

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

REPUBLICAN PARTY OF FLORIDA,

Plaintiff,

v.

**Case No:
Division:**

BRENDA C. SNIPES, in her official capacity
as Broward County Supervisor of Elections

Defendant.

COMPLAINT

This is a complaint for declaratory judgment and injunctive relief against Broward County Supervisor of Elections Brenda C. Snipes. Florida law requires each Supervisor of Elections to keep all vote-by-mail ballots “unopened in his or her office until the county canvassing board canvasses the vote.” § 101.68, Fla. Stat. The Republican Party of Florida, on behalf of its candidates and members, seeks a declaratory judgment affirming that the Broward County Supervisor of Elections must comply with this law.

Parties

1. Plaintiff Republican Party of Florida (“RPOF”) is a political party committee recognized by Florida law. RPOF is the statewide political party organization representing Republican candidates and Florida’s 4.5 million registered Republican voters.
2. Defendant Brenda C. Snipes is the Broward County Supervisor of Elections and is sued in her official capacity.

Jurisdiction and Venue

3. This Court has jurisdiction to render declaratory judgments under sections 26.012, 86.011, 86.021, 86.051, and 86.101 of the Florida Statutes. RPOF seeks a declaration regarding

its rights under the statutes addressed in this Complaint. The relief sought in this action is declaratory and anticipatory in nature and includes a request for supplemental injunctive relief.

RPOF does not seek damages or monetary relief.

4. Venue is proper under section 47.011, Florida Statutes, because Defendant resides in Broward County and the cause of action accrued here.

General Allegations

I. Overview of Vote-By-Mail Balloting Procedures

5. The Florida Election Code authorizes any eligible voter to request a vote-by-mail ballot in person or in writing. § 101.62(1)(a), Fla. Stat.

6. For each request for a vote-by-mail ballot received, the Supervisor of Elections must record the date the request was made; the date the vote-by-mail ballot was delivered to the voter, the voter's designee, or the post office; the date the ballot was received by the Supervisor; and the absence of the voter's signature on the voter's certificate, if applicable. § 101.62(3), Fla. Stat.

7. Supervisors of Elections must mail a vote-by-mail ballot to each absent qualified voter who has requested such a ballot. § 101.62(4), Fla. Stat. For absent uniformed service voters and overseas voters, the deadline for sending the ballot is 45 days before each election. § 101.62(4)(a), Fla. Stat. For other absent qualified voters, vote-by-mail ballots must be sent between the 35th and 28th days before the election. § 101.62(4)(b), Fla. Stat. After these deadlines, the Supervisor of Elections must mail vote-by-mail ballots within 2 business days after receiving a request. *Id.*

8. Two envelopes must be enclosed with each vote-by-mail ballot: a secrecy envelope, into which the voter encloses his or her marked ballot, and a mailing envelope, into which the voter places the secrecy envelope. § 101.64, Fla. Stat.

9. The mailing envelope must be addressed to the Supervisor of Elections and bear a certificate in substantially the following form:

Note: Please Read Instructions Carefully Before
Marking Ballot and Completing Voter's Certificate.

VOTER'S CERTIFICATE

I, _____, do solemnly swear or affirm that I am a qualified and registered voter of _____ County, Florida, and that I have not and will not vote more than one ballot in this election. I understand that if I commit or attempt to commit any fraud in connection with voting, vote a fraudulent ballot, or vote more than once in an election, I can be convicted of a felony of the third degree and fined up to \$5,000 and/or imprisoned for up to 5 years. I also understand that failure to sign this certificate will invalidate my ballot.

(Date) (Voter's Signature)

10. The voter's certificate must be arranged on the back of the mailing envelope and must be executed by the voter. § 101.64(2), Fla. Stat.

11. Supervisors of Elections must enclose instructions with each vote-by-mail ballot. § 101.65, Fla. Stat. Those instructions advise the voter regarding the steps that must be taken for a vote-by-mail ballot to be counted. *Id.*

II. Canvassing of Vote-By-Mail Ballots

12. After receiving a returned vote-by-mail ballot, the Supervisor of Elections must compare the signature of the elector on the voter's certificate with the signature of the elector in the registration books or precinct register to determine whether the elector is duly registered in the county. § 101.68(1), Fla. Stat.

13. After comparing the elector's signature on the voter's certificate, the Supervisor of Elections cannot take further action to open or tabulate a vote-by-mail ballot until the vote has been canvassed by the county canvassing board.

14. Section 101.68(1) of the Florida Statutes specifically provides:

The supervisor shall safely keep the ballot unopened in his or her office until the county canvassing board canvasses the vote.

15. A county canvassing board may begin the canvassing of vote-by-mail ballots at 7 a.m. on the 15th day before the election, but not later than noon on the day following the election.

§ 101.68(2)(a), Fla. Stat. The canvass may include a comparison of the signature of the elector on the voter's certificate with the signature of the elector in the registration books or the precinct register to determine whether the elector is duly registered in the county and to determine the legality of the vote-by-mail ballot. *Id.*

16. A vote-by-mail ballot is considered illegal if the voter's certificate or vote-by-mail ballot affidavit does not include the signature of the elector, as shown by the registration records or the precinct register. § 101.68(2)(c), Fla. Stat.

17. If the canvassing board determines that any ballot is illegal, a member of the board shall, without opening the envelope, mark across the face of the envelope: "rejected as illegal." § 101.68(2)(c), Fla. Stat. The vote-by-mail ballot affidavit, if applicable, the envelope, and the ballot contained therein shall be preserved in the manner that official ballots voted are preserved. *Id.*

18. Vote-by-mail ballots that have been canvassed may be processed through electronic tabulating equipment, but no result may be released until after the closing of the polls on Election Day. § 101.68(2)(a), Fla. Stat.

III. Right to Protest Illegal Vote-By-Mail Ballot

19. If any elector or candidate present believes that a vote-by-mail ballot is illegal due to a defect apparent on the voter's certificate or the vote-by-mail ballot affidavit, he or she may, at any time before the ballot is removed from the envelope, file with the canvassing board a protest

against the canvass of that ballot, specifying the precinct, the ballot, and the reason he or she believes the ballot to be illegal. § 101.68(2)(c)2., Fla. Stat.

20. A challenge based upon a defect in the voter's certificate or vote-by-mail ballot affidavit may not be accepted after the ballot has been removed from the mailing envelope. § 101.68(2)(c)2., Fla. Stat.

IV. Violations of Vote-By-Mail Balloting Procedures by the Broward County Supervisor of Elections in the 2016 General Election

21. In accordance with section 101.68, Florida Statutes, the county canvassing boards in nearly all of Florida's large counties convened beginning on October 24, 2016—the first day authorized by law—to begin canvassing vote-by-mail ballots.

22. The Broward County Canvassing Board did not convene to canvass vote-by-mail ballots for the General Election on October 24, 2016. Instead, the Broward County Canvassing Board first convened to canvass vote-by-mail ballots for the 2016 General Election on Monday, November 7, 2016.

23. Defendant Snipes failed to “safely keep” the vote-by-mail ballots “unopened” in her office until the Broward County Canvassing Board canvassed these votes on November 7, 2016.

24. Defendant Snipes authorized her staff to open vote-by-mail ballots before they were canvassed by the Broward County Canvassing Board.

25. Defendant Snipes authorized her staff to remove vote-by-mail ballots from their mailing envelopes before they were canvassed by the Broward County Canvassing Board.

26. Defendant Snipes authorized her staff to remove marked vote-by-mail ballots from their secrecy envelopes before they were canvassed by the Broward County Canvassing Board.

27. Defendant Snipes authorized her staff to process and electronically tabulate marked vote-by-mail ballots before they were canvassed by the Broward County Canvassing Board.

28. The decision of Defendant Snipes to authorize the removal of vote-by-mail ballots from their mailing envelopes before they were canvassed by the canvassing board deprived RPOF and its members and candidates of their statutory right to challenge any vote-by-mail ballot believed to be illegal by filing a protest with the Broward County Canvassing Board.

29. When informed of these ongoing violations of the law, RPOF Chairman Blaise Ingoglia sent correspondence demanding that Defendant Snipes take immediate actions to mitigate the ongoing harm to the interests of the Republican Party of Florida and its candidates and members. A copy of the correspondence is attached as Exhibit A.

30. In response to the RPOF's correspondence, Defendant Snipes and the Broward County Canvassing Board agreed to allow a Republican Party representative to monitor the conduct of Broward County's vote-by-mail ballot processing and tabulation for the 2016 General Election.

31. In response to the RPOF's correspondence, the Chair of the Broward County Canvassing Board agreed to be present throughout Broward County's vote-by-mail ballot processing and tabulation process for the 2016 General Election.

32. Although these corrective actions provided some transparency in Broward County's vote-by-mail balloting process for the 2016 General Election, Defendant Snipes has refused to alter her office's practice of opening and processing vote-by-mail ballots before those ballots have been canvassed by the Broward County Canvassing Board.

33. Unless this Court grants the relief sought in this action, Defendant Snipes will continue to authorize vote-by-mail ballots to be opened and removed from their mailing envelopes before they have been canvassed by the Broward County Canvassing Board.

34. Unless this Court grants the relief sought in this action, the actions of Defendant Snipes will continue to deprive RPOF and its members and candidates of their statutory right to file a protest of any vote-by-mail ballot believed to be illegal.

35. Broward County will hold municipal elections in 2017 and state and federal elections in 2018.

36. All conditions precedent to the filing of this action have been performed or waived.

Count 1: Declaratory Judgment

37. The allegations in paragraphs 1 through 36 are incorporated by reference.

38. On its own behalf and on behalf of its members and candidates, RPOF has an interest in ensuring that elections in Broward County are conducted in compliance with the Florida Election Code and other applicable state and federal laws.

39. The declaratory relief sought in this Count is appropriate for RPOF to seek on behalf of its members and candidates.

40. Defendant Snipes, by authorizing vote-by-mail ballots to be opened and removed from their mailing envelopes before they have been canvassed by the canvassing board, has placed RPOF, its members, and its candidates in doubt about their ability to exercise the statutory right to file a protest of any vote-by-mail ballot believed to be illegal.

41. Because canvassing of vote-by-mail ballots cannot begin until the 15th day before the election, the dispute in this case is capable of repetition yet evading review.

42. RPOF has a bona fide, actual, present, and practical need for the declaration sought in this action.

43. This action involves a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; the immunities, powers, privileges or rights of RPOF are dependent upon the facts or the law applicable to the facts; RPOF and Defendant Snipes have an

actual, present, adverse and antagonistic interest in the subject matter, either in fact or law; the antagonistic and adverse interests are all before this Court by proper process or class representation; and the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity.

44. The public interest strongly favors the resolution of this dispute now rather than through emergency litigation on the eve of a future election.

Count 2: Temporary and Permanent Injunctive Relief

45. The allegations in paragraphs 1 through 36 are incorporated by reference.

46. This is a claim for temporary and permanent injunctive relief to prohibit Defendant Snipes from engaging in the illegal conduct described in this Complaint in future elections.

47. On its own behalf and on behalf of its members and candidates, RPOF has an interest in ensuring that elections in Broward County are conducted in compliance with the Florida Election Code and other applicable state and federal laws.

48. The injunctive relief sought in this Count is appropriate for RPOF to seek on behalf of its members and candidates.

49. RPOF faces a likelihood of irreparable harm if this Court does not grant the relief sought, because Defendant Snipes will continue to authorize vote-by-mail ballots to be opened and removed from their envelopes before they have been canvassed by the Broward County Canvassing Board.

50. Unless this Court grants the relief sought, Defendant Snipes will continue to deprive RPOF and its members and candidates of their statutory right to file a protest of any vote-by-mail ballot believed to be illegal because a challenge based upon a defect in the voter's certificate or vote-by-mail affidavit cannot be accepted after the ballot has been removed from its mailing envelope.

51. RPOF has no adequate remedy at law to address the harm described in this Complaint. The deprivation of a statutory right to protest a ballot believed to be illegal cannot be adequately remedied through money damages.

52. RPOF has a substantial likelihood of success on the merits. The governing provisions of the Florida Election Code are clear and unambiguous and the relevant facts regarding the conduct of Defendant Snipes are not in dispute.

53. The threatened injury to RPOF in the absence of an injunction outweighs any possible harm to Defendant Snipes from an injunction requiring compliance with the law.

54. The public interest strongly favors the entry of an injunction and the resolution of this dispute now rather than through emergency litigation on the eve of a future election.

55. The public interest also strongly favors injunctive relief requiring the Broward County Supervisor of Elections to comply with the Florida Election Code.

RELIEF SOUGHT

Wherefore, Plaintiff Republican Party of Florida requests a judgment:

a. Declaring that Defendant Snipes has no legal authority to authorize the opening of vote-by-mail ballots before they are canvassed by the Broward County Canvassing Board;

b. Declaring that Defendant Snipes must safely keep all vote-by-mail ballots unopened in her office until the Broward County Canvassing Board canvasses the votes;

c. Declaring that the electors and candidates of the Republican Party of Florida have a statutory right, before a vote-by-mail ballot is removed from the envelope, to review the voter's certificate or vote-by-mail ballot affidavit to determine whether any defects are apparent on the certificate or affidavit;

d. Declaring that the Republican Party of Florida's electors and candidates have a statutory right, before a vote-by-mail ballot is removed from the envelope, to file with the canvassing board a protest against the canvass of a vote-by-mail ballot believed to be illegal;

e. Enjoining Defendant Snipes, in her official capacity as Broward County Supervisor of Elections, from engaging in or authorizing actions contrary to the Florida Election Code or the declarations sought in this action; and

f. Providing additional relief as this Court deems just and proper.

Respectfully submitted,

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November 2, 2016

Dr. Brenda C. Snipes
Supervisor of Elections
115 South Andrews Avenue, Room 102
Fort Lauderdale, Florida 33301

Dear Supervisor Snipes:

I write in response to reports that your office is engaged in ongoing violations of Florida law governing the canvassing of vote-by-mail ballots. Specifically, I have been advised that tens of thousands of vote-by-mail ballots in Broward County are being opened by your staff: (1) before they have been canvassed by the county canvassing board; and (2) without providing the public the opportunity to review or file a protest against the canvass of a ballot believed to be legally deficient. These illegal actions must stop immediately.

Florida law requires each supervisor of elections to keep every vote-by-mail ballot "unopened in his or her office until the county canvassing board canvasses the vote." Fla. Stat. § 101.68(1). The county canvassing boards in nearly all of Florida's large counties convened beginning on October 24—the first day authorized by law—to begin canvassing vote-by-mail ballots. According to the Public Notice posted on your website, the Broward County Canvassing Board has not met since October 19's Logic and Accuracy Testing and will not meet again until Monday, November 7. Given that the canvassing board has apparently not canvassed *any* vote-by-mail ballots, your office has no legal authority to open these ballots. You and your staff must immediately cease opening vote-by-mail ballots until the Broward County Canvassing Board has been properly convened to begin the canvass in compliance with the law.

Florida law also allows any registered voter who believes a vote-by-mail ballot is illegal due to a defect on the voter's certificate or the vote-by-mail affidavit to file with the canvassing board a protest against the canvass of the ballot. Fla. Stat. § 101.68(2)(c)2. Yet you have prevented voters from exercising their right to have allegedly deficient ballots reviewed by the canvassing board by excluding the public from the process by which the vote-by-mail ballots are reviewed. The artificial "public inspection" period of only 30 minutes per day provided by your office is plainly insufficient and contravenes the purpose of this law. Moreover, because a challenge based on a defect in the voter's certificate "may not be accepted after the ballot has been removed from the mailing envelope," your decision to open vote-by-mail ballots prior to canvassing may have permanently deprived voters of their legal right to lodge a protest against illegal ballots.

The illegal conduct outlined above threatens irreparable harm to the Republican Party of Florida and its voters. Your actions are also contrary to the public's interest in a fair, open, and transparent process that ensures every person entitled to vote has the opportunity to cast a ballot and have that ballot counted properly. Given the media reports of your office's many failures this election cycle, including your omission of a congressional race and proposed constitutional amendment from some ballots, printing ballots with the word "no" on the "yes" line, and distribution of inaccurate voter identification cards, the Republican Party of Florida is prepared to take all necessary legal actions to ensure that Broward County conducts its election in compliance with the law.

Please respond to my office by 4 p.m. today to confirm the immediate actions that you are taking to correct these issues prospectively and to correct any errors or illegality that have occurred to this point.

Sincerely,

Blaise Ingoglia
Chairman

cc: Broward County Canvassing Board members

EXHIBIT A