



VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

R.W. "BOBBY" MATHIESON

Petitioner,

v.

At Law No.: C09-6581

RON A. VILLANUEVA

Respondent.

PRELIMINARY ORDER

This matter is before the Court on the Petition for Recount filed on November 24, 2009, by R.W. "Bobby" Mathieson, Petitioner; on the Answer of Ron A. Villanueva, Respondent; and the stipulation of counsel.

Upon consideration of the Petition of Recount and Answer, and it appearing just and proper to do so, the Court orders as follows, subject to review by the Special Three-Judge Recount Court when it convened:

1. All voting machine keys, poll books, statements of results, printed return sheets, print-out tapes produced by computers or other machines, ballots, and other election materials used or produced in connection with the November 3, 2009 General Election for Virginia House of Delegates in the Twenty-First House District of the Commonwealth of Virginia (the "Election"), and previously delivered to the Clerk of the Circuit Court of the City of Virginia Beach (the "Clerk"), shall remain in the safekeeping of the Clerk, and the Clerk shall ensure that the materials remain secure and undisturbed, except as otherwise provided in this Preliminary Order. All voting equipment used in the Election shall remain secure and undisturbed in the locations

where presently situated, and the Virginia Beach Electoral Board shall continue to ensure the security of the voting equipment.

2. To the extent that she has not already done so, pursuant to Va. Code § 24.2-668, the Clerk is ordered to: (a) secure all paper ballots and other election materials in sealed boxes (closing and sealing all openings to boxes); (b) place all boxes in a vault or room to be securely locked at all times, except when access is necessary for the Clerk and her staff; (c) cause such vault or room to be securely locked except when access is necessary for the Clerk and her staff; (d) implement all other security measures, if any, taken by the Clerk with respect to trial evidence; and (e) certify in writing to this Court (i) the security measures taken by the Clerk following the election through the date of this Order and (ii) any additional security measures taken pursuant to this Order. Within two (2) days of the entry of the Order, the Clerk shall provide this Court and both Parties with copies of the certification.

3. Promptly upon request of a representative of either Party, the Virginia Beach General Registrar shall provide such representative with access to and copies of (at the requesting Party's sole expense) the following documents from the materials maintained by the General Registrar in her office: all statements of results (original and corrected), print-out tapes produced by computers or other machines, poll books and abstracts of votes (original and corrected) from the Election. If the General Registrar does not have any of these materials in her office, she shall so advise the Party's representative.

4. Promptly upon request of a representative of either Party, the Clerk shall provide such representative with access to and copies of (at the requesting Party's

sole expense) the following documents from the materials maintained by the Clerk's office: poll books (whether in paper or electronic format) and abstracts of votes (original and corrected) from the Election. If the Clerk does not have any of these materials in her office, she shall so advise the Party's representative.

5. The recount of ballots and redetermination of the vote in the Election shall take place in the office of, or other facilities provided or arranged by, the Clerk beginning at 10:00 a.m. on _____, December ____, 2009, and shall continue until it is completed. The offices or other facilities provided or arranged by the Clerk shall be of sufficient size for the purposes of the recount and redetermination and shall allow for direct and proximate observation of the Recount Officials by the Recount Observers. The recount and redetermination shall be conducted according to procedures and instructions to be determined by further order of the Special Three-Judge Recount Court, which shall, if the parties cannot agree to the conduct of the Recount and redetermination, schedule a hearing on the Procedural Order at least one week before the Recount date set forth above.

6. Counsel for the Parties shall meet and confer regarding the substance of the proposed Recount Procedural Order submitted by Petitioner as Exhibit C to the Petition for Recount. The Parties then shall prepare and submit a Recount Procedural Order for consideration by the Special Three-Judge Recount Court. In the event the Parties do not agree on one or more provisions, the Parties shall exchange and file legal memoranda and proposed orders not later than 5:00 p.m. three days prior to the convening of the Special Three-Judge Recount Court for the purpose of considering the entry of the Procedural Order, and at the same time shall provide copies of their

memoranda and proposed orders to the Judges of the Special Three-Judge Recount Court. Reply memoranda, if any, shall be exchanged, and filed not later than 5:00 p.m. on the day prior to the convening of the Special Three-Judge Recount Court for the purpose of considering the entry of the Procedural Order, with copies to the Judges.

7. Counsel for the Parties shall meet and confer regarding the form and substance of the proposed Final Order submitted by Petitioner as Exhibit D to the Petition for Recount. The Parties then shall prepare and submit a Final Order for consideration by the Special Three-Judge Recount Court, not later than at the final hearing of the recount and redetermination. In the event the Parties do not agree on one or more provisions of the Final Order, the Parties shall file legal memoranda and proposed orders with the Court prior to the final hearing, with copies to each other and to the Judges of this Special Three-Judge Recount Court, or they may present oral argument at the final hearing.

8. The Special Three-Judge Recount Court shall supervise the recount and redetermination of the vote, with assistance from the State Board of Elections and the Virginia Beach Electoral Board. The Court shall supervise the recount through the Recount Coordinators, who shall be the Chair and Secretary of the Virginia Beach Electoral Board; provided, however, that if both the Chair and the Secretary of the Virginia Beach Electoral Board are of the same party, then the candidate of that party shall designate only one of them to serve, along with the board member representing the party of the other candidate as a Recount Coordinator.

9. The Recount Officials and Alternate Recount Officials for the City of Virginia Beach shall be chosen by the candidates from among the Officers of Election previously appointed by the Virginia Beach Electoral Board pursuant to Va. Code § 24.2-115. The number of recount teams and the number of Recount Officials and Alternate Recount Officials to be appointed for the City of Virginia Beach shall be established by further order of the Court after the hearing before the Special Three-Judge Recount Court.

10. The Recount Coordinators and Recount Officials shall be Officers of the Court acting under its jurisdiction. Nothing contained in this Order or in the procedures to be established for the recount shall be construed, however, to prevent the Parties or their representatives from communicating directly with Recount Coordinators and Recount Officials.

11. By no later than 5:00 p.m. five days prior to the date set for the Recount and redetermination, each candidate shall submit to the Court the names and addresses of the Recount Coordinators, Recount Officials, and Alternate Recount Officials whom he has chosen to serve. The persons so identified by the Parties are appointed as Recount Coordinators, Recount Officials and Alternate Recount Officials, subject later to disqualification by the Court for good cause shown, in the event that the other candidate files an objection by no later than 5:00 p.m. on the day following their identification.

12. The Clerk of this Court is authorized and directed to issue the necessary summonses to compel the attendance of the Recount Coordinators, Recount Officials and Alternate Recount Officials chosen by the Parties to appear at _____ a.m.

on the date of the Recount and redetermination, at the office of the Clerk of the Circuit Court of the City of Virginia Beach, or at other facilities provided or arranged for by the Clerk, to receive such instructions and take such oaths as the Court may prescribe, and to commence the recount and redetermination of the vote. The summonses shall be on forms prescribed by this Court and shall be issued by the Clerk, who shall mail them directly to the Recount Coordinators, Recount Officials, and Alternate Recount Officials. The Parties are directed to cooperate with the Clerk in completing the summonses, providing address labels, and providing such other assistance as is necessary to expedite the mailing of the summonses.

13. Each Party is authorized to appoint, and is entitled to have present at the recount and redetermination, one Recount Observer for each team of two Recount Officials. Persons shall qualify as Observers by submitting to the Recount Coordinators a statement, signed by a representative of or counsel for a Party, giving the person's name and authorizing him or her to represent the candidate as an Observer. A photocopy authorization form shall suffice. Not later than 5:00 p.m. two days prior to the Recount and Redetermination, the candidates shall exchange with one another and lodge with the Clerk the form of their respective authorization statements that will constitute the credentials of the Recount Observers.

14. The Clerk is directed to make arrangements to retain the forms, envelopes containing challenged ballots, and other materials after the recount and redetermination, regardless of the hour, and to maintain these materials securely at all times.

15. The Special Three-Judge Recount Court shall convene at 10:00 a.m. on _____, December ____, 2009, for the purpose of determining all matters raised by the Parties pertaining to the recount and redetermination of the vote, to certify the vote for each Party to the recount, and to declare the person who received the higher number of votes to be elected.

15. The Petitioner is directed to send a copy of this Preliminary Order to the Virginia Beach Electoral Board.

This matter is continued until _____, December ____, 2009.

IT IS SO ORDERED.

Enter: / /

Chief Judge
Circuit Court of the City of Virginia Beach

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