

VIRGINIA :

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

BRUCE W. TYLER)
611 Saint Christopher's Road)
Richmond, Virginia 23226)

Contestant,)

v.)

Civil Action No. _____

JONATHAN T. BALILES)
3110 Floyd Avenue)
Richmond, Virginia 23221)

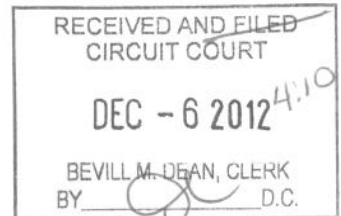
Contestee.)

COMPLAINT

Bruce W. Tyler, Contestant, by counsel and pursuant to Sections 806 and 807 of the Code of Virginia (the "Code"), contests the general election for City Councilman from the City of Richmond's 1st Council District, and in support of this Contest asserts as follows:

1. A general election was held on November 6, 2012, in the City of Richmond, for Councilman from the 1st Council District ("the Election").
2. The candidates in the Election were Bruce W. Tyler, who is a resident of the City of Richmond, and Jonathan T. Baliles, who is a resident of the City of Richmond.
3. On November 14, 2012, the City of Richmond Electoral Board (the "Board") certified Baliles as the winner of the Election by 22 votes out of 12,722 total votes cast and counted in the Election. According to the Board, the results of the Election were:

Jonathan T. Baliles	6,340 votes
Bruce W. Tyler	6,318 votes



Write-Ins	64 votes
Total votes	12,722 votes

4. The difference of 22 votes between the two candidates is currently the subject of a recount pending before the Circuit Court of Richmond. The Circuit Court will recount the ballots and redetermine the vote difference between the two candidates on December 19, 2012. The 22-vote margin may change as a result of the recount.

5. Section 24.2-806 of the Code authorizes this Court to adjudicate a contest of an election held in the city of Richmond.

6. Section 24.2-807 of the Code sets forth permissible grounds for contesting an election: “The complaint shall contain ... (ii) objection to the conduct or results of the election accompanied by specific allegations which, if proven true, would have a probable impact on the outcome of the election”

Count I: Contest of Election

7. Several irregularities occurred in the conduct of the Election and voters were disenfranchised, specifically:

- (a) Voters who timely applied for absentee ballots were disenfranchised because they never received their absentee ballots from the General Registrar. On information and belief, the number of voters who timely applied for an absentee ballot but did not receive one is or exceeds 10 voters.
- (b) Voters who timely applied for absentee ballots were disenfranchised because they received their absentee ballots too late to timely cast them. The General Registrar delayed processing and mailing these absentee

ballots. On information and belief, the number of voters who timely applied for an absentee ballot but not receive it in sufficient time for the ballot to be received before the close of polls on election day is or exceeds 7 voters.

- (c) Voters who cast absentee ballots in the Election were disenfranchised when their absentee ballots were rejected in violation of the Due Process Clause of the U.S. Constitution and Virginia law. Election officials rejected absentee ballots without providing the voters any prior notice before depriving them of their fundamental right to vote or providing them any opportunity to correct any defects in their ballots. Election officials applied standards for rejecting otherwise valid absentee ballots that violated the state statutory standard of materiality and that violated the Due Process Clause. On information and belief, the number of voters whose absentee ballots were rejected in violation of the Due Process Clause of the U.S. Constitution and Virginia law is 15 voters.
- (d) One voter personally returned his absentee ballot to his precinct on election day, but his ballot we rejected as late.
- (e) One voter who applied for an absentee ballot did not cast the absentee ballot and appeared in her precinct on election day to vote in person, but was denied the right to vote and was not afforded the right to vote a provisional ballot.

- (f) One voter was allowed to vote only in the presidential election but wanted to vote in the 1st Council District election too. She was disenfranchised in the 1st Council District election.
 - (g) In Precinct 105, election officials included in the vote count 12 votes more than the number of voters recorded in the pollbook. In Precinct 102, election officials included in the count 9 votes more than the number of voters recorded in the pollbook.
8. These irregularities in the conduct of the Election had a probable impact on the outcome of the Election.
9. Absent these irregularities, Contestant would have won the Election.
10. Because of these irregularities in the conduct of the Election, the election results do not reflect a valid election result.

Prayer for Relief

WHEREFORE, Contestant respectfully requests that the Court order the following relief:

- A. Grant Contestant full and complete discovery of all facts, records and testimony regarding the conduct of the Election.
- B. Declare Bruce W. Tyler to be the winner of the election and certify him as the winner to the City of Richmond Board and the State Board of Elections.
- C. Alternatively, declare that there has been no valid election of any person, declare the election void, and declare that there is a vacancy in the 1st Council District Councilman seat of the City of Richmond which must be filled in conformity with Sections 24.2-226 and 24.2-227 of the Code.
- D. Issue a writ calling a special election to be held promptly.

- E. Award Contestant his costs.
- F. Grant such other relief as may be just and proper and equitable.

BRUCE W. TYLER

By: 

Counsel

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Counsel for Contestant, Bruce W. Tyler

Date: December 6, 2012