

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN
AND FOR PALM BEACH COUNTY,
FLORIDA.

CASE NO.:

CONGRESSMAN ROBERT WEXLER,

Plaintiff,

vs.

THERESA LEPORE, SUPERVISOR
OF ELECTIONS FOR PALM BEACH
COUNTY, FLORIDA; PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS;
SECRETARY OF STATE, GLENDA E. HOOD,

Defendants.

COMPLAINT

Plaintiff, CONGRESSMAN ROBERT WEXLER, by and through his undersigned counsel, hereby sues the Defendants, THERESA LEPORE, Supervisor of Elections for Palm Beach County, Florida; PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS and Secretary of State, GLENDA E. HOOD and as grounds therefore states:

GENERAL ALLEGATIONS

1. This is an action for both Declaratory and Injunctive Relief.
2. Plaintiff, CONGRESSMAN ROBERT WEXLER, is both a Congressman representing the 19th Congressional District of Florida, as well as a registered voter in Palm Beach County, Florida.
3. Article VI Section 1 of the Florida Constitution provides:

SECTION 1. Regulation of elections.--All elections by the people shall be by direct and secret vote. General elections shall be determined by a plurality of votes cast. Registration and elections shall, and political party functions may, be regulated by law; however, the requirements for a candidate with no party affiliation or for a candidate of a minor party for placement of the candidate's name on the ballot shall be no greater than the requirements for a candidate of the party having the largest number of registered voters.

SECTION 2. Electors.--Every citizen of the United States who is at least eighteen years of age and who is a permanent resident of the state, if registered as provided by law, shall be an elector of the county where registered.

SECTION 5. Primary, general, and special elections.--

(a) A general election shall be held in each county on the first Tuesday after the first Monday in November of each even-numbered year to choose a successor to each elective state and county officer whose term will expire before the next general election and, except as provided herein, to fill each vacancy in elective office for the unexpired portion of the term. A general election may be suspended or delayed due to a state of emergency or impending emergency pursuant to general law. Special elections and referenda shall be held as provided by law.

(b) If all candidates for an office have the same party affiliation and the winner will have no opposition in the general election, all qualified electors, regardless of party affiliation, may vote in the primary elections for that office.

4. The general Election in 2000, was perhaps the most controversial election in the history of our Nation. A great deal of the controversy arose here in Palm Beach County.

5. Certainly, the 2000 Election controversy uncovered severe shortcomings in election procedures and systems both in Palm Beach County, as well as elsewhere in Florida.

6. Subsequent to the 2000 Election controversy, the Florida Legislature amended many existing election law statutes and also passed an Act entitled "The Electronic Voting Systems Act" Fla. Stat. §101.5601-101.5614.

7. The abovementioned various statutory revisions and new statutes required each of the Defendants to fulfill certain responsibilities.

8. The Defendant, Secretary of State, GLENDA E. HOOD, pursuant to Fla. Stat. §101.015 was responsible to adopt rules in order to establish minimum standards for new voting systems, for provisional approval of hardware and software for use with such systems and to approve the voting systems prior to use throughout the State of Florida. Moreover, such statute required the Division of Elections to continuously review the voting system's certification standards.

9. Pursuant to Fla. Stat. §101.5605, Defendant, Secretary of State, GLENDA E. HOOD, was responsible to approve or disapprove any voting system, to maintain any report pertinent to such system, and further, to reexamine any system or any part thereof which had previously been approved for the purpose of updating the certification of the system.

10. Fla. Stat. §101.506 established minimum standards for requirements to be utilized by the Defendant, Secretary of State, GLENDA E. HOOD, pertinent to approval of electronic or electromechanic voting systems.

11. Pursuant to Fla. Stat. §101.015, the Defendant, THERESA LEPORE, Supervisor of Elections for Palm Beach County, was required to establish written procedures to assure accuracy and security in Palm Beach County and was further, in the event revisions were required to such security procedures, required to submit them to Co-Defendant, Secretary of State, GLENDA E. HOOD, at least 45 days prior to election.

12. Pursuant to Fla. Stat. §101.5604 the Defendant, THERESA LEPORE, had a responsibility to consult with and advise the Board of County Commissioners for Palm Beach County.

13. Pursuant to Fla. Stat. §101.5604, the Defendant, PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS had the responsibility to adopt, purchase, and procure voting systems approved by Co-Defendant, Secretary of State, GLENDA E. HOOD.

14. Fla. Stat. §102.141 and 102.166, establish when and what type of recount must take place in the election process and further require the Defendant, Secretary of State, GLENDA E. HOOD to adopt specific rules for each certified voting system prescribing recount standard and procedures.

15. The Defendants, and each of them, pursuant to their respective and shared statutory duties, developed procedures for, approved, purchased and operated a voting system now utilized in Palm Beach County called "Sequoia AVC Edge Voting System Release 3.1".

16. The aforesaid voting system, "Sequoia AVC Edge Voting System Release 3.1" is a paperless voting system.

17. The Division of Elections, Florida Department of State website at <http://election.dos.state.fl.us/votemeth/systems/countysys.asp> reveals that there are presently several voting systems that have been approved in the State of Florida. Further, the "Sequoia AVC Edge Voting System Release 3.1" is utilized by three other counties in the State of Florida. At least 15 counties utilize paperless voting.

18. On or about July 8, 2003, Plaintiff, CONGRESSMAN ROBERT WEXLER wrote to the Defendant, Secretary of State, GLENDA E. HOOD, expressing his concerns regarding the shortcomings of voting equipment that was being purchased/implemented. (Exhibit "A" attached hereto).

19. Recently, there was a special election to fill a vacated seat in the Florida Legislature for District 91, which, in part, lies in Palm Beach County.

20. The margin of victory was 12 votes, further, 134 ballots were invalidated as "undervotes". Pursuant to Fla. Stats. §102.141 and §102.166 a manual recount was mandated.

21. Because of the Defendants and each of their violations of their aforesaid respective and shared statutory duties, a manual recount was impossible and thus not accomplished.

22. Indeed, the Defendants and each of them did not even have any guidelines/procedures for manual recounts. When inquiries were made to the Defendant, GLENDA E. HOOD, she refused to even put guidelines/procedures for recount into writing.

COUNT I
DECLARATORY RELIEF

Plaintiff, CONGRESSMAN ROBERT WEXLER, adopts and realleges each and every allegation contained in paragraphs 1 through 22 above and further alleges:

23. Plaintiff, CONGRESSMAN ROBERT WEXLER, contends that Defendants, and each of them, pursuant to above noted statutory requirements, have respective and shared mandatory responsibility to ensure that each citizen of Palm Beach County who

exercises his or her right to vote guaranteed by the Florida Constitution will have such vote accurately recorded and reported.

24. Further, Plaintiff, CONGRESSMAN ROBERT WEXLER, contends that the Defendants, and each of them have a respective and shared mandatory responsibility to ensure that in the event of a recount, such recount must be able to be rapidly, properly and accurately performed.

25. Plaintiff, CONGRESSMAN ROBERT WEXLER, in addition to his concerns as a registered voter in Palm Beach County, contends that, since he is running for re-election in November 2004, in the event a re-count will be required, that the current systems, procedures and equipment will render that impossible.

26. Plaintiff, CONGRESSMAN ROBERT WEXLER, is in doubt as to his rights both as a voter and as a candidate for re-election under the Florida Constitution and the above noted statutes.

27. Plaintiff, CONGRESSMAN ROBERT WEXLER respectfully requests that this Court:

A) Take jurisdiction over this matter for purposes of rendering a declaratory decree;

B) Having taken jurisdiction, enter an Order declaring that the Defendants and each of them, have and continue to be in violation of their respective and shared statutory duties to provide for, protect and ensure that each voter in Palm Beach County will have his or her vote accurately and properly recorded with the ability to rapidly, accurately and properly conduct a recount if necessary;

C) Require the Defendants, and each of them, to immediately take whatever steps are necessary to correct such Constitutional and Statutory violations prior to the very next election scheduled in Palm Beach County;

D) Require the Defendants notify this Court of the progress and completion of implementation of this Court's Order on an ongoing basis;

E) Require the Defendants, and each of them, to communicate to the Palm Beach County voters of this Court's Order and steps taken to implement such Order;

F) Grant such other relief as this Court deems proper;

G) Retain jurisdiction over the parties and the subject to assess taxable costs and any and all penalties this Court deems meet and just;

WHEREFORE, Plaintiff, CONGRESSMAN ROBERT WEXLER, requests this Honorable Court enter declaratory judgment in favor of the Plaintiff and against the Defendants, and each of them.

COUNT II
INJUNCTIVE RELIEF

Plaintiff, CONGRESSMAN ROBERT WEXLER, adopts and realleges each and every allegation contained in paragraphs 1 through 22 above and further alleges:

28. Plaintiff, CONGRESSMAN ROBERT WEXLER, reasonably anticipates that, in order for Defendants, and each of them, to correct their respective and shared constitutional and statutory violations will take some time.

29. The next election cycle in Palm Beach County, Florida is the presidential primary, which will be held on Tuesday, March 9, 2004.

30. The Defendants, aforesaid acts and omissions in violation of their respective and shared Constitutional and statutory duties pose an immediate threat to the rights of Palm Beach County voters and to the political candidates.

31. Plaintiff, CONGRESSMAN ROBERT WEXLER, has no adequate remedy at law and he and all other Palm Beach County voters, as well as he in his capacity as a political candidate will suffer immediate and irreparable harm if this Injunctive Relief is not granted.

32. Plaintiff, CONGRESSMAN ROBERT WEXLER, is confident that, based on all the aforesaid facts and law that he will prevail on the merits of this action.

33. Plaintiff, CONGRESSMAN ROBERT WEXLER respectfully requests that this Court:

A) Take jurisdiction over this matter for purposes of rendering a declaratory decree;

B) Having taken jurisdiction, enter an Order declaring that the Defendants and each of them, have and continue to be in violation of their respective and shared statutory duties to provide for, protect and ensure that each voter in Palm Beach County will have his or her vote accurately and properly recorded with the ability to rapidly, accurately and properly conduct a manual recount if necessary;

C) Require the Defendants, and each of them, to immediately take whatever steps are necessary to correct such Constitutional and Statutory violations prior to the very next election scheduled in Palm Beach County;

D) Require the Defendants notify this Court of the progress and completion of implementation of this Court's Order on an ongoing basis;

E) Require the Defendants, and each of them, to communicate to the Palm Beach County voters of this Court's Order and steps taken to implement such Order;

F) Grant such other relief as this Court deems proper;

G) Retain jurisdiction over the parties and the subject to assess taxable costs and any and all penalties this Court deems meet and just;

WHEREFORE, Plaintiff, CONGRESSMAN ROBERT WEXLER, requests this Honorable Court enter declaratory relief in favor of the Plaintiff and against the Defendants, and each of them.

Dated this _____, 2004.

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