

IN THE CIRCUIT COURT FOR THE 19th 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 004319AXXXHC

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 11:21
ST. LUCIE COUNTY
CLERK OF CIRCUIT COURT

SECOND AMENDED COMPLAINT

COMES NOW, Plaintiffs Allen West, et. al., and complain against Defendants as follows:

1. This is a challenge under the equal protection clause of the Florida Constitution challenging the actions of the St. Lucie County Supervisor of Elections, the St. Lucie County Canvassing Board and the Secretary of State.
2. Plaintiffs bring this challenge to ensure that votes cast by the voters of St. Lucie County in the 2012 General Election are accurately reflected in the election results.
3. This is a challenge under Florida's Open Meetings Law and Florida's Open Records Law challenging the actions of the St. Lucie County Supervisor of Elections and the St. Lucie County Canvassing Board.

Jurisdiction and Venue

4. The Court has subject matter jurisdiction pursuant to Article V, Section 5(b), Florida Constitution, Section 26.012 and 86.011, Florida Statutes, and Rules 1.220 and 1.610, Florida Rules of Civil Procedure.
5. Venue is proper in St. Lucie County, Florida, pursuant to Section 47.011, Florida Statutes, because Defendants St. Lucie County Canvassing Board and St. Lucie Supervisor of Elections have their official headquarters in St. Lucie County, and against Defendant Secretary of State pursuant to Section 47.021, Florida Statutes.

Parties

6. Plaintiff Allen West is a resident of Palm Beach County, Florida, a Florida registered voter, and a candidate for the United States House of Representative from Florida's 18th Congressional District in the November 2012 general election.
7. Plaintiff Lynn 'Sam' Sammulu, 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.
8. Plaintiff Caroline Knudsen is a resident and registered voter of St. Lucie County, residing at 379 SW North Shore Boulevard, Port Saint Lucie, FL 34986. Plaintiff is a voter in Precinct 67, and voted on October 28, 2012 at Morningside Library.
9. Plaintiff Sandra Krischke is a resident and registered voter of St. Lucie County, residing at 8407 Fort Walton Avenue, Fort Pierce, FL 34951. Plaintiff is a voter in Precinct 1, and voted on October 29, 2012 at Orange Blossom Business Center.
10. 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.
11. 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.
12. Plaintiff Megan Elam is a resident and registered voter of St. Lucie County, residing at 38 Harbour Isle Drive 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.
13. Plaintiff Robert Keener is a resident and registered voter of St. Lucie County, residing at 950 SE Atlantis Avenue, Port Saint Lucie, FL 34983. Plaintiff is a voter in Precinct 45, and voted on November 2, 2012 at Morningside Library.
14. Plaintiff Catherine Griffin is a resident and registered voter of St. Lucie County, residing at 1840 SW Kimberly Avenue, Port Saint Lucie, FL 34953. Plaintiff is a voter in Precinct 71, and voted on November 3, 2012 at Morningside Library.
15. Defendant Gertrude Walker is the Supervisor of Elections for St. Lucie County, Florida.
16. Defendant St. Lucie Canvassing Board is the official body charged with ascertaining the rules of the 2012 General Election in St. Lucie County, Florida.

Factual Background

17. Early voting for the 2012 General Election was available at four locations in St. Lucie County for eight days, from October 27 to November 3, 2012 (the “early voting period”).
18. During the early voting period, voters were permitted to cast a ballot corresponding to their precinct at any of four designated early voting locations throughout the county and each voter casting a regular ballot was required to sign in electronically or, if casting a provisional ballot, to sign the sealed envelope enclosing their provisional ballot.
19. St. Lucie County informed the Florida Division of Elections of the specifics of the voting systems that would be used for tabulating all votes for the November 2012 General Election. (Attached to prior Complaint as Exhibit 1 and all exhibits attached to that First Amended Complaint are incorporated herein by reference).
20. St. Lucie County employed the same precinct and central accumulation optical scan voting system, the Accuvote OS, to tabulate ballots cast during early voting and on Election Day. St. Lucie County contracted with vendor Dominion for the Premier Release 1.21.5, version 2 voting system with Gems 1.21.5 election management software. This system included Accuvote OS/PCS central scan software for the “central count” and Premier for ballot printing.
21. A report available online at the St. Lucie County Supervisor of Elections website shows that 37,379 votes were cast during the eight-day early voting period from October 27 to November 3, 2012. The aggregate number of early votes cast on November 1, 2, and 3 according to that report is 16,123, excluding provisional ballots. It is unclear whether these numbers come from the voter registration system or from the counts on the voting machine system.
22. Fla. Stat. 101.657 provides that each elector voting early must provide identification and must complete an Early Voting Certificate. The Supervisor of Elections for each county in Florida must make available and provide to the Division of Elections by noon of each day from October 28 to November 4, 2012, the total number of voters casting a ballot at each early voting location during the previous day.
23. A report of early voter names and voter information available online at the Division of Elections website includes 34,352 individual voter names and reflects a total of 16,095 votes cast on November 1, 2, and 3.
24. Sometime in the afternoon or early evening of November 6, 2012, the Supervisor’s staff “recounted” all early votes cast between November 1 and November 3 in part – namely all of the early votes cast at Zora Neal Hurston Library and Morningside Library and precincts 41 through 94 at Orange Blossom Business Center and at Port Saint Lucie City Hall.

25. The announced totals from those re-feeds according to the transcript of the November 6 proceeds reflect 2,120 votes cast at Zora Neal Hurston, 6,561 votes cast at Morningside Library, 1,529 votes cast at Orange Blossom Community Center, and 7,543 votes cast at Port Saint Lucie City Hall.
26. The Secretary of State data shows the number of votes cast in at the locations identified in the November 6 transcripts for the precincts identified as being recounted at each for November 1 through 3 reflect the following totals: 1) Morningside Library – 4,320 votes cast; 2) Zora Neal Hurston – 1,713 ballots cast; 3) Orange Blossom – 754 votes cast; and 4) Port Saint Lucie City Hall – 4,937 votes cast.
27. The November 6 afternoon recount of early votes reflects significant double counting of votes.
28. Late in the evening on November 6 it became known to the public at the Office of the Supervisor of Elections that data cards in use in scanners during several days of early voting could not be uploaded to the central counting system at the Office of the Supervisor of Elections. Election officials informed public observers that due to a “disk problem,” ballots cast during several days of early voting would be hand-fed through scanners.
29. Election officials intermittently announced throughout the evening that they were ready to upload data from a data card contained in a scanner used to tabulate the hand-fed early voting ballots affected by the “disk problem.”
30. At or around 11:06 p.m. on November 6, early voting ballots were still being hand-fed into scanners at the Office of the Supervisor of Elections and the real-time running vote total on display in the counting room showed that Congressman Allen West led Patrick Murphy by at least 1,500 votes.
31. At or around 12:00 midnight on November 6, public observers became aware that ballots from Precinct 89 were missing from the Office of the Supervisor of Elections.
32. The Supervisor informed public observers at or around 1:00 a.m. on November 7 that ballots from Precinct 89 were mistakenly left behind at that polling place and that someone had been sent to recover the ballots.
33. The Supervisor further informed public observers that someone had been dispatched on a second trip to Precinct 89 to recover the missing ballots because the first person sent was unable to uncover the ballots.
34. Optical scan ballot cards were hand-fed into scanners by election officials at the Office of the Supervisor on November 6 beginning as early as 10:30 p.m. and continuing until at least 1:30 a.m. on November 7.

35. At some time between 1:00 a.m. and 2:00 a.m. on November 7, the Supervisor announced that all ballots had been tabulated and that Patrick Murphy led Congressman Allen West by 13,271 votes.
36. At or around 2:00 a.m. on November 7, the Honorable Judge Kathryn Nelson convened an informal hearing at the request of Counsel for Congressman West. Judge Nelson presided, a court reporter was present, and both Counsel to Congressman West and the Supervisor of Elections entered statements on the record.
37. During this hearing, Counsel for Congressman West submitted to Judge Nelson a Motion for Injunctive Relief to Count Paper Ballots and to Impound Voting Machines as well as a Proposed Order. The motion and proposed order were styled as pleadings for submission to the Circuit Court for the 19th Judicial Circuit, St. Lucie County Florida, Civil Division.
38. During this hearing the Supervisor of Elections agreed to provide 24-hour security by a Sheriff's Deputy for the security of voting machines and ballots.
39. On the morning of November 7, 2012, the County Canvassing Board convened in public view as provided by prior public notice and announced the following information: (1) that a motion was received by the Canvassing Board early that morning and as a result, the Supervisor would keep ballots secured behind a doorway containing a paper seal; (2) that there were 779 provisional ballots received but still sealed and uncounted; (3) that four memory cards from scanners used during the early voting period failed to upload on November 6 and as a result, the optical scan cards cast during the first three days of the early voting period had to be hand-fed into scanners by election officials late into the night on November 6.
40. During the November 7 Canvassing Board meeting, the Supervisor stated three times that the process of hand-feeding those three days of early voting optical scan ballots "was hurriedly done" in an effort to meet the statutory reporting deadline for submission of precinct results to the County Canvassing Board.
41. Near the end of the November 7 Canvassing Board meeting, the Supervisor received an updated report of the number of provisional ballots received and revised her previously reported figure of 779 provisional ballots to 691 provisional ballots.
42. When questioned about the apparent overstatement of nearly 100 provisional ballots, the Supervisor informed the Canvassing Board and the public present that the number she first reported was a "guesstimate."
43. The Canvassing Board accepted questions from the public present at the November 7 meeting and Counsel to Congressman West requested an explanation as to why precinct returns included an odd number of ballots tabulated by the optical scanners and at the Office of the Supervisor.

44. The Supervisor responded that the optical scan machines were programmed to reject overvoted cards as well as cards cast with no votes and that these cards were set aside at all polling places as “emergency” ballots to be tabulated by the Canvassing Board.
45. The Supervisor further explained that if one card of a voter’s two-card ballot was tabulated by the scanner but the second card of a voter’s ballot was rejected by the optical scanner, poll workers were instructed to mark the rejected card as spoiled and provide the voter with a new two-card ballot.
46. The Supervisor further informed the Canvassing Board and the public present that after a voter completed the second two-card ballot, poll workers were instructed to mark the first card as spoiled and attempt to scan the second card of the second ballot.
47. During the November 7 Canvassing Board meeting Counsel to Congressman West expressed concern about the ability of the public and the Canvassing Board to determine the number of total votes counted as compared to the number of voters who voted without further information.
48. During the evening on November 7, the Supervisor provided a list of the names of individuals who cast provisional ballots. That list contained 713 names of voters who cast provisional ballots.
49. On November 8, 2012, the County Canvassing Board convened in public view pursuant to public notice for the purpose of counting provisional ballots, absentee ballots, and “emergency” ballots.
50. During the November 8 meeting, Counsel to Congressman West again expressed concern over the inability of the Canvassing Board and the public to determine the number of votes cast without being given access to records of electronic poll books in use at the four early voting locations in St. Lucie County. The Supervisor and the Board provided no time when those records might be produced and no answer as to whether those records would be produced.
51. During the November 8 Board meeting, following a heated exchange between public observers regarding the content and treatment of an unknown number of provisional ballots contained in a box marked as “Rejected,” the Chief Judge of the Board adjourned the meeting and announced that they would reconvene the following morning.
52. On November 8, the Allen West Campaign submitted a written request by fax to the Canvassing Board and the Office of the Supervisor expressing various concerns and requesting access to records of the number of voters appearing on election day and signing the e-pollbook as well as records of the number of voters signing the e-pollbook during early voting. (Attached hereto as Exhibit 2).

53. On November 9 the Canvassing Board reconvened in public view and pursuant to public notice to finish the business of tabulating provisional ballots, emergency ballots, and absentee ballots.
54. Prior to the conclusion of the November 9 Board meeting, Counsel to Congressman West again expressed concern over the inability to match the number of voters who voted with the number of votes cast and again requested that the records previously requested be made available.
55. The Supervisor responded that she was unable to know when that information might be available and Counsel to Congressman West asked whether that information would be made available prior certification of unofficial results so that Board could determine the true vote.
56. The Supervisor responded that the requested information would be made available but provided no time for doing so.
57. On November 9 the Supervisor released a report of “Unofficial Results with Provisionals” indicating 119,458 total votes cast for U.S. Representative in Congressional District 18, with Congressman Allen West receiving 52,804 votes and Patrick Murphy receiving 66,234 votes. The report also noted “124,606/175,554” in the “Times Counted” category and 5,138 in the “Times Blank Voted” category.
58. On November 10 at or around 4:45 p.m., Counsel to Congressman West received a phone call from the Supervisor of Elections informing Counsel that the Canvassing Board was currently convened and that Counsel was at that moment, via-teleconference, before the convened Board and Assistant County Attorney Heather Young.
59. The Supervisor informed Counsel to Congressman West, via teleconference in the presence of the Board, that the Board decided to “recount all ballots cast for early voting” and that the Board would reconvene for that purpose at 7:00 a.m. on November 11, roughly 14 hours from the time of the call notifying Counsel.
60. The transcript of the November 10 hearing provided by Counsel for the Canvassing Board on the afternoon of November 15, reveals that Ms. Walker informed the canvassing board the 1137 ballots were identified that had not been counted.
61. A copy of the transcript of the November 10 meeting has been filed with this Court.
62. Ms. Walker described the cause of the need for the November 11 meeting during the November 10 meetings in the following ways: 1) “Staff at a meeting this morning determined that 1137 ballots that were cast during the early voting were not counted when the recount of the early voting took place November 6th”; 2) “We had a malfunction of our equipment on some memory cards during the process of recounting that.” 3) “in the process of recounting after those memory cards failed”; 4) “everybody is well aware that we had some problems with the memory cards for the recount and

then -- for the count of those votes.”; and 5) “we had some problem with the memory cards during the upload of the results and the ballots -- a portion of the ballots during -- that were cast during early voting had to be recounted on election night”.

63. During this call, the Supervisor further explained that the Board would complete its “recount” by 12:00 noon on November 11.
64. Other than a note made by the Supervisor during the Board’s November 7 meeting that a “tentative recount” of a city election might be conducted on November 10, the Allen West Campaign, and the public, received no prior notice that the Board would convene on Saturday, November 10.
65. Notice of the Board’s November 10 meeting was not posted on the website of the Supervisor of Elections.
66. On the evening of November 10, the website of the Supervisor of Elections provided public notice of an “EMERGENCY MEETING” and expressly stated that “THE PURPOSE OF THE MEETING IS TO RECOUNT ALL BALLOTS CAST DURING EARLY VOTING.” (Attached hereto as Exhibit 3).
67. Shortly after 7:00 a.m. on November 11, the Canvassing Board convened in a room in an abandoned mall and the County Attorney announced that the Board would proceed to count only ballots cast during the last three days of the early voting period, November 1, 2, and 3, because the data cards containing the tabulation of these ballots could not be uploaded on November 6.
68. Counsel to Congressman West objected to the Board’s decision to re-feed only ballots from early voting on November 1, 2, and 3.
69. Counsel to Congressman West requested that the Board immediately begin the re-feeding of all ballots cast during early voting in compliance with the previous statements of the Supervisor and the public notice provided on the website of the Supervisor.
70. The Board declined, through the County Attorney, to re-feed any ballots other than those cast on the last three days of the early voting period.
71. Counsel to Congressman West further objected to potential Board certification until the Board and the Supervisor could provide the information previously requested on multiple occasions beginning November 7.
72. The Board, through the County Attorney, noted the objection and gave no indication of when that information might be provided or whether it would be provided.

73. In the early afternoon on November 11, the County Attorney publicly stated that the Secretary of State ordered the Board to re-scan only the last three days of the early voting period and not the remaining five days of the early voting period.
74. Contrary to the County Attorney's statement on November 11, 2012, the Secretary of State **did not** order the Board to re-scan only the last three days of the early voting period.
75. Previously filed with the court is an email from the Secretary of State to the Board, wherein counsel for the Secretary of State clearly stated that the determination as to the scope of any recount of early votes was "solely a matter for the canvassing board."
76. Counsel to Congressman West requested transcripts of all Canvassing Board proceedings from November 5 through the November 11.
77. To date, the only transcripts provided to Counsel for Plaintiffs has been the transcript of the Canvassing Board meeting held on November 6 and 7, 2012 and November 10, 2012.
78. As of the evening of November 15, the records reflecting the number of voters who voted requested as evidenced by the poll book and EVID system for election day voters requested by the West Campaign since November 7 has not been provided and no expected date of production has been provided.
79. On the afternoon of November 15, 2012, Counsel to Defendant Supervisor of Elections provided Counsel for Plaintiffs with the voting machine totals by precinct, with counts showing absentee ballots counted, early votes counted, polling place votes counted, provisional votes counted, and unread ballots.
80. A comparison of this information to the voter information uploaded to the Secretary of State's website for early and absentee voters reveals significant problems with both the early vote and absentee vote tabulation.
81. A letter summarizing the findings was sent to the Secretary of State on November 15, 2012, and copies were provided to counsel for all parties that same day, and a copy was filed with this Court the morning of November 16, 2012.
82. In summary, the early vote numbers show 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.
83. A total of 110 early votes have been counted as cast in precincts where there are not enough early voters signed in to support that number of votes cast.

84. Some 211 early votes appear not to have been counted at all, looking at precincts where more voters sign in to vote than were counted on the machines.
85. With respect to absentee ballots, 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.
86. There are 269 instances where there are more absentee votes in a precinct than voters reported to have cast ballots in that precinct.
87. There are 52 instances where absentee ballots are reported to have been returned but appear not to have been counted .
88. In particular, there are 48 absentee ballots that appear to have been returned in precinct 14, but appear not to have been included in the precinct counts.
89. This precinct includes at least a portion of Fort Pierce, where the outcome of the Mayor's race after the Canvassing Board's November 14 recount was decided by only 45 votes.
90. Fla. Stat. 102.112(2) requires the County Canvassing Board to submit election returns to the Department of State by noon on the 12th day following the general election.
91. Fla. Stat. 102.112(1) requires the Canvassing Board to include a certificate when submitting its returns to the Department of State, affirming that the Board has compared the number of persons who voted with the number of ballots counted and that the certification includes all valid votes cast in the election.
92. Fla. Stat. 102.111(1) and (2) requires the Elections Canvassing Commission, comprised of the Governor and two members of the cabinet selected by the Governor, to meet on the 14th day after a general election to certify the returns of an election for federal office.

Count One: Violation of Article 1, Section 2 of the Florida Constitution

93. All allegations contained in paragraphs 1 through 79 are incorporated herein by reference.
94. Article 1, Section 2 of the Constitution of Florida provides for equal protection of all persons under the law.
95. The selective re-feed of only a portion of the early votes is in violation of the equal protection rights of all other voters of St. Lucie County, Florida, and early voters in particular.

96. Defendant Secretary of State, according to public statements of Defendant Canvassing Board's counsel, ordered the selective re-feed.
97. 16,095 voters, according to the Secretary of State's website, voted early on November 1st, 2nd and 3rd.
98. To date, the Supervisor of Elections has failed to publicly produce information showing voting machine counts by date during the early vote period.
99. Without through explanation, the Supervisor of Elections and the Canvassing Board announced a selective re-feed of only three days of early voting.
100. Results released by the Canvassing Board prior to the selective re-feed showed 119,458 votes cast for Representative for Congressional District 18 (Attached hereto as Exhibit 5).
101. Results released by the Canvassing Board after the selective re-feed showed 118,649 votes cast for Representative for Congressional District 18 (Attached hereto as Exhibit 6).
102. Between November 9 and November 11, the numbers show 799 fewer votes counted for Representative in Congressional District 18.
103. Plaintiffs who cast their ballot on November 1st, 2nd and 3rd, specifically Plaintiffs' Megan Elam, Robert Keener and Catherine Griffin, have been deprived of their clear equal protection rights to have their vote counted due to the nature of the improper selective recount administered by Defendants in violation of Article 1, Section 2 of the Florida Constitution.
104. If votes were in fact double counted on November 1st, 2nd and 3rd, remaining voter plaintiffs are certain that similar double counting of votes happened on other days of early voting, since the same physical scanner systems and computer programs were in use.
105. Plaintiffs have no adequate remedy at law to remedy Defendants violation of their respective constitutional rights, and will suffer irreparable harm unless this Court issues a mandatory injunction. Plaintiffs' legal rights to have their votes lawfully counted are clearly enshrined in Florida's constitution, and the public interest as a whole will be served by this Court ordering Defendants' to properly tabulate the votes.

Count Two: Violation of Article 1, Section 2 of the Florida Constitution

106. All allegations contained in paragraphs 1 through 79 are incorporated herein by reference.

107. Article 1, Section 2 of the Constitution of Florida provides for equal protection of all persons under the law.
108. The selective re-feed of only a portion of the early votes is in violation of the equal protection rights of all other voters of St. Lucie County, Florida, and early voters in particular.
109. Defendant Secretary of State, according to public statements of Defendant Canvassing Board's counsel, ordered the selective re-feed.
110. 16,095 voters, according to the Secretary of State's website, voted early on November 1st, 2nd and 3rd.
111. To date, the Supervisor of Elections has failed to publicly produce information showing voting machine counts by date during the early vote period.
112. Without a thorough explanation, the Supervisor of Elections and the Canvassing Board announced a selective re-feed of only three days of early voting.
113. Results released by the Canvassing Board prior to the selective re-feed showed 119,458 votes cast for Representative for Congressional District 18 (Attached hereto as Exhibit 5).
114. Results released by the Canvassing Board after the selective re-feed showed 118,649 votes cast for Representative for Congressional District 18 (Attached hereto as Exhibit 6). These numbers delineate 809 fewer votes counted for Representative in Congressional District 18, which is evidence of the faulty and illegal nature of the selective recount administered by Defendants.
115. Plaintiffs who cast their ballot on October 27, 2012 through October 31, 2012, specifically Plaintiffs' Lynn Sammuli, Caroline Knudsen, Sandra Krischke, Phyllis Genovese and Mark Gotz, have been deprived of their equal protection rights to have their vote counted due to the nature of the improper selective recount administered by Defendants in violation of Article 1, Section 2 of the Florida Constitution.
116. Specifically, the selective recount administered by Defendants failed to even count Plaintiffs early votes, as it excluded votes cast from October 27-31st, 2012 from the recount. Further, the selective recount, which produced an ultimate vote count that was over 600 votes fewer for the days of November 1-3rd, 2012 than was originally reported, has revealed that the vote counting procedures administered by Defendants resulted in fundamentally flawed vote counts. Absent a recount of all votes cast in this election, or at a minimum a recount of all early votes cast from October 27-31, 2012, Plaintiffs' equal protection rights to have their vote counted, and counted properly, have been violated as evidenced by the differing vote counts produced by Defendants selective recount.

117. The selective recount failed to properly count Plaintiffs' vote in violation of Article 1, Section 2 of the Florida Constitution.
118. Plaintiffs have no adequate remedy at law to remedy Defendants violation of their respective constitutional rights, and will suffer irreparable harm unless this Court issues a mandatory injunction. Plaintiffs' legal rights to have their votes lawfully counted are clearly enshrined in Florida's constitution, and the public interest as a whole will be served by this Court ordering Defendants' to properly tabulate the votes.

Count Three: Violation of Article 1, Section 2 of the Florida Constitution

119. All allegations contained in paragraphs 1 through 79 are incorporated herein by reference.
120. Article 1, Section 2 of the Constitution of Florida provides for equal protection of all persons under the law.
121. Because St. Lucie had a two card ballot, the times counted report shows the number of votes cast, and the cards cast shows the number of pieces of paper the machines counted, by precinct according to the statement of votes cast posted on November 11, 2012 (attached hereto as exhibit 7).
122. The attached Chart shows the expected number of cards by precinct, and the differences between the expected number of cards and the number of cards actually counted as reported by the voting machine tabulation system (attached hereto as Exhibit 8).
123. Of the precincts where the cards counted was under the expected number of cards, there are 413 cards missing from the count. This is the "undercard" number.
124. Of the precincts where the cards counted exceed the number of expected cards, there are 279 more cards than the machines should have reported. This is the "overcard" number.
125. The failure of the Supervisor and the Canvassing Board to reconcile these numbers means that some 413 votes could have been lost because they were not scanned, and that 279 pieces of paper were in the machines that could actually be votes and were not counted by the system.
126. In this close election, this means that up to 692 votes were not properly counted.
127. Once again, public examination of the poll book system by precinct would evidence and resolve these number discrepancies, but again the Supervisor and the Canvassing Board have not yet made this information available.

128. Upon information and belief, in the Congressional District 18 race these lost votes will make the difference in the outcome of the election, or at a minimum without these lost votes being properly tabulated the true outcome of the election will never be known. Such a result would run afoul of the fundamental tenets of Florida's constitutional law and democracy as a whole.
129. Plaintiffs have no adequate remedy at law to remedy Defendants violation of their respective constitutional rights, and will suffer irreparable harm unless this Court issues a mandatory injunction. Plaintiffs' legal rights to have their votes lawfully counted are clearly enshrined in Florida's constitution, and the public interest as a whole will be served by this Court ordering Defendants' to properly tabulate the votes.

Count Four: Violation of Article 1, Section 2 of the Florida Constitution

130. All allegations contained in paragraphs 1 through 125 are incorporated herein by reference.
131. Article 1, Section 2 of the Constitution of Florida provides for equal protection of all persons under the law.
132. The absentee ballot records available from the Secretary of State compared with the vote counts made available by the Supervisor of Elections reveal a significant discrepancy.
133. Some 269 ballots appear to have been counted without a proper voter associated with them.
134. Some 52 absentee ballots appear to have not been counted at all, but were returned to the Supervisor of Elections.
135. Some 121 absentee voters appear to be unassigned to any precinct and not counted.
136. The attached Chart shows the expected number of cards by precinct, and the differences between the expected number of cards and the number of cards actually counted as reported by the voting machine tabulation system (attached hereto as Exhibit 8).
137. Of the precincts where the cards counted was under the expected number of cards, there are 413 cards missing from the count. This is the "undercard" number.
138. Of the precincts where the cards counted exceed the number of expected cards, there are 279 more cards than the machines should have reported. This is the "overcard" number.
139. The failure of the Supervisor and the Canvassing Board to reconcile these numbers means that some 413 votes could have been lost because they were not scanned, and

that 279 pieces of paper were in the machines that could actually be votes and were not counted by the system.

140. In this close election, this means that up to 692 votes were not properly counted.
141. Once again, public examination of the poll book system by precinct would evidence and resolve these number discrepancies, but again the Supervisor and the Canvassing Board have not yet made this information available.
142. Upon information and belief, in the Congressional District 18 race these lost votes will make the difference in the outcome of the election, or at a minimum without these lost votes being properly tabulated the true outcome of the election will never be known. Such a result would run afoul of the fundamental tenets of Florida's constitutional law and democracy as a whole.
143. Plaintiffs have no adequate remedy at law to remedy Defendants violation of their respective constitutional rights, and will suffer irreparable harm unless this Court issues a mandatory injunction. Plaintiffs' legal rights to have their votes lawfully counted are clearly enshrined in Florida's constitution, and the public interest as a whole will be served by this Court ordering Defendants' to properly tabulate the votes.

Count Five: Violation of State Open Meetings Law

144. All allegations contained in paragraphs 1 through 79 are incorporated herein by references.
145. On November 10, 2012, counsel for Plaintiffs was notified in a 5 p.m. phone call from the Supervisor of Elections, made in the presence of the Canvassing Board and the Canvassing Board counsel, that the board had determined that on November 11, 2012 beginning at 7 a.m., all early votes cast would be subject to a "recount."
146. There was no public notice made of the November 10, 2012 afternoon meeting of the Canvassing Board, and there is no indication that any member of the public attended or had an opportunity to attend this meeting.
147. On November 11, 2012, at approximately 7 a.m., the counsel for the Canvassing Board announced that the Canvassing Board had decided to "re-feed" only ballots cast on November 1st, November 2nd, and November 3rd.
148. There was no public vote held where the Canvassing Board in public and on the record recorded this determination.
149. The public notice of the November 11, 2012, 7 a.m. meeting (attached hereto as Exhibit 3) stated that the purpose of the meeting was to "recount all early votes."

150. While the rights of individuals to have their votes counted were at issue, in secret and without public notice, the Canvassing Board apparently determined to conduct a selective re-feed.
151. Article I, Section 24 of the Florida Constitution and Fl. Stat. 286.011 requires that meetings of public bodies be held in public, and subject to proper notice.
152. Here, the Canvassing Board acted in violation of the Florida Constitution and Florida Statutes, and in the process made a secret determination that ultimately resulted in a fewer number of votes being counted in the race for Representative in Congressional District 18 than had previously been counted.
153. This secret process denied voters their opportunity to have the reasons for this determination aired and voted in public, and as a result was wholly in violation of law.
154. Plaintiffs have no adequate remedy at law to remedy Defendants' violation of their respective statutory and constitutional rights, and will suffer irreparable harm unless this Court issues a mandatory injunction. Plaintiffs' legal rights to have their votes lawfully counted are clearly enshrined in Florida's constitution, and the public interest as a whole will be served by this Court ordering Defendants' to properly tabulate the votes.

Count Six: Violation of Open Records Law

155. All allegations contained in paragraphs 1 through 79 are incorporated herein by references.
156. The public records law is codified at Section 119 of the Florida Statutes.
157. The law provides no fixed time limits beyond "reasonable" time for an agency to respond to a request.
158. Counsel for Plaintiff Allen West made a verbal request for poll book information on November 7, 2012 of the Supervisor of Elections.
159. Counsel for Plaintiff Allen West renewed this request verbally on November 8, 2012 and November 9, 2012.
160. Counsel for Plaintiff Allen West again renewed this request in writing on November 11, 2012.
161. Counsel for Plaintiff Allen West again renewed this request on November 15, 2012, and modified the request to indicate that counts by precinct for election day turnout from the EVID voter registration system would be an acceptable alternative to the actual poll book lists..

162. Poll book information for election day turnout has still not been provided.
163. According to the Florida Supreme Court, “[T]he Act is to provide for timely inspection of the records, with the exception of statutory exemptions asserted *by the custodian*, which may be challenged by an accelerated court hearing. In essence, the custodian is mandated to place any nonexempt requested record "on the table" for inspection, at reasonable times and under reasonable conditions.” *Tribune Co. v. Cannella*, 458 So. 2d 1075 (Fla. 1984).
164. Said the court, “The only delay permitted by the Act is the limited reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt.” *Id.* At 1079.
165. Fla. Stat. 102.141(3) requires that the Canvassing Board conduct an examination of the tabulation of ballots to determine “if there is a discrepancy between the returns and the tabulation of votes cast.”
166. Necessarily, the Supervisor of Elections must have available the number of early votes counted by on the voting tabulation systems. The names of voters who are recorded as having voted on particular days are already publicly available on the Secretary of State website, so the Supervisor could cure this issue by providing the tabulation of voting machine totals by day for the early vote period.
167. Questions raised by the card counts discrepancies noted above could be cured by release of the names and counts of persons by precinct presenting themselves to vote.
168. The Supervisor possesses this information, and to date has refused to timely release it.
169. Florida election law provides that the Canvassing Board must certify its final election returns to the Department of State by noon on November 18, 2012.
170. Each day the Supervisor continues to deny public access to these records only enhances the potential harm to Plaintiffs if the precinct poll-book numbers and early vote totals from the voting machines by day are not available for public inspection.
171. In *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), *review denied*, 47 So. 3d 1288 (Fla. 2010), the court concluded that damage occurred when city refused to produce canvassing board minutes until approved by city commission, serious harm was inflicted on the Plaintiffs.
172. The harm identified by *Grapski* is continuing almost precisely in this case.
173. Under Fla. Stat 119.11(1), this court is required to set this matter for an immediate hearing, giving priority over other pending cases.

174. The refusal of the Supervisor and Canvassing Board to timely provide Plaintiffs access to these records is in violation of law and will severely prejudice Plaintiffs.
175. Plaintiffs have no adequate remedy at law to remedy Defendants violation of their respective statutory and constitutional rights, and will suffer irreparable harm unless this Court issues a mandatory injunction. Plaintiffs' legal rights to have their votes lawfully counted are clearly enshrined in Florida's constitution, and the public interest as a whole will be served by this Court ordering Defendants' to properly tabulate the votes.

Prayer for Relief

Wherefore, Plaintiffs pray for the following relief:

1. Issue immediately a preliminary mandatory 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-counting all votes cast in the election for the 18th Congressional District during the early voting period, such order to take effect if the Defendant Canvassing Board does not voluntarily take such action at its 4 pm meeting on November 16, 2012 and;
2. Issue immediately a preliminary mandatory 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-counting all votes cast in the election for the 18th Congressional District by absentee ballot, and;
3. Ordering Defendants to refrain from certifying results of the election for the 18th 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
4. Ordering Defendants to immediately perform its ministerial act of producing all public records sought by Plaintiff, Representative Allen West, in accordance with Florida Statutes section 119 *et seq*; by 9am on November 17, 2012 and
5. For such other relief as this Court deems just and proper

Respectfully submitted,



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* Pro Hac Vice Pending

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT IN AND FOR
ST. LUCIE COUNTY, FLORIDA

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

Plaintiffs,

Case No.: 56 2012 CA 004319XXXHC

v.

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

Defendants.

2012 NOV 16 AM 11:17
ST. LUCIE COUNTY
CLERK OF CIRCUIT COURT

NOTICE OF FILING

COMES NOW, the Plaintiffs, Allen West, Lynn 'Sam' Sammuli, Caroline Knudsen,
Sandra Krischke, Phyllis Genovese, Mark Gotz, Megan Elam, Robert Keener, and Catherine
Griffin, and file two documents as described below:

1. 11/6/12-11/7/12 Copy of Transcript of the St. Lucie Canvassing Board on the evening of the election.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

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

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on November 15, 2012.



Mark Miller

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PUBLIC INSPECTION AND CANVASS OF
ABSENTEE BALLOTS FOR THE GENERAL ELECTION OF
NOVEMBER 6, 2012

Date and Time: November 6 & 7, 2012
1:00 p.m -- 2:00 a.m

St. Lucie County Supervisor of Elections Office
4132 Okeechobee Road
Fort Pierce, Florida 34947

1 (Whereupon, the following is a transcript of the
2 proceedings held on November 6 & 7, 2012:)

3 MS. CLARK: Good morning, everyone.

4 JUDGE WALSH: Good morning, Annie.

5 MS. CLARK: I'd like to call the Board to order at
6 this time for the general election November 6th, 2012.
7 This is our sixth opening of our absentee ballots. We
8 have volunteers here from the League of Women Voters,
9 as well as members from the community to work as staff
10 for the Supervisor of Elections office. Thank you all
11 for your support and your help.

12 I'd like to introduce the Board at this time.
13 The Honorable Judge Thomas Walsh, the Honorable
14 Commissioner Tod Mowery. We have County Attorney
15 Heather Young, Linda Baggett, our court recorder,
16 Debra Hall, our absentee coordinator. I'm Annie
17 Clark, administrative assistant for Supervisor of
18 Elections. Tiffany will be opening our ballots and
19 Tywann Clemons is going to read our ballots through
20 the absentee reader. At this time I would like to
21 read an oath. If everyone can affirm to this oath,
22 then we can move forward. If you cannot, then I will
23 have to ask you to leave.

24 "Any person who is an active participant in a
25 campaign or candidacy of any candidate, who has

1 opposition in the election being canvassed, shall not
2 serve as a member or an employee of the Canvassing
3 Board." Florida Statute 102.141.

4 "Any supervisor of elections, deputy supervisor
5 of elections, canvassing board member, election board
6 member, or election employee who releases the results
7 of a canvassing or processing of absentee ballots
8 prior to the closing of the polls in that county on
9 election day commits a felony of the third degree,
10 punishable as provided in Section 775.082, Section
11 775.83 or Section 775.84."

12 Do you affirm to this oath?

13 THE STAFF: Yes.

14 MS. CLARK: Thank you.

15 A WOMAN: If I don't vote, I can't be here?

16 MS. CLARK: No. This just means you can't be
17 working in a campaign or supporting any candidate for
18 the election.

19 A WOMAN: Oh.

20 MS. CLARK: And you can't release any results you
21 might see opening the ballots.

22 Okay. And the final Statute I'd like to read is
23 "Changing elections ballots" -- which I'm sure I
24 won't have that problem, no one has a pen.

25 104.21, "Changing elections' ballots: Whoever

1 fraudulently changes or attempts to change the vote
2 or ballot of any elector, by which actions such
3 elector is prevented from voting such ballot or from
4 voting such ballot as the elector intended, is guilty
5 of a felony of the third degree, punishable as
6 provided in Statute 775.84."

7 So now do I have confirmation on the oath from
8 everyone? Hearing none, we will move forward with
9 our opening.

10 And we have today to open 2,690.

11 (Whereupon, a recess was taken for record purposes
12 and the proceedings continued as follows:)

13 JUDGE WALSH: We four questioned ballots that have
14 been picked out by employees from the elections office
15 reflecting that their alleged signatures on the
16 submitted envelopes do not match their previous
17 signature when it was submitted for the application for
18 a change of address. In each of the incidents both
19 Commissioner Mowery and Judge Walsh agree the
20 signatures do not match and will not be counted, nor
21 will they be opened. They will be available for review
22 in the future.

23 Okay. We can go open now.

24

25

1 (Whereupon, Mr. Penner arrived, a recess was taken
2 for record purposes and the proceedings continued as
3 follows:)

4 MS. CLARK: We've completed the opening of the
5 absentee ballots. I have asked a few people to stay
6 for when we will be receiving our ballots in the mail
7 in just a little bit. For those of you who I haven't
8 asked to stay, unless you really want to stay, we're
9 done for the day with you. I appreciate your help. We
10 got these ballots fed quite fast today. Thank you.

11 JUDGE WALSH: Thank you.

12 MS. CLARK: What we're going to do is set up some
13 absentee ballot machines and try to get our ballots
14 finished a little bit quicker.

15 JUDGE WALSH: Are both of them working today?

16 MS. CLARK: We only have one person working for
17 each one. The other one's out in the field, so it's
18 going to the Accu-Vote.

19 (Whereupon, a recess was taken for record purposes
20 and the proceedings continued as follows:)

21 JUDGE WALSH: Can we finish this real quick?

22 MS. CLARK: We had a memory card to fail at early
23 voting over in the main -- main office location for
24 early voting, and we're going to have to re-feed the
25 ballots that went into that machine.