

Write-In Candidates Closing a Primary Election

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

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

Four days later, the plaintiffs filed a motion for a preliminary injunction⁴ and an agreed motion for a briefing schedule culminating in a July 13 hearing.⁵ The agreed schedule reflected an understanding that Judge Zloch wanted the case to move quickly.⁶ The day that the proposed schedule was filed, Judge Zloch shortened the schedule by an additional day.⁷ As a further accommodation of the case's time pressure, he moved filing deadlines to noon from the proposed deadline of 5:00 p.m.⁸ The case proceeded very smoothly in part because of the efficient time schedule.⁹ It helped that there were no disputes as to facts.¹⁰

On July 5, the Ron Brown South Dade Democratic Caucus Chapter of the Democratic Caucus of Florida moved to intervene.¹¹ On the following day, find-

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

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

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

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

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

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

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

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

8. [Briefing Order](#), *supra* note 7.

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

10. *Id.*

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

ing that the caucus's interests would be adequately represented by the county supervisor, Judge Zloch denied intervention.¹²

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

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

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

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

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

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

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

16. [Lacasa](#), 883 F. Supp. 2d 1231.

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

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