

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

TIM CANOVA

Plaintiff,

CASE NO.:

IMMEDIATE HEARING
REQUESTED PURSUANT
TO Fla. Stat. § 119.11

v.

BRENDA SNIPES, IN HER OFFICIAL
CAPACITY AS SUPERVISOR OF ELECTIONS,
BROWARD COUNTY, FLORIDA

Defendant,

Verified Complaint to Compel Production of Public Records
Pursuant to Florida's Public Records Act

COMES NOW, TIM CANOVA, Plaintiff who hereby sues Defendant, Brenda Snipes in her official capacity as Supervisor of Elections, Broward County, Florida and states:

1. This action concerns the Defendant's refusal to produce public records for copying and/or scanning pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes, (herein collectively the "Public Records Act").
2. Plaintiff seeks an immediate hearing of this matter as required by the Public Records Act. See § 119.11(1), Florida Statutes.
3. This Court has subject matter jurisdiction pursuant to Article V, Section 5(b), of the Florida Constitution and the Public Records Act.
4. This Court has personal jurisdiction over the Defendant because the Defendant is the Supervisor of Elections for Broward County, Florida.

5. The cause of action in the instant case accrued in Broward County, Florida, therefore this Court is the appropriate venue for the vindication of the Plaintiffs' civil rights.

6. Plaintiff, Tim Canova, resides in Broward County, Florida and is a "person" as that term is used in the Public Records Act.

7. Plaintiff Canova was a candidate for U.S. Congress for Florida's 23rd Congressional District in the August 30, 2016 primary election in Broward County, Florida.

8. Defendant, Brenda Snipes, in her official capacity as Supervisor of Elections of Broward County, Florida is an "agency" as that term is used in the Public Records Act.

9. On March 10, 2017, Lulu Friesdat, an agent of Mr. Canova, made a public records request to Defendant for records to be produced pursuant to Chapter 119, Florida Statutes.

10. On March 10, 2017, Dolly Gibson, Broward Supervisor of Elections Registration Clerk, confirmed receipt of the March 10, 2017 public records request and assigned the public records request a number (#2077).

11. Mr. Canova also requested all records sought under public records request #2077 on May 9, 2017.

12. On April 3, 2017, Defendant emailed a letter and an invoice responding to the Plaintiff's Public Records Request. Defendant agreed to produce certain items that are not the subject of this lawsuit. In the letter, the Defendant took the position that ballots cast in the August 30, 2016 primary election are not subject to being photocopied or scanned.

13. Over the course of April, the parties and their respective counsel exchanged letters and emails and spoke over the telephone in an effort to resolve disputes concerning the production of records and other issues that have since been resolved concerning costs.

14. During a April 13, 2017 call, counsel for the Supervisor of Elections took the position that ballots did not have to be produced pursuant to Section 119.07(5) which states:

(5) When ballots are produced under this section for inspection or examination, no persons other than the supervisor of elections or the supervisor's employees shall touch the ballots. If the ballots are being examined before the end of the contest period in s. 102.168, the supervisor of elections shall make a reasonable effort to notify all candidates by telephone or otherwise of the time and place of the inspection or examination. All such candidates, or their representatives, shall be allowed to be present during the inspection or examination.

15. Counsel Plaintiff advised that the statute cited by the Supervisor of Elections only addresses whether ballots may be touched by a requestor and his/her agents, not copied as public records. Further, because Plaintiff is willing to pay for Supervisor's Office staff to physically touch the ballots in order to facilitate obtaining copies or scans of the ballots, the public records must be copied pursuant to Section 119, Florida Statutes.

16. On May 1, 2017, counsel for the Supervisor of Elections responded in writing once again denied Plaintiff access to scanning or copying to public records.

17. On May 9, 2017, the undersigned counsel replied and stated among other things:

We simply seek to observe the scanning process and do not propose to touch any ballots. We stated that to the extent that your office sought a reasonable accommodation, in order to provide for scanning/copying of the public records to advise and that we would work out the issue. Specifically, if your objection is to scanning images as opposed to photocopying them, we would work to resolve the matter and would accept photocopies. Our understanding of your response is simply no--- there are no circumstances where we may obtain copies/scans of ballots cast in the August 30, 2016 primary election.

You have cited to no case law or statutory support that provides any exception to the production of the records sought under Chapter 119, Florida Statutes and we know of none. Ballots are public records and they should be made available for copying/electronic scanning under Chapter 119, Florida Statutes.

18. Defendant agrees that the records in question are public records and has offered Plaintiff an in person viewing of the records at a public meeting, but will not allow Plaintiff to

obtain copies/scans of the records. Additionally, Defendant will not permit Plaintiff to retain a court reporter, at their expense, to transcribe and videotape the public meeting.

19. Plaintiff has attempted to work with the Supervisor of Elections over the course of several months to resolve issues, however the question as to whether ballots from the August 30, 2016 primary are public records subject to copying/scanning cannot be resolved between the parties.

20. Section 119.07(1)(a), Florida Statutes, requires the Defendant to permit public records in its custody to “be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervisions by the custodian of the public records.”

21. The Defendant has failed to comply with this statutory requirement, despite the fact that requested records do not fall under any statutory exemption.

22. The Attorney General’s office issued a written opinion considering the issue at hand, (whether the public has a right to obtain photocopies of cast ballots even though §119.07(5), Florida Statutes, states that only supervisors of elections or their staff may touch the cast ballots) and found that ballots are public records that are subject to being copied under Chapter 119, See Fla. AGO 2004-11, 2004 WL 608778.

23. Plaintiff has no adequate remedy at law.

24. All conditions precedent to this action have occurred or have been excused or waived.

25. The Public Records Act provides that “if a civil action is filed against an agency to enforce the provisions of this chapter and if the court determines that the agency unlawfully refused to permit a public record to be inspected or copied, the court shall access and award, against the

agency responsible, the reasonable costs of enforcement including reasonable attorneys' fees." See § 119.12, Fla. Stat.

WHEREFORE, Plaintiff respectfully requests this Court to set an expedited hearing, declaring Defendant to be in breach of its constitutional and statutory duties to permit access to the public records, compelling Defendant to provide access to these public records and awarding Plaintiff's costs, including reasonable attorneys' fees, in pursuing this action to enforce the Public Records Act pursuant to Section 119.12, Florida Statutes.

RESPECTFULLY SUBMITTED this 6th day of June, 2017.

BROAD AND CASSEL

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VERIFICATION OF COMPLAINT AND CERTIFICATION

STATE OF FLORIDA)

COUNTY OF BROWARD)

Plaintiff, Tim Canova, having first been duly sworn and upon oath, deposes and says as follows:

1. I am a plaintiff in a civil proceeding.
2. I have read the above-entitled civil Complaint, prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for extension, modification, or reversal of existing law.
4. I believe that this civil Complaint is not filed for any improper purpose, such as to harass any Defendant, cause unnecessary delay to any Defendant, or create a needless increase in the cost of litigation to any Defendant named in the Complaint.
5. I have filed this civil complaint in good faith and solely for the purposes set forth in it.

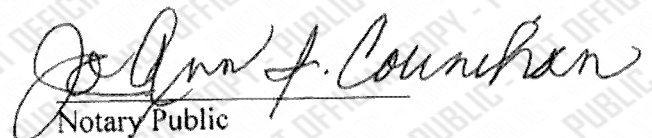
Subscribed and sworn before me
this 5 day of June 2017.

My commission expires:



Jo Ann I Counihan
Commission # FF996689
Expires: August 7, 2020
Bonded thru Aaron Notary


Tim Canova


Notary Public

Proof of ID.: Florida Driver's License