

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR PALM BEACH COUNTY CIVIL DIVISION

SEAN HEYNIGER,

CASE NO.: 502009CA007349 AG

Plaintiff(s),

vs.

PALM BEACH COUNTY CANVASSING BOARD;
THE TOWN OF PALM BEACH CANVASSING
BOARD; JACK McDONALD; and the PALM
BEACH COUNTY SUPERVISOR OF ELECTIONS,

Defendant(s).

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GERRY GOLDSMITH,

CASE NO. 502009CA007372 AG

Plaintiff,

vs.

JACK McDONALD, candidate for election to
Mayor of the Town of Palm Beach, THE PALM
BEACH COUNTY CANVASSING BOARD, THE
TOWN OF PALM BEACH, and SUSAN BUCHER,
as Palm Beach County Supervisor of Elections,

Defendants:

_____ /

ORDER ON REHEARING

THIS CAUSE came before the Court upon the Plaintiff, GERRY GOLDSMITH's Motion for Rehearing of Final Judgment and Motion to Correct Clerical Errors in Final Judgment. The Court has again reviewed the evidence and testimony, reviewed all memorandums of the parties and has reviewed its Final Judgment dated April 6, 2009 and heard argument of counsel.

1. The primary dispute at the initial trial of the above matter was when is an absentee ballot "received" by the Supervisor of Elections as that term is defined in Florida Statutes Section 101.67(2) when the Supervisor has designated a post office box for return of the ballot. At trial, the Plaintiff

contended that any ballot delivered and located somewhere within the 380,000 square foot Summit Boulevard post office by 7:00 p.m. on February 17, 2009 has been "received" by the Supervisor. On rehearing, GOLDSMITH seems to agree with this Court's initial ruling that the plain meaning of "receipt" under the statute means delivery to the specific post office box identified by the Supervisor. GOLDSMITH now suggests, however, that since the Supervisor did not check the box between 5:00 and 7:00 p.m. that this Court should somehow redefine the term "receipt" to mean received at the 380,000 square foot postal facility as to any ballots retrieved by the Supervisor on the morning of February 18, 2009.

2. First, there was no conflict or inherent inconsistency in this Court's Final Judgment. While anything is "possible", the clear, convincing and overwhelming evidence established that there were no absentee ballots placed in the Supervisor's box after the box was last checked by the Supervisor's staff. The evidence by any standard of proof (a preponderance of the evidence, clear and convincing, etc.) demonstrated that there were no absentee ballots placed in the Supervisor's box between approximately 5:00 p.m. February 17th (when last checked by the Supervisor's office) and 7:00 p.m. February 17, 2009. Not only did the Plaintiff fail to prove his case that the disputed ballots were "received" pursuant to the statute, the Defendants, including the Supervisor, proved that the subject absentee ballots were not

"received" by the Supervisor by 7:00 p.m. on February 17, 2009 and were properly determined to be late and properly not opened, canvassed or counted.

3. The statutory deadline of receipt of the absentee ballot by February 17, 2009 is mandatory and is not some insignificant omission or irregularity by the voter.

4. The Court does correct a clerical error on page 11 of its Final Judgment. The second full sentence on that page should read, "The Plaintiff GOLDSMITH" rather than "The Plaintiff McDONALD". This Court's Final Judgment is hereby amended to so reflect.

5. Based upon the foregoing, and after a thorough consideration of all the evidence, all the testimony, the Memorandums of the parties, and after hearing arguments, the Motion for Rehearing and/or Clarification is hereby denied. All matters not specifically addressed herein are hereby denied, and this Court's Final Judgment of April 6, 2009 is hereby reaffirmed.

DONE AND ORDERED this 27th day of April, 2009 at West Palm Beach, Palm Beach County, Florida.



DAVID F. CROW
CIRCUIT COURT JUDGE

Copy furnished:

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