

IN THE CIRCUIT COURT OF LEFLORE COUNTY, MISSISSIPPI

PATRICIA YOUNG

PLAINTIFF

VS.

CAUSE NO. 2021-0025-CICI

REGINALD FREEMAN

DEFENDANT

PETITION CONTESTING THE JUNE 8, 2021 MUNICIPAL GENERAL ELECTION FOR THE  
OFFICE OF MAYOR OF THE CITY OF ITTA BENA, MISSISSIPPI

The Plaintiff, Patricia Young, by and through her legal counsel, hereby brings her petition contesting the election of the Defendant, Reginald Freeman, who was unlawfully returned by the municipal election commission as elected to the office of Mayor of the City of Itta Bena, Mississippi in the June 8, 2021 municipal general election. The Plaintiff sets forth the following grounds upon which the election is contested:

1. Plaintiff Young and Defendant Freeman were each candidates for the office of Mayor of the City of Itta Bena, Mississippi, with both of their names appearing on the June 8, 2021 general election ballot. There was also a third candidate seeking the office of mayor, Henry Purnell, whose name also appeared on the general election ballot. The election was conducted at four polling places for each of the four aldermanic wards. The elections for ward alderman and at large alderman were also on the ballot.

2. The official recapitulation of the votes cast for the municipal general election shows Defendant Freeman receiving 199 votes, Plaintiff Young receiving 194 votes, and Henry Purnell receiving 62 votes. Based on the official recapitulation, there was only a five (5) vote margin of difference between Freeman and Young. The official recapitulation, signed and filed by the municipal election commission, may be found at the Mississippi Secretary of State's web page.

<https://www.sos.ms.gov/elections-voting/election-results/2021-municipal-general-election>

3. As set forth in this election contest petition, the Plaintiff has alleged various violations of Mississippi election law, including numerous instances of illegally accepted and counted votes cast on

paper ballots, which includes a great number of affidavit ballots cast by Leflore County voters who resided outside of the municipal boundaries of the City of Itta Bena, and several illegal absentee ballots.

4. Notably, Plaintiff Young apparently received the most votes recorded on the TSX touch screen voting machines used in the election, and these machines apparently operated on election day with no breakdowns, malfunctions or voter incidents.

5. Defendant Freeman's five vote margin of victory, occurred, on the other hand, because of the great number of illegal paper ballots counted, which included certain illegal affidavit ballots, absentee ballots and curbside ballots. All of the paper ballots were commingled and counted together in the respective precincts, tainting the entirety of the paper ballots, and it is therefore impossible to know which voter cast a particular paper ballot, and to separate any properly accepted paper ballots from illegal paper ballots; this makes it necessary to exclude all paper ballots from the vote count of the respective four wards, and for the Court to rely, instead, on the machine vote tabulations of the respective wards to ascertain and order the legal result of the election.

6. Miss Code Ann. § 23-15-951 grants this Court subject matter jurisdiction to consider this matter and fixes venue in Leflore County, Mississippi.

7. Miss Code Ann. § 23-15-951 states the following, which pertains to the role of the circuit clerk in dealing with this petition:

*When such a petition is filed, the circuit clerk shall immediately notify, by registered letter, telegraph, telephone, or personally the Chief Justice of the Supreme Court or in his absence, or disability, some other Justice of the Supreme Court, who shall forthwith designate and notify a circuit judge or chancellor of a district other than that which embraces the district, subdistrict, county or any of the counties, involved in the contest or complaint, to proceed to the county in which the contest or complaint has been filed to hear and determine the contest or complaint. The circuit clerk shall also cause a copy of such petition to be served upon the contestee, which shall serve as notice to such contestee.*

## WARD 1

8. There is a discrepancy in the number of persons who voted in Ward 1. The poll managers entered "voted" beside 100 names in the Ward 1 poll book. However, there are 101 signatures in the Ward 1 voter receipt book. Notably, the official vote total for Ward 1 is only 97 votes tabulated. The tapes for the two machines also show 97 total votes recorded for the three candidates for mayor, the same number as the total official tabulated vote. There do not appear to be any "undervotes" for mayor with the machine votes. The machine votes for the three candidates also appear to match the official vote totals (Freeman 42, Purnell 14, and Young 41).

9. As discussed below, there appears to be several "accepted" affidavit ballots, three "accepted" absentee ballots, and 6 "curbside" ballots. However, it is not clear whether any of these paper ballots were included in the official vote total for Ward 1.

10. The precinct poll managers did not properly fill out the required ballot recap form, which might have identified the discrepancies. Miss. Code § 23-15-531.10 (3)(a) requires that after the election the poll managers shall obtain the results tape from each TSX unit and verify that the number of ballots as cast on the tape matches the public count number as displayed on the DRE unit; (b) and the poll manager shall extract the memory card from each DRE unit. Miss. Code § 23-15-531.10 (4)(a) states the following:

Upon completion of shutting down each DRE unit and extracting the election results, the poll manager shall cause to be completed and signed a ballot recap form, in sufficient counterparts, showing:

- (i) The number of valid ballots;
- (ii) The number of spoiled ballots;
- (iii) The number of affidavit ballots;
- (iv) The number of accepted and rejected absentee ballots;
- (v) The number of challenged and rejected ballots; and
- (vi) The number of unused paper ballots.

Failure to carry out all of the above steps and account for all of the ballots is a violation of the election code; this is mandatory language in all instances and one can demonstrate a substantive effect on the outcome, and in ascertaining the true will of the voters. The poll managers of Ward 1 failed to carry out these necessary steps.

11. 13 signatures appear in the separate affidavit voter receipt book for Ward 1.

12. There are 12 affidavit ballot envelopes in the ballot box and the envelopes were opened, and no ballots were found inside these envelopes, suggesting that these ballots were accepted.

13. 11 of the 12 opened affidavit ballot envelopes correlate to signatures that appear in the affidavit voter receipt book.

14. There is no signature in the affidavit voter receipt book for Jamaya Kesha Morris; however, there is an opened affidavit ballot envelope for her. This ballot should have been rejected pursuant to Miss. Code § 23-15-573 (3)(a). (“A separate register shall be maintained for affidavit ballots and the affiant shall sign the register upon completing the affidavit ballot.”)

15. Tamara Warren’s signature is found in the affidavit voter receipt book but no affidavit envelope, opened or unopened, for her was found in the Ward 1 ballot box .

16. Ernestine Clay’s affidavit ballot envelope was found in a separate place and in a small letter size envelope, which is unlike the other envelopes used for affidavit voting.

17. Affidavit voter John Edward Johnson did not check any affidavit box (answering specific questions as to why the person is voting by affidavit ballot) found in section 1 above his signature. The fact that no boxes were checked is a violation of Miss. Code § 23-15-573. (“A statement that the affiant believes he is registered to vote in the jurisdiction in which he offers to vote.”).

18. Affidavit voter Nola Mae Johnson did not check any affidavit box (answering specific questions as to why the person is voting by affidavit ballot) found in section 1 above her signature. See comments regarding John Edward Johnson found in paragraph 17 above.

19. There are 5 "curbside" ballot envelopes that appear to have been opened; however the precinct officer canvas envelope says there were 6 curbside voters. Jonavan Caldwell appeared to have voted curbside; there is an opened curbside ballot envelope in an affidavit envelope with his name on it.

20. The poll managers did not follow the procedures for curbside voting. Neither the poll book nor the voter receipt book indicate the names of the curbside voters. The curbside paper ballots should have been put in the ballot box and not in separate sealed envelopes, as appeared to be the case here. Miss. Code § 23-15-541 (2)(b) provides the following: "*the initialing poll manager shall initial the ballot as provided by law, and the disabled elector, after marking his or her ballot shall fold the ballot or place it in the ballot sleeve. The initialing poll manager or alternate initialing poll manager shall determine whether the initials on the ballot are genuine, and upon a determination that the initials are genuine, mark "VOTED" by the elector's name and in the appropriate column in the pollbook. The initialing poll manager or alternate initialing poll manager shall without delay place the ballot in the ballot box.*" That requirement applies to all paper ballots and that means the naked paper ballot is deposited into the ballot box once the manager confirms that it has been initialed, not in a separate envelope for each curbside ballot. The failure to follow this procedure makes these curbside ballots illegal. These curbside ballots were commingled with the paper absentee ballots and paper affidavit ballots, making it impossible to separate these illegal curbside ballots from other paper ballots, and thereby tainting other paper ballots that might have been properly accepted and counted.

21. An irregularity/illegality pertains to absentee voter Lequita Robinson. Her application to vote absentee is dated and signed May 21, 2021, but her absentee ballot envelope is dated and signed by the municipal clerk on June 3, 2021, two weeks later. Because Ms. Robinson was voting in person at the Clerk's Office, her absentee ballot application should have been filled out immediately before she voted an absentee ballot with the clerk, not two weeks beforehand. The absentee ballot envelope for Lequita Robinson should have been rejected by the election officials, particularly the resolution board, as specifically required by Miss. Code Ann. § 23-15-639 and Miss. Code Ann. § 23-15-641, as the dates for the application and the envelope did not match. Apparently, this illegal absentee ballot was commingled

with other paper ballots found in the Ward 1 ballot box, making it impossible to separate this illegal absentee ballot from other paper ballots, and thereby tainting other paper ballots that might have been accepted and counted.

22. There are 24 card stock pink in color ballots, all apparently used for affidavit voting, absentee voting and curbside voting in Ward 1. All 24 ballots were marked for a mayor candidate. Assuming there were 12 affidavit ballots accepted by the poll managers, 4 absentee ballots accepted, and 6 curbside ballots accepted, that equals 22 accepted paper ballots. There is no documentation showing where the other two ballots come from to explain the 24 paper ballots found together. Notably, Freeman received 7 votes, Purnell received 2 votes and Young received 15 votes of these 24 paper ballots.

23. None of the affidavit envelopes contained the information to be provided in Item 3 of the affidavit envelope form, which is to be completed by the election commissioners. Without this completed information, it is impossible to know what investigation the election commissioners undertook to ascertain the problem associated with the voter, the final action taken to accept or reject the ballot, and the follow up action taken by county election officials to bring the voter's status up to date in the Statewide Election Management System (SEMS).

24. All of the affidavit envelopes apparently were marked by election officials to indicate that the voter's name did not appear in the precinct poll book. It is reasonably believed that the poll book used in the June 6 municipal election contained an accurate list of voters of the municipality. Notably, State law requires municipal election officials, prior to the election, to enter municipal boundaries and districts (wards) into the Statewide Elections Management System(SEMS). SEMS provides the database used to create the poll books for the municipal election.

25. The Plaintiff compared the names of affidavit voters found in the affidavit voter receipt book and the corresponding affidavit ballot envelopes and confirmed that none of these individuals were in the poll book for this Ward. Additionally, none of these affidavit envelope names appeared on the "inactive voters" list obtained from the Circuit Clerk following the Plaintiff's ballot box inspection.

26. Several months before the election, the municipal election commissioners supplied the candidates an "active voter" list of voters in the municipality, broken down by precinct (ward), which the Plaintiff believes matches the names contained in the municipal poll books used on election day. None of these affidavit voters appear in this active voter list.

27. The Plaintiff notes that for county elections there are two polling places located in Itta Bena, and these polling places are for precincts named "Itta Bena North" and "Itta Bena South." The Plaintiff believes that the boundaries of "Itta Bena North" and "Itta Bena South" precincts extend beyond the corporate boundaries of the City of Itta Bena, and thus include voters who live outside the City. The Plaintiff believes that substantially all of the affidavit voters in this election actually resided outside the City, and the municipal election commission illegally accepted these affidavit ballots of "county" voters during the canvas because these voters' names appeared in the Statewide Elections Management System (SEMS) as active voters registered in either Itta Bena North or Itta Bena South precincts. Notably, there was some confusion regarding municipal boundaries, with residents of the Valley Apartments being told by election officials, incorrectly, that they lived outside the city limits and could not vote in the election.

#### **WARD 2**

28. The Ward 2 Poll book has 73 persons marked "voted. The voter registration book has 72 signatures. The official vote total for Ward 2 is 115 votes. There are three open absentee envelopes with no ballots inside, suggesting that these three votes were accepted and counted. There are 19 opened affidavit ballot envelopes with no ballots inside, suggesting that these 19 ballots were accepted and counted. Assuming that there were (a) 73 votes cast on the Ward 2 touch screen machines, (b) three accepted absentee ballots counted and (c) 19 accepted ballots counted, this provides only 94 votes; 94 votes is 20 votes fewer than the official vote of 115. In other words, there are at least 20 votes included in the official vote total that cannot be accounted for.

29. The absentee ballot envelope of Sarah Croft was accepted and her ballot was apparently counted even though her name does not appear in the poll book. She should have been required to vote by affidavit ballot envelope, and the City Clerk should not have allowed her to fill out an application and cast

a ballot to begin with. The ballot should have been rejected by the Resolution Board as an improper absentee ballot. Apparently, this illegal absentee ballot was commingled with other paper ballots found in the Ward 1 ballot box, making it impossible to separate this illegal ballot from other paper ballots, and thereby tainting other paper ballots that might have been accepted.

30. Regarding the matter of opened and accepted affidavit ballots, the Plaintiff incorporates paragraphs 23 through 27 of this petition, *supra*, by reference.

31. There is a discrepancy in the voter receipt book: Dottie Jackson's name was crossed out and replaced with Barbara West McClung in line #41 and Barrell O. Jackson was added at line #42.

32. There is a discrepancy involving William Proctor, who signed the Ward 2 affidavit voter receipt book, but appears to have voted by affidavit ballot in Ward 1, and whose name also appears to be in the Ward 2 poll book.

33. There is a discrepancy involving John L. Ray, who signed both the voter receipt book at line #23 and the affidavit voter receipt book at line #10. His affidavit ballot envelope was opened and there is a ballot inside, and the affidavit ballot envelope has a written notation stating "wrong ward." The affidavit envelope should not have been opened by the election officials, and it was illegal to do so.

34. Jasmine Caldwell's affidavit envelope has a written notation stating "void in wrong ward." Her affidavit ballot envelope was opened and there is a ballot inside. The affidavit envelope should not have been opened without it being accepted beforehand, and it was illegal to do so. Moreover, Jasmine Caldwell's signature does not appear in the affidavit voter receipt book.

35. Carmel Bailey's signature appears in the affidavit voter receipt book and there is a completed affidavit ballot envelope. Her affidavit ballot envelope was unopened, with "purged" written on the envelope.

36. Keshon Jackson's signature appears in the affidavit voter receipt book and there is a completed affidavit ballot envelope. Her affidavit ballot envelope was unopened, with "purged" written on the envelope.

37. John Flowers, Jr.'s signature appears in the affidavit voter receipt book and there is a completed affidavit ballot envelope. His affidavit ballot envelope was unopened with "NR" written on the envelope.

38. There are four uninitialed paper ballots---two are cast for Freeman, one for Purnell, one Young. These ballots should not have been counted pursuant to Miss Code Ann. § 23-15-541.

39. There were 26 paper ballots found in the ballot box, of which 16 are for Freeman, 2 are for Purnell and 8 are for Young. However, as noted above, there are 19 opened affidavit envelopes and three opened absentee envelopes, which only accounts for 22 ballots. There are thus four additional ballots that cannot be accounted for.

### **WARD 3**

40. The official vote total for mayor in Ward 3 is 113. The poll managers entered "voted" beside 112 names in the Ward 1 poll book, with one "absentee" notation. The affidavit receipt book has 28 signatures. 28 affidavit ballot envelopes were found, and 25 are opened and no ballots were inside. There are two unopened absentee ballot envelopes for Telven Gray and Leesa Freeman Hampton. Willete Taylor's affidavit ballot was opened with the ballot still inside. 26 paper ballots were marked with votes for mayor. A question arises as to whether any or all of these affidavit ballots were included in the official vote total for Ward 3, or whether the official vote is limited to the votes recorded on the touch screen machines.

41. Regarding the matter of opened and accepted affidavit ballots, the Plaintiff incorporates paragraphs 23 through 27 of this petition, *supra*, by reference.

42. The absentee ballot received report found in the ballot box says there were no absentee ballots received.

43. There is a separate curbside receipt book but it has no signatures.

### **WARD 4**

44. The official vote total for mayor in Ward 4 is 109 tabulated votes. The poll managers entered "voted" beside 83 names in the Ward 1 poll book. There are also 83 signatures in the Ward 4 voter receipt book.

45. There is a separate "curbside" voter receipt book with 5 signatures. There are 5 opened curbside ballot envelopes with no ballots found inside. The Plaintiff incorporates by reference paragraph 20 of this petition regarding the procedure for curbside voting, which was not followed in this polling place.

46. There is an affidavit voter receipt book with 18 signatures. There are 16 affidavit envelopes opened with no ballots found inside the envelopes. There is one opened affidavit ballot envelope opened with a ballot inside, and the envelope has "NR" written on it. There is an unopened affidavit ballot envelope that has "NR" written on it.

47. There are two accepted absentee ballot envelopes and the envelope are opened and no ballots are found inside.

48. There are 24 paper ballots with votes for mayor on each ballot. The Plaintiff believes that that these ballots were counted and, along with the machine votes, were included as part of the official vote total for Ward 4.

49. As noted, there were two absentee ballot envelopes accepted. One of the two absentee voters was Rosetta Harris. Her name does not appear in the poll book and she did not sign the absentee ballot application. The absentee ballot envelope for Rosetta Harris should have been rejected by the election officials, particularly the resolution board, as specifically required by Miss. Code Ann. § 23-15-639 and Miss. Code Ann. § 23-15-641. Apparently, this illegal absentee ballot was commingled with other paper ballots found in the Ward 4 ballot box, making it impossible to separate this illegal ballot from other paper ballots, and thereby tainting other paper ballots that were accepted and counted.

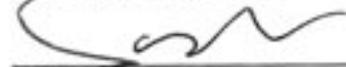
50. Regarding the matter of opened and accepted affidavit ballots, the Plaintiff incorporates paragraphs 23 through 27 of this petition, *supra*, by reference.

#### **PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, the Plaintiff prays for a trial of her contest of the election, and further prays that the Court will vacate the June 8, 2021 primary election and, in turn, either declare the Plaintiff the winner based on the number of legal votes cast, or order a special election based on a finding that a sufficient number of illegal votes were cast to change the result or to cast uncertainty upon the result so that the will of the voters cannot be ascertained.

Respectfully submitted this the 28<sup>th</sup> day of June, 2021.

**PATRICIA YOUNG**



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**FILED**

JUN 28 2021

ELMUS STOCKSTILL, CIRCUIT CLERK  
BY  D.C.