

FACSIMILE COVER PAGE

To : John Cunningham

From : Richard K. Means

Sent : 3/7/2008 at 12:32:00 PM

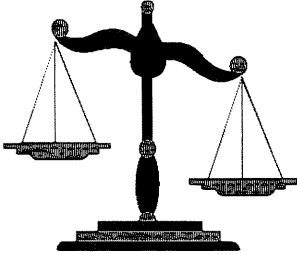
Pages : 10 (including Cover)

Subject : 14th Congressional District

Petition for discovery recount and FOIA request

originals being hand delivered with fee payment

RICHARD K. MEANS
ATTORNEY AT LAW
806 FAIR OAKS AVENUE
OAK PARK, ILLINOIS 60302



TELEPHONE: (708) 386-1122

FACSIMILE: (708) 383-2987

CELLULAR : (312) 391-8808

E-MAIL: RMEANS@RICHARDMEANS.COM

HTTP://WWW.RICHARDMEANS.COM

March 7, 2008

Facsimile Transmission For

Election Authorities in 14th Congressional District and their Attorneys

RE: Petitions for Discovery Recount being filed today

Ladies and Gentlemen,

A few minutes ago, the Illinois State Board of Elections proclaimed the results of the February 5, 2008 Democratic Primary Election. In the 14th Congressional District, Bill Foster was declared the successful candidate over my client John Laesch by a very small margin. By the attached Petition For Discovery (which is being hand delivered to you with the appropriate fee payment in a few minutes) we are seeking discovery recounts in the City of Aurora and the Counties of DeKalb, Kane, Kendall, Lee and Whiteside pursuant to the provisions of the Illinois Election Code. We are NOT seeking discovery recounts in the counties of Bureau, DuPage and Henry.

Attached for those election authorities who we are petitioning for a discovery recount is a Freedom of Information Act request (also being hand delivered) of the type usually filed in such matters so that the parties will have sufficient information upon which to determine whether an election contest proceeding in the circuit court is appropriate.

We know you are busy with tomorrow's Special General Election in the 14th Congressional and we want to avoid any unnecessary diversion of your efforts in its preparation and administration. We only ask you to schedule and notify candidate Bill Foster (and us) that the discovery recount shall begin on Tuesday, March 11, 2008 at a specific time and place. It is essential that the discovery recount begin on

Confidentiality Note

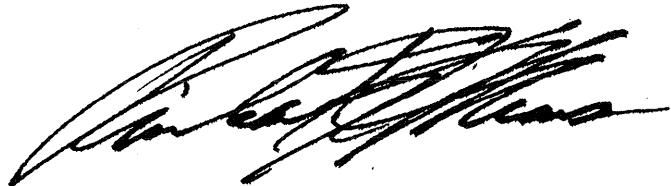
The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual(s) or entity(ies) named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please notify us immediately by telephone and return this original message to us at the address above via the United States Postal Service. Thank you.

RE: Petitions for Discovery Recount being filed today, March 7, 2008

Tuesday, March 11, 2008 so that the parties will have sufficient information upon which to determine whether an election contest proceeding in the circuit court is appropriate to be filed on Friday, March 14, 2008. Because of this extraordinarily short timeline, it is essential that you schedule and make the notifications today and other preparations can wait until after tomorrow's special election.

Bill Foster can be notified at phone: 630.362.0096 fax: 630-578-0906 and email: tom@foster08.com, His attorney James P Nally can be notified at phone: 312-422-5560, fax: 312-346-7999 and email: jpnlaw11@netzero.net.

We thank you for your cooperation in this matter and we look forward to working with you to amicably resolve all questions.



Attorney For Candidate John Laesch

CC: James P. Nally

Attachments: Petition and FOIA Request

**PETITION FOR DISCOVERY RECOUNT
TO THE HONORABLE JOHN CUNNINGHAM
KANE COUNTY CLERK**

PETITION OF JOHN LAESCH FOR A DISCOVERY RECOUNT)
OF THE FEBRUARY 5, 2008 GENERAL PRIMARY ELECTION)
HELD IN THE PORTIONS OF THE 14TH CONGRESSIONAL DISTRICT)
WHICH LIE WITHIN THE COUNTY OF KANE, STATE OF ILLINOIS)

PETITION FOR DISCOVERY

Now comes the Candidate, John Laesch, by and through his attorney, Richard K. Means and, pursuant to §22-9.1 of the Illinois Election Code (10 ILCS 5/22-9.1), the Candidate petitions for a discovery recount of the votes cast in certain precincts or districts of Kane County at the February 5, 2008 General Primary Election held in the 14th Congressional District of Illinois. In support thereof, he states as follows:

That John Laesch was a candidate for the Democratic Nomination for the office of Representative in Congress for the 14th Congressional District of Illinois in portions of Kane County at the February 5, 2008 General Primary Election;

That the official canvass of results by the State Board of Elections on March 7, 2008 for the office of Representative in Congress for the 14th Congressional District of Illinois at the February 5, 2008 General Primary Election indicates that the various candidates received the following vote totals:

John Laesch: 32,012
Jotham Stein: 5,865
Bill Foster: 32,410
Joe Serra: 6,033

That, by virtue of this result, John Laesch, Jotham Stein and Joe Serra were declared not nominated, and Bill Foster was declared nominated by the Democratic Party for such office;

That John Laesch received votes equal to at least 95% of the votes received by the successful candidate, Bill Foster;

That §22-9.1 of the Election Code (10 ILCS 5/22-9.1) provides that candidates so situated shall be entitled to and may petition the election authority for a discovery recount;

That Petitioner John Laesch hereby petitions and requests that a discovery recount be conducted in the following 16 precincts or districts of Kane County, which precincts or districts do not exceed 25% of the precincts or districts in portions of the 14th Congressional District which lie within Kane County:

Aurora Twp., Precinct 5
Campton Twp., Precinct 2
Dundee Twp., Precinct 34
Elgin Twp., Precinct 57
Hampshire Twp., Precinct 3
Sugar Grove Twp., Precinct 4

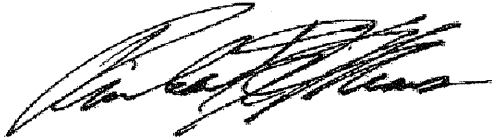
Aurora Twp., Precinct 9
Dundee Twp., Precinct 5
Dundee Twp., Precinct 16
Geneva Twp., Precinct 2
Rutland Twp., Precinct 3

Batavia Twp., Precinct 7
Dundee Twp., Precinct 6
Elgin Twp., Precinct 7
Geneva Twp., Precinct 15
St. Charles Twp., Precinct 16

That Petitioner John Laesch tenders herewith the sum of \$160, by bank check payable to Kane County, as costs, as required by statute.

WHEREFORE, the Petitioner John Laesch prays that the election authority conduct a discovery recount of the ballots in said precincts (or districts) pursuant to §22-9.1 of the Election Code (10 ILCS 5/22-9.1).

Respectfully submitted,

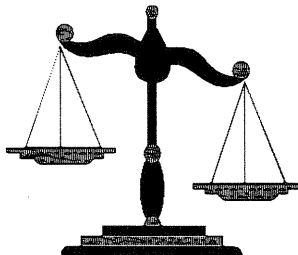


Richard K. Means
Attorney for Candidate John Laesch

Dated: March 7, 2008

Richard K. Means
806 Fair Oaks Avenue
Oak Park, Illinois 60302
Telephone: (708) 386-1122
Facsimile: (708) 383-2987
Cellular (312) 391-8808
Email: Rmeans@RichardMeans.com
ARDC Attorney #01874098

RICHARD K. MEANS
ATTORNEY AT LAW
806 FAIR OAKS AVENUE
OAK PARK, ILLINOIS 60302



TELEPHONE: (708) 386-1122

FACSIMILE: (708) 383-2987

CELLULAR: (312) 391-8808

E-MAIL: RMEANS@RICHARDMEANS.COM

[HTTP://WWW.RICHARDMEANS.COM](http://WWW.RICHARDMEANS.COM)

March 7, 2008

Hon. John Cunningham
Kane County Clerk
719 S. Batavia Ave., Bldg. B
PO Box 70
Geneva, Illinois 60134

Re: Freedom of Information Act Request For Public
Records Respecting the February 5, 2008 General
Primary Election

Dear Clerk Cunningham,

On behalf of my client, John Laesch, who was a candidate the Democratic Party nomination for the office of Representative in Congress for the 14th Congressional District of Illinois at the February 5, 2008 General Primary Election and pursuant the Freedom of Information Act ("FOIA"; 5 ILCS 140/1 *et seq.*), we hereby request disclosure of certain identified public records.

Simultaneously with the filing of this FOIA request, Mr. Laesch has filed a petition for a discovery recount pursuant to §22-9.1 of the Illinois Election Code (10 ILCS 5/22-9.1) seeking to discover whether there is sufficient evidence to file an election contest to correct and overturn the proclaimed results of this election in which the Illinois State Board of Elections found that candidate Bill Foster was the successful candidate.

The discovery recount provisions of the Election Code set forth a methodology by which evidence of election returns and election materials which are, by law, held under seal may be examined. We have timely sought that evidence by our discovery recount petition. With this FOIA request, we seek further evidence which is held as public records by the Kane County Clerk so that we may timely present all relevant evidence in an election contest in case we discover sufficient mistakes, errors and/or fraud to require, under Illinois law, that

March 7, 2008
page 2

the proclamation of results, with respect to this Democratic nomination, must be overturned. For this reason, we ask that you respond to our requests for disclosure of public records with all deliberate speed and otherwise within the requirements of FOIA.

Pursuant to FOIA, we seek to inspect, examine, and procure true copies of the following specified public records:

1. Any and all documents (of all type and description), notes, recordings, electronic files and other matters within the custody and control of the Kane County Clerk which comprise, contain or disclose evidence (or leads to evidence) of mistakes, errors and/or fraud in the precincts under your jurisdiction comprising the 14th Congressional District with respect to any matter relating to the integrity of the election process or accuracy of the election results including, but not limited to:
 - a. The qualifications of voters who were permitted to vote;
 - b. The qualifications of persons claiming to be voters who were not permitted to vote;
 - c. The integrity of absentee ballot voting;
 - d. The integrity of early voting;
 - e. The integrity of provisional ballots;
 - f. The freedom of the voters from improper influence or campaigning within the polling place;
 - g. The freedom of the voters from breaches of their privacy and the secrecy of their ballot within the polling place;
 - h. The completeness or accuracy of the results generated in the polling place;
 - i. The completeness or accuracy of the results transmitted from the polling place; and
 - j. The completeness or accuracy of the results computed in the central counting process;
2. According to 10 ILCS 5/24C-12, “ ... ballots and election materials and equipment returned to the office of the election authority which are not signed and sealed as required by law shall not be accepted by the election authority until the judges returning the ballots make and sign the necessary corrections. Upon acceptance of the ballots and election materials and equipment by the election authority, the judges returning the ballots shall take a receipt signed by the election authority and stamped with the time and date of the return. The election judges whose duty it is to return any ballots and election materials and equipment as provided shall, in the event the ballots and election materials and equipment as provided

March 7, 2008
page 3

cannot be found when needed on proper request, produce the receipt which they are to take as above provided.”

Provide any and all of the time and date stamped receipts for all election materials which were returned on election night, February 5, 2008 and all those which were not returned on February 5, 2008, including any log or documentation which verifies that the election judges in those polling locations were contacted and came in to verify that election materials that were missing were accepted as genuine and valid.

3. Documents showing the chain of custody for all election material which was found to be missing after February 5, 2008 election, including, but not limited to, seal numbers, names, reports, notes, and emails and
 - a. All locations of the polls with any missing election materials;
 - b. All precincts associated with the polls with any missing election materials;
 - c. All serial numbers for all machines and memory cards with any missing election material for the February 5, 2008 election;
 - d. Documents showing the names of all public employees (full-time, part-time and contract), and observers, and any other individuals who were involved with locating and transporting any and all election material that was initially missing for the February 5, 2008 election, including the assigned poll locations corresponding to each person.
4. All serial numbers for all machines used to tabulate the results of the memory cards for early voting and the February 5, 2008 election, including, but not limited to, machines used for the tabulation of all ballots, all memory cards missing, and all memory cards which failed to load into the central database;
5. The data dump for the failed memory cards referenced in 4 (above);
6. All written procedures for gathering the data from missing or failed memory cards and the retrieval of data upon them;
7. All technical reports for all memory cards which failed at the February 5, 2008 General Primary Election;
8. Documents showing the names of all individuals who transferred the information from the memory cards to the central database during the tabulation of the February 5, 2008 General Primary Election vote including, but not limited to, those who had administrative access;

March 7, 2008
page 4

9. Documents showing all background checks for all individuals who transferred data from the memory cards to the central database for the February 5, 2008 General Primary Election;
10. Documents showing all records and notes, electronic or paper, pertaining to the Kane County Clerk's internal reconciliation or quality control work taking place from February 5, 2008 through the present;
11. Documents showing all records and notes, electronic or paper, pertaining to the statutorily required five percent retabulation from February 5, 2008 through the present;

Since many of these requested public records are prepared and maintained on computer media, *we are entitled to and specifically request their disclosure on computer media.* *AFSCME v. County of Cook*, 136 Ill. 2d 334 (1990). Specifically, we presume that you maintain such public records in word processing, spreadsheet and/or database format and, while we prefer disclosure in Microsoft formats, we can read the computer file public records in almost any form in which they exist.

As a purchaser of the Microsoft Office XP Professional Suite 2003 software, we are licensed to possess and use such electronic files and their disclosure is not subject to the trade secret exception in §7(1)(g) of FOIA. We purchased Microsoft Office XP Professional Suite 2003 license # 70145-748-6862157-57798 in 2004. We invite you to confirm our licensee status with the software publisher.

Respecting our request for computer files of public records, *we specifically request that they immediately be delivered to us, by electronic mail*, on a CD-ROM or DVD disk, and/or on 3.5 inch floppy computer disk(s). Our ultimate preference for the lowest cost to the public and to the requester and promptness of disclosure is that all computerized records be disclosed by sending them as an attachment to the electronic mail address **rmeans@richardmeans.com**. If you choose to disclose the records other than by electronic mail, we request that we be telephoned (at the above stated telephone number) and we will send a messenger to retrieve them from wherever they are located.

To the extent that any portions of the public records we seek are exempt from disclosure for privacy or other reasons, we specifically request immediate disclosure of those portions of the public records which are not exempt by disclosing to us a copy of the public records with any exempt portions redacted. In addition, we request a specific explanation of the reasons why any records requested (or portions thereof) are not disclosed.

The above FOIA requests are, and are intended to be, severable and are only included in a single FOIA request document for administrative simplicity and thematic similarity. The delay or denial regarding the production of public records for one particular request should not affect or delay the production of public records covered by a different request herein. Please provide disclosures in increments as soon as you have

March 7, 2008
page 5

them by the fastest method of delivery and please notify us by telephone as soon as you have any portion of the above public records request available for on-site review.

We stand ready to pay the Kane County Clerk any and all legally permitted fees and costs for the duplication of the public records we seek.

Thank you for your cooperation and assistance. Please reply at your earliest convenience (but in no case in excess of the time provided by FOIA) by facsimile or electronic mail.

Kindest personal regards,

A handwritten signature in black ink, appearing to read "Richard K. Means", is written in a cursive style.

Cc: James P. Nally, Candidate Foster's Attorney

Katherine Moran, the Kane County Clerk's Attorney