

IN THE CIRCUIT COURT
OF THE 17th JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA
GENERAL CIVIL

ELLEN H. BRODSKY
Plaintiff

v.

BRENDA SNIPES, Supervisor of
Elections
BROWARD COUNTY CANVASSING
BOARD
Defendants

case # 2008-44024

Div #09

The Hon. **Robert L. Andrews**

PLAINTIFF ELLEN H. BRODSKY
MOTION for PRELIMINARY INJUNCTION

Tanner Andrews
Fla. Bar #21426
Tanner Andrews, P.A.
112 W. New York Ave., #203
P.O. Box 1208
DeLand, FLA 32721
pho +1 386 490 1128
fax +1 386 734 2116
Counsel for Ellen H. Brodsky

Motion for Preliminary Injunction

The plaintiff, Ellen H. Brodsky, pursuant to Fla.R.Civ.P. 1.100(b), moves this Court for a preliminary injunction preventing the counting of the ballots in the judicial race between Bober and Levey (the “Race”). For her motion, she would show:

1. Plaintiff relies upon the sworn facts in the verified complaint in this matter.
2. The counting of the ballots is imminent. While public access cases are often given priority, it is not practical to reach a full decision on the merits before the election.

Entitlement to Relief

3. There is no doubt that the Canvassing Board is an agency subject to Fla. Stat. § 286.011. That section of statute is commonly termed “Sunshine”. The law is well established in Florida that the public is permitted to attend meetings of such agencies. A meeting which is not open to the public is called a “shade” meeting by way of contrast with the Sunshine law.

4. The Canvassing Board met on 31-Aug-2008. At least one member of the public, the plaintiff in this matter, attempted to attend. She was turned away by a deputy sheriff and a servant of one of the Canvassing Board members. We know from this that the meeting was not open to the public. Thus, the Canvassing Board selected the candidates in the Race in an illegal shade meeting.

5. The remedy for a Sunshine violation is provided by the statute: Fla. Stat. § 286.011(1) states that “no ... formal action shall be considered binding except as taken or made” in the Sunshine. Actions taken in the shade are null and void from the beginning. Town of Palm Beach v. Jules T. Gradison, 296 So. 2d 473, 477 (Fla. 1974).

6. It is very likely that Plaintiff will prevail on the merits. The fact of the shade meeting is clear. The applicable law, that acts taken in the shade are void, is well settled. We can therefore predict the outcome once the entire process is complete.

Irreparable Harm

7. Courts hold that “Violation of the Sunshine law constitutes an irreparable public injury, the only remedy for which is to enjoin the violator from acting on violations.” Silver Express Company v. Miami-Dade Community College, 691 So. 2d 1099, 1101 (Fla. 3d DCA 1997), citing Gradison at 477. The 31-Aug-2008 meeting was held in derogation of the Sunshine law, in that the public was excluded. It follows, then, that the 31-Aug-2008 meeting constituted an irreparable injury.

8. Counting the ballots in the Race would be acting directly upon the selection of candidates made at the 31-Aug-2008 shade meeting. It would be an action based on a Sunshine violation, and would therefore continue and compound the irreparable injury.

Balance of Hardships

9. Delaying the counting of ballots in one race will not cause injury to any defendant, or to any other person, because the ballots may be counted and the totals announced at any time. Plaintiff is not seeking to interfere with the casting of ballots, nor with the counting of other races.

10. Defendants would suffer no injury from being restrained or delayed in counting ballots and announcing the results. Plaintiff will be irreparably harmed as discussed above. It follows that the balance of hardships favors granting a preliminary injunction.

Public Interest

11. We may safely presume that the Legislature's enactment of statutes represents the public policy of the State of Florida. That is, public policy favors obedience to the statutes. It benefits the public when the statutes are obeyed, and injures the public when they are violated.

12. Plaintiff here is asking only that the statutes be followed. The statute provides that acts taken in the shade are of no effect. Plaintiff is asking that the court, through its equitable power of injunction, make the statutory command effective by suspending the effect of the illegal act.

13. Because Plaintiff is seeking a preliminary injunction which closely follows the statute, public policy favors granting the injunction.

Conclusion

Plaintiff has shown the essential elements for a preliminary injunction: likely success; irreparable harm; balance of hardships; and public interest.

Wherefore, Plaintiff asks the court to enter its preliminary injunction, barring the counting of the ballots in the race between Bober and Levy pending resolution of this matter.

Respectfully submitted,

Tanner Andrews
Fla. Bar #21426
Counsel for Ellen H. Brodsky
Tanner Andrews, P.A.
112 W. New York Ave., #203
P.O. Box 1208
DeLand, FLA 32721
pho +1 386 490 1128
fax +1 386 734 2116

Certificate of Service

I certify that a copy hereof has been furnished to all parties listed below by the method indicated for each party.

Brenda Snipes (by fax)
Burnadette Norris-Weeks, Esq.,
Burnadette Norris-Weeks, P.A.,
401 N. Ave of the Arts,
Ft. Lauderdale, FLA 33311.
fax +1 954 768 9790

Broward County Canvassing Board (by fax)
James D. Rowlee, Esq.,
County of Broward,
115 S. Andrews Ave., #423,
Ft. Lauderdale, FLA 33301.
fax +1 954 357 7641

Done this 29 day of October, 2008.

Tanner Andrews
Fla. Bar #21426
Counsel for Ellen H. Brodsky
Tanner Andrews, P.A.
112 W. New York Ave., #203
P.O. Box 1208
DeLand, FLA 32721