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

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

*Plaintiff,*

vs.

Case No. 2008 CA 002944

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.*

4:55

RICHARD I. WENNET,

*Counter-Plaintiff,*

vs.

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

*Counter-Defendants.*

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**WENNET'S REPLY MEMORANDUM OF LAW IN
FURTHER SUPPORT OF MOTION FOR NEW ELECTION**

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When considering whether a recount could be ordered, this Court asked: "What procedure does the statute provide for in this instance?" Counsel for the State Defendants

accurately responded that there was no procedure. Indeed, counsel for all parties agreed that the situation was unprecedented.

It is no surprise, then, that neither Abramson nor the State Defendants[1] have provided a single authority in support of the proposition that this Court and the Canvassing Board can act in derogation of the statutorily prescribed elections procedures by, respectively, authorizing and engaging in the ad hoc reconciliation/recount process. Under their theory: (i) statutory deadlines and procedures can simply be ignored; (ii) ballots can be tallied, "reconciled" and canvassed for several weeks on end; and (iii) an unlimited number of recounts can be conducted in any fashion desired. This is not only contrary to law, but it also undermines confidence in -- and the legitimacy of -- our elections system.

No case has ever held that the statutory elections deadlines and procedures can be ignored in this manner; this Court should not countenance the attempt to read the statutory provisions out of existence. *Smith v. Crawford*, 645 So.2d 513, 525 (Fla. 1st DCA 1994) ("It is axiomatic that courts may not rewrite legislation or fashion new law that they deem to be 'fair' and 'just.' [I]t is not the court's duty or prerogative to modify

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[1] The County Defendants take no position with the legal arguments raised, yet provided a response to address certain alleged "misstatements, distortions and mischaracterizations." The County Defendants do not rebut any of the facts presented, and, instead, merely offer their own "characterizations" of those facts -- *e.g.*, they admit to five counts and not the nine identified in Exhibit A to the motion. The County Defendants' suggestion that they accounted for all of the ballots is inaccurate and circular. It is inaccurate because there are ballots that the County cannot account for. *See* Affidavit of Gerald F. Richman dated October 6, 2008, attached at Tab 1, ¶ 11. The contention is circular in that the number reached is "final" because it is simply the result of the last count that they conducted; there is no dispute that that number changed every time the ballots were "reconciled." Nor can there be any doubt that another counting would yield yet another result.

or shade clearly expressed legislative intent in order to uphold a policy favored by the court.") (quoting *Holly v. Auld*, 450 So.2d 217, 219 (Fla. 1984)).

The statutory deadlines and procedures not only provide a uniform and non-discretionary mechanism for canvassing the returns, they also serve an important role in assuring the prompt reporting of results so that any disputes can be timely resolved under the compressed calendar inherent in the election season. That function has been eroded to prejudicial effect here. The county's ad hoc reconciliation spanned several weeks -- tying up the ballots and tabulation machines virtually up to the Supervisor's deadline for preparing the machines for the general election. That delay effectively put this litigation on hold for nearly one month. Now that it has resumed, Judge Wennet has been denied the opportunity to take discovery and conduct a full investigation of the voting machines because they are now being processed for the general election. The prejudice is undeniable and the danger of allowing the unrestricted reconciliation process is quite real as the limited testing conducted on the machines last week clearly demonstrates that several voting machines malfunctioned in counting ballots that should not have been counted and rejecting ballots that should have been counted. *See* Affidavit of Gerald F. Richman dated October 6, 2008, attached at Tab 1.

It is important to note that whether the reconciliation process and subsequent recounts were accurate is not at issue nor can be relied upon as an after the fact justification for their authorization. Those processes were unlawfully conducted in derogation of the statutorily prescribed procedures and any result of same is void *ab initio*.

Abramson and the State Defendants conspicuously ignore that the statutorily prescribed canvassing, recount, and certification procedures were exhausted when the Elections Canvassing Commission certified that it was unable to determine the true vote for the office at issue. There is no provision under Florida law allowing the Canvassing Board to disregard its own certified result and turn back the clock, search for "missing" ballots, and begin the canvassing process anew once it believes it has found enough ballots. Where, as here, no person was elected to office pursuant to the mandatory statutory procedures, the only remedy provided by law is to hold a new election pursuant to Section 100.101(1).[2]

Because Abramson and the State Defendants offer no support for this Court's authority to order the recount in derogation of the statutory procedures, they principally rely upon pleas to equity. This, however, is misdirection and misses the mark. No one disputes that the will of the voters is paramount. Judge Wennet does not seek, as

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[2] The State Defendants' contention that the request for a new election is beyond the Court's authority and somehow contrary to Judge Wennet's position is misguided. *State Defs. Mem.*, at 5. As an initial matter, the procedures allegedly implicated by section 100.141(1) and (2) apply by their express terms to special elections to fill a *vacancy* and do not obtain where the special election is held where no one has been elected to fill an office. Compare § 100.101(2), (3) and (4) (requiring to fill certain vacancies) *with* § 100.101(1) (requiring special election where "no person has been elected...."). Section 100.101(1) would have no operation but for a circumstance such as here, where the winner of an election cannot be determined. The relief is precisely within the statutory scheme. To the extent a new election must be ordered by the Governor, that is accomplished by simple writ of mandamus, and Judge Wennet adopts this form of relief accordingly. *State v. Haskell*, 72 So. 651, 659 (Fla. 1916) ("The rights of a candidate which arise under and are created by the primary election laws of the state of Florida are such that when violated the courts of this state may be resorted to for their enforcement, and the writ of mandamus may be used to compel the performance of the duties which are imposed by law upon the officers designated to canvass the returns of a primary election; such duties being ministerial in their nature involving no discretion"); Wennet's Answer and Counterclaim, pg. 11 (requesting "all other appropriate relief as this Court deems proper and just").

Abramson suggests, to interfere with the right of voters to cast their votes effectively. To the contrary, while Abramson lays claim to a tainted and unauthorized result, Judge Wennet seeks to restore the people's confidence and to ensure that every lawful vote that is cast gets counted. Given the uncertainty that has loomed over this post-election morass, the only means authorized by Florida law for doing so is to conduct a new election. By holding the new election on November 4, the will of the voters can be exercised and determined free from the stain of doubt.

## I. Abramson Fails to Provide Support for Ratifying the Ad Hoc Reconciliation and Authorizing a Recount in Derogation of the Statutory Framework.

Abramson invites this Court to ignore the statutory framework installed by the Legislature in 2001. Such a request should be declined as the Florida Supreme Court has recognized:

> that the development of a specific, uniform standard necessary to ensure equal application and to secure the fundamental right to vote throughout the State of Florida should be left to the body we believe best equipped to study and address it, the Legislature.

*Gore v. Harris*, 773 So.2d 524, 526 (Fla. 2000). Justice Pariente, in providing a detailed analysis of the discretionary scheme that failed in 2000, aptly noted:

> It would thus seem appropriate that any revised statutory scheme should include more specific standards to govern the exercise of county canvassing boards' discretionary authority in a statewide election.

*Id.*, 773 So.2d at 533 (Pariente, J., concurring). In 2001, the Legislature did exactly that and eliminated any discretion of the canvassing boards to conduct recounts in any election except under statutorily specified circumstances; similarly, it expressly circumscribed the circuit courts' discretionary authority in the elections process. Abramson fails to offer any support as to why the statutes should be disregarded but,

instead, relies upon case law that has been supplanted by the 2001 legislative amendments.

Rather than refute the Legislature's clear circumscription of discretionary authority to order and conduct recounts via the 2001 amendments to sections 102.166 and 102.168, Abramson begins with the general proposition that voters must be afforded the right to cast their votes effectively. This is self-evident, undisputed, and not at issue here. Abramson fails to show how a new election -- conducted on a day surely to have the highest voter turnout in history -- would deny voters this right. In fact, the right of voters to cast their vote effectively is better served by holding a new election as opposed to further recounts of questionable accuracy obtained through processes of questionable legitimacy. Regardless, the cases relied upon by Abramson provide no support for the proposition that this Court can ratify the ad hoc reconciliation and order a recount in derogation of the statutorily prescribed procedures.

The cases relied upon by Abramson are clearly distinguishable and unavailing because every one of them predates the non-discretionary recount procedures and other limitations implemented in 2001. The Legislature, through the revisions to sections 102.166 and 102.168, expressly eliminated the disparate procedures and standards that arose under the former discretionary scheme and, in their place, created a uniform procedure for the conduct of elections, recounts and canvassing of results. To permit a "reconciliation" and recount not contemplated by statute would be to ignore the 2001 revisions and to return to the same unbridled discretion that produced the 2000 presidential election recount fiasco. Abramson provides no support for departing from the

statutory procedures and the Court should decline his invitation to do so based upon outdated case law that has been superseded by Legislative amendment.

Abramson claims that Wennet's position that the 2001 revisions to Section 102.166 and 102.168 precluded any additional recount "does not take into account the decisions of Florida courts" issued decades before the 2001 revisions. *Abramson Mem.*, at 3. This is without merit as the 2001 Legislature is presumed to have been aware of this caselaw when it expressly limited the discretion of the courts and canvassing boards. *See, e.g., Crescent Miami Center, LLC v. Florida Dept. of Revenue*, 903 So.2d 913, 918 (Fla. 2005) ("Florida's well-settled rule of statutory construction [is] that the legislature is presumed to know the existing law when a statute is enacted, including 'judicial decisions on the subject concerning which it subsequently enacts a statute.'"). Thus, the 2001 revisions -- eliminating discretionary recounts and limiting the circuit courts' role in elections matters -- control and supersede any contrary inference sought to be drawn by Abramson from those earlier cases.[3]

## II. The State Defendants Likewise Fail to Provide Authority for Ratifying the Ad Hoc Reconciliation and Authorizing a Recount in Derogation of the Statutory Framework.

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[3] The cases cited by Abramson are also distinguishable in that they predate Section 100.101(1) or did not involve circumstances under which no person was elected to office. In the cases predating Section 100.101(1), the recount did not contradict the procedure provided by statute as the courts at that time had the authority to act in equity to order a recount. To the extent the remaining cases did not involve circumstances under which Section 100.101(1) would even apply, Abramson does not provide any authority to refute application of this provision to the case at hand. As fully set out in the motion, "an election is a political matter as to which courts of equity have, and should have, nothing to do." *Treadwell v. Town of Oak Hill*, 175 So.2d 777, 778 (Fla. 1965). Thus, this Court must follow the procedure statutorily prescribed and cannot provide equitable relief in derogation of that procedure.

As with Abramson, the State Defendants offer no support for the notion that the Court is authorized to ratify the reconciliation and order a recount based upon same in derogation of the statutory procedures and remedy. Instead, the State Defendants launch into a discussion of the Court's general equity powers under Section 86.11. In doing so, they ignore the context of this declaratory action: an election dispute.

"It has frequently been said that . . . an election is a political matter as to which courts of equity have, and should have, nothing to do." *Treadwell v. Town of Oak Hill*, 175 So.2d 777, 778 (Fla. 1965) ("[e]quity is usually reluctant to interfere in any way with an election"); *see also Wexler v. Lepore*, 878 So.2d 1276, 1282 (Fla. 4th DCA 2004) ("The rule is well settled that equity will neither determine questions involving rights that are purely political nor will it undertake the protections of such rights by the writ of injunction"). Assuming, *arguendo*, the Court has "wide latitude in fashioning a remedy" in a declaratory judgment action as contended by the State Defendants, none of the parties have provided any authority to suggest that the remedy fashioned may be in derogation of statutory procedure. As detailed in the motion and above, the Legislature did not provide for a second machine recount nor a third manual recount much less a partial machine recount or a partial manual recount. Rather, the mandatory statutory procedure provides that, where no person has been elected -- as made clear when the Elections Canvassing Commission certified that it could not determine the true vote, a new election must be held in accordance with Section 100.101(1). None of the parties have demonstrated that the Court may act in derogation of this procedure.[4]

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[4] The State Defendants' discussion of Section 102.168 is a *non sequitur*. *See State. Def. Mem.*, at 4-5. Judge Wennet does not claim that the Court's equitable powers would be similarly restrained in an election contest. Rather, Wennet contends that where, as here,

The State Defendants also attempt to justify the reconciliation effort as part of a post-election "evaluation."[5] As conceded by the State Defendants, however, the ad hoc reconciliation attempt had nothing to do with canvassing the returns for this race. *State Def. Mem.*, at 2. Instead, "they were purely internal efforts aimed at **determining the cause of the discrepancies and determining what procedures should be implemented in November to avoid a similar occurrence**." *Id.* (emphasis added). If, indeed, the candidates and voters on November 4 are entitled to an election free from the problems that plagued this primary election, why, then, should the candidates and voters in *this* race not be entitled to the same treatment by means of a new election?

The state's contention that the reconciliation was "squarely within the County Defendants' purview to evaluate their performance" under section 102.141(9)(a) is misplaced. Section 102.141(9)(a) is a post-canvass reporting mechanism that is concerned with identifying problems so that they may be corrected and prevented in the future. *See* § 102.141(9)(c) ("The division shall utilize the reports submitted by the canvassing boards to determine what problems **may be likely to occur in the other elections** and disseminate such information, **along with possible solutions**, to the supervisors of election.") (emphasis added). Such "conduct of election" report must be submitted "[a]t the same time that the official results of an election are certified to the Department of State." § 102.141(9)(a).

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no person has been elected, the Court must act in accordance with Section 100.101(1). Put another way, the Court may not provide equitable relief that is contrary to this statutory procedure. This procedure only comes into play where no person has been elected and to the extent no person has been elected, there is no certified election to contest under Section 102.168.

[5] Tellingly, the County Defendants do not join the State Defendants in this attempt to justify the reconciliation under Section 102.141(9).

Notably, the "reconciliation" did not begin until weeks *after* the canvassing board certified the original results to the Department of State on August 30. *See Wennet Mot. & Mem.*, Ex. A (Chronology Chart). The fact that such a report must be submitted at the same time that the official results of an election are certified to the Department of State plainly indicates that this "evaluation" and reporting procedure is not designed to stretch on for weeks on end. More importantly, there is nothing in section 102.141(9) to suggest that such an "evaluation" can be used as a vehicle to change a result that was certified by the Canvassing Board to the Department.

The State Defendants "disagree with the contention that as a matter of law once the Canvassing Board certified its returns it was divested of any authority to conduct further investigation or reconciliation." *State Def. Mem.*, at 3, n.2. Whether or not the Canvassing Board can generally conduct further investigation of its election conduct is not the point; rather, the issue is whether the after-the-fact ad hoc reconciliation process can be used -- extant of the statutory requirements and procedure -- to impact the result of the election. Under the State Defendant's construct, canvassing boards remain free from statutory deadlines or procedures to conduct further investigation or reconciliation <u>and</u> to have those processes govern the result. Thus, even a certified result could be revisited by the Canvassing Board under the State Defendants' theory. Under such a scheme, no result could be assured of finality.

At bottom, and assuming *arguendo* that the ad hoc reconciliation was authorized under Section 102.141(9), the fact remains that it was not intended to be, nor was it, conducted for the purpose of canvassing the results and certifying the returns. Because the reconciliation attempt was admittedly outside of the canvassing process, it cannot and

should not be relied upon as the basis for conducting a new canvass and certifying the results of same. It is dangerous precedent to allow a canvass to be based upon ballot tallying procedures that are not authorized nor governed by the statutory canvassing process.

## III. The Recount Failed to Comply with the Statutory Requirements.

Assuming, *arguendo*, that the Court had the authority to enter the recount order, the recount itself violated both the statutory requirements and the order. The order required that the recount be conducted in accordance with the procedures of Chapter 102; specifically:

> 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)**.... 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.

Recount Order, ¶ 1 (emphasis added).

Despite this clear directive, the statutorily mandated procedure was not followed. Rather, after the second machine recount and second manual recount, the tabulation could not be certified because 156 ballots remained unaccounted for. A partial recount (*i.e.*, a third machine recount) of only 54 precincts (approximately 1800-1900 ballots) was conducted and, from that, a partial manual recount (*i.e.*, a third manual recount) was conducted of 160 (not the anticipated 156) ballots.

Nowhere does the statue provide for multiple machine and manual recounts. More importantly, nowhere does the statute authorize *partial* recounts of select precincts as undeniably occurred on September 22 and 23. *See* Wennet Mem., Ex. A; *see also* § 102.141(7) (the canvassing board "shall order a recount of the votes cast with respect to

such office"); § 102.166 (the canvassing board "shall order a manual recount of the overvotes and undervotes cast in the entire geographic jurisdiction of such office").[6] Conducting multiple and partial recounts of select precincts not only violates the plain language of the statutes, but also constitutes the type of "unequal evaluation of ballots" rejected by the Supreme Court. *Bush v. Gore*, 531 U.S. 98, 106 (2000). The discretionary nature of such a subjective and selective process "raises concerns of uniformity and completeness" of the process. *Gore v. Harris*, 773 So.2d at 531 (Pariente, J., concurring).[7]

## CONCLUSION

The undisputed facts are simple: the election was held; the ballots canvassed; statutorily mandated machine and manual recounts were conducted; the results were timely certified and reported by the Canvassing Board to the Department; and the Elections Canvassing Commission certified under Florida law that it was unable to determine the true vote for the office at issue. In short, the statutorily prescribed canvassing and recount procedures were exhausted and no winner was declared. Under

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[6] The recount order similarly did not comply with the statutory procedure in that if the returns are not filed with the Department of State by 5 p.m. on the seventh day following a primary election, they "**shall be ignored** and the results on file at that time shall be certified by the department." § 102.112(2), (3), Fla. Stat. (2008) (emphasis added). The Court cannot read this requirement out of existence. *Crawford*, 645 So.2d at 525, above.

[7] Additionally, Abramson makes the unsubstantiated leap that because the Elections Canvassing Commission refused to certify the results due to an irregularity, as contemplated by Section 102.131, it was appropriate for the Court to act to assure the right to a correct count of the ballots. *Abramson Mem.*, at 8. Abramson's position conflicts with the 2001 revisions to Sections 102.166 and 102.168, which provides for one machine recount and one manual recount. The statutes do not provide for a second run through Section 102.141(7)(c) or Section 102.166(1). Where, as here, the return cannot be certified after the statutorily mandated recount, no person has been elected and the provisions of Section 100.101(1) are activated to provide for a new election rather than to fuddle through numbers that may never add up and related litigation.

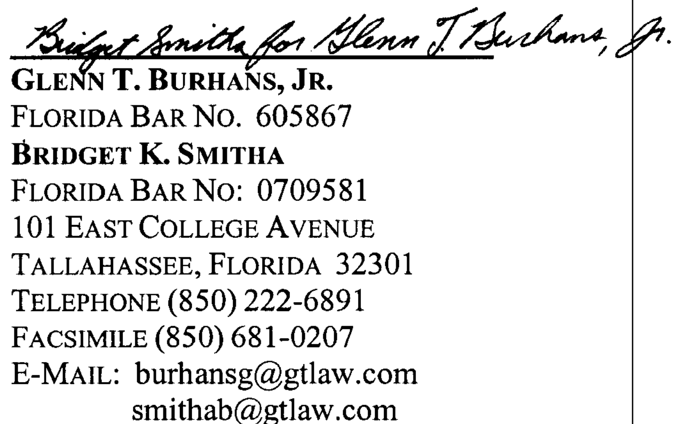
such circumstance, there is no basis in statute nor decisional law authorizing any further procedures nor other relief but the ordering of a new election.

What occurred in the canvassing of the Group 23 election and the subsequent post-election calamity was unfortunate and grossly unfair to the voters of Palm Beach County. The errors and uncertainty that plagued the entire ordeal should not be compounded by allowing a result spawned from an unauthorized and illegitimate process to survive.

Accordingly, Judge Wennet requests entry of an order: (i) rescinding the Court's Recount Order *nunc pro tunc*; (ii) declaring that any result of the Group 23 race certified by the Palm Beach County Canvassing Board and the Elections Canvassing Commission after September 5, 2008 is void *ab initio*; (iii) declaring that no one has been elected to the Group 23 seat; and (iv) ordering that a new election for the Group 23 seat be held on November 4, 2008 and that the results of same be canvassed in accordance with law.

Respectfully submitted,

**GREENBERG TRAURIG, P.A.**



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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail this 6th day of October, 2008, to the following counsel of record:

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**GLENN T. BURHANS, JR.**

*TAL 451,489,383v2 10-6-08*

# AFFIDAVIT OF GERALD F. RICHMAN

I, GERALD F. RICHMAN, state the following:

1. I am an attorney for Judge Wennet during the numerous recount processes and have personal knowledge of the matters set forth herein.

2. On or about September 21, 2008, the Palm Beach County Canvassing Board could not certify the election after the second manual recount because there was a discrepancy of 156 ballots (which turned out to be 160 ballots). These ballots were subsequently found in a third partial machine recount and I was present when those ballots were run through a high speed scanner and were then manually recounted. I was one of the observers. During this manual recount, I observed that 156 of the ballots were clearly undervotes, and I also saw that four of the ballots which had previously been rejected by the high speed scanner were then determined by the Canvassing Board to be a vote for either Mr. Abramson or Judge Wennet. These ballots were clearly marked votes and it appears that they should have been counted by the high speed scanner. In other words, the voter connected the arrow and they should have been counted by the high speed scanner but in fact had not been counted.

3. During the manual recount of under votes and over votes which occurred on September 20, 2008, it was also reported to me by an observer on behalf of Judge Wennet that there were two bins of approximately 51 ballots each that had been rejected by the high speed scanners as undervotes when in fact most of them appeared to have been marked sufficiently to have been counted by the high speed scanner.

4. Accordingly, I requested on behalf of Judge Wennet that the four ballots that had been counted as votes by the Canvassing Board but had been rejected by the high speed scanner during the second machine recount be tested by two different high speed scanners. I also requested that the bins containing the 51 ballots each that had been identified by the observer similarly be tested by two high speed scanners.

5. Pursuant to an Order of this Court entered nunc pro tunc on October 3, 2008, those ballots were located and tests performed by two randomly selected high speed scanners, out of the total of eight high speed scanners at the Supervisor of Elections ("SOE") tabulating center that had been used in the machine recounts. Counsel and observers from both sides were present as the SOE staff ran the tests pursuant to Court Order.

6. The tests of the four ballots that had been previously rejected but that were later accepted by the Canvassing Board resulted this time in both high speed scanners counting three of the four ballots.

7. Tests were then conducted on the 102 ballots referenced in paragraph 2 above that had previously been rejected as under votes but which were determined by the manual recount to have been voted 51 votes for Mr. Abramson and 51 votes for Judge Wennet.

8. When those 102 votes were run through the same two randomly selected high speed scanners, in the first run with machine number "2", eleven of the 51 ballots that had been previously rejected by the machine but manually counted for Mr. Abramson were now counted by the machine for Mr. Abramson and 40 were rejected. Of the other 51 ballots that had been previously rejected by the machine recount, but manually recounted for Judge Wennet, only two were accepted and 49 were rejected.

9. An entirely and dramatically different result was then obtained by the machine recount from high speed scanner number "7": of the 51 ballots that had previously been rejected as undervotes for Mr. Abramson but that were then manually recounted for Mr. Abramson, the machine this time accepted 41 ballots and rejected only 10; and with regard to Judge Wennet whereas the first machine (#2) had accepted two ballots for Judge Wennet and rejected 49, machine number "7" accepted 49 and rejected two. Moreover, it clearly appeared that as to some of the ballots, the machines had counted ballots that should not have been counted and counted others that should have been counted originally by machine.

10. Because of the time constraints involved and the necessity to have approximately 1000 machines and the eight high speed scanners maintained and reprogrammed for the general election, there was no practical way to retest and examine all the machines or even to examine all of the eight high speed scanners to determine the basis for the inconsistencies and glaringly apparent malfunctions. Similarly, given the fact that the Elections Canvassing Commission did not certify the election until September 29, 2008 after having previously denied certification on September 5, 2008, Judge Wennet has been seriously prejudiced by the delays in the multiple recount process with regard to any contest to be pursued under Florida Statute, Section 102.168, as well as any other relief to which he may be entitled.

11. I also note that from documents provided by the SOE subsequent to the recounts, there are only 102,056 signatures accounted for whereas the final certification of the Palm Beach County Canvassing Board is 102,746 ballots counted.

Under penalties of perjury, I declare that I have read the foregoing affidavit and the facts stated in it are true.

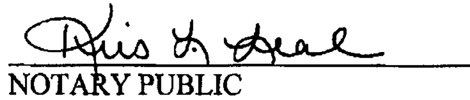
Dated: 10/6/08

GERALD F. RICHMAN

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 6th day of October, 2008 by Gerald F. Richman who is personally known to me or has produced ________ as identification and who did/did not take an oath.



NOTARY PUBLIC

Kris L. Leal

Printed Name of Notary
Commission No.:
My commission expires: