SUPREME COURT OF FLORIDA

Case No. SC04-1755
DCA Case No. 04-4050
Consolidated Circuit Court Case Nos. 04-CA-2140 and 2141

THE REFORM PARTY OF FLORIDA, et al.,	v.	HARRIET JANE BLACK, et al.
Appellants		Appellees

BRIEF OF GLENDA HOOD, FLORIDA SECRETARY OF STATE

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STATEMENT OF CASE AND FACTS

This is an appeal of a final declaratory judgment and injunctive relief issued by the Circuit Court for the Second Judicial Circuit. Plaintiffs below filed their complaint on September 2, 2004, seeking a declaration that the nominees of the Reform Party for the offices of President and Vice President of the United States failed to comply with the requirements of section 103.021(4)(a), Fla. Stat., for ballot placement. Plaintiffs also sought an injunction prohibiting the Secretary of State from certifying a ballot position for those candidates. The court below first granted a temporary injunction preliminarily enjoining the Secretary of State from "certifying Ralph Nader and Peter Camejo as candidates for the Florida Presidential election ballot of 2004 and from certifying the electors offered by the Defendant Reform Party of Florida."

Notices of appeal were filed challenging the courts issuance of the temporary injunction. The First District Court of Appeal *sua sponte* certified the case to this court pursuant to Rule 9.125, Florida Rules of Appellate Procedure. This Court accepted jurisdiction but ordered the circuit court to proceed to final judgment before addressing the merits.

On September 15, 2004, the trial court heard the case on the merits and issued a final judgment. The court granted Plaintiffs' request for a declaratory judgment, and held that the Reform Party candidates had failed to comply with the

requirements of Section 103.021(4)(a), Florida Statutes. The court also enjoined the Secretary of State from certifying Nader and Camejo to the supervisors of elections for ballot placement.

This appeal ensued.

SUMMARY OF ARGUMENT

The final judgment should be reversed.[1] The circuit court's (i) failure to provide a clear, unambiguous and workable standard to establish compliance with Section 103.021(4)(a) and (ii) failure to acknowledge federal constitutional limits on the question of access to Florida's ballots, compels reversal. A rule of law that provides no meaningful way for minor parties to now whether they have complied with the requirements of Section 103.021(4)(a) without resort to litigation constitutes a substantial burden to ballot access in contravention to established federal and state constitutional principles.

The Secretary of State must implement Florida's election laws in an orderly, constitutional manner. The judgment under review materially impedes that effort. The Secretary's concern is for the proper legal construction of the state election law at stake to (i) limit further litigation in this case, (ii) advise other minor parties

[1] Because the Legislature assigned the Secretary a purely ministerial role in the certification of minor party candidates under Section 103.021(4)(a), Fla. Stat., she takes no position as to whether the facts of record compel placement of Ralph Nader and Peter Camejo on the ballot. The Secretary has an abiding interest, however, in a workable and constitutional interpretation of the statute.

what is necessary to comply with Section 103.021(4)(a), and (iii) prevent disruptive and politically calculated litigation in future presidential election years between the date of ballot certification and the mailing of advance absentee ballots.

ARGUMENT

Applicable Standard of Review

While a declaratory judgment action is generally accorded a presumption of correctness on appellate review, See, e.g., Williams v. Gen. Ins. Co., 468 So. 2d 1033, 1034 (Fla. 3d DCA 1985), the circuit court's interpretation of Florida law, and federal constitutional law, is reviewed *de novo*. See Operation Rescue v. Women's Health Ctr., Inc., 626 So. 2d 664, 670 (Fla. 1993), rev'd. in part on other grounds by Madsen v. Women's Health Ctr., Inc., 512 U.S. 753 (1994); See e.g., Florida Power Corp. v. City of Casselbury, 793 So. 2d 1174, 1176 (Fla. 5th DCA 2001); Browning-Ferris Indus. of Florida, Inc. v. Manzella, 694 So. 2d 110, 111-112 (Fla. 4th DCA 1997).

Introduction

The Secretary is Florida's chief election officer and she is charged with the responsibility to "[o]btain and maintain uniformity in the application, operation and interpretation of election laws." Section 97.012, Florida Statutes (2004). Pursuant to her statutory duties, the Secretary has a substantial interest in the

smooth and efficient administration of the Florida Election Code. In particular, the Secretary, as an executive officer of the State, has a compelling interest in ensuring that Florida's election laws are applied in a legal manner, respectful of all constitutional interests at stake. Because the court misapplied the law and unconstitutionally burdens access to ballots, the court should reverse its judgment.

Any state statute must be construed in a manner that avoids constitutional infirmity. See Corn v. State, 332 So. 2d 4, 8 (Fla. 1976).

Here, the circuit court explicitly concluded that federal legal issues are not at stake in this case. As a result, the court put aside federal constitutional interests implicated in its interpretation of the ballot access provisions of Section 103.021(4)(a), to the exclusion of a minor political party's opportunity to participate in the political process.

Moreover, the circuit court unnecessarily thrust Florida's judiciary into the management of the core political processes of a political party. It also defined terms applicable to such parties where the Legislature has chosen not to. In so doing, the court created unworkable standards that will likely involve the Secretary in repetitive litigation repugnant to core First Amendment expression and associational values. The Legislature did not create any such standard and it violates the separation of power's doctrine to do so. Fla. Const. Art. I, Sec. 3.

The legal issue on appeal is whether the circuit court properly interpreted Section 103.021(4)(a), Florida Statutes, in view of the state and federal constitutional rights that statute implicates and the prohibition upon executive or judicial management of the affairs of political parties.

The circuit court erred in granting Plaintiffs' declaratory relief. It misapplied the law in its interpretation of Section 103.021(4)(a), Florida Statutes, by establishing subjective standards that fail to preserve constitutional rights.

To obtain the permanent injunctive relief it requested, the Plaintiffs were required to establish a clear legal right, an inadequate remedy at law, and that irreparable harm will arise absent injunctive relief. K.W. Brown and Co. v. McCutchen, 819 So. 2d 977, 979 (Fla. 4th DCA 2002). As a result of the circuit court's misapplication of the law, the court also erred in granting injunctive relief to Plaintiffs, as it could not properly determine whether Plaintiffs established a clear legal right to such relief.

In addition, the circuit court impermissibly addressed a non-justiciable political question.

I. The circuit court's interpretation of Section 103.021(4)(a), which relates to minor party access to a general election ballot, implicates core constitutional rights.

At the heart of this appeal is the circuit court's interpretation of Section 103.021(4)(a), Florida Statutes. Under that subsection, a minor political party

meeting certain conditions may have candidates for President and Vice President of the United States printed on the general election ballot. See Fla Stat. § 103.021(4)(a). The manner in which Section 103.021(4)(a) is applied, therefore, determines the degree of burden a minor party and its candidates encounter in obtaining access to the general election ballot.

Statutory burdens to candidate ballot access implicate constitutional rights of both candidates and voters. As the U.S. Supreme Court noted in Anderson v. Celebrezze, 103 S.Ct. 1564, 1569 (1983):

> Our primary concern is with the tendency of ballot access restrictions "to limit the field of candidates." . . . Therefore, "[i]n approaching candidate restrictions, it is essential to examine in a realistic light the extent and nature of their impact on voters." The impact of candidate eligibility requirements on voters implicate basic constitutional rights.

(citations omitted).

And in Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 184 (1979):

> Restrictions on access to the ballot burden two distinct and fundamental rights, "the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively.

(citations omitted) (holding Illinois Election Code unconstitutional insofar as it imposed a disparate signature requirement on independent candidates and new political parties wishing access to ballot).

Among the core constitutional rights implicated by candidate ballot access limitations are freedom of expression and freedom of association rights under the First Amendment to the U.S. Constitution. Williams v. Rhodes, 393 U.S. 23, 30-31 (1968) (implicate right to vote and freedom of association rights); Nader 2000 Primary Comm., S.D. v. Hechler, 112 F. Supp. 2d 575, 578 (S.D.W.Va. 2000) (noting candidates and party have First Amendment interests of free speech and political expression in being on an election ballot). Florida courts have also long recognized the constitutional rights implicated by ballot access provisions. See e.g., Libertarian Party v. Smith, 665 So. 2d 1119, 1121 (Fla. 1st DCA 1996).

Interpretation of Section 103.021(4)(a) necessarily determines the degree of burden the statute imposes upon a minor party candidate's ability to gain ballot access. Therefore, any such interpretation must be mindful of the rights of potential candidates and ensure the constitutional protections afforded to parties and candidates seeking access to the ballot. See Ervin v. Collins, 85 So. 2d 852, 858 (Fla. 1956) ("Even if there were doubts or ambiguities as to [the candidate's] eligibility, they should be resolved in favor of a free expression of the people in relation to the challenged provision . . ."); Smith v. Crawford, 645 So. 2d 513, 520 (Fla. 1st DCA 1994) ("[D]oubt should be resolved in favor of holding a free and competitive election.").

As described below, the circuit court's interpretation of Section 103.021(4)(a) failed to adequately protect the constitutional rights at issue. Moreover, the very fact that no manageable standard was articulated by the court creates a substantial burden on minor parties. If this Court were to adopt the standard articulated by the circuit court, neither the Secretary nor a minor party would not know how many members it needs to have, how many candidates it needs to run nationally, how much advocacy it must undertake, and how much money it must have before obtaining certainty that it has complied with Section 103.021(4)(a). This ambiguity effectively eviscerates any practical use of Section 103.021(4)(a).

II. The circuit court interpreted Section 103.021(4)(a) in a way that fails to comply with federal and state constitutional requirements.

a. The circuit court created rigid criteria that do not address the legitimate state interests that would justify constitutional ballot access limitations.

Section 103.021(4)(a), Florida Statutes provides:

> A minor party that is affiliated with a national party holding a national convention to nominate candidates for President and Vice President of the United States may have the names of its candidates for President and Vice President of the United States printed on the general election ballot by filing with the Department of State a certificate naming the candidates for President and Vice President and listing the required number of persons to serve as electors. Notification to the Department of State under this subsection shall be made by September 1 of the year in which the election is held. When the Department of State has been so notified, it shall order the names of the candidates nominated by the minor party to be included on the ballot and shall permit the

> required number of persons to be certified as electors in the same manner as other party candidates.

In interpreting Section 103.021(4)(a), the circuit court created criteria that burden access to the ballot, but without identifying the compelling State interest justifying these criteria, and without showing how these criteria are narrowly tailored to implement that objective. Those criteria therefore constitute unconstitutional limitations to ballot access.

When interpreting statutes that impinge upon the rights of individuals to freedom of association and freedom of speech to disseminate core political ideas, a court must strive to find a reasonable interpretation that is constitutional. Trustees of Tufts College v. Triple R. Ranch, Inc., 275 So. 2d 521, 535 (Fla. 1973) (Ervin, J., dissenting) (It is court's duty to save a statute from unconstitutionality if at all possible.):

> This court is committed to the fundamental principle that it has the duty if reasonably possible, and consistent with constitutional rights, to resolve doubts as to the validity of a statute in favor of its constitutional validity and to construe a statute, if reasonably possible, in such a manner as to support its constitutionality - to adopt a reasonable interpretation of a statute which removes it farthest from constitutional infirmity

Corn, 332 So. 2d at 8 (Fla. 1976).

Here, however, the court interpreted 103.021(4)(a) in a manner that creates, rather than avoids, constitutional infirmity. And in doing so, it excludes this minor political party and future minor political parties from the ballot.

In the absence of legislatively adopted definitions of the specific terms of Section 103.021(4)(a), Florida Statutes, the circuit adopted its own criteria to define their meaning. The criteria the circuit court adopted, however, are overly burdensome and fail to meet the compelling state interest test for burdening ballot access.

That a state may adopt some requirements for a candidate to obtain access to an election ballot is not in question. Illinois State Bd. of Elections, 440 U.S. at 184-85. The state is, however, constrained by clear constitutional limitations:

> "[A] State may not choose means that unnecessarily restrict constitutionally protected liberty," . . . and we have required that States adopt the least drastic means to achieve their ends . . .This requirement is particularly important where restrictions on access to the ballot are involved. The States' interest in screening out frivolous candidates must be considered in light of the significant role that third parties have played in the political development of the Nation.

Id. at 185-186 (1979) (citing, in part, Kusper v. Pontikes, 414 U.S. 51, 58-59 (1973)).

The Supreme Court has upheld "properly drawn statutes that require a preliminary showing of a 'significant modicum of support' before a candidate or party may appear on the ballot." Id. (quoting Jenness v. Fortson, 403 U.S. 431, 442 (1971). The standard, however, for burdening access to a ballot is that the burden must serve a "compelling state interest." Id. at 184; Am. Party of Texas v.

White, 415 U.S. 767, 771 (1974); Duke v. Massey, 87 F. 3d 1226, 1232 (11th Cir. 1996).

In applying that standard, the courts have recognized few "compelling state interests" that warrant limiting ballot access. Those include such interests as denying official recognition to fraudulent and frivolous candidates and keeping ballots within manageable, understandable limits. See Lubin v. Panish, 415 U.S. 709, 715 (1974); Dixon v. Maryland State Admin. Bd. of Election Laws, 878 F.2d 776, 784 (4th Cir. 1989) (denying fraudulent and frivolous candidates); Duke, 87 F.3d at 1233.

The criteria adopted by the circuit court in interpreting Section 103.021(4)(a) addressed no compelling state interests. They therefore constitute unconstitutional limitations to ballot access.

In defining the criteria for what constitutes a "national party" for purposes of Section 103.021(4)(a), the circuit court determined that the Defendant political entity was not a national party because it did not meet such criteria as having a uniform national platform, engaging in "party building", and engaging in sufficient national fundraising raising activity. Tr. Sept. 15, p. 13., l. 22-24 (uniform platform); Tr. Sept. 15, p.14, l. 9-11 (party building); Tr. Sept. 15, p. 15, l. 2-3.[2]

[2] Due to time constraints, for purposes of this brief, the transcripts of the September 15, 2004 hearing before the Circuit Court shall be referred to herein as follows: "Tr.," followed by transcript date, followed by the page number appearing

Moreover, the court deemed the number of the party congressional candidates running in other states, and the amount of publicity the party engaged in to be insufficient to be considered a national party. Tr. Sept. 15, p. 15, l. 11-16 (number of congressional candidates); Tr. Sept. 15, p. 16, l. 1-4. In the end, the court confusingly boiled its approach in defining a "national party" under Section 103.021(4)(a) down to whether, in the court's own view, the party has any of the "trappings of a national party." Tr. Sept. 15, p. 16, l. 13. Yet the court does not rely on any applicable case law or other legal authority for its imposition of any of the criteria the court adopted. More important, the court did not establish that any of its judicially created criteria are intended to serve a compelling state interest.

Without any explanation of the legitimate state interest being served, the court below required that in order to be a "national party" or a "minor party"[3] under the statute a party must have substantial funds, engage in substantial fundraising or party building activities, promote its platform, have a national impact and presence, and not have differences of opinion on critical issues. Further, the court required that the party support a slate of national candidates aside from its candidates for President and Vice President. Yet the record is

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in the right column of the electronic version of the transcript, followed by transcript line number.

[3] The term "minor political party" is defined requires no further judicial interpretation. See § 97.012 (15) (2004)

devoid of any state policy – expressed in statute or otherwise – which compels these specific and narrow restrictions upon ballot access. Certainly something less than the requirements of the Federal Elections Comission (F.E.C.) for national committee status under the campaign finance laws will suffice to address the State concerns. F.E.C. definitions are part of a complex scheme of providing public monies to political parties. Accordingly, the "definitions" the court found persuasive serve interests (protection of the public fisc) discordant with the associational values at stake with respect to minor party ballot access.

Had the court adhered to its obligation to interpret the statute liberally and in favor of candidate eligibility, see e.g., Smith, 645 So. 2d at 520, it could have looked to the federal definition of political party for guidance – a much more liberal standard.[4] But it did not.

b. The circuit court erred in defining political party processes.

The court also erred by injecting itself into the inner workings of a political party. A state's interest is in orderly elections, not orderly parties. Tashjian v. Republican Party, 479 U.S. 208, 224 (1986) (The Party's determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution.); Democratic Party of

[4] Under federal law, the terms "political party" means an association, committee, or organization which nominates a candidate for election to any Federal office

the United States of America v. Wisconsin ex rel. La Follettee, 450 U.S. 107, 123-124 (1981) (political party's choices among ways of determining makeup of a State's delegation to a national convention is protected by the Constitution); San Francisco County Democratic Cent. Comm. v. Eu, 826 F. 2d 814, 818, 831 (9th Cir. 1987)(Courts have placed the internal workings of a political party squarely within the protection of the First Amendment.).

In applying its own judicially-created criteria to its interpretation of the meaning of terms such as "national party," (such as the minimum membership and financial requirements) the circuit court impermissibly substitutes its vision of a political party's structure for that of the party's members.

The Court found that Nader and Camejo were not properly "nominated," noting that the Reform Party violated its own rules. See Tr. Sept. 15, p. 17. Whether the internal rules of a party were properly followed is not an issue subject to adjudication in this context. Nor is the number of people that actually participated in the process. See e.g., Tashjian, 479 U.S. at 224. And whether the nomination process occurred at any particular meeting is irrelevant for purposes of this case. Id. Moreover, for the court to impose its own stringent restrictions on each of these points, in the absence of legislative direction, is to unnecessarily impose standards discordant with modern political reality.

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whose name appears on the elections ballot as the candidate of such association,

II. The circuit court adjudicated a non-justiciable political question.

The question of whether the Reform Party or any party is a "national party" is a nonjusticiable political question.

The United States Supreme Court, in Baker v. Carr, 369 U.S. 186, 217 (1962), set forth six criteria to gauge whether a case involves a political question: (1) a textually demonstrable constitutional commitment of the issue to a coordinate political department; (2) a lack of judicially discoverable and manageable standards for resolving it; (3) the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; (4) the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; (5) an unusual need for unquestioning adherence to a political decision already made; and lastly (6) the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Neither the lower court nor any of the parties have articulated a positive definition that would provide manageable standards for determining the question. Because of the intrusion on the associational rights inherent in the formation of a political party, it is up to the political department of the legislature to craft a definition if one is to be adopted. Legislative hearings rather than adversarial

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committee or organization. See 2 U.S.C. § 431.

processes are the most appropriate forum for determining whether one group or another should qualify for ballot placement. In that forum, all the political calculations can be brought to the fore rather than having judges decide based on the limited record before them. It is for the legislature to make the initial determination. For the same reasons, adoption of positive definitions of national party by the judicial branch necessarily shows disrespect for the coordinate legislative branch which has decided to leave the ballot as wide open to national entities as possible – consistent with constitutional respect for first amendment rights.

CONCLUSION

The circuit court's declaratory judgment failed to preserve constitutional rights implicated by the ballot access question before it. In doing so, it misapplied the law in its interpretation of Section 103.021(4)(a), and erred in granting declaratory and injunctive relief to the Plaintiffs. In addition, the court created unworkable criteria for present or future application of the statute.

Appellants respectfully request that the Court reverse the circuit court's judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENT

I certify that the font used in this brief is Times New Roman 14 point and in compliance with Rule 9.210, Florida Rules of Appellate Procedure.

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