

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

RICK SCOTT FOR SENATE,

Plaintiff,

v.

BRENDA C. SNIPES, solely in her capacity as Supervisor of Elections of Broward County, Florida, and the BROWARD COUNTY CANVASSING BOARD,

Defendants.

CASE NO.

JUDGE

Plaintiff's Emergency Motion for a Temporary Injunction and Supporting Memorandum of Law

PLAINTIFF RICK SCOTT FOR SENATE'S EMERGENCY MOTION FOR A TEMPORARY INJUNCTION AND SUPPORTING MEMORANDUM OF LAW

Plaintiff Rick Scott for Senate ("Plaintiff"), through its undersigned counsel, respectfully moves this Court pursuant to Fla. R. Civ. P. 1.610(a) for the issuance of a Temporary Injunction, ordering Defendants, Brenda C. Snipes, solely in her capacity as Supervisor of Elections of Broward County, Florida, and the Broward County Canvassing Board (collectively, "Defendants"), (i) to immediately cease violating § 102.141(5), Fla. Stat.; and (ii) to segregate, from the ballots included in Defendants' forthcoming official return to the Florida Department of State, those ballots that Defendants failed to canvass by the statutory, unofficial return deadline of noon on Saturday, November 10, 2018, in violation of § 102.141(5).

Defendants' ongoing violation of § 102.141(5), through their failure to canvass all ballots by the unofficial return deadline, and through their stated plan to continue canvassing ballots past that deadline and to include (as yet) non-canvassed ballots in Defendants' forthcoming official return, has inflicted and continues to inflict irreparable injury upon Plaintiff. Respectfully, this

Court should issue immediate relief to protect both Plaintiff and the integrity of the 2018 general election.

As attested in the attached Certificate of Service, Plaintiff concurrently is serving Defendants with the Verified Complaint for Declaratory and Injunctive Relief and this Motion by email and facsimile.

Dated: November 10, 2018

Respectfully submitted,

/s/ Alette D. Rodz

Alette D. Rodz, Esq.
Florida Bar No. 0173592
Email: arodz@shutts.com
SHUTTS & BOWEN LLP
200 S. Biscayne Blvd., Suite 4100
Miami, FL 33131
Office: (305) 347-7342
Facsimile: (305) 347-7742

-and-

George T. Levesque, Esq.
Florida Bar No. 555541
Email: george.levesque@gray-robinson.com
Leslie Arsenault Metz, Esq.
Florida Bar No. 98865
Email: leslie.metz@gray-robinson.com
Jason Zimmerman, Esq.
Florida Bar No. 104392
Email: jason.zimmerman@gray-robinson.com
Jeff Aaron, Esq.
Florida Bar No. 123473
Email: jeff.aaron@gray-robinson.com
GRAYROBINSON, P.A.
515 N. Flagler Dr., Suite 1425
West Palm Beach, FL 33401
Office: (561) 268-5727
Facsimile: (561) 886-4101

Attorneys for Plaintiff

**MEMORANDUM OF LAW IN SUPPORT OF EMERGENCY MOTION FOR A
TEMPORARY INJUNCTION**

Plaintiff respectfully requests, on an emergency basis, that the Court issue a Temporary Injunction, ordering Defendants (i) to immediately cease violating § 102.141(5), Fla. Stat.; and (ii) to segregate, from the ballots included in Defendants' forthcoming official return to the Florida Department of State, those ballots that Defendants failed to canvass by the statutory, unofficial return deadline of noon on Saturday, November 10, 2018, in violation of § 102.141(5), and to ensure that any ballots counted after the deadline are not added to Defendants' official return of Sunday, November 18, 2018 at 5 p.m. In support of this Motion, Plaintiff states:

I. Under § 102.141(5), Fla. Stat., County Election Officials Must Canvass “All Ballots” by the Statutory, Unofficial Return Deadline, Subject Only to a Narrow Exception.

Section 102.141(5), Fla. Stat., the provision of the Florida Election Code primarily at issue here, provides that county election officials must canvass “all ballots” by the statutory, unofficial return deadline of noon on the fourth day after a general election. That provision states (emphasis added):

The canvassing board shall submit on forms or in formats provided by the division unofficial returns to the Department of State for each federal, statewide, state, or multicounty office or ballot measure . . . **no later than noon on the fourth day after any general or other election. Such returns shall include the canvass of all ballots as required by subsection (2).**

The language of § 102.141(5) is uncomplicated and unambiguous. Under the statute, a Canvassing Board's unofficial return, by the statutory deadline (*i.e.*, noon today), “shall include the canvass of **all ballots** . . .” § 102.141(5). The only exception that the Florida Election Code codifies for this unambiguous mandate pertains to the processing of the absentee ballots of overseas voters. In this regard, § 101.6952(5), Fla. Stat. explains that an absentee ballot from such voters that “is postmarked or dated no later than the date of the election and is received by

the supervisor of elections . . . no later than 10 days after the date of the election shall be counted as long as the vote-by-mail ballot is otherwise proper.” No other provision of the Florida Election Code excepts county election officials from the obligation to canvass “all ballots” by the unofficial return deadline. *See* § 102.141(5).

II. Defendants Are Presently Violating the Mandates of § 102.141(5).

As outlined in Plaintiff’s Verified Complaint for Declaratory and Injunctive Relief (the “Complaint”) at ¶¶ 10–13, Defendants are presently violating the clear mandates of § 102.141(5).

First, despite the fact that § 102.141(5) obligated Defendants to canvass, by the unofficial return deadline of noon today, **all ballots**, Defendants proceeded to canvass additional ballots after that deadline (hereinafter, the “Illegal Ballots”), and specifically after submitting their unofficial return to the Department of State. *Complaint* at ¶ 10. Between the time of an unofficial return and an official return (on the 12th day after a general election, *see* § 102.112(2), Fla. Stat.), the **only ballots** that county election officials may canvass are the absentee ballots of overseas voters. *See Complaint* at ¶ 11; § 101.6952(5). Upon information and belief, Defendants intend to include, in Defendants’ forthcoming official return, the Illegal Ballots, in direct contravention of § 102.141(5). *Complaint* at ¶ 12. There is no legal basis that permits Defendants to canvass ballots (and then submit such ballots as part of an official return) **after** their submission of the unofficial return, except as provided in § 101.6952(5) regarding the canvassing of overseas voters’ absentee ballots. *Id.* at ¶ 13.

As of the filing of Plaintiff’s Complaint, Defendants have failed and refused to confirm whether they will count and/or add, to Defendants’ official return, the Illegal Ballots, or maintain

the Illegal Ballots segregated at all times and excluded from Defendants' official return (as they should be, consistent with § 102.141(5)). *Id.* at ¶ 13.

III. Plaintiff Satisfies the Requirements for Obtaining a Temporary Injunction.

A. The Legal Standards for Obtaining Injunctive Relief.

This Court should issue an emergency temporary injunction where necessary to avoid immediate and irreparable injury to Plaintiff. A temporary injunction may be granted without notice upon a showing, by affidavit or verified pleading, that “immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition[.]” Fla. R. Civ. P. 1.610(a)(1)(A).¹ An applicant for a temporary injunction also must certify to the Court the efforts, if any, “that have been made to give notice and the reasons why notice should not be required.” Rule 1.610(a)(1)(B).

The standard for granting a temporary injunction under Rule 1.610 is well established. The Court should examine four factors, including whether: (1) there is a substantial likelihood that the movant will succeed on the merits; (2) the movant will suffer irreparable injury if the injunction is not granted; (3) there is no adequate remedy at law; and (4) the public interest will be served by the temporary injunction. *See U.S. 1 Office Corp. v. Falls Home Furnishings, Inc.*, 655 So. 2d 209, 210 (Fla. 3d DCA 1995) (affirming application for a temporary injunction where plaintiff made showing of all four factors); *see also Zuckerman v. Professional Writers of Florida, Inc.*, 398 So. 2d 870, 871 (Fla. 4th DCA 1981) (affirming temporary restraining order and requiring bond).

¹ Rule 1.610(a)(1)(A)–(B) provides: “A temporary injunction may be granted without written or oral notice to the adverse party or his attorney only if: (A) it appears from the specific facts shown by affidavit or verified pleading that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant’s attorney certifies in writing any efforts that have been made to give notice and the reasons why notice should not be required.”

In the context of requests for injunctive relief in the election setting, the Supreme Court of the United States has stated that “[i]n awarding or withholding immediate relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of election laws, and should act and rely upon general equitable principles.” *Reynolds v. Sims*, 377 U.S. 533, 585 (1964). *See also Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (denying injunction to suspend voter identification rules “[g]iven the imminence of the election” and the State’s “compelling interest in preserving the integrity of its election process” and “preventing voter fraud” (internal quotation marks omitted)).

B. Plaintiff Satisfies the Four Requirements for Obtaining Injunctive Relief.

Plaintiff satisfies the four requirements under Florida law for obtaining injunctive relief.

First, Plaintiff has established a strong likelihood of success on the merits. Section 102.141(5) clearly and unambiguously requires county election officials to canvass **all ballots** by the statutory, unofficial return deadline of noon on the fourth day after a general election (*i.e.*, **by noon today, November 10, 2018**). The only exception that the Florida Election Code provides to this unambiguous mandate pertains to the canvassing of overseas voters’ absentee ballots, which may occur later. *See* § 101.6952(5). Defendants simply failed to fulfill their obligation to canvass all votes by the unofficial return deadline and, even more troublingly, are presently engaged in the active violation of § 102.141(5), including by canvassing the Illegal Ballots, and by refusing to segregate and not count such Illegal Ballots from the ballots included in the forthcoming official return.

Second, the Complaint clearly shows that Plaintiff will suffer immediate and irreparable injury absent the Court’s issuance of a temporary injunction. *See* Complaint at ¶¶ 10–13, 15. The general election has taken place and these post-election matters were to have concluded by noon

today. *See* § 102.141(5). Unless this Court grants immediate relief, Plaintiff's interest in ensuring a fair and orderly election will be unduly burdened by the canvassing of the Illegal Ballots, flowing from Defendants' active and ongoing violation of § 102.141(5). *See Lantana v. Pelczynski*, 303 So. 2d 326, 327 (Fla. 1974) ("There is no question that the State has the power and the duty to insure free and fair elections."); *see also Siegel v. LePore*, 234 F.3d 1163, 1180 (11th Cir. 2000) (acknowledging that regulations governing the electoral process may be necessary to protect a State's "interest in conducting an orderly and fair election"). Moreover, as discussed above, notice of the Complaint and the instant Motion is being served contemporaneously on Defendants. Due to the limited time remaining, however, respectfully this Court should adjudicate this issue immediately. *See United States v. Metro. Dade Cnty.*, 815 F. Supp. 1475, 1478–79 (S.D. Fla. 1993) ("Where an impending election is imminent and the election machinery is already in progress, a Court may take into account equitable considerations when prescribing immediate relief.") (citing *Reynolds*, 377 U.S. at 585); *cf. Siegel*, 234 F.3d at 1177 (suggesting that harm from an election that is "underway or imminent" is sufficient to satisfy the "immediate and irreparable" standard).

Third, Plaintiff does not have an adequate remedy at law. As noted above, the election took place and these post-election matters were to have concluded by noon today, subjecting Plaintiff to immediate and irreparable injury as a result of Defendants' conduct. Defendants' violation of § 102.141(5) will increase the risk of improper counting of voters' ballots, which the courts cannot correct in the future, after the conclusion of the election process. Plaintiff's only pathway to achieving relief is through this Court's issuance of a temporary injunction, which would at least help ameliorate Defendants' election law violations.

Fourth and finally, there is a strong public interest in enforcing state election laws and protecting the fundamental right to vote. *See, e.g., Friedman v. Snipes*, 345 F. Supp. 2d 1356, 1376 (S.D. Fla. 2004) (acknowledging the State’s interest in regulating elections in order to avoid chaos, provide order, and ensure a “fair and honest election”); *Kennedy v. Riley*, No. 2:05cv1100-MHT, 2007 WL 1461746, at *2 (M.D. Ala. 2007) (finding that the public interest is served by protecting the “fundamental political right” to vote) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)); *see also Storer v. Brown*, 415 U.S. 724, 730 (1974) (recognizing that “as a practical matter, there must be a substantial regulation of elections if they are going to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process.”). The public interest factor thus weighs overwhelmingly in favor of requiring Defendants to strictly comply with the requirements of § 102.141(5).

IV. CONCLUSION

For these reasons, Plaintiff respectfully requests, on an emergency basis, that the Court issue a Temporary Injunction, ordering Defendants (i) to immediately cease violating § 102.141(5), Fla. Stat.; and (ii) to segregate, and not count, from the ballots included in Defendants’ forthcoming official return to the Florida Department of State, those ballots that Defendants failed to canvass by the statutory, unofficial return deadline of noon on Saturday, November 10, 2018, in violation of § 102.141(5). Plaintiff also requests that the Court order such further relief as the Court deems just and proper.

Dated: November 10, 2018

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November, 2018, I did cause a true and correct copy of the Complaint, and the foregoing Plaintiff's Emergency Motion for Temporary Injunction and Supporting Memorandum of Law, to be served via facsimile and email upon:

Burnadette Norris-Weeks
Florida Bar No. 949930
Email: *bnorris@bnwlegal.com; bnorris199@aol.com*
AUSTIN PAMIES NORRIS WEEKS, LLC
401 N.W. 7th Ave.
Fort Lauderdale, FL 33311
Office: (954) 768-9770

Attorneys for Defendant Susan Bucher, solely in her capacity as the Supervisor of Elections for Broward County, Florida

Scott Andron, Assistant County Attorney
Florida Bar No. 112355
Email: *sandron@broward.org*
BROWARD COUNTY ATTORNEY'S OFFICE
Broward County Governmental Center
115 S. Andrews Ave., Suite 423
Fort Lauderdale, FL 33301
Office: (954) 357-7645

Attorneys for Defendant Broward County Canvassing Board

Respectfully submitted,

/s/ Alette D. Rodz
Alette D. Rodz, Esq.
Florida Bar No. 0173592
Email: *arodz@shutts.com*
SHUTTS & BOWEN LLP
200 S. Biscayne Blvd., Suite 4100
Miami, FL 33131
Office: (305) 347-7342
Facsimile: (305) 347-7742

-and-

George T. Levesque, Esq.
Florida Bar No. 555541
Email: *george.levesque@gray-robinson.com*
Leslie Arsenault Metz, Esq.
Florida Bar No. 98865
Email: *leslie.metz@gray-robinson.com*
Jason Zimmerman, Esq.
Florida Bar No. 104392
Email: *jason.zimmerman@gray-robinson.com*
Jeff Aaron, Esq.
Florida Bar No. 123473
Email: *jeff.aaron@gray-robinson.com*
GRAYROBINSON, P.A.
515 N. Flagler Dr., Suite 1425
West Palm Beach, FL 33401
Office: (561) 268-5727
Facsimile: (561) 886-4101

Attorneys for Plaintiff