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 REPLY BRIEF ON THE MERITS

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

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I. ELIMINATION OF THE PROVISION IN SECTION 99.061(7)(a)1., FLORIDA STATUTES, ALLOWING CANDIDATES TO PAY THE FILING FEE WITH A CASHIER'S CHECK "THE END OF QUALIFYING NOTWITHSTANDING" DOES NOT SIGNAL LEGISLATIVE INTENT THAT OTHERWISE QUALIFIED CANDIDATES SHOULD BE DISQUALIFIED DUE TO EASILY CORRECTED BANK ERRORS OCCURRING AFTER QUALIFYING ENDS.

Prior to 2011, section 99.061(7)(a)1 provided:

> 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, the end of qualifying notwithstanding, have 48 hours from the time such notification is received, excluding Saturdays, Sundays, and legal holidays, to pay the fee with a cashier's check purchased from funds of the campaign account.

§ 99.061(7)(a)1., Fla. Stat. (2010). In chapter 2011-40, section 14, Laws of Florida, the Legislature amended this language accordingly:

> 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 ~~notwithstanding, have 48 hours from the time such notification is received, excluding Saturdays, Sundays, and legal holidays,~~ 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.

Respondents contend this change in language evinces the Legislature's intent that there no longer be a post-qualifying "cure period" if a candidate's check is

returned, and that therefore, Mr. Wright's disqualification was an intended result of the change.

However, to accept the interpretation urged by Respondents, this Court must read the statute as imposing a duty upon filing officers to immediately deposit filing fee checks for negotiation upon receiving them from candidates so that any problems can be resolved during the qualifying period. In other words, because the language now says "the candidate shall have until the end of qualifying" to submit a cashier's check, the only way Respondents' interpretation of section 99.061(7)(a)1 as amended in 2011 makes any sense is if the entire process for negotiating payment on a candidate's filing fee check—the filing officer deposits the check with its financial institution, which, in turn presents the check to the candidate's financial institution for payment; the second institution accepts and pays out funds on the candidate's check; and the funds are credited to the account of the filing officer by its financial institution—must occur during the qualifying period.

In this case Mr. Wright's check began its journey through the processing procedure on June 7, 2016, the first of two apparent processing dates which appears to be the date on which the City deposited the check, and came back to the City on June 8, 2016, the second of the two apparent processing dates reflected on this check. (Initial Br. App. 3 at 71.). If the City was able to turn around the

processing of Mr. Wright's check in a short 24 hours after qualifying ended, it certainly could have done so, insofar as Mr. Wright filed the day before qualifying ended. Had the City done so, which clearly was possible, Mr. Wright would have had the time and opportunity to submit a cashier's check in payment of his filing fee. It is disingenuous now for the City and City Clerk to urge that Mr. Wright was correctly disqualified when it is evident the City could have prevented that outcome in the first place.

Mr. Wright posits, more reasonably, that the change in statutory language only signals the Legislature's intent that problems with a candidate's filings be resolved during the qualifying period *if the problems become apparent during the qualifying period*. Nothing more; nothing less. There is nothing in the legislative history to suggest the Legislature intended an otherwise qualified candidate—one who has filed the necessary papers and submitted a properly executed check for the filing fee all before the end of the qualifying period, and has not been notified of any deficiency in those submissions before the end of the qualifying period—to be disqualified by the filing officer after the qualifying period closes due to some event outside the candidate's control. "The Legislature has given no indication that it wants [filing officers] to disqualify full compliant candidates based on easily correctable bank errors arising after qualifying has ended." *Levey v. Detzner*, 146 So. 3d 1224, 1232 (Fla. 1st DCA 2014), Makar, J. dissenting. Paragraphs 7(b) and

7(c) make it abundantly clear that filing officers have only a ministerial function in the qualifying process and have no authority to deem a candidate disqualified based on the content or substance of documents filed before qualifying ends. See §§ 99.061(7)(b), (7)(c), Fla. Stat. 2015.

The statutory language as amended is silent about what is to occur under circumstances that occurred in Mr. Wright's case. One thing is certain and undisputed: Mr. Wright complied with section 99.061(7)(a)1 fully and in a timely manner. He was duly qualified under the statute to have his name on the ballot for the Miami Gardens mayoral election. Nothing in the statute or in its legislative history provides for the result he suffered here due to a post-qualifying period bank error he did not cause or otherwise have any control over.

II. MR. WRIGHT EXERCISED DUE CARE IN FILING HIS PAPERS AND SUBMITTING A PROPERLY EXECUTED CHECK FOR THE FILING FEE BEFORE THE END OF THE QUALIFYING PERIOD

Respondents City of Miami Gardens ("City) and City Clerk appear to argue that Mr. Wright failed to exercise due care in submitting his qualifying documents and filing fee because he used temporary checks—the only checks available to him at the time—and because he filed the items the day before qualifying ended. The argument simply has no basis in fact. And the decision Respondents rely on, *Sola v. Corona*, 126 So. 3d 273 (Fla. 3d DCA 2011), to suggest Mr. Wright did not act responsibly provides absolutely no factual or legal support for the assertion.

In any event, there is absolutely no requirement for the use of permanent versus temporary checks. In addition, there is absolutely no guarantee that qualifying fee checks submitted earlier in the qualifying process will be cleared before the qualifying period ends—keeping in mind that this qualifying period spanned a mere four business days. As the record shows, *several checks* similar to the one at issue in this case had been previously written on Mr. Wright's campaign account and had been honored/paid by his bank. That is not in dispute. Moreover, the check was *pre-printed* with Mr. Wright's name and address, the name of Mr. Wright's campaign, and the account number. The check was a valid, official, properly executed check written on Mr. Wright's campaign account, as required by section 99.061(7)(a)1.

Furthermore, there can be no reasonable argument that even if Mr. Wright had filed everything on the first day of qualifying, what happened to him thereafter would have been avoided. The record shows the bank error occurred, and the City Clerk notified Mr. Wright of the error, *well after* the end of the qualifying period. And there is nothing in the record to substantiate the implied suggestion that the error could have been caught sooner had Mr. Wright filed his papers and remitted his check sooner.[1] Importantly, nowhere in their Answer Brief or, indeed, in the

[1] In actuality, Mr. Wright submitted his paperwork on June 1, 2016. The four-business-day qualifying period ended on June 2, 2016. The City was closed Friday, May 27, 2016 and Monday, May 30, 2016.

record of all that occurred below, do the City and City Clerk point this Court's attention to any fact reflecting that Mr. Wright's check was acted upon in any way *before* the close of the qualifying period. In fact, from the record it appears Mr. Wright's check began its journey through the processing procedure on June 7, 2016, which is the first of two apparent processing dates reflected on this check. (Initial Br. App. 3 at 71.).

III. NEITHER LACHES NOR MR. WRIGHT'S REFRAINING FROM CONDUCTING CAMPAIGN ACTIVITIES AFTER BEING DISQUALIFIED SERVES AS A BASIS TO DENY HIM THE RELIEF HE SEEKS.

The City and City Clerk assert that the doctrine of laches renders it too late for Mr. Wright to receive any relief for his erroneous disqualification from running for mayor of Miami Gardens. Indeed, it appears the argument is that Mr. Wright was too late in challenging the disqualification even in the trial court. (City Ans. Br. at 18.) This argument was made in, and evidently discounted by, the Third District.

"Laches has four elements: (1) conduct on the part of the defendant giving rise to the situation of which the complaint is made; (2) failure of the plaintiff to assert his or her rights by suit, even though the plaintiff has had knowledge of the defendant's conduct and has been afforded the opportunity to institute suit; (3) lack of knowledge on the defendant's part that the plaintiff would assert the right on which he or she bases the suit; and (4) injury or prejudice to the defendant in the

event relief is accorded to the plaintiff or the suit is held not to be barred." *Dep't of Rev. ex rel. Thorman v. Holley*, 86 So. 3d 1199, 1203 (Fla. 1st DCA 2012). Absent a showing of "prejudicial change in position of any of the parties in these proceedings," "no prejudice attributable to any delay by the" complainant, or "injury, embarrassment or disadvantage" to anyone by virtue of the delay, laches will not operate to deny the relief sought. *State ex rel. Clendinen v. Dekle*, 173 So. 2d 452, 456 (Fla. 1965).

Mr. Wright timely challenged his disqualification by the City Clerk by filing an action for declaratory and injunctive relief and by seeking a temporary injunction. Upon the trial court's denial of such relief, he timely appealed the decision to the Third District and sought expedited treatment. He acted with similar speed in seeking this Court's review on an expedited basis. Thus, he asserted his rights at every juncture, even though the process for printing and distributing ballots continued. It is unclear what more Mr. Wright could have done to vindicate his right to have his name on the ballot as a candidate for mayor of Miami Gardens. Laches simply does not lie here. Further, the assertion that a host of incurable difficulties will ensue if Mr. Wright is now permitted onto the ballot from which he was wrongly omitted is belied by the representations of the Supervisor of Elections made to the trial court, to the Third District and to this

Court that the mayoral election, currently scheduled for August 30, 2016, *can be moved* to November 8, 2016.

The City and the City Clerk further attack Mr. Wright for not continuing to engage in campaign activities and submit campaign finance reports after he was disqualified. (City Answer Br. at 4). Although Mr. Wright has always been ready, willing and able to continue his campaign efforts and fulfil those requirements, in all fairness he was disqualified and in the process of bringing the instant action to remedy this wrong. In fact, Mr. Wright sought an advisory opinion from the Department of State two days after the City's disqualification to determine exactly what he could and could not do moving forward, so as to avoid any ethics complaint. (Initial Br App. 2, at 6-7 & Ex. O of Ex. 1.)

IV. THE CITY OF MIAMI GARDENS MAYORAL ELECTION CAN AND SHOULD BE MOVED TO THE NOVEMBER 8, 2016, GENERAL ELECTION BALLOT TO ALLOW THE CITIZENS OF MIAMI GARDENS TO CHOOSE THEIR NEXT MAYOR AT THE EARLIEST PRACTICABLE TIME.

The relief Mr. Wright has sought all along has simply been to have his name properly placed on the ballot as a candidate for mayor of Miami Gardens. At no time has he asked for any relief that would disrupt the entire August, 30, 2016, Primary Election. Recognizing this, Respondent Supervisor of Elections, in the trial court, in the Third District and before this Court, has taken the position that

moving the mayoral election to the November 8, 2016, General Election *is* practicable.

The City and the City Clerk in their Answer Brief set forth a parade of horribles to justify denying Mr. Wright the opportunity to run for mayor of Miami Gardens *at all*, even though he has been wrongly disqualified from the ballot. They spend a great deal of time explaining the process for preparing and printing ballots, etc., claiming that there is just no way to grant Mr. Wright the relief he seeks. Respectfully, administrative difficulties cannot justify handing Mr. Wright what would be a pyrrhic victory by answering the certified question in the negative but keeping him off the ballot. He deserves to be able to run for mayor of Miami Gardens in *this* election cycle and should not have to pay, more than he already has done, for the filing officer's error.

In any event, notwithstanding claims made by the City and the City Clerk, the Supervisor of Elections clearly acknowledges that despite administrative challenges, there are ways to get Mr. Wright on the ballot in this cycle. Of the three alternatives the Supervisor of Elections presents in her Answer Brief—(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—Mr. Wright respectfully urges this Court to adopt alternative (1), the relief he originally requested, which is to move the mayoral election to the November 8, 2016, General Election. Doing so would allow the citizens of Miami Gardens to choose their next mayor at the earliest date practicable. It is not evident that alternative (2) would similarly ensure swift resolution of the mayoral contest. To be sure, the third alternative, remand to the trial court, does not appear necessary and would serve only to prolong the electoral uncertainty wrought by the error in disqualifying Mr. Wright in the first place. Consequently, Mr. Wright continues, respectfully, to urge this Court to order that the Miami Gardens mayoral election be moved to November 8, 2016, and that his name be placed on the ballot as a candidate for that office.

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. Nothing in the legislative history for this statute evinces any intent by the Legislature that a fully qualified candidate who has timely complied with the statutory requirements should become disqualified after qualifying ends based on bank errors that can be easily and quickly corrected. For the reasons set forth in his Initial Brief and in this Reply Brief, Mr. Wright urges this Honorable Court to answer the Third District's certified question in the

negative, and to order that his name be placed on the ballot for mayor in the November 8, 2016, General Election. The Supervisor of Elections agrees that this relief is practicable, and the citizens of Miami Gardens should be permitted to choose their mayor in that election.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 29, 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.

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