

STATE OF SOUTH CAROLINA
THE STATE 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)
)
)

SENATOR MALLOY'S
NOTICE OF WITHDRAWAL

Trust but verify.

President Ronald Reagan,
Farewell Address to the Nation
January 11, 1989.

The Protest was over before it began. We were asked to trust but not verify. Under the circumstances, we cannot. What is past is prologue: there are a lot of wrong ways to do things right, but there is no right way to do things wrong. Transparency is needed for election integrity and accuracy in election results.

The Certified Results are Wrong

The certified results are wrong and by more votes than the margin. No one can credibly dispute that. And the State Election Commission (SEC) has confirmed it. At least

275 votes were improperly counted in the certified results—that is 3 times more than the margin of votes between the candidates.

Most—but not all—the problems were in Lee County, which was unable “to find the discrepancies before the certification” but “instructed to certify the results even though the numbers were different … [and] couldn’t explain why.” Lee County Response to SEC, Nov. 21, 2024. The SEC agreed the recount in this election was “very unusual” and that “something didn’t add up.” *See* Nick Neville, *Malloy protests SC Senate District 29 results after recount, cites ‘irregularities’ in Lee County* (Nov. 22, 2024) (found at <https://www.wistv.com/2024/11/22/malloy-protests-sc-senate-district-29-results-after-recount-cites-irregularities-lee-county/>). The SEC has “not been able to find any other cases like this in the state of South Carolina.” *Id.*

A Remarkable Feat of Reverse Engineering

Ten days after certification, the SEC provided its evaluation of two errors in the Lee County initial vote counts and its certified recount results. In a remarkable feat of reverse engineering, the SEC used ballot images and cast vote records to look behind the secrecy curtains of our voting booths to try to justify its third re-tabulation of the Lee County vote counts. But then the SEC refused to let the most qualified expert in the State—even under the strictest protective order and for the expert’s eyes only—analyze the data used by the SEC in its evaluation to verify its evaluation and post-certification re-tabulation of the Lee County election results. The SEC Evaluation Report also did not look at the event logs with the activity of the electronic voting equipment used in this election. Those event logs and the poll lists of voters who cast ballots show even more discrepancies in the

Senate District 29 vote counts not only in Lee County but also in the two other counties that provided sufficient data to analyze.

The Expert Finds Even More Discrepancies

Dr. Duncan Buell is the most qualified expert in South Carolina on electronic voting and accurate counting of ballots. He is a retired professor of Computer Science and Engineering at the University of South Carolina and has served as a member of the Richland County Board of Canvassers. Dr. Buell has served as an expert witness on electronic voting systems and probably analyzed more ES&S voting data than anyone else anywhere. He has analyzed electronic voting data, including cast vote records data, in South Carolina since at least 2010.

Dr. Buell was provided and analyzed event log and voter poll list data from Lee, Sumter, and Marlboro counties in the election contest for South Carolina Senate District 29. Although Darlington and Chesterfield Counties provided some data from this election for Senate District 29, neither county provided the requested electronic files of the event log data, making it very hard to make similar analyses and comparisons with the certified results.

The event log is the record of the “events” in each electronic ballot-reading scanner and reports the existence of votes by precinct and polling place. The voter poll lists similarly record the existence of a vote by a voter also by precinct and polling place. Dr. Buell and the undersigned requested of the SEC but were refused access to the cast vote record of the individual votes.

An In-Depth Review of this Election Should be Conducted

Based on his findings from reviewing the data from several counties but not having the same access to the election data the SEC used to reverse engineer its re-tabulation, Dr. Buell concluded:

The numbers reported in detail are sufficiently divergent from the vote totals and vote counts tabulated and reported as the election results that an in-depth review of this election should be conducted. ... [I]t is my professional opinion that the data provided for this election is sufficiently anomalous that it should not be taken as the accurate or final result of this election. In multiple counties in this election, hundreds of votes are not properly accounted for in the data. With a margin of less than one hundred votes, it is my professional opinion that one cannot conclude who won the election without a complete exposure of the data and a verification that the data support the conclusion of who won.

Report of Dr. Duncan Buell on the Senate District 29 Results from the 2024 General Election, Exhibit 1 (emphasis added).

What should be Done?

The number of questionable and improperly counted votes in the certified results of the 2024 general election for Senate District 29 cause the certified results to be uncertain. The law requires a new election because all questionable and improperly counted votes should be subtracted from the declared winner's total. *See Broadhurst v. City of Myrtle Beach Election Comm'n*, 342 S.C. 373, 381-82, 537 S.E.2d 543, 547 (2000) (affirming a new election after a voting machine failed to count up to 231 votes and that number of uncounted votes exceeded the margin of victory); *Creamer v. Anderson*, 240 S.C. 118, 125, 124 S.E.2d 788, 791 (1962) ("But it seems to us, apart from the matter of precedent, that the rule that has been followed by this court for more than a century and a half in cases involving election to public office ... is better calculated to safeguard the purity of elections

by sending the matter back to the people whenever so many illegal votes have been cast that their deduction from the winning side would affect the result.”).

Only 87 votes separate the candidates in the certified results. Even just subtracting the 275 improperly counted votes found by the SEC from the declared winner’s total renders this election’s results in doubt. *See Odom v. Town of McBee Election Comm’n*, 427 S.C. 305, 314, 831 S.E.2d 429, 434 (2019) (discussing cases where “there was no way to tell for whom the disputed votes were cast; consequently, the only conceivable conclusion was that the results of the election were in doubt, and the only remedy in those cases was a new election”).

Senator Malloy protested only when these irregularities affected the outcome of the election. The SEC’s Lee County Evaluation Report looked behind the curtain of the voting booth to determine the choices of voters whose ballots were improperly counted in the certified results. The cast vote record data is necessary to verify or challenge the conclusions of the Evaluation Report. The SEC refuses to make that data available even under the strictest of confidentiality to the expert and for his eyes only. Therefore, the certified results cannot be changed by this protest—and thus it is withdrawn.

What will be Done?

Senator Malloy respectfully asks the General Assembly, the SEC, the county boards of elections, and the many dedicated elections volunteers, workers, and staff in South Carolina to:

1. embrace transparency and strive for accuracy,
2. use Dr. Duncan Buell to analyze and audit these election results and repair the election processes,
3. follow the approach to trust but verify,
4. reliably determine the will of the voters by accurately counting every legally cast ballot,
5. identify and fix potentially incorrect results before certification and recounts,
6. protect the chain of custody for ballots and the election data and documents,
7. require audits rigorous enough to ensure any potential tabulation errors are caught and corrected before certification, and ultimately
8. pay attention to the substantial discrepancies in vote totals and vote counts found by Dr. Buell in the event log and voter poll list data for three out of five counties in Senate District 29.

This could happen, and be happening, anywhere or everywhere.

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

December 2, 2024