IN THE SUPREME COURT FOR THE STATE OF FLORIDA

JAMES BARRY WRIGHT,

Petitioner,

v.

CITY OF MIAMI GARDENS, a Florida municipal corporation, RONETTA TAYLOR, in her official capacity as the City Clerk for the City of Miami Gardens, and CHRISTINA WHITE, in her official capacity as the Miami-Dade County Supervisor of Elections,

Respondents.
_____ /

CASE NUMBER: SC16-1518
3d DCA Case No. 3D16-1804
L.T. Case No. 16-16248

PETITIONER'S INITIAL BRIEF ON THE MERITS

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE THIRD DISTRICT COURT OF APPEAL

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PRELIMINARY STATEMENT

Petitioner, James Barry Wright, seeks to invoke this Court's discretionary jurisdiction under article V, section 3(b)(4), Florida Constitution, to review a question certified by the Third District Court of Appeal to be one of great public importance. The Respondents in this case are the City of Miami Gardens, a Florida municipal corporation ("City"), Ronetta Taylor, in her official capacity as the City Clerk for the City of Miami Gardens ("City Clerk"), and Christina White, in her official capacity as the Miami-Dade County Supervisor of Elections.

Pursuant to Florida Rule of Appellate Procedure 9.120, Mr. Wright has included an Appendix to accompany the Initial Brief. Citations to the Appendix will be as follows: (A.___, at___) - (Appendix. Tab Number, at Page Number).

STATEMENT OF THE CASE AND FACTS

Petitioner, James Barry Wright, asks this Court, on an expedited basis, to consider the question the Third District Court of Appeal in *Wright v. City of Miami Gardens*, no. 3D16-1804 (Fla. 3d DCA August 17, 2016), certified to be one of great public importance; to wit:

> Does section 99.061(7)(a)1. require a candidate's disqualification when the candidate's qualifying fee check is returned by the bank after the expiration of the qualifying period due to a banking error over which the candidate has no control?

Obtaining a definitive answer to this question is critical not only to Mr. Wright, but also to every woman and man in Florida heeding the call to public service and seeking to put herself or himself forward as a candidate for elective office.

The case began when Mr. Wright was deprived of the opportunity to run in the August 30, 2016, City of Miami Gardens mayoral race due to an event outside his control, and the misapplication of Section 99.061(7)(a)1. of the Florida Statutes (2015).

On February 3, 2016, Mr. Wright opened a campaign account with Wells Fargo Bank in order to qualify as a candidate for the City of Miami Gardens mayoral race. (A. 3, at Ex. 1). The account was managed by Mr. Wright's campaign treasurer, Roderick Harvey, CPA, CVA. (A. 3, at Ex. 1). Upon opening the account, Mr. Wright received two starter checks (check numbers 99 and 100)

and a number of temporary checks beginning with check number 1001. Over time, starter check number 99 and temporary check numbers 1001 through 1006 were written, drawn upon, and duly cleared Mr. Wright's account. (A. 3, at Ex. C of Ex. 1).

On June 1, 2016, within the qualifying period from May 26, 2016, through June 2, 2016, Mr. Wright provided temporary check number 1007 in the amount of $620.00 to the City of Miami Gardens Clerk as part of the process to qualify as a mayoral candidate for the City of Miami Gardens. (A. 3, at Ex. J of Ex. 1). In turn, he received a receipt from the City Clerk as proof of payment. (A. 3, at Ex. K of Ex. 1). At all material times, Mr. Wright's account maintained sufficient funds to cover the $620.00 qualifying fee check. (A. 3, at Ex. G of Ex. 1). Furthermore, Mr. Wright properly submitted all required documentation to qualify as a mayoral candidate pursuant to Section 99.061(7)(a)(1) of the Florida Statutes (2015).

There is no record of check number 1007 being negotiated or presented for payment against Mr. Wright's account. (A. 3, at Exs. H & I of Ex. 1). Indeed, not a single check from Mr. Wright's account was ever returned or rejected payment by Wells Fargo Bank, nor was Mr. Wright ever charged a return check fee or any other similar fee related to check number 1007. (A. 3, at Exs. D–I of Ex. 1).

On June 20, 2016, nearly three weeks after Mr. Wright submitted his qualifying check, he was informed over the phone by the City Clerk that check number 1007 had come back from the City's bank (also a Wells Fargo Bank). The City Clerk further instructed him to bring a cashier's check to cover the $620.00 qualifying fee and $45.00 service charge, which the City was charged by its bank. Shortly thereafter, Mr. Wright received an email from the City Clerk stating that he had been disqualified as a mayoral candidate for the August 30, 2016 election. (A. 3, at Ex. L of Ex. 1).

Mr. Wright responded to the email requesting information concerning the City's handling of the check. (A. 3, at Ex. M of Ex. 1). That same day, Mr. Wright hand-delivered a letter to the City Clerk along with cashier's checks for $620.00 and $45.00, as she had previously requested. The City Clerk refused to accept the $620.00 cashier's check, but accepted the $45.00 cashier's check. She further provided Mr. Wright with a copy of *Levey v. Detzner*, 146 So. 3d 1224 (Fla. 1st DCA 2014). (A. 3, at Ex. N of Ex. 1).

Thereafter, on June 24, 2016, Mr. Wright again requested public records information pertaining to the processing of check number 1007. (A. 3, at Ex. P of Ex. 1). To date, Mr. Wright has not received any documents responsive to the request. Mr. Wright did, however, learn that the City Clerk first became aware

of an issue with Mr. Wright's check on June 16, 2016 from the City's Finance Department. (A. 3, at Ex. Q of Ex. 1).

Apparently, the City Clerk misinformed Miami-Dade County's Elections Department on June 16, 2016 that the check came back as "insufficient funds." (A. 3, at Ex. Q of Ex. 1). In actuality, the City Clerk later learned from the Finance Department for the City of Miami Gardens that the check came back because the bank could not locate the account number, not because of insufficient funds. (A. 3, at Ex.1). She further misinformed the Elections Department that Mr. Wright had used a starter check. Mr. Wright had not used a starter check, but one of his temporary checks which correctly displayed Mr. Wright's name, the Campaign name, the check number, routing number, account number, and the address of Mr. Wright's Campaign Treasurer's office. (A. 3, at Ex. B of Ex. 1).

On June 30, 2016, Mr. Wright filed a complaint against the City of Miami Gardens and its City Clerk for declaratory and injunctive relief and also his motion for preliminary injunctive relief. After a hearing and in response to the City's motion to dismiss, he amended the complaint to add the supervisor of elections. (A. 2; A. 7). At a subsequent hearing on Mr. Wright's amended motion for temporary injunction and emergency writ of mandamus, the trial court heard from the parties and felt constrained by the First District's opinion in *Levey*, having no authority from the Third District or any other district upon which to rely. (A. 8,

at 27, 41-42). Ultimately, the trial court denied Mr. Wright's motion. In fact, the City Clerk, the circuit court and the district court all decided against Mr. Wright on the strength of the First District's decision in *Levey*. All reasoned that, harsh though the result may be, under the plain language of section 99.061(7)(a)1, an otherwise qualified candidate for elected office is disqualified from running if his or her qualifying fee check is returned unpaid for any reason by the bank to the filing officer in error, through no fault of the candidate's, after the qualifying period has ended. (A. 13 at 5.)

The Third District rendered its opinion on August 17, 2016, certifying the previously-quoted question to this Court. Mr. Wright filed both a Notice to Invoke Discretionary Jurisdiction of the Florida Supreme Court and an Emergency Motion to Expedite on August 19, 2016. (A. 14; A. 15).

STANDARD OF REVIEW

The Third District has certified the following question to this Court as one of great public importance:

> Does section 99.061(7)(a)1. require a candidate's disqualification when the candidate's qualifying fee check is returned by the bank after the expiration of the qualifying period due to a banking error over which the candidate has no control?

The issue this question presents is one of statutory interpretation—purely a question of law. Accordingly, the applicable standard of review is *de novo*. *See Keck v. Eminisor*, 104 So. 3d 359, 363 (Fla. 2012).

SUMMARY OF THE ARGUMENT

"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." *Ervin v. Collins*, 85 So. 2d. 852, 858 (Fla. 1956). This principle notwithstanding, the City Clerk for Miami Gardens, the circuit court and the Third District have construed section 99.061(7)(a)1., Florida Statutes, in such a way as to keep Mr. Wright from running for and holding elective office.

The provision keeping Mr. Wright off the ballot reads:

> (7)(a) In order for a candidate to be qualified, the following items must be received by the filing officer by the end of the qualifying period:
>
> 1. A properly executed check drawn upon the candidate's campaign account payable to the person or entity as prescribed by the filing officer in an amount not less than the fee required by s. 99.092, unless the candidate obtained the required number of signatures on petitions pursuant to s. 99.095. The filing fee for a special district candidate is not required to be drawn upon the candidate's campaign account. *If a candidate's check is returned by the bank for any reason, the filing officer shall immediately notify the candidate and the candidate shall have until the end of qualifying to pay the fee with a cashier's check purchased from funds of the campaign account. Failure to pay the fee as provided in this subparagraph shall disqualify the candidate*.

§ 99.061(7)(a)1., Fla. Stat. (2015) (emphasis added). The Third District certified question asks whether the statute mandates disqualification of a candidate who, after the qualifying period has closed, receives notice his filing fee check has been

returned due to bank error and through no fault of his own. For a number of reasons, the answer to the question is no.

First, the statute is rife with ambiguity. The phrase "the bank" as used here is ambiguous for it is unclear whose bank—the candidate's or the filing officer's (or some other entity's). The phrase "failure to pay the fee" also is susceptible to several interpretations, leaving candidates unsure of their rights and responsibilities under the statute. And the term "returned" is undefined and especially problematic in light of the lack of clarity over which bank is *the* bank. Moreover, taken as a whole, the language of the statute creates ambiguity about how the Legislature intends the statute to operate when post-qualifying bank errors occur.

Second, even assuming the statute were clear and well written, by its terms it does not apply to filing fee problems that occur after qualifying ends. Here, Mr. Wright submitted his filing papers and filing fee on time, and at all times the check he wrote from his campaign account to cover the filing fee was backed by more than sufficient funds in the account. He satisfied all qualification requirements to have his name placed on the ballot for mayor of Miami Gardens.

Third, the decision from the First District in *Levey v. Detzner*, 146 So. 3d 1224 (Fla. 1st DCA 2014), *rehearing en banc denied*, Sept. 22, 2014, *review denied*, 153 So. 3d 906 (Fla. 2014), on which the City Clerk, the circuit court and the Third District relied, incorrectly rests on the "clear and unambiguous" language

of the statute, allowing a harsh and unreasonable result. Principles of statutory interpretation discourage construing statutes in ways that yield such results. *Levey* is also based on facts distinguishable from the circumstances facing Mr. Wright when he was incorrectly disqualified. The decision should be limited to its facts and not applied blanket fashion to Mr. Wright who was in full compliance with section 99.061(7)(a)1.

Fourth, inasmuch as section 99.061(7)(a)1. is ambiguous, it should be construed as to favor candidate qualification and allowing the public to have many choices on the ballot. Indeed, the policy favoring liberal construction of election laws is well established in this state.

Fifth, section 99.061(7)(a)1. must be read *in pari materia* with subsections (7)(b) and (7)(c), both of which confirm the ministerial function filing officers serve at candidate qualifying time, and both of which make it clear the Legislature intends filing officers only to determine whether a candidate is qualified at the time qualifying ends. Nothing in either subsection empowers filing officers to do what was done to Mr. Wright—disqualifying a fully qualified candidate.

Because Mr. Wright was wrongly disqualified under section 99.061(7)(a)1., he must be allowed to stand as a candidate for the office he qualified for. There is insufficient time at this point to place him on the August 30 ballot for mayor. But moving that election to the November 8, 2016, general election can be done,

though the window of opportunity is small, indeed. Putting Mr. Wright on the ballot not only would support his right to run for and hold office, but it also would accomplish public good by giving citizens more office seekers to choose from on Election Day.

ARGUMENT

I. SECTION 99.061(7)(a)1., FLORIDA STATUTES (2015), DOES NOT MANDATE DISQUALIFYING A CANDIDATE WHOSE QUALIFYING FEE CHECK IS RETURNED BY THE BANK AFTER THE QUALIFYING PERIOD ENDS DUE TO A BANKING ERROR OVER WHICH THE CANDIDATE HAS NO CONTROL.

"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." *Ervin v. Collins*, 85 So. 2d. 852, 858 (Fla. 1956).

To qualify to run for office in this state, candidates must, of course, satisfy office-specific requirements, but they also must submit certain items to the appropriate filing officer during the short qualifying period for getting the candidate's name on the ballot. Section 99.061(7)(a), Florida Statutes (2015), sets forth the list of required items:

(1) A properly executed check drawn on the candidate's campaign account in the amount of the filing fee prescribed by section 99.092, Florida Statutes, or notice of obtaining ballot position by petition;
(2) The candidate's oath required by section 99.021, Florida Statutes, and the office sought;
(3) The loyalty oath required by section 876.05, Florida Statutes;
(4) A written statement of political party affiliation required by section 99.021(1)(b), Florida Statutes, if the office sought is partisan;
(5) The completed form required by section 106.021, Florida Statutes, for appointment of a campaign treasurer and designation of a campaign account; and
(6) The completed form for full and public disclosure or statement of financial interests required by section 99.061(5), Florida Statutes.

Mr. Wright, the Petitioner in this case, duly and timely filed with the City Clerk his qualifying papers to run for mayor of Miami Gardens and his filing fee in the manner prescribed and within the pertinent qualifying period, as required by section 99.061(7)(a). He exercised due care. He did not wait until the last minute to file. Through no fault of his own and well after the close of the qualifying period, Mr. Wright learned there had been a bank error regarding his filing fee check to the City, he was told he could not submit a cashier's check for the fee, he was deemed disqualified and his name was not put on the ballot for the August 30, 2016, mayoral election.

The provision keeping Mr. Wright off the ballot is contained in section 99.061 and reads:

> (7)(a) In order for a candidate to be qualified, the following items must be received by the filing officer by the end of the qualifying period:
>
> 1. A properly executed check drawn upon the candidate's campaign account payable to the person or entity as prescribed by the filing officer in an amount not less than the fee required by s. 99.092, unless the candidate obtained the required number of signatures on petitions pursuant to s. 99.095. The filing fee for a special district candidate is not required to be drawn upon the candidate's campaign account. *If a candidate's check is returned by the bank for any reason, the filing officer shall immediately notify the candidate and the candidate shall have until the end of qualifying to pay the fee with a cashier's check purchased from funds of the campaign account. Failure to pay the fee as provided in this subparagraph shall disqualify the candidate*.

§ 99.061(7)(a)1., Fla. Stat. (2015) (emphasis added). The City Clerk, and subsequently the circuit court and the Third District, read the italicized language as precluding Mr. Wright from curing the returned check after the end of the qualifying period, even though the return did not occur, and he was not notified of it, until well after the qualifying period ended.

The question now before this Court is whether the language clearly and unambiguously expresses legislative intent that the statute should operate in this way. It is submitted the answer is no.

A. The Subsection is Ambiguous as to Whose Bank a Returned Check Must Come From—the Candidate's Bank, or the Entity's Bank that Received the Check.

By the statute's plain language it states "*the* bank," not "any" bank or "either" bank. In context, the paragraph addresses the candidate's campaign account. Presumably then, the statute refers to the candidate's bank returning the check after presentation. Indeed, logic does not support that a candidate should be penalized for a check being returned by the *entity's* bank as such issues could open the Pandora's box of mishaps by the entity or its bank occurring outside the candidate's control.[1] Further, the statute does not define what

[1] For example, what happens if city employees or the city's bank spills coffee on or otherwise stains or damages the candidate's qualifying check, and then the city remits the check to its bank that summarily rejects the check thereafter? Or suppose the city mistakenly attempts to deposit the qualifying check into an old, invalid account and

"failure to pay" means. Does it mean the failure to present a check, or does it mean the failure of the check to clear? Moreover, the statute is silent concerning checks which are paid or returned after the qualifying period.

Arguably, because all facts of this case involve post-qualifying period, this statute should not be applied to bar Mr. Wright's candidacy. Indeed, he complied with the statutory requirements on June 1, 2016. He submitted a properly executed check from his campaign account to the City of Miami Gardens. It was not until after the qualifying period that the City informed Mr. Wright its bank had sent check 1007 back for an unknown reason. At no time, however, had the check been presented to Mr. Wright's bank, nor did Mr. Wright's bank ever return or send back check number1007. At all material times, the funds for payment were in Mr. Wright's account. Mr.Wright never failed to pay the fee as stated in the subparagraph (7)(a)1. As such, disqualification was unwarranted.

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the city's bank returns the check to the city for this reason. Surely this Court would not read the statute to convey that the candidate whose qualifying check was damaged by the city or a candidate whose city mixed up its own account numbers and thereby causing the city's banking institution to "return the check for any reason" must be disenfranchised from public office under a plain reading of the statute. This harsh and absurd result cannot have been the legislature's intent. *See Fla. Dep't of Envtl . Prot. v. ContractPoint Fla. Parks, L.L.C.*, 986 So. 2d 1260, 1270 (Fla. 2008) ("We have long held that the Court should not interpret a statute in a manner resulting in unreasonable, harsh, or absurd consequences.").

B. The Statutory Language Creates Ambiguity About the Effect of a Filing Fee Check Being Returned After the Close of the Qualifying Period.

Questions of statutory interpretation are questions of legislative intent.

> It is well settled that legislative intent is the polestar that guides a court's statutory construction analysis. *See State v. Rife*, 789 So.2d 288, 292 (Fla.2001); *McLaughlin v. State*, 721 So.2d 1170, 1172 (Fla.1998). In determining that intent, we have explained that "we look first to the statute's plain meaning." *Moonlit Waters Apartments, Inc. v. Cauley*, 666 So.2d 898, 900 (Fla.1996). Normally, "[w]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." *Holly v. Auld*, 450 So.2d 217, 219 (Fla.1984) (quoting *A.R. Douglass, Inc., v. McRainey*, 102 Fla. 1141, 137 So. 157, 159 (1931)).

Knowles v. Beverly Enterprises-Florida, Inc., 898, So. 2d 1, 5 (Fla. 2004).

Notwithstanding the clear-and-unambiguous maxim, however, at times even seemingly unambiguous words in statutory provisions fail to express legislative intent. Indeed, this Court has recognized and stated that its "obligation is to honor the obvious legislative intent and policy behind an enactment, even where that intent requires an interpretation that exceeds the literal language of the statute." *Byrd v. Richardson-Greenshields Sec., Inc.*, 552 So. 2d 1099, 1102 (Fla. 1989).

The district court decision at the root of the issue now before this Court is *Levey v. Detzner*, 146 So. 3d 1224 (Fla. 1st DCA 2014), *rehearing en banc denied*, Sept. 22, 2014, *review denied*, 153 So. 3d 906 (Fla. 2014). The candidate in that

case filed her qualifying papers and tendered her qualifying fee check to the Department of State ("Department") well before the end of the qualifying period for the seat in the Florida House of Representatives she was running for. *Id*. at 1225. Not until weeks after the qualifying period closed was the candidate notified that her bank had failed to honor her check. Unbeknownst to the candidate and not owing to anything she did, the bank had placed a hold on her campaign account. *Id*. When the candidate tendered to the Department a cashier's check in the amount of the filing fee to replace the returned check, the tender was refused because the qualifying period had ended. *Id*. The candidate thereafter was disqualified. *Id*. She sought but was denied injunctive and declaratory relief by the trial court. *Id*. The First District affirmed the lower court, reasoning:

> The statute at issue is clear and unambiguous. Although we agree with the trial court that this result is harsh, it is mandated by the clear language of the statute. If a candidate's qualifying check is returned *for any reason*, the candidate must pay the qualifying fee by cashier's check before the end of the qualifying period. *Levey*'s check was returned, the reason for that occurring is immaterial, and she failed to cure the deficiency within the time allotted by the statute. This circumstance ''shall disqualify the candidate.''

Id. at 1226 (emphasis in original). The Third District followed this reasoning in deciding Mr. Wright's case.

As Judge Makar observes in his dissent to the First District's order denying en banc review in *Levey*, the language of section 99.061(7)(a)1. may be clear about

the process for dealing with qualifying fee checks returned *during* the qualifying period, but the legislative intent about the process for dealing with qualifying fee checks returned *after* the qualifying period ends is decidedly unclear. Insofar as the statute gives a candidate "until the end of qualifying" to replace a returned check with a cashier's check, the bank's return of the check "for any reason" logically must have occurred during the qualifying period. "[N]othing shows a legislative intent that the phrase 'returned for any reason' applies other than in the period before the end of qualifying." *Id*. at 1233 (Makar, J., dissenting). The reason for the check's return may be immaterial, as the First District reasoned, but the *timing* of the check's return *is* material for there is no way for a candidate to cure a problem within the time specified in section 99.061(7)(a)1. when the problem has yet to occur. To base disqualification on such a circumstance is not harsh so much as absurd, and the Legislature cannot have intended such a result. Courts should not adopt interpretations of statutes "resulting in unreasonable, absurd, or harsh consequences." *Florida Dep't of Envtl Prot. v. ContractPoint Fla. Parks, LLC*, 986 So. 2d 1260, 1270 (Fla. 2008) (citing *State v. Atkinson*, 831 So. 2d 172, 174 (Fla. 2002)); *see Austin v. State ex rel. Christian*, 310 So. 2d 289, 293 (Fla. 1975) ("Statutes should not be construed in a way so as to lead to untenable conclusions.").

It is similarly unclear from the statutory language whether the Legislature intended disqualification to occur under the circumstances presented in this case and in *Levey*. Disqualification for "[f]ailure to pay the fee as provided in this subparagraph" refers to the two methods set out in the statute: by properly executed check drawn on the candidate's campaign account, or by cashier's check by the end of qualifying, if the campaign account check is returned for any reason during that period. Section 99.061(7)(a)1. is silent about post-qualifying check returns. "If the Legislature intended this [ ] language to mean that all qualifying checks . . . must clear and yield payment *before* the end of qualifying, it woefully failed." *Levey* at 1233 (Makar, J., dissenting).

Further, "failure to pay" implies, in this context, a knowing failure. In this case, Mr. Wright timely tendered in the first instance a check that was good and his check was accepted.. Nothing in section 99.061(7)(a)1. provides for what is essentially automatic disqualification of an otherwise qualified candidate if a bank error occurs after the qualifying period closes. Because of these ambiguities in legislative intent despite "clear" language, Mr. Wright cannot be deemed disqualified under section. 99.061(7)(a)1. because of the post-qualifying check snafu caused by bank error. The certified question must be answered in the negative.

C. *Levey* is Factually Distinguishable From This Case and Does Not Dictate the Same Result.

The facts of this case are wholly not in dispute. Mr. Wright timely submitted his documentation, including his qualifying check, to the City of Miami Gardens to become a candidate in the mayoral race taking place August 30, 2016. A few weeks after the qualifying period had ended, Mr. Wright was notified by the City Clerk that his check had come back from the City's bank.[2] Soon after, Mr. Wright learned that check number 1007 had never been presented as the account was not located. Yet, the account did exist, the temporary check reflected the proper account information, and funds were in the account. In fact, Mr. Wright had written several checks from the account without incident.

Contrary to the facts of *Levey*, which was a statewide not a municipal election, *Levey's* bank had not honored the check, not the Department of State's bank. Additionally, the Department in *Levey* had presented the check for payment multiple times. Here, Mr. Wright's check was **never** presented against his account as the City's bank erroneously could not locate his account. There is also no indication from the record that more than one attempt was made by the City's bank to locate the account.

[2] As an aside, if the subsection applies despite being post-qualifying, the City failed to notify Mr. Wright "immediately" of issues with check number 1007 as it was a number of days after the City was aware that it informed Mr. Wright. Indeed, the City Clerk learned of an issue on June 16, 2016, but did not alert Mr. Wright until June 20, 2016.

As the facts are not squarely on point, the First District's restrictive application of the statute cannot equally apply to the facts of this case. In this case, Mr. Wright's bank never returned the check as his account was never presented with the check. Furthermore, the statute is silent as to any issues coming to light after the qualifying period. Additionally, the statute is silent as to the time in which a candidate is to be disqualified. Thus, Mr. Wright implores this Court to reach a different result from the First District, and adopt the compelling dissents of Judges Benton and Makar.

D. Florida Supreme Court Election Law Jurisprudence Requires That Any Ambiguity in Section 99.061(7)(a)1. Be Resolved in Favor of Allowing the Candidate to Qualify.

This Court has long held that statutes imposing restrictions on the right of a person to hold office must be liberally construed "in favor of the right of the people to exercise freedom of choice in the selection of officers." *Ervin v. Collins*, 85 So. 2d. 852, 857 (Fla. 1956).

> Even if there were doubts or ambiguities as to [LeRoy Collins's] eligibility, they should be resolved in favor of a free expression of the people in relation to the challenged provision of the Constitution. *It is the sovereign right of the people to select their own officers and the rule is against imposing disqualifications to run. The lexicon of democracy condemns all attempts to restrict one's right to run for office.* The Supreme Court of the United States has approved the support of fundamental questions of law with sound democratic precepts. *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. at 858 (emphasis added); *see also State ex rel. Siegendorf v. Stone*, 266 So. 2d 345, 346 (Fla. 1972) ("Literal and 'total compliance' with statutory language which reaches hypersensitive levels and which strains the quality of justice is not required to fairly and substantially meet the statutory requirements to qualify as a candidate for public office."). In *Hurt v. Naples*, 299 So. 2d 17 (Fla. 1974), this Court reiterated these principles:

> Discouragement of candidacy for public office should be frowned upon in the absence of express statutory disqualification. The people should have available opportunity to select their public officer from multiple choices of candidates. *Widening the field of candidates is the rule, not the exception, in Florida*. It should not be abated in the absence of express statutory provision to the contrary.

Id. at 21 (emphasis added); *see also Smith v. Crawford*, 645 So. 2d 513, 520 (Fla. 1st DCA 1994) (explaining that "the law requires judges to resolve doubts about qualification of a political candidate in favor of the candidate" as "the effect of a mistake could disenfranchise a large segment of the population").

The First District failed to apply these principles in *Levey*, and in following *Levey*, the Third District failed to do so, as well—both courts accepting, albeit reluctantly, the harsh, if not unreasonable or absurd, result yielded by adhering to the plain language of section 99.061(7)(a)1. Indeed, neither court appears to have recognized or considered the tenets of election law interpretation set forth in

Collins, *Siegendorf* and *Hurt*. Had the Third District applied these longstanding rules when construing the statute, Mr. Wright's name would be now on the ballots the citizens of Miami Gardens are casting.

As previously discussed, section 99.061(7)(a)1. is ambiguous, and the ambiguity arises from the statute's plain language. Accordingly, and in keeping with Florida's well-settled jurisprudence favoring liberal interpretation of election statutes, the provision must be construed as to favor candidate qualification under the circumstances presented here and in *Levey*. The certified question must be answered in the negative.

E. Construing Section 99.061(7)(a)1. in Favor of Candidate Qualification if Bank Error Causes the Qualifying Fee Check to be Returned After Qualifying Closes is Consistent with the Overall Statutory Scheme and the Filing Officer's Ministerial Function.

When construing a statutory provision to determine legislative intent, courts should not consider the provision in a vacuum, but should consider the provision *in pari materia* with its surrounding statutory scheme. *See Forsyth v. Longboat Key Beach Erosion*, 604 So. 2d 452, 454 (Fla. 1992) ("[I]f from a view of the whole law, or from other laws *in pari materia* the evident intent is different from the literal import of the terms employed to express it in a particular part of the law, that intent should prevail, for that, in fact is the will of the Legislature.") (citation omitted).

In this case, two other provisions within section 99.061(7) provide particular support for construing paragraph (7)(a)1. to permit, and not remove, candidate qualification in circumstances similar to Mr. Wright's and to those in *Levey*. Both concern the function of the filing officer in the candidate qualification process provided for in the statute.

First, paragraph (7)(b) provides:

> If the filing officer receives qualifying papers during the qualifying period prescribed in this section which do not include all items as required by paragraph (a) prior to the last day of qualifying, the filing officer shall make a reasonable effort to notify the candidate of the missing or incomplete items and shall inform the candidate that all required items must be received by the close of qualifying. A candidate's name as it is to appear on the ballot may not be changed after the end of qualifying.

§ 99.061(7)(b), Fla. Stat. (2015). The similarity between this provision and paragraph (7)(a)1. is patent. Both place responsibility on the filing officer to notify a candidate of problems with submissions prior to the close of qualifying. While (7)(b) concerns missing or incomplete items in qualifying papers, the paragraph at issue in this case concerns qualifying fees. Both support the conclusion that the Legislature's overarching intent is to ensure that any qualification document or fee discrepancies be resolved before the qualifying period closes in order for the balloting process to ensue smoothly and without many, if any, candidate name removals.

Second, paragraph (7)(c) dictates that

> The filing officer performs a *ministerial function in reviewing qualifying papers*. In determining whether a candidate is qualified, the filing officer shall review the qualifying papers *to determine whether all items required by paragraph (a) have been properly filed and whether each item is complete on its face*, including whether items that must be verified have been properly verified pursuant to s. 92.525(1)(a). The filing officer may not determine whether the contents of the qualifying papers are accurate.

§ 99.061(7)(c), Fla. Stat. (2015) (emphasis added). This provision strongly, if not conclusively, evinces legislative intent that qualification under section 99.061 is determined by a facial review of the documents a candidate timely submits to the filing officer. If those items are facially complete, the candidate is deemed qualified. Furthermore, all such review by the filing officer occurs within the qualification period. Once that period closes, paragraph (7)(c) makes it clear there is no further determination for the filing officer to make. The ministerial work is done. To be sure, this provision does not support any construction that would permit the filing officer to disqualify a candidate previously deemed qualified at the close of the relevant filing period.

Reading paragraphs (7)(a)1., (7)(b) and (7)(c) together provides needed illumination on the legislative intent behind the language in paragraph (7)(a)1., and leads comfortably and reasonably to the conclusion that disqualification of an otherwise qualified candidate is not required where the candidate's qualifying fee

check is returned due to bank error after qualifying ends. Should a question arise after qualifying closes about whether a candidate *should* be disqualified, an opposing candidate may seek redress in the court.

As for Mr. Wright, there is no dispute that, but for Wells Fargo admitted error in failing to locate his campaign account, he is qualified to be a candidate for mayor of Miami Gardens and should be permitted to run for that office in this election cycle. Accordingly, the certified question must be answered in the negative.

II. BECAUSE MR. WRIGHT WAS INCORRECTLY DISQUALIFIED UNDER SECTION 99.061(7)(a)1., FLORIDA STATUTES (2015), HE SHOULD BE PERMITTED TO STAND FOR ELECTION AS A CANDIDATE FOR MAYOR OF MIAMI GARDENS IN THE NOVEMBER 8, 2016, ELECTION.

Answering the certified question in the negative means Mr. Wright is qualified to be a candidate for mayor of Miami Gardens. Indeed, under the circumstances, the public's interest would be well served by adding Mr. Wright's name to the list of qualified mayoral candidates. Doing so, "would afford the electorate the largest opportunity to select, at election, the candidate of their choice." *McClung v. McCauley*, 238 So. 2d 667, 670 (Fla. 4th DCA 1970); *see also Davis v. Adams*, 400 U.S. 1203, 1204 (1970) ("The risk of injury to applicants from striking their names from the ballot outweighs the risk of injury to Florida

from permitting them to run."); *Siegendorf*, 266 So. 2d at 346-47) ("It is better in such factual situations to let the people decide the ultimate qualifications of candidates unless they appear clearly contrary to law."); *Bayne v. Glisson*, 300 So. 2d 79, 82 (Fla. 1st DCA 1974) (allowing a candidate's name on the ballot, in part, because of the public policy of Florida "affording the people an opportunity to make a choice in the election of their public officials").

Mr. Wright is aware that being placed on the August 30, 2016, ballot at this time is not possible and, even so, cost prohibitive to the City and the County since some ballots have already been released. However, Mr. Wright submits to have his name included on the November 8, 2016, general election ballot. Voter ballots for that election will begin printing on or about September 1, 2016. During the proceedings in the circuit court, counsel for the Supervisor of Elections voiced no objection to Mr. Wright's request and confirmed during the appeal proceedings in the district court that the mayoral election can be moved to November to allow Mr. Wright to run for that office (A. 8, at 38).

The City of Miami Gardens has argued that the electoral process would suffer and the other candidates would be disenfranchised by the request. (A. 8, at 38, 40). On the contrary, the voters of Miami Gardens and Mr. Wright have been disenfranchised by the City's actions and by the decisions of the circuit and district courts. Mr. Wright respectfully submits that any administrative burden

on the City and supervisor of elections would be slight, and any disenfranchisement resulting from moving the mayoral election to November would be minimal. His right to run for and hold office is a "valuable one," as this Court has recognized, and one that has been abridged long enough. *See Collins*, 85 So. 2d. at 857.

The general election ballot will have approximately seventeen additional municipal elections. Once the order is given to include Mr. Wright on the November ballot, poll workers can inform voters during the August 30, 2016, election that the mayoral race has been moved to the general election. Giving the public access to have all candidates included outweighs any minimal burden to the City of Miami Gardens of a potential run-off election in late November or December, rather than on November 8th. Mr. Wright urges this Court to let the people of Miami Gardens decide whether they want him as their mayor. Things will have to move quickly because the November ballots will begin printing on or about September 1, 2016.

CONCLUSION

Mr. Wright was wrongly disqualified under section 99.061(7)(a)1., Florida Statutes (2015), and omitted from the ballot for the City of Miami Gardens' mayoral election on August 30, 2016. For the reasons set forth in this brief, the statute does not require or authorize filing officers, whose function is purely ministerial, to disqualify candidates after the qualifying period. The Third District's certified question should be answered in the negative, and Mr. Wright should be permitted to have his name on the ballot for mayor in November.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 24, 2016, the foregoing Initial Brief has been electronically filed with The Honorable John A. Tomasino, Clerk, The Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927 via the e-Filing Portal; with copies furnished via e-mail to: Juan-Carlos Planas, Esq., (jcplanas@kymplaw.com), KYMP, 600 Brickell Avenue, Suite 1715, Miami, FL 33131, *Attorney for Defendants/Appellees/Respondents, City of Miami Gardens and Ronetta Taylor*; Sonja K. Dickens, Esq., (sdickens@miamigardens-fl.gov), CITY OF MIAMI GARDENS, 18605 N.W. 27th Avenue, Miami Gardens FL, 33056, *Attorney for Defendants/Appellees/Respondents, City of Miami Gardens and Ronetta Taylor*; Oren Rosenthal, Esq. and Michael B. Valdes, Esq., (orosent@miamidade.gov) (mbv@miamidade.gov), COUNTY ATTORNEY'S OFFICE, 111 N.W. First Street, 28th Floor, Miami, Florida 33130, *Attorneys for Defendant/Appellee/Respondent Christina White.*

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CERTIFICATE OF COMPLIANCE

Undersigned counsel does hereby certify that this Brief is submitted in 14 point proportionately spaced Times New Roman font, and that this brief has been filed by e-mail in accord with the Court's order of October 1, 2004.

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