

**DAVID R. M. WILLIAMS**

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**NO. 2007-CA-1447**

**VERSUS**

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**COURT OF APPEAL**

**ARTHUR MORRELL, IN HIS  
OFFICIAL CAPACITY AS THE  
CLERK OF CRIMINAL  
COURT FOR THE PARISH OF  
ORLEANS, JAY DARDENNE,  
IN HIS OFFICIAL CAPACITY  
AS THE SECRETARY OF  
STATE FOR THE STATE OF  
LOUISIANA, SANDRA  
WILSON, ETC.**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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**CANNIZZARO, J., DISSENTS AND ASSIGNS REASONS**

I respectfully dissent and adopt the reasons assigned by Judge Murray. I write separately to address the concurring opinion of Judge Tobias.

Nowhere in the Louisiana Code of Civil Procedure does it mandate an attorney to proffer the evidence he would have presented at the trial once a trial judge grants an adverse peremptory exception of no cause of action. It is undisputed that an exception of no cause of action is decided on the four corners of the petition. *Industrial Co., Inc. v. Durbin*, 02-0665 (La. 1/28/03), 837 So.2d 1207. La. C.C.P. art. 931 mandates that there be no evidence presented in support of or in opposition to the exception of the no cause of action. If the exception is improperly sustained, then the plaintiff should be afforded the opportunity to present his evidence before the judge at the trial of the matter. Nor is it required that, if a plaintiff is unsuccessful with regard to an exception of no cause of action, that he is then obligated in any way to proffer the evidence he would have presented at the trial on the matter. Applying these principles to the case at hand, the plaintiff in the instant case, as was his right, took a timely appeal from the adverse ruling to this court. To dismiss the plaintiff's appeal because he does not proffer evidence or object and appeal the denial of a proffer of evidence sets forth

principles of law not expounded in the Louisiana Election Code, La. R.S. 18:1, *et seq.*, or the Louisiana Code of Civil Procedure.

I recognize a need for swift justice in cases involving elections. Notwithstanding, the overriding concern should be to ensure that the will of the electorate is constitutionally protected.