

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

RICK SCOTT FOR SENATE,

Plaintiff,

v.

BRENDA C. SNIPES, solely in her capacity as
Supervisor of Elections of Broward County,
Florida, and THE BROWARD COUNTY
CANVASSING BOARD,

Defendants.

Case No.

CACE-18-026470 Division 14

MOTION FOR LEAVE TO INTERVENE
BY THE LEAGUE OF WOMEN VOTERS OF FLORIDA AND JOANNE LYNCH AYE

The League of Women Voters of Florida and Joanne Lynch Aye (collectively, the “Intervenors”), by and through their undersigned counsel, respectfully request leave to intervene in the above-captioned action (the “Vote Counting Litigation”) pursuant to Rule 1.230 of the Florida Rules of Civil Procedure. In support of their motion to intervene (the “Motion to Intervene”), the Intervenors state as follows:

1. The voters of Broward County, Florida properly and timely cast their ballots in the elections held on November 6, 2018. Certain of those elections, including the election for United States Senator, are subject to a recount. Prior to the commencement of the recount proceedings, the election officials of Broward County named as defendants in the Vote Counting Litigation (the “Defendants”) included some, but not all, of these ballots in the first unofficial count submitted on November 10, 2018. None of the voters of Broward County had any control over whether their ballots were included in the first unofficial count. Rick Scott for Senate, the plaintiff in the Vote

Counting Litigation (“Plaintiff”), now asks this Court to compel Defendants to discard all ballots that were not included in the first unofficial count, based on Plaintiff’s incorrect interpretation of Fla. Stat. § 102.141(5). The purpose of this Motion to Intervene is to ensure that every Broward County voter who cast a valid and timely ballot has a voice in the election for United States Senator (the “Senate Election”).

The Intervenors Will Not Inject New Issues Into This Litigation, But Will Raise Important Arguments for the Court’s Consideration.

2. Permitting intervention will not delay or disrupt the proceedings, as the Intervenors have no intention of injecting new issues into this litigation. Rather, the Intervenors simply seek to ensure that the Court has the opportunity to consider the voters’ interests in deciding the issues at stake.

3. If permitted to intervene, the Intervenors will demonstrate that Plaintiff’s argument is predicated on an incorrect reading of Fla. Stat. § 102.141(5). Florida statutes provide that valid ballots not included in the first unofficial count should, in the event of a recount, continue to be counted and included in the final, certified count.

4. Plaintiff, however, asks this Court for a wholly inappropriate and bordering on absurd outcome: a ruling requiring that timely and validly cast ballots be discarded not because voters submitted them past the deadline, but because *Defendants* purportedly failed to include those ballots in the first unofficial count. In other words, Plaintiff wants voters—who have done nothing improper—to suffer the consequences of Defendants’ purported failure to adhere to their statutory duty to count the ballots in full and on time. Plaintiff’s claims rest on an erroneous and illogical construction of Florida election laws, as set forth below.

5. There is no dispute that Fla. Stat. § 102.141(5) expressly presumes that a county will canvass all validly cast votes by noon on the fourth day following the election (in this case

November 10, 2018). Following the first unofficial count, in the event of a recount, the Florida Statutes provide for a second unofficial count in which updated returns can be submitted. By the ninth day after the election (in this case November 15, 2018), the county “shall submit” “a second set of unofficial returns.” Fla. Stat. §102.141(7)(c). After that, the statutes provide for a third deadline: The twelfth day after the election, by which the returns along with a certification must be submitted. Fla. Stat. § 102.112. The second and third counts are designed to account for all valid and timely ballots that were not included in prior counts.

6. When read together, the most logical construction of the statute is that valid and timely cast ballots that the county failed to canvass by November 10, 2018 must be included in the subsequent counts. There are at least three reasons the statute should be read this way.

7. *First*, the recount procedure established by statute allows for *other* ballots not initially counted to be included in subsequent counts. For example, ballots that tabulating machines did not initially count must be added in the second unofficial count following a machine recount, Fla. Stat. § 102.141, and in the manual recount, Fla. Stat. § 102.166.¹

8. *Second*, nowhere does the statute say that valid ballots which the county failed to canvass by the first unofficial deadline shall not be counted. Where the Florida Statutes prohibit ballots from being counted, they do so expressly: For example, if a county fails to provide certified returns following a manual recount, Fla. Stat. § 102.112 provides that those returns “shall be ignored.”

¹ Plaintiff cites Fla. Stat. § 101.6952, which allows the addition of military and overseas ballots if received by November 16—not only after the first unofficial count, but also after the second unofficial count—as evidence that other ballots should be excluded. In reality, the existence of this provision harmonizes with the purpose of the recount process—to ensure that valid, timely ballots that were not initially counted may subsequently be included.

9. *Third*, it would be arbitrary, and a potential violation of the Florida and United States Constitutions to discard valid ballots timely submitted by voters, simply because county election officials did not meet their statutory deadline for the first unofficial count. Under Plaintiff's reading, some voters would have their ballots counted (because county election officials included those ballots in the first official count), while others who submitted ballots at the same time and in the same manner would be disenfranchised. Some voters whose ballots were not in the possession of the county by Saturday (overseas voters) would have their ballots counted, while other absentee voters would not. Voters whose ballots were accidentally overlooked because of a voting machine error would ultimately have their ballots counted, but voters whose ballots were not counted because of human error would have no voice in that same election.

10. Through this litigation, Plaintiff seeks to disenfranchise innocent, civic-minded voters who submitted valid ballots on time yet, through no fault of their own, did not have their ballots counted in the first unofficial count. Plaintiff uses the inaccurate moniker of "illegal ballots" to suggest these voters should not be allowed to participate in this election. Under Plaintiff's logic, if a county election official failed to count all ballots submitted to the county by Saturday at noon, or submitted those ballots one minute after noon on Saturday, *the entire county would be disenfranchised*. Such a reading cannot be squared with the Florida Statutes, the Constitutions of Florida and the United States, or common sense.

The Intervenors Meet the Requirements for Intervention Under Florida Rule of Civil Procedure 1.230.

11. Pursuant to Rule 1.230 of the Florida Rules of Civil Procedure, "[a]nyone claiming an interest in pending litigation may at any time be permitted to assert a right by intervention, but the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding, unless otherwise ordered by the court in its discretion." Fla. R. Civ. P. 1.230.

12. To satisfy Rule 1.230, an intervenor must have an interest “of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment.” *Nat’l Wildlife Fed’n Inc. v. Glisson*, 531 So. 2d 996, 997–98 (Fla. 1st DCA 1988) (internal quotations and citation omitted). “Intervention should be liberally allowed.” *Id.* at 998.

A. The Intervenors Have Direct and Immediate Interests in This Litigation.

13. The Vote Counting Litigation impacts core interests of the Intervenors. The League of Women Voters of Florida (the “League”) is a nonpartisan, nonprofit organization committed to advocating for the electoral rights of citizens through constitutional, legislative, and judicial processes. The League is dedicated to ensuring that each voter’s voice is heard. The League represents the interests of voters in Broward County, many of whose votes are in jeopardy in the Senate Election. A judgment enjoining Defendants from counting all valid votes would frustrate the League’s purpose of encouraging participation in elections, and divert the League’s resources from other functions. In recognition of the unique interests served by the League of Women Voters (“LWV”) and its affiliate organizations, courts have granted motions to intervene in election-related litigation by other LWV organizations. *See, e.g., Kobach v. United States Election Comm’n*, No. 13-cv-4095-EFM-DJW, 2013 WL 6511874, at *2 (D. Kan. Dec. 12, 2013) (granting motions to intervene by the League of Women Voters of the United States, the League of Women Voters of Arizona, and the League of Women Voters of Kansas in a litigation challenging the requirement that voters submit proof of citizenship in order to register to vote, and recognizing that these LWV-affiliated organizations have “a mission of encouraging voting and civic participation, particularly among minorities and underprivileged communities”); *Texas v. Holder*,

63 F. Supp. 3d 54, 59 n.4 (D.D.C. 2014) (noting that the court granted a motion to intervene by the League of Women Voters of Texas in a challenge to a Texas voter identification law).

14. Joanne Lynch Aye is a registered voter who resides in Broward County. She cast a ballot by mail in the November 6, 2018 election. She is personally at risk of disenfranchisement if her vote is not counted in this election.

15. Together, the Intervenors represent the interests of the voters of Broward County, whose right to have their votes counted is of paramount importance in this action. *See Boardman v. Esteva*, 323 So. 2d 259, 263 (Fla. 1975) (“[T]he real parties in interest here, not in the legal sense but in realistic terms, are the voters. They are possessed of the ultimate interest and it is they whom we must give primary consideration.”).

B. No Party to This Litigation Can Adequately Represent the Interests of the Intervenors.

16. The Intervenors’ interests are not represented by any other party in this litigation. The Intervenors oppose the relief sought by Plaintiff for the reasons stated herein. The interests of the Intervenors are distinct from the interests of the Supervisor of Elections of Broward County (the “Supervisor”), a public servant with limited resources and a broad constituency. The Supervisor may have an interest in ensuring that every ballot is counted, but this is not the Supervisor’s only interest in this litigation. Because the Supervisor failed to ensure that all valid ballots were included in the first unofficial count, the Supervisor could be subject to significant public and financial pressure to resolve this litigation in a manner adverse to the interests of the Intervenors.

17. The Broward County Canvassing Board (the “Board”) also cannot fully represent the interests of the Intervenors. The Board’s delay and lack of transparency in addressing the vote counting challenges demonstrate that the Board will not completely defend the interests of

Broward County voters even if the Board has some interest in doing so. Like the Supervisor, the Board must balance multiple interests, not all of which align with the interests of the Intervenors. *See, e.g., Meek v. Metro. Dade Cnty.*, 985 F.2d 1471, 1478 (11th Cir. 1993) (county did not represent interests of intervenors because it “was required to balance a range of interests likely to diverge from those of the intervenors” including “the overall fairness of the election system to be employed in the future . . . and the social and political divisiveness of the election issue”), *abrogated on other grounds, Dillard v. Chilton Cnty. Com’n*, 495 F.3d 1324 (11th Cir. 2007).

18. Without the Intervenors’ participation, the other parties could opt to settle this litigation on terms that do not comport with the Intervenors’ interests. Alternatively, the Court could potentially issue a ruling adverse to the Intervenors’ interest without the benefit of arguments or evidence presented by the Intervenors. In that event, the Intervenors would be left with no alternative but to file suit to challenge the ruling. This would be both unjust to the Intervenors and an inefficient use of judicial resources. Granting intervention here will ensure that all interested parties are given an opportunity to be heard.

C. The Intervenors’ Motion Is Timely.

19. The Intervenors’ Motion to Intervene is timely. Plaintiff filed this litigation on Saturday, November 10, 2018, in the middle of a holiday weekend. The Intervenors moved to intervene on Tuesday, November 13, 2018, the first business day after Plaintiff filed suit. Given the urgency with which the Intervenors sought to protect their interests, intervention is appropriate here. *See, e.g., Hartford Fire Ins. Co. v. Sch. Bd. of Dade Cty.*, 661 So. 2d 111, 112 (Fla. 3d DCA 1995) (“Where the litigation is still in the pleading stage, and the intervenors assure the court that their participation will not delay or disrupt the proceedings, it is an abuse of discretion to deny the motion to intervene.”).

20. For the foregoing reasons, the Intervenor respectfully request that the Court grant their Motion to Intervene.

CERTIFICATE OF CONFERRAL

Given the Plaintiff's request for an urgent hearing, Intervenor nonetheless reached out to counsel to confer on the motion. Counsel for the Plaintiff has told us we can report that Plaintiff takes no position on the Motion. As of this filing, we have not been able to reach Defendant's counsel, and we are reluctant to defer this filing given the exigencies of the case.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was sent via E-Mail Service or via an automatic email generated by the Florida Courts E-Filing Portal to all parties on the attached Service List on this 13TH day of November, 2018.

Respectfully submitted,

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