

**IN THE MATTER OF THE PROTEST  
OF RAY N. MUNS**

**This matter coming on to be heard before the Carteret County Board of Elections this 5<sup>th</sup> day of December, 2006. That Ray N. Muns has filed a protest of the hand-to-eye recount of the November 7<sup>th</sup> general election in which he was a candidate for County Commissioner District 2. That Wade Nelms was a candidate who had initially requested a hand-to-eye recount, which had been allowed.**

**That Ray N. Muns was properly notified of said hearing. That at said hearing Ray N. Muns appeared with his attorney, James T. Strickland with Ward and Smith, PA of New Bern. Mr. Muns, by and through his attorney, filed an amended protest which was accepted by the Board of Elections. That Mr. Muns, by and through his attorney, called witnesses who were duly sworn and gave testimony. That Mr. Muns, through his attorney, also provided affidavits from his witnesses which were allowed into evidence. That, also in evidence were the Board of Elections' records as to the ballot counters with their names and party affiliations. Also included in the record are the results of the November 7<sup>th</sup>, 2006 election, the results from the machine recount which was conducted on November 20<sup>th</sup>, 2006 and the results of the hand-to-eye recount conducted on November 29<sup>th</sup>, 2006.**

**That based upon the evidence presented and the other documentary evidence, the board makes the following Finding of Fact:**

- 1. The protest of Ray N. Muns was duly filed in accordance with NCGS 163-182.9.**
- 2. That the amendment to the protest was properly filed and considered.**
- 3. A preliminary hearing was allowed by the Board of Elections for December 5, 2006.**
- 4. All parties were given proper notice and were present for said hearing, there were no objections as to any notice or place or time of hearing.**
- 5. The evidence failed to show that there was probable cause to believe that a violation of election law or irregularity or misconduct occurred during the November 29, 2006 recount.**
- 6. The witnesses, with the exception of Clarence Williams, were public observers; Clarence Williams was a tally marker for Table 3.**
- 7. Clarence Williams stated that the count that he observed was proper, however he knew of no problems that could have resulted in an improper count on**

Table 2. He signed tally sheets that the count in which he was involved was done correctly.

8. No other ballot counters testified as to whether the count had been done improperly or were aware of any errors that could have occurred in the recount.

9. There is no credible evidence that the ballots for review were not properly reviewed by the Board of Elections, and that said allegation is without basis.

10. The board further finds that Table 2 was properly supervised and that the results from those precincts is substantially correct. There is no showing of any impropriety or irregularity occurring on Table 2, and that said allegation by Ray N. Muns is without basis.

11. That in order to insure fairness and additional public scrutiny, the Board of Elections used six ballot counters rather than the minimum of four as set forth in 8 NCAC 9.0106(f) and said ballot counters consisting of three Republicans and three Democrats. No party official or candidate objected or complained that the board was using six ballot counters rather than the minimum of four as set forth above.

**THE BOARD CONCLUDES:**


1. The protest of Ray N. Muns was duly filed.

2. Proper notice was given to all parties and a preliminary hearing was had on December 5, 2006.

3. The protest should be dismissed because there is not substantial evidence of a violation of the election law or other irregularity or misconduct.

We, therefore, find that the protest of Ray N. Muns should be dismissed as of the 5<sup>th</sup> day of December, 2006 at 12:20 o'clock.

**WE, THE BOARD OF ELECTIONS, SO FIND.**

  
Bill Henderson, Chairman

  
Harry Rivers, Secretary

  
Sue Verdon, Member

Filed: 12-5-06  
12:20 PM  
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bmuns@ec.rr.com

Carteret County Board of Elections  
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Beaufort, NC 28516

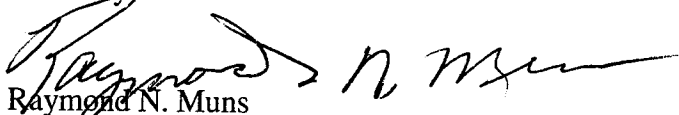
Members of the Carteret County Board of Elections:

As you are aware, the hand-to-eye recount of County Commissioner District 2 ballots has reversed two prior machine counts and resulted in a difference of only three votes between me and Mr. Nelms. I am protesting the results of the hand-to-eye recount for the reasons stated in my official protest/complaint. In addition, I am providing this statement to you so that I may urge you to act in the best interest of Carteret County and consider what is fair and good. I believe it is fair and good for you to call for a recount.

I urge you to make this decision at the local level, where we can act without interference from additional personalities who have not been a part of this process. This is a Carteret County election, and I am hopeful that Carteret County can correct its own mistakes and ensure that the votes receive fair and accurate election results. I ask for nothing more.

As explained in my protest/complaint, the totality of the errors that occurred in the hand-to-eye recount process cast significant doubt on the accuracy of the results. We owe it to the voters and the candidates to make sure that an election this close is conducted exactly as required by law and produces the most accurate result. I have a good-faith basis for believing that hand-to-eye result is erroneous and I believe that my amended complaint sets forth an adequate basis for probable cause that a recount is necessary.

Sincerely,



Raymond N. Muns  
Commissioner, District 2  
Carteret County Board of Commissioners

## **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, 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.

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**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. There is at least one recount table where this did not occur. 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 improbable that the Talliers could 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 or Republican Party, one observer from the other 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 my assertions that I will be providing at the probable cause hearing on December 5, 2006.**

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**Raymond N. Muns**  
Signature of Protestor

Date/Time Filed with County Board \_\_\_\_\_

(to be filled out by the county board)