

## **Intesa sull'Esercizio del Voto all'Esteri negli Stati Uniti**

La Legge sull'esercizio del diritto di voto dei cittadini italiani residenti all'estero, n.459 del 27 dicembre 2001 prevede, all'articolo 19, che le rappresentanze diplomatiche italiane concludano intese in forma semplificata (cioè: non soggette a ratifica parlamentare) con i Governi degli Stati ove risiedono cittadini italiani, al fine di garantire:

- a) che l'esercizio del voto per corrispondenza si svolga in condizioni di eguaglianza, di libertà e segretezza;
- b) che nessun pregiudizio possa derivare per il posto di lavoro e per i diritti individuali degli elettori e degli altri cittadini italiani in conseguenza della loro partecipazione a tutte le attività previste dalla legge 459.

Il testo dell'intesa relativa agli Stati Uniti, in forma di scambio di note verbali tra l'Ambasciata d'Italia a Washington e il Dipartimento di Stato degli Stati Uniti, è integralmente pubblicato sul sito web dell'Ambasciata ([www.italyemb.org](http://www.italyemb.org) - Avvisi per i Connazionali) e riprodotto qui di seguito.

"The Embassy of Italy presents its compliments to the U.S. Department of State and has the honor to make reference to Italian Law No.459 passed by the Italian Parliament on December 20, 2001, and entered into force on January 6, 2002, concerning the provisions governing the right to vote of Italian citizens resident abroad.

A translation into English of Law no.459 is hereby attached.

The Embassy of Italy respectfully draws the attention of the U.S. Department of State to two provisions of the foregoing Law, articles 19 and 17, respectively.

With regard to article 19, the Embassy of Italy requests that an agreement in simplified form – i.e., without parliamentary ratifications and through an exchange of notes, of which the present one would be integral part – be entered into between the Government of Italy and the United States Government, for the purpose of ensuring:

- a) that Italian citizens who are residents of the United States exercise their right to vote by absentee ballot in Italian elections, in conditions of equality, freedom and confidentiality;
- b) that electors and other Italian citizens not be subject to prejudice in terms of employment and their individual rights as a result of their participation in the activities envisioned by Italian Law no.459.

With regard to article 17, the Embassy of Italy kindly requests that the U.S. Department of State provide information on any procedures for or limitations on electoral campaign activities conducted in the United States by Italian political parties, groups and candidates participating in Italian elections. In this regard the Embassy of Italy seeks the assurance that equal treatment be guaranteed to all political parties, groups and candidates participating in Italian elections." (Embassy of Italy, February 7, 2003)

"The Department of State acknowledges receipt of note No.737 dated February 7, 2003 from the Embassy of Italy inquiring about the possible effects of articles 17 and 19, respectively, of Italian Law No.459 passed by the Italian Parliament on December



20,2001, that entered into force on January 6,2002. Article 17 governs the conduct of electoral campaigns whereas Article 19 concerns the right of eligible Italian citizens to participate in Italian national elections and referendums in the United States. A response addressing both these articles is provided below.

1. With regard to Article 17, in the United States there are both Federal and local laws that, while not directed at foreign electoral campaigns, would have to be taken into account in conducting such a campaign. On the Federal side, the main legal requirements are contained in the **Foreign Agents Registration Act**, 22 U.S.C. 611 et seq. As indicated by its title, **this legislation and implementing regulations require registration and reporting of agents of foreign principals, which would include foreign political parties**; however, it does not apply to foreign diplomatic and consular officials conducting official business.

It also does not restrict the activities that may be conducted by a properly registered foreign agent. Beyond this, the legal requirements are sufficiently complex that **persons wishing to conduct a political campaign in the United States for a political election, and perhaps a referendum, should seek the advice of the Department of Justice, Foreign Agents Registration Unit, 1400 New York Avenue, Washington, DC, 20005.**

As just indicated, foreign diplomatic and consular officers conducting official business are not required to register under the Foreign Agents Registration Act and may freely engage in public information activities directed towards the mail-in election process under Article 19 of Italian law No.459, as well as particular elections and referendums in which Italian nationals in the United States may participate.

Federal campaign and campaign finance laws pertain only to the United States elections; however, **State and local laws could contain provisions that would apply to a political campaign for an Italian election, for example, reporting campaign solicitations and disclosing expenditures.**

Both Federal and local laws may impose **requirements or limitations on public events** such as parades and demonstrations, or the kind of activities that may be conducted in governmentally-regulated premises. These requirements would not be imposed on the basis of nationality or related to a foreign election but are generic public safety requirements. These laws, of course, must be implemented consistent with the United States constitutional protections for individual rights of freedom of speech, press, and association and the **constitutional provision for equal protection under the law. Both these protections, as well as any obligations or responsibilities imposed by our laws, apply on an equal and non-discriminatory basis to all candidates and parties irrespective of their political beliefs.**

The Department of State understands that under the Italian law cited foreign election districts may include more than one country, so that there is a potential for campaign officials or candidates to seek entry into the United States, whether from Italy or a third country. In such case, of course, admission to the United States would be governed by United States immigration laws and regulations; Italian nationals are eligible for entry under the Visa Waiver Program but must meet generally applicable eligibility requirements.

2. With regard to Article 19, it is the understanding of the United States Government that the Italian Embassy and Italian consulates in the United States would send ballots to qualified Italian Nationals who would then fill them out and send them to the consulates,



where they would be collected and returned to Italy by diplomatic or consular pouch, and the Government of Italy would validate and count the returned ballots. The assurances requested are that the mail-in vote so described would be conducted in conditions of equality, freedom, and confidentiality and that the participation in this voting will not prejudice employment or the personal rights of participating Italian Nationals.

As provided in Article 5(m) of the Vienna Convention on Consular Relations (hereafter referred to as the “Vienna Convention”) the functions of the Italian Embassy and Italian consulates described above are not prohibited by the laws and regulations of the United States and no objection is taken to those functions. **The provisions of the Vienna Convention further secure the conditions of equality, freedom, and confidentiality in the conduct of the balloting;** Article 36 provides for free communication between consular officers and their nationals, and laws and regulations of the United States that may apply to such communications are required to permit full effect to be given to the purposes of free communication. Article 1(k) of the Vienna Convention defines consular archives for the purposes of Article 33, and it is the view of the United States Government that the ballots received by the Italian consulates of the mail-in voting are archives of the consulates and thereby inviolable.

With respect to any adverse effect of participation in an Italian election in the manner described on the personal rights of the Italian nationals involved, **current United States law would not cause loss of United States nationality** in the case of an Italian national who is also a United States national if the person merely voted or becomes a candidate for elective office in Italy. Moreover, election to the Italian Parliament, or assuming appointive office in the Italian Government, generally would not result in loss of U.S. nationality if the person has expressed an intent to retain U.S. nationality, particularly if he or she maintains ties to the United States such as a residence.

The United States Government is not aware of any **adverse effect on employment by government agencies** that would result from merely voting in an Italian election or being a candidate; however, *election to political office in Italy might create a potential conflict of interest with Federal employment.* Private employers, of course, are not under governmental control in this respect. A person, whether a dual U.S.-Italian citizen residing in the United States or a legal permanent resident of the United States, who is elected to the Italian Parliament would be subject to U.S. laws and, consequently, any parliamentary privileges and immunities would be effective only on Italian territory.” (Department of State, April 30, 2003)

Si attira l’attenzione sui seguenti aspetti (evidenziati nel testo) della Nota del DoS:

- le garanzie di eguaglianza, libert  e segretezza del voto;
- le garanzie circa la doppia cittadinanza italiana e americana, sulla quale non hanno effetto l’esercizio del diritto di voto nelle elezioni italiane, ne’ l’elettorato passivo (ossia l’atto di candidarsi), ne’, in linea di principio, il fatto di risultare eletti nel Parlamento italiano, a meno che non vi sia un’esplicita manifestazione di volonta’ di rinuncia alla cittadinanza americana.
- sulla posizione ufficiale delle Autorita’ americane in materia di doppia cittadinanza si puo’ consultare anche il sito web del Dipartimento di Stato, alla pagina: <http://travel.state.gov/dualnationality.html> ;



- le informazioni sui requisiti per il legale svolgimento della campagna elettorale negli Stati Uniti, con particolare riguardo ai possibili obblighi derivanti dal “***Foreign Agents Registration Act***”, per i quali le Autorità americane consigliano gli interessati (candidati, partiti politici) di contattare direttamente la “Foreign Agents Registration Unit” del Dipartimento di Giustizia [***Department of Justice, Foreign Agents Registration Unit, 1400 New York Avenue, Washington, DC, 20005***].
- la parte relativa al rapporto tra esercizio del diritto di voto e mantenimento del rapporto d’impiego negli Stati Uniti.

Sugli ultimi due aspetti – possibile situazione di un doppio cittadino italiano e americano che risulti eletto al Parlamento Italiano e che sia impiegato in un ente federale americano e obblighi legali delle organizzazioni italo-americane – il Dipartimento di Stato ha ulteriormente elaborato con lettera del 4 febbraio 2003, che egualmente si trascrive:

“The purpose of this letter is to provide clarification of two matters which you brought to our attention... The first concerns our statement that “*election to political office in Italy might create a potential conflict of interest with [U.S.] Federal employment.*” The concern here relates to the possibility that a person who, while continuing to be employed by the U.S. Government, also undertakes to perform duties of elective political office in Italy may be unable to suitably fulfill his obligations as a U.S. Government employee.

The “*Standards of Ethical Conduct of Employee of the Executive Branch*” discusses topics such as possible misuse of time, information, and U.S. Government property while employed by the U.S. Government. As a practical matter, it is our consistent advice to any U.S. federal employee who is contemplating outside activity, such as seeking elective political office in Italy, that he or she should consult with an ethics attorney within the employing U.S. Government agency well in advance of filing as a candidate.

As a result of such consultation, all pertinent considerations relating to a particular employee’s working for a specific U.S. federal agency can be reviewed. The employee will then be in a position to make an informed judgment as to whether to file as a candidate. In addition, there may be instances when, as a result of discussions with the employing U.S. Government agency, the employee may choose to take a leave of absence during his or her service in elective political office in Italy so as to avoid any possible conflict of interest.

With respect to the additional question about the potential legal obligations of groups such as Italian American associations, I have consulted with the Foreign Agents Registration Unit of the U.S. Department of Justice. I was advised that instances in which such groups would support lists or candidates in Italian political elections would present a “close question” in terms of registration as a foreign agent under the Foreign Agents Registration Act, 22 U.S.C. 611 et seq. It is for this reason that I can only reiterate the point stated in the draft note, that persons or organizations contemplating such activities should seek the advice of the Foreign Agents Registration Unit at the Department of Justice.”