

Write-In Candidates Closing a Primary Election

Mazzilli v. Townsley

(*William J. Zloch, S.D. Fla. 1:12-cv-22432*)

A Florida statute provided that a primary election would be open to all voters if only one party fielded a candidate for the general election. A ruling by Florida's secretary of state specified that if anyone registered as a write-in candidate for the general election, then the primary election would remain closed to voters who were not party members. Several weeks before a primary election in which only one party had candidates, two voters challenged the secretary's ruling. Less than one month later, the court denied immediate injunctive relief because the plaintiffs had failed to include the secretary of state as a defendant. Twelve days later, reviewing an amended complaint, the court held the secretary's ruling a reasonable interpretation of an unambiguous statute serving legitimate interests.

Subject: Voting procedures. *Topics:* Primary election; write-in candidate.

On June 29, 2012, six and one-half weeks before the 2012 Democratic primary election for Miami-Dade County's state attorney, an unaffiliated voter and a Republican voter filed a federal complaint against the county's supervisor of elections seeking an injunction opening the primary election to all voters because no other party was fielding a candidate for the office.¹ Florida's constitution was amended in 1998 to make primary elections open to all voters when no other party was fielding a candidate, but a subsequent secretary of state ruled that primaries had to be closed when a write-in candidate registered for the general election.² The court assigned the case to Judge William J. Zloch.³

Four days later, the plaintiffs filed a motion for a preliminary injunction⁴ and an agreed motion for a briefing schedule culminating in a July 13 hearing.⁵ The agreed schedule reflected an understanding that Judge Zloch want-

1. Complaint, *Mazzilli v. Townsley*, No. 1:12-cv-22432 (S.D. Fla. June 29, 2012), D.E. 1; *Lacasa v. Townsley*, 883 F. Supp. 2d 1231, 1232–33 (S.D. Fla. 2012); see Amended Complaint, *Mazzilli*, No. 1:12-cv-22432 (S.D. Fla. July 3, 2012), D.E. 6; see also David Ovalle, *Suit Filed in State Attorney's Race*, Miami Herald, June 30, 2012, at 3B.

2. *Lacasa*, 883 F. Supp. 2d at 1233; see David Ovalle, *Write-In Candidates Spark Controversy*, Miami Herald, June 22, 2012, at 1B (reporting that some write-in candidates may not actually seek election but register only to allow primary-election winners to continue to raise funds until the general election or to make primary elections closed); see also Michael Van Sickler, *Write-In Elections Write Off Plenty of Voters*, Miami Herald, Oct. 23, 2012, at 1B.

3. Docket Sheet, *Mazzilli*, No. 1:12-cv-22432 (S.D. Fla. June 29, 2012).

Tim Reagan interviewed Judge Zloch for this report by telephone on October 3, 2012.

4. Preliminary-Injunction Motion, *Mazzilli*, No. 1:12-cv-22432 (S.D. Fla. July 3, 2012), D.E. 9; *Lacasa*, 883 F. Supp. 2d at 1232.

5. Briefing Motion, *Mazzilli*, No. 1:12-cv-22432 (S.D. Fla. July 3, 2012), D.E. 10.

ed the case to move quickly.⁶ The day that the proposed schedule was filed, Judge Zloch shortened the schedule by an additional day.⁷ As a further accommodation of the case's time pressure, he moved filing deadlines to noon from the proposed deadline of 5:00 p.m.⁸ The case proceeded very smoothly in part because of the efficient time schedule.⁹ It helped that there were no disputes as to facts.¹⁰

On July 5, the Ron Brown South Dade Democratic Caucus Chapter of the Democratic Caucus of Florida moved to intervene.¹¹ On the following day, finding that the caucus's interests would be adequately represented by the county supervisor, Judge Zloch denied intervention.¹²

On July 13, Judge Zloch denied the plaintiffs a preliminary injunction because they did not join as defendants Florida's secretary of state and its elections canvassing commission.¹³

Reviewing an amended complaint,¹⁴ Judge Zloch dismissed the action on July 25.¹⁵ The 1998 amendment was unambiguous, the secretary's interpretation of it was reasonable, the state had a legitimate interest in preserving party integrity, and the plaintiffs' desire to vote in another party's primary election did not overcome these factors.¹⁶

A state-court judge in Broward County reached a similar conclusion in a lawsuit filed there.¹⁷ Before he ruled, the state judge obtained a copy of Judge Zloch's opinion from Judge Zloch's chambers.¹⁸

6. Interview with Hon. William J. Zloch, Oct. 3, 2012.

7. Briefing Order, *Mazzilli*, No. 1:12-cv-22432 (S.D. Fla. July 3, 2012), D.E. 12; *see also* Order, *id.* (July 10, 2012), D.E. 19 (moving the hearing from 10:30 a.m. to 9:30 a.m.); Order, *id.* (July 9, 2012), D.E. 17 (instructing parties to address the court's subject-matter jurisdiction).

8. Briefing Order, *supra* note 7.

9. Interview with Hon. William J. Zloch, Oct. 3, 2012.

10. *Id.*

11. Intervention Motion, *Mazzilli*, No. 1:12-cv-22432 (S.D. Fla. July 5, 2012), D.E. 13.

12. Intervention Order, *id.* (July 6, 2012), D.E. 15.

13. Opinion, *id.* (July 13, 2012), D.E. 23; *Lacasa v. Townsley*, 883 F. Supp. 2d 1231, 1232–33 (S.D. Fla. 2012).

14. Second Amended Complaint, *Mazzilli*, No. 1:12-cv-22432 (S.D. Fla. July 13, 2012), D.E. 24.

15. *Lacasa*, 883 F. Supp. 2d 1231; *see* David Ovalle, *Judge: Only Democrats Can Vote in Race*, Miami Herald, July 26, 2012, at 3B.

16. *Lacasa*, 883 F. Supp. 2d 1231.

17. *See* Brittany Wallman, *Judge Rejects Primary Lawsuit*, Miami Herald, Aug. 4, 2012, at 5B.

18. Interview with Hon. William J. Zloch, Oct. 3, 2012.