J.A. 5693 007

FILED
SID J. WHITE
FEB 12 1993
CLERK, SUPREME COURT
By Chief Deputy Clerk

IN THE SUPREME COURT OF THE
STATE OF FLORIDA
CASE NO. 80,189

ROBIN C. KRIVANEK, as
Hillsborough County Supervisor
of Elections,

Petitioner,

v.

TAKE BACK TAMPA POLITICAL
COMMITTEE and RICHARD M.
CLEWIS, III,

Respondents.

APPEAL FROM THE SECOND DISTRICT
COURT OF APPEALS
STATE OF FLORIDA
NO. 91-04045

ANSWER BRIEF AND APPENDIX OF RESPONDENTS, TAKE BACK TAMPA POLITICAL COMMITTEE AND RICHARD M. CLEWIS, III

G. DONOVAN CONWELL, JR.
Post Office Box 1438
Tampa, Florida 33601
(813) 228-7411
Florida Bar Number 371319

ATTORNEY FOR RESPONDENTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CHARTERS, CODES AND STATUTES

STATEMENT OF FACTS

1. The Supervisor Misstated the Facts and Omitted Material Facts in her Initial Brief. The Respondents, Therefore, are Providing Their Own Statement of the Facts.

The Supervisor's Statement of the Facts does not include certain material facts important to this appeal. The Supervisor also supplied alleged facts that are not part of the Record, often contradicting the Record. Her unsupported statements are not followed by a Record cite, nor could they be, because they are not part of the Record. For example, on page one of her Brief, the Supervisor stated that she mailed a form to electors which advised the Supervisor "whether the electors' status has changed from that of the Registration Record." The card, however, says no such thing. The card advises "Yes, I want to remain a voter"; nothing more and nothing else. (R. 300; App. A). She also incorrectly states on page one that in 1991 she maintained her registration books "just as she had done" throughout her career as a Supervisor of Elections. The Record, however, shows that in 1991 she maintained the registration books for the first time on a computer. (R. 752, L. 12 - 16; R. 748, L. 19 - 21). This misstatement by the Supervisor is important to this appeal for reasons set forth on pages 35-37 below related to the timing of the Supervisor's disqualification of signatures of alleged inactive registered voters.

The Supervisor also misstated on page two of her Brief that she "purged" her voter registration records on June 21, 1991. The

Record, however, shows that she "began the actual suspension process" on June 21 or 22 (R. 776, L. 4 - 7), but did not delete any signatures from the computer registration files until after she received the Petition on August 12, 1991. (R. 756, L. 7 - 12). She also did not move the physical voter registration certificates of inactive registered voters out of the active voter file until October, 1991, more than two months after she received the Petition. (R. 754, L. 12 - 21).

The Supervisor also misstated the Record on page four of her Brief where she stated that Clewis and Take Back Tampa sought an Order requiring the Supervisor to count the signatures of persons whose names were "removed" from the registration books. As set forth in detail below, no names were "removed" from the registration books.

For each of the foregoing reasons, the Respondents are supplying their own Statement of the Facts, as follows:

2. The Respondents Circulated a Petition to be Signed Only by "Registered Voters" to Repeal an Ordinance by Referendum.

Richard M. Clewis, III ("Clewis") is a "qualified voter" of the City of Tampa. (R. 355; R. 506; App. A at p. 1). He chairs the Take Back Tampa Political Committee ("Take Back Tampa"). (R. 506; R. 879, L. 11-13). Take Back Tampa is an association of voters in the City of Tampa who volunteered to assist Clewis and Take Back Tampa in their efforts to repeal a city ordinance. (R. 174; R. 878 - 879). Clewis and Take Back Tampa circulated the petition at issue in this case ("the Petition"). (R. 880, L. 2-4). They began circulating the Petition on June 13, 1991. (R. 181). They turned in

the Petition to the Supervisor on August 12, 1991. (R. 183, R. 356). Every person who signed the Petition stated in the Petition that he or she was a "**registered voter** in the City of Tampa" and gave the Supervisor their current name, address and precinct number. (R. 179-181; App. B at pages 6 - 8).

On June 21, 1991, eight days into the Respondents' Petition drive, the Supervisor began creating on her computer from the list of registered voters, a list of "inactive" registered voters. (R. 776, L. 5; R. 757, L. 6 - 13). She called this process a "purge." (R. 757, L. 6-13). She made the purge pursuant to §98.081(1) Fla. Stats. (R. 769, L. 9-15; R. 358).[1] The Supervisor did not have to conduct the purge when she did, for example, she could have created the purge list on June 30 rather than June 21. (T. 776, L. 8 - 18). The Supervisor did not notify Clewis or Take Back Tampa before they started their Petition drive that a purge would take place while they were circulating their Petition among Tampa voters. (R. 556; R. 884, L. 8-14; R. 778, L. 11-16; R. 781, L. 25 - R. 782, L. 10; R. 807, L. 11-23). She did not do so because she "probably . . . did not see [the purge] as germane." (R. 779, L. 19 - R. 780, L. 1).

---

[1] The Supervisor testified that she mailed cards to registered voters which the voter was supposed to sign and return to the Supervisor within 30 days. (R. 757, L. 6 - 8). The cards say "Yes, I want to remain a voter." (R. 330; App. A). If a card was returned, stamped as undeliverable, the Supervisor made <u>no</u> effort to locate that voter. (R. 788, L. 6 - 21).

3. **The Supervisor Created a "Purge File" in the Permanent Registration Record During the Respondents' Petition Drive to Which She Transferred the Names of Alleged "Inactive" Registered Voters.**

The Supervisor explained the process used to transfer voter names from the "active" list to the "inactive" or "purged" list, in the permanent registration record, as follows:

The "registration record" consists of voter registration certificates and a computer file containing the information on those certificates. (R. 793, L. 3 - R. 794, L. 5). In late 1990, the Supervisor also started keeping signatures from the certificates in the computer file. (R. 751, L. 6-13). The physical registration certificates are kept in two large Diebold power files in the Supervisor's office. (R. 747, L. 23 - R. 748, L. 2). The computer file is called the "voter registration certificate file." (R. 750, L. 17).

The Supervisor did not have computer files in 1989 or prior years, so the 1991 purge apparently was the first voter purge in Hillsborough County involving computer records. (R. 752, L. 12-16; R. 748, L. 19-21). To conduct the 1991 purge the Supervisor created another file in the computer called the "purge file." (R. 756, L. 22 -R. 757, L. 13).[2] She duplicated the names of electors in the voter registration certificate file who did not return a card and

---

[2] The Supervisor also had another file, called "the canceled file" for persons convicted of a disqualifying crime or who failed to notify the Supervisor for three (3) years after receiving a notice under § 98.081(1) Fla. Stats. (R. 759, L. 12 - 25). The names of persons in that file were removed from the computer record. Id.

put them in the purge file. (R. 757, L. 6-13).[3] Additionally, she intended to delete from the "voter registration certificate file" the signatures of persons that she put in the "purge file." (R. 751, L. 22 - R. 752, L. 11). The Supervisor believes that in this case, however, she did not delete signatures of temporarily withdrawn electors from the voter registration certificate file until after she received the Petition from Take Back Tampa. (R. 756, L. 7-12). The Supervisor also did not move the original voter registration certificates of temporarily withdrawn electors from the Diebold files to a warehouse until approximately October, 1991, long after she verified the signatures on the Petition. (R. 754, L. 12-21).

When the Supervisor verified signatures on the Petition, all of the original signature cards for all of the electors were still kept together in her office in the Diebold files. (R. 754, L. 22 - R. 755, L. 16). All of the signatures on the Petition were contained on the original voter registration cards and on the computer in the Supervisor's office and could have been physically compared during the verification process. (R. 755, L. 3-12).

4. The Supervisor Refused to Count the Signatures of a Certain Class of "Registered Voters".

At least 180 of the names that the Supervisor moved to the inactive registered voters' list in June and excluded from the

---

[3] The Record is not clear whether she had a single database of all electors and simply coded some electors as "active" and others as "inactive," or whether she created a second database.

Petition were on the active registered voters' list when the Petition drive started. (R. 761, L. 17 - R. 762, L. 11; R. 782, L. 11-20). The Supervisor did not count signatures on the Petition of electors who signed the Petition on or after June 21 whose names she moved to the inactive registered voters list. (R. 782, L. 21 - R. 783, L. 9). As a result of excluding the signatures of this class of registered voters, the Supervisor ruled that the Respondents' Petition failed to meet the requirements of Section 10.07 of the City Charter for a Referendum. (R. 175 and 177). The Supervisor, however, counted signatures on the Petition of electors who signed the Petition before June 21, even though she put these names on the inactive list on or after June 21. (R. 782, L. 21 - 783, L. 9).

The Supervisor concedes that persons she put on the inactive list as part of her purge did not lose their status as "registered voters" after the purge. (R. 787, L. 7-10; App. C). The Senior Counsel for the Division of Elections, Yeteva Hightower, also conceded that electors whose names are temporarily withdrawn from the registration list "do not lose [their] registration until three years have passed." (R. 572, L. 2-25; App. D). The Supervisor further conceded that a registered voter is a "qualified elector." (R. 808, L. 19 - R. 809, L. 3). Electors on this inactive list can still vote, even though their name has been temporarily withdrawn and the registration books are closed, by signing at the polls a statement that their status has not changed. (R. 760, L. 1 -11; R. 795, L. 12-19). In contrast, a person who is not registered to vote

must register by the deadline before the election. They cannot do so at the polls. (R. 795, L. 20-25).

The Supervisor is not aware of any statute that "explicitly states that any class of registered voters are not permitted to petition the government." (R. 808, L. 11-14). Nonetheless, according to the Supervisor, "there are persons in the City of Tampa [persons on the inactive list] **who are registered voters** whose signatures are not being counted in a petition to the government." (R. 808, L. 3-10) (emphasis added). The effect of the Supervisor's interpretation of the law is that the number of persons used to determine the number of signatures required on the Petition is different from the number of persons that were eligible to sign the Petition. (R. 789, L. 22 - R. 790, L. 2). The Supervisor believes that she interpreted the Election Laws "close to strictly" in this respect (R. 741, L. 13-14) and that her interpretation is "not fair." (R. 790, L. 3-6).

The trial judge issued a Peremptory Writ of Mandamus to the Supervisor on November 25, 1991, compelling her to perform her ministerial duty of counting otherwise valid signatures of "electors of the City." (R. 501-503) Upon the Supervisor's compliance with the Peremptory Writ, the Respondents' Petition met the requirements of Section 10.07 of the Tampa City Charter.

SUMMARY OF THE ARGUMENT

The Supervisor's refusal to count the signatures of a certain class of registered voters invalidated Clewis' and Take Back Tampa's Petition, making Clewis' Petition signature a meaningless

exercise and denying Clewis his right to vote. Clewis, as a registered voter, and his committee, Take Back Tampa, also had a right under Section 10.07 of the Tampa City Charter and related statutes and laws to petition the government and to have the Petition signatures counted as required by law. The Supervisor's refusal to count signatures that she was required by law to count, infringed upon those rights. The Respondents, accordingly, have standing to bring this suit because their rights are "affected by the outcome of the litigation." They also have standing because their mandamus action attempts to enforce a public duty. The Supervisor, in any event, has waived any defense of "standing" that she might have had, by failing to raise such a defense either in the Circuit Court or in her appeal to the Second District Court of Appeals.

The persons whose names the Supervisor moved to the temporarily withdrawn list are "electors of the City" and their signatures on the Petition should have been counted. Section 10.07 of the Tampa City Charter provides that "electors of the City" are eligible to sign a petition. An "elector" is a "registered voter." The Supervisor and the Division of Elections concede that all persons on the Supervisor's temporarily withdrawn list are "registered voters." Moreover, §98.081(1) makes clear that electors on the temporarily withdrawn list retain their legal status as "electors." The persons on the temporarily withdrawn list, therefore, were eligible to sign the Petition as "electors of the City."

Even if persons on the temporarily withdrawn list were not "electors," they were reinstated as electors when they signed the Petition as a "registered voter" of the City of Tampa and gave their current address and precinct number. This act of signing the Petition and supplying this information met the minimal requirements for reinstatement under §98.081(1) Fla. Stats. and provided all of the information that the Supervisor would have received if the Supervisor had received those voters' reinstatement cards.

The Supervisor unconstitutionally applied §98.081(1) by denying registered voters the right to petition the government without a compelling state interest for doing so. She also violated the equal protection provisions of the Constitution by denying inactive registered voters the same right to petition the government which she granted to active registered voters.

Finally, the issue of whether persons whose names are temporarily withdrawn are "electors" should not be an issue because the Supervisor has admitted that she did not delete the names of any electors from the registration record until after she received the Petition. She intended to remove them earlier, but simply was not able to do so. The temporary withdrawal provisions of §98.081(1), therefore, do not apply here.

ARGUMENT

I. THE CIRCUIT COURT HAD SUBJECT MATTER JURISDICTION TO ISSUE THE WRIT OF MANDAMUS.

In the Supervisor's Initial Brief, she raised a defense, for the first time in this litigation, that the Respondents, Clewis and

his committee, Take Back Tampa, do not have standing to bring this action. In doing so she relied entirely upon alleged matters outside the Record and completely ignored Clewis' testimony (which is part of the Record), on matters that relate to standing.

This Court should deny the Supervisor's request that this Court dismiss the action based upon an alleged lack of standing, for three reasons. First, the Respondents' private rights are "affected by the outcome of this litigation" and they, accordingly, have standing to bring this suit. Second, the Respondents sought through this suit to enforce a public duty. As a voter in the City of Tampa, Clewis has standing to seek enforcement of the supervisor's public duty. Finally, the Supervisor waived any defense of lack of standing that she might have had, by failing to raise such a defense either in the Circuit Court or in her appeal to the Court of Appeals.

A. <u>The Respondents Have Standing to Bring this Action</u>.

A plaintiff has standing "where there is sufficient interest at stake in the controversy which will be affected by the outcome of the litigation." <u>Jamlynn Investments Corp. v. San Marco Residents of Marco Condominium Association, Inc.</u>, 544 So.2d 1080, 1082 (Fla. 2d DCA 1989); <u>Geiger v. Sun First National Bank of Orlando</u>, 427 So.2d 815, 817 (Fla. 5th DCA 1983). Clewis and the association of qualified voters that make up Take Back Tampa have standing to bring this action under this test. The outcome of this litigation clearly affects the rights of Clewis and the association of qualified voters of Tampa known as the Take Back Tampa

Committee. Section 10.07 of the Tampa City Charter and its related laws and statutes provide a mechanism whereby a qualified voter of the City, such as Clewis, may exercise the constitutionally guaranteed right to petition the government. Section 10.07 specifically provides that a qualified voter may "require reconsideration of any adopted ordinance by petition signed by the electors of the City equal in number to not less than ten percent of the electors of the City qualified to vote at the last general municipal election." Clewis, whom the Supervisor has admitted is a "qualified voter of the City" (R. 355) had the power and legal right to require reconsideration of any adopted ordinance upon his submission of a petition bearing enough signatures to meet the requirements of Section 10.07. The Supervisor's refusal to count petition signatures of "electors of the City" which she was required by law to count, infringed upon Clewis' right to require, through the petition process, reconsideration of the adopted ordinance.

Clewis also had the right through the petition process, to have "the qualified voters . . . approve or reject such ordinance at a city election . . .". (Section 10.07, Tampa City Charter). The Supervisor's refusal to count signatures of "electors of the City" which she was required by law to count, therefore, also infringed upon Clewis' right as a qualified voter to vote on such ordinance and to submit the ordinance to the qualified voters of the City for a vote.

Any qualified voter who has been deprived of the federal constitutionally protected right to vote has standing to seek vindication of that right. Baker v. Carr, 82 S.Ct. 691, 705 (1962). A voter so deprived can seek vindication of his own right and the rights of those similarly situated. Id. In Baker, the appellants challenged a state reapportionment statute as a "debasement" of their right to vote. The statute allegedly apportioned legislators arbitrarily and in disregard of the apportionment formula established by the state constitution. The court recognized a citizen's right to vote free of unlawful government action. Id. If government action unlawfully impairs the right to vote, citizens have a "plain, direct and adequate interest in maintaining the effectiveness of their votes." Id. (Quoting Coleman v. Miller, 59 S.Ct. 972, 975 (1939)).

Under the Court's opinion in Baker, Clewis and the association of qualified voters that make up Take Back Tampa had a "plain, direct and adequate interest" in bringing this action. The Supervisor's unlawful refusal to count signatures of "electors of the City" deprived Respondents of their own rights to petition for repeal of the ordinance, and to vote on whether to repeal the ordinance. By bringing this action, Respondents vindicated their constitutional rights.

B. The Respondents Have Standing to Compel the Supervisor's Performance of Her Public Duty.

The Supervisor's duty to count the otherwise valid signatures of all "electors of the city" is a public duty. The Respondents sought through this mandamus proceeding to compel the Supervisor to

perform that public duty. The Respondents, therefore, have standing to bring this action, even if they had no private interest in the results of these proceedings. Bd. of Public Instruction of Dade County v. State, 7 So.2d 105, 107 (Fla. 1942) (where "the object of the mandamus is to procure the enforcement of a public duty . . . relator . . . need not show that he has any . . . interest in the results."); Florida Industrial Commission v. State, 21 So.2d 599, 600 (Fla. 1945) (". . . where the question is one of public right and object of the mandamus is to procure the enforcement of a public duty, the relator need not show that he has any legal or special interest in the result . . .").

C. The Supervisor Waived Any Defense That the Respondents Lack Standing by Failing to Assert Such a Defense in the Circuit Court or in her Appeal to the Second District Court of Appeals.

The Supervisor argues on page seven of her Brief that it is evident on the face of the Petition for Writ of Mandamus that Clewis and Take Back Tampa do not have standing. (Initial Brief at P. 7). Nonetheless, the Supervisor did not raise lack of standing as a defense in this action (R. 355 - 370), nor did she raise this issue on appeal to the Second District Court of Appeals. (Supervisor's Initial Brief to the Second District Court of Appeal, Case No. 91-04045; App. E).

This Court has ruled that the failure of a defendant to raise in the lower court the question of standing "until after all of the proceedings below are concluded" constitutes a waiver of that defense. Cowart v. City of West Palm Beach, 255 So.2d 673, 674 (Fla. 1971); Dover v. Worrell, 401 So.2d 1322, 1324 (Fla. 1981)

(citing with approval, Cowart v. City of West Palm Beach); Lyons v. King, 397 So.2d 964, 968 (Fla. 4th DCA 1981) (Where issue of standing to assert cause of action was not raised in trial court, the issue was waived and would not be decided on appeal); Bergen Brunswig Corp. v. State, etc., 415 So.2d 765, 767 (Fla. 1st DCA 1982) (the appellant waived the right to assert "lack of capacity" on appeal by failing to raise it before the circuit court.)

D. The Supervisor's Request for a Writ of Prohibition Should be Denied.

The request for a Writ of Prohibition, based upon an alleged lack of standing, should be denied for two reasons. First, the Respondents have standing and the Supervisor waived the issue of standing, as set forth above. Second, a Writ of Prohibition is not a proper remedy to revoke an Order already entered. English v. McCrary, 348 So.2d 293, 296-297 (Fla. 1977) ("Prohibition . . . is preventitive and not corrective in that it commands the one to whom it is directed not to do the thing which the Supervisory court is informed the lower court is about to do. Its purpose is to prevent the doing of something, not to compel the undoing of something already done. It cannot be used to revoke an Order already entered.") The Order targeted by the Supervisor in her request already has been entered and cannot be revoked by a Writ of Prohibition.

II. THE TRIAL COURT AND COURT OF APPEALS CORRECTLY RULED THAT ELECTORS ON THE "TEMPORARILY WITHDRAWN" LIST RETAIN THEIR LEGAL STATUS AS "ELECTORS OF THE CITY" AND, THEREFORE, ARE ELIGIBLE TO PETITION THE CITY.

Section 10.07 of the Charter provides that the Petition shall be signed by "**electors** of the city." Section 100.361(1)(a) Fla. Stats. (1991) provides that "**[e]lectors** of the municipality are eligible to sign the petition." All that the Supervisor must do is determine whether signatures on the Petition are in fact the signatures of "electors" of the city. §100.361(1)(d) and (h) Fla. Stats. (1991) (all that the Supervisor shall do is "determine the number of valid signatures"). The Supervisor must count and accept each valid signature of an elector of the City which appears on the Petition; Id; §10.07 Tampa City Charter; §99.097(3) Fla. Stat. (1991), (if the "Supervisor determines that the person signing the Petition and the person who registered to vote are one and the same" then the name on the petition "shall be counted as a valid signature"). The Supervisor concedes that she was required to count the valid signatures of each "elector of the City" who signed the Petition. (R. 853). The persons on the inactive registered voters' list never lost their legal status as "electors" of the City and, therefore, their signatures on the Petition should have been counted.

A. A Person Becomes an "Elector" by Registering to Vote.

"Elector" is not defined in the Charter or the Related Laws, but is defined in the Florida Election Code §97.021(11) Fla. Stats. (1991) and in the Florida Constitution Article 6 §2. The Florida Election Code is incorporated into the election laws of the City of

Tampa pursuant to Part B, §8.23 Tampa City Charter and Related Laws. The Election Code defines "Elector" as "synonymous with 'voter' or 'qualified elector or voter'." §97.021(11) Fla. Stats. (1991). A "qualified elector" is defined in the Florida Election Code as "any person 18 years of age who is a citizen of the United States and a legal resident of Florida and the county where he wishes to register" and who registers to vote. §97.041(1)(a) Fla. Stats. (1991). In other words, an "elector," as that term is used in the Florida Election Code and Tampa City Charter, is a person who has registered to vote.

The Florida Constitution defines "elector" as follows:

> Every citizen of the United States who is at least twenty-one years of age and who has been a permanent resident for one year in the state and six months in a county, if registered as provided by law, shall be an elector of that county.

Fla. Const. Art. I, §5. In other words, someone who has registered to vote in a county is an "elector" of that county.

Everyone on the Supervisor's inactive registered voter list has registered to vote in Hillsborough County. Once registered those persons do not lose their legal status as electors except as provided by law. Section 98.041 Fla. Stats. (1991) (**"electors registered shall not thereafter be required to register or reregister except as provided by law"**). The Supervisor, therefore, was required by §10.07 of the Charter to count and accept the valid signatures of all persons on the inactive registered voter list in Hillsborough County who reside in the City of Tampa, unless some

other law caused those persons to lose their legal status as an "elector of the City."

B. A Person Does Not Lose Her Legal Status as an "Elector" When Her Name is Temporarily Withdrawn From the Registration Records.

A person can lose her legal status as an "elector" if her name is "removed" from the registration record under §98.081(2) or (3) Fla. Stat. (1991) or §98.301(3) Fla. Stat. (1991) or if her name is "stricken" from the registration record under §98.201(1) Fla. Stat. (1991). An "elector" whose name is only "temporarily withdrawn" from the registration record pursuant to §98.081(1) Fla. Stats., however, does not lose his or her status as an "elector."[4] The signature of such an "elector," therefore, must be counted under §10.07 of the Charter as a signature of an "elector." This is crucial here because the Supervisor treated at least 180 electors whose names were temporarily withdrawn from the registration records as if they were no longer "electors."

The Florida Legislature made clear in the Election Code that electors whose names have been temporarily withdrawn from the registration records under §98.081(1) Fla. Stats. are still "electors" of the City under §10.07 of the Charter. The language that the Legislature used in §98.081(1) proves it.

---

[4] Throughout the Supervisor's Initial Brief she uses the words "temporarily withdrawn" and "removed" interchangeably, apparently missing the material distinction made in the Election Laws between those terms. She also uses the term **"qualified elector"** instead of **"elector."** Those terms are **synonymous** under §97.021(11) Fla. Stats (1991), so they can be used interchangeably in the Supervisor's Brief or in this Answer Brief.

1. **The Legislature specifically describes a person whose name the Supervisor has temporarily withdrawn from the registration record as an "Elector".**

Section 98.081(1) provides in part:

> A name shall be restored to the registration records when the **elector**, in writing makes known to the Supervisor that his status has not changed.
>
> The Supervisor shall then reinstate the name on the registration books without requiring the **elector** to reregister.

(Emphasis added). This shows that the Legislature made clear its intent that persons who are already on the temporarily withdrawn list retain their legal status as an "elector," by using the word "elector" to describe such persons.

The Legislature, in contrast, did not use the term "elector" in other sections of the Election Code when referring to persons whose names have been either "removed" under §98.081(2) or (3) or §98.301(3)[5], or "stricken" under §98.201(1), from the registration records.[6] Section 98.081(2) provides that:

> The name of an elector temporarily withdrawn from the registration books shall be removed from such books if the elector fails to respond to the notice mailed pursuant to subsection (1) within 3 years from the date the last such notice was mailed to him, and such person

---

[5] The word "elector" is not used in §98.301 Fla. Stats., probably because this section applies in part to deceased persons who, by definition, could not be electors. Obviously, you can lose your status as an elector by dying.

[6] In determining the meaning of a statute the court should consider the statute as a whole rather than from any one part thereof. Florida Jai Alai Inc. v. Lake Howell Water & R. Dist., 274 So.2d 522, 523 (Fla. 1973).

shall be required to reregister to have his name restored to the registration books (emphasis added).

The Legislature identified the affected person as an "elector" prior to the three year deadline when the person's name is "removed," from the registration books. But after the elector's name is "removed," the affected person is identified with the word "person," not "elector." When the Legislature intended a change in legal status, it stopped using the word "elector," and used the word "person" instead.

Section 98.201(1) similarly used the term "elector," when referring to a person before he or she becomes disqualified as an elector and the elector's name is "stricken" from the records. In contrast, the Legislature used the word "person," when referring to a person after his name has been "stricken" from the registration records.[7]

2. An Elector Whose Name is Temporarily Withdrawn from the Registration Records is not Required to Reregister and, Therefore, Never Lost His Legal Status as a Registered Voter.

Section 98.081(1) states that the Supervisor shall reinstate the name of an elector who notifies the Supervisor that his status has not changed "without requiring the elector to reregister."

---

[7] Under this section, the Supervisor can "strike" your name from the registration record if you become disqualified to vote e.g. you are convicted of a disqualifying crime, and after receiving a notice to show cause and presenting evidence at an administrative hearing, the Supervisor determines there is sufficient evidence to strike your name from the registration record.

§98.081(1) Fla. Stats. (1991). The Legislature emphasized this important point in the same provision by repeating:

> This is not a reregistration, but a method to be used for keeping the permanent registration list up to date.

Section 98.081(1) Fla. Stat. (1991) (emphasis added). An "elector" by definition, is someone who has registered to vote. If an elector whose name has been temporarily withdrawn is not required to "reregister" to put his or her name back on the registration record, then that elector never lost his or her status as a registered voter.

In contrast, a "person" whose name has been "removed" or "stricken" under §98.081(2) or (3) or §98.201(1) must "reregister to have his name restored to the registration books." In other words, such persons lost their legal status as a registered voter and must reregister to regain that status.

3. Temporary Withdrawal Under §98.081(1) is Procedural and is not Intended to Affect Substantive Legal Status.

Section 98.081(1) is a procedural statute that is not intended to affect legal status. The Legislature's statement of purpose says so:

> This is not a reregistration but a method to be used for keeping the permanent registration list up to date.

Section 98.081(1) Fla. Stat. (1991) (emphasis added). The purpose of the temporary withdrawal of electors' names is to give the Supervisor a procedure for keeping the voter registration list current. It gives the Supervisor a way to keep track of voters whose status might have changed, while the Supervisor waits the

three year period required under §98.081(2) before "removing" those names from the registration books. This is a procedural statute affecting administrative, bookkeeping procedures, not a substantive statute affecting legal status. That is what the Legislature meant when it said that this statute is "not a reregistration" (i.e. is not a substantive statute affecting an elector's legal status) "but a method" for updating the records (i.e. is procedural). Additionally, if temporary withdrawal was substantive rather than procedural, then §98.081(2) would be unnecessary. There would be no reason to "remove" a name from the registration record under §98.081(2), thereby requiring reregistration if the same thing already had been accomplished under §98.081(1).

Finally, as set forth below in this Petition, if the statute purported to change the elector's legal status to a non-elector, or to prohibit an elector from petitioning the government, then it would be unconstitutional because it would deprive "electors" of their right to vote and petition the government. The court should avoid an interpretation of the statute that would render it unconstitutional when it is susceptible to another construction which is constitutional. McKibben v. Mallory, 293 So.2d 48, 51 (Fla. 1974). Moreover, as the trial judge correctly held, "election laws should be construed liberally in favor of the right to vote." State v. Rinehart, 192 So. 819, 823 (Fla. 1939). The Supervisor incorrectly construed them against the right to vote. (R. 741, L. 2-14).

4. **The Minimal Requirements for "Reinstatement" Under §98.081(1) Prove that Temporary Withdrawal Does not Result in Loss of Legal Status as an Elector.**

A comparison of the "reinstatement" requirements for an "elector" under §98.081(1) with the "reregistration" requirements of a "person" under §98.081(2) and (3) and §98.201(1) further proves that "temporary withdrawal" does not affect legal status as a registered voter:

Reinstatement §98.081(1)	Reregistration §98.081(2) and (3) and 98.201(1)
1. elector makes known in writing that his status has not changed	1. person must make two oaths as set forth in §97.041 2. provide registration date 3. give full name 4. identify your sex 5. state your date of birth 6. list party affiliation 7. identify your race 8. list the state or country of your birth 9. give your residence address at the time of registering 10. give your P.O. mailing address at the time of registering 11. state whether you are disabled 12. the Supervisor must fill in your precinct number 13. the Supervisor must state whether you are able to write your name and, if not, the reason you cannot 14. provide "other information deemed necessary by the Department of State" 15. Provide an affidavit swearing that all the information on the registration form is true (§98.111 Fla. Stat. [1989]).

An elector needs to do very little to have her name reinstated under §98.081(1) because she never lost her status as a registered voter. In contrast, a person whose name has been "removed" or "stricken" (not just temporarily withdrawn) from the registration records under the other sections, must satisfy substantial requirements to "reregister." This is because the electors' legal

status has changed to that of a non-registered person or non-elector and could be restored only by "reregistration."

5. **The Supervisor's Construction of §98.081(1) so that Temporary Withdrawal Results in Loss of Legal Status as an "Elector," Leads to an Unfair and Absurd Result.**

In construing the statutes to determine whether electors, whose names have been temporarily withdrawn from the registration record, retain their legal status as "electors," the Court should avoid a construction "that would lead to an absurd result." McKibben v. Mallory, 293 So.2d 48 (Fla. 1974). Under the Supervisor's interpretation of §98.081(1), many of the persons who are counted in determining the number of signatures required to be on the Petition, are not counted in determining whether that requirement was met. The Supervisor included electors in determining the number of signatures required on the Petition (123,000 electors) that she excluded from signing the Petition. (On June 21, 1991 she moved over 25,000 electors to the inactive registered voters' list.) (R. 337) i.e. The Supervisor treats persons on the inactive registered voters' list as if they were not "electors." This is an unfair and absurd result.

The Supervisor has taken electors used to define the number of signatures required on the Petition, out of the pool of electors eligible to meet that requirement. The solution to this inequity is not to reduce the number of electors used to define the requirement for the Petition. The solution is to include all of the "electors"

used to establish the requirement, in the count used to determine whether the requirement was met.[8]

The legislature certainly intended this and would not have intended §98.081(1) to apply the way the Supervisor has applied it. Even the Supervisor recognizes that her interpretation is not fair. She frankly conceded in her deposition, "It's not fair" that people temporarily withdrawn from the registration record cannot sign petitions. (R. 790, L. 3-7).

C. <u>The Supervisor and Division of Elections Concede that Temporarily Withdrawn Electors Retain Their Legal Status as "Registered Voters"</u>.

Q Do you consider persons whose names have been put on the inactive list to have lost their status as registered voters?

A No. (R. 787, L. 7-10).

With this admission in her deposition, the Supervisor long ago undermined the position that she is now taking in her Brief, that temporarily withdrawn electors are not registered voters. She

---

[8] This Court, for the following reasons, should reject the Supervisor's request made on pages 29 - 30 of her Brief, to remand the case so that the Supervisor may recompute the number of signatures required on the Petition. First, the Supervisor is bound by her admissions in her Answer that (a) the number of signatures required to meet the requirements of Section 10.07 was 10% of 123,090 and (b) she told the Respondents before they circulated their Petition that this was the required number. Second, the Supervisor did not raise this issue in her pleadings and so the issue was not before the lower court. She should be estopped to raise that issue now, nearly two years later, after the Respondents relied on the figure she gave them by circulating the Petition and then bringing this suit.

further has admitted that a "registered voter" is a "qualified elector." (R. 808, L. 19 - 809, L. 3). These admissions show that her argument on pages 14 - 16 of her Brief, that inactive voters are not registered voters, is spurious.

The Division of Elections likewise has held that a purge under §98.081(1) does not alter your legal status as a registered voter. In DE 78-20 (App. F) the Division held that a "temporarily withdrawn" elector under §98.081(1) is merely "being placed in an inactive status"; i.e. they do not lose their legal status as an "elector." Moreover, the Division confirmed that a temporarily withdrawn purged elector under 98.081(1) has not been "removed," as has been a person under §98.081(2), §98.201 and §98.301 (DE 78-20). This supports the trial judge's conclusion that temporary withdrawal under §98.081(1) does not have the same effect to alter legal status as does "removal" under the other Election Law provisions.

The Senior Counsel for the Division of Elections also admitted in her deposition that persons on the temporary withdraw list do not lose their legal status as registered voters. She testified that such electors "do not lose [their] registration until three years have passed." (R. 572, L. 2-25; App. D).

D. The Supervisor's Argument That Electors on the Inactive List Lose Their Status as "Registered Voters" and "Electors" is Not Supported by Binding or Persuasive Authority.

The Supervisor's reliance on State ex rel. Kyle v. Brown, 167 So.2d 904 (Fla. 3d DCA 1964), to prove that electors whose names are "temporarily withdrawn" have the same non-registered status as

persons whose names are "removed," is misplaced. Brown does not address the issue of whether a person whose name has been temporarily withdrawn from the registration records under §98.081 has lost his status as a registered voter. Brown involved removal of a name from the registration record under §98.201 because of mental incompetence. Brown mentioned §98.081 only because it is referenced in §98.201 to describe the procedures to follow for non-return of a card. The Supervisor misstated on page 11 of her Initial Brief that §98.081 was the statute applied in Brown.

Brown also is inapplicable here because it concerned the 1963 version of §98.081. The 1963 version did not distinguish between "temporary withdrawal" for failure to return a card in 30 days and "removal" for failure to return a card for three years.[9] The current version of §98.081 makes even more clear that a person whose name is only temporarily removed or withdrawn under §98.081(1) is still registered. He is still referred to as an "elector" and need not reregister. In contrast, someone whose name is "removed" under §98.081(2) is not registered. He is referred to as a "person" and must reregister. The wording of subsection (2) regarding "removal" and "persons" was added in July, 1978 by

---

[9] The 1963 version of §98.081 also restricted reinstatement to times when the registration books are "open." The Legislature has removed that restriction and electors now can be reinstated under §98.081(1) even at the polls on election day. Under the 1963 version of the law, an elector could not vote if he did not get reinstated when the registration books were open. Under the law today, such an elector can vote under those circumstances. The Supervisor did not mention this distinction in her Brief.

Chapter 78-102, Laws of Florida. All authority relied upon by the Supervisor preceding that date is distinguishable because it interprets or applies an outdated version of §98.081.

The Supervisor's reliance on DE 87-16 similarly is misplaced. As the trial judge correctly pointed out, DE 87-16 is premised upon the assumption that the Supervisor cannot verify a signature not on the rolls. The Supervisor admitted, however, that she did not remove the signatures from either her computer or manual records until after the Petition had been turned in to her for verification. The Supervisor in this case could have verified the signatures, but chose not to do so. DE 87-16 also is not persuasive because it fails to even consider whether electors whose names are temporarily withdrawn retain their legal status as "electors." As explained above, DE 78-20 correctly found that electors temporarily withdrawn do retain their legal status as "electors."

Finally, although the Supervisor brought to the attention of the Court many Division of Election Opinions, she omitted from her Brief DE 78-20 - "Purged Voter; Reinstatement," which directly answers the question of whether a purged voter under §98.081(1) has the same non-registered status as persons whose names are "removed" under §98.081(2), §98.201 or §98.301. DE 78-20 states that an elector whose name is "purged" or "temporarily withdrawn" under §98.081(1) is simply "being placed in an inactive status." They do not lose their legal status as an "elector" or "registered voter." It further explains that a "purged voter" under §98.081(1) has not been "removed," as has a person whose name is taken from the

registration record under §98.081(2), §98.201 and §98.301. This completely undermines the Supervisor's argument in her Initial Brief that "temporary withdrawal" under §98.081(1) is equivalent to the "removal" under other Election Law provisions that results in loss of registration and qualification to vote.

III. ELECTORS WHO SIGNED THE PETITION PURSUANT TO §10.07 OF THE CHARTER AND §100.361 FLA. STATS. COMPLIED WITH THE WRITTEN NOTICE REQUIREMENT FOR REINSTATEMENT UNDER §98.081(1)

The requirements for reinstatement under §98.081(1) are so minimal that they were satisfied when the electors, whose names the Supervisor temporarily withdrew, merely signed the Petition and gave their current address and precinct number. (R. 182). That is all the information that the statute requires, (see §98.081(1)), or that the Supervisor requires on the reinstatement notices that she mails out. (R. 329-330; App. A). Moreover, when the electors signed the Petition they stated that they were "registered voters of the City of Tampa," (R. 180-182) thereby further indicating that they met the residency and citizenship requirements of §97.041, Fla. Stats. (1991).

When the Supervisor received the Petitions, she was required by law to reinstate the names of the electors who had signed the Petition whose status had not changed. She admitted that her interpretation of the statutes which led to her refusal to reinstate was "close to " a strict interpretation of the election law statutes. (R. 741. L.13-14). Her failure to reinstate was a breach of her ministerial duty set forth in §98.081(1) Fla. Stats.

The Supervisor's refusal to reinstate the electors who signed the Petition also violated the guidelines of the Florida Division of Elections. As the trial judge pointed out, the Division of Elections:

> follows a similar procedure in using the information provided on the petition to record a change of address of an active registered voter. The Division of Elections Advisory Opinion 91-01 states that the act of signing the petition constitutes notice that the elector has moved to a new address within the county and is therefore eligible to sign the petition in accordance with §97.091(2)(a), Fla. Stat." (See App. A and App. G).

The Division of Elections also made clear in DE 78-20 that the "reinstatement" occurs automatically when the Supervisor receives the written notification of no change in status:

> The elector's name is required to be restored upon the written notification to the supervisor of no change in his status. The statutory language found in that section is significant. It mandates that the supervisor "shall then reinstate the name on the registration books without the elector reregistering." Id. (e.s.). This language indicates a legislative intent that this reinstatement occur then, i.e., at the time of receipt of the necessary written notification.

The Supervisor's argument on pages 17 and 18 of her Initial Brief, that an elector must "notify the Supervisor that his constitutional and statutory qualifications as an elector have not changed," is inconsistent with the Supervisor's own reinstatement form. According to her form, all an elector must do is sign a card that says "Yes, I want to remain a voter." (R. 330; App. A). The electors who signed the Petition effectively stated that when they signed the Petition identifying themselves as "the undersigned registered voters." (R. 179).

IV. THE SUPERVISOR VIOLATED THE CONSTITUTIONAL RIGHTS OF ELECTORS TO VOTE AND PETITION THE GOVERNMENT.

Although §98.081(1) Fla. Stats. may be facially constitutional, it is unconstitutional as applied by the Supervisor. The actions of the Supervisor have disenfranchised Tampa voters, including Clewis, in violation of the United States and Florida Constitutions. The right to vote is a fundamental constitutional right. U.S. Const. Amend I, XIV; Fla. Const. Art. 6, §2., DE 91-01 Equally important is the right to petition the government in order to put a matter of great public importance on the ballot. Id.; Art. 1, §5. "Citizens have the unquestioned right to petition their governments for redress of what they believe are grievances . . . . One means of preserving this right is through the procedures of initiative, referendum and recall." Diaz v. Board of County Com'rs of Dade County, 502 F. Supp. 190, 193 (S.D. Fla. 1980). The right to vote also encompasses the right of voters to place their names on petitions seeking a recall or other action. Pena v. Nelson, 400 F. Supp. 493, 496 (D. Ariz. 1975).[10] The Supervisor conceded at the bottom of page 14 of her Initial Brief that qualified voters have an "inherent 'fundamental' right to sign, or circulate, a petition to place a referendum on the ballot repealing a local ordinance."

---

[10] The opinions in Diaz and Pena make clear that the act of petitioning for a referendum is an exercise of the First Amendment Right to petiton the government for redress of grievances. The argument on pages 31 and 32 of the Supervisor's Brief, that the act of petitioning for a referendum is not a petition for redress of grievances under the First Amendment, clearly is incorrect.

The Supervisor's treatment of electors whose names are on the temporarily withdrawn list as if they had lost their registration violates the statute and the Supervisor's refusal to count the names of registered voters deprived these and all other registered voters in Tampa of their fundamental rights to petition and to vote under the First and Fourteenth Amendments to the U.S. Constitution as well as Art. 6 of the Florida Constitution.

A municipality may not refuse to accept voters' names on a petition unless there is a compelling state interest which outweighs these fundamental rights. Pena v. Nelson, 400 F.Supp. 493, 496 (D. Ariz. 1975). In Pena, the court ruled that it was improper to disqualify voters' names on recall petitions simply because the petitions were circulated by deputy registrars. 400 F.Supp. at 496. There was no compelling reason in that case to distinguish between deputy registrars and non-deputy registrars so long as the voters who signed the petition were actually registered voters. Id.

In this case, there is no compelling reason to presumptively disqualify voters who have not voted in the past two elections when those same voters have verified their status on the Petition. The Supervisor conceded as much in her deposition:

> Q Do you know what interests, if any, the government has in rejecting signatures on petitions of persons who register to vote, but according to your records have not voted for two years and have not returned your card saying that their status has not changed?
>
> A I certainly don't have any idea what the interest of the government is in that. (R. 787, L. 11-18).

At the hearing on the motion for summary judgment, the Supervisor's attorney argued that the Supervisor's purge under §98.081(1) was intended to prevent fraud. The Supervisor made the same argument on pages 28 and 29 of her Initial Brief. Assuming that is a legitimate state interest to be protected, the Court must then determine whether the Supervisor chose a means to protect that interest which "unnecessarily restricts constitutionally protected liberty." Ill. State Bd. of Elec. v. Socialist Workers, 99 S.Ct. 983, 991 (1979); N.A.A.C.P. v. Button, 83 S.Ct. 328, 341 (1963).

The creation of a list of inactive registered voters for bookkeeping purposes does not further the state interest in preventing fraud in the process of petitioning the government. As the trial judge correctly explained, "the tools to prevent fraud" are present for both active and inactive registered voters. (R. 133, L. 17 - R. 136, L. 9). The tools (which are the records containing the electors' signatures and addresses), exist in the computer for both active and inactive voters and in the original registration certificates. The possibility of fraud was equally present for both active and inactive registered voters and the means of preventing fraud was equally available to the Supervisor for both classes of registered voters. The Supervisor's exclusion of electors on the inactive list "unnecessarily" restricted the constitutional right of those electors to petition the government.

Fundamental rights such as the right to petition and the right to vote are protected by the equal protection clause of the Fourteenth Amendment to the United States Constitution. Pena, 440

F.Supp. at 496. Our nation's highest court has held that a government cannot casually deprive a fundamental right to a class of voters because of some remote administrative benefit. Carrington v. Rash, 85 S.Ct. 775, 780 (1965). A government that acts in such a manner violates the Constitutional guarantee of equal protection. Id.

Section 98.081's express purpose is to provide a means for record keeping. §98.081(1). In other words, §98.081 merely provides the Supervisor with an administrative benefit. The Legislature clearly intended that §98.081 should not act as an abridgement of the right to petition by providing that the procedures set forth therein are "not a reregistration." §98.081(1). This is highlighted by the fact that a temporarily withdrawn elector can be restored to the registration books anytime within three years by signing any writing indicating that he wants to remain an elector. DE 78-20. Electors on the inactive list who signed the Petition satisfied the minimal requirements for restoration.

Yet the Supervisor misused §98.081 by classifying registered electors who were on the inactive list differently from registered electors who were on the active list. Under the Supervisor's classification, electors on the inactive list could not petition while those on the active list could.

The Supervisor's exclusion of one class of voters was unconstitutional because electors on both lists were registered voters. The Supervisor did not further any compelling state

interest by excluding one class and not the other. The only purpose served by the Supervisor's classification was to deprive electors on the inactive list of their fundamental right to petition.

V. THE SUPERVISOR DID NOT HAVE "DISCRETION" TO EXCLUDE THE SIGNATURES OF "ELECTORS OF THE CITY."

The Supervisor has admitted on page one of her Initial Brief that she is, ". . . required by law to follow detailed statutes that precisely define . . . [her] duties." Sections 100.361(1)(d) and (h) Fla. Stats. (1991) provide that the Supervisor "shall determine the number of valid signatures" on the Petition. In this case, that meant determining whether the signatures on the Petition were those of "electors of the City." Section 10.07, Tampa City Charter. The Legislature did not give the Supervisor discretion to interpret the meaning of the term "electors." Instead, the Legislature defined that term in the statutes. (See pages 15-16, above.) The Supervisor does not have a quasi-judicial power to determine the legal meaning of the statutes and charter. Solomon v. Sanitarians Registration Board, 155 So.2d 353, 356 (Fla. 1963).

The court in Solomon held that a Government Board did not have "discretion or quasi-judicial power" to interpret the meaning of a statute. Id. The Legislature defined the qualifications of persons who could register as a sanitarian without examination. The Legislation provided that the Board "shall register" those who met the Legislation's requirements. The Board, therefore, had a ministerial duty to register those who met the Act's requirements and mandamus was proper to compel performance of that duty. Id.

The Supervisor in the present case, likewise, had a ministerial duty to count signatures of persons who are "electors of the City," as that term is defined by the Charter and related laws and statutes. She does not have discretion to judicially interpret that term and usurp the role of the courts. Id.[11]

VI. THE SUPERVISOR DID NOT TEMPORARILY WITHDRAW THE NAMES OF ANY ELECTORS UNTIL AFTER SHE RECEIVED THE PETITION FOR VERIFICATION. TEMPORARY WITHDRAWAL UNDER §98.081(1), THEREFORE, IS NOT RELEVANT TO DETERMINE WHETHER THE SUPERVISOR SHOULD HAVE DISQUALIFIED CERTAIN ELECTORS FROM PETITIONING THE GOVERNMENT.

The issue of whether electors on the temporarily withdrawn list may petition the government should be a non-issue because the Supervisor did not temporarily withdraw any names until after she received the Petition.

The Supervisor kept two sets of registration books during the time of the petition drive and the verification process. Large filing cabinets stored one set of registration books. (R. 748, L. 1-2). A newly instituted computer system stored another set. R. 748, L. 19-20). The registration books contain the registration forms executed by the electors of the City of Tampa. §98.101, Fla. Stat. The registration books also comprise the permanent registration system that the Supervisor is required to maintain. §98.041, Fla. Stat.

The computer system stores all the information contained on the registration forms. (R. 748, L. 11-15). Through use of a

---

[11] The Supervisor did not raise the issue of "ministerial versus discretionary duty" in her appeal to the Second District Court of Appeals. (App. E)

scanning device, the computer is also able to store an elector's signature. Id. To verify a signature, the Supervisor compares it with the signature stored in the computer and displayed on the computer screen. (R. 751, L. 17-21).

On June 21, 1991, the Supervisor began the process of temporarily withdrawing those electors from the registration books who had not responded to the §98.081 notice that was mailed on May 16, 1991. (R. 776, L. 1-7). As part of the process, the Supervisor created two separate files of electors in the computer in her permanent registration system. (R. 757, L. 6-13). (The record is not clear whether she had one database of electors and coded some as "active" and others as "inactive.") One file contained a list of active registered electors. The other file contained a list of electors who were to be temporarily withdrawn because the forms updating their registration records were not received within the 30 day statutorily prescribed period. Id. In the Supervisor's deposition, this list was referred to as either the "purge file" or the "inactive list." (R. 757, L. 11-15).

Significantly for the Respondents, the Supervisor has indicated that the electors on the inactive list were not deleted from the computer until after the Petition was received by her office on August 12, 1991. (R. 756, L. 7-12). (The Supervisor incorrectly stated on page 17 of her Initial Brief that they were purged on June 21.) The timing of the Supervisor's deletion means these electors were still on the registration books when they signed the Petition on or after June 21, 1991. Their signatures on

the Petition were subject to verification simply by calling the scanned signatures up from the inactive list.

In addition, the Supervisor has testified "absolutely" that the registration forms of the electors slated for temporary withdrawal were not removed from the registration books stored in the filing cabinets until after she completed the verification process. (R. 754, L. 22 - R. 755, L. 2). Consequently, the Supervisor was able to verify their signatures by checking them against the forms that remained in her office.

In her Initial Brief, the Supervisor argues that the electors who did not timely return the forms sent with the §98.081 notice were not "qualified electors." According to the Supervisor, they were not qualified electors because their names had been removed from the registration books on June 21, 1991. Id. The Supervisor's argument, however, is contrary to the facts. As shown above, the Supervisor apparently did not remove the electors from the registration books stored in the computer or those stored in the filing cabinets until sometime after the Petition drive was completed. According to the Supervisor's own testimony, temporary withdrawal does not occur until she deletes the names from the computer (R. 752, L. 1-11). Therefore, even assuming arguendo that temporarily withdrawn persons are not "electors," the voters excluded by the Supervisor in this case were "qualified electors" because their names remained on the registration books during both the Petition drive and the verification process.

CONCLUSION

This Court should affirm the decision of the Second District Court of Appeals (See App. H). The Electors whom the Supervisor placed on the inactive list retained their legal status as "registered voters" and "electors" and were eligible to sign the Petition. Even if they lost that status, they regained it by signing the Petition as a registered voter and supplying all the information necessary for reinstatement. In any event, an arbitrarily timed purge (which did not really occur until after the Supervisor verified the Petition) cannot constitutionally operate to deprive registered voters their First Amendment right to petition the government.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Answer Brief has been furnished by regular U.S. Mail this 9 day of February, 1993, to John Dingfelder, Esq., Hillsborough County Attorney's Office, 725 E. Kennedy Blvd., Tampa, FL 33602.

G. DONOVAN CONWELL, JR., ESQ.
FOWLER, WHITE, GILLEN, BOGGS,
VILLAREAL & BANKER, P.A.
P.O. Box 1438
Tampa, FL 33601
(813) 228-7411