FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D22-2423

JERRY TORRES, as a candidate for Member of Congress from Florida, District 14,

Appellant,

v.

SEAN SHAW; THOMAS HODGES; and the FLORIDA DEMOCRATIC PARTY,

Appellees.

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

August 19, 2022

OSTERHAUS, J.

Jerry Torres appeals a circuit court judgment disqualifying him from running for Congress in Florida's 14th Congressional District because he submitted an improperly verified candidate oath and party affiliation form. We reverse because § 99.061(7)(c), Florida Statutes, requires the Florida Department of State to determine whether items have been "properly verified pursuant to s. 92.525(1)(a)." And no private right of action exists for challengers in Appellees' shoes to obtain a second-opinion, judicial declaration superseding the Department's decision on the proper

verification of paperwork and thereby obtain a candidate's disqualification.

I.

In June 2022, Torres submitted qualifying paperwork to the Florida Department of State to run for Congress. His submission ultimately included all of the items required by § 99.061(7)(a), including two versions of the Federal Candidate Oath/Statement of Party Form (Department Form DS-DE 300A) (Oath-Statement Form) that Torres signed and had verified by different notaries public from Mississippi on the last day of the qualifying period. The Department determined Torres's paperwork to be complete and it qualified him as a congressional candidate.

Twelve days after qualifying ended, two voters and the Florida Democratic Party served a complaint seeking an emergency declaratory and injunctive relief disqualifying Torres as a candidate. They alleged that Torres's Oath-Statement Form hadn't been properly signed, sworn, and subscribed by the notary public in Mississippi because Torres was in Africa on the date the Oath-Statement Form was signed. Torres apparently signed multiple copies of the Oath-Statement Form and left them for his campaign assistants to have notarized and filed. They were later notarized as having been sworn to and subscribed in the physical presence of the notary public while Torres was in Africa. And whereas § 92.525(1)(a) allows for verification by notaries outside of Florida, *see* § 92.50(2), Fla. Stat., the Complaint alleged that the State of Mississippi would deem Torres's notarization to be null and void.

The Complaint attacked the mechanics of Torres's notarization and whether it was properly done. Conversely, Appellees didn't allege that Torres made false statements as to substantive matters covered by the Oath-Statement Form: that he was qualified under federal law to hold office; that he wished to be nominated; that he held no other public office; that he would support the Constitution of the United States; that he hadn't been a registered member of another political party within the past year; and that he had paid any relevant assessment. Appellees have also acknowledged that Torres's Oath-Statement Form was facially complete. All the right blanks were completed, providing

Torres's name; office sought; district; voter registration number; phonetic spelling of his name; party identification; signature; telephone number; email address; address; and a completed public notary section complete with the Mississippi notary public's signature and stamp.[1] The dispute involved only whether the Oath-Statement Form was properly verified by the notary public.

After rejecting Torres's argument that Appellees lacked standing and a private right of action, the circuit court expedited a trial as to how Torres completed the Oath-Statement Form. And it concluded that the form hadn't been properly verified under § 92.525(1) because:

> Torres was not under oath, he never spoke to a notary about his form, he signed a blank candidate oath form, and he . . . never appeared before a notary in Mississippi . . . prior to the end of the qualifying period.

Consequently, the court entered final judgment deeming Torres not qualified as a candidate and ineligible to run in the 2022 election cycle. It then rejected Torres's request to stay the judgment.

Torres appealed and filed an emergency motion seeking review of the denial of a stay with this court. We issued an order staying the final judgment and expediting this appeal. *See Lampert-Sacher v. Sacher*, 120 So. 3d 667, 668 (Fla. 1st DCA 2013) (allowing the lower tribunal's order to be stayed pending appeal when appellant demonstrates "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) (recognizing

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[1] Torres's paperwork included the other items required to qualify as a candidate for Congress under § 99.061(7)(a)2: a check drawn on the campaign account; the completed form for the appointment of a campaign treasurer and designation of campaign depository; the disclosure of financial interests; as well as the state form combining the Federal Oath of Candidate and Statement of Party requirements. Only this last form was challenged by Appellees because of its verification mechanics.

that "to remove [a candidate] from the people's consideration, and his name from the election ballot, would be irremediable").

II.

A.

Section 99.061, Florida Statutes, governs the "Method of qualifying" for elective office in Florida and sets a deadline by which various items must be filed with the Department of State for a person to qualify. A single Department form incorporates two of the items required to be filed by congressional candidates, the Candidate Oath for Federal Office (*see* § 99.021(a), Fla. Stat.) and the Statement of Party (*see* § 99.021(b), Fla. Stat.). *See* Form DS-DE 300A (Rev. 08/2021), *available at* https://files.floridados.gov/media/704464/ dsde300a-fed-oath-pty-aff-august-2021-1.pdf. By law the Candidate Oath "must be verified under oath or affirmation pursuant to s. 92.525(1)(a)." § 99.061(7)(a)2, Fla. Stat. Regarding verification mechanics, § 92.525(1)(a) provides that such oaths be verified by an officer authorized under § 92.50 to administer them. Section 92.50 allows an out-of-state notary public to administer the oath so long as they are so authorized under their own state's laws. These parameters focus on the authority of the out-of-state officer to administer oaths and not the physical mechanics of how oaths must be taken (which presumably may vary from state to state, depend upon local conditions, etc.). *Id.*

Ultimately, a filing officer at the Department must review a candidate's qualifying paperwork and determine "whether each 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. Section 99.061(7)(c) describes the Department's work as a ministerial function and forbids review of "whether the contents of the qualifying papers are accurate." § 99.061(7)(c), Fla. Stat. Unlike most consequential agency decisions, the Department's qualification decisions are explicitly exempt from challenge through typical review processes. § 99.061(11), Fla. Stat. ("The decision of the filing officer concerning whether a candidate is qualified is exempt from the provisions of chapter 120.").

B.

Torres argues that Appellees lacked a private right of action under § 99.061(7) to seek a competing circuit court declaration on whether his Oath-Statement Form was properly verified and to obtain his disqualification. We see his point.

Legal standing is required to challenge the conduct of another person and have penalties imposed for violations of law. This generally requires that plaintiffs "must have a 'legitimate or sufficient interest at stake in the controversy that will be affected by the outcome of the litigation.'" *DeSantis v. Fla. Educ. Ass'n*, 306 So. 3d 1202, 1213 (Fla. 1st DCA 2020) (quoting *Equity Res., Inc. v. County of Leon*, 643 So. 2d 1112, 1117 (Fla. 1st DCA 1994)). In the absence of a personal stake—the Complaint didn't allege and the Final Judgment didn't identify how a declaration particularly affects Appellees—standing may be established via a statute authorizing litigation. *Cf. Friends of the Everglades, Inc. v. Bd. of Trs. of the Internal Improvement Trust Fund*, 595 So. 2d 186, 189 (Fla. 1st DCA 1992) ("Standing under chapter 120 . . . is established by statute."). Courts have little room to imply such rights to bring a civil action; rather, statute-based private rights of action must be legislatively created and show textual support. *QBE Ins. Corp. v. Chalfonte Condo. Apartment Assoc., Inc.*, 94 So. 3d 541, 551 (Fla. 2012) (explaining that whether a statutory cause of action should be judicially implied depends on the "actual language used in the statute" and "the context in which the language lies").

Some Title IX, election-related statutes broadly provide private rights of action. *See, e.g.,* § 102.168, Fla. Stat. (providing rights to contest an election to "any unsuccessful candidate . . . any elector qualified to vote . . ., [or] any taxpayer," to challenge a candidacy on various grounds, including "[i]neligibility of the successful candidate for the nomination or office in dispute"); *see also* §§ 97.023(3), 99.097(5), 101.161(3)(c)(2), Fla. Stat. (contemplating private rights of action). And in *Chalifoux v. Sanchez*, 991 So. 2d 432, 433 (Fla. 1st DCA 2008), for example, we approved the standing of an elector to challenge a candidate's noncompliance with a qualifying law expressly because the law "places the responsibility for enforcing the Resign–to–Run Law on

an elector." *See* § 99.012(5), Fla. Stat. (2007) ("The name of any person who does not comply with this section may be removed from every ballot on which it appears *when ordered by a circuit court upon the petition of an elector* or the Department of State.") (emphasis added).

But other election-related statutes do not provide private rights of action. *See, e.g., Schurr v. Sanchez-Gronlier*, 937 So. 2d 1166 (Fla. 3d DCA 2006) (finding no private right of action to challenge whether a check had been "properly executed" under § 105.031(5)(a)); *Goff v. Ehrlich*, 776 So. 2d 1011 (Fla. 5th DCA 2001) (finding no private right of action under chapter 106); *see also Torrens v. Shaw*, 257 So. 3d 168, 170 (Fla. 1st DCA 2018) (approving *Schurr* and *Goff* and concluding that "a private citizen's allegation of a violation of chapter 106 has no bearing on whether a candidate has properly qualified for office under section 99.061(7)"). As in these cases, the verification law underpinning Appellees' case, § 99.061(7), provides no textual or contextual support for finding a private right of action. Rather than granting private enforcement rights and authority for courts to declare if candidate paperwork has been properly verified, the statute expressly delegates this work to the Department. *Id.*

Appellees insist that they can attack Torres's paperwork via Florida's Declaratory Judgment Act, which broadly allows for declaratory actions in circuit court. Ch. 86, Fla. Stat.; *see also City of Apalachicola v. Franklin Cty.*, 132 So. 3d 1217 (Fla. 1st DCA 2014). The Declaratory Judgment Act provides that "[t]he circuit and county courts have jurisdiction within their respective jurisdictional amounts to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed." § 86.011, Fla. Stat. Under this statute, courts may render declaratory judgments on the existence, or nonexistence:

> (1) Of any immunity, power, privilege, or right; or
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> (2) Of any fact upon which the existence or nonexistence of such immunity, power, privilege, or right does or may depend, whether such immunity, power, privilege, or right now exists or will arise in the future. Any person seeking a declaratory judgment may also demand

> additional, alternative, coercive, subsequent, or supplemental relief in the same action.

Id. It further allows any person "whose rights, status, or other equitable or legal relations are affected by a statute . . . may have determined any question of construction or validity arising under such statute . . . and obtain a declaration of rights, status, or other equitable or legal relations thereunder." § 86.021, Fla. Stat.

While chapter 86 provides broad rights to seek declaratory relief, it doesn't green-light plaintiffs with no justiciable rights at stake in a case, nor need for the declaration. *MacNeil v. Crestview Hospital Corp.*, 292 So. 3d 840, 843 (Fla. 1st DCA 2020). To obtain declaratory relief, Appellees had to claim and prove:

> (1) there is a bona fide dispute between the parties; (2) the plaintiff has a justiciable question as to the existence or nonexistence of some right, status, immunity, power or privilege, or as to some fact upon which existence of such a claim may depend; (3) the plaintiff is in doubt as to the claim; and (4) there is a bona fide, actual, present need for the declaration.

*Id. (*quoting *Ribaya v. Bd. of Trs. of the City Pension Fund for Firefighters & Police Officers in the City of Tampa*, 162 So. 3d 348, 352 (Fla. 2d DCA 2015)); *see also State v. Florida Consumer Action Network*, 830 So. 2d 148, 151 (Fla. 1st DCA 2002) (addressing the same point). But here there is no bona fide dispute or adequate justiciable question because the paperwork verification issue disputed by Appellees is explicitly delegated for the Department's determination, whose work isn't challenged. § 99.061(7)(c), Fla. Stat.

With no private right to bring a civil action in § 99.061(7), and with only the Department given authority to determine what has been "properly verified under § 92.525(1)(a)," Appellees' declaratory judgment action as to whether Torres's papers were properly verified fails for the same reason identified in *MacNeil*. In *MacNeil*, we dismissed a declaratory action under the PIP statute's requirement that health care providers charge "only a reasonable amount" because it didn't create a private cause of action for insureds. *MacNeil*, 292 So. 3d at 842, 845. We concluded

that "any declaration . . . would constitute an improper advisory opinion." *Id.* Similarly here, we agree with Appellant that "[p]eople in Appellees' shoes have no dog in the fight." Chapter 86 doesn't serve as a standing catchall authorizing Appellees to obtain a declaration on the same issue reserved by § 99.061(7)(c) for the Department's determination. *Cf. Torrens*, 257 So. 3d at 170 (reversing a declaration and injunction disqualifying a candidate where the matter was enforceable by the Florida Elections Commission).

In reaching this conclusion, we have also reviewed the other qualifying-related cases cited by Appellees. We see nothing in them that alters our standing-based conclusion here. None of these cases involves the standing of general voters and parties to challenge the notarization work underlying a candidate's facially complete and approved paperwork. Rather, what we see in these cases is courts entertaining mandamus and declaratory actions where plaintiff-candidates and plaintiff-election officials have questioned what the elections law requires, or where disputes have arisen about candidates meeting substantive constitutional or statutory qualifying requirements. *See, e.g., Boatman v. Hardee*, 254 So. 3d 604 (Fla. 1st DCA 2018) (supervisor of elections-filed challenge to qualifying fee payment); *Hoover v. Mobley*, 253 So. 3d 89 (Fla. 1st DCA 2018) (candidate-filed challenge to acceptance of incomplete and late-filed paperwork); *Brinkmann v. Francois*, 184 So. 3d 504 (Fla. 2016) (voter-filed challenge alleging noncompliance with statutory residency requirement); *Browning v. Young*, 993 So. 2d 64 (Fla. 1st DCA 2008) (candidate-filed mandamus action challenging Department's rejection of a notary's work); *Chalifoux*, 991 So. 2d at 432 (elector-filed challenge alleging noncompliance with statutory resign-to-run law where statute authorized elector standing); *Miller v. Mendez*, 804 So. 2d 1243 (Fla. 2001) (candidate-filed challenge alleging noncompliance with constitutional residency requirement); *Polly v. Navarro*, 457 So. 2d 1140 (Fla. 4th DCA 1984) (multiple-plaintiff challenge alleging noncompliance with statutory party-switching requirement). Suffice to say, none of these cases recognizes a right of action for parties like Appellees to go behind facially complete and acceptable

notarized paperwork and challenge whether correct procedures were used in its swearing and signing.[2]

In summary, we conclude that the two voters and political party here could not bring a declaratory action to challenge the verification mechanics underlying Torres's Department-approved paperwork. In turn, they could not obtain a judicial remedy overriding the Department's decision to qualify Torres. *Cf. Wright v. City of Miami Gardens*, 200 So. 3d 765, 775 (Fla. 2016) ("Fundamental to our system of government is the principle that the right to be a candidate for public office is a valuable one and no one should be denied this right unless the Constitution or an applicable valid law expressly declares him to be ineligible.").

Finally, we see no room for implying a private enforcement right based on the absurdity doctrine. The absurdity doctrine "applies 'only under rare and exceptional circumstances,' [and] 'is not to be used as a freewheeling tool for courts to second-guess and supplant the policy judgments made by the Legislature.'" *State v. Lewars*, 259 So. 3d 793, 800 (Fla. 2018) (quoting *State v. Hackley*, 95 So. 3d 92, 95 (Fla. 2012)). The doctrine does not apply when rational legislators could have intended what the statutory text requires. *See Nassau Cty. v. Willis*, 41 So. 3d 270, 279 (Fla. 1st DCA 2010) (quoting *Public Citizen v. U.S. Dep't of Justice*, 491 U.S. 440, 470–71 (1989) (Kennedy, J., concurring)) ("Courts may only legitimately rely on the 'absurdity doctrine' without running afoul of the separation of powers where 'applying the plain language would be, in a genuine sense, absurd, i.e., where it is quite impossible that [the legislative body] could have intended the result ... and where the alleged absurdity is so clear as to be obvious to most anyone.'"). Here, with elections involving tight timelines after candidate qualifying occurs, it is rational for the law to delegate exclusive paperwork-verification authority to the

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[2] Our conclusion, of course, does not speak to the consequences at play if there was perjury or unlawful notarization work done here. *See, e.g.*, § 837.012, Fla. Stat. (criminalizing false statements made under oath); § 117.105, Fla. Stat. (criminalizing false or fraudulent acknowledgements of an instrument as a notary public).

Department to avoid the last-minute disruptions and uncertainty that comes with having the status of candidate qualifications hang in the balance while the voting is going on.

III.

For the reasons stated above, we REVERSE the final judgment and REMAND for the trial court to enter judgment in Appellant's favor. We needn't reach the final argument raised by Appellant involving the time-to-trial requirement in Florida Rule of Civil Procedure 1.440.

LONG, J., concurs; ROBERTS, J., concurs with opinion.

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

ROBERTS, J., concurring.

I concur in the above opinion. I write only to emphasize the narrowness of our holding, which is that Appellees, the plaintiffs below, did not sufficiently allege "any immunity, power, privilege, or right" that would give them standing under section 86.011, Florida Statutes. The other arguments presented by Appellant need not be addressed.

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