

W Y C H E

Attorneys at Law

November 19, 2024

VIA HAND DELIVERY

The Honorable Dennis Shedd
Chair, South Carolina Election Commission
1122 Lady Street, Suite 500
Columbia, SC 29201

Re: *Senator Gerald Malloy, Candidate for South Carolina Senate District 29 v. Lee County Board of Elections, Chesterfield County Board of Elections, Darlington County Board of Elections, Sumter County Board of Elections, Marlboro County Board of Elections*

In re: South Carolina Senate District 29 General Election Held November 5, 2024

Dear Judge Shedd,

Please find enclosed for filing and service Senator Gerald Malloy's Election Protest under South Carolina Code section 7-17-260.

Thank you for your attention to this matter, and please contact me with any questions.

Most respectfully,



Matthew T. Richardson

Enclosure

cc: The Honorable Mark Keel
James Daniel Chaplin

W Y C H E
PROFESSIONAL ASSOCIATION

Post Office Box 12247 Columbia, SC 29211
p: 803.254.6542 f: 803.254.6544
www.wyche.com

STATE OF SOUTH CAROLINA
THE STATE ELECTION COMMISSION

RECEIVED
2024 NOV 19 PM 11:26
SOUTH CAROLINA
ELECTION COMMISSION

SENATOR GERALD MALLOY,)
Candidate for South Carolina)
Senate District 29,)
)
Protestant,)
)
vs.)
)
Lee County Board of Elections,)
Chesterfield County Board of Elections,)
Darlington County Board of Elections,)
Sumter County Board of Elections,)
Marlboro County Board of Elections,)
)
)
In re: South Carolina Senate District 29)
General Election Held November 5, 2024)
)

ELECTION PROTEST

There are a lot of wrong ways to do things right, but there is no right way to do things wrong. The results in Senate District 29 are wrong. Certification requires election officials to ensure all votes cast were counted accurately. That was not done in the 2024 general election for Senate District 29. The recount revealed hundreds of votes in Senate District 29 were miscounted and that the results are wrong. Accordingly, under South Carolina statutory law¹ and our Constitution,² Senator Gerald Malloy files this challenge to the certified election results for Senate District 29 in the general election held on November 5, 2024.

¹ S.C. Code § 7-17-260.

² S.C. Const. art. II, § 10 (“The General Assembly shall . . . establish procedures for contested elections, and enact other provisions necessary to the fulfillment and integrity of the election process.”).

Factual Background

1. Senator Malloy is the Democratic candidate in the 2024 general election for South Carolina Senate District 29, which encompasses portions of Lee, Chesterfield, Darlington, and Sumter Counties and all of Marlboro County.
2. The only opposing candidate in the 2024 general election for Senate District 29 is Republican candidate James Daniel Chaplin.
3. The State Board of Canvassers certified the results of the election on November 15, 2024.
4. Many material irregularities, errors, and problems affected the vote totals and vote counts of this election. These irregularities, errors, and problems rendered doubtful the result of the 2024 general election for Senate District 29.
5. The initial vote totals for District 29 consisted of 49,729 votes, with a difference of 287 votes separating Chaplin and Senator Malloy.
6. Following the mandatory recount, the total number of votes decreased to 49,642, with a difference of only 87 votes separating the Chaplin and Senator Malloy.
7. The recount margin of 87 votes is 0.18% of the 49,642 total votes.
8. Changes in the votes counted from the initial count to the recount exceed 350 votes, more than even the initial margin in favor of the declared winner.
9. Vote totals significantly changed from the initial count to the recount.
10. Vote totals significantly decreased from the initial count to the recount.
11. Vote counts from Straight Ticket subtotals for the non-major political parties significantly decreased from the initial count to the recount.

12. Vote counts from Straight Ticket subtotals for the non-major political parties in Lee County alone decreased more than 350 votes (413 to 60), which is greater than even the margin from the initial count to the recount and four times the recount margin.
13. Vote counts for both candidates also significantly changed—affecting more than 220 votes—from the initial count to the recount.
 - a. Chesterfield County: 26 fewer votes, 13 fewer for the declared winner and 13 fewer for Senator Malloy.
 - b. Darlington County: 7 more votes, with 2 more for the declared winner and 3 more for Senator Malloy.
 - c. Lee County: 353 straight-party subtotals changed and 188 votes different between the candidates in Senate District 29, with 129 fewer for the declared winner and 59 more for Senator Malloy.
 - d. Marlboro County: 2 more votes for Senator Malloy.
 - e. Sumter County: same vote total and same vote count.
14. Total vote counts for Chaplin changed by 144 votes and decreased by 140 votes from the initial count to the recount.
15. Total vote counts for Senator Gerald Malloy changed by 77 votes and increased by 51 votes from the initial count to the recount.
16. Upon information and belief, during the recount in Lee County, ballots cast during early voting were either missing or improperly included in election day voting, including:
 - a. Records of early voting in Lee County were stored in a small room inside the Lee County Board of Elections.

- b. Upon information and belief, before the recount there were missing early vote ballots and a missing “ballot box”.
 - c. Upon information and belief, officials left the room unsecured to locate the missing ballots.
 - d. Upon information and belief, when officials returned to the room to conduct the recount, additional votes were “discovered” in the election day vote count even though these “discovered” votes consisted entirely of early voting and not election day votes.
 - e. And a mandatory State audit after this election with a random sampling of precincts showed only one precinct statewide with more than 1% vote differential and that was a Lee County precinct with more than 4% difference between the number of ballots cast when counted by hand versus the number of ballots cast when counted by the scanner for the results tape.
17. Upon information and belief, the voters on the poll lists, which show the voters who voted, do not accurately match the voter registration list, resulting in improper votes that render the outcome of this election doubtful. This ballot discrepancy could exceed 300 votes cast by voters who were not lawfully permitted to vote in Senate District 29. This number of exceeds the difference of votes received by Chaplin and Senator Malloy in both the initial counting and in the mandatory recount.

Grounds for Relief

18. The foregoing evidence, including the significant changes in vote totals, vote counts for each candidate, and vote counts for straight tickets are unprecedented and overwhelming. Further, every race in the 2024 general election in Lee County had

changes to the vote totals and vote counts from the initial count to the recount. That, too, is unprecedented. Something is clearly amiss.

19. The discrepancies in the 2024 general election for Senate District 29 far exceed votes changes in all other State and Congressional recounts in the past ten years combined.

20. Most recounts in the past ten years resulted in no vote changes at all.

There were no changes in the:

- a. 2022 for House Districts 30 and 89 Republican primaries,
- b. 2020 Senate District 16 and House District 100 Republican primaries and two House District 115 Democratic primary runoffs (one for an unexpired term and one for the regular election),
- c. 2018 House District 100 and 104 Republican primaries, and
- d. 2016 House District 122 Democratic primary.

There were less than three votes changed in the:

- e. 2022 House District 77 Republican Primary (difference of one vote between initial election night vote and recount vote)
- f. 2022 House District 101 Democratic Runoff (difference of one vote)
- g. 2020 House District 90 General Election (difference of three votes)

Other elections with recounts in the past ten years had a total of only 24 vote changes in the recounts:

- h. Of the 24 votes, 18 of those vote changes came from just two elections, one of which was the 2016 Congressional District 2 Democratic primary with

11 vote changes and the other was 2014 House District 54 Democratic primary with 7 vote changes.

21. Thus, compared with all the 18 other State and Congressional recounts over the past ten years and in which a total of only 24 votes changed, just one of the counties in the 2024 Senate District 29 general election had **14 times more votes changes in this recount than the total vote changes in all 18 other recounts combined.**
22. Upon information and belief, during the vote recount in Lee County, votes cast during early voting were either missing or improperly included in election day voting, as set forth in paragraph 16 above.
23. Upon information and belief, the voters on the poll lists do not accurately match the voter registration list, which results in a ballot discrepancy that renders the outcome of this election doubtful, as set forth in paragraph 17 above. *See also* S.C. Code Ann. § 7-13-810 (“A candidate may protest an election in which he is a candidate pursuant to § 7-17-30 when the protest is based in whole or in part on evidence discovered after the election. This evidence may include, but is not limited to, after-discovered evidence of voters who have voted in a precinct or for a district office other than the one in which they are entitled by law to vote.”); *Dukes v. Redmond*, 357 S.C. 454, 457, 593 S.E.2d 606, 608 (2004) (“The evidence presented by Dukes that voters included on the voter registration list were not in fact city residents qualifies as after-discovered evidence under this section. Dukes’s protest therefore is not procedurally barred.”).

Remedy

24. Because the margin for the declared winner in this election is only 87 votes, these significant anomalies and changes to vote totals and vote counts during the recount raise more questions than they answer and do not ensure that all votes cast were counted accurately. *See Dukes v. Redmond*, 357 S.C. 454, 458, 593 S.E.2d 606, 608 (2004) (ordering a new election and stating “[b]ecause three votes, including the Foshees’ two votes, were cast illegally, and the margin of victory was only three votes, the result of this election is rendered doubtful”).
25. What remains is why the vote counts are not correct—and addressing Lee County specifically (but not discounting the vote changes in the other counties in Senate District 29), that question has not and most likely cannot be answered.
26. These anomalies require reconciliation of the cast votes records and the ES&S ExpressVote Voting System with an audit of the event logs and software for the election management system, the voting machines, the scanners, and the central county computers.
27. If the systemic problems that prevented the accurate counting of all votes cast cannot be corrected and accurate results confirmed, then a new election should be ordered for Senate District 29. *See generally George v. Mun. Election Comm’n*, 335 S.C. 182, 187, 516 S.E.2d 206, 209 (1999) (nullifying a referendum and noting “[t]he Court . . . will not sanction practices which circumvent the plain purposes of the law and open the door to fraud.” (quoting *May v. Wilson*, 199 S.C. 354, 362, 19 S.E.2d 467, 471 (1942))).

28. Senator Malloy reserves the right to supplement or amend this Protest, or otherwise, to expand upon or to provide additional allegations.

Conclusion

The 2024 general election for Senate District 29 suffered unprecedented irregularities—hundreds of votes changed between the candidates with the recount in just one of five counties in the district, changes to straight ticket voting affected over 350 votes, vote totals went down significantly, allegations of missing early votes were missing and then discovered mixed in with election day ballots, voters on poll lists cannot be reconciled with voter registration records, and potential software issues in counting ballots and causing inconsistent results with vote totals and with vote counts between the candidates.

These irregularities are so pervasive and substantial that they undermine a free and fair election. Certification requires that all votes cast be counted accurately. That has not been done, and now cannot. Because these irregularities cast unshakable doubt on the accuracy of the results of the election, the only appropriate remedy is to invalidate the election results and order a new election.

Respectfully submitted,

Wyche, PA

s/Matthew Richardson

Matthew Richardson (SC Bar No. 15647)

Brian Critzer (SC Bar No. 103159)

P.O. Box 12247

Columbia, SC 29211

P: (803) 254-6452

mrichardson@wyche.com

bcritzer@wyche.com

[SIGNATURE CONTINUED ON FOLLOWING PAGE]

William Nettles (SC Bar No. 65392)
Law Office of Bill Nettles
2008 Lincoln St.
Columbia, SC 29201
P: (803) 814-2826
bill@billnettlelaw.com

Skyler B. Hutto (SC Bar No. 102741)
Williams & Williams Attorneys at Law
1281 Russell Street
P.O. Box 1084
Orangeburg, SC 29115
P: (803) 534-5218
skyler@williamsattys.com

Donovan Malloy (SC Bar No. 104814)
McGowan Hood Law Firm
1517 Hampton Street
Columbia, SC 29201
P: (803) 768-1230
dmalloy@mcgowanhood.com

November 19, 2024