

IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA  
CIVIL DIVISION

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LEON COUNTY, FLORIDA  
CIRCUIT COURT

WILLIAM S. "BILL" ABRAMSON,  
candidate for election to the office  
of Circuit Court Judge, in and for the  
Fifteenth Judicial Circuit, Group 23,

Plaintiff,

Case No.: 2008-CA-2944

vs.

ELECTIONS CANVASSING COMMISSION  
OF THE STATE OF FLORIDA; KURT  
S. BROWNING, as SECRETARY OF STATE;  
DEPARTMENT OF STATE, DIVISION OF  
ELECTIONS; PALM BEACH COUNTY  
CANVASSING BOARD; ARTHUR  
ANDERSON, as PALM BEACH  
COUNTY SUPERVISOR OF ELECTIONS;  
and RICHARD I. WENNET, candidate for  
election to the office of Circuit Court Judge,  
in and for the Fifteenth Judicial Circuit,  
Group 23,

Defendants.

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RICHARD I. WENNET,

Cross-Plaintiff,

vs.

WILLIAM S. "BILL" ABRAMSON, et al.,

Cross-Defendants.

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**ORDER DIRECTING RECOUNT OF BALLOTS IN ELECTION FOR THE  
OFFICE OF CIRCUIT COURT JUDGE, IN AND FOR THE 15<sup>th</sup> JUDICIAL  
CIRCUIT, GROUP 23**

This cause having come before the Court upon Plaintiff Abramson's motion to compel recount of ballots for the office of Circuit Court Judge, in and for the Fifteenth Judicial Circuit, Group 23, considered at the telephonic hearing in this matter on September 16, 2008. The Court having considered the motion, argument of counsel and being otherwise fully advised hereby finds and orders as follows:

FINDINGS:

A. This is an action for declaratory relief or, in the alternative, an action to contest the election for the office of Circuit Court Judge, in and for the Fifteenth Judicial Circuit, Group 23, in Palm Beach County, Florida (the "Election").

B. As noted by the Florida Supreme Court, in these types of cases:

**[T]he real parties in interest here, not in the legal sense but in realistic terms, are the voters. They are possessed of the ultimate interest and it is they whom we must give primary consideration.** The contestants have direct interests certainly, but the office they seek is one of high public service and utmost importance to the people, thus subordinating their interests to that of the people. Ours is a government of, by and for the people. Our federal and state constitutions guarantee the right of the people to take an active part in the process of that government, which for most of our citizens means participation via the election process. **The right to vote is the right to participate; it is also the right to speak, but more importantly the right to be heard.** We must tread carefully on that right or we risk the unnecessary and unjustified muting of the public voice. **By refusing to recognize an otherwise valid exercise of the right of a citizen to**

**vote for the sake of sacred, unyielding adherence to statutory scripture, we would in effect nullify that right.**

*Boardman v. Esteve*, 323 So.2d 259, 263 (Fla. 1975)(emphasis added).

C. Defendants Palm Beach County Canvassing Board and Arthur Anderson have caused a ballot reconciliation process (described in the Anti-Spoliation Order previously entered by this Court) to be undertaken. That process has been completed and the results presented. This Court makes no findings with respect to the completeness or accuracy of that reconciliation process and recognizes that it may be subject to challenge by either party at a later date. However, in order to move this matter towards resolution, the Court has determined that a recount can now occur in accordance with the procedures discussed below.

D. Accordingly, the first order of business is to ascertain the number of votes cast for each candidate in the Election, consistent with the procedures set forth in Chapter 102, Florida Statutes; next is to have that vote certified by the Defendant Palm Beach County Canvassing Board to the Defendant Department of State; and then for the Defendant Elections Canvassing Commission to certify a winner of the Election.

ACCORDINGLY, THE COURT ORDERS:

1. Within forty-eight hours of the completion of the reconciliation processes described in the Anti-Spoliation Order previously entered by this Court, Defendant Palm Beach County Canvassing Board shall conduct a machine

recount of the ballots and prepare a second set of unofficial returns as provided in Section 102.141(7), Florida Statutes, but need not submit such returns to the Department of State. If the machine recount indicates that a candidate is defeated by one-quarter of one-percent or less of the votes cast in the Election, the Canvassing Board shall conduct a manual recount as provided in Section 102.166(1), Florida Statutes. To the extent necessary to conduct the recount procedures described herein, the Anti-Spoliation Order previously entered by this Court is lifted. In conducting the machine recount, the Defendant Palm Beach County Canvassing Board shall maintain a record on a container by container basis as to which container and how many ballots are counted on which machine.

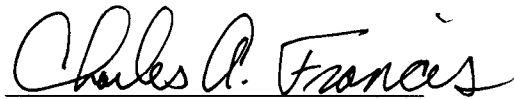
2. At the completion of the recount procedures described in Paragraph 1, above, the Defendant Palm Beach County Canvassing Board shall certify the returns of the Election to the Defendant Department of State.

3. Upon receipt of the certified results from the Defendant Palm Beach County Canvassing Board, the Defendant Elections Canvassing Commission shall certify the returns of the election and determine and declare who has been elected to the office Circuit Court Judge, in and for the Fifteenth Judicial Circuit, Group 23.

4. Nothing herein is intended to or has the effect of precluding any unsuccessful candidate for the office Circuit Court Judge, in and for the Fifteenth Judicial Circuit, Group 23, or an elector for the office, from contesting the results

of the Election, including the conduct of the recount ordered herein and the ballot reconciliation process described-above, in accordance with Section 102.168, Florida Statutes.

DONE AND ORDERD in Chambers in Leon County, Florida, this 17<sup>th</sup> day of September, 2008.



Charles A. Francis  
Circuit Judge

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