

IN THE DISTRICT COURT OF ELLIS COUNTY, KANSAS

Janis Lee
4604 Hoover Drive
Hays, Kansas 67601

Lyn Lee
4604 Hoover Drive
Hays, Kansas 67601

Elizabeth Michaelis
3511 Lincoln Drive
Hays, Kansas 67601

Mike Michaelis
3511 Lincoln Drive
Hays, Kansas 67601

Kathleen Rome
1129 Centennial Blvd.
Hays, Kansas 67601

Kaytee Wisley
314 W 11th Street
Hays, Kansas 67601

Conner Mountford
3041 Sherman Ave.
Hays, Kansas 67601

Contestants,

v.

Barbara K. Wasinger
1602 Elm Street
Hays, Kansas,

Contestee.



Case No. 18-CV-148

NOTICE OF ELECTION CONTEST

Come now Janis Lee, Lyn Lee, Elizabeth Michaelis, Mike Michaelis, Kathleen Rome, Kaytee Wisley, and Conner Mountford, all of whom are registered voters residing in the 111th House legislative district of Kansas, and for the Notice of Election Contest, state the following:

1. This Notice of Election Contest is filed pursuant to K.S.A. 25-1435, under which any registered voter residing in the legislative district in which the subject election was conducted may contest the results of that election under grounds specified in K.S.A. 25-1436.

Parties

2. The persons filing this contest (hereinafter "the Contestants") are Janis Lee, 4604 Hoover Drive, Hays, Kansas 67601, Lyn Lee, 4604 Hoover Drive, Hays, Kansas 67601, Elizabeth Michaelis, 3511 Lincoln Drive, Hays, Kansas 67601, Mike Michaelis, 3511 Lincoln Drive, Hays, Kansas 67601, Kathleen Rome, 1129, Centennial Blvd., Hays, Kansas 67601, Kaytee Wisley, 314 W 11th Street, Hays, Kansas 67601, Conner Mountford, 3041 Sherman Ave., Hays, Kansas 67601, each of whom is presently, and was at all times during 2018, a registered voter residing within the boundaries of the Kansas 111th District of the Kansas House of Representatives.

3. The Contestee is Barbara K. Wasinger who resides at 1602 Elm Street, Hays, Kansas.

Jurisdiction and Venue

4. Under K.S.A. 25-1435, any registered voter residing within the subject legislative district (here, the Kansas 111th House legislative district) may bring an action characterized as a Notice of Election Contest.

5. The certificate of election stating that Contestee was the prevailing candidate in the 2018 general election for the Kansas 26th House legislative district was issued by Kris W. Kobach, Secretary of State of the State of Kansas on December 3, 2018. Under K.S.A. 25-1439, a Notice of Election Contest must be filed within five days

of the issuance of the subject certificate of election, not including the event-triggering date or intervening weekend days. The Notice of Election Contest is filed on December 10, 2018, and is thus timely-filed.

6. Under K.S.A. 25-1437, if the subject election involves an election to the Kansas House of Representatives, the Notice of Election Contest must be filed in the District Court of the county in which the Contestants reside. Each of the Contestants resides in Ellis County, so Ellis County is the appropriate jurisdiction and venue for their contest of the Kansas 111th House legislative district election.

Allegations

7. Under Kansas Law, K.S.A. Chapter 25, it is the duty of Election Officials and primarily the County Clerk, who is also Election Officer, to conduct a fair and accurate election. Kansas Law provides a detailed procedure for the County Clerk to follow that requires her to ensure each election duty is properly conducted. One of the duties is ensuring all Voting Machines and Equipment are properly tested, calibrated and maintained. K.S.A. Chapter 25 Article 44 explains various steps to properly using Voting Machines or Voting Systems in an election.

8. K.S.A. 25-4408 requires that the county election officer shall be in complete charge of voting systems, their safekeeping, keeping them in repair and working order, etc. The voting computers, which were purchased twelve years ago, have not been properly maintained, and were malfunctioning on the date of the election in almost all polling places. Additionally, the county election officer failed to continuously

store the computers in a guarded and climate-controlled location when the machines were not in use.

9. Per K.S.A. 25-4404 and the iVotronic Manual for the Electronic Voting Equipment used in the Ellis County, it is required that the county election officer ensure each voting machine is properly certified, tested and calibrated to ensure accuracy of votes. Despite lawful request for notification of any such testing and/or any meeting of any election board, the County Clerk claims to have performed some, but not all required, tests on a day after the request, failing to notify the requestor or the public. Upon information and belief, the voting computers' touch screens were not calibrated.

10. During 2018 an election was held for the selection of the person to hold the seat in the Kansas 111th House legislative district for a two-year term beginning in January, 2019. The Contestee, Barbara K. Wasinger, was a declared candidate for the seat. She was first a declared candidate for the nomination of the Republican Party, and after the primary election in August, 2018, was the declared nominee of the Republican Party in the general election, which was held in November, 2018.

11. The preliminary count of votes by the County Clerk showed a result of the Contestee, Barbara Wasinger, having received 32 more votes than the other candidate, Eber Phelps. A recount was requested according to law yet it was improperly conducted. The County Clerk, having made her own determination regarding provisional voters, reported that some of them should be counted and some should not, yet refused to report which ones were counted and which ones were not. She made decisions to not count mail in ballots which should have been counted, allowed some voters to withdraw

their votes after they had been placed in the mail and received, erroneously decided to not count ballots that had actually been delivered to the USPS within the statutory time limits, and caused and/or suffered ballots which had been cast in ways that the voters' intent was ascertainable to be rejected yet allowed others on which the voters' intent was not ascertainable to be counted.

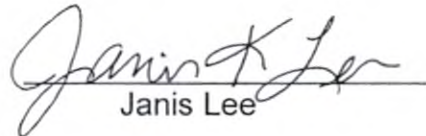
12. The Election Officer failed to print and prepare sufficient paper ballots, causing poll workers on election day to force voters to use the voting computers, which are believed to be inaccurate and not properly prepared. In many instances voters were forced to either wait long times to be able to vote or abandon their place in line, some choosing to leave without being able to vote. She photographed ballots and allowed those to be used in lieu of legitimate ballots and has refused to reveal how many were disseminated and voted upon. After candidate Phelps requested a full, manual, hand recount, the County Clerk, without consulting with Phelps, allowed the vendor of the voting system, ES&S, to decide that despite the instructions for how to conduct a recount of the computer/aided voting, the Clerk should not print ballot images, but instead performed a process that only repeated any errors made by the machines. The Clerk did not use the data available to perform a full hand recount and has failed to perform even rudimentary tests to determine what caused numerous machines to be taken out of service, what caused machines to shut down and reboot during the voting process or even to determine if the touch screens accurately recorded the exact place on the screen the voters' touched.

13. As a result of the various failures of the election officer to follow the law on the operating instructions for the voting computers, some voters were deprived of the

right of voting for the candidate they intended and such deprivation could change the result of the election; illegal votes were received and legal votes were rejected which could change the results of the election, error occurred in computing the results of the election which could change the result of the election and so the Certificate of Election should not have been to the Contestee but rather should have been Eber Phelps.

Wherefore, the Contestants respectfully request that the court initiate the procedures specified under KSA 25-1435 et seq. and for all other relief deemed necessary, just and proper.

Signature of Contestant


Janis Lee

12-10-18
Date

Respectfully submitted,

/s/ Vic Miller
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