

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.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, MATTHEW CALDWELL and THE CAMPAIGN TO ELECT MATT CALDWELL COMMISSIONER OF AGRICULTURE, files this Complaint against Defendant, DR. BRENDA C. SNIPES in her capacity as Supervisor of Elections for Broward County, Florida, and alleges:

IDENTIFICATION OF PARTIES AND JURISDICTION

1. This is an action for declaratory and injunctive relief pursuant to Chapter 86, Florida Statutes.
2. Matthew Caldwell is the Republican candidate for the Office of Commissioner of Agriculture for the State of Florida.
3. The Campaign to Elect Matt Caldwell Commissioner of Agriculture is the official campaign to elect Matthew Caldwell for the Florida Commissioner of Agriculture.
4. Dr. Brenda C. Snipes, the Supervisor of Elections, is a constitutional officer charged with holding elections in Broward County, including regular and special elections.

5. The causes of action as stated herein occurred in Broward County, Florida.

6. This Court has subject matter jurisdiction over the claims complained of herein as a court of general jurisdiction, pursuant to Fla. Stat. § 86.011, and article V, section 5, Florida Constitution.

7. Venue in this Court is proper pursuant to Fla. Stat. § 47.011.

PAST MISCONDUCT OF THE SUPERVISOR OF ELECTIONS

8. Dr. Brenda C. Snipes is currently the Broward County Supervisor of Elections.

9. Since taking office in November 2003, Snipes has been sued in her capacity as Supervisor of Elections numerous times.

10. 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.

11. 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.

12. 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).

13. Most recently, this Court instructed Snipes to comply with Florida election law by not opening vote-by-mail absentee ballots in secret, to instead open them 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).

14. 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.

IRREGULARITIES IN 2018 GENERAL ELECTION BALLOT TABULATION

15. A statewide election was held on November 6, 2018 for among other offices, the Commissioner of Agriculture.

16. As of the time of this filing, the reported votes statewide in favor of candidate Matthew Caldwell were 4,022,195, while the reported votes statewide in favor of his opponent, Nicole Fried, were 4,025,168. As of the time of this filing, the unofficial reported votes from Broward County were 213,400 in favor of Caldwell and 477,450 in favor of Fried.

17. Florida law requires that “[e]xcept as provided in s. 101.6952(5) [which pertains to absentee ballot from an overseas voter], all marked absent electors’ ballots to be counted must be received by the supervisor by 7 p.m. the day of the election.” Fla. Stat. § 101.67(2).

18. Snipes held a press conference on November 8, 2018. Despite being questioned about the counting of absentee ballots, she would not confirm the number of absentee ballots that remain to be counted. No information has been provided that confirms that only absentee ballots being received by 7 p.m. on November 6, 2018 were being counted.

19. 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.

20. 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 absentee ballots being counted were received after the permitted statutory time. Thus, Plaintiffs are in doubt as to whether the Supervisor of Elections is counting only those absentee ballots received by 7 p.m. on November 6, 2018 or whether the Supervisor of Elections is counting absentee ballots that were received after 7 p.m. on November 6, 2018.

Count I

(Declaratory Judgment)

21. Paragraphs 1 through 20 are incorporated by reference as if fully set forth herein.
22. Florida law expressly requires that absentee ballots (“[e]xcept as provided in s. 101.6952(5)) received after 7 p.m. the day of the election shall not be counted. Fla. Stat. § 101.67(2).
23. Plaintiffs seek a declaratory judgment that the counting of any absentee ballots received after 7 p.m. on November 6, 2018 (“[e]xcept as provided in s. 101.6952(5)) is in violation of Fla. Stat. § 101.67(2) and that any such ballots that were included in the tabulated results are void.

Count II

(Injunctive Relief)

24. Paragraphs 1 through 20 are incorporated by reference as if fully set forth herein.
25. Plaintiffs seek injunctive relief directing 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 to void the improper tabulation of any votes cast after 7 p.m. on November 6, 2018.
26. Plaintiffs also seek injunctive relief directing Defendant to preserve all ballots until it can be determined that they have complied with Florida election laws.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request:

1. A declaration that the counting of any votes received after 7 p.m. on November 6, 2018 (“[e]xcept as provided in s. 101.6952(5)) is in violation of Florida Statute § 101.67(2);

2. Emergency and injunctive relief in the form of an order 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)), 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, to void the improper tabulation of any votes cast after 7 p.m. on November 6, 2018, and to preserve all ballots until such time as it can be determined that they have complied with Florida election laws; and
3. Such other and further relief as this Court deems just and proper.

Dated: November 9, 2018

Respectfully submitted,

By: /s/ George S. LeMieux

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Affidavit of Chelsey Marie Smith

1. My name is Chelsey Marie Smith. I am over the age of 18, I am of sound mind, and I have personal knowledge of the facts contained in this affidavit.
2. I was employed through a temporary employment agency (KForce) and was working full-time at the Broward County Supervisor of Elections (hereinafter, SOE) main office in Lauderhill, FL. My duties included clerical work as well as delivering various items, as needed, throughout the office. My regular hours were from 8:00AM until approximately 9:00PM, depending on the need. As an employee, I regularly clocked in and out of work as required.
3. As part of my regular duties, I frequently handled absentee ballots, including time-stamping, registering new voter residences, and sorting and delivering ballots to various sections of the SOE headquarters. One of my supervisors, Dozel Spencer, had reviewed the various ballots with me as part of my training. As such, I am very familiar with the appearance of those ballots.
4. On 10/31/16 at about 8:30PM, I was instructed by my supervisor, Charlotte Shipman-Smith, to carry a stack of absentee ballot request forms to another room in the building, which they referred to as the Pitney-Bowes Room. I had never previously been asked to go to that room.
5. When I got to the Pitney-Bowes Room, I found that the entrance door was locked and required a security number to gain entrance. I was never provided with that security number so I could not enter on my own. The door has a long thin window which was uncovered. Although I knocked several times, the people inside were too busy to notice. Through the door window I could clearly see four SOE employees sitting at a table with stacks of documents and writing something. Eventually one of the employees opened the door, took the ballots from me, and closed the door. I was not let into the room and the employee seemed very rushed. From the door window I was unable to determine what documents were on the table. I then returned to my regular work place.
6. I was then asked to deliver another stack of absentee ballot request forms to the same room. Once again, the employees initially ignored my knocking. I looked through the door window and could clearly see four SOE employees sitting at a table. Each person had a stack of documents next to them on one side and another stack on the other side, and they were all writing something on each document.
7. Eventually an employee opened the door for me, and in a very hurried pace, allowed me in the room and told me to place my ballots on a different table. Once in the room, I could see the four SOE employees sitting at the same table actively filling out election ballots. Each had a stack of blank ballots to the right of them (about an inch high) and a stack of completed ballots to their left. There were perhaps a dozen in each completed stack. I could see that the bubbles on the right stack had not been filled in, while the bubbles on the left stack had been blackened in. I could also see the employees filling in the bubbles as they moved the ballots from right to left. I witnessed this activity for over a minute.

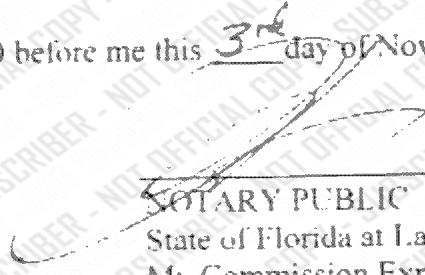
8. I could see that the SOF employees were using the same black pens (white body with a black cap) that the SOE supplies to voters at the polling sites. I was then told to leave the room by one of the employees at the table.
9. I completed other duties in another section of the building and left about 30 minutes later. When I arrived home, I told my mother, Michelle Castellanos, what I had seen. I was initially frightened to report this activity to anyone at the SOF for fear of retaliation.
10. The following day I reported for work at the same office at 9:00AM, performed my regular duties and took my lunch break at the regular time. When I returned from lunch at 12:30, I was met by a uniformed security guard at the SOF entrance and told that I had been terminated, and was forced to immediately turn over my SOE credentials. I was warned that I was no longer welcomed in the SOE building and that I should never return. I was given no explanation for this action.
11. I was able to determine the identity of one of the SOE employees using the Facebook site for the SOE Office. The employee was Mary Hall. I recognized Ms. Hall from a group picture of SOE employees which is posted on the SOE Facebook page. I had also seen photographs of Mary Hall with her name on the walls in the SOE building. Finally, Mary Hall's Facebook page lists her employment with the SOE Office. Thus, I can say that I saw Mary Hall, an SOE employee, sitting at the table in the Pitney-Bowes Room actively completing ballots with an SOE pen, and placing them into a stack. Mary Hall was also the employee who told me to leave the room.
12. I am executing this affidavit freely and voluntarily. I have not been pressured or enticed in any manner to provide this testimony. I am willing to fully cooperate with law enforcement in the investigation and prosecution of this matter.
13. Further affiant sayeth naught.


Chelsey Marie Smith

STATE OF FLORIDA
COUNTY OF BROWARD

BEFORE ME, the undersigned authority, personally appeared Chelsey Marie Smith who is personally known to me or having displayed the following identification Florida Driver's License, and who after being duly sworn, deposes and states that, under penalty of perjury, the above listed facts are true and correct.

SWORN TO AND SUBSCRIBED before me this 3rd day of November, 2016.


NOTARY PUBLIC
State of Florida at Large
My Commission Expires:



Robert G. Nichols
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FP228389
Expires 7/17/2019