

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

SOUTH CAROLINA ELECTION COMMISSION
BEFORE THE BOARD OF CANVASSERS

Michael Letts,)
)
Protestant/Appellant,)

v.)

Richland County,)
)
Respondent.)

-----)
Re: Richland County Sales)
Tax Increase Referendum)
Questions 1 and 2)
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-----)

John Moylan,)
)
Intervenor on behalf)
of Richland County Council,)
and Central Midlands Regional)
Transportation Authority.)

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-----)
Helen McFadden,)

Intervenor on behalf)
of Richland County Council.)
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TRANSCRIPT OF
PROCEEDING

December 17, 2012
10:00 o'clock A.M.

RECEIVED

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S.C. SUPREME COURT

Before the South Carolina
Election Commission/Board
of Canvassers, 2221 Devine
Street, Columbia, S.C. 29201

Eric B. Gore, Reporter.

(See following page for
Appearances.)

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1
2 PROCEEDING:

3 CHAIRMAN WAY: Good morning, everyone. Thank
4 you for being here. Sorry, we're a little late, we have
5 people coming in from around the state, and sometimes that
6 gets us off to a little late start. But thanks everyone for
7 being here. My name is Billy Way, I am the Chairman of the
8 South Carolina Election Commission; and we have a meeting
9 today the Board of Canvassers. Before we get started, I
10 would like to make some introductions. First of all, Mark
11 Benson, one of the Commission Members is unable to attend, he
12 had an emergency and cannot attend today. To my left is Mr.
13 Allen Dawson, who is here from John's Island, South Carolina.
14 To my immediate right is J.C. Nicholson, who is with the
15 Attorney General's Office, will providing the Commission with
16 legal advice today. To his right is Marilyn Bowers, is here
17 from Easley, today. To her right is Nicole Spain White, who
18 is from Belton, South Carolina; and to her right is Marci
19 Andino, the Executive Director of the South Carolina State
20 Election Commission. At this time I would like to call this
21 meeting of the South Carolina State Board of Canvassers to
22 order, and before we start the proceedings I would like for
23 the people here to make introductions and identify who you
24 are representing today.

25 MR. MOYLAN: Thank you very much, Mr.
Chairman. I am John Moylan, and I am representing the CMRTA,

1 the Central Midlands Regional Transportation Authority. Thank
2 you.

3 MS. MCFADDEN: Mr. Chairman, my name is
4 Helen McFadden, and I represent Richland County Council along
5 with Beth McLean, who is present and sitting on the back row,
6 I think.

7 CHAIRMAN WAY: County Council?

8 MS. MCFADDEN: Yes, sir.

9 MR. LETTS: Mr. Chairman, I am Michael
10 Letts, and I represent a group of citizens who believe that
11 our election was invalid. And I am representing myself.

12 CHAIRMAN WAY: Thank you. Sir?

13 MR. SHEALY: I am R.J. Shealy and I am sort
14 of a co-protestor.

15 CHAIRMAN WAY: Okay. Mr. Shealy, were you
16 part of the original protest.

17 MR. SHEALY: No.

18 CHAIRMAN WAY: Okay, but you are ---
19 assistant.

20 MR. SHEALY: Sort of a co-protestor.

21 CHAIRMAN WAY: Okay. All right, the first
22 matter at hand is --- thank you all for being here, and thank
23 you every one who has been subpoenaed or otherwise for being
24 here today. The first matter at hand, is there has been a --
25 - Mr. Letts has filed a --- made a motion for a de novo

1 hearing. So, the Board of Canvassers is the first here. Your
2 comments for the reasons why, and then we'll hear from the
3 opposing party on their position on that. So, Mr. Letts would
4 you please describe to us why you feel a de novo hearing
5 would be in order here.

6 MR. LETTS: Mr. Chairman, I think there is
7 simply all the information that was necessary for us to even
8 prepare for this appeal was not available at the time, and we
9 actually did the appeal before the County Board of Election.
10 The initial report by their attorney, Steve Hamm, was not
11 issued until two days after --- three days after the appeal
12 had been heard. During that initial report that he released
13 there were additional votes that were discovered that had not
14 even been counted as of yet. So, we did not have all the
15 information necessary, even for our initial appeal before the
16 Richland County Election Commission. So because of that we
17 are asking the Board to allow us a de novo hearing.

18 CHAIRMAN WAY: Thank you. Mr. Moylan.

19 MR. MOYLAN: Thank you, Mr. Chairman. As
20 you know, the legal standard is provided by Section 7-17-70.
21 It allows this Board if it desires with two roads to have a
22 de novo hearing, it's completely discretionary on the Board.
23 Two weeks ago we spent four hours at the Richland County
24 Election Commission for a hearing. Mr. Letts called eight
25 witnesses. At the end of that time we know a fact, we are

1 here today, Richland County Election Commission failed to
2 distribute one voting machines for every 250 voters. We know
3 that. Mr. Letts had the opportunity to call up any witness he
4 wanted, to ask any questions he had wanted to ask. In most
5 elections there is no attorney or investigative body that
6 conducts any investigation. The fact that they did not
7 finish really had no relevance on this matter. Mr. Letts had
8 the ability to ask any questions that he wanted to ask. It is
9 important, too, to realize that what we are here on is a very
10 straight forward legal question. And that is, "Whether the
11 failure to distribute one voting machine for every 250 voters
12 invalidates an election?" That's the question that this body
13 has to answer today. And you can go through the precedent, as
14 I will. I think it has already been answered by the Attorney
15 General, by the Supeme Court. It is also important to
16 recognize what we are not here about today. We are not here
17 to figure out why the Richland County Election Commission
18 screwed up. Who screwed it up? What they should have done?
19 How they could have done it better? They have got to figure
20 that out. We are all here. Mr. Letts is frustrated about
21 the process, most of us who live in Richland County are
22 frustrated by the process. That's not the reason for our
23 being here today to figure out what went wrong and how they
24 should fix it. They have got to do that. They have got to fix
25 it. What we are here on is to answer the question of whether

1 the failure to distribute the voting machines as it should
2 have been done invalidates the election, whether it throws
3 away the 159,000 votes. Here we stood in line and they say
4 converted. All of those votes were thrown away. And we think
5 it is crystal clear that the failure does not do that. The
6 sales tax was run by a margin over 6600 votes. The statute
7 was an issue, that is 7-13-16- 80. It is a statute that was
8 passed as it related to voting machines, it was amended back
9 in 1968. At that time the Legislature said, "We think that
10 the Election Commission should distribute one voting machine
11 for every 350 voters, or as near thereto as practical? Well,
12 it was written in the most discretionary language possible.
13 In 2000 the statute was amended to suggest that it should be
14 one voting machine for every 250 voters. But again, it was
15 made in discretionary language. It was near thereto as
16 practical. And the South Carolina Attorney General has been
17 asked on three different occasions whether or not that
18 language is mandatory. And on every occasion he has said,
19 "No, it is not mandatory." In fact, the Spartanburg County
20 Election Commission wrote to the Attorney General and said,
21 "Is it okay if we just do one for every 500?" And the
22 Attorney General said, "Yeah, that's fine." The actual
23 language is, quoting this: "I therefore advise that in the
24 opinion of this Office, the statutory ratio of one machine
25 for each 350 registered voters should be followed with

1 assignment of machines to precincts. But the failure to
2 follow to strictly follow this procedure would not invalidate
3 an election." The legal question before you has been
4 answered. What we should not do each day, because the work
5 that this Commission does is far too important, we should not
6 allow this to become a stage for a political theater. There
7 are fifteen witnesses that have been subpoenaed to testify
8 today, including at least a half a dozen elected officials,
9 none of whom had anything to do with the administration of
10 what happened on November the 6th. You have before you, you
11 have the transcripts of the Richland County Election
12 Commission, you have the legal issue that is the same as it
13 was before. We think it's entirely appropriate for this
14 Commission to hear, again if it would like, on the issue of
15 whether or not the failure to comply with the statute
16 invalidates an election. But beyond that, I'm paid by the
17 hour if you want to go through all of the witnesses, we can
18 certainly do it; again, it's at your discretion. But we don't
19 think it is necessary or indeed advisable to discuss it.

20 CHAIRMAN WAY: Thank you, Mr. Moylan.

21 Ms. McFadden.

22 MS.MCFADDEN: Mr. Chairman, I will not
23 reiterate what Mr. Moylan said so eloquently. I agree with
24 his position. I would add only that with regard to
25 information not available at the time of the hearing before

1 the Richland County Election Commission, Mr. Letts got
2 substantially more time than any of us who do this kind of
3 work, have ever gotten before with regard to the first
4 hearing. As this Commission knows they run a very quick,
5 short, straight --- that hearing, had it not been for the
6 cases filed with the State Supreme Court, would have occurred
7 much sooner than it actually occurred. And this hearing would
8 have occurred approximately two, if not three, weeks ago.
9 And if the usual time table had been followed, what is
10 referred to here as the Hamm Report would not have existed at
11 the point in time we got here. So, the so-called lack of
12 information is simply the way these cases occur. They are on
13 a very short string, they are done without discovery. It is -
14 -- among lawyers, it is just a wild west show. You come
15 here, you try your case with what you can find when the
16 hearing is scheduled. So, the so-called after discovery
17 evidence should not be a reason for giving a de novo hearing
18 in this matter.

19 CHAIRMAN WAY: Okay, thank you. We have
20 heard comments from both sides. Thank you for those
21 comments. Mr. Nicholson here has advised us that --- excuse
22 me. Will everybody please turn their cell phones off. I
23 apologize. But this is, as I mentioned about one of the of
24 the attorneys here, it's in our discretion whether or not to
25 grant this de novo hearing, and we may I do so if we have at

1 least two Commissioners of the four who would --- Canvassers,
2 I guess, is the correct term. Two of the four suggest that
3 they feel the need to grant the de novo hearing. So, at this
4 time, I would like to --- not make a motion. I'll just ask if
5 any Commissioners feel it necessary, appropriate to grant the
6 de novo hearing required by --- requested by Mr. Letts.

7 (No response)

8 CHAIRMAN WAY: Okay, hearing none, then the
9 motion for a de novo hearing is respectfully denied. And we
10 will move forward with the appeal.

11 MS. MCFADDEN: Mr. Chairman, on behalf of
12 numerous folks who were subpoenaed, could they be released
13 from the subpoenas at this point in time to return to their
14 work?

15 MR. NICHOLSON: That's a yes.

16 COMMISSIONER WAY: Yes. So, anyone who was
17 subpoenaed who is not going to stay for the appeal are free
18 to go. Okay, so moving forward now with the ---

19 UNIDENTIFIED: Making a change in the
20 transcript before it is considered, Mr. Chairman.

21 CHAIRMAN WAY: Okay. A correction?

22 UNIDENTIFIED: A correction in the
23 transcript.

24 CHAIRMAN WAY: Yes, sir. What is it?

25 UNIDENTIFIED: It was an incidence of in the

1 transcript where it had Mr. Letts referring to a George case,
2 and that was mistranscribed. He is actually talking about a
3 Duvan (phonetic) case, a Harry Duvan case.

4 MR. NICHOLSON: So, that is the protest, the
5 transcript.

6 UNIDENTIFIED: In the transcript, yes. The
7 legal transcript.

8 MR. NICHOLSON: Can correct it.

9 MS. MCFADDEN: If I might, my notes reflect
10 that he said "George". We all knew from the facts that he
11 recited that he meant Duvan (phonetic). But he actually said
12 George. There was no confusion among those there ---

13 MR. NICHOLSON: Is the mistake relevant to
14 anything?

15 UNIDENTIFIED: I just wanted those words
16 considered in anything, we want to make that clear.

17 (Off the record)

18 CHAIRMAN WAY: Okay, thank you. So, we will
19 move forward and with this appeal we'll rely strictly on the
20 record, on the transcript that was produced a couple weeks
21 ago. And the comments that the two parties make today.
22 Mr. Letts, would you please describe your argument for the
23 dispute.

24 MR. LETTS: Thank you, Mr. Chairman, and
25 Fellow Commissioners. My name is Michael Letts. I am

1 representing a growing group of citizens who believe the
2 November 6th elections in Richland County weren't valid; that
3 they were held and were not held in accordance with the law.
4 You can't over state the magnitude of what happened on
5 election day. We easily had the resources and the man power
6 to have the election. Yet for some reason the Board of
7 Elections refused to put out enough voting machines. People
8 were hurt and angry, and they felt betrayed. We are
9 particularly concerned because there was one question on the
10 ballot which had enormous consequences. And that's the
11 question of whether or not to collect more than a billion
12 dollars from citizens for the sales tax increase. A billion
13 dollars is a lot of money. We are going to vote on a tax
14 increase of this size and scope, we ought to at least make
15 sure the election is held in accordance with the law. Before
16 I go any further, I want to address one thing. While we have
17 met with some attorneys and received some legal advice, we
18 ultimately decided that I would argue this case myself. We
19 decided to do this as a way of symbolizing what we are really
20 here for and what this protest is all about. We are here as
21 regular citizens, just ordinary people who want what's best
22 for our community. It's been implied there is a political
23 motive; there is none. It's not about Republicans or
24 Democrats, it's simply about doing the right thing. It's not
25 about changing the outcome of an election. There is much

1 more at stake here. The message that we send, "Do we comply
2 with the law, or are there no equals in consequences for
3 mandatory state's debts?" And if there are none, then what
4 is the purpose of having them reflected on the votes to begin
5 with?" Of course, in this day and age no one should have to
6 pay thousands of dollars and attorney's fees just to make
7 sure people can vote. That right was secured for us long
8 ago. Today, I am going to show that there is a State Statute
9 requiring a certain number of voting machines to be used,
10 and that despite the pleas of poll workers who alerted them
11 before election day that there will be major problems. The
12 Board of Elections completely chose to ignore this Statute.
13 Further, I am going to show that that disregarding the
14 Statute are grounds for over turning an election. And that's
15 according to the State Supreme Court. And, of course, I am
16 going to show that there are numerous other issues. Voting
17 machines mal-functioning, voting machines casting error in
18 votes. When it comes to invalidly to voting, the Supreme
19 Court puts them in two distinct categories. There are
20 irregularities, and then there is the disregarding of the
21 Statute. This protest isn't about mere irregularities, as
22 the opposing counsel has already conceded. I am going to
23 show that Richland County Board of Elections disregarded,
24 willfully disregarded, the State Statute. Their disregard of
25 this Statute substantially impairs citizens of going to

1 exercise their Constitutional right to vote. Those are the
2 grounds for our challenge in this referendum. The Statute
3 that I am talking about has already been referred to, Section
4 Code 7-13-1680. Number of voting machines type and use,
5 repair and custody. Are we doing what it says? The governing
6 body of any county or municipality providing voting machines
7 at polling places for use in elections, shall provide for
8 each polling place at least one voting machine for each 250
9 registered voters, or portion thereof, or as near thereto as
10 may be practical. Notice the word "shall". So I went over
11 this with other attorneys, everybody that I spoke this to had
12 the same thought. They all saw the word "shall" and they
13 said that this is a mandatory Statute. The word "shall" means
14 mandatory. So, this is a mandatory Statute and it must be
15 followed. If you don't follow it, then it's an unlawful act
16 in an election. Folks, I might add, I've been known to go
17 off script, so --- Statutes are put in place because they
18 enable to make the citizens be able to function
19 or be able to perform their duty to be able to vote. If we
20 disregard what a Statute says, we open ourselves up to
21 anybody interpreting it in any way, any form or fashion. We
22 jeopardize the future of elections. And it's not just about
23 this one, it's about our future. I am going to show that
24 they didn't just put out nearly enough voting machines on
25 election day. They didn't comply with the law, and their

1 non-compliance is so substantial that it undermines the very
2 integrity of this law. I am going to show there is ample
3 evidence, helpers call the Election Office before election
4 day to try to sound the alarm that there weren't enough
5 voting machines. They got one or two Board of Election
6 workers who are here, they wanted to come. I am going to
7 show that despite all these people that contacted the Board
8 of Elections, they even pleaded for more machines. Yet the
9 Board of Elections still refused and failed to put out enough
10 voting machines. The results were long lines, wait time as
11 long as seven hours, thousands of voters weren't able to
12 participate in this election. And then I have again Mr. Neal
13 (phonetic) to go forward and prove that. That's my opening
14 statement, Mr. Chairman.

15 CHAIRMAN WAY: Thank you, Mr. Letts.

16 MR. MOYLAN: Thank you, Mr. Chairman. I
17 think we start this morning given the standard review, that
18 this Commission be extra time thing is the reviews what the
19 County Election Commission has already decided. And now we go
20 points, this Commission did a couple of decisions of our
21 Supreme Court. First is the Gecy (phonetic) case that
22 recognizes, quote, "perfect compliance with the Election
23 Statutes is unlikely". And the second, I would like to with
24 the Dukes case, again, by the State Supreme Court; and I
25 quote, "This Court will employ every reasonable production to

1 sustain a contested election. We will not set aside an
2 election due to mere irregularities or illegalities unless
3 the result is changed within your (inaudible)." Here we have
4 a valid referendum, but won by almost 7,000 votes. As we sit
5 here today, not one voter has ever testified that they were
6 not allowed to vote, that they were turned away from the
7 polls. And still what we know is that 159,000 voters in
8 Richland County stood in line for as long as it took, some
9 for a lot longer than they wanted to be able to cast their
10 votes. And those votes were counted, and those votes should
11 be counted. The crux of the legal issue is correct for Mr.
12 Letts just how I --- I was saying that I think this year, I
13 just started with the belief that because that Statute is
14 written editorially, which it has to be followed to the
15 letter. But we know from the Supreme Court and the Attorney
16 General that that in fact is not the law. And again, I would
17 quote from the State Supreme Court, this is the George case
18 out of Charleston, and the quote is this: "After an election
19 in which no fraud is alleged or proven ---" and that is this
20 case, if you read the protest here or before the County
21 Election Commission, there have been no allegations of fraud.
22 And the Supreme Court says, "After an election which no
23 fraud is alleged or proven, and the Court seeks to uphold the
24 result in order to avoid disenfranchising those who voted.
25 Such provisions in a Statute are merely directory even though

1 the Legislature use's seemingly mandatory terms, such as
2 'shall' or 'must' in establishing conditions." And that's
3 exactly what we have here. And we also have the three
4 Attorney General opinions as mentioned earlier, in which the
5 Attorney General looked at this specific Statute and said
6 that the language in that Statute is clearly directory and
7 not mandatory. In which it said to Spartanburg County, if you
8 only distribute one voting machine for every 500 voters, that
9 is your decision because it is not a mandatory Statute. The
10 legal question before this Commission has been answered,
11 both by our Supreme Court and by the Attorney General: it is
12 not a novel question. You are not the first ones to have to
13 address and the answer has been given, and it has been given
14 over and over the same way. There is not one case, not one
15 the Attorney General opinion that says that they need to
16 follow that Statute, invalidates the election, and throws out
17 the votes of the 159,000 people who casts votes. We are here
18 today to defend not only the results of the election but to
19 defend the rights of those people who stood in line and voted
20 to have their votes counted. Because, there is no Statute,
21 there is no Constitutional mandate that says you don't have
22 to stand in line and wait to vote. Now, there is a
23 Constitutional mandate that says every vote that's cast shall
24 be counted. And that is what this Election Commission should
25 do today. And finally, as you read the transcripts before the

1 Richland County Election Commission, one thing that I think
2 would jump out at you, there is not one document, not one
3 shred of paper introduced into evidence. And this Commission
4 has to make a ruling based on the evidence that's presented.
5 And here you will find that there is none. And again, the
6 State Supreme Court in Fielding versus the South Carolina
7 Election Commission summarized the evidence before it as
8 this, and said the evidence rises at best to the level of
9 conjecture, speculation and surmise. No poll manager or poll
10 watcher had testified, can identify a definitive number of
11 alleged illegal votes cast. And finally, no documentation
12 whatsoever of any of the alleged irregularities were
13 presented, only the uncorroborated opinions of individuals.
14 That is precisely what this Commission has today. And I
15 would just like to end by thanking you all for your service
16 on this Commission. I know you have had a busy couple of
17 months. We appreciate very much your time and patience that
18 you have given to all of us. Thank you.

19 CHAIRMAN WAY: Thank you, Mr. Moylan. Ms.
20 McFadden.

21 MS. MCFADDEN: Thank you, Mr. Chairman.
22 Once more I join with what Mr. Moylan has said, and I will
23 not repeat it, I will make only one additional quote, that in
24 the traditional protest the protesting party would come in
25 here and try to show to this body, having tried to show

1 everyone, that a specific number of voters and votes is at
2 issue. In this matter, as Mr. Moylan has said, there is
3 approximately 65 --- almost, there is more than the 6500 vote
4 margin. And in the hearing below there was no voter who came
5 and said, "I went there and the wait was too long, and I
6 left." There is absolutely no evidence anywhere there were
7 five people or ten people, or even a hundred people who
8 wanted to vote, left. So, there is in this record before you
9 absolutely no evidence of any causal relationship between the
10 lack of voting machines for every 250 people, and the result
11 of the election. And that is the one thing that must be
12 present in any protest. You must show some causal
13 relationship between how the election occurred and what
14 resulted. And for that reason we would like it that this
15 protest should be denied. And I thank you, as well, for your
16 service. Thank you.

17 CHAIRMAN WAY: Thank you, Ms. McFadden.
18 Excuse me one second while I speak to counsel.

19 (Off the record)

20 CHAIRMAN WAY: Thank you. All right, thank
21 you for your opening comments. Mr. Letts, we'll now hear
22 from you, and just as a reminder, when you do, stay within
23 what's contained within the record from the process a couple
24 of weeks ago.

25 MR. LETTS: Probably be brief, Mr. Chairman.

1 Thank you. First of all, as you would have read the second
2 paragraph under --- the first paragraph underneath the George
3 case. It clearly states the Court still may deem such
4 provisions to be mandatory after an election. And thus
5 capable of nullifying the results on the provisions of
6 (inaudible) effect the pre and intelligent casting of a vote,
7 a determination of the results, an element of the election
8 or the fundamental integrity of the election. Mr. Chairman,
9 you have heard there is no evidence. I quite frankly
10 disagree. I think if you look at the transcripts, the
11 evidence that was produced, first and foremost Richland
12 County had the second lowest voter turn out in the entire
13 state. Which, if you look at the previous election turn
14 outs, a substantial amount for all these previous years. And
15 that's introduced in the testimony. Introduced in that
16 testimony is that had Richland County --- Richland County in
17 the testimony typically exceeds state wide voter turn out.
18 Had Richland County merely met state wide voter turn out, it
19 would have been an minimal, an additional 8672 voters that
20 would have been cast. Which is more than the margin by which
21 the penny sales tax prevailed. So, to say that there was no
22 evidence in the record, I strongly disagree. There was ample
23 evidence that we had the lowest voter turn out. There is
24 ample evidence in that record. This is the greatest
25 debauchal for an election that Richland County has seen in

1 its most recent history. There is ample evidence they are in
2 the Duane case. It states the Court will overturn the
3 results of an election, however the mandatory Statute for
4 provisions have been violated. And those violations
5 interfere with a fair and full expression of the voters turn
6 out. To imply and to minimize thousands of votes to the 2000
7 which we had, even as in testimony who stood in line for
8 hours, but due to work constraints, child care constraints,
9 medical conditions, could not spend the seven hours necessary
10 wait, and had to leave, would somehow characterize this as
11 having made a choice not to participate in the vote and the
12 process. It's quite frankly Un-American. We are not a Third
13 World country. This is not typically what is experienced on
14 election day. In this characterize we're defending the
15 159,000 were due. Weren't able to manage to cast their vote.
16 We are not asking this body to get away disenfranchise
17 things. We are asking this body because of the fact that
18 this banding was not upheld to allow the thousands of
19 citizens who did not have the opportunity, who had to make a
20 choice, and a twist out of their own choosing, forced upon
21 them, who could not participate, to be allowed to vote,
22 participate in the process. That is what the argument is,
23 Mr. Chairman. And to imply there is not ample evidence, when
24 you only look at your own statistics of voter turn out in
25 previous years compared to this last year. You can clearly

1 see that there were a far majority of people who would have
2 changed the outcome of the election had these problems not
3 existed. We get no pleasure out of taking time to come down
4 here today, or to come down when we have done in previous
5 cases. But we do feel it's fundamental that to have
6 thousands of people who could not participate in the
7 election. We think it's a fundamental right and ought to be
8 taken. In one word, coming down and asking this body to
9 consider that.

10 CHAIRMAN WAY: Do any Commissioners have any
11 questions for Mr. Letts at this time?

12 (No response)

13 CHAIRMAN WAY: Thank you, Mr. Letts. Mr.
14 Moylan.

15 MR. MOYLAN: Mr. Chairman, I'll be very
16 brief. Again, what this Commission has are the transcripts of
17 the record of the Richland County Election Commission. And
18 if you want to look at what is in the record as to voter turn
19 out, you will find there is no question that was asked by Mr.
20 Letts. There was no testimony, there is no documentation
21 in the record as to know that. I would request of you that
22 you review the transcript yourself, that you will really
23 find, again, the question is asked, but there is no answer,
24 there is no testimony that was admitted on that question.
25 The motion that there are thousands who did not have the

1 opportunity to vote, either striking the week of my vote
2 (inaudible). This Body to this day, six weeks after the
3 election we have not heard from one voter who came before the
4 County Election Commission to say, "I tried to vote and I was
5 turned away. I was not allowed to vote." Not one. Again,
6 this is the Fielding case where what we have before you is
7 surmise and conjecture. In fact, there is no established
8 grounds invalidating the election, when you total out the
9 votes it's 159,000 who voted. Thank you.

10 CHAIRMAN WAY: Thank you, sir. Ms. McFadden:

11 MS. MCFADDEN: Thank you, Mr. Chairman. And
12 I am not going to repeat what Mr. Moylan says here. Mr.
13 Letts in his argument, his assertions and his protest he
14 presents, there is no evidence in this record he has prepared
15 to numbers of people not voting. And when you further
16 consider the issue in this Commission, if there were a
17 hypothetical, if there were 6,500 people who said they walked
18 away rather than staying in the line to vote. That this is
19 a case where the ballot is not in the box. Most of their
20 cases, the ballot is in the box and our State Rule when the
21 ballot is in the box is that you deduct it from the winner to
22 see if it would change the outcome. These ballots are not in
23 the box. We don't get that Rule, we don't deduct them
24 because there is no evidence that 6500 people left. But we
25 don't know because those ballots are not in the box how those

1 people would have voted. Our Court says not on this but when
2 to apply when the ballot is not in the box. And other states
3 apply per proportionality to the ballots not in the box. And I
4 will argue to you that you have to do that. And once you
5 apply per proportionality to the ballots not in the box, the
6 penny still wins because it won the first round. And when you
7 proportionally deal with a ballot not in the box, it's going
8 in. And for that reason you should deny this protest.

9 CHAIRMAN WAY: Thank you, Ms. McFadden. Do
10 any Members of the Board Commission have any questions for
11 either party at this time?

12 (No response)

13 CHAIRMAN WAY: Okay, let me cover a
14 procedural matter, it was something there at the beginning.
15 It's probably about the time my phone started to ring. But,
16 I just wanted to ask Ms. Andino to confirm for me that all
17 the Notices necessary to comply with the Freedom of
18 Information Act were made prior to this meeting.

19 MS. ANDINO: Yes, they were.

20 CHAIRMAN WAY: Thank you. At this time then
21 I will entertain a motion to go into executive session for
22 the purpose of obtaining legal advice. Do I have a motion?

23 COMMISSIONER BOWERS: So moved.

24 COMMISSIONER WHITE: Second.

25 CHAIRMAN WAY: We have a motion and a second.

1 to go into executive session for the purpose of obtaining
2 legal advice. All in favor, say "aye".

3 (All Commissioner voted in the affirmative)

4 CHAIRMAN WAY: All opposed?

5 (No Commission Members voted in the
6 negative)

7 CHAIRMAN WAY: We will be back in a few
8 minutes. Thank you.

9 (Off the record)

10 (The Board of Commissioners go into executive session)

11 (The Board of Commissioners return from executive session)

12 CHAIRMAN WAY: Thanks to everyone for your
13 patience. I would like to entertain a motion to go back into
14 regular session. Can I have such a motion?

15 COMMISSIONER WHITE: So moved.

16 CHAIRMAN WAY: A second?

17 COMMISSIONER DAWSON: Second.

18 CHAIRMAN WAY: Okay, I have a motion and a
19 second to go into regular session. All in favor?

20 (All Commission Members voted in the
21 affirmative)

22 CHAIRMAN WAY: All opposed?

23 (No Commission Members voted in the
24 negative)

25 CHAIRMAN WAY: I would like to, before we get

1 started, I would just to let everyone know that we went into
2 executive session for the sole purpose of obtaining legal
3 advice; we made no deliberations; we took no votes; we were
4 simply asking Mr. Nicholson some of the intricacies of the
5 voter election law. And that was the purpose for that
6 recess. Okay, we have heard from both parties. We heard
7 from Mr. Letts and both of the attorneys for Richland County
8 and the CMRTA. At this time, I would like to ask the
9 Commission if there is a motion that you have to present at
10 this time?

11 COMMISSIONER DAWSON: I make the motion that
12 the appeal be denied.

13 CHAIRMAN WAY: Okay, we have a motion to set
14 the appeal to overturn the findings of the Richland County
15 Protest. Do I have a second?

16 COMMISSIONER BOWERS: Second.

17 CHAIRMAN WAY: I have a motion and a second.
18 that the appeal of the decision by the Richland County
19 Election Commission be denied. Any discussion in this
20 matter?

21 UNIDENTIFIED FEMALE: Mr. Chairman, I don't
22 know if --- should there have been more machines for the
23 record that it affected the outcome of the election? I want
24 this represented as an act that would show that there were
25 that many people that were turned away or how they would

1 have voted if they had voted. So based on the lack of
2 evidence presented, I didn't vote but I could uphold this.
3 Thank you.

4 CHAIRMAN WAY: Any other comments?

5 UNIDENTIFIED MALE: This is the same that
6 went on in that case.

7 CHAIRMAN WAY: All right. So, at this time,
8 then, we have a motion and a second to deny the appeal, the
9 findings of the Richland County Election Commission. All in
10 favor of that motion, say "aye".

11 (All Commission Members voted in the
12 affirmative)

13 CHAIRMAN WAY: All opposed, "nay"?

14 (No Commission Members voted in the
15 negative)

16 CHAIRMAN WAY: So, the "ayes" have it. The
17 appeal is denied, and thank you very much for your time and
18 efforts. Thank you.

19 HEARING ADJOURNED.

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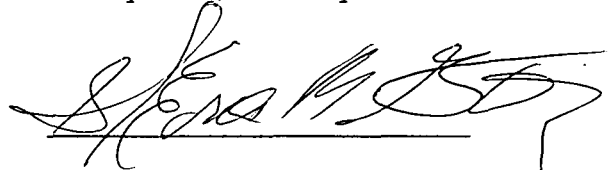
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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) CERTIFICATE

3 This is to certify that I, Eric B. Gore, a Notary
4 Public in and for the State of South Carolina, was hired to
5 take the foregoing proceeding; that I did take notes of the
6 said proceeding; and that the foregoing 27 typewritten
7 pages represent a true, accurate and complete transcription
8 of the said proceeding which took place at the time and
9 location aforestated.

10 IN WITNESS WHEREOF, I have hereunto affixed my
11 hand and official seal this 13th day of January 2013.

12 
13
14 Eric B. Gore

15 Notary Public for South Carolina

16 My commission expires: 1/16/17

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