

FILED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CLERK: USDC / SDFL / WPB

MILTON H. MILLER, a registered voter
of the State of Florida

Plaintiff,

v.

KATHERINE HARRIS, Secretary of State, Chief Election Officer,
THERESA LePORE, Supervisor of Elections for Palm Beach County, Florida, and
FLORIDA DEPT OF STATE, DIVISION OF ELECTIONS

Defendant.

Case No. **00-9004**
CIV-RYSKAMP

MAGISTRATE JUDGE
VITUNAC

COMPLAINT FOR EMERGENCY INJUNCTIVE RELIEF

Plaintiff, MILTON H. MILLER, sues Defendants FEDERAL ELECTION COMISSON and PALM BEACH ELECTIONS COMMISSION and states:

1. This action seeks preliminary and permanent injunctive relief against Defendants to (1) maintain the status quo until such time that a new election be held in Palm Beach County, Florida and (2) and to order a new election in Palm Beach County
2. This action brings a Federal question based upon Federal law, the United States Constitution, the Florida Constitution and Florida Statutes Title 9, chapters 97-107.
3. This action properly lies in the Southern District of Florida, as all acts took place in this judicial district

PARTIES

4. Plaintiff is a citizen and resident of the United States and of Palm Beach County, Florida, within the Southern District of Florida and is a male, over the age of 18.
5. Plaintiff is a registered voter, registered to vote at precinct #214 in the city of Boca Raton, Palm Beach county, Florida.
6. Defendant KATHERINE HARRIS, Secretary of State, is the Chief Election Officer for the State of Florida
7. Defendant THERESA LePORE, is the Supervisor of Elections for Palm Beach County, Florida

Handwritten signature or initials in the bottom right corner.

- 8 Florida Dept of State Division of Elections oversees all elections in the State of Florida.
- 9 At all times material, Defendants have acted through their agents and employees, acting within the scope of their employment, as well as on its own.

GENERAL ALLEGATIONS

10. Plaintiff went to the 1st Korean Christian Reform Church on November 7, 2000 where voting at precinct #214 is held.
11. At all times material, Plaintiff was supervised by agents of the Defendants.
12. Plaintiff voted but was unsure of who he voted for as a result of the confusing and misleading ballot.
13. Defendants agents were made aware of misleading and confusing ballot by Plaintiff, and others but took no action to rectify the situation.
14. At the time of voting and to date, Plaintiff is unaware of who Plaintiff voted for, Al Gore or Pat Buchannon.
15. According to Florida Statute 101.151(4) and 101.27 the order of the names of the candidates is stated as follows: [t]he names of the candidates of the party which received the highest number of votes for Governor of the last election in which the Governor was elected shall be placed first under the heading for each office, together with an appropriate abbreviation of the party name; the names of the candidate of the party which received the second highest vote for Governor shall be second under the heading for each office. [m]inor political party candidates and candidates with no party affiliation shall have their names appear on the general election ballot following the names of recognized political parties in the same order as they were certified.”
16. The names of the parties on the Palm Beach ballots were in the correct order. However, the names were zig-zagged so that the punch-holes were not in the correct order. The first party – Republican - received the first punch-hole. The second party Democrat received the third punch-hole with the Reform party receiving the second punch-hole.
17. Plaintiff meant to vote for Democrat – Al Gore – but was confused by the inherently unfair format and believes that he punched the second punch hole thus voting for the Reform Party and being denied his right to vote.

PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

18 Plaintiff restates and realleges paragraphs 1 through 17 as if stated herein.

19. The general function of an injunction is to preserve the status quo until full relief can be granted following a final hearing. Tamiami Trail Tours, Inc. v Greyhound Lines, Inc. Southern Greyhound Lines Division, 212 So. 2d 365 (Fla 4th DCA 1968). See also: University of Texas v Camenish 451 U.S. 390, 395 (1981). The issuance of a preliminary injunction falls within the broad discretion of the court. A preliminary injunction must be based upon (1) irreparable harm, (2) a clear legal right (3) an inadequate remedy at law, (4) consideration of the public interest. Islandia Condominium Association Inc. v Vermont, 438 So. 2d 89 (Fla 4th DCA 1983). Clearly the balance of equities heavily favors the plaintiff in this case such that justice requires the preservation of Plaintiff's statutory and common law right to vote with freedom for the candidate of his choice..

20 The status quo preserved by a preliminary injunction is the last peaceable non-contested condition that preceded the controversy. Baily v Christo, 453 So 2d 1134, 1137 (Fla 1st DCA 1984), citing Bowling v National Convoy & Trucking Co. 135 So 541 (Fla 1931). Thus the status quo sought to be maintained in this action is Plaintiff's statutory and common law right to vote.

21 The facts and application of law hereto indicate that Plaintiff faces irreparable harm and an inadequate remedy at law absent the issuance of a preliminary injunction. An injury is irreparable where the damages are estimable only by conjecture and not by any accurate standard. One must distinguish between the difficulty of proving that an injury exists and the difficulty of measuring the amount or extent of a proven injury. 42 Am. Jur 2d Injunctions sec. 49 at 790. Here an injury clearly exists with the only question being the full extent thereof.

22 Plaintiff will suffer irreparable harm due to the Defendants actions in the event a preliminary and permanent injunction is not granted. Defendant's actions have caused Plaintiff to suffer emotional distress for which he can not adequately calculate money damages.

23 Furthermore, Plaintiff has no adequate remedy at law in that his vote is so unique as to be incapable of complete and adequate compensation through money damages

24 "Irreparable harm is [resumed if the party seeking injunctive relief clearly established validity and continuing infringement of it's ... rights." Smith Int'l, Inc. v Hughes Tool Co., 718 F.2d 1573, 1581 (Fed Cir. 1983) cert denied 464 U.S. 996 (1983)

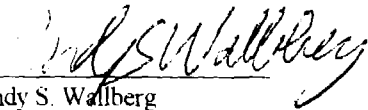
- 25 The equitable remedy of preliminary injunction allows Plaintiff to be made whole where the legal remedy is clearly inadequate and damage to plaintiff's right to vote is irreparable.
- 26 Plaintiff has a clear legal right to the remedy requested of a preliminary and permanent injunction.
- 27 Plaintiff has a clear right to vote. He is a registered voter in the State of Florida.
- 28 Plaintiff was denied that right to vote as the ballot was inherently unfair and incorrect.
- 29 Clearly the prevention of Plaintiff's right to vote for whichever candidate he wants to vote for is contrary to public interest.
- 30 The issuance of injunctive relief in this case would serve the public interest by protecting the rights of Plaintiff and also all others who were similarly misled by the ballot of Palm Beach County and thus denied their right to vote.
- 31 Any argument that the granting of an injunction allowing a new election in Palm Beach County would unduly harm Defendants is without merit.
- 32 Respectfully the only way to properly insure the preservation of plaintiff's rights is to issue a mandatory preliminary injunction which provides for the preservation of the status quo and a new election to be held in Palm Beach County, Florida.
- 33 Plaintiff stands ready, willing and able to perform any act required by this Court or the law of Florida for the issuance of a preliminary injunction, including but not limited to, the posting of a reasonable bond. However, given the circumstances the plaintiff respectfully requests that any bond be a minimal amount.

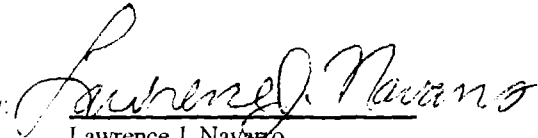
WHEREFORE, Plaintiff moves this Honorable Court for the issuance of a preliminary injunction enjoining Defendants, their officers, agents, employees and all those in active participation with them to preserve that status quo of the time immediately prior to the election of November 7, 2000 and to further order a new election for the County of Palm Beach, Florida. And any other relief the Court deems proper under the circumstances.

Respectfully submitted,

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Ron Renzy
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Lawrence J. Navarro
Florida Bar No.: 989185

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CIVIL COVER SHEET

00-9004

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings and other documents in accordance with the rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

Milton H. Miller
a registered voter of the
State of Florida

DEFENDANTS

CIV-RYSKAMP
Katharine Harris, Secretary of State, Chief
Election Officer, Theresa LePore, Supervisor
of Elections for Palm Beach County, Florida, and
Florida Department of State, Division of Elections

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Palm Beach
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)

MILITARY
FILED

NOTE: IN U.S. CONDEMNATION CASES, USE THE LOCATION OF THE TRACT.

MAGISTRATE JUDGE
VITUNAC

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Lawrence J. Navarro
16300 NE 19th Ave #206
North Miami Beach, FL 33162

ATTORNEYS (IF KNOWN)

(d) CIRCLE COUNTY WHERE ACTION AROSE:

DADE, MONROE, BROWARD, PALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKEECHOBEE, HIGHLANDS

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

(DO NOT CITE JUDICIAL STATUTES UNLESS DIVERSITY)

IVa. _____ days estimated (for both sides) to try entire case.

V. NATURE OF SUIT

(PLACE AN X IN ONE BOX ONLY)

A CONTRACT	A PERSONAL INJURY	B FORFEITURE/PENALTY	A LABOR	A BANKRUPTCY	A OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 382 Personal Injury - Med. Malpractice <input type="checkbox"/> 385 Personal Injury - Product Liability <input type="checkbox"/> 388 Assault Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Ruth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	A LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Legislation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Heps <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other A PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark B SOCIAL SECURITY <input type="checkbox"/> 881 HIA (1395f) <input type="checkbox"/> 882 Black Lung (923) <input type="checkbox"/> 883 DIWC/DIWW (405(g)) <input type="checkbox"/> 884 SSID Title XVI <input type="checkbox"/> 885 RSI (405(g)) A FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Arbitration <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/exc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Recreater Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 881 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Free Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Action
A REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	A CIVIL RIGHTS <input checked="" type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	B PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 535 General <input type="checkbox"/> 536 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights			<input type="checkbox"/> 800 State <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 881 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Free Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Action

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Refiled
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
 UNDER F.R.C.P. 23

DEMAND \$ _____

Check YES only if demanded in complaint.

JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY

JUDGE _____

DOCKET NUMBER _____

DATE

11/9/00

SIGNATURE OF ATTORNEY OF RECORD

Lawrence J. Navarro

UNITED STATES DISTRICT COURT

S/P I-2

REV. 6/90

FOR OFFICE USE ONLY: Receipt No. 713461

Amount: \$750.00

Date Paid: 11/9/00

N/IFP: _____