

Form 1.997
Civil Cover Sheet

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of the Court for the purpose of reporting judicial workload data pursuant to Florida Statute 25.075 (See Instructions on the reverse side of form.)

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR OSCEOLA COUNTY, FLORIDA**

ARMANDO RAMIREZ,

Plaintiff,

VS

CASE NO: _____

JUDGE: _____

**THE OSCEOLA COUNTY CANVASSING
BOARD, OSCEOLA COUNTY JUDGE
HAL C. EPPERSON, JR., OSCEOLA
COUNTY COMMISSIONER
FRED HAWKINS, JR., and MARY JANE
ARRINGTON, OSCEOLA COUNTY
SUPERVISOR OF ELECTIONS, as members
of and as THE OSCEOLA COUNTY
CANVASSING BOARD, and MARY JANE
ARRINGTON, as Supervisor of Elections,
and JOHN QUINONES, Nominee of
the Republican Party of Osceola County,
Florida, for Osceola County Commission
District Two,**

Defendant.

II. TYPE OF CASE (Place an x in one box only. If the case fits more than one type of case, select the most definitive.)

Domestic Relations	Torts	Other Civil
<input type="checkbox"/> Simplified dissolution <input type="checkbox"/> Dissolution <input type="checkbox"/> Support - IV-D <input type="checkbox"/> Support - Non IV-D <input type="checkbox"/> URESA - IV-D <input type="checkbox"/> URESA - Non IV-D <input type="checkbox"/> Domestic Violence <input type="checkbox"/> Other domestic relations	<input type="checkbox"/> Professional Malpractice <input type="checkbox"/> Products liability <input type="checkbox"/> Auto negligence <input type="checkbox"/> Other negligence	<input type="checkbox"/> Contracts <input type="checkbox"/> Condominium <input type="checkbox"/> Real Property / Mortgage foreclosure <input type="checkbox"/> Eminent domain <input checked="" type="checkbox"/> Other

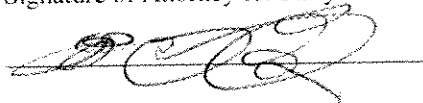
III. Is Jury Trial Demanded In Complaint?

☒ Yes

☐ No

Date:

Signature of Attorney for Party

A handwritten signature in black ink, appearing to be "J. L. Smith", written over a horizontal line.

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR OSCEOLA COUNTY, FLORIDA
CIVIL DIVISION**

ARMANDO RAMIREZ,

Plaintiff,

vs.

THE OSCEOLA COUNTY CANVASSING
BOARD, OSCEOLA COUNTY JUDGE
HAL C. EPPERSON, JR., OSCEOLA
COUNTY COMMISSIONER
FRED HAWKINS, JR., and MARY JANE
ARRINGTON, OSCEOLA COUNTY
SUPERVISOR OF ELECTIONS, as members
of and as THE OSCEOLA COUNTY
CANVASSING BOARD, and MARY JANE
ARRINGTON, as Supervisor of Elections,
and JOHN QUINONES, Nominee of
the Republican Party of Osceola County,
Florida, for Osceola County Commission
District Two,

Defendants.

VERIFIED COMPLAINT TO CONTEST ELECTION

The Plaintiff, ARMANDO RAMIREZ (hereinafter, "RAMIREZ" or "Plaintiff"), by and through the undersigned attorney, contests the election results from November 2, 2010, by the bringing of suit against the above-named Defendants, respectfully requesting both declaratory relief and the entry of a writ of mandamus, and as grounds would further allege as follows:

1. The following is an action to contest the Osceola Canvassing Board's November 12, 2010, certification that Defendant John Quinones received 50 more votes than his challenger, RAMIREZ, in the election for Osceola County Commission for the Second District (hereinafter, "District 2 Commission"). The vote totals in the certification are wrong because they:

- a. Did not include hundreds of legal votes that were cast in Osceola County but not counted due to the pervasive malfunctioning of electronic voting machines, manufacturing by Premier Elections Solutions, Inc., specifically, the Premier Release 1.20.2, Version 1 GEMS 1.20.2 Accuvote OS TSX Accuvote OSX optical scan voting devices (hereinafter, "Accuvote Op-Scans"). The number of uncounted undervotes in the County, totaling 304 cast ballots, is more than sufficient to call into doubt, indeed to change, the result of the election.
- b. Involved the pervasive and systemic malfunctioning of the Accuvote Op-Scans, and the underlying and real potential for individuals to corrupt the devices and thus alter votes, and to permit for the corrupting of the democratic process.
- c. Did not include the votes of citizens disenfranchised due to the practices of the Supervisor of Elections and her employees to (1) improperly issue provisional ballots to voters qualified for issuance of regular ballots; and (2) apply dissimilar and illegal instructions on these provisional ballot voters so as to later disqualify their otherwise valid votes.
- d. Included the counting of absentee ballots by voters *who never cast any votes* during General Election 2010, and the miscounting of ballots cast for RAMIREZ. In other words, there is a good-faith basis to assert that the election was the subject of fraudulent practices – while under the supervisory authority of both the Supervisor of Elections and the Osceola County Canvassing Board.
- e. Included a suspect swing in the vote totals *after* RAMIREZ was unofficially certified the winner of the race by an almost four (4) percentage point margin. Absentee ballots counted following RAMIREZ's victory – in precincts registering Democratic absentee ballot requests exceeding those of Republican requests – then allegedly swung the result of the race in favor of Defendant Quinones. The totals on these primarily Democratic ballots in precincts with strong Democratic voting histories (including on November 2, 2010), showed Quinones winning the absentee ballot count by almost twenty-five (25) percentage points – an unprecedented and suspect margin. Based upon the non-absentee results, wherein RAMIREZ was shown to have won both the Early Voting and Election Day counts,

there is no way that Defendant Quinones could have logically achieved such numbers on the absentee count. Statistical analysis will confirm that common-sense conclusion.

- f. Failed to include a counting of any military ballots being counted in the District 2 race, despite information and belief that such ballots were cast, were never counted, by the Supervisor of Elections' office.
- g. Involved the improper maintenance by the Supervisor of Elections of the voting lists and information including, but not limited to, the inaccurate accounting for votes cast, as well as security necessary to ensure the proper counting of ballots, the identities of absentee voters and conformity to state statute regarding the submission of absentee ballots.

2. Accordingly, RAMIREZ is entitled to appropriate relief pursuant to Fla. Stat. § 102.168. It is critically important that this Court provide such relief promptly – in the form of a new election – to ensure that the will of the people of Osceola County's Second District is respected, and to restore the confidence of the electorate, which continues to be impacted by yet another electoral debacle – following an established history of voting rights violation.

3. The eyewitness accounts of those witnessing the counting of ballots at the Supervisor of Elections Office on November 2, as well as the representations of District 2 voters, and the contemporaneous records of the Osceola County Supervisor of Elections demonstrate that there is significant evidence that the voting process was unreliable and corrupted as pertains to the District 2 Commission race.

4. The actions by the Defendants disenfranchised, at a minimum, hundreds of voters and – when considering the total number of ballots cast, thousands of voters. These actions violate constitutional and statutory rights of the highest order. Because the right to vote in elections is preservative of other basic civil and political rights, it is one of the most fundamental rights in our democracy. *Reynolds v. Sims*, 377 U.S. 533 (1964).

5. Pursuant to Fla. Stat. § 101.031(2) (2010), every polling place in Florida displays a “Voters Bill of Rights” stating that “[e]ach registered voter in this state has the right to: Vote on a voting system that is in working condition and that will allow votes to be accurately cast.”

6. In the election challenged herein, Osceola County election officials failed to deliver on that promise. Indeed, the failure to count the legal votes of hundreds of Osceola County voters who went to the polls and cast votes in the District 2 Commission race is a miscarriage of the electoral process that can -- *and must* -- be remedied in this contest action. These voters should not forfeit their constitutional right to vote because the County’s machines malfunctioned, that such machines were corrupted, or because of additional fraud stemming from the non-counting of ballots, and the counting of ballots never submitted by an actual voter.

7. Yet, disenfranchisement and the corruption of the democratic electoral process is exactly what will occur unless the Osceola County Canvassing Board’s certification is declared void. If the uncounted legal votes and the counted illegal votes in Osceola County had been properly accounted, reviewed, recorded and counted, RAMIREZ would be entitled to prevail in this race or, at a minimum, be entitled to the benefit of a recount pursuant to Fla. Stat. § 102.141.

8. The voting percentages in District 2 ran significantly in RAMIREZ’s favor. The votes he lost due to the issues described above would thus be more than enough to reverse the razor-thin margin Defendant Quinones holds in the certified result. Thus, the current election result cannot stand. The voters of the Osceola County, District – all of the voters, including those disenfranchised by machine failure – should decide the outcome, and the proper remedy is therefore to hold a new election in the district as promptly as possible.

9. The right to vote is perhaps the most fundamental liberty enjoyed by citizens in a democratic society. The right to vote includes the fundamental right to have one's votes counted. Unfortunately, hundreds of Osceola County voters lost this most fundamental right in the 2010 general election for District 2 Commission.

JURISDICTION & VENUE

10. All conditions precedent have been met. This matter is being filed pursuant to the ten (10) day period provided for under Fla. Stat. § 102.168 (2010), following the certification of the election results by the Osceola Canvassing Board.

11. This is an action to contest an election under Fla. Stat. § 102.168 (2010), which provides that the outcome of an election “may be contested in the circuit court by any unsuccessful candidate for such office” based on the “rejection of a number of legal votes sufficient to change or place in doubt the result of the election.”

12. Florida Statutes § 102.1685, provides in relevant part that “[t]he venue for contesting a nomination or election or the results of a referendum shall be in the county in which the contestant qualified” Accordingly, Osceola County is the proper venue for this action.

13. The Second District of Osceola County of Florida comprises a section of Osceola County which, as of the 2010 General Election, included twelve (12) designated precinct locations.

PARTIES

14. Plaintiff ARMANDO RAMIREZ is the Democratic candidate for Osceola County Commission in District 2. He is also an eligible voter residing within Osceola County, District 2.

15. Defendant Osceola County Canvassing Board is constituted in accordance with Fla. Stat. 102.141, and is comprised of Defendants Mary Jane Arrington, Supervisor of

Elections; Hal C. Epperson, Jr., County Court Judge, who presides as Chair; and Fred Hawkins, Jr., Osceola County Commissioner in District 5. The Osceola County Canvassing Board is charged with canvassing and certifying Osceola County's elections to the Department of State.

16. Mary Jane Arrington (hereinafter, "Arrington") is the Supervisor of Elections of Osceola County. Arrington is a member of the Osceola County Canvassing Board. In her capacity as Supervisor of Elections, Arrington is charged with overseeing all federal, state, and county elections in Osceola County.

17. John Quinones is the Republican candidate for the Osceola County Commission in District 2. Fla. Stat. § 102.168(4), provides that the apparently successful candidate is an indispensable party to any action brought to contest the election of a candidate.

COMMON ALLEGATIONS

18. Pursuant to Fla. Stat. § 120.168(3) (2010), an election may be set aside for "misconduct, fraud, or corruption on the part of any election official or any member of the canvassing board ... sufficient to change or place in doubt the result of the election" or "[r]eceipt of a number of illegal votes or rejection of a number of legal votes sufficient to change or place in doubt the result of the election."

19. In *Beckstrom v. Volusia County Canvassing Board*, 707 So.2d 720 (Fla. 1998), the Florida Supreme Court affirmed that "if a court finds substantial noncompliance with statutory election procedures and also makes a factual determination that reasonable doubt exists as to whether a certified election expressed the will of the voters, then the court in an election contest brought pursuant to section 102.168, Florida Statutes (1997), is to void the contested election even in the absence of fraud or intentional wrongdoing."

20. Pursuant to the authority cited in ¶¶ 18 and 19, above, the facts in the instant election challenge demonstrate misconduct “sufficient to ... place in doubt the result of the election” or “receipt of a number of illegal votes or rejection of a number of legal votes sufficient to change or place in doubt the result of the election,” or “substantial noncompliance with statutory election procedures . . . ” such that “a reasonable doubt exists as to whether a certified election expressed the will of the voters”

Election Day 2010

21. On November 12, 2010, in a race where partisan affiliations were clearly identified on the ballots, the Osceola County Canvassing Board certified 4,223 votes for RAMIREZ and 4,273 votes for Defendant Quinones – a percentage difference of .58%. The Supervisor of Elections also reported that there were 304 undervoted ballots as reflected by Accuvote Op-Scans tabulation devices – the equivalent of approximately 3.6% of the votes certified by the Canvassing Board. By treating these ballots as “undervotes” in the Osceola Commission District 2 race, the Osceola County Canvassing Board rejected hundreds of legal votes sufficient to place in doubt the result of the election.

22. Previously, on November 2, 2010 (hereinafter, “Election Day”), Osceola County conducted an election for numerous federal, state and local offices, including the County Commissioner for the Second District. Early voting and voting by absentee ballot were permitted for this election (as for all state elections).

23. For both early voting and voting on Election Day, Osceola County made use of electronic voting machines, the abovementioned Accuvote Op-Scans. Additionally, absentee ballots were tabulated through these same devices, purportedly located at the Supervisor of Elections’ office.

24. The first unofficial results reported during the late evening of November 2, 2010, for the Osceola District 2 Commission race showed – with 100% of all precincts reporting – that there were 3,727 votes cast for RAMIREZ, and 3,452 votes cast for Defendant Quinones – a 3.84% point margin of victory for RAMIREZ. Thereafter, the local press declared RAMIREZ the winner of the race. Subsequently, RAMIREZ also received a congratulatory letter from Florida Senate President Mike Haridopoulos.

25. Based upon knowledge and information, the reporting of 100% of all precincts is an indicator used by Supervisors of Elections throughout the State to show the inclusion of all ballots being counted, including absentee ballots.

26. Notwithstanding, approximately one (1) hour from this count, the Supervisor of Elections commenced tabulating of 1,304 previously unannounced absentee ballots. Following this tabulation, completely askew of the overall results, the results from Early Voting and the results of Election Day, Defendant Quinones carried the absentee ballot count by a margin of 817-487. In other words, despite clear evidence of an advantage in absentee ballots requested and submitted by voters registered with the Democratic Party, and despite the advantage held by RAMIREZ both in Early Voting and on Election Day, Quinones defied all statistical norms and outdistanced RAMIREZ by an astounding margin of 62.65% to 37.35% -- a margin exceeding twenty-five (25) percentage points. This included, for example, Quinones mystically capturing all seven (7) absentee votes cast by six Democratic voters and one independent voter in Precinct 28.

27. Consequently, following a count of provisionals (the validity of which also remains in question) Quinones was declared the new winner of the Commission District 2 race -- by a margin of fifty (50) votes. Based upon this count, and without any scrutiny over the validity

of 304 undervotes – RAMIREZ was approximately 6-7 votes short of the number necessary to trigger statutory recount provisions.

28. On November 9, 2010, as reported by the *Orlando Sentinel*, Arrington unilaterally declared that there would be no recount of the District 2 Commission race. Contemporaneous efforts by Plaintiff's counsel to discuss with legal counsel for the Supervisor of Elections the necessity – pursuant to Fla. Stat. § 102.141 – of initiating an automatic recount fell on deaf ears.

29. Prior to the certification of the District 2 Commission race, Arrington announced that there were 304 undervotes, as established by the machine count, and two (2) overvotes, as reviewed by the Osceola Canvassing Board.

30. The term “undervote” describes a situation in which a voter cast ballots for other candidates or ballot measures but did not register a vote for the particular office. *See* Fla. Stat. § 97.021(37) (2010). In the instant challenge, these undervotes were never – unlike the overvotes – subject to hand examination to determine the intent of the voter. Based upon knowledge and information, the reviewing of undervotes can and does result in many being counted toward voting tallies, and can impact the entire course of an election. *See, e.g.,* Recount of Orange County Judicial Race Between Maureen Bell and James Sears (November 2006) (wherein Bell was down to her opponent by approximately 60 votes, but – following scrutiny of undervotes – won the election by approximately 15-20 votes).

31. The failure to review and include all valid undervotes, i.e., where the intent of the voter is discernable, resulted in extreme prejudice to RAMIREZ, as well as to the voters of District 2. Indeed, these 304 uncounted votes could have and, it is reasonably believed, would have changed the results of the District 2 election or, at a minimum, triggered an automatic recount pursuant to Fla. Stat. § 102.141.

32. The AccuVote Op-Scans' GEMS tabulator has a manual-entry override that appears to be a likely explanation for the legitimate votes for RAMIREZ that were counted instead for Quinones. This manual override is a feature of GEMS that allows anyone with access to the central GEMS Server to highlight candidates' results in any race, delete those results, and manually enter new results. Whether this manual override feature was used in the Commission District 2 race can be determined by various items asked for in Plaintiff's request for Expedited Discovery.

**Historical and Established Problems with the Accuvote Op-Scans and
Within Osceola County**

33. As powerful as this statistical evidence is, it is far from the only indication that hundreds of legal votes in Osceola County simply were left out of the certified election results or entirely miscounted for the District 2 race because of the failure of electronic voting machines. A variety of contemporaneous sources document widespread problems with the AccuVote Op-Scans. These sources identify a consistent pattern of voter difficulty in having their votes recorded in the Commission District 2 race.

34. The claim by the Supervisor of Elections that the ballots were counted accurately raises numerous other concerns regarding the legitimacy of the Accuvote Op-Scans and its software package. Indeed, the lack of security of the vote, including reports on Election Day that Supervisor of Elections employees were instructed to "shake" up and down tabulation devices, alongside historical reports of inaccuracies in the Accuvote Op-Scans raise serious questions regarding the legitimacy of the tabulation process. These problems have been encountered across multiple versions and after multiple certification procedures.

35. For example, Accuvote Op-Scans from Volusia County during the 2000 Elections showed – three (3) years later following the leaking of internal Diebold, a/k/a Premier Elections,

show that the company officials knew about the 16,022 votes inaccurately subtracted for Al Gore, and they still did not have an explanation for why those votes were lost. Per those memos, Diebold officials held out the potential of tampering as the cause. One Diebold tech official wrote that problem precinct had two (2) memory cards uploaded, and that there was always the possibility that the second memory card came from an unauthorized source.

36. Likewise, in 2006, in Barry County, Michigan, the Accuvote Op-Scans “scrambled” the election results. Upon discovery, officials recognized their responsibility, and initiated a hand count of all ballots. Officials were uncertain as to whether the problem arose from the actual ballot printing or with the memory card programming.

37. Analogous, perhaps, to the instant challenge, is another Accuvote Op-Scan situation – this time arising in King County, Washington, in 2004. There, the functional tests didn’t catch a major software design error that caused the machines to reject valid ballots. Similarly, in 2004, in Putnam County, Georgia, the Accuvote Op-Scans failed to read valid votes.

38. Scholarly, investigative studies have also revealed fundamental defects in the Accuvote Op-Scans, problems which appear to transcend computer generations. For instance, in July 2005, a computer expert was able to pre-load the AccuVote-OS electronic ballot box with negative and positive votes such that the zero tape printed at the beginning of the day showed all zeros but really contained some votes. In October 2006, a group of computer scientists from the University of Connecticut reported a number of vulnerabilities with the AccuVote-OS that didn’t involve removing the memory card from the optical scan device including: allowing no votes to be cast for a particular candidate, swapping votes for two candidates, and another set of reporting problems where the data is right but what is reported is incorrect.

39. Problems also arose in Osceola County’s 2010 General Election. Atop the shaking of voting tabulators on November 2, election observers noted a Supervisor of Elections

employee exclaim – on November 5, during Canvassing Board examinations – that “the memory card is gone; we will update it with the provisional memory card.”

40. Significantly, the records of the Osceola County Supervisor of Elections will document that election officials were on both actual and constructive notice of continued issues with the AccuVote Op-Scans, as a result of the past difficulties including, but not limited to, malfunctions and issues involving security of the devices, both in Osceola County and throughout the State of Florida. Nevertheless, the County election officials do not appear to have taken *any* steps to correct or even acknowledge these serious machine problems in advance of Election Day.

41. This machine-induced failure had significant, indeed, determinative, effects on the outcome of the election for the Commission District 2 race. Preliminary statistical analysis (based on the undervote rates for the election and the number of absentee ballot vote counts) indicate that at least 304 voters cast ballots but failed to have them properly recorded. As has been discussed and will be the subject of further explanation, *infra*; there are serious concerns that additional votes were not counted; that the machine’s counting of absentee ballots improperly skewed the race disproportionately against RAMIREZ; and, in some cases, that absentee ballots were counted despite the voter never actually having submitted any ballot. Given that the certified election results give Defendant Quinones a lead of only 50 votes, and given that RAMIREZ carried District 2 in both Early Voting and on Election Day, the failure to include, at a minimum, 304 more votes in the final tally places the outcome of the election into grave doubt. Indeed, preliminary statistical analysis indicates that inclusion of these 304 or more District 2 votes would change the outcome of the election, because the District 2 voters whose votes were recorded in the election favored RAMIREZ by a clear margin.

42. It is impossible to determine the exact number of overvotes and undervotes in the District 2 race as the Supervisor of Elections failed to post the "Cards Cast" report for the 2010 election, even though this report was posted in previous elections. Likewise, it is impossible to determine voter turnout compared to the number of votes cast in any race, including District 2. The Supervisor of Elections had the "Cards Cast" report posted for all other elections and it is this report that shows total voter turnout by precinct.

43. Through information and belief, the AccuVote optical scanners fail to read a variety of ink colors and types, fail to read faint marks, and fail to read marks that are too small and do not fill the complete oval on a ballot, as evidenced in part by tests conducted by the Florida Division of Elections and published by the Division in a November 2009, report. The scanners' failure to read blue ink was further evidenced in Sarasota County, Florida, where elections personnel had to darken the ovals on ballots marked in blue ink in order for the machines to read blue-ink votes. The failure of the machines to read a variety of ink and pencil types results in legitimate votes being read as undervotes (blank votes). Absentee ballots are particularly vulnerable to inaccurate undervotes (blank votes) because voters who vote at home sometimes use types of pens or pencils that cannot be read by the AccuVote-OS scanners and are inaccurately interpreted as undervotes. Absentee voters sometimes spill coffee or make stray marks on their ballots that make their ballots unreadable by the AccuVote scanners or which the scanners interpret as overvotes.

44. Even though the Supervisor of Elections failed to post the "Cards Cast" report for the 2010 election, it is possible to calculate that there were eighty-three (83) overvotes and/or undervotes ("residual votes") in the absentee ballots for the Commission District 2 race by looking at the official records submitted to the Division of Elections by Osceola County and by

subtracting the number of absentee voters whose votes were counted from the total number of absentee voters listed. The undervotes (blank votes) in the Commission District 2 race have not been looked at for voter intent and are, by themselves, potentially enough to change the outcome of the Commission District 2 election.

45. Exacerbating these issues is the questionable history of Osceola County in violation of voting rights, including a well-publicized federal action in which the County vigorously, albeit unsuccessfully, litigated to prevent the formation of single-member County Commission districts. Under the old scheme, the prominent Latino population had been denied any representation on the County Commission. Indeed, the outcome of that litigation resulted in the formation of a Latino, predominantly Democratic District 2.

Additional Improprieties Arising During General Election 2010

46. The vote totals are suspect for the Commission District 2 race in numerous other respects including, but not limited to, the following situations described in ¶¶ 47-54, *infra*.

47. Democratic electors in District 2, Aurea Lee and Stephen Lee, husband and wife, residing at 196 Larkspur Court, Kissimmee, were disenfranchised due, in part, to a disparity in their home address. The Supervisor of Elections failed to apprise itself that Osceola County had, approximately one (1) year ago, modified the Lees address from 100 to 196 Larkspur Court (both addresses are located in Precinct No. 63). Accordingly, the Lees were appeared at the polls on November 2, and – despite being prepared to affirm the legitimacy of their address for purposes of issuance of a regular ballot – were both required to complete provisional ballots, contrary to Fla. Stat. § 101.045. This unlawful conduct by the Supervisor's Office also forced the Lees to visit the Supervisor of Elections office to prove the legitimacy of their address.

48. The Lees' story does not end. Late in the evening on November 3, the Lees received a knock on their front door. A person identified as Defendant Quinones requested entrance; the Lees refused, but permitted Quinones to speak to them through the door. Quinones advised the Lees that he was aware of their difficulties at the polls, but that there was no need to visit the Supervisor of Elections office since the problem had been resolved and their votes were being counted.

49. Notwithstanding these assurances from Defendant Quinones, the Lees visited the Supervisor of Elections Office on November 4, 2010. There, they were immediately addressed by a clerk who stated to them "I know about you! You have been counted, don't worry about it." Arrington's employee never requested documentation from the Lees, and did not otherwise know the Lees from previous contacts. However, the Lees believed they had been sufficiently reassured, and departed the Office.

50. Subsequently, on November 5, the Lees discovered that their provisional ballots were not counted, despite their eligibility to cast ballots at the subject precinct. Needless to say, the Lees' circumstances constitute *prima facie* evidence of fraud and voter disenfranchisement.

51. Another District 2 voter, Wilma Sexton of 2736 Orchid Lane, Kissimmee (Precinct No. 28), was registered by the Supervisor of Elections (and as certified by the Canvassing Board) as having cast an absentee ballot. However, Sexton never voted in this Election. Her husband, John was also certified as having cast an absentee ballot. However, Ms. Sexton confirmed that her spouse never ordered an absentee ballot, and has been in the Phillipines for the past three (3) months. Ms. Sexton stated that an unrequested absentee ballot was sent to her in the mail, but that she immediately discarded it and did not vote in the

November 2010 general election. Needless to say, the Sextons' circumstances constitute *prima facie* evidence of vote fraud.

52. Yet another District 2 voter, Nancy Rivera of 3050 Camino Real Drive, Kissimmee (Precinct No. 134) – voting a straight Democratic ticket, except in the U.S. Senate race. Ms. Rivera confirmed that she had voted via absentee ballot. However, she also told about her mother, Juanita Garcia, with whom she resides. Ms. Garcia, who also resides at 3050 Camino Drive (Precinct No. 134) had an absentee ballot certified as having been cast during the General Election. However, Ms. Garcia has been in Puerto Rico for the past six (6) months, and did not cast any absentee ballot.

53. Rather, contrary to the records of the Supervisor of Elections, and contrary to the certified results of the Osceola County Canvassing Board, Ms. Rivera located her mother's sealed absentee ballot. A copy of this sealed, uncast absentee ballot is attached hereto as Plaintiff's Exhibit A. Needless to say, Ms. Garcia's unopened, uncast absentee ballot constitutes further *prima facie* evidence of voter fraud.

54. Moreover, additional evidence is presently being ascertained to demonstrate that three (3) additional absentee voters from Precinct 134 cast ballots for RAMIREZ: Lisa L. Caswell, Melanie K. Johnson, and Travis D. Johnson, all of 3109 Riachuelo Lane, Kissimmee. This is extraordinarily significant as the Supervisor of Elections had tallied only *two (2)* absentee votes for RAMIREZ in Precinct 134. However, we now know that this is an impossibility, and that number tallied by the Supervisor of Elections must be fallacious and fraudulent.

55. The fact that individuals are shown as having voted on the Division of Elections official records submitted by the Osceola Supervisor of Elections when those individuals did not vote constitutes, per Florida law, "receipt of a number of illegal votes ... sufficient to change or

place in doubt the result of the election,” such that “a reasonable doubt exists as to whether a certified election expressed the will of the voters” This is further supported by the fact that Democratic voters were shown as having voted for Quinones when, by their own statements, they voted for RAMIREZ.

56. Through information and belief, there were no overseas military ballots tabulated in the District 2 race. However, there is reason to also believe that such military ballots were submitted, but never tabulated. It is reasonable to infer that these ballots would have delivered additional votes in the District 2 race, and assisted in changing the outcome of that race.

57. The Division of Elections official records submitted by Osceola County show eighty-six (86) absentee voters successfully voted in the November 2010, General Election who had no assigned precinct numbers and no physical address or mailing address, raising questions as to the legitimacy of votes cast by voters who received absentee ballots without a mailing address and further questions as to which County Commission District their votes were attributed without any precinct numbers.

58. The Division of Elections official records submitted by Osceola County show that forty-three (43) absentee votes were rejected in the Commission District 2 race due to undefined “voter error.”

59. There was ample motive and opportunity to tamper with paper ballots, and the inadequate security and storage of all ballots that permitted twenty-four (24) hour access to those ballots by said personnel. For example, attached as Plaintiff’s Exhibit No. 2, is a photograph of the Attorney for the Supervisor of Elections personally handling ballots. This proved to be a common occurrence of both the County Attorney and the Attorney for the Supervisor of

Elections. It also happens to be in violation of Florida election law and throws into disarray the proper chain of custody to be maintained over the ballots.

60. Plaintiff is reasonably concerned because access to the memory cards, election computers and servers, voting machine result tapes and paper ballots is not presently restricted, creating ample opportunity for tampering with that critical evidence.

COUNT I: VIOLATION OF FLA. STAT. § 102.168(3)(A)
(Osceola County Supervisor of Elections Mary Jane Arrington)

61. Plaintiff realleges and reaffirms ¶¶ 1 through 60, herein.

62. Supervisor of Elections Mary Jane Arrington has a duty under Section 102.141(8)(a)(1) to identify and report all voting system equipment or software malfunctions at the precinct level, and the steps taken to address the malfunctions.

63. Supervisor of Elections Arrington has a duty under Section 102.141(8)(a)(2) to identify and report all election definition errors that were discovered after the logic and accuracy test, and the steps taken to address the errors.

64. On information and belief, Defendant Arrington took no or insufficient steps to investigate or to identify and report equipment malfunctions, software malfunctions or election definition errors in the AccuVote Op Scans that have led to complaints of election improprieties. Instead, Defendant Arrington and many of her employees have proven dismissive and condescending toward voters and poll watchers who lodged the complaints.

65. Defendant Arrington, notwithstanding her duties under Sections 102.141(8)(a)(1) and 102.141(8)(a)(2), refused to post the Cards Cast results, as described above in ¶ 41, *supra*, and in her failure to safeguard the integrity of the electoral process in allowing unauthorized access to the ballots and voting equipment under her custody and care.

66. Through misconduct, incompetence, gross negligence, lack of care or an erroneous understanding of the statutory requirements, Defendant Arrington failed to investigate and to identify and correct the equipment malfunctions, software malfunctions or ballot layout errors responsible for the faulty operation of the AccuVote Op-Scan devices.

67. Consequently, Arrington failed to substantially comply with her statutory duty under Section 102.141(8)(a)(1) & (2). On information and belief, as described herein and including, but not limited to, equipment malfunctions, software malfunctions or ballot layout errors or a combination thereof in the AccuVote Op-Scan devices caused the results in the County Commission District 2 election certified by Defendant Osceola County Canvassing Board to include false voting figures, excessive undervote figures and the rejection of hundreds of legal votes. At a minimum, hundreds of voters were disenfranchised in this County Commission election. A reasonable doubt exists as to whether the certified election result expresses the will of the voters, and the Court must void the election.

68. Therefore, pursuant to Fla. Stat. § 102.168, RAMIREZ is entitled to prevail in this contest action, and should be awarded all appropriate relief.

COUNT II: VIOLATION OF FLA. STAT. § 102.168(3)(c)
(Osceola County Canvassing Board)

69. Plaintiff realleges and reaffirms ¶¶ 1-68, herein.

70. Defendants Judge Hal C. Epperson, Jr., Fred Hawkins, Jr., and Mary Jane Arrington are and were at all relevant times members of the Osceola County Canvassing Board.

71. On information and belief, equipment malfunctions, software malfunctions, ballot layout errors or a combination thereof in the AccuVote Op-Scans, as well as other factors described herein including, but not limited to, the falsification of ballots and legitimate votes for RAMIREZ being counted instead for Defendant Quinones, caused the result for the County

Commission District 2 election certified by Defendant Osceola County Canvassing Board on November 12, 2010, to include false results, excessive undervote figures and the rejection of, at a minimum, hundreds of legal votes. Accordingly, at a minimum, hundreds of voters were disenfranchised in the Commission District 2 race. A reasonable doubt exists as to whether the certified election result expresses the will of the voters, and the Court must void the election.

72. Therefore, pursuant to Fla. Stat. § 102.168, RAMIREZ is entitled to prevail in this contest action, and should be awarded all appropriate relief.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, ARMANDO RAMIREZ, respectfully requests that the Court grant the following relief:

- a. Advance this matter on the Court's docket.
- b. Immediately take custody of and safeguard all voting machine memory cards, voting machine results tapes, all paper ballots, and all computers and servers pertaining to or used for vote tabulation on November 2, except that supervised access be granted to Plaintiff as required to produce evidence pertaining to the 2010 General Elections in Osceola County.
- c. Order immediate discovery, including discovery of the source code to the Premier Release 1.20.2, Version 1 GEMS 1.20.2 Accuvote OS TSX Accuvote OSX optical scan voting devices with all county-specific election-definition files and ballot programming modifications, which is necessary to determine conclusively the cause of the sizeable and uncounted undervote numbers in the Osceola County Commission, District 2 race.
- d. Convene a status conference promptly to establish an expeditious schedule for completing discovery and conducting a hearing.
- e. Schedule this matter for a prompt hearing pursuant to Fla. Stat. § 102.168(7).
- f. Order the Osceola County Canvassing Board to declare *void* the results of the 2010 General Election for Osceola County Commissioner, District 2.

- g. Order the Osceola County Canvassing Board to decertify Defendant John Quinones as the winner of the 2010 General Election for Osceola County Commissioner, District 2. *See* Fla. Stat. § 102.1682.
- h. Enter a finding that Plaintiff is entitled to the Office of Commissioner from Osceola County's Second District pursuant Fla. Stat. 102.1682 or, in the alternative, pursuant to Fla. Stat. §§ 100.101(1) and 100.111(3), declare the seat for Commission District 2 vacant such that a special election, or order a new election to determine the winning candidate for the County Commission seat.
- i. Order all other appropriate relief, including an award of attorneys' fees and costs.

Respectfully submitted, this 22d day of November 2010,

THE BRETT LAW FIRM, P.A.



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Attorney for Plaintiff

VERIFICATION BY

ARMANDO RAMIREZ

I, ARMANDO RAMIREZ, declare that the facts alleged in this Complaint are true and correct, based on my personal knowledge.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED IN ORLANDO, FLORIDA THIS 22d DAY OF NOVEMBER 2010.

ARMANDO RAMIREZ

11/22/2010

Joni J. Meyers



JONI J. MEYERS
MY COMMISSION # EE 027696
EXPIRES: September 20, 2014
Bonded Thru Budget Notary Services

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was forwarded via to hand delivery to Defendant John Quinones, 12 South Orlando Avenue, Kissimmee, Florida 34744; Defendant Fred Hawkins, Jr., 1 Courthouse Square, Suite 4700, Kissimmee, Florida 34741; County Judge Hal C. Epperson, Jr., 2 Courthouse Square, Fourth Floor, Kissimmee, Florida 34741; to R. Stephen Miles, Jr., Attorney for Supervisor of Elections, Mary Jane Arrington, Overstreet, Miles, Ritch & Cumbie, P.A., 100 Church Street, Kissimmee, Florida 34741; and to Legal Counsel for the Osceola County Canvassing Board, Office of the Osceola County Attorney, 1 Courthouse Square, Suite 4200, Kissimmee, Florida 34741, this 22d day of November 2010.

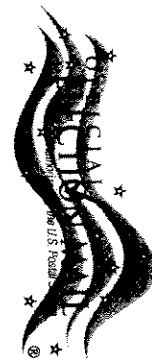
THE BRETT LAW FIRM, P.A.

Derek B. Brett

DEREK B. BRETT, ESQ.



Mary Jane Arrington
Osceola County Supervisor of Elections
2509 E. Irló Bronson Memorial Highway
Kissimmee FL 34744-4909



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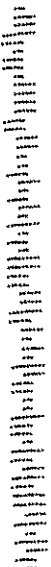
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OFFICIAL ABSENTEE BALLOTING MATERIAL—FIRST-CLASS MAIL



117846907 DEM 134 C E1C103 STY D134 #10004
Juanita Garcia
3050 Camino Real DT S
Kissimmee FL 34744-4129

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