Filing # 20297612 Electronically Filed 11/06/2014 03:59:13 PM

RECEIVED, 11/6/2014 16:03:39, John A. Tomasino, Clerk, Supreme Court

IN THE FLORIDA SUPREME COURT

CASE NO. SC14-1899
L.T. CASE NO(s). 4D14-2739; 14-012324(09)

JENNIFER BRINKMANN

Appellant,

v.

TYRON FRANCOIS

Appellee.

_________________________________/

REPLY BRIEF OF JENNIFER BRINKMANN

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Preface

This Reply Brief is submitted on behalf of JENNIFER BRINKMANN, Plaintiff in the trial court, Appellee in the district court.

JENNIFER BRINKMANN is referred to as Brinkmann.

TYRON FRANCOIS is referred to as Francois.

DR. BRENDA SNIPES, in her official capacity as Supervisor of Elections for Broward County, Florida, is referred to as "the Supervisor" or Dr. Snipes.

The following symbols will be used:

"App. ___" references are to the Appendix to Petitioner's Initial Brief.

Unless otherwise indicated, all emphasis is supplied by the writer.

ARGUMENT

I. FLORIDA STATUTES SECTION 99.0615 IS CONSTITUTIONAL

Francois' Answer Brief neglects to address the recognized distinction between constitutional eligibility requirements on *who* may run for office and qualifying regulations setting out *how* one gets placed on the ballot. Section 99.0615 does not alter the eligibility requirements for the office of County Commissioner. Rather, § 99.0615 effectuates the legislature's authority to protect the integrity of the political process from frivolous or fraudulent candidacies by implementing a residency requirement as a qualification ***for write-in candidates only***.

To qualify as a write-in candidate requires virtually no effort. Write-in candidates like Francois are exempted from the qualifications applicable to candidates for the office of county commissioner (as well as all other offices) who wish to have their name printed on the ballot. Sections 99.092 and 99.095 require that all candidates (except write-in candidates) either pay a filing fee, or collect voter petition cards in order to qualify to run for office. But write-in candidates are not required to do either. The only qualification applicable to write-in candidates is governed by § 99.0615, and requires this unique type of candidate to reside within the district represented by the office sought at the time of qualification.

Francois bases his assertion that § 99.0615 is unconstitutional on the Supreme Court's admonition that the legislature cannot add to constitutional requirements for office expressly prescribed in the constitution. *See State v. Grassi,* 532 So. 2d 1055, 1056 (Fla. 1988); *Miller v. Menendez*, 804 So. 2d 1243, 1246 (Fla. 2001). But unlike the situation in *Grassi* and *Miller,* § 99.0615's residency requirement is not applicable to an office, but rather, is only applicable to a particular type of ***candidate***.

Florida has a legitimate interest in managing how write-in candidates qualify to run for office. The trial court in *Adams v. Bray* recognized the justification for treating write-in candidates differently than other candidates:

> **Without a monetary or sweat equity investment, the likelihood rises that a write-in candidate might be a pawn of one candidate seeking to gain an advantage over the other by closing the primary. This danger becomes particularly acute when the write-in candidate can live anywhere in the state and is only constitutionally required to reside in the district in the extremely unlikely event that he or she should win the election.**

Adams v. Bray, 2014 WL 4401071, July 18, 2014 (Fla.Cir.Ct. 2014)(*citing* Art. III Sec. 15 Fla. Const.).[1] There is no constitutional right to be a write-in candidate. *Burdick v. Takushi*, 504 U.S. 428 (1992). As acknowledged by the Florida

[1] Although the trial court in *Adams* recognized that a residency requirement for write-in candidates could thwart a candidate's ill-conceived efforts to circumvent the UPA, the court went on to hold § 99.0615 unconstitutional.

Supreme Court, the legislature is empowered to set reasonable regulations for write-in candidates. *Pasco v. Heggen,* 314 So. 2d 1 (Fla. 1975). Section 99.0615 does not add additional qualifications for office, but is a valid regulation of ballot access.

The courts have consistently recognized that states have a legitimate interest in keeping ballots within manageable limits. *Danciu v. Glisson*, 302 So. 2d 131, 133 (Fla. 1974)(citing *Lubin v. Panish,* 415 U.S. 709, 94 S.Ct. 1315, 39 L.Ed.2d 702 (1974)). Given the electorates' passage of the UPA, Florida has a particular interest in managing write-in candidates. Without the residency requirement of § 99.0615, it will be that much easier to manipulate the election process by recruiting "dummy" write-in candidates to close what would otherwise be an open primary. The holding below, if permitted to stand, will essentially vitiate the UPA and will have the practical effect of disenfranchising countless Florida voters.

Because § 99.0615 is only a qualification for a particular type of candidate and does not affect the eligibility requirements for the office of county commissioner (or any other office), § 99.0615 should be upheld as constitutional.

II. WRITE IN CANDIDATES ARE NOT "OPPOSITION"

Francois' assertion that a write-in candidate constitutes "opposition" for purposes of the UPA simply ignores the policy behind the constitutional

amendment. The stated purpose of the UPA is "to allow all registered electors to vote in a primary election" where the winner will effectively be the person elected to office. Comments to 1998 Amendment, Art. VI, s. 5, Fla. Const. The UPA, as a constitutional amendment, must be construed in a way that fulfills the intent of the people. *See Gray v. Bryant*, 125 So. 2d 846 (Fla. 1960).

If Francois and other write-in candidates are considered "opposition" the UPA will be rendered a nullity. The practical effect is that write-in candidates will routinely be employed as a campaign tactic where closing a primary will benefit a particular candidate. Utilizing write-in candidates for political gain frustrates the will of the people. This practice will in turn disenfranchise countless Floridians who would have had an opportunity to elect a candidate of their choice in the primary, rather than choosing between the primary winner and a blank line in the general election.

Moreover, Francois' Answer Brief completely ignores the fact that he is a registered Democrat. As a democrat, Francois cannot be considered "opposition" as that term is used in the UPA because all of the "candidates" for Broward County Commissioner, District 2 will have the same party affiliation. If Francois, as a registered democrat, is considered "opposition," the clear intent of the UPA will be wholly disregarded and the entire constitutional amendment will be null and void.

Because a write-in candidate cannot be considered "opposition" as that term is used in the UPA, in accordance with the will of the people, primaries should be open to all electors despite the presence of a write-in candidate in the general election.

Conclusion

Based on the foregoing, this Court should reverse the September 10, 2014, opinion of the Fourth District Court of Appeal and reinstate the order of the trial court holding § 99.0165 constitutional and opening the primary election for the office of Broward County Commissioner from District 2.

Respectfully submitted,

By: /s/Willilam R. Scherer
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Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via electronic service to all counsel on the attached Mailing List on this 6th day of November, 2014.

Certificate of Type Size and Style

The undersigned counsel certifies that the type and style used in this brief is 14 point Times New Roman.

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