

DAVID R. M. WILLIAMS	*	NO. 2007-CA-1447
VERSUS	*	COURT OF APPEAL
ARTHUR MORRELL, IN HIS	*	FOURTH CIRCUIT
OFFICIAL CAPACITY AS THE	*	STATE OF LOUISIANA
CLERK OF CRIMINAL	*	
COURT FOR THE PARISH OF	*	
ORLEANS, JAY DARZENNE,	*	
IN HIS OFFICIAL CAPACITY	*	
AS THE SECRETARY OF	*	
STATE FOR THE STATE OF	*****	
LOUISIANA, SANDRA		
WILSON, ETC.		

MURRAY, J., DISSENTS AND ASSIGNS REASONS

In my view, the petition in the instant case alleges irregularities sufficient to state a cause of action under La. R.S. 18:1401 (B). That statute provides, in pertinent part:

§ 1401 Objections to candidacy and contests of elections; parties authorized to institute actions

B. A candidate who alleges that, except for substantial irregularities or error, or except for fraud or other unlawful activities in the conduct of the election, he would have qualified for a second party primary election or for a general election or would have been elected may bring an action contesting the election.

This is the appropriate statute to look to in determining whether Mr. Williams' petition states a cause of action recognized by law. Despite the majority's focus upon R.S. 18:503, the petitioner does not merely allege that the clerk of court failed to post notice of the withdrawal of candidate Andrew Gressett at the polling places. He alleges that this failure, coupled with the clerk's posting of notice at those same polling places of the withdrawal of other candidates from other races (including candidates who withdrew *after* the date of Mr. Gressett's withdrawal) misled the electorate to the extent that nearly ten percent of the votes cast in this particular race were cast for Mr. Gressett. Although La. R.S. 18:503 provides that the failure of the clerk to post notice shall not void the election, the

petitioner herein has alleged irregularities that go beyond the mere failure to post notice. In particular, he alleges that an illegal “canvass” of the electorate improperly removed registered voters from District 5 and added other voters to the district in numbers sufficient to change the outcome of the election. He also alleges that a significant number of those voters who showed up at the polls were required to fill out and sign a verification of address form, which intimidated many voters and caused them to abandon their intention of voting.

In *Jenkins v. Williamson-Butler*, 04-1926 (La. App. 4 Cir. 10/8/04), 883 So. 2d 537, this court noted that the law no longer requires the challenger in an election contest to prove “but for” the alleged irregularities, he would have prevailed. Instead, a candidate contesting an election must show that because of the irregularities, the outcome of the election is impossible to determine. 04-1926, p. 4, 883 So.2d at 540 (citations omitted). Moreover, we stated:

A trial judge is not limited to strictly numerical considerations in declaring an election void.... [In making that a determination] “a judge can and should consider whether the proven frauds or irregularities are of such a serious nature so as to deprive the voters of the free expression of their will.”

Id. (citation omitted)

I believe the irregularities alleged by the petitioner herein are sufficiently serious to potentially affect the outcome of the election. Therefore, the trial court erred by dismissing the petition on the basis of the exceptions of no cause of action. Whether the petitioner is able to prove his allegations remains to be seen, as he was precluded from putting on any evidence in the trial court.

Accordingly, I would reverse the trial court’s granting of the exceptions of no cause of action and remand to that court for trial. Due to the approaching “runoff” election date, I would also order the trial court to postpone that election pursuant to the provisions of La. R.S. 18:1409 (B).

For these reasons I respectfully dissent from the holding of the majority.

