IN THE SUPREME COURT FOR THE STATE OF FLORIDA

JAMES BARRY WRIGHT, Petitioner, v. **CITY OF MIAMI GARDENS**, a Florida municipal corporation, **RONETTA TAYLOR**, the City of Miami Gardens City Clerk, in her official capacity, and **CHRISTINA WHITE**, in her official capacity as Supervisor of Elections, Miami-Dade County, Florida, Respondents.	Case No. SC16-1518 3d DCA Case No. 3D16-1804 L.T. Case No. 16-16248 CA 04

ANSWER BRIEF OF RESPONDENT SUPERVISOR OF ELECTIONS CHRISTINA WHITE ON THE MERITS

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Statement of the Case and Facts

Petitioner, James Barry Wright ("Wright"), requests that this Court excuse him from the clear and unambiguous language of Fla. Stat. § 99.061(7)(a)(1) simply because the law has led to an admittedly harsh result in his case. Under the clear application of the law, Wright was disqualified by Respondent Ronetta Taylor, City Clerk for the City of Miami Gardens ("Taylor"), as a candidate for election to the office of Mayor of the City of Miami Gardens because his qualifying fee check was returned by Respondent City of Miami Gardens' ("City") bank after both the qualifying period had closed and the time permitted for a cure had expired.

In seeking this relief, Wright does not make a facial attack on the validity of statute.[1] Instead, he argues that this Court should take a tortured and out-of-context reading of Section 99.061(7)(a)(1) that runs contrary to the plain language of the statute and imputes ambiguity where none exists. Worse yet, Wright's proffered reading of the statute would require this Court to effectively ignore the legislature's decision in 2011 to amend Section 99.061(7)(a)(1), which had the effect of eliminating the previously existing 48-hour-post-qualification cure period in favor of a new standard which requires that when a candidate's qualifying fee check is

[1] At no time in this litigation has Wright alleged any legal infirmity in the statute or the legislature's authority to enact such a law. Nor has Wright filed a notice of Constitutional question or served the notice and pleadings on the Attorney General or the state attorney for the Eleventh Judicial Circuit as required by Rule 1.071 of the Florida Rules of Civil Procedure.

returned "for any reason" such deficiency must result in disqualification unless cured before the end of qualification.

The current version of Section 99.061(7)(a)(1), however, is clear and the express dictates of the legislature must be followed. "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 from the campaign account … Failure to pay the fee as provided in this subparagraph ***shall disqualify the candidate***." Fla. Stat. § 99.061(7)(a)(1) (2016) (emphasis added). While the application of Florida law in this case may have resulted in a harsh result for Wright, the Third District Court of Appeals correctly found that this statute "clearly and unambiguously required Wright's disqualification." *See* A. 13–2. The Third District's holding was in accord with the previous decision of the First District Court of Appeal 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), which similarly held that "[t]he statute at issue is clear and unambiguous [and requires that] … [t]his circumstance 'shall disqualify the candidate.'" *Levey*, 146 So. 3d at 1226. As the First District noted in *Levey*: "[i]t is not within a court's power to rewrite the statute or ignore this amendment, and any remedy [those] aggrieved by the amendment may have lies with the Legislature, not the courts." *Id*. at 1226.

As acknowledged by the Petitioner, the "facts of this case are wholly not in dispute." Int. Br. at 20; A. 1-5. On June 1, 2016, Wright filed all of his qualifying papers along with a qualifying check drawn on his Wells Fargo campaign bank account one day before the close of qualifying. A. 1-5. On June 20, 2016, well after the close of qualifying, Taylor informed Wright that his check had been returned by Wells Fargo and that he was disqualified as a candidate for Mayor. *Id*. The returned check was stamped with "UN LOCATE ACCOUNT," "Do Not Re-deposit," and "RETURN REASON – UNABLE TO LOCATE ACCOUNT." *Id.*; A. 2-63, Ex. 1, 49. For purposes of the temporary injunction hearing, and without the benefit of discovery from Wells Fargo, the Respondents did not dispute "that the 'return' of the check was the result of bank error and that Wright was not notified of any issue regarding the validity of his qualifying check until after the expiration of the qualifying period." A. 13-3.

Although the Third District Court of Appeal agreed with the trial court and the First District in *Levey* that Florida law clearly and unambiguously mandated this result, the Third District 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?

This Petition followed.

Standard of Review

The issues raised in the Petition require only statutory construction. As such, the standard of review is *de novo*. *See Diamond Aircraft Industries, Inc. v. Horowitch*, 107 So. 3d 362, 366 (Fla. 2013); *Borden v. East-European Ins. Co.*, 921 So. 2d 587, 591 (Fla. 2006).

Summary of the Argument

The Third District's decision should be affirmed and the certified question should be answered in the affirmative because the "plain provision of the law" requiring disqualification of Wright contained in Fla. Stat. § 99.061(7)(a)(1) (2016) is clear and unambiguous. *Ervin v. Collins*, 85 So. 2d 852, 858 (Fla. 1956).[2] It provides that if a check used to pay a candidate's qualifying fee "is returned for any reason," "the candidate shall have until the end of the qualifying to pay the fee with a cashier's check purchased from the funds of the campaign account. Failure to pay the fee as provided in this subparagraph shall disqualify the candidate." Fla. Stat. § 99.061(7)(a)(1) (2016). Here, Wright's check to pay his qualifying fee was returned by Wells Fargo after the close of the qualifying period and Wright tendered payment of the qualifying fee with a cashier's check purchased from the funds of the

[2] Wright repeatedly cites to *Ervin v. Collins* for the proposition that the "right to hold office is a valuable one" but fails to recognize that this Court also held that such right may be "abridged … by plain provision of law" as it has in this case by Fla. Stat. § 99.061(7)(a)(1). *Ervin,* 85 So. 2d at 858 (Fla. 1956).

campaign account well after the close of qualifying. Florida law, however, only provides that "the candidate shall have until the end of the qualifying" to pay the qualifying fee. *Id*. Thus, Florida law mandated that Wright be disqualified.

In response, Wright asserts that the return of his campaign check to pay the qualifying fee was due to bank error on behalf of the City's bank. But the plain language of Section 99.061(7)(a)(1) does not permit the Court to craft exceptions for checks returned for "bank error" that would permit a candidate to pay the qualifying fee after the close of qualifying. Such exceptions may only be drafted by the legislature. This is particularly true in light of a 2011 amendment to Section 99.061(7)(a)(1), which eliminated the previously available remedy of curing a returned check within 48 hours even after the close of the qualifying period.

But, even if the Florida Statutes permitted the requalification of Wright, it is too late in the conduct of the August 30, 2016 Primary Election to change the conduct of that election. The Court's ordered briefing schedule requires that this brief be filed less than 24 hours before the polls open in Miami-Dade County and after it is anticipated that more-than-half of the ballots to be cast in the election have already been cast by early voting and vote-by-mail balloting. The votes cast in that election for the Mayor of Miami-Gardens will be tabulated and reported in accordance with Florida law. Any relief afforded by the Court, if warranted, should be targeted to either ordering a subsequent election or of a prospective nature only.

To this end, the November General Election ballot is currently available for the placement of additional races, but that ballot will no longer be available within days of the August 30, 2016 Primary Election because the General Election ballot must be prepared, the voting machines must be programmed, the election ballots and equipment must be tested and the ballots must be printed prior to the mailing of overseas vote-by-mail ballots in the middle of September. *See* Fla. Stat. §101.62(4)(a) (requiring Supervisors of Election to send vote-by-mail ballots to each absent uniformed services and overseas voters no later than 45 days before the general election). If the Court requires additional time to consider this matter, relief may also be provided by directing the City of Miami-Gardens to conduct a subsequent special election to choose its next Mayor or remand this case to the trial court to craft an appropriate remedy which will not interfere with the conduct of the remainder of the federal, state, county, municipal and local races on the Primary and General Election ballots.

Argument

While Appellee Supervisor of Elections Christina White ("Supervisor White") was joined in this case as the ministerial actor who is conducting the August 30, 2016 Primary Election, her interest in this case is two-fold. First, Supervisor White must preserve the integrity of the ballot in the August 30, 2016 Primary Election and November 8, 2016 General Election and ensure that no late changes are

imposed on the election or the ballot that will deleteriously effect the conduct of these elections for all federal, state, local and party races which appear on the same ballots. Secondly, Supervisor White, as a qualifying officer who accepts the qualifying fee from candidates in every election cycle, has an interest in preserving the bright-line test established by the legislature—however harsh the application of that bright-line test may be to an individual candidate—so that future elections will not be subject to delay by the fact-finding required to determine the cause of a returned qualifying check, which often occurs after a complicated ballot has been prepared, tested and printed and would demand discretion by a ministerial official.

As such, this Court should follow the clear, unambiguous direction of the Florida Statutes in this case: "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 from the campaign account … Failure to pay the fee as provided in this subparagraph ***shall disqualify the candidate***." Fla. Stat. § 99.061(7)(a)(1) (2016) (emphasis added). Any deviation from this rule announced by the legislature should be crafted by the legislature through the legislative process, which is better suited to resolve the competing interests of the individual candidate against the need to conduct an orderly election and prepare an accurate election ballot.

In the event this Court declines to do so and reverses the trial court's denial of the Motion, Supervisor White urges this Court to adopt one of the alternative forms of relief requested by the Wright: (1) order the City of Miami Gardens Mayoral election moved to the November 8, 2016 General Election ballot which will not be programmed until September 1, 2016; (2) order that the race be placed on a subsequent special election; or (3) remand the case to the trial court with direction not to interfere or harm the orderly conduct of the Primary and General Election. While such a result may cause additional hardship for the City of Miami Gardens and the current candidates in the city's mayoral race, such damage will pale in comparison to the effects of having to undo an election already in progress for multiple federal, state, county, local and party races all appearing on the same ballot.

Accordingly, the decision of the Third District Court of Appeals should be affirmed and the certified question should be answered in the affirmative in accordance with the clear directives of Florida law, or, if not, relief should be provided on a subsequent election ballot rather than disturb an election already well underway.

I. Florida Law Unambiguously Required Wright's Disqualification Upon the Return of his Qualifying Check.

In his Initial Brief, Wright argues that he should be excused from disqualification because (1) the statute is ambiguous as it applies to him, (2) the statute does not apply to this situation, (3) the statue should be interpreted to favor

candidate qualification, and (4) reading the statute *in pari materia* supports qualification. Int. Br. at 9-10. None of these arguments, however, are availing in this case because the state's qualifying officers have been provided a clearly-defined directive from the Florida legislature to disqualify a candidate whose qualifying fee check is returned and not cured before the close of qualifying. In such cases, this Court has "uniformly held that a candidate's qualification papers must be completed and filed within the time prescribed by statute, and that any errors or omissions cannot be corrected after the filing deadline has passed." *Battaglia v. Adams*, 164 So. 2d 195, 199 (Fla. 1964) (citing decisions).

A. The Express Terms of the Statute Require Disqualification

Section 99.061(7)(a)(1) provides that:

> 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.

When interpreting a statute, courts must look first to the statute's plain language. *See Joshua v. City of Gainesville,* 768 So.2d 432 (Fla. 2000). If the statute's plain language is clear and unambiguous, courts should rely on the words used in the statute without involving rules of construction or speculating as to the legislature's intent. *See Borden v. East–European Ins. Co.,* 921 So.2d 587, 595 (Fla. 2006).

Here, the plain language of the statute is clear and unambiguous. Once Wright's check was "returned by the bank for any reason," he had "until the end of qualifying to pay the fee with a cashier's check purchased from funds of the campaign account." Fla. Stat. § 99.061(7)(a)(1) (2016). Because Wright was unable to do so as a result of the time it took for the bank to return the check, Taylor was required to comply with the statutory requirement that "[f]ailure to pay the fee as provided in this subparagraph shall disqualify the candidate." *Id*. Put simply, the clear language of the statute required Taylor to disqualify Wright.

Wholly ignored by Wright in his analysis is the very instructive legislative history of Section 99.061(7)(a)(1), which is informative as to its meaning. Prior to 2011, candidates like Wright were able to cure a check returned from the "bank for any reason" within 48 hours of receiving notice by the filing officer – "***the end of qualifying notwithstanding***." Fla. Stat. § 99.061(7)(a)(1) (2010) (emphasis added).

However, in 2011, subparagraph (7)(a)(1) was amended to ***eliminate*** any cure period that extended past the end of qualifying. Ch. 2011-40, § 14, Laws of Florida.[3]

Both the current law and its prior iteration applied to the return of a qualifying check "by the bank for any reason." The difference between the current law and the law which existed prior to the 2011 amendment is that the prior law permitted the candidate to cure within "48 hours from the time such notification is received…." The current statute requires the candidate to cure "before the end of the qualifying." By this appeal, Wright asks this Court to construe the provisions of the current statute to permit the post-qualifying cure period that existed prior to the 2011 amendment, thus allowing him to pay the qualifying fee by certified check as a result of his check being returned by Wells Fargo "for any reason." But, unfortunately for Wright, "[c]ourts have no power to set [a legislative enactment aside] or evade its operation by forced or unreasonable construction." *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So.2d 452, 454 (Fla. 1992). Said another way, Wright is not asking that this Court interpret an ambiguity in Section 99.061(7)(a)(1); he is asking

[3] It is also instructive to note that judicial and school board candidates still have the 48-hour cure period "notwithstanding" the end of qualifying. Fla. Stat. § 105.031 (2016). "The legislative use of different terms in different portions of the same statute is strong evidence that different meanings were intended." *State v. Mark Marks, P.A.,* 698 So. 2d 533, 541 (Fla. 1997) (finding that the terms "any person" had a different meaning than the terms "any insured").

that the Court take the same tack as his initial brief and ignore the clear legislative history all together.

The Third District Court of Appeal was not the first district court to tackle this issue. In *Levey v. Detzner*, the First District Court of Appeals was confronted by a similar set of facts as it relates to the application of the 2011 amendment to Section 99.061(7)(a)(1), where a bank incorrectly returned a candidate's qualifying check for insufficient funds even though the funds were available to pay the qualifying fee. *See Levey v. Detzner*, 146 So. 3d 1224 (Fla. 1st DCA 2014). Nevertheless, the First District upheld the disqualification of the faultless candidate even though such result was patently unfair. *Id.* The First District held:

> 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 statute. This circumstance "shall disqualify the candidate." Courts are not at liberty to extend, modify, or limit the express and unambiguous terms of a statute.

Id. (emphasis in original).

The First District reached this conclusion because "[i]t is not within a court's power to rewrite the statute or ignore this amendment, and any remedy Levey or others aggrieved by the amendment may have lies with the Legislature, not the courts." *Id.*

The decision in *Levey* is consistent with the long standing precedent in Florida that payment of the filing fee is the sole responsibility of the candidate. This is true because a "requirement of the statutes is that the prospective candidate shall pay to the [qualifying officer] on or before a specified day a qualifying fee in an amount that is fixed and certain, or that may be made certain by simple mathematical calculation … [t]he statutes evidence no indication of an intention to except anyone from their operation, or to place the duty or responsibility for compliance therewith upon anyone other than the prospective candidate himself." *State ex rel. Taylor v. Gray*, 25 So. 2d 492, 496 (Fla. 1946).

As such, Wright's argument is not with the actions of Taylor—who merely applied the law as written—but with the Legislature, which amended Fla. Stat. § 99.061(7)(a)(1) in 2011 to require that any cure of a problem with the qualifying check must occur before "the end qualifying." As the Third District held below, "[w]hen an unambiguous statute plainly requires a particular result … courts are powerless to fashion a different result under the auspices of fairness." A. 13-5 (citing *Corfan Banco Asuncion Paraguay v. Ocean* Bank, 715 So. 2d 967, 970 (Fla. 3d DCA 1998). Whether the Legislature contemplated how contribution checks or qualifying checks are received and processed by the banks and the State of Florida is of no moment. "[T]he fact that the legislature may not have anticipated a particular

situation does not make the statute ambiguous." *Forsythe* 604 So.2d at 456. The duty of this Court is to apply the statute as written, not to rewrite it.

B. The Statute Applies to the Return of Wright's Qualifying Check

Wright attempts to distinguish the facts in this case with the requirements of the statute by arguing that (1) it was the City's bank which returned his check, not his bank, (2) his qualifying check was properly drawn and therefor "paid," and (3) the statute only applies to returned checks before the close of qualification. Int. Brief at 14 - 19. None of these arguments, however, are consistent with the plain language of the statute and do not standing up to scrutiny.

Initially, leaving aside the fact that both Wright and the City used Wells Fargo, the exact same bank, Wright's argument regarding the use of the words "the bank" in the statute rather than "a bank" or "any bank" creates nothing more than a distinction without a difference. Section 99.061(7)(a)(1) requires the qualifying officer to disqualify any candidate "if a candidate's check is returned by the bank for any reason" and the candidate has not resubmitted a cashier's check by the close of qualifying. The clear and unambiguous wording of this provision does not leave room for drawing such meaningless distinctions. Returned checks are always returned by the qualifying officer's bank. But, whether it is the qualifying officer's bank or the candidate's bank that makes the error, the legislature's broad drafting of the phrase "returned … for any reason" accounts for either scenario. As such, the

distinction drawn by Wright is both factually and legally incorrect as the statute requires disqualifications no matter which banking institution made the fatal error.

Furthermore, Wright's arguments that he properly paid the qualifying fee and that the statute does not apply to events which occur after qualifying are equally unavailing and contradicted by the express language of the statute and the 2011 amendment. The statutory consequence of a returned qualifying check is not a direction to stop a candidate's qualification but to affirmatively "disqualify" an already qualified candidate. Fla. Stat. § 99.061(7)(a)(1) ("Failure to pay the fee as provided in this subparagraph shall disqualify the candidate"). While Wright is correct that the presentment of a properly drawn check is sufficient for qualification of a candidate, the return of that check "for any reason" mandates that the qualifying officer take an additional step and "disqualify" the candidate. As explained above, the 2011 amendment to the statute eliminated the ability to cure a qualifying check returned by the bank for any reason after the end of qualifying by eliminating the phrase "the end of qualifying notwithstanding." Fla. Stat. § 99.061(7)(a)(1) (2010). Such an amendment would have been superfluous if the statute did not address a check returned after the "end of qualifications."

These invented distinctions are also doomed by the fact that Wright does not offer any suggestion as to the effect that the Court accepting his proffer and crafting new statutory exceptions out of whole cloth would have on his or any other

candidates' qualification. In this case, the bank returned Wright's check with the annotation "Do Not Re-deposit." A. 2-63. To date, the City of Miami Gardens has not been paid Wright's qualifying fee. No funds were deposited into the City's bank accounts and the City cannot negotiate the instrument provided by the candidate. Therefore, assuming *en arguendo* that Wright's statutory interpretation is correct, what process would he be required to follow in order to cure the bank error? Does Wright suggest that he or future candidates be excused from the statutory requirement of submitting a qualifying fee because of bank error? Is Wright's qualifying fee now to be uniquely supported by the taxpayers because he did nothing wrong? Should Wright be permitted to cure the retuned check "the end of qualifying notwithstanding" even though the legislature clearly and intentionally eliminated that option? Those questions, however, are unanswered. And the plain language of Section 99.061(7)(a)(1) offers no guidance on how to fashion a post-qualification cure for one simple reason: the legislature did not want one. Instead, the legislature considered all of these options and elected to create a bright-line rule which, however harsh, provides clear and express guidance to qualifying officers and a level playing field for the candidates.

Lastly, in a footnote, Wright argues in line with Judge Makar's dissent in *Levey*, that this bright-line test may lead to "political shenanigans" and an unfair result. *Levey*, 146 So. 3d 1233; Int. Brief at 14-15, fn 1. Such an argument is

inapposite to this case as the Clerk, the City of Miami Gardens, and the Supervisor of Elections are all as innocent as Wright in this banking error. As acknowledged by all parties, the bank improperly returned Wright's check after the close of qualification through no fault of anyone but Wells Fargo. In the event that a future case finds malfeasance, misfeasance, or nonfeasance committed by a qualifying officer or other party outside the control of the bank, then the Court may address that issue at that time. "[T]he fact that the legislature may not have anticipated a particular situation does not make the statute ambiguous" or require that the Court address that issue here.[4] *Forsythe* 604 So.2d at 456.

C. Wright is not Entitled to Ballot Access When the Express Terms of the Statute Require Disqualification

Wright argues that the general rules of statutory construction for election laws favor interpretations that permit ballot access. Int. Br. at 21. This rule, however, is available only when "not expressly precluded by the applicable language" of the statute itself. *Republican State Executive Committee v. Graham*, 388 So. 2d 556, 588 (Fla. 1980). *See Hurt v. Naples*, 200 So. 2d 17, 21 (Fla. 1974) (rule applies "in the absence of express [] provision to the contrary"); *Ervin*, 85 So. 2d at 855-58 (Fla. 1956) (courts "are to effectuate their purpose from the words employed in the

[4] In fact, the Third District's certified question only asked this Court to address the situation where a candidate's disqualification is "due to a banking error over which the candidate has no control."

document;" the rule applies "except for unusual reason or by plain provision of law"); *Schurr v. Sanchez-Gronlier*, 937 So. 2d 1166, 1170 (Fla. 3d DCA 2006) (relying on *Graham* and restating that the rule applies "[i]f two equally reasonable constructions might be found"). *Accord* Int. Br. at 7-8 (acknowledging that any "burden upon access to the ballot … must be clearly delineated" and ballot access will only be given when there is "doubt as to meaning of the statutory terms") (citing *Reform Party of Florida v. Black*, 885 So. 2d 303, 311 (Fla. 2004)).[5]

Here, the express language of the qualifying statute explicitly requires that Wright be "disqualified." And Wright offers no interpretation of the statute that would excuse him from the hard deadline imposed upon the candidate to cure a returned qualifying check by "the end of qualifying." Fla. Stat. § 99.061(7)(a)(1) (2016). Rather, Wright's argument is that such a requirement is unfair and there

[5] Moreover, the cases cited by Wright that favor ballot access are inapplicable to the instant case. Both *Hurt v. Naples* and *Ervin v. Collins* dealt with a candidate's eligibility to hold office, not the statutory steps a candidate must take to be placed on the ballot. *See Hurt*, 200 So. 2d 17 (Fla. 1974); *Ervin*, 85 So. 2d 852, 855 (Fla. 1956). A candidate's satisfaction of the conditions precedent to being duly-qualified is different from the candidate's eligibility for office. *See Norman v. Ambler*, 46 So. 3d 178, 182-83 (Fla. 1st DCA 2010) (explaining the distinction). Similarly, the Court in *Smith* was concerned with a candidate's compliance with the resign-to-run law. *Smith v. Crawford,* 645 So. 2d 520 (Fla. 1st DCA 1994). Finally, *Siegendorf* did not deal with a deficiency that failed "to meet the requirements of the law" and sought to uphold the qualifying officer's decision, not mandate that the qualifying officer take strained interpretations of a statute to reach a particular result. *State ex rel. Siegendorf v. Stone*, 266 So. 2d 345 (Fla. 1972).

should be no deadline in his case as he did nothing wrong. Such a request is inconsistent with the clear language of the statute.

D. Wright Misconstrues the Overall Statutory Scheme of Section 99.061 and the Qualifying Officer's Ministerial Function

Rather than support his position, Wright's reliance on the overall statutory scheme of Section 99.061(7) and the qualifying officers ministerial function only proves that his reading of the law in this case is wrong. *See* Int. Brief at 23-25. While Wright is correct that Section 99.061(7) both provides the statutory requirements for qualifying candidates for office in Florida and requires the qualifying officer to perform a "ministerial function" to only determine when all documents have "been properly filed and whether each item is complete on its face," such provisions support the City Clerk's decision rather than Wright's ambiguous interpretation of the clear bright line test established by Section 90.061(7)(a)(1). Fla. Stat. § 99.061(7)(c).

If this Court were to accept Wright's argument that a bank error wholly outside of the candidate's control would relieve the candidate from the statutory mandated disqualification, then it would also have to assign discretion and fact-finding responsibilities to an otherwise ministerial officer. Under Wright's interpretation, the qualifying officer would need to determine whether the returned check was a result of bank error or candidate error in order to correctly apply the statute. The complications presented by this new interpretation are three-fold. First,

the qualifying officer would have to make this decision during the ever-shrinking period of time between qualification and ballot planning, preparation and printing. Second, this scheme runs contrary to the proscription that qualifying officers solely perform a "ministerial function" set forth in Section 99.061(7)(c). Third, there is no statutory support for this arrangement and, on the contrary, Section 99.061(7)(a)(1) uses phrases such as "for any reason" precisely to eliminate any exercise of discretion by a qualifying officer.

Instead, the plain language of 99.061(7)(a)(1) shows that the legislature desired to establish a bright line test whereby a qualifying officer would "disqualify" a candidate who's qualifying check has been returned by the bank "for any reason" after the close of qualifying. This interpretation is entirely consistent with the overall framework of Section 99.061 and permits qualifying officers to have the time and ability to adequately prepare for the upcoming election for all candidates and ballot questions. According, the decision of the Third District should be affirmed and the certified question should be answered in the affirmative.

II. It is Too Late to Change the August 30, 2016 Primary Election and Almost Too Late to Add a Race to the November 8, 2016 General Election

Even if Wright were clearly and unconditionally entitled to be qualified as a candidate for the office of Mayor of Miami Gardens, it is now too late to change any aspect of the August 30, 2016 Primary Election ballot. By the filing of the reply brief in this case, it will be less than 24 hours before the opening of polls on election day

and Supervisor White will have already deployed all election equipment to the polling places and have received and tabulated most vote-by-mail and all early voting results.

Thus, it is impossible to make any changes to August 30, 2016 Primary Election. At most, and only if warranted in extreme cases, the only remedy available to this Court is to order that there be a subsequent election on the November 8, 2016 General Election Ballot or a subsequently set special election. Petitioner has already conceded that such a relief is the only relief available and Supervisor White urges this Court not to deviate from this request.

The time by which this matter made be added to the November 8, 2016 general election ballot, however, is rapidly diminishing as Supervisor White will need to begin planning, programming and printing the General Election ballots within days after the close of the polls on August 30, 2016. Once that task is begun, courts have routinely held that injunctive relief is simply unavailable. *See e.g., Smith v. Smathers,* 372 So.2d 427 (Fla. 1979) (denying relief to insert candidate in ballot after printing because, in part, "[t]o have granted the relief would have caused unwarranted disruption of the election process"); *Fishman v. Schaffer*, 429 U.S. 1325, 1330, 97 S. Ct. 14, 50 L.Ed.2d 56 (1976) (denying injunction on the ground that "[t]he Presidential and overseas ballots have already been printed; some have been distributed[, and t]he general absentee ballots are currently being printed.");

See also Westermann v. Nelson, 409 U.S. 1236, 1236–37, 93 S.Ct. 252, 34 L.Ed.2d 207 (1972) (denying injunction "not because the cause lacks merit but because orderly election processes would likely be disrupted by so late an action."); *Williams v. Rhodes*, 393 U.S. 23, 34–35, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968) (denying a political party's ballot access request, despite the unconstitutionality of the relevant statute, because "relief cannot be granted without serious disruption of election process"); *Perry v. Judd*, 2012 WL 120076, *5 (4th Cir. Jan. 17, 2012) ("Challenges that came immediately before or immediately after the preparation and printing of ballots would be particularly disruptive and costly for state governments….we are loath to reach a result that would only precipitate a more disorderly presidential nominating process.") (citing *Anderson v. Celebrezze*, 460 U.S. 780, 788, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983) ("[T]here must be a substantial regulation of elections if ... some sort of order, rather than chaos, is to accompany the democratic processes.")).

If this Court affirms the trial court's decision, then these concerns are moot because there is no relief to be granted that could potentially disrupt the election process. But, in the event that this Court reverses the trial court's denial of injunctive relief, Supervisor White requests that any relief ordered by this Court only be ordered for a subsequent election, either in conjunction with the November 8, 2016 General Election Ballot if ordered in a timely manner or at a subsequent special election mutually agreed to by the City and the Supervisor of Elections as required

by Florida Law. *See* Fla. Stat. § 100.151 (2016) ("the governing authority of a municipality shall not call any special election until notice is given to the supervisor of elections and his or her consent obtained as to a date when the registration books can be available"). Wright has already consented to this alternative relief should the Court reverse the trial court's denial of his Motion. Int. Br. at 27-28. In the alternative, this court may remand this matter to the trial court to address available remedies.

Conclusion

Accordingly, Supervisor White respectfully requests that this Court either affirm the decision of the Third District Court of Appeals and answer the certified question in the alternative or, in the alternative, not order any relief inconsistent with this brief.

Dated August 29, 2016

Respectfully submitted,

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Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing was served by e-mail on August 29, 2016 upon all counsel or parties of record indicated on the Service List below.

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