

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT, IN AND FOR PALM
BEACH COUNTY, FLORIDA

SHARON ELKIN, FLORENCE
ZOLTOWSKY, AND ALEX ZOLTOWSKY,

Plaintiffs,

CASE NO.: CL - 0010988-AE

v.

THERESA LePORE, SUPERVISOR OF
ELECTIONS, PALM BEACH COUNTY,
FLORIDA, AND KATHERINE HARRIS,
SECRETARY OF STATE, STATE OF
FLORIDA,

Defendants,

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

COMES NOW the Plaintiffs, SHARON ELKIN, FLORENCE ZOLTOWSKY, and ALEX ZOLTOWSKY, by and through the undersigned attorneys and files their Motion for Partial Summary Judgment on the issue that the General Election Ballot that was utilized by the Plaintiffs on November 7, 2000 in Palm Beach County, Florida AS A MATTER OF LAW, violates Florida Statutes, Section 101.191 and Section 101.151(3)(a) and (4), and states their reasons as follows:

1. In reviewing this issue in the light most favorable toward the Defendants, there is no genuine issue of a material fact, and thus the Plaintiffs are entitled to judgment as a matter of law that the General Election Ballot that the Plaintiffs utilized on November 7, 2000 is in violation of Florida Law.
2. The Plaintiffs maintain that on November 7, 2000, they each took part in the General

Election to choose the President and Vice-President of the United States of America. At the time that they took part in this election, each was provided a General Election Ballot to cast their respective votes. (Attached hereto and incorporated herein is a copy of the General Election Ballot, as Plaintiffs Exhibit "A". Plaintiffs do not have an original as that is in the possession of the Defendants)

3. The Plaintiffs maintain that the above described General Election Ballot is in clear violation of Florida Law.
4. First, Florida Statute, Chapter 101, Section 101.191, "Form of General Election Ballot", provides that in (1) the general election ballot shall be in a specific form. It then proceeds to outline the type of form that should be applied. (Attached hereto and incorporated herein as Plaintiffs Exhibit "B" is a copy of Florida Statute, Section 101.191)
5. This form ballot clearly shows that the ballot should be in single row for the respective candidates for President and Vice-President, with the proper area to check or punch to the RIGHT of the candidates names.
6. It is further clear in this statute that the location to mark your vote is to the RIGHT of the candidates names, as indicated in Florida Statute Section 101.191.
7. Additionally, this section is the "General Election Ballot", without any differentiation to a paper ballot or one involving electronic or electromechanical voting.
8. The "General Election Ballot" that was provided to the Plaintiffs does not follow the requirements of Florida Statute, Section 101.191, in that the candidates are not aligned in a single row and the area to place your vote is not at the RIGHT of the name of the candidate for whom they desired to vote for.

9. AS A MATTER OF LAW, the "General Election Ballot" that was provided by the Defendants to the Plaintiffs during the General Election which took place on November 7, 2000, is in CLEAR violation of the form and standards set out Florida Statute, Section 101.191.
10. However, the fatal flaws to "General Election Ballot" do not end with above described violations.
11. Florida Statute section 101.151 entitled "Specifications for general election ballot" provides that the general election ballot shall conform to certain specifications. These include the proper placement of the candidates on the "General Election Ballot". (Attached hereto and incorporated herein is a copy of Florida Statute Section 101.151, as Plaintiffs' Exhibit "C")
12. This Statute provides in subsection(3)(a) that the names of the candidates for President and Vice-President of the United States nominated by the political party which received the highest vote for Governor in the last general election of the Governor in this state shall be placed first on the ballot. Followed by the names of the other candidates for President and Vice-President who have been properly nominated.
13. One should then look to subsection (4) which further outlines that the candidates of the party which received the highest number of votes for Governor in the last election which a Governor was elected shall be placed first under the heading for each office...; the names of the candidates of the party which received the second highest vote for Governor shall be second under the heading for each office.
14. Florida Statute Section 101.151 and its subsections provide that on the " General

Election Ballot” that was utilized in Palm Beach County, that George Bush and Dick Cheney should be listed first and Al Gore and Joe Lieberman should be listed second. However, in reviewing the “General Election Ballot” that was utilized in the November 7, 2000 election this was not the case.

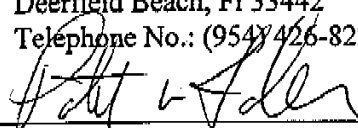
15. In reviewing Plaintiffs exhibit “A” it is clear that the Gore/Lieberman name may be second on the left hand column, but they were third concerning their location on the ballot. The candidates listed second were the Reform Party candidates Pat Buchanan and Ezola Foster. This listing clearly violates the provisions of Florida Statute 101.151, as it is undisputed that the Reform Party did not get the second highest vote in the last gubernatorial election in Florida.
16. Further, the Gore/Lieberman ticket should have been listed second on the Ballot. They were not. Secondly, they should have been provided the second punch hole for the voters to chose. They were not. As evident by the sample ballot, they were assigned the THIRD punch hole. This violation created a fatal flaw in the Ballot which is the essence of the irregularities we are presently dealing with.
17. Based upon the above described argument, the Plaintiffs maintain that the “General Election Ballot” that was utilized by the Defendants in Palm Beach County, Florida on November 7, 2000 during the General Election is in clear violation of Florida Laws.

WHEREFORE, the Plaintiffs respectively requests this Honorable Court enter Partial Summary Judgment finding, AS A MATTER OF LAW, that the “General Election Ballot” that was utilized by the Plaintiffs on November 7, 2000 during the General Election, and provided by the Defendants is in VIOLATION OF FLORIDA LAWS.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by hand delivery and by certified mail to the Defendant, Theresa LePore, Supervisor of Elections, 301 N.Olive Ave, West Palm Beach, Palm Beach County, Florida 333401 and by Certified mail to the Defendant Katherine Harris, Secretary of State, State of Florida, PL-02 The Capital, Tallahassee, Fl 32399-0250 on November 13, 2000, and Via Facsimile (561) 832-0887 to Robert M. Montgomery, Esq. of the Law Firm of Montgomery & Larmoyeux, 1016 Clearwater Place, West Palm Beach, Florida 33401 and Via Facsimile (954) 764-1530 to Bruce Rogow, Esq. Broward Financial Centre, 500 E. Broward Boulevard, Suite 1930, Fort Lauderdale, Florida 33394 on this date November 12, 2000.

YOUNG & LAWLOR, P.A.
Attorneys for Plaintiffs
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Deerfield Beach, Fl 33442
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By: _____


PATRICK W. LAWLOR, ESQUIRE
Fla. Bar. 969941

cc: Judicial Assistant

OFFICIAL BALLOT, GENERAL ELECTION
PALM BEACH COUNTY, FLORIDA
NOVEMBER 7, 2000

OFFICIAL BALLOT, GENERAL ELECTION
PALM BEACH COUNTY, FLORIDA
NOVEMBER 7, 2000

<p>ELECTORS FOR PRESIDENT AND VICE PRESIDENT</p> <p>(A vote for the candidates will actually be a vote for their electors.)</p> <p>(Vote for Group)</p>	<p>(REPUBLICAN)</p> <p>GEORGE W. BUSH - PRESIDENT DICK CHENEY - VICE PRESIDENT</p>	3
	<p>(DEMOCRATIC)</p> <p>AL GORE - PRESIDENT JOE LIEBERMAN - VICE PRESIDENT</p>	5
	<p>(LIBERTARIAN)</p> <p>HARRY BROWNE - PRESIDENT ART OLIVIER - VICE PRESIDENT</p>	7
	<p>(GREEN)</p> <p>RALPH NADER - PRESIDENT WINONA LA DUKE - VICE PRESIDENT</p>	9
	<p>(SOCIALIST WORKERS)</p> <p>JAMES HARRIS - PRESIDENT MARGARET TROWE - VICE PRESIDENT</p>	11
	<p>(NATURAL LAW)</p> <p>JOHN HAGELIN - PRESIDENT NAT GOLDHABER - VICE PRESIDENT</p>	13

<p>(REFORM)</p> <p>PAT BUCHANAN - PRESIDENT EZOLA FOSTER - VICE PRESIDENT</p>	4
<p>(SOCIALIST)</p> <p>DAVID McREYNOLDS - PRESIDENT MARY CAL HOLLIS - VICE PRESIDENT</p>	6
<p>(CONSTITUTION)</p> <p>HOWARD PHILLIPS - PRESIDENT J. CURTIS FRAZIER - VICE PRESIDENT</p>	8
<p>(WORKERS WORLD)</p> <p>MONICA MOOREHEAD - PRESIDENT GLORIA La RIVA - VICE PRESIDENT</p>	10
<p>WRITE-IN CANDIDATE</p> <p>To vote for a write-in candidate, follow the directions on the long stub of your ballot card.</p>	

TURN PAGE TO CONTINUE VOTING

ITS "A"

For any general election in which the Secretary of State, by any circuit, or the supervisor of elections, of any county, has certified the ballot position for an initiative to change the method of selection of judges, the ballot for any circuit must contain the statement in paragraph (c) or paragraph (d) and the ballot for any county must contain the statement in paragraph (e) or paragraph (f).

(c) In any circuit where the initiative is to change the method of selection of circuit court judges to merit selection and retention, the ballot shall state: "Shall circuit court judges in the (number of the circuit) judicial circuit be selected through merit selection and retention?" This statement must be followed by the word "yes" and also by the word "no."

(d) In any circuit where the initiative is to change the method of selection of circuit court judges to election by the voters, the ballot shall state: "Shall circuit court judges in the (number of the circuit) judicial circuit be selected by vote of the electorate of the circuit?" This statement must be followed by the word "yes" and also by the word "no."

(e) In any county where the initiative is to change the method of selection of county court judges to merit selection and retention, the ballot shall state: "Shall county court judges in (name of county) be selected through merit selection and retention?" This statement must be followed by the word "yes" and also by the word "no."

(f) In any county where the initiative is to change the method of selection of county court judges to election by the voters, the ballot shall state: "Shall county court judges in (name of county) be selected by vote of the electorate of the county?" This statement must be followed by the word "yes" and also by the word "no."

History.—s. 34, ch. 4328, 1895; GS 218; RGS 262; CGL 318; ss. 1-11, ch. 18877, 1935; s. 4, ch. 17898, 1937; s. 1, ch. 22626, 1945; s. 10, ch. 1951, ss. 10, 35, ch. 69-106; s. 1, ch. 73-7; s. 13, ch. 77-175; s. 2, ch. 79-205; s. 2, ch. 80-305; s. 32, ch. 84-302; s. 11, ch. 90-203; s. 10, ch. 92-18.

§11.171 Copy of constitutional amendment to be printed.—Whenever any amendment to the State Constitution is to be voted upon at any election, the Department of State shall have printed, and shall furnish to each supervisor of elections, a sufficient number of copies of the amendment, and the supervisor shall have a copy thereof conspicuously posted at each precinct upon the day of election.

History.—s. 1, ch. 5405, 1905; RGS 263; CGL 319; s. 5, ch. 26870, 1951; ss. 1, 2, ch. 80-104; s. 13, ch. 77-175.

§11.181 Form of primary ballot.— (1) The primary election ballot shall be in substantially the following form:

OFFICIAL PRIMARY BALLOT
____ Party
____ COUNTY, FLORIDA
Precinct No. ____
(Date) _____
Signature of Voter _____ (Initials of Issuing Official)
Stub No. 1

OFFICIAL PRIMARY BALLOT
____ Party

____ COUNTY, FLORIDA
Precinct No. ____
(Date) _____
(Initials of Issuing Official)
Stub No. 2

OFFICIAL PRIMARY BALLOT
____ Party
____ COUNTY, FLORIDA
Precinct No. ____
(Date) _____

TO VOTE for a candidate, mark a cross (X) in the blank space at the RIGHT of the name of the candidate for whom you desire to vote.

CONGRESSIONAL
UNITED STATES SENATOR
Vote for One
(Name of Candidate)
(Name of Candidate)
(Name of Candidate)

(And thence other offices under this heading, followed by the headings and offices as prescribed in s. 101.141.)

(2) The primary election ballot shall be arranged and printed so that the offices of Governor and Lieutenant Governor are joined in a single voting space to allow each elector to cast a single vote for the joint candidacies for Governor and Lieutenant Governor.
History.—s. 40, ch. 6469, 1913; s. 5, ch. 6874, 1915; RGS 244; CGL 401; s. 8, ch. 13761, 1929; s. 2, ch. 17901, 1937; s. 3, ch. 25386, 1949; s. 5, ch. 26870, 1951; s. 9, ch. 69-281; s. 14, ch. 77-175.
Note.—Former s. 102.39.

101.191 Form of general election ballot.— (1) The general election ballot shall be in substantially the following form:

OFFICIAL BALLOT GENERAL ELECTION
No. ____ COUNTY, FLORIDA
Precinct No. ____
(Date) _____
(Signature of Voter) _____ (Initials of Issuing Official)
Stub No. 1

OFFICIAL BALLOT GENERAL ELECTION
No. ____ COUNTY, FLORIDA
Precinct No. ____
(Date) _____
(Initials of Issuing Official)
Stub No. 2

OFFICIAL BALLOT GENERAL ELECTION
____ COUNTY, FLORIDA
Precinct No. ____
(Date) _____
TO VOTE for a candidate whose name is printed on the ballot, mark a cross (X) in the blank space at the RIGHT of the name of the candidate for whom you desire to vote. To vote for a candidate whose name is not printed on the ballot, write the candidate's name in the blank space provided for that purpose.

T/S "B"

ELECTORS
For President
and
Vice President
(A vote for the candidates will actually be a vote for their
electors)
Vote for group

DEMOCRATIC

(Name of Candidate)
For President

(Name of Candidate)
For Vice President

REPUBLICAN

(Name of Candidate)
For President

(Name of Candidate)
For Vice President

(NAME OF MINOR PARTY)

(Name of Candidate)
For President

(Name of Candidate)
For Vice President

NO PARTY AFFILIATION

(Name of Candidate)
For President

(Name of Candidate)
For Vice President

WRITE-IN

For President

For Vice President

CONGRESSIONAL
UNITED STATES SENATOR
Vote for One

(Name of Candidate) (Party abbreviation)

(Name of Candidate) (Party abbreviation)

(And thence other offices under this heading, fol-
lowed by the headings and offices as prescribed in s.
101.151.)

PROPOSED CONSTITUTIONAL
AMENDMENTS OR OTHER PUBLIC MEASURES
To vote on a constitutional amendment or other public
measure, mark a cross (X) in the blank space next to
either YES or NO.

No. ____
CONSTITUTIONAL
AMENDMENT
ARTICLE ____, SECTION ____

(Here the wording of the substance of the amendm
shall be inserted.)

YES for Approval

NO for Rejection

(2) The general election ballot shall be arran
and printed so that the offices of President and
President are joined in a single voting space to a
each elector to cast a single vote for the joint cand
cies for President and Vice President and so that
offices of Governor and Lieutenant Governor are join
in a single voting space to allow each elector to ca
single vote for the joint candidacies for Governor
Lieutenant Governor.

History.—s. 35, ch. 4328, 1895; GS 220; RGS 285; CGL 321; s. 5, ch. 3
1948; s. 4, ch. 25187, 1949; s. 5, ch. 26870, 1951; s. 29, ch. 29934, 1955; s.
57-235; s. 3, ch. 59-334; ss. 10, 35, ch. 69-106; s. 10, ch. 69-281; s. 15, ch. 77
s. 7, ch. 81-105; s. 557, ch. 95-147; s. 15, ch. 99-318.

Note.—Former s. 99.19.

101.20 Publication of ballot form; sample ball

(1) Two sample ballots shall be furnished to e
polling place by the officer whose duty it is to pr
official ballots. The sample ballots shall be in the k
of the official ballot as it will appear at that polling pl
on election day. Sample ballots shall be open to insp
tion by all electors in any election, and a sufficient n
ber of reduced-size ballots may be furnished to elec
officials so that one may be given to any elector de
ing same.

(2) Upon completion of the list of qualified ca
dates, a sample ballot shall be published by the sup
visor of elections in a newspaper of general circula
in the county, prior to the day of election. If the cou
has an addressograph or equivalent system for mail
to registered electors, a sample ballot may be mailed
each registered elector or to each household in wh
there is a registered elector, in lieu of publication,
least 7 days prior to any election.

History.—s. 5, ch. 26870, 1951; s. 8, ch. 57-168; s. 9, ch. 65-380; s.
75-174; s. 16, ch. 77-175.

101.21 Official ballots; number; printing; paym

(1) In any county in which voting machines are
used, the supervisor of elections shall determine
actual number of ballots to be printed. The printing
delivery of ballots and cards of instruction shall, i
municipal election, be paid for by the municipality,
in all other elections by the county.

(2) In any county in which voting machines
used, one set of official ballots shall be provided
each machine plus a number of sets equal to 5 per
of the total number of machines; one set shall
inserted or placed in or upon each machine, and
remainder of the sets shall be retained in the custody
the supervisor, unless it shall become necessary
ing the election to make use of same upon or in
machines.

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beginning with "No. 1," and the stubs on each ballot shall bear the same number. However, a second stub shall not be required for absentee ballots.

(3) Beneath the caption and preceding the names of candidates shall be the following words: "To vote for a candidate, mark a cross (X) in the blank space at the right of the name of the candidate for whom you desire to vote."

(4) The ballot shall have the headings, under which shall appear the names of the offices and the candidates for the respective offices alphabetically arranged as to surnames, in the following order: the heading "Congressional" and thereunder the offices of United States Senator and Representative in Congress; the heading "State" and thereunder the offices of Governor and Lieutenant Governor, Secretary of State, Attorney General, Comptroller, Treasurer, Commissioner of Education, Commissioner of Agriculture, state attorney, and public defender; the heading "Legislative" and thereunder the offices of state senator and state representative; the heading "County" and thereunder clerk of the county court, clerk of the county court (when authorized by law), sheriff, property appraiser, tax collector, district superintendent of schools, and supervisor of elections. Thereafter follows: members of the board of county commissioners, and such other county and district offices as are involved in the primary election, in the order fixed by the Department of State, followed, in the order of their election, by "Party offices," and thereunder the offices of state and county party executive committee members. Immediately following the name of each office on the ballot shall be printed, "Vote for One." When more than one candidate is to be nominated for office, the candidates for such office shall qualify and run in a group or district. The group or district number shall be printed beneath the name of the office. The names of candidates in the respective group or district shall be arranged thereunder in alphabetical order as to surnames, and following the group or district number there shall be printed the words, "Vote for One." The name of the office shall be printed over each numbered group or district and each numbered group or district shall be clearly separated from the next numbered group or district, the same as in the case of single offices. When two or more candidates running for the same office have the same or similar surname and one candidate is currently holding that office, the word "Incumbent" shall be printed next to the incumbent's name. If in any primary election all the offices as above set forth are not involved, those offices to be filled shall be arranged on the ballot in the order named.

(5) On each ballot stub the words, "Official Primary Ballot" and the party name, and on the caption the words, "Official Primary Ballot ___ Party," shall be in 15-point caps; the printed instruction to electors immediately preceding the offices and names of candidates shall be in 10-point type; the headings shall be in 12-point blackfaced caps; the offices, the group or district numbers, and the words, "Vote for One" shall be in 12-point upper and lower case blackfaced type; the names of candidates shall be in 10-point lightfaced caps; the lines on which are printed the candidates' names shall be at least 1½ picas apart, and the box to the right of

each candidate's name provided for the cross (X) in voting shall be 2 picas wide and 1½ picas high.

(6) Should the above directions for complete preparation of the ballot be insufficient, the Department of State shall determine and prescribe any additional matter or form. The Department of State shall, not less than 60 days prior to the first primary election, mail to each supervisor of elections the format of the ballot to be used for the primary election.

(7) If the above requirements as to type, size, and kind are not possible to follow, the ballot shall be prepared to conform as closely as possible to such requirements.

History.—SS. 38, 39, ch. 6466, 1913; RGS 342, 343; CGL 399, 400; s. 7, ch. 13761, 1929; s. 1, ch. 17901, 1937; ss. 1, 2, ch. 25386, 1949; s. 5, ch. 26870, 1951; s. 2, ch. 29537, 1955; s. 1, ch. 65-52; s. 2, ch. 65-60; s. 7, ch. 65-380; s. 7, ch. 69-281; ss. 10, 35, ch. 69-108; s. 1, ch. 70-268; s. 1, ch. 71-236; s. 36, ch. 73-333; s. 1, ch. 77-102; s. 13, ch. 77-175; s. 32, ch. 79-400; s. 8, ch. 81-304; s. 8, ch. 82-143; s. 19, ch. 89-338; s. 10, ch. 99-326.

Note.—Former ss. 102.37, 102.38.

101.151 Specifications for general election ballot. In counties in which voting machines are not used, and in other counties for use as absentee ballots not designed for tabulation by an electronic or electromechanical voting system, the general election ballot shall conform to the following specifications:

(1) The ballot shall be printed on paper of such thickness that the printing cannot be distinguished from the back.

(2) Across the top of the ballot shall be printed "Official Ballot, General Election," beneath which shall be printed the county, the precinct number, and the date of the election. The precinct number, however, shall not be required for absentee ballots. Above the caption of the ballot shall be two stubs with a perforated line between the stubs and between the lower stub and the top of the ballot. The top stub shall be stub No. 1 and shall have printed thereon, "General Election, Official Ballot," and then shall appear the name of the county, the precinct number, and the date of the election. On the left side shall be a blank line under which shall be printed "Signature of Voter." On the right side shall be "Initials of Issuing Official," above which there shall be a blank line. The second stub shall be the same, except there shall not be a space for signature of the elector. Both stubs No. 1 and No. 2 on ballots for each precinct shall be prenumbered consecutively, beginning with "No. 1." However, a second stub shall not be required for absentee ballots.

(3)(a) Beneath the caption and preceding the names of candidates shall be the following words: "To vote for a candidate whose name is printed on the ballot, place a cross (X) mark in the blank space at the right of the name of the candidate for whom you desire to vote. To vote for a write-in candidate, write the name of the candidate in the blank space provided for that purpose." The ballot shall have headings under which shall appear the names of the offices and names of duly nominated candidates for the respective offices in the following order: the heading "Electors for President and Vice President" and thereunder the names of the candidates for President and Vice President of the United States nominated by the political party which received the highest vote for Governor in the last gen-

TTS "C"