

FILED

SID J. WHITE

SEP 16 1985 /

CLERK, SUPREME COURT

IN THE SUPREME COURT OF FLORIDA

By _____
Chief Deputy Clerk

ROBERT HARDEN, :

Appellant, :

vs. :

ELSIE GARRETT, KEITH BRACE, :

BILL PEEPLES, SAM PRIDGEN, :

LEWIS LINDSEY, NELLIE :

THOMPSON, and JAMES G. WARD, :

Appellees. :

_____ :

CASE NO. 67,531

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CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

INITIAL BRIEF OF APPELLANT

Appeal taken from the Circuit Court
of the Second Judicial Circuit,
in and for Leon County, Florida
(On Certification)

STEPHEN MARC SLEPIN, Esquire
and
GEORGE L. WAAS, Esquire
Slepin, Slepin & Waas
1114 East Park Avenue
Tallahassee, Florida 32301
(904) 224-5200

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CITATIONS	ii
PRELIMINARY STATEMENT	vi
STATEMENT OF CASE AND FACTS	1
ISSUE ON APPEAL	
WHETHER THE TRIAL COURT ERRED IN ITS FINAL ORDER BY DISMISSING THE ELECTION CONTEST COMPLAINT HEREIN, AND BY DETER- MINING THAT THE COURTS OF THE STATE OF FLORIDA ARE WITHOUT JURISDICTION TO ENTERTAIN A LEGISLATIVE CANDIDATE'S STATUTORY REMEDY TO CONTEST AN ELECTION	4
SUMMARY OF ARGUMENT	5
ARGUMENT	
THE TRIAL COURT ERRED IN ITS FINAL ORDER BY DISMISSING THE ELECTION CONTEST COMPLAINT HEREIN, AND BY DETERMINING THAT THE COURTS OF THE STATE OF FLORIDA ARE WITHOUT JURIS- DICTION TO ENTERTAIN A LEGISLATIVE CANDIDATE'S STATUTORY REMEDY TO CONTEST AN ELECTION	6
CONCLUSION	26
CERTIFICATE OF SERVICE	27

TABLE OF CITATIONS

<u>Cases</u>	<u>Page(s)</u>
<u>Akizaki v. Fong</u> , 461 P.2d 221 (Haw. 1969)	11, 12
<u>Barry v. United States ex rel. Cunningham</u> , 279 U.S. 597, 49 S.Ct. 452, 73 L.Ed. 867 (1929)	9
<u>Belknap v. Board of Canvassers of Ionia County</u> , 94 Mich. 516, 54 N.W. 376 (1893)	9
<u>Board of Commissioners of Everglades Drainage District v. Forbes Pioneer Boatline</u> , 80 Fla. 252, 86 So. 199 (1920)	13
<u>Boddie v. Connecticut</u> , 28 L.Ed.2d 113 (1970)	22
<u>Bond v. Floyd</u> , 385 U.S. 116, 17 L.Ed.2d 235, 87 S.Ct. 339 (1966)	10, 23
<u>Burchell v. State Board of Election Commissioners</u> , 252 Ky. 823, 68 S.W.2d 427 (1934)	9
<u>Caloosa Property Owners Association, Inc. v. Palm Beach County Board of County Commissioners</u> , 429 So.2d 1260 (Fla. 1st DCA 1983)	17
<u>Gammage v. Compton</u> , 548 S.W.2d 1 (Tex. 1977)	9
<u>Horsemen's Benevolent and Protective Association v. Division of Pari- Mutuel Wagering</u> , 397 So.2d 692 (Fla. 1981)	14
<u>In re Apportionment Law, Senate Joint Resolution No. 1305</u> , 263 So.2d 797 (Fla. 1972)	15

TABLE OF CITATIONS, con't

<u>Cases, con't</u>	<u>Page(s)</u>
<u>In re Williams' Contest</u> , 198 Minn. 516, 270 N.W. 586 (1936)	9
<u>Laxalt v. Cannon</u> , 80 Nev. 588, 397 P.2d 466 (1964)	9
<u>Manion v. Holzman</u> , 379 F.2d 843 (7th Cir. 1967)	9
<u>McLeod v. Kelly</u> , 304 Mich. 120, 7 N.W.2d 240 (1942)	9
<u>McPherson v. Flynn</u> , 397 So.2d 665 (Fla. 1981)	21
<u>Odegard v. Olson</u> , 264 Minn. 439, 119 N.W.2d 717 (1963)	9
<u>Rogers v. Barnes</u> , 172 Colo. 550, 474 P.2d 610 (1970)	9
<u>Roudebush v. Hartke</u> , 405 U.S. 15, 92 S.Ct. 804, 31 L.Ed.2d 1 (1972)	9, 11, 12, 13
<u>Smith v. Polk</u> , 135 Ohio St. 70, 19 N.E.2d 281 (1939)	9
<u>State ex rel Bisbee v. Board of County Canvasses of Alachua County</u> , 17 Fla. 9 (1878)	16
<u>Thorsness v. Daschle</u> , 279 N.W.2d 166 (S.D. 1979)	12, 13
<u>Town of Lantana v. Pelszynski</u> , 303 So.2d 326 (Fla. 1974)	14
<u>Treiman v. Malmquist</u> , 342 So.2d 972, 975 (Fla. 1977)	14

TABLE OF CITATIONS, con't

<u>Florida Statutes</u>	<u>Page(s)</u>
Chaps. 97-106	15
Chap. 99	24
Chap. 100	24
Chap. 101	24
Chap. 102	20, 21, 24
§102.161	17
§102.163	17
§102.166	1, 20, 21
§102.168	1, 2, 6, 7, 15, 17, 18, 20, 21, 23
§102.1682	2, 15, 17, 18
§102.1685	1
 <u>United States Constitution</u>	
Article I, §4	11
Article I, §5	8, 11
Article IV, §4	6
 <u>Florida Constitution</u>	
Article I	24
Article I, §1	6, 13

TABLE OF CITATIONS, con't

<u>Florida Constitution, con't</u>	<u>Page(s)</u>
Article I, §2	6
Article I, §5	13, 14, 16
Article I, §21	6, 14, 17, 19
Article II, §3	6
Article III	24
Article III, §2	7, 23
Article V, §1	6
Article VI	14, 19
Article VI, §1	6
Article VI, §2	6
 <u>Other</u>	
"Mr. Justice Holmes and the Constitution," 41 Harv. L. Rev. 121, Frankfurter	10, 21
"Qualifications of Legislator," 17 L.Ed.2d 911, §4	9
<u>Reason and Law, Morris Cohen</u> (1950), at 79	22

PRELIMINARY STATEMENT

References to the Record on Appeal will be designated herein as "R", followed by the appropriate page number.

STATEMENT OF CASE AND FACTS

Robert Harden (Republican), a newcomer, and James Ward (Democrat), the veteran incumbent, faced one another in the November 6, 1984 General Election for Florida House of Representatives, District 5--Okaloosa and Walton counties--wherein Harden "officially" lost by thirty-nine (39) votes.

The "why" of that certified result is the rationale of this litigation.

- A. Harden timely filed in the Circuit Court (Okaloosa County) an Election Protest pursuant to §102.166, Fla. Stat., and an Election Contest pursuant to §102.168, Fla. Stat.
- B. Judge Tolton in 1984 dismissed the Protest but found that the Circuit Court was seized of jurisdiction to entertain the Contest. The cause was then transferred to Leon County under the special venue statute, §102.1685, Fla. Stat. (Tolton ORDER, R-1)
- C. Judge Miner (Leon County) in 1984 thereupon denied Harden's petition to restrain the Speaker of the House

from swearing in James Ward, but ruled that such ceremony would not divest the Circuit Court of its Election Contest jurisdiction in the premises. (Miner ORDER, R-5)

- D. Trial eventuated on April 25, 1985, and evidence was admitted respecting the requisites of §§102.168 and 102.1682, Fla. Stat.
- E. Judge Miner's Final Order of July 17, 1985 thereupon found that:
- (1) The Harden-Ward election had been thoroughly "botched" from alpha to omega, including the denial of a Harden-Ward ballot available to 198 on-site voters on election day in Harden's own home precinct, among numerous other pervasive and fundamental violations of Election Law.
 - (2) The circuit courts are without jurisdiction of election contests, and are closed to election contest plaintiffs, despite §102.168,

Fla. Stat., if or as legislative
races are involved. (Miner FINAL
ORDER DISMISSING COMPLAINT, R-7)

Harden noticed appeal to the District Court of Appeal,
accompanying same by Suggestion For Certification to the
Supreme Court and a Motion to Expedite, which pleas were
granted.

ISSUE ON APPEAL

WHETHER THE TRIAL COURT ERRED IN ITS FINAL ORDER BY DISMISSING THE ELECTION CONTEST COMPLAINT HEREIN, AND BY DETERMINING THAT THE COURTS OF THE STATE OF FLORIDA ARE WITHOUT JURISDICTION TO ENTERTAIN A LEGISLATIVE CANDIDATE'S STATUTORY REMEDY TO CONTEST AN ELECTION.

SUMMARY OF ARGUMENT

By Florida's Declaration of Rights, all political power inheres in the people of Florida--not in either house of its elected representatives--and is most fundamentally exercisable by the "right to vote" in an honest and fair election, with access to the courts denied no person.

The courts of the State of Florida may not abstain from the responsibility to vindicate these rights nor, by such purported abstention, deny these rights to the people of the State of Florida.

As a matter of law, guaranteed by the Constitution of the State of Florida and implemented by the Florida Election Code, the people's right to a free and fair election in the selection of their elective representatives, thereby to exercise the inherent political power of the people, is guaranteed by the parallel constitutional guarantee of access to the courts.

As a matter of the highest public policy, these basic and enduring constitutional guarantees ought not be abrogated nor judicially delegated to a transient legislative majority so as to allow that transient legislative majority to exercise purely judicial power and thereby to co-opt kindred members in derogation of the people's fundamental right to vote, nor to exercise legislative housekeeping power over non-members to insure their exclusion from elective office.

ARGUMENT

THE TRIAL COURT ERRED IN ITS FINAL ORDER BY DISMISSING THE ELECTION CONTEST COMPLAINT HEREIN, AND BY DETERMINING THAT THE COURTS OF THE STATE OF FLORIDA ARE WITHOUT JURISDICTION TO ENTERTAIN A LEGISLATIVE CANDIDATE'S STATUTORY REMEDY TO CONTEST AN ELECTION.

Robert Harden, a 24-year-old newcomer to electoral politics, grew up believing that Floridians were guaranteed a republican form of government, Article IV, §4, U.S. Const., that all political power inhered in the people, Article I, §1, Fla. Const., that all Floridians enjoyed equality before the law, Article I, §2, Fla. Const., that no branch of government, including the legislative, could trench upon the power of any other, including the judicial, Article II, §3, Fla. Const., that the judicial power was vested exclusively in the judicial branch, Article V, §1, Fla. Const., that elections and the right of the people to exercise Article I, §1, power thereby were basic and protected rights, Article VI, §§1 and 2, Fla. Const.--and that the courts are open to every person (not just to certain classes of person) for redress of any injury, Article I, §21, Fla. Const., whereby candidate-citizen Harden would have standing as surrogate for the qualified electors of House District 5. §102.168, Fla. Stat.

Robert Harden was apparently correct ... until July 17, 1985.

On that date, the received wisdom notwithstanding, the Circuit Court (Leon County) repudiated Judge Tolton's Circuit Court Order of November 19, 1984 and its own Circuit Court Order of November 21, 1984, to declare that Robert Harden is without access to the courts, lacks equality of access, cannot sue to preserve the people's political power via a free ballot, nor even their republican form of government--even though the November 6, 1984 election had been, on the evidence, a travesty in derogation of law.

Why?

Because, §102.168, Fla. Stat., notwithstanding, only James Ward's House colleagues could judicially cognize (if they wished to cognize) citizen-candidate Robert Harden's now-proved claims. Cf., Article III, §2, Fla. Const., treating of "members" only.

That the November 6, 1984 General Election involving incumbent Democratic candidate James Ward and Republican candidate Robert Harden was replete with "manifest election law irregularities" is already adjudicated. R-12. Yet, in the Final Order, the trial judge declared that, under Article III, §2, of the 1968 Florida Constitution, Harden has no access to the courts, no judicial remedy to redress these irregularities because, by that provision declaring that "[e]ach house shall be the sole judge of the qualifications, elections, and returns of its members," an impenetrable wall

has been erected between the Legislature and the courts barring judicial review of matters involving the election process from which a winner is determined and seated in the Florida Legislature.

In so ruling, the trial judge erred by placing inordinate reliance upon the addition of the word "sole" by the framers of the 1968 revision to the Constitution of 1885; by ignoring case law authorizing judicial review under circumstances involving other constitutional provisions similar to Florida's; and by overlooking Harden's claim predicated upon statutes enacted by the Legislature in deference to fundamental constitutionally-protected voting and other rights. As demonstrated hereinafter, inquiry into the fairness of any election in Florida is vested in the judiciary.

In his Final Order, the trial judge declares that "the addition of the word 'sole' by the framers of the 1968 revision can only be viewed as making absolute the principle of non-delegation embodied in the Constitutions of 1868 and 1885."

This would seem not to be the law of Florida, and would further seem to be frighteningly bad public policy.

Article I, §5, of the Constitution of the United States provides that:

Each House shall be the Judge of the
Elections, Returns and Qualifications
of its own Members

Federal and state courts have long recognized that this provision gives final and exclusive jurisdiction to each house of the Congress to determine election contests relating to its members. Roudebush v. Hartke, 405 U.S. 15, 92 S.Ct. 804, 31 L.Ed.2d 1 (1972); Barry v. United States ex rel. Cunningham, 279 U.S. 597, 49 S.Ct. 452, 73 L.Ed. 867 (1929); Manion v. Holzman, 379 F.2d 843 (7th Cir. 1967); Gammage v. Compton, 548 S.W.2d 1 (Tex. 1977); Rogers v. Barnes, 172 Colo. 550, 474 P.2d 610 (1970); Burchell v. State Board of Election Commissioners, 252 Ky. 823, 68 S.W.2d 427 (1934); Belknap v. Board of Canvassers of Ionia County, 94 Mich. 516, 54 N.W. 376 (1893); McLeod v. Kelly, 304 Mich. 120, 7 N.W.2d 240 (1942); In re Williams' Contest, 198 Minn. 516, 270 N.W. 586 (1936); Odegard v. Olson, 264 Minn. 439, 119 N.W.2d 717 (1963); Laxalt v. Cannon, 80 Nev. 588, 397 P.2d 466 (1964); Smith v. Polk, 135 Ohio St. 70, 19 N.E.2d 281 (1939).

And, the constitutions of most, if not all, of the states contain provisions similar to that found in the United States Constitution, giving each house of state legislatures final and exclusive jurisdiction of the elections and qualifications of members. "Qualifications of Legislator," 17 L.Ed.2d 911, §4.

Therefore, the addition of the word "sole" to the Florida Constitution added nothing to the law regarding

exclusivity of each house's jurisdiction re the election and qualifications of its own members.

However, this extant law does not authorize nor require a purely literal reading of a constitutional provision in abstraction from the constitutional document in toto and in derogation of basic rights thereunder. "The particular in isolation is meaningless." "The judicial process ... is a fertile interplay between generalization and particular" Frankfurter, F., 41 Harv. L. Rev., 121 (1927).

Despite the claimed exclusivity of the provision in the United States Constitution, a state legislature's action or decision as to the qualifications of a member, wherein there are involved substantial federally protected rights, may be tested by a federal court's application of a federal constitutional standard. In Bond v. Floyd, 385 U.S. 116, 17 L.Ed.2d 235, 87 S.Ct. 339 (1966), the issue was whether Julian Bond, a duly elected representative, was excluded from the Georgia House of Representatives because he exercised his First Amendment right of free speech. The United States Supreme Court specifically held that it had jurisdiction to review the question of whether the action of the Georgia House of Representatives deprived Bond of federally protected constitutional rights. The previously perceived impenetrable wall between the judiciary and the legislature was penetrated upon the

time-tested principle of judicial review ... notwithstanding the language of the Georgia Constitution.

Another penetration of this wall took place in Roudebush v. Hartke, 405 U.S. 15, 31 L.Ed.2d 1, 92 S.Ct. 804 (1971), in which the Supreme Court held that a recount under state law was not prohibited by either Article I, §4, or Article I, §5, of the United States Constitution, notwithstanding that Article I, §4, provides for the times, places and manner of holding elections for United States Senators.

Yet, despite judicially-recognized intrusions into the claimed exclusivity of the legislative houses in determining the election of their members, the trial judge sub judice, sensitive to the need for some remedial opportunity available to an unsuccessful candidate victimized by pervasive election law irregularity, attempted to divine such a remedy in Rule 5.5 of the Rules of Florida House of Representatives. However, whether the House is authorized to enact a rule applicable to non-members--however doubtful--is not for resolution here; for the spectre of judicial non-reviewability of election contests involving legislative candidates recalls the very fear gently touched upon by the trial judge herein, viz., "the fate of [Harden's] challenge ... [resting] in the hands of the 'transient' majority" As the Supreme Court of Hawaii said in Akizaki v. Fong, 461 P.2d 221 (Haw. 1969):

For the framers of our Constitution to have entrusted the final determination of [election] controversies to the legislative body would have been unwise. It would have provided a dangerously effective method of perpetuating the existing majority in office, with no recourse available to the people.
461 P.2d at 223.

In Akizaki the court declared:

The right to vote is perhaps the most basic and fundamental of all the rights guaranteed by our democratic form of government. Implicit in that right is the right to have one's vote count and the right to have as nearly perfect an election proceeding as can be provided.
461 P.2d at 222-223.

In Thorsness v. Daschle, 279 N.W.2d 166 (S.D. 1979), the court denied a motion to dismiss a challenge to the election of Daschle, who asserted that the House of Representatives has final and exclusive jurisdiction to determine the election of its members. The court determined that the question of who won and the propriety of the election procedure are purely matters of state law, citing Roudebush v. Hartke, op. cit. On the other hand, the court said, the question of who sits is solely within the province of the United States Congress. The South Dakota Supreme Court reflected upon the state's extensive election system, including a recount procedure. Accepting the successful candidate's view would, according to

the court, "totally defeat the legislature's scheme and abrogate the legislative mandate to this court to review the recount procedures of this state. If a defeated candidate has a question regarding the correctness of the ballot-counting procedure ..., his only recourse is the recount procedure." 279 N.W.2d at 169.

The South Dakota Supreme Court, citing Hartke, op. cit., found no reason why a state may not protect and enforce its election laws through post-election judicial review, adding that under Hartke, "[t]he possibility that Congress may decide to make its own investigation and determination apart from the judgment of the state court and the fact that Congress has the final authority to make such determination do not constitute a bar to the enforcement of state procedures designed to insure the legal outcome of its elections." 279 N.W.2d at 170.

Unlike the United States Constitution, however, the Florida Constitution is not a grant but a limitation on legislative power, so that the Legislature may enact any law not expressly or inferentially prohibited by the Constitution of the state or nation, Board of Commissioners of Everglades Drainage District v. Forbes Pioneer Boatline, 80 Fla. 252, 86 So. 199 (1920). Article I, §1, Fla. Const., provides that "[a]ll political power is inherent in the people." Article I, §5, Fla. Const., grants to the people

"the right ... to instruct their representatives" And, by Article I, §21, "[t]he courts shall be open to every person for redress of any injury,"

Elections are governed by Article VI, Fla. Const. (1968).

The Legislature has broad constitutional authority to enact laws designed to enhance the public good and welfare. Horsemen's Benevolent and Protective Association v. Division of Pari-Mutuel Wagering, 397 So.2d 692 (Fla. 1981). In light of this authority, the Legislature is empowered to enact election laws to insure free and fair elections. Town of Lantana v. Pelczynski, 303 So.2d 326 (Fla. 1974). In Treiman v. Malmquist, 342 So.2d 972, 975 (Fla. 1977), the Supreme Court said:

[T]he Legislature is charged with the authority and responsibility of regulating the election process so as to protect the political rights of the people and the integrity of the political process,

* * *

The right of the people to select their own officers is their sovereign right,

* * *

Fundamental to our system of government is the principle that the right to be a candidate for public office is a valuable one

Chapters 97 through 106, Fla. Stat., constitute the Florida Election Code enacted in accordance with the constitutional authority vested in the Legislature, and which the courts are to take as presumptively valid.

Part and parcel of the Legislature's responsibility to protect the inherent and the specified political rights of the people and the integrity of the political process, is the provision of remedial actions available to one who is injured by an election process irrefutably in contravention of law.

Consistent with the requirements imposed upon the Legislature respecting the rights of the people and the integrity of the political process is the availability of legislatively-enacted procedures to question or contest the fairness and correctness of the political process and thereby to insure its integrity. Sections 102.168 and 102.1682, Fla. Stat., serve the legislatively-determined purpose of allowing an injured person to protect his or her rights and those of the people, thereby insuring the integrity of the political process. The right of the people to select their own officers as an exercise of their sovereign right is meaningless if the election process giving rise to that selection is fraught with illegalities. The right of the people to instruct their representatives in accordance with Article I, §5, Fla. Const., see In re Apportionment Law, Senate Joint Resolution No. 1305, 263 So.2d 797

(Fla. 1972), is meaningless if those representatives are elected and seated as a result of a tainted election process. And the right of a person to be a candidate for public office, although valuable, is rendered meaningless if that candidate has no recourse to question the credibility and integrity of the process, save for the whim of a transient legislative majority. (Indeed, why then bother with popular elections?)

Yet, the effect of the Circuit Court's opinion and decision is to make the relationship of the Election Code exiguous at best, or even meaningless, as to legislative races. The courts of this state have had no difficulty in applying the Election Code laws to legislative races. In State ex rel Bisbee v. Board of County Canvasses of Alachua County, 17 Fla. 9 (1878), the Florida Supreme Court held that state courts have jurisdiction to compel a canvass of returns of votes for a representative in Congress, despite the language in Article I, §5 of the Constitution of the United States. It is submitted that if the courts may exercise jurisdiction over provisions of the Election Code pertaining to qualifications and registration, registration procedures, candidates, general and special elections, voting methods and procedures, election conduct, presidential electors, Election Code violations, non-partisan election for judicial officers, and campaign financing, as they apply to congressional and state legislative candidates, there is no

compelling argument for excising or exempting from the Election Code inquiry as to the integrity of races for the Florida Legislature.

If the Circuit Court decision is validated by this Court, then it could well be argued that the Legislature has sole and exclusive responsibility for presiding over the election of its members and that any delegation to the several supervisors of elections with respect to legislative races is unconstitutional. This, of course, is not the case. However, it demonstrates the lack of merit in the argument that the courts are powerless with respect to matters concerning the fairness of elections to the Legislature.

Article I, §21, Fla. Const., authorizes every person to have access to the Florida courts for redress of any injury. While this provision applies only to causes of action that existed at common law or by statute prior to the adoption of the Declaration of Rights in the Florida Constitution, Caloosa Property Owners Association, Inc. v. Palm Beach County Board of County Commissioners, 429 So.2d 1260 (Fla. 1st DCA 1983), in fact §§102.168 and 102.1682, Fla. Stat., existed prior to the adoption of the Declaration of Rights in the Florida Constitution in 1968 and appeared as §§102.161 and 102.163, Fla. Stat., respectively, prior to 1968.

Accordingly, it is evident that the issues of election fairness and "who won" are assigned to the judiciary by

legislative action reflected by a pervasive Election Code containing §§102.168 and 102.1682, Fla. Stat. Once the fairness is properly determined by the judiciary, the Legislature is charged to judge the election results fairly obtained and decide who shall sit.

That is, the judiciary and the Legislature are indeed coordinate branches of government.

Even as the courts are not to substitute for the houses of the Legislature in their discharge of purely legislative, constitutionally vouchsafed functions, neither are the courts to abandon the various and specific constitutional rights of the people as these are judicially protected and cognizable simply because there are coordinate branches of government.

The trial court herein refused to enjoin the Speaker of the House of Representatives from swearing in James Ward, presumably in recognition of the coordinate status of the legislative and judicial branches of government, even as the trial court correctly (in 1984) recognized that such a ceremonial performance by the Speaker did not oust the judicial branch of government of its clear--constitutional and statutory--functions, responsibilities and powers.

It was that forthright recognition of the very nature of our tripartite government and the responsibilities thereof, which the Circuit Court foreswore in its July 17, 1985 order here on appeal.

When Oliver Wendell Holmes, Jr. in 1897 observed that "the law is the witness and the external deposit of our moral life," he said no more than that the pronouncements of our people's courts are the indices of our moral opinions.

Thus, the pronouncement of the trial court sub judice must be considered oblique to the overarching moral commitment of our people to the notion of a republican form of government produced by a political power inhering in the people and exercisable by a free and fair ballot resulting in an elective government deputed to function within the prescriptions of law.

At no time and by no mechanism have the people of the State of Florida agreed to give up, to foreswear, to alienate their constitutional right to vote in free and fair elections.

At no time, by no mechanism, have the people of the State of Florida authorized majorities of either house of the Legislature to co-opt politically kindred souls to serve as the people's representatives in derogation of the inherent and constitutionally-protected political power of the people to vote.

Indeed, pursuant to Article VI of the Constitution of the State of Florida, the Legislature of the State of Florida lawfully provided the means by which the integrity of that electoral process should be judicially protected--every person of this state having access to the courts under Article I, §21, Fla.

Const.--at §§102.166, Fla. Stat., and 102.168, Fla. Stat.

What is the remedy of the people of the State of Florida or a candidate for legislative office, if or as another candidate for legislative office buys that office, or bribes voters, or otherwise illegally obtains certification of the election results? No remedy? Of course not: The people have fundamental rights, and those rights are enforceable in and by and through the courts of the State of Florida--viz., §§102.166 and 102.168, Fla. Stat. Nor is this vitiated if the corruption be negligent rather than criminal.

Chapter 102, Fla. Stat., is a lawful promulgation of the Legislature of the State of Florida, presumptively lawful until demonstrated to be unconstitutional, whereby any candidate or elector may "protest ... returns" as being erroneous, §102.166, Fla. Stat., or "any unsuccessful candidate" may contest the election by making the requisite proofs. §102.168, Fla. Stat.

These fundamental rights of the people of the State of Florida cannot be read out of our political society nor expunged from our constitutional law by a trial court's fixation upon a particular provision in the Constitution (the effect of which fixation is to negate the republican form of government, the right to vote in a free and fair election, and to vest already elected representatives with a self-perpetuating power as against the people of the State of Florida).

In McPherson v. Flynn, 397 So.2d 665 (Fla. 1981), the Supreme Court of the State of Florida quite rightly observed that Chapter 102 does not provide a remedy respecting the "qualifications" of one seeking legislative office. That is indubitable: §§102.166 and 102.168, Fla. Stat., do not treat of protests or contests respecting "qualifications." Sections 102.166 and 102.168, Fla. Stat., go, respectively, to error in the counting of returns and, as the McPherson court correctly noted, the conduct of elections themselves.

That is the context in which the instant cause arose, was twice tested by two circuit courts, went to evidentiary trial, and now comes before this Honorable Court.

The late Mr. Justice Felix Frankfurter in his 1927 article, "Mr. Justice Holmes and the Constitution," 41 Harv. Law Rev. 121, addressed this very category of consideration, thusly:

The judicial process in Mr. Justice Holmes is a fertile interplay between generalization and particular. The particular in isolation is meaningless; the generalization without concreteness, sterile. At the core of his decisions is the realization that words are only symbols of things and feelings and relations. He does not delude himself with phrases, and saves us, if we have the wit to see, from verbal mirages. And so his constitutional opinions are but application of his candid insight into the realities of law and the share which courts have in its making.

It is in the very nature of our constitutional system, and is inseparable from that system, that "[i]t is to the courts, or other quasi-judicial official bodies, that we ultimately look for the implementation of a regularized, orderly process of dispute settlement." Boddie v. Connecticut, 28 L.Ed.2d 113 (1970), Marshall, J.

And, in respect of the important protective function of the courts, open to all persons according to our Constitution, as well as the imperative right to vote in free and fair elections, the judicial decision ought to be made to fit as far as possible the expectations of society. Morris Cohen, Reason and Law (1950), at 79.

It is, and it is indubitably, the expectation of the people of the State of Florida that they shall be allowed to exercise their fundamental right to vote in a free and fair election, having access to the courts of the State of Florida to vindicate their right to vote in free and fair elections--being their constitutionally guaranteed entitlement, and being thereby their constitutionally formulated means of exercising the political power inherent in the people.

Consonant with which fundaments, the Legislature of the State of Florida has provided a specific means of election "protest" and a specific means of election "contest"--the latter exercisable by "any candidate" and cognizable by the

circuit courts of the State of Florida. §102.168, Fla. Stat.

The Definition of "Sole Judge of Its Members"

What do we know of Article III, §2, Fla. Const. (1968)?

1. The Constitution of 1968--a limitation upon governmental power--restricts the Legislature to judge "its members" only, as to qualifications, elections and returns. No such power extends, by constitutional proviso, to non-members. Art. III, §2, Fla. Const.

2. What, then, is the meaning of the operative terms "sole judge" of the members' qualifications, elections and returns?

We know only that this proviso is not absolute--i.e., that by case law, for example, the body may not violate one's guaranteed rights in or by exercise of the proviso. See, Bond v. Floyd, op. cit., inter alia.

3. The definition of this "sole judge" proviso may be sought in the Supreme Court records of the 1968 Constitutional Revision Commission (in the file cabinets behind the Supreme Court Law Library reception desk):

A. There is no bound, blue volume for Article III, §2;

B. The folder designated to contain the Article III, §2 analysis is marked "Empty Folder."

4. Thus, the definition of the provision is provided by the Florida Election Code scheme enacted consistent with the guarantees of Article III, Fla. Const. (and Article I, Florida Declaration of Rights):

A. All candidates must qualify, Chap. 99, Fla. Stat.,

B. Supervisors of Elections shall emplace names on ballots, Chap. 100, Fla. Stat.

C. Voting methods and procedures are specified, Chap. 101, Fla. Stat.

D. The manner of conducting elections is specified, Chap. 102, Fla. Stat.

These chapters, this definitional scheme--particularizing the duties of supervisors, the Department of State, local canvassing boards, the state board, and the courts--comprehends the elements for any exercise of the Legislature's ability to "judge" its "members."

No candidate of any sort is free of, nor exempted from, this definitional scheme, by the very terms thereof.

No candidate for elective office is free from the requirements to qualify, to run per law, to receive the winning vote in a lawful election, to have her or his returns lawfully canvassed and certified, to protest or contest (or

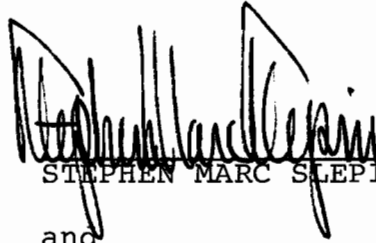
to face same).

Whereupon, as to its "members," the Legislature may--not with absolute discretion, however--"judge" based upon the foregoing mix of executive or administrative and judicial elements.

CONCLUSION

The order on appeal reflects reversible error, and the said Circuit Court order should be reversed and the cause remanded for entry of the appropriate judgment (trial having already eventuated) in the premises.

Respectfully submitted this 16th day of September, 1985.



STEPHEN MARC SLEPIN, Esquire

and

GEORGE L. WAAS, Esquire

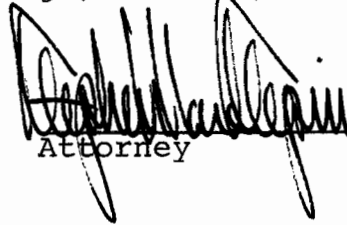
of

Slepín, Slepín & Waas
1114 East Park Avenue
Tallahassee, Florida 32301
(904) 224-5200

Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been mailed this 16th day of September, 1985 to JOHN H. FRENCH, JR., Esquire, Post Office Box 1876, Tallahassee, Florida, 32302; JAMES G. MOORE, Esquire, Post Office Box 746, Niceville, Florida, 32578; JOHN R. DOWD, Esquire, Post Office Box 404, Shalimar, Florida, 32579; GREGORY M. ANCHORS, Esquire, Post Office Box 297, Niceville, Florida, 32578; and GEORGE R. MILLER, Esquire, Post Office Box 687, DeFuniak Springs, Florida, 32433.



Attorney