

IN THE SUPREME COURT OF FLORIDA

ORANGE COUNTY, FLORIDA,

Petitioner,

v.

CASE NO. SC18-79

L.T. NOS. 5D16-3509, 5D16-2511

RICK SINGH, individually and as
Orange County Property Appraiser,
SCOTT RANDOLPH, individually and as
Orange County Tax Collector, and
JOHN MINA, Sheriff of Orange
County, **BILL COWLES**, Orange County
Supervisor of Elections,

Respondents.

_____ /

RESPONDENTS' JOINT MOTION FOR CLARIFICATION

Respondents Rick Singh, individually and as Orange County Property Appraiser, and Scott Randolph, individually and as Orange County Tax Collector (“Respondents”), pursuant to Rule 9.330, Florida Rules of Appellate Procedure, hereby move for clarification of this Court’s Opinion issued January 4, 2019. In further support of this Motion, Respondents state:

This case arrived at the Florida Supreme Court as a challenge to a 2014 amendment to the Orange County Charter that made the election of constitutional officers in that county nonpartisan. On January 4, 2019, this Court entered its Opinion. The Majority Opinion’s resolution, however, has left questions and

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uncertainties as to the Opinion’s effect on the procedures for the election of constitutional officers in Orange County.

Clarification is needed as a result of the last paragraph of the Majority Opinion, which states:

Because the purpose of the ordinance, as adopted by the voters of Orange County, was to “provide[] for county constitutional officers to be elected on a non-partisan basis,” and there is a way to achieve this goal consistently with the Florida Election Code by having the candidates for these offices appear on the general ballot without party affiliation pursuant to section 99.0955. . . .

Orange County, Florida v. Singh, 44 Fla. L. Weekly S102a (Jan. 4, 2019).

The specific statute referenced in the quoted passage governs candidates running without party affiliation, in a partisan race. There are separate and distinct statutes that define the mechanisms and requirements which govern nonpartisan races. Because the Majority Opinion conflates these two schemes, and appears to create a new, hybrid type of election that that is not specifically addressed or enumerated in Florida’s Election Code, there remain unaddressed questions as to the applicability of various portions of the Election Code to the races governed by the 2014 charter amendment.

Qualifying

The Court’s Opinion leaves uncertainty surrounding candidate qualifying. Florida law provides distinct and different processes for candidates to qualify for elections, depending on the nature of the position for which they intend to run.

Section 105.035, Florida Statutes, addresses the nonpartisan races for circuit judge, county judge, and school board member, while sections 99.061 and 99.095, Florida Statutes, address candidate qualifying in partisan races. It is unclear from the Court's Opinion which of these two processes the Court intended to govern the election of constitutional officers.

Under the Florida Election Code as it presently exists, neither is expressly applicable. Section 105.031(1), Florida Statutes, discusses qualifying deadlines for nonpartisan elections and states:

Except for candidates for judicial office, **nonpartisan candidates for multicounty office** shall qualify with the Division of Elections of the Department of State and nonpartisan candidates for countywide or less than countywide office shall qualify with the supervisor of elections. **Candidates for judicial office** other than the office of county court judge shall qualify with the Division of Elections of the Department of State, and **candidates for the office of county court judge** shall qualify with the supervisor of elections of the county. **Candidates for judicial office** shall qualify no earlier than noon of the 120th day, and no later than noon of the 116th day, before the primary election. **Candidates for the office of school board member** shall qualify no earlier than noon of the 71st day, and no later than noon of the 67th day, before the primary election. Filing shall be on forms provided for that purpose by the Division of Elections and furnished by the appropriate qualifying officer. Any person other than a write-in candidate who qualifies within the time prescribed in this subsection shall be entitled to have his or her name printed on the ballot.

(Emphasis added.)

The only candidates to which this statutory section applies are judicial candidates, school board candidates, and nonpartisan candidates for multicounty

office—the constitutional officers covered by the challenged charter amendments are none of these. Section 99.061(2), Florida Statutes, on the other hand, provides qualifying deadlines for election to a county office, but this statutory section contemplates a party assessment, which necessarily implies that this section governs partisan races and would also be inapplicable to the instant constitutional officers. As such, the Court’s Opinion stops short of identifying the section of the Florida Election Code that dictates qualifying deadlines for constitutional officers, whether in Orange County or otherwise. Accordingly, the Respondents seek clarification from this Court as to what qualifying deadlines the Court intended to apply to the nonpartisan constitutional officers in Orange County.

Section 105.031(3), Florida Statutes, likewise addresses qualifying fees for nonpartisan elections, and states:

Each candidate qualifying for election to a judicial office or the office of school board member, except write-in judicial or school board candidates, shall, during the time for qualifying, pay to the officer with whom he or she qualifies a qualifying fee, which shall consist of a filing fee and an election assessment, or qualify by the petition process. The amount of the filing fee is 3 percent of the annual salary of the office sought. The amount of the election assessment is 1 percent of the annual salary of the office sought. The Department of State shall transfer all filing fees to the Department of Legal Affairs for deposit in the Elections Commission Trust Fund. The supervisor of elections shall forward all filing fees to the Elections Commission Trust Fund. The election assessment shall be deposited into the Elections Commission Trust Fund. The annual salary of the office for purposes of computing the qualifying fee shall be computed by multiplying 12 times the monthly salary authorized for such office as of July 1 immediately preceding the first day of

qualifying. This subsection does not apply to candidates qualifying for retention to judicial office.

This section addresses qualifying fees only for judicial and school board candidates, and does not specify how the fee would be calculated for nonpartisan constitutional officers or when that fee would be due. Nor does the alternative provision on qualifying fees in section 99.061, Florida Statutes, appear to govern. As that section mandates payment of a party assessment, it appears to be even more directly inapplicable than section 105.031(3), Florida Statutes.

In addition to the statutory sections noted above, the Secretary of State's office provides qualifying forms for all races in the state, regardless of whether the races are local or statewide. Different forms exist for candidates in nonpartisan races and candidates with no party affiliation,¹ and the Court's Opinion leaves confusion as to which forms the Court intends to apply for candidate qualifying in Orange County's nonpartisan constitutional officer races in which candidates are to

¹ To implement section 99.021, Florida Statutes, Florida Administrative Code Rule 1S-2.0001 requires the use of specific forms for candidate oaths of office, depending on whether the election is partisan or nonpartisan. The form applicable for a candidate with no party affiliation is the oath of office form for partisan elections (form number DS-DE 301SL), which is a different form than is used for nonpartisan elections (form number DS-DE 302NP). As a result, it is unclear whether the Orange County Supervisor of Elections would use the oath of office form for nonpartisan elections or, as the Majority Opinion may be suggesting, the oath of office form for candidates with no party affiliation running in a partisan election. See Fla. Admin. Code R. 1S-2.0001; see also Florida Department of State County Candidate Forms, available at <https://dos.myflorida.com/elections/forms-publications/forms/county-candidate-forms/>.

appear as candidates with no party affiliation (“NPA candidates”). As such, the Court’s Opinion leaves uncertainty as to the appropriate filing fee amount and deadline for these nonpartisan constitutional officer elections.

Financial Disclosures and Campaign Finance

The governing processes for candidate financial disclosures and campaign finance are also unclear. The Florida Election Code requires candidates to file financial disclosures, but the schedules and requirements are different depending on whether the candidate is one covered by section 105.031(5)(a)5., Florida Statutes, which specifically addresses races for judge and school board, or section 99.061, Florida Statutes, which covers partisan races, including those in which candidates with no party affiliation would run.

Candidate reporting requirements for nonpartisan constitutional offices are also unclear. Section 105.08, Florida Statutes, addresses receipt of contributions and financial reporting for campaigns in nonpartisan elections, but is limited to candidates for judge and school board. The only other alternatively applicable section would be section 106.021, Florida Statutes, which merely discusses reporting for campaign contributions generally. It is unclear whether the hybrid race contemplated by the Majority’s Opinion would be governed by section 105.08 because they are nonpartisan races, or by section 106.021, Florida Statutes.

Preparation of Ballots

The Court's Opinion also creates uncertainty relating to preparation of ballots. The charter amendment upheld in part by the Court prohibits constitutional officers in Orange County from qualifying by party, while leaving unclear which statute regulates the placement of candidate names on the ballot. Section 101.151 expressly applies to constitutional officers, and the Majority Opinion does not state that it is to be treated as inapplicable. § 101.151(2)(a), Fla. Stat. Pursuant to section 101.151(4)(a), Florida Statutes, the names of all of the candidates for each office must be listed on the primary ballot. The Majority Opinion holds, however, that all of the candidates must be listed on the general ballot. It is unclear whether the Majority Opinion should be read to implicitly instruct that section 101.151(4)(a) is required to be (or perhaps may be) ignored, or whether all of the constitutional officer candidates must be listed on both the primary and general election ballots, and voted on twice.

Similarly problematic, sections 99.0955 and 101.151(3)(b), Florida Statutes, direct candidates with no party affiliation to appear on the ballot after the major and minor party candidates, in the order in which they qualified. This is different from partisan candidates, who appear alphabetically, by incumbency status, or by the party which received the highest number of votes for governor in the last election, as well as nonpartisan candidates who, pursuant to section 105.041,

Florida Statutes, appear on the ballot in alphabetical order. Section 101.151(4)(a), Florida Statutes, which expressly applies to constitutional officers, makes the appearance of candidate names in alphabetical order (without regard to party affiliation) applicable only to primary races. If, however, this Court is treating nonpartisan constitutional officer elections as identical to constitutional officer candidates running with no party affiliation, then it is unclear which statutes apply when determining how the names should be placed on the ballot.

Campaigning

Section 97.021(22), Florida Statutes, defines “nonpartisan office” as an office for which a candidate is prohibited from campaigning or qualifying for election based on party affiliation. Florida’s Election Code specifically addresses the offices for which candidates are prohibited from campaigning based on party, and nothing therein discusses constitutional officers or mentions traditionally partisan offices made nonpartisan by county charter. See §§ 105.071, 105.09, Fla. Stat. (specifically prohibiting political parties from endorsing judicial candidates, and prohibiting judicial candidates from campaigning as members of any political party).

Conflating nonpartisan constitutional officer races with races that simply have all candidates with no party affiliation calls into question how the requirements of section 106.143(3), Florida Statutes, can be met. This section

prohibits disclosure of a candidate's party affiliation in a nonpartisan race, while requiring, on the other hand, NPA candidates to disclose that they have no affiliation with a political party.

Designating a race as nonpartisan ordinarily does not prohibit a candidate registered with a party from running, it just prevents that candidate from running as a member of his or her party. In upholding Orange County's charter amendment conversion of the constitutional officer positions to nonpartisan races, the Opinion shoehorns these candidates into the procedures for candidates with no party affiliation. Section 106.143(3), however, requires candidates in partisan races to either state the party with which they are affiliated or state that they have no party affiliation, while prohibiting candidates running in nonpartisan races from making any disclosure as to their party affiliation. Section 101.19, Florida Statutes, subjects any candidate making a false statement on a campaign-related disclosure to prosecution for a first degree misdemeanor. The Opinion, without further clarification on how these provisions are to be reconciled, would leave these candidates between a proverbial rock and a hard place, having to choose whether to remain mute as to party affiliation or potentially make a material misstatement about that candidate's non-affiliation with a party, or to be forced to divest their party membership altogether just to be able to run for the office.

Election

As the Majority Opinion points out, Florida law requires that constitutional officers be on the general election ballot. With partisan races, the primary election is used to determine which candidate for each party will proceed to the general election. With nonpartisan elections for judge and school board, the primary is intended to narrow the pool of candidates down to two, although if there is no primary opponent or one of the candidates gets more than fifty percent of the vote in the primary, then the winning/unopposed candidate is deemed elected in the general election by express statute providing such.² There is no such statutory language for constitutional officer primaries.

The Majority Opinion's suggestion that all candidates be named on the general ballot leaves uncertainty as to whether this Court really intended to eliminate the primary election for these races. If the Court did not intend to eliminate any primary or run-off for these positions, it is unclear what procedures would (or could) govern without the "deemed elected" language necessary to ensure the officer is elected in the general election. See, e.g., Art. VI, § 5, Fla. Const. (requiring county officers to be voted upon in the general election), §

² See, e.g., § 105.015(a)(a), Fla. Stat. ("The name of an unopposed candidate for the office of circuit judge, county court judge, or member of a school board shall not appear on any ballot, and such candidate shall be deemed to have voted for himself or herself at the general election."); § 101.151(7), Fla. Stat. ("[T]he names of unopposed candidates shall not appear on the general election ballot. Each unopposed candidate shall be deemed to have voted for himself or herself.").

100.041, Fla. Stat. (requiring that constitutional officers be chosen in the general election). On the other hand, in the absence of any procedures allowing for a primary or run-off election, it would mean that all candidates who qualify for the election would be placed on the general election ballot, and a candidate could win the election with a very small percentage of the vote, or there could be a tie, with no mechanism for conducting a runoff. As such, clarification is necessary to determine whether the Court contemplated primaries for the constitutional officer elections in Orange County and, if so, the process by which those primaries are to be governed.

CONCLUSION

The Majority Opinion leaves questions and uncertainties as to how the election of Orange County's nonpartisan constitutional officers should be handled. Absent clarification and clear instructions from this Court, county supervisors of elections will have to render or seek independent interpretations to develop a process, currently unwritten, to endeavor to comply. Such a scheme undermines the express purpose and intent of the Florida Election Code, which is to "obtain and maintain uniformity in the interpretation and implementation of the election laws." § 97.012(1), Fla. Stat. To obtain needed clarity and uniformity in the elections of constitutional officers, Respondents respectfully request clarification of the Court's Opinion.

The Respondents advised counsel for the parties of their intent to file this Motion and the undersigned is authorized to represent that Petitioner Orange County objects and intends to file a response; Bill Cowells, the Orange County Supervisor of Elections, supports the Respondents' efforts to recall the mandate and seek clarification and will file a separate notice to that effect; John W. Mina, Sheriff of Orange County, agrees that the ruling is in need of clarification; Florida Sheriffs' Association does not object to the relief sought herein; Orange County Clerk of the Circuit Court agrees that the ruling is in need of clarification; and Florida Association of Counties takes no position.

WHEREFORE, Respondents Rick Singh, individually and as Orange County Property Appraiser, and Scott Randolph, individually and as Orange County Tax Collector, respectfully request that this Court clarify its January 4, 2019 Opinion, and afford the parties any other relief deemed necessary and just.

Respectfully submitted this 22nd day of January, 2019.

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I HEREBY CERTIFY that, on this 22nd day of January, 2019, the foregoing
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