

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

CASE NO. 2020 CA 000908

LILY AARONSON, and FARM
WORKERS ASSOCIATION OF FLORIDA,

Plaintiffs,

vs.

FLORIDA DEPARTMENT OF STATE,
FLORIDA DIVISION OF ELECTIONS,
LAUREL M. LEE, Secretary of State
of Florida, CHRISTINA WHITE, Supervisor
of Elections, Miami-Dade County, and BILL
COWLES, Supervisor of Elections,
Orange County, Florida,

Defendants.

**THIRD AMENDED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiffs Lily Aaronson and the Farm Workers Association of Florida sue Defendants Florida Department of State, Florida Division of Elections, Laurel M. Lee in her capacity as Secretary of State of Florida, Christina White, Supervisor of Elections, Miami-Dade County, Wesley Wilcox, Supervisor of Elections, Marion County, and Bill Cowles, Supervisor of Elections, Orange County, and state:

PRELIMINARY STATEMENT

1. The right to vote is the cornerstone of our democracy and the government's

obligation to ensure its exercise is of fundamental importance. *See, e.g., Reynolds v. Sims*, 377 U.S. 533, 561-62 (1964).

The right to vote is a “precious” and “fundamental” right. *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966). Voting is, indisputably, a right “ ‘of the most fundamental significance under our constitutional structure.’ ” *Burdick v. Takushi*, 504 U.S. 426, 433, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992) (quoting *Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184, 99 S.Ct. 983, 59 L.Ed.2d 230 (1979)). State and local laws that unconstitutionally burden that right are impermissible. *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451, 128 S.Ct. 1184, 170 L.Ed.2d 151 (2008).

Fla. Democratic Party v. Scott, 215 F.Supp.3d 1250, 1256 (N.D. Fla. 2016).

2. This case asks whether the State of Florida, in response to the on-going coronavirus pandemic, has done everything it can do to ensure that electors who prefer to vote by mail have an accessible way to do so and that their mailed-in ballot will be counted.

PARTIES, JURISDICTION AND VENUE

3. Plaintiff Lily Aaronson is a 93-year old resident living in Miami-Dade County, Florida.

4. Plaintiff Farm Workers Association of Florida is an organization based in Apopka, Florida.

5. Defendant Florida Department of State is charged with the oversight of elections throughout the state.

6. Defendant Division of Elections is an agency of the State of Florida that is located in Leon County, Florida. The Division is responsible for ensuring that Florida has fair and accurate

elections. In addition to working directly with county Supervisors of Elections, the Division “ensures compliance with election laws, provides statewide coordination of election administration and promotes public participation in the electoral process.”

7. Defendant Laurel M. Lee is the Secretary of State of Florida and does business in Leon County, Florida. In her official capacity, Secretary Lee is Florida’s Chief of Elections, Chief Cultural Officer and head of the Department of State.

8. Defendant Christina White is the Supervisor of Elections in Miami-Dade County.

9. Defendant Bill Cowles is the Supervisor of Elections in Orange County.

10. Venue is proper in this Court based on the sword and shield doctrine. *See Dept. of Highway Safety v. Sarnoff*, 734 So. 2d 1054 (Fla. 1st DCA 1998), *approved*, 825 So. 2d 351 (Fla. 2002).

STANDING

11. Each of the above-named Plaintiffs are registered electors in Florida and have a genuine interest in voting by mail in the November 3, 2020 General Election.

12. Lily Aaronson is a 93-year old resident of Miami-Dade County. She resides at the Miami Jewish Health Systems facility, has always voted in person in past elections in Florida, and intends to vote in the 2020 General Election. However, because of her age and health, she will only vote by mail. She cannot risk exposure to COVID-19. She does not have ready access to the mails, postage resources, or computer services – all of which makes submitting a request for a mail-in ballot unnecessarily cumbersome and ineffective.

13. The Farm Workers Association of Florida is a 10,000-member organization that, among other things, assists farm workers in voicing concerns relevant to its membership and

helping elect officials who, it feels, will be sympathetic with members' plights. The Association is headquartered in Apopka, Florida, and is affiliated with the Florida Immigrant Coalition. The Coalition is itself associated with 60 other member organizations around the state which include farmworkers, unions, legal advocates, service providers and community-based and grassroots organizations.

14. Members of the above Association reside in Indian River, Orange, Collier, and Miami-Dade counties. Many of them are registered voters in Florida and have voiced their desire to vote by mail in the upcoming General Election. However, because of their age and compromised health conditions (one member, among other registered voters supporting this action, is an 80-year old African-American female with Lupus disease), which the members fear will be jeopardized by COVID-19, and because of their limited ability to travel and other resources, requesting a mail-in ballot in person, by telephone or via the computer will be unnecessarily cumbersome and/or unavailable to them.

15. Association members have a personal stake in the outcome of the upcoming General Election and have delegated to the Association the authority to represent their interests. As such, the Farm Workers Association of Florida enjoys representational associational standing on behalf of its members. This is consistent with associational standing law recognized by the United States Supreme Court and courts throughout the country.

CONSTITUTIONAL RIGHTS IMPLICATED BY THIS LAWSUIT

16. The United States and Florida Constitutions both provide that citizens have the right to vote in public elections. This right is guaranteed by numerous provisions within these constitutions.

17. For example, the United States Supreme Court and federal courts around the country have analyzed the right to vote through the lens of the Due Process and Equal Protection provisions of the 14th Amendment and the Free Speech, Free Expression, and Free Association guarantees of the 1st Amendment to the United States Constitution.

18. Similar guarantees are provided in Article I, Section 2 (Basic Rights), Section 4 (Freedom of Speech), and Section 9 (Due Process) of the Florida Constitution, and have been so recognized by the Supreme Court of Florida and appellate decisions throughout the state.

19. Where the election process is facially unfair or overly cumbersome or where it is administered in a manner that effectively chills the right to vote and have those votes counted, the process violates constitutional protections. In this case, because of the ambiguity of the above statutes, the preemption statute limiting county Supervisor of Election discretion, and the statutes' misinterpretation and misapplication, the Plaintiffs' ability to vote by mail and have those votes counted has been thwarted, thereby violating the state and federal constitutional rights referenced above.

GENERAL ALLEGATIONS

20. Voting procedures throughout the state are determined as a matter of state law. That is, according to Florida Statute 97.0115, the state preempts local and county voting procedures, such as exercised by county Supervisors of Election.

21. Florida state election law provides electors with the option to vote by mail, rather than in person. The process is as follows:

- a. an elector may request a mail-by-vote ballot, as long as the request is made in person or in writing, Fla. Stat. 101.62 (1)(a);

- b. such a request must be received no later than 5 p.m. on the 10th day before the election, Fla. Stat. 101.62 (2)
- c. the county supervisor of elections shall mail the vote-by-mail ballots to voters between the 33rd and 40th days before the election -- but in no event shall this be later than 8 days before the election, Fla. Stat. 101.62 (2), (4)(b).
- d. the county canvassing board may begin canvassing vote-by-mail ballots on the 22nd day before the election (not later than 3 days after the election); Fla. Stat. §101.68 (2)(a).
- e. by the June 17, 2020 Executive Order, the time for beginning canvassing mail-in ballots is now 40 days before the election.

22. One plaintiff is a 93 years old female who resides in an assisted living wing of a facility in Miami. The 450-bed facility has assisted living, rehabilitation, hospice, hospital, COVID-19, and nursing wings. She is not permitted to leave in order to vote in person (her preferred method of voting) and, given the size of the facility, does not have confidence that she will be able to return a card enabling her to receive a mail-in ballot. The other plaintiff is a Farm Workers Association charged with representing its greater than 10,000 members. The Association's mission is to further the interests of its members, which includes counseling them on candidates who would be sympathetic to their condition and assisting with the voting process.

23. Statistics show that cases of COVID-19 have increased in Florida at an alarming rate. Cases affecting black Florida residents have increased by over 20% and deaths rose over 30%. Cases for white residents rose 15% and deaths rose over 20%. Hispanics of all races saw a 17% increase in cases and more than a 7% rise in deaths. The highest rate of COVID-19 deaths is among the elderly, especially those who have pre-existing chronic health conditions. The degree to which each of these groups' ability to exercise their right to vote may depend on the

availability of alternative voting methods.

24. There is no question that Florida law allows electors to request mail-in-ballots and then, by separate mailing, submit them for canvassing. The issue in this action is whether the statutes authorize county supervisors of elections to automatically send mail-in-ballots to electors even without a request and, if so, whether -- as a matter of constitutional law -- they should be required to do so.

25. The spread of the coronavirus (COVID-19) throughout Florida has placed electors wishing to exercise their constitutional right to vote in a precarious position. Experience within this state and around the country has shown that failing to honor stay-at-home orders can have potentially disastrous consequences. Electors can either go to the polls and vote in person (thereby potentially exposing themselves to the virus) or go through the process of requesting mail-in ballots and then, by separate mail, submit the ballots to be canvassed (which may require them to go to the post office for stamps and to mail the requests and the ballots).

26. States around the country have begun to modify their vote-by-mail procedures to make them more voter-friendly.

WHAT OTHER STATES ARE DOING

27. In California, for example, Governor Gavin Newsom signed Executive Order N-64-20 into law. That order directed each county elections officer to transmit vote-by-mail ballots for the November 3, 2020 General Election to all voters registered in the State of California whether or not the electors had first requested the ballot be sent to them.

28. In Oregon, mail-in ballots are sent to every voter in the state three weeks before each election, along with a pamphlet of information about the candidates and the issues. Voters mark

and sign their ballots and drop them in a mailbox. Election officials (who are trained in forensics) contact voters if their signatures don't match voter identification rolls and tally and report ballot results. To alleviate the need for voters to have to go out to buy stamps in order to mail their ballots, the state pays for return postage.

29. Similar procedures are used in Colorado, Hawaii, Utah, and Washington. South Dakota and Nebraska are considering re-vamping their vote-by-mail procedures. More than a dozen states have either postponed their primaries or moved to a vote-by-mail system in direct response to the coronavirus pandemic. The trend is quickly spreading as states look for ways to make the voting process safer.

30. Here, in Florida, voters must still complete a two-step process to cast their vote-by-mail ballots and while counties look for ways to make it easier (by, for instance, allowing voters to click on computer links to register for mail-in voting), those without computers or postage stamps to mail their ballots are still disadvantaged. *See Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1988) (conditioning the access to voting on wealth violates voters' Equal Protection rights and heightened scrutiny appropriate when reviewing such state laws); *Jones v. Governor of Florida*, 950 F.3d 795 (11th Cir. 2020) (conditioning the right to vote on the payment of fees and restitution violates the indigent's rights to Equal Protection); Amend. XIV, U.S. Const.; Art. I, § 2, Fla. Const.

31. Of late, media around the country has shown a great interest in re-vamping statewide vote-by-mail procedures.¹ On May 10, 2020, the *New York Times Magazine* cover story was

¹ *See, e.g.*, <https://www.cnbc.com/amp/2020/04/06/coronavirus-election-lawmakers-push-for-vote-by-mail.html> (last visited May 12, 2020);

devoted to the impact of the virus on, among other things, mail-in voting. In Florida, interest in automatic vote-by-mail is growing.²

DUTY TO ENSURE THE INTEGRITY OF THE VOTING PROCESS

32. The right to vote is constitutional and the government must ensure that all electors have a meaningful opportunity to participate in the voting process. This includes easy and safe access to the voting process. It is especially important in these days of coronavirus and social distancing. And it is especially important because the high incidence of sickness and death in, for example, racial and advanced-age communities implicitly disenfranchises many voters' ability to participate in the election process. This applies equally to those people not especially susceptible to the virus but who choose not to be exposed to it.

33. Indeed, the recent experience in Wisconsin highlights the significance of taking added steps to ensure that every voter can submit his or her ballot in a safe and secure manner. There, voters who could not get their mail-in ballots submitted in time were forced to stand in lines at polling places to cast their in-person ballots. Reports state that 52 people who worked at polling stations in Wisconsin have now tested positive for COVID-19.

<https://www.nytimes.com/2020/04/15/learning/should-we-all-be-able-to-vote-by-mail.html> (last visited May 12, 2020); <https://www.nytimes.com/2020/05/05/magazine/voting-by-mail-2020-covid.html> (last visited May 12, 2020) <https://thehill.com/homenews/campaign/496657-gop-group-releases-ad-advocating-for-vote-by-mail-amid-coronavirus-pandemic?amp> (last visited May 12, 2020); <https://www.cnn.com/2020/04/26/opinions/vote-rights-pandemic-covid-19-austin-hillery/index.html> (last visited May 12, 2020).

² See <https://www.baynews9.com/fl/tampa/politics/2020/05/06/another-lawsuit-challenges-florida-s-vote-by-mail-laws> (last visited May 12, 2020); <https://www.jacksonville.com/news/20200409/coronavirus-florida-is-uptick-in-deaths-of-black-people-start-of-trend> (last visited May 12, 2020).

34. Florida is one of the most affected states in the country. As of yesterday, June 28, 2020, the incidence of those contracting coronavirus in this state has now reached 451,000 confirmed cases, resulting in more than 6,332 deaths. (This number rises daily and does not take into consideration how a second wave of the virus will affect the state). Many electors in Florida are elderly and whether they have underlying illnesses or not, their ability to participate in a two-step vote-by-mail process is questionable. The same is true for non-elderly electors. This is the time for the State of Florida to simplify the vote-by-mail process to make it easier and safer.

A SIMPLE AND SAFE SOLUTION

35. This may be accomplished in several ways. Two suggestions are: 1) county Supervisors of Elections should mail to all electors in their county a vote-by-mail ballot, whether requested or not, in sufficient time before the General Election, along with a postage-paid return envelope so that voters can simply place their ballots in the mailbox early enough to be counted; and 2) county Supervisors of Elections should be authorized to begin tabulating mail-in votes earlier than, even with the Governor's recent Executive Order, the 40-days-before election time to ensure adequate time for processing the expected increase in the number of such votes.³ These are exceptional circumstances and to ensure that the state's voting process proceeds in a fair, efficient, and safe way, modifications to the vote-by-mail process are necessary.

³ There is every reason to expect that the spread of COVID-19 in Florida could reduce the number of in-person polling sites available which would then place a strain on the staff assigned to the open sites. See <https://fox6now.com/2020/04/07/pitch-in-where-we-can-reduced-number-of-polling-sites-1st-time-workers-keep-elections-moving-despite-covid-19/> (last visited May 12, 2020); <https://www.nytimes.com/2020/04/02/us/politics/wisconsin-election-coronavirus.html> (last visited May 12, 2020); https://journalstar.com/news/local/govt-and-politics/elections/coronavirus-will-force-changes-at-polling-places-this-year/article_a1c168c2-6b1f-5aba-87bf-cb018062a73d.amp.html (last visited May 12, 2020).

CLAIMS FOR RELIEF

**COUNT 1
DECLARATORY RELIEF
(Against All Defendants)**

36. Plaintiffs incorporate all allegations in paragraphs 20 through 26 as if fully set forth herein.

37. Section 101.62 (1)(a), Florida Statutes, provides that an elector may request a vote-by-mail ballot, as long as the request is made in person or in writing.⁴

38. Section 101.62 (1)(a), Florida Statutes, has been read to provide that mail-in ballots will only be sent out upon the request of an elector. This is contrary to accepted principles of statutory interpretation.

39. Based on the foregoing, an actual, justiciable controversy exists between the parties.

40. Accordingly, Plaintiffs request a judicial determination that Section 101.62 (1)(a), Florida Statutes, allows the Defendants to automatically send mail-in ballots to all electors in Florida, whether requested to do so or not.

WHEREFORE, Plaintiffs Lily Aaronson and the Farm Workers Association of Florida demand judgment against Defendants declaring that Section 101.62 (1)(a), Florida Statutes, does not limit the provision of mail-in ballots to only those electors who request such ballots.

⁴ Florida Statute 101.64 (1) provides “The supervisor shall accept a request for a vote-by-mail ballot from an elector in person or in writing.” Applying the principle of *expressio unius est exclusio alterius*, this language does not preclude the supervisor from automatically mailing out ballots.

COUNT II

INJUNCTIVE RELIEF (Against All Defendants)

41. Plaintiffs incorporate the allegations in paragraphs 20 through 26 as if fully set forth herein.

42. In view of the growing recognition around the country that vote-by-mail processes must be streamlined and made more accessible to the public -- and especially the number of individual states that have changed their voting laws to send mail-in ballots to electors even without a request -- there is a substantial likelihood of success on the merits.

43. There is currently no other remedy at law available to ensure the relief sought herein. Given the allocation of resources necessary if the requested relief is granted and the time necessary to comply with it, this is a matter that must be resolved quickly. No other avenue can afford the expeditious review that courts can give.

44. By ensuring the reliability of Florida's vote-by-mail procedures, and ultimately the election, injunctive relief unquestionably serves the public interest.

To the extent that candidates can be voted into office without mail-in ballots being considered, there is a strong likelihood of irreparable harm. Injunction is the proper remedy to provide immediate review and, if ultimately granted, to avoid a skewed election. Finally, the injunction is undoubtedly in the public interest. The Constitution guarantees the right of voters "to cast their ballots and have them counted." *United States v. Classic*, 313 U.S. 299, 315, 61 S.Ct. 1031, 85 L.Ed.2d 1368 (1941). Cementing unconstitutional obstacles to "that right strike at the heart of representative government." *Reynolds v. Sims*, 377 U.S. 533, 555, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964).

Fla. Democratic Party v. Scott, 215 F.Supp. 3d 1250, 1258 (N.D. Fla. 2016).

WHEREFORE, the Plaintiffs Lilly Aaronson and the Farm Workers Association of Florida request that this Court order the State of Florida and the Supervisors of Elections in Miami-Dade, Indian River and Orange counties to automatically send mail-in ballots to all electors in their counties, along with a stamped (or postage-paid) self-addressed return envelope for the submission of mail-in ballots, and to roll back the time for processing the mail-in-ballots to a date that would enable the counties to tabulate the ballots for the reporting of election results.

Respectfully submitted,

/s/ Harvey J. Sepler

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CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing has been filed on this 29th day of July, 2020 with the Clerk of Court, and sent via certified U.S. mail to Bradley R. McVay, Esq., brad.mcvay@dos.myflorida.com, Ashley E. Davis, Esq., ashley.davis@dos.myflorida.com, colleen.obrien@dos.myflorida.com, Counsel for State Defendants, Defendant Christina White, Supervisor of Elections of Miami-Dade County, 2700 N.W. 87th Avenue, Miami, Florida 33172, and to Bill Cowles, Supervisor of Elections of Orange County, 119 W. Kaley Street, Orlando, Florida 32806.

/s/ Harvey J. Sepler

Harvey J. Sepler

Fla. Bar No. 473431