

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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JUN 18 2012

S.C. Supreme Court

APPEAL FROM Horry County
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Civil Action No. 2012-CP-26-4709

Donnie McBride and Vincent Masterpaul, Respondents-Plaintiffs,

v.

South Carolina Election Commission; Marci Andino, as Executive Director and Representative of the South Carolina Election Commission; Horry County Election Commission; Russell W. Hall, III, Chairman of Horry County Election Commission; Georgetown County Election Commission; Dean Smith, Director of Georgetown County Election Commission; Florence County Election Commission; David K. Alford, Director of Florence County Election Commission; Marion County Election Commission; Teresa C. Moody, Director of Marion County Election Commission; Dillon County Election Commission; Joe Moffet, Chairman of Dillon County Election Commission; Marlboro County Election Commission; Phyllis Hagan, Director of Marlboro County Election Commission; Chesterfield County Election Commission; Donald Sellers, Director of Chesterfield County Election Commission; Darlington County Election Commission; Hoyt Campbell, Director of Darlington County Election Commission, Defendants,

Of whom

South Carolina Election Commission and Marci Andino, as Executive Director and Representative of the South Carolina Election Commission, are Appellants-Defendants.

**EMERGENCY PETITION FOR WRIT OF SUPERSEDEAS TO VACATE
THE *EX PARTE* TEMPORARY RESTRAINING ORDER AND TO DISMISS
THE CASE AND INCORPORATED MEMORANDUM OF LAW IN SUPPORT**

INTRODUCTION

This is an appeal from an order granting the Respondents-Plaintiffs' Motion for an *Ex Parte* Temporary Restraining Order issued June 14, 2012, preventing Appellants-Defendants' South Carolina State Election Commission and Marci Andino, as Executive Director and Representative of the South Carolina State Election Commission (SEC) and the remaining defendants "from calibrating and/or distributing any electronic voting machines or elections materials pertaining to the Seventh Congressional District runoff election before a hearing is held¹ and a ruling issued on the underlying Petition for Writ of Mandamus." This Court has jurisdiction pursuant to S.C. Const. art. V, sec. 5, Rule 240, SCACR, and S.C. Code Ann. § 14-3-330(4) (Supp. 2011).

The SEC makes this Emergency Petition for Writ of Supersedeas (Petition), and by and through their undersigned counsel, requests that this Court supersede and vacate the *Ex Parte* Temporary Restraining Order (*Ex Parte* TRO) issued June 14, 2012, and dismiss the action pursuant to Rules 12(b)(2), (4), (5), and (6), and Rule 65(f)(1), SCRCR. By law, any political party runoff has to be held two (2) weeks after the first. S.C. Code Ann. § 7-13-50. The political party runoffs will be held June 26, 2012. In order to prevent electors from being disenfranchised by the improvidently granted *Ex Parte* TRO that on its face enjoins the SEC and the effected County Election Commissions from responding timely to legitimate requests for absentee ballots for the primary election runoff for the Republican Party for the Seventh Congressional District (District), this Court should rule on the Petition without hearing or hold a hearing as soon as reasonably possible.

¹ The hearing is set for June 21, 2012, two (2) working days prior to the mandatory primary runoff date.

BACKGROUND

The SEC and the respective county election commissions are tasked with the responsibility of conducting the political party primary elections. S.C. Code Ann. § 7-13-15 (Supp. 2011). The primary elections for the Democratic and Republican parties were held on June 12, 2012. The new South Carolina Seventh Congressional District (District or Office) includes all or portions of Horry, Georgetown, Florence, Marion, Dillon, Marlboro, Chesterfield and Darlington Counties.

The South Carolina Republican Party State Committee certified to the SEC seven (7) candidates seeking nomination as the republican candidate for the District in the November general election. No candidate got a majority of the votes cast for the Office in the Republican Primary and there will be a runoff for the Office in the Republican Party primary on June 26, 2012, as required by S.C. Code Ann. § 7-17-510. Exhibit 1, Affidavit of Marci Andino, ¶ 5.

The South Carolina Democratic Party State Committee (Democratic Committee) certified five (5) candidates seeking the nomination as the democratic candidate for the District in the November general election, including Preston Brittain (Brittain), Gloria Tinubu (Tinubu) and Ted Vick (Vick). Exhibit 1, Andino Aff., ¶ 6. On May 29, 2012, the Democratic Committee forwarded a copy of Vick's letter of withdrawal as a candidate for the Office. Exhibit 1, Andino Aff., ¶ 7.

Because the Office is a federal office, absentee ballots began to be transmitted by the County Election Commissions no later than April 28, 2012, and were being transmitted approximately a month prior to Vick's withdrawing his name. S.C. Code Ann. § 7-13-380 provides:

After the official ballots have been printed by the proper officer, commissioners, or other authority, the death or withdrawal of a candidate whose name is printed

on the official ballot does not require the officer, commissioners, or other authority to reprint the official ballots, but the officer, commissioners, or other authority having jurisdiction over the printing and distribution of the ballots concerned may (1) cause the ballots to be reprinted and be substituted in all respects for the first printed ballots if this substitution is considered feasible and advisable or (2) affix a blank label to cover the name of the deceased or withdrawn candidate on voting systems where possible or appropriate.

(Emphasis added). There was not sufficient time to reprint the absentee ballots, revise the databases to remove Vick's name or affix blank labels for the ballots in all eight (8) effected counties and his name was left on. Exhibit 1, Andino Aff., ¶ 8. If there had been sufficient time, Vick's name could have been removed from the ballot in each of the effected counties.

Votes were cast for Vick, whether absentee prior to June 12, 2012, or during the June 12, 2012, Democratic Party primary. If the votes for Vick are counted as part of the total votes cast for the Office, there will be a runoff between Vick and Tinubu. If the votes cast for Vick are not counted as part of the total votes cast for the Office, Tinubu will have a majority of the vote and there will not be a runoff. Exhibit 1, Andino Aff., ¶ 9.

On June 14, 2012, the County Commissions convened as the County Board of Canvassers to certify the results of the primary elections. S.C. Code Ann. § 7-17-510 (Supp. 2011). Based upon the long standing interpretation of the SEC, the County Board of Canvassers did not count² the votes cast for Vick in determining the vote total for the Democratic Primary District. Exhibit 1, Andino Aff., ¶ 10. The State Election Commission serves as the State Board of Canvassers and is responsible for declaring the results of the nominations for federal offices, including offices, such as here, that involve more than one county. S.C. Code § 7-17-510 (Supp. 2011). The State Election Commission met on Friday afternoon, June 15, 2012, and certified the results of the District vote and determined that Tinubu had a majority.

² While not counted, all votes for Vick are preserved.

DISCUSSION

The Supreme Court should supersede and vacate the *Ex Parte* TRO and dismiss the Petition for Writ of Mandamus on the grounds that the Circuit Court lacks personal jurisdiction over the SEC and, on information and belief, all other defendants³ because the Plaintiffs have not filed and served a summons and complaint as required by the South Carolina Rules of Civil Procedure (SCRCP), thereby rendering all other documents filed or served in this purported action a nullity, and the Plaintiffs fail to state a cause of action because they have alleged no cognizable injury.

On June 14, 2012, Respondents-Plaintiffs Ronnie McBride and Vincent Masterpaul (Plaintiffs) filed a verified Petition for a Writ of Mandamus (Petition) in the Court of Common Pleas, Fifteenth Judicial Circuit, Horry County seeking to mandamus the SEC and each of the County Election Commissions for Horry, Georgetown, Florence, Marion, Dillon, Marlboro, Chesterfield and Darlington Counties “to conduct a runoff election as required by S.C. Code Section 7-13-50”. Exhibit 2, p. 1. Respondents also filed a Motion for an *Ex Parte* Temporary Restraining Order with its Mandamus Petition. See Exhibit 3. Later, on the afternoon of June 14, 2012, the Honorable Larry B. Hyman, Jr., At-large Circuit Judge, issued the *Ex Parte* TRO which provides, in pertinent part: “The Defendants are restrained from calibrating and/or distributing any electronic voting machines or elections materials pertaining to the Seventh Congressional District runoff election before a hearing is held and a ruling issued on the underlying Petition for Writ of Mandamus.” See Exhibit 4, pages 2-3.

1. THE EX PARTE TRO SHOULD BE SUPERSEDED BECAUSE THE LOWER COURT LACKED JURISDICTION TO ENTER THE ORDER. Pursuant to Rules 12(b)(2), (4), (5), and (6), and Rule

³ SEC also does not understand how the Circuit Court in Horry County has jurisdiction over the county election commissions such as the Florence County Election Commission.

65(f)(1), SCRPC, the Circuit Court lacked personal jurisdiction over the SEC and, on information and belief, all other defendants because the Plaintiffs have not filed and served a summons and complaint as required by the South Carolina Rules of Civil Procedure (SCRPC), thereby rendering all other documents filed or served in this purported action a nullity. As a threshold matter, because the SEC has not been served with a summons and complaint as required under the Rules, Plaintiffs have failed to invoke the Circuit Court's jurisdiction over the SEC, and the Petition should be dismissed as to the SEC for lack of personal jurisdiction. Further, the *Ex Parte* Temporary Restraining Order should be vacated for lack of personal jurisdiction and because the underlying matter was not a proper civil action.

a. Lack of Service and Personal Jurisdiction. As a threshold matter, because the SEC has not been served with a summons and complaint as required under the SCRPC, Plaintiffs have failed to invoke this Court's jurisdiction over the SEC, and the Petition should be dismissed as to the SEC for lack of personal jurisdiction. Further, the *Ex Parte* TRO should be vacated for lack of personal jurisdiction and because the underlying matter was not a proper civil action.

b. Failure to File and Serve a Summons and Complaint for the Mandamus Petition. In order for the Circuit Court to have jurisdiction over the mandamus request, Plaintiffs must file and serve a summons and complaint. See Rule 65(f)(1), SCRPC. Rule 65(f)(1), SCRPC, provides the requirements for requesting a writ of mandamus and states, in pertinent part:

No writ of mandamus, habeas corpus, or other remedial writ shall be granted without notice of motion for the writ to the adverse party, which notice shall be served, together with the summons and complaint, in event no summons and complaint have previously been filed and served in the action, upon the adverse party in accordance with the provision of Rules 4 and 5. Such notice and motion

shall be supported by affidavit or verified complaint setting forth clearly the facts entitling the moving party to such writ.

(Emphasis added).

Here, Plaintiffs have not filed and served a summons and complaint as required by Rule 7(a), SCRCF, which provides: “There shall be a complaint” The Mandamus Petition, however, does not meet the requirements of Rule 10, SCRCF. Further, the plain language of Rule 65(f)(1), SCRCF, requires a summons and complaint be filed and served in accordance with Rules 4 and 5, SCRCF. Because Plaintiffs have not filed and served a summons and complaint on the SEC and, on information and belief, the other defendants, the Mandamus Petition is a nullity and should be dismissed and the *Ex Parte* TRO vacated because the underlying matter was not a proper civil action and the Circuit Court did not have jurisdiction to issue the Order.

2. THE *EX PARTE* TRO SHOULD BE SUPERSEDED BECAUSE THE PLAINTIFFS FAIL TO STATE A CAUSE OF ACTION. Plaintiffs have failed to state facts sufficient to constitute a cause of action because they have alleged no cognizable injury and this matter should be dismissed. A motion to dismiss under Rule 12(b)(6), SCRCF, should be granted if the facts alleged and inferences reasonably deductible therefrom do not entitle the plaintiff to any relief on any theory of the case. See *Gentry v. Yonce*, 331 S.C. 1, 522 S.E.2d 137 (1999). Plaintiffs have not alleged that either is a registered elector of the District and is eligible to vote in any runoff election, if one were to be held, for the District race.

The District includes all or portions of Horry, Georgetown, Florence, Marion, Dillon, Marlboro, Chesterfield and Darlington Counties. In order to be eligible to vote for a nominee in the District, a person has to have residency in the District and be a registered voter. In order to be eligible to vote in any Democratic Party primary runoff, a voter must not have voted in the Republican Party primary.

Plaintiffs do not allege any facts establishing they have been harmed in any manner, thus they cannot establish they are entitled to relief. At a minimum to bring this action, Plaintiffs must state facts sufficient to establish they are registered voters eligible to vote in a Democratic Party primary runoff election—that is, they live in the district, are properly registered to vote in the District and did not vote in the Republican Primary. Plaintiffs’ Petition contains none of these allegations. Because Plaintiffs have not established they are eligible even to vote in the Democratic Party primary, they have not alleged, much less established, they will be harmed by the lack of a Democratic Party primary runoff election. This matter must be dismissed under Rule 12(b)(6), SCRPC, for failure to state facts sufficient to constitute a cause of action.

3. THE SEC PROPERLY DETERMINED THAT THE VICK VOTES SHOULD NOT BE INCLUDED IN ORDER TO DETERMINE THE MAJORITY. S.C. Code Ann. § 7-17-600 (Supp. 2011) provides that “[n]o candidate shall be declared nominated in a first primary election unless he received a majority of the votes cast for the office for which he was a candidate. The question of a majority vote shall be determined by the number of votes cast for any particular office and not by the whole number of votes cast in the primary.” Emphasis added. S. C. Code Ann. § 7-17-610 (Supp. 2011) provides, in pertinent part:

It is the intent of the South Carolina General Assembly that the following method be used in determining what candidates have received a majority vote for a particular office and are thereby entitled to be nominated on the first ballot according to the terms of Sections 7-17-600 and 7-13-50.

(1) If a candidate for a single office is to be selected, and there is more than one person seeking nomination, the majority shall be ascertained by dividing the total vote cast for all candidates by two. Any excess of the sum so ascertained shall be a majority, and the candidate who obtains a majority shall be declared the nominee. ...

As this Court recently held in Anderson v. S.C. State Election Comm. :

The primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly. *Beaufort Cnty. v. S.C. State Election Comm'n*, 395 S.C. 366, 718 S.E.2d 432 (2011). In construing statutory language, the statute must be read as a whole, and sections which are a part of the same general statutory law must be construed together and each one given effect. *Id.*; *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000). Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning. *Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 476 S.E.2d 690 (1996). When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. *Id.*

Anderson v. S.C. State Election Comm., Shearouse Advanced Sheet No. 16, May 9, 2012, p. 25.

A candidate is defined as an “individual seeking nomination, election, or appointment to an office,,,” *Black’s Law Dictionary*, Eighth Ed, 1999. The clear language of Section 7-17-610 is that the “candidate” is the “person seeking nomination.” When Vick withdrew, he was no longer a candidate and was not “seeking nomination.” Since Vick was not seeking the nomination, he was not a candidate and his votes cannot be counted to determine the majority number.

Further, if Vick had withdrawn earlier in the primary season, his name could have been removed from the databases for the electronic voting machines and from the absentee ballots. See S.C. Code Ann. § 7-13-380 (Supp. 2011). It would be absurd to count Vick’s votes toward determining what the majority vote number is simply on an accident of timing. Further, the statutory form of the ballot for South Carolina primary elections does not provide for write-in candidates. Finally, to determine that the General Assembly intended for the votes for a candidate who had withdrawn from a race had to be counted would certainly reach an absurd result if there were three candidates for an office on the primary ballot and one withdrew prior to the election. If counting the votes of the candidate who had withdrawn meant that no candidate had a majority, there would have to be a runoff for the only two candidates that could be nominated and the two that had already been through the election process. See *Kiriakides v. United Artists Comm’n, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994) (“However plain the

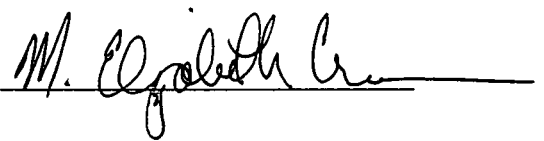
ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention... . If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect." (citing Stackhouse v. Rowland, 86 S.C. 419, 422, 68 S.E. 561, 562 (1910))." Catawba Indian Tribe of South Carolina v. State of South Carolina, 372 S.C. 519, 526-527, 642 S.E.2d 751, 755 (2007),

Finally, the SEC interpretation that the votes of a withdrawn candidate should not be counted in determining the majority vote number is a long standing interpretation, having been provided to the county election commissions in the 2006, 2008, 2010 and 2012 primary election cycles. The long standing interpretation of the agency should be given difference. "“Courts defer to the relevant administrative agency's decisions with respect to its own regulations unless there is a compelling reason to differ.” South Carolina Coastal Conservation League v. South Carolina Dep't of Health & Envtl. Control, 363 S.C. 67, 75, 610 S.E.2d 482, 486 (2005); see also Brown v. Bi-Lo, Inc., 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003) ('We recognize the Court generally gives deference to an administrative agency's interpretation of an applicable statute or its own regulation.')." Brownlee v. S.C. Dept. of Health and Env'tl Control, 382 S.C. 129, 136, 676 S.E.2d 116.120 (2009)

CONCLUSION

In order not to disenfranchise voters who seek absentee ballots to vote in the Republican Primary runoff for the Seventh Congressional District, Appellants-Defendants request this Court to grant SEC's Petition, supersede the *Ex Parte* TRO and dismiss the Mandamus Petition. This is an important issue that should be decided immediately by this State's highest court. Delay in this Court's adjudication of the issue could be detrimental to the integrity of the mandated election process.

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By: 

Attorneys for Petitioners-Defendants
South Carolina State Election Commission
and Marci Andino

June 18, 2012

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM Horry COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Civil Action No. 2012-CP-26-4709

Donnie McBride and Vincent Masterpaul, Respondents-Plaintiffs,

v.

South Carolina Election Commission; Marci Andino, as Executive
Director and Representative of the South Carolina Election
Commission; Horry County Election Commission; Russell W. Hall, III,
Chairman of Horry County Election Commission; Georgetown County
Election Commission; Dean Smith, Director of Georgetown County
Election Commission; Florence County Election Commission; David
K. Alford, Director of Florence County Election Commission; Marion
County Election Commission; Teresa C. Moody, Director of Marion
County Election Commission; Dillon County Election Commission;
Joe Moffet, Chairman of Dillon County Election Commission; Marlboro
County Election Commission; Phyllis Hagan, Director of Marlboro
County Election Commission; Chesterfield County Election Commission;
Donald Sellers, Director of Chesterfield County Election Commission;
Darlington County Election Commission; Hoyt Campbell, Director of
Darlington County Election Commission, Defendants,

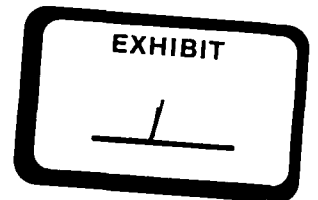
Of whom

South Carolina Election Commission and Marci Andino, as
Executive Director and Representative of the South Carolina
Election Commission, are Appellants-Defendants.

AFFIDAVIT

PERSONALLY APPEARED BEFORE ME, Marci B. Andino, who, first being duly sworn,
deposes and says that:

1. She is the duly appointed Executive Director of the South Carolina State
Election Commission (SEC) and is a resident of Richland County, South Carolina.



2. The SEC and she were served on June 15, 2012, with a Petition for a Writ of Mandamus (Petition), a Motion for an *Ex Parte* Temporary Restraining Order (Motion) and an *Ex Parte* Temporary Restraining Order. Attached as Attachment A is a true and accurate copy of the only documents in connection with this case that have been served upon the SEC.

3. Neither the SEC nor she has been served with a Summons and Complaint in this matter.

4. As a result of the 2010 census, a seventh congressional district (District) was added in South Carolina. The District encompasses all or part of the precincts in Horry, Georgetown, Florence, Marion, Dillon, Marlboro, Chesterfield and Darlington Counties. As a federal office, the transmission of absentee ballots for the District was not covered by the April 20, 2012 Order of the Supreme Court of South Carolina staying the transmission of absentee ballots in the case of *Anderson v. S. C. Election Comm'n*. Absentee ballots for the Democratic Primary for the District began to be transmitted no later than April 28, 2012.

5. The South Carolina Republican Party State Committee certified to the SEC nine (9) candidates seeking nomination as the republican candidate for the District in the November general election. No candidate got a majority of the votes cast for the office in the republican primary and there will be a runoff for the office in the Republican Party primary on June 26, 2012, as required by S.C. Code Ann. § 7-17-510. The runoff election for the Republican nominee for the Seventh Congressional District will have to be conducted, and the election commissions must be able to transmit absentee ballots now and allow electors to vote at the county election commission now.

6. The South Carolina Democratic Party State Committee (Democratic Committee) certified five (5) candidates seeking the nomination as the democratic candidate

for the District in the November general election, including Preston Brittain (Brittain), Gloria Tinubu (Tinubu) and Ted Vick (Vick).

7. On May 29, 2012, the SEC received an e-mail from the Democratic Committee attaching a copy of the letter Mr. Vick had sent to the Committee formally withdrawing from the Democratic Party Primary as a candidate for the Seventh Congressional District. A true and accurate copy of the e-mail and letter are attached hereto as Attachment B.

8. It was not feasible or advisable for the SEC to revise the databases to substitute a database with Vick's name removed from the electronic voting machines. After Vick's withdrawal, the county election commissions struck Vick's name from any absentee ballots that were transmitted to voters for the eight (8) counties or parts thereof comprising the District.

9. If the votes for Vick are counted in the votes cast for the Democratic nomination vote total, there will be a runoff between Brittain and Tinubu but, if the votes cast for Vick are not counted, Tinubu will have a majority of the votes cast and there will not be a runoff.

10. Since the 2006 primary election cycle, the SEC has instructed county board of canvassers not to count the votes of any candidate who withdrew his candidacy prior to the date of the primary election. Attached as Attachment C are true and accurate copies of the instructions sent to the county election commissioners for the 2006, 2008, 2010 and 2012 primary elections.

11. On June 14, 2012, the county election commissions for the eight effected counties meet as the county board of canvassers and, in accordance with the SEC policy

regarding determination of the majority vote when a candidate withdraws prior to the primary, each certified the results of the Democratic Primary District race without counting the votes cast for Vick.

12. On June 15, 2012, the SEC meet and as the State Board of Canvassers and certified the results of the Democratic Primary District race without counting the votes cast for Vick and determined that Tinubu had a majority of the vote and no runoff is necessary for the District race.

13. As of June 18, 2012, there will be only eight (8) days remaining for absentee ballots to be requested and cast so that absentee voters will not be disenfranchised.

14. The Court's Temporary Restraining Order does not appear to limit the injunction to the Democratic Party primary runoff election when it ordered: "The Defendants are restrained from calibrating and/or distributing any electronic voting machines or elections materials pertaining to the Seventh Congressional District runoff election before a hearing is held and a ruling issued on the underlying Petition for Writ of Mandamus."

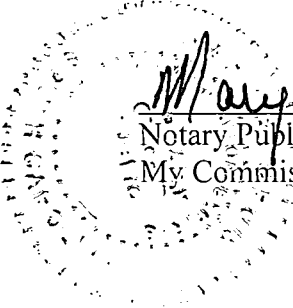
15. At any time in the calendar year, a voter can request an absentee ballot for the primary and/or any primary runoff. Beginning on June 14, 2012, she began receiving requests from several effected county election commissions that had voters requesting absentee ballots for the District Republican Party primary runoff election asking if they could transmit absentee ballots to voters requesting the same or allow voters who came into the county election commission office to vote.

Further Affiant saith not.



Marci B. Andino

SWORN TO and subscribed before me
this 17th day of June, 2012.



Mary E. Crew (L.S.)

Notary Public for the State of South Carolina.

My Commission expires: June 21, 2015

COUNTY OF Horry

IN THE COURT OF COMMON PLEAS

Donnie McBride and Vincent Masterpaul

CIVIL ACTION COVERSHEET

Plaintiff(s)

2012-CP - 26- 4709

vs.

South Carolina Election Commission, etal

Defendant(s)

(Please Print)

Submitted By: L. Morgan Martin
Address: 1121 Third Avenue
Conway, SC 29526

SC Bar #: SCB3667
Telephone #: 843.248-3177
Fax #: 843. 248-2868 42
Other:
E-mail: mmartin@sccoast.net

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
NON-JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20-CP-, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Other (799)
Administrative Law/Relief: Reinstate Driver's License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Administrative Law Judge (980), Public Service Commission (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (510)

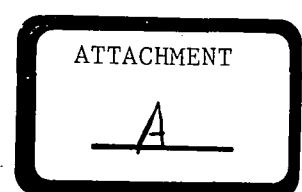
CLERK OF COURT
Horry County
JUN 14 11:01 AM

Submitting Party Signature:

[Handwritten Signature]

Date: June 14, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.



STATE OF SOUTH CAROLINA)
)
COUNTY OF Horry)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Donnie McBride and Vincent Masterpaul)
)
Plaintiffs,)

Case No. 2012-CP-_____

v.)

South Carolina Election Commission; Marci)
Andino, as Executive Director and)
Representative of the South Carolina Election)
Commission; Horry County Election)
Commission; Russell W. Hall, III, Chairman of)
Horry County Election Commission;)
Georgetown County Election Commission;)
Dean Smith, Director of Georgetown County)
Election Commission; Florence County)
Election Commission; David K. Alford,)
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Marion County Election Commission; Dillon)
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Marlboro County Election Commission;)
Chesterfield County Election Commission;)
Donald Sellers, Director of Chesterfield County)
Election Commission; Darlington County)
Election Commission; Hoyt Campbell, Director)
of Darlington County Election Commission;)
Defendants.

PETITION FOR A
WRIT OF MANDAMUS

Horry County
12 JUN 16 AM 10:57
SHELLE HUGGINS, WARD
CLERK OF COURT

Pursuant to S.C. Const. art. V, §20 and Rule 65, SCRCP, Petitioners ask this Court to issue a writ of mandamus directing Defendant South Carolina Election Commission (state Election Commission) and all other named Defendants¹ to conduct a runoff election as required by S.C. Code Section 7-13-50. For the reasons set forth below, an order from this Court is

¹ The named county election commissions are joined as necessary parties to allow this Court to grant full relief.

urgently needed to prevent irreparable injury resulting from the Defendant state Election Commission's refusal to count votes cast in yesterday's Democratic primary election for a candidate in the Seventh Congressional District. By refusing to count these votes, the state Election Commission has erroneously and unlawfully concluded that a primary runoff election should not be held. This is a violation of the state Election Commission's clear and unambiguous statutory mandate to count all of the votes cast when deciding whether a runoff election is necessary. As such, this Court should issue the writ to prevent further confusion and harm resulting from the state Election Commission's conduct.

FACTS

Yesterday, June 12, 2012, South Carolina conducted statewide primary elections for the Democratic and Republican parties to allow those political parties to select nominees through primary election. See S.C. Code Ann § 7-11-15. One of the primary elections conducted yesterday was the Democratic primary to elect a party nominee to run for the United States House of Representatives in the new Seventh Congressional District.

This election included five candidates: Preston Brittain (Brittain), Parnell Diggs (Diggs), Harvey Pavilack (Pavilack), Gloria Tinubu (Tinubu), and Ted Vick (Vick). These five candidates were certified by the South Carolina Democratic Party as candidates eligible to appear on yesterday's primary ballot. See S.C. Code Ann. § 7-13-40 (requiring the political parties to certify candidates).

On or about May 28, 2012, Vick, suspended his campaign. His name remained on the primary election ballot as a candidate for Congress.

Yesterday, voters cast ballots for all five of these candidates. Tinubu earned the largest number of votes cast with 16,370 votes, followed by Brittain with 12,300 votes, Vick with an

unknown number of votes, Diggs with 1,404 votes, and Pavilack with 1,143 votes. While it is presently unclear how many votes Vick earned – because of the illegal conduct of the state Election Commission at issue here – news reports estimated that Vick earned approximately seven (7) percent of the overall votes cast. None of these candidates earned a majority of the votes cast.

Sometime yesterday evening, an employee with the South Carolina Election Commission incorrectly told numerous newspapers and television stations that Tinubu was the winner of the election. This state Election Commission employee further stated, as reported, that Vick's votes would not be counted.² **Exhibit A.** The state Election Commission website subsequently removed Vick's name and vote totals from their website.³

S.C. Code Section 7-17-600 states that:

No candidate shall be declared nominated in a first primary election unless he received a majority of the votes cast for the office for which he was a candidate. The question of a majority vote shall be determined by the number of votes cast for any particular office and not by the whole number of votes cast in the primary.

(emphasis added). Furthermore, S.C. Code Section 7-17-610 explains what constitutes a majority of the votes cast for the purpose of determining whether a candidate has earned a majority of the votes:

If a candidate for a single office is to be selected, and there is more than one person seeking nomination, the majority shall be ascertained by dividing the total vote cast for all candidates by two. Any excess of the sum so ascertained shall be a majority, and the candidate who obtains a majority shall be declared the nominee.

² See e.g., Steve Jones, *Sun-News*, "Tinubu wins Democrat race for 7th District; Rice, Bauer to runoff in GOP," June 12, 2012, available at: <http://www.myrtlebeachonline.com/2012/06/12/2883208/runoff-to-be-held-in-7th-district.html>; Associated Press, "Tinubu wins in Democratic nomination in 7th," June 12, 2012, available at: http://www.theitem.com/news/ap_state_news/article_42c8851e-2ea2-5cc2-b5d5-775b7adb75da.html; Tracy Vreeland, *Carolina Live.com*, "Gloria Tinubu wins 7th Congressional District Democratic race," June 12, 2012, available at: <http://www.carolinalive.com/news/story.aspx?list=-%5Cnews%5Clists%5Clocal%20and%20state&id=764892#.T9i1YSiYvWp>.

³ Available at: <http://www.enr-scvotes.org/SC/39142/85868/en/summary.html>.

When a candidate fails to earn a majority of the votes, the state Election Commission and county election commissions must conduct a second primary within two weeks of the first primary pursuant to S.C. Code Section 7-13-50.

By erroneously excluding the votes cast for Vick from the calculation under S.C. Code Section 7-17-610, the state Election Commission will not conduct the second primary election (runoff) required by Section 7-13-50. An order from this Court is urgently needed to compel the state Election Commission to perform this ministerial duty and to ensure that it can be conducted in accordance with the statutory schedule timeline for conducting runoff elections.

PETITION FOR A WRIT OF MANDAMUS
(All Defendants)

A writ of mandamus must issue when an official (1) has a duty to perform an act, (2) the act is ministerial and lacks discretion, (3) the petitioner is legally entitled to the discharge of the act by the official, and (4) there is no other legal remedy available. HHHunt Corp. v. Town of Lexington, 389 S.C. 623, 640, 699 S.E.2d 699, 707 (Ct. App. 2010). This case meets that standard.

Here Defendants, the state Election Commission and the named county election commissions, are responsible for conducting primary elections. S.C. Code Ann. § 7-13-15. Second, Defendants have no discretion with which to conduct these elections as the procedure is explicitly proscribed by statute. S.C. Code Ann. §§ 7-13-10 et seq. With respect to how the state Election Commission must calculate whether a candidate received the majority of the vote, the General Assembly has expressed its position in no uncertain terms. S.C. Code Ann. 7-17-610 (“It is the intent of the South Carolina General Assembly that the following method be used in determining what candidates have received a majority vote for a particular office and are thereby

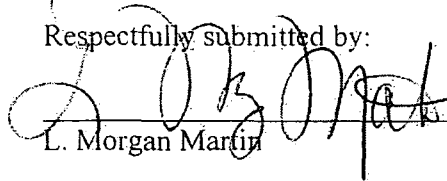
entitled to be nominated on the first ballot according to the terms of Sections 7-17-600 and 7-13-50.”) By providing an explicit procedure, the General Assembly has removed all discretion. Third, Petitioners are voters of this state who voted in this election and is entitled to have their votes and all other votes cast in this election in accordance with the laws of this state. Fourth, there is no other remedy available to Petitioners that will not substantially prejudice the timely conduct of this election.

PRAYER FOR RELIEF

For the reasons set forth above, Petitioners respectfully requests that this Court:

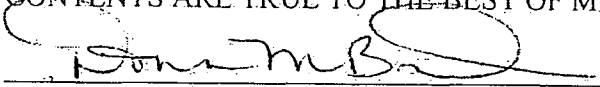
- (1) Issue a writ of mandamus instructing the state Election Commission to count all votes cast for Ted Vick and conduct a runoff election if no candidate received a majority of the vote as required by S.C. Code Section 7-17-600;
- (2) Order all other relief this Court deems fair and just.

Respectfully submitted by:


L. Morgan Martin

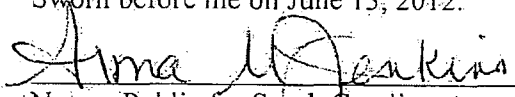
VERIFICATION

I HAVE READ THE ABOVE PETITION IN ITS ENTIRETY AND VERIFY THAT ITS CONTENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE.



Petitioner / Donnie McBride

Sworn before me on June 13, 2012.



Notary Public for South Carolina
My commission expires 5/2/2021

HORRY COUNTY
12 JUN 14 AM 10:47
JENNIFER WARD
CLERK

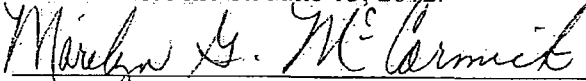
VERIFICATION

I HAVE READ THE ABOVE PETITION IN ITS ENTIRETY AND VERIFY THAT ITS CONTENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE.



Petitioner / Vincent Masterpaul

Sworn before me on June 13, 2012.



Notary Public for South Carolina

My commission expires 11-2-17

HORRY COUNTY
12 JUN 14 AM 10:17
MELANIE HIGGINS MARSH
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
)
)
Donnie McBride and Vincent Masterpaul)
 Plaintiff,)
 vs.)
)
South Carolina Election Commission, et al)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CASE NO.: _____-CP-_____

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Horry County
 12 JUN 16 AM 10:47
 MELANIE HUSCHINS-WARR
 CLERK OF COURT

Plaintiff's Attorney: L. Morgan martin, Bar No. 3667 Address: 1121 Third Avenue Conway, SC 29526 Phone: 843-248-3177 Fax 843-248-2842 E-mail: mmartin@sccoast.net Other: _____	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Ex Parte Estimated Time Needed: 30 mins Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant	June 14, 2012 Date submitted
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions. Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Civil Action No.: 2012-CP-26-_____

Donnie McBride and Vincent Masterpaul,)
)
Plaintiffs,)

v.)

South Carolina Election Commission; Marci)
Andino, as Executive Director and)
Representative of the South Carolina)
Election Commission; Horry County)
Election Commission; Russell W. Hall, III,)
Chairman of Horry County Election)
Commission; Georgetown County Election)
Commission; Dean Smith, Director of)
Georgetown County Election Commission;)
Florence County Election Commission;)
David K. Alford, Director of Florence)
County Election Commission; Marion)
County Election Commission; Teresa C.)
Moody, Director of Marion County Election)
Commission; Dillon County Election)
Commission; Joe Moffet, Chairman of)
Dillon County Election Commission;)
Marlboro County Election Commission;)
Phyllis Hagan, Director of Marlboro County)
Election Commission; Chesterfield County)
Election Commission; Donald Sellers,)
Director of Chesterfield County Election)
Commission; Darlington County Election)
Commission; Hoyt Campbell, Director of)
Darlington County Election Commission;)
)
Defendants.)

HORRY COUNTY
12 JUN 14 AM 10:47
MELANIE HUGGINS-WARD
CLERK OF COURT

**MOTION FOR AN EX PARTE
TEMPORARY RESTRAINING ORDER**

Pursuant to Rule 65, SCRPC, Plaintiffs petition the Court for an ex parte temporary restraining order prohibiting Defendant South Carolina Election Commission (State Election Commission) to conduct a runoff election as required by S.C. Code Section 7-13-50. Plaintiffs file this motion in conjunction with a verified complaint seeking a Petition for a Writ of Mandamus to compel the Defendants to conduct the runoff election for the Democratic Party Primary of the Seventh Congressional District in compliance with South Carolina law.

For the reasons set forth below, an immediate ex parte order from this Court is urgently needed to prevent irreparable injury resulting from the Defendant State Election Commission's refusal to count votes cast in yesterday's Democratic primary election for a candidate in the Seventh Congressional District. By refusing to count these votes, the State Election Commission has erroneously and unlawfully concluded that a runoff election should not be held. While doing so, the State Election Commission is now certifying voting machines and compiling elections materials throughout the Seventh Congressional District in a manner that will provide a Republican Party Primary runoff but will exclude a Democratic Party Primary runoff. An order from this court is urgently needed to restrain the State Election Commission from distributing such machines, data, or materials until the underlying Petition for Writ of Mandamus may be heard.

FACTS

On June 12, 2012, South Carolina conducted statewide primary elections for the Democratic and Republican parties to allow those political parties to select nominees through primary election. See S.C. Code Ann § 7-11-15. One of the primary elections conducted yesterday was the Democratic primary to elect a party nominee to run for the United States House of Representatives in the new Seventh Congressional District.

This election included five candidates: Preston Brittain (Brittain), Parnell Diggs (Diggs), Harvey Pavilack (Pavilack), Gloria Tinubu (Tinubu), and Ted Vick (Vick). These five candidates were certified by the South Carolina Democratic Party as candidates eligible to appear on yesterday's primary ballot. See S.C. Code Ann. § 7-13-40 (requiring the political parties to certify candidates).

On or about May 28, 2012, Vick, suspended his campaign. His name remained on the primary election ballot as a candidate for Congress.

On Tuesday, June 12, 2012, voters cast ballots for all five of these candidates. Tinubu earned the largest number of votes cast with 16,370 votes (48.8%), followed by Brittain with 12,300 votes (36.7%), Vick with approximately 2,340 votes (7.0%), Diggs with 1,404 votes (4.2%), and Pavilack with 1,143 votes (3.4%). None of these candidates earned a majority of the votes cast.

Sometime Tuesday evening, an employee with the South Carolina Election Commission incorrectly told numerous newspapers and television stations that Tinubu was the winner of the election. This State Election Commission employee further stated, as reported, that Vick's votes would not be counted. (1) Exhibit A. The State Election Commission website subsequently removed Vick's name and vote totals from their website (2). The resulting change in vote totals and percentages wrongfully gave the appearance of Gloria Tinubu receiving in excess of 50% of the ballots cast in the Democratic Primary.

S.C. Code Section 7-17-600 states that:

No candidate shall be declared nominated in a first primary election unless he received a majority of the votes cast for the office for which he was a candidate. The question of a majority

vote shall be determined by the number of votes cast for any particular office and not by the whole number of votes cast in the primary.

Furthermore, S.C. Code Section 7-17-610 explains what constitutes a majority of the votes cast for the purpose of determining whether a candidate has earned a majority of the votes: If a candidate for a single office is to be selected, and there is more than one person seeking nomination, the majority shall be ascertained by dividing the total vote cast for all candidates by two. Any excess of the sum so ascertained shall be a majority, and the candidate who obtains a majority shall be declared the nominee.

When a candidate fails to earn a majority of the votes, the State Election Commission and county election commissions must conduct a second primary within two weeks of the first primary pursuant to S.C. Code Section 7-13-50.

By erroneously excluding the votes cast for Vick from the calculation under S.C. Code Section 7-17-610, the State Election Commission will not conduct the second primary election (runoff) required by Section 7-13-50. An ex parte order from this Court is urgently needed to prohibit the State Election Commission from calibrating and distributing electronic voting machines and other elections data and materials that exclude the required Democratic Party runoff until the underlying Petition for a Writ of Mandamus can be heard.

ANALYSIS

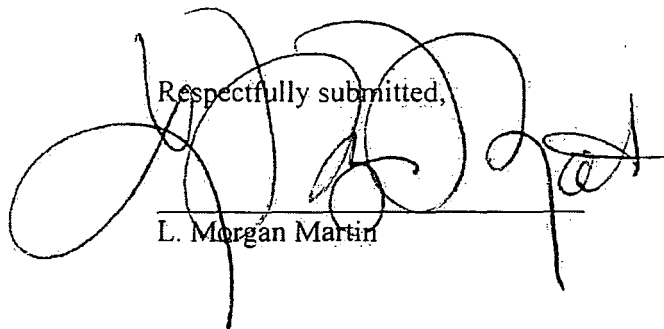
Rule 65(b), SCRPC sets for the requirements for obtaining a temporary restraining order. No temporary restraining order shall be granted without notice of motion for the order to the adverse party unless it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon.

As the verified complaint petitioning the court for a writ of mandamus shows, immediate and irreparable injury threatens the voters of the Seventh Congressional District if the Election Commission fails to conduct a Democratic Party primary runoff in compliance with State law.

As we speak, the State Election Commission is preparing electronic voting machines and other election materials that exclude Seventh Congressional District Democratic candidates from the statutorily-mandated June 26, 2012 election. Because the voting machines and other election materials, once distributed over a multi-county area including hundreds of voting precincts, are virtually (if not completely) impossible to gather, recalibrate, and redistribute by the statutorily-mandated election date, any further action taken by the State Election Commission that excludes Democratic candidates from the ballot threatens immediate and irreparable injury to the Plaintiff and all voting citizens of the Seventh Congressional District.

As a result, Plaintiffs respectfully seek an ex parte order temporarily restraining the State Election Commission and all other Defendants from preparing electronic voting machines or any other election materials pertaining to the June 26, 2012 runoff election until a full hearing may be had on the verified complaint seeking a Petition for Writ of Mandamus that accompanies this motion.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'L. Morgan Martin', is written over a horizontal line.

L. Morgan Martin

Conway, SC
June 14, 2012

(1) See e.g., Andrew Shain, The State, "SC Dems Ask: Why Did Vick's Votes Vanish?" <http://www.thestate.com/2012/06/13/2314217/sc-dems-ask-why-did-vicks-votes.html>; Steve Jones, Sun News, "Tinubu wins Democrat race for 7th District; Rice, Bauer to runoff in GOP," June 12, 2012, available at: <http://www.myrtlebeachonline.com/2012/06/12/2883208/runoff-to-be-held-in-7th-district.html>; Associated Press, "Tinubu wins in Democratic nomination in 7th," June 12, 2012, available at: http://www.theitem.com/news/ap_state_news/article_42c8851e-2ea2-5cc2-b5d5-775b7adb75da.html; Tracy Vreeland, Carolina Live.com, "Gloria Tinubu wins 7th Congressional District Democratic race," June 12, 2012, available at: <http://www.carolinalive.com/news/story.aspx?list=~%5Cnews%5Clists%5Clocal%20and%20state&id=764892#.T9i1YStYvWp>.

(2) Available at: <http://www.enr-scvotes.org/SC/39142/85868/en/summary.html>.

EXHIBIT A



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Wednesday, June 13, 2012

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GinaNSmith

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GinaNSmith Yes, it's true. I'm moving to Hilton Head
next wk. I'll continue to write for The State thru the
Nov. elections. Thanks for the well wishes!

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adambeam

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one.
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adambeam Columbia Marathon says it has a "very
exciting announcement" about the start/finish line for
the 7013 race.

Join the conversation

DEADLINE: 5:00 PM - Elections
Wednesday, Jun. 13, 2012

SC Dems ask: Why did Vick's votes vanish? (updated)

By ANDREW SHAIN · ashain@thestate.com

S.C. Democratic leaders are asking state elections officials why all the votes cast in the newly created 7th Congressional district were not counted Tuesday night -- a decision that prevented a runoff and could lead to a do-over.

About 2,340 votes were cast for state Rep. Ted Vick, whose name remained on the ballot despite withdrawing from the race last month after being charged with DUI.

But a state elections official decided Tuesday night not include them in the final tally, South Carolina Democratic Party Chairman Dick Harpootian said. Vick's votes were included in early returns, leading to confusion in news reports about the race.

Video from around the world:

Eliminating Vick gave Gloria Bromel Trubui, a Georgetown college professor, 52.4 percent of the tally -- enough of a margin to be declared the outright winner among four candidates and avoid a runoff with second-place finisher Preston Brittain, a Myrtle Beach attorney who received 39.4 percent of the vote.

Adding back the Vick votes would put Trubui at about 49 percent and push her into a runoff with Brittain, who received endorsements from many state party leaders including U.S. Rep. Jim Clyburn and former Gov. Jim Hodges.

Harpootian said he is unaware of any precedent to not count votes for someone whose name was on the ballot -- even if they dropped out of the race.

"If 2,000 folks wrote in Ted Vick's name, they would be counted," Harpootian said. "This is the same thing: Those people voted." Write-in votes are not allowed in primary races.

Harpootian is waiting to hear back from elections commission leaders about the decision to not count votes for Vick. Efforts

to reach S.C. elections officials were unsuccessful Wednesday.

If the tally stands, Harpootian expects someone either file a lawsuit asking to put the result on hold or file a complaint with the S.C. Democratic party where the executive committee could vote to repeat the election without Vick's name on the ballot.

"That could be expensive," he said noting the state elections commission would pay for the re-vote.

Harpootian hopes instead the commission will add Vick's votes and hold a runoff between Trubui and Brittain on June 26.

Trubui said Wednesday that she never thought Vick's votes would be counted after he dropped out of the race. She expects to be certified the winner on Friday. "We'll take it as we receive it, but we're comfortable with our double digit win," she said.

Trubui declined comment when asked if she thought state Democratic leaders were trying to force a run-off to keep alive hopes of a perceived party favorite, Brittain.

Brittain's campaign manager John Keig did not say in a statement Wednesday what actions, if any, the candidate would take.

"In yesterday's election, more than 2,300 voters have been told their vote does not count -- it's not right," Keig said in his statement. "We are committed to making sure these voters' voices are heard and will oppose any effort to disenfranchise voters in the 7th District."

Among Republicans vying for the seat covering the Myrtle Beach and Florence areas, former Lt. Gov. Andre Bauer will meet Honey Council chairman Tom Rice in a runoff on June 26.

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Bauer received the most votes in the primary with 32 percent of those cast versus 27 percent for Rice.

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SCVoter

If you research two round political systems, all votes are supposed to be counted, and then if no one receives more than half of the total votes cast in the election, there is a run-off of the top two candidates.

Based on research, the Election Commission was wrong to not count all of the votes cast in the Democratic primary.

These Republican appointed Election Commissions appear they look for ways to influence Democratic elections.

In the 2010 elections, it was proven that the Election Commission did not report or count entire precincts in Democratic areas in Richland County. When the League of Women's voters demanded to check all votes, the election commission reported that they could not because the ballot boxes had been compromised and it was no longer possible to verify # of votes cast against # of candidates and what was reported. http://www.postandcourier.com/...

Why do people vote for Republicans who cannot appoint people to ensure our votes are counted properly, who cannot even provide the sorry equipment they use to be verified because of machine and human error, and I submit who actively interfere in our elections.

Republicans cannot appoint people to determine who is alive and/or dead who vote. First they notify us 900 dead people vote, and then on a sample size of 6-9 people out of 900, they tell us everyone who voted was alive.

Why do people vote for Republicans I ask - again.



RosewoodDave

Why do people vote for Ted Vick or Alvin Greene? Because they are Idiots! They want to bail out their anointed one, Brittain, because of the stupidity of their electorate? The endorsement of "sharper than the leading edge of a bowling ball" Clyburn makes Brittain a scary fellow!

And of course, you show up here to blame the ignorance of some of the Democratic electorate on Republicans. I remember when Dems tried to blame Republicans for the Alvin Greene fiasco as well. All they needed to do then was look in the mirror.



JR Lentini

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Posted on Tue, Jun. 12, 2012

Tinubu wins Democrat race for 7th District; Rice, Bauer to runoff in GOP

By Steve Jones

sjones@thesunnews.com

Republican voters will head to the booths June 28 to decide if Andre Bauer or Tom Rice will meet the Democratic candidate in November's general election.

The Associated Press reported late Wednesday night that Democrats Preston Brittain of Horry County and Gloria Tinubu of Georgetown County will meet in the runoff, but numbers reported by the State Election Commission suggested that Tinubu was the outright winner.

The Commission's website reported that Tinubu had more than 51 percent of the vote from six of the eight counties in the 7th District, which is a new congressional district. Horry was one of the two counties that hadn't been listed yet on the website, and Tinubu, a Georgetown county resident, trounced Brittain, a Myrtle Beach lawyer, on his home turf.

Bauer and Rice ran neck and neck in Horry County voting with Bauer ending up with 32 percent of the vote and just one precinct to count.

Tinubu got 62 percent of the Horry County Democratic vote to nearly 29 percent for Brittain.

"We feel really great about the numbers," said Robin Shipp, Tinubu's campaign manager.

She said Tinubu was not yet at the campaign gathering at the Sidewheeler on Conway's riverfront. At the time she was contacted, Shipp still held out hope that Tinubu might win outright. But the Associated Press reported that was not to be.

While Tinubu had a commanding lead in Horry, she didn't capture the necessary 51 percent of the vote districtwide to claim an outright victory. Although she captured Marion and Marlboro counties, Brittain ran strongly enough in other counties to pull Tinubu back for a runoff, according to early numbers.

Brittain, a Myrtle Beach lawyer, couldn't be reached for comment, but issued a statement saying he believed there would be a runoff.

"We did it," the statement said. "I am proud to announce that we are in the runoff election. Our message ... is being embraced by people throughout the district."

Brittain and Tinubu, an educator and former member of the Georgia House of Representatives, said they want to stimulate job growth if they are elected, a message echoed by all primary candidates, Republican and Democrat.

Brittain said he wants to get the money to build Interstate 73 while protecting Social Security and Medicare. Tinubu said she wants to work to strengthen workers' rights.

On the Republican side, Rice's narrow victory over Bauer in Horry – which has about 40 percent of the registered voters in the district – likely kept him in the runoff. Bauer won the primary vote in Dillon, Marion and Marlboro counties Inland, but as in Horry, not with a clear majority of the votes.

"I feel wonderful," Rice said.

He said his campaign is already geared up for the runoff and that financially he is in good shape for the second contest.

"We want to keep hammering our message," Rice said. "We want to be the congressman for the entire district."

Rice and Bauer bickered during the primary campaign with Bauer saying that Rice didn't have the experience to do the job of a congressman, while Rice said Bauer moved to Horry County just to run for the seat in the new 7th District.

Other than that, both want to shrink the size of the federal government and bring more jobs to the 7th District.

Bauer said he was disappointed by the primary vote turnout, and wouldn't comment on how his campaign will move through the runoff because he didn't want to give Rice his strategy.

But he's ready to keep campaigning, he said.

Funding is an uphill battle for him.

"I'm competing with the biggest development crowd in all of Myrtle Beach," he said.

Contact STEVE JONES at 444-1785.

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Gloria Tinubu wins 7th Congressional District Democratic race

by [Tracy Vreeland](#)

Posted: 08.12.2012 at 10:04 PM

Updated: 08.12.2012 at 10:30 PM

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Read more: [Local News: 7Th Congressional District Democrats: 7Th Congressional District Democrats Race, Runoff in the 7Th Congressional District Democratic Race: Gloria Bromell Tinubu, Preston Brittain, Parnell Diggs, Harry Pavlack](#)

Gloria Bromell Tinubu, a Coastal Carolina University economist, has won the 7th Congressional District Democratic race with 53 percent of the vote, according to the South Carolina Election Commission.

Attorney Preston Brittain received 39 percent of the vote.

Attorneys Parnell Diggs and Harry Pavlack each got four and three percent respectively.

Ted Vick dropped out of the race after a [DUI arrest](#).

The Associated Press initially reported there would be a runoff between Tinubu and Brittain because Vick's numbers were being included in the results.

Without Vick's 7% of the votes, Tinubu does have the majority necessary to win the primary outright.

All results are unofficial.

For more primary election results, click [here](#).

Tinubu wins in Democratic nomination in 7th

Posted: Wednesday, June 13, 2012 6:00 am

MYRTLE BEACH (AP) - Coastal Carolina University economist Gloria Tinubu has won the Democratic nomination for South Carolina's new 7th Congressional District.

Tinubu appeared headed for a runoff with Horry County attorney Preston Brittain after Tuesday's voting.

But late Tuesday night the State Elections Commission said that votes for third-place finisher Ted Vick would not count because he had withdrawn from the race.

That gave Tinubu the majority needed to claim the nomination.

Tinubu got 52 percent of the vote. Brittain got about 39 percent in the four-candidate field. Attorneys Parnell Diggs and Harry Pavilack trailed.

Vick had been considered the front-runner but dropped out last month after his arrest on a drunken driving and weapons charge in Columbia.

Republicans have a runoff June 26 after a nine-way race on Tuesday.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Donnie McBride and Vincent Masterpaul,)
)
Plaintiffs,)

Case No. 2012-CP-_____

v.)

South Carolina Election Commission; Marci)
Andino, as Executive Director and)
Representative of the South Carolina Election)
Commission; Horry County Election)
Commission; Russell W. Hall, III, Chairman of)
Horry County Election Commission;)
Georgetown County Election Commission;)
Dean Smith, Director of Georgetown County)
Election Commission; Florence County)
Election Commission; David K. Alford,)
Director of Florence County Election)
Commission; Marion County Election)
Commission; Teresa C. Moody, Director of)
Marion County Election Commission; Dillon)
County Election Commission; Joe Moffet,)
Chairman of Dillon County Election)
Commission; Marlboro County Election)
Commission; Phyllis Hagan, Director of)
Marlboro County Election Commission;)
Chesterfield County Election Commission;)
Donald Sellers, Director of Chesterfield County)
Election Commission; Darlington County)
Election Commission; Hoyt Campbell, Director)
of Darlington County Election Commission;)
Defendants.

EX PARTE
TEMPORARY
RESTRAINING ORDER

HORRY COUNTY
12 JUN 14 PM 2:18
MEL ANNE JOHNSON-WARD
CLERK OF COURT

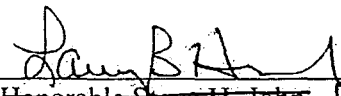
The Plaintiffs bring an ex parte motion for a temporary restraining order before the Court pursuant to Rule 65(b), SCRCP. The motion is accompanied with a verified complaint setting forth immediate and irreparable injury the Plaintiffs may suffer if the relief sought within the complaint is not granted. After reviewing the motion and accompanying complaint, the Court GRANTS the temporary restraining order for the following reasons and subject to the following restrictions.

1. The South Carolina Democratic Primary for the Seventh Congressional District was held on Tuesday, June 12, 2012. Initial final vote totals reported through the press indicated that no candidate received more than 50% of the vote.
2. During the late evening of June 12, 2012, the South Carolina Election Commission chose to strike from its totals all votes pertaining to Ted Vick, a Democratic candidate who chose to withdraw from the race weeks ago, but remained on the ballot. The Election Commission subsequently recalculated its vote percentages and announced that the top vote-getting Democrat received greater than 50% of the vote.
3. Plaintiffs have now filed a Petition for a Writ of Mandamus with this Court, seeking to compel the Election Commission to consider votes cast for candidate Vick and, correspondingly, to order a runoff election in the Democratic Primary for the Seventh Congressional District in compliance with South Carolina law.
4. The Plaintiffs argue, and the Court agrees, that should the Election Commission calibrate electronic voting machines and distribute election materials throughout the Seventh Congressional District before a hearing is held on the underlying Petition for Writ of Mandamus, such actions will cause immediate and irreparable injury to the Plaintiffs and other voters of the Seventh Congressional District. More specifically, voting machines and election materials that potentially violate South Carolina law by failing to include the mandatory Democratic Party runoff will be distributed to hundreds of election precincts in anticipation of the June 26, 2012 election.
5. As a result of the threat of this immediate and irreparable injury, the Court grants Plaintiffs' motion for an *ex parte* temporary restraining order without a hearing. The Defendants are restrained from calibrating and/or distributing any electronic voting

machines or elections materials pertaining to the Seventh Congressional District runoff election before a hearing is held and a ruling issued on the underlying Petition for Writ of Mandamus.

6. To protect the rights of the Defendants, the Court orders that this temporary restraining order shall expire upon the resolution of the underlying Petition for Writ of Mandamus.
7. To further protect the rights of the Defendants, the Court orders that the Petition for Writ of Mandamus shall be heard on 21st DAY OF JUNE, 2012
COUNTY COURT HOUSE AT 9:30 AM.

IT IS SO ORDERED.


The Honorable Steve H. John LARRY B. NYMAN JR.
Court of Common Pleas
Fifteenth Judicial Circuit

Conway, South Carolina
June 14, 2012

From: "Andino, Marci" <marci@elections.sc.gov>
Date: June 15, 2012 9:15:37 AM EDT
To: "james@jamesmithpa.com" <james@jamesmithpa.com>
Subject: FW: Vick letter to SCDP

FYI

From: Whitmire, Chris
Sent: Wednesday, June 13, 2012 10:18 AM
To: Andino, Marci
Subject: FW: Vick letter to SCDP

This is a forward of the email from Amanda Loveday to me with the Vick withdrawal letter attached.

Chris Whitmire
Director of Public Information & Training

South Carolina State Election Commission

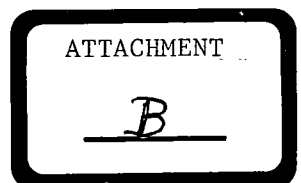
Post Office Box 5987
Columbia, S.C. 29250
Tel: 803.734.9070
Fax: 803.734.9366
scVOTES.org



This message originates from the South Carolina State Election Commission. If you have received this message in error, we would appreciate it if you would immediately notify the South Carolina State Election Commission by sending a reply e-mail to the sender of this message. Thank you.

From: amanda.alpert@gmail.com [<mailto:amanda.alpert@gmail.com>] **On Behalf Of** Amanda Loveday
Sent: Tuesday, May 29, 2012 8:39 AM
To: Whitmire, Chris
Subject: Fwd: Vick letter to SCDP

No virus found in this incoming message.
Checked by AVG - www.avg.com
Version: 9.0.930 / Virus Database: 2433.1.1/5065 - Release Date: 06/12/12 14:58:00





Ted Vick for Congress • P.O. Box 310 Chesterfield, SC 29709

Amanda Loveday
South Carolina Democratic Party
PO Box 5965
Columbia, SC 29250

Dear Ms Loveday:

I'm writing to inform you and Chairman Harpootlian that I have decided to withdraw my candidacy for the Democratic nomination for US Congress in the 7th district of South Carolina.

Please contact me if you need more information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ted M. Vick', written in a cursive style.

Ted Vick

Memo To: Director/ Chair County Election Commission
From: Chris Whitmire, Director of Public Information & Training
Date: June 5, 2012
Subject: Memo 14 - Determining Winners in Primary Election

One of the important differences between a primary and a general election is that to win a primary election, one must receive a majority of the votes cast for that office. In general elections, the winner is determined by plurality (most votes wins). S.C. Code of Laws 7-17-600 sets out the requirement for determining winners in primaries:

7-17-600 No candidate shall be declared nominated in a first primary election unless he received a majority of the votes cast for the office for which he was a candidate. The question of a majority vote shall be determined by the number of votes cast for any particular office and not by the whole number of votes cast in the primary.

Section 7-17-610 provides the method for determining which candidates have received a majority of the votes cast for a particular office. Remember that a majority of votes does not have to be a whole number; it may be a partial number.

7-17-610 What constitutes majority vote.

It is the intent of the South Carolina General Assembly that the following method be used in determining what candidates have received a majority vote for a particular office and are thereby entitled to be nominated on the first ballot according to the terms of Sections 7-17-600 and 7-13-50.

(1) If a candidate for a single office is to be selected, and there is more than one person seeking nomination, the majority shall be ascertained by dividing the total vote cast for all candidates by two. Any excess of the sum so ascertained shall be a majority, and the candidate who obtains a majority shall be declared the nominee.

(2) If nominees for two or more offices (constituting a group) are to be selected, and there are more persons seeking nomination than there are offices, the majority shall be ascertained by dividing the total vote cast for all candidates by the number of positions to be filled, and by dividing the result by two. Any excess of the sum so ascertained shall be a majority, and the candidates who obtain a majority shall be declared the nominees in the first primary. If more candidates obtain a majority than there are positions to be filled, those having the highest vote (equal to the number of positions to be filled) shall be declared the nominees.

IMPORTANT: In the 2012 Primaries, many counties have candidates who were decertified, or who withdrew as candidates, but whose names remain on the ballot. Candidates who withdrew or were decertified are no longer candidates. Votes cast for these names should not be included in the formulas set out below for determining majority. Only use the votes cast for those candidates who remain eligible for the nomination. Formal withdrawals and decertifications should be in writing signed by the candidate (withdrawal) or appropriate party official (decertification).

Example: Candidates A, B, C and D are running for sheriff. Candidate B was decertified after ballots were printed and his name could not be removed. Votes were cast as follows: Candidate A – 30, Candidate B – 5, Candidate C – 55, Candidate D - 10. The five (5) votes for Candidate B should be disregarded, making the total votes cast for this office 95 (not 100).

ATTACHMENT

C

COMMISSIONERS

JOHN H. HUDGENS, III
Chairperson

MARK A. BENSON

MARILYN BOWERS

THOMAS WARING

NICOLE SPAIN WHITE

MARCI ANDINO
Executive Director

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Fax: 803.734.9366
www.scvotes.org

One Seat to Fill

Subsection (1) provides that in a single office such as sheriff, coroner, or State House district or single member county council district, a majority is determined by dividing the total votes for all candidates in that race by two. Any number in excess of that figure is a majority. The key word to remember is *excess*.

Example: A county council primary has four (4) candidates. The total number of votes cast for all candidates is 1,001. Divide the total votes cast (1,001) by two (2), and you get 500.5. If any candidate receives more than 500.5 votes, he is declared the winner. In this example, a candidate with 501 votes has a majority because he has a number of votes in *excess* of 500.5.

Multiple Seats to Fill

For multi-seat offices (some school boards and a few county councils) that select nominees in primary elections, follow subsection (2) to determine majority. Divide the total votes for all candidates in the race by the number of seats to be filled, and divide that result by two. Any *excess* of that sum is a majority.

Example: A school board primary has four (4) seats to fill and six (6) candidates running. The total votes cast for all six candidates is 5,000. Divide the total votes cast (5,000) by four (the number of seats to fill), and you get 1,250. Then divide that result by two, and you get 625. Any candidate who receives a number of votes in *excess* of 625 has a majority (in this case, at least 626 votes). In offices with multiple seats to fill, it is mathematically possible for more candidates to receive a majority votes than there are seats to fill. If this occurs, the candidates who received the highest number of votes are declared the nominees.

Runoffs

If no candidate receives a majority in the first primary, or in the case of a multi-seat office, fewer candidates receive a majority than there are seats to fill, a second primary (runoff) must be held. Any runoff will be held two weeks after the first primary. This year, runoff elections will be held on June 26. County election commissions (CECs) will order any runoffs necessary for countywide and less than countywide offices (with the exception of Solicitor, State Senate and State House of Representatives) as part of the canvass and certification hearing on Thursday, June 14. Runoffs for Federal offices, State offices (including Solicitor, State Senate and State House) and multi-county offices are ordered by the SEC.

Runoffs in one-seat-to-fill offices are held between the two candidates who received the most votes in the first primary who have not withdrawn. If one of the candidates who would be in a runoff withdraws (signed, in writing), the remaining candidate is considered the nominee.

In multi-seat offices, any necessary runoff is held between double the number of candidates necessary to fill the remaining seats to fill.

Example: There are four (4) seats to fill for a particular office, and six (6) candidates running. In the original primary, three (3) candidates received majority votes, leaving one (1) seat remaining to fill. In this example, a runoff will be held between the top two (2) candidates who did not receive a majority and have not withdrawn.

In all runoffs, the candidate receiving the largest number of votes cast for a particular office is declared the nominee whether or not he receives a majority of the votes cast (7-13-50).

A second primary, when necessary, must be held two weeks after the first and is subject to the rules governing the first primary. At the second primary the two candidates among those who do not withdraw their candidacies and who received more votes in the first primary than any other remaining candidate alone shall run for any one office and if only one candidate remains, he is considered nominated, except that if there are two or more vacancies for any particular office, the number of candidates must be double the number of vacancies to be filled if so many candidates remain.

In all second primaries the candidate receiving the largest number of votes cast for a given office must be declared the nominee for the office whether or not he has received a majority of the votes cast for that office, and when there are several candidates for several different offices, then the several candidates receiving the largest number of votes for the several positions are considered as nominated for the offices whether or not they received a majority of the votes cast. Other primaries, if necessary, must be ordered in a similar manner by the CEC or the SEC, as appropriate.

Recounts

In addition to determining if candidates have received a majority of the votes, the CEC must also determine if a recount is necessary. Section 7-17-280, below, provides that whenever the difference between any candidates declared nominated in a primary election and any other candidate not declared nominated is 1% or less of the total votes cast for that office, a recount of the votes for that office must be conducted unless the candidates waive such recount in writing.

7-17-280 Mandatory recounts.

Whenever the difference between the number of votes received by a candidate who has been declared nominated for an office in a primary election or who has been declared elected to an office in a general election and the number of votes received by any other candidate or candidate not declared so nominated or elected or whenever the difference between the number of votes received by a candidate who received the least number of votes to qualify for a runoff election and a candidate or candidates who did not so qualify shall be not more than one percent of the total votes which were cast for such office therein, the committee or board charged by law with canvassing such votes shall order a recount of such votes to be made forthwith unless such other candidate or candidates shall waive a recount in writing.

The SEC will order any necessary recounts for U.S. House, State Senate, State House, Solicitor, and any other multi-county offices on Friday, June 15. CECs will order any necessary recounts for other countywide and less-than-countywide offices at the Thursday, June 14 canvass hearing.

Conduct any recounts as soon as possible after your Thursday canvass of results. Be sure to notify all candidates in the affected office of the date, time and location of the recount. Also notify these candidates that they may appoint observers to be present at the recount. Once the recount is completed, you will hold another canvass and certification hearing to certify the results of the recount for that race. Remember to post appropriate FOIA notice for the recount certification hearing.

If you have any questions regarding this memo, please feel free to contact me directly at (803) 734-9070. Thank you.

[Home](#)

Determining Winners in a Primary (Majority)

- [View](#)
- [Edit](#)
- [Outline](#)
- [Track](#)
- [Access control](#)

Submitted by [gbaum](#) on Wed, 05/19/2010 - 10:40

- [Election Information](#)
- [Election Day](#)

Memo 14 One of the important differences between a primary and a general election is that to win a primary election, one must receive a *majority* of the votes cast for that office. In general elections, one receives a *plurality* (the highest number) of votes cast to be declared the winner. S.C. Code of Laws 7-17-600, shown below, sets out this requirement.

7-17-600 No candidate shall be declared nominated in a first primary election unless he received a majority of the votes cast for the office for which he was a candidate. The question of a majority vote shall be determined by the number of votes cast for any particular office and not by the whole number of votes cast in the primary.

Section 7-17-610 provides the method for determining which candidates have received a majority of the votes cast for a particular office. Remember that a majority of votes does not have to be a whole number; it may be a partial number.

7-17-610 What constitutes majority vote.

It is the intent of the South Carolina General Assembly that the following method be used in determining what candidates have received a majority vote for a particular office and are thereby entitled to be nominated on the first ballot according to the terms of Sections 7-17-600 and 7-13-50.

(1) If a candidate for a single office is to be selected, and there is more than one person seeking nomination, the majority shall be

ascertained by dividing the total vote cast for all candidates by two. Any excess of the sum so ascertained shall be a majority, and the candidate who obtains a majority shall be declared the nominee.

(2) If nominees for two or more offices (constituting a group) are to be selected, and there are more persons seeking nomination than there are offices, the majority shall be ascertained by dividing the total vote cast for all candidates by the number of positions to be filled, and by dividing the result by two. Any excess of the sum so ascertained shall be a majority, and the candidates who obtain a majority shall be declared the nominees in the first primary. If more candidates obtain a majority than there are positions to be filled, those having the highest vote (equal to the number of positions to be filled) shall be declared the nominees.

One Seat to Fill

Subsection (1) provides that in a single office such as sheriff, coroner, or State House district or single member county council district, a majority is determined by dividing the total votes for all candidates in that race by two. Any excess of that figure is a majority. The key word to remember is *excess*.

Example: You have a county council election with four candidates. The total votes cast for all candidates is 1,001. Divide the total votes cast (1,001) by two, and you get 500.5. If any candidate receives more than 500.5 votes, he is declared the winner. In our example, a candidate with 501 votes has a majority because he has *exceeded* 500.5 votes.

Multiple Seats to Fill

For multi-seat offices (some school boards and a few county councils) that select nominees in primary elections, follow subsection (2) to determine the majority. You will divide the total votes for all candidates in the race by the number of seats to be filled, and divide that result by two. Any excess of that sum is a majority.

Example: You have a primary election for school board with four seats to fill and six candidates running. The total votes cast for all six candidates is 5,000. Divide the total votes cast (5,000) by four (the number of seats to fill), and you get 1,250. You then divide that result by two, and you get 625. Any candidate who receives a number of votes in excess of 625 has a majority (in this case, at least 626 votes). In some cases it is mathematically possible for more candidates to receive majority votes than

there are seats to fill. If this occurs, the four candidates who received the highest number of votes are declared the nominees.

Any votes cast for a candidate who has officially withdrawn should be disregarded and not included when determining majority. This formal withdrawal should be in writing signed by the candidate.

Runoffs

If no candidate receives a majority in the first primary, or in the case of a multi-seat office, fewer candidates receive a majority than is necessary to fill the full number seats, a second primary (runoff) must be held. Any runoff will be held two weeks after the first primary. This year, runoff elections will be held on June 22. You will order any runoffs necessary for countywide and less than countywide offices (with the exception of State House of Representatives) for June 22, **after** you have canvassed and certified the results of primary elections in your county on Thursday, June 10. Runoffs for Federal offices, State offices (including State House of Representatives) and multi-county offices (Solicitor) are ordered by the State Election Commission.

Runoffs in single offices are held between the two candidates who received the most votes in the first primary who have not withdrawn. If only one candidate remains, he is considered the nominee.

In multi-seat offices, any necessary runoff is held between double the number of candidates necessary to fill the remaining vacancies. For example, there are four seats to fill for a particular office, and six candidates running. In the original primary, three candidates received majority votes, leaving one seat vacant. A runoff will be held between the top two candidates who did not receive a majority and have not withdrawn; for the remaining seat.

In all runoffs, the candidate receiving the largest number of votes cast for a particular office is declared the nominee whether or not he receives a majority of the votes cast. See 7-13-50.

7-13-50 Second and other primaries.

A second primary, when necessary, must be held two weeks after the first and is subject to the rules governing the first primary. At the second primary the two candidates among those who do not withdraw their candidacies and who received more votes in the first primary than any other remaining candidate alone shall run for any one office and if

only one candidate remains, he is considered nominated, except that if there are two or more vacancies for any particular office, the number of candidates must be double the number of vacancies to be filled if so many candidates remain.

In all second primaries the candidate receiving the largest number of votes cast for a given office must be declared the nominee for the office whether or not he has received a majority of the votes cast for that office, and when there are several candidates for several different offices, then the several candidates receiving the largest number of votes for the several positions are considered as nominated for the offices whether or not they received a majority of the votes cast. Other primaries, if necessary, must be ordered in a similar manner by the county election commission or the State Election Commission, as appropriate.

Recounts

In addition to determining if candidates have received a majority of the votes, you must also determine if a recount is necessary. Section 7-17-280, below, provides that whenever the difference between any candidate declared nominated in a primary election and any other candidate not declared nominated is 1% or less of the total votes cast for that office, a recount of the votes for that office must be conducted unless the candidates waive such recount in writing.

7-17-280 Mandatory recounts.

Whenever the difference between the number of votes received by a candidate who has been declared nominated for an office in a primary election or who has been declared elected to an office in a general election and the number of votes received by any other candidate or candidate not declared so nominated or elected or whenever the difference between the number of votes received by a candidate who received the least number of votes to qualify for a runoff election and a candidate or candidates who did not so qualify shall be not more than one percent of the total votes which were cast for such office therein, the committee or board charged by law with canvassing such votes shall order a recount of such votes to be made forthwith unless such other candidate or candidates shall waive a recount in writing.

Whenever the difference between the number of votes cast in favor of and opposed to any constitutional amendment, question or other issue is not more than one percent of the total cast thereon, the Board of State Canvassers shall order a recount of these votes.

You will order recounts, if necessary, for countywide and less than countywide offices (with the exception of State House of Representatives) following the Thursday canvass hearing.

If you have to conduct a recount, do it as soon as possible **after** your Thursday canvass of results. Be sure to notify all candidates in the race to be recounted of the date, time and location of the recount. Also notify these candidates that they may appoint observers to be present at the recount. Once the recount is completed, you will certify the results of that race.

This is a lot to consider, but you are and will continue to do an excellent job in the conduct of these primary elections. If you have any questions regarding this memorandum, please let us know.

State of South Carolina

COMMISSIONERS

JOHN H. HUDGENS, III
Chairperson

CYNTHIA M. BENSCH

TRACEY C. GREEN

PAMELLA B. PENSON



State Election Commission

PHONE: (803) 734-9060
FAX: (803) 734-9366
www.SCVotes.org

MARCI ANDINO
Executive Director

DONNA C. ROYSON
Deputy Executive Director
Director, Voter Services

JANET REYNOLDS
Director
Administrative Services

GARRY BAUM
Director, Public Information
and Training

CHRIS WHITMORE
Public Information Officer

Memo To: Director/ Chair County Election Commission
From: Marci Andino, Executive Director *MA*
Date: May 23, 2008
Subject: Determining Winners in Primary Election

Memo Number 10

One of the important differences between a primary and a general/special election is that, to win a primary election, one must receive a majority of the votes cast for that office. In general elections, one receives a plurality (the highest number) of votes cast to be declared the winner, but a primary election requires a majority. S.C. Code of Laws 7-17-600, shown below, sets out this requirement.

7-17-600 No candidate shall be declared nominated in a first primary election unless he received a majority of the votes cast for the office for which he was a candidate. The question of a majority vote shall be determined by the number of votes cast for any particular office and not by the whole number of votes cast in the primary.

Section 7-17-610 provides the method for determining which candidates have received a majority of the votes cast for a particular office. Remember that a majority of votes does not have to be a whole number; it may be a partial number.

7-17-610 What constitutes majority vote.

It is the intent of the South Carolina General Assembly that the following method be used in determining what candidates have received a majority vote for a particular office and are thereby entitled to be nominated on the first ballot according to the terms of Sections 7-17-600 and 7-13-50.

(1) If a candidate for a single office is to be selected, and there is more than one person seeking nomination, the majority shall be ascertained by dividing the total vote cast for all candidates by two. Any excess of the sum so ascertained shall be a majority, and the candidate who obtains a majority shall be declared the nominee.

(2) If nominees for two or more offices (constituting a group) are to be selected, and there are more persons seeking nomination than there are offices, the majority shall be ascertained by dividing the total vote cast for all candidates by the number of positions to be filled, and by dividing the result by two. Any excess of the sum so ascertained shall be a majority, and the

candidates who obtain a majority shall be declared the nominees in the first primary. If more candidates obtain a majority than there are positions to be filled, those having the highest vote (equal to the number of positions to be filled) shall be declared the nominees.

Subsection (1) provides that in a single office such as sheriff, coroner, a State Senate or State House district or single member county council district, a majority is determined by dividing the total votes for all candidates in that race by two. Any excess of that figure is a majority. The key word to remember is *excess*. For example, in a county council election with four candidates, the example total votes for all candidates is 1,001 votes. Dividing by two equals 500.5 votes. If any candidate receives over 500.5 votes, he is declared the winner. In our example, a candidate with 501 votes has a majority because he has *exceeded* 500.5 votes.

For multi-seat offices (some school boards and a few county councils) that select nominees in primary elections, follow subsection (2) to determine the majority. You will divide the total votes for all candidates in the race by the number of seats to be filled, and divide that result by two. Any excess of that sum is a majority. Example: You have a primary election for school board with four seats to fill and six candidates running. The total votes cast for all six candidates is 5,000. Divide that total by four (the number of seats to fill) and you get 1,250. You then divide that result by 2 which equals 625. Any candidate who receives in excess of 625 votes or more has a majority (in this case, 626 votes). If more candidates obtain a majority than there are seats to fill, the four candidates receiving the highest majority vote are declared the nominees.

Votes should be disregarded and not counted for a candidate who has formally withdrawn. This formal withdrawal should be in writing signed by the candidate.

If no candidate receives a majority in the first primary, or in the case of a multi-seat office, less candidates than necessary to fill the full number of seats receive a majority of the votes cast, a second primary, or runoff, must be held. Any runoff will be held two weeks after the first primary. This year, runoff elections will be held on June 24. You will order any runoffs necessary for countywide and less than countywide offices (with the exception of the State Senate and State House of Representatives) for June 24, after you have canvassed and certified the results of primary elections in your county on Thursday, June 12. Runoffs for Federal offices, State offices (including Senate and House of Representatives) and multi-county offices (Solicitor) are ordered by the State Election Commission.

Runoffs in single offices are held between the two candidates who received the most votes in the first primary who have not withdrawn. If only one candidate remains, he is considered the nominee. In multi-seat offices, a runoff, if necessary, is held between double the number of candidates necessary to fill the vacancies if that many candidates remain.

In all runoffs, the candidate receiving the largest number of votes cast for a particular office is declared the nominee whether or not he receives a majority of the votes cast. See 7-13-50.

7-13-50 Second and other primaries.

A second primary, when necessary, must be held two weeks after the first and is subject to the rules governing the first primary. At the second primary the two candidates among those who do not withdraw their candidacies and who received more votes in the first primary than any other remaining candidate alone shall run for any one office and if only one candidate remains, he is

considered nominated, except that if there are two or more vacancies for any particular office, the number of candidates must be double the number of vacancies to be filled if so many candidates remain.

In all second primaries the candidate receiving the largest number of votes cast for a given office must be declared the nominee for the office whether or not he has received a majority of the votes cast for that office, and when there are several candidates for several different offices, then the several candidates receiving the largest number of votes for the several positions are considered as nominated for the offices whether or not they received a majority of the votes cast. Other primaries, if necessary, must be ordered in a similar manner by the county election commission or the State Election Commission, as appropriate.

Recounts - In addition to determining if candidates have received a majority of the votes, you must also determine if a recount is necessary. Section 7-17-280, below, provides that whenever the difference between any candidates declared nominated in a primary election and any other candidate not declared nominated is less than 1% of the total votes cast for that office, a recount of the votes for that office must be conducted unless the candidates waive such recount in writing.

7-17-280 Mandatory recounts.

Whenever the difference between the number of votes received by a candidate who has been declared nominated for an office in a primary election or who has been declared elected to an office in a general election and the number of votes received by any other candidate or candidate not declared so nominated or elected or whenever the difference between the number of votes received by a candidate who received the least number of votes to qualify for a runoff election and a candidate or candidates who did not so qualify shall be not more than one percent of the total votes which were cast for such office therein, the committee or board charged by law with canvassing such votes shall order a recount of such votes to be made forthwith unless such other candidate or candidates shall waive a recount in writing.

Whenever the difference between the number of votes cast in favor of and opposed to any constitutional amendment, question or other issue is not more than one percent of the total cast thereon, the Board of State Canvassers shall order a recount of these votes.

You will order recounts, if necessary, for countywide and less than countywide offices (with the exception of State Senate and House of Representatives) following the Thursday canvass of your votes.

If you have to conduct a recount, do it as soon as possible after your Thursday canvass of results. Be sure to notify all candidates in the race to be recounted to the date, time and location of the recount. Also notify these candidates that they may appoint observers to be present at the recount. Once the recount is completed you will certify the results of that race.

I know that this is a lot to consider and to keep in mind, but I also know that you are and will continue to do your excellent job in the conduct of these primary elections. If you have any questions regarding this memorandum, please call on me.

State of South Carolina



Election Commission

PHONE: (803) 734-9060

FAX: (803) 734-9366

www.state.sc.us/scsec

MARCI ANDINO
Executive Director

DONNA C. ROYSON
Deputy Executive Director
Director, Voter Services

JANET REYNOLDS
Director
Administrative Services

GARRY BAUM
Director,
Public Information and
Training

CHRIS WHITMIRE
Public Information Officer

COMMISSIONERS
KARL S. BOWERS, JR.
Chairperson
JOHN H. HUDGENS, III
PAMELLA B. PINSON
EDWARD K. PRITCHARD, JR.
JOHN SAMUEL WEST

Memo To: Director/ Chair County Election Commission
From: Marci Andino, Executive Director
Date: May 24, 2006
Subject: Determining Winners in Primary Election

We have discussed that we should look at primary elections just like any other elections but with a few differences.

One of the important differences for this June 13 primary is that, to win a primary election, one must receive a majority of the votes cast for that office. In general elections, one receives a plurality (the highest number) of votes cast to be declared the winner, but a primary election requires a majority. S.C. Code of Laws 7-17-600, shown below, sets out this requirement.

7-17-600 No candidate shall be declared nominated in a first primary election unless he received a majority of the votes cast for the office for which he was a candidate. The question of a majority vote shall be determined by the number of votes cast for any particular office and not by the whole number of votes cast in the primary.

Section 7-17-610 provides the method for determining which candidates have received a majority of the votes cast for a particular office. Remember that a majority of votes does not have to be a whole number; it may be a partial number.

7-17-610 What constitutes majority vote.

It is the intent of the South Carolina General Assembly that the following method be used in determining what candidates have received a majority vote for a particular office and are thereby entitled to be nominated on the first ballot according to the terms of Sections 7-17-600 and 7-13-50.

(1) If a candidate for a single office is to be selected, and there is more than one person seeking nomination, the majority shall be ascertained by dividing the total vote cast for all candidates by two. Any excess of the sum so ascertained shall be a majority, and the candidate who obtains a majority shall be declared the nominee.

(2) If nominees for two or more offices (constituting a group) are to be selected, and there are more persons seeking nomination than there are offices, the majority shall be ascertained by dividing the total vote cast for all candidates by the number of positions to be filled, and by dividing the result by two. Any excess of the sum so ascertained shall be a majority, and the candidates who obtain a

majority shall be declared the nominees in the first primary. If more candidates obtain a majority than there are positions to be filled, those having the highest vote (equal to the number of positions to be filled) shall be declared the nominees.

Subsection (1) provides that in a single office such as sheriff, coroner, a State House district or single member county council district, a majority is determined by dividing the total votes for all candidates in that race by two. Any excess of that figure is a majority. The key word to remember is *excess*. For example, in a county council election with four candidates, the example total votes for all candidates is 1,001 votes. Dividing by two equals 500.5 votes. If any candidate receives over 500.5 votes, he is declared the winner. In our example, a candidate with 501 votes has a majority because he has *exceeded* 500.5 votes.

If any of you have multi-seat offices (some school boards and a few county councils) that select nominees in primary elections, follow subsection (2) to determine the majority. You will divide the total votes for all candidates in the race by the number of seats to be filled, and divide that result by two. Any excess of that sum is a majority. Example: You have a primary election for school board with four seats to fill and six candidates running. The total votes cast for all six candidates is 5,000. Divide that total by four (the number of seats to fill) and you get 1,250. You then divide that result by 2 which equals 625. Any candidate who receives in excess of 625 votes or more has a majority (in this case, 626 votes). If more candidates obtain a majority than there are seats to fill, the four candidates receiving the highest majority vote are declared the nominees.

Votes should be disregarded and not counted for a candidate who has formally withdrawn. This formal withdrawal should be in writing signed by the candidate and/or party.

If no candidate receives a majority in the first primary, or in the case of a multi-seat office, less candidates than necessary to fill the full number of seats receive a majority of the votes cast, a second primary, or runoff, must be held. Any runoff will be held two weeks after the first primary. This year, runoff elections will be held on June 27. You will order any runoffs necessary for countywide and less than countywide offices (with the exception of the State Senate and State House of Representatives) for June 27, after you have canvassed and certified the results of primary elections in your county on Thursday, June 15. Runoffs for Federal offices, State offices (including Senate and House of Representatives) and multi-county offices (Solicitor) are ordered by the State Election Commission.

Runoffs in single offices are held between the two candidates who received the most votes in the first primary who have not withdrawn. If only one candidate remains, he is considered the nominee. In multi-seat offices, a runoff, if necessary, is held between double the number of candidates necessary to fill the vacancies if that many candidates remain.

In all runoffs, the candidate receiving the largest number of votes cast for a particular office is declared the nominee whether or not he receives a majority of the votes cast. See 7-13-50.

7-13-50 Second and other primaries.

A second primary, when necessary, must be held two weeks after the first and is subject to the rules governing the first primary. At the second primary the two candidates among those who do not withdraw their candidacies and who received more votes in the first primary than any other

remaining candidate alone shall run for any one office and if only one candidate remains, he is considered nominated, except that if there are two or more vacancies for any particular office, the number of candidates must be double the number of vacancies to be filled if so many candidates remain.

In all second primaries the candidate receiving the largest number of votes cast for a given office must be declared the nominee for the office whether or not he has received a majority of the votes cast for that office, and when there are several candidates for several different offices, then the several candidates receiving the largest number of votes for the several positions are considered as nominated for the offices whether or not they received a majority of the votes cast. Other primaries, if necessary, must be ordered in a similar manner by the county election commission or the State Election Commission, as appropriate.

Recounts - In addition to determining if candidates have received a majority of the votes, you must also determine if a recount is necessary. Section 7-17-280, below, provides that whenever the difference between any candidates declared nominated in a primary election and any other candidate not declared nominated is less than 1% of the total votes cast for that office, a recount of the votes for that office must be conducted unless the candidates waive such recount in writing.

7-17-280 Mandatory recounts.

Whenever the difference between the number of votes received by a candidate who has been declared nominated for an office in a primary election or who has been declared elected to an office in a general election and the number of votes received by any other candidate or candidate not declared so nominated or elected or whenever the difference between the number of votes received by a candidate who received the least number of votes to qualify for a runoff election and a candidate or candidates who did not so qualify shall be not more than one percent of the total votes which were cast for such office therein, the committee or board charged by law with canvassing such votes shall order a recount of such votes to be made forthwith unless such other candidate or candidates shall waive a recount in writing.

Whenever the difference between the number of votes cast in favor of and opposed to any constitutional amendment, question or other issue is not more than one percent of the total cast thereon, the Board of State Canvassers shall order a recount of these votes.

You will order recounts, if necessary, for countywide and less than countywide offices (with the exception of State House of Representatives) following the Thursday canvass of your votes.

If you have to conduct a recount, do it as soon as possible after your Thursday canvass of results. Be sure to notify all candidates in the race to be recounted to the date, time and location of the recount. Also notify these candidates that they may appoint observers to be present at the recount. Once the recount is completed you will certify the results of that race.

I know that this is a lot to consider and to keep in mind, but I also know that you are and will continue to do your excellent job in the conduct of these primary elections. If you have any questions regarding this memorandum, please call on me.

COUNTY OF Horry

IN THE COURT OF COMMON PLEAS

Donnie McBride and Vincent Masterpaul
Plaintiff(s)

CIVIL ACTION COVERSHEET

2012-CP - 26- 4709

vs.

South Carolina Election Commission, etal

Defendant(s)

(Please Print)

Submitted By: L. Morgan Martin
Address: 1121 Third Avenue
Conway, SC 29526

SC Bar #: SCB3667
Telephone #: 843.248-3177
Fax #: 843. 248-2863 42

Other:
E-mail: mmartin@sccoast.net

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) <input type="checkbox"/> Previous Notice of Intent Case # 20__-CP-____ <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Assault/Slander/Libel (300) <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Other (799) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstete Driver's License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Administrative Law Judge (980) <input type="checkbox"/> Public Service Commission (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb (610) <input type="checkbox"/> Medical (620) <input checked="" type="checkbox"/> Other (699) | <ul style="list-style-type: none"> <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Sexual Predator (510) | | |

CLERK OF COURT
Horry County
2 JUN 14 AM 10:57

Submitting Party Signature:

Date: June 14, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et. seq.

EXHIBIT
2

STATE OF SOUTH CAROLINA)
)
COUNTY OF Horry)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Donnie McBride and Vincent Masterpaul)
)
Plaintiffs,)

Case No. 2012-CP-_____

v.)

South Carolina Election Commission; Marci)
Andino, as Executive Director and)
Representative of the South Carolina Election)
Commission; Horry County Election)
Commission; Russell W. Hall, III, Chairman of)
Horry County Election Commission;)
Georgetown County Election Commission;)
Dean Smith, Director of Georgetown County)
Election Commission; Florence County)
Election Commission; David K. Alford,)
Director of Florence County Election)
Commission; Marion County Election)
Commission; Teresa C. Moody, Director of)
Marion County Election Commission; Dillon)
County Election Commission; Joe Moffet,)
Chairman of Dillon County Election)
Commission; Marlboro County Election)
Commission; Phyllis Hagan, Director of)
Marlboro County Election Commission;)
Chesterfield County Election Commission;)
Donald Sellers, Director of Chesterfield County)
Election Commission; Darlington County)
Election Commission; Hoyt Campbell, Director)
of Darlington County Election Commission;)
Defendants.)

PETITION FOR A
WRIT OF MANDAMUS

Horry County
12 JUN 16 AM 10:57
SHELLA M. HUGHES-WARD
CLERK OF COURT

Pursuant to S.C. Const. art. V, §20 and Rule 65, SCRCP, Petitioners ask this Court to issue a writ of mandamus directing Defendant South Carolina Election Commission (state Election Commission) and all other named Defendants¹ to conduct a runoff election as required by S.C. Code Section 7-13-50. For the reasons set forth below, an order from this Court is

¹ The named county election commissions are joined as necessary parties to allow this Court to grant full relief.

urgently needed to prevent irreparable injury resulting from the Defendant state Election Commission's refusal to count votes cast in yesterday's Democratic primary election for a candidate in the Seventh Congressional District. By refusing to count these votes, the state Election Commission has erroneously and unlawfully concluded that a primary runoff election should not be held. This is a violation of the state Election Commission's clear and unambiguous statutory mandate to count all of the votes cast when deciding whether a runoff election is necessary. As such, this Court should issue the writ to prevent further confusion and harm resulting from the state Election Commission's conduct.

FACTS

Yesterday, June 12, 2012, South Carolina conducted statewide primary elections for the Democratic and Republican parties to allow those political parties to select nominees through primary election. See S.C. Code Ann § 7-11-15. One of the primary elections conducted yesterday was the Democratic primary to elect a party nominee to run for the United States House of Representatives in the new Seventh Congressional District.

This election included five candidates: Preston Brittain (Brittain), Parnell Diggs (Diggs), Harvey Pavilack (Pavilack), Gloria Tinubu (Tinubu), and Ted Vick (Vick). These five candidates were certified by the South Carolina Democratic Party as candidates eligible to appear on yesterday's primary ballot. See S.C. Code Ann. § 7-13-40 (requiring the political parties to certify candidates).

On or about May 28, 2012, Vick, suspended his campaign. His name remained on the primary election ballot as a candidate for Congress.

Yesterday, voters cast ballots for all five of these candidates. Tinubu earned the largest number of votes cast with 16,370 votes, followed by Brittain with 12,300 votes, Vick with an

unknown number of votes, Diggs with 1,404 votes, and Pavilack with 1,143 votes. While it is presently unclear how many votes Vick earned – because of the illegal conduct of the state Election Commission at issue here – news reports estimated that Vick earned approximately seven (7) percent of the overall votes cast. None of these candidates earned a majority of the votes cast.

Sometime yesterday evening, an employee with the South Carolina Election Commission incorrectly told numerous newspapers and television stations that Tinubu was the winner of the election. This state Election Commission employee further stated, as reported, that Vick's votes would not be counted.² **Exhibit A.** The state Election Commission website subsequently removed Vick's name and vote totals from their website.³

S.C. Code Section 7-17-600 states that:

No candidate shall be declared nominated in a first primary election unless he received a majority of the votes cast for the office for which he was a candidate. The question of a majority vote shall be determined by the number of votes cast for any particular office and not by the whole number of votes cast in the primary.

(emphasis added). Furthermore, S.C. Code Section 7-17-610 explains what constitutes a majority of the votes cast for the purpose of determining whether a candidate has earned a majority of the votes:

If a candidate for a single office is to be selected, and there is more than one person seeking nomination, the majority shall be ascertained by dividing the total vote cast for all candidates by two. Any excess of the sum so ascertained shall be a majority, and the candidate who obtains a majority shall be declared the nominee.

² See e.g., Steve Jones, Sun News, "Tinubu wins Democrat race for 7th District; Rice, Bauer to runoff in GOP," June 12, 2012, available at: <http://www.myrtlebeachonline.com/2012/06/12/2883208/runoff-to-be-held-in-7th-district.html>; Associated Press, "Tinubu wins in Democratic nomination in 7th," June 12, 2012, available at: http://www.theitem.com/news/ap_state_news/article_42c8851e-2ea2-5cc2-b5d5-775b7adb75da.html; Tracy Vreeland, Carolina Live.com, "Gloria Tinubu wins 7th Congressional District Democratic race," June 12, 2012, available at: <http://www.carolinalive.com/news/story.aspx?list=-%5Cnews%5Clists%5Clocal%20and%20state&id=764892#.T9fJYStYvWp>.

³ Available at: <http://www.enr-scvotes.org/SC/39142/85868/en/summary.html>.

When a candidate fails to earn a majority of the votes, the state Election Commission and county election commissions must conduct a second primary within two weeks of the first primary pursuant to S.C. Code Section 7-13-50.

By erroneously excluding the votes cast for Vick from the calculation under S.C. Code Section 7-17-610, the state Election Commission will not conduct the second primary election (runoff) required by Section 7-13-50. An order from this Court is urgently needed to compel the state Election Commission to perform this ministerial duty and to ensure that it can be conducted in accordance with the statutory schedule timeline for conducting runoff elections.

PETITION FOR A WRIT OF MANDAMUS
(All Defendants)

A writ of mandamus must issue when an official (1) has a duty to perform an act, (2) the act is ministerial and lacks discretion, (3) the petitioner is legally entitled to the discharge of the act by the official, and (4) there is no other legal remedy available. HHHunt Corp. v. Town of Lexington, 389 S.C. 623, 640, 699 S.E.2d 699, 707 (Ct. App. 2010). This case meets that standard.

Here Defendants, the state Election Commission and the named county election commissions, are responsible for conducting primary elections. S.C. Code Ann. § 7-13-15. Second, Defendants have no discretion with which to conduct these elections as the procedure is explicitly proscribed by statute. S.C. Code Ann. §§ 7-13-10 et seq. With respect to how the state Election Commission must calculate whether a candidate received the majority of the vote, the General Assembly has expressed its position in no uncertain terms. S.C. Code Ann. 7-17-610 ("It is the intent of the South Carolina General Assembly that the following method be used in determining what candidates have received a majority vote for a particular office and are thereby

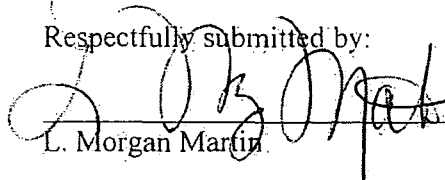
entitled to be nominated on the first ballot according to the terms of Sections 7-17-600 and 7-13-50.”) By providing an explicit procedure, the General Assembly has removed all discretion. Third, Petitioners are voters of this state who voted in this election and is entitled to have their votes and all other votes cast in this election in accordance with the laws of this state. Fourth, there is no other remedy available to Petitioners that will not substantially prejudice the timely conduct of this election.

PRAYER FOR RELIEF

For the reasons set forth above, Petitioners respectfully requests that this Court:

- (1) Issue a writ of mandamus instructing the state Election Commission to count all votes cast for Ted Vick and conduct a runoff election if no candidate received a majority of the vote as required by S.C. Code Section 7-17-600;
- (2) Order all other relief this Court deems fair and just.

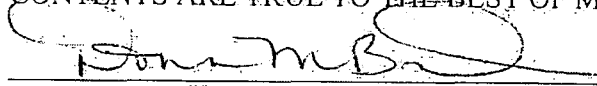
Respectfully submitted by:



L. Morgan Martin

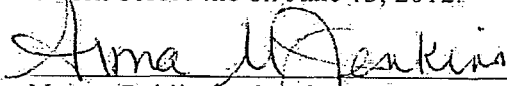
VERIFICATION

I HAVE READ THE ABOVE PETITION IN ITS ENTIRETY AND VERIFY THAT ITS CONTENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE.



Petitioner / Donnie McBride

Sworn before me on June 13, 2012:



Notary Public for South Carolina
My commission expires 5/2/2021

HORRY COUNTY
12 JUN 16 AM 10:17
CLERK OF COURT
WARD

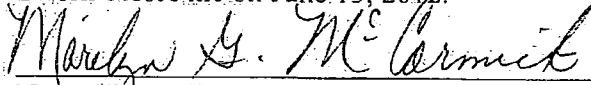
VERIFICATION

I HAVE READ THE ABOVE PETITION IN ITS ENTIRETY AND VERIFY THAT ITS CONTENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE.



Petitioner / Vincent Masterpaul

Sworn before me on June 13, 2012.



Notary Public for South Carolina

My commission expires 11-2-17

HORRY COUNTY
12 JUN 14 AM 10:17
MELANIE HUGHES WARD
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
Donnie McBride and Vincent Masterpaul)
 Plaintiff,)
 vs.)
South Carolina Election Commission, et al)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CASE NO.: _____-CP-_____

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

MELANIE HUGHES-WARR
 CLERK OF COURT
 12 JUN 14 AM 10:47
 HORRY COUNTY

Plaintiff's Attorney: L. Morgan martin, Bar No. 3667 Address: 1121 Third Avenue Conway, SC: 29526 Phone: 843-248-3177 Fax 843-248-2842 E-mail: mmartin@sccoast.net Other: _____	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

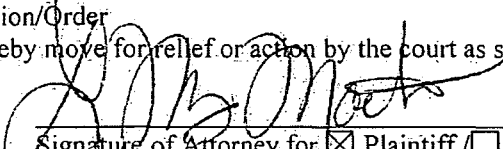
SECTION I: Hearing Information

Nature of Motion: Ex Parte
 Estimated Time Needed: 30 mins Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant Date submitted: June 14, 2012

SECTION III: Motion Fee

PAID - AMOUNT: \$ _____
 EXEMPT: (check reason)

Rule to Show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRCP)
 Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
 Other: _____

JUDGE CODE _____
 Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____



STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Civil Action No.: 2012-CP-26-_____

Donnie McBride and Vincent Masterpaul,)
)
Plaintiffs,)

v.)

South Carolina Election Commission; Marci)
Andino, as Executive Director and)
Representative of the South Carolina)
Election Commission; Horry County)
Election Commission; Russell W. Hall, III,)
Chairman of Horry County Election)
Commission; Georgetown County Election)
Commission; Dean Smith, Director of)
Georgetown County Election Commission;)
Florence County Election Commission;)
David K. Alford, Director of Florence)
County Election Commission; Marion)
County Election Commission; Teresa C.)
Moody, Director of Marion County Election)
Commission; Dillon County Election)
Commission; Joe Moffet, Chairman of)
Dillon County Election Commission;)
Marlboro County Election Commission;)
Phyllis Hagan, Director of Marlboro County)
Election Commission; Chesterfield County)
Election Commission; Donald Sellers,)
Director of Chesterfield County Election)
Commission; Darlington County Election)
Commission; Hoyt Campbell, Director of)
Darlington County Election Commission;)

Defendants:)

HORRY COUNTY
12 JUN 14 AM 10:41
MELANIE HUGGINS-WARD
CLERK OF COURT

**MOTION FOR AN EX PARTE
TEMPORARY RESTRAINING ORDER**

Pursuant to Rule 65, SCRPC, Plaintiffs petition the Court for an ex parte temporary restraining order prohibiting Defendant South Carolina Election Commission (State Election Commission) to conduct a runoff election as required by S.C. Code Section 7-13-50. Plaintiffs file this motion in conjunction with a verified complaint seeking a Petition for a Writ of Mandamus to compel the Defendants to conduct the runoff election for the Democratic Party Primary of the Seventh Congressional District in compliance with South Carolina law.

For the reasons set forth below, an immediate ex parte order from this Court is urgently needed to prevent irreparable injury resulting from the Defendant State Election Commission's refusal to count votes cast in yesterday's Democratic primary election for a candidate in the Seventh Congressional District. By refusing to count these votes, the State Election Commission has erroneously and unlawfully concluded that a runoff election should not be held. While doing so, the State Election Commission is now certifying voting machines and compiling elections materials throughout the Seventh Congressional District in a manner that will provide a Republican Party Primary runoff but will exclude a Democratic Party Primary runoff. An order from this court is urgently needed to restrain the State Election Commission from distributing such machines, data, or materials until the underlying Petition for Writ of Mandamus may be heard.

FACTS

On June 12, 2012, South Carolina conducted statewide primary elections for the Democratic and Republican parties to allow those political parties to select nominees through primary election. See S.C. Code Ann § 7-11-15. One of the primary elections conducted yesterday was the Democratic primary to elect a party nominee to run for the United States House of Representatives in the new Seventh Congressional District.

This election included five candidates: Preston Brittain (Brittain), Parnell Diggs (Diggs), Harvey Pavilack (Pavilack), Gloria Tinubu (Tinubu), and Ted Vick (Vick). These five candidates were certified by the South Carolina Democratic Party as candidates eligible to appear on yesterday's primary ballot. See S.C. Code Ann. § 7-13-40 (requiring the political parties to certify candidates).

On or about May 28, 2012, Vick, suspended his campaign. His name remained on the primary election ballot as a candidate for Congress.

On Tuesday, June 12, 2012, voters cast ballots for all five of these candidates. Tinubu earned the largest number of votes cast with 16,370 votes (48.8%), followed by Brittain with 12,300 votes (36.7%), Vick with approximately 2,340 votes (7.0%), Diggs with 1,404 votes (4.2%), and Pavilack with 1,143 votes (3.4%). None of these candidates earned a majority of the votes cast.

Sometime Tuesday evening, an employee with the South Carolina Election Commission incorrectly told numerous newspapers and television stations that Tinubu was the winner of the election. This State Election Commission employee further stated, as reported, that Vick's votes would not be counted. (1) Exhibit A. The State Election Commission website subsequently removed Vick's name and vote totals from their website (2). The resulting change in vote totals and percentages wrongfully gave the appearance of Gloria Tinubu receiving in excess of 50% of the ballots cast in the Democratic Primary.

S.C. Code Section 7-17-600 states that:

No candidate shall be declared nominated in a first primary election unless he received a majority of the votes cast for the office for which he was a candidate. The question of a majority

vote shall be determined by the number of votes cast for any particular office and not by the whole number of votes cast in the primary.

Furthermore, S.C. Code Section 7-17-610 explains what constitutes a majority of the votes cast for the purpose of determining whether a candidate has earned a majority of the votes: If a candidate for a single office is to be selected, and there is more than one person seeking nomination, the majority shall be ascertained by dividing the total vote cast for all candidates by two. Any excess of the sum so ascertained shall be a majority, and the candidate who obtains a majority shall be declared the nominee.

When a candidate fails to earn a majority of the votes, the State Election Commission and county election commissions must conduct a second primary within two weeks of the first primary pursuant to S.C. Code Section 7-13-50.

By erroneously excluding the votes cast for Vick from the calculation under S.C. Code Section 7-17-610, the State Election Commission will not conduct the second primary election (runoff) required by Section 7-13-50. An ex parte order from this Court is urgently needed to prohibit the State Election Commission from calibrating and distributing electronic voting machines and other elections data and materials that exclude the required Democratic Party runoff until the underlying Petition for a Writ of Mandamus can be heard.

ANALYSIS

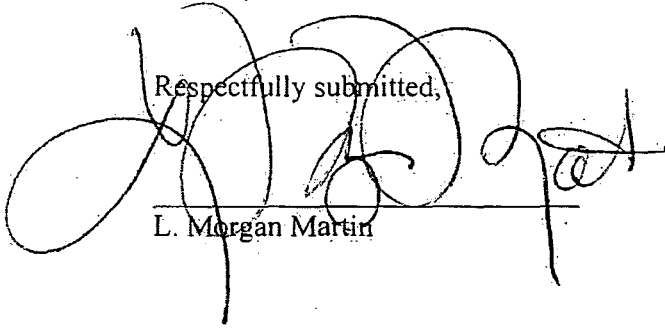
Rule 65(b), SCRCP sets for the requirements for obtaining a temporary restraining order. No temporary restraining order shall be granted without notice of motion for the order to the adverse party unless it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon.

As the verified complaint petitioning the court for a writ of mandamus shows, immediate and irreparable injury threatens the voters of the Seventh Congressional District if the Election Commission fails to conduct a Democratic Party primary runoff in compliance with State law.

As we speak, the State Election Commission is preparing electronic voting machines and other election materials that exclude Seventh Congressional District Democratic candidates from the statutorily-mandated June 26, 2012 election. Because the voting machines and other election materials, once distributed over a multi-county area including hundreds of voting precincts, are virtually (if not completely) impossible to gather, recalibrate, and redistribute by the statutorily-mandated election date, any further action taken by the State Election Commission that excludes Democratic candidates from the ballot threatens immediate and irreparable injury to the Plaintiff and all voting citizens of the Seventh Congressional District.

As a result, Plaintiffs respectfully seek an ex parte order temporarily restraining the State Election Commission and all other Defendants from preparing electronic voting machines or any other election materials pertaining to the June 26, 2012 runoff election until a full hearing may be had on the verified complaint seeking a Petition for Writ of Mandamus that accompanies this motion.

Respectfully submitted,


L. Morgan Martin

Conway, SC
June 14, 2012

(1) See e.g., Andrew Shain, The State, "SC Dems Ask: Why Did Vick's Votes Vanish?" <http://www.thestate.com/2012/06/13/2314217/sc-dems-ask-why-did-vicks-votes.html>; Steve Jones, Sun News, "Tinubu wins Democrat race for 7th District; Rice, Bauer to runoff in GOP," June 12, 2012, available at: <http://www.myrtlebeachonline.com/2012/06/12/2883208/runoff-to-be-held-in-7th-district.html>; Associated Press, "Tinubu wins in Democratic nomination in 7th," June 12, 2012, available at: http://www.theitem.com/news/ap_state_news/article_42c8851e-2ea2-5cc2-b5d5-775b7adb75da.html; Tracy Vreeland, Carolina Live.com, "Gloria Tinubu wins 7th Congressional District Democratic race," June 12, 2012, available at: <http://www.carolinalive.com/news/story.aspx?list=-%5Cnews%5Clists%5Clocal%20and%20state&id=764892#.T9ilYStYvWp>.

(2) Available at: <http://www.enr-scvotes.org/SC/39142/85868/en/summary.html>.

EXHIBIT A



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Gina Smith GinaNSmith

GinaNSmith State sees record low primary turnout - Elections - TheState.com: bit.ly/KUruTo 2 hours ago · reply · retweet · favorite

GinaNSmith Yes, it's true. I'm moving to Hilton Head next wk. I'll continue to write for The State thru the Nov. elections. Thanks for the well wishes!

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Adam Beam adambeam

adambeam @TSN_cdmurray Ha, they already have one. 4 minutes ago · reply · retweet · favorite

adambeam Columbia Marathon says it has a "very exciting announcement" about the start/finish line for the 2013 race.

Join the conversation

Headlines: Politics - Elections Wednesday, Jun 13, 2012

SC Dems ask: Why did Vick's votes vanish? (updated)

By ANDREW SHAIN - ashain@thestate.com

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S.C. Democratic leaders are asking state elections officials why all the votes cast in the newly created 7th Congressional district were not counted Tuesday night -- a decision that prevented a runoff and could lead to a do-over.

About 2,340 votes were cast for state Rep. Ted Vick, whose name remained on the ballot despite withdrawing from the race last month after being charged with DUI.

But a state elections official decided Tuesday night not to include them in the final tally, South Carolina Democratic Party Chairman Dick Harpoottian said, Vick's votes were included in early returns, leading to confusion in news reports about the race.

Video from around the world

Eliminating Vick gave Gloria Bromel Trubui, a Georgetown college professor, 52.4 percent of the tally -- enough of a margin to be declared the outright winner among four candidates and avoid a runoff with second-place finisher Preston Brittain, a Myrtle Beach attorney who received 39.4 percent of the vote.

Adding back the Vick votes would put Trubui at about 49 percent and push her into a runoff with Brittain, who received endorsements from many state party leaders including U.S. Rep. Jim Clyburn and former Gov. Jim Hodges.

Harpoottian said he is unaware of any precedent to not count votes for someone whose name was on the ballot -- even if they dropped out of the race.

"If 2,000 folks wrote in Ted Vick's name, they would be counted," Harpoottian said. "This is the same thing: Those people voted." Write-in votes are not allowed in primary races.

Harpoottian is waiting to hear back from elections commission leaders about the decision to not count votes for Vick. Efforts

to reach S.C. elections officials were unsuccessful Wednesday.

If the tally stands, Harpoottian expects someone either file a lawsuit asking to put the result on hold or file a complaint with the S.C. Democratic party where the executive committee could vote to repeat the election without Vick's name on the ballot.

"That could be expensive," he said noting the state elections commission would pay for the re-vote.

Harpoottian hopes instead the commission will add Vick's votes and hold a runoff between Trubui and Brittain on June 26.

Trubui said Wednesday that she never thought Vick's votes would be counted after he dropped out of the race. She expects to be certified the winner on Friday. "We'll take it as we receive it, but we're comfortable with our double digit win," she said.

Trubui declined comment when asked if she thought state Democratic leaders were trying to force a run-off to keep alive hopes of a perceived party favorite, Brittain.

Brittain's campaign manager John Keig did not say in a statement Wednesday what actions, if any, the candidate would take.

"In yesterday's election, more than 2,300 voters have been told their vote does not count - it's not right," Keig said in his statement. "We are committed to making sure these voters' voices are heard and will oppose any effort to disenfranchise voters in the 7th District."

Among Republicans vying for the seat covering the Myrtle Beach and Florence areas, former Lt. Gov. Andre Bauer will meet Horry Council chairman Tom Rice in a runoff on June 26.

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Bauer received the most votes in the primary with 32 percent of those cast versus 27 percent for Rice.

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SCVoter

If you research two round political systems, all votes are supposed to be counted, and then if no one receives more than half of the total votes cast in the election, there is a run-off of the top two candidates.

Based on research, the Election Commission was wrong to not count all of the votes cast in the Democratic primary.

These Republican appointed Election Commissions appear they look for ways to influence Democratic elections.

In the 2010 elections, it was proven that the Election Commission did not report or count entire precincts in Democratic areas in Richland County. When the League of Women's voters demanded to check all votes, the election commission reported that they could not because the ballot boxes had been compromised and it was no longer possible to verify # of votes cast against # of candidates and what was reported. <http://www.postandcourier.com/...>

Why do people vote for Republicans who cannot appoint people to ensure our votes are counted properly, who cannot even provide the sorry equipment they use to be verified because of machine and human error, and I submit who actively interfere in our elections.

Republicans cannot appoint people to determine who is alive and/or dead who vote. First they notify us 900 dead people vote, and then on a sample size of 6-9 people out of 900, they tell us everyone who voted was alive.

Why do people vote for Republicans I ask - again.



RosewoodDave

Why do people vote for Ted Vick or Alvin Greene? Because they are Idiots! They want to ball out their anointed one, Brittain, because of the stupidity of their electorate? The endorsement of "sharper than the leading edge of a bowling ball" Clyburn makes Brittain a scary fellow!

And of course, you show up here to blame the ignorance of some of the Democratic electorate on Republicans. I remember when Dems tried to blame Republicans for the Alvin Greene fiasco as well. All they needed to do then was look in the mirror.



JR Lentini

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Posted on Tue, Jun. 12, 2012

Tinubu wins Democrat race for 7th District; Rice, Bauer to runoff in GOP

By Steve Jones
sjones@thesunnews.com

Republican voters will head to the booths June 28 to decide if Andre Bauer or Tom Rice will meet the Democratic candidate in November's general election.

The Associated Press reported late Wednesday night that Democrats Preston Brittain of Horry County and Gloria Tinubu of Georgetown County will meet in the runoff, but numbers reported by the State Election Commission suggested that Tinubu was the outright winner.

The Commission's website reported that Tinubu had more than 51 percent of the vote from six of the eight counties in the 7th District, which is a new congressional district. Horry was one of the two counties that hadn't been listed yet on the website, and Tinubu, a Georgetown county resident, trounced Brittain, a Myrtle Beach lawyer, on his home turf.

Bauer and Rice ran neck and neck in Horry County voting with Bauer ending up with 32 percent of the vote and just one precinct to count.

Tinubu got 62 percent of the Horry County Democratic vote to nearly 29 percent for Brittain.

"We feel really great about the numbers," said Robin Shipp, Tinubu's campaign manager.

She said Tinubu was not yet at the campaign gathering at the Sidewheeler on Conway's riverfront. At the time she was contacted, Shipp still held out hope that Tinubu might win outright. But the Associated Press reported that was not to be.

While Tinubu had a commanding lead in Horry, she didn't capture the necessary 51 percent of the vote districtwide to claim an outright victory. Although she captured Marion and Marlboro counties, Brittain ran strongly enough in other counties to pull Tinubu back for a runoff, according to early numbers.

Brittain, a Myrtle Beach lawyer, couldn't be reached for comment, but issued a statement saying he believed there would be a runoff.

"We did it," the statement said. "I am proud to announce that we are in the runoff election. Our message ... is being embraced by people throughout the district."

Brittain and Tinubu, an educator and former member of the Georgia House of Representatives, said they want to stimulate job growth if they are elected, a message echoed by all primary candidates, Republican and Democrat.

Brittain said he wants to get the money to build Interstate 73 while protecting Social Security and Medicare. Tinubu said she wants to work to strengthen workers' rights.

On the Republican side, Rice's narrow victory over Bauer in Horry – which has about 40 percent of the registered voters in the district – likely kept him in the runoff. Bauer won the primary vote in Dillon, Marion and Marlboro counties Inland, but as in Horry, not with a clear majority of the votes.

"I feel wonderful," Rice said.

He said his campaign is already geared up for the runoff and that financially he is in good shape for the second contest.

"We want to keep hammering our message," Rice said. "We want to be the congressman for the entire district."

Rice and Bauer bickered during the primary campaign with Bauer saying that Rice didn't have the experience to do the job of a congressman, while Rice said Bauer moved to Horry County just to run for the seat in the new 7th District.

Other than that, both want to shrink the size of the federal government and bring more jobs to the 7th District.

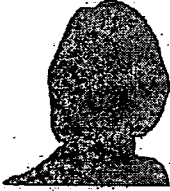
Bauer said he was disappointed by the primary vote turnout, and wouldn't comment on how his campaign will move through the runoff because he didn't want to give Rice his strategy.

But he's ready to keep campaigning, he said.

Funding is an uphill battle for him.

"I'm competing with the biggest development crowd in all of Myrtle Beach," he said.

Contact STEVE JONES at 444-1765.



Gloria Tinubu wins 7th Congressional District Democratic race

by [Tracy Vreeland](#)

Posted: 08.12.2012 at 10:04 PM

Updated: 08.12.2012 at 10:30 PM

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Read more: [Local News: 7th Congressional District Democrats: 7th Congressional District Democratic Race, Runoff in the 7th Congressional District Democratic Race, Gloria Bromell Tinubu, Preston Brittain, Parnell Diggs, Harry Pavlack](#)

Gloria Bromell Tinubu, a Coastal Carolina University economist, has won the 7th Congressional District Democratic race with 53 percent of the vote, according to the South Carolina Election Commission.

Attorney Preston Brittain received 39 percent of the vote.

Attorneys Parnell Diggs and Harry Pavlack each got four and three percent respectively.

Ted Vick dropped out of the race after a [DUI arrest](#).

The Associated Press initially reported there would be a runoff between Tinubu and Brittain because Vick's numbers were being included in the results.

Without Vick's 7% of the votes, Tinubu does have the majority necessary to win the primary outright.

All results are unofficial.

For more primary election results, click [here](#).

Tinubu wins in Democratic nomination in 7th

Posted: Wednesday, June 13, 2012 6:00 am

MYRTLE BEACH (AP) - Coastal Carolina University economist Gloria Tinubu has won the Democratic nomination for South Carolina's new 7th Congressional District.

Tinubu appeared headed for a runoff with Horry County attorney Preston Brittain after Tuesday's voting.

But late Tuesday night the State Elections Commission said that votes for third-place finisher Ted Vick would not count because he had withdrawn from the race.

That gave Tinubu the majority needed to claim the nomination.

Tinubu got 52 percent of the vote. Brittain got about 39 percent in the four-candidate field. Attorneys Parnell Diggs and Harry Pavilack trailed.

Vick had been considered the front-runner but dropped out last month after his arrest on a drunken driving and weapons charge in Columbia.

Republicans have a runoff June 26 after a nine-way race on Tuesday.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Donnie McBride and Vincent Masterpaul,)
)
Plaintiffs,)

Case No. 2012-CP-_____

v.)

South Carolina Election Commission; Marci)
Andino, as Executive Director and)
Representative of the South Carolina Election)
Commission; Horry County Election)
Commission; Russell W. Hall, III, Chairman of)
Horry County Election Commission;)
Georgetown County Election Commission;)
Dean Smith, Director of Georgetown County)
Election Commission; Florence County)
Election Commission; David K. Alford,)
Director of Florence County Election)
Commission; Marion County Election)
Commission; Teresa C. Moody, Director of)
Marion County Election Commission; Dillon)
County Election Commission; Joe Möffet,)
Chairman of Dillon County Election)
Commission; Marlboro County Election)
Commission; Phyllis Hagan, Director of)
Marlboro County Election Commission;)
Chesterfield County Election Commission;)
Donald Sellers, Director of Chesterfield County)
Election Commission; Darlington County)
Election Commission; Hoyt Campbell, Director)
of Darlington County Election Commission;)
Defendants.

EX PARTE
TEMPORARY
RESTRAINING ORDER

HORRY COUNTY
12 JUN 14 PM 2:10
MELANIE HUGHES-WARD
CLERK OF COURT

The Plaintiffs bring an ex parte motion for a temporary restraining order before the Court pursuant to Rule 65(b), SCRCP. The motion is accompanied with a verified complaint setting forth immediate and irreparable injury the Plaintiffs may suffer if the relief sought within the complaint is not granted. After reviewing the motion and accompanying complaint, the Court GRANTS the temporary restraining order for the following reasons and subject to the following restrictions.

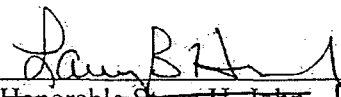
1. The South Carolina Democratic Primary for the Seventh Congressional District was held on Tuesday, June 12, 2012. Initial final vote totals reported through the press indicated that no candidate received more than 50% of the vote.
2. During the late evening of June 12, 2012, the South Carolina Election Commission chose to strike from its totals all votes pertaining to Ted Vick, a Democratic candidate who chose to withdraw from the race weeks ago, but remained on the ballot. The Election Commission subsequently recalculated its vote percentages and announced that the top vote-getting Democrat received greater than 50% of the vote.
3. Plaintiffs have now filed a Petition for a Writ of Mandamus with this Court, seeking to compel the Election Commission to consider votes cast for candidate Vick and, correspondingly, to order a runoff election in the Democratic Primary for the Seventh Congressional District in compliance with South Carolina law.
4. The Plaintiffs argue, and the Court agrees, that should the Election Commission calibrate electronic voting machines and distribute election materials throughout the Seventh Congressional District before a hearing is held on the underlying Petition for Writ of Mandamus, such actions will cause immediate and irreparable injury to the Plaintiffs and other voters of the Seventh Congressional District. More specifically, voting machines and election materials that potentially violate South Carolina law by failing to include the mandatory Democratic Party runoff will be distributed to hundreds of election precincts in anticipation of the June 26, 2012 election.
5. As a result of the threat of this immediate and irreparable injury, the Court grants Plaintiffs' motion for an *ex parte* temporary restraining order without a hearing. The Defendants are restrained from calibrating and/or distributing any electronic voting

machines or elections materials pertaining to the Seventh Congressional District runoff election before a hearing is held and a ruling issued on the underlying Petition for Writ of Mandamus.

6. To protect the rights of the Defendants, the Court orders that this temporary restraining order shall expire upon the resolution of the underlying Petition for Writ of Mandamus.

7. To further protect the rights of the Defendants, the Court orders that the Petition for Writ of Mandamus shall be heard on 21st DAY OF JUNE, 2012
COUNTY COURT HOUSE AT 9:30 AM.

IT IS SO ORDERED.


The Honorable Steve H. John Barry B. Nyman Jr.
Court of Common Pleas
Fifteenth Judicial Circuit

Conway, South Carolina
June 14, 2012