

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

RICK SCOTT FOR FLORIDA and
NATIONAL REPUBLICAN SENATORIAL
COMMITTEE,

CASE NO.:

Plaintiffs,

v.

IMMEDIATE HEARING REQUESTED

CRAIG LATIMER, in his official
capacity as Hillsborough County
Supervisor of Elections, and
THE HILLSBOROUGH COUNTY
CANVASSING BOARD,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, the National Republican Senatorial Committee and Rick Scott for Florida, sue Defendant, Craig Latimer, in his official capacity as Hillsborough County Supervisor of Elections, and the Hillsborough County Canvassing Board, and allege:

INTRODUCTION

1. When a machine recount follows an election, Florida law unambiguously entitles each candidate and each political party involved in the election to one representative, and entitles that representative (unlike the general public) to be present in the room in which the recount is conducted. Florida law thus guarantees transparency in the integrity of the electoral process and the integrity of—and public confidence in—electoral outcomes. Defendants have refused to permit the designated representatives of candidates or political parties into the room in which machine recounts are being conducted—in violation of a plain and unambiguous provision of law. The recount is presently ongoing. To protect the interests that Florida law was intended to

advance, Plaintiffs seek immediate declaratory and injunctive relief that directs Defendants to permit a designated representative of each affected candidate and political party into the recount room, as Florida law requires.

JURISDICTION AND VENUE

2. This is a lawsuit for declaratory and injunctive relief under § 86.011, Fla. Stat.

3. Venue is proper in Hillsborough County, Florida, because Defendants maintains their principal places of business in Hillsborough County and because all or part of the claim for relief at issue in this litigation arose in Hillsborough County.

THE PARTIES

4. Plaintiff, National Republican Senatorial Committee, is the national organization solely devoted to strengthening the Republican Senate Majority and electing Republicans to the United States Senate.

5. Plaintiff, Rick Scott for Florida, is the official campaign to elect Governor Rick Scott to the United States Senate.

6. Defendant, Craig Latimer, is the Supervisor of Elections for Hillsborough County, Florida, and is sued in his official capacity.

7. Defendants are responsible for overseeing the conduct of elections in Hillsborough County, including but not limited to the conduct of election personnel throughout the county in the post-election process.

8. All conditions precedent to the filing of this lawsuit have been performed, have been waived, or are otherwise excused.

**COUNT I – REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF
REQUIRING DEFENDANTS TO ALLOW DESIGNATED REPRESENTATIVES TO
OBSERVE THE MACHINE AND MANUAL RECOUNTS AS SPECIFIED IN
FLA. ADMIN. CODE R. 1S-2.031 AND FLA. STAT. §§ 102.141, 101.4614, 101.5614**

9. Plaintiff adopts and realleges the allegations of paragraphs 1 through 7 above.

10. Defendants are currently conducting a machine recount of votes cast in the race for United States Senate between Governor Scott and Senator Bill Nelson. *See* § 102.141(7), Fla. Stat.

11. Rule 1S-2.031(2) and (3), Florida Administrative Code, applies to both machine and manual recounts. Fla. Admin. Code R. 1S-2.031(2) & (3) (stating “The following procedures apply to both machine and manual recounts: . . .”).

12. Rule 1S-2.031 entitles each candidate involved in a recount to be represented by a representative during the recount. Rule 1S-2.031(3)(d) provides in part:

Permissible representatives. The following persons or entities are entitled to have representatives present during a recount:

1. In a race, each candidate whose ultimate success or failure in the race could be adversely or favorably impacted by the recount is entitled to have:

a. One representative for the county canvassing board.

b. One additional representative per counting team during a manual recount.

2. In a partisan race that is the subject of a recount, each political party with a candidate whose ultimate success or failure in the race could be adversely or favorably impacted by the recount is entitled to have:

a. One representative for the canvassing board.

b. One additional representative per counting team during a manual recount.

13. Rule 1S-2.031(3)(d) is unambiguous and plainly requires that each candidate involved in the recount is entitled to one representative for the canvassing board and, if applicable, one additional representative per counting table during the manual recount. In a partisan race, such as the one at issue, each political party is also entitled to one representative for the canvassing board and, if applicable, one additional representative per counting table.

14. Rule 1S-2.031(2)(e) provides: “All procedures relating to recounts shall be open to the public.”

15. Rule 1S-2.031(2)(f) provides:

Location. Recounts shall be conducted in a room large enough to accommodate, as applicable, the necessary number of counting teams, the canvassing board members and representatives of each candidate, political party or political committee entitled to have representatives. Members of the public, including the media, shall be allowed to observe the recount from a separate area designated by the canvassing board. The area may be outside of the actual recount area but must still allow the observers to view the activities.

(emphasis added).

16. Rule 1S-2.031(2)(f) is unambiguous and plainly entitles permissible representatives to be present for observation *in the same room* in which the recount is taking place. While the general public and media may be required to observe the recount from a separate observation area, authorized representatives of candidates and political parties must be able to observe the recount in the same room.

17. For the elections at issue, Rule 1S-2.031 clearly mandates that the Republican side is entitled to three representatives inside the room where any recounts are being conducted (one representative for Governor Scott, one representative for Matt Caldwell (whose race for Commissioner of Agriculture is also subject to a machine recount), and one representative for the Republican Party of Florida.

18. Despite the clear language of Rule 1S-2.031, Defendants are refusing to allow any representatives of candidates or political parties into the room in the recount room. As the attached affidavit attests, the representatives of candidates or political parties are being required to remain in a separate room, separated by glass and without the ability to hear what is transpiring in the recount room.

19. As of the filing of this lawsuit, Defendants have failed and refused to comply with Rule 1S-2.031. There is a present, bona fide controversy as to whether Defendants are presently in violation of Rule 1S-2.031.

20. Plaintiffs rights—and those of their candidates and of the voters—will be violated if Rule 1S-2.031 is not followed, as Defendants’ ongoing violation of Rule 1S-2.031 denies the transparency that Florida law requires and jeopardizes the integrity of the 2018 general election.

21. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

- a. A declaratory judgment declaring:
 - i. All authorized representatives under Rule 1S-2.031 shall be allowed to be present for observation *in the room* in which any recount is taking place, whether manual or by machine (including, if separate, the room in which machines are located and the room in which the canvassing board is located);
 - ii. Each candidate involved in the recount is entitled to one representative for the canvassing board and one additional representative per counting table during the recount; and
 - iii. Each political party is also entitled to one representative for the canvassing board and one additional representative per counting table during the recount.
- b. A temporary and permanent injunction ordering Defendants to comply with the declarations set forth above;

c. Such further relief as the Court deems just and proper.

Respectfully submitted this 13th day of November, 2018,

/s/ Jeff Aaron

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