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THE STATE OF SOUTH CAROLINA

In the Supreme Court

S.C. Supreme Court

APPEAL FROM THE SOUTH CAROLINA ELECTION COMMISSION

APPELLATE CASE NO: 2012-213679

Michael Letts, ...Petitioner,

vs.

Richland County and Richland
County Board of Canvassers,.....Respondents.

S.C. Election Commission,
In RE: Richland County Sales Tax Referendum Questions 1 and 2

**APPENDIX TO EXHIBITS OF RICHLAND COUNTY AND CMRTA'S
RETURN TO PETITION FOR WRIT OF CERTIORARI**

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REGIONAL TRANSIT AUTHORITY
(CMRTA)**

1 STATE OF SOUTH CAROLINA
2 RICHLAND COUNTY BOARD OF CANVASSERS
3
4 IN RE: PROTEST OF NOVEMBER 6, 2012 PENNY
5 SALES TAX REFERENDUM QUESTIONS 1 AND 2
6 MICHAEL LETTS,
7 Protestant.
8 vs.
9 RICHLAND COUNTY,
10 Pending Motion to Intervene As
11 Party of Record.

12 H E A R I N G
13

14 DATE: Monday, December 3, 2012
15 TIME: 9:49 a.m.
16 LOCATION: Richland County Council Chambers
17 2020 Hampton Street
18 Columbia, South Carolina
19 REPORTED BY: SHERI L. BYERS
20 Registered Professional Reporter

21 -----
22 COMPUSCRIPTS, INC.
23 A Full-Service Court Reporting Agency
24 Post Office Box 7172
25 Columbia, South Carolina 29202
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1 APPEARANCES:

2 BOARD OF CANVASSERS:

3 ALLEN DOWDY, ACTING CHAIRMAN

4 ELAINE DUBOSE

5 ADDELL ADAMS

6

7 ATTORNEYS FOR THE BOARD:

8 STEVE HAMM, ESQUIRE

9 C. JO ANNE WESSINGER HILL, ESQUIRE

10

11 ATTORNEYS FOR CMRTA:

12 JOHN MOYLAN, ESQUIRE

13 MATTHEW RICHARDSON, ESQUIRE

14

15 ATTORNEY FOR RICHLAND COUNTY COUNCIL:

16 HELEN T. MCFADDEN

17 ELIZABETH MCLEAN

18

19 ATTORNEY FOR LILLIAN MCBRIDE

20 JOHN SHANNON NICHOLS, ESQUIRE

21

22 MICHAEL A. LETTS, PROTESTANT

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1 MR. DOWDY: Come to order, please.

2 Good morning. I'm Allen Dowdy, a member of
3 the Board of Election and Board of Registration of
4 Richland County.

5 During our special call meeting last
6 Thursday, November 29, 2012, our chairperson, Liz Crum,
7 announced that she was recusing herself from any
8 involvement in any protest hearing that might in any
9 manner raise issues in any way connected with the
10 countywide one cent tax referendum.

11 As a result of her recusal, the Board elected
12 me as acting chairman for the purpose of conducting all
13 protests hearing scheduled for today.

14 I am joined by my fellow members, Addell
15 Adams on my left here, your right, and Elaine Dubose.
16 And I'd like to thank all of you all for coming, and I
17 would like to thank my Board Commissioners for coming.

18 I would like to let you all know that this is
19 a part of our duty, and we are happy to serve in that
20 capacity.

21 The Board and I will conduct the hearing
22 today in a manner consistent with the provisions of the
23 South Carolina Code 7-17-50, and in accordance with the
24 rulings by South Carolina Supreme Court.

25 South Carolina law direct that any protest by

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1 testimony offered today shall be limited to the grounds
2 stated in the written protest. A copy of each written
3 protest have been provided to each Board member for our
4 review during the course of today's protest hearing.

5 Any protestant and other candidates in the
6 protestant race have the absolute right to be present
7 at the hearing today and to be represented by counsel,
8 if they so choose.

9 Only one individual of counsel representing a
10 candidate will have the right to examine and
11 cross-examine any witness called to present the
12 testimony today before the Board.

13 As required by statute, the Board must follow
14 the rules and procedures of the Circuit Court,
15 including the Rules Of Evidence. Mr. Hamm, our
16 attorney, or Ms. Hill, will advise the Board during the
17 course of the hearing today on any legal issues raised
18 during the protest hearing.

19 Only members of the Board are authorized to
20 make the decision regarding the credibility of
21 witnesses and the weight that might be accorded to any
22 testimony and evidence.

23 Any protestant herein today have the
24 statutory burden and the public responsibility to
25 establish by clear and convincing evidence and proof

1 that the certified Board results and the outcome
2 regarding the protest filed and presented today were
3 directly and adversely influenced by specific
4 irregularities.

5 Any protestant must demonstrate that any
6 irregularities or any other claims presented will
7 address the required total number of specific votes
8 needed to alter the announced election vote outcome.

9 I will ask that each protestant advise the
10 Board at the beginning of each hearing as to the actual
11 votes difference in the protest, then -- before the
12 Board. For the Board to reach a final and conclusion
13 necessary to alter any voting outcome, the protestant
14 must demonstrate and present clear, specific, and
15 competent evidence and testimony sufficient to address
16 the total number of votes needed to change and alter
17 the outcome of the voting results.

18 The protest hearings today are important and
19 must be and will be conducted with great respect and in
20 conformity with statutory standards. This Board have
21 no authority and will not make any decisions based on
22 surmise, conjecture, or speculation.

23 The Board will hear, review, and carefully
24 examine all evidence and testimonies to determine if
25 the specific evidence and testimonies, if deemed to be

1 reliable and credible to determine whether the
2 protestant presented sufficient and compelling evidence
3 that address the total number of total votes required
4 to alter and clearly change the voting outcome.

5 The Board will not allow any protestant or
6 party appearing today to conduct any form of a fishing
7 exercise in order to develop evidence. In addition, we
8 will not allow any repetitive questions and arguments
9 that would unnecessarily delay the important hearing
10 that will take place today.

11 Let me be very clear, every protestant must
12 demonstrate with appropriate evidence the specific
13 factual, basic, supporting any challenge and not merely
14 state or rely on general dissatisfaction or regret for
15 voting outcome now under protest today.

16 We are now prepared to call the first
17 protestant, the voting outcome in the county penny
18 sales tax referendum. I would like for all parties
19 that will participate to identify themselves, and the
20 individual who will be responsible for representing any
21 party or outcome during their protest hearing.

22 Are there any questions from the Commission?

23 At this point, we will continue.

24 MS. MCFADDEN: Mr. Chairman, I have
25 previously filed a motion to intervene. Ms. McLean and

1 I wish to represent Richland County Council as the
2 candidate, for lack of a better word. That is the word
3 used in the statute. The proponent of the penny. And
4 I would specifically ask that that motion to intervene
5 be granted.

6 Ms. McLean is present, but the intention has
7 been that I would be the attorney actually
8 participating in the matter today on behalf of Richland
9 County Council.

10 MR. DOWDY: Are there any objections to the
11 motion?

12 MR. MOYLAN: Mr. Chairman, just to be clear,
13 too, I am John Moylan. I represent CMRTA along with my
14 law partner, Matthew Richardson.

15 The motion to intervene is a joint motion to
16 intervene on behalf of both Richland County Council and
17 CMRTA. So as a matter of your consideration, I would
18 just ask that both of those motions be considered at
19 the same time.

20 MR. DOWDY: Would you identify CMRTA?

21 MR. MOYLAN: Yes, sir. That is the Central
22 Midlands Regional Transportation Authority.

23 MR. LETTS: Mr. Chairman, I'm Michael Letts.
24 Just a citizen, but I represent a group of individuals
25 who formed a citizens committee to advocate for new

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1 elections in Richland County due to the penny sales
2 tax.

3 MR. DOWDY: Do we have any objections to the
4 motion?

5 None.

6 Okay. The motion now -- I likely have --

7 MS. ADAMS: I move we allow them to
8 intervene.

9 MR. DOWDY: Can we have a second on this?

10 MS. DUBOSE: Yes.

11 MR. DOWDY: It's moved and proper second that
12 your motion has been allowed to intervene.

13 Are there any questions?

14 All those in favor may signify by saying aye.

15 (Members respond.)

16 MR. DOWDY: Opposes, nay.

17 The motion is granted.

18 MR. MOYLAN: Thank you, Mr. Chairman.

19 MS. MCFADDEN: Thank you, Mr. Chairman.

20 We have also spoken informally among
21 ourselves today, and we would specifically request that
22 those of us who are participants in the hearing remain
23 seated instead of having to jump up and down, if that
24 would be acceptable to the Commission.

25 MR. LETTS: I have no objection.

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1 MR. HAMM: I would be happy to see them stand
2 all day, but let them sit.

3 MR. LETTS: I can do either.

4 MR. DOWDY: Are there anything else that come
5 before the floor before we continue with the protest of
6 the penny sales tax with the pending motions that have
7 been approved by the Board?

8 Yes.

9 MR. LETTS: I think we need to go on the
10 record now, Mr. Hamm.

11 MR. HAMM: For purposes -- for the record,
12 I'm Steve Hamm. I serve as council to the Board.

13 Madam Court Reporter, does Mr. Letts need to
14 pull a speaker closer to you, or how are you going to
15 hear him?

16 THE COURT REPORTER: I can hear him fine. I
17 can.

18 MR. HAMM: Okay. Well, just as a procedural
19 matter to assist the chairman, I want to make sure that
20 everybody speaks up and speaks clearly.

21 MR. LETTS: Do you want the mic?

22 MR. HAMM: I always think that's a good idea.
23 The purpose of this, this is a public proceeding, and I
24 want to make sure that anyone that has taken the time
25 to come and observe, they ought to have the opportunity

1 to clearly hear statements made during the course of
2 the hearing.

3 And again, I would note on the record that
4 this proceeding is being transcribed by a certified
5 court reporter.

6 MR. DOWDY: So we will continue at this
7 point. At this point, we will continue to hear from --
8 we will hear from Mr. Michael Letts.

9 MR. LETTS: Thank you, Mr. Chairman.

10 First of all, I'd like to thank each and
11 every person on this Board for the job that you do. I
12 know it's not an easy task. I also am very well aware
13 it's not an easy time for any of us. The job can seem
14 to be thankless, and this is certainly one of those
15 times. But I have no doubt that each one of you are
16 doing this out of a genuine desire to serve the people
17 of Richland County. And so because of that, I thank
18 you for your service.

19 But it's imperative as we begin, that for the
20 record, I want to make the following request: Insomuch
21 as each of you have had some hand in the operations of
22 this election agency, I request that each of you, as
23 one of your members has already done, recuse yourself
24 from this hearing and that this case be heard by the
25 State Election Commission.

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1 MR. HAMM: As a matter of procedure, are you
2 making a motion? I want to make sure on the record
3 what you're asking.

4 MR. LETTS: I'm on the record making a
5 motion. I want it in the record.

6 MR. HAMM: Restate it one more time and then
7 we'll address it.

8 MR. LETTS: For the record, I'm making the
9 following request: Insomuch as each of you have had
10 some hand in the operations of this election agency, I
11 request that each of you, as one of your members has
12 already done, recuse yourself from this hearing and
13 that this case be heard by the State Election
14 Commission.

15 MR. HAMM: All right.

16 MR. DOWDY: Okay. At this point the
17 commissioners will just ask, do any of these other
18 parties want to be heard on this?

19 Yes.

20 MR. MOYLAN: Mr. Chairman, just briefly, I
21 would say that it's clear that this Board is meeting in
22 compliance with state law. State law is very clear
23 that a protest of a county election shall be filed with
24 the County Election Commission. In every protested
25 case across the state, the County Election Commission

1 is always involved in the certification of the results
2 of the election under protest.

3 The State Legislature is well aware of that
4 fact at the time it passed the statute. The statute is
5 clear that the protest begins here with the County
6 Election Commission. There is a procedure after this
7 protest is heard that if the petitioner chooses to be
8 heard before the State Election Commission, there's a
9 procedure for that. This is not that day.

10 MR. DOWDY: Are there any further remarks or
11 consideration?

12 MR. LETTS: This is a further remark,
13 Mr. Chairman.

14 This is not about mere irregularities within
15 an election, which is commonly heard by an election
16 agency board. This is about a disregarding of a state
17 statute and as much, because of that fact, we request
18 that you recuse yourself from this case and that it be
19 heard by the State Election Commission.

20 MS. MCFADDEN: Mr. Chairman, could I just
21 speak in opposition to Mr. Letts' motion? And I would
22 call the Chair's attention, as well as Council's
23 attention, to the series of decisions involving school
24 boards, which are in a very similar position when they
25 are determining the matters of discharge and discipline

1 of their employees. And they have, as a matter of
2 course, been far more intimately involved in the
3 selection, hiring, promotion, and the charts by which
4 employees are assigned to duties. And our court has
5 repeatedly held that the School Board is not to recuse
6 itself from those kinds of hearings.

7 What the court has provided is that the
8 School Board must be independently advised during those
9 hearings where it is sitting as both judge and jury.
10 And this Commission has, in fact, done that. This
11 Commission is presently independently advised by an
12 attorney who is not a county employee and, therefore,
13 has the requisite level of independence to advise this
14 Commission as to the law and the Commission's duties.

15 MR. DOWDY: Thank you very much. Thank you.

16 At this point, can we have a motion for a
17 legal briefing, executive session? That we go into
18 executive session.

19 MS. ADAMS: I move that we go into executive
20 session for legal advice.

21 MS. DUBOSE: Second.

22 MR. DOWDY: All those in favor may signify by
23 saying aye.

24 (Members respond.)

25 MR. DOWDY: The motion is carried.

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1 MR. HAMM: For purposes of the record, I'm
2 going to walk the Board members out in the lobby. So
3 this entire room, I see people saying, Well, thank
4 goodness. We shall return shortly.

5 (The Board exits for Executive Session.)

6 (A recess transpired.)

7 (The Board returns from Executive Session.)

8 MR. DOWDY: At this time the Chair will
9 entertain a motion to go out of executive session.

10 MS. DUBOSE: So moved.

11 MS. ADAMS: Second.

12 MR. DOWDY: All those in favor the motion may
13 signify by saying aye.

14 (Members respond.)

15 MR. DOWDY: Opposes, nay.

16 The motion is carried.

17 I would like to say that no vote was taken in
18 our executive session. It was only an advisory
19 session. So at this time we will proceed to the motion
20 on Mr. Michael Letts' request.

21 MS. ADAMS: I move to respectfully deny the
22 motion that the Board recuse themselves. The law
23 clearly requires that the Board hear and consider any
24 timely filed protest. The law allows appeals of any
25 decision rendered by the Board.

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1 MS. DUBOSE: Second.

2 MR. DOWDY: You heard the motion. It's been
3 seconded.

4 All those in favor of the motion may signify
5 by saying aye.

6 (Members respond.)

7 MR. DOWDY: Opposed is nay.

8 The motion is carried.

9 Thank you. We'll continue with Mr. Letts.

10 MR. LETTS: Thank you, Mr. Chairman, and
11 thank you for allowing me to enter that into the
12 record. I will be glad to proceed at this stage.

13 My name is Michael Letts, and let me briefly
14 tell you about myself. I'm a lifelong resident of
15 Richland County. I've been involved in my community.
16 I volunteer in the schools. I volunteer for charity.
17 I started a nonprofit to buy bulletproof vests for our
18 law enforcement across this country. I received the
19 Order of the Palmetto, a congressional gold medal for
20 my community service.

21 I tell you these things for one reason: Just
22 so you'll know I'm a good guy. I'm not here to stir
23 the pot, to be a thorn in anyone's side. I'm here for
24 the same reasons you are, and that is that we
25 collectively together care about Richland County's

1 future. I want the best for my neighbors and for my
2 community as I'm assuming, I'm assured that you do as
3 well.

4 As I stated before, I represent a group of
5 individuals, of citizens, just like myself who have
6 formed a committee to advocate for new elections in
7 Richland County. We have received some legal advice,
8 but ultimately, I decided to present -- I decided to
9 present our case myself as a way of symbolizing the
10 real reason for this protest.

11 We're citizens who generally want what's best
12 for our fellow citizens in Richland County. There's no
13 political motive here. This isn't simply about
14 changing the outcome of a race. This is about what's
15 best for the people of Richland County.

16 And finally in this day and age, ladies and
17 gentlemen, with all due respect to my colleagues on my
18 right, no one should have to pay the thousands of
19 dollars for lawyers just to make sure that people can
20 vote.

21 The right to vote was secured hundreds of
22 years ago for us in this country. And I'm honored to
23 be able to be here today.

24 What is the reason for the protest? We've
25 got a long way to go to restore public trust. First

1 step in restoring trust is to hold valid elections.
2 The election held November the 6th wasn't valid because
3 they were not held in accordance with the law.

4 The agency overseeing the county's election
5 disregarded a mandatory state statute dictating how
6 many voting machines are required at each precinct. By
7 disregarding this important statute, the agency created
8 a scenario in which long lines and excessive wait times
9 caused people to be unable to participate in this very
10 basic democratic process.

11 Let me read to you what the law says.
12 South Carolina Code 7-13-1680, titled Number of Voting
13 Machines Type and Use, Repair and Custody. "The
14 governing body of any county or municipality providing
15 voting machines at polling places for use at elections
16 shall" -- and I want you to notice the word shall --
17 "shall provide for each polling place at least one
18 voting machine for each 250 registered voters or a
19 portion thereof or as near thereto as may be
20 practical."

21 When it comes to election problems, the state
22 Supreme Court puts them in two distinct categories.
23 One category is irregular rarities, but the other
24 category is disregarding a statute. And that is the
25 provision and the grounds upon this protest that I

1 entered in last week.

2 Because see, this is not a mere irregularity,
3 ladies and gentlemen. This is disregarding a mandatory
4 statute. The statute that was provided was not a
5 guideline. It was not discretionary. It is mandatory.
6 It's not an optional statute. It doesn't just merely
7 give suggestions. Again, let me reiterate it is a
8 mandatory statute. And the Board of Elections
9 disregarded this mandatory statute, and in so doing,
10 substantially impaired citizens' ability to exercise
11 their constitutional right to vote.

12 State law doesn't spell out what recourse is
13 available to voters when mandatory statutes have been
14 violated. But interesting enough, the Supreme Court
15 does. The court has made it clear in a couple of
16 rulings. I printed them out and would hand you out
17 copies of those, excerpts of those rulings.

18 And, Mr. Chairman, would you like me to hand
19 you those now or would you like me to --

20 MR. HAMM: As a matter of process,
21 Mr. Chairman, it would first be appropriate for you to
22 show other counsel what you're wanting to hand to the
23 Board. Anything handed to the Board will be treated as
24 an exhibit.

25 MR. LETTS: Okay.

1 MR. HAMM: This is not going to be a casual
2 or informal proceeding. So why don't you do that. And
3 then once they've had an opportunity to review them, as
4 I understand what you're asking the Board to do is
5 accept those as information you would like them to
6 consider during the course of this hearing.

7 MR. LETTS: That is correct. Thank you.

8 MR. MOYLAN: And, Mr. Chairman, I would have
9 simply this objection. I don't have any objection to
10 Mr. Letts handing up an entire Supreme Court decision
11 to the Board. I do have an objection to this, which is
12 taking a paragraph out of a multipage decision and
13 asking the Board to consider these out of context.

14 The Board certainly has access to law. I
15 think if Mr. Letts wants to reference these decisions,
16 I have no objection to that. But introducing a portion
17 out of context, I would object to

18 MR. DOWDY: What action shall we take on
19 this? Should we accept this? Mr. Hamm, if you could
20 make those clear.

21 MR. HAMM: I think this is a matter of
22 public -- I don't think it needs my -- my
23 recommendation would be to allow Mr. Letts to provide
24 the members of the Board with those, apparently,
25 excerpts from cases simply to demonstrate that the

1 Board wants to hear and consider the points that he's
2 raising.

3 But I do think that it would be appropriate
4 for Mr. Letts to get into the record the entire cases,
5 but I don't think we need to wait on that now.

6 My other procedural question, Mr. Letts, is
7 you want them -- obviously, I haven't seen whatever it
8 is you've handed to opposing counsel. Do they on their
9 face make clear what case they're from?

10 MR. LETTS: It does.

11 MR. HAMM: Did you intend for those to be
12 numbered individually or collectively as an exhibit?

13 MR. LETTS: Collectively.

14 MR. HAMM: How many pieces of paper?

15 MR. LETTS: One page per case. Two pieces.

16 MR. HAMM: And how much cases?

17 MR. LETTS: Two cases.

18 MS. MCFADDEN: Mr. Chairman, I would ask the
19 Chair and the Legal Adviser to consider the fact that
20 in Circuit Court judges do not accept as exhibits
21 pieces of cases. The judge traditionally says to the
22 litigant that that is a matter that I get to decide. I
23 am here to decide the law.

24 And I believe that in this instance, the
25 Commission is here to decide the law and will have more

1 than adequate assistance in discerning what that law
2 is. Mr. Letts certainly gets to argue the law. But
3 like a lawyer in Circuit Court, other than handing up a
4 full case, other than calling the judge's attention to
5 a particular citation, I do not think it should be made
6 an exhibit to this hearing.

7 MR. DOWDY: Okay. Can we have -- at this
8 point we will entertain a motion to reject or accept
9 that.

10 MS. ADAMS: I move that we reject the
11 information submitted.

12 MR. DOWDY: Can we get a second on that?

13 MS. DUBOSE: Second.

14 MR. DOWDY: All those in favor of that may
15 signify by saying aye.

16 (Members respond.)

17 MR. DOWDY: Opposes, nay.

18 The motion is respectfully rejected.

19 MR. LETTS: I will make reference then and
20 allow you to pull the case at your own leisure.

21 The court has made it dear in a number of
22 rulings --

23 MR. HAMM: For purposes, again, helping the
24 record here, to the extent that you're going to review
25 or quote whatever material are on those pieces of

1 paper, I would ask you simply help the Board and this
2 record be clear what -- when you get to it --

3 MR. LETTS: It will be.

4 MR. HAMM: -- if you state what case it is
5 that you're quoting so that we'll all understand where
6 that quotation is coming from.

7 MR. LETTS: Be glad to.

8 The court has made it clear in a couple of
9 rulings that disregard of a mandatory statute is
10 grounds for overturning an election.

11 One of the cases is Duming versus Charleston
12 County Council. The court ruling reads, "The Court --"
13 "This Court will overturn the results of an election,
14 however, when mandatory statute provisions have been
15 violated and those violations interfere with a full and
16 fair expression of the voter's choice. We may deem
17 such provisions to be mandatory even after an election
18 and thus capable of nullifying the results when the
19 provision substantially affect the free and intelligent
20 casting of a vote, the determination of the results an
21 essential element of the election or the fundamental
22 integrity of the election."

23 The other case is Gecy versus Bagwell, and
24 its reads: "As a general rule, statutory provisions are
25 mandatory in two instances: When a statute

1 expressively declares that a particular act is
2 essential to the validity of an election or when
3 enforcement is sought before an election in a direct
4 proceeding.

5 "However, the court may deem such provisions
6 to be mandatory after an election and thus
7 noncompliance may nullify the results when the
8 provisions substantially affect the determination of
9 the results, an essential element of the election, or
10 the fundamental integrity of the election. Where there
11 is a total disregard of the statute, the violation
12 cannot be treated as an irregularity. But it must be
13 held and adjudicated to be cause for declaring the
14 election void and illegal."

15 Again, the Board of Elections chose to
16 disregard a key statute specifically designed to
17 safeguard citizens' ability to participate in this
18 democratic process. And because this statute was
19 disregarded, thousands were left without a voice. The
20 obvious recourse is to hold a new election. One in
21 which the law is followed.

22 I'll close with two thoughts. First,
23 according to the State Election Commission, statistics
24 in 2008 and 2010, Richland County's voter participation
25 rate exceeded the state participation rate. This time,

1 however, the percentage of registered voters who cast
2 ballots in Richland County is far below the statewide
3 percentage.

4 According to the State Election Commission,
5 statewide voter participation was 69 percent while just
6 65 percent of registered voters cast their votes in
7 Richland County. This time we had the second lowest
8 voter participation rate in the entire state. Only
9 Marlboro County had a lower percentage of its
10 registered voters that cast ballots. That's not
11 something we should be proud of.

12 It also shows the degree to which our
13 inability to follow the law impacted the number of
14 people who participated. Consider this: Had Richland
15 County voter participation at least been equal to the
16 statewide voter participation, there would have been an
17 additional 8600 voters, enough to sway a close election
18 like this tax referendum.

19 Second, there was a question on the ballot
20 which was to decide whether to collect and spend \$1
21 billion in taxpayer money. Given this extraordinary
22 amount of money and the impact it has on all of our
23 pocketbooks, it seems reasonable to expect the election
24 to be held in accordance with the law. Public trust is
25 something you cannot put a price tag on.

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1 As I conclude my comments, let me once again
2 reiterate. This is not, as you will see and notice
3 when I filed the appeal from the protest and the
4 grounds that I stated, this was not about
5 irregularities -- mere irregularities. This was about
6 a total disregard of a state statute, and this is about
7 seeking to rectify that matter. And we recognize the
8 Supreme Court has already decided on this matter, and
9 we call for a new election.

10 Thank you, Mr. Chairman

11 MR. DOWDY: Thank you, sir.

12 Do you intend the statement that you just
13 made to be your opening statement?

14 MR. LETTS: That is my opening statement.

15 MR. DOWDY: That is the opening. Okay.

16 MR. LETTS: That is my opening statement.

17 MR. DOWDY: Thank you.

18 MR. MOYLAN: Mr. Dowdy, Ms. Adams, Ms.

19 DuBose, Mr. Hamm, I thank you all very much for your
20 time today and thank you for your public service.

21 We are here today, and it's important to
22 remember that we are here on the basis of a protest
23 that has been filed. I think you all have the protest
24 in front of you. And you'll see in the middle of the
25 first page, it says, "The above reasons are the grounds

1 for our protest." And there are several bullet points
2 above that that lay out the grounds for the protest.

3 And each of those grounds goes to one point
4 and one point only, and that is that the Richland
5 County Election Commission failed to distribute one
6 voting machine for every 250 registered voters. That
7 is the allegation before this court. It is the only
8 allegation. And what we are here on today is a pure
9 question of law. Which is what affect does the failure
10 to distribute one voting machine for 250 registered
11 voters have on an election?

12 What we are not here on today is another
13 important matter and that is what does the Board do
14 with the information that it has that this Richland
15 County Election Commission failed to comply with that
16 statute? Does the Election Commission discipline
17 employees? Does it change its regulations? That's not
18 why we're here. That's a matter for this Board for
19 another day.

20 The question for this Board today is does the
21 failure to distribute one voting machine for every 250
22 voters invalidate an election? That's it. A pure,
23 pure question of law.

24 And the statute that we are on, as Mr. Letts
25 said, is 7-13-1680. And just to put that statute in a

1 little bit of context, in 1968, the State Legislature
2 first began this process of looking at the use of
3 voting machines in South Carolina. And it amended the
4 statute to say that South Carolina Election
5 Commissions, county election commissions, should
6 distribute one voting machine for every 350 voters.
7 That was the law in 1968.

8 That remained the law for 32 years until
9 2000. In 2000 the law was amended to say that the
10 Election Commission should distribute one voting
11 machine for every 250 registered voters or as near
12 thereto as practical.

13 It has been written consistently in the most
14 permissive language a statute can be written "as near
15 thereto as practical."

16 And where we have the legal debate is this:
17 Mr. Letts says that this is a mandatory statute because
18 it uses the word "shall," and he pointed this court,
19 this Commission to the George case out of Charleston.
20 And I think it's important for the court -- the
21 Commission to understand the George case.

22 In the George case, there is an allegation
23 that the City of Charleston failed to comply with a
24 constitutional mandate for secret ballots. That is the
25 City of Charleston held an election where voters were

1 handed unfolded ballots and given a table and told to
2 go check off their vote. And the Supreme Court said,
3 "No, you cannot do that. There's a constitutional
4 mandate that we have secret ballots." And the court
5 said this as it relates to the language that Mr. Letts
6 says is mandatory.

7 After -- and I'll quote from the George case.

8 "After an election in which no fraud is
9 alleged or proven --" which is what we have here.
10 There's no allegation of fraud in this protest. "After
11 an election in which no fraud is alleged or proven,
12 when the court seeks to uphold the result in order to
13 avoid disenfranchising those who voted, such provisions
14 are merely directory, even though the legislature uses
15 seemingly mandatory terms such as 'shall' or 'must' in
16 establishing the provisions."

17 That is the language of our State Supreme
18 Court in the case that Mr. Letts has referred to.

19 I also think it's important to note that our
20 South Carolina Attorney General has been asked on three
21 separate occasions to rule on this specific statute.
22 And in every one of those rulings the attorney general
23 has said repeatedly that the language of the statute is
24 directory and not mandatory.

25 The first time he says it, and I will quote

1 from his opinion. "The terms of the statute would
2 appear to be directory rather than mandatory."

3 And I would point again to a separate
4 attorney general opinion. This opinion comes from
5 Spartanburg. And Spartanburg wrote a letter to the
6 attorney general saying, "Mr. Attorney General, we are
7 probably only going to distribute one voting machine
8 for every 500 voters. Is that going to invalidate the
9 election?"

10 And here's what the attorney general said in
11 response to Spartanburg. "I therefore advise that in
12 the opinion of this office, the statutory ratio of one
13 machine for each 350 registered voters should be
14 followed in the assignment of machines to the
15 precincts, but the failure to strictly follow this
16 procedure will not invalidate an election."

17 The legal question before this Commission has
18 been decided. It has been decided repeatedly. No
19 attorney general opinion, no Supreme Court opinion has
20 ever suggested that the failure of an Election
21 Commission to distribute the proper number of voting
22 machines will invalidate an election. That is simply
23 not the law.

24 And here what we know is that in this case,
25 the Richland County Election Commission failed to

1 distribute the right number of voting machines. It
2 failed to distribute them in precincts such as Ward 8
3 that voted more than 75 percent in favor of the penny.
4 It was a failure across the county to distribute the
5 right number of voting machines.

6 But that does not invalidate an election.
7 And more importantly, it does not disenfranchise the
8 159,000 people in Richland County who stood in line as
9 long as it took to cast their vote. Because the
10 constitution does not guarantee that we will not have
11 to wait in line to vote. But it does guarantee that
12 every person who stands in line and casts their vote
13 will have their vote counted. 159,000 people in this
14 county did that. You are being asked to throw out
15 those votes. That is not the law in South Carolina.

16 The penny passed by a margin of 6,591 votes.
17 There's no evidence, no evidence to suggest that that
18 election should be overturned.

19 MS. MCFADDEN: Mr. Chairman, I agree with the
20 position taken and outlined by Mr. Moylan. I would add
21 to it only one proposition, which is the proposition
22 that this Commission is going to have to consider. The
23 opening statement of the Chair reiterated very
24 specifically the standard in South Carolina for
25 requiring a new election, which is the sole remedy that

1 this Board can grant today. Grant or deny.

2 The chairman said it required clear,
3 specific, competent testimony and evidence. And it had
4 to be sufficiently compelling with regard to the margin
5 of victory.

6 Okay. What Mr. Letts is actually asking this
7 Board to do is to validate the individual decisions of
8 however many Richland County voters there were, and
9 that is an unknown number. To validate their
10 individual decisions to walk away from the polls.

11 So are you going to validate that decision?
12 It is a slippery slope. And if you validate that
13 decision, then how are you going to do it? Are you
14 going to grant them a revote and then restrict it only
15 to the people who walked away? Because if you do it
16 that way, then you're going to invalidate the 159,000
17 who stayed.

18 Are you going to make the 159,000 who stayed
19 come back? What kind of justice is that? That's what
20 he's asking you to do. He's asking you to
21 disenfranchise the 159,000 people who stayed and voted
22 against the unknown number of people to whom it was not
23 appropriate or convenient or useful that day to wait.

24 Thank you.

25 MR. DOWDY: Thank you. Mr. Letts.

1 MR. LETTS: Thank you, Mr. Chairman.

2 What we have heard presented are attorney
3 general's opinions. We go out throughout the course of
4 history in this country. There have been attorney
5 generals' opinions, there have been Supreme Court
6 decisions that were not -- that were overturned.
7 Opinion is just that. It doesn't make it right just
8 because someone issued an opinion.

9 I would address the issue about
10 disenfranchisement. To imply that because those who
11 have voted in the past knew the waiting lines, knew
12 what the law required of 250 machines -- 250 people per
13 machine, and yet made repeated attempts and were denied
14 that ability because of six- and seven-hour waits, to
15 try to place citizens to have to make a decision to
16 whether to lose their employment, not be able to pick
17 up their kids, stand in line outside in the cold with
18 small children, or with the ability to stand and wait
19 in line is a burden that our citizens should never have
20 to face.

21 Because of the fact that this statute,
22 mandatory statute provides the remedy, and Richland
23 County Election Commission had more than enough
24 machines to provide the remedy and we would not be here
25 today. But a deliberate act was made and a deliberate

1 decision was chosen and that decision, regardless of
2 how we attempt to rationalize it or justify it caused
3 thousands of people to be denied a very fundamental
4 right upon which this country was based upon. Which we
5 have fought for generations, from the Revolution to the
6 Civil Rights Movement.

7 To imply that we will disenfranchise 159,000
8 voters by ordering a new election is to tell those who
9 voted the first time that they don't have enough
10 respect or integrity in the process to come back out
11 and do it again. We are simply asking for a fair
12 playing field and allowing all participants the ability
13 to exercise the constitutional right that we have paid
14 such a dear price for to have in this country.

15 What will be -- if we do not have a remedy,
16 may I ask what will be the thing that will keep this
17 from happening again?

18 There's been public outcry. But if there are
19 no consequences to the statutes the General Assembly
20 puts on the books, then we have no basis for law.
21 Before you take one billion dollars out of this
22 community, you should at least require that they hold a
23 legal election.

24 Interesting, no one has disputed that the law
25 was broken. One can marginalize it, but you cannot

1 deny it. One can marginalize that the effect of an
2 unlawful or a breaking of the law quantified a section
3 of people that were unable to exercise the right to
4 vote.

5 MR. DOWDY: Mr. Letts.

6 MR. LETTS: Yes, Your Honor.

7 MR. DOWDY: May I interrupt you, please, sir.
8 We heard your introductory remarks, and at this point
9 we would like to proceed with the testimonies.

10 MR. LETTS: Without objection.

11 MR. DOWDY: That's in order respectfully.

12 MR. LETTS: Okay. How do you want to proceed
13 on the first?

14 MR. HAMM: Just announce on the record who
15 you intend to be your first witness.

16 MR. LETTS: We would like Lily McBride to
17 please take the stand.

18 MR. DOWDY: Would you please her under oath?
19 Ms. Lillian McBride.

20 LILLIAN MCBRIDE, being first duly
21 sworn, testified as follows:

22 MR. LETTS: Thank you, Mr. Chairman.

23 Ms. McBride, thank you for your appearance
24 here today.

25 MR. HAMM: Pull that speaker. I want to make

1 sure everybody in the room can hear.

2 EXAMINATION

3 BY MR. LETTS:

4 Q. Ms. McBride, can you tell me how many
5 registered voters there are in Richland County?

6 A. As of when we allocated the machine was 244
7 registered votes -- 240-something registered voters. I
8 don't know the number exact right now, but it was
9 240-something-thousand registered voters.

10 Q. Okay. How many voting machines did your
11 agency put out at the polling places on November 6?

12 A. That, I'm not exactly sure. We're still
13 looking into that to make sure we give a correct number
14 instead of inaccurate number to the public. So I would
15 say I need to hold off and make sure with those numbers
16 before I say something that is incorrect.

17 Q. Are you aware that there's a state statute
18 that requires one voting machine for every 250
19 registered voters as each precinct?

20 A. Yes. Yes.

21 Q. Based on the number of voting machines that
22 have been put out by your agency at each polling place,
23 would you say that the Board of Elections complied with
24 the state statute?

25 MR. MOYLAN: Mr. Chairman, excuse me. I'm

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1 going to object to Ms. McBride being asked to offer a
2 legal opinion. She may be asked factual questions.
3 She is not --

4 MR. LETTS: This is a factual question.

5 MR. DOWDY: Could you restate the question.

6 BY MR. LETTS:

7 Q. Ms. McBride, based on the number of voting
8 machines placed by your agency, did that comply with
9 the state statute of one machine for 250 registered
10 voters?

11 MR. MOYLAN: Same objection, Mr. Chairman.
12 It is for this Commission to determine compliance with
13 the law, not for Ms. McBride. She may testify as to
14 facts, not as to the law.

15 MR. LETTS: This is a factual matter.

16 Mr. Chairman, I realize they're schooled and
17 I'm supposedly not. But this is a very simple
18 question, did we comply with state statute or not?

19 MS. MCFADDEN: Mr. Chairman.

20 MR. HAMM: Yes.

21 MS. MCFADDEN: Because Mr. Letts is not an
22 attorney, may I say on his behalf, the issue with the
23 question, Mr. Letts, is the phrase "to comply." Ask
24 the factual question.

25 MR. LETTS: To comply or did comply?

1 MS. MCFADDEN: That's the problem. Take that
2 out and your question will meet what -- will meet the
3 objection.

4 BY MR. LETTS:

5 Q. Did the State Board of Elections place enough
6 machines in accordance with state statute?

7 A. No.

8 Q. Okay. I've read media reports in which poll
9 workers say they contact --

10 MR. MOYLAN: Objection, hearsay.

11 MR. DOWDY: Sustain that objection, please.

12 BY MR. LETTS:

13 Q. Were you contacted by any poll workers that
14 contacted you or your agency to say that they were not
15 given enough machines?

16 A. I was not contacted, and I'm not aware of any
17 other employees brought to my attention.

18 Q. Okay. When a poll worker calls your office
19 to say they haven't been given enough voting machines,
20 with whom would that poll worker speak?

21 A. With the precinct coordinator.

22 Q. And that name is?

23 A. Rebecca Brown.

24 Q. Okay. State law requires a number of paper
25 ballots, not to exceed 10 percent of the number of

1 registered votes to be on hand at each polling place in
2 the case of an emergency.

3 Ms. McBride, were paper ballots distributed
4 to the polling places?

5 A. Yes.

6 Q. How many paper ballots were placed at each
7 polling location?

8 A. I don't know the exact number of those paper
9 ballot that was distributed, but those paper ballots
10 that were distributed was with compliance with the law.

11 Q. So who would know exactly how many paper
12 ballots?

13 A. The precinct coordinator.

14 Q. The precinct. Okay.

15 And is that number of paper ballots the
16 amount that were required in the state statute?

17 A. Yes.

18 Q. Were any of those paper ballots used to try
19 to alleviate the long wait times?

20 A. Not to my knowledge.

21 Q. I'm asking this because it was brought up at
22 the Richland County Legislative Delegation's recent
23 hearing. Are you related either by blood or by
24 marriage to Frank McBride?

25 A. No.

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1 Q. When you hired Garry Baum as deputy director,
2 were you aware that he was a brother-in-law of one of
3 the members of Richland County Legislative Delegation?

4 A. I hired Mr. Baum on his experience with the
5 State Election Commission.

6 Q. Did you discuss Mr. Baum's hiring with anyone
7 on the legislative delegation?

8 A. No, I did not.

9 Q. Okay. In 2008 or 2010, Richland County's
10 voter participation exceeded the state average. But
11 this year the percentage of registered voters casting
12 ballots in Richland County dropped well below the state
13 average. To what would you attribute the fact that
14 there was such a dramatic drop in the percentage of
15 ballots cast this year?

16 MR. MOYLAN: I'm going to object again, Mr.
17 Chairman. There's no foundation that's been laid for
18 at least three supposed facts in that statement.

19 MR. DOWDY: Would you restate your question,
20 Mr. Letts.

21 MR. LETTS: Yes.

22 BY MR. LETTS:

23 Q. According to the State Election Commission,
24 the 2008 and 2010 Richland County voter participation
25 exceeded the state average?

1 MR. MOYLAN: Same objection.

2 MR. LETTS: You're objecting to the State
3 Election Commission's report?

4 MR. DOWDY: Mr. Letts, would you -- have you
5 let them review the information that you're -- the
6 question that you're proposing to Ms. McBride at this
7 point?

8 MR. LETTS: I have not.

9 MR. DOWDY: Okay. Have you -- has this
10 information been made known to Ms. McBride prior to
11 this meeting? That's my question that you would ask
12 her, have she been presented this information?

13 BY MR. LETTS:

14 Q. Ms. McBride, have you been presented what the
15 2008, 2010 voter participation was in Richland County?

16 A. By who?

17 Q. By the State Election Commission, by anyone
18 else. Do you know that knowledge?

19 A. No, I do not.

20 Q. Okay. Would you -- what would you attribute
21 the fact the percentage of ballots cast this year to
22 be? What would you attribute --

23 MS. MCFADDEN: Objection. I'm going to
24 restate Mr. Moylan's objection, if I might. And I
25 believe my grounds are the same as those previously

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1 articulated by Mr. Moylan, and that is that the witness
2 is being asked to offer a conclusion on something that
3 should, in fact, if it is an appropriate question at
4 all, be offered on the basis of facts and examination
5 with expertise in the area. And there has been no
6 foundation for that.

7 And quite likely, based on the experience of
8 Ms. McBride, she would be an inappropriate witness to
9 whom to put that question under any circumstances. But
10 the objection made by Mr. Moylan and the one that I am
11 continuing is there has been no foundation to render an
12 expert opinion. Mr. Letts is seeking to ask for an
13 expert opinion. He's asking why the differences.

14 MR. DOWDY: We'd like to at this point,
15 Mr. Letts, we'd like to sustain on the objection.

16 BY MR. LETTS:

17 Q. Okay. Let me go back to one question then,
18 Ms. McBride.

19 You stated that you knew that the number of
20 paper ballots met state law. How do you know that?

21 A. When a precinct coordinator, which is Ms.
22 Rebecca Brown, she understood when she was doing those
23 numbers, that what was required by law for those paper
24 ballots to be at each voting precinct.

25 Q. Okay. But you're not able to supply me as to

1 whether you know the number of ballots were given to
2 each precinct, correct?

3 A. Not at this time.

4 MR. LETTS: No further questions.

5 Mr. Chairman.

6 MR. DOWDY: At this point, we'll hear from
7 Richland County Intervention.

8 MR. MOYIAN: We have no questions for
9 Ms. McBride.

10 MR. DOWDY: No questions.

11 MS. MCFADDEN: And, Mr. Chairman, based on
12 these questions to Ms. McBride, I have no questions at
13 this time. I would ask that she remain as a witness,
14 however, should someone wish to recall her.

15 MR. DOWDY: Your question, would you like for
16 her to remain physically in the room or just to remain
17 available if she's called on at a later date?

18 MS. MCFADDEN: The second, Your Honor.

19 MR. DOWDY: Physically in the room?

20 MS. MCFADDEN: Remain available should she be
21 called.

22 MR. DOWDY: Okay. Thank you. Thank you.

23 We'd like to go on record to the Commission
24 that Ms. McBride is subject to recall on this issue.

25 Okay.

1 Next witness, Mr. Letts.

2 MR. LETTS: We'd like to call Mr. Frank
3 McBride.

4 Court reporter, will you swear in the
5 witness.

6 FRANK MCBRIDE, being first duly
7 sworn, testified as follows:

8 BY MR. LETTS:

9 Q. Thank you, Mr. McBride, for coming to
10 testify.

11 Mr. McBride, let me also ask you, are you
12 related by marriage or blood to Illian McBride, or is
13 she married to any of your relatives?

14 A. No.

15 Q. Okay. What was your role in the penny tax
16 campaign?

17 A. I had no role in the penny tax campaign.

18 Q. Did you order a disk of the Richland County
19 voters from the State Election Commission?

20 A. Yes, I did.

21 Q. And the purpose being?

22 A. I have a political consultant firm, and I am
23 also the executive director of the Richland County
24 Democratic Leadership Council. That was the reason for
25 ordering the CD from the Election Commission, to do a

1 mail order.

2 Q. Are you the CEO and manager of Daybreak
3 Consulting?

4 A. Yes, I am.

5 Q. Do you have any kind of relationship,
6 personal or business, with the chairman of the Richland
7 County Legislative Delegation?

8 A. No.

9 Q. For what purpose did Senator Darrell Jackson,
10 chairman of the Richland County Legislative Delegation,
11 pay your company a thousand dollars on October 26 of
12 this year?

13 MR. MOYLAN: Objection, Mr. Chairman. Let me
14 make this because this is going to be important
15 throughout the morning or however long we're here. The
16 protest before this Commission is based on one fact:
17 The failure of the Election Commission to distribute
18 one voting machine for every 250 registered voters.
19 That fact has now been established through the
20 testimony of Ms. McBride.

21 There are no other facts that are at issue in
22 this protest. And to start asking Mr. McBride and
23 others about their business dealings simply does not
24 relate to the issue before this Board, which is whether
25 the Commission failed to distribute an adequate number

1 of voting machines and what legal impact that failure
2 has.

3 MR. DOWDY: Mr. Letts, respectfully, we'll
4 sustain on the objection.

5 MR. LETTS: Okay. That is all the questions
6 I have for Mr. McBride.

7 MR. DOWDY: Are there any questions to
8 Mr. McBride from Richland County?

9 MR. MOYIAN: None from CMRTA.

10 MS. MCFADDEN: None, Mr. Chairman.

11 MR. DOWDY: Thank you. The witness --
12 Mr. Letts, are you releasing the witness?

13 MR. LETTS: I'm releasing the witness, yes.

14 MR. DOWDY: Okay. For the record?

15 MR. LETTS: Yes, sir, for the record.

16 MS. MCFADDEN: No objection.

17 MR. DOWDY: We'll continue with the next
18 witness.

19 MR. LETTS: We call Rusty or William DePass.

20 MR. DOWDY: Would you put him under oath,
21 please.

22 WILLIAM DEPASS, being first duly
23 sworn, testified as follows:

24 EXAMINATION

25 BY MR. LETTS:

1 Q. Mr. DePass, thank you. Thank you for coming
2 to answer these questions.

3 How long did you serve on the State Election
4 Commission, Mr. DePass?

5 A. I was on the Commission for nine years and
6 chairman for seven.

7 Q. And how long have you been a Richland County
8 poll worker?

9 A. Well, in one -- except for those nine years
10 when I didn't do anything, luckily, I guess for the
11 last -- well, almost 40 years. Let's say 30. It makes
12 me feel a little old when you start talking about 40
13 years.

14 Q. No objection here.

15 Are you aware of any major issues with the
16 way the voting machines were functioning on election
17 day in your precinct? And first of all, will you tell
18 me what precinct you worked at.

19 A. Yeah. I was the clerk of the managers at
20 Ward 24, which votes in the gym at the Kilbourne Park
21 Baptist Church. I also helped -- my sister was the
22 clerk of the managers in Ward 25, which votes on the
23 other side of the gym at the same church, Kilbourne
24 Park Baptist.

25 And it was Ward 25 that really had the

1 problem. I mean, it was just a horrible situation over
2 there. And there were two of us who -- two of us
3 working Ward 24 who when we could get away would go
4 over and try to help out in Ward 25.

5 One of the problems that they had that we
6 made the people downtown aware of as early as we could
7 get them on the telephone was the fact that when you
8 pressed -- this is on the penny sales tax referendum
9 question only, that I'm aware of this, but when you
10 pressed the no --

11 MR. MOYLAN: Objection, Mr. Chairman. I'm
12 going to reiterate the same objection.

13 I apologize, Mr. DePass

14 The testimony that Mr. DePass is entering
15 into now is beyond the grounds that are stated in the
16 protest.

17 MR. LETTS: Mr. Chairman, if you look at that
18 protest, that is not the case. If you will look at the
19 second paragraph, I allude to all three, it is in the
20 record.

21 MR. MOYLAN: I don't understand what he just
22 said. But beyond that, one reads the protest, it is
23 clear. It says here, "The above reasons are the
24 grounds for our protest." There is no reason stated
25 here that relates to the functioning of the voting

1 machines on the penny sales tax.

2 MR. LETTS: Mr. Chairman, if you look on the
3 second page and if you will look at how it is worded,
4 "Please consider these other additional points." I did
5 put it into the record, and it is on the top of the
6 second page. Contrary to what Mr. Moylan just told
7 you.

8 MS. MCFADDEN: And, Mr. Chairman, in support
9 of the objection by Mr. Moylan, a plain reading of that
10 paragraph asserts that the problem comes from trying to
11 vote a straight party ticket, which is not what the
12 witness is presently testifying about. He is asserting
13 a change or a problem in the machines between a yes, no
14 vote on the penny sales tax, which was the last thing
15 on the ballot and as to which one did not have an
16 opportunity to vote a straight party ticket.

17 And I would agree with Mr. Moylan's
18 objections on those grounds.

19 MR. LETTS: Mr. Chairman, I think the point
20 of this hearing is to gather all the facts for this
21 Commission to make a decision. We alluded to in the
22 complaint all the facts that we had at the time, but we
23 were aware that there were voting machine problems. We
24 could not specify what every voting machine problem was
25 due to the constraint of time in filing this protest.

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1 But since then, they have come to light, but
2 we had made it abundantly clear in our protest that
3 there were voting machine issues. Whether it was
4 straight ballot issues or whether it was referendum
5 question issues, this yields to the point that there
6 were voting machine difficulties. And as such, I would
7 request that you allow the continuing of the question.

8 MR. DOWDY: Mr. Letts, I believe we indicated
9 that there was a difference of about 6,000 votes there,
10 589. I would like for you, as we indicated in our
11 initial opening statement, that we want you to be
12 specific and give us direct information pertaining to
13 that. Are you prepared to give us that information
14 now?

15 MR. LETTS: I am prepared to enter into the
16 record and to establish the basis for that. I'm not
17 prepared to give you all 659 that are necessary. But I
18 can tell you, if we cannot establish a basis and a
19 line, then what is the purpose behind the decision?

20 MR. DOWDY: Would you restate your whole
21 statement again for clarity for the commissioners and
22 for our attorney, please.

23 MR. LETTS: Yes, sir. The basis of our
24 challenge was first and foremost an unlawful election
25 on a number of machines. But we also ask the

1 Commission to keep in its deliberations and
2 considerations that there were difficulties with the
3 number of poll managers, there are difficulties with
4 some of the machines malfunctioning. And as such we
5 want it in the record that those irregularities, those
6 difficulties did occur.

7 The question being raised, can we demonstrate
8 6,659, to ask that that be done within a six-day period
9 or five-day period after we've been notified we have
10 seven days to file a protest, no, sir, we have not been
11 able to pull together that amount of information in
12 that short amount of time. But we would like to
13 establish in the record that there was a baseline for
14 those difficulties which would allow us to continue to
15 proceed.

16 MR. DOWDY: Mr. Letts, again, we're dealing
17 with specific numbers. And if you would like to
18 continue on a limited basis with Mr. DePass on this
19 issue, we will allow you. But it must be specific and
20 would be direct. We realize that there were many, many
21 problems throughout the county, but we want to be
22 specific so that we will be able to make a decision on
23 this. So ...

24 MR. LETTS: I will ask that of the witness,
25 to try to be as specific as possible.

1 BY MR. LETTS:

2 Q. Mr. DePass.

3 A. Okay. As a matter of fact, all I can be is
4 specific. And I would be specific to the point of
5 suggesting that on six separate occasions that I was
6 called to assist a voter in a particular machine that
7 was a Ward 25 machine. It was not a Ward 24 machine.
8 The voter was trying to vote no on the penny sales tax
9 and could not get the machine to register. When I
10 tried to help the voter in each of these six cases, the
11 machine registered a yes vote.

12 Now, in each of the six, I was able to undo
13 the yes vote and eventually cast the vote no for that
14 particular voter. However, all through the day, and I
15 cannot tell you how many times this happened, but all
16 through the day, I was called and made aware by other
17 people of voting machines that were -- it was very
18 difficult -- where it was very difficult to vote no on
19 the sales tax question.

20 Now, how many times that would have happened,
21 I'm talking in terms of only two precincts. And, of
22 course, I wouldn't have been aware of every instance.
23 But this happened during the day.

24 I made Garry Baum aware of it. He told me,
25 in fact, to quit using the machine. And so at that

1 point I think Ward 25 went from two machines -- I mean,
2 excuse me, three machines to one -- two machines. And
3 then, of course, when we had to use one of those on
4 curb side, you only had one. So all of that
5 contributed to creating the mass confusion and long
6 line that existed at Ward 25.

7 But that's the specific instance.

8 Q. Mr. DePass let me readdress the issue that
9 you raised.

10 A. Okay.

11 Q. There had been testimony earlier that the
12 Election Commission was not aware of the lack of voting
13 machines on that morning. But yet I thought I heard
14 your testimony to say you attempted to contact them
15 throughout the morning, throughout the day to tell
16 them?

17 A. We -- we began -- we began calling downtown
18 at 7:15. I don't remember exactly when we got through
19 the first time. I think it was shortly after 9:00. We
20 got -- I believe we got a tech to come out and see
21 about the machine, couldn't get anything in the way of
22 additional machines. Garry probably has in his log
23 what -- you know, when he brought an extra machine to
24 Ward 25. I would say it was about 10:30 or 11:00. But
25 that machine -- he was not able to get that machine up

1 and running, neither was the tech. So we -- it was --
2 it ended up being useless to us. I mean, it was a nice
3 effort. Excuse me, Garry. But it was a nice effort,
4 it just didn't work out. I mean, the machine didn't
5 work.

6 Later in the day, at approximately 7:20 p.m.,
7 there were two additional machines that were brought,
8 set up, and operated until we closed down a little
9 before 10:00 -- or a little before 9:00.

10 MR. LETTS: Thank you, Mr. DePass. I have no
11 other questions.

12 MR. MOYLAN: Mr. DePass, I'll be very brief.

13 THE WITNESS: That's all right. I have all
14 day.

15 EXAMINATION

16 BY MR. MOYLAN:

17 Q. In Ward 25, you were called on six occasions
18 to help voters cast a no vote?

19 A. Six occasions when that happened. It might
20 have been more occasions than that, but six that I can
21 recall.

22 Q. And in each of those six occasions, you did,
23 in fact, help the voter, and they were able to cast the
24 no vote as they desired?

25 A. I hope so. I mean, I assume so.

1 Q. And in Ward 25, 572 people actually managed
2 to cast no votes and only 286 cast yes votes?

3 A. That's correct. I mean I guess that's
4 correct. I don't have those numbers in front of me.

5 MR. MOYLAN: Thank you very much.

6 THE WITNESS: Okay.

7 EXAMINATION

8 BY MS. MCFADDEN:

9 Q. Mr. DePass, did you have paper ballots that
10 day?

11 A. Yes, ma'am. But we never opened them. I
12 never saw them.

13 Q. You had them available to you, you could have
14 used them, correct?

15 A. Well, now, bear in mind I was the clerk of
16 the managers in Ward 24.

17 Q. Please answer the question.

18 A. I had --

19 Q. You had paper ballots?

20 A. In Ward 24, we had paper ballots. But we
21 didn't have --

22 Q. You did not use them?

23 A. We didn't -- we didn't need them.

24 MS. MCFADDEN: Okay. Thank you. That's all.

25 THE WITNESS: We didn't have the backup in

1 Ward 24 that they had in Ward 25.

2 BY MS. MCFADDEN:

3 Q. You were not at Ward 25. I only asked you a
4 Ward 24 question.

5 A. That's fine. That's fine. Yes, ma'am.

6 MS. MCFADDEN: Thank you.

7 MR. DOWDY: Thank you very much. And for the
8 record, if he needs to come back again, you will be
9 willing to?

10 MR. HAMM: Ask if he's excused.

11 MR. LETTS: I excuse him.

12 MR. DOWDY: He's excused.

13 MR. LETTS: He's excused.

14 MR. DOWDY: Is there another witness,
15 Mr. Letts?

16 MR. LETTS: Yes, I do.

17 MR. DOWDY: Okay.

18 MR. LETTS: Michael Sullivan. And I'm not
19 sure if he was able to attend.

20 MR. DOWDY: Michael Sullivan is not. I don't
21 see him here.

22 MR. HAMM: Mr. Chairman, let me -- I briefly
23 talked to Mr. Letts about Mr. Sullivan, and I want
24 to -- I want to place this e-mail -- this is first time
25 I've seen it, Mr. Letts, so that you'll know. I want

1 to -- if you don't mind as counsel, let me just publish
2 it on the record, which simply means I'm going to read
3 it.

4 This is an e-mail addressed this morning to
5 Mr. Baum, Garry Baum, with the county election staff.
6 I note that it's dated this morning at 5:30 a.m.

7 "Dear Garry, I received a subpoena at 7:00
8 p.m. on Friday night, November 30th, 2012, to testify
9 at the sales protest hearing today. I assume this is
10 in connection with my work as precinct clerk, Ward 11.
11 I am unable to appear because I am in New Orleans where
12 my wife and I are celebrating our 36th wedding
13 anniversary. I have documentations of my flight and
14 hotel reservation. I would be happy to appear at any
15 time after my return tomorrow.

16 "I don't know if you are the right person for
17 me to notify. I would appreciate it if you could
18 forward this e-mail to the appropriate person, if it's
19 not you, or let me know to whom. Thank you very much.
20 I am resending this as my first attempt containing the
21 flight information bounced back."

22 We need to -- I think the chair, you ought
23 to -- I would suggest that you ask the court reporter
24 place that in the record as an -- as an exhibit
25 regarding a subpoena issued by this Board.

1 Then I think you should ask Mr. Letts about
2 the service of this.

3 MR. DOWDY: I would like you to put this in
4 the record for the subpoena.

5 MR. HAMM: Madam Court Reporter, given where
6 we are right now, does this actually constitute Exhibit
7 1?

8 THE COURT REPORTER: Yes.

9 (EXHIBIT 1, Sullivan E-Mail Dated 12-3-2012,
10 was marked for identification.)

11 MR. HAMM: And for the record and the public,
12 I just want it clear, the information that was made
13 available to us this morning we're regarding this
14 individual.

15 MR. LETTS: Okay.

16 MR. DOWDY: Mr. Letts, will you continue.

17 MR. LETTS: We'll continue.

18 I would like to call Rebecca Brown to the
19 stand, please.

20 MR. DOWDY: Ms. Brown.

21 MR. LETTS: You want me to call another
22 witness while she's being secured? I can call another
23 witness while she is being located.

24 MR. DOWDY: Yes.

25 MR. LETTS: Is Helen Munnerlyn --

1 MR. HAMM: Could we go off the record,
2 Mr. Chairman.

3 (A recess transpired.)

4 MR. DOWDY: At this time we will come back to
5 order to continue our hearing.

6 MR. HAMM: Mr. Chairman, as counsel, let me
7 report, and I have spoken to Mr. Letts, with regard to
8 the subpoena issued and signed by you last week
9 regarding Helen Munnerlyn. I was given a message that
10 Helen Munnerlyn was on jury duty. I was given a
11 telephone number, which I called. That call was
12 answered by a voice mail identifying it as the phone of
13 Helen Munnerlyn. And I asked her to call me
14 immediately given that she was subject to a subpoena
15 issued for this hearing.

16 And that I have advised Mr. Letts and other
17 counsel that when I get that call, I will report on the
18 record as to what we heard. I left the message that
19 was urgent for her to call me.

20 Mr. Letts is prepared to proceed with his
21 next witness.

22 MR. DOWDY: You may continue, sir.

23 MR. LETTS: Before we proceed with our next
24 witness, I would like it in the record on both the
25 subpoenas that we issued for Michael Sullivan, who was

1 served -- service was accepted and his purpose was for
2 the interrogation of statements he had made to the
3 media about calls that he had placed in need of
4 machines. And the same applies for Helen Munnerlyn.
5 So both were served and both did accept service, and
6 that was the purpose in asking them.

7 My next witness would be Rebecca Brown.

8 REBECCA BROWN, being first duly
9 sworn, testified as follows:

10 EXAMINATION

11 BY MR. LETTS:

12 Q. Thank you, again, Ms. Brown, for your
13 testimony.

14 Did at any point in time you receive any
15 calls from poll workers ahead of the schedule concerned
16 about the number of machines they had been allocated?

17 A. Yes, I did.

18 Q. Okay. And could you give me a reference or
19 give testimony as to what those calls were in reference
20 to or what the concerns were.

21 A. Certainly. We had several workers who called
22 and requested additional machines, as they have in the
23 past. They've called and said, "I have too many
24 machines." They've called and said they need more
25 machines. And their biggest is, "I need more 'I Voted'

1 stickers." But, yes, I mean, I did receive calls.

2 Q. Did any of those calls indicate that they
3 were concerned that the number of machines were less
4 than what had been done previously or indicate that it
5 was not in compliance with the 250 allocation?

6 A. They never indicated they weren't in
7 compliance. However, they did say they wanted more
8 machines. That's basically all that was said to me.

9 Q. Did you refer those callers to anyone, or how
10 were those calls addressed?

11 A. I did. I did refer the call.

12 Q. Who were they being referred to?

13 A. To the person that is over the machines.

14 Q. And that would be?

15 A. Cheryl Goodwin.

16 Q. Cheryl Goodwin. Okay.

17 Do you have any involvement with the paper
18 ballots?

19 A. Yes, I do.

20 Q. Do you know how many paper ballots were given
21 at each polling precinct?

22 A. It is a breakdown based on the law for
23 emergency, provisional, and fail-safe ballots. I do
24 not have that information in front of me.

25 Q. Okay. Were you -- do you have any knowledge

1 that any of those paper ballots were utilized?

2 A. Yes. Several were utilized.

3 Q. Do you know what precincts they were utilized
4 in?

5 A. I have no idea.

6 Q. Okay. Do you know if any of those paper
7 ballots were used to alleviate long lines?

8 A. To my knowledge, no.

9 Q. Okay. Were there any contingent plans in
10 place within the office for dealing with long lines or
11 for dealing with a delay in the voting process?

12 A. No. We didn't expect a delay.

13 MR. LETTS: Okay. Mr. Chairman, I yield the
14 witness.

15 MR. MOYLAN: I have no questions for
16 Ms. Brown.

17 MR. DOWDY: No questions. Yes, Ms. McFadden.

18 MS. MCFADDEN: Just a couple of questions.

19 EXAMINATION

20 BY MS. MCFADDEN:

21 Q. Ms. Brown, how long have you worked for the
22 Richland County Commission?

23 A. I have worked for voter registration for 17
24 years, and I've been working for the election side for
25 one year.

1 Q. Okay. So this was, in fact, your first
2 general election?

3 A. It was my first general election, yes.

4 MS. MCFADDEN: Thank you.

5 MR. DOWDY: Thank you. Are there any --

6 MR. LETTS: One follow-up question,
7 Mr. Chairman.

8 REEXAMINATION

9 BY MR. LETTS:

10 Q. What are the purpose of the paper ballots?

11 A. The paper ballots are emergency and
12 provisional ballots. There are several different
13 reasons why you would use those ballots throughout your
14 day. Emergency ballots would be used in case all the
15 machines are down, and there's no other way to vote,
16 the power is out or whatever. They would have to move
17 to a paper ballot at that time. A provisional ballot
18 could be that someone did not present the proper ID,
19 had moved, didn't have the proper identification,
20 whatever it is that they would need. They would then
21 vote a provisional ballot.

22 And the fail-safe ballot is if you have moved
23 from that precinct, you can go to your previous
24 precinct and vote a shortened ballot with statewide,
25 countywide --

1 Q. Okay.

2 A. -- offices.

3 MR. LETTS: Thank you. No further questions.

4 MR. DOWDY: Thank you.

5 Yes, Mr. Moylan.

6 MR. MOYLAN: No questions here, Mr. Chairman.

7 MR. LETTS: Release the witness.

8 MR. DOWDY: For the record, would the witness
9 be available for future questions concerning this
10 matter?

11 THE WITNESS: Of course

12 MR. HAMM: Mr. Chairman, since Mr. Letts says
13 the individual can be released, she can go back to her
14 duties.

15 MR. DOWDY: You can be released to be
16 returned back to your duties. Thank you very much.

17 MR. LETTS: I would like to call Cheryl
18 Goodwin.

19 CHERYL GOODWIN, being first duly
20 sworn, testified as follows:

21 EXAMINATION

22 BY MR. LETTS:

23 Q. Ms. Goodwin, thank you for your testimony.

24 Do you know how many voting machines were
25 originally distributed?

1 A. The number changes. There was 628.

2 Q. Okay. To your knowledge, did the Board of
3 Elections receive any calls or e-mails before November
4 the 6th?

5 A. I received one message from Becky Brown, from
6 a poll worker, and I returned the call. And she said
7 that she didn't have enough voting machines at her
8 precinct from previous years. And I looked at the list
9 and I said, "We had allocated you the right amount of
10 voting machines, but our technician has a voting
11 machine. If you see that you need a voting machine, he
12 will, you know, give you that machine. And we have
13 machines here as our contingency plan. And if you see
14 you need some, I'll make sure you get those."

15 Q. Okay. Thank you. You referred to a list
16 that you referred to when you saw that she had the
17 correct number of machines. What list was that that
18 you referred to?

19 A. The original list that I used to determine
20 how many voting machines would be used for the
21 election.

22 Q. And that list was in compliance with the
23 statute of one machine for 250 voters?

24 A. Yes. That's correct.

25 Q. Do you have any knowledge as to why that list

1 was not implemented in the field, how the number got
2 changed?

3 A. I have no idea. We're still trying to figure
4 that one out.

5 Q. Okay.

6 A. It looks like a typo. I mean, it's just
7 simple as that.

8 Q. Is this the same list that was penciled in
9 red where the differences occurred in the number of
10 machines were delivered versus the ones that were in
11 the column?

12 A. That's not my original list.

13 Q. Okay. That's not your original list.

14 Can I ask you what happened with the --
15 before I ask that question, did you receive any
16 communication from a Michael Sullivan concerning the
17 lack of voting machines in his precinct?

18 A. No, sir.

19 Q. Is there anyone in the office that would have
20 taken those complaints or someone else that could have
21 made that complaint?

22 A. It's possible.

23 Q. To your knowledge, do you know what happened
24 to any of the alleged, any complaints that may have
25 been made, to your knowledge, and what would have

1 happened in those complaints?

2 A. I had so many telephone calls, I haven't even
3 assessed half of them. My phone was like overwhelming.
4 If I received calls from anybody, I haven't even had
5 that time to assess those calls. But the calls were
6 going to various -- our phones were just ringing off
7 the hook, so I'm not really sure. Everything should
8 have been documented on, you know, when people call,
9 that call should have been documented.

10 Q. You mentioned that you -- there was a
11 contingency plan.

12 A. Yes.

13 Q. So how was that contingency plan implemented
14 on that day when we begin to see that there was concern
15 about how the election process was proceeding?

16 A. Our contingency plan was to have at least 30
17 voting machines on the truck, which was parked outside
18 our mail delivery area. And those machines would be
19 disbursed if needed. And that's what we did.

20 Q. So those 30 -- you testified those 30
21 machines were disbursed?

22 A. Yes. Plus.

23 Q. Plus.

24 A. Yes.

25 Q. Okay. Do you have any involvement with the

1 absentee ballots?

2 A. Other than to create the database that
3 produces the absentee ballots, I order the absentee
4 ballots. And the ballots come in, and they are
5 delivered to absentee.

6 Q. Can you give any statement or any knowledge
7 as to why there were two absentee ballots?

8 A. Yes. There was an issue with my Adobe print.
9 It prints a PDF file. I put in a PDF file to send to
10 the printer, and then I actually print a ballot at the
11 office on a printer. And if the fonts do not match, it
12 tries to shrink in two -- it tries to make the font
13 match as close to the Adobe print.

14 If anybody who knows about Adobe and files,
15 they'll understand that. It just didn't print the same
16 print as the Adobe printer did.

17 Q. On the absentee ballots, what is the
18 procedure and the mechanism in place to safeguard that
19 there is only one absentee ballot per person?

20 MR. MOYLAN: Mr. Chairman, I'm going to
21 object. I hate to do this, but there is no allegation
22 in the protest about absentee ballots. That word, in
23 fact, doesn't appear in the protest.

24 MR. DOWDY: The Chair sustains the objection.

25 MR. LETTS: Excuse me, Mr. Chairman.

1 MR. HAMM: He's sustaining the objection.

2 MR. LETTS: Again, for the record, I'm just
3 trying to get out all the facts, Mr. Chairman. But if
4 it's an issue, we'll be glad to move on.

5 I give the witness at this time.

6 MR. DOWDY: Yes. Mr. Moylan or Ms. McFadden.

7 MR. MOYLAN: Thank you, Mr. Chairman. I have
8 no questions for Ms. Goodwin.

9 MS. MCFADDEN: No questions, Your Honor.

10 MR. DOWDY: The witness is released.

11 Would you call your next witness.

12 MR. LETTS: Garry Baum.

13 GARRY BAUM, being first duly sworn,
14 testified as follows:

15 EXAMINATION

16 BY MR. LETTS:

17 Q. Thank you, Mr. Baum for your testimony.

18 To your knowledge, were you aware of any
19 calls or any e-mails that were received concerning lack
20 of voting machines before November the 6th?

21 A. No call -- no, sir, calls or e-mails.

22 Q. Okay. Do you have any knowledge as to how
23 the number of machines that according to previous
24 testimony were on a typed list different from what were
25 given into the field?

1 A. No, sir.

2 Q. Okay. And final question, Mr. Baum, I
3 appreciate your testimony. Any knowledge there has
4 been established that complaints were called in
5 concerning the number of -- who handles those
6 complaints in that office when a call was received that
7 there were not enough machines?

8 A. I could be one of those people.

9 Q. You could be one of those people.

10 Is there any one particular person that just
11 handles those complaints or be it just whoever answers
12 the phone at that time?

13 A. Depending on the day and our situations.

14 Q. Okay.

15 A. It could be a number of people.

16 Q. All right. Is there a procedure to document
17 the calls when someone has a complaint regarding the
18 voting machines?

19 A. Yes, sir. I don't know if it's a standard
20 practice, but there is a procedure to document as many
21 as we can.

22 Q. So how are those calls documented? Is it a
23 handwritten notation on a note pad, or is there a
24 computer form, what one logs on to register that
25 complaint? How do you all handle those documents --

1 those calls? Complaint calls.

2 On the day of the election or before, if a
3 complaint was made that there were weren't enough
4 machines, how is that documented? How are those calls
5 handled?

6 A. For me, if it's by e-mail, I respond by
7 e-mail. If it's by phone, I respond by phone call.

8 Q. Okay. Is there a list and who would have it
9 of the calls and complaints about the voting machines
10 that day?

11 A. I would have some calls that were given to me
12 or e-mails that were provided to me.

13 Q. There is no centralized system to where we
14 can locate every complaint call that was made and just
15 be based on whoever we're talking to at the moment,
16 whoever happened to answer the phone?

17 A. Yes, sir.

18 MR. LETTS: Okay. I yield the witness.

19 MR. MOYLAN: I have no questions for
20 Mr. Baum.

21 MS. MCFADDEN: No questions, Mr. Chairman.

22 MR. DOWDY: No questions. Mr. Baum can be
23 released?

24 MR. LETTS: I have one follow up just to make
25 sure I'm clear on the record.

1 BY MR. LETTS:

2 Q. There is no recorded documentation of
3 procedures as to how complaints are received; is that
4 correct? I wasn't sure I understood the testimony
5 correctly. I will use myself as an illustration.

6 If I had called in to complain about the
7 number of machines, whoever had taken the call, it
8 would have been their discretion as to whether they had
9 put a note down or received a phone call. There's no
10 centralized system to where that complaint would have
11 been logged in that we can access to show all the
12 complaints that were logged in; is that a correct
13 summation of the testimony?

14 A. Yes. No centralized location.

15 MR. LETTS: Thank you, Mr. Baum.

16 MR. DOWDY: Thank you, Mr. Baum. You can be
17 released now.

18 Next witness.

19 MR. LETTS: I would like to call Heyward
20 Bannister.

21 MR. DOWDY: Would you place him under oath.

22 Mr. Bannister.

23 HEYWARD BANNISTER, being first duly
24 sworn, testified as follows:

25 EXAMINATION

1 BY MR. LETTS:

2 Q. Thank you, Mr. Bannister, for your testimony
3 and coming down.

4 Would you describe your role in the penny tax
5 campaign.

6 A. I served as a consultant and manager of the
7 campaign. The yes side.

8 Q. And that is in partnership with Senator
9 Jackson?

10 A. No. I own my own company, the
11 Banco/Bannister Company.

12 Q. Which is at the address of 924 Hampton
13 Street?

14 A. Absolutely.

15 Q. And the phone number is 771-0325?

16 A. I use that number sometimes.

17 Q. Okay. Which is the same address and
18 telephone number for --

19 MR. MOYLAN: Mr. Chairman, I'm going to
20 object again. This is completely unrelated to the
21 distribution of one machine for every 250 registered
22 voters, which is the basis of the challenge.

23 MR. DOWDY: Objection sustained.

24 MR. LETTS: I yield the witness.

25 MR. DOWDY: Yes, Mr. Moylan.

1 MR. MOYLAN: If I might have just one moment.

2 I have no questions for Mr. Bannister.

3 MS. MCFADDEN: None, Mr. Chairman. I would
4 request that Mr. Bannister, however, remain.

5 MR. DOWDY: Mr. Bannister, you're requested
6 that you remain.

7 THE WITNESS: Thank you.

8 The next witness.

9 MR. LETTS: I have no other witnesses at this
10 time, Mr. Chairman.

11 MR. DOWDY: Mr. Letts, have you fully
12 concluded your testimony?

13 MR. LETTS: Other than my closing statement,
14 yes, sir. I yield to opposing counsel if they have any
15 questions.

16 MR. DOWDY: Okay. We'll give you a minute.

17 MR. HAMM: Can we go off the record for just
18 a second.

19 (Off the record.)

20 MR. HAMM: Please state that again,
21 Mr. Letts, for the record. I don't know that we were
22 on the record.

23 MR. LETTS: I would like to recall
24 Ms. Lillian McBride to the stand.

25 MR. MOYLAN: I would object at this time to

1 Ms. McBride being called. There's been no testimony
2 offered for which she can be a rebuttal witness. He
3 has simply rested his case.

4 MR. LETTS: I'll ask somebody else if he
5 objects.

6 MR. DOWDY: Okay. Mr. Letts, we would like
7 to know the reason stated on the record why you would
8 like to recall her.

9 MR. LETTS: The question is very simple. I
10 think under the testimony, the testimony was given that
11 reports are still being generated, that questions are
12 still unanswered. And I just simply want to know when
13 those reports will be due. It is hard to conduct a
14 hearing without having all the reports available.

15 MR. DOWDY: All right. I believe --

16 MR. LETTS: I don't recall a time or a date
17 being given when the reports would be available.

18 MR. MOYLAN: And, Mr. Chairman, there's no
19 reason that question could not have been asked when
20 Ms. McBride was on the stand if he wished to ask that
21 question.

22 MR. DOWDY: Objection sustained.

23 At this point is there anything from the
24 Richland County?

25 MR. MOYLAN: Mr. Chairman, my only thought,

1 and Mr. Hamm, and this is, of course, up to Mr. Letts.
2 I wonder if we have two witnesses that Mr. Letts had
3 subpoenaed or purportedly subpoenaed who were not here,
4 one out of state, the other on jury duty. If Mr. Letts
5 would like to make a proffer as to what he believes
6 that testimony would have been, we would not object to
7 his making that proffer.

8 MR. LETTS: And I will just base that --
9 thank you. I will just simply base it on the reports
10 that are actually written in The State newspaper. The
11 reports are very simple, and that is that communication
12 was done significantly prior to the election to raise
13 the question that there were not enough voting machines
14 in both instances. So it yields to the same thing
15 we've been talking about.

16 MR. DOWDY: Okay. At this point do we have
17 anything from Richland County?

18 MR. MOYLAN: We do not have any witnesses we
19 wish to call, Mr. Chairman. We would like to be heard
20 in closing remarks, brief closing remarks.

21 MR. DOWDY: Okay. Ms. McFadden.

22 MS. MCFADDEN: Mr. Chairman, with regard to
23 the statement just made by Mr. Letts, I've spent many
24 years as a lawyer fighting against what the newspaper
25 said becoming evidence. And I hear laughter from

1 Mr. Hamm because we've been in those cases together.

2 And so with regard to Mr. Letts' proffer, I
3 object to the reference to The State newspaper. I am
4 prepared to let Mr. Letts state what he thinks those
5 two witnesses would themselves have testified about,
6 but I am not willing to rely on The State newspaper.
7 And that is for the same reason I have expressed before
8 in other court proceedings, that takes on the third
9 level of hearsay. And it simply should not be
10 permitted.

11 I have been in Mr. Letts' position before
12 where the witnesses were unavailable for various
13 reasons, and so I understand his position. And I'm
14 certainly willing to let him make a proffer as to what
15 they would have said absent reliance on The State
16 newspaper.

17 MR. DOWDY: Mr. Letts.

18 MR. LETTS: My question is, because their
19 testimony is very pertinent, can it then be postponed
20 because these witnesses are not here?

21 MR. HAMM: I'm sorry, I was reading a note.
22 I didn't hear.

23 MR. DOWDY: Would you state your --

24 MR. LETTS: Because their testimony is very
25 pertinent to this particular point, can it be postponed

1 because the witnesses are not here? I'm asking the
2 question.

3 MR. HAMM: We are required by law that we
4 must meet today, and the rule states that we cannot
5 adjourn and come back again.

6 Yes. Could you state or proffer what they
7 would say from a witness standpoint without reference
8 to The State.

9 MR. LETTS: We believe their testimony would
10 be reflective that communication had been given in
11 September or October of the lack of number of machines
12 that were going to be utilized, and as such, we feel it
13 is very important to this case.

14 Can you recess instead of adjourn?

15 MR. DOWDY: Do you have any other specific
16 information pertaining to that?

17 MR. LETTS: That was the reason for
18 subpoenaing them was to get their testimony.

19 MR. DOWDY: But they're not here.

20 MR. LETTS: That's -- they were issued
21 subpoenas. Those subpoenas were served. That's all I
22 can request is either as I stated into the record what
23 I believe the testimony to be or ask for a recess until
24 they are able to be present.

25 MS. MCFADDEN: Mr. Chairman, I would point

1 out to Mr. Letts that he is in no different position
2 than I would be in a wreck case if one of my witnesses
3 was pregnant and was delivering and was therefore
4 unavailable to me. And then a judge would have to
5 decide whether to continue the case or not. But that
6 judge would have considerable more flexibility than
7 this Commission has because you are not given
8 flexibility under the statute. Our statutes require
9 that these hearings be held on a very tight schedule
10 because it is important to have a final result to any
11 specific election.

12 What I understood Mr. Letts to say was that
13 one or both of these witnesses, he believed, would
14 testify that they had communication with The State --
15 with the Richland County Election Commission during the
16 month of September regarding the number of machines at
17 whichever precincts they were at on the day of the
18 election.

19 I am certainly willing to permit him to make
20 that information as a proffer to this Commission. If
21 that is the scope of those witnesses' testimony, then
22 he has it offered to you today.

23 MR. DOWDY: Yes. Mr. Letts, to my knowledge
24 and what you've said already, without your being
25 specific about their proposed testimony, what you have

1 just given us, is there anything else?

2 MR. LETTS: Concerning their testimony?

3 MR. DOWDY: Yes.

4 MR. LETTS: I wouldn't know that unless I had
5 them on the stand. I wouldn't know where the question
6 would lead. But that would be the initial thrust of
7 the question to begin with.

8 MR. DOWDY: It seems as if we have no other
9 grounds as to accept what have been said based on that
10 and making our -- and that would be used in helping us
11 to make our final station.

12 So at this point, would you be -- is there
13 anything from Richland County side, I mean, Mr. Moylan
14 and Ms. McFadden?

15 MR. MOYLAN: Nothing here, Mr. Chairman.

16 MS. MCFADDEN: Mr. Chairman, I would not
17 propose to put up witnesses based on the current state
18 of the testimony. So if the protestant -- if the
19 moving party has, in fact, rested I believe that it
20 would be appropriate to go to closing arguments.

21 MR. DOWDY: Okay.

22 MR. LETTS: I would ask, Mr. Chairman, if we
23 could have a five-minute recess for restroom breaks,
24 would be appropriate? If there is no objection, I
25 don't want to make a mess. Thank you.

1 MS. MCFADDEN: It's called biological break.

2 MR. LETTS: I move for a biological break.

3 MR. DOWDY: Yes. Mr. Letts, we would like
4 to, from both sides, want to make sure that you have
5 rested your case. Before the break, we would like to
6 know that.

7 MR. LETTS: Other than closing statements.

8 MR. DOWDY: Closing remarks. Okay. Is that
9 in agreement here, as well?

10 MR. MOYLAN: It is, Mr. Chairman.

11 MS. MCFADDEN: Yes, sir.

12 MR. DOWDY: I think a five-minute break is in
13 order. Is that good? Ten minutes?

14 MR. LETTS: I will take whatever you give me,
15 Mr. Chairman.

16 (A recess transpired.)

17 MR. DOWDY: At this time we'll continue with
18 the hearing, and I would like to admonish each side if
19 you would give us precise closing statements and as
20 brief as possible.

21 MR. LETTS: We will do so, Mr. Chairman.
22 Thank you.

23 Are you ready to proceed?

24 MR. DOWDY: Yes.

25 MR. LETTS: Thank you, Mr. Chairman, Members

1 of the Board.

2 My concluding statement, let me just
3 reiterate the points that have been driven. You will
4 see an attempt to characterize and to minimize the
5 fiasco that happened on November the 6th as mere
6 irregularities. It will be opinions offered from the
7 Attorney General that perhaps they to not rise to the
8 level of. But the mere fact of the matter is that it
9 has been clearly established that there was knowledge
10 in advance of the election the mandatory statute was
11 not going to be held in compliance. And because it was
12 not held in compliance, that unlawful act
13 disenfranchised thousands of voters in Richland County.

14 The Supreme Court has already issued rulings
15 that a failure to abide by mandatory statutes is cause
16 for the overturn or invalidation of election and the
17 ordering of a new election. So there's precedent that
18 has been established.

19 If we do not send a clear message that
20 violation of the law brings with it consequence and
21 disenfranchising and not allowing people the
22 opportunity to be able to exercise their right to vote
23 due to hardships caused by the breaking of a law -- of
24 a statute, then where will it end?

25 We ask simply that this Commission reflect

1 not just on the voting irregularities, the machines, et
2 cetera, the breaking down of machines, but that it
3 concentrate keenly on the fact that there is a
4 deliberate disregard for a statute that was put in
5 place to ensure that people have the right to vote.

6 That was clearly violated. People were
7 disenfranchised and not able to cast their ballot and
8 as such we asked the Commission to award a new
9 election.

10 Thank you, Mr. Chairman

11 MR. DOWDY: Thank you.

12 At this point, we will continue with Mr.
13 Moylan or Ms. McFadden.

14 MR. MOYLAN: Thank you very much,
15 Mr. Chairman. And, again, thank you to each member of
16 the Commission for your time and your patience today.

17 As you all know, the Commission at the end of
18 the day has to rule based on the evidence that's been
19 presented. Not on conjecture, not on speculation, not
20 on news articles or anything else, but on the evidence
21 that's been presented.

22 We've been sitting here today for almost
23 three hours. At the conclusion at three hours, there's
24 not one document that's been introduced into evidence,
25 zero. Not a single shred of paper has been introduced

1 into evidence in this case.

2 What that leads us to are a couple of Supreme
3 Court cases that this Commission should be cognizant
4 of. And the first I would mention is Dukes versus
5 Redmond in which the Supreme Court says, "This court
6 will employ every reasonable presumption to sustain a
7 contested election. We will not set aside an election
8 due to mere irregularities or illegalities unless the
9 result is changed or rendered doubtful."

10 There has been nothing introduced to render
11 the outcome of this election, a 6,591 margin of
12 victory, doubtful. The only testimony introduced as to
13 voters, actual voters, was the testimony of Mr. DePass
14 who said that six voters had problems voting, but at
15 the end of the day each of them was allowed to cast a
16 vote and did, in fact, vote. There has been no
17 challenge, not one voter has come before this
18 Commission and said, "I was not allowed to vote. I was
19 turned away. My vote was not inaccurately counted."
20 Not a single person has said that.

21 Instead, what we have is a situation very
22 similar to that facing the Supreme Court in the
23 Fielding case. And in the Fielding case, after a
24 hearing, the Supreme Court says this, "Viewing it in
25 the light most favorable to the protesting candidate,

1 the evidence rises at best to the level of conjecture,
2 speculation, and surmise. No poll manager or poll
3 watcher who testified could identify a definitive
4 number of alleged illegal votes cast; and finally, no
5 documentation whatsoever of any of the alleged
6 irregularities was presented, only the uncorroborated
7 opinions of individuals."

8 And the Supreme Court refused to change the
9 outcome of the election based on that lack of evidence.

10 At the end of the day, after being here for
11 three hours, we know two things: We know that the
12 Richland County Election Commission made an error and
13 sent out too few voting machines. We know that. And
14 how you handle that going forward is your decision. My
15 suspicion is there will be consequences. There will be
16 changes made. But that's up to you. And that's not
17 why we're here today.

18 Why we're here today is to determine whether
19 that renders an election invalid. And as you know,
20 both our Supreme Court and the Attorney General have
21 said that does not render an election invalid.

22 So the second issue we are faced with is what
23 do we do? Because the other thing we know is that
24 159,000 people in Richland County stood out in line for
25 however long it took. They didn't get too cold. They

1 didn't get too hungry. They stood in line. They
2 exercised their constitutional right to cast a ballot.
3 And that right and that vote should count. It should
4 not be overturned.

5 And we thank you again for your time.

6 MR. DOWDY: Thank you.

7 Ms. McFadden.

8 MS. MCFADDEN: Thank you, Mr. Chairman. I'll
9 be very brief.

10 I think that the evidence today fails utterly
11 to show any causal connection between the number of
12 machines placed in the various precincts in
13 Williamsburg -- in -- sorry, in Richland County on the
14 day of this election. The record here today is utterly
15 devoid of evidence to show a causal connection between
16 the result and the absence of machines.

17 I think our court has made it crystal clear
18 that you have to show that the operations or the number
19 of voters, you have to show some causal connection that
20 would result in a change in the outcome. We lack that
21 here today from the testimony in front of this
22 Commission.

23 And for that reason, on behalf of the
24 Richland County Council, I would ask this Commission to
25 deny the protest and to sustain the results of this

1 election.

2 Thank you.

3 MR. DOWDY: Thank you. Thank you very much
4 for your testimonies and witnesses. And at this point,
5 we would like to go into --

6 MR. HAMM: There's no other pending matters
7 from any of the parties?

8 MR. DOWDY: Yeah. At this point, we will
9 deem the hearing concluded at this point.

10 Okay. At this point we're going to recess,
11 and we will come back at 1:45.

12 MR. HAMM: To address the next hearing and
13 issue a ruling.

14 MR. DOWDY: To address the next hearing and
15 issue a ruling. That's 1:45. So that's about an hour
16 and 20, 25 minutes, roughly. And that is consistent
17 with our public notice that has gone out.

18 (A lunch recess transpired.)

19 MR. DOWDY: Good evening. We're back into
20 our regular session. And at this point, the Chair
21 would entertain a motion that we might go into
22 executive session for a legal briefing on the penny
23 sales tax.

24 MS. DUBOSE: Motion.

25 MS. ADAMS: Second.

1 MR. DOWDY: All those in favor of that motion
2 may signify by saying aye.

3 (Members respond.)

4 MR. DOWDY: Opposes, nay.

5 Okay. We'll go in.

6 (The Board exits for Executive Session.)

7 (A recess transpired.)

8 (The Board returns from Executive Session.)

9 MR. DOWDY: The Chair will entertain a motion
10 that we go back into regular session.

11 MS. ADAMS: I so move.

12 MS. DUBOSE: Second.

13 MR. DOWDY: All those in favor may signify by
14 saying aye.

15 (Members respond.)

16 MR. DOWDY: Opposes, no

17 The motion is carried.

18 At this time we will continue with the -- I'd
19 like to confirm at this time no votes was taken in our
20 executive session. This is what we are about to do at
21 this point.

22 MS. ADAMS: I move to respectfully deny the
23 protest of Michael Letts related to the Richland County
24 sales tax increase referendum, questions 1 and 2.

25 MS. DUBOSE: Second.

1 MR. DOWDY: It's been moved and second. All
2 those in favor of that motion may signify by saying
3 aye.

4 (Members respond.)

5 MR. DOWDY: Opposes, nay.

6 The motion is carried.

7 I would like to restate this motion again.
8 It's been moved that the protest of Michael Letts
9 related to Richland County sales tax increase
10 referendum, questions 1 and 2, have been denied.

11 And I'd like to say, if I could, at this
12 point, let the citizens of Richland County know that as
13 a commission, we are not pleased with the results, the
14 handling of the election. We realize many people had
15 to wait in line for hours, and it does not confirm that
16 we approve the no or yes on the penny sales tax.

17 However, we must abide by the law and the
18 statute that we have before us now and the evidence
19 that have been presented. It's not enough to make us
20 to do anything otherwise than what we have done at this
21 point.

22 And I will yield now to see if we have any
23 additional discussions or comments from the
24 commissioners.

25 MS. ADAMS: Mr. Chair, I would like to say

1 that even though I voted against Mr. Letts, that we
2 realize that we did have significant problems with the
3 election. And that we are continuing to wait for
4 reports from our attorney on what happened, and we're
5 sorry that the citizens had problems voting and we are
6 going to do everything we can to make sure this never
7 happens again.

8 MS. DUBOSE: And I agree so wholeheartedly.
9 I feel so badly that our citizens went through so much
10 just to vote this time. But it's a very unfortunate
11 situation, and our no vote does not mean that we were
12 happy with the election in any way.

13 MR. DOWDY: Okay. We'll continue on. Again,
14 I hope everybody heard what we said, and it's a
15 position that we have to abide ourselves by the law and
16 by the evidence that have been presented. And in no
17 way does it mean that we are totally satisfied with the
18 results.

19 And has been said, I will restate, that as
20 commission -- as a commissioner and the other
21 Commission members will do everything they can humanly
22 do to avoid these problems that we have at this point.

23 MR. DOWDY: And at this point, if it's in
24 order, we will move on to the next agenda. That's the
25 Michael Letts hearing. County Council Seat District 8.

12/3/2012

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1 MS. MCFADDEN: Thank you, Mr. Chairman,
2 Members of the Commission.

3 MR. MOYLAN: Thank you.

4 (The hearing concluded at 2:03 p.m.)

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12/3/2012

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CERTIFICATE OF REPORTER

I, Sheri L. Byers, Registered
Professional Reporter and Notary Public of the
State of South Carolina at Large, do hereby
certify:

That the foregoing proceedings were
taken before me on the date and at the time
mentioned on page 1 and the proceedings were
recorded stenographically by me and were thereafter
transcribed under my direction; that the foregoing
transcript as typed is a true, accurate and
complete record of the proceedings to the best of
my ability.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 10th day of December,
2012, at Columbia, Richland County, South Carolina.



Sheri L. Byers
Sheri L. Byers,
Registered Professional Reporter,
Notary Public
State of South Carolina at Large
My Commission expires:
January 5, 2014

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STATE OF SOUTH CAROLINA) SOUTH CAROLINA ELECTION COMMISSION
COUNTY OF RICHLAND) BEFORE THE BOARD OF CANVASSERS

Michael Letts,
Protestor/Appellant,

v.

James Manning,

Candidate.

Re: Richland County Council
District 8 Election.

Michael Letts,

Protestor/Appellant,

v.

Richland County,

Respondent.

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

John Moylan,

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

Helen McFadden,

Intervenor on behalf
of Richland County Council.

TRANSCRIPT OF
PROCEEDING

December 17, 2012

10:00 o'clock A.M.

HEARING:

Before the South Carolina
Election Commission/Board
of Canvassers, 1221 Devine
Street, Columbia, S.C. 29201

Eric B. Gore, Reporter.

(See following page for
Appearances.)

Annette B. Gore Court Reporter
P. O. Box 51, Irmo, S.C. 29063
Phone: (803) 781-1400

APPEARANCES:

Michael Letts, Pro Se John Moylan, III, Esquire
Protestant/Appelland, of the Wyche Law Firm,
 Attorneys for Richland
Re: County Council; and Central Midlands Trans-
Richland County Council portation Authority
District 8 Election; and Richland County
and Richland County. Council.

Helen McFadden, Esquire
and Elizabeth McLean,
Esquire, Attorneys for
Richland County Council.

Protest Appeal Hearing, taken before Eric B. Gore, commencing at the hour of 10:00 o'clock A.M., on Monday, December 17, 2012, at the South Carolina Election Commission/Board of Canvassers, 2201 Devine Street, Columbia, S.C., pursuant to Notice. Commission Members present: Billy Way, Chairman; Marilyn Bowers, Commissioner; Nicole Spain White, Commissioner; and Allan Dawson, Commissioner. Also, Marci Andino, Executive Director of the South Carolina Election Commission; and J.C. Nicholson, Esquire, of the South Carolina Attorney General's Office.

Eric B. Gore, Reporter

ANNETTE B. GORE

COURT REPORTER

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(No Exhibits were made during the cou
Hearing)

PROCEEDING:

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

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 uses 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 portionality 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 portionality 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.

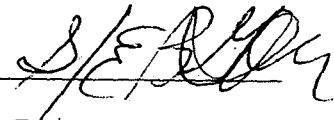
19 HEARING ADJOURNED.
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1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND) CERTIFICATE

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

9 IN WITNESS WHEREOF, I have hereunto affixed my
10 hand and official seal this 6th day of January, 2013.

11
12 
13 Eric B. Gore

14 Notary Public for South Carolina

15 My commission expires: 01/16/17.
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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM
The South Carolina Election Commission

Appellate Case No. 2012-213679

Michael Letts, ... Petitioner,

v.

Richland County and the Board of Elections and Voter Registration of
Richland County, ... Respondents.

In Re: Richland County Sales Tax Referendum Questions 1 and 2

PETITION FOR WRIT OF CERTIORARI

Now comes the Petitioner, by his undersigned attorneys, pursuant to S.C. Code
Ann. §7-17-270 and in response to the Court's January 22, 2012 letter, and Petitions this
Court for a Writ of Certiorari to the State Board of Canvassers.

February 4, 2013

THE CARPENTER LAW FIRM, PC

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QUESTIONS PRESENTED

1. When a statute requires a county board to distribute one voting machine for every 250 voters "or as near thereto as may be practical," that statutory ratio calls 980 voting machines, a county board owns 958 voting machines but distributes only 577 voting machines without explanation or excuse, is the failure to distribute all available voting machines a "total disregard of the statute?"
2. When at the County Canvassers' hearing, election officials were unable to testify to the number of voting machines distributed, when three days *after* the County Canvassers' hearing the County Board's attorney issued his Preliminary Report on the election, and when two of Petitioner's witnesses at the County Canvassers had failed to honor their subpoenas, did the State Board abuse its discretion in refusing to grant Petitioner a *de novo* hearing?

STATEMENT OF THE CASE

Richland County conducted a one-cent sales tax increase Referendum (“Referendum”) on November 6, 2012. The Referendum consisted of two questions. The first question passed by a margin of a little over 4%; the second one passed by a margin of a little under 4%.

Petitioner Michael Letts, a Richland County citizen, resident, and taxpayer and registered elector filed a protest of the Referendum (**Exhibit A**) addressed to the Richland County Election Commission.¹

On December 3, 2012, the County Board constituted as the Richland County Board of Canvassers (“County Canvassers”)² conducted a hearing on the Petitioner’s protest. Richland County and the Central Midlands Regional Transportation Authority (“CMRTA”) (“Intervenor”) moved jointly to intervene in the hearing (**Exhibit B**). The County Board allowed the intervention. At the conclusion of the hearing, the County Board denied relief to the Petitioner (Transcript of Hearing before the Richland County Board of Canvassers In re: Protest of November 6, 2000 Penny Sales Tax Referendum Questions 1 and 2 (“Transcript”), p. 87, l. 22-p. 88, l. 10).

Petitioner appealed to the State Election Commission (“State Commission”) (**Exhibit C**). The Petitioner requested a *de novo* hearing at the State Commission (**Exhibit C**). On December 17, 2012, the State Board of Canvassers (“State Board”) conducted a

¹ S.C. Code Ann. § 7-27-405(F)(2) abolished the Richland County Election Commission. Section 7-27-405 (A)(1) created the Board of Elections and Voter Registration of Richland County (“County Board”) to succeed it.

² Pursuant to S.C. Code Ann. §7-17-10, “The commissioners of election . . . shall meet . . . , and shall proceed to organize as the county board of canvassers.”

hearing, denied the Petitioner a *de novo* hearing, and voted 3-1 to deny relief to Petitioner (Exhibit D).

Petitioner filed a "Notice of Appeal" with this Court on December 27. On January 22, this Court wrote a letter to the Petitioner advising him that it had assigned his case an appellate case number, and that he should file and serve a Petition for Writ of Certiorari by February 15, 2013.

STATEMENT OF FACTS

The Petitioner listed several grounds for his protest of the Referendum, including the County Board's failure to provide one working voting machine for every 250 registered voters in each precinct³ (Exhibit A) S.C. Code Ann. § 7-17-1680.

On December 3, 2012, the County Canvassers conducted a hearing in which the Petitioner represented himself and presented testimony from several witnesses.

The Intervenor, opposing the Petitioner, admitted that the County Board "failed to distribute the right number of voting machines" (Transcript, p. 29, l. 25-p. 30, l. 1). The Intervenor further admitted, "It was a *failure across the county* to distribute the right number of voting machines" (Transcript, p. 30, ll. 4-5 (emphasis added)). However, the Intervenor also contended, "That does not invalidate an election" (Transcript, p. 30, l. 6). The Intervenor relied on the language requiring one machine for every 250 voters or "as near thereto as practical," (Transcript, p. 27). S.C. Code Ann. § 7-17-1680. The Intervenor emphasized the phrase, "as near thereto as practical," contended that the statutory ratio was "merely directory," and argued that the failure to comply with the statute was not sufficient to invalidate the Referendum (Transcript, pp. 27-30).

Petitioner contends that the County Board failed to meet even the flexible statutory ratio, that the failure to meet the statutory ratio was a “deliberate act” and a “deliberate decision,” and that the County Board’s failure affected the validity and outcome of the election (Transcript, p. 32, l. 25- p. 33, l. 1).

Lillian McBride, Director of the County Board, testified that Richland County has more than 240,000 registered voters (Transcript, p. 35, ll. 4-9).

Even after nearly a month of public outcry and discussion, McBride testified that she was “*not exactly sure*” how many machines her agency distributed to polling places on November 6 (Transcript, p. 35, l. 12). She testified she knew the standard was one machine for every 250 registered voters at each precinct (Transcript, p. 35, ll. 17-20). She further admitted that the County Board did *not* place enough machines to comply with the statute (Transcript, p. 37, ll. 5-7).

A poll worker testified that he began calling the County Board at 7:15 A.M. requesting additional voting machines (Transcript, p. 52, ll. 11-18). The County Board sent an extra machine about 10:30 or 11:00 A.M., but the machine was not functional (Transcript, p. 52, l. 23-p. 53, l. 2). At approximately 7:20 P.M., the County Board sent two additional machines that the poll workers used until voting ended a little before 9:00 P.M. (Transcript, p. 53, ll. 6-9).

³ In addition, the protest addressed the unusually low voter turnout for Richland County, the two different

The same worker testified that the precinct at issue did not use a combination of paper ballots and voting machines (Transcript, p. 54, ll. 9-12). Indeed, to do so would violate the advice from the Attorney General. *See* Atty. Gen. Opinion No. 2490, dated August 12, 1968 (1968 WL 8887).

In this precinct with the shortage of voting machines, the voters voted overwhelmingly against both Referendum questions. The same poll worker testified to several occasions in which voters at his precinct attempted to vote “no” on the Referendum and the machine registered a vote of “yes” (Transcript, p. 51, ll. 3-23). Eventually, County Board officials directed him to quit using that machine (Transcript, p. 51, ll. 24-25).

Cheryl Goodwin is a County Board employee and the administrator of the machines (Transcript, p. 60, ll. 9-15). Goodwin testified that prior to the election, she had a list that allocated voting machines to the precincts in accord with the statutory ratio, and that she retained additional voting machines as a contingency (Transcript, p. 64, ll. 8-24). However, the County Board did not distribute machines to the polling places in accord with her initial list. *She had no idea* how the numbers on the list got changed (Transcript, p. 64, l. 25-p. 65, l. 4). Goodwin testified, “We’re still trying to figure that one out.” *Id.* Goodwin testified that she *did not know* how many voting machines were distributed originally because “the number changes. There was 628” (Transcript, p. 63, l. 24- p. 64, l. 1).

Goodwin also testified that her office received many calls from poll workers complaining about the lack of voting machines.

I had so many telephone calls, I haven’t even assessed half of them. My phone was like overwhelming. If I received calls from anybody, I haven’t

styles of paper ballots, and the voting machine errors.

even had that time to assess those calls. But the calls were going to various--our phones were just ringing off the hook, so I'm not really sure. Everything should have been documented on, you know, when people call, that call should have been documented.

(Transcript, p. 66, ll. 2-9). Goodwin further testified,

Our contingency plan was to house at least 30 voting machines on the truck, which was parked outside our mail delivery area. And those machines would be dispersed if needed. And that's what we did.

(Transcript, p. 66, ll. 16-19).

Another County Board employee, Gary Baum, testified that there was no centralized system for calls coming in requesting additional machines. Anyone who answered the phone would receive the complaint or request. Baum agreed, "There is no centralized system to where we can locate every complaint call that was made and just be based on whoever we're talking to at the moment, whoever happened to answer the phone" (Transcript, p. 70, ll. 1-17).

At the hearing before the County Canvassers, Petitioner subpoenaed two additional witnesses, who failed to honor their subpoenas (Transcript, pp. 55-58).

Despite the County Board's admitted widespread deficiencies in distributing the voting machines and their high rate of disrepair, the County Canvassers voted to deny relief to the Petitioner (Transcript, p. 87, l. 22-p. 88, l. 10).

Petitioner appealed to the State Election Commission (**Exhibit C**).

The State Board denied the Petitioner's request for a *de novo* hearing and voted 3-1 to deny relief to the Petitioner (**Exhibit D**).

ARGUMENT

- I. **WHEN A STATUTE REQUIRES A COUNTY BOARD TO DISTRIBUTE ONE VOTING MACHINE FOR EVERY 250 VOTERS "OR AS NEAR THERETO AS MAY BE PRACTICAL," THAT STATUTORY RATIO CALLS 980 VOTING MACHINES, A COUNTY BOARD OWNS 958 VOTING MACHINES BUT DISTRIBUTES ONLY 577 VOTING MACHINES WITHOUT EXPLANATION OR EXCUSE, THE FAILURE TO DISTRIBUTE ALL AVAILABLE VOTING MACHINES IS A "TOTAL DISREGARD OF THE STATUTE."**

State law requires that a county board provide a minimum of one working voting machine for every 250 registered voters in each precinct, "or as near thereto as may be practicable." S.C. Code Ann. 7-13-1680. The statute also requires, "The machines . . . *shall be kept in complete and accurate working order and in proper repair.*" *Id.* (emphasis added). A county board must also provide at least one voting booth for every 250 registered electors. S.C. Code Ann. § 7-13-740. Voting booths and voting machines are critical and essential to the secret ballot required by the South Carolina Constitution. This Court ruled that the total lack of voting booths required the results of a referendum to be set aside. *George v. Municipal Election Commission of the City of Charleston*, 335 S.C. 182, 516 S.E.2d 206 (1999).

This Court described the circumstances in which failure to comply with statutory standards require an election to be overturned.

As a general rule, statutory provisions are mandatory in two instances: when the statute expressly declares that a particular act is essential to the validity of an election or when enforcement is sought before an election in a direct proceeding. *George [v. Municipal Election Commission of the City of Charleston]*, 335 S.C. [182] at 186, 516 S.E.2d [206] at 208. However, the Court may deem such provisions to be mandatory after an election, and thus non-compliance may nullify the results, when the provisions *substantially affect the determination of the results*, an essential element of the election, or the fundamental integrity of the election. *Id.* at 187, 516 S.E.2d 206. *Where there is a total disregard of the statute, the*

violation cannot be treated as an irregularity, but it must be held and adjudicated to be cause for *declaring the election void and illegal*. *Id.* The Court will not sanction practices which circumvent the plain purposes of the law and open the door to fraud. *May v. Wilson*, 199 S.C. 354, 19 S.E.2d 467 (1942).

Gecy v. Bagwell, 372 S.C. 237, 642 S.E.2d 569 (2007) (emphasis added).

This Court has also stated the standard this way: “This Court will overturn the results of an election, however, when mandatory statutory provisions have been violated and those *violations interfere with a full and fair expression of the voter’s choice.*”

Douan v. Charleston County Council, 357 S.C. 601, 608, 594 S.E.2d 261, 264 (2003) (emphasis added).

In another case, this Court has ruled,

The Court still may deem such provisions to be mandatory after an election-and thus capable of nullifying the results-when the provisions *substantially affect the free and intelligent casting of a vote*, the determination of the results, an essential element of the election, or *the fundamental integrity of the election*. *Zbinden v. Bond County Community Unit School Dist. No. 2*, 2 Ill.2d 232, 117 N.E.2d 765, 767 (1954); *Lewis v. Griffith*, 664 So.2d 177, 186 (Miss.1995); *O’Neal v. Simpson*, 350 So.2d 998, 1005-09 (Miss.1977); *Mittelstadt v. Bender*, 210 N.W.2d 89, 94 (N.D.1973). Furthermore, “where there is a *total disregard of the statute, it cannot be treated as an irregularity*, but it must be held and adjudicated to be cause for declaring the election *void and illegal.*” *Moon v. Seymour*, 182 Ga. 702, 186 S.E. 744, 745 (1936); accord *Lewis v. Griffith*, *supra*. “The Court ... will not sanction practices which *circumvent the plain purposes of the law* and open the door to fraud.” *May v. Wilson*, 199 S.C. at 360, 19 S.E.2d at 470.

George v. Municipal Election Commission of the City of Charleston, 335 S.C. 182, 187, 516 S.E.2d 206, 208-209 (1999) (emphasis added).

The Intervenor contends that the failure to provide voting booths and voting machines pursuant to the statutory ratio is an insignificant error, and a mere technicality that should not affect the validity of the election. In the hearings below, the Intervenor relied

upon three opinions of the Attorney General that arose from Spartanburg County in 1968. On March 2, 1968, the General Assembly enacted a statute requiring "at least one voting machine for each 350 voters or as near thereto as practicable." Act No. A. 991. Spartanburg County apparently did not own enough machines to meet the statutory ratio. Three times that year, persons from Spartanburg County wrote to the Attorney General asking for his opinion on the County's lack of sufficient voting machines. The Attorney General advised that the statutory ratio "should be followed," but that the County should have paper ballots available to those precincts that did not have voting machines. Opinion No. 2453, dated May 16, 1968 (1968 WL 8854). He also advised that because Spartanburg County did not have sufficient machines, the failure to follow the ratio strictly would not invalidate the election. *Id.*

In response to the second inquiry, the Attorney General responded that the County should distribute the voting machines as closely as possible to the statutory ratio, but they should not have some voters using voting machines and others using paper ballots in the same precinct. The Attorney General advised the County to seek substantial compliance with the statutory ratio. Opinion No. 2490, dated August 12, 1968 (1968 WL 8887).

In response to the third question, the Attorney General responded:

Given the fact that *Spartanburg County owns only a limited number of voting machines*, it is the opinion of this office that the placement of voting machines at the ratio of one to every five hundred registered voters at those polling places where machines will be used would be *substantial compliance* with the above requirement. It is our view that the 'one machine for every three hundred and fifty voters' provision is not an unalterable requirement in light of that portion of the statute which I have underlined for emphasis purposes ["or as near thereto as may be practicable"]. Undoubtedly, this phrase was tacked on to give the governing body some discretion or leeway in the matter of placing machines, just as they had under the law prior to the 1968 amendment.

Opinion No. 2503, dated August 29, 1968 (1968 WL 8899) (emphasis added).

The facts in this matter differ significantly from the facts in Spartanburg County in 1968. Richland County officials testified that they had a list stating how many machines were to be delivered to each precinct, and that the County owned sufficient machines to fulfill the statutory ratio, at least according to their initial calculations (864 machines) (Transcript, p. 64, ll. 19-24).

In addition, the County Board was bound by a statutory duty to keep its voting machines "*in complete and accurate working order and in proper repair.*" S.C. Code Ann. 7-13-1680 (emphasis added). Many of the machines distributed throughout the day were not in working order.

Finally, providing proper voting booths is a statutory implementation of the Constitutional requirement for secret ballots. This Court has ruled,

Municipal elections must be conducted pursuant to the South Carolina Election Law contained in Title 7, with any necessary changes in points of detail. S.C. Code Ann. § 5-15-10 (1976). The Legislature has established ***explicit requirements for voting booths.***

There must be provided at each polling precinct at least one booth. ***At least one booth must be provided for each two hundred and fifty registered electors or a major fraction thereof of the precinct.***

* * *

S.C. Code Ann. § 7-13-740 (Supp. 1998).

* * *

Absent the several statutes that address the secret ballot requirement of Article II, Section 1, we would be less constrained in deciding whether Commission met the constitutional requirement in this case. However, we are guided both by the constitution and the Legislature's ***explicit instructions on how to ensure the right to a secret ballot.***

We conclude this election challenge is ***not*** one in which we are faced with ***minor violations of technical requirements.*** The history of the secret ballot, our precedent, and the statutes persuade us that ***the voting booth is an essential element of the electoral process.*** The lack of any evidence of voter intimidation or fraud is not dispositive because the total absence of booths affects the fundamental integrity of the election. *See Edwards v. Abrams, supra; Corn v. Blackwell, supra; Birchmore v. State Bd., supra.* ***We cannot condone*** the method of voting employed by Commission because it would unwisely sanction a practice that "circumvent[s] the plain purposes of the law and open[s] the door to fraud" and intimidation. *May v. Wilson*, 199 S.C. at 360, 19 S.E.2d at 470.

Accordingly, we choose to follow the view espoused in *Moon v. Seymour, supra*, and hold that ***the statutory provision for voting booths is mandatory in these circumstances.*** Therefore, the total absence of voting booths violates the constitutional and statutory right to a secret ballot.

George v. Municipal Election Commission of the City of Charleston, 335 S.C. 182, 190-192, 516 S.E.2d 206, 210-211 (1999) (emphasis added).

The Intervenor might attempt to distinguish a voting booth from a voting machine. Separate statutes require voting machine and voting booths to be distributed at a

ratio of at least one for every 250 voters in a precinct. However, the Court's analysis of the voting booth requirement is applicable to voting machines because the voting booth would do little good unless it surrounds a voting machine, or unless paper ballots are used.

that failure amounts to a "total disregard of the statute," and accordingly "the violation cannot be treated as an irregularity." *Gecy v. Bagwell*, 372 S.C. 237, 642 S.E.2d 569 (2007). Furthermore, the failure to provide working voting machines "interfere[d] with a full and fair expression of the voter's choice." *Douan v. Charleston County Council*, 357 S.C. 601, 608, 594 S.E.2d 261, 264 (2003).

Finally, the County Board's failure to deliver sufficient voting machines "*substantially affect[ed] the free and intelligent casting of a vote, . . . [and] the fundamental integrity of the election.*" *George v. Municipal Election Commission of the City of Charleston*, 335 S.C. 182, 187, 516 S.E.2d 206, 208-209 (1999) (emphasis added).

Furthermore, the Petitioner would not have filed a protest.

“Where there is a total disregard of the statute, the violation cannot be treated as an irregularity, but it must be held and adjudicated to be cause for declaring the election void and illegal.” *Gecy v. Bagwell*, 372 S.C. 237, 642 S.E.2d 569 (2007) (emphasis added).

II. **WHEN COUNTY BOARD OFFICIALS WERE UNABLE TO TESTIFY TO THE NUMBER OF VOTING MACHINES DISTRIBUTED, THE COUNTY BOARD'S ATTORNEY PUBLISHED HIS PRELIMINARY REPORT ON THE ISSUES THREE DAYS AFTER THE COUNTY ASSESSORS HEARING, AND TWO OF PETITIONER'S WITNESSES FAILED TO HONOR THEIR SUBPOENAS, THE STATE BOARD ABUSED ITS DISCRETION IN ITS REFUSAL TO REVIEW THE FACTS IN A *DE NOVO* HEARING.**

When hearing an appeal, the State Board has discretion to allow the reopening of the record and a *de novo* hearing.

The state board is bound by the facts as determined by the county board. However, *if* in the opinion of at least two members of the state board *the facts should be reviewed*, then a hearing *de novo* must be held by the state board. In the event of a review of the facts, the state board *may receive any new evidence or exhibits* as it in its discretion considers *necessary to determine the appeal*.

S.C. Code Ann. § 7-17-70 (emphasis added). In this case, Petitioner requested the State Board to grant him a *de novo* hearing, and the State Board abused its discretion in refusing to grant him a *de novo* hearing to review the facts. Several facts supported the request for a *de novo* hearing.

As set out above in some detail, at the time of the hearing before the County Canvassers, the County Board officials *did not know* how many machines they had actually distributed (Transcript, p. 64). They were "*still trying to figure that one out*" (Transcript, p. 65). The number of voting machines actually distributed is a very important fact that bears on the appeal.

“A candidate may protest an election . . . when the protest is based in whole or in part on *evidence discovered after the election*.” S.C. Code Ann. § 7-13-810 (emphasis added).

Third, the State Board abused its discretion in refusing to grant a *de novo* hearing because Petitioner subpoenaed two witnesses at the County Canvassers’ hearing who failed to honor their subpoenas (Transcript, pp. 55-58). With a *de novo* hearing, Petitioner could have issued subpoenas to them, and everyone would have benefitted from their testimony.

Without explanation or comment, the State Board denied Petitioner a *de novo* hearing. The State Board's refusal to grant a *de novo* hearing to hear all of the relevant evidence was an abuse of discretion and a violation of their duty to seek the truth.

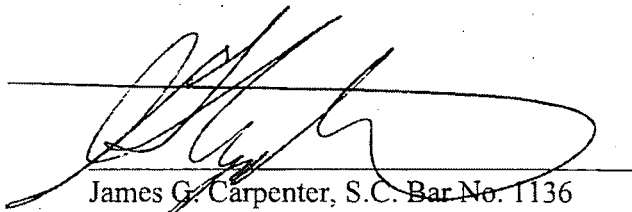
CONCLUSION

The County Board's failure to provide voting machines for 36-41% of its voters was not a "mere technicality," but was a "total disregard of the statute," a violation that significantly affected the election.

The State Board abused its discretion in refusing to grant the Petitioner a *de novo* hearing to enable consideration of the Preliminary Report compiled by the County Board's own investigation and issued three days after the County Canvassers' hearing.

Petitioner prays the Court to set aside the results of the vote on the sales tax referendum, and in the alternative, to remand this case for a fuller evidentiary hearing.

Respectfully submitted,
THE CARPENTER LAW FIRM, PC

A large, stylized handwritten signature in black ink, likely belonging to James G. Carpenter, is written over a horizontal line.

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February 4, 2013

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he served a copy of the foregoing
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first class mail postage prepaid this February 4, 2013:

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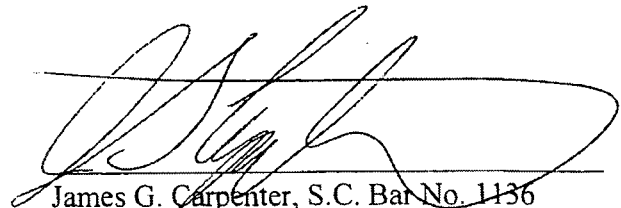
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