

**HOUSE OF REPRESENTATIVES OF THE
STATE OF MISSOURI**

In the Matter of the)	
40th Legislative District:)	
)	
Sean O’Toole)	
and)	
Will Royster,)	
Contestants/Petitioners)	No. _____
v.)	
)	
John J. Rizzo,)	
Contestee/Respondent.)	

PETITION TO CONTEST ELECTION AND SEATING OF JOHN J. RIZZO

1. Contestee/ Respondent John J. Rizzo (“Rizzo”) won the Democrat primary election for the 40th Legislative District conducted by the Kansas City Board of Election Commissioners on August 3, 2010 (sometimes hereafter “primary election”).

2. Petitioner/Contestant Sean O’Toole is a duly qualified and registered voter of the State of Missouri, Jackson County, 40th Legislative District, and he was the successful candidate for the Libertarian Party in the August 3, 2010, primary for the 40th Legislative District (Jackson County, Missouri) (sometimes hereafter “election”), and candidate for the Libertarian Party for the 40th Legislative District in the November 2010 general election. Petitioner/Contestant Royster is a duly qualified and registered voter of the State of Missouri, Jackson County, 40th Legislative District, and he was a candidate in the Democrat August 3, 2010, primary for the 40th Legislative District.

3. The initial certification of the August 3, 2010, Democrat primary election was returned with a *three vote margin of victory* - 667 votes for Rizzo and 664 votes for Contestant/ Petitioner, Will Royster (“Royster”).

4. After receiving reports of irregularities concerning voting, electioneering and

assistance given to voters, Royster filed an election contest in the Circuit Court of Jackson County, Missouri, in which he requested a recount under Section 115.539 RSMo. and a new election under Section 115.549 RSMo. (*Royster v. Rizzo*, Case No. 1016-CV25576, Circuit Court of Jackson County, sometime hereafter “election contest”).

5. Because Rizzo’s margin of victory was less than 1%, Royster also was automatically entitled to a mechanical recount of ballots. (Section 115.601 RSMo.) The recount was conducted by the Missouri Secretary of State pursuant to Royster’s written letter request. This 601 recount is limited to a recounting of ballots; it is separate from and does not include the extensive review of evidence available in a recount under Section 115.539 RSMo., such as, for example, whether voters were qualified to vote, circumstances surrounding why voters failed to certify their qualifications under oath in order to vote, proper identification procedures, misconduct by election judges or voters, or other irregularities that might have affected the election.

6. The “601” ballot recount resulted in a new certification, this time with a one vote margin of victory – Rizzo having received 664 votes and Royster 663 votes. The 601 recounts and recertification were reported to the trial court, and it is noted in the trial court’s judgment.

7. The trial court conducted the first of two hearings pursuant to Royster’s election contest on September 7, 2010.

8. Upon conclusion of the second hearing held on September 14, 2010, the trial court declined to authorize either a full recount with examination of evidence as provided under Section 115.539 RSMo., or a new election under Section 115.549 RSMo.. The Court thereafter entered its amended (final) judgment. Royster immediately appealed the trial court decision to the Missouri Court of Appeals, Western District (*Royster v. Rizzo*, WD 72947).

9. On October 6, 2010, after completion of the briefing schedule, the Court of Appeals heard oral arguments, following which the case was submitted to the Court of Appeals for a decision. After the submission of the case but before the Court of Appeals rendered an opinion, Royster discovered additional (news) evidence indicating election irregularities and fraud. This new evidence, which has never been reviewed by any court, was based, in very large measure, on the Election Board's list of voters who actually voted in the primary. Royster and his campaign volunteers had requested this voters' list from the Kansas City Election Board several times beginning within days of the August 3 primary election, but the Election Board (claiming that the list was not immediately available) delivered it well after the trial and too late (as it turned out) for use at the Court of Appeals level.

10. Following receipt of the Election Board's voters list, Royster and his campaign began an investigation which included, among other efforts, comparing the names of voters on the Election Board list to the list of Rizzo's campaign contributors, securing other information from public sources, reviewing a report by a local television station which shows an interview of an individual who voted in the 40th Legislative District (Jackson County) primary but who admitted to being a resident of Clay County, Missouri, and making personal visits to locations in the 40th Legislative District allegedly designated as the home and legal residence of voters whose names were taken from the Election Board's voter list. Upon confirming the irregularities, Royster filed a Motion for the Appointment of a Special Master with the Court of Appeals in order to request the Court to appoint a special master to examine the new evidence discovered during the investigation.

11. The Court of Appeals declined to appoint a special master to hear the new evidence (because of the short time remaining before the general election) and ruled against

Royster on the merits of the appeal. Included as part of the packet of evidence and information that accompanies this Petition are copies of Royster's First Amended Petition (election contest) filed at the trial level, the amended judgment of the trial court, the motion for the appointment of a special master, and the opinion of the Missouri Court of Appeals.

12. On information and belief, after Royster filed the motion for the appointment of a special master to examine the new evidence, the Kansas City Election Board conducted its own investigation into Royster's additional allegations of voter fraud. To the best knowledge and belief of Petitioners, the Election Board's investigation consisted of sending a letter of inquiry to at least one of the voters identified by Royster as a nonresident in the motion for the appointment of a special master. To date, the Kansas City Election Board has refused to respond to Royster's requests for information related to the Board's investigation.

13. The *additional evidence* (sometimes hereafter referred to as "newly discovered evidence" or "new evidence") that was discovered after the appeal was submitted to the Court of Appeals has not been adjudicated, and it constitutes irregularities that are material and are of such magnitude that, had that evidence been available, the trial court would have been required to order either a recount under Section 115.539 RSMo., and a new election. The additional or new (non-adjudicated) evidence is detailed in the Report of Voter Fraud (2010 40th District State Representative Race; Evidence of Voter Fraud and Voter Fraud Intent), which has been filed with the House of Representatives, is incorporated herein, and includes the following:

a. At least two and possibly as many three voters who are related by family to Rizzo and who *were not residents of the 40th Legislative District or even Jackson County, Missouri*, voted in the primary for the 40th Legislative District. These voters were residents of Clay County, Missouri. One of these voters acknowledged his Clay County residence before a

television camera crew.

b. At least one voter who contributed to Rizzo's campaign, but who was not a resident of the 40th Legislative District, voted in the primary and in the general election conducted for the 40th Legislative District. This third voter resides in Lee's Summit, Missouri, which is well outside (by many miles) the geographical boundaries of the 40th Legislative District.

c. Two other voters who were listed on the Election Board's voter list voted claiming an address in the 40th Legislative District, but that same residence is listed as owned by the Jackson County Land Trust and it appears to have been abandoned, closed and boarded up at least by the date of Royster filed his Motion for the Appointment of a Special Master with the Court of Appeals.

d. Another voter used 123 Oakley, Kansas City, Jackson County, Missouri as his residence for purposes of voting in the primary, even though that residence had been vacant for three years preceding the August 3, 2010, primary and was the subject to a demolition order as of the date of the primary.

e. Another voter who was registered in the 41st Legislative District both before and after the August 3, 2010, primary voted in the primary race for the 40st Legislative District.

f. Another voter tried to, but could not, vote because she could not find her polling place which was later discovered to have been combined with a precinct that was not joined with or contiguous to the geographical boundaries of that voter's precinct. This Precinct was one of those the trial court in *Royster v. Rizzo* found was not improperly joined.

g. During the general election, the same problems with unlawful assistance (in violation of Section 115.445 RSMo.) occurred multiple times in the same precinct located in the

40th Legislative District that was involved in the *Royster v. Rizzo* contest. The details regarding this report are in the Report of Voter Fraud. On information and belief, officials of the Kansas City Board of Election Commissioners were again called out to this precinct to ascertain and correct voter activities that were occurring.

h. The illegal ballots represented by the nine or more voters above-mentioned exceed Rizzo's one vote margin of victory in the primary. This evidence would have satisfied the requirements of both Sections 115.539 and 115.549 RSMo., which means that the primary election for the 40th Legislative District did not produce a lawfully selected and qualified candidate for the November 2010 general election.

i. The 601 Recount that was administered did not follow Ballot Tabulation procedures according to Missouri Code of State Regulations, Division 30—Secretary of State Chapter 10—Voting Machines (Electronic) for the proper counting of ballots.

14. The reasons why the additional evidence of voter fraud was not discovered earlier in the proceedings are set forth in the motion of the appointment of Special Master and the written response of Royster's counsel when the Court of Appeals inquired into why the evidence was brought to light after submission of the appeal.

15. A summary of the facts developed at the trial court level (which do not include the newly discovered evidence set forth above) are set forth in Exhibit A attached hereto and incorporated herein as additional support for this Petition and for consideration by the House of Representatives when determining Rizzo's qualifications and the result and validity of his election, both at the primary and general elections. Already on file with the House of Representatives, or to be filed concurrently with the submission of this Petition, are copies of the trial transcript and briefs of all parties filed with the Court of Appeals.

16. On information and belief, (a) the Secretary of State, State of Missouri, *delegated the responsibility to conduct the 601 recount requested by Royster to one or more officials of the Kansas City Election Board of Commissioners*; (b) Royster and his designees who attended the recount were specifically and repeatedly denied the ability to challenge any ballots; (c) within two days prior to the filing this Petition and acting on reports in the news media, officials with the office of Secretary of State, State of Missouri, contacted members of Royster's campaign claiming now that Royster should have been allowed to challenge formally all ballots during the 601 primary recount; and, (d) that recount was hurriedly conducted, and Royster and his designees were repeatedly admonished that they could not challenge ballots.

LEGAL GROUNDS

17. The Missouri Constitution provides as follows:

§ 18. Appointment of officers of houses--jurisdiction to determine membership--power to make rules, punish for contempt and disorderly conduct and expel members

Each house shall appoint its own officers; shall be sole judge of the qualifications, election and returns of its own members; may determine the rules of its own proceedings, except as herein provided; may arrest and punish by fine not exceeding three hundred dollars, or imprisonment in a county jail not exceeding ten days, or both, any person not a member, who shall be guilty of disrespect to the house by any disorderly or contemptuous behavior in its presence during its sessions; may punish its members for disorderly conduct; and, with the concurrence of two-thirds of all members elect, may expel a member; but no member shall be expelled a second time for the same cause.
(Missouri Constitution, 1945; Article III, Section 18.)

18. The House of Representatives shall be the sole judge of the qualifications, election and returns of its own members, and the court will not intervene. *State v. Banks* (Mo.1970), 454 S.W.2d 498; The Legislative body of which he is a member has exclusive right to determine elected representative's qualifications to hold or assume office and courts are without jurisdiction to determine issue of removal of residence from district. *State v. Hickey*

(Mo.), 475 S.W.2d 617. (1971)

19. Contested general elections involving a member of the House of Representatives shall be determined by the House of Representatives exclusively. Section 115.563 RSMo.

20. Neither the Contestants nor the voters were afforded a fair election, either during the primary or the general election. Practically and realistically, the primary election remains the single most important, if not the only, component to, and reason for, Rizzo's election to the House of Representative in the general election conducted in November, 2010.

Allegations regarding the New Evidence Discovered

21. The election laws violated by the voters who voted out-of-district in the August 3, 2010, primary election were **mandatory statutes**. Ballots cast in violation of mandatory election statutes are illegal and may not be counted. If the number of ballots declared to be illegal exceeds the margin of victory, the result of the election, and possibly the validity of the election itself, is in doubt. See Section 115.539, 115.449, and 115.593 RSMo.; *Barks v. Turnbeau*, 573 S.W. 2d 677 at 681 (Mo. App. ED 1978); *Ledbetter v. Hall*, 62 Mo. 422 (Mo. 1876); *Elliott v. Hogan*, 315 S.W.2d 840 (Mo.App. 1958).

22. Included among the mandatory statutes called into question by the *newly discovered evidence* in this matter are: (1) Sections 115.013 (21) and 115.113 RSMo. - precincts are the geographical area into which each election authority of this State must divide its jurisdiction for purposes of conducting elections, (2) Section 115.115.1 RSMo.- for each election within its jurisdiction, the election authority (the Kansas City Board of Elections) Ashall designate a polling place for each precinct within which any voter is entitled to vote at the election...@, (3) Section 115.163.3 RSMo. - the election authority Ashall@ send to each registered voter, a voter identification card containing the name and address of the voter, and the voter=s

correct precinct and polling location at which the voter may vote, (4) Section 115.135 RSMo. – “Any person who is qualified to vote, ... shall be entitled to register *in the jurisdiction within which he or she resides. In order to vote in any election for which registration is required, a person must be registered to vote in the jurisdiction of his or her residence no later than...*” (5) Section 115.139 RSMo.- with limited exceptions pertaining to ownership of real property and absentee voters (which are not applicable here), Ano person shall be permitted to vote in any election unless the person is duly registered in accordance with this chapter. (6) Section 115.155 RSMo. – voter must register using statutorily prescribed registration card on which voter states under oath the voter’s correct address, township and precinct; (7) Section 115.430.2(3) RSMo. - voters shall have the duty to appear and vote at the correct polling place.; and, (8) Section 115.430.2(1) RSMo.- *if a voter refuses to go to the correct polling place, the voter shall be permitted to vote a provisional ballot at the incorrect polling place, but such ballot shall not be counted if the voter was not eligible to vote at that polling place.*

23. The classification of the above statutes as mandatory and their importance to the conduct of lawful is underscored by two at least other statutes: (a) Section 115.191 RSMo. authorizes election authorities to “investigate the residence or other qualifications of any voter at any time it deems necessary”; and (b) Section 115.175 RSMo. declares that “Any person who knowingly or willfully gives any false information for the purpose of establishing his eligibility to register to vote or who conspires with another person for the purpose of encouraging his false registration or illegal vote, or who otherwise willfully and fraudulently furnishes false information to a registration official for the purpose of causing a false or fictitious registration,shall be guilty of a class one election offense.” See also Section 115.631 (1) and (18) RSMo. – class one election offense, Class C felony for false statements to an election authority or for

misleading an election authority in performance of duties and registering to vote not that a person is not legally entitled to register.

24. Individually, and in combination, the statutes that govern this matter (including also those involved in the election contest) constitute a mandate: To be lawful and counted, votes must be cast by qualified, eligible and registered voters, and in the legally correct legislative district and precinct of residence; only lawful votes cast in a lawfully conducted election may be counted.

25. Missouri appellate decisions make it clear that ballots cast by non-resident voters or voters who are not otherwise qualified to vote shall not be counted:

(a) Election invalidated because unqualified voters {because of residence in the case of nine voters, and improper registration in the case of one voter who was classified as “not a legal voter” by the court} were allowed to vote in a city election (Marre v. Reed, 775 S.W. 2d 951 at 956-957 (Mo. 1989).

(b) Election invalidated because the election authority inadvertently or mistakenly allowed nonresidents to vote, and denied actual residents the right to vote, in a public water supply election (Landwersiek v. Dunivan, 147 S.W. 3d 141 (Mo. App. S.D. 2004).

(c) Election invalidated because illegal and improperly cast absentee ballots were counted. Elliot v. Hogan, 315 S.W.2d 840 (Mo.App. 1958).

Prior Judicial Proceedings – Violations of Mandatory Election Statutes

26. In addition to the newly discovered (post-appeal, non-adjudicated) evidence described specifically by paragraph above, Royster states that the House of Representatives must consider, as part of its duty to review and pass upon Rizzo’s qualification and right to be seated, the facts and evidence developed in the election contest filed by Royster (*Royster v. Rizzo*),

including the trial transcript, all exhibits, pleadings, briefs of the parties filed with the trial court and the Court of Appeals, and the opinion of the Missouri Court of Appeals, all of which are incorporated herein by this reference

27. If, after such review, the House of Representatives finds independently that the evidence actually produced at the judicial trial established multiple violations of mandatory statutes (including Section 115.445 RSMo.), and that those violations resulted in the casting of unlawful ballots that exceed Rizzo's margin of victory in the August 3 primary, or that those statutory violations otherwise disqualify Rizzo from being seated by this body, then this House of Representatives must also consider those violations, and the illegal votes cast by reason thereof, when determining the right, eligibility, qualifications of Rizzo to be seated as a member of the House of Representatives representing the 40th Legislative District.

Failure to Meet Qualifications to be Seated; Primary and General Elections

28. The violations of election statutes set forth herein, including the statutes incorporated herein from pleadings in the primary election contest, applicable statutes relating to election offenses, as well as those specifically cited herein, and the evidence in support thereof establish that there were irregularities of sufficient magnitude to cast doubt on the validity and the result of the initial (general election) and the primary election conducted by the Kansas City Board of Election Commissioners for the 40th Legislative District. Sections 115.539, 115.549 and 115.593 RSMo.

29. If the evidence of new and additional irregularities, the identity of the voters who voted in the August 3 primary and their true places of residence, and the other wrongful conduct herein set forth had been discovered in time, the August 3 primary that Rizzo won by one vote would have been declared invalid under Missouri law, a new primary election for the 40th

Legislative District would have been required, and a lawfully qualified Democrat candidate for the general election would have been selected. Section 115.549 RSMo. Having secured a majority of votes by one in the original August 3 primary by and through an invalid election and violations of Missouri law, Rizzo was not, and could not be, a lawfully selected candidate qualified to run for office in the November 2010 general election. No lawfully qualified candidate won the November 2010 election for the 40th Legislative District. Rizzo, therefore, is not qualified to be seated as a duly elected member of the House of Representatives.

30. Each member of the House of Representatives, and the House as a whole, has a duty to ensure that the election laws of the State of Missouri are properly implemented and that all members of the House are lawfully elected and qualified to be seated.

WHEREFORE, Petitioners/Contestants respectfully request the House of Representatives, State of Missouri, to:

- a. Conduct a full evidentiary investigation into the Democrat primary election for the 40th Legislative District conducted on August 3, 2010, including the voters who voted out-of-precinct and out-of district;
- b. Subpoena, retain, protect and preserve all records of the Kansas City Board of Election Commissioners relating to voters registered with that election authority and all records relating specifically to the August 3, 2010 primary election and the November 2010 general election, including, but not limited to, all voter registration materials, applications and affidavits that the Kansas City Election Board is required by statute to retain, and all election materials, ballots, precinct registers, tally books, ballots (whether or not cast or used), notes, internal reports, reports of investigations, reports of irregularities, voter and candidate

complaints, and statements made by all voters respecting their residence and qualifications to vote;

c. Conduct such hearings and allow such evidence as shall be deemed necessary or proper, and to accept as evidence the information supplied by Petitioners herewith, the trial transcript and deposition transcripts in *Royster v. Rizzo*, Case No. 1016-CV25576, and the briefs and motions and all other pleadings filed, and exhibits and evidence introduced, by all parties in that election contest trial and the resulting appeal to the Missouri Court of Appeals, Western District, No. WD72947, and the decisions of the trial and Court of Appeals in that case;

d. To re-examine the evidence, exhibits and pleadings in *Royster v. Rizzo*, Case No. 1016-CV25576 for the purpose of determining the qualifications of John J. Rizzo to be seated in the House of Representatives;

e. Find and determine that the Democrat primary election for the 40th Legislative District conducted on August 3, 2010, was invalid, void and unlawful, and that it failed to result in the election of any lawfully selected candidate qualified to run in the November 2010 general election.

f. Refuse and decline to seat John J. Rizzo as the representative of the 40th Legislative District;

g. Find that John J. Rizzo has not met the qualifications to serve as representative of the 40th Legislative District;

h. Find that the irregularities set forth herein are of sufficient magnitude to cast doubt on the result and the validity of the initial (general election) conducted

in November 2010, and the primary election conducted on August 3, 2010, and to take such measures as are necessary to require a new election.

i. Give notice of this Petition to, and serve the same upon, John J. Rizzo and others as directed by statute.

j. Allow Contestant his costs and attorney=s fees and for such other relief as the House deems just and equitable.

Respectfully submitted,

Sean O'Toole

Will Royster

Exhibit A to
Petition to Contest Election and Seating of John J. Rizzo

SUMMARY OF FACTS FROM FIRST HEARING – September 7, 2010

Interpreters/ Escorts – unlawful assistance to voters – Section 115.445 RSMo.

1. The first witness to testify was Lindy Hobkins at the first hearing was an election judge at the Kansas City Museum. She testified that several groups of Somali voters came to the precinct, one of which consisted of three or four Somali women accompanied by a male escort (Tr. 8, lines 1-25; 9, lines 23-25; Tr. 10, lines 1-13).¹ With respect to this particular group, Hobkins stated:

a. Unlike other ESL voters (English second language), the group of female Somali voters who were accompanied by the Somali escort “could not communicate on any level at all,” (Tr. 11, lines 11-13) and “stood out to me because they had absolutely not even the most basic rudimentary skills in being able to communicate in English at all... ” so much so that she questioned if they were citizens (Tr. 18, Lines 1-25); that when these Somali voters could not even determine who they wanted to vote for by examining sample ballots (TR.11, lines 16-25), she finally ask them directly, and several times, “do you know who you want to vote for on any of the ballots.” (Tr. 12, lines 1-3).

b. At that point, the Somali interpreter, who was standing nearby, left the polling place and returned with a Rizzo campaign sign to the polling place where the judges and voters were located. (Tr. 12, lines 4-25) (Exh. 24). The

¹ The abbreviation “Tr.” followed by a page number refers to the transcript of the trial and page number on which the referenced testimony may be found.

interpreter then “stood in front of me and held it (Rizzo sign) up and pointed to it and said this one, this one, this one.” (Tr. 12, lines 10-25). After pointing to the Rizzo sign, the interpreter took the sign and the voters to the tables with the voting booths, where he stood and the Somali women took a seat to mark their ballots. (Tr. 13, lines 13-20).

c. Because the Rizzo sign was too unwieldy, the interpreter took the sign back to the election judges’ table, and returned to a place behind the voting tables where the Somali women were sitting (Tr. 13, lines 21-25), and “he began to point toward the (Rizzo) sign” that he had placed at the judges’ table” (Tr. 14; lines 1-4; 16-25) while he “was actually leaning into the women’s personal space,” (Tr.14; lines 16-25; Tr. 15, Lines 1-2), and “he would go in between from pointing to Mr. Rizzo’s sign and pointing on to the ballot” for each of the Somali voters. (Tr. 15, lines 1-9). None of the Somali voters requested an affidavit (oath assistance card) to verify the need for assistance. (Tr. 15, line 10-25). When cross-examined, Hobkins said that she “tried” to determine the name of this interpreter, and whether or not he was related to the Somali voters, but could not “because he spoke no English.” (Tr. 20, lines 1-25).

2. Sean Warren, the Democrat supervisory judge at the Museum, testified that the escort “was over in each individual box (referring to booth) pointing to them and speaking their language, ... but he was directly pointing to them, instructing them basically is what it looked like.” (Tr. 25, lines 1-7).

3. Wendy Jones, who was an election judge at Garfield Elementary School on Election Day, testified that,

a. She saw two Somali men and two women escorting and leading Somali voters “inside the polling place,” where she “witnessed myself – I witnessed myself seeing them fill out the ballots. Actually fill out the ballots and actually tell the people – tell the people where to fill out at, what to sign..”, and when she confronted the escorts (interpreter), they claimed to be related to the voters, or that the voters were deaf, or blind or could not read or write ...(Tr. 53, lines 3-16), and that “These were the excuses all day long that we had for these particular four individuals (referring to the escorts) to vote with them and for them. (Tr. 53, lines 17-19).

b. Jones determined from her discussions with the interpreter/escort that not every escorted, Somali voter was related to the escort, and that some of the escorts were not related and were just from the same “tribe or village...” as the Somalis who voted. (Tr. 57, lines 1-11).

c. Some of the escorts signed the voter precinct register for the voters they escorted (Tr. 60, lines 14-25), and some of the escorts actually filled out a ballot for “maybe about eight.” (Tr. 61, lines 17-25).

d. When she decided to peak to the Democrat supervisory judge about the problems with the Somali voters and interpreters, she was told “... well look, you know, we’re just trying to get through the day, you’re making --- you know, we all want to just make a little money here and just get out, you know, just make the best of it and just --- let’s go home.” (Tr. 58, lines 12-21). That supervisory judge tried to stop the escorts, “maybe towards the end of the day, yes.” (Tr. 58, lines 21-25).

4. Elaine Oberg , the Democrat supervisory judge for Ward 11, Precinct 8, the precinct to which Jones was assigned, observed a Somali interpreter who accompanied Somali voters, “help them get registered, find their name,... help them ... pick up a ballot that they should vote on, and then he would take them back to the voting booth and they both would be in the voting booth at the same time” (Tr. 78, lines 1-9), and “He would point usually at the ballot they should take.” (Tr. 78, lines 13-17).

5. Elmer Wyatt was the Democrat supervisory election judge at the Garfield polling tables where the Somali voters appeared (Tr.148, line 9-14). He saw a Somali interpreter stand behind “about five” (5) Somali voters (Tr. 179, lines 12-21; Tr.180, lines1-7) assisting the voters. The same man returned a second time and “did the same thing” (Tr. 180, Lines 17-25), after which Wyatt became suspicious and warned the man not to return to the “poll anymore.” (Tr. 181, Line 1-7). The same man returned a third time, and Wyatt “stopped him at the door ... I didn’t let him come back into the building anymore.” (Tr. 181, lines 8-25). Wyatt also testified that the initials of two judges were placed on the ballot to validate it, that before the register is signed the voter must show identification, after which the vote is eligible to receive a ballot. (Tr. 182; 183). Wyatt also stated he made no mistakes when checking in voters, “I catch them things pretty quickly.” (Tr. 183, lines 18-25; Tr. 184).

6. Mr. Keifer, the Republican Election Board director, acknowledged that the Election Board headquarters received two calls regarding the Somali escorts (sometimes “interpreters”) on Election Day (Tr. 108, line 3-25). He personally visited Garfield after the second call and interviewed the election judges, where he learned about the interpreters from the election judges, “explained the law” to them (referring to judges) about when assistance is permitted, but did not think to remind the judges about the requirement to complete oath

assistance cards. (Tr. 109, lines 8-25; Tr. 110-112). Kiefer stated that “it is the voters’ responsibility ...” to complete the oath assistance cards. (Tr.128, lines 11-25; tr. 129, lines 1-11).

Failure of voters to certify residence, sign and initial register; failure of election judges to initial ballots

7. A voter, Billie Robelado, found upon her arrival that the table for her precinct at Garfield was attended by one judge (Dora Spight), and that the ballots were unmonitored and located on the table “as far away from that judge as they could have been.” (Tr. 41; Tr. 42, lines 16; Tr. 42, lines 16-25).

8. The Republican Director of the Election Board identified at the first hearing, (a) 10 ballots without the initials of one or both election judges, six of which came from Ward 11, precincts 3 and 4 (Garfield), the precinct to which Dora Spight was assigned (Exhibits 21 A- G, and 22 and 23; Tr. 89-92; Tr. 11, lines 21-25; Tr. 101, lines 1- 25), (b) a precinct map which shows the consolidated precincts that are one of the points on this appeal (Exh.10; Tr. 95); (c) the oath assistance card referred to in the election manuals and is distributed to each polling place for completion by voters needing assistance (Exh. 18; Tr. 102), and none of which were completed or used on Election Day at Garfield or the Kansas City Museum precincts where the Somali escort and interpreters appeared (Tr. 104); and, (d) the Election Board’s instruction manuals which are given to the election judges during training sessions (Exh. 7, 9, 13;Tr. 92-94), and which instruct the judges (1) that the voter must complete the Oath Assistance Card before assistance in voting can be given, (2) that “one person may not assist multiple voters, and (3) on three separate pages, that only family members, one person of the voter’s choice (subject to the one voter per election rule) and election judges may give assistance (pages 20, 22and 25). (Exh. 7, pages 20-24; Exh. 9, pages 20-25). The power point presentation (Exh13) contains a full page on the procedures, rules and restrictions that apply to assistance given to voters. Keifer agreed

that election laws require “a lot of oaths..., and that they go the very heart of the election. (Tr. 108-109, line 1).

9. The Republican Director also reviewed the tally sheets for Precincts 11/4,11/ 5 and 11/6, and from that review, concluded that the failures to initial ballots were caused by judges’ mistakes. (Tr. 120-121). This review was not conducted under the supervision of the court, the parties or the attorneys. He did not interview or speak to any of the election judges when he made this conclusion.

10. One of the ballots that lacked the initials of both judges was an absentee ballot, but Mr. Keifer could not identify which judge made the mistake. (Tr. 121). All ballots cast in the primary election were commingled, and it would be impossible to identify ballots cast with assistance by the Somali interpreter. (Tr. 125, line 8-22).

Precinct consolidation

11. The Board consolidated several precincts, Ward 2, precinct 16 with Ward 2, precinct 02, and Ward 2, precincts 12 and 13 with Ward 2, Precinct 10. (Tr. 101-104).

SUMMARY OF FACTS SECOND HEARING –
Additional evidence September 14, 2010

12. At the second hearing, Mr. Keifer testified that (a) voters must sign the precinct (poll) register (Exh. 28, 29) to receive a ballot, and that the voter’s “signature signified that they are --- that they are actually a registered voter at that location (precinct) which matches our books (Exh. 28,29; Tr. 161-162); (b) that the voter must initial the register to identify the correct address , and identification is required (Tr. 162, lines 4-23); (c) that election judges initial the voter’s signature to verify the identity of the voter (Tr. 162, lines 24-25; Tr. 163); and (d) that the stickers placed on the register to indicate that “the two judges agree that that person who – is who they claim to be , and at that time they issue the ballot. (Tr. 165, lines 1-12).

13. There were multiple problems with the voter register of the precinct where the Somali voters were assisted. The Republican Director identified five (5) instances in which voters did not sign the register, six (6) instances in which voters did not initial the register, nine (9) instances in which the judges failed to initial the register, nine (9) instances in which no sticker was affixed to the register, and five (5) instances (one two times) in which the voters initials do not match the signatures of voters who signed for the ballots.(Tr. 164-173).

14. Keifer testified that he thought the mistakes with respect to the ballots and initials were judges' mistakes. (Tr. 174). On redirect examination, he acknowledged that he had not spoken to the precinct election judges since the election to determine why, or how it was that voters did not sign their names and place their initials on the precinct register. He said he did not know what happened. (Tr. 175).

15. The Election Board consolidated Ward 2, Precinct 16 with Ward 2, Precinct 2, and Precincts 12 and 13 in Ward 2 with Ward 2, precinct 10. (Exh.10). . *In one of these consolidated precincts, no voter voted, in any race.* (Exh. ; Precinct 2-16 in Exh.10). None of the consolidated precincts questioned by Appellant share common boundaries with the polling place (precinct) to which they were assigned. In order to vote, voters were required to travel past and through other precincts that do not adjoin the precincts of their residence. The trial court determined that the precincts were not improperly consolidated.

1. On the 6th day of October, 2010, the above-captioned matter was submitted to the Court upon oral argument by Appellant and Respondents.

2. That on September 28th , 2010, the Contestee Kansas City Board of Election Commissioners released its list of voters who voted in the August 3, 2010 primary election, which release was subsequent to Appellant submitting his Brief (September 17th), and

subsequent to or near the time of said oral argument.

3. That prior to the release of the list of voters who voted in the election, the names on the voter registry was designated as confidential, together with all information on the poll registry, and was not released by the election board, and therefore there was not sufficient time to investigate and brief the Court on the findings of the review until the present.

4. That based upon a review of the recently released list of registered voters who cast votes in the August 3, 2010 Democratic primary for the 40th Legislative District, relevant and material information has become known concerning potentially irregular votes cast in the contest.

5. According to a comparison of the released voting list provided by the Kansas City Board of Elections and other public documents, including the campaign finance disclosure statements of Contestee Rizzo, certain irregularities are evident, including but not limited to the following:

a. A voter who is identified as a contributor of Contestee Rizzo's campaign with an address outside the 40th Legislative District voted in the August 3rd primary using a different address from his residence. Jackson County records demonstrate the voter as residing where the voter is designated on the Rizzo campaign records, which is not in the 40th Legislative District.

b. Two voters who were listed on the voter list voted claiming an address in the 40th Legislative District, but said residence is listed as owned by Jackson County Land Trust and appears to have been abandoned and boarded up as of the date of this Motion.

c. Three voters used the same address which does not exist, but on information and belief, one voter admitted to a local news outlet he resided out of the county.

6. That pursuant to Rule 68.03, “Each Appellate Court in which any action is pending may appoint a master therein.”

7. That in the election contest, presently pending in this Court, this Court sits “in equity” and can fashion a remedy which ensures a fair election for the residents of the 40th Legislative District.

8. To assist the Court in fashioning a remedy, Appellant asks the Court to appoint a master to receive and report to the Court evidence of the actions on the part of individuals the master may find, which may further call into question the validity of the election.

9. That pursuant to Rule 68.03(d), Appellant requests the Court to exercise its powers as the Court directs in the most expeditious of matters, and report his or her findings to the Appellate Court, concerning the above allegations.