

IN THE CIRCUIT COURT OF  
FORREST COUNTY, MISSISSIPPI

DAVE WARE

PLAINTIFF

v.

CIVIL ACTION NO. \_\_\_\_\_

JOHNNYL DUPREE AND ELECTION COMMISSION  
FOR THE CITY OF HATTIESBURG, MS

DEFENDANTS

PETITION OF CONTEST

~~EXPEDITED HEARING REQUESTED~~

COMES NOW, Plaintiff Dave Ware ("Ware" or "Plaintiff"), pursuant to Miss. Code Ann. § 23-15-951, and files this Petition to contest the General Election held in Hattiesburg, Mississippi, on June 4, 2013, for the office of Mayor. Ware respectfully requests that this Court receive this Petition, expeditiously set a hearing, and declare the true results of the election, in accordance with the procedures outlined in § 23-15-951. In further support of his Petition, Ware shows as follows:

Parties

1. Ware is an adult resident of Hattiesburg, Mississippi, whose address is 402 Rebecca Avenue, Hattiesburg, MS 39401. Ware was an Independent candidate for Mayor during the June 4 General Election. Ware's opponent was erroneously certified by the Hattiesburg Municipal Election Commission as the winner of the election by a vote total of 4,775 to 4,738.

2. Defendant Johnny L. DuPree ("DuPree") is an adult resident of Hattiesburg, Mississippi, who may be served at his residence address of 1028 North

Main Street, Hattiesburg, MS 39401. DuPree was Plaintiff's opponent in the June 4, 2013 General Election for Hattiesburg Mayor and currently serves as the incumbent Mayor.

3. The Hattiesburg Municipal Election Commission (the "MEC") is an entity created by statute, *see* Miss. Code Ann. § 23-15-221, and can be served with process through its Chairman, George Decoux, whose address is 710 Adeline Street, Hattiesburg, Mississippi; or through the City Clerk of the City of Hattiesburg at City Hall, 200 Forrest Street, Hattiesburg, MS, 39401.

#### Jurisdiction and Venue

4. This Court has jurisdiction to hear this Petition, pursuant to Miss. Code Ann. §§ 9-7-81 and 23-15-951. Section 23-15-951 provides, in relevant part, that

. . . a person desiring to contest the election of another person returned as elected to any office within any county, may, within twenty (20) days after the election, file a petition in the office of the clerk of the circuit court of the county, setting forth the grounds upon which the election is contested; and the clerk shall thereupon issue a summons to the party whose election is contested, returnable to the next term of the court, which summons shall be served as in other cases; and the court shall, at the first term, cause an issue to be made up and tried by a jury, and the verdict of the jury shall find the person having the greatest number of legal votes at the election. If the jury shall find against the person returned elected, the clerk shall issue a certificate thereof; and the person in whose favor the jury shall find shall be commissioned by the Governor, and shall qualify and enter upon the duties of his office. . . .

Plaintiff timely files this Petition. Further, because the City of Hattiesburg is situated within two counties, Forrest and Lamar, and because the person returned as elected to the office of Mayor of Hattiesburg holds an office within both of said

counties, Plaintiff has filed a companion Petition of Contest in Lamar County Circuit Court. Irregularities affecting the outcome of the election substantially occurred in both Forrest and Lamar Counties.

5. Out of an abundance of caution, Plaintiff files herewith the certificates of three independent attorneys “stating that they have each fully made an independent investigation into the matters of fact and of law upon which the protest and petition are based, and that after the investigation they believe that the protest and petition should be sustained and that the relief prayed in the protest and petitions should be granted.” *See* Miss. Code Ann. § 23-15-927. Plaintiff also is providing herewith, if required by law, a cash bond in the sum of Three Hundred Dollars (\$300.00) conditioned to pay all costs in case the Petition is dismissed.

6. Venue is proper in this Court, under Miss. Code Ann. §§11-11-3 and 23-15-951, as significant and material irregularities detailed herein substantially occurred in this county, and the defendants reside or can be found in Hattiesburg, Forrest and Lamar County, Mississippi.

#### Procedural Background

7. The MEC certified results of the June 4 General Election for the office of Mayor on or about June 7, 2013. The MEC certified Plaintiff's opponent, Defendant DuPree, as the winner of the election by a vote of 4,775 votes for DuPree and 4,738 votes for Ware.

8. The certified results do not correctly reflect the number of votes legally cast for each candidate in the election. As detailed herein, there are a number of

irregularities surrounding the ballots that were counted, particularly absentee ballots, both during the open polling hours and after the election.

9. The Plaintiff, through his duly designated representatives, timely conducted an examination of the balloting materials, as provided by Miss. Code Ann. § 23-15-911, from June 11 to 17, 2013.

10. Based on the conduct of the election on election day, the canvassing by both the poll managers and the MEC after the polls closed, and based further on information observed during the statutorily-provided examination of the balloting materials by Plaintiff's representatives, the true will of the voters is not reflected by the vote totals certified by the MEC. Accordingly, Plaintiff timely files this Petition.

#### Irregularities in the June 4 Election

A. Absentee ballots were not handled in accordance with Miss. Code Ann. § 23-15-621 *et seq.*, or Miss. Code Ann. § 23-15-711 *et seq.*, by the poll managers and the MEC.

11. A total of 606 absentee ballots were cast in the General Election. Of those ballots, 587 ballot envelopes were eventually opened, though only 581 ballots were apparently counted by the MEC in the certified vote totals. The absentee vote totals counted for each candidate were 343 votes for DuPree, 232 votes for Ware, and 6 votes that were for other candidates or not voted. A breakdown by precinct of absentee ballots cast, counted and rejected, is attached hereto as Exhibit A.

12. There are material irregularities in the way that absentee ballot applications and ballots themselves were issued, mailed, and processed by the City Clerk's Office. Each of these irregularities was significant enough to change the

outcome of the election, preventing the will of the voters from being ascertained. By way of example:

- a. In some cases, it appears that balloting materials were delivered to voters, in contravention of Miss. Code Ann. §§23-15-625, 23-15-627, and 23-15-657, instead of being mailed pursuant to a proper voter request. First, the records maintained by the City Clerk regarding absentee ballot application requests, applications completed, and ballots sent to voters are incomplete and cannot be reconciled to the number of absentee ballots requested, cast, and counted. Second, contrary to Miss. Code Ann. §§ 23-15-625, 23-15-627, and/or 23-15-657, the City Clerk, and/or the person requesting a ballot application on behalf of a voter, failed to complete the required certificate of delivery as to approximately 80 such applications, such that there is no record of who requested the absentee ballots.
  - b. At least 55 ballot applications lack the Clerk's initials and/or seal, rendering them materially deficient under the law. Some of these applications were completed in the Clerk's Office, while others were completed by mail. Finally, at least 160 ballot applications were not properly witnessed by the Clerk, such that those applications do not constitute sworn affidavits and are void (as is any ballot issued based on such a defective application).
  - c. The Clerk improperly mailed absentee ballot materials to voters for reasons that do not permit absentee ballots to be voted outside the City Clerk's Office, contrary to Miss. Code Ann. § 23-15-715.
  - d. The Clerk either failed to witness or improperly witnessed 69 sealed ballot envelopes, such that those votes were illegal and should not have been counted in the vote totals.
13. In at least one case, according to information from the affected voter, an absentee voter from the Train Depot precinct voted in person at the City Clerk's Office prior to the June 4 election, but the voter's absentee ballot application and the corresponding absentee ballot envelope do not exist in the balloting materials that were provided for examination by the Plaintiff's representatives.

14. As to 36 absentee ballots cast from the Forrest County Detention Center at 55 Arena Drive, Hattiesburg, all were eventually counted, and none were rejected by the poll managers. There are numerous irregularities with regard to the 36 absentee ballots cast by the inmates. First, applications for ballots were not requested, delivered, or completed consistent with Miss. Code Ann. §§ 23-15-625, 23-15-627, and 23-15-657. The City Clerk's records only show that thirty ballot applications were mailed to voters in the jail, meaning that additional applications (and ballots) may have been hand delivered to incarcerated voters by improper means. The applicable ballot applications were all witnessed May 24. All are witnessed by the same notary, and in at least one case, the notary "witnessed" an application even though the voter never signed the application. All the applications but one initially indicated the reason for voting absentee as "being outside of the county on election day." Later, that reason was "whited out" and a new, handwritten reason for entitlement to vote absentee was created on each application, verbatim and in the same handwriting, as "in jail, not be able to vote on June 4." Such reason is not provided by law, *see* Miss. Code Ann. § 23-15-713, and the evidence demonstrates that the requesting voters did not offer this reason when the applications were initially completed.

15. Those absentee ballots issued via the defective applications from the Forrest County Detention Center were also all voted on the same day, May 24, without being properly witnessed and handled. The same notary public who witnessed the ballot applications also witnessed all the ballot envelopes, and

appears to have done so *en masse*. With regard to the ballot envelopes, the notary public was not at the Detention Center for long enough to allow each of the 36 voters who apparently voted ballots, to do so individually and in privacy, to complete the application, mark his or her absentee ballot, place the ballot into the envelope, and then seal and complete the ballot envelope affidavit. Such absentee ballot materials, not properly executed and/or witnessed, are legally deficient, and those ballots should not have been opened or counted under Mississippi law.

16. At least five of the votes cast by absentee ballot at the Forrest County Detention Center were illegally cast by disenfranchised felons. On information and belief, other votes were cast in the June 4 election by persons who had been previously convicted of a disenfranchising crime.

17. Defendant's wife, Johniece DuPree, who is also a notary public, on information and belief, improperly hand carried absentee balloting materials to voters, in contravention of Miss. Code Ann. §§ 23-15-625 and 23-15-627. Mrs. DuPree, who witnessed 35 absentee ballot applications and notarized the 35 ballot envelopes, was not authorized by law to deliver any balloting materials from the Clerk's Office to voters. Further, on information and belief, Mrs. DuPree pressured one or more absentee voters to vote for her husband when some of the voters she witnessed were voting their ballots.

18. Irrespective of the irregularities detailed above, of the 606 absentee ballots that were cast, 581 ballots were apparently counted by the MEC. Of those 581 absentee ballots, at least 330 of them (about 56% of the total absentee ballots

counted) should not have been counted because they failed to meet the clear requirements of Mississippi election law. Yet, poll managers only rejected eleven absentee ballots on election day, less than 2% of the 606 absentee ballots cast. The absentee ballots that were rejected were from seven of the City's fourteen precincts, meaning poll managers in *half* of the City's precincts rejected *none* of the absentee ballots cast in their precincts, despite the fact that between 40% and 80% of the absentee ballots in *every* precinct (except for one precinct that had only one absentee ballot cast) failed to comply in material and mandatory respects with Mississippi election law.

- a. The Election Commission rejected an additional eight absentee ballots, six of which had been marked "Accepted" by the poll managers. The MEC had no authority to overrule the ballot determinations made by the poll managers.
- b. In 5 precincts, three of which were overwhelmingly carried by Defendant DuPree, the poll workers failed even to consider the legality of the precinct's absentee ballots, because none of the ballot envelopes from those precincts were marked "accepted" *or* "rejected" at the polling place, as required by Miss. Code Ann. § 23-15-639. All 166 of those ballots were nonetheless counted when, by law, the envelopes should never have been opened by the election commissioners because they were not accepted by the poll managers. In 4 other precincts, there were 7 ballot envelopes opened that had not been marked "accepted" by the poll managers.
- c. In the Wesley Manor precinct, twenty absentee ballots were eventually counted, even though there were only ten open ballot envelopes in the balloting materials, none of which were marked as "accepted" by the poll managers. One additional ballot envelope was marked "rejected" and left unopened. Because of the City Clerk's incomplete records and the discrepancy between the twenty ballots counted and the ten ballot envelopes opened for the Wesley Manor precinct, there is no way to reconcile which ballots were properly cast in the precinct.



- d. At least 160 of the absentee ballots cast and counted failed to meet at least one of the requirements of Miss. Code Ann. § 23-15-717, which requires, among other things, that a voter's absentee ballot application must specify the reason such voter is eligible to vote absentee, must be properly signed by the voter, and must be witnessed.
- e. At least 208 of the absentee ballots cast and counted failed to meet the requirements of Miss. Code Ann. § 23-15-625, which requires, among other things, that a voter's absentee ballot application must specify the election for which the absentee ballot is to be cast.
- f. At least 6 of the absentee ballots cast and counted failed to meet the requirements of Miss. Code Ann. § 23-15-639, which requires that a voter's signature affixed to the absentee ballot application match the voter's signature affixed to his or her absentee ballot envelope.
- g. At least 115 of the absentee ballots cast and counted failed to meet the requirements of Miss. Code Ann. § 23-15-633, which requires that a voter's signature cross the flap of the absentee ballot envelope and specifies that the printed ballot envelopes so advise absentee voters of that requirement in bold print and in a distinguishing color.
- h. At least 72 of the absentee ballots cast and counted failed to meet the requirements of Miss. Code Ann. § 23-15-633, which requires that a voter's absentee ballot envelope be properly witnessed by a witness whose signature must also cross the flap of the absentee ballot envelope.
- i. At least 45 of the absentee ballots cast and counted failed to meet the requirements of Miss. Code Ann. §§ 23-15-631 through 639, which requires that a voter and/or the witness complete the information on the ballot envelope regarding the date, time and specific election for which the ballot is being cast.
- j. While there were 581 absentee ballots eventually counted in the certified totals, there were 587 opened absentee ballot envelopes. Six absentee ballots were thus apparently not counted in the certified vote totals, even though the envelopes were opened.
- k. There were at least 4 fewer ballot applications than there were absentee ballot envelopes opened. Such a discrepancy should not exist because no absentee ballot envelope should have been opened without first verifying a valid and complete ballot application for each voter.

1. Other absentee ballots envelopes were opened and their votes included in the certified totals that should have been rejected for not meeting the requirements of the absentee balloting statutes of the Mississippi Code. The Plaintiff reserves the right to amend this allegation to plead with more specificity upon discovery of further evidence adduced in this action.

19. Cumulatively, as noted above, at least 330 absentee ballots of the 581 absentee ballots that were counted (or about 56% of the total) should not have been counted under mandatory requirements of Mississippi election law. In addition to the foregoing examples of illegal absentee ballots, there are additional ballots that were not properly processed in accordance with the law.

20. The number of absentee ballots that should not have been counted is well more than enough votes to call into doubt the true will of the voters in the election for Hattiesburg Mayor. Moreover, the illegal absentee ballots have been commingled with the remaining absentee ballots; under Mississippi law, none of those ballots can properly be counted in the certified totals.

- B. At least 24 paper ballots voted in the June 4 election were not initialed by any initialing manager as required by law, such that they should not have been counted.

21. At least 19 emergency and curbside ballots at the Rowan precinct were not initialed by any initialing manager, as required by Miss. Code Ann. §23-15-541. There were a total of 52 emergency ballots cast at the precinct, and the rest of those ballots were properly initialed. Of the emergency and curbside ballots that were not initialed, 17 of them were counted as votes for DuPree, and two were counted as votes for Ware. Under Mississippi law, the ballots that were not properly initialed were not legally cast and should not have been counted in the vote totals.

22. Additionally, of the 115 affidavit ballot envelopes that were canvassed by the MEC, twelve affidavit ballot envelopes came from the East 6<sup>th</sup> Street Precinct. Six of those ballot envelopes were marked with a "C," and the ballots were claimed to be "curbside" ballots voted at the East 6<sup>th</sup> Street Precinct. These "curbside" voters were not marked as having "voted" in the poll book, and at least one of those voters was not listed in the poll book at all (meaning that the voter would not have been a proper "curbside" voter). This irregularity is impossible to reconcile because the affidavit voter sign-in booklet does not contain the signatures of all the voters who voted affidavit at the USO precinct. Those six ballots, which were not properly voted as affidavit ballots, were not initialed by any initialing manager, as required by Miss. Code Ann. § 23-15-541.

23. Eight of the "affidavit" ballots from East 6<sup>th</sup> Street Precinct were eventually counted by the MEC, including five of the six ballots that were "curbside" ballots. These eight ballots, none of which were properly initialed, were all counted as votes for DuPree. Under Mississippi law, the five "curbside" ballots that were not properly initialed but were counted were not legally cast and should not have been counted in the vote totals.

**C. Affidavit ballots were not properly canvassed and/or counted in the June 4 election.**

24. There were a total of only 115 affidavit ballots cast in the General Election. Of those 115, only 47 were eventually counted by the Election Commission in the certified vote totals. Of the 47 affidavit ballots counted, 25 were

votes cast for DuPree, 21 were votes cast for Ware, and one affidavit ballot was cast for a third person.

25. Of the 47 affidavit ballots that were counted, 35 were properly initialed, while twelve were not, as provided by law. Those twelve uninitialed affidavit ballots were counted with eleven votes for DuPree and one vote for Ware.

26. At least 4 affidavit ballots were counted, even though the voter cast the ballot in a different precinct from the one in which the voter resides, contrary to Miss. Code Ann. § 23-15-573.

27. At least 8 affidavit ballots were counted, even though the voter failed to provide a reason justifying the voter's right to vote by affidavit, contrary to Miss. Code Ann. § 23-15-573. Additional affidavit ballots were cast and included in the certified totals although they failed to sign the affidavit ballot register, contrary to Miss. Code Ann § 23-15-573.

**D. The election was conducted contrary to law, such that the will of the voters cannot be ascertained.**

28. During the election, and during the canvassing that followed, there were a number of errors, violations of law, and irregularities that call into question the validity and fairness of the election. Plaintiff specifically notes the following issues:

- a. At least five convicted felons voted from the Forrest County Detention Center even though all, on information and belief, were previously disenfranchised because of prior felony convictions. Other disenfranchised voters were, on information and belief, permitted to vote, and voted, in the June 4 election. Further, on information and belief, another voter who purportedly requested an absentee ballot and voted absentee from prison, Rico Rondell Roberts, is named on the list

of jailed voters provided by the City Clerk. On information and belief, Roberts, whose date of birth is November 23, 1970, has not been booked into the jail since July 13, 2012. However, Roberts' son, who is only 17 years old and not allowed to vote, has the same name (Jr.) and was in the jail on May 24, 2013, and has been since February 3, 2012.

- b. There are instances of voters who voted even though they were not qualified electors residing in the City of Hattiesburg, knowingly voted in a precinct in which they did not live, and/or could not have voted on election day but nonetheless appear to have had ballots cast for them. For example, one person who cast an absentee ballot in the June 4 election posted on Facebook in May 2013 details about her recent (and permanent) move to Memphis, TN. Another voter voted in a precinct in Hattiesburg even though the house at her address of registration has been torn down and, on information and belief, that voter now lives in Petal. Still another voter is shown as having voted in person, even though family members have verified that the voter did not return to Hattiesburg on Election Day to vote. These irregularities are sufficient to change the outcome of the election, such that the will of the voters cannot be ascertained, and the results certified by the MEC are not accurate.
- c. On the night of June 5, 2013, before the vote totals were certified and before the Elections Commission had completed its canvass of the election returns, City Hall and the vault located inside City Hall that contained the ballots from the June 4 election were both left unlocked and unsecured. The security videos recorded inside City Hall reveal that, around 10:00 pm on June 5, unauthorized persons were inside. Further, on information and belief, approximately 55 minutes of video footage from the security cameras from that night are missing.
- d. The City Clerk and the Elections Commission failed to maintain a proper record of seals on the ballot boxes, such that the chain of custody and the integrity of the balloting materials cannot be verified, particularly and including the interval between the time the elections officials recessed their canvass of returns on June 5 and reconvened on the morning of June 6. There is thus no adequate way to determine whether, by way of example, the seals affixed to the ballot boxes on June 5 actually matched the seals that were on the boxes on June 6.
- e. On information and belief, the City Clerk and/or the deputy clerks who handled the absentee ballots and other election responsibilities were not properly appointed by both the Forrest and Lamar County Circuit

Clerks and approved by the MEC as provided by law. Likewise, poll managers for the June 4 election were not appointed in accordance with Miss. Code Ann. § 23-15-231, and at least in some cases, managers, clerks, and other election officials were not properly administered the oath required by Miss. Code Ann. §23-15-237.

29. There were also instances of improper voter assistance, intimidation and interference, caused both by Defendant DuPree and his representatives, and by poll managers in particular precincts. Some specific examples include the following:

- a. On June 10, 2013, Mitchell Carter, Jr., a qualified 18-year-old elector in the City of Hattiesburg, in a story aired by a reporter for the WDAM television station, stated that a member of the DuPree campaign, after giving Carter a ride to the Rowan precinct on June 4, actually voted for him for DuPree. Carter did not request assistance, and was not qualified under law to receive assistance in voting. Carter stated that he intended to vote for Ware. Carter also stated that the DuPree campaign transported other voters to the polls and voted for them as well.
- b. At the East 6th Street (USO) precinct, duly authorized poll watchers were physically thrown out of the precinct, on at least two separate occasions, by the bailiff, such that the Plaintiff and other authorized candidates and parties were denied their right to observe the conduct of the election and to challenge voters as allowed by law. One watcher stated that the bailiff “grabbed me, physically, hollered at me, and pulled me out of the building.” Another poll watcher stated that he was “immediately thrown out” of the polling place by the bailiff upon arrival. “I mean, I was manhandled.” The bailiff’s improper actions at the USO precinct created a disruptive and intimidating atmosphere not only for authorized poll watchers, but also for voters.
- c. A poll watcher for Plaintiff’s campaign at the Camp School precinct was able to hear poll managers in that precinct talking about attending an election night party for Defendant DuPree.
- d. At least one authorized poll watcher in the Train Depot precinct was required to sit thirty feet away from the voting process by the poll managers, such that the Plaintiff and other authorized candidates and parties were denied their right to observe the conduct of the election and to challenge voters as allowed by law. By contrast, poll watchers

for Defendant's campaign, including Defendant DuPree, were allowed to freely move about the polling place and more closely observe the voting process. During one such time that Defendant DuPree was in the polling place, he threatened and intimidated a poll watcher. DuPree, without any authority, insisted that she leave the polling place. DuPree paced around the precinct, made phone calls, and then started yelling at a poll watcher for the Plaintiff's campaign that DuPree had the Attorney General on the phone and demanded that the other poll watcher leave the precinct. That poll watcher stated that she was "terrified because I was just there to volunteer and there's no reason that I needed to be intimidated like that." The Defendant's improper actions at the Train Depot precinct created a disruptive and intimidating atmosphere not only for authorized poll watchers, but also for voters.

- c. Another poll watcher, at the Rowan precinct, was required to sit about 20-30 feet away from the voting process by the poll managers, such that the poll watcher was denied the right to observe the conduct of the election and to challenge voters as allowed by law. That poll watcher was also advised by a person who was apparently serving as a DuPree poll watcher "that we were intimidating voters, and he warned us that we were in the wrong neighborhood to even try voter intimidation." Later, that person returned to the precinct with Defendant DuPree, who improperly told the poll watcher to leave the precinct. Notwithstanding the actions by the poll managers and Defendant's campaign, the poll watcher witnessed at least one occasion when it appeared that a voter was allowed to vote by machine even though the voter's name could not be found in the poll book. The poll watcher further observed times when the poll workers appeared to be overwhelmed with voters, such that a crowd would form in front of the sign-in table and voters obtained voting cards without signing the signature book. The improper actions by the poll managers, Defendant and his representative at the Rowan precinct created a disruptive and intimidating atmosphere not only for authorized poll watchers, but also for voters.
- f. Similarly, at Grace Christian precinct, a poll watcher for Plaintiff was placed by the poll managers too far away from the voting process, such that the poll watcher was denied the right to observe the conduct of the election and to challenge voters as allowed by law. On information and belief, the same poll manager, who created a disruptive and intimidating atmosphere not only for authorized poll watchers, but also for voters, and who was demonstrably biased in favor of Defendant DuPree, was later removed as a poll manager because she is not a

resident of Hattiesburg, and was therefore not legally qualified to serve as a poll worker.

30. The number of ballots cast, counted, and certified, compared with the number of signatures in the voter registers and the voters who have been marked as voted do not correlate in several of the precincts. These differences, along with the Ballot Accounting Report required by Miss. Code Ann. § 23-15-531 to be prepared by the poll managers, do not correlate with the certified totals or the other election documents, making it impossible to properly determine the actual number of individuals who voted and are recorded as having done so.

31. On information and belief, several machines in several different precincts were not properly calibrated and/or tested for logic and accuracy prior to the election, so that on those machines, the ballot for the election for Mayor was not correct, and actually omitted candidates who should have been on the ballot.

32. In the East 6<sup>th</sup> Street precinct, there is no "Zero Tape" from the five voting machines returned with the memory cards in a sealed communication package, and there is no evidence that such tape was prepared as required prior to the election, all as required by Miss. Code Ann. § 23-15-531.

33. As a result of these irregularities and departures from the mandatory provisions of Mississippi election law, the will of the voters in the June 4 General Election for Mayor of Hattiesburg cannot be ascertained, and the results certified by the MEC are not accurate. In fact, when considering only those votes that were legally cast in the June 4 election, Plaintiff Ware, not Defendant DuPree, received the most votes and should be certified as the winning candidate.



Relief Requested

WHEREFORE, for the material departures from the mandatory provisions of the Election Code and other irregularities set forth above, Plaintiff Dave Ware respectfully requests that this Court receive and set this Petition for expedited hearing, and upon hearing this action, award the following relief in the form of a judgment against Defendants as follows:

1. Declaring that Ware is entitled to the relief sought herein;
  2. Ruling that the certified results of the June 4, 2013 Municipal General Election for the office of Mayor are in error, and further ruling that the correct results demonstrate that Ware should be certified as receiving the highest number of legally-cast votes for such office;
  3. In the alternative, granting such other relief as provided by law;
  4. For costs of suit and other relief as the Court deems just and proper;
- and
5. For reasonable attorneys' fees.

This, the 24<sup>th</sup> day of June, 2013.

HEIDELBERG STEINBERGER  
COLMER & BURROW, P.A.



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CORY T. WILSON (MSB #10168)  
On behalf of DAVE WARE

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STATE OF MISSISSIPPI

COUNTY OF LAMAR

PERSONALLY CAME BEFORE ME, the undersigned authority in and for the jurisdiction aforesaid, the Plaintiff DAVE WARE, who, after being by me first duly sworn, on his oath stated that each and every allegation in the above Petition of Contest is, to the best of his knowledge, true and correct.

Dave Ware  
DAVE WARE

SWORN AND SUBSCRIBED BEFORE ME, this the 24<sup>th</sup> day of June, 2013.

Shirley Anderson  
Notary Public

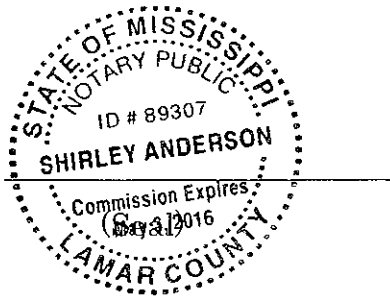


EXHIBIT "A"

CITY OF HATTIESBURG MS  
 June 4, 2013 General Election  
 Absentee Ballot Recapitulation

Precinct	Ballots		Envs Opened	Total Ballots	Ware	Jordan	O'Hara	Stewart	No Vote	Total
	Cast	Rejected								
Blair	13	1	12	12	6	0	0	0	0	12
Camp School	34	1	33	33	19	0	1	1	0	33
Dixie Pine	40	4	36	36	3	0	0	0	0	36
East 6th	79	0	79	81	10	0	0	0	0	81
Grace Christian	18	0	18	18	2	0	0	1	0	18
Highland Park	44	1	43	43	29	0	0	0	0	43
IMF	125	1	124	118	24	0	0	0	0	118
Kampar Park	41	3	38	38	31	1	0	0	0	38
North Heights	1	0	1	1	0	0	0	0	0	1
Rowan	94	3	91	88	24	0	0	0	2	88
Thames School	53	1	52	43	39	0	0	0	0	43
Timberton	34	2	32	33	10	0	0	0	0	33
USM Golf Course	19	1	18	17	9	0	0	0	0	17
Wesley Manor	10	0	10	20	7	0	0	0	0	20
Unknown Precinct *	1	1	0	0	0	0	0	0	0	0
	606	19	587	581	343	231	1	1	2	581

\* One rejected ballot envelope was completely blank; no indication on the envelope as to in which precinct it was cast.

STATE OF MISSISSIPPI

COUNTY OF JONES

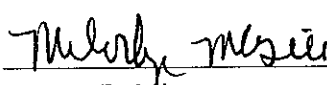
PERSONALLY CAME BEFORE ME, the undersigned authority in and for the jurisdiction aforesaid, Robert D. Gholson, who, after being by me first duly sworn, on his oath states as follows:

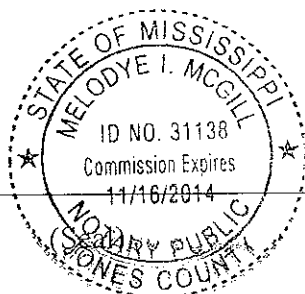
1. I am a licensed and practicing attorney in the State of Mississippi, and I have no connection with this election contest, nor have I been employed in the past, present, or expect to be employed in the future by the contestant or his attorneys;
2. I have fully made an independent investigation into the matters of fact and law upon which the foregoing protest and petition are based; and,
3. After such investigation, I verily believe that the protest and petition should be sustained and that the relief requested therein should be granted.

Further Affiant sayeth not.

  
\_\_\_\_\_  
ROBERT D. GHOLSON (MS Bar #4811)

SWORN AND SUBSCRIBED BEFORE ME, this the 21<sup>ST</sup> day of June, 2013.

  
\_\_\_\_\_  
Notary Public



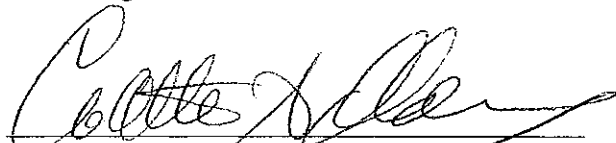
STATE OF MISSISSIPPI

COUNTY OF PEARL RIVER

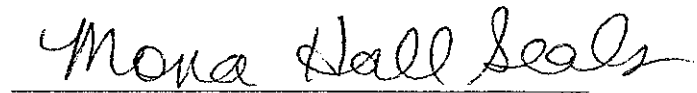
PERSONALLY CAME BEFORE ME, the undersigned authority in and for the jurisdiction aforesaid, Colette A. Oldmixon, who, after being by me first duly sworn, on her oath states as follows:

1. I am a licensed and practicing attorney in the State of Mississippi, and I have no connection with this election contest, nor have I been employed in the past, present, or expect to be employed in the future by the contestant or his attorneys;
2. I have fully made an independent investigation into the matters of fact and law upon which the foregoing protest and petition are based; and,
3. After such investigation, I verily believe that the protest and petition should be sustained and that the relief requested therein should be granted.

Further Affiant sayeth not.

  
COLETTE A. OLDMIXON (MS Bar #3924)

SWORN AND SUBSCRIBED BEFORE ME, this the 21<sup>st</sup> day of June, 2013.

  
Notary Public



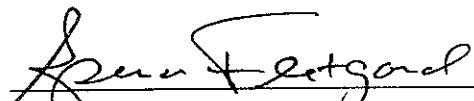
**STATE OF MISSISSIPPI**

**COUNTY OF MADISON**

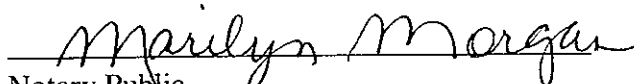
**PERSONALLY CAME BEFORE ME**, the undersigned authority in and for the jurisdiction aforesaid, SPENCE FLATGARD, who, after being by me first duly sworn, on his oath states as follows:

1. I am a licensed and practicing attorney in the State of Mississippi, and I have no connection with this election contest, nor have I been employed in the past, present, or expect to be employed in the future by the contestant or his attorneys;
2. I have fully made an independent investigation into the matters of fact and law upon which the foregoing protest and petition are based; and,
3. After such investigation, I verily believe that the protest and petition should be sustained and that the relief requested therein should be granted.

Further Affiant sayeth not.

  
SPENCE FLATGARD (MS Bar # 99381)

**SWORN AND SUBSCRIBED BEFORE ME**, this the 26 day of June, 2013.

  
Notary Public

December 17, 2015  
(Seal)

