

BEFORE THE HARPERS FERRY TOWN COUNCIL

IN RE: THE MATTER OF CONTESTED TOWN COUNCIL ELECTION

**NANCY SINGLETON CASE, and
DEBORAH A. McGEE,**

Individual Contesters,

**HARDWICK SMITH JOHNSON,
CHARLOTTE WARD THOMPSON,
CHRISTIAN PECHUEKONIS,
MARJORIE FLINN YOST,
BARBARA HUMES, and
JAY PREMACK,**

Individual Contestees.

**NOTICE OF INTENT TO CONTEST
HARPERS FERRY TOWN COUNCIL ELECTION**

Comes now, Nancy Singleton Case and Deborah A. McGee, individual Contesters, by and through their counsel, Gregory A. Bailey, Esq., and the law firm of Arnold & Bailey, PLLC, and pursuant to W.Va. Code § 3-7-6 files the foregoing Notice of Intent to Contest the Harpers Ferry Town Council Election based upon the averments set forth herein:

Parties

1. Contester, Nancy Singleton Case, was a candidate who ran for the office of Town Council in the election held on June 11, 2019 and certified on June 28, 2019.
2. Contester, Deborah A. McGee, was a candidate who ran for the office of Town Council in the election held on June 11, 2019 and certified on June 28, 2019.

3. Contestee, Hardwick Smith Johnson was a candidate who ran for the office of Town Council in the election held on June 11, 2019 and certified on June 28, 2019.

4. Contestee, Charlotte Ward Thompson was a candidate who ran for the office of Town Council in the election held on June 11, 2019 and certified on June 28, 2019.

5. Contestee, Christian Pechuekonis, was a candidate who ran for the office of Town Council in the election held on June 11, 2019 and certified on June 28, 2019.

6. Contestee, Marjorie Flinn Yost was a candidate who ran for the office of Town Council in the election held on June 11, 2019 and certified on June 28, 2019.

7. Contestee, Barbara Humes was a candidate who ran for the office of Town Council in the election held on June 11, 2019 and certified on June 28, 2019.

8. Contestee, Jay Premack was a candidate who ran for the office of Town Council in the election held on June 11, 2019 and certified on June 28, 2019.

Jurisdiction and Venue

9. W.Va. Code § 3-7-6 provides that contests to municipal elections are to be brought before the governing body of the municipality of the offices contested.

Facts Supporting Election Contest

10. An election was held for seats on the Harpers Ferry Town Council during an early voting period, from May 29 through June 8, 2019, and on general election day June 11, 2019. The Board of Canvassers conducted the Canvass of Returns Meeting on June 17, 2019. A recount of that vote was held on June 26, 2019 and the election results were certified on June 28, 2019.

11. W.Va. Code 3-1-3 provides that citizens of the state shall be entitled to vote at all elections held within the municipalities in which they respectively reside.

12. During the early voting period of the 2019 municipal elections, which occurred from May 29 through June 8, 2019, and on the general election day June 11, 2019, no fewer than five (5) Harpers Ferry citizens sought to vote, but Harpers Ferry poll workers required these voters to vote using provisional ballots, based upon erroneous records of the Jefferson County Clerk that indicated they were not Harpers Ferry residents.

13. Each of these citizens were Harpers Ferry residents and registered voters appropriately permitted to cast provisional ballots in the election.

14. The citizens who cast provisional ballots are: Linda McCarty, George McCarty, Leah Howell (who was also a candidate for town council), Adam Hutton and Jane Mumaw.

15. Leah Howell was qualified to cast a ballot in the election as a duly registered voter who resides in the corporate limits of Harpers Ferry at 887 Washington Street, Harpers Ferry, West Virginia.

16. George McCarty was qualified to cast a ballot in the election as a duly registered voter who resides in the corporate limits of Harpers Ferry at 800 Washington Street, Harpers Ferry, West Virginia.

17. Linda McCarty was qualified to cast a ballot in the election as a duly registered voter who resides in the corporate limits of Harpers Ferry at 800 Washington Street, Harpers Ferry, West Virginia.

18. Adam Hutton was qualified to cast a ballot in the election as a duly registered voter who resides in the corporate limits of Harpers Ferry at 900 Washington Street, Harpers Ferry, West Virginia.

19. Jane Mumaw was qualified to cast a ballot in the election as a duly registered voter residing in the corporate limits of Harpers Ferry at 675 Cliff Street, Harpers Ferry, West Virginia.

20. The Board of Canvassers for the election conducted a Canvass Meeting to canvass the vote returns of the June 11 election on June 17, 2019 but, based upon information and belief, a majority of those Canvassers (Councilmember Johnson, Councilmember Thompson, Councilmember Humes and Councilmember Yost) refused to consider, or even examine, any of the provisional ballots cast by the voters named herein, thereby denying these five provisional voters the right to vote.

21. On June 19, 2019, Town Council candidates Nancy Singleton Case and Deborah A. McGee requested an official recount of the June 11, municipal election results, and further urged the Board of Canvassers to consider all provisional ballots. The official recount was conducted on June 26, 2019, wherein the Board of Canvassers recounted all early, absentee and election day ballots, but once again, the Board of Canvassers refused to consider any of the provisional ballots cast by the voters named herein.

22. The official election results were certified on June 28, 2019, without consideration of any of the provisional ballots cast by the voters herein.

23. Each of the provisional ballots should have been properly examined by the Board of Canvassers, thoughtfully reviewed and considered, and when found to be valid, should have been tallied together with the regular ballots.

24. Upon information and belief, if the provisional ballots had been counted it would change the outcome of the election.

25. The West Virginia Supreme Court declared long ago that fairness, purity and freedom of elections are essential to free government. *Ralston v. Meyer*, 12 S.E. 783 (1891). That pronouncement which dates back to 1891 holds true today.

26. An election that does not count all votes of its citizens fails to satisfy the criteria of fairness and is not a free election.

27. Equally damaging to a free election is counting ballots cast by persons not qualified to vote in an election.

28. In the present election, at least four ballots were counted despite the fact that they were cast by those who are not residents or proper voters of Harpers Ferry, WV.

29. Based upon information and belief, Tess Bishop, who resides in the state of Utah, cast a ballot in the town council election, in violation of W.Va. Code § 3-1-3 and W.Va. Code § 3-1-34.

30. Based upon information and belief, Taylor Bishop, who resides in the state of Utah, cast a ballot in the town council election, in violation of W.Va. Code § 3-1-3 and W.Va. Code § 3-1-34.

31. Based upon information and belief, Jacob Morse, who resides in the state of Illinois, cast a ballot in the town council election, in violation of W.Va. Code § 3-1-3 and W.Va. Code § 3-1-34.

32. Based upon information and belief, Craig Yost, who resides outside the corporation of Harpers Ferry, West Virginia, cast a ballot in the town council election, in violation of W.Va. Code § 3-1-3 and W.Va. Code § 3-1-34.

33. Upon information and belief, it is impossible to review these improperly cast ballots to remove the votes from candidates they voted for.

34. Upon information and belief, the West Virginia Secretary of State's Office has undertaken an investigation of the failure of the Board of Canvassers to consider provisional votes, and of the illegal votes that were cast in this subject election.

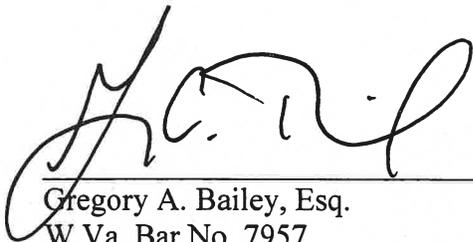
35. The totality of circumstances surrounding the failure to count ballots cast by duly registered Harpers Ferry citizens while allowing ballots to be cast by non-residents, along with other election irregularities, has tainted the fairness and reliability of the election and Contesters reserve the right to contest the legality of the election as a whole.

Based upon all of the foregoing, Contesters challenge the election results based upon the following contested votes by provisional ballots that should have been counted and contesting the votes by non-residents that should have been disallowed:

- a. Provisional ballot cast by Leah Howell, which should have been counted;
- b. Provisional ballot cast by George McCarty, which should have been counted;
- c. Provisional ballot cast by Linda McCarty, which should have been counted;
- d. Provisional ballot cast by Adam Hutton, which should have been counted;
- e. Provisional ballot cast by Jane Mumaw, which should have been counted;
- f. Ballot accepted from non-resident Tess Bishop, which should not have been cast nor counted;

- g. Ballot accepted from non-resident Taylor Bishop, which should not have been cast nor counted;
- h. Ballot accepted from non-resident Jacob Morse, which should not have been cast nor counted;
- i. Ballot accepted from non-resident Craig Yost, which should not have been cast nor counted;
- j. Fundamental unfairness calling into question the legality of the election; and
- k. Any other vote or basis discovered during the pendency of this election contest.

WHEREFORE, based upon the election contest procedures set forth in W.Va. Code 3-7-7, Contesters request that this matter be set down for trial within the earliest possible time but no later than August 12, 2019.



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By Counsel

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Individual Contestees.

SWORN VERIFICATION OF CONTESTER NANCY SINGLETON CASE

Contester, Nancy Singleton Case, being first duly sworn, deposes and says that the averments contained in the Notice of Intent to Contest Harpers Ferry Town Council Election are true and correct insofar as they are therein stated to be upon information and belief, she believes them to be true.


Nancy Singleton Case

STATE OF WEST VIRGINIA

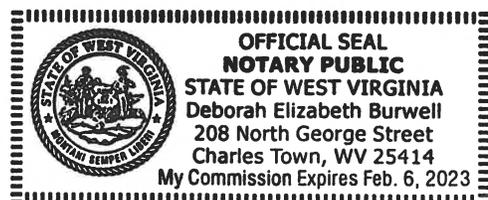
COUNTY OF JEFFERSON, to-wit;

Taken and subscribed and sworn by Nancy Singleton Case before me, in my said

State and County, this 8th day of July, 2019.


Notary Public

My commission expires: Feb. 6th, 2023



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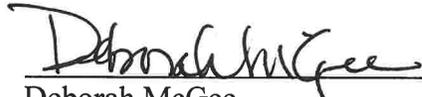
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BARBARA HUME, and
JAY PREMACK,**

Individual Contestees.

SWORN VERIFICATION OF CONTESTER DEBORAH MCGEE

Contester, Deborah McGee, being first duly sworn, deposes and says that the averments contained in the Notice of Intent to Contest Harpers Ferry Town Council Election are true and correct insofar as they are therein stated to be upon information and belief, she believes them to be true.


Deborah McGee

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON, to-wit;

Taken and subscribed and sworn by Deborah McGee before me, in my said

State and County, this 8th day of July, 2019.


Notary Public

My commission expires: Feb. 6th, 2023

