

IN THE CIRCUIT COURT OF THE 2nd
JUDICIAL CIRCUIT IN AND FOR LEON
COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 2016-CA-2619
Fearis

KAREN THURMAN, as Chairman of the
FLORIDA DEMOCRATIC PARTY; and the
FLORIDA DEMOCRATIC PARTY,

Plaintiffs,

vs.

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

Defendants.

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CLERK CIRCUIT COURT
LEON COUNTY, FLORIDA

MOTION FOR EMERGENCY INJUNCTIVE RELIEF
AND ACCOMPANYING MEMORANDUM OF LAW

COME NOW Plaintiffs, Karen Thurman and Florida Democratic Party (“FDP”), pursuant to Fla. R. Civ. P. 1.610, and move this Honorable Court for emergency injunctive relief, and in support would state as follows:

I. FACTUAL BACKGROUND

1. Mark Foley ("Foley") recently withdrew as the Republican candidate for nomination and election as a member of Congress from the 16th Congressional District of Florida. District 16 includes voters representing all or portions of Palm Beach, Martin, St. Lucie, Okeechobee, Highlands, Glades, Hendry and Charlotte counties.

2. Shortly thereafter, as provided for pursuant to Fla. Stat. §100.111(4), the Florida Republican Party selected Joe Negron ("Negron") as its designated replacement candidate for Foley. This statute also provides that any ballots cast on election day for Foley will be counted for Negron. On information and belief, the statements contained in this paragraph are uncontested by the defendants and parties in interest, and that all applicable ballots are going to or already do state Foley's name as the candidate for District 16.

3. The purpose of this lawsuit is to assure that Florida law is followed by the Supervisors of Elections ("SOE") 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 Negron for Foley. As provided below, Florida law states no communication between any SOE or the Secretary of State and an elector about the substitution of a candidate on the ballot is allowable.

II. BASIS FOR EMERGENCY RELIEF

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

5. 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. Labasky's memorandum is attached hereto as Exhibit "A."

6. 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."

7. 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.

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

"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)."

9. Further, the issue also is ripe because early voting for the general election begins approximately 10 days from the filing of this Complaint, and it is believed that certain SOE's may be planning either to hand out printed material or post signs in the polling locations containing the "informational sheet" developed by Mr. Labasky, or a similar statement as

provided above. Further, the Secretary of State seems to be taking the position such action is acceptable, although as described below, it would be in violation of Florida law.

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

11. Fla. Stat. §101.5611(1) "*Instructions to Electors*" states that the SOE "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 SOE's 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 SOE from passing out at a polling location, any information whatsoever that identifies Negron replacing Foley, for that would clearly and prejudicially constitute favoritism for both the Republican Party and Negron.

12. Florida Administrative Code 1S-2.033 "*Standards for Non-Partisan Voter Education*" also specifically provides a list of what County SOEs are to prepare in creating a Voter Guide which is to be "*non-partisan.*" Advising voters that the Republican candidate has been replaced against a backdrop in which the Florida Legislature has specified that the withdrawn candidate's name must remain on the ballot and authorized no remedial instructions

to voters, is clearly a partisan statement. Florida law requires elections officials to be neutral and impartial and not to take actions which favor any political party or candidate.

13. Fla. Stat. §102.031(4)(a) 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 Subsection 102.0314(b) to include “seeking or attempting to seek any vote or fact...” Therefore, any document that effectively states a vote for Foley is a vote for Negron, serves the purpose of soliciting a vote for Negron, and is a violation of all of the foregoing cited laws.

IMMEDIATE INJUNCTIVE RELIEF IS APPROPRIATE

14. Pursuant to Florida Rule of Civil Procedure 1.610, Plaintiffs are entitled to immediate injunctive relief because: (a) Plaintiffs’ claims have a substantial likelihood of success on the merits; (b) Plaintiffs have no adequate remedy at law; (c) Irreparable harm will occur unless immediate injunctive relief is granted; and (d) Injunctive relief serves the public interest.

15. Plaintiffs’ claims have a substantial likelihood of success on the merits because the statutes and legal citation cited above clearly prohibit the dissemination of any partisan at the polling places during early voting and on election day.

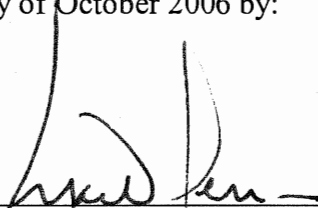
16. Plaintiffs have no adequate remedy at law because this claim does not involve money damages. Critically, every elector who views “informational sheet” disseminated by the supervisors of election are given instruction in the polling place that they should not have from an election official and the Democratic candidate for District 16 is prejudiced by this partisan action. Once an elector has been given such an instruction, that elector may be influenced in his or her vote, and no relief after the fact can remedy the effect of that prejudicial favoritism for the Republican Party candidate.

17. Irreparable harm will occur unless immediate injunctive relief is granted (a) because there is no other way to remedy the illegal and partisan activity complained of which prejudices the Democratic candidate for District 16, and (b) to assure that each elector is free from the influence of being presented with improper materials with his or her respective ballot.

18. The injunction sought will serve the public interest since Florida electors have a right to the correct application and impartial administration of the election laws in this state on election day by their public officials.

WHEREFORE, Plaintiffs respectfully request this Court to enter an injunction directing the Secretary of State and each defendant Supervisor of Elections to forthwith immediately cease and desist from disseminating in any form, directly or indirectly, any publication, whether it be in electronic, printed or spoken form, in any voter education materials, at early voting and general election day polling places, referencing any fact pertaining to Foley no longer being a candidate for District 16, or that voting for Foley comprises a vote cast for Negron. Plaintiffs further seek all such other relief as the Court deems just and appropriate.

Respectfully submitted this 13th day of October 2006 by:


COUNSEL FOR PLAINTIFFS
Mark Herron, Esq.
Florida Bar No. 199737
Messer, Caparello & Self, P.A.
215 South Monroe Street
Suite 701
Tallahassee, Florida 32301
Telephone: (850) 222-0720
Facsimile: (850) 224-4359
E-mail: mherron@lawfla.com

Charles H. Lichtman, Esq.
Florida Bar No. 501050
Berger Singerman
350 E. Las Olas Boulevard
Suite 1000
Fort Lauderdale, Florida 33301
Direct Telephone: (954) 627-9913
Facsimile: (954) 523-2872
E-mail: CLichtman@BergerSingerman.com

Stephen F. Rosenthal
Florida Bar No. 0131458
25 West Flagler Street, Suite 800
Miami FL 33130
Phone: 305/358-2800
Fax: 305/358-2382
srosenthal@podhurst.com

Richard B. Rosenthal
Florida Bar No. 0184853
Law Offices of Richard B. Rosenthal, P.A.
Alfred I DuPont Building
169 East Flagler St., Suite 1422
Miami, FL 33131
Fax: 305-779-6095
E-mail: rbr@rosenthalappeals.com
Phone: 305/779-6097