

**IN THE
SUPREME COURT OF FLORIDA**

THE REFORM PARTY
(OF FLORIDA), RALPH NADER,
PETER MIQUEL CAMEJO, and
GLENDA E. HOOD, in her capacity
As Florida Secretary of State,

Appellants,

vs.

SC Case No. SC04-1755
CASE NO. 1D04-4050
L. T. CASE NO. 04-CA-2140
L. T. CASE NO. 04-CA-2141

HARRIET JANE BLACK,
ROBERT RACKLEFF,
WILLIAM CHAPMAN and
TERRY ANDERSON,

Appellee.

BRIEF OF APPELLEES
BLACK ET AL. (L.T. CASE NO. 04-CA-2140)

EDWARD S. STAFMAN, ESQ.
Florida Bar No. 0251526
6950 Bradfordville Road
Tallahassee, FL 32301
Ph: (850) 681-7830
Fax: (850) 893-0645

KELLY OVERSTREET JOHNSON, P. A.
Fla. Bar No. 0354163
DAVID K. MILLER, P. A.
Florida Bar No. 213128
BROOKE E. LEWIS, ESQ.
Florida Bar No. 0710881
BROAD AND CASSEL
215 South Monroe Street, Suite 400
Post Office Drawer 11300 (32302)
Tallahassee, Florida 32301
Phone: (850) 681-6810
Fax: (850) 521-1446

Co-Counsel for Plaintiffs/Appellees

Co-Counsel for Plaintiffs/Appellees

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STATEMENT OF THE CASE AND FACTS

The Plaintiffs-Appellees Black et al. v. Hood et al., Cir. Ct. Case No. 2004 CA 2140, adopt the Statement of the Case and Facts in the Brief filed by the Appellees Wilson *et al.* in Case No. 2004 CA 2141; but add the following:

Plaintiffs-Appellees Black *et al.*, are four Florida citizens and registered voters of different political parties, whose interest is in furthering the nonpartisan goal of ballot integrity in conformity with state law so that they and other Florida voters are able to vote for candidates who are truly qualified to be on the ballot by virtue of having significant support, as required by Florida law, to avoid confusion, deception and frustration of the democratic process.

Plaintiff-Appellee Harriet Jane Black is a registered Republican voter in Pinellas County. Robert Rackleff is a registered Democrat voter in Leon County. William Chapman is a registered Reform Party voter in Marion County. Terry Anderson is a registered Independent voter in Miami-Dade County. Plaintiffs are not part of the Democratic Party (Wilson et al.), which brought Case No. 2004-CA-2141 after their case was filed. They have a non-partisan agenda, and contend that inclusion of candidates on the 2004 Florida Presidential ballot who are not qualified by law would confuse and mislead voters, disenfranchise voters who vote for candidates who are unqualified, dilute the votes for other candidates who are

properly qualified, and undermine the integrity of the election process, all to their detriment and the detriment of the public. (Amended Complaint p. 2 ¶¶ 2-3).

Plaintiff Chapman testified and verified his interest in the September 8 hearing. (9/8 Tr. 197-98). Each of the other three Plaintiffs testified and verified his/her interest in the September 15 hearing. (9/15 Tr. 359-385).

The key evidence, which the Circuit Court credited, included the Reform Party's own public records filings (or lack thereof) and the testimony of two witnesses described below.

Plaintiff William Chapman was the Reform Party USA Treasurer, national committee member, and national and state convention delegate. (9/8 Tr. 177-79, 188). He testified that since the Pat Buchanan campaign in 2000, the Florida Reform Party has had no candidates for public office, and no party building activity or fundraising at any significant level. (9/8 Tr. 177-79, 204). On August 3, 2004, Chapman filed a termination report with the Federal Elections Commission, which set forth reasons to terminate the Reform Party USA's status as a national entity. (9/8 Tr. 181-82, Ex. QQ).

Chapman attended the April 2004 national committee teleconference where the Reform Party USA adopted a rule to terminate the party's national convention's authority to nominate party candidates for President and Vice President, and gave that authority to the national committee. (9/8 Tr. 188-89).

The national committee's action at the next teleconference meeting in May 2004 to endorse/nominate Nader for President was intended to be final and binding. There was never any rule change to give this power back to the convention. The convention was called in August just to ratify the decision and attempt to show compliance with the Florida law. (9/8 Tr. 189-91, 198-99). In fact, Defendants presented excerpts from the convention including a statement from their witness, Ms. Kennedy, that "There is no opportunity to vote no" when purportedly considering the Nader endorsement. (9/15 Tr. 299-300, Defendants' Ex. 11).

It was understood that Nader only wanted endorsement and not nomination to run on the Reform Party ticket, so he would continue to run as an independent candidate in other states. (9/8 Tr. 195-96).

The national party did not actively back or support any candidates for federal office, and did not engage in fundraising, except for one effort that sold 50 newsletter subscriptions for \$25 each. (9/8 Tr. 193-94).

Chapman concluded:

... I discovered by reading the [FEC] advisory opinion, 1998-2, that there were some very serious requirements by the FEC in order to be a national committee. And none of those requirements, not even one, was being maintained. They were just going about having a little country club. They were not a national committee. (Id. 204).

Allan Lichtman, Ph.D., a professor of history and political analyst, was engaged by the independent Ballot Project and qualified as an expert in analysis of American political history, political systems, the presidency and third parties, as well as quantitative and historical methodology applied to voting in political systems. (9/8 Tr. 207-211). He has worked in the past for both the Republican Party and the Democratic Party and typically testifies for third parties. (9/8 Tr. 245).

He testified that “insurgent” third parties historically follow a trajectory path in which the formative charismatic figure loses interest, and the party devolves into factionalism, infighting and political ineffectiveness, disintegrates, or disappears. This pattern usually occurs in a short period of time, usually about four to eight years. (9/8 Tr. 212-13). This pattern has occurred, for example, with Theodore Roosevelt’s Bull Moose Party and George Wallaces’s American Party, and occurred for the Reform Party after 1996, when its charismatic leader, Ross Perot lost interest and the party subsequently self-destructed, with groups leaving to form other splinter parties.¹ The party’s decline has reached the point where where it

¹ In 2003, the remnant party has been taken over by a fringe group of 35 people whose leader, Party Chair Shawn O’Hara, reportedly advocates such extreme positions as executing doctors and nurses who perform abortions and abolishing the FBI, CIA, and EPA (9/8 Tr. 213-217). While ideological content is not an issue, a gross lack of continuity or consistency may be considered in deciding whether this is a true “national party.”

does not function as a national party according to any standard criteria. (9/8 Tr. 219).

Dr. Lichtman testified that a national party must be nationwide in focus, existing across the country in all regions. A national party must do more than simply nominate a presidential candidate, and there are recognized standard criteria for national parties. (Tr. 218-19). Dr. Lichtman testified to four vital areas: (1) ability to recruit and run national candidates across the country; (2) ability to stimulate interest in the political process; (3) ability to promote and develop and publicize issues; and (4) ability to raise money to conduct political activities. These are four minimal criteria that any national party must fulfill. However, the Reform Party does not fulfill the functions of a national party under any of these criteria. (9/8 Tr. 219).

The first criterion, the ability to recruit candidates, is a make or break issue. Even counting marginal candidates who have not filed financial reports with the FEC, the number of Reform Party candidates and the number of states in which these candidates run has rapidly declined since 2000, and is almost nonexistent in 2004. (9/8 Tr. 220-222).²

² Dr. Lichtman testified that in 2004, the Reform Party is only running candidates for national office in two states, Mississippi and Kansas. Four of these candidates are for House seats in Mississippi, O'Hara's home state. (9/8 Tr. 216). Defendants' witness, Janice Miller, a national committee member, testified that she was aware of only one federal candidate (9/15 Tr. 54), and Beverly Kennedy,

Other factors also showed the Reform Party to be in a serious decline stage, in terms of objective quantitative indicators of national level activity, such as the number of states where Nader appears as a Reform candidate (as opposed to an independent candidate), party registration, number of state affiliates represented in critical national committee meetings, number of subscribers to the party newsletter, number of delegates to the national convention where Nader was selected, lack of publicity, lack of continuity in the party platform from election to election, and lack of funding to accomplish these objectives. (9/8 Tr. 222-231).

Dr. Lichtman also considered public statements by current and recently disaffiliated Party leaders, who said that the party endorsement of Nader was the only logical answer to its “dry spell,” that the Party “barely functions at all” and has “no sense of direction or goals.” (Tr. 231-234).

Based on these criteria, Dr. Lichtman expressed the opinion that the Reform Party USA is not a national party today, but rather followed the trajectory of other insurgent third parties that had started the same way. (9/8 Tr. 235).

The Circuit Judge also mentioned the testimony of Robert Williams at the September 15 trial as persuasive. (9/15 Tr. 488). Williams attempted to join the Reform Party USA to establish a Tennessee affiliate, but he got no support from the national committee for these efforts. (Tr. 9/15 398-400). He attended

another national committee member, testified that she was aware of one federal candidate outside of Mississippi (9/15 Tr. 141).

approximately 10 teleconference meetings, in which no fund raising or party-building issues were addressed and the attendees mostly argued with one another. (Tr. 9/15 399-400).

Defendants' witness Beverly Kennedy, a Reform Party USA national committee member, the national custodian of records, and chair of the national party-building committee, agreed that the Reform Party USA, and in particular its party-building committee, do nothing independently in terms of party building, but instead pass that on to the affiliated state committees. (9/15 Tr. 104-05;136-37).

Upon conclusion of all the evidence and argument on the evening of September 15, the Circuit Court announced its findings that the evidence showed:

- (1) The Reform Party USA was not a "national party";
- (2) The Reform Party (of Florida) is not a "minor party"; and
- (3) The nomination of Nader and Camejo was done at a national committee teleconference meeting, and not at a subsequent national convention.

A copy of his transcribed oral ruling, which is adopted in his written order, is attached at App. 1.

SUMMARY OF THE ARGUMENT

The Plaintiffs Black *et al.*, adopt the Summary of the Argument in the Brief filed by the Plaintiffs Wilson *et al.*

ARGUMENT

UNDER FLORIDA LAW INDEPENDENT CANDIDATES MAY NOT USE ENDORSEMENT OF SHAM MINOR PARTIES TO GET ON THE PRESIDENTIAL BALLOT, TO DEFEAT COMPLIANCE WITH THE PETITION SIGNATURE REQUIREMENT IN FLA. STAT. § 103.021(4). BASED ON FINDINGS THAT NADER'S CLAIM OF BALLOT ACCESS IS NOT BASED ON A NOMINATION AT A REAL NATIONAL CONVENTION BY A TRUE NATIONAL PARTY, THE CIRCUIT COURT PROPERLY EXERCISED ITS DISCRETION TO ORDER THE SECRETARY OF STATE TO REMOVE HIS NAME FROM THE 2004 BALLOT.

The Plaintiffs Black *et al.*, adopt the Argument in the Brief filed by the Plaintiffs Wilson *et al.*, and add the following comments.

A. Standard of Appellate Review

The Circuit Court's factual findings relative to the nature of the Reform Party and its nominating convention are presumed correct. The appellate court cannot reweigh the evidence or substitute its judgment on these fact issues, but can reverse only if the findings are unsupported by competent substantial evidence. Shaw v. Shaw, 334 So.2d 13, 16 (Fla. 1976).

B. Plaintiff-Appellees' Standing

Enforcement of ballot access laws is not the exclusive domain of the Secretary of State. Florida citizens-electors' standing to enforce statutory ballot

access requirements has long been upheld, as they have a substantial interest in fair elections. See Tacker v. Polk County Bd. of Comm'rs, 170 So. 458, 459 (Fla. 1936)(citizen had standing to restrain the county commissioners from printing a recall question on the ballot, for failure to get required signatures); City of Miami Beach v. Herman, 346 So.2d 122, 123 (Fla. 3d DCA 1977) (taxpayers and property owners have standing to sue to prevent inclusion of a question on the election ballot based on a procedural challenge to the initiative petition). And see State ex rel. Landis v. Tedder, 143 So. 148, 149 (Fla. 1932):

This Court is committed to the doctrine that any and all appropriate judicial writs, including writs of injunction in proper cases, are available to *electors* and office holders to prevent violations of *statutes* enacted for the purpose of regulating and securing the expression of popular will in election....[first emphasis supplied]

and see Joughin v. Parks, 147 So. 273, 274 (Fla. 1932), which noted:

A court of equity will in other words not attempt to supervise or control the management of a political party or a political function but when the law prescribes rules and regulations for the party to conduct an election any interested elector may invoke the aid of a court of appropriate equitable remedies to enforce such rules and regulations. (e.s.)

Here, electors eligible to vote are seeking to invoke laws prescribing specific rules for conducting elections, and they have standing to do so.

C. Merits Argument

This is not a partisan issue: the public has a compelling interest in the integrity of the ballot and in fair and efficient elections, in which only candidates with substantial support are placed on the ballot, so that voters do not have to wade through a confusing sea of names of candidates and parties.

This case boils down to whether the Reform Party is a true national party or a sham, whether the state affiliate is a party, and whether the party national convention was to nominate Nader and Camejo or just to ratify a decision already made. These are fact issues, and the Circuit Court's findings are amply supported.

In enacting Fla. Stat. §103.012(4)(a), the Legislature surely did not intend the standards for national party, minor party, and national nominating convention to be meaningless. To do so would make Florida's Presidential ballot open to every self-proclaimed candidate who can posture a shell national party and assemble a small meeting of friends to constitute a "nominating convention."

Defendants argue that regardless of the statute, they have a constitutional right to be on the Florida ballot without either meeting the signature requirement or having a real national party and legitimate national nominating convention. However, the Constitution leaves the standards for ballot access largely in the hands of state legislatures, and recognizes that states are not only allowed to require substantial support, but that such requirements serve a compelling state

interest in preventing overcrowding, voter confusion and deception, and waste. See Libertarian Party v. State of Florida, 710 F.2d 790 (11th Cir. 1983), cert. denied, 469 U.S. 831 (1984), in which the Court upheld Florida's petition signature requirement for minor party candidates, which at the time was 3% of registered voters - a substantially more burdensome requirement than the 1% under current Fla. Stat. § 103.021(3)and (4). The Court said:

... the state has an interest in regulating the election process and avoiding voter confusion. That these, and the other interests asserted, are compelling has been well established under decided cases. [citations omitted] The Supreme Court stated in Jeness v. Fortson, 403 U.S. 431, 91 S.Ct. 1970, 29 L.Ed.2d 554 (1971), that a state has an important interest "in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization's candidate on the ballot - the interest, if no other, in avoiding confusion, deception, and even frustration of the democratic process. Id. at 442, 91 S.Ct. at 1976.

Id. at 792-93, citing cases that upheld signature requirements from 1% up to 5%.

The Court noted that the Supreme Court continued:

When candidates list a party affiliation, however, the voters and the state are entitled to some assurance that particular party designation has some meaning in terms of a "statewide, ongoing organization with distinctive political character." Storer v. Brown, 415 U.S. at 745, 94 S.Ct. at 1286. Requiring a party to meet the 3% requirement on a state basis helps achieve this goal. It protects the party's name and platform against use by unauthorized, truly independent candidates who seek to play off the party's success for their own benefit.

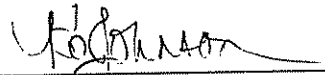
Id. at 795.

More recently, the Court expressed similar views in upholding the ballot access qualifying fee requirements, saying that state ballot access requirements serve compelling interests such as maintaining fairness, honesty, and order, minimizing frivolous candidacies, and “avoiding confusion, deception and even frustration of the democratic process.” Green v. Mortham, 155 F.3d 1332, 1335 (11th Cir. 1998).

The requirement that persons who want to run for President on Florida’s ballot show substantial support, either by a valid signature petition, or by a genuine minor party affiliated with a genuine national party and nomination at a genuine national nominating convention, carries out the state law’s intent and is entirely rational and fair, and must be neutrally enforced by the courts.

WHEREFORE, the Circuit Court’s ruling should be affirmed.

Respectfully submitted,



KELLY OVERSTREET JOHNSON, P.A.

Florida Bar #: 0354163



DAVID K. MILLER, P. A.

Florida Bar #213128

BROAD AND CASSEL

215 South Monroe Street, Suite 400

Post Office Drawer 11300 (32302)

Tallahassee, Florida 32301

Phone: (850) 681-6810

Fax: (850) 521-1446

Co-counsel for Appellees

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile, this 14th day of September, 2004, to the following:

D. Andrew Byrne, Esq.
Cooper, Byrne, Blue & Schwartz, PLLC
3520 Thomasville Road
Suite 200
Tallahassee, Fl 32309
(850) 553-9170 (Fax)

Kenneth W. Sukhia, Esq.
Fowler, White, Boggs, Banker
101 North Monroe Street
Suite 1090
Tallahassee, FL 32301
(850) 681-6036 (Fax)

George Waas, Esq.
Gerald Currington, Esq.
Office of Attorney General
State of Florida
PL-01, The Capitol
Tallahassee, Florida 32399-1050
(850) 488-4872 (Fax)

Richard B. Rosenthal, Esq.
Law Off. of Richard B. Rosenthal, P.A.
Alfred I. DuPont Building
169 East Flagler Street
Miami, FL 33131
Suite 1422
(305) 779-6095 (Fax)

Richard Perez, Esq.
Office of the General Counsel
Florida Department of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399
(850) 245-6127 (Fax)

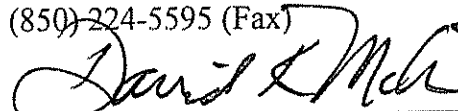
Stephen F. Rosenthal, Esq.
Michael S. Olin, Esq.
Maria Kayanan, Esq.
Podhurst Oreseck, P.A.
25 West Flagler Street
Suite 800
Miami, FL 33130
(305) 358-2382 (Fax)

Mark Herron, Esq.
Messer, Caparello & Self, P.A.
215 South Monroe Street
Suite 701
Tallahassee, FL 32301
(850) 224-4359 (Fax)

George Meros, Esquire
Gray Robinson, P.A.
P.O. Box 11189
Tallahassee, FL 32302-3189
(850) 222-3494 (Fax)

Joel S. Perwin, P.A.
Alfred I. DuPont Building
169 East Flagler Street, Suite 1422
Miami, FL 33131
(305) 779-6095 (Fax)

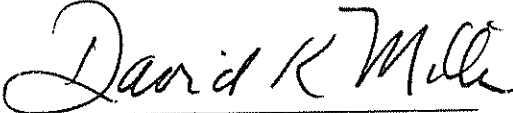
Ronald A. Labasky, Esquire
Landers & Parsons, P.A.
310 W. College Avenue
Tallahassee, FL 32301
(850) 224-5595 (Fax)



ATTORNEY

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the font requirements of Rule 9.210(a), Florida Rules of Appellate Procedure, have been complied with in this Brief and the size and style of type used in this brief is Time New Roman 14 point.



DAVID K. MILLER, P. A.

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APPENDIX

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Order of Honorable P. Kevin Davey dated September 15, 2004

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

HARRIETT JANE BLACK, ROBERT
RACKLEFF, WILLIAM CHAPMAN and
TERRY ANDERSON,
Plaintiffs,

vs.

CASE NO.

2004-CA-2140

GLEND A HOOD, in her Official
Capacity as Florida Secretary of
State, THE REFORM PARTY (OF FLORIDA),
RALPH NADER, and PETER MIGUEL CAMEJO,
Defendants.

_____ /

CANDICE WILSON; ALAN HERMAN; SCOTT
MADDOX, as Chairman of the FLORIDA
DEMOCRATIC PARTY; the FLORIDA
DEMOCRATIC PARTY,
Plaintiffs,

vs.

CASE NO.:

2004-CA-2141

GLEND A HOOD, Secretary of State
of the State of Florida; JEB BUSH,
Governor of the State of Florida;
THE REFORM PARTY OF FLORIDA; THE
REFORM PARTY OF THE UNITED STATES
OF AMERICA; RALPH NADER and PETER
MIGUEL CAMEJO,
Defendants.

_____ /

IN RE:	ORDER
BEFORE:	Honorable P. KEVIN DAVEY
DATE:	September 15, 2004
TIME:	Commenced at 8:00 a.m. Concluded at 9:20 p.m.
LOCATION:	Leon County Courthouse Tallahassee, Florida
REPORTED BY:	SANDI NARGIZ Certified Realtime Reporter Certificate of Merit

ACCURATE STENO TYPE REPORTERS, INC.
2894-A REMINGTON GREEN LANE, TALLAHASSEE, FLORIDA 32308

(850)878-2221

APPEARANCES CONTINUED:

REPRESENTING DEFENDANT REFORM PARTY OF FLORIDA:

D. ANDREW BYRNE, ESQUIRE
DARREN A. SCHWARTZ, ESQUIRE
Cooper, Byrne, Blue & Schwartz
1358 Thomaswood Drive
Tallahassee, Florida 32312

REPRESENTING DEFENDANT NADER AND CAMEJO:

KENNETH W. SUKHIA, ESQUIRE
Fowler, White, Boggs & Banker
101 North Monroe Street
Tallahassee, Florida 32301

APPEARANCES:

REPRESENTING PLAINTIFF WILSON:

MICHAEL S. OLIN, ESQUIRE
STEPHEN F. ROSENTHAL, ESQUIRE
Podhurst Orseck
25 West Flagler Street, Suite 800
Miami, Florida 33130

THOMAS FINDLEY, ESQUIRE

MARK HERRON, ESQUIRE
Messer, Caparelli & Self
215 South Monroe Street, Suite 701
Tallahassee, Florida 32301

RICHARD B. ROSENTHAL, ESQUIRE
Law Offices of Richard B. Rosenthal, P.A.
169 East Flagler Street, Suite 1422
Miami, Florida 33131

REPRESENTING PLAINTIFF BLACK:

EDWARD S. STAFMAN, ESQUIRE
6950 Bradfordville Road
Tallahassee, Florida 32308

KELLY OVERSTREET JOHNSON, ESQUIRE

Broad and Cassel
215 South Monroe Street, Suite 400
Tallahassee, Florida 32301

REPRESENTING DEFENDANT HOOD:

RICHARD A. PEREZ, ESQUIRE

GEORGE MEROS, ESQUIRE

PETER ANTONACCI, ESQUIRE

Florida Department of State
500 South Bronough Street
Tallahassee, Florida 32399-0250

1 EXCERPT OF PROCEEDINGS
2 THE COURT: All right. This isn't the
3 preferable way to do this. The preferable way to
4 do this would be go back to my office and spend the
5 next 12 hours writing a law of the article that any
6 lawyer, judge, or law professor would be pleased to
7 put his or her name on it.
8 But due to the exigencies of time, the fact
9 that the hurricane, the courthouse is closed
10 tomorrow, what I am going to do is this.
11 I am going to try to make coherent findings of
12 fact and conclusions of law on the record. I am
13 going to enter a one-page order that basically
14 adopts those; and I hate to do that, but I think to
15 get this to the Supreme Court in a reasonable time,
16 along with the record, that's the best I can do.
17 Because I read the Supreme Court's order today and
18 you all, I guess, will be over in the Supreme Court
19 8 o'clock in the morning on Friday arguing to them.
20 So I want to thank all the lawyers for their
21 presentations. I want to thank all the witnesses
22 for coming here, including Mr. O'Hara came all the
23 way by bus from Mississippi. And I do want to
24 recognize all the people here, both the plaintiffs
25 and the defendants, for taking an active role in

1 the process.

2 I wish we had 200 million voters like all you
3 people, the plaintiffs and the defendants. I think
4 we would have a lot better country than we have.
5 We have the most wonderful country on earth but it
6 could be better.

7 And so I salute everyone for their willingness
8 to spend their time, money, great or small, in
9 trying to make the system better and trying to be
10 involved in the system because we all learned in
11 ninth grade civics, that's our system. We have a
12 Republican form of government, a democracy that's
13 based upon people's input and all the power resides
14 in the people and that's what the constitution
15 says.

16 First of all, the -- I recognize in reviewing
17 these statutes that there is painfully little case
18 law on this -- on the issues that are presented in
19 this particular case. There are -- while there is
20 a definition of minor party in another statute that
21 has some workability in this case, there is no
22 definition of national party affiliation in a lot
23 of other statutes and this isn't unusual. I
24 understand about the constitutional underpinnings
25 argument, but this isn't an unusual -- the

1 legislature does its best to try to reflect its
2 intent in promulgating laws in these statutes in a
3 meaningful way and cogent way and in a way that
4 will facilitate rather than hamper our democracy.

5 However, it falls upon under our constitution,
6 it falls upon the judiciary to interpret statutes,
7 rules, laws, circumstances, in trying -- in drawing
8 lines as to whether there has been compliance with
9 laws or whether there hasn't been compliance with
10 laws.

11 In this particular case, there are two
12 extremely important competing factors as there are
13 in a lot of cases; two competing and important
14 compelling interests which need to be considered
15 and balanced by this court.

16 One is the access to the ballot by minor party
17 candidates and parties. And two, the
18 enforcement -- the interpretation and enforcement
19 and the giving meaning to Florida's election code.

20 The statutory construction principles, the
21 paramount one is that the legislature is not --
22 it's not to be assumed that the legislature
23 intended a meaningless act when it passes a
24 statute. It intends that the statute be -- have
25 some meaning and be interpreted in a way to give it

1 meaning.

2 The -- I want to -- I do reiterate the point I
3 made earlier. I know the Secretary of State's able
4 counsel has spoken about the federal questions and
5 the federal law and constitutional looming over
6 this case. Maybe that's where it will end up.

7 But I agree with Judge Mikel when this case
8 was removed, there was an attempt to remove it to
9 federal court, which is fine, be glad for him to
10 have to take it; could have been doing something
11 else tonight.

12 But the -- I don't find that there is any
13 federal question. I think it's strictly a question
14 of Florida statutory law to be interpreted in light
15 of the salient facts to determine whether or not
16 the Reform Party, both the national and Florida,
17 have complied with the law.

18 Concerning the issue -- and I will try to take
19 these one at a time -- of affiliation, the court
20 originally ruled that it did not appear to the
21 court that the Reform Party of Florida, I will
22 call -- let me just call it that for ease of
23 understanding, didn't appear to the court that the
24 Reform Party of Florida was affiliated with a
25 national party. That was primarily based upon the

1 letter from Mr. Simmermaker which was Exhibit H of
2 the plaintiffs.

3 After listening to the additional evidence
4 presented today, while based upon the evidence
5 presented the other day, I think it was very clear
6 that they weren't; I think that it's questionable
7 now as to whether or not Mr. Simmermaker had the
8 authority of the party, even though he was the
9 party chairman at the time he wrote that letter in,
10 I think it was August of 2002, whether he had the
11 authority to do that.

12 I say questionable because there is testimony
13 today that shortly thereafter a majority of the
14 executive committee voted to rescind that letter
15 and to write another letter saying that they were
16 affiliated.

17 So I have -- to me, I have a real question as
18 to whether or not they are affiliated with a
19 national party. And I think I should have to give
20 them the benefit of the doubt in that regard even
21 though the Secretary of State under Florida
22 apparently does not recognize it as affiliated as
23 based upon their own website.

24 So I think that at least there does appear to
25 be a loose affiliation by the Reform Party of

1 Florida with the national -- with the Reform Party,
2 which is the national party, the erstwhile national
3 party.

4 Now the statute in question, I think mostly in
5 question in this case is Florida Statute 103.021
6 subsection (4). That is but one of the ways a
7 minor party can be admitted to the ballot, in other
8 words, can have a slate of candidates on the
9 ballot.

10 There is another procedure which is more
11 onerous that's existed for a long time where there
12 is basically a percentage of Florida voters
13 specifically needed to be gathered to get the party
14 on the ballot.

15 This is obviously, I think, a less onerous --
16 the method that has been employed by Mr. Nader and
17 Mr. Camejo acting with the national Reform Party or
18 the Reform Party has opted for the less onerous
19 requirements.

20 And while these requirements can in no way, in
21 my judgment, be considered to be interpreted to be
22 equal, but there seems to me to be some
23 relationship, it doesn't seem to me to make any
24 sense that the legislature would have a provision
25 in the law that says you can get on the ballot as a

1 minor party candidate by getting a hundred thousand
2 or some number, great number of signatures, and
3 then have another way that's basically no
4 requirements. I mean, it just doesn't make sense
5 that the legislature would have intended to have
6 one mechanism for getting on the ballot that is
7 darn tough to do and another one that -- I don't
8 like the three people in Iowa and three people in
9 Delaware business, but that basically a few people
10 can get together and get on the ballot.

11 Now certainly the legislature has the
12 authority to make reasonable regulations, not only
13 to give ballot access but also make sure that the
14 ballot doesn't become unwieldy. So there's not
15 been a constitutional issue raised in my judgment
16 in this case, but it seems to me that the
17 legislature has acted reasonably in allowing this,
18 these two ways of becoming qualified for a ballot.

19 Now it just seems to me that if one -- if the
20 provision under 103.021 subsection (4) means
21 anything and it's so much easier, at least it
22 should have to be, if not strictly complied with,
23 substantially complied with or otherwise it has no
24 meaning.

25 If those statutory requirements in that

1 statute don't mean anything, then to me it's like
2 the statute was never even passed. And certainly
3 it was passed, it was promulgated, it is Florida
4 law, and it's been the law for a while.

5 So the court finds that there has to be at
6 least some substantial compliance with this
7 legislative provision to be determined to be a
8 candidate on Florida's ballot.

9 Now the first issue is whether or not the
10 Reform Party is a, quote, national party, close
11 quote.

12 Now as I alluded to earlier, there is no case
13 law defining this. There are no case authorities
14 defining this. However, it has to mean something
15 and I think it does fall to this court, at least
16 initially, to try to determine what the legislature
17 had in mind when it used that term.

18 And with respect to the Reform Party, I don't
19 think there was any doubt that the Reform Party in
20 1997, 1996, 2000, even 2000, was a national party.
21 It had all the trappings of a national party, and I
22 will get into those in a minute. But I think it's
23 equally clear that the party is a -- and some
24 person used shell, it's no longer is imbrued with
25 those characteristics. And all the experts talked

1 about how parties ebb and flow, and so forth.
2 Well, as far as the Reform Party, this is ebb tide.

3 I think Mr. Williams, who is kind of -- I
4 think most people think of as sort of a nondescript
5 witness, but you know, I think Mr. Williams kind of
6 had it right. He testified that back in the days
7 of Ross Perot and even Pat Buchanan this was a
8 national party. But it isn't anymore. And I think
9 he -- and I not basing my ruling on that, but I
10 think he had it analyzed pretty correctly for a
11 layman.

12 And I was struck by, you know, here's a guy,
13 the only person in my judgment that knows what's in
14 the platform is Mr. Robert Williams up there in
15 Chattanooga, Tennessee, on the side of an
16 interstate, because nobody else -- it's not in
17 evidence, nobody testified to it, nobody from
18 either the national or the state party seemed to be
19 able to tell anybody what the plank was in it.

20 Mr. Gillespie, who's the primary expert of
21 the -- of the Reform Party parties in this
22 litigation couldn't -- maybe it's unfair, but he
23 didn't have one -- he wasn't able to tell me one
24 plank in the platform.

25 And so when I try it to analyze what it means

1 to be a political party -- excuse me, a national
 2 political party, as I did the other evening when we
 3 were considering the matter of the injunction, I
 4 think all the experts, while they may agree to --
 5 they may disagree a little bit as to the
 6 quantification of the factors and criteria, as to
 7 what makes up a national party, they pretty much
 8 agree on those criteria, on that criteria.

9 And it's an organization that engages in party
 10 building, no evidence that I can see that the
 11 national form party does that. Here's a guy,
 12 Mr. Williams -- and I don't want to put too much
 13 emphasis on him, but I thought it was kind of
 14 interesting. Here's a guy that is really
 15 interested, wants to be a true believer, he goes to
 16 10 meetings, and I mean, you couldn't even get to
 17 recruit that guy?

18 So I am not making fun of the party at all. I
 19 am just saying, it just seems to me strange that
 20 when party building seems to be one of the major
 21 factors, here's a guy that's hungry to be in the
 22 party and he is not in it; although it seemed to me
 23 he made a pretty good faith effort to try to be in
 24 it.

25 Fund raising, I think that's the least of the

1 in this record, and I don't remember, I listened to
 2 it carefully, about even publicizing their
 3 policies. A couple of press releases about
 4 Mr. Nader's going to be our candidate.

5 Mr. Nader -- as I said the other day, I have
 6 the utmost respect for Mr. Nader. He is, to me,
 7 one of the great Americans of the last 50 years, I
 8 don't think there is any doubt about what he has
 9 done.

10 But that's all you have got. You've got
 11 Mr. Nader's name without any policies, any
 12 platform, any fund raising, any party building, and
 13 any of the other trappings of a national party.

14 I would say this. The reason I asked
 15 Dr. Gillespie for his definition the second time,
 16 is, I didn't get a chance to write it down, but I
 17 don't even think that the Reform Party
 18 unfortunately -- and I am not criticizing this, I
 19 am trying to make findings of fact based upon the
 20 evidence and I don't mean to be critical at all.
 21 But I have to analyze and think critically on this.

22 But one of his criteria was that a party has
 23 to articulate the interest of its devotees. I
 24 heard not one shred of evidence about any interest
 25 that the Reform Party had outside of getting

1 factors. But there is unquestionably both the
 2 Florida and the Reform Party on the national basis
 3 has had little or no fund raising activities or
 4 funds or expenditures over the past two years,
 5 probably since Mr. Buchanan ran in 2000. But the
 6 evidence will show exactly when fund raising -- and
 7 I dare to say most of his money came out of the
 8 federal matching funds that he was able to garner
 9 because of the votes and percentage of votes that
 10 Mr. Perot received back in '96.

11 There does not seem to be -- outside of
 12 Mr. Camejo and Mr. Nader and four Congressional
 13 candidates in Mississippi, and one, Mr. Good, the
 14 Congressional candidate out in Colorado, doesn't
 15 seem to me that this is somehow equivalent or
 16 evidence of running national candidates.

17 Yeah, you have two people that want to be
 18 on -- be affiliated with the party on a national
 19 basis, but there are literally five other
 20 candidates in all the races, federal races all over
 21 the country. I didn't hear much about any local
 22 Reform Party candidates in Michigan or Florida or
 23 anywhere else. So I really don't know about the
 24 local candidates.

25 And I just don't -- I don't see any evidence

1 Mr. Nader and Mr. Camejo on the ballot. I have no
 2 clue what they stand for. Something about
 3 globalization, I think that was Nader's idea, or
 4 antiglobalization.

5 And again, it seemed to be the only person
 6 that's even seen the platform is Mr. Williams. And
 7 he is disaffected with the party because he thinks
 8 it's going nowhere. Or it was something, but now
 9 it's not anything much.

10 Turning to -- so I think that requirement of
 11 the statute is not borne out by the evidence, that
 12 the Reform Party as it stands today, not four years
 13 ago or eight years ago, does not meet the
 14 definition of a national party that's required
 15 under the statute under the question.

16 The last thing I will say about this is that I
 17 understand that the Federal Election Commission
 18 only deals with finances of major political parties
 19 and minor political parties. But I would again
 20 reiterate what I said: Their definitions of what
 21 is a national party, and then they talk about
 22 major, but it's a little bit different, I
 23 understand the committee is a little bit different
 24 than a national party. That distinction is not
 25 lost on me. But I think it's illustrative of the

1 fact that it just comports with the same findings
2 that under the FEC advisory opinions, under no
3 circumstances would the Reform Party be considered
4 to be a national party. The only reason I think it
5 hasn't been terminated, even though Mr. -- I am
6 sorry, it's getting late -- Mr. Chapman tried to
7 terminate it is that the FEC says it owes them 300
8 grand, or at least that's what they are saying in
9 that lawsuit in Gainesville.

10 So under even their criteria, which I think is
11 not -- is persuasive while not being dispositive,
12 it's certainly persuasive additional evidence at
13 least as to what the federal government thinks is
14 what, quote, a national party is.

15 Now with respect to the Florida party, the --
16 again, the Florida party has a number of very
17 ardent supporters -- excuse me, I've already said
18 that it's questionable in my mind as to whether
19 they are affiliated with a national party, but I
20 will give them the benefit of the doubt that there
21 does appear to be some loose affiliation with the
22 Reform Party, and I call it the national Reform
23 Party even though it's not a national party, just
24 for ease of understanding.

25 Again, the FEC, Federal Election Commission is

1 not appear to be in compliance with their own
2 constitution about notice, about having a, quote,
3 convention, close quote, rather than just a
4 conference call. I think it seems credible to me
5 that Mr. Hernandez, at some point thereafter,
6 realized that there was -- could be a legal
7 challenge, and B, that they didn't have a
8 convention, so this August 24 to August 27 or 28th
9 meeting in outside of Dallas, Texas, was sort of
10 cobbled together as a, quote, convention to sort of
11 confirm the nomination that was made in May.

12 Courts have to be careful when they interfere,
13 and that's what I don't want to interfere in, is
14 political parties' business and I am not
15 interfering in it.

16 All I am doing is looking at what has happened
17 after the fact and trying to determine whether that
18 complied with the Florida law and under all the
19 evidence, it does not appear that they did comply
20 with Florida law or with their own constitution or
21 bylaws.

22 It's questionable to me whether or not even
23 the August meeting complied with their own bylaws.

24 I am unsure about this 25 percent delegate
25 rule. It seems to me Mr. Meros is correct about

1 only interested in financial dealings, but there is
2 no question but that the FEC on January 19, 2001,
3 terminated its approval of the Florida party as a
4 party entity, as an FEC entity. That has not been
5 renewed.

6 The court is aware of the -- and I think there
7 is less stringent requirements, let me just say
8 this, as to whether a party is a minor party in
9 Florida than whether or not it's a national party.
10 But I just want to say that the Florida party, at
11 least in the last three to four years, has fielded
12 only a handful of candidates, has little or no
13 money, I don't know what its platform is. Doesn't
14 seem to be engaging any party building activities.
15 It just does not seem to have the trappings or
16 components of what a political party would have.

17 Regardless of that fact, I think there is
18 other graver problems with the attempted nomination
19 of Mr. Nader and Mr. Camejo. It is -- the evidence
20 to me is very clear that the party attempted to
21 nominate Mr. Nader -- I am talking about the Reform
22 Party of Florida -- attempted to nominate Mr. Nader
23 and Mr. Camejo on May 11. That's a clear intent of
24 all the documents of what occurred.

25 Unfortunately, that is not in compliance, does

1 that. It seems to me that has more application to
2 a primary than it does a nominating convention, but
3 by the same token, I don't think the May 11th
4 telephone conference was a, quote, primary, close
5 quote.

6 I believe that was the nominating convention
7 and at the time the Florida party felt that that
8 would be sufficient. There may have been other
9 motivations, too. But that they felt that would be
10 sufficient and later on they -- in an abundance of
11 caution, they decided to have another meeting to
12 confirm that.

13 There are many other findings that I could --
14 I can make on that issue, but I think when you look
15 at all of these factors in trying to make a
16 difficult decision when it concerns minor party
17 ballot access and weigh that decision and balance
18 that decision against enforcing and having some
19 meaning in our election -- code of election
20 statutes, I think that the evidence is more than
21 preponderant.

22 I think it's clear and convincing that the
23 Reform Party, and the Reform Party USA, and the
24 manner in which Mr. Nader and Mr. Camejo were
25 nominated, does not comport with Florida law and

1 therefore, the Court will issue a declaratory
2 judgment basically stating that, finding that they
3 are not legally qualified as candidates for the
4 2004 presidential election scheduled to occur in
5 November.

6 The Court will further enter an order -- the
7 Supreme Court has already done it, so I don't know
8 if I need to do that, but it seems to me that the
9 Supreme Court has entered its order today basically
10 prohibiting the Secretary of State from advising
11 the supervisors of elections of the state from
12 sending out any ballots at this point in time.
13 That's my reading of the Supreme Court's order that
14 was issued this afternoon.

15 But to the extent that the Supreme Court needs
16 an order, I will enter a final injunction today.
17 It will be in this written order that I am going to
18 type that is going to basically adopt all these, as
19 the Court's order, all these findings and
20 conclusions of law of the Court's order. I will
21 enjoin the Secretary of State from certifying Ralph
22 Nader and Peter Camejo as candidates for president
23 and vice president respectively on the ballot and
24 prohibiting her from advising the secretaries, the
25 various secretaries -- excuse me, supervisors of

1 elections -- from printing and mailing out absentee
2 ballots or preparation of any ballot pending
3 further order of the Florida Supreme Court who will
4 review the order that was entered on September 9
5 and the order that's going to be entered in a few
6 minutes that I've just announced verbally.

7 I am sure there's other things I can say but I
8 think that's the analysis of the evidence. And
9 again, I want to thank all the attorneys for -- all
10 the sides for their written arguments and their
11 oral arguments.

12 I appreciate the fact that both parties
13 limited their time in their presentations because
14 we have just a very brief window of action in this
15 case. And I thank all of them for their efforts in
16 this case. I think all the lawyers have engaged in
17 difficult litigation in the best tradition of
18 Florida trial lawyers, and I thank all of you very
19 much for your patience and your demeanor and your
20 handling of this difficult and contentious case;
21 and I know all cases are contentious to somebody.

22 Is there anything anybody wishes to state for
23 the record?

24 MR. MEROS: Your Honor, George Meros. I have
25 come to learn that I do not believe the Secretary

1 of State has filed an answer to the complaint. And
2 in view of the circumstances and in view of the
3 fact that actually time is still not due for an
4 answer, but there is a final judgment, can I
5 understand or can I ask that the Court waive the
6 need for Secretary of State to answer a complaint?
7 And if the Court will not or cannot do that, can I
8 seek leave to file an answer?

9 THE COURT: Any objection?

10 MR. OLIN: No, sir.

11 THE COURT: I just leave it up to you. I will
12 either waive the answer with --

13 MR. MEROS: I'd just assume to waive it.

14 THE COURT: Or if you want to file an answer,
15 you can file one tomorrow and send it straight to
16 Supreme Court.

17 MR. MEROS: I have no interest in it unless I
18 have to.

19 THE COURT: Before I hear from Mr. Byrne, I
20 want to say one other thing.

21 This was kind of interesting to me anyway.
22 And -- well, I am going to say this. Florida
23 Statute section 103.121 which originally raised as
24 a count in the case, I think when everybody saw
25 that maybe everybody's pants were down a little bit

1 on complying with that statute, everybody pretty
2 much receded from it. You all had me take it out
3 of the last one, and so I am not going to rule on
4 that.

5 The Supreme Court may choose to. It may throw
6 everybody off the ballot and our 27 electoral
7 votes will go into the nether world. I kind of
8 doubt that.

9 But it just seems to me that there has -- and
10 I think I should say this. There are some really
11 technical requirements there, and I think there is
12 a, at least in my judgment in reading this, there
13 is some -- there is one statute that talks about
14 filing the thing with the governor, there is
15 another one that talks about filing with the
16 Secretary of State. Some people file with the
17 governor, some people file with the Secretary of
18 State. It all ended up getting to the governor for
19 everybody and he sent out his letter to the
20 Secretary of State on September 1st which he is
21 required to do by the state law.

22 It just strikes me that probably over the last
23 number of years, maybe nobody has strictly complied
24 with that statute. And it does not appear that the
25 Secretary of State's office has strictly required

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1 compliance with that statute for anybody.
2 So I just want to make it clear that the fact
3 that the Reform Party or Reform Party of Florida
4 didn't comply with the statute, I don't find that
5 in any way disqualifies them from appearing on the
6 ballot. There are other reasons that I indicated I
7 think are far more significant, more important, and
8 more substantive.
9 So the fact that the Republican party, the
10 Democratic party, or the Constitutional Party or
11 the Socialist Party or any of them, Libertarians,
12 may not have complied with that, I don't think it's
13 of any consequence in this lawsuit, frankly.
14 Maybe the Supreme Court will think otherwise
15 but that's what I think.
16 Mr. Byrne, I am sorry, you were going to say
17 something.
18 MR. BYRNE: Your Honor, I think you just
19 addressed my question about our counterclaim, so I
20 will just take your comments as answering my
21 question.
22 THE COURT: Okay. I know you didn't argue the
23 counterclaim, but to the extent that you want to
24 and want them to answer and so forth, you can do
25 that; you can still do it. I don't know, given the

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1 time --
2 MR. BYRNE: I think I did argue it in the
3 closing.
4 THE COURT: You've got bigger fish to fry than
5 that.
6 MR. BYRNE: I think I did argue it in the
7 closing. I think I made our position clear that I
8 thought it was absurd and ought to be gotten, but
9 if we are going to insist on it, everybody has to
10 be treated the same; I think you made that ruling.
11 THE COURT: Right. I agree with that. I
12 think everybody has to be treated the same on that,
13 to the extent that that particular statute applies
14 to everybody.
15 Now obviously there are different statutes
16 that apply to national parties, Democratic,
17 Republican parties.
18 Mr. Suhkia, Mr. Meros, anything? Mr. Olin?
19 MR. OLIN: The only thing I wanted to tell
20 you, Your Honor, we had drafted a short form order
21 which, based on your findings, would have to be
22 changed, but at least it might provide the Court
23 with a template and we would be happy to provide it
24 to Your Honor.
25 THE COURT: You can, but I think -- you can

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1 give it to the others.
2 MR. OLIN: I have a copy for everybody. It's
3 just a template. You would obviously have to
4 change it because you made some findings that are
5 different than what are in here.
6 THE COURT: Let me just tell you, as jumbled
7 as those findings are and as the antithesis of a
8 law review article as it was, I would rather go
9 ahead and let Ms. Nargiz type that up because that
10 is basically my ruling.
11 I could maybe make it a little nicer, sweeter,
12 more flowery or what have you, but we don't have
13 time for that. So I am going to basically issue an
14 order that adopts those as my findings and then the
15 Supreme Court will unfortunately have to read about
16 a 20 -- 15 or 20-page transcript from Ms. Nargiz
17 that would basically say what I would have said in
18 a 25 or 30-page order had we had more time to do
19 it.
20 MS. JOHNSON: Are you going to do that right
21 now? Should we wait on the order?
22 THE COURT: Yes, I am going to go back to my
23 office right now and just do that one-line order.
24 I will give it to everybody so you can make your
25 appeals or whatever.

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1 (Proceeding concluded at 9:20 p.m.)
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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, SANDRA L. NARGIZ, RMR, CRR, certify that I was authorized to and did stenographically report the proceedings herein, and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS my hand and official seal this 15th day of September, 2004.

SANDRA L. NARGIZ, RMR, CRR
2894 REMINGTON GREEN LANE
TALLAHASSEE, FL 32308
850-878-2221