

IN THE CIRCUIT COURT OF OKTIBBEHA COUNTY MISSISSIPPI



IN RE: DEMOCRATIC MAYORAL PRIMARY
FOR CITY OF STARKVILLE BETWEEN
D. LYNN SPRUILL AND JOHN S. "JOHNNY"
MOORE

JOHN S. (JOHNNY) MOORE

PETITIONER

VS.

NO. 2017-0215-CVK

D. LYNN SPRUILL

RESPONDENT

SPECIAL APPEARANCE AND MOTION TO DISMISS

COMES NOW D. LYNN SPRUILL [SPRUILL], named Respondent in the above-captioned cause and makes her Special Appearance to contest the jurisdiction of this Court over both her person and the subject matter of this action and files this her MOTION TO DISMISS the Petition for Judicial Review of Election Contest filed by JOHN S. (JOHNNY) MOORE [MOORE] on June 12, 2017 and the Amended Petition for Judicial Review of Election Contest filed by him on June 13, 2017.

SUMMARY OF ARGUMENT

In Mississippi, a Special Tribunal hearing a party primary election contest only has jurisdiction to review the decision of the local body (in this case the Starkville Democratic Executive Committee [SDEC]) on that election contest. The instant action by MOORE challenges certain things concerning the primary runoff election for the Democratic Party's candidate for Mayor of Starkville on May 16, 2017, but it does not in any way challenge the action of SDEC in ruling on MOORE'S Petition for Election Contest. In fact, MOORE has fatally ignored both the SDEC hearing and its action on his Election Contest and has not invoked the limited jurisdiction of this Court.

MOORE has taken consistent efforts to avoid and frustrate SDEC's statutory duty to review his election contest, and when SDEC foiled MOORE's attempts to circumvent its jurisdiction and convened a hearing on MOORE's election contest, MOORE failed and refused to present any evidence in support of his unsworn Election Contest at the time and place set for the hearing. This hearing was set and convened with proper notice given within the time required by law.¹ MOORE, thus, actually and effectively abandoned his election contest. As a result of MOORE's failure to substantiate any allegations of his election contest, the SDEC acted, as it only properly could, on the evidence, or lack of evidence before it, and declared SPRUILL the elected nominee of the Democratic Party for Mayor of Starkville as it had done previously. Because of MOORE's actions or failures to act, this Court has no jurisdiction to review and go behind the decision of the SDEC.

FACTS

The Primary and the Run-Off.

MOORE and SPRUILL [and Damion Poe] qualified as candidates for Mayor of the City of Starkville in the City's Democratic Primary for the year 2017. In the primary election on May 2, SPRUILL received a plurality of the vote (47%) and led the ticket by 81 votes. (Ex. A – Affidavit of Patti Drapola, Chairman, Starkville Democratic Executive Committee at ¶2).

A run-off election between MOORE and SPRUILL was held on May 16. On May 17, the affidavit ballots were examined Starkville Municipal Election Commission [COMMISSION], and representatives of each candidate were allowed to review the affidavit ballots and raise issues regarding the ballots with the COMMISSION if they felt it appropriate. After the affidavit ballots were counted and included in the vote total, SPRUILL was declared the winner of the run-off, this

¹ MOORE's Election Contest (Ex. C) contains various generalized allegations without sufficient specificity. It is unsworn and no documents or other substantiation, much less any properly authenticated documentation, is attached to the Contest.

time by a six (6) vote margin. (Ex. B - Affidavits of P.C. McLaurin and Jim McKell, members of the COMMISSION)

MOORE then sent a letter to the SDEC requesting a recount of all ballots prior to certification. Since the law is clear that a recount is not a vehicle in Mississippi election law (see *Harpole v. Kemper County Democratic Executive Committee*, 908 So. 2d 129, 135 (Miss. 2005), this relief was denied. MOORE has not at any time complained of this denial.

The Election Contest is Filed and the Hearing Scheduled.

MOORE then requested to examine the ballot boxes and selected the date of Friday, May 26 for his examination. SPRUILL requested to examine the ballot boxes and selected the date of Thursday, May 25. Both MOORE and SPRUILL completed their respective examinations within the day scheduled.

Thereafter, MOORE filed a Petition for Election Contest with the SDEC. (Ex. A, ¶3 and Ex. C – Moore’s Petition for Election Contest) The Petition, though it bears a date of June 2, 2017, was served on the SDEC on Saturday, June 3. Thereafter the SDEC met and scheduled a hearing on the Election Contest for Tuesday, June 13, 2017. The parties were notified of the hearing on Wednesday, June 7. (Ex. A, ¶3 and Ex. F) There is nothing contained in MOORE’s Election Contest that states that he will need any extended period of time to present or have whatever evidence he intended to produce considered. (Ex. C) Moreover, MOORE made no objection to the hearing date and time. At no time did he ever notify the SDEC that he felt the date and time of the hearing gave him insufficient time to make his presentation or have it considered before the expiration of the ten (10) days he had to seek judicial review. (Ex. A, ¶3) SPRUILL provided the SDEC with a memorandum of law. (Ex. D – Spruill’s Memorandum to the Starkville Municipal Democratic Executive Committee)

MOORE Prematurely Files Suit the Day Before the SDEC Hearing.

Without any prior communication to SDEC or SPRUILL, and without any prior request for relief or an earlier hearing time, on the afternoon of Monday, June 12, 2017, the afternoon before the scheduled SDEC hearing at 10:00 a.m. the next morning, MOORE filed a Petition for Judicial Review of Election Contest purporting to invoke the jurisdiction of this Court over a hearing which had not yet even happened. In the Petition was the first mention to anyone that MOORE, not SDEC, had determined that SDEC would not have adequate time to hear his purported evidence and obtain a ruling in time for MOORE to file this Complaint (Petition for Judicial Review of Election Contest) within the statutory time frame. (Ex. A, ¶¶3 and 4)

After filing his Petition seeking to invoke this Court's jurisdiction, MOORE announced that he had the unilateral right to determine whether or not the SDEC could timely perform its duties, a matter to which he had not previously objected or even alluded. MOORE waited until the last possible minute to make this position known so that neither the SDEC nor SPRUILL could assent to having the hearing earlier. (Ex. A, ¶¶3 and 4)

On Monday afternoon MOORE also advised SDEC and SPRUILL that there was no reason for the hearing on Tuesday, June 13, since the Court now had jurisdiction of his election contest and the SDEC no longer did. According to MOORE he had the unilateral right to make the decision as to whether SDEC would have jurisdiction over the Election Contest he filed. MOORE stated that "[the hearing before the SDEC] would be moot anyway" based on his understanding that "this filing [with the circuit court] supersedes any action of the Executive Committee. (Ex. A, ¶4 and exhibit thereto - 6/12/17 email of Moore's attorney William Starks)

SPRUILL informed the SDEC that she intended to be present at the scheduled hearing and expected the SDEC to proceed, to which the SDEC Committee Chair responded that they would proceed. (Ex. E – 6/12/17 email of Lydia Quarles)

The Hearing Before the SDEC

The SDEC convened the hearing promptly at 10 o'clock on the 13th of June, as scheduled. MOORE and SPRUILL appeared, represented by counsel. The SDEC Chairman called the hearing to order and called upon MOORE, as the petitioner, to proceed. (Ex. A, ¶5)

MOORE first requested that the SDEC abandon the hearing because, in his opinion, the SDEC no longer had jurisdiction. When the SDEC informed MOORE that it intended to continue with the hearing, MOORE asked whether any members of the SDEC would recuse themselves. Receiving no recusals, MOORE asked the Chairman to recuse herself. The Chairman declined. (Ex. A, ¶6)

Though there were numerous further discussions between counsel for the parties and the SDEC, MOORE, at all times, refused or failed to offer any testimony or other evidence supporting the bare, general allegations in his Election Contest. At one point MOORE stated that he would stand on his written submission, the Election Contest. It should be noted that MOORE did make one legal argument which was – possibly, and possibly not -- contained in his Election Contest, concerning the validity of the contract between the SDEC and the Commission for conducting the election. SDEC heard arguments from both parties and did not act in MOORE's favor. It should also be noted that MOORE at no time ever sought to even argue, much less factually support, his four (4) bases asserted in his Election Contest. (Ex. A, ¶¶7, 8 and 9 and Ex. C)

MOORE was offered a final opportunity to present evidence; again, MOORE did not. MOORE concluded by asking SDEC to call an assistant attorney general who MOORE claimed

he had already consulted, and to seek his advice. The SDEC declined, and MOORE rested. (Ex. A, ¶¶9, 10 and 11)

The SDEC then called upon SPRUILL. After various arguments from SPRUILL's counsel, including a request that the SDEC consider her written submission, SPRUILL advised the SDEC that since MOORE had the burden of proof and had chosen not to go forward, there was no reason for her to present a case: there was nothing to respond to. (Ex. A, ¶7)

After having given MOORE several opportunities to present evidence, and no evidence being forthcoming, the SDEC acted on MOORE's Election Contest by taking an oral roll-call vote in public in the hearing. Each of the six (6) SDEC members declared the winner of the primary run-off election to be SPRUILL. The meeting was concluded at approximately 12:30 p.m. The SDEC released a written decision in mid-afternoon. (Ex. A, ¶¶11 and 12 and exhibit thereto)

Also, in the afternoon, MOORE filed an Amended Petition for Judicial Review of Election Contest in this cause. The Amended Petition makes no reference to, nor does it complain of, the hearing or ruling of the SDEC on MOORE's Election Contest, even though it was filed subsequent to the decision. Thus, MOORE has yet to acknowledge the SDEC's action on his Election Contest, much less suggest that the SDEC's decision was improper or erroneous.

ARGUMENT

The SDEC: A Predicate to MOORE Seeking Judicial Review.

Mississippi law requires that a primary election contest be filed with the party's executive committee, and it is the duty of that executive committee to hear and determine that election contest. *Miss. Code Ann.* §23-15-921. "As a ***predicate*** to a petition for judicial review the contestant ***must first present*** his grievance to the county, or in this case, municipal executive committee." *Moore v. Parker*, 962 So. 2d 558, 564 (Miss. 2007) (citations omitted) (emphasis

supplied). This is the crux of what MOORE has not done. In fact, MOORE sought in every way he could to avoid his obligation to proceed before and obtain an adjudication from the SDEC, the very predicate needed to invoke the jurisdiction of this special tribunal

If judicial review is sought it may only be sought with regard to the matters brought before and the decision made by the municipal executive committee. “The special tribunal is limited in its review and examination to matters presented by the original contest petition brought before the executive committee.” *Id.* at 565 (citations omitted). MOORE can only invoke this Court’s jurisdiction and seek review of the action of the SDEC in deciding on his Election Contest.

Neither MOORE’s Petition nor his Amended Petition herein make any mention whatsoever of the matters which were, or in this case were not (there being no evidence offered in support of the contest at all), brought before the municipal executive committee. Perhaps even more damning is that neither MOORE’s Petition nor his Amended Petition even make any reference to the decision of the municipal executive committee, the SDEC.

Since the extent of this Court’s special jurisdiction is limited to the review of the action of the SDEC, and since MOORE’s position does not appeal from that decision, and, in fact, does not even mention it, the jurisdiction of this Court has not been invoked, and has certainly not been invoked within the ten (10) days required by our Code.

MOORE’s Petition for Judicial Review Does Not Fall Under §23-15-927

MOORE argues that *Miss. Code Ann.* §23-15-927 relieves him of his obligation to proceed before the SDEC at any time and under any circumstances MOORE so chooses. This section of the Code develops the right of the contestant of any election to forthwith file in the circuit court of the county wherein the irregularities are charged to have occurred “*if* the executive committee . . . shall **fail to promptly meet or having met shall fail or unreasonably delay to fully act** upon the

contest or complaint, or shall **fail to give with reasonable promptness the full relief required** by the facts and the law.” *Barbour v. Gunn*, 890 So. 2d 843, 847 (Miss. 2004). (Emphasis supplied)

MOORE argues that *Barbour, supra*, allows a contestant at any time to file an action for review with the circuit court and deprive the municipal executive committee of jurisdiction and thus circumvent the process established by *Miss. Code Ann.* §23-15-927. That is clearly wrong. The statute clearly requires that certain conditions be met before pursuing judicial review (without a decision of the executive committee.

Additionally, there is a clear factual distinction between the *Barbour* case and the case at bar. In *Barbour, supra*, the election committee was concerned that “*they* would not have time before the general election to decide the issue.” *Id.* at 847. Because of this decision of the committee, the Supreme Court found that it was completely permissible for Gunn to “[seize] the reins” and steer his complaint directly to circuit court.

That is not the case here. Here MOORE filed a petition, requested a hearing, was apprised of a hearing and, so far as anyone knew until approximately eighteen (18) hours prior to the hearing, was prepared to go forward at the hearing. Then, suddenly, MOORE claims to have decided that the hearing set by the SDEC did not provide the SDEC adequate time to hear the evidence MOORE purportedly wanted to put on and still enable the SDEC to rule on the evidence. Had the SDEC determined that it did not have adequate time to hear the complaint that would be one thing; but here it was MOORE who sought to make the decision based upon his opinion about the ability of the SDEC to fulfill its legal duties. The SDEC set the hearing, noticed the hearing, was never advised by any party that the date of the hearing was inadequate. The SDEC was present and prepared to proceed.

MOORE never at any time notified the SDEC that a hearing on June 13, 2017 was inadequate, though he had been apprised of the date and time almost a week before, on June 7. If at any time MOORE had notified the SDEC that he needed more time the hearing could have been moved up to an earlier day. Yet, MOORE waited until the very last minute when the SDEC could no longer grant him any additional accommodation to say that he, MOORE, was of the opinion that the time allotted would be insufficient. Whether this course of action was intentional or whether it was negligent, the old legal maxim that one who sleeps on his rights loses them, certainly applies. Besides, MOORE never even made an attempt to put on any proof he may have had. We can never know what time would have been required: we have only MOORE's self-serving opinion.

Barbour v. Gunn states: “***So there is a simple test to be considered for filing a contest in circuit court: the committee having jurisdiction must fail to promptly meet, or unreasonably delay action, or fail to give prompt relief.***” *Id.* at 847 (emphases supplied). In the case of MOORE, the committee having jurisdiction did not fail to promptly meet, did not unreasonably delay action, nor did it fail to give prompt relief. MOORE did not have the right to circumvent the SDEC.

The Hearing on the Election Contest and its Consequences for MOORE.

Failing to convince the SDEC to cancel the hearing because of the premature filing of his Petition with this Court, MOORE did appear for the hearing scheduled by the SDEC and about which he had not previously complained. Obviously concerned about his legal position, MOORE assented to participate in the hearing, though MOORE primarily argued that the SDEC had no jurisdiction and could not proceed because of MOORE's Petition to this Court. Thereafter, as recited above, he urged various action from the SDEC, which they declined.

The SDEC gave MOORE numerous opportunities to present testimony or other evidence to support his Election Contest. The Chairman of the SDEC asked MOORE's counsel if he wished to proceed several times. At every opportunity MOORE declined to go forward with his Contest. Late in the proceeding MOORE stated he would "stand" on his pleadings but would submit no evidence or argument or discussion to support them – just an attitude of: "Here's-my-paper. You go figure it out. I'm not going to help you or provide any guidance or information."

These "pleading" on which MOORE said he was standing was MOORE's Petition for Election Contest (Ex. C) and nothing more. The Election Contest was not verified nor supported by affidavit, nor did it attach any documents or other papers, and the allegations were very generalized with no specificity. As noted, MOORE did not even make an effort to argue or discuss what was in his "pleading".

It is the duty of the contestant to plead and prove issues with specificity. It has long been established that such a contest filed before an election committee "**shall be reasonably specific in its charges and not in mere general language.**" *Burham v. Shaw*, 186 Miss. 647, 658, 191 So. 484, 486 (Miss. 1939) (Emphasis Supplied). See also: *Moore v. Parker, supra*, 962 So. 2d at 563.

MOORE put on no proof for the SDEC to consider. He called no witnesses; he introduced no documentary evidence. He provided the SDEC absolutely no factual or legal reason to change or alter the results of the election. MOORE continually relied upon his argument that the SDEC had no jurisdiction and whatever the SDEC did was moot because he had filed suit. Presented with no other choice and having no factual basis from MOORE, the SDEC did the only thing it could do, it unanimously declared SPRUILL the winner of the election.

MOORE had the burden to prove, as contestant, the existence of the allegations made in the petition; he made no effort to do so. He developed no factual record which would support any

change in the decision of the SDEC. Effectively and practically, MOORE abandoned his Election Contest before the SDEC.

The Court Has No Jurisdiction Outside the Bounds of the SDEC Hearing at Which Moore Submitted No Evidence, and Moore Does Not Complain of that Hearing or its Result.

The fact that no proof was offered before the SDEC is fatal to MOORE's Petition before this Court. As the Mississippi Supreme Court stated in *Boyd v. Tishomingo County Democratic Executive Committee*, 912 So. 2d 124 (Miss. 2005): **"We are unable to ignore the requirements set by the Legislature that the special tribunal only consider those issues raised before the executive committee."** *Id.* at 134. (Emphases Supplied) See also: **"The special tribunal in an election contest has jurisdiction only to hear those issues that a party raised before the executive committee."** *Id.*

In *Boyd, supra*, the contestant put on proof before the executive committee, and then, after the matter being delivered to the tribunal, sought to amend his pleadings to raise additional errors. Referencing the decision of *Darnell v. Myres*, 202 Miss. 767, 772-72, 32 So. 2d 684, 685 (1947)² the tribunal said simply that the issues which Boyd tried to argue through amendment were not brought before the executive committee and the special tribunal correctly determined it had no jurisdiction to consider issues not raised before the executive committee.

The special tribunal in an election contest has jurisdiction only to hear those issues that a party raised before the executive committee. Pursuant to §23-15-927, a contestant who makes no protest or sworn contest before the executive committee cannot confer any jurisdiction on the special tribunal. This special tribunal has before it literally nothing, and thus, respectfully, has no jurisdiction.

² *Darnell v. Myres, supra*, stands for the proposition that there is no jurisdiction to review the action of the executive committee if the contestant brought nothing before the committee. Only matters presented by the original contest or protest before the executive committee can be reviewed or examined by the special judicial tribunal.

As noted in *Shannon v. Henson*, 499 So. 2d 758 (Miss. 1986):

The nature of judicial review of an election contest is neither fish nor fowl in the sense the Special Tribunal's authority and mode of proceeding are quasi-original and quasi-appellate. The proceedings are in the nature of an appeal in that no matter may be presented to the Special Tribunal not previously heard and decided by the Executive Committee.

Id. at 764, citing *Darnell v. Myres, supra*; *Harris v. Stewart*, 187 Miss. 489, 507, 193 So. 339, 343-44 (Miss. 1940).

Matters not before the SDEC could not be considered or decided by it. Because of the special tribunal's limited scope of review, it would be wholly inappropriate to take up things not before the SDEC. What issues were raised before the SDEC? Critically, none. While there were various generalized, non-specific allegations in an unsworn petition, there were no issues raised and no proof adduced before the SDEC. Thus, this Tribunal is without jurisdiction to consider any issue.

CONCLUSION

Where, as in this case, there is a contest of a party primary election, Mississippi law requires the contesting party (MOORE) present that protest to the party executive committee, *i.e.*, the SDEC, so that the committee may exercise its legal rights and perform its legal duties to consider the facts and law and rule on the contest.³ It is only the action of the SDEC which this special tribunal has any jurisdiction to review. If MOORE has failed or refused to go forward before the SDEC, he has abandoned his Election Contest.

MOORE's argument that *Miss. Code Ann.* §23-15-927 gives him the right to dictate and control how the process of an election contest will go and bypass the party executive committee is

³ None of the very limited exceptions to this rule are present here. See, *e.g.*, *Barbour v. Gunn*, 890 So. 2d 843, 847 (Miss. 2004) (The committee having jurisdiction must fail to promptly meet, or unreasonably delay action, or fail to give prompt relief.)

simply fallacious. MOORE has submitted no proof, nor do the facts show, that MOORE's Petition for Judicial Review falls within the bounds of §23-15-927.

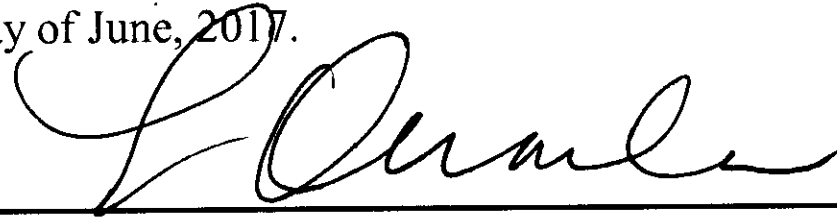
MOORE has done everything he could to bypass and circumvent the requirement that the SDEC first hear and adjudicate his protest. MOORE seeks to avoid the SDEC and seeks a special tribunal to review his Election Contest. MOORE should not be allowed to bypass the party committee because he wants to, or because he prefers not to make his case to the committee, or because he doesn't have a case and hopes to find one later, or whatever. This is not a decision that MOORE gets to make. The law requires otherwise.

The Court's jurisdiction is to review the action of the Committee on MOORE's election contest. MOORE does not get to skip the SDEC if he wants to. No evidence was submitted by MOORE at the hearing to back up any of his general, non-specific allegations. There was no proof to show that the time allowed for the SDEC hearing was insufficient, and MOORE certainly never raised that issue in any way before it was too late for the SDEC to allow him more time if he thought he needed it. Here the Committee did act and did act timely and within the statutory ten (10) day requirement, and it acted in light of the complete lack of cooperation and evidence from MOORE.

As there was no evidence placed before the SDEC, there is nothing for the Court to review, and thus this Court has no jurisdiction over the parties or the subject matter. MOORE's complaint (including its amendment) ask this Court to become a party to his subversion of the positive law of Mississippi – the bypassing of the party executive committee. If the Court were to review any of Moore's allegations concerning the election, it would be validating MOORE's complete and total repudiation of the SDEC and his contempt for what State law requires. Such a review could only act as encouragement for others to do likewise.

Lynn Spruill, through her special appearance, respectfully suggests that this Court has no jurisdiction, and the Court should immediately dismiss this case for lack of jurisdiction.

Respectfully submitted, this the 16th day of June, 2017.



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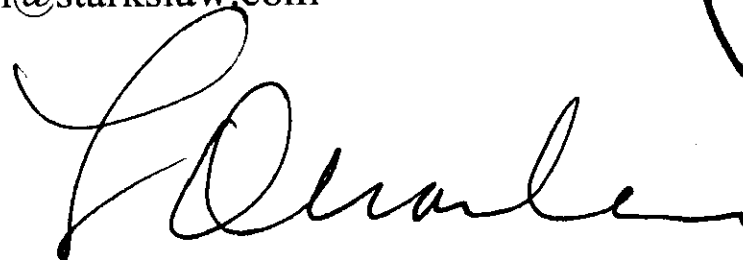
ATTORNEYS FOR MOVANT LYNN SPRUILL

CERTIFICATE OF SERVICE

I, the undersigned attorney for Movant, do hereby certify that I have this day served, via email, and U.S. Mail, postage prepaid, a true and correct copy of the above and forgoing Special Appearance and Motion to Dismiss to counsel for Petitioner at his regular email and office addresses:

William P. Starks, II, Esq.
Starks Law Firm
Post Office Box 748
Columbus, Mississippi 39703
Email: william@starkslaw.com

This the 16th of June, 2017.



LYDIA QUARLES
MOZINGO|QUARLES PLLC



LIST OF EXHIBITS

- Exhibit A Affidavit of Patti Drapola, Starkville Democratic Executive Committee
- Exhibit A June 12, 2017 email from William Starks (Moore)
- Exhibit B June 13, 2017 written decision of Starkville Democratic Executive Committee
- Exhibit B Affidavits of P.C. McLaurin and Jim McKell, Starkville Election Commission
- Exhibit C Petition for Election Contest (Moore)
- Exhibit D Memorandum to the Starkville Municipal Democratic Executive Committee (Spruill)
- Exhibit E June 12, 2017 email from Lydia Quarles (Spruill)
- Exhibit F Notice of Hearing, Starkville Democratic Executive Committee



IN THE CIRCUIT COURT OF OKTIBBEHA COUNTY
STATE OF MISSISSIPPI

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MOORE

JOHN S. (JOHNNY) MOORE
VS.
D. LYNN SPRUILL

PETITIONER
NO. 2017-0215-CVK
RESPONDENT

STATE OF MISSISSIPPI
COUNTY OF OKTIBBEHA

AFFIDAVIT OF PATTI DRAPALA

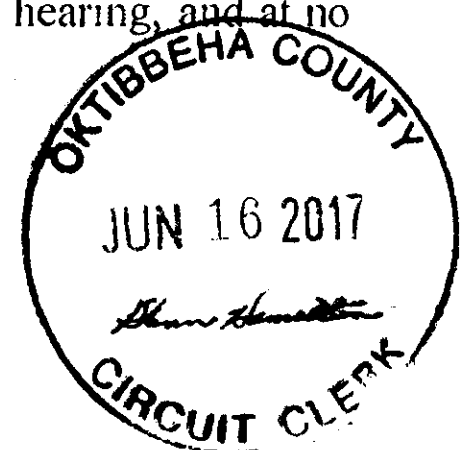
Personally appeared before me, the undersigned authority in and for the jurisdiction aforesaid, Patti Drapala, who, being first duly sworn by me, states and deposes on oath as follows:

1. I am the Chair of the Democratic Executive Committee of the City of Starkville (SDEC) and I make this affidavit of my personal knowledge.

2. Johnny Moore, Lynn Spruill and Damion Poe qualified as candidates for Mayor of the City of Starkville in the City's Democratic Primary for the year 2017. In the primary election on May 2, Ms. Spruill received a plurality of the vote. A run-off election between Mr. Moore and Ms. Spruill was held on May 16. After the affidavit ballots were counted and included in the vote total, Ms. Spruill was declared the winner of the run-off, this time by a six (6) vote margin.

3. On June 3, 2017, I was personally served with John S. Moore's Petition for Election Contest. Thereupon the SDEC met and scheduled a hearing on five (5) days' notice to be held on Tuesday, June 13, 2017, and gave notice of the hearing to John S. Moore and Lynn Spruill on Wednesday, June 7, 2017. Neither party objected to the date and time of the hearing, and at no

1
EXHIBIT A



time did John Moore notify the SDEC that he believed the date and time of the hearing gave him insufficient time to make his presentation or have it considered before the expiration of his ten-day period to file a case in Circuit Court.

4. On Monday afternoon I received an email from Mr. Moore's attorney, William Starks, showing a "sent time" of 3:47 p.m. (though I am not sure exactly what time I saw it) notifying me and other members of the SDEC that Mr. Moore had filed suit in court because "a hearing set by the Committee tomorrow did not provide adequate time to present the voluminous evidence of all the contested ballots and obtain a ruling in time to file this Complaint." The email also requested that the hearing on Mr. Moore's Election Contest be cancelled "since it would be moot anyway." A copy of the email is attached to my Affidavit as Exhibit A. At that late time on Monday afternoon it was impossible to schedule the hearing any earlier.

5. The SDEC convened the hearing promptly at 10 o'clock on June 13, 2017, as scheduled. Mr. Moore and Ms. Spruill appeared and both were represented by counsel. I called the hearing to order and asked Mr. Moore, as the petitioner, to proceed.

6. At the beginning of his presentation, Mr. Moore's counsel, William Starks, requested that the SDEC proceed no further with the hearing because the SDEC no longer had jurisdiction, since he had filed a Petition for Judicial review in the Circuit Court. The Committee told counsel that it intended to continue with the hearing, and Mr. Starks asked whether any members of the SDEC would recuse themselves. No member of the committee recused himself or herself. Mr. Starks then asked me to recuse myself, and I declined to do so, telling him that I could officiate at the hearing in an unbiased manner and alongside the five other voting members of the SEDC.

7. Mr. Starks told the Committee that he would stand on the written Petition for Election Contest which he had served on the Committee. I offered Mr. Starks another opportunity to pre-

sent evidence and he did not do so. Ms. Spruill's attorney, James Mazingo, told the Committee that since Mr. Moore had the burden of proof in the matter and did not choose to go forward, there was no reason for Ms. Spruill to present a case because there was nothing to respond to.

8. Mr. Starks made an argument that the contract between the SDEC and the election City of Starkville Election Commission, through which the Commission conducted the election, was invalid. Mr. Starks did not make an argument about any of the other items in the Moore Petition.

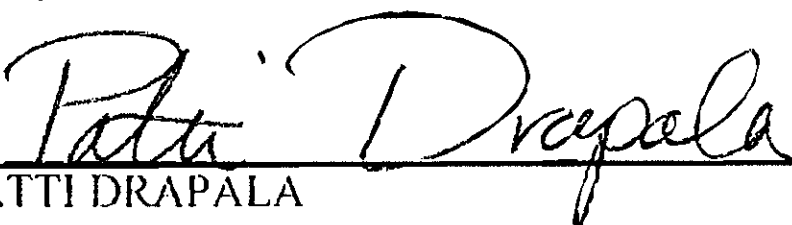
9. Mr. Starks requested that the SDEC call the Attorney General's Office and talk to Mr. Phil Carter, with whom he said he had already communicated. Mr. Starks argued that it would be sensible to do so because Mr. Carter's opinion would shield the SDEC from liability. Mr. Mazingo stated that an Attorney General's opinion would shield the Committee from liability only if the opinion was addressed to us and spoke to the precise issue. The Committee voted 6-0 not to discuss the matter with Mr. Carter. The SDEC had already discussed election issues with Mr. Carter in the past, and we were uncomfortable that Mr. Starks had already spoken to Mr. Carter to prepare him for the SDEC's call.

10. After the Committee told the parties that the SDEC would not call Mr. Carter and intended to proceed with the hearing, Mr. Starks rested Mr. Moore's case.


11. The other members of the SDEC and I were prepared to hear whatever specific or compelling evidence Mr. Moore had about the irregularities in the election which he alleged in his Petition for Election Contest. The irregularities he cited were general, and I tried repeatedly to give Mr. Moore's counsel room to introduce specifics about the conduct of the election. However, Mr. Moore did not present the SDEC any specifics which would compel us to go into the ballot boxes

12. The SDEC conducted an oral roll-call vote in public at the conclusion of the hearing. Each member of the Committee voted to declare Lynn Spruill as the winner of the primary run-off election. The hearing was concluded at approximately 11:30 p.m. The SDEC gave a written decision to the parties in mid-afternoon on June 13, 2017, a copy of which is attached to my Affidavit as Exhibit B.

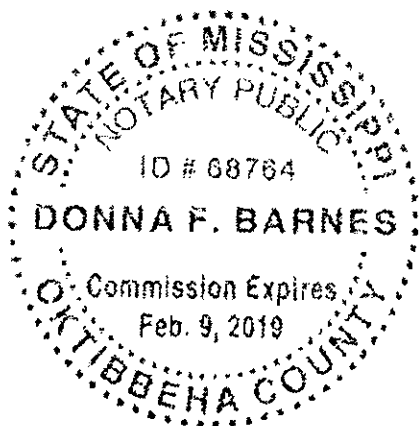
WITNESS my signature this the 15th day of June, 2017.


PATTI DRAPALA

Sworn to and subscribed before me this the 15th day of June, 2017.


NOTARY PUBLIC

SEAL



From: william@starkslaw.com
To: dlspruill@bellsouth.net; lydia@mqlawoffices.com; Jim Mozingo; pattidrapala@gmail.com; eshine46@hotmail.com; w.conley60@yahoo.com; DEW1Brandon@bellsouth.net; rvancolvin@hotmail.com; jomorse333@sbcglobal.net; Yolanda102265@hotmail.com; L.hardin@cityofstarkville.org
Subject: Election Contest - Mayor of Starkville - Circuit Court File Stamped Complaint
Date: Monday, June 12, 2017 3:48:10 PM

Attached is a link to the file stamped complaint requesting judicial review of the election contest filed with the Circuit Clerk today. With the strict 10 day deadline for filing for judicial relief, a hearing set by the Committee tomorrow did not provide adequate time to present the voluminous evidence of all the contested ballots and obtain a ruling in time to file this Complaint. Thus, we made the decision to go ahead and file due to the time issue. Pursuant to MCA Section 23-15-927, it is my understanding that this filing supersedes any action by the Executive Committee, thus, I would request that the Committee cancel the hearing since it would be moot anyway. If you still intend on proceeding with the hearing, please advise accordingly so I may be present. I am hoping that this reaches everyone in time to avoid anyone attending unnecessarily.

<https://www.dropbox.com/sh/a6kkwghw6zfa7v/AACbafjmSOpOMzrSwTaXYCaBa?dl=0>

Thanks,

William Starks

EXHIBIT A - Exhibit A (Para. 4)



**DEMOCRATIC MUNICIPAL EXECUTIVE COMMITTEE
STARKVILLE, MISSISSIPPI**

JOHNNY MOORE

PETITIONER

V.

LYNN SPRUILL

DEFENDANT

DECLARATION OF TRUE RESULT

This matter came before the Starkville, Mississippi Democratic Municipal Executive Committee for hearing on June 13, 2017 through the petition of Johnny Moore, Democratic candidate for mayor of Starkville in the Democratic Primary held on Tuesday, May 16, 2017.

Executive Committee members present for the hearing were Patti Drapala, Chair; Walter Conley, Vice-Chair; Ryan Colvin; Yolanda Walker; Diane Wall; and James Morse. Also present were Johnny Moore and counsel William Starks; and Lynn Spruill and counsel Jim Mazingo and Lydia Quarles.

Having considered the petition and arguments of counsel, the Executive Committee, by a vote of 6 for and 0 against, finds as follows:

1. The certified results of the May 16, 2017 Starkville Municipal Democratic Primary are hereby affirmed as the true result of the election and Lynn Spruill is declared the winner of the Democratic Primary for mayor of Starkville.

So declared, this the 13th day of June, 2017.



Patti Drapala, Chair
Starkville Democratic Municipal Executive Committee



IN THE CIRCUIT COURT OF OKTIBBEHA COUNTY
STATE OF MISSISSIPPI

IN RE: DEMOCRATIC MAYORAL PRIMARY
FOR CITY OF STARKVILLE BETWEEN
D. LYNN SPRUILL AND JOHN S. "JOHNNY"
MOORE

JOHN S. (JOHNNY) MOORE
VS.
D. LYNN SPRUILL

PETITIONER
NO. 2017-0215-CVK
RESPONDENT

STATE OF MISSISSIPPI
COUNTY OF OKTIBBEHA

AFFIDAVIT OF JIM MCKELL

Personally appeared before me, the undersigned authority in and for the jurisdiction aforesaid, JIM MCKELL, who, being first duly sworn by me, states and deposes on oath as follows:

1. I am a member of the Starkville Election Commission (SEC) and I make this affidavit of my personal knowledge.

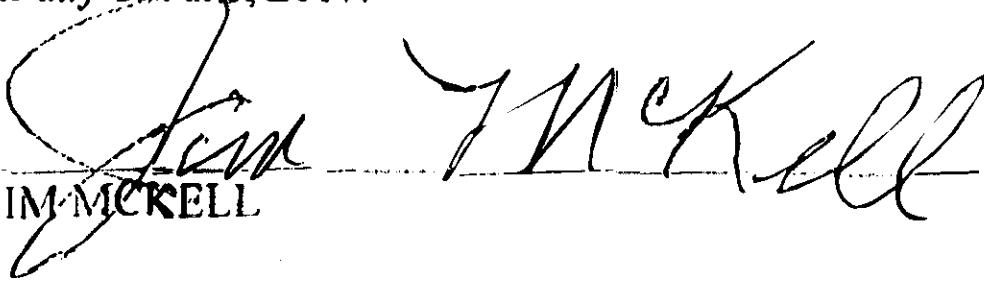
2. In the Democratic Party primary election for Mayor of Starkville on May 2, 2017, Lynn Spruill received a plurality of the vote. A run-off election between Johnny Moore and Lynn Spruill was held on May 16. On May 17, the affidavit ballots were examined by the SEC. Representatives of each candidate, Moore and Spruill, were allowed to review the affidavit ballots and raise issues regarding the ballots with the SEC if they felt it appropriate. The SEC determined which affidavit ballots were eligible to be counted and which were not. There were numerous discussions with the candidates' representatives concerning the affidavit ballots and whether or not they should be counted.

1
EXHIBIT B

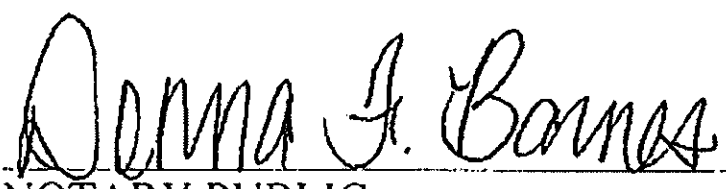


3. After the affidavit ballots were counted and included in the vote total from May 16, Lynn Spruill was determined to be the winner of the run-off by a six (6) vote margin.

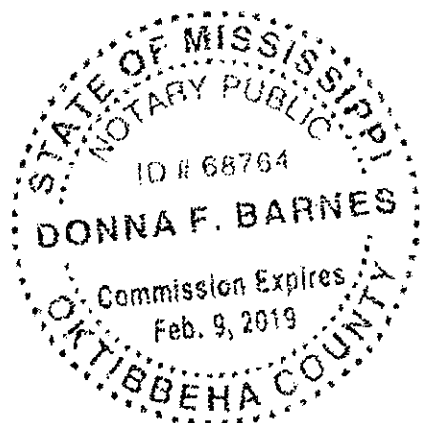
WITNESS my signature this the 16th day of June, 2017.


JIM MCKELL

Sworn to and subscribed before me this the 16th day of June, 2017.


NOTARY PUBLIC

SEAL



IN THE CIRCUIT COURT OF OKTIBBEHA COUNTY
STATE OF MISSISSIPPI

IN RE: DEMOCRATIC MAYORAL PRIMARY
FOR CITY OF STARKVILLE BETWEEN
D. LYNN SPRUILL AND JOHN S. "JOHNNY"
MOORE

JOHN S. (JOHNNY) MOORE
VS.
D. LYNN SPRUILL

PETITIONER
NO. 2017-0215-CVK
RESPONDENT

STATE OF MISSISSIPPI
COUNTY OF OKTIBBEHA

AFFIDAVIT OF P.C. MCLAURIN

Personally appeared before me, the undersigned authority in and for the jurisdiction aforesaid, P.C. MCLAURIN, who, being first duly sworn by me, states and deposes on oath as follows:

1. I am a member of the Starkville Election Commission (SEC) and I make this affidavit of my personal knowledge.

2. In the Democratic Party primary election for Mayor of Starkville on May 2, 2017, Lynn Spruill received a plurality of the vote. A run-off election between Johnny Moore and Lynn Spruill was held on May 16. On May 17, the affidavit ballots were examined by the SEC. Representatives of each candidate, Moore and Spruill, were allowed to review the affidavit ballots and raise issues regarding the ballots with the SEC if they felt it appropriate. The SEC determined which affidavit ballots were eligible to be counted and which were not. There were numerous discussions with the candidates' representatives concerning the affidavit ballots and whether or not they should be counted.

3. After the affidavit ballots were counted and included in the vote total from May 16, Lynn Spruill was determined to be the winner of the run-off by a six (6) vote margin.

WITNESS my signature this the 16th day of June, 2017.

P. C. Mc Laurin

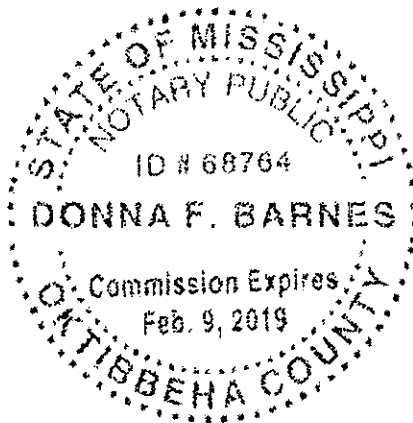
P.C MCLAURIN

Sworn to and subscribed before me this the 16th day of June, 2017.

Donna F. Barnes

NOTARY PUBLIC

SEAL



BEFORE THE DEMOCRATIC EXECUTIVE COMMITTEE
CITY OF STARKVILLE, MISSISSIPPI

IN RE: DEMOCRATIC MAYORAL PRIMARY FOR
CITY OF STARKVILLE BETWEEN D. LYNN SPRUILL AND
JOHN S. "JOHNNY" MOORE

JOHN S. "JOHNNY" MOORE PETITIONER

VS.

D. LYNN SPRUILL RESPONDENT

PETITION FOR ELECTION CONTEST

COMES NOW, John S. "Johnny" Moore, pursuant to MCA §23-15-921, and files this Petition to Contest the May 16, 2017, Democratic primary run-off election for the position of Mayor of the City of Starkville, and in support thereof, would show the following:

1. Petitioner, Johnny Moore, is an adult resident citizen and qualified elector of the City of Starkville, Mississippi, and was duly qualified as a Democratic candidate for Mayor of the City of Starkville in the 2017 Democratic primary.

2. Petitioner faced respondent, D. Lynn Spruill, in the Democratic primary run-off election for Mayor of the City of Starkville on May 16, 2017¹.

3. The Democratic primary election was conducted by the city of Starkville municipal election commissioners pursuant to a contract with the Starkville municipal Democratic executive committee. The contract was signed by Albert Gore, Jr., Chairman

¹ Johnny Moore, D. Lynn Spruill and Damion Poe were the original candidates in the initial primary on May 2, 2017, and Moore and Spruill were the top two receivers of votes in the initial primary and proceeded to the run-off election on May 16, 2017.



of the “Democratic Executive Committee”², Starkville Election Commission Chair James McKell and the Municipal Clerk, Lesa Hardin.

4. The May 16, 2017, election was conducted solely by paper ballots rather than the direct recording electronic voting equipment which was available or by optical mark ballots which could be scanned. Upon information and belief, the municipal election commission chose the paper ballots by finding that it would be less expensive than using the electronic equipment.

5. After tabulation in counting of the ballots, the Starkville Municipal election commissioners and/or the Starkville municipal democratic executive committee certified the election results for mayor of Starkville as follows:

D. Lynn Spruill	1872 votes
Johnny Moore	1866 votes

6. As a result of the above certification of the primary runoff election, the Starkville Municipal Election Commission and/or Starkville Municipal Democratic Executive Committee declared Lynn Spruill as the winner by 6 votes.

7. Petitioner contends that numerous irregularities and willful violations of Mississippi election law occurred during the primary runoff election and during the computation of the primary runoff election results. These issues in their totality

² Albert Gore, Jr., is known to be the Oktibbeha County Democratic Executive Committee Chair but it is unknown if he was a member of the Starkville Democratic Municipal Executive Committee as elected in the 2013 municipal election for same. Thus, there may be an issue of whether a valid agreement exists for the Starkville Municipal Election Commission to conduct the primary for the Democratic party.

represent a radical departure from Mississippi election law and make it impossible to discern the true will and intent of the voters in the City of Starkville.

8. Petitioner, Johnny Moore, pursuant to Mississippi law, examined the ballot boxes associated with his election on May 26, 2017. The examination revealed numerous errors and irregularities which were made regarding the conduct of the election, and the casting of regular ballots, absentee and affidavit ballots in the run-off election.

DEVIATIONS FROM ELECTION LAW

9. In the run-off primary election on May 16, 2017, there were several deviations from Mississippi election law.

A. FAILURE TO PROVIDE ACCOUNTING FOR ALL BALLOTS

10. MCA Section 23-15-591 was not complied with which requires that a receipt by the manager who received the blank ballots be enclosed in the ballot box, with a tally of total ballots voted, the number of spoiled ballots and unused ballots, showing the totals correspond with the receipt. If they do not match up, the "failure must be perfectly accounted for by a written statement under oath of the managers, which statement must be inclosed in the ballot box." MCA §23-15-591.

10. The failure to comply with §23-15-591 provides grounds for the executive committee to throw out the entire box if these failures make it "impossible to arrive at the will of the voters" in said precinct. See MCA §23-15-593. The Secretary of State, in its municipal election forms, has provided a "Paper Ballot Accounting Report" form as an example of the required accounting. Although the poll managers are not required to use this particular form, the poll managers are required to account for the paper ballots

and provide a written statement if the numbers do not correspond with the number of ballots received. No accounting form was used in some precincts to tally the ballots. In others, the poll managers made a futile attempt to account for the paper ballots, but did not account for all ballots received since there was no initial certification of how many ballots were received. Also, the poll managers did not account for discrepancies between the actual number of the votes cast and the receipt book and/or poll book.

11. Further, MCA §23-15-335 provides:

The county executive committee shall designate a person whose duty it shall be to distribute all necessary ballots for use in a primary election, and shall designate one (1) among the managers at each polling place to receive and receipt for the blank ballots to be used at that place. When the blank ballots are delivered to a local manager, the distributor shall take from the local manager a receipt therefor signed in duplicate by both the distributor and the manager, one of which receipts the distributor shall deliver to the circuit clerk and the other shall be retained by the local manager and said last mentioned duplicate receipt shall be enclosed in the ballot box with the voted ballots when the polls have been closed and the votes have been counted. The printer of the ballots shall take a receipt from the distributor of the ballots for the total number of the blank ballots delivered to the distributor. The printer shall secure all ballots printed by him in such a safe manner that no person can procure them or any of them, and he shall deliver no blank ballot or ballots to any person except the distributor above mentioned, and then only upon his receipt therefor as above specified. The distributor of the blank ballots shall so securely hold the same that no person can obtain any of them, and he shall not deliver any of them to any person other than to the authorized local managers and upon their respective receipts therefor. The executive committee shall see to it that the total blank ballots delivered to the distributor, shall correspond with the total of the receipts executed by the local managers.

No receipts, signed by the receiving manager, establishing a beginning number of ballots received by the receiving manager at each precinct were present in the ballot box. Thus, any accounting attempted of the remaining ballots is impossible to do without an

established beginning number of ballots certified by the receiving manager. In most precincts, the number of persons signing the receipt book did not match the number of ballots cast as required. Since the accounting issues are pervasive and affect all precincts, a new election should be ordered since the integrity of the ballot boxes cannot be ascertained due to the failure to account for all ballots and other deficiencies.

B. IMPROPER MARKING OF PAPER BALLOTS

12. Mississippi Code Annotated Sections 23-15-333 requires the election commission to provide "Cards of Instruction" on how to mark the ballots properly and obtain a new one if spoiled. No cards of instruction were provided to the voters, posted in the precinct and the only instruction on the ballot was the phrase "Choose one."

13. Mississippi law requires that the voter mark a paper ballot only by use of an "X" or alternatively, a check in the form of and similar to a "V" opposite the name of their candidate of choice. See MCA §23-15-551.

14. Numerous ballots which were counted contained improper and illegal distinguishing marks such as the signature of the voter or circles, arrows or stars, rather than the mandated "X" or "V" marks allowed. In the instance where a voter places "any mark upon his ballot by which it can afterward be identified," such action constitutes a misdemeanor by the voter. See MCA §97-13-45.

15. In one instance, a vote for Johnny Moore with a signature of a voter was placed into the "Rejected Ballots" envelope in Ward 2, but another ballot in the same precinct was counted as valid for his opponent despite containing a signature of the voter. There were numerous ballots which were counted which contained a signature of the

voter which were cast for either candidate. However, this counting method is not in compliance with Mississippi election law. See *Rush v. Ivy*, 853 So.2d 1226 (finding that rejected ballots "all contained distinguishing remarks that rendered them invalid").

C. AFFIDAVIT BALLOTS IMPROPERLY REJECTED OR ACCEPTED

16. On May 17, 2017, the Starkville Municipal Election Commissioners met to canvas and count the affidavit ballots in the election primary run-off conducted on May 16, 2017.

17. During this canvas, the election commissioners "accepted" 18 of the affidavit ballots and "rejected" 24, out of a total of 42 affidavit ballots cast.

18. At least one of the accepted affidavit ballots is believed to have failed to comply with a mandatory provision of the affidavit ballot law which requires that the voter signed the affidavit receipt book. See MCA §23-15-573(3)(a). This voter, known as the pizza guy, also did not place the ballot in the ballot envelope, but instead placed the ballot into the regular ballot box.

19. Several rejected affidavit ballots were improperly rejected or rejected inconsistently when compared to other accepted affidavit ballots.

20. In Petitioner's review, he has identified at least nine (9) affidavit ballots which should have been "accepted" rather than rejected by the election commissioners which can be identified and shown when the Committee examines the rejected affidavit ballots in each ballot box. Petitioner can identify the specific affidavit ballot envelopes and the reasons they should have been accepted in the hearing when each rejected affidavit ballot is examined by the committee from the ballot boxes.

D. ABSENTEE BALLOTS IMPROPERLY REJECTED OR ACCEPTED

21. Mississippi's election law allows for absentee ballots to be cast under certain conditions, including but not limited to, a voter being disabled, out of the county on election day, having to work during election hours, etc. See MCA §23-15-627, 23-15-673, and 23-15-713 for all reasons allowed for absentee ballots.

22. Absentee ballots may be cast by appearing in person at the Municipal Clerk's office or by mail for certain categories of voters. See MCA §23-15-715 and 23-15-721.

23. Absent ballot applications and absentee ballot envelopes must be acknowledged as required by the absentee ballot laws. The applications and ballot envelopes of those who are temporarily or permanently disabled need not be acknowledged by an official authorized to administer oaths, but must only be witnessed and signed by a person eighteen (18) years of age or older. See MCA §23-15-631.

24. The general procedure for submitting an absentee ballot requires the voter to request an absentee ballot by filling out an absentee ballot application, and submitting their ballot enclosed in one of three preprinted sealed absentee ballot envelopes to the Municipal Clerk. The three (3) absentee ballot envelopes used are for 1) voters appearing before the municipal clerk, 2) voters not appearing before the municipal clerk and 3) voters who are permanently or temporarily disabled. Upon timely submission to the clerk, the ballot envelopes are to be attached to the applications and placed into the appropriate ballot box.

25. After the election day is complete, the respective poll managers remove the applications and absentee ballot envelopes that were placed into the ballot box by the clerk and perform an evaluation of each to determine whether the ballots are “accepted” or “rejected.”

26. The process for this evaluation is detailed in full in the attached Poll Managers’ Absentee Ballot Checklist provided in the training to the poll workers. These requirements are codified in the Mississippi Absentee Balloting Procedures Law, found in MCA §§23-15-621 through 23-15-653, and specific grounds for rejection in MCA §23-15-641. The Mississippi Supreme Court has routinely and often held that it is imperative that appropriate election officials strictly adhere to the statutes concerning absentee ballots. See *Stringer v. Lucas*, 608 So.2d 1351 (Miss. 1992); *Thompson v. Jones*, 17 So.3d 524, 527 (Miss. 2008); *Ruhl v. Walton*, 955 So.2d 279, 282 (2007)(“this Court requires strict compliance with statutes concerning absentee ballots.”)

27. In this run-off primary election on May 16, 2017, a total of 287 absentee ballots were reviewed by the poll workers and 269 were “accepted.”

28. Eighteen (18) of these absentee ballots were “rejected” by the poll managers. Petitioner submits that an examination of these rejected ballots will reveal at least eight (8) of these “rejected” ballots appear to be valid absentee votes.

29. Petitioner submit that many of the “accepted” absentee ballots were illegal ballots because of at least one or more various legal violations, including but not limited, to the following:

- failure of the voter or witness to sign across the flap (violation of MCA §23-15-633);
- witness is not an eligible witness (e.g. not a notary when required);
- the ballot application lacks the city clerk's seal (violation of MCA §23-15-627)
- no witness signature on envelope (violation of MCA §23-15-635 and 23-15-641);
- signature of voter on application and envelope do not match (violation of MCA §23-15-639 and 23-15-641);
- application and envelope do not appear to be signed by voter (MCA §23-15-635); and
- voter's name is not on pollbook (requiring an affidavit ballot be cast)(violation of MCA §23-15-573).

30. In his examination of the ballot box, Petitioner identified more than fifty (50) "accepted" absentee ballots which were "illegal ballots" that should have been rejected by the poll managers rather than accepted.

31. Ironically, there are examples of such illegal ballots being correctly "rejected" by the poll managers for the very same reasons identified above. Thus, the poll managers were not consistent in accepting or rejecting absentee ballots pursuant to Mississippi law.

32. Since legal absentee ballots were counted and commingled with illegal but accepted absentee ballots, it is impossible to discern the total number of legal votes received for each candidate and therefore to discern the true will of the voters

33. A special election is warranted when “(1) enough illegal votes were cast for the contestee to change the result of the election; or (2) so many votes were disqualified that the will of the voters is impossible to discern.” *McIntosh v. Sanders*, 831 So.2d 1115, 1116 (Miss. 2002)(citing *Noxubee Co. Democratic Executive Committee v. Russell*, 443 So.2d 1191, 1197 (Miss. 1983). In addition, if there are valid votes cast which were not counted, these must be counted.

34. The total number of absentee votes which were illegally cast (more than 50) is significantly higher than the number of votes which decided this primary run-off election.

33. The integrity of the votes cast, including but not limited to the absentee ballots and affidavit ballots, in the primary run-off election were compromised due to blatant disregard and substantial departure from fundamental provisions of the balloting procedures law.

34. Petitioner expressly reserves the right to raise any additional grounds supportive of this primary election, contest which may be revealed by further investigation or which the Petitioner should become aware.

35. Based on the totality of the circumstances, including the failure of the vote tallies to match the voter receipt book, the disqualification of validly cast affidavit and absentee ballots, the allowance of illegally cast affidavit and absentee ballots, there is

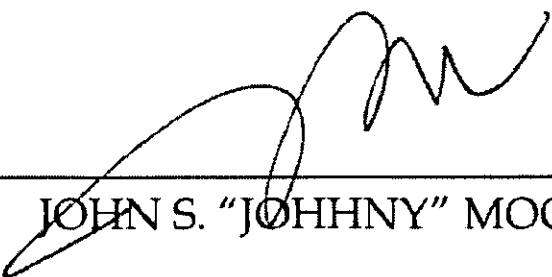
Of Counsel:

Starks Law Firm
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Columbus, MS 39703
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F: 662.798.4016
E: william@starkslaw.com

ATTESTATION

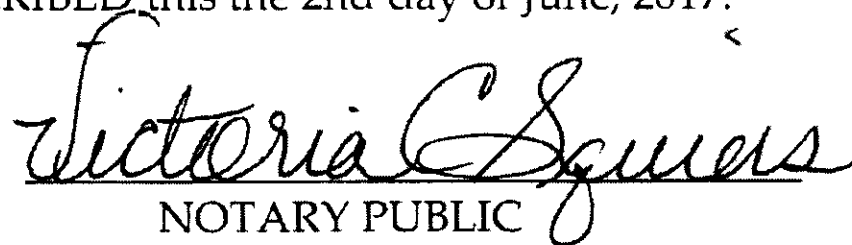
STATE OF MISSISSIPPI
COUNTY OF OKTIBBEHA

This day personally appeared before me, the undersigned authority of law, in and for said county and state, John S. "Johnny" Moore, who, being by me first duly and legally sworn, stated and deposed on his oath that the matters and things alleged in the foregoing Petition for Election Contest are true and correct as therein stated and averred.



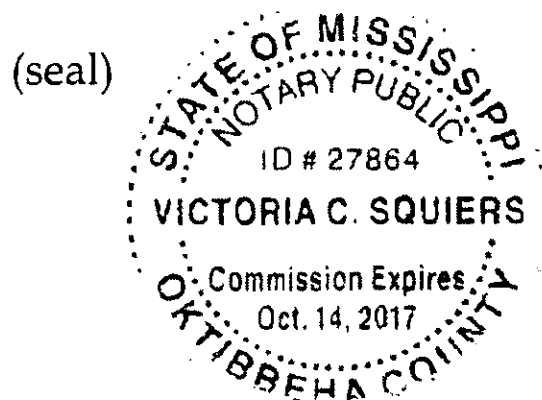
JOHN S. "JOHNNY" MOORE

SWORN TO AND SUBSCRIBED this the 2nd day of June, 2017.



NOTARY PUBLIC

My Commission Expires:



CERTIFICATE OF SERVICE

I, William P. Starks, II, attorney for the Petitioner, do hereby certify that I have this day served by hand delivery (unless otherwise indicated) a true and correct copy of the above and foregoing *Petition for Election Contest* to:

Patti Drapala, Chair
Starkville Municipal Democratic Executive Committee
905 South Montgomery Street
Starkville, MS 39759

Albert Gore, Jr.
Chair, Democratic Executive Committee
429 Cambridge Drive
Starkville, MS 39759

Ethel Shine - via email at eshine46@hotmail.com

Walter Conley - via email at w.conley60@yahoo.com

Diane E. Wall - via email at DEW1Brandon@bellsouth.net

Ryan Colvin - via email at ryancolvin@hotmail.com

Jim Morse - via email at jomorse333@sbcglobal.net

Yolanda Walker - via email at Yolanda102265@hotmail.com

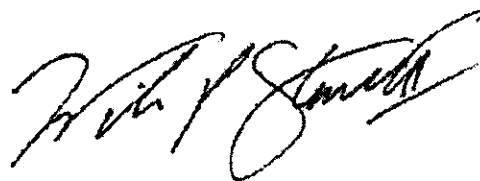
D. Lynn Spruill - via email at dlspruill@bellsouth.net

Lydia Quarles - via email at lydia@mqlawoffices.com

James R. Mozingo - via email at jmozingo@mozingolaw.com

Lesa Hardin - via email at l.hardin@cityofstarkville.org

This the 2nd day of June, 2017.



William P. Starks, II

BEFORE THE STARKVILLE MUNICIPAL DEMOCRATIC EXECUTIVE COMMITTEE

IN RE:

JOHN S. (JOHNNY) MOORE

PETITIONER

VS.

D. LYNN SPRUILL

RESPONDENT

**MEMORANDUM TO THE STARKVILLE MUNICIPAL DEMOCRATIC EXECUTIVE
COMMITTEE**

Having been served with a copy of the PETITION FOR ELECTION CONTEST by counsel for John S. (Johnny) Moore [hereinafter Moore], and duly notified of a hearing established by the Starkville Municipal Democratic Executive Committee [hereinafter Committee], D. Lynn Spruill [hereinafter Spruill], as named respondent, submits this her memorandum for the consideration of the committee.

INTRODUCTION

In the event of a primary election contest, it is the responsibility of the Committee to hold a hearing to evaluate the complaints of the loser and deliberate as to the validity of these complaints. This memorandum first sets forth the issues to be considered by the Committee in this case and then responds to allegations made by Moore in the petition tendered to the Committee.

The overarching responsibility of the Committee is to balance compliance with the voting statutes with the recognition that mere technical irregularities in the casting of ballots will not be grounds for invalidation of an election, absent evidence of fraud or intentional wrongdoing. *Slaughter v. Collins*, 816 So. 2d 1244 (Miss. 2002); *Rogers v. Holder*, 636 So. 2d 645 (Miss. 1994). In determining whether failure to comply strictly with a statute will void an election, the key is whether the act constitutes “such a total departure from the fundamental provisions of the statute as to destroy the integrity of the election and make the will of the qualified electors impossible to ascertain.” *Riley v. Clayton*, 441 So. 2d 1322, 1326 (Miss. 1983). Moreover, when considering this question, whether the act is one which voids a directory rather than a mandatory statute is dispositive.



As a preliminary matter, the “rules of the game” must be addressed. Moore, as petitioner, has the burden of proof in all matters relative to this contest. The statute requires that Moore “[set] forth the grounds upon which the primary election is contested.” Miss. Code Ann. §23-15-961. As noted in *Boyd v. Tishomingo County Democratic Executive Committee*, 912 So. 2d 124 (Miss. 2006), the burden is on the contestant to prove the existence of these illegal votes and that there were enough illegal votes cast to change the election’s results (citing *Walker v. Smith*, 213 Miss. 255, 57 So. 2d 166, at 166-67 (1952)). The Committee’s responsibility is to consider the petition, determine if the petitioner has proven the allegations of his petition by the standard of proof required, and decide as to whether the petitioner should be entitled to relief, or not.

INITIAL ISSUES FOR CONSIDERATION BY THE COMMITTEE

The fundamental inquiry for the Committee is to determine the following issues:

1. Was there any willful violation of Mississippi election law?
2. Did anything occur which would represent a radical departure from Mississippi election law?
3. Is the Committee able to determine the true will and intent of the wishes of the voters in the democratic primary run-off?
4. Did Moore allege any fraudulent behavior on behalf of the election officials or electors?

Based on the Committee’s findings on these issues, the statute and case law guide the Committee to the decisions to be made in response to Moore’s petition.

1. WAS THERE ANY WILLFUL VIOLATION OF MISSISSIPPI ELECTION LAW?

Only in one place in Moore’s petition has he utilized the word “willful.” This use is found in ¶7 where Moore alleges: “Petitioner contends that numerous irregularities and willful violations of Mississippi election law occurred during the primary run-off election and during the computation of the primary run-off election results.” There is no other comment as to willful activity, and certainly the petition contains no specific allegation of willfulness on its face.

What were the willful violations of the law to which Moore referred? The Committee was not provided with this information. There is no other reference to willful violations in the remaining paragraphs Moore’s petition. Instead, Moore focuses on “irregularities” and “errors” but not willful violations.

As the burden is on Moore, as petitioner, to prove his allegations, it would be reasonable for the Committee to reach the conclusion that Moore has not proven to the Committee’s

satisfaction that anyone associated with the primary run-off behaved in any willful manner to violate Mississippi election law.

2. DID ANYTHING OCCUR WHICH WOULD REPRESENT A RADICAL DEPARTURE FROM MISSISSIPPI ELECTION LAW?

Moore has made the following allegation relative to a “radical departure” from our Mississippi Code: “These allegations (referring to the allegation of “numerous irregularities and willful violations of Mississippi election law”) in their totality represent a radical departure from Mississippi election law.” ¶7 of petition

There is no other mention of any other activity which would demonstrate a “radical departure” from Mississippi election law in the conduct of the primary run-off or any activity associated with the counting of the ballots or certification of the election. The numerous irregularities and willful violations alleged in Moore’s petition are neither itemized nor described. It is the burden of Moore, as the petitioner, to prove to the satisfaction of the Committee that a “radical departure” from Mississippi election law occurred on May 16. Moore has failed in this obligation. Thus, it would be reasonable for the Committee to reach the conclusion that Moore has not proven to the Committee’s satisfaction that actions, whether individually or in their “totality” rise to the level of “radical departure” from the law.

3. DOES THE COMMITTEE FIND IT IMPOSSIBLE TO DETERMINE THE TRUE WILL AND INTENT OF THE VOTERS?

Moore alleges, again in ¶7 of his petition, that the “radical departure” from Mississippi election law make (*sic*) it impossible to discern the true will and intent of the voters. We have already seen that Moore has failed to itemize or describe any “radical departure” with any degree of specificity. He discusses “deviations” from election law in several paragraphs in his petition, but these “deviations” do not make a “radical departure.”

In discussing “deviations” Moore concerns himself, for the most part, with irregularities in the count of affidavit and absentee ballots. While Spruill avers that irregularities may have occurred in the handling of the election, she does not believe that these irregularities were malicious, ill-intentioned, or fraudulent. Moreover, it is obvious that Moore does not allege malicious, ill-intentioned, or fraudulent activity on the part of run-off election officials or voters.

With respect to “deviations” identified (without specificity) in Moore’s petition (see ¶¶9-32) there are significant legal decisions which have been made by our Mississippi Supreme Court to guide the Committee. Our Court has determined that, of the various and sundry obligations established in the Mississippi Code for the handling of a primary election, some of

these obligations are “mandatory” while others are “directory.” The Court has acknowledged that if a statute does not expressly declare that a particular act is essential to the election’s validity or that omission of a particular act will render the election void, then the statute’s guidance is considered directory rather than mandatory “so long as the irregular act is not intended to affect the integrity of the election.” *Riley v. Clayton*, supra. Moore has made no allegation that any action in the election process was “intentional” or “intended to affect the integrity of the election.”

The Committee can make a distinction between directory and mandatory irregularities. In Moore’s petition there are only two (2) allegations which suggest mandatory irregularities. These are found in ¶¶29 (unnumbered bullet points 3 and 4) of the petition. These allegations will be discussed independently in following paragraphs.

All other remaining allegations of irregularities are in the context of directory rather than mandatory sections of the Mississippi Code. For example, the following sections of our Mississippi Code have been determined to be directory: §§23-15-333, 335, 551, 573, 591, 593, 631, and 641. The irregularities alleged in every other paragraph of the petition which speaks to irregularities (¶¶10, 10 (*sic – Moore as denominated two paragraph 10s*), 11, 12, 13, 18, 23, 26, and the majority of irregularities listed in ¶29) are irregularities which violate directory statutes only. As our Court has reminded us, if the violated statute is directory rather than mandatory and there is no allegation or proof of fraud, then the non-complying ballots are valid and properly counted. *Riley, id.* at 1328, citing *Hatcher v. Fleeman*, 617 So. 2d 634 (Miss. 1993). Notably, Moore has alleged in ¶30 of the petition that he has identified more than fifty (50) “accepted” absentee ballots that were “illegal ballots” that should have been rejected by the poll managers rather than accepted. Absent specificity, and even if observed in a manner most beneficial to the petitioner, there is no possible way that the Committee can determine that there are more than fifty (50) irregularities found among votes cast, but even so, non-complying ballots are not “illegal ballots” and may appropriately be counted, based on the circumstances in the particular case. Election contests, like most types of litigation, are fact intensive and fact determinative.

The only allegations of violation of mandatory statutes alleged by Moore appear to be associated with absentee ballots. The allegations Moore has suggested that may rise to the level of irregularities found under statutes which our Court has determined to be mandatory are these: (a) absentee ballots may be rejected if the ballot application lacks the City Clerk’s seal and (b) absentee ballots may be rejected if there is no witness signature on the envelope. Although these allegations were not specifically pled, and absentee ballots have now been separated from their envelopes and comingled with other cast ballots, if the Committee chooses to determine that Moore is correct in his allegations of the “fifty (50) or more” irregularities, the remedy that Moore seeks (a new election) is not necessarily the remedy of choice. In fact, it is the remedy of last resort.

In light of allegations that Moore has made in his petition (but not necessarily specified or proved), can the Committee determine the true will and intent of the primary run-off voters? Spruill believes that the Committee can determine the true will and intent of the primary run-off voters. In support of this belief, Spruill would demonstrate to the Committee that in the primary (a three-man race) Spruill and Moore were leaders and in this primary. Spruill received 1,682 votes while Moore received only 1601. In the run-off, Spruill again led the ticket (1872 to 1866), was determined by the Committee to be the winner of the primary run-off, and was certified as the Democratic nominee for Mayor of Starkville. She has now prevailed in the General Election. In three (3) elections in thirty (30) days, Spruill has been identified as the greatest vote-getter. To allow a new, special election at this point would only serve to give Moore an additional bite at this apple in hopes of performing better in the next opportunity. Moreover, as will be demonstrated later through case law and analysis, a special election is not only the last resort for the committee, but the wrong resort as well.

Thus, it would be reasonable for the Committee to reach the conclusion that Moore has not proven to the Committee's satisfaction that it is unable to determine the will and intent of the primary run-off voters.

4. DID MOORE ALLEGE ANY FRAUDULENT BEHAVIOR ON BEHALF OF THE ELECTION OFFICIALS OR ELECTORS?

Moore makes no allegation of any fraudulent behavior on behalf of the election officials or electors. Nor does Spruill. There is no basis for the Committee to determine that there was any fraud associated with this election.

Should the Committee determine the following...

- that Moore has not proved a willful violation of election law;
- that Moore has not proved any occurrence(s) which would suggest a radical departure from Mississippi election law;
- that the Committee can determine the true will and intent of the voters in the primary run-off election; and
- that Moore has neither alleged nor proved fraud as associated with this election...

then the Committee should **reaffirm its certification of Spruill as Democratic nominee for the Starkville Mayoral election.**

If the Committee cannot reaffirm its findings, this means that Moore has succeeded in contesting the election and he is entitled to a remedy to be shaped by the Committee. Assuming,

arguendo that the Committee reaches this point in its deliberation, what does the Committee do to shape an appropriate remedy?

Moore seeks, as his sole remedy, a new election. He petitions for a new election in ¶11 (on the basis of “accounting issues”) of the petition and in his plea for relief. He asks for no other relief from the Committee.

A new election (special election) is not the appropriate remedy in this set of facts. Even if the Committee determines that Moore was “wronged” in any substantial way, there are other options available to the Committee to remedy any election irregularity short of a new election. Special elections are not favored in the law for several reasons. *Noxubee County Democratic Executive Committee v. Russell*, 443 So. 2d 1191 (Miss. 1983), as well as *Hatcher, supra*, referencing *Russell*, sets forth considerations of the (1) substantial expense involved in a special election and there is a likelihood of (2) diminished voter turnout, both of which argue against a special election as the remedy of choice. In this particular case, there were actually more votes cast in the run-off than in the general election, a fact that is not necessarily completely driven by the mayoral run-off, but also driven by other run-off elections in several Starkville wards. Also, the run-off was held at a time when many students remained in Starkville and/or voted absentee. The vast majority of these students have returned home or gone to jobs elsewhere. Moreover, a great many professors and instructors also leave town during the summer months. None of these individuals would be available for a special election.

There is no dispute that the Democratic primary was a close election. However, Starkville and Oktibbeha County are well acquainted to close elections. Examples abound. For instance, in recent memory:

- a. 2005 general election for Alderman Ward 2: 16 vote difference between Jim Mills and Raymond Brooks
- b. 2005 general election for Alderman Ward 4: 5 vote difference between Lee Beck and Richard Corey
- c. 2007 general election for Supervisor District 3: 13 vote difference between Marvel Howard and Terry Kellum
- d. 2009 general election for Alderman Ward 2: 9 vote difference between Sandra Sistrunk and Rodney Lincoln
- e. 2009 general election for Alderman Ward 4: 12 vote difference between John Gaskin and Eric Parker
- f. 2011 general election for Supervisor District 3: 3 vote difference between Marvel Howard and Dennis Daniels

Committee in this matter is *Pyron v. Joiner*, 381 So. 2d 627 (Miss 1981). In this case, the Supreme Court held that a special election was not required even though the initial winning margin was only “5 votes out of a total of 267,709.”

For example, it is within the purview of the Committee to throw out all absentee and/or affidavit ballots as Moore objects to so many of them. Spruill does not favor this option, as she believes that the Committee can, and ably did, interpret the will of the voters to elect her. However, our Courts have advocated casting out questionable ballots before using the option of last resort, the special election. Here are some examples: In *Harpole v. KCDEC*, *supra*, the committee, finding that there were departures from the absentee ballot statutes, as Moore alleges here, ordered that the absentee ballots be excluded from the certified count. In speaking to this particular issue, our Court, in *Harpole*, stated as follows:

“Whether the amount of disqualified voters is substantial enough to warrant a special election depends upon the particular facts and circumstances of each case, i.e., the nature of the procedural requirement(s) violated, the scope of the violation(s), and the ratio of illegal votes to the total votes cast. *Rizzo*, 530 So. 2d at 129 quoting *Walker v. Smith*, 231 Miss. 255, 264, 57 So. 2d 166, 167 (1952).

While our Court has said that, even in absence of fraud, if significant disenfranchisement occurs such as to give the Committee sufficient doubt as to the election results, a special election may be justified. However, the Court immediately reiterated that a special election was the remedy of last resort, so long as the Committee could interpret the will of the voters.

This raises a question for the Committee: can a portion of the public be disenfranchised without requiring the “extraordinary remedy of a new election?” *Harpole*, at 139. While Spruill does not desire to disenfranchise any voter, it is up to the Committee to determine a remedy if it finds, after consideration, that Moore has proven that he has been wronged, and one way to do that is to disenfranchise a group of votes to which Moore objects.

This remedy (elimination of questionable ballots) has been utilized and approved by our Court, preferably and in lieu of a special election. For example, in *Russell*, *supra*, after considering the contest brought by Russell, it determined that, in order to balance the interest of the electorate with that of a contestant who was determined by the Committee to warrant reconsideration, the Committee correctly threw out 300 absentee votes in an election where a total of approximately 4,300 votes were cast. The Court, determining that the remedy would disenfranchise roughly 7% of the vote, said that the integrity of the election could be maintained. The Court agreed with the Committee that a special election should not be called. A special election was not warranted with the disqualification of only 7% of the vote. There are other examples of elections where our Court approved Committee elimination of ballots were the

elections in which 3.9% of the votes were disqualified, 6% of the total votes were disqualified, and 10.4% of the votes were disqualified. See *Harpole, supra*, at 138-39.

In this particular election, if all absentee votes were eliminated, this action would disqualify only about 7% of votes cast. If absentee and affidavit votes were eliminated, this action would disqualify only about 8% of the votes cast. Thus, the appropriate remedy, if required, would be the elimination of “irregular” ballots as identified and proven by Moore.

COMMENTS RELATIVE TO MOORE’S PETITION

In ¶3 of his petition, Moore raises a question about the validity of the contract executed which would allow the Starkville Municipal Election Commissioners to conduct this election. There is no irregularity here. As a matter of policy of the Mississippi Democratic Party, the Oktibbeha County Democratic Party is the organ and organization for Democrats in Oktibbeha County. The Starkville Municipal Democratic Executive Committee is a sub-committee of the Oktibbeha County Democratic Party. Thus, the execution of the contract between the City of Starkville Municipal Election Commissioners and Colonel Albert Gore, Jr. (ret.), signing for the County Democratic Executive Committee as its chair, is proper. It is to be noted that in the future, the parties to the contract should be the Starkville Municipal Election Commission and the Oktibbeha County Democratic Party, rather than the Starkville Municipal Democratic Executive Committee. This issue can be discounted by the Committee, but should be addressed by contracting parties prior to the next municipal election.

In ¶9 and following, Moore discusses deviations from election law. Were there directory features of the statute that were ignored? Yes. In Spruill’s examination of ballots and Moore’s petition, the following were noticed:

- Unlike Moore’s allegation that there is no accounting report, these reports and tabulations do exist and have been bound in the poll books for the correct precinct. Also, when Spruill conducted an examination, there were separate tabulations (handwritten and on small pieces of white paper) in the ballot boxes themselves.
- Moore alleges that there can be no correct accounting because one cannot determine the original number of ballots placed in each ballot box. This, also is a red herring which may be easily remedied. Ballot boxes contain blank ballots, cast ballots and rejected ballots. The City Clerk is knowledgeable of the number of blank ballots placed in each box, and any mathematical issue can be accomplished to Moore’s satisfaction.
- Spruill denies that “in most precincts, the number of persons signing the receipt book did not match the number of ballots cast” and thus denies the “pervasiveness” of accounting issues. Spruill also points out that instructions Moore cited, listed from the statute, are directory in nature and can be remedied. Spruill also points out that some of the allegations contained in these paragraphs are erroneous.

In her examination, Spruill also noticed some irregularities, mostly directory in nature. As such, these non-complying ballots are valid and properly counted in the absence of fraud. Hatcher, supra. With respect to specific regularities, these were identified in Spruill's examination:¹

WARD 1

There were two (2) ballots with incorrect symbols used (rather than checks or Xs): 1 for Moore; 1 for Spruill.

One ballot for Moore was initialed B, when it should have been initialed SW or AR (appropriate initialing worker or bailiff).

Spruill finds no problems with absentee or affidavit ballots as handled in Ward 1.

WARD 2

One spoiled ballot: the voter initially voted for Spruill and then XXX'd it out and voted for Moore. This should have been marked "spoiled" but it was counted for Moore.

One vote that was cast for Moore did not use a check or an X, but used a "scribble" that could be interpreted in many ways, including a "spoiled" ballot, but it was counted for Moore.

There were three (3) rejected absentee ballots in this ward, with which Spruill finds no problem.

There were three (3) questionable accepted absentee ballots (one with no witness attestation, two with no dates.)

Spruill finds no problems with the affidavit ballots as handled in Ward 2.

WARD 3

Spruill believes that the vote count in this ward is erroneous. On examination of the counted ballots, Spruill's representatives, after counting three (3) times, verily believes that the vote count should be Moore 535, Spruill 352 (rather than 350).

There were incorrect symbols used on 4 ballots in this ward, 3 for Moore, 1 for Spruill.

¹ Spruill has chosen not to place proper names in the material discussing the discrepancies located in Wards 1-7, but does have identifying information in order to easily indicate these discrepancies to the Committee. Spruill thought that a public document would not be the venue in which to name names.

Spruill finds no problems with the absentee ballots rejected.

Spruill finds three (3) accepted absentee ballots that are questionable, one with no attestation date, two with no note by poll workers as to whether the ballot was accepted or rejected.

With respect to affidavit ballots in Ward 3, Spruill finds no problems with the affidavit ballots as handled.

WARD 4

There were incorrect symbols used on two (2) ballots in this ward, both Moore votes.

There was a poll worker initial on a regular ballot that did not match the workers at that precinct.

No absentee ballots were rejected.

Spruill questions three absentee ballots in Ward 4 because there is no attestation date on them.

Spruill finds no problems with the affidavit ballots in Ward 4.

WARD 5

There were six (6) ballots with incorrect symbols in this ward, 4 for Moore, 2 for Spruill.

Three (3) absentee ballots were rejected and Spruill finds no problems with these rejections.

Spruill questions five (5) "accepted" affidavit ballots, 3 with the wrong election date, 2 with the attestation not dated.

Spruill finds no problems with the affidavit ballots in Ward 5 as handled by the poll workers.

WARD 6

Two (2) ballots in this ward were signed and dated: 1 for Moore and 1 for Spruill.

Two (2) Moore votes were not initialed by a poll worker.

One (1) ballot (Sпруill) used an incorrect symbol.

Ten (10) absentee ballots were rejected in this ward. Each of these, from nursing homes, were blatantly inaccurate.

Spruill questions two (2) accepted absentee ballots: one with no signature; one where the voter was not signed in.

Spruill finds no problems with the affidavit ballots in Ward 6.

WARD 7

There were six (6) signed and dated ballots in this ward: 3 for Moore; 3 for Spruill.

One (1) Moore ballot appears to have the wrong initialing manager or bailiff.

Three (3) Spruill ballots used incorrect symbols.

No absentee ballots were rejected in Ward 7.

Of the accepted absentee ballots, Spruill questions four (4): one which does not say accepted or rejected and does not have an attesting witness; one that has no attesting witness; one that has no attestation date; one that was not signed and had no attesting information.

With respect to affidavit ballots, Spruill has no problems with how the affidavit ballots were handled in this ward.

Note: This ward (7) had the two (2) extra ballots (“Pizza Man” Shermon Tyrone Watts.) Mr Jim McKell, Chairman of the Starkville Municipal Election Commission, was acquainted with this particular vote and explained this issue in the presence of Moore and Spruill to the satisfaction of Spruill and her representatives.

CONCLUSION

It is the obligation of Moore to prove, with specificity, allegations made. It is the obligation of the Committee to “carefully and consciously” make an examination and decision which is supported by the evidence and legal authority and which would warrant a subsequent election tribunal’s affirmance. *Pearson v. Parsons*, 541 So. 2d 447 (Miss. 1989). If the Committee finds that Moore has failed to allege any act, or any failure to act, on the part of the Committee, which would lead the Committee to take action on the petition, then the Committee should ratify its prior decision. Moore has done little more than make allegations. Moreover, he fails to couch his petition in a manner which, if proven to be true, would nullify the election results. What he has brought forward to this Committee is insufficient to require anything other than a ratification of the Committee’s prior decision. Even assuming, *arguendo*, that Moore could prove his allegations, the percentage of “irregular” votes cast would not be substantial enough to warrant a special election.

So, the questions for the Committee are: Has Moore proved a willful violation of the Mississippi election laws? No. Did anything occur which would represent a radical departure from Mississippi election laws? No. Does the Committee find it impossible to determine the true will and intent of Starkville's voters? No. Has Moore alleged or proved any fraudulent behavior? No. These factual findings do not merit a change in the Committee's certification of Spruill as Democratic candidate for Mayor of the City of Starkville.

Respectfully submitted, this the 12th day of June, 2017.

/s/ Lydia Quarles
LYDIA QUARLES
MOZINGO|QUARLES PLLC
ATTORNEY FOR RESPONDENT,
LYNN SPRUILL

CERTIFICATE OF SERVICE

I, Lydia Quarles, attorney for the respondent, do hereby certify that I have this day served, via email, a true and correct copy of the above and forgoing MEMORANDUM TO THE STARKVILLE MUNICIPAL DEMOCRATIC EXECUTIVE COMMITTEE to the following, via email:

Patty Drapala – pattidrapala@gmail.com

Ethel Shrine – eshine46@hotmail.com

Walter Conley – w.conley60@yahoo.com

Diane E. Wall – DEW1Brandon@bellsouth.net

Ryan Colvin – ryancolvin@hotmail.com

Jim Morse – jomorse333@sbcglobal.net

Yolanda Walker – Yolanda102265@hotmail.com

William P. Starks, II – william@starkslaw.com

This the 12th of June, 2017.

/s/ Lydia Quarles
LYDIA QUARLES
MOZINGO|QUARLES PLLC

This document prepared by:

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----- Forwarded message -----

From: "Patti Drapala" <pattidrapala@gmail.com>

Date: Jun 12, 2017 7:18 PM

Subject: Re: Hearing Tuesday

To: "Lydia Quarles" <lydia@mqlawoffices.com>

Cc:

We will be there tomorrow at 10 a.m.

Patti

From: "Lydia Quarles" <lydia@mqlawoffices.com>

Date: Jun 12, 2017 6:01 PM

Subject: Hearing Tuesday

To: "Patti Drapala" <pattidrapala@gmail.com>

Cc:

We will be there and we expect to see your committee.

EXHIBIT E



Starkville Democratic Municipal Executive Committee
c/o Patti Drapala
905 South Montgomery Street
Starkville, MS 39759

June 7, 2017

Mr. John S. "Johnny" Moore
John Stuart Moore Law Office
108 S. Lafayette Street
Starkville, MS 39759

Dear Mr. Moore,

On Saturday, June 3, 2017, at approximately 6:30 p.m., members of the Starkville Democratic Municipal Executive Committee received notice of your petition to contest the results of the Democratic Primary Mayoral Runoff Election held on Tuesday, May 16, 2017, and certified on Thursday, May 18, 2017.

We have set a date of Tuesday, June 13, 2017, in the municipal courtroom at Starkville City Hall to conduct a hearing relative to the document received by members of the Starkville Democratic Municipal Executive Committee entitled PETITION FOR ELECTION CONTEST. The hearing will begin at 10:00 a.m.

Sincerely,



Patti Drapala, Chair
Starkville Democratic
Municipal Executive Committee

cc: William Starks – via email at william@starkslaw.com

Albert Gore Jr. – via email at andbgorejr@att.net

D. Lynn Spruill – via email at dlspruill@bellsouth.net

Lesa Hardin – via email at l.hardin@cityofstarkville.org

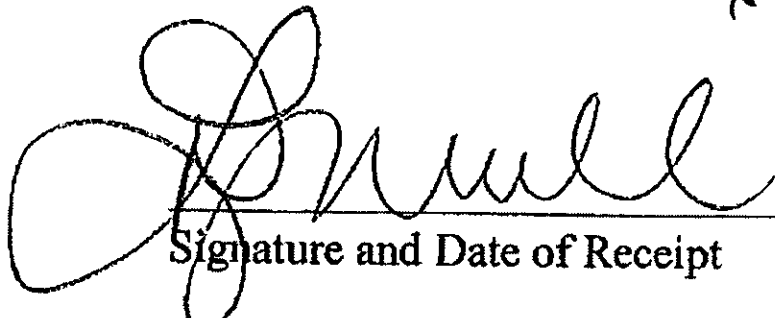
EXHIBIT F



Starkville Democratic Municipal Executive Committee
c/o Patti Drapala
905 South Montgomery Street
Starkville, MS 39759

June 7, 2017

I hereby acknowledge the receipt of this letter from the Starkville Democratic Municipal Executive Committee in response to the PETITION FOR ELECTION CONTEST.

 6-7-2017
Signature and Date of Receipt