

IN THE CIRCUIT COURT OF THE 17th JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

MATTHEW CALDWELL
and CAMPAIGN TO ELECT
MATT CALDWELL COMMISSIONER
OF AGRICULTURE,

Case No.

Plaintiffs,

v.

DR. BRENDA C. SNIPES, Supervisor of
Elections for Broward County, Florida,

Defendant.

MOTION FOR EMERGENCY INJUNCTIVE RELIEF AND
MEMORANDUM IN SUPPORT

Pursuant to Rule 1.610 of the Florida Rules of Civil Procedure, Plaintiffs MATTHEW CALDWELL and the CAMPAIGN TO ELECT MATT CALDWELL COMMISSIONER OF AGRICULTURE, request that this Court grant emergency injunctive relief directing DR. BRENDA C. SNIPES, the Supervisor of Elections for Broward County, named as the Defendant in this action, to count only those absentee ballots received by 7 p.m. on November 6, 2018 (“[e]xcept as provided in s. 101.6952(5)), to void ballots received after 7 p.m. on November 6, 2018 that were improperly tabulated, to segregate and preserve the absentee ballots received by 7 p.m. on November 6, 2018 from the absentee ballots received after 7 p.m. on November 6, 2018, and to preserve all ballots, on the grounds set forth in detail in the Plaintiffs’ Complaint, pending resolution of this action.

BACKGROUND

Since taking office in November 2003, Snipes has been sued in her capacity as Supervisor of Elections numerous times. For example, in 2016 Snipes omitted a constitutional amendment question from some absentee ballots. News reports noted that Snipes, similar to the current election, could not articulate what went wrong or how many ballots were at issue. It was also reported in the news in 2016 that the Broward County Supervisor of Elections Office posted election results a half hour before the polls actually closed.

Amongst the egregious allegations against Snipes and her office is the sworn statement from a woman, Chelsey Marie Smith, who details her experience on October 31, 2016, while working as a temporary employee at the Broward County Supervisor of Elections office. Ms. Smith describes in her affidavit (a copy of which is attached as **Exhibit 1**) entering a locked and secured room at the office and observing four employees filling out stacks of blank ballots. She was able to identify one employee as Mary Hall, who currently serves as the Voter Services Director for the Broward County Supervisor of Elections office. According to Ms. Smith, she was terminated the next day with no explanation.

In May 2018, this Court found that Snipes violated state and federal law by destroying original paper ballots that were the subject of a public records request as well as the litigation. *Canova v. Snipes*, 2018 WL 3659485 (Fla. Cir. Ct. May 17, 2018).

Most recently, this Court instructed Snipes to comply with Florida election law by not opening vote-by-mail absentee ballots in secret as they were to be opened when the Canvassing Board were present in order to determine the validity of the ballots in accordance with Section 102.141(2), Fla. Stat. *Republican Party of Florida v. Snipes*, CACE17-001159(21) (Fla. Cir. Ct. August 10, 2018).

In the current election cycle, questions have arisen regarding a possible flawed ballot design for Broward County that may have confused voters into failing to vote for the Senate race. Broward County tallies are indicating that thousands of voters may have voted on lower-profile races while declining to make a selection for the Senate race, though no other county in the State of Florida has reported a similar pattern.

Moreover, as Governor Rick Scott (and candidate for the U.S. Senate for the State of Florida) explained on November 8, 2018:

On election night, Broward County said there were 634,000 votes cast. At 1 a.m. today, there were 695,700 ballots cast on election day. At 2:30 p.m. today, the number was up to 707,223 ballots cast on election day. And we just learned, that the number has increased to 712,840 ballots cast on election day . . . So—It has been over 48 hours since the polls closed and Broward [County is] still finding and counting ballots – and [Supervisor of Elections] Brenda Snipes . . . cannot seem to say how many ballots still exist or where these ballots came from, or where they have been.

Despite all other counties in the State (with the exception of Palm Beach County) having finished counting similar ballots, including Miami-Dade County which has a larger voter roll, as of the time of this filing the Florida Division of Elections website shows that Broward County inexplicably still has yet to complete the vote-by-mail ballots and early-voting ballots three days after election day. This is a repeat of Broward's Supervisor of Elections' performance in the August 2018 primaries when the County was the last to post election results. In the context of Snipes' past violations, this raises the concern that the ballots being counted were received after the permitted statutory time. It is against this backdrop that Snipes' conduct, this election process, and the Plaintiffs' request for injunctive relief must be viewed.

ARGUMENT

“[A]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic

processes.” *Storer v. Brown*, 415 U.S. 724, 730 (1974). On November 8, 2018, Defendant Snipes, the Supervisor of Elections for Broward County, Florida, would not even confirm the number of absentee ballots that remain to be counted. She did not provide *any* information that confirms that only absentee ballots being received by 7 p.m. on November 6, 2018 were being counted. Pursuant to Rule 1.610 of the Florida Rules of Civil Procedure, the relief requested is necessary immediately. Unless Defendant is temporarily and permanently enjoined from counting absentee ballots that were not timely received on election day, Plaintiffs will suffer irreparable injury, for which there is no remedy at law.

Plaintiffs are entitled to temporary injunctive relief because: (1) they will suffer irreparable harm unless the *status quo* is maintained; (2) they have no adequate remedy at law; (3) they have a substantial likelihood of success on the merits; and (4) a temporary injunction will serve the public interest. *Foreclosure FreeSearch, Inc. v. Sullivan*, 12 So. 3d 771, 775 (Fla. 4th DCA 2009) (quoting *Broward Cnty. v. Meiklejohn*, 936 So. 2d 742, 746 (Fla. 4th DCA 2006)). Moreover, as a candidate and campaign in the election, Plaintiffs have standing to seek this relief. *See Wexler v. Lepore*, 878 So. 2d 1276, 1280 (Fla. 4th DCA 2004).

Plaintiffs will suffer a distinct and irreparable injury if the Broward County Supervisor of Elections and Broward County Canvassing Board do not adhere to the Florida Statutes governing the election process. They will face irreparable harm if invalid votes are counted that alter the election outcome in favor of Caldwell’s opponent.

Caldwell and the campaign also have a clear legal right to the requested relief, but do not have an adequate remedy at law as their damages cannot be “reduced to a monetary amount and the potential public harm in failing to follow the applicable legal requirements cannot be dissipated by ordinary judicial remedies.” *Reform Party of Fla. v. Black*, 885 So. 2d 303, 306

(Fla. 2004). Plaintiffs also have a substantial likelihood of success on the merits as Florida Statute Section 101.67(2) expressly provides that absentee ballots to be counted must be received by 7 p.m. the day of the election. At a press conference on November 8, 2018, the Supervisor of Elections, despite being questioned about the counting of absentee ballots, would not confirm the number of absentee ballots that remain to be counted. Finally, the public interest weighs heavily in favor of granting the preliminary injunction in order to preserve the integrity of the election process. “. . . Florida has important interests in enforcing its election laws [and] protecting the integrity of the ballot and election process” *Black*, 885 So. 2d at 306. Compliance with Florida Statute § 101.67(2), in addition to all election laws, must be ensured to preserve the integrity of the voting process.

The chief function of a preliminary injunction is to preserve the status quo until the merits of the controversy can be fully and fairly adjudicated. *See Yardley v. Albu*, 826 So. 2d 467, 470 (Fla. 5th DCA 2002). Thus, the absentee ballots must not be counted or certified until the absentee ballots received after 7 p.m. on November 6, 2018 are segregated and preserved from the absentee ballots timely received by 7 p.m. on November 6, 2018. And all ballots must be preserved until such time as it can be determined that history has not repeated itself and that Defendant is complying with election laws.

CONCLUSION

Plaintiffs respectfully request that the Court enter a preliminary injunction: requiring Defendant to not count any absentee ballots received after 7 p.m. on November 6, 2018 (“[e]xcept as provided in s. 101.6952(5)) and directing Defendant to segregate and preserve the absentee ballots received by 7 p.m. on November 6, 2018 from the absentee ballots received after 7 p.m. on November 6, 2018; voiding the improper tabulation of any votes cast after 7 p.m. on

November 6, 2018; directing Plaintiffs to preserve all ballots until it can be determined that they have complied with the election laws; and such other and further relief as this Court deems just and proper.

Respectfully submitted,

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