

Main Identity

From: "JAMES W. NORMENT - 5453" <JWN@wardandsmith.com>
To: "Jason T. Strickland - 5483" <J_S@wardandsmith.com>; "Ray Muns" <bmuns@ec.rr.com>
Sent: Monday, December 04, 2006 4:49 PM
Attach: header.htm
Subject: #705672 v1 - Ray Muns Election Protest/Complaint



Mr. Muns, please review the attached. It is still a draft, but I want you to see it now. We will call you to discuss. Thanks.

ELECTION PROTEST/COMPLAINT**AMENDED AND SUPPLEMENTED**

(Use of this form is required by G.S. 163-182.9(c))

This form must be filed with the county board of elections within the timeframes set out in G.S. 163-182.9 (b)(4). Please print or type your answers. Feel free to use and attach additional sheets if needed to fully answer the questions below. You may also attach relevant exhibits and documents. Please number the pages of such additional sheets and attachments.

1. Full name and mailing address of person filing the protest.

Raymond N. Muns
3000 Market St.
Newport, NC 28570

With the assistance of legal counsel:

Jason T. Strickland, Esq.
Ward and Smith, P.A.
1001 College Ct.
New Bern, NC 28562
(252) 672-5400
j_s@wardandsmith.com

2. Home and business phone number, fax number, and e-mail address.

252-223-4965 (Home)
252-241-7280 (Cell)
252-223-5904 (FAX)
bmuns@ec.rr.com

3. Are you either a candidate or registered voter eligible to vote in the protested election. If a candidate,

12/4/2006

for what office?

Candidate for District # 2 County Commissioner; registered voter

4. List the date, location, and exact nature of the election protested. Name all candidates in the election and the number of votes each received. Note the winning candidate(s) elected or nominated.

Election Protested: November 6, 2006 election of District #2 County Commissioner and November 29, 2006 hand-to-eye recount

**Candidates: Wade Nelms; final tally of votes contested and unknown
Ray Muns; final tally of votes contested and unknown**

Winning Candidate: Unknown

5. Does this protest involve an alleged error in vote count or tabulation? If so, please explain in detail.

This protest involves significant errors with the count and tabulation process. When an election is extremely close, as the Nelms-Muns election was, then any error that could have affected the final vote tally is significant. Based on my first-hand knowledge and other information I believe to be true and accurate, the hand-to-eye recount was conducted in an atmosphere where errors did occur. In addition, the hand-to-eye recount was conducted contrary to the specific instructions of the North Carolina Administrative Code. Whether the errors were accidental or intentional does not concern me at this point. I am most concerned that the errors--no matter why they occurred--resulted in an inaccurate count and therefore deprived me and the voters the opportunity for a fair election.

Most of these problems occurred at Table 2. State law and regulation requires that hand-to-eye recounts proceed exactly as required and in a deliberate and careful manner. This did not occur at least one recount table. The "Caller" at Table 2 on more than one occasion called the wrong name and repeatedly corrected himself. The Caller also called entirely too fast for the "Talliers" to be able to keep up and record the totals correctly. It is probably that the Talliers could not have properly recorded the votes given the speed and errors of the Caller. The two Talliers on more than one occasion arrived at inconsistent vote totals for a batch of votes. Because of these problems, Table 2 often had to recount the ballots and determine why and where the two Talliers were recording inconsistent results. Table 2 acted in ways that resulted in an increased potential for error. Any error is unacceptable in an election decided by less than three ballots, which is less than one percent of all ballots cast.

In addition, Table 2 did not have an efficient way of dividing its ballots into batches. Thus, when the personnel at Table 2 did go back and recount the ballots to find errors, they were uncertain how far back to go. There were frequent interventions at Table 2 by members of the Board of Elections. This caused additional confusion and increased the rate of errors.

Table 2 was not the only table where errors occurred. The Caller at Table 1 quickly looked at the ballot, called out a name, and put the ballot face-down in a pile. There is no way under these circumstances that the observer at Table 1 could have properly observed the ballot. Several observers also remarked that the official precinct totals were arrived at improperly. The batch totals for each precinct were written on a blackboard or easel and added together to ultimately arrive at the official precinct totals. The arithmetic was often erroneous.

One Tallier at Table 3 recalls being replaced in his position by his observer which would mean that both Talliers at the Table 3 were Democrats. It is a violation of the State's regulations to allow both Talliers to be from the same political party.

6. Does this protest involve an irregularity or misconduct not described in number 5 above? If so, please give a detailed description of such misconduct or irregularity and name those who committed such action.

Yes. The recount was conducted in six person teams, which is in violation of the North Carolina Administrative Code and increased the opportunity for confusion and error. Chapter 8 of the North Carolina Administrative Code, Section 09.0106(f), requires--the regulation uses the word "shall"--that the hand-to-eye recount be conducted by a group composed of four persons: One Caller from the Democratic Party, one observer from the Republican Party, one Tallier from the Republican Party, and one Tallier from the Democratic Party.

The system set up for the November 29 recount, by using a group of six people rather than four, was inconsistent with State law. Such a technical violation may not matter in most cases, but in this particular election, the additional two people increased confusion and the opportunity for error. Any error in such a close election is unacceptable and must be corrected. Therefore, there is probable cause that a material and significant irregularity occurred and that a violation of the North Carolina Administrative Code amounts to misconduct that requires the November 29 hand-to-eye recount results be rejected.

7. Please set out all election laws or regulations that you allege were violated in your responses to 5 or 6 above. State how each violation occurred. Please provide the names, addresses, and phone numbers of those who you allege committed such violations.

08 NCAC 09.0106

8. Please provide the names, addresses, and phone numbers of any witnesses to any misconduct alleged by you in this protest, and specify what each witness listed saw or knows.

See attached list of witnesses.

9. What action do you desire the county board of elections to take in this matter?

I request an additional recount of the votes in this election that ensures our right to a fair and accurate election, properly complies with the requirements of 08 NCAC 09.0106 and 08 NCAC 09.0107, and is conducted without error.

10. Do you contend the allegations set out by you are sufficient to have affected or cast doubt upon the results of the protested election? If your answer is yes, please state the factual basis for your opinion.

Yes. The hand-to-eye recount results show only a three vote difference between Mr. Nelms and me. As discussed above, there were numerous problems with the recount process. Given the number of ballots that were processed at the counting tables and the confusion there, it is highly probable that errors occurred sufficient to change the result of the election. It is highly probable that if the votes processed at Table 2 were counted correctly, there would be a greater than 3 vote change in the results.

In addition, the use of six-person teams was inconsistent with the requirements of the North Carolina Administrative Code. Not only was the process inconsistent with state law, but also it increased the potential for confusion and error.

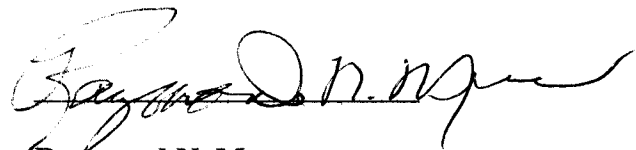
Given the extent and type of errors that occurred at the hand-to-eye recount, I believe that it was ultimately conducted improperly and that a further recount, with stricter procedures adhering to the Administrative Code requirements, is justified. There is, therefore, probable cause to believe that a violation of election law and material irregularities occurred.

11. Have you read and reviewed the North Carolina law pertaining to election protests as set out in G.S. 163-182.9 through G.S. 163-182.14 and current North Carolina State Board of Elections regulations pertaining to election protests?

Yes.

12. How many pages of additional answer are attached to this protest? 1

13. How many pages of attachments are attached? **Other than my list of witnesses, none. However, I have affidavits from at least three individuals supporting by assertions that I will be providing at the probable cause hearing on December 5, 2006.**



Raymond N. Muns

Signature of Protestor

Date/Time Filed with County Board _____

(to be filled out by the county board)

x	x
<p>JAMES W. NORMENT Attorney</p>	<p>Phone: (252) 672-5453 Cell: (252) 259-2451 Fax: (252) 672-5477 1001 College Court PO Box 867 New Bern, NC 28563-</p>

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