Third District Court of Appeal

State of Florida, July Term, A.D. 2009

Opinion filed August 26, 2009.
Not final until disposition of timely filed motion for rehearing.

No. 3D08-3126
Lower Tribunal No. 08-72577

Republican Party of Miami-Dade County, et al.,
Appellants,

vs.

Phil Davis, et al.,
Appellees.

An appeal from a non-final order from the Circuit Court for Miami-Dade County, Michael A. Genden, Judge.

McDermott Will & Emery and Raquel A. Rodriguez and Justin B. Uhlemann; Jefferson Knight, for appellants.

Stephen M. Cody, for appellees.

Before RAMIREZ, C.J., and COPE and SALTER, JJ.

SALTER, J.

The Republican Party of Miami-Dade County and Republican Party of Florida (together, "Party") appeal a circuit court order granting an emergency motion for temporary injunction. The temporary injunction required the Party to seat 19 individuals (the plaintiffs below, appellees here) as Miami-Dade Executive Committee members. The Party had declined to recognize the appellees as Executive Committee members because of their failure to file a Party loyalty oath before the June 20, 2008, qualifying deadline.

This case first requires us to harmonize two statutory provisions in the Florida Election Code: section 99.021, Florida Statutes (2008), regarding the form of candidate oath required by the State public election authorities, and section 103.091, Florida Statutes (2008), describing the rights and duties of political parties and their executive committees. We conclude that the Party retained an express statutory right to "provide for the selection of its … county executive committee in such manner as it deems proper,"[1] but that it (a) failed to make the new forms sufficiently accessible to prospective candidates to comport with the Election Code and (b) failed to bring an action to enforce the new requirement before the election. Accordingly, we affirm the injunction below.

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[1] § 103.091(1), Fla. Stat. (2008).

I. Applicable Facts

The underlying facts are not disputed. Prior to the August 26, 2008, election, the Party allowed applicants and candidates for the Miami-Dade Executive Committee to execute the Party's loyalty oath (as opposed to the form of oath provided by the County Elections Department under section 99.021) after the qualifying deadline but before a successful candidate took office. At its annual meeting in February 2008, however, the Republican Party of Florida amended the Party's loyalty oath. Thereafter, the Party issued a memorandum to all state committee members interpreting Republican Party of Florida Rule 9 to require that the Party's new loyalty oath be signed and filed with the Party's County chairperson before the end of the qualifying period for the election.

The new loyalty oath required by the Party stated:

> I, ____________, hereby swear and affirm that during my term of office I will not actively, publicly, or financially support the election of any candidate other than the Republican candidate in a partisan unitary, general or special election, or a Registered Republican in non-partisan elections, other than Judicial races governed under Florida Statute 105, if there is a registered Republican running for the same office, unless the county executive committee has taken an affirmative vote to endorse one Republican over another per Rule 8(B). I further swear and affirm that I will not engage in activities or conduct that may be deemed by the Grievance Committee and affirmed by the RPOF Chairman as likely to injure the name of the Republican Party or interfere with the activities of the Republican Party.

In May 2008, the chair of the Party's Miami-Dade County Executive Committee convened a meeting of the committee. She discussed the new oath and

the requirement that it be filed with her by the end of the qualifying period—noon on June 20, 2008. The new oath and procedure were also mentioned in a written agenda for the meeting that was circulated to committee members. On June 12, 2008, the chair of the Republican Party of Florida sent a memorandum to all Florida County executive committee chairpersons and all Republican elected officials advising them of the new oath and procedure. The Party did not, however, mail the change in procedure and new form of loyalty oath to all registered Republicans in Miami-Dade County or post the information and new form on its website.

The qualifying period for the August 26 election was from noon on June 16, 2008, to noon on June 20, 2008. All of the appellees filed their applications and section 99.021 statutory oath forms with the Miami-Dade Elections Department on the last day with only about an hour left before the end of the qualifying period. They did not file their papers in person, but instead relied on a local lawyer to file all 19 sets of applications as their agent. When the agent was advised of the additional requirement that the Party's new loyalty oath also be signed and filed with the County office of the Party by the qualifying deadline, the agent was unable to distribute the new oath forms, have them signed, and get them filed in the time remaining.

Before the election took place, (1) the appellees signed and delivered[2] the Party's new loyalty oath forms to the County Office, and (2) the chair of the Party's County executive committee notified the appellees in writing that their Party loyalty oath forms were untimely and that they would not be eligible to become members of the executive committee.

Neither the Party nor the appellees took any legal action before the August 26 election to obtain a determination of the appellees' right to be on the ballot or to serve if they prevailed in votes cast. As a result, the appellees' names were included among the names of all the candidates on the relevant ballots. The appellees prevailed in the election, but the Party refused to seat them after the election (again basing that refusal on the alleged untimeliness of delivery of the new Party loyalty oath). The appellees then filed their circuit court complaint for declaratory and injunctive relief and an emergency motion for temporary injunction.

II. The Statutory Issue

In granting the temporary injunction, the trial court made the following conclusion of law:

> In enacting section 99.021, the Florida Legislature made clear that the loyalty oath contained therein was the only oath that could be required

[2] The record indicates that a few of the 19 appellees offered to file the form but did not actually deliver it to the Party's office because they had been told that it would be untimely.

> of a candidate for county executive committeeperson as a condition for qualifying as a candidate.

We find no such intention. To the contrary, and harmonizing section 103.091 (the special provision applicable to political party elections) with section 99.021, we find that the legislature expressly authorized a political party to "provide for the selection of its … county executive committees in such manner as it deems proper,"[3] so long as the party does not attempt to eliminate the minimum requirements imposed in section 99.021.

Section 99.021(1)(a)1. requires a candidate to execute a written oath that he or she complies with these conditions for candidacy:

> 1. The candidate must be a qualified elector of the requisite County;
> 2. He or she is qualified under the Constitution and laws of Florida to hold the office in question;
> 3. He or she has taken the oath required by sections 876.05-.10, Florida Statutes;[4]

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[3] § 103.91(1), Fla. Stat. (2008).

[4] There is no apparent purpose for this oath as regards political party executive committee members. Section 876.09, "Scope of law," specifies that these provisions only apply to "employees and elected officers of the state, including the Governor and constitutional officers and all employees and elected officers of all cities, towns, counties, and political subdivisions, including the educational system." The term "political subdivisions" does not include political parties, per section 1.01(8), Florida Statutes (2008).

4. The candidate has not qualified for any "other public office in the state, the term of which office or any part thereof runs concurrent with that of the office he or she seeks;" and

5. He or she has resigned from any office from which he or she is required to resign pursuant to section 99.012.

Section 99.021(1)(b) requires any person seeking to qualify for "nomination"[5] as a candidate of any political party to "state in writing" these additional facts:

1. The party of which the person is a member.

2. That the person is not a registered member of any other political party and has not been a candidate for nomination for any other political party for a period of 6 months preceding the general election for which the person seeks to qualify.

3. That the person has paid the assessment levied against him or her, if any, as a candidate for said office by the executive committee of the party of which he or she is a member.

Although the trial court referred to section 99.021 and "the loyalty oath contained therein," that section does not in fact contain any pledge of loyalty that is applicable to a political party. Nothing within section 99.021 purports to preclude a political party from imposing other requirements for service on a county executive committee, so long as those conditions are not inconsistent with the minimum requirements found in that section. And turning to section 103.091—a

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[5] Section 99.021(2) clarifies that although "nomination" is used (rather than "nomination or election"), these provisions "shall apply with equal force and effect to, and shall be the oath required of, a candidate for election to a political party executive committee office."

set of provisions applicable only to political parties, their executive committees, and their membership rules—we conclude that it should be given precedence in construing the two statutes in pari materia.

The logic of these provisions as applied to the new Party loyalty oath and deadline is apparent. First, no political party achieves a "leg up" on the other under this reading, because the same analysis applies to all parties other than a "minor political party."[6] Second, and as the legislature intended, each party provides its own rules for governance and eligibility for leadership. Each party's executive committee is permitted to establish any rules for eligibility that do not expressly conflict with the minimal requirements found in section 99.021.

Under the analysis proposed by the specially concurring opinion, a political party could not establish, as a requirement for an individual wishing to run for the party's state or local executive committee, a condition that the prospective member certify first to the party's leadership that he or she has been registered as a member of the party for a specified period before the date of the election, or that he or she has read and will comply with the party's platform and written rules. These are hypothetical examples of executive committee eligibility rules that would not conflict in any way with the statutory form of oath required by section 99.021.

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[6] A "minor political party" is defined by section 97.021(17) of the Election Code as a group which has less than 5% of eligible state electors registered as members (determined as of the January 1 preceding a primary election).

The specially concurring opinion would hold that any such eligibility restrictions, because they exceed the minimal conditions set forth in section 99.021, are unlawful and could be enjoined. As described in section IV of this opinion, that analysis would impermissibly nullify both (a) the constitutional rights of association of a political party's members and (b) the express statutory grants of authority (in subsections 103.091(1) and (4)) to a political party to elect its state and local executive committee members "in such manner as it deems proper," and pursuant to the party's own internal membership rules.

To summarize this analysis of the two statutes as they apply to the Party's new oath and deadline, different statutory provisions within the Election Code should be construed together to harmonize the statutes, to give effect to the Legislature's intent, and to avoid rendering one of the two provisions meaningless. Fla. Dep't of State v. Martin, 916 So. 2d 763, 768 (Fla. 2005). Further, the statute applying specifically to political party executive committee candidates should control in the event of a conflict with the general statute applying to candidates of every stripe—for state constitutional office, for state and federal elected office, and for political party committee positions. See State Farm Mut. Auto. Ins. Co. v. Nichols, 932 So. 2d 1067, 1073 (Fla. 2006).

Harmonizing the statutes as we must, we conclude that the Party has the right and the authority to require its own form of loyalty oath as a condition of

eligibility to seek election to a committee membership position, and the right and authority to require receipt of that oath (as a party membership rule) before the election.[7] That is not, however, the end of the analysis.

III. Accessibility of the New Form of Oath; Timing of a Challenge

The trial court also recognized the notice, fairness, and due process issues that arose in this particular case. Here, the appellees did not refuse to execute the Party's new form of oath; they executed that oath (or in a few cases, offered to do so) promptly after learning that it was required. The Party does not argue, and did not prove, that the appellees failed to file the oath with the Party office before the qualifying deadline because they were attempting to avoid or circumvent the requirement. Rather, the record establishes that while existing Party officials and executive committee members were informed of the additional requirement, no mass mailing or website bulletin disseminated the notice and form to others.[8]

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[7] Requiring the Party loyalty oath before the qualification deadline is arguably more efficient. If a candidate fails or refuses to deliver the oath to the Party before the qualification deadline, there is still time to have the prospective candidate's name stricken from the ballot so that the voters can choose among qualified candidates. If the Party oath is not required to be delivered until after the voting and before taking office, an otherwise duly-elected person refusing to execute the oath may leave an empty position or make a second round of voting necessary.

[8] We do not discount the Party's position that it took some measures to make an individual at the Miami-Dade Elections Department aware of the new requirement, and also to station a Party representative at the Department to answer questions and provide the new form to persons intending to qualify. Unfortunately, these measures occurred only days before the qualifying deadline and did not provide

The Party's decision not to challenge the plaintiffs before the election is also a fatal flaw in its case below. The Party was fully aware of the appellees' alleged non-compliance before the election, but did not attempt to have the allegedly-ineligible names stricken from the ballot. Florida law recognizes an estoppel in a case such as this, in which the alleged irregularities were known before the ballots were cast and results announced. Winterfield v. Town of Palm Beach, 455 So. 2d 359, 362 (Fla. 1984); Levey v. Dijols, 990 So. 2d 688, 694 (Fla. 4th DCA 2008).

IV. The Specially Concurring Opinion

The specially concurring opinion which follows necessitates a further response on several points. While we naturally agree with that opinion that citizens have a fundamental right to run for public elective office, political parties are not governmental entities, and there is no fundamental right on the part of a citizen to run for the executive committee of a political party without obeying the party's rules. Political party members have a constitutional right "not to associate" with those who do not share their party platforms or rules,[9] so long as they do not engage in prohibited acts of discrimination. No such acts are alleged here.

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broad exposure and early availability of the information and forms. The Party determined that a mass mailing to all registered Republicans in the County would be prohibitively expensive, but this only suggests that the new timing for the new form was not sufficiently critical to warrant such an expense.

[9] Democratic Party v. Wisconsin ex rel. LaFollette, 450 U.S. 107, 122 (1981). Note 22, p. 122, quotes L. Tribe, American Constitutional Law 791 (1978): "Freedom of association would prove an empty guarantee if associations could not

Florida's Election Code has therefore recognized that a state may not interfere in the internal governance and operations of political parties.[10] The concurring opinion concludes that, when a party chooses under section 103.091(4) to allow the state's electoral apparatus to conduct the election of executive committee members, the political party surrenders its own rights to impose additional qualifications (beyond those imposed by the statutory oath, but not inconsistent with them) for the positions. If that were so, and it is not, the state would thereby unconstitutionally interfere with the parties' well-established rights of self-governance.

This is not simply a matter of, in the words of the concurring opinion, "following the Election Code just like everyone else." Of course a prospective candidate for a party executive committee position must comply with the applicable requirements of the Election Code (in this case, filing within the time period specified and using the forms specified by the Department of State). The mistaken premise in the concurring opinion, however, is that these are the exclusive requirements applicable to a political party executive committee

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limit control over their decisions to those who share the interests and persuasions that underlie the association's being."

[10] Cal. Democratic Party v. Jones, 530 U.S. 567, 574 (2000), prohibits such interference, and that is why the specific political party provisions in section 103.091 defer to "the rules of the state executive committee" of the party and allow the party to select that committee "in such manner as it deems proper."

candidate and that those requirements preempt the provisions of section 103.091 (i.e., that the committee operates in accordance with the party's own set of rules). Section 103.091 expresses no such intention, and such a reading contravenes both (a) the principles of statutory construction detailed in section II of this opinion and (b) the constitutional prohibition on state interference in political party governance. The concurring opinion's analysis would create a dilemma in which a political party may either keep its own membership rules and run its own election (section 103.091(1)) or accept a state-run election of the committee members (under section 103.091(4))—at the price of being unable to impose or enforce any membership rules other than those fixed by the state. The state has expressed no intention to require such a choice, nor does the statute carry any hint that its internal subsections are mutually exclusive.

Finally, the specially concurring opinion's analysis of the 1980 and 1983 Opinions of the Attorney General overlooks these critical facts: the Attorney General recognized that his office had no portfolio to express opinions regarding "party politics;" and the Supreme Court of Florida had long before held that the parties have the ultimate right to set the requirements for election to party office. Alexander v. Booth, 56 So. 2d 716, 719 (Fla. 1952) (holding that the courts have "no right, power, or authority to exercise any control or regulation over the discretion vested in State Executive Committees by statute"). Nor did the Attorney

General consider or express any opinion in the 1980's regarding the unconstitutionality of state interference in the internal governance of a political party.

Though completely respecting the specially concurring opinion and its author, we conclude that the dispositive issues in this case were a lack of fair notice of the new Party requirements to the appellees, and a tactical decision not to attempt to strike the appellees from the ballot before the election. The new Party loyalty oath and deadline were not themselves unlawful or impermissible.

V. Conclusion

We affirm the trial court and injunction on somewhat different grounds than those set forth in the order under review. See § 59.041, Fla. Stat. (2008). Our analysis pretermits any need to reconsider the adequacy of the injunction bond. We also affirm, without discussion, the trial court's evaluation of the elements required for the entry of a temporary injunction.

As a matter of statutory construction, we find that the Party has the right to establish its own separate form of loyalty oath, and a filing deadline for that form, so long as it makes the new rule and new form reasonably (and timely) known and available to the prospective candidates. That right does not excuse the candidates' obligations to comply with sections 103.091(4) and 99.021, and of course the Party cannot require the supervisor of elections to monitor compliance with any of the

Party's own rules.[11] Here, the trial court found (and this evidence was not disputed below) that the Party's notices regarding the new form and deadline were too little and too late. We agree.

We also find that the Party was estopped, by virtue of its knowledge of the alleged ineligibility of the appellees before the election, to await the outcome of the election and the commencement of a lawsuit by the appellees before submitting the alleged ineligibility to a court for resolution.

Temporary injunction affirmed.

RAMIREZ, C.J., concurs.

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[11] In this case, for example, the Party's loyalty oath was to be delivered to the Party office, not the supervisor of elections. The Party thus did not attempt to impose some extra-statutory duty on the supervisor of elections.

COPE, J. (specially concurring).

I agree on the result but cannot join the majority opinion. Respectfully, the majority opinion's statutory analysis is incorrect, and contravenes well-settled Florida precedent.

I.

In this case the plaintiffs ("Candidates") ran for election to the position of Committeeman or Committeewoman on the Miami-Dade County Republican Executive Committee. The deadline for filing their qualifying papers was noon, June 20, 2008 ("the Filing Deadline"). They timely filed their qualifying papers, and were placed on the ballot.

Unbeknownst to the Candidates, the Republican Party of Florida had promulgated a rule that an additional document—the Party Loyalty Oath—had to be completed and filed with the local party chair by the Filing Deadline, failing which the candidate—even if elected—would not be seated.

Because the Candidates in this case did not know about this additional requirement, they failed to file the Party Loyalty Oath with the Miami-Dade County party chair by the Filing Deadline. Although these Candidates won their elections, the Republican Party of Miami-Dade County refused to seat them.

The trial court entered a temporary injunction directing the Republican Party of Miami-Dade County to install the Candidates as members of the Miami-Dade

County Republican Executive Committee. Judge Genden reasoned that the Republican Party's actions violated the Florida Election Code.[12] The Republican Party of Miami-Dade County and the Republican Party of Florida (collectively, the "Party") have appealed.

The majority opinion holds that it was permissible for the Party to impose a special filing deadline for the Party Loyalty Oath and to refuse to install any newly elected candidate who failed to comply ("the Additional Candidate Condition"). The majority upholds the injunction, however, on the ground that the Party failed to give proper notice of this Additional Candidate Condition, thus depriving the Candidates of due process of law, and failed to take action to remove the Candidates from the ballot.

While the majority opinion is correct about the due process issue, it is incorrect in saying that the Additional Candidate Condition is permissible under the Florida Election Code. The majority opinion misreads the Code and fails to apply binding precedent.

II.

The principles applicable to this case all run in favor of the Candidates. Each citizen has a fundamental right to run for elective office. "The lexicon of

[12]The Florida Election Code consists of chapters 97-106, Florida Statutes. § 97.011, Fla. Stat. (2008).

democracy condemns all attempts to restrict one's right to run for office." Ervin v. Collins, 85 So. 2d 852, 858 (Fla. 1956).

"Fundamental to our system of government is the principle that the right to be a candidate for public office is a valuable one and no one should be denied this right unless the Constitution or an applicable valid law expressly declares him to be ineligible." Treiman v. Malmquist, 342 So. 2d 972, 975 (Fla. 1977); Vieira v. Slaughter, 318 So. 2d 490, 491 (Fla. 1st DCA 1975).

"Discouragement of candidacy for public office should be frowned upon in the absence of expressed statutory disqualification. The people should have available opportunity to select their public officer from a multiple choice of candidates. Widening the field of candidates is the rule, not the exception, in Florida." Hurt v. Naples, 299 So. 2d 17, 21 (Fla. 1974); Treiman, 342 So. 2d at 975.

"If there be doubt or ambiguity in the [applicable] provisions, the doubt or ambiguity must be resolved in favor of eligibility." Vieira, 318 So. 2d at 492; City of Miami Beach v. Richard, 173 So. 2d 480, 482 (Fla. 3d DCA 1965).

III.

With the above principles in mind, let us turn to the applicable statutes. The statutory framework for the major political parties is found in section 103.091, Florida Statutes (2008), which states:

> **103.091 Political parties.—**
>
> (1) . . . A political party may provide for the selection of its national committee and its state and county executive committees in such manner as it deems proper. . . .
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> . . . .
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> (4) **Any political party** other than a minor political party **may by rule provide for the membership of its state or county executive committee to be elected for 4-year terms at the primary election in each year a presidential election is held.**

(Emphasis added).

The Republican Party of Florida voluntarily chose to participate in the Florida election process in order to choose state and county executive committee members. Once it made that decision, the Party must follow the Election Code just like everyone else.

IV.

Under the Election Code, candidates—including candidates for party office—must file their qualifying papers with the supervisor of elections during the qualifying period. § 103.091(4), Fla. Stat. (2008).

One of the qualifying papers that a candidate must file is a candidate oath. § 99.021, Fla. Stat. (2008). We know that the statutory oath applies to political party candidates because the statute says so. The statutory oath "shall apply with equal force and effect to, and shall be the oath required of, a candidate for election to a political party executive committee office, as provided by law. The requirements set forth in this section shall also apply to any person filling a vacancy on a political party executive committee." § 99.021(2), Fla. Stat. (2008). Thus, the statutory oath must be completed not only by a candidate who qualifies for election, but must also be completed by someone who is chosen by the county executive committee to fill a vacancy. Id.; § 103.091(5). The statute spells out the content of the candidate oath. Id. § 99.021(1).[13]

The Candidates in this case executed the required oaths. No one contends otherwise. The Party concedes that the Candidates' names were properly placed on the primary election ballot. The Party makes no claim that the Candidates' filing papers were defective, and makes no claim that the Candidates should have been excluded from the ballot.

V.

[13] The statute has been implemented by the Division of Elections on form DS-DE24D. This is a three-part form which contains the Oath of Candidate and Statement of Party under section 99.021 and (not relevant here) the Loyalty Oath required by sections 876.05-.10, Florida Statutes (2008).

Next to be considered is what the Party did, and why it runs afoul of the Election Code.

The Party promulgated its own Party Loyalty Oath. This oath imposes obligations going beyond the statutory oath discussed in the preceding section. A signer of the Party Loyalty Oath promises (with some exceptions) to refrain from supporting the election of any candidate other than the Republican candidate, and promises to refrain from activities which may injure the name of, or interfere with the activities of, the Republican Party.[14]

In this case the Candidates have no objection to the oath. Indeed, as soon as the Candidates were informed that the Party wanted them to sign the oath, they did

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[14] The Party Loyalty Oath states in its entirety:

> I, ________________, hereby swear and affirm that during my term of office I will not actively, publicly, or financially support the election of any candidate other than the Republican candidate in a partisan unitary, general or special election, or a Registered Republican in non-partisan elections, other than Judicial races governed under Florida Statute 105, if there is a registered Republican running for the same office, unless the county executive committee has taken an affirmative vote to endorse one Republican over another per Rule 8(B). I further swear and affirm that I will not engage in activities or conduct that may be deemed by the Grievance Committee and affirmed by the RPOF Chairman as likely to injure the name of the Republican Party or interfere with the activities of the Republican Party.

so. No one in this case challenges the text of the oath, or challenges the right of the Party to require members of the executive committee to sign the oath.

But the Party went too far. The exact problem is that the Party required candidates to file this Party Loyalty Oath with the county chair by the Filing Deadline. According to the memo, a candidate failing to comply with this requirement would not be seated on the executive committee—even if that candidate won the election. The memorandum states in part:

> 2. . . . [A]nyone running for State, District or Precinct Committeeperson must file the party loyalty oath no later than noon on Friday, June 20, 2008 in order to be considered properly qualified under party rules to seek or hold such office.
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> . . . .
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> 7. It is solely within the party's discretion and authority to determine whether a person has met The Republican Party of Florida's requirements to hold party office. Therefore, any person who fails to provide the county [Republican Executive Committee] Chairman a properly executed party loyalty oath by noon on Friday, June 20, 2008 shall be ineligible to hold party office resulting from elections conducted on August 26, 2008.

In substance the Party required all candidates for executive committee positions to execute this additional Party Loyalty Oath as a condition of running for office. As a matter of form, the Party required the extra oath to be filed with the local committee chairperson, not with the supervisor of elections. But as a

matter of substance, the Party reserved to itself the right to nullify the election of successful candidates if the candidates had not filed this extra oath by the Filing Deadline. This the Party cannot do.

Florida law expressly spells out the oath which is to be taken by candidates for the position of committeeman or committeewoman. § 99.021. There is no authority in section 99.021 for the Party to add another oath which operates as an additional de facto condition for election to office.

The majority opinion maintains that such authority exists in subsection 103.091(1), Florida Statutes, which states in part, "A political party may provide for the selection of its national committee and its state and county executive committees in such manner as it deems proper." Id. §103.091(1). The majority opinion is mistaken. The majority opinion takes this one sentence out of context.

Later in section 103.091(4), the statute gives a political party the option "by rule [to] provide for the membership of its state or county executive committee to be elected . . . at the primary election . . . ." Id. § 103.091(4). Once the Party voluntarily decides to participate in the election process, the Party must follow the Election Code. The Election Code spells out the oath which is to be taken. Id. § 99.021. Neither section 99.021 nor section 103.091 authorizes the Party to require an additional oath which, as implemented by the Party, amounts de facto to an additional requirement to qualify for election to office.

VI.

In 1983, the Florida Attorney General issued an opinion which, although not binding on us, is persuasive. Op. Att'y Gen. Fla. 83-74 (1983). The Florida Democratic Party asked the Attorney General whether it could "require an oath of party loyalty on the part of a candidate for party nomination for election to public office as a prerequisite to qualification by said candidate for such nomination and election?" Id. at 199. The proposed loyalty oath was similar to the Republican Party oath now before us.[15]

The Attorney General's answer was no: the party could not impose this additional requirement on qualifying for office. The Attorney General explained that section 99.021, Florida Statutes, sets forth the required oath. The Attorney General said:

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[15] The proposed loyalty oath said:

> I, , having been duly sworn, say that I am a member of the Democratic Party; that I am a qualified elector of County, Florida; that during my term of office, I will not support the election of the opponent of any Democratic nominee nor will I oppose the election of any Democratic nominee; that I am qualified under the Constitution and Laws of the State of Florida and the charter and Bylaws of the Florida Democratic Party to hold the office I am seeking, or to which I have been elected; that I have not violated any of the laws of the State of Florida relating to elections or the Charter and Bylaws of the Florida Democratic Party. (e.s.)

> **Section 99.021, F.S., does not provide for or authorize the proposed party loyalty oath which is described above.** Our office . . . cannot legislate, and cannot by interpretation add something to s 99.021 which it does not contain. See, Platt v. Lanier, [127 So. 2d 912 (Fla. 2d DCA 1961).] While such a loyalty oath might well further the goals of party loyalty, it is up to the Legislature to add authorization for such an oath to the statute, and it is not within the power of our office to do so.
>
> **It is fundamental to our system of government that the right to be a candidate for public office is a valuable one and no one shall be denied the right unless the State Constitution or an applicable valid law expressly declares him to be ineligible.** Treiman v. Malmquist, 342 So. 2d 972 (Fla. 1977); see also, Hurt v. Naples, 299 So. 2d 17 (Fla. 1974) (holding that denial of candidacy should be based on an express legislative provision for ineligibility and further that ineligibility for office cannot be judicially prescribed by implication).

Id. at 201-02 (footnotes omitted; emphasis added). The Attorney General's opinion is on point and entirely correct.

The majority opinion gives short shrift to the 1983 Attorney General's opinion, saying that it was "limited to candidates for 'public office,'" and that "political party executive committee members 'are not considered to hold public office' . . . ." Majority opinion at 8. It is true that a 1980 Attorney General's opinion ruled that for purposes of Florida's career service statute, a member of a party executive committee is considered to occupy a political office, but not a public office. Op. Att'y Gen. Fla. 80-35 (1980).

But the majority cannot avoid the 1983 Attorney General opinion so easily. That is so because the text of the 1983 opinion addresses political party executive committees. The Attorney General said that it was appropriate to issue the 1983 opinion because the question "deals with a requirement made of candidates for nomination or election to public office, **as well as candidates for election to a political party executive committee as provided by law**." Id. at 200 (emphasis added).

The 1983 Attorney General's opinion cited Platt v. Lanier, 127 So. 2d 912 (Fla. 2d DCA 1961), which is also on point. In that case Lanier and several other individuals were appointed to fill vacancies on the Palm Beach County Democratic Executive Committee. They failed to execute the statutory oath of section 99.021, Florida Statutes. In 1961, section 99.021 applied to candidates for election on a county executive committee, but did not state that persons appointed to fill a vacancy had to execute the same oath.[16] The Second District held that "[a] county executive committee is purely a creature of statute, and all its functions and powers are derived thereby." Id. at 913. Because the then-existing version of section 99.021 applied only to candidates, the county executive committee had no authority to require appointees to execute the statutory oath. That logic is

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[16] The statute was subsequently amended to include appointees. See § 99.021(2), Fla. Stat. (2008); supra pt. IV.

applicable to the present case. The Party cannot impose nonstatutory election conditions on candidates for the Party's executive committee.

VII.

Once it is acknowledged, as the majority opinion does, that "citizens have a fundamental right to run for public elective office," majority opinion at 11, it follows that this fundamental right applies to elections for a political party's executive committee. That is so because both the Republican and Democratic Parties have chosen the public elective process as the means to elect their respective executive committees.

What is at stake is the fundamental right of individuals to offer themselves as candidates for elective positions—including political party positions—and the equally fundamental right of party members to vote for the candidates of their choice. As explained earlier in this opinion, well-settled Florida precedent forbids the Party from imposing additional, nonstatutory requirements as a condition of running for elected office. The principles set forth in the Florida Supreme Court's election cases are exactly on point, and the Platt decision, cited above, is a decision directly applicable to political parties. Platt, 127 So. 2d at 913.

The majority opinion takes a position never argued by the Party when the majority opinion states, "If a candidate fails or refuses to deliver the oath to the Party before the qualification deadline, there is still time to have the prospective

candidate's name stricken from the ballot so that the voters can choose among qualified candidates." Majority op. at 10 n. 7. The June 12, 2008 memorandum issued by the Republican Party of Florida did not take the position that a candidate could be stricken from the ballot if the candidate failed to file the Party's oath by the qualifying deadline. Although it may be a distinction without a difference, the Party's position was that "any person who fails to provide the County [Republican Executive Committee] Chairman a properly executed Party Loyalty Oath by noon on Friday, June 20, 2008 shall be ineligible to hold Party office resulting from elections conducted on August 26, 2008." The Party's approach was to allow the Candidates' names to remain on the ballot, but refuse to install the successful Candidates as members of the executive committee.

The majority opinion states that "[p]olitical parties have a constitutional right 'not to associate' with those who do not share their platforms or rules . . . ." Majority op. at 12 (footnote omitted). This is a red herring. The Candidates have already executed the oath, thereby **agreeing** with their Party's position.[17]

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[17] The majority opinion suggests that enforcement of the Election Code would interfere with the Party's rights of association. For that proposition the majority opinion cites two First Amendment association cases, Cal. Democratic Party v. Jones, 530 U.S. 567 (2000), and Democratic Party v. Wisconson ex rel. LaFollette, 450 U.S. 107 (1981). In those cases, the Court found a violation of First Amendment associational rights where California's "blanket" primary, and Wisconsin's "open" primary, allowed nonparty members to cast binding votes for the Party's nominees. California Democratic Party, 530 U.S. at 569, 586; La Follette, 450 U.S. at 126.

VIII.

In summary, the Republican Party of Florida promulgated a Party Loyalty Oath and required candidates for county executive committees to file the oath with the local party chair by noon, June 20, 2008, failing which they would not be seated even if elected. The Candidates completed the oath after the deadline, but the Party refused to install them as executive committee members.

Candidates have the right to offer themselves for political party office, and individual Party members have the right to vote for the candidates of their choice. The rule establishing the Additional Candidate Condition operates as an additional unauthorized condition on candidacy, and violates the Florida Election Code. The trial court correctly entered the injunction.

For the stated reasons, I concur in affirming the temporary injunction.

No such issue is presented in the case now before us. Florida's primary is a "closed" primary in which only party members can vote. The Candidates executed the statutory oath swearing that they were members of the Party.