

1 MRS. COLLINS: I didn't get the last name.

2 MS. WALKER: Marc, T-R-A-U-M.

3 JUDGE NELSON: And can we get your name?

4 MRS. COLLINS: This is Becky Collins. I'm his  
5 wife.

6 JUDGE NELSON: Oh. Thank you.

7 MRS. COLLINS: And your name again was Kathryn?

8 JUDGE NELSON: I'm Nelson, N-E-L-S-O-N.

9 MRS. COLLINS: Nelson?

10 JUDGE NELSON: Yes. S-O-N.

11 MRS. COLLINS: Okay. And there's a hand recount?

12 MS. WALKER: No, it is not. It's a machine --

13 MRS. COLLINS: Oh.

14 MS. WALKER: -- recount of all ballots cast during  
15 early voting.

16 MRS. COLLINS: Okay. Why is it being done?

17 MS. WALKER: It's being done to ensure that every  
18 ballot was counted, because we had some problem with  
19 the memory cards during the upload of the results and  
20 the ballots -- a portion of the ballots during -- that  
21 were cast during early voting had to be recounted on  
22 election night --

23 MRS. COLLINS: Okay.

24 MS. WALKER: -- the Board has made a decision to  
25 recount them all to ensure that every vote was counted

1 and that everything was counted accurately before the  
2 State --

3 MRS. COLLINS: Okay.

4 MS. WALKER: -- certifies the results of the  
5 election.

6 MRS. COLLINS: Okay. All right. I will pass the  
7 message on to him, and I guess you'll be getting back  
8 to him as far as the results?

9 MS. WALKER: Well, what -- the results will be on  
10 the "slections.com" website --

11 MRS. COLLINS: Okay.

12 MS. WALKER: -- as soon as the Board can conclude  
13 its work. So it will be available there.

14 MRS. COLLINS: Okay. Any idea when?

15 MS. WALKER: It will be afternoon on Sunday.

16 MRS. COLLINS: Okay.

17 MS. WALKER: It will be held at 7:00 a.m. in the  
18 morning at 4132 Okeechobee Road, the office of the  
19 Supervisor of Elections.

20 MRS. COLLINS: Tomorrow morning?

21 MS. WALKER: Tomorrow morning.

22 MRS. COLLINS: So does he need to be there?

23 MS. WALKER: No, he does not have to be there, but  
24 we do have to notify him by law.

25 MRS. COLLINS: Okay.

1 MS. WALKER: It's just a notice. Uh-huh.

2 MRS. COLLINS: Okay. All right.

3 MS. WALKER: Thank you so much.

4 MRS. COLLINS: Thank you.

5 JUDGE NELSON: Bye-bye.

6 MRS. COLLINS: Bye-bye.

7 MS. WALKER: Okay. I'm going on down the line...

8 MR. TRAUM: Are you being sarcastic about the  
9 printing?

10 MS. WALKER: No.

11 (Placing telephone call.)

12 MRS. MANCUSO: Hello.

13 MS. WALKER: Hello. Mrs. Mancuso?

14 MRS. MANCUSO: Yes.

15 MS. WALKER: Hi. This is Gertrude Walker,  
16 Supervisor of Elections. Is Sal there?

17 MRS. MANCUSO: Yes, he is. Hold on, Mrs. Walker.

18 MS. WALKER: Thank you.

19 MR. MANCUSO: Hey, Gertrude. Congratulations.

20 MS. WALKER: Congratulations to you. Thank you so  
21 much, but congratulations to you, Sal.

22 MR. MANCUSO: And aren't you happy, like I am,  
23 that Obama won? I'm serious. You have no idea.

24 MS. WALKER: Okay. ...I want to notify you of a  
25 decision. I am in a Canvassing Board meeting here with

1 the Members of the Canvassing Board. I have Judge  
2 Kathryn Nelson here at the meeting.

3 JUDGE NELSON: Hi, how are you?

4 MR. MANCUSO: Hi.

5 MS. WALKER: And also I have Marc Traum.

6 MR. TRAUM: Hi. Good evening.

7 MS. WALKER: And the purpose of this call is to  
8 notify you that the Canvassing Board has made a  
9 decision to recount all of the ballots that were cast  
10 during early voting.

11 MR. MANCUSO: Right.

12 MS. WALKER: There were some -- some problems in  
13 the count and we pretty hurriedly had to recount a  
14 portion of that.

15 MR. MANCUSO: Gertrude, Gertrude, whatever you do  
16 is okay with me.

17 MS. WALKER: Okay. Thank you, Sal.

18 MR. MANCUSO: Okay, Hon.

19 MS. WALKER: And the meeting is going to be at  
20 7:00 a.m. in the morning.

21 MR. MANCUSO: Yes. And I'm going to be taking the  
22 oath of office on November 20th. Oh, beautiful.

23 MS. WALKER: And I wanted to let you know what the  
24 location of the meeting is. It's at my office, 4132  
25 Okeechobee Road.

1 MR. MANCUSO: Yes.

2 MS. WALKER: Okay. Very good. And you're not  
3 required to attend the meeting. We're required to  
4 notify you of it.

5 MR. MANCUSO: Honey, as long as I won, you'll  
6 never see me until two or four years from now. That's  
7 if I'm alive.

8 MS. WALKER: Okay. Very good. Thank you very  
9 much. Have a great evening. Bye-bye.

10 MR. MANCUSO: You, too. Bye.

11 MR. TRAUM: I guess he --

12 (Recess. Placing telephone call.)

13 MS. WALKER: ...during early voting.

14 AN UNIDENTIFIED MAN: Okay.

15 MS. WALKER: Yes. We experienced some difficulty  
16 in recounting those ballots and it's been a -- a point  
17 of contention ever since.

18 AN UNIDENTIFIED MAN: Okay.

19 MS. WALKER: The Board has decided to recount all  
20 of them to settle any questions that may have come out  
21 of that.

22 AN UNIDENTIFIED MAN: Yes.

23 MS. WALKER: As a candidate, we have to notify  
24 you.

25 AN UNIDENTIFIED MAN: I appreciate that. And I

1 hope you come up with 600 votes on the other side.

2 MS. WALKER: Well --

3 AN UNIDENTIFIED MAN: I don't think that's going  
4 to happen, but thank you.

5 MS. WALKER: -- but whenever we have a recount,  
6 you know, things can change. But we're required by law  
7 to notify you of that.

8 AN UNIDENTIFIED MAN: I appreciate it.

9 MS. WALKER: You do not have to attend the  
10 meeting. The meeting will be at 7:00 a.m. in the  
11 morning. We hope to conclude our work by noon. The  
12 results will be available at "slections.com" on our  
13 website shortly after the Canvassing Board concludes  
14 its work.

15 AN UNIDENTIFIED MAN: Okay. Thank you very much,  
16 and thank you for what I thought was a pretty good  
17 election.

18 MS. WALKER: Thank you so much. I appreciate it.

19 AN UNIDENTIFIED MAN: Okay.

20 MS. WALKER: Bye-bye.

21 AN UNIDENTIFIED MAN: Bye.

22 MS. CLARK: Are both the notices here on one sheet  
23 is what I'm asking?

24 (Recess. Placing telephone call.)

25 MR. STACHEWICZ: Hello.

1 MS. WALKER: Hi. This is Gertrude Walker,  
2 Supervisor of Elections, St. Lucie County.

3 MR. STACHEWICZ: Yes?

4 MS. WALKER: Is this Tony?

5 MR. STACHEWICZ: Yes, it is.

6 MS. WALKER: Hi, Tony. I'm calling you as a  
7 notice, and I am in a meeting of the Board of --  
8 Canvassing Board for the November 6th general election.  
9 And I have with me Judge Kathryn Nelson.

10 JUDGE NELSON: Hi, how are you?

11 MS. WALKER: And Marc Traum, who are Members of  
12 the Board.

13 MR. STACHEWICZ: Right.

14 MS. WALKER: And the Board has made a decision to  
15 recount all of the ballots that were cast through  
16 during early voting. We had...and those votes, we had  
17 to recount them. So we want to clear the air of  
18 anyone's concerns about the early voting count before  
19 it's certified to the State.

20 MR. STACHEWICZ: All right.

21 MS. WALKER: And so as a candidate in the election  
22 and you may be affected by it, we're required to notify  
23 you. The meeting will be held at 7:00 a.m. in the  
24 morning. It should be concluded by noon, and the  
25 results of the recount will be available at

1 "slcelections.com" shortly after the meeting.

2 MR. STACHEWICZ: And that's "slc.com"?

3 MS. WALKER: "slc," like St. Lucie County.

4 MR. STACHEWICZ: Okay. "slc."

5 MS. WALKER: "elections.com."

6 MR. STACHEWICZ: Okay. All right. I thank you  
7 for calling.

8 MS. WALKER: You're not required to be at the  
9 meeting, but this is --

10 MR. STACHEWICZ: All right.

11 MS. WALKER: -- a required notice.

12 MR. STACHEWICZ: And I'd like to congratulate you  
13 on winning the election.

14 MS. WALKER: You're certainly welcome. I mean,  
15 thank you so very much, and your --

16 MR. STACHEWICZ: You had my vote, you know. You  
17 had my vote.

18 MS. WALKER: Thank you so much.

19 MR. STACHEWICZ: Okay. Thank you very much --

20 MS. WALKER: You have a great evening.

21 MR. STACHEWICZ: -- Ms. Walker. Bye-bye.

22 MS. WALKER: Thank you. Bye-bye.

23 Cynthia, I'm in the middle of this Canvassing  
24 Board meeting notifying all of the candidates.

25 MS. ANGELOS: ...speaker on.



1 MS. WALKER: Okay. The speaker's on.

2 MS. ANGELOS: All right. I just wanted to pass  
3 this along to you and not, you know, that you have to  
4 act on it, but Mr. West's campaign, his counsel just  
5 called me and I didn't want to give any information out  
6 that I don't, you know, for sure know the answer to,  
7 for starters. They want to know the number of votes  
8 that will be counted tomorrow, and I told him, you  
9 know, he may be provided the information in the  
10 morning. I couldn't necessarily --

11 (Recess. Placing telephone call.)

12 MS. WALKER: I didn't talk to William Holden  
13 (sic). How did I skip him? (Unintelligible.)

14 MR. HOWDEN: Hello. Hello.

15 MS. WALKER: Hi. Is this Mr. Holden, William  
16 Holden?

17 MR. HOWDEN: Howden.

18 MS. WALKER: Howden. I'm sorry. I'm so sorry.  
19 This is Gertrude Walker, Supervisor of Elections for  
20 St. Lucie County.

21 MR. HOWDEN: How are you?

22 MS. WALKER: I'm fine. How are you doing?

23 MR. HOWDEN: I'm empathizing with you. I sure  
24 hope that Patrick Murphy wins.

25 MS. WALKER: Well, he's hoping so, too, and I know

1 he was real happy to hear the news that we're about to  
2 give you, too. The Canvassing Board is in session  
3 right now, and --

4 MR. HOWDEN: Right.

5 MS. WALKER: And present at this meeting is Judge  
6 Kathryn Nelson.

7 MR. HOWDEN: Uh-huh.

8 MS. WALKER: And we also have Marc Traum, and  
9 they're here in the room now. And I'm calling to  
10 notify you of a note -- of a decision that they've made  
11 to count all of the ballots that were cast during early  
12 voting --

13 MR. HOWDEN: Uh-huh.

14 MS. WALKER: To clear the air on all of the  
15 questions that have come up because we had some  
16 difficulty on election night when we tried to tabulate  
17 those votes.

18 MR. HOWDEN: Uh-huh.

19 MS. WALKER: We had some failure of some memory  
20 cards and it's been a matter of contention ever since.  
21 This will hopefully --

22 MR. HOWDEN: I empathize with you.

23 MS. WALKER: -- clear the air on that issue. And  
24 you are a candidate in that election that could be  
25 affected and so we must notify you of it. The meeting

1 will be held at 7:00 a.m. in the morning and we  
2 conclude -- hope to conclude our work by noon. And the  
3 results of that will be available at  
4 "slcelections.com," which is our website. That's  
5 "slc", as in St. Lucie County --

6 MR. HOWDEN: Right.

7 MS. WALKER: "Elections" with an "s.com."

8 MR. HOWDEN: Yeah, I saw where I lost by 47  
9 points. My wife says she hates to sleep with a loser,  
10 but... But that's okay. I really appreciate you  
11 calling me with that, and I sure -- I'm also delighted  
12 we got the President back in office again. I tell you  
13 what --

14 MS. WALKER: Okay. Very good.

15 MR. HOWDEN: -- I'm coming down and switching  
16 my -- my party from Republican to Independent as soon  
17 as you get behind all this. You take care. We love  
18 you.

19 MS. WALKER: Thank you so much.

20 MR. HOWDEN: You hang in there.

21 MS. WALKER: You have a good evening. Bye-bye.

22 MR. HOWDEN: Thanks for the call very much.

23 Bye-bye.

24 MS. WALKER: You're certainly welcome. Bye-bye.

25 MR. HOWDEN: Bye-bye.

1 (Phone ringing.)

2 MS. WALKER: Oh, my Lord. WPTV Channel -- let her  
3 know.

4 I'm in a meeting now and I cannot talk to you.  
5 Can I call you back? Can you give me an extension  
6 that I can reach you at, a direct number?  
7 ...796-...We cannot confirm we have found anything.  
8 We are just going to recount all of the ballots for  
9 the -- for the -- that were cast during early voting.  
10 And I'm going to call you back. Bye.

11 MR. TRAUM: Excitement.

12 MS. WALKER: "Can you confirm that you have found  
13 the missing ballots?"

14 MR. TRAUM: Now you've failed to find the missing  
15 ballots, which implies there's missing ballots.

16 MS. WALKER: Where did they get that from? "I  
17 have confirmed that I found the missing ballots." ...

18 Okay. Now --

19 (Placing telephone call.)

20 MR. ALTWEIN: Hello.

21 MS. WALKER: Hello. Is this Charles Altwein?

22 MR. ALTWEIN: Yes, speaking.

23 MS. WALKER: Hi. This is Gertrude Walker,  
24 Supervisor of Elections. How are you doing?

25 MR. ALTWEIN: Congratulations on your election --

1 re-election.

2 MS. WALKER: Well, thank you so much, Mr. Altwein.  
3 I have -- I'm in a meeting right now of the Canvassing  
4 Board, the St. Lucie Canvassing Board, and present at  
5 the meeting is Judge Kathryn Nelson and Marc Traum, who  
6 is representing Tod Mowery...on the Board. The Board  
7 has made a decision and this call is to notify you of  
8 that decision.

9 The Board had decided to recount all ballots  
10 that were cast during early voting, and we've also  
11 set the time for that meeting. We had some  
12 difficulty uploading those results on election night  
13 and had...counted at 7:00 a.m. in the morning. We  
14 hope to conclude our work by noon and the results  
15 will be available on my website at "slcelections.com"  
16 shortly after the Board concludes their work.

17 MR. ALTWEIN: I'm writing that down.

18 MS. WALKER: Do you need me to repeat any...

19 MR. ALTWEIN: ..."elections.com"?

20 MS. WALKER: Yes. Elections with an "S."

21 MR. ALTWEIN: Elections with an "S."

22 MS. WALKER: Elections with an "S," yes. And  
23 "slc," like St. Lucie County.

24 MR. ALTWEIN: ...my favorites are, too, just to  
25 make sure.

1 MS. WALKER: Okay.

2 MR. ALTWEIN: You said it's going to be done  
3 tomorrow morning?

4 MS. WALKER: Yes, it's going to be done tomorrow  
5 morning.

6 MR. ALTWEIN: Sunday?

7 MS. WALKER: Yes. 7:00 a.m. This is so that we  
8 can ensure the State, in their certification of the  
9 election, has accurate information...

10 MR. ALTWEIN: And you'll be posting it on your  
11 website when?

12 MS. WALKER: After the meeting. I would say  
13 probably by one o'clock it will be out there.

14 MR. ALTWEIN: So I can check your website.

15 MS. WALKER: And see the results.

16 MR. ALTWEIN: Yep. Okay. Thank you for notifying  
17 me. I appreciate that.

18 MS. WALKER: It will probably also be in Monday's  
19 paper, too.

20 MR. ALTWEIN: Uh-huh. Thank you.

21 MS. WALKER: Okay. You're certainly welcome. You  
22 don't have to be at the meeting, but I do have to  
23 notify you. This is just a notice.

24 MR. ALTWEIN: Okay. Thank you.

25 MS. WALKER: Have a good evening. Bye.

1 MR. ALTWEIN: Take care. Bye.

2 MS. WALKER: Okay. Who else did we decide...

3 JUDGE NELSON: I did look up Vince Gaskin.

4 (Placing telephone call.)

5 MR. GASKIN: Hello.

6 MS. WALKER: Hello. I'm trying to reach Vince  
7 Gaskin.

8 MR. GASKIN: Speaking.

9 MS. WALKER: Hi. This is Gertrude Walker,  
10 Supervisor of Elections.

11 MR. GASKIN: Hey, Ms. Walker.

12 MS. WALKER: How are you doing?

13 MR. GASKIN: I'm good.

14 MS. WALKER: Okay. I'm in the meeting of the  
15 Canvassing Board, St. Lucie County Canvassing Board.

16 MR. GASKIN: Uh-huh.

17 MS. WALKER: And I have with me Judge Kathryn  
18 Nelson.

19 JUDGE NELSON: Hi, Mr. Gaskin.

20 MR. GASKIN: Hey, Ms. Nelson.

21 MS. WALKER: And I have Marc Traum.

22 MR. TRAUM: Hello there.

23 MS. WALKER: The purpose of this call is to notify  
24 you that the Board has made a decision and that  
25 decision is to recount all of the ballots that were

1 cast during early voting.

2 MR. GASKIN: Okay.

3 MS. WALKER: And they have set the date and time  
4 for that meeting as 7:00 a.m. in the morning so that we  
5 can have our work completed before the State certifies  
6 state-wide candidates. We...by noon and the results  
7 will be available by 1:00 p.m. at "slcelections.com."  
8 But I'm sure you're going to have some representatives  
9 here at the office.

10 MR. GASKIN: Yes.

11 MS. WALKER: It will be held at 4132 Okeechobee  
12 Road, which is the Supervisors'...

13 MR. GASKIN: Okay. It's going to take place in  
14 the morning?

15 MS. WALKER: Yes.

16 MR. GASKIN: Okay. Yes, ma'am. We'll have  
17 somebody there.

18 MS. WALKER: Okay. Thank you very much. You have  
19 a good evening.

20 MR. GASKIN: Thank you for calling. You, too.

21 MS. WALKER: Bye.

22 JUDGE NELSON: Bye.

23 MS. WALKER: ...everybody. That's everybody we  
24 think is going to...

25 JUDGE NELSON: Okay. So we're ready to --



1 MR. TRAUM: We're done?

2 MS. WALKER: Okay. After -- we're ready to  
3 adjourn the meeting until 7:00 a.m. tomorrow morning.

4 JUDGE NELSON: Tomorrow morning.

5 MR. TRAUM: Great.

6 JUDGE NELSON: Sounds great.

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1 STATE OF FLORIDA )  
 ) SS.  
 2 COUNTY OF MARTIN )  
 3

4 CERTIFICATE

5  
 6  
 7 I, LINDA L. BAGGETT, Professional Court  
 8 Reporter, do hereby certify that in the matter of AN  
 9 EMERGENCY MEETING OF THE CANVASSING BOARD FOR THE GENERAL  
 10 ELECTION OF NOVEMBER 6TH, 2012, the proceedings were held  
 11 at the Supervisor of Elections Office, on the 10th day of  
 12 November, 2012; that I transcribed the proceedings from a  
 13 voice-activated audiotape, that the foregoing pages  
 14 comprise a true and accurate transcript of those  
 15 proceedings, to the best of my abilities, recognizing  
 16 those limitations in electronically recorded proceedings.

17 DATED this 15<sup>th</sup> day of November, 2012.



19 *Linda L. Baggett*

20 LINDA L. BAGGETT.  
 21  
 22  
 23  
 24  
 25

# HOLTZMAN VOGEL JOSEFIAK PLLC

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p 703-441-8388  
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November 15, 2012

The Honorable Ken Detzner  
Florida Division of Elections  
Room 316  
R.A. Gray Building  
500 Bronough Street  
Tallahassee, FL 32399

**VIA FACSIMILE: (850) 245-6125**

Dear Mr. Secretary,

We wanted to apprise you of our latest findings after the St. Lucie County Supervisor of Elections, through her legal counsel, released to us today some of the public records we have been requesting since last week. We understand that your auditors are currently meeting with staff of the Supervisor of Elections, and we ask that you provide this information to your auditor in hopes that actions can be taken to ensure all votes from St. Lucie County are properly and accurately counted.

Our findings are summarized in some detail below, and we hope this information will assist your staff as they conduct their review of the St. Lucie County records. We trust that you and your staff will be able to resolve these questions and provide an appropriate remedy before permitting St. Lucie County to certify its vote totals to the Department of State on Sunday, November 18.

## **Early Voting**

We have found that a total of 237 voters who have been disclosed as signing in to vote at an early voting location, but whose votes appear to have been not been counted at all. These voters have no precinct assigned to them in the data upload posted on your website and provided to you by the St. Lucie County Supervisor of Elections.

After reviewing the election returns from the county's vote counting system by precinct,, we have found a total of 110 early votes cast in precincts where there are not enough early voters signed in to support that number of votes cast. For example, in precinct 28, the Division of

Exhibit 2  
Notice of Filing  
11/15/12

Elections website shows that 488 persons voted in that precinct during early vote. However, the St. Lucie County election returns show that 499 early votes were counted in that precinct. Similarly, precinct 85 shows 2,458 voters having signed in at an early voting location for early voting, while the county's vote counting system shows 2,472 votes cast early in that precinct. This reflects a difference of 14 votes.

There are also some 211 votes that appear not to have been counted at all. For example, in precinct 50, data shows some 1,476 voters having signed in, but the total votes counted (including undervotes and overvotes) is only 1,446. This results in a difference of 30 votes that appear to have not been counted at all. In precinct 71, 1,020 voters signed in to vote, but the vote counting system reports only 977 votes cast. This is a difference of 43 votes.

### **Absentee Voting**

We have found that a total of 121 voters disclosed as returning absentee ballots are not assigned to any precinct and do not appear to have had their votes counted. The early vote data accessible on your website, and provided to you by the St. Lucie County Supervisor of Elections, indicates that these voters have no precinct assigned to them.

Comparing the election returns for absentee voting by precinct to the data available from the Secretary of State's website (which had been provided to you by St. Lucie County), we have found some 269 instances where there are more votes by precinct than voters reported to have cast ballots in that precinct. For example, in precinct 50, the records reflect that 1,114 absentee ballots have been returned for that precinct. However, the precinct vote count report shows that 1,171 ballots were processed, resulting in a difference of 57 votes that do not appear to have an actual voter to support it. Similarly, precinct 85 shows that 2,886 voters returned absentee ballots, but 2,907 votes are reported to have been cast in that precinct. This reflects a difference of 21 votes.

Additionally, we have identified circumstances where there appear to have been ballots returned by actual voters that are not reflected in the absentee ballot count by precinct. The bulk of these appear to come from precinct 14, which includes a portion of the City of Fort Pierce.<sup>1</sup> In that precinct, 607 absentee ballots were reported as having been returned, but only 559 absentee ballots were counted in that precinct. This is a difference of 48 votes that appear to have been omitted. Notably, this amount exceeds the margin of victory in the City of Fort Pierce Mayor's race.

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<sup>1</sup> We note that on November 14, 2012, the County Canvassing Board conducted a recount in this race, and the difference between the certified winner after the recount and her opponent was a mere 45 votes. Furthermore, with respect to that race we have two other notes. First, the total number of votes counted in that race declined by 10 votes from the November 11 selective re-feed to the November 14 recount. Second, while ballots not containing a vote for the mayoral race were supposed to have been manually removed during the recount and not run through the machines, the Supervisor's election returns after the recount indicate that 201 absentee ballots were fed through the scanning machines, but no votes were tabulated for those 201 cards. Either the cards contained under or over votes and were not removed, or 201 votes were scanned and not tabulated.

**Conclusion**

While we have not yet been provided access to the poll book information for votes cast on Election Day, our examination of the early and absentee ballot information raises significant questions relating to nearly 1,000 votes. We can provide a detailed spreadsheet containing our precinct by precinct analysis of the early votes and absentee ballots in the event your office desires additional detailed information.

We hope to continue our examination of records upon receipt of additional information from the St. Lucie County Supervisor of Elections, but we believe it is incumbent upon the Secretary of State to examine these returns and take any action necessary to ensure that the votes cast in St. Lucie were accurately counted.

Based on the information we have examined, we still believe that serious doubt exists as to the accuracy of the vote count so far reported by St. Lucie County.

Sincerely,

/s/ Jason Torchinsky

Jason Torchinsky  
P. Christopher Winkelman  
Counsel to Allen West for Congress

Cc: Daniel Nordby, General Counsel, Department of State  
Cynthia Angelos, Counsel to St. Lucie County Supervisor of Elections  
Heather Young, Assistant County Attorney, St. Lucie County

IN THE CIRCUIT COURT FOR THE 19<sup>th</sup> JUDICIAL CIRCUIT,  
ST. LUCIE COUNTY, FLORIDA, CIVIL DIVISION

Allen West, Lynn 'Sam' Sammuli,  
Caroline Knudsen, Sandra Krischke,  
Phyllis Genovese, Mark Gotz,  
Megan Elam, Robert Keener,  
and Catherine Griffin  
Plaintiffs

Case Number: 562012 CA 004319XXXHC

v.

Gertrude Walker, in her official capacity  
as the Supervisor of Elections for St.  
Lucie County, Florida, and St. Lucie  
Canvassing Board its official capacity,

Defendants.

2012 NOV 16 AM 11:25  
ST. LUCIE COUNTY  
CLERK OF CIRCUIT COURT

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**PLAINTIFFS' SECOND AMENDED**  
**MOTION FOR PRELIMINARY INJUNCTION**

**COMES NOW** the Plaintiffs, Allen West, Lynn 'Sam' Sammuli, Caroline Knudsen, Sandra Krischke, Phyllis Genovese, Mark Gotz, Megan Elam, Robert Keener, and Catherine Griffin ("Plaintiffs"), and respectfully seek preliminary injunctive relief requiring Defendants to: (i) comply with Defendant Supervisor of Elections' initial notice declaring an emergency meeting of the canvassing board for the purpose of re-feeding into tabulating machines and counting all votes cast during the early voting period; (ii) comply with Plaintiffs' request for a re-feed of absentee ballots cast; and (iii) refrain from certifying results until all ballots cast during the early voting period are re-fed into tabulating machines and counted, and until such time as all matters raised in the instant litigation are resolved. As ground therefore, Plaintiffs would state:

## PARTIES

Plaintiff Allen West a citizen and registered voter of Palm Beach County, Florida of the State of Florida. He is a candidate for election to the United States House of Representatives in Florida's 18<sup>th</sup> Congressional District in the election held November 6, 2012.

Plaintiff Lynn 'Sam' Sammuili, is a resident and registered voter of St. Lucie County, residing at 2746 SE Eagle Dr, Port Saint Lucie, FL 34984. Plaintiff is a voter in Precinct 22, and voted on October 27, 2012 at Morningside Library.

Plaintiff Caroline Knudsen is a resident and registered voter of St. Lucie County, residing at 379 SW North Shore Blvd, Port Saint Lucie, FL 34986. Plaintiff is a voter in Precinct 67, and voted on October 28, 2012 at Morningside Library.

Plaintiff Sandra Krischke is a resident and registered voter of St. Lucie County, residing at 8407 Fort Walton Ave, Fort Pierce, FL 34951. Plaintiff is a voter in Precinct 1, and voted on October 29, 2012 at Orange Blossom Business Center.

Plaintiff Phyllis Genovese is a resident and registered voter of St. Lucie County, residing at 509 SE Oceanspray Terrace, Port Saint Lucie, FL 34983. Plaintiff is a voter in Precinct 41, and voted on October 30, 2012 at Morningside Library.

Plaintiff Mark Gotz is a resident and registered voter of St. Lucie County, residing at 154 NW Magnolia Lakes Blvd, Port Saint Lucie, FL 34986. Plaintiff is a voter in Precinct 85, and voted on October 31, 2012 at the PSL Community Center.

Plaintiff Megan Elam is a resident and registered voter of St. Lucie County, residing at 38 Harbour Isle Dr E Unit 205, Fort Pierce, FL 34949. Plaintiff is a voter in Precinct 16, and voted on November 1, 2012 at the Orange Blossom Center.

Plaintiff Robert Keener is a resident and registered voter of St. Lucie County, residing at 950 SE Atlantis Ave, Port Saint Lucie, FL 34983. Plaintiff is a voter in Precinct 45, and voted on November 2, 2012 at Morningside Library.

Plaintiff Catherine Griffin is a resident and registered voter of St. Lucie County, residing at 1840 SW Kimberly Ave, Port Saint Lucie, FL 34953. Plaintiff is a voter in Precinct 71, and voted on November 3, 2012 at Morningside Library.

Defendant Gertrude Walker is the Supervisor of Elections for St. Lucie County, Florida.

Defendant St. Lucie Canvassing Board is the official body charged with ascertaining the rules of the 2012 General Election in St. Lucie County, Florida.

### **FACTS**

The result of the election of November 6, 2012, with respect to the 18<sup>th</sup> Congressional District, remains unknown and in dispute.

On November 10, 2012, at approximately 5p.m., Defendant Walker gave notice of an “emergency meeting for the canvassing board” to be held November 11, 2012, for the purpose of “recount[ing] all ballots cast during early voting.”

Despite the aforementioned notice, Defendants convened on November 11, 2012, but conducted only a partial re-feed of early votes cast in St. Lucie County, namely those early ballots cast on November 1, 2 and 3, 2012.

On November 15, 2012, Defendant Supervisor of Elections provided public records that revealed a 1,000 vote discrepancy between the voter registration / pollbook system and the vote counting system for absentee and early ballots.

Plaintiff seeks preliminary injunctive relief requiring Defendants to: (i) comply with Defendant Supervisor of Elections’ initial notice declaring an emergency meeting of the



canvassing board for the purpose of re-feeding into tabulating machines and counting all votes cast during the early voting period; (ii) comply with Plaintiffs' request for a re-feed of absentee ballots cast; and (iii) refrain from certifying results until all ballots cast during the early voting period are re-fed into tabulating machines and counted, and until such time as all matters raised in the instant litigation are resolved.

### LAW

“No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.” Wesberry v. Sanders, 376 U.S. 1, 17 (1964). The Eleventh Circuit Court of Appeals has referred to voting as “about the most important thing there is.” Citizens for Police Accountability Political Comm. v. Browning, 572 F.3d 1213, 1221 (11th Cir. 2009). Defendant Walker’s decision to conduct a partial re-feed of early votes, rather than a full re-count of the early votes, risks that at least some of the voters in St. Lucie County will lose that precious right to have their vote count because of the under-counting and over-counting of ballots that likely took place as a result of Defendant Walker’s admitted problems with the counting of the early voting results.

That the early voting was problematic is demonstrated by the fact that Defendant Walker’s partial recount (a/k/a “retabulation”) resulted in a significant change to the vote count, a change that left Plaintiff West within .07 of one point of a district-wide statutorily-mandated recount. Only a full recount or retabulation of the early voting would meet Defendant Walker’s statutorily-mandated duty to re-tabulate the votes where errors are obvious or suspected. See Section 102.141(3), Fla. Stat.

Further, the apparent tabulation errors with the absentee ballots present even further concerns about the reported totals.

In order for this Court to rule in Plaintiffs' favor and grant the injunctive relief sought, Plaintiffs must show: (1) irreparable harm, (2) a clear legal right, (3) an inadequate remedy at law, and (4) considerations of the public interest. See Weinstein v. Aisenberg, 758 So.2d 705, 706 (Fla. 4th DCA 2000)(citations omitted). It is respectfully submitted that all four elements are met on the instant case facts.

First, the Plaintiffs can show irreparable harm in that it is now a mystery as to whether the errors that led Defendant Walker to promise a full recount or retabulation resulted in some votes not being counted, or some votes being cancelled out by double-counting. The Court knows that the retabulation of three days of early voting changed the result of the count substantially, and serious questions now exist about the absentee ballot count. If the Court does not order the Defendants to complete the retabulation that they began, then Plaintiffs will be irreparably harmed in that they will never know if their votes were properly counted by the Defendants, or if they were overlooked or perhaps cancelled out by double-counting of other ballots. Additionally, if Defendants do not retabulate absentee ballots, there is additional risk of irreparable harm in that there may be votes improperly double-counted or not counted among these votes, as well.

Second, as for a clear legal right to the relief sought, the statutory scheme is clear. The relevant statute provides: "If the returns from any precinct are missing, if there are any omissions on the returns from any precinct, or if there is an obvious error on any such returns, the canvassing board shall order a retabulation of the returns." See Section 102.141(3), Fla. Stat. That the Defendants departed from that statutory requirement – and only retabulated three days of the early voting rather than all days – is a violation of the clear statutory scheme that the Florida Legislature has put in place. This Court would simply be following the law if it required

the Defendants to retabulated all the early voting ballots, rather than just the three days that were retabulated. Id. Remarkably, the transcript of the 11/10/12 Canvassing Board meeting (filed on today's date) shows that Defendant Walker recognized that she was statutorily required to retabulate all the early votes, as she repeatedly says during that hearing that she intends to retabulate all the early voting. There is no statutorily-protected reason for her to have disregarded both the statute and what she promised to do when for reasons unexplained the retabulation was reduced to only three days of early voting, rather than eight days.

Third, Plaintiffs also can show that there is no other adequate remedy at law. The only way to challenge the manner in which these votes were partially re-tabulated is to bring the instant action. Plaintiffs should not have to do so because Plaintiffs are simply asking that the statutory scheme vis-à-vis retabulation be followed. A post-certification contest, a different legal proceeding that Plaintiffs expect Defendants to point to as a purported alternative remedy, is not the remedy that addresses the irreparable injury at stake here. The injury here is that the statutory manner in which the retabulation took place was improper, did not follow the statute, and has left uncertainty as to the vote count such that it is practically certain that votes went uncounted, votes were double-counted, or some combination thereof. In any event, these errors in tabulation will effectively disenfranchise voters. The Court must grant the remedy sought so that the will of the Florida Legislature is followed and a retabulation that captures all the early votes, and the absentee votes, is performed so as to protect that right to vote.

Finally, it is quite certain that the public interest counsels in favor of completing the retabulation and retabulating early votes, rather than allowing the Defendants to only retabulate some of the votes and call it a day. The public deserves to know that every vote counts. No right is more precious than having a voice in the election of those who make the laws under

which we live. See Wesberry. If the Court allows the partial re-tabulation to stand, then the Court leaves the voters of St. Lucie County – and the voters of this Country – wondering whether a proper re-tabulation of the vote, in light of the errors that have been admitted by Defendant Walker, would have led to a different result. In fact, it is not just in the interest of the public but it is even in the interest of both Defendant Walker and Mr. Murphy that a full re-tabulation take place. A full re-tabulation of early ballots and absentee votes will hopefully eliminate the concern among the public, and the concern that both Ms. Walker and Mr. Murphy likely have, that the result that right now they rely upon was in error, and that the Congressional seat at issue was selected rather than elected by virtue of the conceded errors on election night in counting the early voting and problems with the absentee voting

Plaintiffs further rely on the memorandum of law they have previously submitted to the Court to further demonstrate their entitlement to the relief sought here.

**WHEREFORE**, since the Plaintiffs have made the necessary showing to obtain the injunctive relief they seek, the Plaintiffs respectfully pray that this Honorable Court:

Issue immediately a preliminary injunction ordering Defendant Gertrude Walker, as St. Lucie County Supervisor of Elections, to convene Defendant St. Lucie County Canvassing Board for the purpose of re-tabulation all votes cast in the election for the 18<sup>th</sup> Congressional District during the early voting period,

Issue immediately a preliminary injunction ordering Defendant Gertrude Walker, as St. Lucie County Supervisor of Elections, to convene Defendant St. Lucie County Canvassing Board for the purpose of re-tabulating all absentee ballots cast in the election for the 18<sup>th</sup> Congressional District,

Ordering Defendants to refrain from certifying results of the election for the 18<sup>th</sup> Congressional District until all ballots cast during the early voting period and all absentee ballots have been counted pursuant to this Order, and until such time as all matters raised in the instant litigation are fully resolved; and

Provide any outstanding poll book and / or EVID information for election day turnout; and

Provide any outstanding transcripts of Canvassing Board meetings from November 6 through today's date.

Grant such other and further relief as is necessary and just.

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Notice of Appearance has been served via e-mail to:

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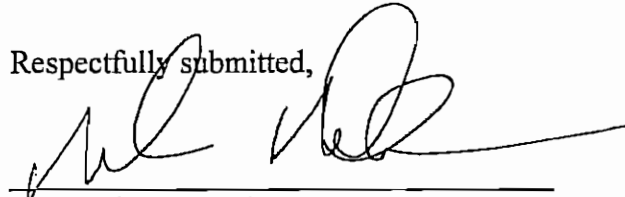
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on November 15, 2012.

Respectfully submitted,



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\* Pro Hac Vice Petition Pending