No. 22-12451

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

THE PEOPLE'S PARTY OF FLORIDA; ELISE MYSELS; CAROLYN WOLFE; & VICTOR NIETO,

Plaintiffs-Appellants

v.

THE FLORIDA DEPARTMENT OF STATE, DIVISION OF ELECTIONS; CORD BYRD, SECRETARY OF STATE; & BRIAN CORLEY, PASCO COUNTY SUPERVISOR OF ELECTIONS,

Defendants-Appellees

On Appeal from the United States District Court
for the Middle District of Florida, Tampa Division
No. 8:22-cv-1274 TPB-MRM (Hon. Thomas Barber)

LETTER TO THE CIRCUIT CLERK CITING SUPPLEMENTAL AUTHORITY PURSUANT TO F.R.A.P. 28(j) & I.O.P. 6

Challenge to the Constitutionality of Fla. Stat. § 99.021

/s/ Christopher Kruger

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People's Party of Florida v. Florida Dept. of State, Division of Elections 22-12451

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Plaintiffs-Appellants certify that there have been no additions nor deletions to their prior Certificates of Interested Persons filed with the Court as part of their original Opening Brief filed on August 4, 2022, and as recently as August 17, 2022. Plaintiffs-Appellants make this Certification as required by Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1.

Dated: August 23, 2022

s/Christopher Kruger
Christopher Kruger
Counsel for Plaintiffs-Appellants

In *Rebekah Jones v. Margaret Ann "Peggy" Schiller, et al.* No. 1D22-2465 (Fla. 1st. DCA) (August 22, 2022), Judge Nordby provided the history of Florida Statutes §99.021.

In the 1970s disaffiliation statute, a candidate had "to affirm that he had 'not been a candidate for nomination for any other political party' for the six months before the general election" instead of approximately seventeen months in the current affiliation statute. *Jones*' cited case law confirms, rather than refutes, that the 2011 version of § 99.021 was never challenged by a newly-formed party, or any political party whatsoever. See Reply Brief at 5.

The Court found §99.021 to be unenforceable by the State; the Court found §99.021 to be unenforceable by private suit. The Court allowed Jones on the ballot.

The *Jones* Court cited *Ervin v. Collins,* 85 So. 2d 852 (Fla. 1956), a case recognizing the confluence of individual and associational rights in election cases, for the proposition that "[t]he right to be a candidate for public office is a valuable right, and no one should be denied this right unless the Constitution or applicable valid law expressly declares him ineligible."

Judge Makar's concurrence questioned the Statute's usurpation of party-rights by the State:

"[A] …provision that is a bit of an odd duck because, if actionable, it would make the judicial branch of the State of Florida—rather than the political party

itself—the sole arbiter of whether a candidate's oath of political affiliation is adequate."

Jones states: "Our decision today holds only that the party affiliation requirements in section 99.021(1)(b) cannot be the basis for disqualification of a duly qualified candidate." *Jones* was thus decided on statutory interpretation, not constitutional grounds.

It would however be the supreme irony if Appellants in this case, who "played by the rules" instead of executing false oaths, were nevertheless disqualified.

Respectfully,

/s/ Christopher Kruger

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FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D22-2465

REBEKAH JONES,

Appellant,

v.

MARGARET ANN "PEGGY" SCHILLER, ARLENE COOK-WILLIAMS, BOBBY BEASLEY in his official capacity as the Supervisor of Elections in Walton County, DAVID H. STAFFORD in his official capacity as the Supervisor of Elections in Escambia County, PAUL LUX in his official capacity as the Supervisor of Elections in Okaloosa County, TAPPIE VILLANE in her official capacity as Supervisor of Elections in Santa Rosa County, and CORD BYRD, in his official capacity as Florida Secretary of State,

Appellees.

On appeal from the Circuit Court for Leon County.
John C. Cooper, Judge.

August 22, 2022

NORDBY, J.

Rebekah Jones aims to be the Democratic Party's candidate for Florida's 1st Congressional District. Before that, though, she must prevail over her sole opponent in the primary election. And that candidate, Margaret Ann "Peggy" Schiller, has sued to disqualify Jones and knock her off the ballot. If successful, Schiller will advance to the general election as the Democratic Party candidate.

Schiller's legal challenge is straightforward. She argues that Jones failed to properly qualify as a Democratic primary candidate because Jones was not a registered member of the Democratic Party for a full year before running. Jones counters that she did everything she needed to do to qualify for the ballot. She maintains she is duly qualified and there is no basis for the trial court to remove her from the ballot.

The trial court agreed with Schiller. Based on the evidence presented, the trial court found that Jones had not been a registered member of the Democratic Party for the required time under section 99.021, Florida Statutes, and disqualified her.

On appeal, Jones raises several issues, only one of which we address today. Her argument focuses on the text of section 99.021 and presents us with an issue of first impression: whether, following the Department of State's determination that a candidate has duly qualified for the ballot, the veracity of that candidate's sworn party affiliation statement may be challenged under section 99.021 and used as a basis for disqualification. Because we conclude that it may not, we reverse the final judgment.

I.

We begin with the facts. Jones filed her candidate qualifying paperwork with the Department of State during the June 2022

qualifying window.[1] The Department reviewed the packet, determined everything was in order, and deemed Jones qualified as a congressional candidate for District 1. Schiller likewise qualified for the ballot, and both candidates were certified to appear on the Democratic primary ballot.

Over a month later, Schiller (along with Appellee Arlene Cook-Williams, a registered Democratic voter in the district) filed an "Emergency Complaint for Declaratory and Injunctive Relief" seeking to remove Jones from the ballot. Already, the Department of State had certified the list of qualified candidates to the supervisors of elections in District 1, the ballots had been printed, and vote-by-mail balloting had begun.

The complaint alleged that, as part of her qualifying paperwork, Jones had affirmed under oath that she had been a registered member of the Democratic Party for 365 days before qualifying. But that in fact was not true. Rather, for a two-month period in 2021, Jones had registered to vote without party affiliation. The complaint sought declarative and injunctive relief to disqualify Jones as a Democratic primary candidate based on her violation of the party oath requirement in section 99.021.

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[1] Jones' candidate paperwork included all the items required under section 99.061(7)(a). For her written statement of party affiliation, Jones swore to the following under oath:

> I am a member of the Democratic Party; I have been a registered member of this political party, for which I am seeking nomination as a candidate, for 365 days before the beginning of qualifying preceding the general election for which I seek to qualify; and I have paid the assessment levied against me, if any, by the executive committee of the above-stated political party.

With the primary election looming, the trial court acted promptly. Following a final evidentiary hearing, the trial court found that these facts had been proven by a preponderance of the evidence:

- On April 20, 2021, Jones registered to vote as a member of the Democratic Party in Montgomery County, Maryland.

- On June 11, 2021, Jones submitted a change in her voter registration to Montgomery County, Maryland from Democrat to Unaffiliated voter.

- On June 25, 2021, Jones filed paperwork with the Federal Election Commission to run for the U.S. House of Representatives and listed her party affiliation as "Independent." Jones subsequently made statements in social media and to the press that she intended to run for Congress without a party affiliation.

- On August 11, 2021, Jones submitted a change in her voter registration to Montgomery County, Maryland from Unaffiliated voter to the Democratic Party.

- On August 12, 2021, Jones filed amended paperwork with the Federal Election Commission to run for the U.S. House of Representatives and listed her party affiliation as "Democratic Party." Jones subsequently made statements to the press that she was running for Congress as a Democratic Candidate.

- On June 13, 2022, Jones attempted to qualify to run for U.S. House of Representatives, District 1 in Florida. As part of her qualifying papers, Jones swore an oath that she had been a registered member of the Democratic Party for 365 days before the beginning of the qualifying period.

Given these findings, the trial court determined that Jones "fails to meet the requirements set forth in § 99.021 and is thus not qualified to run as a Democratic candidate in the August 23, 2022,

primary election." The trial court construed the statute to require that Jones must have been, in fact, a registered member of the Democratic Party from June 14, 2021, to June 13, 2022, to qualify.

The trial court entered judgment for Schiller and her co-plaintiff, enjoined the Secretary of State to decertify Jones as a candidate, and directed the supervisors of elections in Walton, Escambia, Okaloosa, and Santa Rosa counties to provide notice of Jones' disqualification to voters. The trial court denied Jones' request to stay the order pending appellate review.

Jones appealed the final judgment, sought expedited review, and asked this Court to review the trial court's denial of her stay request. We set an expedited briefing schedule and issued an order staying the final judgment. *See Lampert-Sacher v. Sacher*, 120 So. 3d 667, 668 (Fla. 1st DCA 2013) (recognizing a stay pending appeal is appropriate when an appellant shows "a likelihood of prevailing on appeal, irreparable harm to movant if the motion is not granted, or a showing that a stay would be in the public interest"); *State ex rel. Siegendorf v. Stone*, 266 So. 2d 345, 347 (Fla. 1972) ("[T]o remove [a candidate] from the people's consideration, and his name from the election ballot, would be irremediable").

II.

A.

We now look to the law governing this case. Under Florida's Election Code, a person seeking to qualify as a congressional candidate must file specific paperwork with the Department of State within a specific candidate-qualifying window. *See* § 99.061(1), Fla. Stat. (2022). This paperwork includes a candidate's oath or affirmation containing "the name of the candidate as it is to appear on the ballot; the office sought, including the district or group number if applicable; and the signature of the candidate . . . ." § 99.061(7)(a)2., Fla. Stat. The form of the candidate's oath for federal office is set out in section 99.021, Florida Statutes. *See* § 99.021(1)(a)2., Fla. Stat.

When the prospective candidate seeks to run on behalf of a political party, the qualifying paperwork must also include a "statement of political party affiliation." § 99.061(7)(a)3., Fla. Stat. This written statement, which is also detailed in section 99.021, is to be made "at the time of subscribing to the [candidate's] oath or affirmation" and must state the "party of which the person is a member" and that "the person has been a registered member of the political party for which he or she is seeking nomination as a candidate for 365 days before the beginning of qualifying preceding the general election for which the person seeks to qualify." § 99.021(1)(b), Fla. Stat.

Because the party affiliation statement is to be made "at the time of subscribing to the [candidate's] oath or affirmation," the Statement of Party and the Candidate Oath both appear on the same Department form. *See* Fla. Dep't of State Form DS-DE 300A, Candidate Oath Federal Office With Party Affiliation (Rev. 08/2021).[2] This form must be signed by the candidate and notarized. *See* § 99.061(7)(a)2. (requiring the candidate's oath required by section 99.021 to contain "the signature of the candidate, which must be verified under oath or affirmation pursuant to s. 92.525(1)(a)").

A filing officer at the Department then reviews this form as part of a candidate's qualifying paperwork to determine whether each submitted item is "complete on its face, including whether items that must be verified have been properly verified pursuant to s. 92.525(1)(a)." § 99.061(7)(c), Fla. Stat. This review is strictly "ministerial": "The filing officer may not determine whether the contents of the qualifying papers are accurate." *Id.*

If all the paperwork is in order, the candidate is qualified to appear on the ballot. If, however, something is facially amiss, and not cured by the close of the qualifying period, the person fails to qualify as a candidate. *See* § 99.061(7)(b), Fla. Stat. ("If the filing officer receives qualifying papers . . . which do not include all items . . . prior to the last day of qualifying, the filing officer shall

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[2] *Available at* https://files.floridados.gov/media/704464/dsde300a-fed-oath-pty-aff-august-2021-1.pdf.

make a reasonable effort to notify the candidate of the missing or incomplete items and shall inform the candidate that all required items must be received by the close of qualifying."). After the qualifying window closes, the Department certifies the names of all the candidates who have qualified to the supervisors of elections. § 99.061(6), Fla. Stat. ("The Department of State shall certify to the supervisor of elections, within 7 days after the closing date for qualifying, the names of all duly qualified candidates for nomination or election who have qualified with the Department of State."). The Legislature has expressly exempted the Department's ultimate decision "concerning whether a candidate is qualified" from challenge or review under Florida's Administrative Procedure Act. § 99.061(11), Fla. Stat.

B.

Because this case involves a candidate's party affiliation statement under section 99.021, we include some background. This provision has a long history in Florida's Election Code. The party oath requirement first appeared in 1913 as part of the general candidate oath.[3] Along with stating party membership, a

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[3] In 1913, Florida's Election Code required the following:

> Every candidate for nomination to any office herein provided for shall be required to take and sign and subscribe to an oath or affirmation in writing, in which he shall state the particular party of which he is a member; that he did not vote for any nominee of any other party, National, State or County, at the next preceding general election; the title of the office for which he is a candidate; that he is a qualified voter of the State, giving the name of the county of his legal residence; that he has paid his poll taxes legally due; that he is qualified under the constitution and laws of Florida to hold the office for which he desires to be nominated; that he has paid the assessment levied against him as a candidate for said office by the appropriate executive committee of the political party of which he is a member; that he has not

candidate had to affirm that "he did not vote for any nominee of any other party" in the preceding general election. Ch. 6469, § 22, at 252, Laws of Fla. (1913). A prospective candidate had to obtain the party oath form directly from the executive committee of the relevant political party. Ch. 6469, § 22, at 253, Laws of Fla. (1913). Under this statutory framework, the parties could, in a sense, act as gatekeepers over who received the oath form.

These requirements changed slightly across the next five decades. Party candidates needed to affirm party membership like today. But they also had to commit to voting for candidates from their party. *See* Ch. 19663, § 3, at 1614–15, Laws of Fla. (1939); Ch. 26870, § 3, at 837–38, Laws. of Fla. (1951); Ch. 28156, § 10, at 559–60, Laws of Fla. (1953); Ch. 57-742, § 1, at 1062–64, Laws of Fla.; Ch. 61-128, § 1, at 220, Laws of Fla.; Ch. 63-66, § 1, at 117–19, Laws of Fla.; Ch. 65-376, § 1, at 1293–94, Laws of Fla. By 1967, candidates no longer had to swear support for candidates of their party, but they had to affirm they would not actively and publicly oppose those candidates or support candidates from another party. Ch. 67-149, § 1, at 303, Laws of Fla.

In the 1970s, the Legislature made several more tweaks. Candidates had to affirm that they were not "a registered member of any other political party and ha[d] not been a candidate" for any other party for six months. Ch. 70-269, § 2, at 845, Laws of Fla. The Legislature also excised the political party oath from the general candidate oath, making it a standalone provision. *See* Ch. 77-175, § 6, at 927, Laws of Fla. Finally, the political parties were no longer responsible for providing the oath form to their prospective candidates; instead, candidates had to obtain the form from the qualifying officers (i.e., from the Department or Supervisor of Elections). Ch. 77-175, § 6, at 926, Laws of Fla. With these changes, the statute began to resemble its current form.

> violated any of the laws of the State relating to elections or the registration of voters.

Ch. 6469, § 22, at 252, Laws of Fla. (1913).

In 2011, the Legislature amended the six-month provision so that candidates had to affirm that they "ha[d] not been a registered member of any other political party for 365 days before the beginning of qualifying." Ch. 2011-40, § 13, at 21, Laws of Fla. The amendment also removed language about prior candidacies for any other political party. *Id.*

And finally, just last year, the statute was amended to its present form.

III.

A.

That brings us to the heart of this dispute: whether the veracity of a duly qualified candidate's sworn party affiliation statement under section 99.021 may be challenged and used as a basis for disqualification from the ballot. It cannot.

Because this case turns on a question of statutory interpretation, our review is de novo. *State v. Lewars*, 259 So. 3d 793, 797 (Fla. 2018). We must first look to the language of the statute and consider its words, not in isolation, but in the context of the entire section. *Id.* When that language is clear and unambiguous, we must adhere to the statute's plain meaning and forgo the use of any other tools of statutory construction. *Id.*

Our analysis starts with the text, which directs that "any person seeking to qualify for nomination as a candidate of any political party shall, at the time of subscribing to the [candidate's] oath or affirmation, state in writing:

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

2. That the person has been a registered member of the political party for which he or she is seeking nomination as a candidate for 365 days before the beginning of qualifying 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.

§ 99.021(1)(b), Fla. Stat. (2022).

In plain terms, this language requires only that a prospective candidate file a written affirmation of the three statements listed in subparagraphs 1.–3. The text of the statute imposes no requirements beyond that. It does not require proof of actual party affiliation, nor does it speak at all to disqualification of a candidate if those sworn affirmations turn out to be untrue. It provides no express authority to disqualify a party candidate if she was not in fact a registered party member during the 365-day window.

Although the Legislature could have included explicit enforcement language in this statute, it didn't. And Schiller has not identified any other language in Florida's Election Code that would provide a statutory basis for Jones' removal under the circumstances.

Indeed, other provisions of Florida's Election Code reinforce our reading of section 99.021. The candidate qualification process in section 99.061 makes clear the Department's "ministerial function in reviewing qualifying papers" to determine whether a person has qualified for the ballot. § 99.061(7)(c), Fla. Stat. Embedded in this ministerial duty is the expectation that, if a candidate's paperwork is in order—facially complete and properly verified—the candidate will be qualified to appear on the ballot. The Legislature designed the process to facilitate ballot access. Once a candidate has obtained access to the ballot through qualification, the only way to remove that candidate is to identify some constitutional or statutory basis for disqualification. *Cf. Vieira v. Slaughter*, 318 So. 2d 490, 491 (Fla. 1st DCA 1975) (citing *Ervin v. Collins*, 85 So. 2d 852 (Fla. 1956)) ("The right to be a candidate for public office is a valuable right, and no one should be denied this right unless the Constitution or applicable valid law expressly declares him ineligible.").

One only needs to look at the statutory section immediately preceding 99.021 for an example of the Legislature providing an express statutory basis for disqualification. In section 99.012, Florida Statutes, Florida's Resign-to-Run Law details various resignation requirements to avoid an individual concurrently holding separate public offices. If a court determines that a qualified candidate did not comply with the Resign-to-Run provisions, that "person shall not be qualified as a candidate for election and his or her name may not appear on the ballot." § 99.012(6), Fla. Stat.

Relatedly, persons seeking to qualify as a candidate for any office other than judicial or federal must affirm in their candidate's oath "that he or she has resigned from any office from which he or she is required to resign pursuant to s. 99.012, Florida Statutes." § 99.021(1)(a)1., Fla. Stat. Yet section 99.021(1)(a)1. is not an enforcement provision for disqualification. *See Lewis v. City of Tampa*, 64 So. 3d 143, 145 (Fla. 2d DCA 2011) (holding that the oath in section 99.021 cannot be construed to automatically resign a candidate from his other position, reasoning, "The statutory opportunity to seek the removal of a name from the ballot would be useless if every qualifying candidate was deemed to have automatically resigned."). Instead, section 99.012(6), the Resign-to-Run Law, provides the basis for disqualification.

If this Court were to construe the party affiliation statement provision in section 99.021(1)(b) as having an *implied* disqualification mechanism, the *express* Resign-to-Run disqualification language in section 99.012(6) would be meaningless. Consistent with longstanding principles, this Court presumes that the Legislature enacts laws with purpose, and we decline to construe statutes in a way that would render them meaningless. *See, e.g.*, *Scherer v. Volusia Cnty. Dep't of Corr.*, 171 So. 3d 135, 139 (Fla. 5th DCA 2015) ("No part of a statute, not even a single word, should be ignored, read out of the text, or rendered meaningless, in construing the provision."); *Heart of Adoptions, Inc. v. J.A.*, 963 So. 2d 189, 198 (Fla. 2007) ("We are required to give effect to every word, phrase, sentence, and part of the statute, if possible, and words in a statute should not be construed as mere surplusage." (internal quotations and citations omitted)). Just as the resignation language of the candidate's oath

in section 99.021(1)(a)1. does not have an implied disqualification mechanism, neither does the party affiliation statement in 99.021(1)(b).

Our examination of these provisions underscores the importance of adhering to the text when construing Florida's Election Code. If we were to construe the party affiliation statement in section 99.021 as a basis for disqualification, we would be reading into the statute what the Legislature chose not to include. *Cf. St. Petersburg Bank & Tr. Co. v. Hamm*, 414 So. 2d 1071, 1073 (Fla. 1982) (quoting *Van Pelt v. Hilliard*, 78 So. 693, 694 (Fla. 1918) ("[E]ven where a court is convinced that the legislature really meant and intended something not expressed in the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity.")).

B.

Only a handful of Florida cases address party oaths or statements of affiliation. Under close examination, none compels a different result.

The first is *Polly v. Navarro*, in which the Fourth District addressed a candidate who switched parties before qualifying. 457 So. 2d 1140, 1142 (Fla. 4th DCA 1984). At the start of his campaign for sheriff, he identified himself as a Democrat. He later changed his party affiliation and sought to qualify as a Republican candidate for the general election. The party affiliation statement at that time included a party-switching provision that required a prospective candidate to affirm that he had "not been a candidate for nomination for any other political party" for the six months before the general election. *Id.* (quoting § 99.021(1)(b), Fla. Stat. (1983)). The Fourth District concluded the candidate had violated section 99.021 and required his removal from the ballot. *Id.*

We find *Polly* unpersuasive. We note we are not bound by decisions from other districts. But in any event, it does not appear that the Fourth District considered the precise issue before us. As the opinion notes, the sole textual argument made by the candidate urged the court to limit the statute's application to only

candidates that had qualified for another party in the primary election. *Id.* at 1142–43. The Fourth District rejected this forced construction as the word "primary" was nowhere in the statute. *Polly*, therefore, does not address the specific question here.

Then there are a series of decisions from the Florida Supreme Court addressing constitutional challenges. The facts and reasoning in each are sparse. *Mairs v. Peters* addressed a challenge brought by a prospective candidate who refused to execute a party affiliation oath. 52 So. 2d 793 (Fla. 1951). At that time, the oath required a candidate to affirm that "he did not vote for any nominee of any other party, national, state or county, at the last general election; . . . and that he pledges himself to vote for all nominees of such party—national, state or county, whose names shall appear upon the ballot at the next succeeding general election." *Id.* at 794. The Court upheld the constitutional validity of the statute.

This was followed by *Crowells v. Petersen*, which rejected another constitutional challenge by a prospective candidate who objected to executing the oath. 118 So. 2d 539, 539 (Fla. 1960). And in *Driver v. Adams*, the Court rebuffed yet another attempt to invalidate the oath requirement. 196 So. 2d 916, 916 (Fla. 1967). None of these cases addressed the issue before us, as none of the prospective candidates executed the oath and qualified for the ballot. And the legal analysis focused on the constitutional arguments, not the interpretive question we face here.

There are two cases of an older vintage where the Florida Supreme Court came close to the issue, but these were resolved on other statutory grounds. In *State ex rel. Brobston v. Culbreath*, the prospective candidate submitted a candidate's oath in which he affirmed that he was "a qualified (but not registered) voter of Hillsborough County." 168 So. 244, 244 (Fla. 1936). The oath was not accepted by the filing clerk because the candidate had added the parenthetical language to the statutory oath confirming he was not a registered elector. The Court determined this added language, appearing on the face of the oath, constituted a "substantial and material variation" from the statutory oath requirements; thus, the clerk had properly declined to accept the form. Of note, in concurrence, Justice Davis explained that he

believed the case could be resolved on the added ground that "[n]o 'qualified' elector whose party affiliation is not that of a registered Democrat can lawfully be deemed a member of the Democratic party for the purpose of being a candidate in a Democratic primary election." *Id.* at 245 (Davis, J., concurring). But the majority decision had not reached this issue.

And last, in *State ex rel. Hall v. Hildebrand*, the petitioner sought a writ of mandamus to have his name appear on the ballot. 168 So. 531 (Fla. 1936). The petitioner submitted all the paperwork to be a candidate in the Democratic primary election. The clerk, however, concluded he was ineligible because he had not specially registered to participate in the Democratic primary election. *Id.* at 531–32. Although the prospective candidate had registered to participate in the general election, "primary election registration is altogether separate and distinct from registrations . . . to vote in general elections." *Id.* at 532. The Court noted that "[t]he primary election laws of this state clearly require participants in primary elections, whether as voters or candidates, to specially register for that purpose." *Id.* While registration for the general election did not require an elector to declare party affiliation, registration as an elector for a party's primary election required a declaration of party affiliation. *Id.* The Court denied relief, explaining the mandamus petition "voluntarily show[ed] a clear absence of legal right on his part to participate in the affairs of the Democratic Party, because of his failure to register and declare his party affiliation as a Democrat in the manner and method prescribed by law." *Id.* This "absence of legal right" to appear on the ballot stemmed from his acknowledged failure to comply with the statutory provision requiring special registration for the primary election, not his candidate's oath.

Because these cases touched upon different circumstances, and were resolved on different grounds, none of them changes our reading of section 99.021.

C.

Our decision today holds only that the party affiliation requirements in section 99.021(1)(b) cannot be the basis for disqualification of a duly qualified candidate. It does not disturb

other instances when our court has recognized constitutional or statutory bases to remove a candidate from the ballot. *See, e.g.*, *McCallum v. Kramer*, 299 So. 3d 630 (Fla. 1st DCA 2020) (affirming trial court's removal of state attorney candidate from ballot because she was constitutionally ineligible to hold the office she sought); *Hoover v. Mobley*, 253 So. 3d 89 (Fla. 1st DCA 2018) (affirming decertification of a qualified candidate who failed to timely file her financial disclosure form based on the "clear and unambiguous statutory requirement" that all of a candidate's qualifying paperwork must be received before the close of the qualifying period); *Varn v. Vasilinda*, 985 So. 2d 1241 (Fla. 1st DCA 2008) (affirming removal of qualified candidate from ballot for failure to comply with Florida's Resign-to-Run Law).

Finally, we are mindful of the concern that our ruling today could invite bad actors to qualify for the ballot using false party affiliation statements to inject chaos into a party's primary. But there are several remedies to that concern. First, there are criminal and financial consequences to lying under oath. *See, e.g.*, § 837.012, Fla. Stat. (criminalizing false statements made under oath); § 775.082(4)(a), Fla. Stat. (authorizing a criminal sentence of a "definite term of imprisonment not exceeding 1 year"); § 775.083(1)(d), Fla. Stat. (authorizing imposition of a fine up to $1,000). And the Legislature can consider enhancing the penalties for perjury in the context of candidate qualifying. Second, the Legislature may amend the election code to expressly address disqualification of candidates who have qualified under false pretenses. And finally, the political parties themselves always remain free to inform voters about any criminal or underhanded tactics by a candidate.

IV.

For the above reasons, the trial court erred when it disqualified Jones. The record reflects that she timely submitted her party affiliation statement on the Department's sworn candidate oath form. Her statement mirrored the requirements of 99.021(1)(b). Upon doing so, she performed everything required of her under section 99.021. The Department then performed its ministerial function, reviewed her candidate paperwork, and ultimately deemed Jones a qualified candidate. Having been duly

qualified, and without any constitutional or statutory basis for her removal, she has a right to appear on the ballot.

We reverse the final judgment and remand for the trial court to enter judgment in favor of Jones.

REVERSED and REMANDED.

JAY, J., concurs; MAKAR, J., concurs with opinion.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

MAKAR, J., concurring.

I join Judge Nordby's opinion in full, noting that the issue decided has evaded direct review over the years thereby leaving open a narrow path for our panel's interpretation of the statutory structure presented and whether a remedy has been made available by the Legislature.

It bears noting that the statute at issue, section 99.021, Florida Statutes, which is entitled "*Form* of candidate oath," contains a political affiliation provision that is a bit of an odd duck because, if actionable, it would make the judicial branch of the State of Florida—rather than the political party itself—the sole arbiter of whether a candidate's oath of political affiliation is adequate. § 99.021(1)(b), Fla. Stat. (2022) (emphasis added). Under the current statute as written, a political party is not directly empowered to decide or weigh in on whether a candidate is truly a member of its fold; instead, the statute essentially entrusts a candidate to make a valid declaration and oath, enforceable by means outside the election code itself, leaving the party on the sidelines with no clear *legal* right to enforce the statute. Perhaps that is the reason why the Democratic Party is neither a party nor an amicus curiae in this case, which is unfortunate; the party may

recognize that it has no *legal* role to play under the statute, only a political one from the sidelines once the primary process has begun, which seems to be an inefficient way to run a primary.

As a foundational matter, however, if a government run primary election is to be feasible, a statutory standard of some sort is necessary to categorize and deem eligible those who seek the nomination of a political party. The standard may be lax or strict, but *who* is to enforce the statutory standard and *when* enforcement is allowed ought to be made clear in the statute itself, which this case demonstrates is lacking. At a minimum, a political party ought to have a point of entry and a means to express its view about candidates' party qualifications under the statute; and a limited window for legal challenge ought to be specified to avoid the type of on-the-ballot/off-the-ballot seesaw that occurred in this case.

Moreover, it gives me great pause in voting to reverse the trial court's thoughtful and facially reasonable order that some ill-motivated ne'er-do-wells may attempt to pawn themselves off as legitimate members of a political party, when they are not, simply to inject chaos or conspiratorial intrigue into a party's primary; the ingenuity and unscrupulousness reflected in political gamesmanship knows no bounds. In this case, however, it is clear that the candidate in question falls decidedly in the Democrat side of the ledger and is not attempting to be a non-Democrat in Democrat clothing.

In conclusion, I do not fault the trial judge for his interpretation and application of the statute; he took a reasonable and defensible approach. As with many statutes, including this one, a range of reasonable interpretation exists, making it possible that a trial judge chooses a reasonable path only to be reversed because the appellate court deems an alternative path more reasonable. Such is the law. Due to the remedial gap in the statute, the Legislature may wish to consider implementing a mechanism to decide, early-on, the bona fides of a political primary candidate's party oath; currently, one is lacking and requires that political party candidates be taken at their word, which is likely not to be sustainable.

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Matthew R. Shaud, Assistant County Attorney, Escambia County Attorney's Office, Pensacola, for Appellee David H. Stafford, Supervisor of Elections, Escambia County.

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the type-volume limitations of FED. R. APP. P. 27(d)(2)(A) because this Letter to the Clerk citing Supplemental Authority contains 306 words, excluding the parts of the motion exempted by FED. R. APP. P. 32(f).

This document complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because this document has been prepared in a proportionately spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font.

Dated: August 23, 2022

s/ Christopher Kruger
Christopher Kruger
Counsel for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system on August 23, 2020. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: August 23, 2022

s/ Christopher Kruger
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