Q45
w/app

FILED
SID J. WHITE 9/29
SEP 8 1992
CLERK, SUPREME COURT
By _____ Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NO. 80,189

ROBIN C. KRIVANEK, as Hillsborough County Supervisor of Elections

Petitioner

vs.

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

Respondent.

ON REVIEW FROM THE SECOND DISTRICT COURT OF APPEAL LAKELAND, FLORIDA

BRIEF ON JURISDICTION OF PETITIONER, SUPERVISOR AND APPENDIX

John J. Dingfelder
Assistant County Attorney
Post Office Box 1110
Tampa, Florida 33601
(813) 272-5670

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PRELIMINARY STATEMENT

In this brief, Petitioner Robin Krivanek, Hillsborough County Supervisor of Elections, will be referred to as Petitioner or Supervisor. Respondents, Take Back Tampa Political Committee, Inc. and Richard M. Clewis, III, will be referred to as Take Back Tampa or Respondents. Tampa City Charter Section 10.07 will be referred to as the Charter or Section 10.07. The District Court's decision is included in the Appendix to this brief at Tab 1 and is referred to as "Op._____." All emphasis in this brief is supplied unless otherwise noted.

SUMMARY OF THE ARGUMENT

Petitioner, Hillsborough Supervisor of Elections, urges that this Court invoke its discretionary jurisdiction available under Article V, Section 3(b)(3) of the Florida Constitution on the basis that the decision below expressly affects a class of constitutional officers, namely all Supervisors of Elections. Prior to this decision, this Supervisor conducted herself like all Supervisors in the state and abided by a 1987 advisory opinion of the Secretary of State, Division of Elections. Specifically, Opinion 87-16 advised all Supervisors that they should not verify the signatures of petitioners whose names have been "temporarily removed" (purged) from their registration books pursuant to Section 98.081, Florida Statutes.

When the Supervisor attempted to verify the signatures on Take Back Tampa's petition in the above-referenced manner, the courts below mandated that the Supervisor ignore the Division's opinion and verify the signatures of purged electors on the subject petition. Petitioner has filed a Notice of Appeal and now urges that jurisdiction vest with this Court as the opinion below not only impacts this Supervisor, but moreover it expressly, directly and exclusively affects all Supervisors of Elections in Florida.

STATEMENT OF THE CASE AND FACTS

This case arises out of an attempt by a voter and a political organization, Take Back Tampa, to place a referendum repealing a local ordinance on the ballot in the next City election. The relevant local ordinance governing the procedures for placing such referendums, Section 10.07 of the City of Tampa Charter, provides as follows:

> The qualified voters of the city shall have power to propose ordinances to the council or to require reconsideration of any adopted ordinance by petition signed by the electors of the city equal in number to not less than 10 percent of the electors of the city qualified to vote at the last general municipal election; the form and content of such petition shall be as provided for under the provisions relating to recall of officers as herein provided. If the council fails to adopt an ordinance so proposed or to appeal an ordinance so reconsidered, the qualified voters shall approve or reject such ordinance at a city election provided that such powers shall not extend to the budget or capital improvement program or any emergency ordinance, or ordinance relating to appropriation of money, levy of taxes or salaries of city officers or employees (emphasis supplied).

On August 15, 1991, Take Back Tampa filed a petition with the Supervisor of Elections undertaken pursuant to Section 10.07. In accordance with the Charter and Section 100.361, Florida Statutes, the Supervisor evaluated the signatures on the petition in order to determine if the petition contained valid signatures of qualified voters "equal in number to not less than 10% of the electors of the city qualified to vote at the last general municipal election." The Supervisor determined that 123,093 electors of the City were "qualified to vote" in the last general municipal election and

calculated that ten (10) percent, or 12,310 signatures of qualified voters would satisfy the requirement of the Charter.[1]

In accordance with her standard procedures, and upon the advice of the Secretary of State-Division of Elections, the Supervisor searched her computer files to ensure that each signing party was included on her list of active registered voters and had not been removed in the purge conducted pursuant to Section 98.081, Florida Statutes.[2] If present on the official list after the purge, the Supervisor verified each signature on the Take Back Tampa petition and confirmed that the address included with the signature was located within the City limits. On September 3, 1991, the Supervisor informed the City that Take Back Tampa's petition contained only 12,130 qualified signatures, 180 signatures short of the 12,310 that she had determined were required by the Charter.

On September 27, 1991, Respondents filed a Petition for Writ of Mandamus in the Circuit Court in and for Hillsborough County seeking to require the Supervisor to count the signatures of 462

---

[1]The determination of 123,093 excluded City electors who were on the inactive voter list at the time of the last general municipal election.

[2]On May 16, 1991, the Supervisor had initiated her regular biennial process of removing the names of inactive voters from the official voter registration books pursuant to Section 98.081, Florida Statutes. On that date she mailed a post card to each elector who had not voted in any election, or made a written request updating his records, within the preceding two years in order to determine if the status of the elector had changed. On the post card the Supervisor requested that the recipient update her records, sign and return the post card within 30 days. In accordance with Section 98.081(1), Florida Statutes, after the 30 day period, the Supervisor purged the names of those electors who failed to return said post cards from the official voter registration books. The purge began on June 21, 1991.

persons who signed the petition but whose signatures were not counted by the Supervisor as they had been removed from the registration books during the June 21-22 purge. The Court entered an alternative writ in mandamus on September 30, 1991, commanding the City Clerk and the Supervisor to show cause why a peremptory writ should not issue. The Court entered its order on petition for writ on November 22, 1991 and issued a peremptory writ on November 25, 1991 requiring the Supervisor to count the signatures even if they had been purged pursuant to Section 90.081, Florida Statutes.

The Supervisor appealed this decision to the Second District Court of Appeal. On July 1, 1992, that court affirmed the issuance of the writ requiring the Supervisor to count the signatures ("if otherwise valid").

Petitioner timely filed its Notice of Appeal requesting that this Court invoke its discretionary jurisdiction pursuant to Article V, Section 3(b)(3) of the Florida Constitution and Rule 9.030(a)(2)(A)(iii) Fla. R. App. P. on the basis that the decision of the District Court of Appeal expressly affects a class of constitutional officers, namely, all Supervisors of Elections in the state.

ARGUMENT

On behalf of all the Supervisors of Elections, Supervisor Krivanek requests that this Court exercise its discretionary jurisdiction under Article V, Section 3(b)(3) of the Florida Constitution and pursuant to Rule 9.030(a)(2)(A)(iii), Florida Rules of Appellate Procedure, on the basis that the decision of the Second District Court of Appeal "expressly affects a class of constitutional officers."

Contrary to the plethora of cases analyzing "conflict jurisdiction," this Court has had limited opportunity to opine on this provision. In State v. Robinson, 132 So.2d 156 (Fla. 1961), this Court granted a petition to review the appellate court's decision by certiorari on the basis that the subject decision affected the "jurisdiction and duties of all justices of the peace of this state." Robinson was followed by Florida State Board of Health v. Lewis, 149 So.2d 41 (Fla. 1963), wherein this Court spoke to this constitutional provision as follows:

> The obvious purpose of the subject constitutional provision was to authorize this court to review decisions which, in the ultimate, would affect all constitutional or state officers exercising the same powers, even though only one of such officers might be involved in the particular litigation.

Likewise, in Richardson v. State, 246 So.2d 771 (Fla. 1971), this Court concluded that it had jurisdiction as the decision below ultimately affected all prosecuting attorneys and trial judges insofar as it interpreted their duties.

Although in Richardson this Court recognized its jurisdiction on the basis that the lower court's opinion affected two classes of constitutional or state officers, viz, prosecuting officers and trial court judges in the exercise of their respective powers and duties, this Court receded slightly from that opinion shortly thereafter when it concluded that it may have opened its jurisdictional doors a little too wide. Spradely v. State, 293 So.2d 697 (Fla. 1974).

In receding from Richardson this Court provided as follows:

> This jurisdictional holding of *Richardson*, however, if literally followed, would mean that this Court had jurisdiction to review nearly all cases, both civil and criminal, because nearly all decisions which review the actions or rulings of trial judges impose upon other trial judges a requirement to follow the law as stated therein similar situations. Likewise, any decision concerning the propriety of the actions of a prosecuting attorney imposes upon all prosecuting attorneys the duty to henceforth follow the law as therein decided. Spradely, 293 So.2d at 700.

However, even in the course of receding from Richardson,[3] this Court still recognized that certain cases satisfy the requirements of this constitutional provision provided the following guidance:

---

[3]The facts of this case are clearly distinguishable from Spradely and Richardson as those cases involved renegade prosecutors who violated clear rules of criminal procedure adopted by this Court. In contrast, the Supervisor here followed the only express guidance available (Advisory Opinion 87-16) and has suffered ever since. In receding from Richardson the court in Spradely sent the message that it would not review every ruling by a trial court on the effects of non-compliance with established rules by prosecutors. That decision, however, merely limits but does not eviscerate this important constitutional provision. Article V, Section 3(b)(3) remains applicable to review of decisions which, as here, directly and exclusively affect the duties of a particular class of constitutional or state officers. Spradley, 293 So.2d at 701.

> A decision which "affects a class of constitutional or state officers" must be one which does more than simply modify or construe or add to the case law which comprises much of the substantive and procedural law of this state. Such cases naturally affect all classes of constitutional or state officers, in that the members of these classes are bound by the law the same as any other citizen. To vest this Court with certiorari jurisdiction, a decision must *directly* and, in some way, *exclusively* affect the duties, powers, validity, formation, termination or regulation of a particular class of constitutional or state officers. 293 So.2d at 701.

The case at bar is precisely the type of case that this Court was speaking to in Spradely as the decision below uniquely and exclusively impacts on the duties and powers of the entire class of Supervisors. The decision at issue here expressly[4] affects all sixty-seven (67) of Florida's Supervisors of Elections. In the opinion below, Judge Danahy stated that the single issue on appeal was "whether those petition signers whose names had been temporarily withdrawn from the Supervisor's permanent registration books were 'qualified electors' for the purpose of signing the petition" (Op. 2). Both courts below recognized that the Supervisor was not acting unilaterally in rejecting the petitions at issue but was instead relying upon the Secretary of State, Division of Elections Advisory Opinion 87-16 which provides in pertinent part as follows:

> An elector whose name has been temporarily removed from the registration books pursuant to Section 98.081(1), Florida Statutes, is not on the registration books when a supervisor is verifying the signatures on a petition, the

---

[4]School Board of Pinellas County v. District Court of Appeal, 467 So.2d 985 (Fla. 1985)("expressly" in this context means within the written district court opinion); c.f. Jenkins v. State, 385 So.2d 1356 (Fla. 1980).

supervisor may not verify the elector's signature for a petition.

The issue of petition verification is one regularly faced by all Supervisors in the state as they each perform their duties. The decision below not only directs Supervisor Krivanek in the "proper" way to verify petitions, but effectively provides such instruction to all the Supervisors of the state. All sixty-seven (67) Supervisors evaluate who is a qualified elector on numerous petitions for purposes of placing candidates and referenda on ballots on a regular basis and for twenty (20) years have relied upon and acted in accordance with Attorney General and Division of Election Opinions in verifying signatures. The decision below has created significant confusion among these constitutional officers as there now exists uncertainty as to which signatures should be verified as qualified electors.[5]

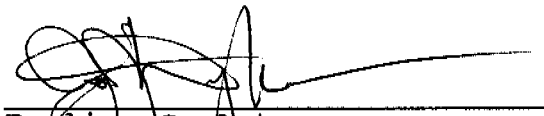
Specifically, the fourteen (14) Supervisors of counties falling within the jurisdiction of the Second District Court of Appeal are clearly bound by the decision below. The remaining fifty-three (53) Supervisors are now faced with the conundrum of whether they should carry out their duties as they have been in conformance with Attorney General Opinions, Advisory Opinion 87-16 and State ex rel. Kyle v. Brown, 167 So.2d 904 (Fla. 3d DCA 1964), or in accordance with the opinion below. At the end of the day the minority of Supervisors (14) must count as qualified electors those names purged pursuant to § 98.081 whereas fifty-three (53)

---

[5]The undersigned is personally aware of inquiries from at least five Supervisors who have inquired into the status of this case in order to evaluate its impact on their own petition verification procedure.

Supervisors will perform their duties to the contrary.

The state constitution provides this Court with the discretion to allow jurisdiction to vest such that it can grant certiorari and review the opinion below as one that directly and exclusively affects the duties and powers of this class of constitutional officers. Regardless of the ultimate outcome, these officers desperately need a final resolution to this critical question by this Court in order to continue to fairly and consistently fulfill their constitutional and statutory obligations. This Court should come to the aid of these constitutional officers and finally requests that this court grant certiorari on the grounds stated above.



Emeline C. Acton
County Attorney
Fla. Bar No. 309559

John J. Dingfelder
Assistant County Attorney
Fla. Bar No. 829129
Post Office Box 1110
Tampa, Florida 33601
(813) 272-5670
Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to **G. Donovan Conwell, Jr., Esquire**, Post Office Box 1438, Tampa, Florida 33601, this 4th day of September, 1992.

John J. Dingfelder
Assistant County Attorney

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

ROBIN C. KRIVANEK, Supervisor of Elections, Hillsborough County, Appellant, v. THE TAKE BACK TAMPA POLITICAL COMMITTEE and RICHARD M. CLEWIS, III, Appellees.	Case No. 91-04045

Opinion filed July 1, 1992.

Appeal from the Circuit Court for Hillsborough County; Guy W. Spicola, Judge.

Lynn Cash, Assistant County Attorney, Tampa, and Yeteva Kemp Hightower, Assistant General Counsel, Tallahassee, for Appellant.

G. Donovan Conwell, Jr., of Fowler, White, Gillen, Boggs, Villareal & Banker, P.A., Tampa, for Appellees.

DANAHY, Judge.

This is an appeal from an order granting the petition for Writ of Mandamus and the Peremptory Writ which ordered the appellant, Robin Krivanek, the Hillsborough County Supervisor

of Elections, [Supervisor] to count the signatures of certain electors on a city referendum petition which was submitted to her for certification. The single issue presented on appeal is whether those petition signers whose names had been temporarily withdrawn from the Supervisor's permanent registration books were "qualified electors" for the purpose of signing the petition. We agree with the circuit court that they were and, accordingly, affirm the issuance of the writ requiring the Supervisor to count their signatures if otherwise valid.[1]

The pertinent facts of this case are summarized as follows. The appellees, The Take Back Tampa Political Committee and its chairman, Richard M. Clewis, III, [TBT] initiated a petition drive which sought to put to a city-wide vote the question of repealing city ordinance 91-88. The Tampa city charter, section 10.07, authorizes such an election if a referendum petition is certified as signed by a requisite number of qualified electors, i.e., registered voters who live in the city. During the petition drive, the Supervisor withdrew from her permanent registration books the names of registered voters who had not voted in the last two years and who had not returned a response card to her indicating they wished to remain voters. Section 98.081(1) of the Election Code required her to accomplish this procedure at some time during each odd-numbered year. At this point, the names are "temporarily withdrawn" but not yet "removed" under the

---

[1] While the circuit court discusses constitutional aspects in its order, the Supervisor raises only issues involving statutory construction, and we decide the case on those grounds alone.

circumstances required by section 98.081(2). When the petition was submitted to the Supervisor, she refused to count the signatures of those registered voters she had temporarily withdrawn. Without those signatures, the petition did not have the requisite number for certification by the Supervisor in order to place the question before the entire city electorate.[2] TBT sought and was granted a writ of mandamus to have the Supervisor count the signatures she had not counted previously if they were otherwise valid. The Supervisor complied with the writ of mandamus which resulted in a determination that the petition contained a sufficient number of valid signatures to place the issue on the ballot. She also appealed the issuance of the writ arguing that the circuit court's construction of the statute--which compelled her to count as registered voters persons not on her permanent registration books--was contrary to legislative intent.

In deciding this case, we are aided by the comprehensive analysis in the final order of the circuit court which includes, in pertinent part, the following:

> ISSUE I: Eligibility of Electors temporarily withdrawn from the voter registration list to petition the city
>
> The first issue before the court is whether the Supervisor may be commanded to accept signatures of electors who were temporarily removed, or in the process of being temporarily removed, from the active voter registration list at the time the Supervisor was attempting to verify the signatures on the petition. The relevant facts presented to the court are that on

---

[2] There were other issues before the circuit court concerning technical defects in the petition which caused certain signatures to go uncounted. Those issues are not before this court.

May 16, 1991, pursuant to section 98.081(1), Florida Statutes, the Supervisor of Elections for Hillsborough County mailed forms to all registered voters who had not voted in the last two years. On June 21, while TBT was circulating the referendum petition, the Supervisor compiled a list of over 25,000 electors to be withdrawn from the active voter registration list. Of the signatures on the petition at issue, the Supervisor rejected 462 because the electors who signed had been temporarily withdrawn pursuant to Section 98.081(1). Four hundred and ten of these electors were withdrawn during the pendency of the petition; 52 had been removed prior to the circulation of the petition. The Supervisor did accept signatures of persons being removed from the list if they signed the petition before June 21, the date the Supervisor began removing names from the list.

The procedure for periodically updating the registration rolls is set out in Section 98.081, Florida Statutes. The pertinent provisions of this section read as follows:

> (1) During each odd-numbered year, the supervisor shall mail, to each elector who, during the past two years, did not vote in any election in the county or did not make a written request that his registration records be updated, a form to be filled in, signed and returned by mail within 30 days after the notice is postmarked. The form returned shall advise the supervisor whether the elector's status has changed from that of the registration record. Electors failing to return the forms within this period shall have their names withdrawn temporarily from registration books . . . The list of electors temporarily withdrawn shall be posted at the courthouse. When the list is completed, the supervisor shall provide a copy thereof, upon request, to the chairman of the county executive committee of any political party. . . 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. . . This is not a reregistration but a method to be used for keeping the permanent registration list up to date.
>
> (2) The name of any 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 shall be required to reregister to have his name restored to the registration books.

The supervisor has a duty under Section 100.361(d), Florida Statutes, to determine whether the "petition contains the required valid signatures." The Supervisor maintains that she did not breach this duty when she rejected the 462 signatures because persons temporarily withdrawn from the rolls are no longer qualified voters. She argues that to be a qualified elector, Article VI, Section 2, of the Florida Constitution, requires that one must be registered as provided by law. In the case of a person temporarily removed from the rolls, the Supervisor contends that that person is not actively registered until he completes the affirmative act of notifying the Supervisor of his status. Furthermore, maintains the Supervisor, the burden should be on the petitioners to determine whether persons signing are actively registered, especially since petitioners knew that a purging process was underway when they began circulating the petition. Finally, the Supervisor states that the procedure she followed is the same as that followed in every other county in this state.

TBT argues that the Supervisor's strict construction of the statutory requirements violates petitioners' fundamental rights to vote and petition. TBT maintains that registered voters do not lose their legal status as electors if their names are temporarily removed from the registration list. They contend that the legislative intent on this point is clear. TBT points out that Section 98.081(1), Florida Statutes, still refers to persons withdrawn as "electors." Only if an elector fails to notify the supervisor of his status after three years of being on the inactive list does the elector lose his legal status as an elector and become referred to as a "person" under the statute. See § 98.081(2), Fla. Stat. In addition, TBT argues that Section 98.081(1) specifically states that it is not requiring reregistration, but is merely setting up a method for bookkeeping. Therefore, TBT argues that the Supervisor breached her duty pursuant to Section 100.361(d) and (h), Florida Statutes, to count the number of valid signatures on the petition.

A. ELECTORS TEMPORARILY WITHDRAWN FROM THE VOTER REGISTRATION ROLLS PURSUANT TO § 98.081(1), FLA. STAT. RETAIN THE LEGAL STATUS OF "ELECTORS"

The exercise of the right to petition is a form of democratic expression at its purest. This fundamental right is recognized in the First Amendment to the

United States Constitution which states that Congress shall make no law abridging the freedom to petition the Government for a redress of grievances. Florida also recognizes the right of its people to petition the government. Art. I § 5, Fla. Const. Locally, Section 10.07 of the Tampa City Charter gives the qualified voters of the city the power to require reconsideration by petition of any adopted ordinance. Also, as stated in Advisory Opinion 91-01, Florida Division of Elections, the right to petition is an inherent and absolute right in contrast to the right to vote which derives from constitutional or statutory grant.

Even an absolute right, however, may be subject to reasonable regulation, and neither party to this case disputes that Section 98.081, Florida Statutes, is facially constitutional. It is well established that the legislature may properly require electors to register to vote and to update registration records periodically, so long as the burden imposed is minimal and incidental. Smith v. Smathers, 372 So. 2d 427 (Fla. 1979); Williams v. Osser, 350 F. Supp. 646 (E.D. Penn. 1972); Duprey v. Anderson, 518 P.2d 807 (Colo. 1974); cf. Michigan State UAW Community Action Program Council v. Austin, 198 N.W.2d 385 (Mich. 1972). However, laws limiting the exercise of voting rights should be liberally construed in favor of giving voters a voice. State ex rel. Whitley v. Rinehart, 192 So. 819 (Fla. 1939); Boardman v. Esteva, 323 So. 2d 259 (Fla. 1975); State v. Rinehart, 192 So. 819, 823 (Fla. 1939); In re Nomination Petition of Justin Johnson, 502 A.2d 142 (Pa. 1985); 1991 Op. Div. of Elections Fla. 91-01 (Feb. 4, 1991). Therefore this court will uphold only those restrictions on the right to petition which are expressly required by law.

Eligibility to petition is prescribed by ordinance and statute. Section 10.07 of the Tampa City Charter provides that "qualified voters" may petition and that the form and content of the petition shall be as provided for under the provision relating to recall of officers (§ 100.361(1), Fla. Stat.). Section 100.361, Florida Statutes, provides that "electors of a municipality" are eligible to sign the petition. "Elector" is defined as being synonymous with the word "voter" or "qualified elector or voter." § 97.021, Fla. Stat.

Article 1, Section 5 of 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.

The statutes define a qualified elector 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. Stat.

None of these provisions specifically addresses the legal effect of being temporarily withdrawn from the registration rolls pursuant to Section 98.081(1). It is clear that the legislature intended to require electors to update their registration records, but it does not necessarily follow that the Supervisor is correct in assuming that withdrawal from active registration renders electors ineligible to petition.

Contrary to the Supervisor's assertion, being placed on the withdrawal list is not the legal equivalent of never having registered or having been permanently removed from the rolls. Inactivated electors have already registered to vote, and, thus, it has already been determined that these people are legally qualified to be electors. In addition, Section 98.081(1), Florida Statutes, states that the withdrawal procedure is not a reregistration, but a method for recordkeeping. Thus, those on the withdrawal list are not required to reregister unlike those who are permanently removed. See § 98.081(2). Rather, the statute places a minimal burden on those temporarily removed to notify the supervisor of their status.

Another distinction is that many of those whose names the Supervisor rejected were clearly intended by the city government to be included in the petition process. Section 10.07 of the Tampa City Charter states that a petition must be signed by electors of the city equal in number to not less than 10 percent of the electors of the city qualified to vote at the last general municipal election. Four hundred and ten of the names rejected had been on the active rolls at the last preceding election. Thus these electors, unlike unregistered persons, were counted in determining the number of signatures to be obtained on the petition. The legislature specifically included these electors in the petition process. Therefore, these electors should not have their right to petition disenfranchised during an open registration period. See Stillman v. Marston, 484 P.2d 628 (Ariz. 1971).

Furthermore, unlike those who are not registered to vote (see § 98.051, Fla. Stat.), those on the inactive list may vote even if they have not been

reactivated before the closing of the registration books, provided that they sign an affidavit at the polls verifying that their status has not changed. In addition, as petitioner argued, the legislature continued to refer to persons on the withdrawal list as "electors," thereby indicating that their legal status had not changed. See § 98.081(1).

Therefore, the Supervisor has overlooked important distinctions between those who are not registered to vote and those whose names have been temporarily withdrawn from the active rolls. She argues, however, that she is compelled by the statute to purge the rolls every two years of those who do not vote and that this purge affects the status of electors for all purposes. This interpretation is too strict. In keeping with a liberal construction standard, the general rule is that statutes providing for the revision of the registration books at stated times to maintain accurate records will not affect an elector's eligibility to exercise of other voting rights unless such an intent appears in the statute. See 25 Am. Jur. 2d § 110; Stillman v. Marston, 484 P.2d 628 (Ariz. 1971). Nothing in the Florida statute regulates electors on the inactive list to a status equal to that of an unregistered person. On the contrary, for the above-stated reasons, it is obvious that those on the withdrawal list remain electors of the city. Therefore, it appears that the Supervisor has not complied with her duty to count the valid signatures of the electors of the city.

The Supervisor's application of the statute is also inconsistent; she places less restrictions on the right to vote than on the right to petition. At any point during the three years that a person may be temporarily withdrawn from the registration rolls, that person may vote. He may simultaneously update his status and exercise his right to vote by signing an affidavit at the polls. In contrast, the Supervisor has read Section 98.081 to preclude a person's right to petition unless that person has updated his status prior to signing the petition. Placing more restrictions on the right to petition contravenes the directive from the Division of Elections that "provisions relating to the right to petition the government should also be construed liberally to preserve an individual's absolute right to petition their government." See Florida Division of Elections, Opinion 91-01.

In rejecting the signatures of those electors placed on the temporary withdrawal list, the Supervisor relied primarily on Advisory Opinion 87-16 from the Division of Elections, State of Florida, which states the following:

> An elector whose name has been temporarily removed from the registration books pursuant to Section 98.081(1), Florida Statutes, is not on the registration books. If the elector's name is not on the registration books when a supervisor is verifying the signatures on a petition, the supervisor may not verify the elector's signature for a petition.

This opinion is not persuasive. Again, it equates those on the temporary withdrawal list with those whose names have been permanently removed or who never registered. As stated previously, such a construction is not proper. Also, the opinion states that the reason for not accepting signatures from temporarily withdrawn electors is that it is not possible to verify a signature not on the rolls. However, nothing precludes the supervisor from referring to the signature cards on record to verify the signatures. The supervisor is required by statute to maintain these records because she must reactivate an elector when the elector makes known to the supervisor that his status has not changed. § 98.081(1), Fla. Stat. In addition, the Supervisor testified at her deposition that these records had not been removed from her computer files at the time the signatures were being verified at her office. ([S]ee pg. 21 of the deposition of Robin Krivanek[.)] Therefore, the Supervisor has the records available to verify the signatures.

The Supervisor's [sic] makes two final arguments in opposition to accepting withdrawn names. First, she maintains that if she were required to accept signatures of withdrawn electors, it is conceivable that she would be compelled to accept a petition signed only by persons who were withdrawn. Second, she argues that inactive electors should not be permitted to sign because electors who were inactive prior to the last municipal election were not included in the count of signatures required to petition the city pursuant to § 10.07 of the Tampa City Charter. She argues that if they are included in the right to petition, they should likewise be included in the count of signatures required, thereby increasing the number of signatures required considerably.

The court can find no merit in the first argument. The only basis the court can conceive for excluding those who [are] on the temporary withdrawal list and who are otherwise qualified to vote might be to insure that when the issue is before the voters on referendum, someone will vote on it. However, there is no requirement that a person signing a petition must vote on the issue if it is put before the voters. In addition,

those signing the petition are actively participating in the democratic process, and the court can find no reason to distinguish the act of petitioning from the act of voting, for these purposes.

Similarly, the legislature has not restricted the right to petition to those included in the count of the number of signatures required. Conceivably, any one [sic] who registered to vote after the last election could sign the petition. The court cannot deny qualified electors who sign a petition their right to petition simply because the Supervisor did not count them in determining the number of signatures the petitio[n] required. The court notes that the Supervisor may be correct in asserting that persons on the inactive list at the last election should be included in the count because they are "qualified voters;" [sic] however, the method of determining the number of signatures required is not before the court.

B. ELECTORS WHO SIGN A PETITION PURSUANT TO § 10.07 OF THE TAMPA CITY CHARTER AND § 100.361, FLA. STAT. HAVE COMPLIED WITH THE WRITTEN NOTICE REQUIREMENT OF § 98.081(1), FLA. STAT.

Another compelling argument for accepting the signatures of those electors on the inactive list is the fact that in signing the petition, the elector has in effect notified the supervisor that his status has not changed. The Supervisor argued that electors on the inactive list were distinguishable from active voters in that they were required to perform an affirmative act before being restored to active status--the elector must make known to the supervisor, in writing, that his status has not changed. The Supervisor assumed that all those whose names appeared on her list had failed to perform this act. However, she overlooked the fact that the signing of the petition was such an act. The petition contained, in writing, the signature, current address, and precinct number of the elector--the same information requested on the form sent out to voters pursuant to § 98.081(1), Fla. Stat. Under a liberal construction of § 98.081(1), the supervisor should reactivate an elector who provides the necessary information on the petition, especially since the statute's purpose in maintaining accurate records could be achieved by accepting the information provided.

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. The Supervisor argues that this procedure should not be followed in the case of electors on the temporary withdrawal list because their status is different from that of an active voter. Again, this strict interpretation is not statutorily mandated and contravenes a liberal construction of the applicable law.

C. ACTUAL TIMING OF SUPERVISOR'S PURGE AND NOTICE OF THE PURGE PROCESS DOES NOT AFFECT ELECTORS' ELIGIBILITY TO PETITION

One final point raised by both parties relates to the timing of the purge and when the purge should be given legal effect. The Supervisor maintains that June 21, 1991, is the operative date because the 30-day grace period had expired and she had identified the names to be placed on the purge list. TBT argues that the operative date should be a date subsequent to her review of the signatures since the actual removal of the names was not complete until sometime in October. The timing of the purge is not an issue, however, since this court has found that the signing of the petition constitutes sufficient notice under § 98.081(1).

Similarly, whether or not TBT had notice of the purge process before it began circulating the petition is not relevant. It appears that the Supervisor knew that TBT would be circulating petitions during the time in which she would be purging the rolls and TBT knew that the purge process was underway. Since the electors were qualified to sign and the act of signing provided the notice required for reactivation of their status, neither party's knowledge of the other party's intentions has any effect on the outcome of this decision.

We agree with the circuit court that the legislature has not expressly revealed what legal status was intended during the interim period after the elector has been placed on the "temporarily withdrawn" list pursuant to section 98.081(1) but before being "removed" from the registration books pursuant to section 98.081(2). The legislature has, however, clearly expressed its intention that a qualified elector remains

"qualified" for three years before the qualification is definitively lost because it is only after that three-year period has passed that the person must register anew to once again become a qualified elector under subsection (2) of the statute. The interpretation placed on subsection (1) by the circuit court is correct: City electors who were placed on the Supervisor's "temporarily withdrawn" list retain their legal status as qualified electors for purposes of signing a referendum petition and were thus eligible to have their signatures counted by the Supervisor if their signatures were otherwise valid.

We have carefully considered the authorities cited to us by the Supervisor, especially State ex rel. Kyle v. Brown, 167 So. 2d 904 (Fla. 3d DCA 1964), but we find them all distinguishable or unpersuasive.

Because the circuit court correctly interpreted the statute, we affirm the order and approve the issuance of the writ.

LEHAN, C.J., and SCHOONOVER, J., Concur.