

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA
CIVIL DIVISION**

MICHAEL JOSEPH, and
JEWISH LEADERSHIP COALITION

Plaintiffs,

Case No. 2015 012209 CA (01)

v.

PHYLLIS SMITH, PAMELA L. LATIMORE, in her
official capacity as the North Miami Beach City Clerk
and in her capacity as a member of the NORTH
MIAMI BEACH MUNICIPAL CANVASSING
BOARD, JOSE J. SMITH, in his capacity as a member
of the NORTH MIAMI BEACH MUNICIPAL
CANVASSING BOARD, ANA M. GARCIA, in her
capacity as a member of the NORTH MIAMI BEACH
MUNICIPAL CANVASSING BOARD,

Defendants,

**FIRST AMENDED COMPLAINT TO CONTEST THE CERTIFIED
RESULTS OF THE MAY 19, 2015 NORTH MIAMI BEACH RUN-OFF ELECTION**

Plaintiffs, MICHAEL JOSEPH and the JEWISH LEADERSHIP COALITION, by and
through their undersigned legal counsel, pursuant to Florida Statutes, Sections 102.168 and
86.021, hereby file this Complaint and sues Defendant PHYLLIS SMITH (SMITH) as the
presumptive successful candidate in the election for North Miami Beach City Council, Group 3,
and the remaining Defendants in their respective official capacities, seeking injunctive and
declaratory relief from this Honorable Court and in support state as follows:

JURISDICTION, VENUE AND PARTIES

1. The right to vote is perhaps the most fundamental liberty enjoyed by citizens in a democratic society.
2. When individuals attempt to corrupt the electoral process by fraudulently obtaining and submitting illegal absentee ballots, the democratic process is tainted and measures must be taken to ensure that tainted absentee votes do not corrupt the electoral process.
3. This is an action under Florida Statutes Section 102.168 to contest the certified results of the May 19, 2015 runoff election for North Miami Beach City Council, Group 3 that declared PHYLLIS SMITH the winner of that election, and under Section 86.021, Fla. Stat. asking this Court to declare that PAMELA L. LATIMORE, the North Miami Beach City Clerk (CLERK) and the NORTH MIAMI BEACH MUNICIPAL CANVASSING BOARD (CANVASSING BOARD) should not have accepted fraudulently collected absentee ballots from election precincts 123 and 127.
4. The grounds for this contest are based on the acceptance of a number of illegal votes sufficient to change or place in doubt the results of the election. (Fla. Stat. Sec. 102.168 (3)(c)(2012))
5. The total number of votes that was reported in the certification of the May 19, 2015 election are inaccurate and include illegally obtained votes that were the result of fraud and coercion of the electors that should not have been counted by the Canvassing Board. The number of such votes is more than sufficient to place in doubt the results of the election.
6. Section 102.1685, Florida Statutes (2014), establishes Miami-Dade County as the proper

venue for this action.

7. The Plaintiff, MICHAEL JOSEPH (JOSEPH) is the reported defeated Candidate for North Miami Beach City Council, Group 3, from the May 19, 2015 run-off Election.
8. The Plaintiff, JEWISH LEADERSHIP COALITION (COALITION) is a civic organization in North Miami Beach who's members include many residents and voters in North Miami Beach who have been disenfranchised by the results of the May 19, 2015 run-off election which has been tainted by fraudulent absentee ballots.
9. The Defendant, PHYLLIS SMITH (SMITH) is a Member of the North Miami Beach City Council for Group 3 and the declared successful Candidate of the May 19, 2015 run-off election for that seat.
10. The Defendant, PAMELA L. LATIMORE (CLERK), is the City Clerk for North Miami Beach, Florida and is sued in her official capacity as both the City Clerk and chief elections officer for the City of North Miami Beach, Florida and as a Member of the North Miami Beach Municipal Canvassing Board (CANVASSING BOARD).
11. The Defendant, JOSE SMITH, (J. SMITH) is the City Attorney for North Miami Beach, Florida and is sued in his official capacity as a member of the North Miami Beach Municipal Canvassing Board.
12. The Defendant, ANA M. GARCIA, (GARCIA) is the City Manager for North Miami Beach, Florida and is sued in her official capacity as a member of the North Miami Beach Municipal Canvassing Board.
13. Defendants, CLERK, J. SMITH and GARCIA where at all relevant times relevant, members of the North Miami Beach Municipal Canvassing Board (CANVASSING BOARD), the entity that purportedly canvassed the absentee ballots for the May 19, 2015

Run-off Election and certified the results that were submitted for official certification by the North Miami Beach City Council on May 26, 2015. (See Exhibit “A”, Certification of election results by North Miami Beach City Council)

14. As per §102.168(2) of the Florida Statutes, the results of the election may be contested by an action in the Circuit Court within 10 days after midnight of the date the last board responsible for certifying the results officially certifies the results of the election being contested. As such, the deadline to contest the results of the run-off election is June 5, 2015.

COMMON ALLEGATIONS

15. On May 8, 2015, the results of the primary election for North Miami Beach City Council, Group 3 were certified with SMITH and JOSEPH moving on to a run-off election on May 19, 2015.
16. Sometime between May 11, 2015 and May 19, 2015, absentee ballots were sent to voters in North Miami Beach.
17. On information and belief, SMITH enlisted absentee ballot brokers in the City to assist with the collection of absentee ballots for her run-off election against JOSEPH.
18. On information and belief, several of the absentee ballot brokers hired by SMITH included the following individuals hired by and coordinated by North Miami Beach Councilman, Frantz Pierre in order to help SMITH:
- Hubert “Bob” Campbell
 - Guilna Prosper
 - Pierre Paul Myrthil

19. On information and belief, several voters in precincts 127 and 123 were coerced by one or more of these individuals to vote for SMITH in the run-off election and some voters may have received financial or other form of compensation in exchange for their votes.
20. On information and belief, several voters in precincts 127 and 123 were deprived of their ability to vote by having their ballots taken away from them after being coerced into signing the affirmation on the back side of the absentee ballot.
21. Were it not for the acceptance of illegally obtained and fraudulent absentee ballots in precincts 123 and 127, the results of the election would have been different.
22. Miami-Dade County Code Section 12-14.1 requires that any campaign that employs individuals who will canvass and campaign the absentee ballot voters must file report MD-ED 26 with the respective municipal clerk.
23. On information and belief neither SMITH nor Frantz Pierre filed form MD-ED 26 with the CLERK in violation of the Miami Dade County Code.
24. Accordingly, any absentee ballot worker for the campaign also violated the law and tainted the results of the election.
25. On May 26, 2015, the North Miami Beach City Council officially certified the results of the Election, declaring SMITH the winner by a margin of 71 votes.
26. The certification of the Election by the City Council does not reflect the will of the electorate because it includes illegal votes that should not have been counted and thus is not legal.
27. Were it not for the acceptance of illegally obtained and fraudulent absentee ballots in precincts 123 and 127, the results of the election would have been different and JOSEPH would have won the election.

28. The amount of votes relating to the alleged fraudulent absentee ballots in these precincts is enough to change the reported results of the election.
29. Both Florida and Federal Statutes and significant case-law states that voters have the fundamental right to a fair election free from fraud and corruption of the votes.

COUNT I
CONTEST OF ELECTION

30. Plaintiffs repeat and reallege the allegations of paragraphs 1 to 28 above as if set forth herein.
31. The election of May 19, 2015 and the events leading up to it revealed that the process of casting and gathering absentee ballots in Miami-Dade County, Florida has been tainted by fraud and illegality in certain instances. While it is unnecessary and over broad that all absentee ballots be removed from the pool of votes cast and this election be decided solely by the votes cast during the early voting period and on Election Day, a review of the specific areas where fraud occurred warrants that in the cases where fraud is found and proven, the fraudulent absentee ballots be removed from the totals of legally cast votes.
32. Florida law permits voters to vote absentee, but places restrictions on how those votes can be handled and cast. Voters must be free from fraud and coercion in order to cast a free and fair vote for the candidate of their choice.
33. The Florida Supreme Court in *Boardman v. Esteve*, 323 So.2d 259, 269 (Fla. 1975), cert. denied, 425 U.S. 967 (1976) held that in determining whether an election should be set aside because of alleged fraudulent conduct or non-compliance with election procedures, the factors to be considered by the trial court include:

- (a) the presence or absence of fraud, gross negligence, or intentional wrongdoing;
- (b) whether there has been substantial compliance with the essential requirements of the absentee voting law; and
- (c) whether the irregularities complained of adversely affect the sanctity of the ballot and the integrity of the election.

34. Further, the Florida Supreme Court held in *Bolden v. Potter*, 452 So.2d 564 (Fla.1984)

set forth the standard to be applied where absentee ballots are at issue, finding:

Although the will of the electorate must be protected, so must the sanctity of the ballot and the integrity of the election. Courts cannot ignore fraudulent conduct which is purposefully done to foul the election or corrupt the ballot. *See Wilson v. Revels*, 61 So.2d 491 (Fla. 1952). In our view, fraud and corruption may permeate the entire absentee balloting process, regardless of whether the number of ballots conclusively shown to be invalid would change the outcome of the election. Once substantial fraud or corruption has been established to the extent that it permeated the election process, it is unnecessary to demonstrate with mathematical certainty that the number of fraudulently cast ballots actually affected the outcome of the election.

We also reject the district court's implication that the burden of proof, with regard to fraud or corruption, is dependent upon the status of the offender. It makes no difference whether the fraud is committed by candidates, election officials, or third parties. The evil to be avoided is the same, irrespective of the source. As long as the fraud, from whatever source, is such that the true result of the election cannot be ascertained with reasonable certainty, the ballots affected should be invalidated.

35. The Third District Court of appeal in *In re The Matter of the Protest of Election Returns and Absentee ballots in the November 4, 1997 Election for the City of Miami, Florida* 707 So.2d 1170 (Fla 3rd DCA 1998), states that the remedy for absentee ballot fraud is to invalidate all of the absentee ballots.

36. In the current action, the fraud is concentrated in two specific precincts; 123 and 127 and the remedy would thus be the elimination of the all the absentee ballots in those specific precincts.
37. By accepting illegal votes in precincts 123 and 127, enough to change the results of the election, the CLERK and the CANVASSING BOARD have disenfranchised voters and accepted election results that do not reflect the intent of the electorate in this election.
38. By certifying results that do not reflect the true intent of the electorate in the Run-off election for North Miami Beach City Council, Group 3, the Canvassing Board has disenfranchised the voters of North Miami Beach.
39. State law requires that the will of the electorate be followed and that these illegal votes not be counted and their totals be removed from the vote totals that were reflected by the improper certification of the election by the Canvassing Board.
40. The absentee ballots in precincts 123 and 127 have been shown to be fraught with fraud and thus are tainting the results of the election.
41. Because the removal of those illegal votes will change the total vote count and thus the results of the election, the Canvassing Board and by extension, the City Council needs to amend the certificate of election and declare that MICHAEL JOSEPH was the winner of the May 19, 2015 Run-off for North Miami Beach City Council, Group 3.

WHEREAS, the Plaintiffs ask this Court to Declare that the Defendants, the NORTH MIAMI BEACH MUNICIPAL CANVASSING BOARD and PAMELA L. LATIMORE counted unlawfully obtained absentee ballots in the two aforementioned precincts, many of ballots belonging to voters who may have severe impediments preventing them from properly

and legally casting their votes and thus had their votes stolen and ordering the NORTH MIAMI BEACH MUNICIPAL CANVASSING BOARD and PAMELA L. LATIMORE to delete all the absentee ballot votes from precincts 123 and 127 in the North Miami Beach Run-off election and submit a new vote total reflecting the adjusted numbers and declaring MICHAEL JOSEPH as the proper winner of the Run-off Election and ordering the CLERK to certify MICHAEL JOSEPH as the new Councilperson for Group 3 in North Miami Beach, Florida.

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JUAN-CARLOS PLANAS, ESQ.
Fla. Bar No.: 156167

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing Amended Complaint was served via personal service on all Defendants this 2nd day of June, 2015.

By:
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EXHIBIT “A”



CITY OF NORTH MIAMI BEACH
Special Meeting
Council Chambers, 2nd Floor
City Hall 17011 NE 19th Avenue North Miami Beach, FL.33162
Tuesday, May 26, 2015
7:30 PM

Mayor George Vallejo
Vice Mayor Marlen Martell
Councilman Anthony F. DeFillipo
Councilwoman Barbara Kramer
Councilman Frantz Pierre
Councilwoman Phyllis S. Smith
Councilwoman Beth E. Spiegel

City Manager Ana M. Garcia
City Attorney Jose Smith
City Clerk Pamela L. Latimore, CMC

Notice to All Lobbyists

Any person who receives compensation, remuneration or expenses for conducting lobbying activities is required to register as a Lobbyist with the City Clerk prior to engaging in lobbying activities before City Boards, Committees, or the City Council.

AGENDA

- 1. ROLL CALL OF CITY OFFICIALS**
- 2. PLEDGE OF ALLEGIANCE**
- 3. PRESENTATIONS**
 - 3.1 Invocation (City Clerk Pamela L. Latimore)**
 - 3.2 Certification and Declaration of Results of Regular Election May 5, 2015 & Run-Off Election May 19, 2015 (City Clerk Pamela L. Latimore)**
 - 3.3 Oath of Office Councilwoman Marlen Martell Sworn In By Christopher Estrada**

Remarks by Councilwoman Marlen Martell
 - 3.4 Oath of Office Councilman Frantz Pierre Sworn In by Rev. D. Eugene, Rev. A. LaCroix, Honorable I. Cuesta, and Rev. G. Toussaint**

Remarks by Councilman Frantz Pierre
 - 3.5 Oath of Office Councilwoman Phyllis Smith Sworn In by W. Scott Smith Esq.**

Remarks by Councilwoman Phyllis Smith
 - 3.6 Oath of Office Mayor George Vallejo Sworn In by Alex Vallejo**

Remarks by Mayor George Vallejo
 - 3.7 Appointment of Vice Mayor (City Clerk Pamela L. Latimore)**

Appointment of Anthony F. DeFillipo to Vice Mayor (June 1, 2015)
- 4. ADJOURNMENT**
 - 4.1 Next Regular City Council Meeting Tuesday June 2, 2015**

OFFICIAL RUN-OFF ELECTION
NORTH MIAMI BEACH, FL
MAY 19, 2015

OFFICIAL RESULTS

	TOTAL VOTES	%	ED OSS	ED IVO	ABSENTEE	EV OSS	EV IVO	PROV	
PRECINCTS COUNTED (OF 11)	11	100.00							
REGISTERED VOTERS - TOTAL	20,862								
BALLOTS CAST - TOTAL	1,922	9.21	840	0	930	148	0	4	
VOTER TURNOUT - TOTAL									
GROUP 3 - COUNCILPERSON									
Vote for 1									
Michael Joseph.	922	48.15	415	0	432	71	0	4	
Phyllis Smith	993	51.85	424	0	493	76	0	0	
Total	1,915		839	0	925	147	0	4	
Over Votes	4		0	0	4	0	0	0	
Under Votes	3		1	0	1	1	0	0	

Paul G. Smith
5/22/15

Donald J. Smith
5/22/15



RUN DATE:05/08/15 10:11 AM

	TOTAL VOTES	%	ED OSS	ED IVO	ABSENTEE	EV OSS	EV IVO	PROV
PRECINCTS COUNTED (OF 11)	11	100.00						
REGISTERED VOTERS - TOTAL	20,890							
BALLOTS CAST - TOTAL	2,762	13.22	1,231	0	1,228	302	0	1
VOTER TURNOUT - TOTAL								

GROUP 3 - COUNCILPERSON

Vote for 1								
Michael Joseph	836	32.20	371	0	377	87	0	1
Bruce Lamberto	497	19.14	248	0	181	68	0	0
Margaret "Margie" Love	188	7.24	72	0	105	11	0	0
Phyllis Smith	1,075	41.41	466	0	486	123	0	0
Total	2,596		1,157	0	1,149	289	0	1
Over Votes	35		1	0	34	0	0	0
Under Votes	131		73	0	45	13	0	0

GROUP 5 - COUNCILPERSON

Vote for 1								
Ketley Joachim	1,265	48.23	599	0	525	141	0	0
Frantz Pierre	1,358	51.77	562	0	647	148	0	1
Total	2,623		1,161	0	1,172	289	0	1
Over Votes	4		0	0	4	0	0	0
Under Votes	135		70	0	52	13	0	0

GROUP 7 - COUNCILPERSON

Vote for 1								
Marlen Martell	1,368	51.27	585	0	649	134	0	0
Paula Villard	1,300	48.73	602	0	540	157	0	1
Total	2,668		1,187	0	1,189	291	0	1
Over Votes	3		1	0	2	0	0	0
Under Votes	91		43	0	37	11	0	0

[Handwritten Signature]
5-8-15

[Handwritten Signature]
5/8/15