IN THE SUPREME COURT OF FLORIDA

THE REFORM PARTY (OF FLORIDA); RALPH NADER; and PETER CAMEJO,

Appellants,

Case No: SC04-1755
1st DCA Case No: 04-4050

vs.

HARRIET JANE BLACK; ROBERT RACKLEFF, WILLIAM CHAPMAN; and TERRY ANDERSON,

Appellees.
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THE REFORM PARTY OF FLORIDA; THE REFORM PARTY OF THE UNITED STATES OF AMERICA; RALPH NADER and PETER CAMEJO,

Appellants,

vs.

CANDICE WILSON; ALAN HERMAN; SCOTT MATTOX, as Chairman of the FLORIDA DEMOCRATIC PARTY; and the FLORIDA DEMOCRATIC PARTY,

Appellees.

INITIAL BRIEF OF APPELLANTS' REFORM PARTY OF FLORIDA, REFORM PARTY OF THE UNITED STATES OF AMERICA, RALPH NADER AND PETER CAMEJO

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A. STATEMENT OF THE CASE

This appeal involves the efforts of the Florida Democratic Party and individual voters to keep Reform Party Presidential candidate Nader and Vice-Presidential candidate Camejo off the November 2004 Florida general election ballot. This brief is submitted today pursuant to this Court's request, and after the following flurry of events.

On September 2, 2004, appellees Candice Wilson, Alan Herman, Scott Maddox, as Chairman of the Florida Democratic Party, and the Florida Democratic Party filed a complaint in Leon County Circuit Court in Tallahassee, Case No. 04 CA 2141. Appellees asked the circuit court to remove Nader and Camejo from the ballot based on alleged violations of various state and federal statutes. Also on September 2, 2004, a second group of plaintiffs, appellees Harriet Jane Black, Robert Rackleff, William Chapman, and Terry Anderson filed a similar complaint in Leon County Circuit Court, Tallahassee, Florida, under Case No. 04 CA 2140, along with a motion for immediate injunctive relief, also seeking to remove Nader and Camejo from Florida's ballot. On September 7, 2004, the latter set of appellees (Black, Rackleff, Chapman, and Anderson) filed an amended complaint for emergency injunctive relief requesting an immediate hearing.

The next day, at 3:00 p.m., the trial court hastily convened and held an evidentiary hearing on the motion for preliminary injunction and consolidated the two cases. The notice of hearing on the motion referred primarily to a case management conference, but included a reference to a hearing on the motion for preliminary injunction as well. This "hearing" was held despite, among other things, the following: (1) all of the parties had not been served and were not present at the hearing. Moreover, of those parties who actually attended the hearing, they were not all represented by counsel.

At the conclusion of the September 8, 2004, hearing, and over appellants' multiple objections and requests for time to contact counsel, the trial court orally declared its ruling and enjoined Hood from certifying Nader and Camejo as candidates for the 2004 Florida general election ballot of 2004, and from certifying the Reform Party of Florida's Presidential election. The trial court entered a written order granting the preliminary injunction a day later on September 9, 2004, denying appellants' oral motion to stay the order pending appeal. Working under the assumption that Florida's absentee overseas ballots had to be mailed out by September 18, 2004, and in order to ensure appellants had a chance to argue their case before the preliminary injunction ruling resulted in Nader's and Camejo's name being excluded by fait accompli; appellants requested that a hearing on the merits

be held on Friday, September 10. In stark contrast to the trial court's rush to convene the evidentiary hearing, the trial court rejected appellants' request.[1] On September 9, 2004, the trial court further refused appellants' request that the final hearing on the merits of appellees' complaints be held the very next day, September 10, 2004.

On September 10, 2004, the instant appellants filed a notice of appeal of the trial court's order granting the preliminary injunction, and an emergency motion with the district court of appeal for a stay of the trial court's preliminary injunction order pending appeal in the First District Court of Appeals. Hood also filed a notice of appeal of the trial court's order on Monday, September 13, which automatically stayed the preliminary injunction, pursuant to Fla. R. App. 9.130(b). The First District Court of Appeals certified the issues raised by the appeal to this Court on September 13. On September 13, the instant appellants also filed a notice of removal of this state court action to the United States District Court for the Northern District of Florida. On Tuesday, September 14, 2004, the federal district court remanded the action to state court.

Following the order of remand, on Wednesday, September 15, the instant appellants filed in the trial court their answer and affirmative defenses to appellees'

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[1]The primary justification offered by the trial court for the delay in scheduling the hearing on the merits was a pre-planned trip to California.

complaints. Included in this submission was a cross claim against Secretary Hood and a counterclaim against appellees, requesting, among other things, immediate injunctive relief.

On September 15, 2004, the trial court held the final hearing on the merits of appellees' allegations. During the hearing, the trial court vacated the automatic stay, which this Court, on September 15, 2004, reinstated in part. On September 15, 2004, and after receiving evidence and hearing argument from the parties, the trial court entered its order and final judgment, concluding that appellees were entitled to a declaratory judgment and permanent injunction, enjoining Secretary Hood from certifying Nader and Camejo as candidates for the Florida presidential election ballot of 2004, and from certifying the electors offered by the Reform Party of Florida, and denying the relief requested by The Reform Party of Florida and The Reform Party of the United States of America. Appellants now appeal to this Court.

B. STATEMENT OF THE FACTS

The Genesis of the Reform Party was the 1992 candidacy of Ross Perot for President under the banner "United We Stand." T- Miller, 15. The Reform Party USA was first organized on a national level in 1996. T- Miller 15. It is one of six minor political parties recognized by the Federal Election Commission ("FEC") as having a national committee. T- Winger, 8, 11. In 1998, the Reform Party USA

was qualified by the FEC as a "political party" and a "national committee, " as those terms are defined by the FEC for purposes of the Federal Election Campaign Act ("FECA") and FEC regulations. (FEC Advisory Opinion No. 1998-2) The FEC was created by Congress in 1975 as an independent regulatory agency to administer and enforce FECA, which governs the financing of federal elections. The FEC based its determination that the Reform Party USA qualifies as a national committee on several indicators, such as significant party building activity, party voter registration, get-out-the-vote activities, the holding of a national convention, and efforts to publicize the party's positions. (FEC Advisory Opinion No. 1998-2) The FEC has not receded from that determination and the FEC qualifications of the Reform Party USA as a political party and as a national committee remain in place. T- Kennedy, 115.

The Reform Party USA is affiliated with state parties, including the Reform Party of Florida. Beverly Kennedy, a national committee member of the Refrom Party USA and its custodian of FEC records, testified that, under the organization structure between the national and state parties, it is the state parties that engage in party building and getting out the vote. T- Kennedy, 124, 135. The Reform Party USA helps state parties undertake those activities by providing donor lists and promoting communications through its website and toll free telephone number. T-

Kennedy 124, 135. The Reform Party USA publicizes its platform through press releases and its website. T- Kenney, 124; Amato, 20.

The Reform Party is the fourth largest minor party in the country based on registered voters and is one of five nationally organized minor parties recognized in more than one state. T- Winger, 7. It is the only minor party which qualified for general election federal matching funds in 2000. T- Amato, 23; Winger, 7. In the year 2000, the party received around $13 million dollars in federal matching funds. T- Amato, 23. In the 2000 election, Ralph Nader garnered 97,488 votes in Florida, running as a candidate of the Green Party. T- Hampton, 101. In 2004, Nader, as the Reform Party, nominee was the only candidate to receive federal matching funds for the primary election. T- Amato, 23. Key factors in Nader's decision to run on the Reform Party USA ticket in 2004, are that party's ability to receive federal matching funds, its history of being a major minor party in previous presidential elections, the party's platform that is posted on its website, its constitution and Nader's commonality with the party in issues.

The Reform Party of Florida was registered with the Florida Department of State's Division of Elections in 1995 in the name of the Reform Party. T- Hampton, 69-73. A copy of the amended bylaws and constitution were filed with the Department of State. T- Miller, 22. In 2003, the bylaws and constitution again

were amended and those documents were filed with the Department of State. T-Hernandez, 104.

For every Presidential election subsequent to its formation, the Reform Party of Florida has had the names of its candidates for the offices of President and Vice President on the Florida Presidential election ballot. (T - Miller) In order to gain access for its candidates on every Presidential election ballot in the State of Florida, the Reform Party of Florida has continuously qualified as a minor party as defined by Fla. Stat. 97-021(15), (T - Hampton), and utilized the procedure set forth in Section 103.021, Florida Statutes, since that party's inception. That statute affords an opportunity for minor parties to have the names of their candidates for President and Vice President on the general Presidential election ballots if that party is affiliated with a national party that holds a national convention to nominate those candidates. Fla. Stat. 103.021(4).

On May 11, 2004, the Executive Committee of the Reform Party USA held a telephone conference and endorsed Ralph Nader for President. This was done to pre-empt the other parties and "entice" Nader as the Party candidate. T - Kennedy, 109-110. The Reform Party USA holds its National Convention on an annual basis in accordance with its constitution. T- Hernandez 126. On July 13, 2004, the Reform Party USA national chairman Shawn O'Hara sent a letter to delegates

inviting them to the Party's national convention on August 27-29, in Irving, Texas for the purpose of nominating candidates for the 2004 Presidential election. T-Hernandez, 125.; Exh. S. The party also issued a call to convention on its national website. T- Miller, 30.

The Reform Party USA's 2004 national convention was held, as noticed, on August 27-29, 2004. T- Miller, 25, 26. A total of 63 delegates attended the national convention, as did alternates, visitors, and members of the press. T- Miller, 29. Six certified delegates were from the State of Florida. T- Miller, 11; Def. Ex. 2. The delegates were approved by the party's credentials committee upon their arrival. T -O'Hara, 2-3; Miller, 9-10. According to the Reform Party USA's Secretary of the Executive Committee and National Chairman, this number of delegates was sufficient for a quorum. T -Miller, 37; O'Hara, 1-2. During the convention, the names of Nader and Camejo were proposed for nomination. T -Miller, 28. Other nominations were requested three times, but none were made. T -Miller, 30. The delegates ratified the Executive Committee's endorsement of Nader for President and also nominated Nader and Camejo as the party's candidates for President and Vice President. T- Kennedy, 100, Def. Ex. 11. A national party platform also was approved at the convention. T- Miller, 35.The Reform Party USA's 2004 nomination was personally accepted by Nader and Camejo at the August national

convention in Texas. T -Amato, 23.

After the 2004 Reform Party USA national convention was held, the Reform Party of Florida proceeded to add the names of Ralph Nader and Peter Miguel Camejo to the Florida November 2004 general election ballot as candidates for President and Vice President and file with the Secretary of State a list of electors which is required by Florida law. T-Miller, 31-32. The Reform Party of Florida chose the qualifying procedure set forth in Section 103.021(4)(a), Florida Statutes, which reads:

> A minor party that is affiliated with a national party holding a national convention to nominate candidates for President and Vice President of the United States may have the names of its candidates fro President and Vice President printed on the general election ballot by filing with the Department of State a certificate naming the candidates for President and Vice President and listing the required number of persons to serve as electors. Notification to the Department of State under this subsection shall be made by September 1 of the year in which the election is held. When the Department of State has been notified, it shall order the names of the candidates to be included on the ballot and shall permit the required number of persons to be certified as electors in the same manner as the other candidates.

The Florida Election Code ("Code") comprises Chapters 97-106, Florida Statutes. Under the Code, a "minor political party" is defined as a group "which on January 1 preceding a primary election does not have registered as members five percent of the total registered electors of the state." §97.021(14), Fla. Stat. and can be "any group." *Id.* The statutory steps to become recognized as a minor political

party are the filing with the Department of State of "a certificate showing the name of the organization, the names of its current officers, including the members of its executive committee, and a copy of its constitution or bylaws." *Id.* In order to ensure accuracy of state records, the Code places a "duty" on minor political parties to advise the Department of State of any changes in the filing certificate within 5 days of such changes. *Id*. The Reform Party of Florida is a "minor political party." (T - Hampton). Registration on of members of the Reform Party of Florida in the State of Florida totals approximately 3,394 members. T- Winger, 24. In the 2000 Presidential election, 17,484 of the 138,067 votes cast for minor parties in Florida were cast for the Reform Party. T- Hampton, 94. Currently on file with the Department of State are: a certificate showing the name of the organization as the Reform Party of Florida, an accurate listing of current officers and members of the party's executive committee, and an up- to- date copy of the party's constitution and bylaws. The party's first filing certificate was filed with the Department of State in 1995. In January 2003, there was a change in chairmanship of the Reform Party of Florida. The party notified the state of its new chairman by letter dated June 3, 2004, and that notice was filed by the Department of State in its records. The latest 2003 bylaws and constitution were filed in February 2003. T-Hernandez, 103. The Reform Party of Florida is affiliated with the national party of the Reform Party

USA. Those two organizations established an affiliation with each other in 1997 through a written statement. Reform Party Exh. 1 and 4. In 2002, officers of the Reform Party of Florida filed a letter with the Secretary of State which purported to "disaffiliate" the Reform Party of Florida from the Reform Party USA. However, subsequent to that letter the state convention of the Reform Party of Florida terminated their officer, voted to maintain the affiliation and advised the Secretary of State of that intent. T- Miller, 16-19, Def. Ex. 3 & 4.

On August 31, 2004, Reform Party of Florida's Chairman Ruben Hernandez filed with the Department of State notification of the party's desire to have its candidates' names on the 2004 general election ballot in accordance with Section 103.021(4)(a), Florida Statutes. T- Hernandez, 141. That notification included the naming of Ralph Nader as candidate for President; the naming of Peter Miguel Camejo as candidate for Vice President; and a listing of persons to serve as electors per the requirements of Sections 103.021(1) and (4)(a), Florida Statutes, to list as many electors as there are Congressional seats from Florida.

Subsequent to the Reform Party of Florida's August 31, 2003, notification, the Department of State reviewed the party's filing. T-Hampton, 87. After review of the filing, the agency ordered that the names of Nader and Camejo be included on the 2004 general election ballot and forwarded the filing with the Office of the

Governor for electoral voter nomination and certification through the elector voter certification procedure set forth in Section 103.021, Florida Statutes. Shortly thereafter, the Governor certified the names of all of the proposed electors of the Reform Party of Florida.

Included in the duties of the Secretary of State is the responsibility to obtain and maintain uniformity in the application, operation, and interpretation of the Code. §97.012(1), Fla. Stat. The Department of State also placed on the 2004 general election ballot the following five other minor political parties, in addition to the two major political parties: (Def. Comp. Exh 1.) The Department of State did not find any problems or aberrations with the filing of any of the minor political parties. T-Hampton, 88.

Twenty-four minor parties are recognized b y the State of Florida, and only six qualified with candidates for the 2004 election. Def. Ex. 8, which were included in the certification.

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The only Florida party to have its ballot access challenged is the Reform Party of Florida. During the proceedings below, the Chairman for the Florida Democratic Party testified for the Plaintiffs that his party would be harmed by the ballot inclusion of the Reform Party of Florida because it would compel the Democratic Party to "have a different campaign strategy, would allocate resources differently than if it were a simple head-to-head contest between the two candidates." T-Maddox, 93-94. The Florida Democratic Party did not scrutinize or challenge the ballot status of any of the minor political parties besides the Reform Party of Florida. T-Maddox, 94. The Plaintiffs also presented the testimony of Dr. Allan Lichtman, a history professor at American University in Washington, D.C. and a media political

analyst. T-Lichtman , 168. Dr. Lichtman testified as to a four prong methodology for determining whether the Reform Party of Florida is a national political party. Professor Lichtman classified the Reform Party as an "insurgent group" because of its apparent formation around charismatic figures. T - Lichtman, 172. His description of the current Reform Party USA is that of a factionalized group that has been taken over by a "fringe group." T-Lichtman, 173-175. He also based his conclusion partially on the present lack of minutes of the August 27-29 convention on the Reform Party of Florida's website, a 15 percent decline of registered Reform Party of Florida voters in Florida over the last four years, and a low paid circulation of its newsletter. T, Lichtman 182- 185. In reaching his conclusion that the Reform Party USA no longer is a national political party, Professor Lichtman did not review any of the Florida election laws. T Lichtman, 193.

At hearing, Ms. Hampton testified that the Reform Party of Florida met the requirements of Section 103.021(4)(a), Florida Statutes, thus qualifying to have the names of candidates Nader and Camejo on the 2004 general election ballot. In reaching that conclusion, she stated that the Department of State does not independently verify the representations of minor parties that are made in their certificates filed for ballot access under Section 103.021(4)(a), Florida Statutes. The act of accepting filing certificates is purely ministerial. (T - Hampton).

APPLICABLE STANDARD OF REVIEW

The applicable standard of review of the circuit court's final order is *de novo*. The final order rests on purely legal matters decided by the circuit court, namely, the circuit court's interpretation of Section 103.021(4)(a), Florida Statutes. Because the order rests on purely legal matters, the order imposing an injunction is subject to *de novo* review on appeal. *See Operation Rescue v. Women's Health Ctr., Inc.*, 626 So. 2d 664, 670 (Fla. 1993), rev'd. in part on other grounds by *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753 114 S.Ct. 2516 (1994); *Browning-Ferris Indus. Of Florida, Inc. v. Manzella*, 694 So. 2d 110, 111-112 (Fla. 4th DCA 1997).

A trial court's decision in a declaratory judgment action is generally accorded a presumption of correctness on appellate review. *See, e.g., Williams v. Gen. Ins. Co.*, 468 So. 2d 1033, 1034 (Fla. 3d DCA 1985). However, the trial court's decision will be rejected on appeal if based on a misapplication of law or shown by the record to be clearly wrong, or against the manifest weight of the evidence, or not supported by competent substantial evidence. *See id.* at 1034. Therefore, even in a declaratory judgment action, where the issue on appeal relates purely to a matter of law, the *de novo* standard of review applies. *See e.g., Florida Power Corp. v. City of Casselbury*, 793 So. 2d 1174 (Fla. 5th 2001) (because interpretation of contract is

a matter of law, court applies *de novo* standard of review); *Kaplan v. Bayer*, 782 So. 2d 417, 419 (Fla. 2d DCA 2001) (same).

Because this appeal relates solely to the circuit court's misapplication of law in its interpretation of a statute, a purely legal matter, the standard of review is *de novo* for both the injunctive and declaratory judgment matters.

ARGUMENT

I.

FEDERAL CONSTITUTIONAL LIMITS ON A STATE'S POWER TO REGULATE BALLOT ACCESS

Article II, Section 1, Clause 2 of the United States Constitution authorizes each State "to appoint, in such a Manner as the Legislature thereof may direct, a Number of Electors" and these electors are, in turn, empowered to meet and to vote by ballot for the election of the President. While this provision grants extensive power to the States to pass laws regulating the selection of electors, it does not endow the States with the "power to impose burdens on the right to vote, where such burdens are expressly prohibited in other constitutional provisions." *Williams v. Rhodes*, 393 U.S. 23, 29, 89 S.Ct. 5, 10, 21 L.Ed.2d 24 (1968). Indeed,

> in the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest. For the President and Vice President of the United States are the only elected officials who represent all the voters in the Nation. Moreover, the impact of the votes cast in each State is affected by the votes case for the various candidates in other States. Thus, in a Presidential election a State's enforcement of more stringent ballot access requirement, including filing deadlines, has an impact beyond its borders. Similarly, the State has a less important interest in regulating Presidential elections than statewide or local elections because the outcome of the former will be largely determined by voters beyond the State's boundaries.

Anderson v. Celebrezze, 460 U.S. 780, 103 S.Ct. 1564, 1569, 75 L.Ed.2d 547 (1983). As succinctly stated in *Cousins v. Wigoda*, 419 U.S. 477, 490, 95 S.Ct. 541, 549, 42 L.Ed.2d 595 (1975), there is a "pervasive national interest in the selection of candidate for national office, and this national interest is greater than any interest of an individual State."

"The impact of candidate eligibility requirements on voters implicates basic constitutional rights." *Anderson*, 460 U.S. 780, 103 S.Ct. 1564, 1569, 75 L.Ed.2d 547. As Justice Harlan stated in *NAACP v. Alabama*, 357 U.S. 449, 460, 78 S.Ct. 1163, 1170, 2 L.Ed.2d 1488 (1958), it "is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." The "liberty" affected by ballot access restrictions involves "two different, although overlapping, kinds of rights—the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms." *Williams v. Rhodes*, 393 U.S. 23, 30-31, 89 S.Ct. 5, 10, 21 L.Ed.2d 24 (1968).

1. The Constitutional Right of Individuals to Associate for the Advancement of Political Beliefs

The freedom to associate as a party is a fundamental right that has diminished practical value if a party can be kept off the ballot. *See Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184, 99 S.Ct. 983, 990, 59 L.Ed.2d 230 (1979). The right of association is protected by the First Amendment and affords individuals the right to "engage in association for the advancement of beliefs and ideas." *Williams*, 393 U.S. at 36, 89 S.Ct. at 14, quoting *NAACP v. Alabama*, 357 U.S. at 460. Freedom of association for the purpose of advancing beliefs and ideas is protected from invasion by the States by the Due Process Clause of the Fourteenth Amendment. *Id.*

In *Anderson v. Celebreeze*, the Supreme Court considered the impact of restrictions on minority parties and stated:

> A burden that falls unequally on new or small political parties or on independent candidates impinges, by its very nature, on associational choices protected by the First Amendment. It discriminates against those candidates and--of particular importance--against those voters whose political preferences lie outside the existing political parties. By limiting the opportunities of independent-minded voters to associate in the electoral arena to enhance their political effectiveness as a group, such restrictions threaten to reduce diversity and competition in the marketplace of ideas. Historically political figures outside the two major parties have been fertile sources of new ideas and new programs; many of their challenges to the status quo have in time made their way into the political mainstream. In short, the primary values protected by the First Amendment--"a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-

> open," -- are served when election campaigns are not monopolized by the existing political parties.

460 U.S. at 793-94, 103 S.Ct. at 1572-73 (internal citations omitted).

2. The Right of All Qualified United States Citizens to Vote Is a Preeminent Right Derived from the United States Constitution

Access restrictions also implicate the right to vote because absent referendums, "voters can assert their preference only through candidates or parties or both." *See Illinois State Bd. of Elections*, 440 U.S. at 184, 99 S.Ct. at 990, quoting *Lubin v. Panish*, 415 U.S. 709, 715 (1974). The right of suffrage, of course, is a preeminent right of all qualified citizens of this nation and laws intended to facilitate that right must be liberally construed in favor of the citizens' right to vote. The United States Constitution protects the right of all qualified citizens to vote and to have their votes counted. *United States v. Mosley*, 238 U.S. 383 (1935); *Ex parte Yarbrough*, 110 U.S. 651 (1884). "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1976). As the Supreme Court has observed, "any restrictions on that right strike at the heart of representative government." *Reynolds v. Sims*, 377 U.S. 553, 555 (1964).

Because the right to vote freely for the candidate of one's choice is "of the essence of a democratic society" and derives from the United States Constitution, U.S. Supreme Court decisions "leave[] no room for doubt that . . . voting rights are, at bottom, federally protected." *Griffin v. Burns*, 570 F.2d 1065, 1075 (1st Cir. 1978). Given the constitutional protections afforded the right to vote, federal courts strictly scrutinize state restrictions that burden voting rights. *See Kramer v. Union Free School District No. 15*, 395 U.S. 621, 625-26 (1969).

The Florida courts have also recognized that because the "right of suffrage is the preeminent right contained in the [Florida Constitutions'] Declaration of Rights," any statutes relating to elections "should receive a liberal construction in favor of the citizens whose right to vote they tend to restrict." *Palm Beach County Canvassing Board v. Harris*, 772 So.2d 1220, 1236, citing *Treiman v. Malmquist*, 342 So. 2d 972, 975 (Fla. 1977). As this Court has noted, "[w]e must tread carefully on [the right to vote] or we risk the unnecessary and unjustified muting of the public voice. By refusing to recognize an otherwise valid exercise of the right of a citizen to vote for the sake of sacred, unyielding adherence to the statutory scripture, we would in effect nullify that right." *Boardman v. Esteva*, 323 So. 2d 259, 263 (Fla. 1975). Florida courts, like the federal courts, will

therefore refuse to disenfranchise voters solely on the basis "of the failure of the election officials to observe directory statutory instructions." *Id.* at 268.

In *Joughin v. Parks,* 143 So. 145 (1932), this Court held that in the absence of fraud or corruption, which clearly has not been alleged or shown to exist in the instant case, injunctive relief will not issue for the purpose of the holding of an election, or of directing or controlling the mode in which, or of determining the rules of law in pursuance of which an election shall be held. The rationale for this decision was that the holding and conduct of an election is a "political matter with which courts of equity have nothing to do." Id. At 145. In a recent case involving a challenge of the approval of touch screen voting machines, the Fourth District cited this court's decision in *Joughin* with approval. *Wexler v. Lepore*, 878 So.2d 1276 (Fla 4th DCA 2004).

II.

TRIAL COURT'S IMPROPER INTERPRETATION OF SECTION 103.021(4)(a) IGNORED THE DEFERENCE AFFORDED THE SECRETARY OF STATE; USURPED FLORIDA'S LEGISLATIVE POWER; AND VIOLATED THE CONSTITUTIONAL RESTRICTION ON THE STATE.

The election process in Florida is committed to the executive branch of government through the Secretary of State as the "chief election officer," and the Secretary of State's judgment is entitled to be regarded by the courts as

presumptively correct. *Bush v. Gore*, 531 U.S. 98, 116 (2000). The statute may well admit of more than one interpretation, but the "general coherence of the legislative scheme may not be altered by judicial interpretations so as to wholly change the statutorily provided apportionment of responsibility among these various bodies." *Id.* at 114.

Importantly, in any election but a Presidential election, a court can give as little or as much deference to Florida's executives as it chooses, so far as Art. II is concerned. With respect to a Presidential election, however, a court must be both mindful of the State Legislature's special role in choosing the manner of appointing electors and deferential to those bodies expressly empowered by the Legislature to carry out its constitutional mandate. *Id.* at 114. This is so because in the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest. For the President and the Vice President of the United States are the only elected officials who represent all of the voters in the Nation. The impact of the votes cast in each State is affected by the votes cast for the various candidates in other states. *Anderson v. Celebreeze*, 460 U.S. 780, 795 (1983). "This inquiry does not imply a disrespect for state *courts* but rather a respect for the constitutionally prescribed role of state *legislatures*." *Bush v. Gore,* 531 U.S. 98, 115 (2000)(emphasis in original).

In this case, the trial court clearly usurped the role of the Secretary of State, as delegated to it by the Florida Legislature, by concluding that the Reform Party of the United States does not meet the indicia of a "national party," that Nader and Camejo were not nominated at a "national convention," and that the Reform Party of Florida is not a "minor political party." Indeed, the statute upon which appellees' claims are based does not contemplate the Secretary of State delving into such matters in that pursuant to Fla. Stat. 103.021(4)(a), the Legislature has determined that it is the filing of the "certificate," only which triggers the Secretary of State's ministerial act of certifying the candidates. Once the Secretary determines that a party qualifies as a minor party, and that its candidates were nominated in accordance with State Law, as was the case here, the statutory scheme requires the Secretary to place such party's candidates on the ballot. Once the certificate is filed, the Secretary of State must certify. Fla. Stat. 103.021(4)(a). So has said our Legislature and that is the end of the matter.

If such determinations were left to the judicial branch of the various state governments throughout the country, then the result is obvious. Each state might establish, relative to other states, inconsistent qualifications and definitions for what is a "national party," what is a "convention," what is "affiliated" and what is a "minor party." This would lead to chaos and a stifling of the profound national

commitment to the principle that debate on public issues pertaining to presidential elections occur on a national level. *Cousins v. Wigoda*, 419 U.S. 477 (1975). The Supreme Court recognized this danger in *Cousins* when it stated:

> Consideration of the special function of delegates to such a Convention militates persuasively against the conclusion that the asserted interest constitutes a compelling state interest. Delegates perform a task of supreme importance to every citizen of the Nation regardless of their State of residence. The vital business of the Convention is the nomination of the Party's candidates for the office of President and Vice President of the United States. To that end, the state political parties are affiliated with a national party through acceptance of the national call to send delegates to the national convention. The States themselves have no constitutionally mandated role in the great task of the selection of Presidential and Vice Presidential candidates. If the qualifications and eligibility of delegates to National Political Party Conventions were left to state law 'each of the fifty states could establish the qualifications of its delegates to the various party conventions without regard to party policy, an obviously intolerable result.

Id. at 489-90.

That the judiciary should not be involved in resolving such questions was again reiterated by the Supreme Court in *Democratic Party Of The United States v. Wisconsin*, 450 U.S. 107, 123 (1981), wherein the Democratic Party sought to avoid the State of Wisconsin's intervention into the Party's nomination process with regard to a Presidential election. In upholding the Democratic Party's

challenge to the State interference, the Supreme Court emphasized that it is not for the courts to mediate disputes in matters involving political parties, stating:

> For even if the State were correct, a State, or a court, may not constitutionally substitute its own judgment for that of the Party. A political party's choice among the various ways of determining the makeup of a State's delegation to the party's national convention is protected by the Constitution. As is true of all expressions of First Amendment freedoms, the courts may not interfere on the ground that they view a particular expression as unwise or irrational.

Id. at 123-24.

Thus, the lower court had no business scrutinizing the method utilized by the Reform Party Convention to choose its Presidential and Vice Presidential candidates.

This does not mean, of course, that a State may not regulate ballot access. It certainly may if a substantial State interest exists. Typical cases in which courts have upheld challenges to ballot access involve allegations of fraud, particularly in the petitioning process. Clearly, in such cases, a substantial interest exists. No allegation of fraud has been made in the instant case, and being a "poor party," which is basically the gist of the appellees' attacks, is not a "substantial interest" and cuts against a finding of a "substantial interest." *Lubin v. Panish*, 415 U.S. 709, 718 (1974)(recognizing that the economic status of a candidate has no bearing on his legitimacy).

There are other federal constitutional constraints that are implicated as a result of the judicial interpretations reached by the trial court judge, particularly, the equal protection clause of the Fourteenth Amendment to the United States Constitution. As recognized in *Bush v. Gore*, 531 U.S. 98, 104 (2000), equal protection principles apply to the manner in which the right to vote is exercised. Any action by the State which, by arbitrary and disparate treatment, values one person's vote over that of another, violates the equal protection clause. *Id.*

In *Bush v. Gore*, 531 U.S. 98, 104 (2000), the Supreme Court held that the lack of any specific rules among the counties designed to ensure uniform treatment with respect to the interpretation of the marks or holes or scratches on an inanimate object such as a piece of cardboard or paper which, it was said, might not have been registered as a vote during the 2000 Florida election machine count, led to unequal evaluation of the ballots in various respects, and therefore, an equal protection violation. Notably, in reaching this conclusion, the Supreme Court relied in part on its prior decision in *Moore v. Ogilvie*, 394 U.S. 814 (1969), where the Court invalidated a county-based procedure that diluted the influence of citizens in large counties in the nomination process. Borrowing from its prior decision in Moore, the Supreme Court stated: "[t]he idea that one group can be granted greater voting strength than another is hostile to the one man, one

vote basis of our representative government." *Bush v. Gore,* 531 U.S. at 104, *quoting, Moore v. Ogilvie*, 394 U.S. at 819.

Just like the pieces of paper in the *Bush v. Gore* case and the various degrees to which they were subjected to review by the different counties, the lower courts judicially created standards not found in the statute as to what is a "national party" and a "minor party" and a "convention," by departing from the language of the statute and creating a more rigorous standard, the trial court's action resulted in an equal protection violation, the same as in *Bush v. Gore*.

In recognition of the dangers and constitutional problems that are inherent in the trial court's judicial interpretation of the statute and its resolution of the issues, there is an even more troubling, pernicious undercurrent to the trial court's conclusions that the Reform Party of the United States is not a "national party," that it is not a "minor party," and that Nader and Camejo were not nominated in a "national convention." For if an elected circuit court judge in Florida is permitted to make a judicial determination of these issues beyond the clear statutory guidelines and in contravention of the Secretary of State's discretion, then who is to say that this same judge will not base his or her decision or at least factor in his or her own political beliefs or positions when reaching such conclusions. The

point is that without any clear statutory guidelines delegated by the Legislature for such determinations, the danger of tainting the political process exists.

To further make the point that the judiciary should not be involved in construing such terms in a statute can be gleaned from a review of Supreme Court cases in other contexts, such as where the Court has resisted traveling down a similar path of defining what is a religion. For example, in *Fowler v. State Of Rhode Island*, 345 U.S. 67 (1953), a minister of the Jehovah's Witnesses, who addressed a religious meeting of the Witnesses and others in a public park, was found guilty of violating a local ordinance providing that no person shall address any political or religious meeting in any public park. After recognizing that the plaintiff's particular sect had "conventions" that were different from the practices of other religious groups (i.e. its religious services were less ritualistic, more unorthodox, less formal than some), the Supreme Court nevertheless held that "it is no business of the courts to say, that what is a religious practice or activity for one group is not religion under the protection of the First Amendment." *Id.* at 68. In explaining the rationale for its decision, the Court expressly stated:

> Nor is it in the competence of courts under our constitutional scheme to approve, disapprove, classify, regulate, or in any manner control sermons delivered at religious meetings. Sermons are as much a part of a religious service as prayers. They cover a wide range and have as great a diversity as the Bible or other Holy Book from which they

> commonly take their texts. To call the words which one miniter [sic] speaks to his congregation a sermon, immune from regulation, and the words of another minister an address, subject to regulation, is merely an indirect way of preferring one religion over another. That would be precisely the effect here if we affirmed this conviction in the face of the concession made during oral argument. Baptist, Methodist, Presbyterian, or Episcopal ministers, Catholic priests, Moslem mullahas, Buddist monks could all preach to their congregations in Pawtucket's parks with impunity. But the head of the law would be laid on the shoulder of a minister of this unpopular group for performing the same function.

Id. at 70.

Just like the question of what is a religion, the questions of what constitutes a "minor party," "national party," was there a "convention," are open to serious debate, but the point is, that the fundamental constitutional rights at the heart of the questions of what is a religion apply equally to the questions in this case. The same danger of stifling religion that occurred in the *Fowler* case through attempted judicial involvement in such sticky issues applies equally here where courts attempt to delve into questions such as those presented in the instant case which involved a determination by the trial court judge of what is a party, was there a convention, etc.

Clearly, similar to the danger posed in religion cases, an affirmance of the trial court's judgment in this case would amount to a judicial determination that

in order for a "legitimate" convention to occur, for example, there must be some minimum number of persons in attendance. Who is to be the arbiter to come up with such a number? Must the convention be held in a particular location. Is a convention held in a Marriot hotel entitled to less deference than a convention at a civic center? Are we going to count the number of balloons, to determine if a "legitimate" convention occurred? The possible scenarios are countless, but the point is that these issues should not be resolved by the judiciary.

III.

Given the State and Federal Constitutional Restraints on Restrictions to Ballot Access, Florida Statute Governing Minor Party Access Was Clearly Written to Facilitate That Access.

Section 103.021(4)(a), Fla. Statutes, (2003) limits a minor party's access to the ballot as follows:

> A minor party that is affiliated with a national party holding a national convention to nominate candidates for president and vice-president of the United States may have the names of its candidates for president and vice-president of the United States printed on the general election ballot by filing with the Department of State a certificate naming the candidates for president and vice-president and listing the required number of persons to serve as electors. Notification to the Department of State under this

> subsection shall be made by September 1 of the year in which the election is held. When the Department of State has been so notified, it shall order the names of the candidates nominated by the minor party to be included on the ballot and shall permit the required number of persons to be certified as electors in the same manner as other party candidates.

Section 103.021(4)(a), Fla. Statutes (2003).

From the express terms of this provision, once a minor party has filed with the Department of State, a certificate naming the candidates for president and vice-president and listing the required number of persons to serve as electors, the Department of State "shall order the names of the candidates nominated by the minor party to be included on the ballot and shall" certify electors. Under this statute, the only limitation the Secretary of State may properly impose on a minor party's right to ballot access is to ensure that the minor has filed a certificate confirming its affiliation that it is affiliated with a national party, holding a national convention to nominate candidates for president and vice-president. Notably absent from the Florida statutes is any definition of the operative terms comprising the minor party's certification, including "national party," "national convention," "affiliated with" or "nominat[ion]." It is apparent that the

legislature did not intend to authorize the state to go behind the certification given by the minor party to challenge its certification to the Secretary that it "is affiliated with the national party holding a national convention to nominate candidates for president and vice–president." Criminal penalties are provided in the election code for person providing false information and/or false certifications and oaths to the Secretary of State under this and other sections of the election code. Any further conditions imposed by the State which would require the Secretary to delve into the inner workings of a party to assess whether it qualifies as a national party holding a national convention, when the statute includes no definitions of these terms, would place the State in the constitutional impermissible position of comparing the internal workings of one party versus others to exclude ballot access without any recognized standards governing the State's action. This is precisely what the State through Judge Davey's order, has done in this case.

IV.

To the Extent It Requires More than the Ministerial Act of Certification, Section 103.021(4)(a) Is Void for Vagueness

1. The Vagueness Doctrine

The Supreme Court enunciated the standards for evaluating vagueness in Grayned v. City of Rockford, 408 U.S. 104 (1972):

> Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory applications.

A statute or regulation is considered unconstitutionally vague under the due process clause of the Fifth or Fourteenth Amendment if it "forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." Connally v. Gen. Constr. Co., 269 U.S. 385, 46 S.Ct. 126, 127, 70 L.Ed.2d 322 (1926); see also State v. Marks, 698 So. 2d 533 (Fla. 1997)(To withstand a void for vagueness challenge, the statute must provide adequate notice of the prohibited conduct as measured by common understanding and practice). "The degree of vagueness that the Constitution tolerates – as well as the relative importance of fair notice and fair enforcement – depends in part on the nature of the enactment."

Village of Hoffman Est. v. Flipside, 455 U.S. 489, 102 S.Ct. 1186, 1193, 71 L.Ed.2d 362 (1982).

In several cases, the Florida courts have found that statutes are vague in violation of due process where a significant term in the statute does not have a definite meaning. See e.g., Whitaker v. Dept. of Ins. and Treasurer, 680 So. 2d 528, 531-532 (Fla. 1st DCA 1996)(finding statute permitting suspension, revocation or refusal of license or appointment of agent if licensee or appointee acted in way "detrimental to public interest" is unconstitutionally vague because the phrase "detrimental to the public interest" is subject to many interpretations"); Bertens v. Stewart, 453 So. 2d 92, 95 (Fla. 2d DCA 1984)(finding that school board's code of conduct rule which does not define "medicine" but prohibits students from possessing "medicine" is unconstitutionally vague in light of the plain and ordinary meaning of "medicine" which must be considered).

2. Vagueness Doctrine in Election/Ballot Access Cases

In Hynes v. Mayor and Council of the Borough of Oradell, 425 U.S. 610, 96 S.Ct. 1755, 48 L.Ed.2d 243 (1976), the Supreme Court invalidated an ordinance for vagueness that required advanced notice to the local police department by any person “desiring to canvass, solicit or call from house to house . . . for a recognized charitable cause . . . or . . . Federal, State, County or

municipal political campaign or cause." Id. at 612-13. The Court considered three factors in striking down the ordinance. First, the coverage of the ordinance was unclear. For example, the ordinance did not explain whether a "recognized charitable cause" means one recognized by the IRS as tax exempt, one recognized by some community agency, or one approved by some municipal official. Id. at 621. Nor did it explain what was meant by a "Federal, State, County or Municipal . . . Cause." Id. Second, the ordinance "did not sufficiently specify what those within it reach must do in order to comply." Id. It did not instruct an individual as to what must be set forth in the notice or what the police would consider sufficient as "identification." Third, the ordinance failed to provide explicit standards for those who apply it. Id. at 622. In light of these shortcomings, and because the ordinance gave the police the power to grant or deny permission to canvass for political causes, the ordinance suffered the vice of vagueness and was struck. Id.

In Kay v. Mills, 490 F.Supp. 844, 849-50 (E.D. Ky. 1980), the plaintiff challenged the constitutionality of a Kentucky law which permitted the Board of Elections to place on the preferential primary ballot candidates the who were "generally advocated and nationally recognized as candidates of the political parties for the office of the President of the United States." The putative

candidate asserted that the Kentucky law was unconstitutionally vague in violation of the due process clause.

The court analyzed the candidates challenge against the three factors discussed in Hynes. As to the first Hynes factor, the court found that the law required candidates to "guess at its meaning" and make important decisions based on "unavoidable guesswork." Id. at 852. With respect to the second Hynes consideration, the statute did not sufficiently specify what those within its reach must do in order to comply. The plaintiff was not informed whether compliance required a showing of support outside the State or recognition by the media, and if so, whether that recognition had to come from a local or national level. Id. at 852. Finally, the court considered the third Hynes criteria and found that the statute imbued its administrators with unreviewable discretion. The court highlighted its concern that granting unlimited discretion to decide "who will gain access to the Presidential primary ballot provides a situation so fraught with potential for abuse as to render the statute void." Id. at 852-53. Particularly, as in the current matter, where a "dark horse" or "one issue" candidate may cause serious political problems to the candidate preferred by the political establishment. Id. at 853. The court accordingly held the statute void for vagueness granting the plaintiff access to the ballot. See id.; see also, Duke v.

Walsh, 790 F.Supp. 50 (D.C. R.I. 1992)(striking as unduly vague a statute that permitted the secretary of state to admit presidential candidate to primary ballot if candidate was a bona fide national candidate "generally recognized nationally as a presidential contender within his (or her) respective party"— statute's coverage was unclear, it forced a candidate to guess at what must be done to insure compliance and it endowed the administrator with unbridled discretion).

3. Section 103.021(4)(a) Is Void for Vagueness

Although the Secretary of State, through her designee, testified to the ministerial and perfunctory attributes of Section 103.021(4)(a), the trial court embarked upon a prolonged journey to determine what the Statute means. The lower court sought, through "expert" testimony, legal opinions as to the meaning of terms such as "national party" and "national convention." As was the case in Hynes, Kay, and Duke, the coverage of the law is unclear, it does not offer a candidate an opportunity to determine his or her compliance, and it vests the secretary of state with unbridled discretion. For example, how is a candidate to know if his "national convention" meets the requirement of the statute? How many attendees must be garnered before the undefined threshold is crossed? How big must the convention hall be? Must every national media outlet cover this convention or is local media coverage adequate? Moreover, what must the

candidate do to insure that Florida's Secretary of State considers him a member of a "national party." Can he turn to the Statute? Surely, the Secretary of State has promulgated regulations through her rule-making authority that can direct the candidate. Unfortunately, she has not. Thus, a candidate is left with a Statute that, on its face, leaves him guessing on whether his right to associate and his constituents right to vote will be afforded their preeminent status.

That the trial court resorted to reliance on the testimony of "experts" to arrive at its understanding of the terms contained in Section 103.021(4)(a) undeniably establishes that the enactment suffers the vice of vagueness. It can hardly be said that "men of common intelligence" should be charge with what the Statute requires, when the learned trial judge himself relied exclusively on "expert" testimony to arrive at his understanding. Accordingly, to the extent Section 103.021(4)(a) requires more than the ministerial act of certification, it is vague in violation of the due process clause of the Fourteenth Amendment and cannot stand.

V.

THE TRIAL COURT'S INTERPRETATION OF 103.021(4)(A) DEPARTED FROM THE CLEAR WORDING OF THE STATUTE AND CUTS CLEARLY ERRONEOUS

Regardless of any constitutional limits on the trial judge's interpretation of Fla. Stat. 103.021(4)(A), the trial judge's interpretation of "minor party," "national party" and "convention," departed from the clear wording of the statute and was clearly erroneous.

1. The Reform Party of Florida was a "minor" party.

The lower court found, based on factors not found in the election laws of Florida that the Reform Party of Florida was not a minor party under Florida law. The Court based this interpretation on factors such as fund raising and other party activities, imposing a quantitative analysis on the definition of "minor party." Without providing any guidelines as to "how much is enough," the Court essentially decided that the collective activities of The Reform Party of Florida did not rise to the level of a "minor party" in Florida. In this, the Court erred.

Fla. Stat. 97.021(14) provides a definition for what is a "minor party" and it says nothing about any quantitative activities. Rather, the statute makes clear that "any group of citizens" may be a minor political party merely by "filing with the department a certificate showing the name of the organization, the names of its current officers, including the members of its executive committee, and a copy of its constitution or bylaws." *Id.* The Reform Party of Florida clearly

met this requirement as the Secretary of State found, and the trial judge erred as a matter of law in imposing additional requirements not found in the law. The Court did find that the Reform Party of Florida was associated with a national party, which begs the question as to how the Court could have found an association with an entity the Court found did not exist. The Court was correct in finding this association, and any doubt about this issue is resolved by the record evidence of the Reform Party of Florida's actual participation in the Reform Party of Florida's 2004 Convention:

> To that end, the state political parties are affiliated with a national party through acceptance of the national call to send state delegates to the national convention.

Cousins v. Wigoda, 419 U.S. 477, 489 (1975).

In finding that the Reform Party USA was not a "national party," however, the Court erred. Florida Law does not define "national party," but the clear intent of the Legislature in 103.021(4)(a) was to define this term in the context of a minor party - - not a major party. The trial court, on the other hand, clearly imposed major party quantitative standards on the definition of "national party," holding essentially that the collective activity of the Reform Party of the USA did not rise to the level of a "national party."

This Court need not decide the level to which a party must rise to become a national party, because the record in this case establishes that as a minor party, the Reform Party USA qualifies if *any* minor party so qualifies.

For if a minor party such as the Reform Party USA, a party boasting the fourth largest registration in America of a minor party, three Presidential candidates in the last twelve years, a State Governor, numerous state candidates, and national party committee status with the FEC qualifying for matching funds, then *no* minor party would ever qualify. Defendant Nader is the Reform Party candidate for president, and he is either on the ballot or fighting to remain on the ballot in some 44 states in the 2004 presidential election. The Reform Party of the United States has a party platform (which is on its website), a national website, a constitution, a set of bylaws, regular meetings, state parties in states across the nation, national officers, and national committees of all sorts including a rules committee, a nominations committee, an executive committee, etc. These committees meet with exhausting regularity, as reflected in the testimony of a defense witness from Tennessee who said that he participated in 10 such meetings of various committees of the Reform Party USA in the mere three months he was involved with the national party. What's more, the Ralph Nader, the candidate running on the Reform Party ticket in Florida in 2004, received 97,000 votes in

the 2000 election in Florida alone. The candidate who ran in 2000 on the Reform Party ticket in Florida received 17,500 votes in Florida in the 2000 election. In other words, of the total 128,000 votes cast for the six minor party candidates running for president in Florida in 2000, the Reform Party candidate in 2000 and Ralph Nader, the Reform Party candidate in 2004, received roughly 90% of all votes cast for minority party candidates in Florida in the last election cycle.

In a pernicious irony, at the same time the plaintiffs are arguing with straight face that the Reform Party of the United States is an entity of little significance with no "national" character, they are fighting tooth and nail to keep the Reform Party's candidate off the ballot by at this moment filing and pursuing legal challenges to his ballot access in states throughout the nation. T- campaign chairman. Even more egregious, the testimony reflected that though they are seeking ballot access in 44 states, the challenges from the Democratic party have come in virtually every instance, only in those states widely recognized to constitute "battle ground states" in which the race between the Republican and Democratic presidential candidates is too close to call.

How could any decision maker, reviewing these facts determine that the Reform Party of the United States does not constitute a "national party" for purposes of a provision which was clearly designed to promote and facilitate non-

restrictive ballot access to minor parties in Florida pursuant to the 1998 amendment to the Florida constitution. The trial court made this determination by relying on the testimony of a political science professor called by the Democrats who testified as to what he believed the proper criterion were to qualify an entity to be a national political party.

Whatever the standards, the Reform Party USA clearly qualifies as a "national party," and the trial judge erred in finding otherwise.

Finally, the trial judge erred in determining that the Reform Party USA's convention did not qualify as the "convention" contemplated by 103.021(4)(a). Again, Florida's Legislature did not define "convention," when it drafted 103.021(4)(a), but the definition must, necessarily, assume the context of a minor party. Thus, such a convention would most certainly not have the glamour and prominence of a major party convention, but such a convention would, nevertheless, meet the intent of the Legislature. It would be absurd to assume that the Legislature intended a minor party to have to spend any certain amount of funds on a convention or produce any level of convention "show" in order to gain ballot access for its candidate.

Whatever the requirements the statute contemplates for convention, the record establishes that the Reform Party USA meets any constitutionally

permissible standards. By imposing qualitative standards for such a convention not found in the statutes, the Court departed from the law.

Clearly, the Reform Party USA and the Reform Party of Florida met the requirements of 103.021(4)(a). The Reform Party of Florida is a "minor party," it is affiliated with a "major party," holding a "national convention," and the Reform Party's candidates for President and Vice President were chosen at the convention and were properly qualified by the Secretary of State of Florida. The trial court had no business imposing qualitative standards not found in the statute and otherwise delving into the internal workings of the Reform Party in choosing its candidates. *Democratic Party v. Wisconsin,* 450 U.S. 107 (1987).

CONCLUSION

Based on the foregoing, the final judgment of the trial court should be reversed.

Respectfully submitted this 16th day of September, 2004.

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I do hereby certify that, pursuant to Fla. R. App. P. 9.100(1), this Answer Brief was printed in Times New Roman with a 14-point font.

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