

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

RICK SCOTT FOR FLORIDA,

Plaintiff,

CASE NO.:

IMMEDIATE HEARING REQUESTED

SUSAN N. BUCHER, in her official
capacity as Palm Beach County
Supervisor of Elections, and the PALM
BEACH COUNTY CANVASSING
BOARD,

Defendants.

**COMPLAINT FOR EMERGENCY
DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff, Rick Scott for Florida (“Plaintiff”), by and through the undersigned counsel, sues Susan Bucher, solely in her capacity as the Supervisor of Elections of Palm Beach County, Florida (“Supervisor of Elections”), and the Palm Beach County Canvassing Board (“Board”), (collectively, “Defendants”) and alleges:

JURISDICTION AND VENUE

1. This an action for emergency declaratory and injunctive relief to require the Supervisor of Elections to conduct testing on all ballot-counting machines as required by Sections 101.5612(1) and 102.141(7)(a), Fla. Stat., prior to today’s 3:00 p.m. deadline for submitting the second unofficial results of the machine recount to the Florida Secretary of State.

2. This Court has jurisdiction to resolve this dispute pursuant to Section 86.011, Fla. Stat., and Chapters 101 and 102, Fla. Stat. (the “Florida Election Code”).

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

THE PARTIES

4. Plaintiff is a federal campaign committee authorized to conduct political activity throughout the state of Florida. Plaintiff's interests in enforcement of the election laws and ensuring a fair election are adversely affected by the conduct complained of below.

5. The Supervisor of Elections is responsible for overseeing the conduct of elections in Palm Beach County, including but not limited to, the conduct of election personnel throughout the county in the post-election process.

6. Among other things, the Board is responsible for submitting election returns to the Florida Department of State, including but not limited to, returns based on a recount ordered by the Florida Secretary of State.

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

GENERAL ALLEGATIONS

8. On November 10, 2018, the Florida Secretary of State ordered a machine recount in statewide races, including the race for the United States Senate between incumbent Senator Bill Nelson, a Democrat, and Florida Governor Rick Scott, a Republican.

9. On the evening of Tuesday, November 13, 2018, the Supervisor of Elections held a press conference and announced that certain voting machines used in the machine recount in Palm Beach County failed due to stress from overheating. *See* Alexandra Seltzer, *Florida election recount: Bucher on 'prayer mode' as Thursday deadline nears*, PALM BEACH POST (Nov. 14, 2018, 9:08 a.m.) (last updated Nov. 14, 2018, 7:32 p.m.), <https://www.palmbeachpost.com/news/20181114/florida-election-recount-bucher-on-prayer-mode-as-thursday-deadline-nears>. The Supervisor of Elections reportedly stated that she had noticed the machines starting to fail "a 'couple' of days" earlier. *Id.*

10. As a result of the mechanical failures, the Supervisor of Elections informed the public that over 170,000 votes that were already being tabulated in the machine recount would need to be re-run through the machines. *See generally* Maya Kaufman, *Palm Beach County's voting machines overheat and force recount of more than 170,000 votes*, MIAMI HERALD (Nov. 13, 2018, 10:33 p.m.) (last updated Nov. 14 2018, 7:28 a.m.), <https://www.miamiherald.com/latest-news/article221631215.html>.

11. The Florida Department of State promptly dispatched mechanics to assist in repairing the ballot-counting machines in Palm Beach County. *See id.*

12. Upon completion of maintenance and repairs to the ballot counting machines, Defendants were required to perform logic and accuracy testing on the machines *before* restarting the machine recount. Fla. Stat. §§ 101.5612(1), 102.141(7)(a).

13. Specifically, all voting systems shall be thoroughly tested. Section 101.5612(1), Fla. Stat., governing the testing of voting tabulation equipment, provides:

All electronic or electromechanical voting systems shall be thoroughly tested at the conclusion of maintenance and programming. Tests shall be sufficient to determine that the voting system is properly programmed, the election is correctly defined on the voting system, and all of the voting system input, output, and communication devices are working properly.

14. In addition, the Board has a statutory duty to ensure that “[i]mmediately before the start of the recount, a test of the tabulating equipment shall be conducted as provided in s. 101.5612.” Fla. Stat. § 102.141(7)(a).

15. Upon completion of repairs to certain ballot-counting machines, the Supervisor of Elections failed and refused to conduct the required logic and accuracy testing to ensure the machines were operating properly and accurately tabulating votes.

16. Despite the objections from on-site observers and representatives of the Republican Party of Florida, the Supervisor of Elections recommenced the machine recount process without first conducting the required testing of the repaired machines.

17. Since the evening of Tuesday, November 13th, the Supervisor of Elections has continued to tabulate votes using repaired machines that have not been tested for accuracy and reliability.

18. Plaintiff notified the Supervisor of Elections about the violations of Sections 101.5612(1) and 102.141(7)(a), Fla. Stat., but as of the filing of this lawsuit, the Supervisor of Elections continues to run ballots through machines that have not properly been tested to ensure accuracy of the voting tabulations.

19. Upon information and belief, the Board has been notified about the violations of Sections 101.5612(1) and 102.141(7)(a), Fla. Stat., but the Board allowed the machine recount to proceed despite such violations.

COUNT I – REQUEST FOR EMERGENCY DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF TO REQUIRE THE SUPERVISOR OF ELECTIONS TO COMPLETE REQUIRED TESTING ON REPAIRED VOTING MACHINES

20. Plaintiff adopts and realleges the allegations of paragraphs 1 through 19 above.

21. Defendants have violated Sections 101.5612 and 102.141(7)(a), Fla. Stat., by failing to perform the mandatory, thorough logic and accuracy testing of the repaired voting systems immediately prior to recommencing the machine recount.

22. Defendants, or their representatives, have asserted that such testing of the repaired machines was not required prior to recommencing the machine recount.

23. There is an actual, *bona fide*, and existing controversy and dispute as to whether Defendants are presently conducting a machine recount in violation of Sections 101.5612(1) and 102.141(7)(a), Fla. Stat.

24. By refusing to ensure the thorough testing of the ballot-counting machines, Defendants violated their statutory duties under Florida's Election Code to ensure a fair, accurate and orderly tabulation of votes.

25. The rights of Plaintiff and the voters of Florida have been and continue to be irreparably harmed and violated by Defendants' ongoing violations of Sections 101.5612(1) and 102.141(7)(a), Fla. Stat.

26. Defendants' violations jeopardize the accuracy and reliability of the vote tabulation, as well as the integrity of Florida's 2018 general election.

27. The relief requested is necessary to maintain public trust in Florida's election process, prevent grave doubts about the accuracy and reliability of the machine recount, and prevent Plaintiff and the public from suffering irreparable harm in the form of a de-legitimization of Florida's election process and untested tabulation equipment.

28. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

a. A declaratory judgment that Defendants' failure to test the ballot-counting machines after they were repaired on November 13, 2018—but before Defendants restarted the recount—violates Sections 101.5612(1) and 102.141(7)(a), Fla. Stat.

b. A temporary and permanent injunction ordering Defendants to conduct the testing required by Sections 101.5612(1) and 102.141(7)(a), Fla. Stat., prior to today's 3 p.m. deadline

for submitting the second unofficial results of the machine recount to the Florida Secretary of State.

c. A temporary and permanent injunction ordering Defendants to segregate and maintain the ballots tabulated using any of the repaired voting systems that fail to pass the logic and accuracy testing.

d. The costs of this lawsuit, together with reasonable attorney's fees to the extent provided by law; and

e. Such further relief as the Court deems proper.

Respectfully submitted this 15th day of November, 2018.

/s/ Jeff Aaron

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