

IN THE CIRCUIT COURT OF LEFLORE COUNTY, MISSISSIPPI

WAYNE A. SELF

PETITIONER

VS.

CIVIL ACTION NO.: 2023-0072-CICI

ERIC MITCHELL

RESPONDENT

FINAL JUDGEMENT

At the outset, the court wishes to complement both parties' excellent counsel, who conducted themselves with the utmost respect for the court, professionalism, and skill in their knowledge of both Mississippi election law and Mississippi trial practice. The court also wishes to thank the Leflore County Circuit Clerk's office, Sheriff's Department, Circuit Judges, and court staff for providing a courtroom, court reporter, judge's chambers, and law enforcement protection for this specially-appointed judge who came into their jurisdiction.

INTRODUCTION AND SUMMARY OF THE DECISION

No election is perfect¹ and absent fraud or intentional wrongdoing, minor, non-statutory, and technical irregularities are typically insufficient to invalidate an election.² But when an election's procedural, absentee and electronic processes are so replete with violations of the Mississippi Election Code³ ("Election Code") so "as to destroy the integrity of the election and make the will of the qualified electors impossible to ascertain," such violations suffice to justify and require a new election,⁴ not only to ensure the election of the proper public official but also to maintain faith and confidence in the election process.

¹As counsel for Gary aptly put it, "The Mississippi Supreme Court 'recognizes that no election is flawless. Therefore, it considers ordering a new election to be a last resort.'" *citing Wesley v. Wash. Co. Dem. Exec. Com.*, 235 So.3d 1379, 1386 (Miss. 2017).

²*Wilbourn v. Hobson*, 608 So.2d 1187, 1192 (Miss. 1992).

³Miss. Code Ann. § 23-15-1, *et seq.*

⁴*Stringer v. Lucas*, 608 So.2d 1351, 1361 (Miss. 1992).

Unfortunately, such was the case in the 2023 Democratic primary election for Leflore County District 4 Supervisor. As described below, numerous Election Code violations took place both in the absentee voting process and at the polls on election day. These violations, together with the intentional deprivation of the public's right to witness the election process, indeed serve to undermine confidence in the election process entirely and cast substantial doubt that the election achieved the will of the qualified voters. Accordingly, this court must order a special election for Leflore County District 4 Supervisor.

BACKGROUND FACTS AND PROCEEDINGS

In the August 8, 2023 Leflore County Democratic primary, Eric Mitchell became the Democratic nominee for District 4 Supervisor and he went on to defeat his Independent opponent, Jason Doyle, in the general election.

Self timely commenced this election contest and because (1) much of the evidence in this case was also to be offered as evidence in Debra Tate Hibbler's separately filed Democratic primary election contest against Johnny Lee Gary; (2) the petitioners and respondents employed the same counsel here and in Hibbler's case; and (3) the Supreme Court assigned the same special judge to hear both cases, all parties and counsel agreed for the court to consolidate the two cases for trial purposes.

Self claims the court should throw out all votes cast in District 4, absentee and otherwise, due to radical departures from the Election Code. Mitchell alleges there was no evidence of fraud or intentional wrongdoing, and that any violations of the Election Code were insufficient to warrant a special election. He further argues that if the court grants any relief, it should exclude all absentee ballots and declare Mitchell the victor because he won a majority of the electronic (precinct) votes.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court's Findings of Fact and Conclusions of Law ("FFCL") include those stated below and as restated for the Leflore County Election Commissioners ("LCEC" or "Commissioners") in Exhibits One and Two attached hereto, incorporated herein, and made a part hereof.

Leflore County's District 4 precincts are Southwest Gwd, Rising Sun, North Itta Bena, and South Itta Bena.⁵ Before contesting Mitchell's primary victory, Self examined all four District 4 precinct boxes and three absentee boxes. The absentee boxes contained the ballots accepted and rejected by the Resolution Board (the "Board") on August 8 and on August 16.

Following his examination, Self filed a timely Petition to Contest the Election with Robert Sims, Chairman of the Leflore County Democratic Executive Committee ("LCDEC") who promptly reported that the LCDEC would not conduct an investigation, prompting Self to timely file his Petition for Judicial Review in this court. The case proceeded to trial before a statutorily-mandated⁶ Special Election Tribunal comprised of this Court and Leflore County's five LCECs, all of whom attended the entirety of the trial.

During the trial, under the supervision of the court and the watchful eye of the Leflore County Sheriff's Department, Self's counsel reopened three absentee boxes and the six precinct boxes including all four District 4 precinct boxes. Eleven witnesses testified, and the parties stipulated into evidence 155 exhibits, some of which were collective exhibits consisting of

⁵See Ex. 139, 140.

⁶See Miss. Code Ann. § 23-15-931.

multiple documents. Due to an illness, Leflore County Circuit Clerk Elmus Stockstill, who was scheduled to testify, tragically and unexpectedly passed away.

The Election Commissioners' Review

Following the trial, the court required the parties to propose FFCL. After receiving and considering the counsels' proposals and conducting its own research, the court prepared a summary draft of its FFCL, following which the court set a face-to-face conference with the five LCECs to learn and consider their views concerning the evidence in the two consolidated cases. The court read out loud each of its findings of fact and offered each Commissioner the individual opportunity to discuss and express their respective opinions and to provide a written dissent to any of the facts found by the court.

Following the review, each Commissioner signed a statement indicating agreement with each the court's findings of fact. The Commissioners' respective votes on the court's findings of fact in this case and in Hibbler's challenge are attached hereto as Exhibits One and Two.

Absentee Ballot Violations

All elections have errors, mistakes, and failures to comply with all of the numerous and sometimes tedious Election Code requirements. In its meeting with the LCEC, the court was impressed with each Commissioner's commitment and concern for the proper conduct of elections and their understanding of the importance of Election Code compliance. They complained of inadequate training and agreed that all violations are troubling, but readily acknowledged that absentee ballot violations are particularly concerning because

[a]bsentee paper ballots, unlike machine votes, are particularly amenable to fraud," and "the detailed procedures outlined in the statutes ... are designed to protect against fraudulent votes and ensure that absentee ballots actually reflect the will of the voters who cast them."⁷

⁷*Rogers v. Holder*, 636 So.2d 645, 649 (Miss. 1995).

The Mississippi Supreme Court has held that all election laws governing absentee voting “are mandatory in nature.”⁸ With that in mind, the court notes that the absentee applications and envelopes reviewed in the courtroom demonstrated the following illegalities:

- Eight of the envelopes had no postmark in violation of Sections 23-15-631, 637;⁹
- Thirteen of the applications were not signed by a witness or, if required, by a person authorized to administer oaths in violation of Sections 23-15-627, 631;¹⁰
- The voter signatures did not match on three of the applications and envelopes in violation of Section 23-15-639;¹¹
- Four of the envelopes were stamped “filed” by the Circuit Clerk's office before Election Day, but not considered until August 16 in violation of Section 23-15-639, 651¹²
- One ballot was accepted on August 16 despite having arrived in an envelope postmarked on August 10 in violation of Section 23-15-637.¹³

Persons seeking to vote absentee by mail must check a box indicating why they are unable to vote in person, and the box checked dictates the type of attestation required for the vote to count. For instance, when a voter checks the box indicating he or she is “temporarily residing outside the county,” their application for a mail-in ballot and envelope

shall be sworn to and subscribed before an official who is authorized to administer oaths or other official authorized to witness absentee balloting as provided in this chapter, said application to be accompanied by such verifying affidavits as required by this chapter.¹⁴

⁸*Id. See also Campbell v. Whittington*, 733 So.2d 820, 827 (Miss. 1999) *citing Rogers*, 636 So.2d at 649).

⁹*See Ex. 3, 37, 43, 45, 52, 65, 67.*

¹⁰*See Ex. 2, 37, 45, 64, 67, 70, 72).*

¹¹*See Ex. 52, 71, 73.*

¹²*See Ex. 45, 65, 77;*

¹³*See Ex. 70.*

¹⁴Miss. Code Ann. § 23-15-715.

On the other hand, when a person checks the box that indicates they have a temporary or permanent physical disability, their application “shall not be required to be accompanied by an affidavit but shall be witnessed and signed by a person eighteen (18) years of age or older.”¹⁵

When the ballots and envelopes are received and examined, they also must comply with other legal requirements such as matching signatures and proper attesting witnesses, or they must be rejected. Section 23-15-641 states that where

an affidavit or the certificate of the officer before whom the affidavit is taken is required and such affidavit or certificate is found to be insufficient, or if it is found that the signatures do not correspond, or that the applicant is not a duly qualified elector in the precinct, or otherwise qualified to vote, or that the ballot envelope is open or has been opened and resealed, or the voter is not eligible to vote absentee, the previously cast vote shall not be allowed. Without opening the voter’s envelope the resolution board shall mark across its face “REJECTED”, with the reason therefor.¹⁶

In addition to the attestation requirements for absentee ballots, the envelopes transmitting the ballots to the Clerk must be “postmarked by the date of the election and received by the registrar no more than five (5) business days after the election to be counted” and ballots that are not timely received “shall not be counted.”¹⁷ These requirements are particularly concerning for at least two reasons. First, they are the only means of confirming that the voter mailed the absentee ballot before the expiration of the deadline, and second, the absence of a postmark on an envelope transmitting an absentee ballot suggests the possibility that the voter or someone else improperly gathered and delivered the absentee ballot to the Clerk’s office.

Although the election officials are required to verify that all of these requirements have been met, trial testimony and exhibits established that this did not happen.

¹⁵ *Id.*

¹⁶ Miss. Code Ann. §23-15-641.

¹⁷ Miss. Code Ann. § 23-15-721 (3).

*Resolution Board member admits she is
"shocked" at the absentee ballot violations.*

Board member Melvina Ware testified that it was her job to review all of the North Itta Bena absentee ballot materials. She said that in fulfilling their duties, the Board members look no further than the guidelines published and provided by the Secretary of State, that the Guidelines do not include any review of postmarks,¹⁸ and that she was confident all legal requirements had been met.

On cross-examination, Ware testified that the Resolution Board does not check or consider a voter's reason for voting absentee. Rather, it relies entirely upon the color of the ballot envelope to determine whether the application and envelope must be signed by someone authorized to administer oaths or may be signed by an attesting witness only.¹⁹ She confirmed her confidence that the requirements were met, and that if there were any significant irregularities, she would be "shocked."

At that point, counsel for Scif presented Ware with numerous absentee applications and envelopes that had been accepted by the Resolution Board, but which exhibited Election Code violations such as violation of postmark requirements, missing witness signatures and although required, missing signatures of persons authorized to administer oaths.

Upon review of these illegal applications and envelopes, Ware proclaimed that she indeed was "shocked" at the violations.

Ware deflected blame for the postmark and other violations, opining that they should have been policed by the Circuit Clerk's office. This very well may be true. But regardless of

¹⁸See Ex. 155. With all the minute and detailed Election Code and regulatory requirements for elections, the court is astonished to find no statute or regulation directing any particular entity to check the postmarks to confirm that absentee ballots have been timely mailed and received as statutorily required.

¹⁹The court was unable to find any provision of law related to the color of envelopes for absentee voters.

who is to blame, the Mississippi Supreme Court has addressed the importance of compliance with those requirements:

The statute creates specific and necessary requirements that must be followed, in order for absentee ballots to count. We do further hold that a clerk in performing statutory duties must perform those duties **in strict compliance** with the statutes.²⁰

And whether Ware was correct, or it was the Board's responsibility, it was abundantly clear at trial that no one was carefully and diligently checking the postmarks, checked boxes, and attestations to make sure the absentee ballots were properly attested, and timely mailed and received.

The violations that occurred in this case far exceed those reported in *Lewis*. And as was found in that case, this court finds that the record before this court undermines confidence in the absentee ballots offered by the Circuit Clerk to the Resolution Board, and calls into question the results of the primary.²¹

*The public was not allowed to view
the scanning of the absentee ballots.*

At least two Election Code provisions make it crystal clear that the Legislature requires strict compliance with statutes guaranteeing the public's right to witness all aspects of elections. Mississippi Code Sections 23-15-523 provides a clear mandate that

[a]ll proceedings at the counting center shall be under the direction of the election commissioners or officials in charge of the election, and **shall be conducted under the observations of the public**, . . .

Section 23-15-581 similarly provides *inter alia*:

During the holding of the election and the counting of the ballots, the whole proceedings **shall be in fair and full view of the voting public, candidates or**

²⁰*Lewis v. Griffith*, 664 So.2d 177, 186 (Miss. 1995) (emphasis added).

²¹*Id.* at 185.

their duly authorized representatives and other authorized poll watchers, without unnecessary interference, delay or encroachment upon the good order of the duties and proceedings of the poll managers and other officers of the election.

In addition to the violations discussed above, Self presented three witnesses who testified to serious, intentional statutory violations of these statutes that occurred in the Circuit Clerk's office on the night of the election. The undisputed and unchallenged testimony of Margaret Buchanan, Larry Griggs, and Sam Abraham clearly established that, on the night of the election, the Circuit Clerk refused to allow the public to view the election workers opening absentee ballot envelopes, removing the ballots, and scanning them.

The door to the room where the election workers were scanning absentee ballots was closed and the scanning continued outside of the view of the public, even though Abraham confronted the Clerk, objected, and requested to view the ongoing process. The Clerk refused, insisting that the door must remain closed. The court finds this to have been A **willful violation** of the Election Code, and one that is particularly concerning, given the number of other absentee voter violations in this case.

Debra Hibbler testified that the Resolution Board, which could not maintain a proper count of absentee ballots on August 16, received at least a half dozen ballots that were not in a secured ballot box. Mitchell called Ware in an attempt to rebut this testimony, and although Ware did not recall ballots being delivered outside a secured ballot box, Self produced unopened envelopes marked "accepted" by the Resolution Board **with uncounted absentee ballots still sealed inside.**²² Thus, The Resolution Board clearly failed to count all legal votes. Notably, Mitchell testified that he had been present for each day of trial and from his observation of the

²²See, e.g. Ex. 63-64.

evidence presented, he had come to believe some ballots were counted that should have been rejected, while other ballots were rejected that should have been counted.

Given the number and magnitude of the Election Code violations related to absentee voting, together with the specific application and envelope violations that were made exhibits, the court finds not only that the reliability of every absentee ballot is at issue, but also that the illegal absentee ballots, whatever the number, were “irredeemably and totally mixed in with the valid ballots,” leaving the court no means of determining for whom the illegal ballots were cast.²³

Accordingly, in this case – as in prior election contests – “[t]he stain of illegality [has] bled from” the invalid absentee ballots onto the legal ones “tainting the entire lot,”²⁴ and this taint – when viewed in the context of all of the other absentee voting violations including the intentional violation in the Clerk’s office – persuades the court by clear and convincing evidence that all absentee ballots cast in this primary must be thrown out as in *Self v. Mitchell I*, in 2019.²⁵

Mitchell appears to agree that all absentee votes should be excluded. But he argues that, “[b]ecause [he] received a majority of the legal votes cast, 517 to 502, barring other grounds, he should be declared the winner.” Mitchell fails to mention the willful violation that took place at the Clerk’s office, and he downplays the numerous Election Code violations that took place in the precincts which, when added to the absentee violations, amplify the need for a new election.

²³*Self v. Mitchell*, 327 So.3d 93, 95 (Miss. 2021).

²⁴*Thompson v. Jones*, 17 So.3d 524, 528 (Miss. 2008).

²⁵*Self*, 327 So.3d at 95.

Voting Precinct Violations

The court now turns to the precinct boxes, and witness testimony regarding what occurred at the polling places. This court is aware that, absent fraud or intentional wrongdoing, minor, non-statutory, and technical irregularities, in and of themselves, are typically insufficient to invalidate an election.²⁶ But the court also is aware that violations – even those that are procedural – that represent such a radical departure from the Election Code “as to destroy the integrity of the election and make the will of the qualified electors impossible to ascertain” will justify a special election.²⁷

Self alleges radical departures from the Election Code at the voting precincts, contends these departures rise to the level of willful violations, and asks the Court to find these violations are “substantial enough to warrant a special election.”²⁸ The result of an analysis of this type “depends upon the facts and circumstances in each particular case, including the nature of the procedural requirements violated, the scope of the violations, and the ratio of illegal votes to the total votes cast.”²⁹

*Ballot box security was
lacking in all four precincts.*

Regarding the nature of the procedural requirements at issue, the Court begins with the premise that “[b]allot box security is essential to producing an election result in which not only

²⁶*Wilbourn v. Hobson*, 608 So.2d 1187, 1192 (Miss. 1992).

²⁷*Stringer v. Lucas*, 608 So.2d 1351, 1361 (Miss. 1992).

²⁸See *Noxubee Cnty. Democratic Exec. Comm. v. Russell*, 443 So.2d 1191, 1198 (Miss. 1983).

²⁹*Id.*

the voters, but the candidates themselves, can be confident.”³⁰ As a result, “several statutes . . . specifically address ballot box security.”³¹ These statutes were enacted for the purpose of “eliminating fraudulent or corrupt practices and insuring a just and trustworthy result.”³² For example, after counting and tallying the votes,

the poll managers shall lock and seal the ballot box [enclosing] one of the duplicate receipts given by the poll manager who received the blank ballots received for that box; and the total ballots voted, and the spoiled ballots, and the unused ballots must correspond in total with the duplicate receipt or else the failure thereof must be perfectly accounted for by a written statement, under oath of the poll managers, which statement must be enclosed in the ballot box.³³

Also, the same statute dictates that each precinct box must contain “the tally list, the receipt book containing the signed names of the voters who voted; and the number of ballots voted must correspond with the number of names signed in the receipt book.”

A “ballot accounting report” and “seal log” are statutorily mandated to ensure against fraudulent or corrupt practices. Section 23-15-519 requires a

ballot accounting report [to be placed in each precinct box] with the seal logs, [which shall] document each time a tamper-evident seal for a ballot box is opened or changed. The seal log shall require the name of the person who opened the seal, the old seal number, the new seal number, the date the seal was opened and the purpose for opening the seal.

Thus, in examining the precinct boxes, the court should have found the following four things:

³⁰*Waters v. Gnemi*, 907 So.2d 307, 329 (Miss. 2005).

³¹*Id.*

³²*Id.*

³³Miss. Code Ann. § 23-15-591

- A completed Receiving & Returning Manager Receipt Form;
- A Seal log;
- Voter Receipt Books signed by each voter who cast a ballot at the precinct; and
- A ballot accounting report.

However, not a single precinct was found to be in compliance with all these requirements. Based on the evidence produced at trial, which included the opening and examination in the courtroom of all four precinct boxes in District 4, the court found:

- The tally list in the Receiving & Returning Manager Receipt Form was used only in Southwest Gwd;³⁴
- The required seal logs were universally ignored;
- The poll managers at Rising Sun, South Itta Bena, and Southwest Gwd used the Precinct Officers Canvas Envelope as a tally list;³⁵
- The precinct box for North Itta Bena did not contain either a Receiving & Returning Manager Receipt Form or any sort of substitute tally list.

The lack of completed seal logs could not be explained. It is beyond doubt that all four precinct boxes were opened and closed on Election Day, and Self thereafter opened and closed these boxes during his pre-filing examination. Yet the seal logs found in the Rising Sun, South Itta Bena, and Southwest Gwd boxes have no entries, and a Receiving & Returning Manager

³⁴See Ex. 110.

³⁵See Ex. 85, 107, 118.

Receipt Form was not found in the North Itta Bena box. In summary, there was virtually no oversight in access to the ballot boxes.

These violations were not minor, and they are particularly concerning because cut sealing tags were found without explanation in the boxes for North Itta Bena, South Itta Bena, and Southwest Gwd;³⁶ and because there is no explanation for the absence of cut sealing tags in the Rising Sun box.

The Court also notes that no seal log was found in any of the three absentee ballot boxes; yet, it is beyond doubt that these boxes were at least twice opened and closed by the Resolution Board, and then by Self's attorney during his examination.

Accordingly, this Court must conclude that, in conducting the primary, election officials at the precincts universally ignored seal log requirements, leaving the ballot boxes unguarded and unprotected.

Self testified regarding ballot box security issues. He lives in South Itta Bena but visited multiple precincts on Election Day. He first went to Rising Sun where he found that someone had installed the incorrect DS200 scanner. While there, he noted the substitute ballot box in use at that precinct did not have a lid.

Next, he went to Southwest Gwd where he found that someone had installed another incorrect DS200 scanner. He testified that, as a result, some people left the precinct without voting. Self cast his own ballot at South Itta Bena around noon. He testified there was little ballot privacy at the precinct and that people who no longer resided in Leflore County had been

³⁶See Ex. 96, 106, 117.

brought in to vote. He testified that voters were being told how to vote, and that some voters who were not disabled received assistance in violation of the law. The court finds his testimony regarding these matters to be credible.

In light of the Supreme Court's holding in *Waters* and the mandatory language of the statutes cited above, the Court finds that ballot box security is a crucial procedural requirement of all elections. And, given the substantial scope and totality of the violations found here, they are sufficient to warrant a special election.

The Court also finds other substantial violations, adding to the justification for a special election. These violations relate to the requirements in Section 23-15-591 as discussed above, and the requirement in Section 23-15-573 that voters unable to cast legal ballots on Election Day be allowed to vote by affidavit. The violations also relate to the requirement in Section 23-15-237 that poll managers serve under oath. The Election Code requires an oath which provides voters with an assurance that the

managers and clerks of an election ... will faithfully perform their duties according to law and will not attempt to guide, aid, direct or influence any voter in the exercise of his right to vote except as expressly allowed by law.³⁷

Proceeding now to address the violations, precinct by precinct, the Court finds as follows:

Rising Sun

³⁷*O'Neal v. Simpson*, 350 So.2d 998, 1007 (Miss. 1977).

Respondents called Joyce Potlow-White, a poll manager at the Rising Sun precinct. White testified the wrong DS200 scanner was installed at the precinct when she arrived at or before 7 a.m. that morning. It was clearly the wrong scanner because it had the name of a different precinct printed on it. White could not understand how such a mistake occurred and testified the correct scanner was not installed until approximately one and half hours later. When asked to explain what happened to the "zero totals" tape³⁸ for the DS200 scanner assigned to the Rising Sun precinct, White could not say. Likewise, she could not explain how the zero totals tape for the Southeast Gwd precinct found its way into the Rising Sun precinct box.³⁹

The Rising Sun box contained two standard voter receipt books and one affidavit voter receipt book. The first standard book had 85 voter signatures, and the second had 125, for a total of 210 signatures.⁴⁰ The affidavit book had six voter signatures; however, only five affidavit ballot envelopes were found in the box.⁴¹ Nothing in the box explains what happened to the sixth voter's ballot.

Additionally, the Oath of Managers and Clerks of Election on the back of each receipt book is not "sworn and subscribed" as required to ensure compliance with Section 23-15-237,

³⁸A Zero Totals tape is the only way election officials can confirm that a voting machine contains no votes at the beginning of an election.

³⁹See Ex. 80.

⁴⁰See Ex. 78 A-B.

⁴¹See Ex. 79.

and it appears Potlow-White did not execute an oath; she merely signed the receipt book attestation above each oath.

Of the five affidavit ballot envelopes found in the Rising Sun box, three were rejected, while two were accepted and marked "OK"; however, none had a completed Affidavit of Voter, and one of the accepted envelopes was not signed by a poll manager.⁴² These irregularities violate Section 23-15-573. Furthermore, it appears none of these voters were given the proper envelope,⁴³ which may explain why none completed the required affidavit. The reasons why these voters were required to vote affidavit include not being registered and not being named in the poll book; yet, each was provided a yellow envelope and, according to trial testimony, only a white envelope would have included the appropriate affidavit categories for these voters.

While a minor technicality in the affidavit voting process would be insufficient to render the will of the voters at the Rising Sun precinct undeterminable, the Court finds the affidavit voting violations apparent in this box, together with the other violations, are more than mere technicalities, especially when considered collectively. The Court finds the character of these particular violations rise to the level of a radical departure by the poll managers charged with ensuring a legal voting process was followed.

⁴²See Ex. 82-83.

⁴³The court refers to a "proper" envelope in the context of what appears to be a local practice of using envelopes with certain colors to indicate the reason for voting absentee. Reliance on this local custom does not excuse election officials from their duty to make sure an absentee voter obtained a proper attestation to their ballot.

Finally, while 210 voter signatures appear in the standard receipt books, and at least two affidavit ballots were accepted, the tally list prepared by the poll managers on the Precinct Officers Canvas Envelope states 211 ballots were cast.⁴⁴ Setting aside the issue of the missing affidavit ballot, the number of ballots cast should have been 212, as reflected on the DS200 ballot accounting report found in the box.⁴⁵

The Court finds sufficient evidence of material failures to comply with Section 23-15-591 and other provisions of the Election Code, including but not necessarily limited to Sections 23-15-237 and 573, such that it is impossible to arrive at the will of the voters at the Rising Sun precinct.⁴⁶ The state of the ballot box in this precinct is such that neither the voters nor the candidates can be confident in the election's outcome.⁴⁷

North Itta Bena

The North Itta Bena box contained three standard voter receipt books. It did not contain an affidavit voter receipt book. The first receipt book contained 217 signatures, but numbers 125 and 137 were struck, leaving 215 signatures; the second contains 158 signatures, and the third, 153 signatures.⁴⁸ The Oath of Managers and Clerks of Election on the back of the first receipt

⁴⁴See Ex. 85.

⁴⁵See Ex. 81.

⁴⁶*Boyd v. Tishomingo Cnty. Democratic Exec. Comm.*, 912 So.2d 124, 130 (Miss. 2005) (“an election may be invalidated when there has been a 'substantial failure' to comply materially with the applicable statutes and the intent of the voters is impossible to ascertain.”).

⁴⁷*Waters*, 907 So.2d at 329.

⁴⁸See Ex. 89.

book appears substantially compliant with Miss. Code § 23-15-237. Although the oaths on the other books are only partially completed, the Court finds this is no more than a technical irregularity in light of the one compliant oath.

While there was no affidavit voter receipt book in the North Itta Bena box, there were 10 affidavit ballot envelopes.⁴⁹ Of these, only three were signed by a poll manager, and only one had a completed Affidavit of Voter.⁵⁰ These irregularities violate Miss. Code § 23-15-573.

Furthermore, it appears only one of these voters was given the proper envelope, which may explain why only one completed the required affidavit. The reasons these voters were required to vote affidavit include appearing at the wrong precinct and their names not being found in the poll book. Yet each was provided a yellow envelope, where only a white envelope would have included the appropriate affidavit categories for these voters.

Of the seven remaining envelopes, four were marked both “OK” in red ink and “Rejected” in black ink.⁵¹ The reason for accepting and then rejecting (or rejecting, then accepting) each of these four affidavit ballots is unclear, but the Court notes that a poll manager signed none, and none included a completed Affidavit of Voter. The Court also mentions one of the “Comments” on one of these four envelopes which states: “Ballot went through machine in

⁴⁹See Ex. 90-93.

⁵⁰See Ex. 91, 93.

⁵¹See Ex. 90, 92.

error due to challenge vote action.”⁵² The box included no additional information; however, this comment clearly indicates that someone cast this illegal affidavit ballot.

The Court finds the affidavit voting violations and other violations apparent in this box are more than mere technicalities, especially when considered collectively. In support, Section 23-15-573 states in mandatory terms the many requirements that affidavit ballot envelopes “shall” meet, but were not satisfied at the North Itta Bena precinct. The Court finds the character of these particular violations rises to the level of a radical departure by the poll managers charged with ensuring the statutory affidavit voting process was followed.

The North Itta Bena box contains no Receiving & Returning Manager Receipt Form and, thus, lacks a tally list in the prescribed form, a seal log in the prescribed form, or any information regarding the security of the DS200 scanner installed at this voting precinct. Further, unlike some others, the poll managers at North Itta Bena did not even attempt to use the Precinct Officers Canvas Envelope as a tally list. Instead, even that envelope is blank. As a result, the Court finds there was little attempt by the North Itta Bena poll managers to comply with the requirements of Section 23-15-591.

The Court notes 526 voter signatures appear in the receipt books, one affidavit ballot marked "OK" and "Accepted," and one that appears to have been counted erroneously.⁵³ Thus, the total number of Democratic votes cast at the North Itta Bena precinct should have been no

⁵²See Ex. 92.

⁵³See Ex. 89, 92-93.

more than 528. However, the DS200 ballot accounting report found in the box states 533 Democratic ballots were cast and counted.⁵⁴ This discrepancy is unexplained despite the requirements of Section 23-15-591. Whether considered independently or alongside other violations, an inability to reconcile the voter receipt books and the ballot accounting report constitutes a radical and striking departure from the Election Code.

Considering the totality of the evidence and violations, the Court finds a material failure to comply with the Election Code, including but not necessarily limited to Section 23-15-237 and Section 23-15-573, such that it is impossible to arrive at the will of the voters at the North Itta Bena precinct.⁵⁵ The state of the ballot box in this precinct is such that neither the voters nor the candidates can be confident in the outcome.⁵⁶

South Itta Bena

The South Itta Bena box contained one standard voter receipt book, and one affidavit voter receipt book. The standard receipt book contained 165 signatures, but number 98 was struck, leaving 164 signatures.⁵⁷ The affidavit receipt book contained 11 signatures; however, only seven affidavit ballot envelopes were found in the box.⁵⁸ Nothing explains what happened to the other four affidavit ballots. Additionally, the Oath of Managers and Clerks of Election on

⁵⁴See Ex. 95.

⁵⁵See *Boyd*, 912 So.2d at 130.

⁵⁶See *Waters*, 907 So.2d at 329.

⁵⁷ See Ex. 98.

⁵⁸See Ex. 99.

the back of each receipt book is not "sworn and subscribed" as required to ensure compliance with Section 23-15-237 and, when compared with the poll managers identified in Exhibit 149, it appears John W. Upton did not execute an oath.

Regarding the seven affidavit ballot envelopes found in the South Itta Bena box, only one has a completed Affidavit of Voter; however, it is unclear whether even that one was properly made.⁵⁹ The voter selected "I am unable to present an acceptable form of photo ID" on the affidavit, but the "Comments" on the back of the envelope state: "Name not on the books." In any case, the failure of six out of seven envelopes to have a completed Affidavit of Voter violates Section 23-15-573.

Furthermore, it appears these voters were not given the proper envelope. The reasons why these voters were required to vote affidavit include the wrong precinct and not being named in the poll book, yet each was provided a yellow envelope and, according to testimony, only white envelopes included the appropriate affidavit categories for these voters.

The Court finds the affidavit voting and other violations apparent in this box are more than mere technicalities. Further, the Court finds the number of voter signatures in the receipt books do not match the number of votes on the DS200 ballot accounting report.⁶⁰ A total of 164 voters signed the standard receipt book and five affidavit ballots were accepted, resulting in 169 accepted ballots; however, the ballot accounting report reflects that only 161 Democratic ballots

⁵⁹See Ex. 103.

⁶⁰See Ex. 105.

were cast and counted. There is nothing in the box to explain this discrepancy. As a result, the Court finds the violations at the South Itta Bena precinct rise to the level of a radical departure from the Election Code.

The Court finds sufficient evidence of material failures to comply with Section 23-15-591, and other provisions of the Election Code, including but not necessarily limited to Sections 23-15-237, 573, such that it is impossible to arrive at the will of the voters at the South Itta Bena precinct.⁶¹ The state of the ballot box in this precinct is such that neither the voters nor the candidates can be confident in the outcome.

Southwest Gwd

The Southwest Gwd box contained two standard voter receipt books, and one affidavit voter receipt book. The first standard receipt book had 62 signatures, and the second had 63, for a total of 125 signatures.⁶² The affidavit book had six signatures; however, seven affidavit ballot envelopes were found in the box.⁶³ Nothing explains this discrepancy. Additionally, the Oath of Managers and Clerks of Election on the back of the affidavit book is not signed, and the oath on the back of the second standard receipt book is not “sworn and subscribed” as required to ensure compliance with Section 23-15-237. The oath on the back of the first receipt book is substantially compliant, but only three of the six poll managers at this precinct signed it.

⁶¹See *Boyd*, 912 So.2d at 130.

⁶²See Ex. 108.

⁶³See Ex. 109.

Furthermore, compared with the poll managers identified in Ex. 149, Sylvia Doyle Turner did not execute an oath.

Regarding the seven affidavit ballot envelopes found in the Southwest Gwd box, four were rejected, while three were accepted and marked "OK;" however, it appears none of these voters were given the proper envelope (the poll managers wrote in appropriate reasons) and two were rejected because a poll manager did not sign them.⁶⁴ Since appropriate reasons were added to the Affidavit of Voter section of these envelopes, the Court finds the failure to use the proper envelope amounts to a technical irregularity. However, it does appear the failure of the poll managers to sign each envelope caused at least one affidavit envelope originally marked "OK" to subsequently be marked "Rejected."⁶⁵

Additionally, the number of voter signatures in the receipt books does not match the number of votes on the DS200 ballot accounting report.⁶⁶ This discrepancy is explained by a notation on the tally list: "126 voted but 125 signatures because Valarie Bethany did not sign receipt book."⁶⁷ However, the Court notes that this explanation is not "a written statement, under oath of the poll managers," as required by Section 23-15-591. The note is not signed, there is no

⁶⁴See Ex. 112-113.

⁶⁵See Ex. 112.

⁶⁶See Ex. 116.

⁶⁷See Ex. 110.

indication it was made under oath, and the Receiving & Returning Manager Receipt Form is signed by a receiving manager only.⁶⁸

The Court finds sufficient evidence of material failures to comply with Section 23-15-591, and other provisions of the Election Code, including but not necessarily limited to Sections 23-15-237, 573, such that it is impossible to arrive at the will of the voters at the Southwest Gwd precinct. The state of the ballot box in this precinct is such that neither the voters nor the candidates can be confident in the outcome.

CONCLUSION

The Court finds the exhibits and witnesses offered by Self are wholly sufficient to substantiate by clear and convincing evidence the claims and allegations made in his Petition for Judicial Review. The Court finds, after throwing out all absentee ballots and considering the Election Code violations that took place at the precincts, it is impossible to discern the winner of the election and the will of the people, and it must order a new election.

The court emphasizes that the Election Code violations in the four precincts comprising District 4 were too numerous and substantial to be classified as technical or minor. They were serious violations that must be addressed for the special election in order for the people of Leflore County to have confidence that the election produced a winner that was the choice of the voters.

⁶⁸See Ex. 110.

Accordingly, under the facts and circumstances set forth herein as found by the court and agreed by all five members of the LCEC, it is:

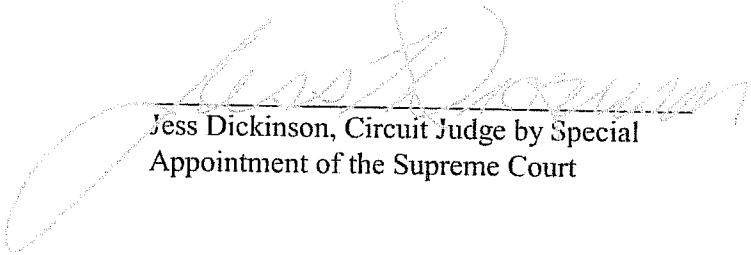
ORDERED that all affidavit votes in the 2023 Leflore County Democratic Primary for District 4 Supervisor are excluded from the election results. It is further

ORDERED that after excluding all illegal affidavit votes, and upon considering the intentionally wrongful conduct and the numerous Election Code violations that took place in the Clerk's office and in the precincts, the court is unable to determine the will of the qualified voters in the Democratic primary race for District 4 Supervisor; It is further

ORDERED that the election of Eric Mitchell is hereby vacated, and that Wayne A. Self and Eric Mitchell shall participate in a special election for Leflore County Supervisor of District 4 in its four precincts, at a time set by the Governor of the State of Mississippi. It is further

ORDERED that the Circuit Clerk or a Deputy Clerk shall immediately provide a filed copy of this Final Judgement to the Election Commissioners and to the Governor of the State of Mississippi.

THIS the 18th day of February, 2024.



Jess Dickinson, Circuit Judge by Special
Appointment of the Supreme Court

FILED
LEFLORE COUNTY

FEB 22 2024

KELLY H. ROBERTS, CIRCUIT CLERK
BY  D.C.