

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

LEAGUE OF WOMEN VOTERS OF)	
FLORIDA; COMMON CAUSE)	
FLORIDA; and JOANNE LYNCH AYE,)	
)	
Plaintiffs,)	
)	Civil Action No. _____
v.)	
)	
RICHARD L. SCOTT, in his official)	
capacity as Governor of the state of Florida,)	
)	
Defendant.)	
_____)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

PRELIMINARY STATEMENT

1. Defendant Richard L. Scott is a candidate for United States Senator in Florida. He is also the Governor of Florida, tasked with certifying the results of his own race and supervising the officials tasked with recounting the votes in his race. In recent days, Defendant Scott has used the official powers of his office to interfere in the election to benefit himself and his political party and to intimidate the local officials and volunteers conducting the vote count. In light of the pervasive opportunities for the Defendant Scott to improperly exercise power over the U.S. Senate race, his continued interventions in the race violate the basic notion of

fairness that no man should be a judge in his own cause. In doing so, Defendant Scott has violated the constitutional rights of Plaintiffs' members and other Florida voters.

2. Being tasked with certifying the results of an election in which one is running for office poses a risk of bias under the best of circumstances. But Defendant Scott's efforts to use the authority of his office to advance his campaign and his political party have been extreme. His race is already close enough to be subject to a mandatory recount, and he has repeatedly threatened law enforcement intervention in the vote-counting process. As Plaintiffs League of Women Voters of Florida and Common Cause Florida explained in a demand letter on Friday, Defendant Scott has "intentionally politicized governance of the elections by publicly threatening a show of force These actions can easily be seen as intimidation of election officials who need to remain unencumbered while they engage in their very demanding work."

3. Defendant Scott has already misused his authority to influence and frustrate the high stakes vote-counting process, and the powers of his office give him opportunity to continue to misuse his authority.

4. Plaintiffs League of Women Voters of Florida and Common Cause Florida are organizations whose thousands of members include individuals who voted in Florida's 2018 election. Both organizations have had to divert significant resources to address Defendant Scott's efforts to frustrate vote counting and

intimidate local officials. Plaintiff Joanne Lynch Aye is a Florida voter who voted in Florida's 2018 election, including in the senatorial race in which Defendant Scott is a candidate. As a result of Defendant Scott's recent conduct, Plaintiffs face the very real prospect that Defendant Scott has exercised his authority related to the elections in an unfair manner, and will continue to do so, in a manner that denies Florida voters, including organizational Plaintiffs' members, the right to cast an effective vote.

5. Defendant Scott's conduct goes far beyond the ordinary political activity of a governor running for office. *The Miami Herald* and *Politico*, among others, have reported that the extent to which Defendant Scott's misuse of his official powers to advance his own candidacy has "underscored the lack of a clear dividing line between [Defendant's] dual roles as candidate for higher office and his current job as governor," Steve Bousquet and Nicholas Nehamas, *FDLE is not investigating Broward elections—because Gov. Scott didn't order it*, *Miami Herald* (Nov. 9, 2018),¹ and has "blurr[ed]" the lines between his roles as governor and senatorial

¹ Available online at <https://www.miamiherald.com/news/politics-government/state-politics/article221407235.html>.

candidate, Marc Caputo and Matt Dixon, *Scott asks for Broward voting probe as his Nelson lead shrinks*, Politico (Nov. 8, 2018).²

6. Plaintiffs come before this Court with a simple request. Defendant Scott's misuse of his official powers in favor of his own candidacy demonstrates the truth of the axiom that no man may be the judge in his own cause. This Court should not permit Defendant Scott to use the power of his office in any manner related to the Florida's 2018 Senate race as long as he remains a candidate.

PARTIES

7. Plaintiff League of Women Voters of Florida ("the League") is a nonpartisan, not-for-profit corporation dedicated to promoting political responsibility by encouraging informed and active participation in government, including by registering citizens to vote and encouraging voter turnout. The League has had to divert significant resources to address Defendant Scott's efforts to frustrate vote counting and intimidate local officials, including by sending, with Common Cause of Florida, a demand letter to Defendant Scott alerting him to his conflicts of interest and request that he step aside from the vote counting and certification of his race. The League has over 2,800 members in Florida. Among its members are many individuals who voted in the 2018 Senate race in Florida,

² Available online at <https://www.politico.com/states/florida/story/2018/11/08/-scott-orders-investigation-of-and-sues-broward-county-as-his-margins-shrink-against-nelson-690074>.

including in Broward and Palm Beach Counties. Its members include supporters of both Defendant Scott and of his opponent, Senator Bill Nelson. The League's affidavit, filed herewith, is incorporated into this Paragraph by reference.

8. Plaintiff Common Cause Florida ("Common Cause") is a nonpartisan grassroots organization dedicated to upholding the core values of American democracy. Common Cause works to create open, honest, and accountable government that serves the public interest; promote equal rights, opportunity, and representation for all; and empower all people to make their voices heard in the political process. Common Cause has had to divert significant resources to address Defendant Scott's efforts to frustrate vote counting and intimidate local officials, including by sending the demand letter mentioned above, monitoring vote-counting, and recruiting and training recount observers. Common Cause has over 41,000 members in Florida. Among its members are many individuals who voted in the 2018 Senate race in Florida, including in Broward and Palm Beach Counties. Its members include supporters of both Defendant Scott and of his opponent, Senator Bill Nelson. Common Cause's affidavit, also filed herewith, is incorporated into this Paragraph by reference.

9. Plaintiff Joanne Lynch Aye is a resident of and is registered to vote in Broward County, Florida. She voted in the Florida's 2018 general election by vote-by-mail absentee ballot on or around October 20, 2018.

10. Defendant Richard L. Scott is the Governor of the State of Florida, and a candidate for U.S. Senator in the 2018 election.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because the claims in this action arise under federal law, specifically 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the U.S. Constitution.

12. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Defendant is domiciled in the district, and a substantial portion of the events giving rise to this litigation took place there.

FACTUAL ALLEGATIONS

The Role of the Governor in Election Administration

13. The Governor's office has substantial responsibilities for election administration. Perhaps most importantly, he is one of three members of Florida's Elections Canvassing Commission ("ECC")—the body that certifies the result of Florida's federal, state, and multicounty elections. The ECC consists of the Governor and two members of the Florida Cabinet selected by the Governor. Fla. Stat. § 102.111. In other words, the Governor is tasked with certifying his own race for U.S. Senate.

14. The Governor has broad authority to suspend members of the county election canvassing boards from their supervisor, judge, or county commissioner

positions. Fla. Const. art. IV, § 7(a); Fla. Stat. § 112.50. Any such suspension may be effectuated by a quick, unilateral action by the Governor, and suspended officials may lose back pay and benefits. Fla. Stat. § 112.40; Fla. Att’y Gen. Op. 2013-23 (2013).

15. The Governor also appoints Florida’s chief election administrator, the Secretary of State, who is in charge of—among other things—determining whether election returns require a machine or hand recount. Fla. Stat. §§ 102.141, 102.166.

16. In addition, Defendant Scott is the chief law enforcement officer of the State of Florida, and the head of the Florida Department of Law Enforcement (“FDLE”). The FLDE Commissioner, also a head of the agency, was appointed by Defendant Scott.

17. Like all public officials in Florida, Defendant Scott is governed by state law provisions prohibiting conflicts of interest, particularly where the conflict is at odds with discharging official duties in the public interest. *See* Fla. Stat. § 112.311(1), (5).

The Status of Florida’s 2018 Election for U.S. Senate and Recount

18. As of filing, Defendant Scott is leading his opponent by less than 13,000 votes, or approximately .18 percentage points. Pursuant to Florida law, a candidate is entitled to a manual recount if the margin of victory is less than .25 percentage points. Fl. Stat. § 102.166(1).

19. A recount in Defendant Scott’s race began over the past weekend—but the race is far from being decided. County canvassing boards’ submissions of a second set of unofficial returns are not due until November 15, 2018, Fla. Stat. § 102.141(7)(c), and the canvassing of absentee ballots from uniformed servicemembers and overseas voters cannot even begin until November 16, 2018, Fla. Stat. § 101.6952(3)(b). Accordingly, the race has not been decided, and likely will not be until on or after November 18, 2018, the deadline for the manual recount. Returns not received by the statutory deadline can simply be ignored. Fla. Stat. § 102.112.

Defendant Scott’s Recent Actions Demonstrating Misuse of Official Powers in the Administration of the 2018 Election

20. Defendant Scott’s recent actions demonstrate an intent to use the power of his office to interfere with the vote-counting process and tilt the results of the election in his favor.

21. On the evening of November 8, 2018, Defendant Scott’s Senate campaign, Scott for Florida, announced and held a press conference. Although the press conference was held by Scott for Florida, not the Office of the Governor, it was held at the official state residence, also known as the governor’s mansion—a taxpayer-funded venue not normally used for partisan political activity.

22. At the November 8 press conference, Defendant Scott needlessly “escalated already rising tensions across the state . . . [by] accus[ing] ‘left-wing

activists in Broward County’ of trying to steal the election for [his opponent]. The county, in [a] deep-blue portion of South Florida, is notoriously slow in counting its votes and as its tally mounted, Scott's lead had predictably diminished.” Gregory Krieg et al., *Florida recounts begin as tensions escalate across state*, CNN (Nov. 10, 2018).³

23. “Scott slammed the supervisors of elections in Palm Beach and Broward counties and said liberals in the two counties are trying to steal the election.” John Kennedy, *Rick Scott sues as recounts loom and vote margins thin*, The Palm Beach Post (Nov. 8, 2018).⁴

24. Most alarmingly, Defendant Scott called on the FDLE to investigate the Broward and Palm Beach Counties—both supervised by elected Democrats—for “rampant fraud.” Both counties have significantly more registered Democrats than registered Republicans, and are counties upon which Defendant Scott’s Senate race may turn.

25. Despite apparently appearing in his role as a *candidate*, Defendant Scott was clearly acting in his role as *governor* when he asked the FDLE, a state agency

³ Available online at <https://www.cnn.com/2018/11/10/politics/florida-recount-rick-scott-bill-nelson-ron-desantis-andrew-gillum/index.html>.

⁴ Available online at <https://www.palmbeachpost.com/news/20181108/rick-scott-sues-as-recounts-loom-and-vote-margins-thin>.

under his control, to investigate the “unethical liberals” Defendant Scott accused of plotting to steal the U.S. Senate seat from him. Indeed, Defendant Scott made clear he would “not sit idly by while unethical liberals try to steal this election.” John Kennedy, *Rick Scott sues as recounts loom and vote margins thin*, Palm Beach Post (Nov. 8, 2018).⁵

26. Defendant Scott doubled down on his call for a criminal investigation into county vote-counting operations on Fox News’s *Hannity* show, where he explained his narrowing lead by stating, “So, it’s clear we’ve got some left-wing activists, we’ve got some Democrat D.C. lawyers, down here for one purpose—to steal this election.” On national television, Defendant Scott accused Broward and Palm Beach Counties of “finding as many votes as it takes to . . . win this election” for Defendant Scott’s opponent. Defendant Scott went on to clearly state, “We’re gonna make sure *we* win this.” Fox News, *Rick Scott files lawsuit in contested Florida Senate race* (Nov. 8, 2018) (emphasis added).⁶

27. The next day, Defendant Scott’s campaign manager, Jackie Schutz Zeckman, characterized local vote-counting operations as a collaboration between Defendant Scott’s opponent and local election officials, and promised that “*we won’t*

⁵ Available online at <https://www.palmbeachpost.com/news/20181108/rick-scott-sues-as-recounts-loom-and-vote-margins-thin>.

⁶ Available online at <https://www.youtube.com/watch?v=sMHVcEOtJuw>.

let them” continue. Arek Sarkissian, *Judges side with Scott in suits against Broward, Palm Beach election supervisors*, Politico (Nov. 9, 2018) (emphasis added).⁷

28. Defendant Scott has produced no evidence of the alleged fraud. And both the FDLE and the Florida Department of State have confirmed that Defendant Scott’s claims are unsubstantiated: on Saturday, Department of State spokeswoman Sarah Revell said that, “Our staff has seen no evidence of criminal activity at this time,” and the FDLE said Friday that it has also seen no allegations of fraud. Matt Dixon, *Rick Scott's monitors agree with state cops: No Florida voter fraud*, Politico (Nov. 10, 2018).⁸

29. Defendant Scott’s statements caused rowdy protests that led Broward County election officials to request police protection for their vote-counting operation. And after a recent court hearing, the supervisor of elections of Palm Beach County was met with protestors yelling that she should be “locked up.” Gray Rohrer,

⁷ Available online at <https://www.politico.com/states/florida/story/2018/11/09/-judges-side-with-scott-in-suits-against-broward-palm-beach-election-supervisors-690950>.

⁸ Available online at <https://www.politico.com/states/florida/story/2018/11/10/-scotts-own-monitors-agree-with-law-enforcement-no-signs-of-florida-voter-fraud-691112>.

et al., *Florida Vote: Recounts Ordered for U.S. Senate, Governor, Agriculture Commissioner*, Orlando Sentinel (Nov. 10, 2018).⁹

30. As explained above, Defendant Scott is directly responsible for the certification of Florida election results—including his own tightly-contested race. He appointed and is directly above other key officials tasked with determining the outcome of his Senate race. And, as governor and head of the FDLE, he is able to effect the law enforcement investigation he has threatened.

31. As recently as this past Friday, Defendant Scott refused to disavow his unsubstantiated claims of fraud or his call for an investigation—even in the face of the Department of State and the FDLE, announcing that no fraudulent or criminal conduct had been observed or reported.

32. This Saturday, as the state-mandated recount began, Defendant Scott used his campaign website and Twitter feed to urge “every Sheriff in the State of Florida to watch for any violations during the recount process” and to “take appropriate action.” Rick Scott (@ScottforFlorida), Twitter (Nov. 10, 2018, 7:21 AM), <https://twitter.com/ScottforFlorida/status/1061277605691883520>; Press Release, *Governor Rick Scott Encourages Sheriffs to Watch for Violations During*

⁹ Available online at <https://www.orlandosentinel.com/news/politics/political-pulse/os-florida-recount-vote-tally-deadline-20181110-story.html>.

Recount (Nov. 10, 2018)¹⁰ Sheriffs, like canvassing board officials, are subject to suspension by the governor. While Florida sheriffs have a freestanding duty to safeguard elections, Defendant Scott’s unnecessary call from his bully pulpit for “strict vigilance” by law enforcement furthers the risk that state officials performing the recount will be chilled in their exercise of independent and neutral judgment.

33. And just yesterday, Defendant Scott reiterated his baseless claims of fraud and his call for an FDLE investigation, telling *Fox News Sunday* that his opponent is “clearly trying to commit fraud to win this election, that’s all this is”—comments that Fox News described as “a significant escalation of his rhetoric.” Gregg Re, *GOP Senate candidate Rick Scott: ‘Sen. Nelson is clearly trying to commit fraud’ to win election*, Fox News (Nov. 11, 2018).¹¹

34. Notably, Florida law already provides an established procedure for state-level supervision of county-level election processes, making Defendant Scott’s threat to send in state police particularly extraordinary. Fla. Stat. § 101.58(1). In fact, in the 2012 presidential election, when Palm Beach County had to deal with the misprinting of some 36,000 vote-by-mail ballots, Defendant Scott did not summon law enforcement or issue unsubstantiated threats of criminal investigation. Instead,

¹⁰ Available online at <https://rickscottforflorida.com/2018/11/10/governor-rick-scott-encourages-sheriffs-to-watch-for-violations-during-recount/>.

¹¹ Available online at <https://www.foxnews.com/politics/gop-senate-candidate-rick-scott-senator-nelson-is-clearly-trying-to-commit-fraud-to-win-election>.

the Secretary of State followed procedures outlined in state law. *See Fla. Stat.* § 101.58(1). In 2012, Defendant Scott seemed to understand the boundaries between governor and partisan during a state election—but now, when he is on the ballot, he has exhibited the kind of bias and misuse of official authority that severely risks undermining the votes of Plaintiffs and all Florida voters.

35. On November 10, 2018, Plaintiffs Common Cause and the League sent Defendant Scott a demand letter explaining that Floridians “have a right to fair and impartial governance of the election process and [Defendant Scott has] an obligation to ensure that there is no impropriety or appearance of impropriety.” *See* Letter (Ex. A to the Declaration of Patricia A. Brigham). The letter asked Defendant Scott to immediately remove himself from oversight of the 2018 election, in order to “help to ensure that there is no appearance of any impropriety, undue influence or conflict of interest in directives being given to election officials.” *Id.* As of filing, Defendant Scott has failed to respond or take the requested action. The Governor’s office did not respond to an inquiry from the *Tampa Bay Times* and *Miami Herald* as to whether Defendant Scott will recuse himself.

36. On November 11, 2018, Attorney General Pam Bondi, a political ally of Defendant Scott, reiterated calls for an FDLE investigation into voter fraud in a letter to FDLE commissioner Rick Swearingen. In the letter, Bondi “direct[ed]” the FDLE to launch an investigation even though police and election officials say they

have found no evidence of fraud. Making matters worse, Bondi is one of the two hand-picked officials whom Defendant Scott appointed to the ECC, which has ultimate authority over the review and certification of the very election that Defendant Scott is hoping to secure. Together, Defendant Scott and Bondi have a blocking position on the ECC and could certify an election result over any dissent.

37. In view of Defendant Scott's threats and the public backlash they have set in motion, there is a real, present, and continuing threat that Defendant Scott, given his formal powers as Governor, will improperly influence the election process during the ongoing recount, or the ultimate election results, in any of a number of ways, including:

- a. Most immediately, deterring or chilling the independent exercise of the election administration work of members of county canvassing boards, by virtue of the Governor's formal power to immediately suspend canvassing board members from their positions as supervisor of elections, judge, or county commissioner, without back pay or benefits, *see* Fla. Const. art. IV, § 7(a); Fla. Stat. §§ 112.40, 112.50; Fla. Att'y Gen. Op. 2013-23 (2013);
- b. Disrupting the Broward and Palm Beach County canvassing boards' ability to complete their arduous recount work within the statutorily allotted time period, particularly if Defendant Scott follows through on his threats to

inject his law enforcement officers into an otherwise bland administrative setting;

- c. Intimidating the Broward and Palm Beach County canvassing boards specifically, and other canvassing boards generally, from tabulating all ballots during the recount process within the statutorily allotted time period by urging sheriffs to watch for any canvassing board violations during the recount process, and otherwise intimidating election workers;
- d. Exercising his power, as a member of the ECC, consisting of members appointed by him, to exclude returns from selected county canvassing boards if the Commission deems them “irregular or false” such that the Commission is “unable to determine the true vote for any office,” Fla. Stat. § 102.131; and
- e. Ultimately exercising his power, as a member of the ECC, to issue certificates of election for the office he is seeking—that is, to certify himself winner of the race for Florida’s open U.S. Senate seat. Fla. Stat. § 102.121.

CLAIMS FOR RELIEF

Count One

Deprivation of Due Process in Violation of 42 U.S.C. § 1983 and the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution

38. Plaintiffs incorporate paragraphs 1-37 by reference.

39. Defendant Scott suffers from a substantial conflict of interest and has demonstrated actual bias in the conduct of his office with respect to the administration of the state's 2018 elections.

40. Acting under color of state law, Defendant Scott has deprived Plaintiffs of rights, privileges, and immunities secured by the Constitution of the United States—namely the due process right to have an impartial official preside over an essential administrative function.

41. As a result of Defendant Scott's conflict of interest and threats of intimidation, it would be improper, unfair, and contrary to the due process of law for Defendant Scott to have the power to certify the winners of the 2018 election, or to remain in charge of those officials tasked with counting, reporting, and recounting the 2018 election results.

Count Two

Violation of the Right to Vote and Right of Free Association in Violation of 42 U.S.C. § 1983 and the First Amendment to the U.S. Constitution

42. Plaintiffs incorporate paragraphs 1-37 by reference.

43. The First Amendment forbids officials from burdening associational rights by penalizing the exercise of those rights.

44. Acting under color of state law, Defendant Scott has deprived Plaintiffs of rights, privileges, and immunities secured by the Constitution of the United

States—namely the First Amendment right to freely associate with other members of a political party.

45. The burdens on Plaintiffs’ associational rights are not narrowly tailored to any compelling governmental purpose—to the contrary, they serve no legitimate purpose whatsoever.

Count Three

Deprivation of the Right to Vote in Violation of 42 U.S.C. § 1983 and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitution

46. Plaintiffs incorporate paragraphs 1-37 by reference.

47. Individual Plaintiff and organizational Plaintiffs’ members are lawful Florida voters whose right to vote and to have their votes counted fairly and accurately is protected by the U.S. Constitution.

48. Acting under color of law, Defendant Scott has acted with actual bias in the conduct of his office, demonstrating a high probability that he will seek to deny Plaintiffs’ members their constitutional right to have their votes counted fairly and accurately.

Prayer for Relief

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Assume jurisdiction over this action;
2. Grant a declaratory judgment in favor of Plaintiffs;

3. Grant a temporary restraining order (“TRO”) and preliminary injunction in favor of Plaintiffs as set forth in the Proposed Order attached to Plaintiffs’ motion for a TRO;
4. Award Plaintiffs costs and attorneys’ fees; and
5. Provide any other relief that the Court deems just and necessary.

Date: November 12, 2018

Respectfully submitted,

/s/ John A. DeVault, III

/s/ Henry M. Coxe III

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