

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

Elvin McCorvey,

*

Plaintiff,

*

vs.

*

CASE NO. 4:08cv218-SPM/WCS

Kurt Browning, in his official capacity
as Secretary of State of the State
of Florida, and Bill McCollum,
in his official capacity as
Attorney General of the
State of Florida,

*

*

*

*

Defendants.

*

PLAINTIFF'S REPLY BRIEF
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Plaintiff respectfully submits this short reply brief in support of his motion for summary judgment, in order to respond to the primary arguments that Defendant Browning has made in opposing that motion. Plaintiff states as follows:

1) As to Defendant Browning's arguments about mootness and ripeness, in addition to the authorities cited in Plaintiff's prior briefing, the Supreme Court's decision in *Democratic Party v. Wisconsin*, 450 U.S. 107, 115 n.13, 101 S.Ct. 1010, 1015 n.13 (1981) is dispositive.

2) On the merits, Defendant Browning does *not* contend that the statute, if

interpreted as we believe it must be, is constitutionally valid. Instead he contends that the statute does not actually purport to override the policy choices of the Democratic Party. He contends that the statute leaves Party officials legally free to choose convention delegates through some non-primary process of the Party's own choosing. But this is contrary to the plain-language mandatory command of the Florida statute at issue here. The statute declares in plain and mandatory terms that each major political party "shall" select delegates (or "shall" select a single Presidential nominee) by means of the January primary. Defendant Browning's non-mandatory reading is not an interpretation of the statute; it is an attempt to re-write the statute to mean something other than what the statute says. The statute, as written in plain terms, is unconstitutional for reasons that we have discussed, under authorities such as *Democratic Party v. Wisconsin*, *supra*.

3) As for the remedy, Defendant Browning contends that it would be impossible to hold a new election within the time recognized as legitimate by Democratic Party rules. But he underestimates the capabilities of state election officials, especially when they are acting in response to a judicial decree. If this Court orders a new election, we trust that Browning will ensure that there is full compliance with the Court's order.

4) Undersigned counsel has spoken with counsel for defendant Browning and is authorized to represent that defendant Browning has no objection to the filing of this brief.

Respectfully Submitted,

THE GARDNER FIRM, P. C.
Mary E. Olsen

