florida.

"That Florida has lived with the preclearance process for several generations proves to me that this works," he said. "Preclearance is the kind of process that keeps the election system honest."

The state's lawsuit against the federal government said the changes to third-party registration were done to prevent voter fraud, not to disenfranchise anyone. "The changes were not adopted for the purpose of denying or abridging the right to vote on the account of race, color or membership in the language minority," the lawsuit stated.

The state falls under the preclearance provision of the Voting Rights Act because Collier, Hardee, Hendry, Hillsborough and Monroe counties at one time printed ballots only in English when more than 5 percent of its population spoke another

language. The law was extended by Congress in 2006, but the U.S. Supreme Court has not reviewed the validity of that move.

The state argues the socioeconomic data that protects the five counties is drawn from the 1970s. Kuehne said he has yet to see data justifying a change for the counties.

PAST DISCRIMINATION

Attorney Raquel Rodriguez, managing member of the Miami office of McDonald Hopkins and former general counsel to then-Gov. Jeb Bush, said the state is on solid legal ground.

"I have been through a lot of election cycles, and I have yet to see any claims from these five counties that they have discriminated against voters on the basis of language," she said.

Rodriguez stressed preclearance is based on a formula that calculates the percentage of non-English speaking people and previous voter turnout, not actual discriminatory actions.

"Continued application of preclearance requirements on five counties based on data from 40 years ago has no rational basis," she said.

If the case gets to the U.S. Supreme

on the web

Read the voting rights lawsuits filed by Florida and the ACLU on DailyBusinessReview.com

Court, justices in a case decided on other grounds said they were troubled by the preclearance requirement.

Former state lawmaker J.C. Planas, an associate with Kurkin Forehand Brandes in Aventura, said he doesn't blame Florida for pulling the four provisions from Justice Department review.

"There was a substantial credible allegation in Pennsylvania in 2008 that there had been intimidation of Republican voters by members of the Black Panthers, and the Justice Department just dropped it," he said, referring to allegations against a group called the New Black Panthers.

Since the 2000 election recount debacle, Planas said changes have made the voting process more fair than it has ever been. Issues that plagued the five Florida counties in question are not relevant anymore.

"Florida is a vastly different state. We are not that rural of a state anymore," he said.

COURT VALIDATION

The state already claimed a victory last week when U.S. District Judge K. Michael Moore in Miami dismissed a lawsuit brought by the American Civil Liberties Union of Florida on behalf of three voters claiming the state was improperly implementing voting changes without Justice Department approval. Moore ruled the plaintiffs — voters in three of the affected counties — lacked standing to sue.

Gov. Rick Scott hailed the ruling as validation of the election law changes but curiously put it in context of the presidential showdown next year.

"As we draw nearer to nationally significant elections in 2012, I will continue to ensure the integrity and fairness of Florida elections," he said in a statement.

Derek Newton, spokesman for the



J. ALBERT DIAZ

"Preclearance is the kind of process that keeps the election system honest," says veteran election law attorney Ben Kuehne, above, who represented Democrats in the 2000 presidential recount.

ACLU in Florida, said the organization is still reviewing Moore's decision to determine whether to appeal.

He disagreed with the contention voter discrimination is a remnant of the past. And he wonders what the state's intention is if it's not trying to roll back voter rights. Is it that cumbersome to undergo a Justice Department review?

"I think it's fair to say there are voter irregularities in Florida and there have been for a long time," he said. "This law is designed to keep the state from intentionally moving backwards on voting rights. How could anybody conceivably object to that?"

Kuehne said state officials know they stand a better chance in court than clearing the new law through the Obama administration.

"Likely in a close call, the courts will allow the process to get approved because elections are in the very near term," he said.

John Pacenti can be reached at (305) 347-6638.