

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

RICK SCOTT FOR SENATE,

Plaintiff,

v.

**SUSAN BUCHER, solely in her capacity as
Supervisor of Elections of Palm Beach
County, Florida,**

Defendant.

CASE NO.

JUDGE

Verified Complaint

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, Rick Scott for Senate (“Plaintiff”), through undersigned counsel, sues Susan Bucher, solely in her capacity as the Supervisor of Elections of Palm Beach County, Florida (“Defendant”), and alleges:

JURISDICTION AND VENUE

1. This is a lawsuit for declaratory and injunctive relief under § 86.011, Fla. Stat.
2. Venue is proper in Palm Beach County, Florida because Defendant maintains her principal places of business in Palm Beach County and because all or part of the claim for relief at issue in this litigation arose in Palm Beach County.

PARTIES

3. Plaintiff is a federal campaign committee authorized to conduct political activity throughout the state of Florida.
4. Defendant is responsible for overseeing the conduct of elections in Palm Beach

County, including but not limited to the conduct of election personnel throughout the county in the post-election process.

5. Plaintiff is supporting candidates to be voted upon in the election in Palm Beach County and throughout Florida. Plaintiff's interests in enforcement of the election laws and ensuring a fair election are adversely affected by the conduct complained of below.

6. All conditions precedent to the filing of this lawsuit have been performed, have been waived, or are otherwise excused.

**COUNT I – REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF AGAINST
DEFENDANT’S VIOLATION OF § 101.5614(4)(a), FLA. STAT. REGARDING THE
PROCESSING OF PHYSICALLY DAMAGED, “OVERVOTED,” AND
“UNDERVOTED” ABSENTEE BALLOTS**

7. Plaintiff adopts and realleges the allegations of paragraphs 1–6 above.

8. Section 101.5614(4)(a), Fla. Stat., the provision of the Florida Election Code at issue in this lawsuit, governs the processing of physically damaged, “overvoted,” and “undervoted” absentee ballots. That provision states, in relevant part (emphasis added):

If any vote-by-mail ballot is physically damaged so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot **in the presence of witnesses** and substituted for the damaged ballot. Likewise, a duplicate ballot shall be made of a vote-by-mail ballot containing an overvoted race or a marked vote-by-mail ballot in which every race is undervoted **which shall include all valid votes as determined by the canvassing board based on rules adopted by the division pursuant to s. 102.166(4).**

9. The language of § 101.5614(4)(a) is uncomplicated and unambiguous.

10. Regarding the processing of physically damaged absentee ballots, § 101.5614(4)(a) requires the Supervisor of Elections to make true duplicate copies of all such damaged ballots “in the presence of witnesses.”

11. Regarding the processing of “overvoted” and “undervoted” absentee ballots,

§ 101.5614(4)(a) provides that only the Canvassing Board—not the Supervisor of Elections, or any other entity—is authorized to determine “all valid votes . . . based upon rules adopted by the division . . .” No provision of the Florida Election Code (or any other legal authority) confers upon the Supervisor of Elections (or any other entity) the power to determine which “overvoted” or “undervoted” absentee ballots contain “valid votes,” within the meaning of § 101.5614(4)(a). That power belongs exclusively to the Canvassing Board.

12. Defendant is presently violating the mandates of § 101.5614(4)(a) in two respects.

13. First, on November 8, 2018, Defendant refused to allow Plaintiff’s representatives (or the representatives of any other political party) to properly witness Defendant’s processing and duplication of physically damaged absentee ballots.

14. In fact, Plaintiff’s representatives have only been allowed outside of the proximity required to properly witness Defendant’s staff’s review and processing of the ballots. Defendant has effectively precluded Plaintiff’s representatives from making any substantive observation of the activities of Defendant’s staff, in direct violation of § 101.5614(4)(a).

15. The statute requires Defendant to make true duplicate copies of all physically damaged absentee ballots “in the presence of witnesses.” § 101.5614(4)(a). As of the filing of this lawsuit, Plaintiff’s representatives have been prohibited from witnessing and/or actually overseeing the duplication of physically damaged absentee ballots. Plaintiff’s representatives have not even been allowed to confirm Defendant’s compliance with the statute’s procedure for processing physically damaged absentee ballots.

16. Despite having thousands of ballots to review, Defendant provided Plaintiff’s representatives with a very quick partial walk-through of the area and then did not allow any further access in reasonable proximity to Defendant’s staff. Moreover, as of mid-afternoon,

upon information and belief Plaintiff learned that there were roughly 1500 faxed-in military ballots and to the extent that these need to be converted to a ballot, the same issues noted above took place.

17. Second, and even more alarmingly, Defendant has failed to allow the Palm Beach County Canvassing Board to execute its statutory duty to determine “all valid votes” from “overvoted” and “undervoted” absentee ballots. Instead, Defendant—in violation of the express language of § 101.5614(4)(a)—has made determinations regarding voter intent herself (through her staff), and has withheld a portion of “overvoted” and “undervoted” absentee ballots from the Palm Beach County Canvassing Board, which the Board will not be provided for review tomorrow. As prescribed in § 101.5614(4)(a), only the Palm Beach County Canvassing Board—not Defendant, or any other entity—is empowered by law to determine “all valid votes” from “overvoted” and “undervoted” absentee ballots.

18. Plaintiff notified Defendant about the violations of § 101.5614(4)(a), but as of the filing of this lawsuit, Defendant has failed to cure such violations.

19. There is a present, *bona fide* controversy over whether Defendant is presently violating the mandates of § 101.5614(4)(a).

20. Plaintiff’s, its candidates’, and its voters’ rights will be violated if the Election Code is not followed, as Defendant’s ongoing violations of § 101.5614(4)(a) jeopardizes the integrity of, and may alter the outcome of, the 2018 general election.

21. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

a. A declaratory judgment that Defendant’s refusal to allow Plaintiff’s representatives to witness Defendant’s processing and duplication of physically damaged

absentee ballots violates § 101.5614(4)(a), Fla. Stat.

b. A declaratory judgment that Defendant's, rather than the Palm Beach County Canvassing Board's, determination of "all valid votes" from "overvoted" and "undervoted" absentee ballots violates § 101.5614(4)(a), Fla. Stat.

c. A temporary and permanent injunction ordering Defendant to cease violating § 101.5614(4)(a), Fla. Stat., and ordering Defendant (i) to have the Supervisor's staff review the duplicate ballots together with the original damaged ballots in the presence of the Plaintiff and any other witnesses, and if there is an objection by the witnesses, require the objected to duplicate ballots in question to be set aside for immediate review by the Canvassing Board once the review process is complete of all physically damaged absentee ballots and duplicate ballots, consistent with the procedure codified in § 101.5614(4)(a); and (ii) to allow the Palm Beach County Canvassing Board (and *only* that entity) to determine valid votes from "overvoted" and "undervoted" absentee ballots, consistent with the procedure codified in § 101.5614(4)(a).

d. The costs of this lawsuit, together with reasonable attorney's fees to the extent provided by law; and

e. Such further relief as the Court deems proper.

VERIFICATION

I hereby swear or affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

/s/ Aliette D. Rodz
Counsel for the Plaintiff

Dated: November 8, 2018

Respectfully submitted,

/s/ Aliette D. Rodz

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