

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

NATIONAL REPUBLICAN SENATORIAL  
COMMITTEE and RICK SCOTT FOR  
SENATE,

Plaintiffs,

v.

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

Defendant.

CASE NO.:  
**IMMEDIATE HEARING  
REQUESTED PURSUANT  
TO Fla. Stat. § 119.11 (2018)**

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**EMERGENCY COMPLAINT TO ENFORCE FLORIDA'S PUBLIC RECORDS ACT  
AND REQUEST FOR IMMEDIATE HEARING**

Plaintiffs, the National Republican Senatorial Committee and Rick Scott for Senate sue Defendant, Dr. Brenda C. Snipes, in her official capacity as Broward County Supervisor of Elections, Florida ("Supervisor of Elections"), and state as follows:

1. This action concerns Plaintiffs' rights to access public records, pursuant to Article I, Section 24 of the Florida Constitution, and Chapter 119 of the Florida Statutes (the "Public Records Act").

2. Voting in the 2018 General Election concluded November 6, 2018. Two days after voting has concluded, the Supervisor Of Elections is unwilling to disclose records revealing how many electors voted, how many ballots have been canvassed, and how many ballots remain to be canvassed. The lack of transparency raises substantial concerns about the validity of the election process. An emergency hearing is necessary as the Canvassing Board is obligated to submit the unofficial elections results to the Division of Elections by noon November 10, 2018. A recount in at least two, possibly three, of the statewide races appears likely.

3. Plaintiffs seek (i) an immediate, emergency hearing of this matter pursuant to section 119.11, Florida Statutes; (ii) an Order from this Court declaring Defendants to be in breach of their constitutional and statutory duties to permit access to public records; and (iii) an Order from this Court compelling Defendants to provide Plaintiffs with access to those records.

### **JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction pursuant to Art. V, § 5 of the Florida Constitution and the Public Records Act.

2. Venue for this action is properly in Broward County, Florida pursuant to section 47.011, Florida Statutes. The Broward County Supervisor of Elections is located in Broward County, Florida, and Plaintiffs' cause of action accrued in Broward County, Florida.

### **THE PARTIES**

3. Plaintiff, National Republican Senatorial Committee, is the only national organization solely devoted to strengthening the Republican Senate Majority and electing Republicans to the United States Senate.

4. Plaintiff, Rick Scott for Senate, is the official campaign to elect Rick Scott for the United States Senate.

5. Defendant, Dr. Brenda C. Snipes, is the Supervisor of Elections for Broward County, Florida, and is sued in her official capacity.

### **GENERAL ALLEGATIONS**

6. Plaintiffs have a constitutional right to access public records. Article I, Section 24 of the Florida Constitution provides:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive,

and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

7. The Supervisor of Elections has a statutory duty to permit Plaintiffs to access all public records within the Supervisor of Elections' custody, including ballots and ballot information:

a. Section 119.07(1)(a), Florida Statutes, provides:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

b. Section 119.07(5), Florida Statutes, provides:

When ballots are produced under this section for inspection or examination, no persons other than the supervisor of elections or the supervisor's employees shall touch the ballots. If the ballots are being examined before the end of the contest period in s. 102.168, the supervisor of elections shall make a reasonable effort to notify all candidates by telephone or otherwise of the time and place of the inspection or examination. All such candidates, or their representatives, shall be allowed to be present during the inspection or examination.

8. Ballots are public records subject to "the inspection requirement of section 119.07(1), Florida Statutes." Fla. Att'y Gen. Op. 2001-37 (2001).

9. Between November 6 and November 8, 2018, counsel for the Plaintiffs made numerous requests and inquiries to the Supervisor of Elections regarding the public records referenced below in Paragraphs 9 through 11, which largely went unanswered.

10. On November 8, 2018, counsel for Plaintiffs submitted to the Supervisor of Elections an Emergency Public Records Request (the "Request"), a true and correct copy of which is attached hereto as **Exhibit "A."**

11. Pursuant to Fla. Stat. 119.07(5), the Request sought an opportunity to inspect all ballots that have not yet been canvassed by the Broward County Canvassing Board, after providing due notice to the candidates.

12. Pursuant to Fla. Stat. 119.07(1)(a), the Request further sought immediate inspection of the below-referenced public records, to occur immediately due to the circumstances of the pending emergent need to review the requested records promptly:

- i. All records of the compilation of the most current information on absentee ballot status and early voting as transmitted to the Division of Elections on Monday, November 5, 2018, as required by Rule 1S-2043 of the Florida Administrative Code;
- ii. All records of the compilation of the most current information and absentee ballot status and early voting as transmitted to the Division of Elections on Tuesday, November 6, 2018, as required by Rule 1S-2043 of the Florida Administrative Code;
- iii. All records of the compilation of the most current information and absentee ballot status and early voting as transmitted to the Division of Elections on Thursday, November 7, 2018, as required by Rule 1S-2043 of the Florida Administrative Code;
- iv. All records of the compilation of the most current information and absentee ballot status and early voting as transmitted to the Division of Elections on Thursday, November 8, 2018, as required by Rule 1S-2043 of the Florida Administrative Code;
- v. Any document that reflects the actual amount of ballots cast;
- vi. Any document that reflects the actual amount of ballots counted; and
- vii. Any document that reflects the actual amount of ballots left to be counted.

13. The Supervisor of Elections has not provided Plaintiffs any of the requested public records.

14. By refusing to provide access to the requested records—including a refusal to provide any information regarding the number of ballots cast, the number of ballots counted, or the number of ballots left to be counted in Broward County—the Supervisor of Elections violated its constitutional and statutory duties under Florida’s Public Records Act.

## **COUNT I – UNLAWFUL WITHHOLDING OF PUBLIC RECORDS**

15. Plaintiffs re-allege and incorporate by reference the allegations and exhibits in paragraphs 1 through 14.

16. The Supervisor of Elections’s refusal to allow Plaintiffs to inspect the requested public records violated the Public Records Act.

17. The records that Plaintiffs seek are public records pursuant to the Public Records Act.<sup>1</sup>

18. There is no statutory exemption that applies to the requested public records, and the Supervisor of Elections has cited none.

19. Violations of the Public Records Act constitute an irreparable public injury.

20. Plaintiffs have a clear legal right to insist upon the performance of the Supervisor of Elections’s duty to permit inspection, copying and photographing of public records as required by Florida law.

21. Plaintiffs have no adequate remedy at law.

22. The Public Records Act requires this matter be set for an immediate hearing.

23. All conditions precedent to this action have occurred, have been excused, or have been waived.

### **REQUEST FOR IMMEDIATE HEARING**

24. An emergency hearing is necessary as the Canvassing Board is obligated to submit the unofficial elections results to the Division of Elections by noon November 10, 2018.

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<sup>1</sup> “Public records” means all documents, papers, letters, text messages, e-mail, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by the Agency. *See* §119.011(12), Florida Statutes; *see also* Fla. Att’y Gen. Op. 2001–37 (2001).

25. Section 119.11, Florida Statutes, provides that courts are to set immediate hearings in actions to enforce the provisions of the Public Records Act and are to give such cases priority over other pending cases. *See Salvador v. Fennelly*, 593 So. 2d 1091, 1094 (Fla. 4<sup>th</sup> DCA 1992).

26. As the Florida Supreme Court has recognized: “News delayed is news denied.” *State ex. Rel. Miami Herald Pub’g Co. v. McIntosh*, 340 So. 2d 904, 910 (Fla. 1976). Plaintiffs therefore request an immediate hearing and that this case be given priority over other pending cases. Specifically, Plaintiffs request that an initial hearing in this matter be immediately set due to the important and public concern regarding this matter.

WHEREFORE, Plaintiffs, the National Republican Senatorial Committee and Rick Scott for Senate, respectfully request that the Court:

- a. Declare that the Supervisor of Elections’s failure to provide Plaintiffs with access to the requested public records is unconstitutional and unlawful under the Public Records Act;
- b. Order the Supervisor of Elections to allow the immediate inspection, copying and photographing of the requested records upon payment of the statutorily authorized fees; and
- c. Grant any further relief as the Court deems appropriate.

Respectfully submitted this 8<sup>th</sup> day of November, 2018,

**/s/ Jason Zimmerman**

**Andre Bardos, Esq.**

Florida Bar No.: 822671

Email Address:

andy.bardos@gray-robinson.com

**Christopher Carmody, Jr., Esq.**

Florida Bar No.: 21492

Email Address:

chris.carmody@gray-robinson.com

**George Levesque, Esq.**

Florida Bar No.: 555541

Email Address:

george.levesque@gray-robinson.com

**Jason Zimmerman, Esq.**

Florida Bar No. 104392

Email Address:

jason.zimmerman@gray-robinson.com

**Ashley H. Lukis, Esq.**

Florida Bar No. 106391

Email Address:

ashley.lukis@gray-robinson.com

**Jeff Aaron, Esq.**

Florida Bar No. 123473

Email Address:

jeff.aaron@gray-robinson.com

GrayRobinson, P.A.

301 East Pine Street, Suite 1400

Orlando, FL 32801

Telephone: (407) 843-8880

Facsimile: (407) 244-5690

*Attorneys for Plaintiffs, National Republican*

*Senatorial Committee and Rick Scott for*

*Senate*

GRAY ROBINSON  
ATTORNEYS AT LAW

Shareholder

GEORGE.LEVESQUE@GRAY-ROBINSON.COM

301 SOUTH BRONOUGH STREET  
SUITE 600  
POST OFFICE BOX 11189 (32302-3189)  
TALLAHASSEE, FLORIDA 32301  
TEL 850-577-9090  
FAX 850-577-3311  
gray-robinson.com

BOCA RATON  
FORT LAUDERDALE  
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**EMERGENCY PUBLIC RECORDS REQUEST**

Records Custodian  
Dr. Brenda C. Snipes  
Broward County Supervisor of Elections  
115 S. Andrews Ave.  
Room 102  
Fort Lauderdale, FL 33301

November 8, 2018

This is a request for public records pursuant to Chapter 119, Florida Statutes, and Article I, Section 24, Florida Constitution.

Chapter 119 specifically permits ballots to be inspected pursuant to a Public Records Request. Fla. Stat. 119.07(5). At this time, we are requesting you inform the candidates by telephone of this request and the time of this inspection, which should be within the next 2 hours. After due notice is provided to the candidates, **we request to inspect all ballots that have not yet been canvassed by the Canvassing Board.** We will pay the reasonable fee associated with staff of the supervisor of elections to supervise the inspection.

Pursuant to 119.07(1)(a), **we also hereby request immediate inspection of the below-referenced public records at this time**, as it is a reasonable time and due to the circumstances of the pending emergent need to review these records promptly.

1. All records of the compilation of the most current information on absentee ballot status and early voting as transmitted to the Division of Elections on Monday, November 5, 2018, as required by Rule 1S-2043 of the Florida Administrative Code;
2. All records of the compilation of the most current information and absentee ballot status and early voting as transmitted to the Division of Elections on Tuesday, November 6, 2018, as required by Rule 1S-2043 of the Florida Administrative Code;
3. All records of the compilation of the most current information and absentee ballot status and early voting as transmitted to the Division of Elections on Thursday, November 7, 2018, as required by Rule 1S-2043 of the Florida Administrative Code;
4. All records of the compilation of the most current information and absentee ballot status and early voting as transmitted to the Division of Elections on Thursday, November 8, 2018, as required by Rule 1S-2043 of the Florida Administrative Code;

EXHIBIT "A"



Public Records Office  
Office of Insurance Regulation  
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5. Any document that reflects the actual amount of ballots cast;
6. Any document that reflects the actual amount of ballots counted; and
7. Any document that reflects the actual amount of ballots left to be counted.

The inability to provide simple information for such an important process is disturbing, to say the least. Until you are able to provide the information above so that the public may have a full and accurate view of the elections process, we request that you stop canvassing ballots immediately.

As used in this request, "public records" means all documents, papers, letters, text messages, e-mail, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by the Agency. See §119.011(12), Florida Statutes.

If you assert that an exemption applies to a particular public record or part of such record, please produce the part of the record which is not exempt, and state the basis of the exemption you contend is applicable to the record (or part thereof), including the statutory citation to an exemption created or afforded by statute. See §119.07(1)(d) and (e), Florida Statutes. Specifically, please state in writing and with particularity the reasons for your conclusion that the record is exempt or confidential. See §119.07(1)(f), Florida Statutes.

Additionally, even if you assert that any records are not public records, I request that you not dispose of those records for 30 days from the date of this request. See §119.07(1)(h), Florida Statutes. Similarly, do not dispose of any public records requested in this letter, notwithstanding any applicable records retention or destruction schedules. See §119.07(1)(i), Florida Statutes.

**Please make these records available as soon as possible, or by 4:00 p.m. today, whichever is earlier.** To expedite this request, we have representatives available to inspect the relevant records at your offices as soon as they are available, including the representative who hand delivered this letter.

If you have any questions or need additional information to respond to this request, please contact me directly at (850)443-3956 or Tim Cerio at (813)784-5656.

Sincerely,



George T. Levesque