

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

FLORIDA DEMOCRATIC PARTY, and
KAREN THURMAN, in her Capacity
as Chairwoman of the Florida
Democratic Party,

Plaintiffs,

vs.

Case No.: 2006-CA-2419
Farris

SUE M. COBB, in her Official Capacity
as Secretary of State, State of Florida;
ARTHUR ANDERSON, in his Official
Capacity as Supervisor of Elections
of Palm Beach County; VICKI
DAVIS, in her Official Capacity as
Supervisor of Elections of Martin
County; GERTRUDE WALKER,
in her Official Capacity as Supervisor
of Elections of St. Lucie County;
GWEN CHANDLER, in her Official
Capacity as Supervisor of Elections
of Okeechobee County; JOE
CAMPBELL, in his Official Capacity
as Supervisor of Elections of Highlands
County; HOLLY WHIDDON, in her
Official Capacity as Supervisor of Elections
of Glades County; LUCRETIA A.
STRICKLAND, in her Official Capacity
as Supervisor of Elections of Hendry
County; and MAC V. HORTON, in his
Official Capacity as Supervisor of Elections
of Charlotte County.

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LEON COUNTY, FLORIDA

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COMPLAINT FOR
EMERGENCY DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs FLORIDA DEMOCRATIC PARTY and KAREN THURMAN, in her Capacity as Chairwoman of the Florida Democratic Party, hereby sue Defendants SUE M. COBB, in her Official Capacity as Secretary of State, State of Florida; ARTHUR ANDERSON, in his Official Capacity as Supervisor of Elections of Palm Beach County; VICKI DAVIS, in her Official Capacity as Supervisor of Elections of Martin County; GERTRUDE WALKER, in her Official Capacity as Supervisor of Elections of St. Lucie County; GWEN CHANDLER, in her Official Capacity as Supervisor of Elections of Okeechobee County; JOE CAMPBELL, in his Official Capacity as Supervisor of Elections of Highlands County; HOLLY WHIDDON, in her Official Capacity as Supervisor of Elections of Glades County; LUCRETIA A. STRICKLAND, in her Official Capacity as Supervisor of Elections of Hendry County; and MAC V. HORTON, in his Official Capacity as Supervisor of Elections of Charlotte County, for Emergency Declaratory and Injunctive Relief, and state as follows:

I. NATURE OF ACTION

1. Recently, Mark Foley has withdrawn as candidate for nomination and election in Congressional District 16, and the Republican Party of Florida has replaced him with Joe Negron.

2. This is an action for Emergency Declaratory and Injunctive relief brought pursuant to Chapter 86, Florida Statutes, seeking a determination that the Defendants are or will be in violation of their obligations imposed by Sections 101.031, 101.5611(1) and 102.031(4)(a), Florida Statutes, with respect to

the November 7, 2006 election for Congressional District 16, by informing voters by means of signs posted inside polling places of the substitution of Mr. Negron for Mr. Foley as the Republican Party nominee for that seat.

II. PARTIES

3. Plaintiff FLORIDA DEMOCRATIC PARTY is an organization dedicated to the advancement of Democratic candidates for public office on a statewide basis, including candidates for Congress. The FDP represents its members, voters in Florida, who support the election of the Democratic Party candidates for Congress, including Florida's 16th Congressional District, as well as the rest of the Democratic Party ticket, in the upcoming November general election.

4. Plaintiff KAREN THURMAN is the Chairwoman of the Florida Democratic Party.

5. Defendant SUE M. COBB is the Secretary of State of the State of Florida and, pursuant to Section 20.10, Florida Statutes, is the head of the Department of State. Pursuant to Section 97.012, Florida Statutes, the Secretary of State is the chief election officer of Florida.

6. Defendant ARTHUR ANDERSON is the Supervisor of Elections of Palm Beach County, Florida. Pursuant to general law, he has duties and responsibilities in connection with the upcoming November election. A portion of Palm Beach County is located in Congressional District 16.

7. Defendant VICKI DAVIS is the Supervisor of Elections of Martin County, Florida. Pursuant to general law, she has duties and responsibilities in connection with the upcoming November election. A portion of Martin is located in Congressional District 16.

8. Defendant GERTRUDE WALKER is the Supervisor of Elections of St. Lucie, Florida. Pursuant to general law, she has duties and responsibilities in connection with the upcoming November election. A portion of St. Lucie County is located in Congressional District 16.

9. Defendant GWEN CHANDLER is the Supervisor of Elections of Okeechobee County, Florida. Pursuant to general law, she has duties and responsibilities in connection with the upcoming November election. A portion of Okeechobee County is located in Congressional District 16.

10. Defendant JOE CAMPBELL is the Supervisor of Elections of Highlands County, Florida. Pursuant to general law, he has duties and responsibilities in connection with the upcoming November election. A portion of Highlands County is located in Congressional District 16.

11. Defendant HOLLY WHIDDON is the Supervisor of Elections of Glades County, Florida. Pursuant to general law, she has duties and responsibilities in connection with the upcoming November election. A portion of Glades County is located in Congressional District 16.

12. Defendant LUCRETIA A. STRICKLAND is the Supervisor of Elections of Hendry County, Florida. Pursuant to general law, he has duties and

responsibilities in connection with the upcoming November election. A portion of Hendry County is located in Congressional District 16.

13. Defendant MAC V. HORTON is the Supervisor of Elections of Charlotte County, Florida. Pursuant to general law, he has duties and responsibilities in connection with the upcoming November election. A portion of Charlotte County is located in Congressional District 16.

III. JURISDICTION AND VENUE

14. This Court has jurisdiction pursuant to Chapter 86 of the Florida Statutes inasmuch as there exists a controversy between Plaintiffs and Defendants as to whether the Defendants have the statutory authority to inform voters in Congressional District 16 at the polling places of the substitution of Mr. Negron for Mr. Foley as the Republican Party nominee for that seat.

15. This Court has jurisdiction to enter injunctive relief because the threatened action that is at the heart of this complaint—whether the Defendants have the statutory authority to inform the voters in Congressional District 16 at the polling places of the substitution of Mr. Negron for Mr. Foley as the Republican nominee for the seat—will be implemented on or prior to the November 7, 2006 election, and because Plaintiffs will demonstrate: a substantial likelihood of success on the merits; that they will suffer irreparable injury if injunctive relief is not granted; that the threatened injury to Plaintiffs outweighs the threatened harm the injunctive relief may do to Defendants; and that injunctive relief will not disserve the public interest.

16. Venue is proper as to Ms. Cobb, as the Secretary of State is located in Leon County, Florida, and, as to the remaining Defendants under Section 47.021, Florida Statutes.

IV. CLAIM FOR RELIEF

17. Mr. Foley's withdrawal as a candidate for nomination and election in Congressional District 16, created a "vacancy in nomination" for the Congressional District 16 seat. Section 100.111(4), Florida Statutes, provides the procedure for filling vacancies in nomination.

18. Section 101.031, Florida Statutes, provides as follows:

101.031 Instructions for electors.—

(1) The Department of State, or in case of municipal elections the governing body of the municipality, shall print, in large type on cards, instructions for the electors to use in voting. It shall provide not less than two cards for each voting precinct for each election and furnish such cards to each supervisor upon requisition. Each supervisor of elections shall send a sufficient number of these cards to the precincts prior to an election. The election inspectors shall display the cards in the polling places as information for electors. The cards shall contain information about how to vote and such other information as the Department of State may deem necessary. The cards must also include the list of rights and responsibilities afforded to Florida voters, as described in subsection (2).

(2) The supervisor of elections in each county shall have posted at each polling place in the county the Voter's Bill of Rights and Responsibilities in the following form:

VOTER'S BILL OF RIGHTS

Each registered voter in this state has the right to:

1. Vote and have his or her vote accurately counted.

2. Cast a vote if he or she is in line at the official closing of the polls in that county.
3. *Ask for and receive assistance in voting.*
4. Receive up to two replacement ballots if he or she makes a mistake prior to the ballot being cast.
5. An explanation if his or her registration or identity is in question.
6. If his or her registration or identity is in question, cast a provisional ballot.
7. *Written instructions to use when voting, and, upon request, oral instructions in voting from elections officers.*
8. Vote free from coercion or intimidation by elections officers or any other person.
9. Vote on a voting system that is in working condition and that will allow votes to be accurately cast.

VOTER RESPONSIBILITIES

Each registered voter in this state should:

1. *Familiarize himself or herself with the candidates and issues.*
2. Maintain with the office of the supervisor of elections a current address.
3. Know the location of his or her polling place and its hours of operation.
4. Bring proper identification to the polling station.
5. Familiarize himself or herself with the operation of the voting equipment in his or her precinct.
6. Treat precinct workers with courtesy.
7. Respect the privacy of other voters.

8. Report any problems or violations of election laws to the supervisor of elections.

9. Ask questions, if needed.

10. Make sure that his or her completed ballot is correct before leaving the polling station.

NOTE TO VOTER: Failure to perform any of these responsibilities does not prohibit a voter from voting.

(3) Nothing in this section shall give rise to a legal cause of action.

(4) *In case any elector, after entering the voting booth, shall ask for further instructions concerning the manner of voting, two election officers who are not both members of the same political party, if present, or, if not, two election officers who are members of the same political party, shall give such instructions to such elector, but no officer or person assisting an elector shall in any manner request, suggest, or seek to persuade or induce any elector to vote for or against any particular ticket, candidate, amendment, question, or proposition.* After giving the elector instructions and before the elector has voted, the officers or persons assisting the elector shall retire, and such elector shall vote in secret.

(emphasis added)

19. Section 101.5611(1), Florida Statutes, states as follows:

The supervisor of elections shall provide instruction at each polling place regarding the manner of voting with the system. *In instructing voters, no precinct official may favor any political party, candidate, or issue. Such instruction shall show the arrangement of candidates and questions to be voted on.* Additionally, the supervisor of elections shall provide instruction on the proper method of casting a ballot for the specific voting system utilized in that jurisdiction. Such instruction shall be provided at a place which voters must pass to reach the official voting booth.

(emphasis added).

20. Section 102.031(4)(a) provides that:

No person, political committee, committee of continuous existence, or other group or organization may solicit voters inside the polling place or within 100 feet of the entrance to any polling place, or polling room where the polling place is also a polling room, or early voting site. Before the opening of the polling place or early voting site, the clerk or supervisor shall designate the no-solicitation zone and mark the boundaries.

(emphasis added)

21. The purpose of this lawsuit is to assure that Florida law is followed by the supervisors of elections in the counties comprising District 16, as well as by the Secretary of State, regarding the issue of informing electors at polling places of the substitution of Mr. Negron for Mr. Foley.

22. This issue is ripe for immediate and emergency disposition.

23. On October 11, 2006, Ronald A. Labasky, the general counsel for the Florida State Association of Supervisors of Elections, issued a memorandum in which he concluded that that "an information sheet" may be placed at the polling places within the affected areas within the counties comprising Congressional District 16 advising and instructing voters regarding the substitution of Republican candidates for nomination and election for Congressional District 16. A copy of the Mr. Lababsky's memorandum is attached hereto as Exhibit "A."

24. Also included in the materials was an "informational sheet" that provided as follows:

IN THE CONGRESSIONAL DISTRICT 16 RACE

- A VOTE FOR MARK FOLEY (REP) WILL BE COUNTED FOR JOE NEGRON (REP), THE REPUBLICAN CANDIDATE.
- A VOTE FOR TIM MAHONEY (DEM) WILL BE COUNTED FOR TIM MAHONEY, THE DEMOCRATIC CANDIDATE.
- A VOTE FOR EMMIE ROSS (NPA) WILL BE COUNTED FOR EMMIE ROSS (NPA), THE NO PARTY AFFILIATION CANDIDATE.

(emphasis in original) A copy of the "informational sheet" is attached hereto as Exhibit "B."

25. Defendant supervisors of elections have indicated that they will post signs at the polling places consistent with the advice set forth in Mr. Labasky's memorandum.

26. The advice provided in Mr. Labasky's memorandum tracks similar advice given by the Department of State, and which is currently posted on the website of the Division of Elections.

"Due to a withdrawal of a candidate after the Primary Election which resulted in the substitution of a new candidate by the respective party:

In the race for Representative In Congress, District 16, any vote cast for Mark Foley (REP) shall be counted as a vote for Joe Negron (REP)."

27. Further, the issue also is ripe because early voting for the general election begins approximately 10 days from the filing of this Complaint.

28. The Secretary of State is taking the position the action of the supervisors is acceptable, although it is in violation of Florida law.

29. Numerous election statutes make clear that it is not the role of the Secretary of State or the supervisors of elections to present any information to an elector about the substitution of Mr. Negron for Mr. Foley on the November general election ballot. Indeed, the statutes make clear that to do so is illegal. First, while Section 100.111(4), Florida Statutes, provides the mechanism for substituting one candidate over another, it does not provide that Mr. Negron's name is to be placed on the ballot as a substitute for Mr. Foley's name, or any procedure whatsoever for notifying electors of the change. And, if the election code was to include such a provision, Section 100.111, Florida Statutes, is logically where it would be stated.

30. Section 101.5611(1), Florida Statutes, "*Instructions to Electors*," states that the supervisor of elections "shall provide instruction at each polling place regarding the manner of voting with the system. In instructing voters, no precinct official may favor any political party, candidate, or issue." This is yet another specific statutory statement that supervisors of elections are not allowed to politicize any party, candidate or issue, and may only address the technical aspects of voting, with the equipment being used. This plain-English statute specifically prohibits any supervisor from distributing or posting out at a polling location, any information whatsoever that identifies Mr. Negron replacing Mr. Foley, for that would clearly and prejudicially constitute favoritism for both the Republican Party and Mr. Negron.

31. Florida Administrative Code 1S-2.033 "*Standards for Non-Partisan Voter Education*," also specifically provides a list of what supervisors of elections are to prepare in creating a Voter Guide which is to be "*non-partisan*." To advise voters concerns the substitution of one party's candidate is a partisan action, which favors that party, particularly considering that the Legislature has not authorized any such action in the event a party's candidate withdraws after the primary elections even though it has required the withdrawn candidate's name to remain on the ballot. Florida law requires elections officials to be neutral and impartial and not to take actions which favor any political party or candidate.

32. Section 102.031(4)(a), Florida Statutes, provides that "no person . . . may solicit voters inside the polling place or within 100 feet of the entrance to any polling place, or polling room where the polling place is also a polling room, or early voting site." "Solicit" is a defined term within Section 102.031(4)(b), Florida Statutes, to include "seeking or attempting to seek any vote or fact. . . ." Therefore, any document that effectively states a vote for Mr. Foley is a vote for Mr. Negron, serves the purpose of soliciting a vote for Mr. Negron, and is a violation of all of the foregoing cited laws.

33. It is the position of the Florida Democratic Party that neither the Defendant supervisors of elections nor the Department of State has the statutory authority to place or acquiesce in the placement of "informational signs" at the polling places within the affected areas within the counties comprising

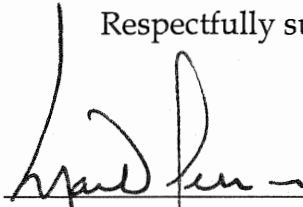
Congressional District 16 advising and instructing voters regarding the substitution of Republican candidates for nomination and election for Congressional District 16.

34. In light of the positions advocated by the Defendant Supervisors of Elections and the Department of State, Plaintiffs are uncertain as to their rights, the rights the members of the Florida Democratic Party, voters in Florida, who support the election of the Democratic Party candidate in Florida's 16th Congressional District.

35. Resolution of the rights, duties, and legal status of each of the parties to this cause is necessary.

WHEREFORE, Plaintiffs respectfully request that this Court take jurisdiction of this case on an emergency basis, declare the rights of the parties, enter an emergency injunction prohibiting the Defendant Supervisors of Elections from placing "informational signs" at the polling places within the affected areas within the counties comprising Congressional District 16 advising and instructing voters regarding the substitution of Republican candidates for nomination and election for Congressional District 16, and grant such other relief as is necessary and proper.

Respectfully submitted on this 13th day of October 2006 by:



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MEMORANDUM

TO: SOE's in Congressional District 16

FROM: Ron Labasky

DATE: October 11, 2006

RE: Congressional District 16 Notice/K. Browning; T. Vaughan

Section 101.561(1), F.S., directs Supervisors of Elections to provide instruction at each polling place regarding the manner of voting with the voting system. In instructing the voter, no precinct official may favor any political party, candidate or issue. The instructions to be provided are to show the arrangements of the candidates and questions to be voted on. In addition, the Supervisor is to provide instruction on the proper method of casting a ballot for the specific voting system utilized in the jurisdiction. Instructions are to be provided at a place where voters must pass to reach the official voting booth.

The Voter Bill of Rights provides voters may ask for and receive assistance in voting and written instructions to use when voting, and upon request, oral instructions in voting from elections officials.

In light of the unusual occurrence in Congressional District 16, it is very clear that poll workers may be presented with questions concerning the ballot. Voters may be confused when presented with the ballot and in determining how to utilize the system, with questions raised as to why Foley remains on the ballot and where the other potential candidate they have heard of, is located. In order to minimize that confusion and how to cast a ballot, an information sheet placed at the polling place may help. In addition, and more importantly, it will avoid poll workers and other elections officials from advising or instructing voters concerning this issue, foreclose explanations of the ballot and differing information being provided, or how voters are to vote once they are engaged with the voting system.

IN THE CONGRESSIONAL DISTRICT 16 RACE

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