

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.

