IN THE SUPREME COURT OF FLORIDA

Case No. : SC16-1518

L.T. Case No. 3D16-1804

JAMES BARRY WRIGHT
Petitioner,

-vs.-

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

RESPONDENTS, MIAMI GARDENS and RONETTA TAYLOR'S ANSWER BRIEF ON THE MERITS

ON REVIEW FROM THE THIRD DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA

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INTRODUCTION AND STATEMENT OF THER CASE

Appellant, James Barry Wright (Hereinafter, "Wright") seeks review of a decision by the Third District that affirmed the denial of his Motion for Injunction by the trial court.[1] In reaching its decision to affirm the trial court, the Third District Court of Appeal in *Wright v. City of Miami Gardens*, no. 3D16-1804 (Fla. 3d DCA August 17, 2016), certified a question 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?

For reasons described in further detail below, this Court should answer the question in the affirmative.

First, however, it is important to recognize what relief Wright originally sought and what the adverse ramifications would be if the relief requested by Wright should be granted by this Court.

Wright's original action before the lower tribunal was for declaratory and injunctive relief in order to be reinstated as a candidate for Mayor of Miami Gardens, Florida (Hereinafter, "City",) after he had been disqualified by the City Clerk, Ronetta Taylor (Hereinafter, "Clerk".) As Wright now seeks relief that

[1] This IS NOT an appeal of a Final Judgment.

would upend the 2016 elections in the City, his request for injunction was properly denied by the court which was affirmed by the Third District. Wright initially filed suit without naming the proper entity required to provide the relief originally sought, the Miami-Dade County Supervisor of Elections (Hereinafter, "Supervisor",) and thus, his original claim was dismissed. Wright then amended his claim to name the Supervisor but did not name any of the other candidates while asking the trial court to move the Mayoral election to November. This is an important fact in this matter as any relief granted to the Petitioner would cause chaos in the entire election and adversely affect all candidates in the Miami Gardens election. As such, both the trial court and the Third District Court of Appeal properly denied Wright's request for relief based on the holding in *Levey v. Detzner*, 146 So. 3d 1224, (Fla. 1st DCA, 2014). Accordingly, this Court should do the same as §99.061(7) of the Florida Statutes is clear and there is no doubt or ambiguity that Wright should not be a qualified candidate for Mayor in Miami Gardens.

RELEVANT FACTS

Wright selectively omits certain facts and elements of the record in his Appendix and as such, the City will provide the same supplemental Appendix[2] that was presented at the 3rd DCA which includes the exhibits submitted and accepted

[2] Referred to as "Supp. Ap."

by the trial court in the proceedings prior to Wright's Amended Complaint including documents submitted before the first hearing.

While the general description of facts presented by Wright in his Brief is mostly accurate and they are reflected as such in 3rd DCA opinion, Wright leaves out some interesting details. First, Wright tries to differentiate between starter checks given to an individual when they open a bank account and temporary checks that Wright used in his attempt to qualify. There simply is no difference. Neither of those checks have the account holder's pre-printed name and address and neither are intended by the bank for permanent use. More importantly, because most banks now mark permanent checks with specific identifying markers to prevent fraud, the chances for an error like the one in this matter would have been reduced greatly as the bank would more clearly recognized the authenticity of a permanent check. This is an important distinction because Wright misrepresents an important fact. Wright states that there is no record of his temporary check being presented for payment. He is incorrect. As both the trial and the Third District found, the check that Wright used to qualify was returned to the City by the bank stamped "Un Locate Acct." and "Do Not Re-deposit". [Supp. Ap. 1000016 - 1000019] Wright, himself, submitted this copy of the check as an exhibit to his Complaint and Motion. As such, the court found that the City indeed

submitted the check to the bank[3] and it was returned to the City without payment being made on the check.

Wright also neglects to mention that he waited until the next to last day to qualify. [Supp. Ap. 1000050] While Wright was free to qualify at any point during the qualifying period and there is no law that states he needed to have permanent checks, not temporary ones, these factors contrast part of Wright's narrative. Wright seems to suggest that his check was never presented to the bank, when the evidence clearly reflects otherwise. While there is no proof in the record or the facts as found by the trial court that the clerk made any false statements as Wright claims, Wright neglects to examine the facts as they appeared to the City of Miami Gardens. A temporary check, which was tendered to the City on the next to last day of the qualifying period was rejected by Wells Fargo (the same bank used by both the City and Wright) because Wright's account could not be found. More important, the check was rejected after the qualifying period ended. Wright did not present the City with a permanent check; presentation of a permanent check would have decreased substantially or even eliminated the possibility of Well Fargo not being able to locate his account. Additionally, Wright did not qualify the first

[3] As noted by the trial court, both Wright and the City both used Wells Fargo Bank. Although Wright tries to contend there are different banks as the City and Wright allegedly use different branches, it is axiomatic that all Wells Fargo use the same computer system as one can deposit money into their Wells Fargo Account from any branch in the United States. Accordingly, when the City deposited the check in their account, Wells Fargo, themselves, stated that Wright's account could not be located.

week of the qualifying period which may have improved his chances of being able to remit payment before the qualifying period expired if an error occurred.

Wright also neglects to present this election in the proper context. After Wright was disqualified by the clerk, he simply stopped acting like a proper candidate for office. Wright did not file any further campaign finance reports. [Supp. Ap. 1000052 – 1000068] There isn't even any record yet of Wright filing a termination report which is required within 90 days of a candidate being defeated or removed from the election. This is important, as absent any evidence to the contrary, the three remaining candidates for Mayor as well as all of the candidates for Commission seats 1, 3 and 5, have all timely filed campaign finance reports and have abided by the limits on contributions set by Chapter 106 of the Florida Statutes. Accordingly, this election is well, well, underway. More than 119,000 vote by mail ballots have been submitted county wide[4] and more than 40,000 Miami-Dade County residents have voted early including roughly 4,400 at the North Dade Regional Library early voting center located in Miami Gardens[5]. Additionally, as the County has reported that the return rate for vote by mail ballots is over 48% of ballots requested, this percentage could be even higher in Miami

[4] http://www.miamidade.gov/elections/library/reports/2016-08-30-primary-election-daily-vote-by-mail-report.pdf

[5] http://www.miamidade.gov/elections/library/reports/2016-08-30-primary-election-daily-early-voting-report.pdf

Gardens as municipalities with city elections generally vote at a higher percentage than unincorporated areas with no municipal election. Furthermore, Wright never filed any action designed to void the results of the August 30, 2016 election. As per F.S.§102.168, there are limited ways to contest the results of an election and Wright did not file any of them. He did not file an action contesting the results nor did he ask for the injunctive relief to stop the canvassing of the current ballots. Wright did not even name any of the other Miami Gardens candidates in his Complaint. Wright did not even file an action for quo warranto.

Perhaps the most important fact that Wright neglects to mention in his initial brief, comes from the Affidavit of Miami-Dade County Supervisor of Elections, Christina White. [See A. 5 – p. 10 – 13] The Supervisor testifies that there are 280 different ballot styles that need to be prepared for primary elections in Miami-Dade County and because the law requires her to mail the first set of vote by mail ballots 45 days before the date of the primary election, the preparation and printing of the ballots begins 15 days before that.

SUMMARY OF THE ARGUMENT

Florida Statutes §99.061 clearly states if a qualifying check is "returned by the bank for any reason,. . . the candidate shall have until the end of qualifying to pay the fee". The trial court and the Third District Court of Appeal properly

followed the holding in *Levey v. Detzner*, 146 So. 3d 1224, (Fla. 1st DCA, 2014) and stated that the Clerk acted properly in disqualifying Wright in this election. While no one will deny that this penalty is harsh, especially as the trial court found that Wright's check was likely returned because of a bank error, this was the clear intention of the Legislature in crafting the statutes and no remedy is available to Wright, especially in light that he did not file any action that could result in the invalidation of the August 30, 2016 election which is almost over. The three candidates for Mayor have been canvassing voters for some time. Most of the vote by mail ballots have already been returned by voters. Early voting ended. There is a very good chance that over 50% of the electors that will vote in the primary election have already done so. Should the Court order an election for November, it will disenfranchise the 3 remaining candidates for Mayor and may force the City of Miami Gardens to pay for a runoff election in December. Voters will also suffer as not only will they pay the cost of the extra election, but also December runoff elections fall right in the middle of the holidays and thus traditionally have a lower turnout than August or November Elections.

STANDARD OF REVIEW

The standard of review in this matter, where a statute is being interpreted is *de novo* as this issue is a pure question of law. See *Bosem v. Musa Holdings*, Inc., 46 So.3d 42 (Fla. 2010).

ARGUMENT

I .

SECTION 99.061(7)(a)1OF THE FLORIDA STATUTES SPECIFICALLY STATES THAT WRIGHT SHOULD BE DISQUALIFIED ONCE HIS CHECK WAS RETURNED BY THE BANK FOR ANY REASON

Wright argues that F.S.§99.061(7) does not automatically require his disqualification from the ballot if there are extenuating circumstances in the check being returned after the end of the qualifying period has ended and if the candidate was not at fault in the return of the check. He is wrong. As a case of statutory interpretation, it is best to start directly with the statute in question. The interpretation of a statute is a purely legal matter. *Stock Building Supply of Florida, Inc. v. Soares Da Costa Construction Services, LLC.,* 76 So. 3d 313, 316 (Fla. 3d DCA 2012). A review of a statute must commence with the plain meaning of the actual language contained therein. *Diamond Aircraft Industries, Inc. v. Horowitch*, 107 So. 3d 362, 367 (Fla. 2013). Examining the plain language of the statute will give effect to legislative intent. *Id;* F.S.§99.061(7)(a)(1) provides in pertinent part as follows:

> (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.** [emphasis added]. Failure to pay the fee as provided in this subparagraph shall disqualify the candidate.

Fla. Stat. §99.061(7)(a)(1) is clear on its face even without interpretation. Wright's check was returned to the City because the account could not be found. In keeping with the statute, the City had no choice but to disqualify Wright as the qualifying period had ended by the time they were informed the check had been returned. The statutes intended that the end of the candidate qualifying period was the last day in which a candidate could make good on a check that had not been paid by the bank because as harsh as this type of action may seem, the statute is designed to protect the electorate. Wright argues that legislative intent must be taken into account and this statute must be read in *pari materia* with the other election laws, and in this singular instance, he is correct. See *Cobb v. Thurman*[6], 957 So. 2d 638 (Fla. 1st DCA 2006) (citing *Palm Beach County Canvassing Bd. v. Harris*, 772 So. 2d 1273, 1287–88 (Fla. 2000)) Wright, however, conveniently fails

[6] "In interpreting the Florida Election Code, it is necessary to read the entire election code in pari materia. Reading all of the cited statutory sections evidences a legislative intent that there be an informed electorate that will know how to cast an effective vote."

to read the election laws in full and does not present a clear picture of the legislative intent behind the necessary result in this case.

One of the most important statutes to look at first is Chapter 101 of the Florida Statutes, Voting Methods and Procedures. This Chapter of the statutes describes all the work required to simply carry out an election. In particular, F.S.§ 101.62(4)(a) specifically states that the first wave of vote by mail ballots are to be mailed out by the Supervisor of Elections no later than 45 days **before** the primary election[7]. This is important because as the Miami-Dade Supervisor of Elections testified, Miami-Dade has 280 different ballot styles and because of this, the Supervisor needs approximately 15 to 16 days to prepare and print the ballots before the first round of vote by mail ballots are mailed. [See A. 5 – p. 10 – 13] By this mathematical calculation, this makes the deadline to receive the names to include on the ballot between 60 and 61 days before the primary election.

While Wright seems intent on reading more than the legislature intended in all further subsections of F.S.§ 99.061(7), he completely ignores the first and most important subsection of F.S.§ 99.061. Subsection (1) provides for the dates for most candidates to qualify to run for office. Pursuant to this section, the last day for candidates to qualify to run for office is on the 67th day prior to the primary

[7] F.S.§ 101.62(4)(b) then requires the domestic vote by mail ballots to be mailed between 35 and 28 days before the primary.

election. Accordingly, as per the Florida Statutes, there are only 22 days between the last day to qualify for office and the date when the first vote by mail ballots are to be mailed to overseas voters. As per the testimony in the record, the Miami-Dade County Supervisor only has 6 or 7 days between the end of qualifying and the start of the process to typeset, test and print the ballots in order to mail them to the voters. While all counties are different and method of ballot used may vary from county to county, the statutes are written in a manner to allow for all counties to be adequately prepared for the election. Although smaller counties will have fewer ballot styles and less voters, therefore needing less time to prepare the ballots before mailing them, the Court must look at the needs of all counties.

In the 16 years since the 2000 election and the related litigation surrounding that election, the State of Florida has changed the voting system twice. First in 2002, the State adopted electronic voting systems after eliminating the punch cards system. In 2006, the state then moved to an optical scan ballot to accommodate the growing need for paper ballots that could be properly recounted in case of a close election. Unlike the punch card system where multiple voters used the same pre-printed list of candidates in the voting booth or the touch screen system that had a computer screen that showed the ballot, today's voting system requires the printing of many more ballots than ever before. The legislature, in their adoption of these voting systems, is presumed to know the effects of all of the statutes in its crafting

of the language of F.S.§99.061(7). *See Knowles v. Beverly Enterprises-Florida, Inc.*, 898 So.2d 1, 9 (Fla. 2004) The legislature is keenly aware that in order to print the amount of ballots in order to comply with the statutes regarding the mailing of vote by mail ballots, Supervisors of Elections in the various Counties need a specific amount of time in order to prepare for the election. It is because of these strict time frames in the statutes, that the legislature amended the statute in 2010 and set such strict language in F.S. §99.061(7)(a)(1) and why no candidate can submit any unpaid qualifying fee after the final day of qualifying. Prior to the changes in 2010, F.S. §99.061(7) allowed a candidate 48 hours after a check was returned to remit payment with a cashier's check whether or not the qualifying period had ended. The Legislature purposely removed the ability remit payment after the qualifying period had expired, knowing full well that the other statutes set strict time tables for the mailing of ballots to voters. The Legislature has the authority to create statutes that require strict application, the results of which may on occasion be harsh, but not unlawful.

For this reason, the First District Court of Appeal came to the result that it did in *Levey*. Even though the penalty is harsh, the Legislature specifically created a statute requiring strict adherence, with no room for other interpretation. "Even though a potential state legislature candidate's bank indicated that its return of the check was due to bank error, this statute [Fla. Stat. §99.061(7)(a)(1)] precluded the

grant of any relief to the candidate because she failed to cure the deficiency in her filing prior to the end of the candidate qualifying period." *Levey v. Detzner*, 146 So. 3d 1224, 1225, (Fla. 1st DCA, 2014). While Wright presents a parade of horribles that could occur such as coffee spilling on a check making it unreadable, these are rather farfetched, especially since new technology intended to prevent fraud, make permanent checks more easily identifiable by the bank no matter who spills coffee on it. Additionally, Wright's suggested interpretation of the statute could lead to even greater problems because of so many unanswered questions. How many days should clerks or election officials wait after the last day of qualifying to accept a replacement cashier's check? What happens if an accident prevents a cashier's check from being properly submitted? How would a candidate even prove that the reason for the returned check was due to bank error and not because of the actions of the candidate? In other words, Wright seeks to so broaden the interpretation of the statute that it would have little or no meaning under his views. Courts generally reject these broad views, not only because it goes contrary to the intent of the legislature, but because it also goes against the common sense approach that Courts use in interpreting statutory construction. *See School Board of Palm Beach County v. Survivors Charter Schools, Inc*., 3 So. 3d 1220, 1235 (Fla. 2009).

In addition to arguing for a broader interpretation of the statute, which was clearly not the intent of the legislature, Wright also attempts to insert doubt or ambiguity in his case, even though none exists. Wright does this in an effort to convince the Court to rely on the well-established legal standard in Florida that any doubt should be resolved in favor of candidacy. This Court should not be persuaded by such arguments. Wright's reliance on *Ervin v. Collins*, 85 So.2d 852 (Florida 1956) and similar cases is misguided. While the Court in *Ervin* stated that any doubt or ambiguity be resolved in favor of candidacy, there are two distinctions in this matter. First, there is no doubt or ambiguity in F.S.§99.061(7)(a). The statute is firm that if the check was returned for **any reason**, the person is disqualified. Additionally, both *Ervin* and, more specifically, *Viera v. Slaughter*, 318 So. 2d 490 (Fla. 1st 1975), provide one important caveat; "[that] *no one should be denied this right [to hold office]* ***unless*** *(emphasis added) the Constitution or applicable valid law expressly declares him(her) ineligible."* F.S.§99.061(7)(a) clearly makes Wright ineligible. Additionally, those cases were decided ***before*** an election had commenced where a court could still allow a candidate to qualify for office not like the current scenario where this election is almost over.

In his argument, Wright also attempts to differentiate the facts of his case from the ones in *Levey*. No relevant differences exist. In *Levey*, the bank had

mistakenly placed a hold on her account and the check was returned unpaid. In this matter the City deposited Wright's check in the same exact bank that Wright used. While others have made an issue of Wright and City using separate branches, nothing in the record establishes that the City and Wright actually even use different branches and Wells Fargo has the same computer system in all its branches and they have the ability to look up all accounts of all of their customers from any branch in the United States. As such, it was Wright's same bank that informed the City that Wright's account could not be found. Wright's argument that the check was not presented to his account for processing is misguided and has not been found as a viable argument in either of the lower courts. The bank clearly noted that the account could not be found, so while the City knew the check was returned, it is not surprising that Wright would be under the mistaken assumption that was not be presented against his account as no record would appear on his account of such an occurrence. Whether Wright's account reflects that or not, however, does not negate the fact that the check was "**returned for any reason**" in accordance with Fla. Stat. §99.061(7)(a)(1). Accordingly, when the City Clerk, as the qualifying officer for Miami Gardens, received the returned check from the bank, she had no choice but to disqualify Wright as per the statute.

As the chief election officer for Miami Gardens, the Clerk's disqualification of Wright stands. The Florida Department of State, Division of Elections has even

opined that the decision of whether to qualify a candidate rests with the qualifying officer. See DE 09-01. Moreover, the qualifying officer has no authority to take any actions on errors in qualifying papers after the qualifying period has ended. *Id.* The City Clerk did not even have discretion in determining that Wright had not qualified for the election and in not requesting that the Dade County Supervisor of Election place his name on the ballot, based upon Fla. Stat. §99.061(7)(a)(1). The judgment of officials duly charged with carrying out the election process should be presumed correct. *See Boardman v. Esteva*, 323 So. 2d 259 (Fla. 1975).

Courts have squarely placed the responsibility upon the candidate to exercise due care in submitting his qualifying papers. *See State ex rel. Taylor v. Gray*, 25 So. 2d 492, 406 (Fla. 1946) Wright's argument that he used due care in qualifying is not entirely forthcoming. In this case, Wright made several decisions that ultimately affected his ability to qualify for the ballot as well as his ability to seek relief. First, Wright still had temporary checks for some reason and did not have permanent checks with the campaign name printed clearly on the check in addition to new security measures with identifying features on the check. Second, Wright for some reason waited until the day before the end of qualifying to submit his final papers instead of the week before which could have reduced the room for any error. While none of these decisions are unlawful or reflect any statute or legal authority that states Wright should be disqualified, there is a certain wisdom

required in qualifying to run for office as paperwork must be submitted in a proper manner. Courts have routinely held that the right to seek office is not absolute and candidates must abide by a series of rules and regulations in order to properly qualify for the ballot. *See Holley v. Adams*, 238 So.2d 401 (Fla., 1970). Courts have also been firm on what constitutes actual doubt, leaning towards strict interpretation of the statutes in deciding candidacy. *See Diaz v. Lopez*, 167 So.3d 455 (Fla., 3d DCA, 2015.) The Third District Court of Appeals properly reversed a trial court for granting an injunction similar to the one that Wright requested in *Sola v. Corona*, 126 So.3d 273 (Fla. 3d DCA2011) because it realized that the litigant had had not acted in a responsible manner in his attempt to qualify for office and the Miami Dade Elections Department was correct in not allowing Corona to qualify. Regardless of all of Wrights arguments to broaden the statute or create doubt and ambiguity where none exists, the First Districts decision in *Levey v. Detzner* is still properly decided and should be followed by this Court because the result properly reflects the intention of the Legislature in crafting the statutes.

II.

WRIGHT IS NOT ENTITLED ANY TO RELEIF THAT WOULD VOID THE CURRENT ELECTION FOR MAYOR OF MIAMI GARDENS AS HE FILED HIS ACTION TOO LATE AND HE DID NOT FILE A PROPER ACTION TO OVERTURN THE RESULTS OF THE ELECTION

Even if Wright, assuming arguendo, was entitled to relief, Wright was too late to sue because this election had already begun when he first filed and served his Complaint and his case is now barred by Laches. Courts are generally hesitant to intervene in election cases when litigants have not acted diligently as "there is no constitutional right to procrastinate." *Dobson v. Dunlap*, 576 F. Supp. 2d 183 (D. Ma 2008); see also *Fulani v. Hogsett*, 917 F. 2d 1028, 1031 (7th Cir. 1991) (Laches "in the context of elections…means that any claim against a state electoral procedure must be expressed expeditiously"). "The test of laches is whether there has been a delay which has resulted in the injury, embarrassment or disadvantage of any person, but particularly the persons against whom relief is sought." *City of Eustis v. Firster*, 113 So.2d 260 (Fla. 2nd DCA, 1959) citing *Stephenson v. Stephenson*, 52 So.2d 684 (Fla.1951). Regardless of how quickly Wright alleges to have brought this action, he did not move his case forward until overseas ballots had been sent and therefore would cause an unfair disadvantage to several parties.

Wright could have sought immediate injunction the day after he was informed he was disqualified rather than taking his time. Instead, he waited

several days to file his claim and several additional days to serve the parties. [Supp. Ap. 1000002] Furthermore, after being notified by the City Clerk that he was disqualified, Wright stopped complying with all campaign finance laws and did not file any further campaign finance reports. By the time Wright filed and served his first Complaint, the ballots had been typeset and the overseas vote by mail ballots had been printed. By the time of the first hearing, the overseas vote by mail ballots were sent and the domestic ones about to be sent. By the time Wright amended his complaint and the court held a second hearing, the vote by mail ballots were at the Elections Department's postal facility. By the time Wright filed his Notice of Appeal to the Third District, the domestic vote by mail ballots had been sent. By the time the 3rd DCA issued its opinion, early voting had begun. While Wright is no longer seeking to be included in the August 30th election, the City, all the other candidates for Mayor and City Commission are well on their way with their respective elections. Any decision that moves this election to November will now cost the City the extra money that it would cost to have a runoff election after the November election and would void this current election disenfranchising the voters and the other candidates who have essentially done everything correct and have properly allocated their campaign resources to an election well underway. This would actually give Wright an unfair advantage as he would be allowed to continue to fundraise without the limits already placed on

the other candidates. Wright has not even filed any further campaign finance reports after he was disqualified. To suddenly place him on equal footing with the other candidates who have raised and spent money in accordance with the law and would suddenly be forced to ask contributors for additional dollars at risk of a violation of Chapter 106 of the Florida Statutes would not only be contrary to these principles of equity and fairness that Wright seems to argue for but would create the disadvantage that the doctrine of laches is designed to avoid.

Finally, even if this Court were to render its decision on August 29th, there would be no time for the Supervisor of elections to notify voters going to the polls on August 30, 2016 of any change. The final day to vote in this election will still take place. The voters in Miami Gardens will have voted for Mayor no matter the decision of this Court and would be shocked if they were to learn their vote did not count. Should this Court grant Wright the relief he seeks, it would be voiding the results of the current election and disenfranchising voters when Wright did not even file any of the actions required by law to throw out the legally cast ballots of the residents of Miami Gardens and challenge this election. In order to obtain any relief that would void the results of the current election, Wright needed to have either filed an action as per F. S. § 102.168 or an action for quo warranto. "At common law, except for limited application of quo warranto, there (was) [is] no right to contest in court any public election, because such a contest is political in

nature and therefore outside the judicial power." *McPherson v. Flynn*, 397 So.2d 665, 667 (Fla. 1981) Not only did Wright not file any such action, he did not even name the other candidates for Mayor in his action. As such, Wright cannot be afforded any relief that would void this election because he his action did not name those most affected by this action. "An indispensable party is one whose interest in the controversy makes it impossible to completely adjudicate the matter without affecting either that party's interest or the interests of another party in the action." *Florida Dept. of Revenue v. Cummings*, 930 So. 2d 604, 607 (Fla. 2006) Accordingly, even if this Court were to address the question certified by the Third District in a manner suggested by Wright, it could only have effect on future cases and not on this current election because Wright did not properly present his action in a manner that could adversely affect these other candidates for Mayor.

CONCLUSION

The result of this case may be seemingly unfair, but it does the least amount of harm to the least number of people. There is a reason why *Levey* is decided the way it is and for that reason, this Court should not deviate from it. Elections, in modern times have strict timetables. For that reason, § 99.061(7) was clearly written to prevent any issues with qualifying after the qualifying period ends. The trial court properly denied the injunction and the Third District Court of Appeal properly affirmed. An expansion of the strict and succinct language of the statute would go against the legislative intent of the statute and any relief that would void this current election is not allowed by law as Wright did not file any action that could lead to such a result. As such, the decision of the Third District should be affirmed and this Court should adopt the holding of *Levey v. Detzner*, 146 So. 3d 1224, (Fla. 1st DCA, 2014)

Respectfully submitted this 28th day of August, 2016 by,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served via THE EFILING PORTAL on this 28th day of August, 2016, to Counsel for James Barry Wright, Simone Marstiller, The Marstiller Firm, P.A., P.O. Box 173738, Tampa, FL 33672, simone@marstillerfirm.com, Jason M. Murray *and* Rashad M. Collins, MURRAY LAW, P.A., 201 S. Biscayne Boulevard, Suite 2800, Miami, Florida 33131, jmurray@murraylawpa.com, rcollins@murraylawpa.com, legalassistant@murraylawpa.com, Sorraya M. Solages-Jones, SMS|JONES LAW, PLLC, 12161 Ken Adams Way, Suite 110-PP, Wellington, FL 33414, sorraya@smsjoneslaw.com, and to Counsel for Christina White, Abigail Williams, Oren Rosenthall and Michael B. Valdes, County Attorney's Office, 111 N.W. First Street, 28th Floor, Miami, Florida 33130, orosent@miamidade.gov, mbv@miamidade.gov.

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CERTIFICATE OF COMPLIANCE

WE HEREBY CERTIFY that the foregoing complies with Rule 9.210 (a)(2) of the Florida Rules of Appellate Procedure and it is formatted in Times New Roman, 14 point font.

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