

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

TIMOTHY A. CANOVA,

Plaintiff,

v.

THE ELECTIONS CANVASSING
COMMISSION, and
DEBBIE WASSERMAN SCHULTZ,

Defendants.

CASE NO.: 2018 CA 002561

IMMEDIATE HEARING
REQUESTED PURSUANT
TO SECTIONS 102.168 (7),
AND 86.111, FLA. STATS.

FIRST AMENDED COMPLAINT TO CONTEST ELECTION

Plaintiff Timothy A. Canova, by and through his undersigned counsel, hereby brings this action against The Elections Canvassing Commission and the reported winner of the race for the 23rd U.S. congressional district Debbie Wasserman Schultz, as indispensable parties to a Contest of Election pursuant to section 102.168, Florida Statutes, and alleges the following upon his own knowledge, or where he lacks personal knowledge, upon information and belief, including the investigation of counsel and election experts.

NATURE OF ACTION

1. This is an action for declaratory and injunctive relief seeking to declare that actions of misconduct by Dr. Brenda Snipes, the Broward County Supervisor of Elections (“SOE”) and other Florida and Broward election officials in the supervision of the 2018 general election for Florida’s 23rd Congressional district require that the election be set aside pursuant to section

102.168, Florida Statutes. As more fully described below, Snipes failed to safeguard the chain of custody of the paper ballots cast in Broward County for this election, and the scope of this issue is sufficient to change or place in doubt the results of this election as now certified.

2. Unfortunately, this is only the most recent instance of what is now a pattern of misconduct by Snipes regarding paper ballots, as it follows barely a year after Snipes unlawfully destroyed hundreds of boxes of all paper ballots cast in Broward County in the 2016 Democratic primary for Florida's 23rd Congressional district between Canova and Wasserman Schultz, in violation of state and federal law and while Canova's prior lawsuit to inspect those ballots was pending, as already determined on summary judgment by the Florida Circuit Court.

3. In addition to Snipes' failure to safeguard the integrity of the paper ballots in the 2018 general election for FL-23, the certification of the purported results is based on inadequate and incomplete information, and it is therefore an invalid certification of those results. Specifically, the county did not report the breakdown of the results by voting method (Early Voting, Absentee, Election Day, or Provisional) in a timely way in many of the precincts. Evidence that the voting methods are missing was revealed in a report by investigative journalist and filmmaker Lulu Friesdat and computer programmer Bennie Smith. The report, published in *Truthout*, shows that ***of the 148,833 votes that Wasserman Schultz reportedly received in Broward County, 97,874 votes were not identified by voting method.*** The total votes that are not identified by voting method alone are enough to change the results of this election, or at the very least to place in doubt these results.

4. Finally, the electronic voting machines used for this election are inherently defective as to the chain of custody for the electronic votes cast in this election. In particular, the electronic voting machines have modems that render them highly susceptible to outside hacking

and inside software manipulation. As a result, use of these electronic voting machines constitute another form of misconduct in connection with this election as conducted in Broward County as well as the portion of North Miami-Dade County also within Florida's 23rd Congressional District. And as with the failure to maintain proper chain of custody of the paper ballots, and the nearly 98,000 votes of unknown nature and date, the inherent inability of the electronic voting machines to ensure proper chain of custody of votes cast through those machines is of sufficient scope to change or place in doubt the elections results.

5. On the basis of these acts of material misconduct, Plaintiff now brings the present action under Sections 86.111 and 102.168, Florida Statutes, to (i) contest the certification of the results of the November 6, 2018, election in Florida's 23rd Congressional District, (ii) invalidate the election, and (iii) order a new election.

THE PARTIES

6. Plaintiff is an individual and resident of Hollywood, Florida. He is a tenured Professor of Law and Public Finance at Nova Southeastern University Shepard Broad College of Law in Davie/Ft. Lauderdale, Florida.

7. In 2016, Plaintiff ran as a candidate for the U.S. House of Representatives in Florida's 23rd Congressional District in the August 30, 2016 Democratic Primary against the incumbent, Debbie Wasserman Schultz (the "2016 primary election").

8. In 2018, Plaintiff ran as a candidate for the U.S. House of Representatives in Florida's 23rd Congressional District in the November 6, 2018 general election (the "2018 general election").

9. Defendant, Debbie Wasserman Schultz is the Representative in Florida's 23rd Congressional District.

10. Defendant, Elections Canvassing Commission consists of Governor Rick Scott and two of his cabinet members, each serving as ex-officio members. Governor Scott recused himself from the Commission and named State Senator Rob Bradley to serve along with Attorney General Pam Bondi and Agriculture Commissioner Adam Putnam on the Elections Canvassing Commission.

JURISDICTION AND VENUE

11. The Court has subject matter jurisdiction over this action pursuant to sections 86.011 and 102.68, Florida Statutes

12. The Court has personal jurisdiction over The Elections Canvassing Commission as an indispensable party defendant under Section 102.168(4), Florida Statutes.

13. The Court has personal jurisdiction over Debbie Wasserman Schultz as an indispensable party defendant under section 102.168(4), Florida Statutes.

14. Under section 102.1685, the venue for contesting the 2018 election for Florida's 23rd Congressional District is Leon County, since the election covered more than one county.

FACTS

I. DEFENDANT SNIPES' ILLEGAL DESTRUCTION OF ALL BALLOTS CAST IN THE 2016 DEMOCRATIC PRIMARY

15. On August 29, 2016, the day prior to the August 30, 2016 primary, NBC 6 South Florida published election results on its website showing Defendant Wasserman Schultz ahead of Plaintiff by 58% to 42% with 69% of the precincts reporting. After taking screen shots, Plaintiff immediately inquired, but has never received any explanation from NBC 6 or the SOE as to the basis for its reporting election results the day before the election. On August 30, 2016, Snipes reported that Plaintiff had lost the Democratic Primary in Broward County to Wasserman Schultz by a margin of 56.48% to 43.52%, or 26,608 votes to 20,504 votes.

16. Plaintiff sought to verify the vote in his August 30, 2016 primary by joining and filing public records requests to inspect and copy the ballots as permitted under Florida's public records law.

17. In November 2016, Friesdat made two public records requests to inspect original ballots and to receive digital scanned images of all the ballots cast in the 2016 primary election. Plaintiff joined those public records requests.

18. In response to those public records requests, Snipes, her attorney and members of her staff claimed that her office had no digital scanned images of the ballots from the DS200 machines. She refused to allow inspection of the paper ballots if any photographs or video of the inspection were taken, something that is customary at other Florida ballots inspections.

19. At a hearing on November 6, 2017, Snipes' outside counsel informed the Florida Circuit Court that Snipes was working with Defendant Wasserman Schultz against Plaintiff's lawsuit and discovery requests.

20. When Plaintiff visited the Supervisor's Voting Equipment Center in Lauderhill, Florida in the weeks prior to the 2016 primary election, he observed numerous photographs of Defendant Wasserman Schultz with top Broward election officials, including in the office of Dozel Spencer, the director of the SOE Voting Equipment Center. Plaintiff immediately objected to the appearance of bias to Snipes, who had no explanation. Spencer admitted to these photos in sworn videotaped deposition testimony in early 2018.

21. In March 2017, Friesdat and Plaintiff made a third public records request of Snipes to inspect the ballots cast in the 2016 primary election and to receive copies or scans of those original ballots.

22. Snipes refused to permit inspection of the ballots or to provide copies of the ballots in response to these multiple public records requests.

23. In June 2017, through his attorneys, Plaintiff filed a lawsuit against Snipes in the Florida Circuit Court to enforce his public records inspection rights.

24. While Plaintiff's lawsuit was pending, and only three days after being served with discovery requests to produce the paper ballots, Snipes ordered the destruction of all the ballots.

25. Snipes and one of her directors, Dozel Spencer, signed a ballot destruction order on September 1, 2017 that falsely certified that the ballots were not the subject of pending litigation despite the fact that the ballots were in fact the subject of pending litigation against Snipes herself as a named defendant.

26. Snipes willfully concealed the ballot destruction from the Florida Circuit Court, Plaintiff and Plaintiff's lawyers for more than two months.

27. In November 2017, Freisdatt and Plaintiff sought to inspect the ballots at the Broward SOE Voting Equipment Center in Lauderhill, Florida. When Freisdatt arrived to inspect the ballots, she was informed that the ballots were not available, without any explanation as to why the ballots were not available.

28. Instead, Snipes' attorney informed Freisdatt that she would be shown digital scanned images of what they claimed were the ballots. This contradicted earlier representations from the SOE office, including an email stating that "we do not capture ballot image files." During the inspection, it was revealed that these were *not* digital ballot images created during the election from the county's scanners, but a separate set of digital ballot images created long after the election by a third party vendor.

29. At a hearing on November 6, 2017, Snipes through her attorney admitted to the Florida Circuit Court that she had destroyed all the ballots cast in the 2016 primary election and claimed that she had digital scanned images of those ballots, which contradicted Snipes' previous representations to Plaintiff and Plaintiff's counsel.

30. Without the original paper ballots, and using only recently-generated digital scanned images, it is impossible to verify the results of the 2016 primary election. There are an unfortunately large number of ways that the process could produce incorrect results. Ballots could have been lost or replaced before the scanning; ballot on demand machines could have produced extra ballots; some digital images could have been either accidentally or deliberately repeated numerous times. Digital images themselves can be altered, and to our knowledge no chain-of-custody evidence for these digital images has been presented.

31. During the pre-trial discovery process, Snipes informed Plaintiff that the process of creating the digital scanned ballot images involved using third-party proprietary software, as well as assistance from a third-party vendor, Clear Ballot. There is no chain of custody documentation showing who from this third-party vendor had access to the ballots and the digital ballot images.

32. In responding to Plaintiff's discovery request, Snipes failed to fully fill out chain-of-custody documents for the original paper ballots.

33. When Friesdat and her data team were able to perform a detailed analysis of the 2016 primary race between Canova and Wasserman Schultz, they found large and unexplained discrepancies between the number of voters who voted and the number of cast ballots. In all, there were more than 1,000 discrepancies, and out of 211 precincts only 19 had the same number of voters and ballots. These irregularities were highly concerning to election experts, cited in

Friesdat's reporting with multiple media outlets. According to Duncan Buell, a professor of computer science at the University of South Carolina, there was a high likelihood of massive incompetence or fraud.

34. Douglas Jones, a computer science professor at the University of Iowa stated that Broward County should be reconciling the number of voters with ballots, that the Broward SOE was at the very least grossly negligent for not doing so, and that he has never seen a county that looks like this. Jones served on the Election Assistance Commission (EAC) Technical Guidelines Development Committee for four years.

35. Discrepancies between the number of voters and the cast ballots, plus the inability or refusal of the SOE office to produce the original ballots, all raised questions about what the true totals for 2016 primary election may have been. According to Karen McKim, a member of the Wisconsin Election Integrity Action Team and a veteran of hand-counts in that state, the certified results must be considered suspect. She said, "They destroyed the evidence. They can't defend their results."

36. In early 2018, Snipes admitted in sworn videotaped deposition that she had destroyed all the paper ballots.

37. In early 2018, Dozel Spencer, the SOE Director of Voting Equipment, also admitted in sworn videotaped deposition that he signed and carried out the ballot destruction order.

38. Snipes has claimed that her ballot destruction inflicted no harm to Plaintiff or the public because she claimed to have the digital scanned images of the original ballots. As previously noted, there is no evidence that the digital ballot images displayed at the inspection were created from the original ballots cast by voters. Furthermore, no one including Plaintiff is

permitted to inspect the software of the electronic voting machines that created those digital scanned ballot images. The closed source software is considered “proprietary” and the private property of the software vendors hired by Snipes.

39. Snipes engaged in a repeated pattern of obstruction, deception, and ultimately unlawful conduct in the destruction of all the ballots cast in the 2016 primary.

40. On May 11, 2018, the Florida Circuit Court granted Plaintiff Canova summary judgment, and found that Snipes had violated numerous state and federal statutes, including laws punishable as felonies with up to five years in prison.

41. In the summary judgment order, the Court rejected Snipes’ argument that the destruction of ballots was unintentional. The Court concluded that Snipes’ defenses were “without substance in fact or law.”

42. The Court’s ruling made clear that Snipes’ destruction of ballots was illegal on several separate counts. According to the Court, federal and Florida law requires that the ballots in a federal election be preserved for 22 months. The ballots were destroyed after only 12 months. Violations of the federal statute are punishable by up to a year in prison. Violations of the state statute are punishable as felonies by up to five years in prison.

43. Plaintiff Canova had sought to inspect the original paper ballots under Florida’s public records law, as permitted for any citizen under both the statute and the Florida Constitution. The court ruled that it was illegal for Snipes to refuse to produce the original paper ballots for inspection as public records and to refuse to allow copying and/or scanning of those ballots.

44. Documents that are the subject of legal proceedings cannot be destroyed without permission from the court. Snipes ordered the destruction of the ballots on September 1, 2017,

while the litigation was pending. The Court found that the destruction of the ballots was in violation of the “litigation hold” that was triggered once the civil action was instituted.

45. The Court further found that Snipes had violated the Florida statutory requirements to act in good faith. Snipes destroyed the ballots in September 2017, but nonetheless filed her Answer and Affirmative Defenses on October 31, 2017 and did not reveal the ballot destruction until November 6, 2017. Even after admitting to the unlawful destruction of ballots, Snipes’ continued to litigate in bad faith.

46. After the Florida Circuit Court ruled that Defendant Snipes had violated state and federal statutes in destroying all the ballots cast in the 2016 primary election, there were no consequences for Snipes – she was not suspended and replaced by the Governor, and there was no announcement of any criminal investigation by any law enforcement agencies.

47. Throughout 2018, Plaintiff warned that if Snipes were kept in office after violating state and federal criminal laws with impunity, there would be more official misconduct in her supervision of the primary and general elections.

48. On or about October 27, 2018, less than two weeks before Election Day and while voters were casting ballots by mail and at early voting sites, Snipes and Wasserman Schultz were photographed together campaigning openly in public. Snipes had no reason to be campaigning in public. She was not on the ballot and not up for election in 2018.

49. By campaigning together with Defendant Wasserman Schultz, Snipes demonstrated an arrogant disregard to avoid even the appearance of a conflict of interest in the supervision of the 2018 election.

II. THE 2018 GENERAL ELECTION IN FLORIDA’S 23RD CONGRESSIONAL DISTRICT

50. Plaintiff ran again in 2018 for Florida's 23rd Congressional District, this time as a No Party Affiliation (NPA) independent candidate.

51. In late October 2018, *The Floridian Press* reported on a public opinion poll that showed Plaintiff Canova and Defendant Wasserman Schultz tied at 34% each among likely voters, with the Republican candidate trailing at 13%.

52. In contrast, on November 6, 2018, very soon after the polls closed on Election Night, Snipes declared Defendant Wasserman Schultz the winner. The official results in Broward County were Wasserman Schultz 58.95%, Republican Joe Kaufman 35.36%, and Plaintiff Canova 5.10%.

53. A portion of Florida's 23rd Congressional District is in Miami-Dade County. When those results are included, Defendant Wasserman Schultz reportedly received 161,611 votes, Kaufman received 99,446 votes, and Plaintiff Canova approximately 15,000 votes.

54. Plaintiff has not conceded or accepted the official results of the election.

55. Snipes and other Broward and Florida election officials committed serious misconduct in the supervision of the 2018 general election for Florida's 23rd Congressional District "sufficient to change or place in doubt the result of the election," which meets the standard for contesting an election under section 102.168 (3)(a), Florida Statutes.

56. As noted above, Snipes and other Broward election officials failed to maintain any proper chain of custody of the paper ballots in the 2018 general election. In particular, on Election Day night, a line of cars with only one person in each car pulled up to at least one polling location in Broward County, and each person removed from their cars the blue satchels that normally contain paper ballots that have been cast, and then loaded them into the back of a rental truck. This procedure is inconsistent with appropriate chain of custody protocols and practices for the

transfer of paper ballots from polling sites to the Broward SOE warehouse. Among other things, appropriate chain of custody practices would prohibit the transfer of ballots in the possession of only one person with no apparent law enforcement authority. Rather, the type of practice that confers protection of chain of custody, and therefore the integrity of the election process, involves a member of law enforcement such as a sheriff's deputy (or perhaps other sworn oath-taking officials) who transports ballots and creates and signs a "paper trail" establishing the details of the chain of custody as the ballots are transported. Absent that, there is no reasonable protection against any other person in possession of ballots as they are transported having the improper opportunity to do anything they want with the ballots.

57. The breakdown in the chain of custody in the paper ballots casts doubt on any hand recount of the paper ballots cast in the 2018 general election.

58. Snipes and other Broward and Florida election officials also failed to protect the security of the software for the electronic voting machines, thereby permitting hackers, or insiders, the opportunity to shift a sufficient number of votes from Canova to Wasserman Schultz as to change or place in doubt that results of the election.

59. Snipes and other Broward and Florida election officials failed to maintain any appropriate chain of custody of the electronic voting machines themselves, including the electronic scanners and tabulators, central tabulation machines, and software that may have been used for these electronic voting machines.

60. Election observers recorded the wireless transmission of election results from an ES&S DS200 digital scanner voting machine at a Broward County polling place on Election evening, November 6, 2018.

61. John Brakey, director of the non-partisan election organization AUDIT-USA, confirmed in a recorded video that cellular modems are installed in the DS200 voting machines and that they operate with a wireless antenna.

62. The cellular modems operating with a wireless antenna make the DS200 voting machines particularly vulnerable to outside hacking or inside software manipulation.

63. According to U.S. intelligence agencies, there are serious risks to the integrity of our elections from hacking and other electronic manipulation. Those risks could be from either foreign or domestic sources. The ease of hacking into electronic voting machines – even those not ordinarily connected to the internet – was reported in a *New York Times Magazine* article by Kim Zetter entitled “The Myth of the Hacker-Proof Voting Machine” (Feb. 21, 2018).

64. The vulnerability in the DS200 means there is no secure chain of custody for election materials in Broward County due to modems inside or connected to their election systems.

65. This vulnerability in the operation of the DS200 means there is no reason to trust the official election results produced by those voting systems, particularly when combined with statistical anomalies and nearly 98,000 votes from nowhere. This pairing of a cellular modem with a digital scanner voting machine is one of the vulnerabilities that could allow hackers near and far, or insiders, to gain access to election results.

66. The breakdown in the chain of custody in the electronic voting machines and software casts doubt on any machine recount of the 2018 general election in Broward County.

67. The vulnerability of Broward’s electronic voting machines to outside hacking or inside software manipulation, resulting from their accessibility by cellular modem to wireless connections, constitutes a “voting system defect” as a “failure, fault, or flaw in an electronic or

electromagnetic voting system . . . which results in the system's nonconformance with the standards in a manner that affects the timeliness or accuracy of the casting or counting of ballots" under section 101.56065, Florida Statutes.

68. In a congressional briefing held in May 2017, J. Alex Halderman, a professor of computer science at the University of Michigan and an international election security expert, said, "optical scan style [voting] machines have been brought into the laboratory. And in every single case [they've] been shown to suffer from vulnerabilities that would allow the spread of vote-stealing malware."

69. Many of the software management systems that Broward uses are provided by VR Systems, a Florida-based vendor of electronic voting services and equipment. VR Systems is believed by intelligence agencies to have been hacked in 2016, using phishing emails sent just days before the August 30th 2016 primary.

70. As described in paragraph 3 above, recent reporting by Friesdat and computer programmer Bennie Smith in *Truthout* shows a time-stamped video of the completely reported results from the Broward County Supervisor of Elections website. In the 23rd Congressional District race, precinct after precinct have totals and percentages listed, but no indication of where and how those votes were cast.

71. The following summary of the protocol used to calculate vote totals demonstrates *why the absence of information for each voting method is a critical issue* and illustrates *the profound problem with the methodology that must have been used to arrive at the certified results.*

A. The ES&S accumulator machine arrives at its total by summing up the parts. If all the parts are zero, it can only report a total of zero. The presence of a total greater

than zero when all the parts are zero indicates that some external and unofficial system was used to create totals.

- B. The reason ES&S identifies the votes of each type within each precinct is to enable auditing, and it also assists with diagnosis if there are problems. One of the most important corresponding documents is the participating voter list, which provides the name, precinct, and ***method of voting*** for each voter. This is the ***only*** way the number of votes cast can be reconciled with the number of persons who cast a vote. Another essential document is the poll tape, which shows vote results for each polling place and can be compared with the accumulator report for polling place votes. A third essential document type is called the audit log, which tracks votes from point to point with each method of voting. Each of these documents is designed to be compared against ***the reported parts***.
- C. ***Timely production of both the parts and the totals is a component of chain of custody.*** Publication of this information commits the data so that any later adjustments are observable. Publishing both the parts and the whole is akin to "show your work" and prevents shifting votes from one pocket to another during an audit.

72. As of November 30, 2018, the categories of Election Day, Vote By Mail, Early Voting, Write-In and Provisional Votes were frequently completely blank in Broward's official election results for the 23rd Congressional district.

73. According to election experts, leaving all of these categories vacant would allow the totals for any candidate to be reallocated with ease by sophisticated hackers or insiders.

74. According to the same reporting, close to 100,000 of Defendant Wasserman Schultz's 161,611 total votes show no indication of how or when those votes were cast.

75. These "approximately 98,00 votes from nowhere" for Wasserman Schultz may have been votes transferred illegally from another candidate or candidates, which would be "sufficient to change or place in doubt the result of the election."

76. According to the same reporting, spreadsheets of data downloaded from the Broward SOE website show that data was being removed, not added, in the days and weeks following the election.

77. When results of the 23rd Congressional District were first downloaded on November 8, there was more information in the various categories, such as Election Day, Vote By Mail and Early Voting, than days later. When the information was downloaded again on November 11, many more of the categories had become blank, even though counties are generally adding more information, or updating totals as they count the votes, not removing already reported results.

78. According to election experts, the disappearing information is consistent with fraud designed to look like sloppy bookkeeping.

79. There are an unusually high number of "undervotes" in the race for Congress in the 23rd District in Broward County, where a voter has signed in and cast a ballot, but for some reason seems not to have voted in this race.

80. Election experts are concerned about a high undervote rate, because it may mean that legitimate votes have either not been counted or have been discarded.

81. Friesdat has provided Plaintiff with her data team's latest estimate of the undervotes in the 23rd Congressional District race. They estimate the undervotes at around 8,337,

or about 3.2%, a figure that is approximately twice as high as the estimated undervotes in other Florida congressional district races in this election. In their reporting, her data team estimated that other Florida congressional districts had an undervote rate of 1.69 percent, based on the totals being reported at the time the data was collected.

82. Undervote numbers in this election were fluctuating somewhat as the counties posted their preliminary results. But no other congressional district that Friesdat's team examined approached the high percentage of voters who appear to have voted in other races on the ballot but for some reason did not at the same time cast a vote in the election for Florida's 23rd Congressional District.

83. In new research that Friesdat made available to the Plaintiff, her team demonstrates that according to the results as reported, not a single precinct has an undervote percentage of less than 1%.

84. Additionally, Friesdat's research shows that the undervotes in this race vary widely across more than 200 precincts from approximately 1.5% to 8.2%.

85. Election, statistics and computer experts interviewed by Friesdat called this variation suspicious, and agreed it demonstrates that the placement of this race on the ballot is unlikely to be the sole reason for the high undervote.

86. In exclusive research made available to the Plaintiff, Friesdat's data team charted the reported percentage of the Plaintiff's vote, comparing it to voting blocks of multiple demographics. Their study reveals that the Plaintiff's vote totals as reported are not impacted by any demographic, but rather remain consistent at very close to 5% across all precincts - no matter which demographic is voting. According to one high level computer security expert interviewed by Freisdat, this is as likely as "winning the lottery every day for a year." In the same interview,

that high-level computer security expert stated that this looks “mathematically generated across the precincts [and that] ... there's something that appears to be systematic in nature ... Typically an algorithm or formula would apply some linear function, and that's essentially what we see here.”

87. Upon information and belief, it is the failure to implement sufficient safeguards as to security of the electronic voting machines that has enabled manipulation of the voting process in a manner that has produced results that are statistically not credible. As noted above, with modems as part of the machines, the machines are susceptible to unauthorized intrusion and communication. In the exclusive interview that Friesdat made available to the Plaintiff, that high-level computer security expert states, “Any electronic device with a CPU [central processing unit] and the ability to communicate is able to store a program. And the amount or size of a program to do this type of manipulation could be very very small ... A scanner often has a very high functional CPU, an operating system – it’s basically a personal computer device that’s specialized for running the scanner ... And it’s been shown these types of devices often don’t follow modern cyber security practices, often don’t have security vulnerabilities updated, and are often easily accessible ... With a modem, anyone on the outside can then use that modem to call through ... in order to insert malware or insert malicious algorithms and code. Today there’s very sophisticated hackers out there who are able to, for instance, use port scanning to detect such devices, and then design carefully crafted algorithms and code ... We have insiders who understand exactly all of the security procedures and operate either individually or in small groups, and when an insider knows all the security procedures, typically it is much much harder to detect because not only do they know all of the inside procedures and devices, but they also know typically how to cover their tracks.”

88. Democracy Counts, a non-profit that attempted to conduct a citizens' audit for Florida's 23rd congressional district, sought to inspect the poll tapes for that are required by Florida law to be posted outside of every polling station at the close of polls. However, volunteers found one polling location after another where poll tapes were not posted.

89. On or around November 16, 2018, the Broward County Canvassing Board ordered Snipes and her office staff to preserve all records, but only after it was revealed that Snipes had already destroyed all digital scanned images of the ballots cast on November 6, 2018.

90. The unlawful destruction of the digital scanned images by Snipes would prevent any comparison of digital scanned images with paper ballots cast.

91. Under Florida Statutes Title IX, Section 98.015(1), Snipes was required to take an oath prescribed in Article II, Section 5 of the State Constitution "to faithfully perform the duties of Supervisor of Elections."

92. Under Florida Statutes section 98.015(8), Spencer and other deputy supervisors were required to take oaths in writing to "faithfully perform the duties of the deputy supervisor's office."

93. Snipes, Spencer and other deputy supervisors violated their oaths to faithfully perform their duties, engaged in repeated misconduct and violations of state and federal laws, including criminal statutes.

94. Following numerous reports of repeated violations of Florida law in the supervision of the 2018 election and recounts for Senate and Governor races, Snipes announced that she would resign as Supervisor of Elections effective early January 2019.

95. However, before her January resignation date, Governor Scott did what was warranted six months ago when the Florida Circuit Court found that Snipes had unlawfully

destroyed all of the paper ballots from the 2016 Democratic primary for FL-23 in violation of state and federal law and while a lawsuit was pending against Snipes for access to those ballots: on November 30, 2018, Governor Scott fired Snipes. In his Executive Order Number 18-342, Governor Scott describes some of the many types of misconduct in which Snipes has engaged in connection with supervising elections, including many that Plaintiff has alleged in his prior lawsuit and the present action. Among other things, Governor Scott states that “in the hours and days following the 2018 General Election, Supervisor Snipes demonstrated repeatedly that she was unable to accurately respond to basic requests from state election officials, candidates, news media, and the general public regarding the number of ballots that had been cast, the number of ballots that had been counted, and the number of ballots remaining to be canvassed; and that Supervisor Snipes was unwilling to permit the inspection of public records containing this information.”

96. Governor Scott also states that Snipes “improperly permitted her staff to open unverified provisional and vote-by-mail ballots that had not been canvassed by the county canvassing board in violation of Florida law . . . and failed to ensure that ballots accepted and rejected by the county canvassing board were appropriately segregated, thereby permitting the commingling of more than 200 valid and invalid ballots in a manner that precluded subsequent actions to ensure that only valid ballots were counted, in violation of Florida law.” Governor Scott also states that “Supervisor Snipes reported that more than 2,000 ballots cast in Broward County had been lost, misplaced, or misfiled . . . but that the missing ballots were allegedly somewhere ‘in the building,’ and has provided no explanation for the unexplained disappearance of thousands of ballots.”

97. Governor Scott also states the obvious, that “Supervisor Snipes has a history of violating the election laws of this state,” something Plaintiff knows about all too well from his successful lawsuit in which Snipes destroyed the ballots from the 2016 primary election. In fact, Governor Scott refers to that election in his statement, saying, “in the 2016 Primary Election, Supervisor Snipes posted the results of early voting and some vote-by-mail ballots thirty minutes before the polls closed at 7 p.m., in violation of Florida law . . . mailed vote-by-mail ballots to voters that omitted a constitutional amendment, in violation of Florida law . . . authorized the opening of vote-by-mail ballots before they had been canvassed by the county canvassing board, in violation of Florida law.”

98. Finally, Governor Scott refers to Plaintiff’s earlier lawsuit, stating, “a judge of the Seventeenth Judicial Circuit has concluded that in 2017 Supervisor Snipes improperly authorized the destruction of ballots cast in the 2016 Primary Election, in violation of state and federal law.”

99. Governor Scott’s conclusions are very apt and relevant to Plaintiff’s present allegations. He states “Supervisor Snipes has repeatedly failed in her duties as Broward County Supervisor of Election; and . . . Supervisor Snipes has contravened her oath of office as set forth in Article II, section 5, of the Florida Constitution, to ‘faithfully perform the duties’ of Supervisor of Elections of Broward County, Florida . . . [D]ue to her demonstrated misfeasance, incompetence, and neglect of duty, Supervisor Snipes can no longer demonstrate the qualifications necessary to meet her duties in office.”

100. It is beyond reasonable dispute that Snipes has long engaged in demonstrable misconduct in connection with elections in Broward County, including misconduct in the 2018 General Election that is sufficient to change or at least place in doubt the results reported by Snipes in the 2018 General Election for Florida’s 23rd Congressional District.

**CAUSE OF ACTION
DECLARATORY AND INJUNCTIVE RELIEF**

101. Plaintiff incorporates paragraphs 1-100 as if fully set forth herein.

102. This is an action for declaratory and injunctive relief pursuant to Chapter 86, Florida Statutes, and Section 102.168, Florida Statutes.

103. Snipes' actions constitute "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" under section 102.168(3)(a), Florida Statutes, which gives Plaintiff the right to set aside the result of the election on a submitted referendum under section 102.168(3), Florida Statutes.

104. Snipes engaged in misconduct that was sufficient to change or place in doubt the results of the 2018 election, and her actions create more than reasonable doubt that the certified results do not express the will of the voters.

105. Snipes' failure to maintain the chains of custody of paper ballots and electronic voting machines makes it impossible to verify the vote and casts doubt on the results of the 2018 election.

106. Broward County's electronic voting machines are vulnerable to outside hacking or inside software manipulation because they are accessible by cellular modem to wireless connections; this constitutes a "voting system defect" under section 101.56065, the Florida Statutes, which also places the in doubt the result of the election.

107. The vulnerability of Broward's electronic voting machines from cellular modem wireless connections constitutes a "failure, fault, or flaw in an electronic or electromagnetic voting system . . . which results in the system's nonconformance with the standards in a manner

that affects the . . . accuracy of the casting or counting of ballots” as set forth in section 101.56065, Florida Statutes, which places into doubt the validity of the election.

108. Because of Broward County’s vulnerable voting machines, the approximately 98,00 votes apparently cast from nowhere for Defendant Wasserman Schultz may have been cast for Plaintiff Canova or Joe Kaufman, the Republican candidate, or Don Endriss, an NPA candidate, and transferred by software manipulation to Wasserman Schultz. Had those votes been transferred from either the Plaintiff or other candidates, there would be a change in the outcome of this election, which is sufficient grounds to place in doubt the results of this election.

109. This is confirmed by statistical evidence analyzed by leading national experts that there were statistical anomalies suggesting manipulation or large errors in the 2018 election results sufficient to change the outcome or place in doubt the outcome of the election for Florida’s 23rd Congressional District.

110. Because of the break in the chain of custody of both the paper ballots and the electronic voting machines there is no way to adequately verify if the 97,874 votes from nowhere were actually cast for Wasserman Schultz, or if they were transferred by software manipulation away from Plaintiff.

111. As a result of the break in the chain of custody of both the paper ballots and the electronic voting machines, and the approximately 98,00 votes from nowhere, there is no way to adequately verify the official election results.

112. Snipes’ repeated course of conduct, her unlawful destruction of the 2016 primary election ballots, and her decision to campaign openly with Defendant Wasserman Schultz in the days before the November 6, 2018, also election creates significant doubt about the validity of the reported results of the 2018 election.

113. Where there is substantial noncompliance with statutory election procedures and reasonable doubt as to whether a certified election expressed the will of the voters—even if there is no fraud or intentional wrongdoing—the court must void the election.

WHEREFORE, Plaintiff requests:

- A. An immediate evidentiary hearing be set;
- B. That judgment be entered in favor of Plaintiff against Defendants that Snipes' actions constitute "misconduct, fraud, or corruption" sufficient to change or place in doubt the result of the election under section 102.168(3)(a), Florida Statutes;
- C. The result of the election be set aside on a submitted referendum under section 102.168(3), Florida Statutes;
- D. An Order to enjoin the certification of Wasserman Schultz as the winner in the 2018 general election for Florida's 23rd Congressional district;
- E. An Order declaring the 2018 general election for Florida's 23rd Congressional district is invalidated;
- F. An Order for a new election among the candidates in Florida's 23rd Congressional district;
- G. An Order enjoining Snipes and Spencer and anyone else who worked for or on behalf of Snipes from having any role or participation, directly or indirectly, in the supervision of any new election for Florida's 23rd Congressional district;
- H. An Order mandating that the new election proceed with hand-marked paper ballots that are counted by hand in public and reported immediately and publicly at the local precinct level. To safeguard the integrity of the new election and restore

public faith and confidence in the new election, the court should further enjoin the use of electronic voting machines with closed-source proprietary software.

- I. An Order directing Defendants to pay all costs incurred in bringing this action;
- J. An Order providing for all other such equitable and legal relief as may be just and proper.

Dated this 5th day of December, 2018.

/s/ Jennifer A. Winegardner
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