

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT,
IN AND FOR INDIAN RIVER COUNTY, FLORIDA

Case No. 312018CA000696XXXXXX

LINDA HILLMAN,

Plaintiff,

vs.

CITY OF VERO BEACH CANVASSING BOARD; WAYNE R. COMENT, in his official capacity as the Chair of the City of Vero Beach Canvassing Board; **JAMES R. O'CONNOR**, in his capacity as a member of the City of Vero Beach Canvassing Board; **TAMMY BURSICK**, in her capacity as a member of the City of Vero Beach Canvassing Board and her capacity as the City Clerk of the City of Vero Beach, Florida; the **CITY OF VERO BEACH, Florida**, a municipal corporation; and **LESLIE ROSSWAY SWAN**, in her capacity as the Supervisor of Elections of Indian River County, Florida,

Defendants.

Complaint for Declaratory and Injunctive Relief

Introduction

1. This is an action for declaratory and injunctive relief seeking a declaration that Plaintiff Linda Hillman is a duly qualified candidate for election to the office of City Councilmember of the City of Vero Beach at the November 6, 2018 election. Consistent with that declaration, this action seeks an order enjoining and directing any and all Defendants from taking any actions to decertify Plaintiff Linda Hillman as a candidate for election to the office of City Councilmember of the City of Vero Beach at the November 6, 2018 election and to the extent that any and all Defendants have taken

actions to decertify Plaintiff Linda Hillman as a candidate for election to the office of City Councilmember of the City of Vero Beach at the November 6, 2018 election to restore as duly qualified candidate.

Jurisdiction and Venue

2. This Court has jurisdiction to grant declaratory and injunctive relief pursuant to Section 86.011, Florida Statutes, *et seq.*

3. Venue is proper in Indian River County since all of the acts complained of and the November 6, 2018 election for the office of City Commissioner of the City of Vero Beach will take place in Indian River County.

The Parties

4. Plaintiff Linda Hillman filed election qualifying papers for the elections to the office of city council member of the City of Vero Beach, Florida, with Defendant Tammy Bursdick, the City Clerk of the City of Vero Beach, Florida.

5. Defendant CITY OF VERO BEACH CANVASSING BOARD is “composed of the Charter officers and the City Attorney shall serve as the chairman.” Defendant CITY OF VERO BEACH CANVASSING BOARD is charged with various responsibilities relating to the conduct of municipal elections in the City of Vero Beach, Florida.

6. Defendant **WAYNE R. COMENT**, is the City Attorney of the City of Vero Beach, Florida, is a “designated Charter officer,” and under the Charter of the City of Vero Beach, Florida, is a member of the City of Vero Beach Canvassing Board and is designated as its Chairman.

7. Defendant **JAMES R. O'CONNOR** is the City Manager of the City of Vero Beach, Florida, is a "designated Charter officer," and under the Charter of the City of Vero Beach, Florida, is a member of the City of Vero Beach Canvassing Board.

8. Defendant **TAMMY BURSDICK** is the City Clerk of the City of Vero Beach, Florida, is a "designated Charter officer," and under the Charter of the City of Vero Beach, Florida, is a member of the City of Vero Beach Canvassing Board. As City Clerk, Defendant **TAMMY BURSDICK** shall be the "supervisor of elections" for the City of Vero Beach and is the qualifying officer in connection with elections to the office of city council members.

9. Defendant **LESLIE ROSSWAY SWAN** is the Supervisor of Elections for Indian River County, Florida, and is sued in her official capacity. Defendant **LESLIE ROSSWAY SWAN** is a constitutional officer charged with administering elections within Indian River County, Florida. Defendant **LESLIE ROSSWAY SWAN** is joined as a necessary and indispensable party for the purposes of the relief sought by this action.

Candidate Qualifying Procedures

10. Section 30-3 of the Vero Beach Code of Ordinances sets forth eligibility requirements and procedures for qualifying as a candidate for election to the office of city councilmember for the City of the Vero Beach, Florida.

11. Section 30-3(a) provides as follows:

Each person seeking to qualify as a candidate for election to the office of city councilmember shall file his or her qualifying papers with, and pay the qualifying fee to, the city clerk during the qualifying period. It shall be the responsibility of the person seeking to qualify to ensure that

the city clerk timely receives all items as required by subsection (b) of this section by the close of the qualifying period. If all required and completed items are not received by the city clerk by the close of the qualifying period the person shall not be qualified as a candidate.

12. An individual seeking to qualify as a candidate for election to the office of city councilmember for the City of the Vero Beach, Florida, must file the following qualifying documents with the City Clerk before the end of the qualifying period:

A. The “Appointment of Campaign Treasurer and Designation of Campaign Depository for Candidates” required by Section 106.021, Florida Statutes. [Section 30-3(a)(7)b., Vero Beach Code of Ordinances.]

B. The “Loyalty Oath and Oath of Office for Non-Partisan Candidates” required by Section 99.021, Florida Statutes. [Section 30-3(a)(7)a., Vero Beach Code of Ordinances.]

C. The statement of financial interests required by Section 112.3145, Florida Statutes. [Section 30-3(a)(7)c., Vero Beach Code of Ordinances.]

D. The “Notice of Candidacy and Affidavit of Candidate.” [Section 30-3(a)(7)e., Vero Beach Code of Ordinances.]

12. In addition, each individual seeking to qualify for election to the office of city councilmember shall pay, by the end of qualifying, a non-refundable qualifying fee which shall consist of a city election filing fee of \$50.00 and the election assessment required by Section 99.093, Florida Statutes. [Section 30-5(a), Vero Beach Code of Ordinances.] The City Clerk may not accept a qualifying fee from any person seeking to qualify for election who fails to submit to the Clerk, either prior to or simultaneously

with the submission of the qualifying fee, the notice of candidacy and affidavit of candidate as required by Section 30-3. [Section 30-5(c), Vero Beach Code of Ordinances.]

13. Notwithstanding the prescribed qualifying period and the other provisions of this chapter, the city clerk is authorized to accept and hold qualifying papers submitted not earlier than 14 days prior to the beginning of the qualifying period, to be subsequently filed and processed by the city clerk during the qualifying period. [Section 30-3(c), Vero Beach Code of Ordinances.]

14. At that time, Plaintiff Linda Hillman submitted her qualifying documents she took an oath administered by the City Clerk swearing and affirming that she was duly qualified to be a candidate for election to the office of city councilmember of the City of Vero Beach.

Hillman's Submission of Qualifying Documents

15. In 2018, the qualifying period for individuals seeking to qualify as a candidate for election to the office of city councilmember commenced on August 23, 2018 and ended at 5:00 p.m. on September 7, 2018.

16. On or about July 9, 2018, Plaintiff Linda Hillman filed with City Clerk each the qualifying documents required under the Charter and Ordinances of the City of Vero Beach to be a candidate for election to the office of city councilmember for the City of the Vero Beach, Florida, at the November 6, 2018 election.

17. When filed on July 9, 2018, each of the required qualifying documents were reviewed and accepted by the City Clerk.

18. During the period from July 9, 2018, the City Clerk assured Plaintiff Linda Hillman that all the requisite qualifying papers had been properly filed.

19. At the close of qualifying, Plaintiff Linda Hillman was identified as a duly qualified candidate for election to the office of city councilmember for the City of the Vero Beach, Florida, at the November 6, 2018 election.

20. At the close of qualifying, the City Clerk certified to the Indian River County Supervisor of Elections that Plaintiff Linda Hillman was a duly qualified candidate for election to the office of city councilmember for the City of the Vero Beach, Florida, at the November 6, 2018 election so that the name of Plaintiff Linda Hillman would appear on the ballot.

Actions Taken To Decertify Hillman as a Candidate

21. On September 10, 2018, City Councilman Val Zudans suggested to the City Clerk "that there may an issue with some of the paperwork filed for one or more of the candidates for city council" and requested that he be kept "informed of any issues."

22. On September 11, 2018, the City Clerk informed Plaintiff Linda Hillman that she had failed to sign "Notice of Candidacy and Affidavit of Candidate" and requested that Plaintiff Linda Hillman come to her office and sign the form at that time, which she did.

23. On September 11, 2018, Assistant City Attorney Kira C. Honse wrote a memorandum to Defendant City of Vero Beach Canvassing Board concluding that Plaintiff Linda Hillman and another candidate, Brian Heady, "did not qualify for the

election,” because of a failure to sign one of the qualifying papers prior to the end of the qualifying period.

24. On September 11, 2018, the City Clerk contracted Defendant Supervisor of Elections for Indian River County informing her that Plaintiff Linda Hillman had been decertified as a candidate for election to the office of city councilmember for the City of the Vero Beach, Florida, at the November 6, 2018 election and seeking to keep her name from being printed on the ballot.

25. It is unclear at this time whether the name of Plaintiff Linda Hillman will appear on the ballot as a candidate for election to the office of city councilmember for the City of the Vero Beach, Florida, at the November 6, 2018 election.

Failure to Comply With Requirements of Law in Disqualifying Hillman

26. Section 30-6 of the Vero Beach Code of Ordinances requires that the City Clerk seek the approval of the Vero Beach Canvassing Board in order to disqualify a candidate.

27. There was no publicly noticed meeting of the Vero Beach Canvassing Board at which the City Clerk sought the approval of the Vero Beach Canvassing Board to disqualify Plaintiff Linda Hillman as a candidate for election to the office of city councilmember for the City of the Vero Beach, Florida, at the November 6, 2018 election.

28. To the extent that the Vero Beach Canvassing Board conducted a meeting without notice to the public as provided in Section 286.0114, Florida Statutes, makes any action taken by the Vero Beach Canvassing Board void.

29. To the extent that Plaintiff Linda Hillman has been disqualified as a candidate for election to the office of city councilmember for the City of the Vero Beach, Florida, at the November 6, 2018 election without any action having been taken by the Vero Beach Canvassing Board, such action is *ultra vires* with no effect.

Failure of City Clerk to Perform Duty to Notify Hillman of Deficiency

30. Florida law places an obligation on the City Clerk to make reasonable effort to notify a candidate, having received qualifying documents prior to the last day of qualifying, of missing or incomplete items in those documents. Section 99.061(7)(b), Florida Statutes, provides:

If the filing officer receives qualifying papers during the qualifying period prescribed in this section which do not include all items as required by paragraph (a) prior to the last day of qualifying, the filing officer shall make a reasonable effort to notify the candidate of the missing or incomplete items and shall inform the candidate that all required items must be received by the close of qualifying. A candidate's name as it is to appear on the ballot may not be changed after the end of qualifying.

31. This provision is applicable to municipal elections in the City of Vero Beach, Florida. Section 100.3605(1), Florida Statutes, provides, in pertinent part: "The Florida Election Code, chapters 97-106, shall govern the conduct of a municipality's election in the absence of an applicable special act, charter, or ordinance provision." There is no provision in any special act, charter, or ordinance provision" which exempts the City Clerk, as the qualifying officer, from the obligation to inform a candidate of missing or incomplete items in qualifying documents received prior to the last day of qualifying.

32. While it is conceded that the City Clerk accepted Plaintiff Linda Hillman's qualifying documents outside of the early acceptance period specified in Section 30-3(c), the City Clerk's acceptance and processing of qualifying papers outside of the early acceptance period cannot be a basis for the City Clerk's failure to inform Plaintiff Linda Hillman of missing or incomplete items in her qualifying documents which were received prior to the last day of qualifying.

Need for Declaratory Judgment

33. Notwithstanding Defendant City Clerk's certification that Plaintiff Linda Hillman was a duly qualified candidate for the office of City Councilmember of the City of Vero Beach at the November 6, 2018 election, the Defendant City Clerk and / or Defendant City of Vero Beach Canvassing Board decertified Plaintiff Linda Hillman was a duly qualified candidate for the office of City Councilmember of the City of Vero Beach and took steps to have Defendant Supervisor of Elections remove Plaintiff Linda Hillman's name from the November 6, 2016 election ballot.

34. The parties have a current, actual, and bona fide dispute as to whether Plaintiff Linda Hillman should be decertified as a duly qualified candidate for the office of City Councilmember of the City of Vero Beach. The interests present before the court present a justiciable controversy that is ripe for adjudication by the Court, pursuant to Chapter 86, Florida Statutes.

35. Plaintiff Linda Hillman has no adequate remedy at law, and it is in the public interest that this dispute be resolved promptly. Pursuant to Section 86.111, Florida

Statutes, the court should order a speedy hearing on this complaint and should advance this cause on its calendar.

Prayer for Relief

WHEREFORE, Plaintiff Linda Hillman requests that this Court acknowledgement jurisdiction over this matter, advance this cause on its calendar, order a speedy hearing, and enter a judgment as follows:

A. Declare that Plaintiff Linda Hillman is a duly qualified candidate for duly qualified candidate for the office of City Councilmember of the City of Vero Beach;

B. Enter an injunction enjoining and directing any and all Defendants from taking any actions to decertify Plaintiff Linda Hillman as a candidate for election to the office of City Councilmember of the City of Vero Beach at the November 6, 2018 election, including removal her name from the ballot, and / or to the extent that any and all Defendants have taken actions to decertify Plaintiff Linda Hillman as a candidate for election to the office of City Councilmember of the City of Vero Beach at the November 6, 2018 election to restore her as duly qualified candidate and, if necessary, to reschedule the November 6, 2018 election in order that all duly qualified candidates can seek election to the office of City Councilmember of the City of Vero Beach; and,

C. Grant such other relief as this Court deems just and proper, including the award of attorneys' fees if the Court finds a violation of Section 286.011, Florida Statutes.

Respectfully submitted on this 17th day of September, 2018, by:

/s/Mark Herron

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