

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.:

BEVERLY ROGERS, and RAY KAPLAN,
individually and on behalf of
others similarly situated electors
in Palm Beach County, Florida,

Plaintiffs,

v.

THE ELECTIONS CANVASSING COMMISSION
OF THE STATE OF FLORIDA; GOVERNOR JEB
BUSH; SECRETARY OF STATE KATHERINE
HARRIS; CLAY ROBERTS, Director of the
Division of Elections for the State of Florida;
THERESA LaPORE, Supervisor of Elections
for Palm Beach County; THE PALM BEACH
COUNTY ELECTIONS CANVASSING
COMMISSION; AL GORE; and GEORGE W. BUSH,

Defendants.

COMPLAINT

The Plaintiffs, BEVERLY ROGERS and RAY KAPLAN, individually and on behalf of others similarly situated, electors in Palm Beach County, Florida sues Defendants, THE ELECTIONS CANVASSING COMMISSION OF THE STATE OF FLORIDA; GOVERNOR JEB BUSH; SECRETARY OF STATE KATHERINE HARRIS; CLAY ROBERTS, Director of the Division of Elections for the State of Florida; THERESA LaPORE, Supervisor of Elections for Palm Beach County; THE PALM BEACH COUNTY ELECTIONS CANVASSING

COMMISSION; AL GORE; and GEORGE W. BUSH, pursuant to Section 102.168, *Fla. Stat.*, and in support thereof allege the following:

1. On November 7, 2000, an election was held in the United States of America, including throughout Palm Beach County, Florida, to elect the 43rd President of the country.

2. On November 7, 2000, the Plaintiffs, BEVERLY ROGERS, RAY KAPLAN, AND SAM KAPLAN, and numerous other electors in Palm Beach County, Florida (hereinafter collectively referred to as "ROGERS"), presented to various polling stations throughout Palm Beach County with the intention of casting their ballots for the office of President of the United States of America on behalf of Al Gore, Jr.

3. Various Florida Statutes govern the form of ballots to be utilized for elections held in the State of Florida. Section 101.191, *Fla. Stat.*, provides the form to be utilized for general elections ballots. That form clearly provides that candidates for the Office of President and Vice-President of the United States of America shall be listed along the left hand side of the ballot, with a blank space adjacent to the right of the candidate's name to be filled in to indicate a selection of that candidate. Section 101.151, *Fla. Stat.*, provides detailed specifications for general election ballots, including the mandate that the candidates for any office shall be listed in the following order: the name candidate of the party which received the highest number of votes for governor in the last election in which a governor was elected shall be placed first under the heading for each office, together with an appropriate abbreviation of party name, to be followed by the name of the candidate of the party which received the second highest vote for governor. Finally, Section 101.011, *Fla. Stat.*, provides that where paper ballots are used, the elector shall retire to a booth, alone, and place a mark after the

name of the candidate of his or her choice in the space provided on the ballot as shown on Section 101.191, *Fla. Stat.* In addition Section 101.011(2), *Fla. Stat.*, provides that a mark on a paper ballot shall not be voided or declared invalid so long as “there is clear indication thereon to the election officials that the person marking such ballot has made a definite choice, and provide further, that the mark placed on the ballot with respect to any candidate by any such voter shall be located in the blank space of the ballot opposite such candidates name.”

4. Unfortunately, and for reasons heretofore unknown to the Plaintiffs, the ballots utilized throughout Palm Beach County, Florida, violated the aforementioned Florida Statutes in that they were printed in such a format that caused the Plaintiffs to be confused to the point that they did not indicate a definite choice, and such that Plaintiffs fear they cast a ballot for a candidate other than whom they intended. A copy of the ballot in question is attached hereto as “Exhibit A.”

5. Specifically, the ballot was designed in such a fashion that it contained a blank space which was adjacent to both the Democratic and Reform Party candidates for President and Vice President of the United States, and caused a reasonably prudent person, including Plaintiffs, to believe they were casting a vote for Al Gore, Jr. when indeed the individual cast a vote for a separate candidate, Pat Buchanan.

6. The design and use of the ballots in question clearly violate Sections 101.011, 101.151 and 101.191, *Fla. Stat.*, which govern and control the format and design of ballots to be utilized in this state’s elections.

7. Due solely to the design of the ballot in question which, as explained above, clearly violates Florida Law, the Plaintiffs and others similarly situated cast their ballots for a candidate for whom they had no intention of voting.

8. A simple review of the polling data clearly and convincingly proves that a wrong was committed in Palm Beach County, Florida. In Broward County, Florida (one county to the south), of total ballots cast (573,183), Pat Buchanan received 789 votes, or .14 percent.

9. In Martin County, Florida (one county to the north), of the total ballots cast (61,842), Pat Buchanan received 112 votes, or .18 percent.

10. In Indian River County, Florida, of the total ballots cast (49,606), Pat Buchanan received 105 votes, or .21 percent.

11. However, in Palm Beach County, the only county where these illegal ballots were utilized, of the total ballots cast (432,183), Pat Buchanan received 3,407 votes, or .788 percent. Buchanan received no more than 1,012 votes in any other county in this state, and received a total of 16,946 votes in the entire state See, Exhibit "B").

12. Clearly the statistics and election results shown above reveal that Buchanan received a disproportionate share of the votes cast in Palm Beach County, Florida for President and Vice President. There should be no doubt that the results are directly related to the illegal design and use of the ballot in question.

13. Section 102.168, *Fla. Stat.*, governs the contest of elections. The statute provides that any elector qualified to vote to in the election related to the contested candidacy, or any taxpayer may file an action contesting the results of the election. Included among the permitted grounds for contesting an election are misconduct, fraud, or corruption on the part of any election official or any member of the Canvassing Commission sufficient to change or

place in doubt the result of the election; or any other cause or allegation which, sustained, would show that a person other than the successful candidate was the person duly elected to the office in question. Further, Section 102.168(7), *Fla. Stat.*, provides that any qualified elector or taxpayer presenting such a contest to a circuit judge is entitled to an immediate hearing thereon. Finally, under Section 102.168(8), *Fla. Stat.*, the circuit judge to whom the contest is presented may fashion such orders as he or she deems necessary to insure that each allegation in the complaint is investigated, examined or checked, to prevent or correct any alleged wrong, and to provide any relief appropriate under such circumstances.

14. Under Section 102.141, *Fla. Stat.*, a county canvassing board shall first review the results of the election in that county and declare a winner of each office subject to election. Under Section 102.151, *Fla. Stat.*, the county canvassing board shall issue certificates containing the total number of votes cast for each person nominated or elected, the names of the persons for whom such votes were cast and the number of votes cast for each candidate or nominee. Those certificates shall be transmitted to the Department of State. Finally, under Section 102.155, *Fla. Stat.*, the supervisor of elections for the county shall give any person, for whom the election has been certified by the county canvassing commission, a certificate of the person's election, and that certificate of election shall be *prima facie* evidence of the election of such person.

15. Section 102.111, *Fla. Stat.*, provides that the results of elections from each County shall be forwarded to the Department of State and the Election Canvassing Commission, which consists of the Governor of the State, the Secretary of the State, and the Director of Division of Elections. The Election Canvassing Commission shall, as soon as the

official results are compiled from all counties, certify the returns from the election and determine and declare who has been elected for each office. Under Section 102.121, *Fla. Stat.*, the Election Canvassing Commission shall make and sign separate certificates of the results of the election for federal and state officers, which certificates shall be written and contain the total number of votes cast for each person for each office.

COUNT I

CLAIM FOR INJUNCTIVE RELIEF

Plaintiffs incorporate and adopt the allegations of Paragraph Nos. 1 through 15 above, as if the same were fully set forth herein.

16. Plaintiffs seek a temporary injunction enjoining the County and State Canvassing Commissions from certifying as final the results of the election for President and Vice-President of the United States as held in Palm Beach County, Florida, and as those results would pertain to or affect the total number of votes received by each candidate in the State of Florida.

17. Absent such an injunction, certificates will be issued by the County and State Canvassing Boards which will constitute *prima facie* evidence of the elections of the candidates certified as having received the most number of votes.

18. Given the State law violations concerning the form and design of the ballot in question, there is a valid and substantial dispute as to the total number of votes actually cast or intended to be cast for the candidates for President and Vice-President of the United States, particularly the number of votes cast for candidates Al W. Gore, Jr.

19. Plaintiffs possess no adequate remedy at law as these election results for State of Florida will be deemed and certified as final absent the injunctive relief requested herein.

COUNT II

CLAIM TO SET ASIDE ELECTION RESULTS

Plaintiffs incorporate and adopt the allegations of Paragraph Nos. 1 through 15 above, as if the same were fully set forth herein.

20. Given the State law violations concerning the form and design of the ballot utilized in Palm Beach County, Florida, for the election of President and Vice-President of the United States of America, there is genuine dispute as to the validity of the number of votes cast for each candidate.

21. Plaintiffs and others similarly situated believe they may have inadvertently voted for Pat Buchanan, the Reform Party candidate for President of the United States, when they in fact intended to vote for Al W. Gore, the Democratic Party candidate for President of the United States.

22. The election for President and Vice-President of the United States has been extremely close, and in fact, the winner of the election hinges upon the outcome of the election for those offices in the State of Florida. Upon information and belief, and after a re-count of the votes cast for President and Vice-President of the United States, it is believed that the difference between the total votes cast in Florida for the Republican and Democratic party candidates for President of the United States will be less than two thousand (2,000) votes, and may indeed be less than one thousand (1,000) votes.

23. Given the discrepancy in the votes cast for Pat Buchanan, and the errors and irregularities in the ballot utilized in Palm Beach County, the results of the election for President and Vice-President of the United States of America from Palm Beach County, Florida, must be set aside and a second general election for Palm Beach County called so that a new ballot may be utilized and the electors given a chance to vote for President and Vice-President of the United States with a ballot which complies with Florida law.

WHEREFORE, based on the foregoing, this Court must void the entire election throughout Palm Beach County, order that the ballot be re-designed to comply with all Florida Law, and schedule a re-election as soon as practicable.

DATED November 9, 2000.

David H. Krathen, Esq.
Fla. Bar No. 147810
Michael Freedland, Esq.
Fla. Bar No. 128988
LAW OFFICES OF DAVID KRATHEN
888 E. Las Olas Blvd., STE 200
Ft. Lauderdale, FL 33301

Gary M. Farmer, Jr., Esq.
GILLESPIE, GOLDMAN, KRONENGOLD
& FARMER, P.A.
6550 N. Federal Highway, Suite 511
Fort Lauderdale, Florida 33308
Telephone No.: (954) 771-0908

Stephen A. Sheller, Esq.
SHELLER, LUDWIG & BADEY
1528 Walnut St., 3rd Floor
Philadelphia, PA 19102

By: _____
GARY FARMER, JR.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of November, 2000, a true copy of the

foregoing was furnished by facsimile transmission and U.S. to:

Governor Jeb Bush
Office of the Governor, The Capitol
Tallahassee, FL 32399-0001
Phone: (850) 488-4441
Fax: (850) 487-0801

Katherine Harris
Secretary of State
The Capitol
Tallahassee, Florida 32399
Phone: (850) 488-5500
Fax: (850) 487-2214

L. Clayton Roberts,
Director of Florida Department of Elections
Department of State, Division of Elections
The Capitol, Room 1801
Tallahassee, FL 32399-0250
Phone: (850) 488-7690
Fax: (850) 488-1768

Theresa LePore,
Supervisor of Elections
P.B.C. Governmental Center
301 North Olive Avenue, Room 105
West Palm Beach, FL 33401-4795
Phone: (561) 355-2650
Fax: (561) 355-4006

Vice President Al Gore, Jr.
601 Mainstream Drive
Nashville, TN 37228
Phone: (615) 340-2000

Governor George W. Bush, Jr.
P.O. Box 1902
Austin, TX 78767
Phone: (512) 637-2000
Fax: (850) 681-0184

By: _____
GARY FARMER, JR.
FLA. BAR NO. 914444

VERIFICATION

Under penalty of perjury I hereby declare that I have read the foregoing and that the facts contained herein are true and accurate.

Beverly Rogers