IN THE SUPREME COURT OF FLORIDA

CASE NO: SC00-2096

ARI MILLER,
Petitioner,

vs.

GINA MENDEZ,
KATHERINE HARRIS,
As Secretary of State, and
DAVID LEAHY, As Supervisor of Elections
of Miami-Dade County,
Respondents.

ON APPEAL FROM THE THIRD DISTRICT COURT OF APPEALS,
CASE NO. 3D00-2746

INITIAL BRIEF OF RESPONDENT, GINA MENDEZ, ON THE MERITS

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STATEMENT OF COMPLIANCE WITH THIS COURT'S JULY 13, 1998 ADMINISTRATIVE ORDER

Pursuant to this Court's July 13, 1998 Administrative Order, counsel whose name appears on this Response certifies that this Response is in 14 point Times New Roman font, proportionally spaced.

PREFACE

Throughout this Brief, the Petitioner's wife, Miami-Dade County Court Judge Terri-Ann Miller, will be referred to as "Judge Miller." Respondent, GINA MENDEZ, will be referred to as "Mendez". Miller vs. Gross, 25 Fla. Law Weekly D2485 (Fla. 4th DCA, August 30, 2000) the decision from the Fourth District Court of Appeals which purportedly conflicts with the instant matter, will be referred to as the "Gross" case. For convenience this brief will refer to the record below by citing to the appendix of documents which was filed by the Petitioner. The symbol "A" will refer to the numbered documents in that appendix. There is a single reference in this brief to the transcript of the proceedings below. That reference is denoted by the prefix "T".

During the pendency of this matter, Mendez lost the November 7, 2000 election for Miami-Dade Circuit Court Judge, Division 25. This fact is not part of the record below as it occurred after the Third District Court of Appeals had rendered its opinion. Mendez requests that this Court take judicial notice of this fact pursuant to Rule 201, Fla. R. Evid.. Pursuant to that rule, Mendez attaches as Exhibit 1 the internet webpage of the Florida Department of Elections showing the November 7, 2000 election results for Miami-Dade County.

STATEMENT OF CASE AND FACTS

Respondent, Mendez, was a long-time resident of Miami-Dade County, Florida, and has spent her entire professional career as an attorney working in that county, even after she moved to Broward County, Florida in December, 1997. (A.19-A.20). On July 10, 2000, Mendez was a resident of Broward County, Florida. (A.30)

On July 10, 2000, Mendez sent a letter to the Florida Department of State, Division of Elections ("DOE") in which she specifically asked the DOE whether she could qualify for the position of circuit court judge in the Eleventh Judicial Circuit while she was still a Broward resident. (A.26).

In a July 11, 2000 letter, the DOE specifically responded to Mendez's inquiry by writing: "[i]f elected as circuit court judge, you would not have to be a resident of the circuit until you assume office on January 2, 2001." (A.27-A.29). In reliance on this July 11, 2000 letter, Ms. Mendez filed an Oath of Candidate on July 18, 2000 indicating that she was a resident of Broward County, that she was running for the position of circuit judge in the Eleventh Judicial Circuit, and that she was qualified to run for this position. (A.30). Mendez further relied on the July 11, 2000, letter from the Division of Elections by actually mounting an

election campaign, foregoing other professional opportunities, and by not immediately establishing residence in Miami-Dade County. (A.22)

In the election held on September 5, 2000, Ms. Mendez placed first among four candidates, garnering forty percent of the votes of the Miami-Dade County electors who participated in the election. Since Ms. Mendez did not win an outright majority of the votes, a run-off election between her and the next highest vote-getter was held on November 7, 2000 as part of the general election. (A.22).

On September 8, 2000, the Petitioner filed a complaint seeking an injunction, and a declaratory judgment from this Court stating that Mendez was ineligible to participate in the November 7, 2000, election because she was not a resident of Miami-Dade County at the time she signed the Oath of Candidate. (A.1-A.5).

Based on facts to which the parties stipulated, on September 26, 2000, Miami-Dade Circuit Court Judge Bernard Shapiro entered a final judgment against the Petitioner declaring that Mendez was eligible to be a candidate for circuit court judge in the November 7, 2000 election. (A.60-A.61). Judge Shapiro noted that Mendez lived in Miami-Dade County at the time of the hearing and that she had sought advice from the DOE on her eligibility. (A.61).

On September 27, 2000 the Petitioner filed a notice of appeal with the Third District Court of Appeals. (A.62-A63). On October 5, 2000 that court affirmed the trial court's decision, adopted the trial court's opinion *in toto*, and certified a conflict with the decision of the Fourth District Court of Appeals in Gross. (A.80-A.83).

The Petitioner filed a notice to invoke the discretionary jurisdiction of the Florida Supreme Court on October 6, 2000. While the Petitioner's notice was pending before this Court, the November 7, 2000 election was held and Mendez lost.

SUMMARY OF ARGUMENT

The central issue in this case is whether a candidate for judge under Art. V, §8, Fla. Const. must satisfy that provision's eligibility requirements at the time of qualifying or at the time of taking office. In Gross, the Fourth District Court of Appeals improperly ignored controlling doctrine from this Court, the Third District Court of Appeals, and the Fourth District Court of Appeals itself which unambiguously holds that candidates for judge need not be qualified until the time of taking office.

In addition to existing doctrine, there are several other reasons to favor the Third District Court of Appeals' decision over that rendered in Gross. First, that interpretation is consistent with the meaning given to eligibility for office elsewhere in the Florida Constitution. Second, case law requires granting a presumption of eligibility in favor of the candidate, particularly in this instance where the candidate did everything in her power to comply with the law.

Finally, this Court ought not to grant discretionary jurisdiction in this matter. This claim has not been brought in good faith; in fact, the Petitioner actually wants to lose this appeal. Moreover, this matter is moot because Mendez has already lost her November 7, 2000 election bid. Finally, the Gross matter is

distinguishable from the instant matter; therefore, there is not a direct conflict between that case and this one.

ARGUMENT ON APPEAL

I. MENDEZ PROPERLY QUALIFIED TO RUN FOR CIRCUIT COURT JUDGE UNDER ART. V, §8, FLA. CONST.

A) The Gross Case Misread Applicable Case Law

Art. V, §8, Fla. Const. provides, in relevant part, as follows:

> **Eligibility**-- No person shall be eligible for office of justice or judge of any court unless the person is an elector of the state and resides in the territorial jurisdiction of the court.... No person is eligible for the office of circuit court judge unless the person is, and has been for the preceding five years, a member of the bar of Florida....

The issue in this case is whether the term "eligibility" as defined in Art. V, §8, Fla. Const. should be construed to mean that the candidate must satisfy the provision's substantive requirements at the time of signing the Oath of Candidate to qualify for office or at the time of taking office.

In the case of In re Advisory Opinion to the Governor, 192 So. 2d 757 (Fla. 1966), this Court construed the meaning of the term "eligibility" as it applies to candidates for judicial office holding that:

> [t]he words therein '*** no person shall be eligible for the office of judge *** unless he is, and for a period of five (5) years has been a member of the Florida bar' ***refer to eligibility at the time of assuming office and not at the time of qualification or election to office.***

Id. at 759. (quotes in original)(emphasis added).

In subsequent cases addressing the meaning of "eligibility", this Court has given this term the same meaning. In In re Advisory Opinion to the Governor--Terms of County Court Judges, 750 So. 2d 610, 613 (Fla. 1999), this Court held that the eligibility requirements for county court judges refer to the time of assuming office, not the time of qualification or election to office. Thus, Florida cases construing the meaning of eligibility for judges in the Florida Constitution consistently have held that the time at which a candidate for judge must be eligible is at the time of taking office.

The Petitioner attempts to distinguish In re Advisory Opinion to the Governor, 192 So. 2d 757 (Fla. 1966) relying on the fact that that case was decided before the adoption of Art. V, §8, Fla. Const.; however, this fact is irrelevant. Proper construction requires that terms construed prior to the adoption of Art. V, §8, Fla. Const. be given the same meaning under the current provision. In re Advisory Opinion to the Governor, 112 So. 2d 843, 847 (Fla. 1959) (construction of an old constitution still applies to an identical term in a new constitution.). More specifically, in State v. Miami Beach Redevelopment Agency, 392 So. 2d 875, 885 (Fla. 1981) this Court held that:

> [d]ecisions construing predecessor provisions of the constitution having the same import as current provisions are sources of authority for the construction of the successor provisions.

The language construed in In re Advisory Opinion to the Governor, 192 So. 2d 757 (Fla.1966) was ultimately incorporated into Art. V, §13A Fla. Const. (1967) and created the brief anomaly of nearly duplicate provisions in that iteration of the Florida Constitution. Those provisions read as follows:

> SECTION 13. **Eligibility requirements for justices and judges.**-No person shall be eligible for the office of justice of the supreme court or judge of a district court of appeal unless he is a citizen of this state, and unless he is, at the time, a member of the Florida Bar in good standing and for a period of at least ten years has been a member of the bar of Florida; and no person shall be eligible for the office of judge or a circuit court or criminal court of record who is not twenty-five years of age and a member of the bar of Florida....
>
> SECTION 13A. **Eligibility requirements for justices and certain judges.**- No person shall be eligible for the office of justice of the supreme court or judge of a district court of appeal unless he is a citizen of this state, and unless he is, at the time, a member of the Florida Bar in good standing and for a period of at least ten years has been a member of the bar of Florida; and no person shall be eligible for the office of judge of a circuit court unless he is a citizen of this state and unless he is, and for a period of five years has been, a member of the Florida

> Bar. The judges of other courts shall be citizens of this state and residents of the county served....[1]

Art. V, §§13 and 13A, Fla. Const. (1967). Both of these provisions were repealed in 1972 and all issues relating to judicial eligibility were merged into the current Art. V, §8, Fla. Const., which was adopted contemporaneously.

The provisions in the current Art. V, §8 Fla. Const. are the only provisions addressing judicial eligibility. While there were minimal differences in the substantive eligibility requirements between the defunct Art. V, §§13 and 13A Fla. Const. (1967) and the newly adopted Art. V, §8 Fla. Const., none of those changes involved language which would define or alter the time when those requirements had to be satisfied by a candidate. It must be assumed that the Florida Legislature was aware of In re Advisory Opinion to the Governor, 192 So. 2d 757 (Fla. 1966) when it repealed Art. V, §§13 and 13A Fla. Const. (1967), and that had it wanted to modify this Court's ruling on when a candidate must be eligible, it would have done so. Nicoli v. Baker, 668 So. 2d 989, 991 (Fla. 1996); Ford v. Wainwright, 451 So. 2d 471, 475 (Fla. 1984). In the absence of any such change, the meaning this Court assigned to the term "eligibility" in In re Advisory Opinion to the Governor, 192 So. 2d 757 (Fla. 1966) is the proper meaning under the law. As the

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[1]The remainders of these two sections were identical.

following section of this brief will demonstrate, this is the meaning this Court and other courts of this State have consistently applied to the term "eligibility" until the Fourth District Court of Appeals' improvident decision in Gross.

B) Even If the Gross Court Was Correct in its Analysis, It Ignored Binding Authority in Reaching its Decision

The Fourth District Court of Appeals ignored this Court's prior ruling In re Advisory Opinion to the Governor, 192 So. 2d 757 (Fla. 1966) by suggesting that that case was inapplicable because it was decided before the adoption of Art. V, §8, Fla. Const. As it turns out, there were several cases in existence at the time the Gross court issued its ruling which applied the rule in In re Advisory Opinion to the Governor, 192 So. 2d 757 (Fla. 1966) to Art. V, §8, Fla. Const. thereby nullifying the Gross court's reasoning.

In In re Advisory Opinion to the Governor-- Terms of County Court Judges, 750 So. 2d 610, 613 (Fla. 1999), this Court specifically cited its 1966 opinion in In re Advisory Opinion to the Governor in holding that eligibility requirements refer to eligibility at the time of assuming office, not at the time of qualification or election to office. Thus, any remaining doubt about whether this Court's 1966 rule on the meaning of "eligibility" applies to the newly adopted Art. V, §8, Fla. Const. was put to rest by the Court's 1999 clarification. In re Advisory Opinion to the

Governor-- Terms of County Court Judges, 750 So. 2d 610, 613 (Fla. 1999) was decided well before the Fourth District Court of Appeals rendered its decision in Gross on August 30, 2000; therefore, it was binding upon the Fourth District Court of Appeals when Gross was decided.

Even if this Court were to find that its own prior decision was not controlling on the decision in Gross, it is a fundamental corollary of the rule of *stare decisis* in the State of Florida that in the absence of controlling authority, the Fourth District Court of Appeals would be bound by controlling law from another district-- in other words, absent authority from this Court, whichever district court addresses an issue first binds this state's other districts. Pardo v. State, 596 So. 2d 665 (Fla. 1992); Howell-Demarest v. State Farm Automotive Ins. Co., 673 So. 2d 526 (Fla. 4th DCA 1996). In Newman v. State, 602 So. 2d 1351 (Fla. 3d DCA 1992) the Third District Court of Appeals had trumped the Fourth District Court of Appeals by holding that the interpretation of eligibility set forth in In re Advisory Opinion to the Governor, 192 So. 2d 757 (Fla. 1960) applies specifically to Art. V, §8, Fla. Const.:

> ...[Newman] needs only meet the ***minimum eligibility requirements set forth in article V, section 8*** of the Florida Constitution. Under the constitutional provision, a person must be a member of the Bar for five years ***at***

the time he or she takes office, not at the time of qualifying.

Newman at 1352 (emphasis added). Since both this Court and the Third District Court of Appeals had already construed the meaning of eligibility under Art. V, §8, Fla. Const., the Fourth District Court of Appeals was bound by the decisions of those courts at the time it decided Gross.[2]

II. CONSTITUTIONAL CANONS OF CONSTRUCTION FAVOR CONSTRUING ELIGIBILITY WITH REFERENCE TO THE TIME OF TAKING OFFICE

A) Consistency of Interpretation of the term "Eligibility"

Florida case law provides that where a constitution contains multiple provisions on the same subject, they must be read *in pari materia* to ensure a consistent and logical meaning. Advisory Opinion to the Governor - 1966 Amendment 5 (Everglades), 706 So. 2d 278, 281 (Fla. 1997). This Court, and the other courts of this state, have consistently defined the term "eligibility" in the context of candidacy for elected office to mean at the time of taking office. In re Advisory Opinion to the Governor-- Terms of County Court Judges, 750 So. 2d

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[2]The Fourth District Court of Appeals also failed to distinguish or even cite its own precedent in State v. Grassi, 532 So. 2d 1055, 1057 (Fla. 1988), which was its case before being affirmed by the Florida Supreme Court. See State v. Grassi, 492 So. 2d 474 (Fla. 4th DCA 1986). The Grassi case is discussed in more detail at Section II.A) of this brief.

610, 613 (Fla. 1999) (construing the meaning of the term "eligible" in Art. V, §8, Fla. Const.); In re Advisory Opinion to the Governor, 192 So. 2d 757 (Fla. 1966); Newman v. State, 602 So. 2d 1351, 1352 (Fla. 3d DCA 1992) ("Under the constitutional provision [of Art. V, §8, Fla. Const.], a person must be a member of the Bar for five years at the time he or she takes office, not at the time of qualifying."); State v. Grassi, 532 So. 2d 1055, 1057 (Fla. 1988)(holding that eligibility for county commissioners under Article** VIII, Section 1(e) of the Florida Constitution does not require residency at the time of qualification.). To interpret the meaning of eligibility differently in this instance would create an inconsistency in the meanings of identical terms in the Florida Constitution which would run afoul of proper canons of constitutional construction. See In Re: Advisory Opinion to the Governor, 192 So. 2d 757 (Fla. 1966) (construing then Article V, Section 13A of the Florida Constitution). Therefore, the definition of eligibility under Art. V, §8, Fla. Const. should be that which has consistently been applied to that term in other provisions of the Florida Constitution-- and that applied by the Third District Court of Appeals below-- namely, that to be eligible a candidate must meet the terms of qualification at the time of taking office.

The Petitioner cites Black's Law Dictionary and inveighs in favor of an interpretation of the term "eligible" which conforms to that term's plain meaning.

The Petitioner alleges that the plain meaning of the word "eligible" suggests qualification at the time of becoming a candidate for office rather than at the time of taking office; however, the Petitioner has given only a truncated version of the definition. The following is the complete definition of the term "eligible" in Black's Law Dictionary:

> **Eligible**. Fit and proper to be chosen; qualified to be elected. ***Capable of serving, legally qualified to serve***. Capable of being chosen, as a candidate for office. ***Also qualified and capable of holding office***.

BLACK'S LAW DICTIONARY 521(6th Ed.1990)(emphasis added). This definition of eligible refers to "serving" or "holding" office three times, thereby suggesting that eligibility attaches at the time of taking office. While the definition also refers to being "chosen" or "elected" three times, suggesting that the moment of election is the moment of relevance, nowhere does the definition refer to the time of qualification. Thus, if anything, "plain meaning" interpretation of the term eligible weighs in favor of construing that term to refer to some time ***after*** qualification-- either at the time of being chosen or at the time of taking office.

B) This Court Should Accord a Presumption in Favor of the Interpretation of the term "Eligibility" Given to Mendez by the Division of Elections

Where a term has previously been interpreted by the legislature or executive, there is a presumption that that interpretation is correct. Brown v. Firestone, 382 So. 2d 654 (Fla. 1980); Greater Loretta Improvement Association v. Boone, 234 So. 2d 665 (Fla. 1970). Moreover, in interpreting the Florida Constitution, this Court has a duty to examine factors such as "evolving customs, traditions, attitudes within the state, [our] state's own general history, and finally any external influences that may have shaped state law." Traylor v. State, 596 So. 2d 957, 962 (Fla. 1992); see also, Mozo v. State, 632 So. 2d 623, 630 (Fla. 4th DCA 1994).

In the instant case, there is one external influence and custom which is of particular relevance: the executive branch of government of the State of Florida, through the DOE, has consistently interpreted case law and advised candidates for judge that they need not be "eligible" until they take office. The DOE is an executive body created by §101, Fla. Stat. (1999). Among its other powers, the DOE is empowered under §101.23(2), Fla. Stat. (1999) to provide candidates with "advisory opinions relating to any provisions or possible violations of Florida election laws." Id. These advisory opinions are binding on any person who seeks

them and are not subject to direct appellate review. See Sullivan v. Division of Elections, 413 So. 2d 109 (Fla. 1st DCA) (holding that district courts of appeal have no subject matter jurisdiction over advisory opinions of the DOE). When, as in this case, such administrative actions are made within the authority granted by statute, they are accorded the affect of the statute. See, Hulmes v. Division of Retirement, Department of Administration, 418 So. 2d 269, 270 (Fla. 3d DCA 1982)("An administrative rule or regulation is operative and binding on those coming within its terms from its effective date until it is modified or superseded by subsequent legislation or by subsequent regulations adopted in compliance with duly ordained standards of administrative procedure...."); and, Florida Livestock Board v. Gladden, 76 So. 2d 291 (Fla. 1954).

The DOE has consistently advised candidates that eligibility requirements need not be satisfied until the time of taking office. Division of Elections Opinion 78-31 (August 3, 1978), for example, was an advisory opinion given in response to the following question posed by a candidate for Dade Circuit Court Judge: "Must a candidate for the Circuit Court have practiced law for a period of five (5) years at the time he qualifies for said office at qualification time in July 1978?" Id. The DOE answered in the negative: "The time requirement to which you refer

must be satisfied ***as of the time of the person elected assuming office.***" Id. (emphasis added).

The DOE gave a similar response to a candidate for county commissioner in Division of Elections Opinion 92-10 (June 24, 1992):

> It is well-settled in Florida that the statutory oath a person is required to take upon qualifying for office refers to qualifications applicable ***when the term of office he seeks begins.***

Id. (emphasis added).

Most importantly, the DOE gave the same response to Mendez in this case. In a July 10, 2000 letter to that body, Mendez specifically asked whether she would be permitted to run for circuit court judge in Miami-Dade County while residing in Broward County. The DOE advised her that "[i]f elected as a circuit judge, you would not have to be a resident of the circuit until you assume office on January 2, 2001." (A.27). While the DOE's July 18, 2000 letter to Mendez may not be an advisory opinion within the meaning of §101.23(2), Fla. Stat. (1999) because it was not published, it would undoubtedly bind Mendez were she to attempt to act in a manner not in accord with it. Conversely, Mendez's good faith reliance upon this letter is a significant external circumstance of the sort contemplated by the Traylor case; therefore, the DOE's advisory letter to Mendez

should preclude contrary judicial action absent a highly compelling countervailing reason. No such reason exists.

C) This Court Should Grant a Presumption in Favor of the Candidate

At the time the trial court ruled in this case, forty percent of Miami-Dade County electors who chose to vote on September 5, 2000 had voted for Mendez. Weighing in the balance at that time was whether the trial court should nullify the democratically expressed wishes of the local electorate and erase the name of the front-runner from the November 7, 2000 ballot. In Ervin v. Collins, 85 So. 2d 852 (Fla. 1956), this Court construed statutory language which would have affected the eligibility of a candidate for office and held as follows:

> [a]lthough there is at least some doubt about the meaning of [the statutory language at issue], that doubt should be resolved in favor of holding a free and competitive election. The right to vote is among the important rights we all share as Floridians and as Americans. Judges must be very careful in determining whether a candidate nominated by a political party is legally qualified to run for office because the effect of a mistake could disenfranchise a large segment of the population. Thus, ***the law requires judges to resolve doubts about qualification of a political candidate in favor of the candidate.***

Id. at 858(emphasis added). In that same opinion this Court also found that:

> Even if there were doubts or ambiguities as to [Leroy Collins'] eligibility, they should be resolved in favor of a free expression of the people . . . The lexicon of democracy condemns all attempts to restrict one's right to run for office . . . Florida is committed to the general rule in this country that the right to hold office is a valuable one and should not be abridged except for unusual reason or by plain provision of law.

Id.

As the foregoing analysis has demonstrated, past cases interpreting when a candidate for judge must be qualified for office have unambiguously held that it is at the time of taking office. However, to the extent there is any remaining doubt, that ambiguity must be resolved in favor of Mendez.

III. THE COURT SHOULD DECLINE TO ACCEPT DISCRETIONARY JURISDICTION OVER THIS CLAIM

A) This Claim has not been Brought in Good Faith

The convoluted subtext of this case ought not be ignored by this Court because it presents a situation abhorrent to a fundamental underpinning of our judiciary; namely, that courts rule only on matters filed in good faith in which the parties are actually adverse to one another. Judge Miller, as the Respondent in Gross, lost her Broward County election bid. Her husband, the Petitioner here, brought this claim against Mendez for the sole purpose of creating a conflict between the district courts in the hope that this Court would then resolve that

conflict in Mendez's favor.[3] But in order for Judge Miller's strategy to work, her husband must lose in the instant action. Judge Miller's manipulation of the district courts has created a situation which is anathema to a basic precept of our judicial system: one party stands only nominally in dispute with his opposing party while his true interest is in seeing his opposing party win. This point was not lost on the trial court which noted near the close of Petitioner's argument of his case: "You seem to be arguing for Ms. Mendez." (T.5).

In Lissenden Co, v. Board of Directors of Palm Beach County, 116 So. 2d 632,636 (Fla. 1960) this Court held that it is:

> a prima facie test, the ultimate requirement [for appellate review is] that there should exist, a genuine issue, fairly and in good faith presented as to the validity of the statue in controversy and its applicability in the case under consideration.

See also, Williston Highlands Development Corporation v. Hogue, 277 So. 2d 260 (Fla. 1973). Since the Petitioner does not have a genuine good faith interest in

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[3]Curiously, Judge Miller's defense in Gross was predicated on her assertion that she was a resident and elector of Broward County while her husband's standing to argue the instant matter is based on his assertion that he is a Miami-Dade County resident and elector. Judge Miller and the Petitioner have minor children. Miller v. Gross, 25 Fla. L. Weekly D2485 (Fla. 4th DCA Aug. 30, 2000). However, there was no assertion in Gross that Judge Miller and her husband live apart, a defense which would surely have been raised had it been true. Therefore, one can only conclude that either she or her husband has been less than candid on the issue of residency.

winning this case, it is not being presented in good faith and this Court should decline to accept jurisdiction.

B) The Gross Case is Distinguishable from this Case

Where a writ of certiorari based on a direct conflict has been issued by this Court, it is appropriate to discharge that writ where, upon further review, this Court finds that there is no direct conflict. Florida Greyhound Owners & Breeders Assn., Inc. v. West Flagler Ass., Ltd., 347 So. 2d 408 (Fla. 1977); Seaboard Airline R.R. v. Branham, 104 So. 2d 356, 358 (Fla. 1958). The standard to determine whether a conflict exists is to ask whether there is a "real and embarrassing conflict of opinion and authority between decisions." Ansin v. Thurston, 101 So. 2d 808, 811 (Fla. 1958) (citing Layne & Bowler Corp. v. Western Well Works, 261 U.S. 387) (internal quotations omitted). Put differently, and in terms used by this Court in the Ansin decision:

> A conflict of decisions *** must be on a question of law involved and determined, and such that one decision would overrule the other if both were rendered by the same court; in other words, ***the decisions must be based practically on the same state of facts and announce antagonistic conclusions.***

Ansin at 811 (emphasis added, internal quotations and citations omitted).

Fourth District Court of Appeals' decision in Gross is neither factually nor legally in direct conflict with the instant matter. First, the central issue in Gross was a factual analysis of candidate Judge Miller's residency at the time of qualification.[4] In the instant action, there is no dispute as to Mendez's residency now or at the time she signed her Oath of Candidacy.

Second, Mendez was not a sitting judge in one judicial circuit attempting to run for judge in another circuit. This distinction is critical given the manner in which the 4th DCA framed the issue in Gross:

> The question presented in this case is whether a serving judge in one county is qualified to run for election to a judicial office in another county.

(A.84). There is no such issue in the instant action. Mendez was not a sitting judge in the circuit in which she resided at the time of signing her Oath of Candidate and, unlike Judge Miller, Mendez had no covenant with the people of her county of residency when she signed the Oath.

Third, in the Gross case, Judge Miller did not seek an advisory opinion from the DOE; rather, she represented that she was qualified to run in Broward County.

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[4]The 4th DCA in the Gross case noted that "[e]ssentially the issue comes down to the meaning of the constitutional provision *resides*." Miller v. Gross, 25 Fla. L. Weekly D2485, D2486 (Fla. 4th DCA Aug. 30, 2000) (emphasis in original).

On the other hand, the sole reason Mendez retained her Broward residency was in reliance upon the advisory letter she had properly sought from the DOE.

Finally, the Gross court cited a number of policy objectives which underlie Art. V, §8, Fla. Const., including that candidates "be acquainted with the problems of the community, ... with its history and mores, [and that they]... have actually lived within its confines and experienced its recent history in order to judge its cases." Miller v. Gross, 25 Fla. L. Weekly D2485, D2487 (Fla. 4th DCA Aug. 30, 2000). Nothing in the factual record in Gross, or in the stipulated facts of this case, suggests that Judge Miller had any genuine connection with Broward County prior to her deciding to run for judge there.

Mendez, however, not only attended college and law school in Miami-Dade County, she lived here until 1997 (A.20). Moreover, unlike Judge Miller, who is a sitting judge in a circuit other than that in which she wishes to run for office, Mendez has spent her entire professional life working in the county in which ran (A.20). Thus, in contrast to the Gross matter, the policy considerations underlying Art. V, §8, Fla. Const. are being served in the instant case.

In reading the Fourth District Court of Appeals' opinion one cannot escape that court's disdain for what it viewed as disingenuous "carpetbagger" tactics on the part of Judge Miller. Judge Miller's dubious efforts to establish residency in

Broward County, her failure to seek an opinion from the DOE regarding her eligibility, and her perspicacity in seeking judicial office in one county while sitting as a judge in another are the facts upon which the Fourth District Court of Appeals based its holding. None of these facts is present in the instant case, and one can surmise that had the Fourth District Court of Appeals reviewed the case at bar, it would have distinguished it from its holding in Gross.

CONCLUSION

This Court should decline to accept jurisdiction in this matter. However, if it does reach the merits of the case, this Court should resolve any conflict between Gross and the Third District Court of Appeals in this case in favor of the latter court. Specifically, this Court should find that the Third District Court of Appeals correctly interpreted case law construing Art. V, §8, Fla. Const. and that under that section and applicable doctrine, judicial candidates need not be qualified until the time they take office.

WHEREFORE, Mendez asks that this Court decline to take jurisdiction of this matter, or in the alternative, affirm the decision of the Third District Court of Appeals below and find that the Fourth District Court of Appeals' decision in Gross is distinguishable from the instant action.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail, on this 12th day of December, 2000, upon Alex T. Barak, P.A., Emerald Hills Executive Plaza, 4601 Sheridan Street, Suite 206, Hollywood, Florida 33021-3432, Charles Fahlbusch, Office of the Attorney General, 110 S. E. 6th Street, Ft. Lauderdale, Florida and David Leahy, Division of Elections, 111 N. W. 1st Street, Miami, Florida.

By:_____
CHRISTOPHER D. BROWN

Appendix

Florida Department of State
Division of Elections
Races by County
November 7, 2000 General Election

Official Results

Use the Following Links to Access Results of
State Races Appearing on the **Miami-Dade County** Ballot
You May Also Wish to Visit the **Miami-Dade County** Web Site at
http://elections.metro-dade.com

President of the United States

	Bush / Cheney (REP)	Gore / Lieberman (DEM)	Browne / Olivier (LIB)	Nader / LaDuke (GRE)	Harris / Trowe (SWP)	Hagelin / Goldhaber (LAW)	Buchanan / Foster (REF)	McReynolds / Hollis (SPF)	Phillips / M Frazier (CPF)
Sub Total	2,911,215	2,911,417	16,407	97,426	562	2,280	17,479	621	1,370
Fed Abs	1,575	836	8	62	0	1	5	1	1
Total	2,912,790	2,912,253	16,415	97,488	562	2,281	17,484	622	1,371
Percent	48.8%	48.8%	0.3%	1.6%	0.0%	0.0%	0.3%	0.0%	0.0%

Recount Completed

United States Senator

	Bill McCollum (REP)	Bill Nelson (DEM)	Joe Simonetta (LAW)	Joel Deckard (REF)	Willie Logan (NPA)	Andy Martin (NPA)	Darrell L. McCormick (NPA)	"Nikki O." (WRI)	Olen C. Faulk (WRI)	Richard Grayson (WRI)	Brian Heady (WRI)
Sub Total	2,704,093	2,988,840	26,075	17,319	80,820	15,877	21,652	29	8	36	6
Fed Abs	1,255	647	12	19	10	12	12	0	0	0	0
Total	2,705,348	2,989,487	26,087	17,338	80,830	15,889	21,664	29	8	36	6
Percent	46.2%	51.0%	0.4%	0.3%	1.4%	0.3%	0.4%	0.0%	0.0%	0.0%	0.0%

United States Representative District: 17

	Carrie P. Meek (DEM)	Bill Barchers (WRI)
Sub Total	100,695	3
Fed Abs	20	0
Total	100,715	3
Percent	100.0%	0.0%

United States Representative District: 18

	Ileana Ros-Lehtinen (REP)	Sheila K. Mullins (WRI)
Sub Total	112,956	23
Fed Abs	12	0
Total	112,968	23
Percent	100.0%	0.0%

United States Representative District: 20

	Peter Deutsch (DEM)	Ed Kopanski (WRI)
Sub Total	156,744	186
Fed Abs	21	1
Total	156,765	187
Percent	99.9%	0.1%

United States Representative District: 21

	Lincoln Diaz-Balart (REP)	George Maurer (WRI)
Sub Total	132,297	25
Fed Abs	20	0
Total	132,317	25
Percent	100.0%	0.0%

United States Representative District: 22

	Clay Shaw (REP)	Elaine Bloom (DEM)	Orin Opperman (WRI)
Sub Total	105,841	105,248	1
Fed Abs	14	8	0
Total	105,855	105,256	1
Percent	50.1%	49.9%	0.0%

Recount Completed

United States Representative District: 23

	Bill Lambert (REP)	Alcee L. Hastings (DEM)	Frances L. Faulk (WRI)	Charles Laurie (WRI)
Sub Total	27,629	89,160	4	0
Fed Abs	1	19	0	0
Total	27,630	89,179	4	0
Percent	23.7%	76.3%	0.0%	0.0%

Treasurer

	Tom Gallagher (REP)	John Cosgrove (DEM)
Total	3,363,705	2,336,117
Percent	59.0%	41.0%

Commissioner of Education

	Charlie Crist (REP)	George H. Sheldon (DEM)	Vassilia Gazetas (NPA)
Total	2,979,297	2,464,557	102,358
Percent	53.7%	44.4%	1.8%

State Attorney Circuit: 11

	Al Milian (REP)	Katherine Fernandez Rundle (DEM)
Total	254,778	324,081
Percent	44.0%	56.0%

State Senator District: 32

	Ken Jennings (REP)	Debbie Wasserman Schultz (DEM)
Total	54,191	107,052
Percent	33.6%	66.4%

State Senator District: 39

	Rodolfo "Rudy" Garcia, Jr. (REP)	Frank Artiles (WRI)
Total	83,735	3
Percent	100.0%	0.0%

State Representative District: 106

	Dan Gelber (DEM)	Mike Calhoun (NPA)
Total	28,721	5,161
Percent	84.8%	15.2%

State Representative District: 108

	Reginald Thompson (REP)	Phillip J. Brutus (DEM)	Jesus A. Camps (NPA)
Total	4,443	22,264	528
Percent	16.3%	81.7%	1.9%

State Representative District: 109

	Dorothy Bendross-Mindingall (DEM)	Shonnail Turner (WRI)
Total	18,576	2
Percent	100.0%	0.0%

State Representative District: 115

	Renier Diaz de la Portilla (REP)	Henry R. Matthews (WRI)
Total	26,842	2
Percent	100.0%	0.0%

State Representative District: 116

	Alina Garcia (REP)	Annie Betancourt (DEM)
Total	15,265	20,749
Percent	42.4%	57.6%

State Representative District: 117

	Carlos Lacasa (REP)	Richard Cason (WRI)
Total	24,940	1
Percent	100.0%	0.0%

State Representative District: 118

	Edward B. Bullard (DEM)	Marie Yves Jose Avignon (WRI)
Total	27,819	0
Percent	100.0%	0.0%

State Representative District: 119

	Tom David (REP)	Cindy Lerner (DEM)
Total	16,047	16,747
Percent	48.9%	51.1%

State Representative District: 120

	Ken Sorensen (REP)	Ron Herron (DEM)
Total	19,123	18,802
Percent	50.4%	49.6%

Supreme Court

Shall Justice R. Fred Lewis be retained in office?

	YES for Approval (NOP)	NO for Rejection (NOP)
Total	3,341,558	1,331,776
Percent	71.5%	28.5%

Shall Justice Barbara J. Pariente be retained in office?

	YES for Approval (NOP)	NO for Rejection (NOP)
Total	3,309,960	1,297,834
Percent	71.8%	28.2%

Shall Justice Peggy A. Quince be retained in office?

	YES for Approval (NOP)	NO for Rejection (NOP)
Total	3,261,223	1,285,706
Percent	71.7%	28.3%

Third District Court of Appeal

Shall Judge James R. Jorgenson be retained in office?

	YES (NOP)	NO (NOP)
Total	292,463	123,705
Percent	70.3%	29.7%

Circuit Judge Circuit: 11 Group: 8

	David C. Miller (NOP)	David Peckins (NOP)
Total	245,765	140,934
Percent	63.6%	36.4%

Circuit Judge Circuit: 11 Group: 25

	Dennis J. Murphy (NOP)	Gina Mendez (NOP)
Total	208,959	196,724
Percent	51.5%	48.5%

Constitutional Amendment

Florida Transportation Initiative for statewide high speed monorail, fixed guideway or magnetic levitation system.

	YES for Approval (NOP)	NO for Rejection (NOP)
Total	2,900,253	2,607,495
Percent	52.7%	47.3%

Referendum

Shall Circuit Court Judges be appointed by the Governor with retention by vote of the people? Circuit: 11

	Yes (NOP)	No (NOP)
Total	156,244	354,214
Percent	30.6%	69.4%

Shall County Court Judges be appointed by the Governor with retention by vote of the people? County: Miami-Dade

	Yes (NOP)	No (NOP)
Total	138,908	356,029
Percent	28.1%	71.9%