

e-Filed in Office
Tammie Mosley
Clerk of Superior Court
Chatham County
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Reviewer: LS

**IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA**

TONY RILEY,)
)
 Petitioner/Contestant,)
)
Vs.)
)
LARRY "GATOR" RIVERS;)
CHATHAM COUNTY BOARD)
OF ELECTIONS;)
)
 Respondents/Defendants.)

Civil Action Number: SPCV20-01059 BA

PETITION CONTESTING THE ELECTION OF LARRY "GATOR" RIVERS

COMES NOW, TONY B. RILEY, pursuant to O.C.G.A. § 21-2-520, et. seq., and brings this Petition Contesting the Election of Larry "Gator" Rivers, and respectfully shows the Court the following:

INTRODUCTION

1.

Mr. Tony Riley was a candidate for the Chatham County Commission, District 2, until the County Board of Elections ("Board") voted to disqualify him a mere 7 days prior to the general election date. In doing so, the Board committed misconduct, fraud, and gross irregularity undeniably putting doubt in the result. By the Board's actions, enough legal votes were rejected to place serious doubt in the result. This Honorable Court should call a second election for the Chatham County Commission, 2nd District.

VENUE

2.

Pursuant to O.C.G.A. § 21-2-523, venue is proper in the Superior Court of Chatham County.

STATUTE OF LIMITATIONS

3.

Pursuant to O.C.G.A. § 21-2-524, a petition to contest the result of an election must be filed within five (5) days after the “official consolidation of the returns ... by the election official having responsibility for taking such action under this chapter.” According to O.C.G.A. § 1-3-1(d)(3), “when the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.”

4.

The Board consolidated the returns on Friday November 13, 2020. A Petition contesting the results of this election must be filed on or before Friday, November 20, 2020. This Petition is filed within the applicable statute of limitations.

STANDING

5.

Pursuant to O.C.G.A. § 21-2-521, the election of any person who is declared elected to any such office may be contested by any person who was a candidate at such election for such office.

6.

Mr. Riley was a candidate for Chatham County Commission, District 2 for the general election held November 3, 2020. Mr. Gator Rivers was declared elected to office of Chatham

County Commission, District 2 following the November 3, 2020 election. Mr. Riley has standing to challenge this election.

STATUTORY ALLEGATIONS

7.

Pursuant to O.C.G.A. § 21-2-524, Mr. Riley must make eight (8) specific allegations, such allegations are laid out below.

8.

Pursuant to O.C.G.A. § 21-2-524(a)(1), as noted above Mr. Riley has standing and is qualified to institute this contest.

9.

Pursuant to O.C.G.A. § 21-2-524(a)(2), Mr. Riley desires to contest the result of the election of Chatham County Commission, District 2 from the November 3, 2020 general election.

10.

Pursuant to O.C.G.A. § 21-2-524(a)(3), the name of the Defendant is Mr. Larry “Gator” Rivers, the declared winner of election of Chatham County Commission, District 2 from the November 3, 2020 general election.

11.

Pursuant to O.C.G.A. § 21-2-524(a)(4), the two candidates for Chatham County Commission, District 2 from the November 3, 2020 general election were Mr. Larry “Gator” Rivers and Mr. Tony Riley.

12.

Pursuant to O.C.G.A. § 21-2-524(a)(5), each ground of contest is fully laid forth below.

13.

Pursuant to O.C.G.A. § 21-2-524(a)(6), the official declaration of the result of the contested election was made on November 13, 2020.

14.

Pursuant to O.C.G.A. § 21-2-524(a)(7), the relief sought is: a determination that Mr. Riley received the requisite number of votes for election and for this Honorable Court to pronounce judgment declaring the election invalid with regard to this office and call a second election; or a determination that the election was so defective as to the eligibility in contest as to place in doubt the result of the entire election and for this Honorable Court to declare the election invalid with respect to this office and call for a second election.

15.

Pursuant to O.C.G.A. § 21-2-524(a)(8), such other facts as are necessary to provide a full, particular, and explicit statement of the case of contest are fully laid forth below.

GROUND FOR CONTEST AND SUPPORTING FACTS

16.

The Chatham County Board of Elections draws its power and authority from Chatham County Ordinance § 6-105 which states, “it is the intention of this Act to implement and carry out the authority provided by Subsection (b) of Code Section 21-2-40 of the Georgia Election Code. O.C.G.A. § 21-2-40(b) states that local laws may create “board of elections ... in any county of this state and empower the board with the powers and duties of the election superintendent relating to the conduct of primaries and elections.” Thus, the Chatham County Board of Elections has the same powers and duties as the State Board of Elections with respect to elections in Chatham County.

17.

Pursuant to O.C.G.A. § 21-2-31(10), the Board has the duty to “take such ... action ... as the board may determine to be conducive to the fair ... and orderly conduct of ... elections.”

18.

Pursuant to O.C.G.A. § 21-2-33 the Board has the power to “examine under oath any person concerning any matter connected with or bearing on the proper discharge of its duties,” additionally the Board “shall have full power to subpoena persons and papers and to compel the witnesses to answer under oath touching any questions which may properly come before the board.” The Chatham County Board of Elections has the power to place people under oath, as well as the power to subpoena persons and papers.

19.

On or about October 27, 2020, the Board held a meeting at which it considered Mr. Riley’s qualification and ultimately declared Mr. Riley disqualified to run for the office of Chatham County Commissioner for District 2.

20.

Prior to the meeting, Mr. Riley asked about the procedure for securing subpoenas for the production of persons and papers in his defense. Mr. Riley was told by the Board that it did not have the power or authority to issue subpoenas.

21.

The denial of subpoenas to Mr. Riley deprived the voters of the 2nd District from a fair and orderly election, and constituted misconduct, fraud, and irregularity by the Board.

22.

O.C.G.A. § 21-2-6(b) states that an elector may challenge the qualifications of any candidate within two (2) weeks of such candidate qualifying, but the Board may bring such challenge at any time prior to the election of such candidate.

23.

A member of the Board had suspicions in at least early September that Mr. Riley may not be qualified for public office. That Board member emailed the Board asking for information on Mr. Riley, but did not explain herself or her suspicions to the entire Board. That Board member waited until after it was impossible to replace Mr. Riley on the ballot to bring the challenge to Mr. Riley's qualification for office.

24.

The intentional delay in challenging Mr. Riley's qualification for office deprived the voters of the 2nd District from a fair and orderly election, and constituted misconduct, fraud, and irregularity by the Board.

25.

Pursuant to O.C.G.A. § 21-2-527, if the winner of an election is deemed ineligible, the Superior Court Judge hearing the case cannot declare the person receiving less votes as the winner. Instead, the remedy is to call for a second election.

26.

Pursuant to O.C.G.A. § 21-2-6, the Board may deem votes "void" and "not counted" if cast for a disqualified candidate.

27.

O.C.G.A. § 21-2-6 was draft prior to the current system of early voting that takes place in the State of Georgia. It was drafted to proactively tell voters that votes cast for a disqualified candidate would not be counted; it was not drafted to retroactively void votes already cast, especially where such voters would not have known their vote would be void or not counted.

28.

By disenfranchising thousands of voters in the 2nd District and trampling on one of the most fundamental rights we have as Americans – the right to vote – the Board deprived the voters of the 2nd District from a fair and orderly election, and constituted misconduct, fraud, and irregularity by the Board.

29.

According to the Board’s Election Summary Report, 14,218 citizens voted in the election for Chatham County Commission, 2nd District. According to the same report, Mr. “Gator” Rivers only received 3,054 votes.

30.

In the election for 2nd District Commissioner, 3,054 citizens voted for Mr. Rivers, and 11,164 citizens voted for someone else. Mr. Rivers received only 21.47% of the votes cast in this election.

31.

The facts and numbers speak for themselves, by sowing mass confusion into the election and election process, the Board deprived the voters of the 2nd District from a fair and orderly election, and constituted misconduct, fraud, and irregularity by the Board.

32.

The facts and numbers continue to speak for themselves, by sowing mass confusion into the election and election process, the Board rejected what should have been legal votes in a number sufficient to change, or at a minimum, place the election result in doubt.

33.

The Board disqualified Mr. Riley because it determined that he had been convicted of a “crime of moral turpitude” and was not yet eligible to hold office in this state. The Board’s decision was based on faulty advice, and grounded in improper procedures that denied Mr. Riley basic due process rights.

34.

He consequence of the Board improperly declaring Mr. Riley disqualified to hold office was that legal votes were rejected, deemed void, and not counted. Sufficient votes were rejected, deemed void, and not counted to change or place the election result in doubt.

35.

Mr. Riley’s conviction, as a matter of law, should not have been considered a “crime of moral turpitude.”

36.

These causes, and any other causes that arise from the facts alleged in this petition and that may arise in subsequent hearings on this matter, show that Mr. Riley was the person legally elected in the election for Chatham County Commissioner, 2nd District.

CONCLUSION

37.

For the reasons stated above, the contest of this election should be upheld, and a second election called.

WHEREFORE, Mr. Riley respectfully prays for the following:

- 1) This Honorable Court direct the Clerk to issue notice and process as required by law.
- 2) This Honorable Court set hearings and other such matters are required by law.
- 3) This Honorable Court issue an Order finding Mr. Riley received the requisite number of votes for election and for this Honorable Court to pronounce judgment declaring the election invalid with regard to this office and call a second election.
- 4) This Honorable Court issue an Order finding the election was so defective as to the eligibility in contest as to place in doubt the result of the entire election and for this Honorable Court to declare the election invalid with respect to this office and call for a second election.
- 5) This Honorable Court grant Mr. Riley any further relief as is just and equitable.

Respectfully submitted, this 20th day of November, 2020

THE CLAIBORNE FIRM, P.C.

/s/ Scott C. Robichaux
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