

IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT, IN AND
FOR FLAGLER COUNTY, FLORIDA

CASE NO. 2012-CA 000735
DIVISION: 49

ANNE-MARIE SHAFFER,

Plaintiff,

v.

JOHN F. POLLINGER, Candidate for
Flagler County Sheriff and KIMBERLE
WEEKS, Supervisor of Elections,

Defendants.

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
(Temporary Injunction Requested)

Plaintiff sues the defendants and alleges as follows:

1. This is an action for a declaratory judgment and supplemental injunctive relief. This Court has jurisdiction under Sections 86.011 and 86.061, Florida Statutes. Venue lies in Flagler County under Section 47.011, Florida Statutes.
2. Plaintiff, Anne-Marie Shaffer, is resident of Flagler County, a qualified elector within Flagler County, a registered Republican entitled to vote in the Republican primary election scheduled for August 14, 2012, an

officer of the Ronald Reagan Republican Assembly of Flagler County, and an officer the Flagler County Republican Club.

3. Defendant John F. Pollinger is a resident of Flagler County and is a candidate for Flagler County Sheriff in the August 14, 2012 primary election.
4. Defendant Kimberle Weeks is the Flagler County Supervisor of Elections and is sued only in her official capacity. Kimberle Weeks is the constitutional officer charged with administering elections within Flagler County and, as such, is joined as a necessary and indispensable party for purposes of the relief sought herein.
5. This is an action for declaratory and injunctive relief. Specifically, plaintiff sues for a declaration that John F. Pollinger is not qualified to seek the Republican nomination as candidate for Flagler County Sheriff in 2012 pursuant to Section 99.021, Florida Statutes, and for an injunction to prevent the supervisor of elections from placing Pollinger on the primary ballot as a Republican.
6. In January 2012 at the Flagler County Administration Building, Defendant Pollinger announced his candidacy to run for Sheriff of Flagler County as a Republican. Among other things, he has a campaign

website, a Facebook campaign page, yard signs around the County and is raising money. He is a Republican candidate for Flagler County Sheriff.

7. Defendant Pollinger, however, had been registered as a Democrat in New Jersey for most of his adult life. It was not until January 2012, the same month he declared himself a Republican candidate for Flagler County Sheriff, that defendant Pollinger took the necessary steps to remove himself from the New Jersey voter rolls.

8. Section 99.021(1)(b), Florida Statutes, provides:

[A]ny person seeking to qualify for nomination as a candidate of any political party shall, at the time of subscribing to the oath or affirmation, state in writing:

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

2. That the person has not been a registered member of any other political party 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.

(Emphasis supplied).

9. Thus, Florida law states a candidate cannot have been a registered member of any other political party for 365 days before qualifying starts for a race. See, *Polly v. Navarro*, 457 So.2d 1140 (Fla. 4th DCA 1984).

10. Qualifying for the office of Sheriff begins on June 4, 2012.
11. Pollinger did not remove himself from the New Jersey rolls as a Democrat until January 17, 2012. Thus, Pollinger was registered as a Democrat in New Jersey within 365 days of the beginning of qualifying for the office he seeks.
12. Pollinger's dual party registration was brought to the attention of defendant Weeks on May 2, 2012, at which time she sought guidance from the Florida Department of State.
13. On May 3, 2012, Gary Holland, an assistant attorney with the Florida Department of State, sent defendant Weeks an email wherein he stated that Florida law "requires the candidate to swear/affirm that he 'has not been a registered member of any other political party for 365 days before the beginning of qualifying.'" He added that Pollinger "cannot truthfully make such a statement because he was a registered member of the Democratic Party during the 365-day period." Holland concluded as follows: "Because of that, he is ineligible to qualify for the nomination as a candidate of any political party. His options at qualifying would be to qualify as a NPA candidate, a write-in candidate, or not qualify."
14. Pollinger's candidacy violates Section 99.021(1)(b), Florida Statutes, and therefore he is not qualified to be the Republican Party nominee for

Sheriff of Flagler County in 2012 General Election. See, *Polly v. Navarro*, 457 So.2d at 1140.

15. Notwithstanding Pollinger's clear lack of qualification to be placed on the ballot as a member of a political party, defendant Weeks has a ministerial duty to put him on the ballot. Mr. Holland confirmed this in his email to defendant Weeks when he wrote: "If he persists in qualifying as a Republican, you perform only a ministerial function and cannot look beyond his qualifying papers to not qualify him."

16. The remedy when an unqualified candidate insists the supervisor of elections perform her ministerial duty by placing him on the ballot is an action for declaratory and injunctive relief. See, *Polly v. Navarro*, 457 So.2d at 1143.

17. The Department of State confirmed this in an email from Gary Holland to defendant Pollinger wherein Holland wrote:

Whether you are ineligible to be a qualified candidate would depend upon the particular facts as determined ultimately by a court. So, if you believe, based upon the facts, that you were not a member of another party during the applicable 365-day period and that you can truthfully execute the oath form, then it would be up to someone to challenge your qualifications as a candidate in a court of competent jurisdiction after the Supervisor of Elections qualifies you to have you removed from the ballot.

18. The Department of State confirmed this again when Chris Cate, a spokesman for the Department, wrote: "If someone wants to challenge the eligibility of a candidate, they can file a lawsuit challenging the candidate's qualifications."
19. Defendant Pollinger publicly stated on May 4, 2012 that he will stay on the ballot as a Republican and that he would "challenge any attempt by Ms. Weeks to remove [him] from the ballot." Defendant Pollinger further stated that Weeks cannot stop him from being on the ballot and that he has retained legal counsel. Finally, defendant Pollinger publicly stated: "So if she has no authority to remove me from the ballot and she has no legal standing to do so, I'm staying on the ballot as a Republican."
20. Plaintiff is without an adequate remedy at law. In the absence of a declaration by this Court accompanied by supplemental injunctive relief determining that defendant Pollinger is not a qualified candidate for the August 14, 2012, Republican primary and enjoining defendant Weeks from placing Mr. Pollinger's name on the 2012 primary ballot as a Republican, defendant Weeks will be required to place his name on the ballot notwithstanding Section 99.021(1)(b), Florida Statutes. Plaintiff will have no right to contest the qualification of defendant after the election. See, *Norman v. Ambler*, 46 So. 3d 178, 182-83 (Fla. 1st DCA

2010). Plaintiff will be deprived of the right to a proper and effective vote and thereby be irreparably injured.

21. The defendant's public declarations of his intent to qualify as a candidate for Sheriff of Flagler County and his continued campaigning as if he were qualified to seek the Republican nomination notwithstanding the provisions of Section 99.021(1)(b) has left plaintiff in doubt and uncertain as to her rights under the elections law, thus giving rise to a justiciable controversy and an actual rather than theoretical controversy as to the legality of defendant's candidacy in the Republican primary for Sheriff of Flagler County. Accordingly, an actual, bona fide, present practical active justiciable controversy has arisen and now exists between plaintiff and defendant Pollinger concerning their respective rights, duties and responsibilities, needing a declaration from this Court. The controversy is definite, concrete, and deals with an ascertained state of facts, all of which are before the Court. Plaintiffs also shows that the relief sought is not merely the giving of legal advice or answers to questions propounded from curiosity.

WHEREFORE, plaintiff respectfully requests that the Court enter judgment as follows:

A. Declaring that defendant Pollinger is not qualified to appear on the August 14, 2012, primary ballot as a Republican candidate for Flagler County Sheriff;

B. Temporarily and permanently enjoining defendant Weeks from placing defendant Pollinger on the August 14, 2012, primary ballot as a Republican candidate for Flagler County Sheriff;

C. Granting such other and further relief as would be just and reasonable.

KANEY & OLIIVARI, P.L.



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