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INSIDE

LEGAL REVIEW

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Planas

J.C. Planas writes that with election season right around the corner, new issues will crop up in a partisan environment, necessitating an aggressive legal compliance stance. Any candidate who overlooks this reality will learn it when the opponent hires counsel. A4

JUDGE DELAYS ROTHSTEIN TRIAL

U.S. District Judge Marcia Cooke postponed Coquina Investments' civil fraud trial against TD Bank in a case related to Scott Rothstein's $1.2 billion Ponzi scheme. If mediation fails as expected, the trial would begin Nov. 1. A3

Commentary by J.C. Planas

Mention the term "election law" and "hanging chads" and the 2000 Presidential Election probably comes to mind. As much as Bush v. Gore shaped our current perception of election law, 11 years later, it is no longer as relevant to the practice of election law as it was once thought to be. While recounts in contested elections still occur from time to time, they are very rare as new state laws and technological advancements in voting methods are better able to capture voter intent and have lessened the chance for human error. And, since the 2000 election, the Florida Legislature has adopted new legal standards for conducting recounts and establishing voter intent on a ballot where virtually no uniform rules existed before Bush v. Gore.

Today, resign-to-run, financial disclosure and third-party committees, and soft-money issues are at the forefront of election law.

Resign-to-run played a prominent role in South Florida last year when a Doral councilwoman was disqualified from running for the Florida House after her opponents sued because she did not properly resign her seat before deciding to run for a different office.

These cases have been gaining in

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BOARD OF CONTRIBUTORS New set of legal issues

J. ALBERT DIAZ

J.C. Planas made Florida election law history by being the first candidate to have two opponents kicked off the ballot by a court.

Election law goes way beyond hanging chad

popularity since 2006 when I ran for re-election to state office. My opponent was an elected member of one of the Miami-Dade County community councils, whose term in office was not set to expire until two years later. The council member had failed to resign before qualifying to run. As soon as the council member qualified to run, our campaign was flooded with calls from interested parties recommending that we sue to disqualify this opponent for violating Florida's resign-to-run law. The very next day, on the last minute of the qualifying period for state elections, another candidate entered the race. A not-so-close cousin with a similar name had also now qualified to run. But rather than use either his birth name or his commonly used name, he used his initials. Nobody knew him by those initials, which were confusingly similar to mine. No doubt, voters would likely be confused. This left me with no choice. We sued both, and got both kicked off the ballot, which, when I prevailed, allowed me to make Florida election law history by becoming the first candidate to have two opponents kicked off the ballot by a court. Soon after a flood of similar cases began to pop up throughout the state.

Recently, the Florida Elections Commission and the Miami-Dade Commission on Ethics began to more closely inspect the financial reports of candidates and elected officials and began fining those who had failed to properly disclose assets and liabilities. Recognizing the high probability of legal challenges, candidates have been seeking legal counsel to review their paperwork as they filed and qualified to run for office as a preventive measure to ensure that they had complied with the law. Earlier this year, a sitting member of the Legislature who resigned his seat midway through his term to run for a seat on the County Commission hired a campaign lawyer to navigate the filing details. The paperwork re-

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CONTRIBUTORS: Law-abiding candidates can sue

quired for the resignation of the seat, the redesignation of the candidacy and the filing of the different financial disclosure forms necessitated the use of legal counsel to ensure that all the paperwork was done correctly.

Election law practice also covers one of the larger parts of modern campaigning: the frequent use of third-party committees by candidates and groups that supported them. Many legislators now have Committees of Continuance Existence (or CCEs as they are known in Tallahassee). These committees were originally used for legislators running for leadership positions within their legislative class so they could support other candidates and pay for reasonable travel expenses as they campaigned among their colleagues for speaker of the House or president of the state Senate. CCEs allowed elected officials to raise unlimited amounts of soft money from donors but have detailed reporting requirements that must be updated almost immediately after receiving contributions and can come with penalties for noncompliance.

Other candidates or groups also have Electioneering Communication Organizations (ECOs) or 527 groups (named after the IRS code that allowed their tax-exempt status). Unlike CCEs, which can contribute to candidates but not do political advertising, ECOs and 527s may run political advertising saying good things about the candidate the group supports or not-so-nice things about the candidates they oppose. The use of these groups during the electoral process adds a layer of complexity to campaigns that further complicates compliance issues, especially as the laws relating to reporting requirements continue to evolve.

Candidates now hire attorneys to proactively review all campaign and committee paperwork and to review political advertisements for legal compliance, but many candidates still fail to recognize the complexities involved and inadvertently fall prey to serious violations.

While many candidates now hire attorneys to proactively review all campaign and committee paperwork and to review political advertisements for legal compliance, many candidates still fail to recognize the complexities involved and inadvertently fall prey to serious violations of the campaign financing laws. In an attempt to avoid close scrutiny of their financial donors, many groups do not properly or timely report their donations and some fail to register their committees all together. As a result, candidates who properly follow the law are now beginning to sue opponents and groups that violate the rules. The Florida Elections Commission has received an increasing number of complaints alleging unlawful ads or the commingling of funds between candidate and committee, resulting in severe fines against candidates.

As we head into our county's municipal elections next month — followed not long thereafter by the presidential primary and then the primary for Miami-Dade mayor, County Commission and legislative candidates eight months later — we will undoubtedly begin to see new issues crop up. There will be new ECOs registered and the inevitable last-minute candidate qualifications, all in an extremely partisan environment, which necessitates a more aggressive legal compliance stance. Any candidate who overlooks this reality will learn it when that candidate's opponent hires counsel and increases the likelihood of victory as a result.

J.C. Planas is an attorney with Kurkin Forehand Brandes in Miami. He focuses his practice on ethics and elections law, local governmental operations and state regulatory matters. He is a former member of the Florida House of Representatives.