

# An Invitation To Improve Voting Statutes

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It is not unusual for appealed cases to be assigned to the public defender's office. What is unusual is for the elected public defender himself to appear before Florida's 2nd District Court of Appeal. But the tale of Edwin McGusty has been unusual from the outset; why should its possible conclusion be any different?

Tuesday, in the latest chapter of the saga that began when McGusty, 31, demanded to vote in his old Land O' Lakes precinct in the November 2000 election despite having moved to Tampa months earlier, **Pinellas-Pasco Public Defender Bob Dillinger** argued for overturning McGusty's subsequent conviction for voting illegally.

Why the personal interest? "I thought it was an important issue," **Dillinger** says. So did **Dillinger's** right hand in east Pasco, Assistant Public Defender Tom Hanlon, who represented McGusty at trial in Dade City, and wept with patriotic passion at closing.

At issue are state voting statutes that seem to be in conflict; at the very least, they could use some clarifying. One says voters must reside in the precinct in which they are registered; it is a felony to willingly vote knowing you are not qualified. Another acknowledges that certain people frequently are gone from their registered residences for long periods of time; that statute provides for retention of voting rights if it is the ballot-caster's intention to return.

Calling Miss Cleo

**Dillinger** argues that the second statute must be seen from the perspective of the affected voter, not from the usual "reasonable man" standard. McGusty, a technical consultant living at the time in a corporate apartment in Tampa, said he had every intention of returning to Pasco County.

That should have been sufficient, **Dillinger** says. "It's clear he thought he had a right to vote. If he didn't, he was mistaken. But being mistaken isn't willful misconduct."

Hold on, says elections supervisor Kurt Browning. For openers, statutes also provide for transient voters to guarantee a place at the polls by contacting the elections office before books close ahead of elections. McGusty neglected that opportunity, as he also neglected opportunities to change his registration to Hillsborough County. Indeed, four months after he'd left Land O' Lakes, he still hadn't changed the address on his driver license, also a violation. In short, McGusty had been sloppy on the details of citizenship.

Instead, he arrived at his old precinct, rightly having been denied an absentee ballot, and asked poll workers to be psychics. (Significantly, McGusty has not yet reestablished Pasco residency.)

Actions And Consequences

**Dillinger** makes a fair point when he says the statute regarding part-time and occasional residency could be tightened, establishing specific time limits on how long a voter can be out of the area before his or her registration lapses. If the statute had said three months when McGusty showed up to vote, no one would have been confused.

Nobody was confused, Browning contends, least of all McGusty. Residency is "central to the whole process of voting." After all, lax residency enforcement opens the door to fraud.

At the risk of sounding grumpy, this whole affair sounds like another example of someone hoping to dodge responsibility for carelessness. Still, the fact that a window of responsibility-dodging was left cracked suggests that the state legislature yet has some tinkering to do.

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