

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

CL 001 0970 AG

KENNETH A. HOROWITZ,
CATHERINE A. BOWSER,
SYLVIA SZYMONIAK,
ON BEHALF OF THEMSELVES
AND ALL OTHERS SIMILARLY
SITUATED,
PLAINTIFFS,



FILED
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Circuit Court
Palm Beach County

VS.

CASE NO.

THERESA LEPORE,
PALM BEACH COUNTY
SUPERVISOR OF ELECTIONS,
DEFENDANT.



CLASS ACTION COMPLAINT
FOR VIOLATION OF CIVIL RIGHTS

KENNETH A. HOROWITZ, CATHERINE A. BOWSER, and SYLVIA SZYMONIAK,
by and through undersigned counsel, sue the Defendant, THERESA LEPORE, Palm Beach
County Supervisor of Elections and say as follows:

1. This is a class action seeking declaratory and injunctive relief with respect to
violation of Plaintiffs' civil rights guaranteed by the Florida and United States Constitutions. The
claims stem from the deprivation of Plaintiffs' right to vote, in connection with the General
Election held on November 7, 2009. The right to vote is a fundamental one secured by the
Florida Constitution and United States Constitution, and in Amendments Fourteen, Fifteen,
Nineteen, Twenty Four and Twenty Six thereto. This action is brought pursuant to 42 U.S.C. Sec.

1783


2. Plaintiffs contend that the ballot format used in connection with the voting for President and Vice-President, in the November 7, 2000, General Election was misleading, was deceptive, and caused many of the voters in the election to cast votes for candidates other than the candidate for whom they intended to vote.

3. The Plaintiffs are adult residents of Palm Beach County, Florida who voted in the November 7, 2000 General Election in Palm Beach County, Florida. The plaintiff class is the group of registered voters, including those with and without party affiliation, who actually voted in the November 7, 2000 General Election in Palm Beach County, Florida.

4. The defendant, THERESA LEPORE, Supervisor of Elections for Palm Beach County, was responsible for and did design, publish and utilize the ballot format set forth in Exhibit A. In so doing she was acting under color of state law.

5. Plaintiffs sought to and did vote in the November 7, 2000 General Election.

6. Each Plaintiff attempted to vote for a presidential candidate of their choice. They are not certain that they, in fact, voted for the candidate of their choice because of the confusing nature of the presidential ballot.

7. This ballot format was unlike that of any of the presidential ballot formats used in any of the other sixty-six counties in the State of Florida in that the ballot used in Palm Beach County had candidates listed on either side of the punch strip used for voting. The sequence used on this ballot required the voter to shift attention from left to right to left to right, etc. in order to view all of the candidates on the list.

8. The balloting promulgated by the Defendant was in violation of Florida law in that it failed to allow the voter to mark an "X" or to utilize a punch strip to the right of the candidates

name, instead, for some candidates, selection was made to the right of the name and for other candidates, selection was made to the left of the name.

9. The publication issued by the Defendant in mailings to registered voters, shortly before the General Election, which showed a sample ballot, failed to show that the punch strip used to select the candidates, was in the same position utilized in the Palm Beach voting booths. The positioning of the punch strip in the voting booths was such that, for example, three separate punch holes were immediately to the right of the box in which the name of the Green Party candidates were found, at the same time, on the opposite side of the ballot, three punch holes were found immediately to the left of the box in which the Workers World Party candidates were found. In contrast, to the right of the box containing the Republican Party candidate, only two punch holes are found.

10. The Defendant has acknowledged that she was responsible for the design of the ballot and has apologized publicly for the confusion caused by the highly unusual ballot.

11. It appears, from comparison of election data from surrounding counties using a standard presidential ballot, that confusion was caused with respect, at least, to the voting for the candidates for the Democratic Party and the Reform Party. Two of the punch holes immediately to the right of the box containing the Democratic Party candidate are two of three punch holes immediately to the left of the box containing the Reform Party candidate. Voters in Palm Beach County, in inordinately high numbers, voted for the Reform Party candidate. In the two adjacent counties, total votes for the Reform Party fell short of 1,000 while the Palm Beach County votes were in excess of 3,000 votes.

12. Further confusion in the election process was demonstrated by the fact that over

19,000 of the ballots were disqualified because there were two holes punched in the presidential section. Though some such disqualifications are common, this amount of disqualification is extraordinarily high and demonstrates that there was confusion in the voting process. Such a high amount of disqualification was not found in other Florida counties using a standard ballot.

13. Considering the critical importance of the Florida vote in the presidential elections, the confusion has possibly caused well over 3,000 votes for the Reform Party candidates which would have likely gone to the Democratic Party candidates, and possibly over 10,000 votes which may have not been disqualified but for the confusion caused by the ballot.

14. At the conclusion of the reported voting on election night, the Republican Party and Democratic Party candidates were less than 1,300 votes apart in the popular election.

15. The ballot has caused confusion, disruption and dilution of the Plaintiff's right to vote. At least 3,000 of the voters were caused by the ballot to vote for candidates other than those they meant to chose.

16. The ballot has caused confusion, disruption and dilution of the Plaintiff's right to vote in that at least 19,000 votes, which otherwise would have been counted, were eliminated from consideration in the election.

17. Each time a vote was made by a member of the class for a candidate other than for the one they meant to select, that class member effectively lost her constitutionally protected right to vote.

18. Each time a ballot submitted by a voter was disqualified because two candidates were simultaneously punched, that class member lost her constitutionally protected right to vote.

19. Each time a ballot submitted by a voter was either for the incorrect candidate or

was disqualified for double punching, the class member was effectively denied his right to freedom of association with others who would have voted in a fashion similar to the class member.

20. The Defendant by publishing and utilizing the ballot format used in the General Election, acted arbitrarily and capriciously, in the design and use of the ballot format. This arbitrary and capricious act of the Defendant resulted in the loss of the Plaintiffs' fundamental right to vote and in violation of the Plaintiffs' freedom of association.

21. The ballot used in the General Election should not have been used, for all of the reasons set forth above, including that the ballot format was in violation of Florida Statutes defining the position of punch holes vis a vis the names of the candidates.

22. The number of members in the putative class is so numerous that separate joinder of each member is impracticable. The class size exceeds 600,000, who voted in the General Election in Palm Beach County.

23. The claims for the putative class raises question of law and fact common to the class member, for example:

- a. Was the ballot used by the Defendant in violation of Florida law?
- b. Was the ballot used by the Defendant confusing, deceptive and disruptive?
- c. Was the confusion, deception and disruption caused by the illegal ballot, such that it caused a violation of the Plaintiffs' civil rights?
- d. Did the Plaintiff act arbitrarily and capriciously in designing the ballot?
- e. What relief is appropriate for the class member?

24. Plaintiffs seek a declaration that the plaintiffs' civil rights were violated by the acts of the defendant.

25. Plaintiffs seek injunctive relief against the Defendant prohibiting the Defendant from further use of this or similarly confusing and deceptive ballots. Injunctive relief is appropriate as the actions of the Defendant are subject to repetition without recourse by the voters of Palm Beach County. The Plaintiffs have no plain, adequate, or complete remedy at law. They are suffering and continue to suffer irreparable injury because of the acts of the Defendant.

26. Plaintiffs seek further relief in the form of a revote by all of the class members, strictly on the presidential candidates. It is only through such means that the class members will be able to correctly exercise their right to vote and their freedom of association. Due to the anonymous nature of the balloting process, none of the Plaintiffs can identify their individual ballots and thus individual relief, in the form of corrected balloting, is not possible.

27. The Plaintiffs are obliged to pay the undersigned attorneys a reasonable fee for the services they provide in connection with this litigation.

WHEREFORE, for all of the foregoing reasons, Plaintiffs seek

1. A determination that the class status is appropriate pursuant to the Fla.R.Civ.Proc. 1.220.
2. A declaration that the Plaintiffs' civil rights were violated by the acts of the Defendant.
3. An injunction prohibiting Defendant from further use of similar ballots in this or other elections.
4. An order directing Defendant to utilize a format of a ballot which is in accordance with the Florida law and which is not confusing or deceptive.
5. An order requiring the Defendant to allow a revote by those Palm Beach County

voters who voted in the General Election, with respect to presidential balloting only, at the cost of the Defendant.

6. An order requiring the Defendant to pay Plaintiffs costs and fees reasonably incurred in the prosecution of this matter.

7. Grant such other and further relief as may be deemed right and just.

Respectfully submitted



MARK A. CULLEN, ESQ.
FLA. BAR NO. 325082
THE SZYMONIAK FIRM, P.A.
2101 Corporate Boulevard, Suite 415
Boca Raton, FL 33431
(561) 989- 9669

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

(REPUBLICAN)

GEORGE W. BUSH - PRESIDENT
DICK CHENEY - VICE PRESIDENT

3

(DEMOCRATIC)

AL GORE - PRESIDENT
JOE LIERMAN - VICE PRESIDENT

5

(LIBERTARIAN)

MARSHY BROWNE - PRESIDENT
ART DWYLER - VICE PRESIDENT

7

(GREEN)

RALPH NAIGER - PRESIDENT
WENDY LAURIE - VICE PRESIDENT

9

(SOCIALIST WORKERS)

JAMES HARRIS - PRESIDENT
MARGARET TROWE - VICE PRESIDENT

11

(NATURAL LAW)

JOHN MARRON - PRESIDENT
PAT GOLDBERGER - VICE PRESIDENT

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

(REFORM)

PAT BUCHANAN - PRESIDENT
EZOLA FOSTER - VICE PRESIDENT

4

(SOCIALIST)

DAVID MCKEYNOLDS - PRESIDENT
MARY CAL HOLLIS - VICE PRESIDENT

6

(CONSTITUTION)

HOWARD PHILLIPS - PRESIDENT
J. CURTIS FRAZEE - VICE PRESIDENT

8

(WORKERS WORLD)

MORICA MOOREHEAD - PRESIDENT
GEORGIA LA RIVA - VICE PRESIDENT

10

WRITE IN CANDIDATE

To vote for a write in candidate, indicate the candidate's full legal name in the space below.

Exhibit A