

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

R.W. "BOBBY" MATHIESON

Petitioner,

v.

Civil Action No. 0609-6581

RON A. VILLANUEVA

Serve: Gary C. Byler, Esq.
Law Offices of Gary C. Byler, P.C.
505 S. Independence Blvd.
Suite 201
Virginia Beach, VA 23452

Respondent.

PETITION FOR RECOUNT

Petitioner, R.W. "Bobby" Mathieson ("Delegate Mathieson"), by counsel and pursuant to Sections 24.2-800 through -805 of the Code of Virginia of 1950, as amended, (the "Code"), petitions the Court for a recount of the ballots cast and redetermination of the vote in the November 3, 2009 General Election for the Virginia House of Delegates from the Commonwealth of Virginia's Twenty-First House District. In support of this Petition, Delegate Mathieson states as follows:

Statement of Facts

1. On Tuesday, November 3, 2009, the Commonwealth of Virginia held an election for Virginia House of Delegates from the Twenty-First House District (the "Election"). The Twenty-First House District is located within the City of Virginia Beach. This District includes the following precincts: Mt. Trashmore, Malibu, Thalia, Windsor Oaks, Bellamy, Timberlake, Edinburgh, Glenwood, Rosemont Forest,

Colonial, Round Hill, Dahlia, Village, Indian Lakes, Hillcrest and the Central Absentee Precinct for Virginia Beach.

2. The candidates for Virginia House of Delegates were the incumbent, Delegate Mathieson, who is a resident of the City of Virginia Beach, and Respondent, Ron A. Villanueva ("Mr. Villanueva"), the challenger, who is also a resident of the City of Virginia Beach.

3. On November 23, 2009, pursuant to Section 24.2-679 of the Code, the Virginia State Board of Elections (the "State Board") certified Mr. Villanueva as the winner of the Election by 14 votes out of the 15,332 total votes cast for Mr. Villanueva and Delegate Mathieson. A copy of the State Board's certification is attached as Exhibit A to this Petition. According to the State Board, the results of the Election were:

Ron A. Villanueva	7,673 votes
R.W. "Bobby" Mathieson	7,659 votes
Write-Ins	33 votes
Total	15,365 votes

4. In such a situation, Section 24.2-800(B) of the Code provides:

When there is between any candidate apparently nominated or elected and any candidate apparently defeated a difference of not more than one percent of the total vote cast for the two such candidates as determined by the State Board... the defeated candidate may appeal from the determination of the State Board... for a recount of the vote...

5. Additionally, Section 24.2-802(E) requires the costs of the recount and redetermination to be paid by the city in the electoral district at issue when the

difference in votes cast for each of the two candidates in the recount is not more than one-half of one percent.

Count I: Recount

6. This Court has subject matter jurisdiction over this case pursuant to Section 24.2-800 of the Code. Venue is proper pursuant to Section 24.2-801, which requires this Petition to be filed in the challenged party's city or county of residence.

7. According to the State Board's certification, Mr. Villanueva prevailed in the Election by 14 votes out of 15,332 total votes cast for Mr. Villanueva and Delegate Mathieson – a difference of .09 percent.

8. Because the vote difference between Mr. Villanueva and Delegate Mathieson was not more than one percent, Section 24.2-800(B) of the Code permits a recount of the ballots cast in the Election and redetermination of the vote. Because the vote difference between the candidates was not more than one-half of one percent, Section 24.2-802(E) requires the costs of the recount and redetermination to be paid by the city containing the Twenty-First Delegate District.

Request for Relief

Wherefore, for the foregoing reasons, Delegate Mathieson respectfully appeals the State Board's certification and petitions this Court to order a recount and redetermination of the November 3, 2009 General Election for Virginia House of Delegates from Virginia's Twenty-First House District, as provided by Section 24.2-802 of the Code, and to:

(A) Promptly notify the Chief Justice of the Supreme Court of Virginia of the filing of this Petition, and request the appointment of two judges to sit, along with the

Chief Judge of this Court, in all respects as a court appointed and sitting under Section 24.2-805 of the Code;

(B) Within seven calendar days of the filing of this Petition, provide a Preliminary Hearing, which may be conducted telephonically by Order of the Court, at which motions may be disposed of, and the rules of procedure may be fixed, both subject to review by the Special Three-Judge Recount Court, and at which the Court shall review the security measures taken for all ballots and voting devices and direct all appropriate measures to ensure proper security to conduct the recount and redetermination;

(C) Enter, at the Preliminary Hearing, the Preliminary Order attached as Exhibit B to this Petition which Order is similar to that used in recent Recounts in the Commonwealth;

(D) Order the General Registrar and the Clerk of the Circuit Court, upon request of a representative of either Party to this case, to provide access to and copies of (at the requesting Party's sole expense) the following election materials: all statements of results (original and corrected), printed return sheets, print-out tapes produced by computers and other machines, poll books (whether in paper or electronic format), and abstracts of votes (original and corrected) from the Election;

(E) Subject to review by the Special Three-Judge Recount Court, set the dates, times and place for the recount and redetermination in Virginia Beach; order the transportation of voting and tabulation devices to a central location in Virginia Beach under appropriate safeguards; and, order delivery of election materials to the Clerk of this Court upon conclusion of Virginia Beach's recount;

(F) Following the appointment of the Special Three-Judge Recount Court, call a Procedural Hearing to dispose of any additional motions, and to fix finally rules of procedure that shall provide for the accurate determination of votes in the Election;

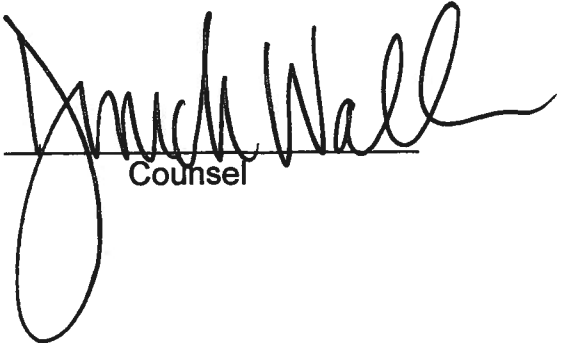
(G) Enter, at the Procedural Hearing, the Recount Procedural Order attached as Exhibit C to this Petition which Order is similar to that used in recent Recounts in the Commonwealth;

(H) Supervise the recount and redetermination to ensure that it is conducted in accordance with the requirements of Section 24.2-802 and the Recount Procedural Order; and,

(I) At the conclusion of the recount and redetermination of the ballots cast in all precincts, after allowing the parties to inspect questioned ballots, and after hearing arguments of counsel, if any, rule on the validity of all questioned ballots and votes, determine and certify to the State Board the votes given to each candidate in the Election, and declare the person who received the highest number of votes to be elected; and

(J) Upon conclusion of the recount and redetermination, enter the Final Order attached as Exhibit D to this Petition.

R.W. "BOBBY" MATHIESON

By  Counsel

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Counsel for Petitioner, R.W. "Bobby" Mathieson

Date: November 24, 2009

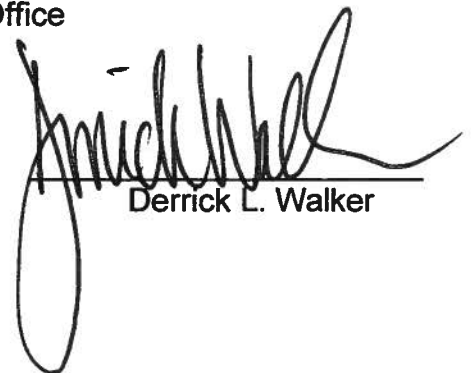
Certificate of Service

On this 24th day of November, a true and correct copy of this Petition for Recount was mailed to the following via regular mail:

Edith "Pat" Harrington
Voter Registrar for the City of Virginia Beach
Municipal Center, Building 14
Virginia Beach, Virginia 23456

Gary C. Byler, Esquire
505 S. Independence Boulevard, #102
Virginia Beach, Virginia 23452

Virginia Beach City Attorney's Office
2401 Courthouse Drive, #260
Virginia Beach, Virginia 23456



Derrick L. Walker