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BEFORE THE HARPERS FERRY TOWN COUNCIL  
IN RE: THE MATTER OF CONTESTED TOWN COUNCIL ELECTION

- - - - -  
Nancy Singleton Case, and Deborah A. McGee, )  
Individual Contesters, )  
v. )  
Hardwick Smith Johnson, Charlotte Ward Thompson, )  
Christian Pechuekonis, Marjorie Flinn Yost, )  
Barbara Humes, and Jay Premack, )  
Individual Contestees. )

- - - - -  
TOWN COUNCIL HEARING  
Saturday, August 24, 2019

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Saturday, August 24th, 2019  
(10:00 a.m.)

Town Council Hearing  
Held at: Harpers Ferry Town Hall  
1000 Washington Street  
Harpers Ferry, West Virginia

Pursuant to Notice, before Jackie Smith, a Notary in and  
for the State of West Virginia.

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A P P E A R A N C E S

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## P R O C E E D I N G S

- - - -

(10:00 a.m.)

MAYOR BISHOP: This proceeding is underway. Harpers Ferry Election Contest Tribunal is before you.

Procedural order: Greg Bailey, Arnold & Bailey, for the contesters.

Zak Ritchie, Ryan Donovan, Hissam, Forman, Donovan, Ritchie, PLLC, for the Contestees, the case, versus Johnson.

So, some general announcements:

As we get underway, by unanimous consent and concurrence of the Election Contest Tribunal in the above referenced matter, directs that a bond for appeal is set at \$300, payable to the Corporation of Harpers Ferry. Parties are to provide eight copies of all documents proffered into evidence.

Parties are to provide post trial findings of fact and conclusions of law via e-mail in both Pdf and Word format by close of business, Friday, August 30, 2019, to the Tribunal's attorney of record.

Cell phones, electronic devices are prohibited inside the venue during the hearing. And I would also

1 add that we are not taking -- there are no comments.

2 Outbursts will not be tolerated or you will be  
3 removed from the chamber.

4 MR. COOK: I'd like to make a quick  
5 statement.

6 MAYOR BISHOP: No, sir. No, sir,  
7 please. We are underway.

8 Film streaming and video of the proceedings are  
9 prohibited.

10 MR. COOK: I'd like to make a comment.  
11 This is an open governmental meeting and this hearing  
12 should be...

13 MAYOR BISHOP: Please be seated.  
14 Please be seated. Sir, we are not going to take any  
15 comments.

16 Is there an officer in the room? If this  
17 gentleman will not be seated and accommodate this Court,  
18 he is going to have to be removed.

19 Okay. Recordings of the proceedings, other than  
20 a court reporter approved by the Tribunal, is prohibited.  
21 Okay. What we're going to do is, for the contesters and  
22 contestees, they will be ten minutes at the beginning of  
23 the meeting for opening comments, and ten minutes at the  
24 beginning of the meeting for opening comments, and then

1 they will be two minutes back. And also at the end of  
2 the proceedings, they will be ten minutes for closing,  
3 closing discussions, and then ten minutes back to the  
4 contesters.

5 We are going to take a restroom break about  
6 every hour, so everybody will be able to use the  
7 facilities and get a drink, or whatever you need to. And  
8 I think the intent is to work through lunch here today  
9 because we've got a lot of work to do. So that's the  
10 current plan, to do that. So, with that in mind, we'd  
11 like to get underway.

12 MR. BAILEY: Okay, very good.

13 May it please the governing body, my name is  
14 Greg Bailey and I represent the contesters.

15 Before I begin my time, Mayor, and my opening  
16 remarks, I do want to, just to preserve the record, since  
17 we have a court reporter here, I want to make sure there  
18 is a motion that is before this Tribunal for the recusal  
19 of Council Member Johnson and Council Member Thompson.

20 I understand the position, but I just want the  
21 motion on the record to be preserved on appeal. And so  
22 if they are on the record, I think by sitting there, they  
23 are telling me, but if you are on the record, that you  
24 are not going to recuse yourself from this by Tribunal



1 based on West Virginia Code 376, which provides that you  
2 shall not sit to judge a contest where your election is  
3 at issue.

4           As you are aware, we brought this issue to Judge  
5 McLaughlin yesterday which she reviewed on whether or not  
6 she should issue an injunction. I don't want anyone left  
7 with the misperception that Judge McLaughlin ruled that  
8 they should not be disqualified or that they should be  
9 disqualified. She didn't say that. She had a lot of  
10 question about it, and she suggested that maybe somebody  
11 should contact the West Virginia Ethics, but she was got  
12 going to issue an injunction, and that was her ruling.  
13 And then she admonished, I hope everybody does the right  
14 thing.

15           But with that said, I didn't want anybody left  
16 with the perception that Judge McLaughlin -- and your  
17 attorneys can give their position on it -- she did not  
18 take the position of whether or not disqualification  
19 should or should not occur. She just reserved ruling on  
20 that at this time.

21           But for my purposes, I just want to make sure  
22 the motion is preserved. If the council members are  
23 going to continue and not recuse themselves, I just  
24 wanted there to be a record of that.

1 MR. DONOVAN: And we note our  
2 objection, for the record, to the extent that we have any  
3 standing to make one.

4 MR. BAILEY: I guess I should ask you,  
5 since you represent Mr. Johnson and Ms. Thompson, is it  
6 their position that they are not going to disqualify  
7 themselves and that they are going to sit on this  
8 Tribunal today?

9 MR. DONOVAN: I am not testifying.

10 MR. BAILEY: Well, I would like to ask  
11 your clients directly.

12 MR. DONOVAN: Sure. They are sitting.

13 MR. BAILEY: So we can stipulate by  
14 their sitting, they are not disqualified; is that fair?

15 MAYOR BISHOP: That fair.

16 Mr. Thompson, is that fair?

17 MR. THOMPSON: (Nods head.)

18 MR. BAILEY: All right. Now, will be  
19 my opening remarks:

20 First of all, I'd like to thank you all for  
21 accommodating us on a Saturday, taking your time to deal  
22 with this very important issue.

23 You all are sitting on this governing body and  
24 have the responsibility to serve all of the citizens of

1 this town. And it's a real simple issue here today.  
2 We're going to present evidence that there were four  
3 citizens who you represent, who cast votes in the June  
4 11th election, and who are being denied their vote. You  
5 are going to have a choice at the end of this proceeding  
6 and after hearing the testimony to decide whether you  
7 want to protect the citizens you represent, whether you  
8 want to protect their right to vote, or you want to  
9 engage in some sort of analysis and use legal gymnastics  
10 to somehow deny their right to cast a vote.

11           You're going to hear evidence from them, from  
12 Leah Howell, the McCartys, and Adam Hutton, that there is  
13 absolutely no doubt whatsoever that they all reside in  
14 the corporate boundaries of Harpers Ferry, that they all  
15 resided there on the day that they voted, and that they  
16 were all registered voters.

17           You're going to hear from Nikki Painter who  
18 works at the Clerk's Office, who is going to make clear  
19 and will stipulate that their names did not appear in the  
20 Harpers Ferry Poll Book on the day of election. You're  
21 going to hear from Nikki Painter that, that fact is from  
22 a technical error, omission, and oversight, that was  
23 absolutely not the fault of any of those four voters. It  
24 was an address technical error that caused them to be

1 placed in the poll book of Bolivar. This was not due to  
2 their own negligence. They didn't do anything that  
3 should disenfranchise their right to vote in the  
4 election.

5           These are your citizens whom you represent. I  
6 understand and I listened to the report of the Board of  
7 Canvassers, and I understand that there was a great deal  
8 of confusion that night about the flow chart that is  
9 contained in this Municipal Canvass Guide. And I agree  
10 with you that this guide is a little confusing, but it's  
11 a guide, okay.

12           Your obligation to accept provisional ballots  
13 are in the West Virginia Code. This is what governs your  
14 decision on provisional ballots. And it says in  
15 3-141(e), that you are to accept provisional ballots if  
16 the voter was denied their vote because of a technical  
17 error, omission, or oversight. That is exactly what  
18 occurred with respect to these four voters.

19           West Virginia Code is also clear that code is  
20 what governs. That manual means nothing, it's a guide.  
21 That's all it is. You are required to follow West  
22 Virginia law. West Virginia law is clear at the outset  
23 that citizens of this state should be entitled to vote in  
24 all elections held within the municipality in which they

1 reside. That's 3 1 b of the West Virginia Code.

2 As I said, there is no issue whatsoever about  
3 where these four people resided. They live on Washington  
4 Street. I am going to have them point out their  
5 addresses. They are clearly within the corporate  
6 boundaries. That's where they lived on the date they  
7 tried to cast their vote. They had properly registered  
8 to vote, but through clerical error, technical or  
9 oversight, that is why they were placed in the wrong poll  
10 book.

11 And I would like to think that as a governing  
12 body, you would use your power to protect your citizens'  
13 right to vote, rather than to use your power to  
14 disenfranchise votes from your citizens. Because I think  
15 if you do so, it's going to certainly appear to the  
16 public as you are doing it for political expediency, and  
17 that it's motivated by nothing else than we don't want  
18 any more votes because we like where it stands. And I  
19 think that would be the wrong message to send to the  
20 citizens of the town that you serve.

21 So at the end of this proceeding, I'm going to  
22 ask that you count the four votes. I'm going to ask that  
23 you follow Judge McLaughlin's admonishment or  
24 recommendation to do the right thing.

1           And we're doing the right thing. After  
2 consulting or looking at the voting records and talking  
3 to Ms. Painter, we are abandoning, just so it's clear, we  
4 are abandoning the claim that the provisional ballot by  
5 Ms. Newhoff be counted. It shouldn't. What we became  
6 aware of is, whether she lived in Harpers Ferry might  
7 have been an issue, but the bigger issue, on the date of  
8 the election, she was registered to vote in Berkeley  
9 County. So it would be wrong and disingenuous to say  
10 that her vote should be counted.

11           We want to do the right thing, and we're asking  
12 that this body do the right thing.

13                       MR. RITCHIE: Ladies and gentlemen and  
14 Town Council, my name is Zak Ritchie and I am joined here  
15 today by my law partner, Ryan Donovan.

16           Doing the right thing, that's what Mr. Bailey  
17 asked you to do. What we think that means is following  
18 the law. I'll be brief, and frankly, so should this  
19 hearing.

20           This election contest really comes down to a  
21 simple question; were the five voters, not four, who cast  
22 provisional ballots properly registered to vote in  
23 Harpers Ferry.

24           For a ballot to count in a municipal election,

1 the voter must be duly registered. That is the word the  
2 code used, to vote in the municipality at least 21 days  
3 before the election and remain so at the time the vote is  
4 cast. Properly registered, again, as the code said, duly  
5 registered. It really is that simple. Not legal  
6 gymnastics, not technicalities. We call that the law.  
7 Harpers Ferry ordinances require it, the statutes require  
8 it, and decisions of the Supreme Court of Appeals require  
9 it.

10           You will learn today that the four provisional  
11 ballots at issue in this case were cast by individuals  
12 not properly registered in the Corporation of Harpers  
13 Ferry. In short, their names did not appear in the  
14 Harpers Ferry Poll Book.

15           That's the law. That's the beginning and the  
16 end of this contest. Thank you.

17           MR. BAILEY: I will reiterate that they  
18 were properly registered. Through clerical error,  
19 technical oversight, they were placed in the wrong poll  
20 book. These people registered to vote. They are not  
21 people that showed up and said, I live here in Harpers  
22 Ferry and I'd like to vote. They were all registered to  
23 vote. One of the four voters was on the ballot. She ran  
24 against you for Town Council. How can you possibly take

1 a woman who is on the ballot against you and say her vote  
2 ought not count, she shouldn't be allowed to vote after  
3 this town already qualified her as a bona fide candidate.

4 This was a clerical error. You can use your  
5 position to protect your citizens or you can use your  
6 position to disenfranchise them. It's going to be your  
7 decision.

8 MAYOR BISHOP: Okay.

9 MR. BAILEY: We'll go ahead and call  
10 our first witness is going to be Ms. Nikki Painter.

11 MAYOR BISHOP: Okay. If the office  
12 coordinator or Clerk would secure her in.

13 MR. BAILEY: We actually made a  
14 mistake. We didn't sequester the witnesses before the  
15 beginning. Ms. Painter is already here. Mr. McCarty,  
16 Mr. Hutton, we would have to ask you to go downstairs,  
17 please.

18 And is Ms. Howell here? Thank you all.

19 Whereupon,

20 NIKKI PAINTER,

21 having been called and duly sworn, testified on oath as  
22 follows:

23 DIRECT EXAMINATION

24 BY MR. BAILEY:



1 Q. Ma'am, state your name, please.

2 A. Nikki Painter.

3 Q. Ms. Painter, where are you employed?

4 A. The Jefferson County Voter Registration &  
5 Elections Office.

6 Q. What is your position there?

7 A. I am the Chief Deputy Clerk of Elections.

8 Q. What are your duties in that position?

9 A. Well, I register voters. I handle every  
10 aspect of the election from the Clerk's perspective,  
11 including preparing poll books. I work with  
12 municipalities to supply their poll books and to provide  
13 whatever other supplies that they would need to borrow  
14 from the county.

15 Q. How long have you done that?

16 A. I have been in that position for 14 years.

17 Q. In your position, do you also participate with  
18 the county when they sit as board chancellors for  
19 countywide elections?

20 A. I do.

21 Q. And have you been involved in that capacity in  
22 election contests that came up before the County  
23 Commission?

24 A. We have never had a contested election since I

1 have been there.

2 Q. Have you, in that position, sat when the  
3 Commission sits as Board of Chancellors to review  
4 provisional ballots?

5 A. Yes.

6 Q. I'm going to get back to that in a bit. Can  
7 you just tell the governing body how the registration  
8 process -- what are the different ways voters can become  
9 registered in this county?

10 A. Okay. There are several ways. You can  
11 register online, you can register at the DMV, you can  
12 register in person, and you can register through mail or  
13 at any motor voter agency, like a WIC office, DHHR,  
14 anything like that.

15 Q. Did you prepare the poll book for the June  
16 11th Harpers Ferry Municipal Election?

17 A. I did.

18 Q. Are you familiar with the four provisional  
19 ballots that are being contested of Leah Howell, Mr. and  
20 Mrs. McCarty, and Mr. Adam Hutton?

21 A. Yes, I am.

22 Q. Did you review their voting records and the  
23 poll books after you became aware of the issue related to  
24 their professional ballots?

1 A. I did.

2 Q. When were you first made aware that there was  
3 a dispute about the professional ballots?

4 A. It was after, I believe, the canvass or before  
5 the canvass, when Kevin contacted me to go over if they  
6 were registered in time and if we had a record of them  
7 because they did not appear in the poll book.

8 Q. And Kevin would be Mr. Carden, the town  
9 recorder?

10 A. Yes.

11 Q. And he is also in charge of elections for the  
12 municipality?

13 A. I believe so, yes.

14 Q. Did you review the voter registrations of  
15 these four voters?

16 A. I did. It was brought to my attention about  
17 the West Washington versus Washington.

18 Q. That's my question. First, let me say, you  
19 will agree with me that those four voters did not appear  
20 in the Harpers Ferry Poll Book that you provided to the  
21 municipality, is that right?

22 A. They did not.

23 Q. Can you explain to the governing body, based  
24 on your review of the records, how this happened?

1           A.       Well, we pulled their record because we wanted  
2 to see was it an error on our part. And all four of them  
3 registered at the DMV. So the DMV records are sent to us  
4 electronically. We keep a copy of that record. And that  
5 record was sent to us as the West Washington Street  
6 address, which is how they were assigned to the Bolivar  
7 precinct.

8           Q.       You are aware they live on Washington Street,  
9 not West Washington?

10          A.       I am now.

11          Q.       Do you know how that occurred, how the mistake  
12 was made that assigned them a West Washington Street  
13 address?

14          A.       I'm not sure because it came to us from the  
15 DMV. I only know what one of the voters had said to me  
16 and that was the only way that I know.

17                    We can't contact the DMV to find out what  
18 happened on their end.

19          Q.       Were you aware that because of the DMV  
20 software and IGF addresses they put in, that it assigns  
21 people a West Washington Street if they are after a  
22 certain number?

23          A.       I have heard that, but I don't know that to be  
24 a fact.

1 Q. With respect to these individuals not being in  
2 the Harpers Ferry Poll Book, do you agree with me that,  
3 that was a mistake?

4 MR. DONOVAN: Object to the form.

5 BY MR. BAILEY:

6 Q. You can answer.

7 A. Based on their address, they should have been  
8 in the Harpers Ferry Poll Book.

9 Q. Would you agree with me that based on their  
10 actual residence, they should have been contained in the  
11 Harpers Ferry Poll Book?

12 MR. DONOVAN: Objection.

13 MR. BAILEY: What we have agreed to do  
14 normally, the Judge would rule on it. Counsel and I have  
15 agreed, if we make an objection, it's preserved. So we  
16 are not going to make you guys vote on every objection.  
17 When the record goes up, if it does, to the Circuit  
18 Court, we will let that Judge decide whether that  
19 evidence should have come in or not.

20 And if you need to make a proper, in addition,  
21 objection, it's preserved. We are trying to make it  
22 easier for you all.

23 And I agree with Counsel, I don't think  
24 we are going to work through lunch. I hope we don't. I

1 think it's going to be much more streamlined than that.

2 - - - -

3 (Pending question read back by the Court Reporter.)

4 - - - -

5 BY MR. BAILEY:

6 Q. In any event, your answer to me, Ms. Painter?

7 A. Yes.

8 Q. And had their names appeared in the Harpers  
9 Ferry Poll Book when they showed up to vote that day,  
10 they would not have been required to cast their vote  
11 through provisional ballot through?

12 A. True, if they were in the poll book.

13 Q. Would you agree with me that their mis --  
14 assignment to West Washington Street, would you regard  
15 that as what you would consider a technical error?

16 MR. DONOVAN: Objection. Calls for a  
17 legal conclusion.

18 THE WITNESS: Yes, we would.

19 BY MR. BAILEY:

20 Q. Would it fall, in your view, on what you would  
21 call an oversight?

22 A. Yes.

23 Q. And an omission?

24 A. Yes.

1 Q. Has this kind of thing occurred on the county  
2 level when you have been with the Board of Canvassers?

3 A. It has.

4 Q. And has the County Commission, where somebody  
5 was mistakenly left out of a poll book since you have  
6 been working with the Board of Canvassers, can you  
7 remember a time when they ever denied the voter the  
8 provisional ballot?

9 A. If they were registered within the county,  
10 within Jefferson County, and it was left out through an  
11 error, clerical error, they have not denied that vote  
12 since I have been there.

13 Q. Are you familiar with the 2019 Best Practices  
14 Guide To Municipal Canvass?

15 A. Yes. It's very similar to our book. It's  
16 actually the same. They just changed the wording from  
17 municipal to county.

18 Q. Before I get to that, let me ask you this:  
19 You mentioned that Recorder Carden contacted you prior to  
20 the Board of Canvassers meeting.

21 After you reviewed the voting records of the  
22 four provisional ballot holder voters that I have named,  
23 did you advise Mr. Carden how it should be treated; did  
24 you have an opinion?

1           A.       I told him, based on what the County -- how  
2 the County would handle that, it would be a  
3 recommendation from me to the Council or to the  
4 Commission to count that, but ultimately --

5           Q.       It's their decision?

6           A.       Right.

7           Q.       But that would be your recommendation, to  
8 count their vote?

9           A.       Right.

10          Q.       Did you confirm to Recorder Carden that these  
11 four voters were properly registered prior to the  
12 municipal election on June 11?

13                   MR. DONOVAN:  Objection again.

14                   THE WITNESS:  I did.

15 BY MR. BAILEY:

16          Q.       Would you agree with me that whether or not a  
17 provisional ballot should be counted by the Board of  
18 Canvassers or this board today is a matter that should be  
19 guided by the West Virginia Statute as opposed to the  
20 guide?

21          A.       Yes.  That is what we go by, and that guide  
22 actually has the code sections directly beside each  
23 scenario.

24                   MR. DONOVAN:  I will object.  Again, I



1 don't want to keep interrupting. So I'm going to object  
2 to all these questions that call for a legal conclusion.

3 MR. BAILEY: Understood.

4 BY MR. BAILEY:

5 Q. You would agree with me that if there is a  
6 disagreement or contradiction between this guide and the  
7 West Virginia code, the West Virginia code should govern  
8 that decision, right?

9 A. Yes. The County would ultimately refer back  
10 to what the code says.

11 MR. BAILEY: I might be able to pass them  
12 out. We have as a packet for everybody the voter records  
13 of the provisional ballot holders. I think they actually  
14 came because Ms. Callis requested, and I think Ms. Callis  
15 will stipulate to them.

16 MR. DONOVAN: Sure. I'd like for them  
17 to have them. It will make my life easier.

18 MR. BAILEY: The only other thing  
19 attached to this is a shrinked down version of that.

20 MR. DONOVAN: We're not going to object  
21 to that.

22 MR. BAILEY: I have seven. I was going  
23 to use one for the witness, but I will give you that  
24 after the witness reviews it. Everyone has one and we'll

1 make you another one. We have eight.

2 - - - -

3 (Whereupon, Contesters Exhibit Nos. 1 through 4 were  
4 hereby marked for identification.)

5 - - - -

6 BY MR. BAILEY:

7 Q. I'm going to hand you what we will mark as  
8 Petitioners or Contesters Exhibit 1 through 4. If you  
9 can just take a minute and review those documents for me.

10 And I'm not going to ask you about the plan, but  
11 Exhibits 1 through 4, do you recognize these documents?

12 A. I do.

13 Q. And what are those documents, Exhibits 1  
14 through 4?

15 A. They are the printouts from our statewide  
16 voter registration system of the entire voting records  
17 for the four individuals.

18 Q. And these are -- Exhibit 1 is the voter  
19 registration record for George McCarty, is that correct?

20 A. It is.

21 Q. And what address is he listed at for his  
22 residence?

23 A. 800 Washington Street, Harpers Ferry.

24 Q. And can you tell by looking at this record if

1 Mr. McCarty was a registered voter prior to the June 11th  
2 municipal election?

3 A. Yes.

4 Q. Okay. And this document indicates there was a  
5 change to his voter registration?

6 A. Correct.

7 Q. And when was that done?

8 A. 6 18 2019.

9 Q. So is that a change that your office made?

10 A. This actually was not.

11 Q. Okay.

12 A. They went back to the DMV to get the correct  
13 address.

14 Q. And this was after the election, presumably,  
15 because they were asked to cast a provisional ballot, and  
16 they wanted to know what was going on?

17 A. I do not know that.

18 Q. Mr. McCarty was registered with the address of  
19 Washington County on June 11, 2019?

20 A. He was registered with West Washington Street.

21 Q. Exhibit 2 is Linda McCarty.

22 Same question: Was Linda McCarty a registered  
23 voter on June 11, 2019 in Jefferson County?

24 A. Yes, she was.

1 Q. And she also made a change to her voter  
2 registration just after the election, is that right?

3 A. Correct, on 6 18.

4 Q. And that was the correct address?

5 A. Correct.

6 Q. And so that was seven days after the election,  
7 but before the Board of Canvassers meeting, correct?

8 A. I'm not sure what date the Board of Canvassers  
9 met.

10 Q. It speaks for itself.

11 Next record is Mr. Adam Hutton. Was he a  
12 registered voter on June 11, 2019 in Jefferson County?

13 A. He was.

14 Q. With an address of what?

15 A. 900 West Washington Street.

16 Q. And did he make a change eight days after the  
17 election?

18 A. He did not. I actually changed the record  
19 once we worked with our GIS office and found on it there  
20 was a problem with the address.

21 Q. Tell me what you found out from your GIS -- I  
22 called it GIF earlier. What did you find out?

23 A. We wanted to find out where the street numbers  
24 stopped for Harpers Ferry and where they began for

1 Bolivar.

2 Q. In making that determination, did you review  
3 the maps of Harpers Ferry?

4 A. We did.

5 Q. And did you determine that the McCartys  
6 resided within the bounds of Harpers Ferry?

7 A. We didn't look at them directly, just because  
8 they had already changed their address. We did look at  
9 the rest of them, and there were several other voters  
10 that we had to change.

11 Q. So you changed Mr. Hutton?

12 A. We did.

13 Q. And did you change Leah Howell?

14 A. I did.

15 Q. And Exhibit 4 is Leah Howell. Was she a  
16 registered voter on June 11, 2019?

17 A. Yes, she was.

18 Q. In Jefferson County?

19 A. Yes.

20 Q. You testified there was a change made shortly  
21 after the election to error of putting them in the  
22 Bolivar Poll Book, is that correct?

23 A. Correct.

24 Q. So these technical errors, clerical errors,

1 omissions, oversights, whatever they were, these are all  
2 corrected before the Board of Canvassers -- well, you  
3 don't know that.

4           They were all made, the latest one was June 18th  
5 or 19th, the latest of the four corrections?

6           A.     It looks like the 19th.

7           Q.     The 19th or earlier.

8           All of these errors were corrected so that they  
9 should appear as Harpers Ferry in the Harpers Ferry  
10 Municipal Poll Book?

11          A.     Yes.

12          Q.     Have you all taken steps at the county level  
13 to try to intercept this if something like this happens  
14 again, if people register at the DMV?

15          A.     It made us more aware of the addresses that  
16 are coming through from the DMV.

17          Q.     If this is going to be fixed, it probably has  
18 to come through on the DMV system?

19          A.     We have the addresses they gave us at the  
20 time, that is provided from the DMV in this case, but we  
21 are aware of this issue, and have taken steps in our  
22 office. We have the street numbers now of what side goes  
23 to what municipality.

24          Q.     In your view, their votes should have counted,

1 the provisional ballot should have been accepted?

2 MR. DONOVAN: Objection to the form.

3 THE WITNESS: I can say the only  
4 thing I can say is if this situation would have happened  
5 at the county level, we would have recommended to the  
6 Commission to count the ballot.

7 MR. BAILEY: Okay. Give me one second.  
8 All right. That's all the questions I have for  
9 Ms. Painter.

10 CROSS-EXAMINATION

11 BY MR. DONOVAN:

12 Q. Good morning, Ms. Painter. Thank you for  
13 being here. I know you are working off the clock.

14 Did you speak to anyone at the DMV about what  
15 you have described as errors and omissions in the  
16 registration of these provisional voters?

17 A. No. We do not have a contact with the DMV. I  
18 only had I only spoke with the Secretary of State's  
19 Office.

20 Q. What do you mean, you don't have a contact?

21 A. We would just call the regular 800 number that  
22 the public calls.

23 Q. Is there a number available to reach the local  
24 DMV where these people actually register?

1 A. No.

2 Q. It's your understanding that someone at the  
3 local DMV would be the person who handles this?

4 A. We don't see which DMV sends us the record.  
5 We just know that it comes from a DMV.

6 Q. So, as a result of that, you said you are not  
7 sure what happened?

8 A. I can't speak to what happened at the DMV, no,  
9 sir.

10 Q. You don't know who input the addresses in  
11 error?

12 A. I would not.

13 Q. And you don't know whether the voters  
14 themselves input the address in there?

15 A. I don't know.

16 Q. So how did you know that it was an error?

17 A. When we contacted our GIS office and found the  
18 street numbers to verify what street numbers lied in what  
19 part of the town.

20 Q. So you referred to this by an oversight by the  
21 DMV; am I quoting you correctly?

22 A. It was an oversight from the address because  
23 based on the street number, it should be Washington  
24 Street.



1 Q. But we don't know by whom, do we?

2 A. I can only say that it came from the DMV.

3 Q. What came from the DMV?

4 A. The record came from the DMV.

5 Q. And you assume that there was an error, but  
6 you don't know who committed the error, correct?

7 A. It was from the DMV. I can't tell you exactly  
8 who committed the error, no.

9 Q. You don't know if it was a computer error, do  
10 you?

11 A. I would assume not, but I can't say  
12 definitely, no.

13 Q. Why didn't you try to talk to someone at the  
14 local DMV when this came to your attention?

15 A. We contact the Secretary of State's Office,  
16 and they usually handle our DMV issues.

17 Q. How did you come to know that there was an  
18 error with these provisional ballots; who first brought  
19 that to your attention? It was Mr. Carden, wasn't it?

20 A. I believe so, yes.

21 Q. And how did Mr. Carden bring this to your  
22 attention?

23 A. When he contacted me regarding the provisional  
24 ballots.

1 Q. And when was that?

2 A. I don't know the exact date.

3 Q. And why did Mr. Carden bring these to your  
4 attention?

5 A. Municipalities typically contact us regarding  
6 their provisional ballots. They have to verify if the  
7 person is registered, not registered, if they were  
8 registered in time.

9 Q. So it was Mr. Carden who told you that there  
10 was a problem with the address, correct?

11 A. He is the first person who brought it to your  
12 attention.

13 Q. It wasn't the DMV?

14 A. No.

15 Q. It wasn't the Secretary of State?

16 A. No.

17 Q. And it wasn't the voters themselves?

18 A. It wasn't until afterwards that one of the  
19 voters contacted me.

20 Q. Prior to that, Mr. Carden brought that to your  
21 attention?

22 A. Right.

23 Q. And it was your understanding Mr. Carden was  
24 up for reelection, is that correct?

1 A. Correct.

2 Q. Did you find it interesting that Mr. Carden  
3 brought this to your attention before the voters  
4 themselves?

5 A. No.

6 Q. Because the voters knew they were voting  
7 provisionally, correct?

8 A. I can only assume. I am not a part of that  
9 process.

10 Q. Typically, a person would be informed at the  
11 polls if they are voting provisionally or not?

12 A. Per code, yes, they are supposed to be told  
13 they are, they are voting on provisional, including  
14 contact information to track their votes. If they  
15 actually did it, I can't say. I was not part of that  
16 process.

17 Q. You are looking at Mr. Bailey for that?

18 MR. BAILEY: Objection.

19 BY MR. DONOVAN:

20 Q. Did you categorize that information?

21 A. Yes, I do.

22 Q. So the election was on June 11th.

23 And these people were told that they voted  
24 provisionally, and yet no one came to you until, you

1 said, the earliest was the 18th?

2 A. Yes. We got that record on the 18th.

3 Q. And when was the first time that you actually  
4 heard from one of the voters themselves?

5 A. I don't know the exact date. It was a phone  
6 call.

7 Q. Was it after June the 19th?

8 A. I don't know the exact date, so I don't want  
9 to assume a date.

10 Q. Okay. Would you have any record of that  
11 communication that you could look at to figure out when  
12 it happened, refresh your memory?

13 A. I did not keep a record of that phone call,  
14 no.

15 Q. I would assume it was a phone call?

16 A. A phone call.

17 Q. And did it come into your office?

18 A. It did.

19 Q. And which voter was that?

20 A. Linda McCarty.

21 Q. Tell me what Ms. McCarty said to you?

22 A. She was concerned that she had to vote a  
23 provisional ballot and that her address was incorrect.  
24 And she was the voter that told us that the DMV required

1 her to register with the West Washington Street address.

2 Q. So now we have a little more information about  
3 the DMV. Ms. McCarty told you that the DMV required her  
4 to do so?

5 A. She did.

6 Q. So she went to them and said, my address is  
7 Washington, and they said, no, it's not, it's West  
8 Washington; is that what she told you?

9 A. That's what she told me.

10 Q. And do you have in front of you the date on  
11 which Ms. McCarty originally registered to vote at that  
12 address? I think it's Exhibit 2?

13 A. She registered on September 10, 2018.

14 Q. So, on September 10, 2018, the DMV told  
15 Ms. McCarty that she was supposed to register to vote at  
16 an address that she knew she didn't live at?

17 A. That is what she communicated to me.

18 Q. And, yet, the first time your office heard  
19 anything about this problem was at least a week after the  
20 election?

21 A. She indicated she didn't realize that her  
22 drivers license would have an affect on her voter  
23 registration.

24 Q. Now, you testified in response to Mr. Bailey's

1 questions that you knew where these individuals lived?

2 A. Based off of their address.

3 Q. Okay. So the basis for that knowledge is  
4 what, what you had in your records said they lived on  
5 West Washington Street?

6 A. Right, but based on the house number, they  
7 would be considered on the Washington Street side.

8 Q. Did you know any of these provisional votes  
9 before their contest?

10 A. I did not.

11 Q. And you had never been to any of their homes?

12 A. No.

13 Q. Is it fair to say that the way you came to  
14 know where these people lived was Mr. Carden first?

15 A. He initiated the process that we went through.

16 Q. And you took Mr. Carden's word for it?

17 A. No, I did not.

18 Q. Did you conduct an investigation?

19 A. From our side of it, based off of the address  
20 that we had for the voter, yes.

21 Q. And what was the nature of that investigation?

22 A. We contacted the GIS office, based off of the  
23 address, and then for some of them, we were able to go in  
24 and look to see if they owned property. And I don't know

1 who owned property. I don't remember, but that's  
2 basically how we came to changing the record.

3 Q. So the GIS can tell you if an address exists?

4 A. Yes.

5 Q. The GIS does not tell you who resides at that  
6 address?

7 A. It does not tell us who resides there, no.

8 Q. How did you gain information to allow you to  
9 testify that you knew where these people lived?

10 A. We based it off of the address that was  
11 provided, the street number that was provided.

12 Q. You never asked Mr. Hutton, for example, if he  
13 lived there?

14 A. I have never spoken to Mr. Hutton, no.

15 Q. You have never asked Ms. Howell if she lived  
16 there?

17 A. No.

18 Q. You said you looked at property records?

19 A. We looked at tax records.

20 Q. Is it your testimony that the McCartys own  
21 property that they claim to reside at?

22 A. I don't remember.

23 Q. Is it your understanding that Ms. Howell owned  
24 the property that she claimed to reside at?

1           A.       As I stated, I don't remember -- remember who  
2 had the record and who didn't.

3           Q.       So it sounds like those records didn't have a  
4 whole lot to do with the conclusion that you reached?

5           A.       Well, it was part of the process.

6           Q.       Some of these individuals voted before under  
7 these registrations, is that correct?

8           A.       I believe so, yes.

9           Q.       You have Ms. Howell's records in front of you  
10 right there, so we can start there. If you look at Page  
11 5 of 5, I think if we have the same copy, the previous  
12 election history?

13          A.       Yes.

14          Q.       That indicates that Ms. Howell voted in the  
15 2016 general election, is that correct?

16          A.       Correct.

17          Q.       And it says there was a status that there had  
18 been a challenge and that it had been removed?

19          A.       Correct.

20          Q.       At that point, at least, Ms. Howell would have  
21 been notified that there was a problem with her voter  
22 registration in the past, right?

23          A.       At the time, she would have been given a  
24 notice as to why she voted provisional and whether it was



1 counted or not counted.

2 Q. Okay. Let's look at Mr. McCarty, that's  
3 Exhibit 1. Now, if you look at Mr. McCarty's, we're  
4 going to have to connect a few dots here. If you look on  
5 Page 1 of 5, you will see there at the bottom, it says  
6 the voting district now is Harpers Ferry, and that's  
7 Precinct No. 14. Am I reading that correctly?

8 A. Correct.

9 Q. And above that, it says there is a Precinct,  
10 and that's 15?

11 A. Correct.

12 Q. And 15 is Bolivar?

13 A. Correct.

14 Q. And if you look on page -- it's difficult to  
15 work with these because these are printouts of a computer  
16 screen?

17 A. Correct.

18 Q. They are not really a natural piece of paper,  
19 but if you'll look on Page 2 of 5, the first complete  
20 row, it says "Voter Information," and there is previous  
21 address, and there's a date change, 6 18 2019. The old  
22 address was West Washington Street.

23 That reflects the date you changed Mr. McCarty?

24 A. That was the date we received the new record

1 from the DMV, yes.

2 Q. And if you look at this passage, I believe  
3 it's Page 5 of 5, we'll look at Mr. McCarty's election  
4 history. It indicates Mr. McCarty voted on the general  
5 election held in November, 2018, correct?

6 A. Correct.

7 Q. And at that time, Mr. McCarty was registered  
8 under the West Washington Street address?

9 A. Correct.

10 Q. And he voted at Precinct 15?

11 A. He did not. He voted at the courthouse.

12 Q. And put his Precinct was 15 at that time?

13 A. Yes.

14 Q. And his voter registration card would have  
15 said Precinct 15, correct?

16 A. Correct.

17 Q. In 2018, Mr. McCarty voted under that  
18 registration in Precinct 15, and he didn't have any  
19 problem with it, did he?

20 A. He didn't vote in Precinct 15. He voted at  
21 the courthouse.

22 Q. He went to Precinct 15 with a voter  
23 registration?

24 A. I can only assume he had his voter

1 registration card.

2 Q. And that ballot wasn't challenged, was it?

3 A. No.

4 Q. Mr. McCarty didn't challenge it?

5 A. No.

6 Q. Nobody challenged it?

7 A. No.

8 Q. At the time of the election Mr. McCarty was  
9 registered to vote and in the poll book in Precinct 15?

10 A. Correct.

11 Q. And that's how the law works, correct?

12 A. How you are registered; however, there are  
13 provisions that allow you to change your address or for  
14 clerical errors.

15 MR. DONOVAN: Thank you. No more  
16 questions.

17 REDIRECT-EXAMINATION

18 BY MR. BAILEY:

19 Q. Ms. Painter, Mr. Carden, he is Recorder of  
20 Harpers Ferry, correct?

21 A. Correct.

22 Q. And in that position, he is in charge of  
23 managing the elections for Harpers Ferry. He is your  
24 contact?

1 A. Correct.

2 Q. There is nothing nefarious about the fact that  
3 the person identified as the representative for the town  
4 would contact you regarding an election issue?

5 A. No, to my knowledge, from my side.

6 Q. And with respect to Mr. McCarty voting down at  
7 the county, that was a countywide election?

8 A. Correct. It was a statewide election.

9 MR. BAILEY: I don't have any more  
10 question. Are we done? May we excuse her?

11 THE WITNESS: I am here with the poll  
12 book.

13 MR. DONOVAN: Are you going to get the  
14 poll book admitted?

15 MR. BAILEY: Well, are you leaving the  
16 poll book. I didn't think so.

17 MR. DONOVAN: She doesn't need to be  
18 sequestered. I'm not going to recall her.

19 MR. BAILEY: We stipulate that the four  
20 provisional ballot voters were not in the Harpers Ferry  
21 Municipality Poll Book on the date of the election.

22 Are you guys okay with that? We can let this  
23 witness leave.

24 MR. DONOVAN: We have no objection.

1 MR. BAILEY: Thank you, Ms. Painter,  
2 very much.

3 MR. PREMACK: Could we take a quick  
4 recess and reconvene in five minutes.

5 MAYOR BISHOP: Five minutes. Five of  
6 11.

7 - - - -

8 (Short Recess.)

9 - - - -

10 MAYOR BISHOP: We're going to get back  
11 in session. Okay. We are back in session.

12 MR. BAILEY: The contesters are going  
13 to call Mr. George McCarty.

14 Whereupon,

15 GEORGE MCCARTY,  
16 having been duly sworn, testified on oath as follows:

17 DIRECT EXAMINATION

18 BY MR. BAILEY:

19 Q. Good morning, Mr. McCarty. How are you?

20 A. Fine. Good morning.

21 Q. Would you state your name, please, your full  
22 name, for the record.

23 A. George McCarty.

24 Q. Mr. McCarty, where do you currently reside,

1 what's your address?

2 A. 800 Washington Street.

3 Q. Are you a Harpers Ferry resident?

4 A. Yes.

5 Q. How long have you been a Harpers Ferry  
6 resident?

7 A. I think we moved here a year ago this month.  
8 August of last year.

9 Q. Did you live in the same residence since you  
10 moved here last year through the date of the election in  
11 Harpers Ferry this year on June 11th?

12 A. Yes.

13 Q. And that's where you were residing at the  
14 time?

15 A. Yes.

16 Q. Do you recall when you registered to vote as a  
17 Harpers Ferry resident?

18 A. Yes.

19 Q. When was that?

20 A. July.

21 Q. July of '18?

22 A. Yes.

23 Q. Where did you go to register to vote?

24 A. At the DMV.

1 Q. What do you remember about that process, how  
2 do you register to vote at the DMV, do you fill out a  
3 form, do you recall that?

4 A. No, I don't recall.

5 I remember that we went there just to get  
6 drivers licenses, and I think the lady said, or it wasn't  
7 the lady -- wanted to know if we wanted to register to  
8 vote at the same time.

9 Q. Okay. So you took whatever steps they were,  
10 you just don't remember what they were?

11 A. Yes. What they offered to us.

12 Q. Do you recall what address you gave them?

13 A. Well, we gave them the 800 Washington Street  
14 and got in a discussion with her, with the woman there at  
15 the DMV. And she came back and said, "Your address is  
16 800 West Washington."

17 Q. So you gave her Washington Street. She comes  
18 back and tell tells you, no, your address is West  
19 Washington Street?

20 A. Yes.

21 Q. What happens then?

22 A. It went on. It wasn't a bad discussion or  
23 anything. She was adamant that it was West Washington.  
24 And we ended up like, okay, we live there, and if it

1 wasn't --

2 Q. It's a good decision not to get into a fight  
3 with the DMV?

4 A. Well, we went to the DMV five times to change  
5 our licenses and everything. It was always something.  
6 We didn't own the house we were living in, so we couldn't  
7 prove through our electrical bill that we lived there.

8 Q. Ultimately, you did, when they finally changed  
9 your license, but they insisted that your address be West  
10 Washington Street?

11 A. Yes.

12 Q. Did they tell you at that time that you were  
13 in Bolivar because you used a West Washington?

14 A. No, that never came up.

15 Q. When did you first learn that you were in the  
16 in the Harpers Ferry Poll Book?

17 A. When we went to vote. We went to vote early  
18 because my sister had ALS, and they lived in Greenville,  
19 South Carolina, and we were going to see her and my  
20 brother-in-law. So we voted the Saturday before that  
21 Tuesday, right here. No. Maybe it was downstairs, but  
22 we went there to vote.

23 And one of the ladies said, "You're not on the  
24 books." And that we could do a provisional vote because



1 -- I can't remember exactly what was said other than we  
2 could vote provisionally.

3 Q. You were confused, you didn't have any idea  
4 why you wouldn't have been in the poll book?

5 A. Not at that time, because during that  
6 conversation, I think it was either the 14th or 15th, I  
7 can't remember which one is Bolivar and which one is  
8 Harpers Ferry, one of the ladies said that we were  
9 registered in the precinct that was Bolivar.

10 Q. Did that make any sense to you?

11 A. No, not at that time because I still didn't  
12 understand. I wasn't familiar with the West Washington  
13 aspect of everything until my wife and I got in the car  
14 and drove down the street and saw that West Washington  
15 ends at Union Street. And from then on, it's just  
16 Washington Street.

17 Q. And in your view, based on that, you live on  
18 Washington Street, not West Washington, is that right?

19 A. Correct.

20 Q. Your address is 800 Washington Street?

21 A. Yes.

22 Q. I'm not going to make you stand up.

23 A. Our next door neighbor who lives west of us,  
24 Ronnie -- I can't think of his last name -- who's lived

1 in that house all his life, is Washington Street. It's  
2 not West.

3 Q. Did Ronnie vote in the election?

4 A. I have no idea.

5 - - - -

6 (Whereupon, Exhibit No. 5 marked for identification.)

7 - - - -

8 BY MR. BAILEY:

9 Q. On the day that you registered to vote -- I'm  
10 just going to show it so he doesn't have to get up and  
11 move around the table, I'm going to hand you what's  
12 marked as Exhibit 5.

13 Take a minute to familiarize yourself with that  
14 layout.

15 A. Okay.

16 Q. Do you see that house on your map or your lot,  
17 I should say?

18 A. I do.

19 Q. Can you hold it up to the governing body here.  
20 If you can hold the map up so they can see it and point  
21 to which house is yours?

22 A. Right there.

23 Q. Does that have a lot designation on that  
24 number?

1 A. Sixty.

2 Q. No. 60?

3 A. Um hum.

4 Q. What's your nearest cross street on that map?

5 A. Pardon me?

6 Q. What's the cross street on that map?

7 A. Jackson.

8 Q. And that's where you resided when you came in  
9 to cast your ballot in this municipal election, is that  
10 right?

11 A. That's correct.

12 Q. And that's the address that you resided at on  
13 that day or that you thought you were?

14 A. Yes.

15 Q. And as a citizen of this town, you'd like this  
16 governing body to count your vote, wouldn't you?

17 A. Absolutely.

18 MR. BAILEY: That's all the questions I  
19 have for Mr. McCarty.

20 CROSS-EXAMINATION

21 BY MR. DONOVAN:

22 Q. Good morning, Mr. McCarty.

23 A. Good morning.

24 Q. Thanks for being here.

1           You told Mr. Bailey about a conversation you had  
2 with someone at the DMV regarding your address at West  
3 Washington Street; is that correct?

4           A.     Um-hum.

5           Q.     Do you remember who that conversation was  
6 with?

7           A.     No.

8           Q.     Was it a man?

9           A.     No. Both times we went there, it was a woman,  
10 not the same, not the same woman.

11          Q.     What did she look like?

12          A.     A woman.

13          Q.     Tall, short?

14          A.     She was sitting behind a desk.

15          Q.     Dark hair, light hair?

16          A.     Dark hair, gray hair.

17          Q.     You remember though clearly the conversation  
18 you had with her about the address?

19          A.     Yes. It went on for a while.

20          Q.     And when was that?

21          A.     What date was it?

22          Q.     Yes, roughly?

23          A.     I don't know.

24          Q.     Was it in 2019, was it in 2014?

1 A. It was probably July of last year.

2 Q. July of 2018?

3 A. Pardon me?

4 Q. July of 2018?

5 A. Yes.

6 Q. And you registered to vote that day?

7 A. Yes.

8 Q. You knew you were registering to vote, you  
9 understood that.

10 So, in July of 2018, you knew two things; that  
11 you had attempted to register to vote, and that the DMV  
12 did not have your address correct, is that right?

13 A. Would you repeat that?

14 Q. In July of 2018, you knew two things; No. 1,  
15 you knew that you had registered to vote, right?

16 A. Um hum.

17 Q. And No. 2, and you may want to say yes or no  
18 so the court reporter can hear you instead of shaking  
19 your head?

20 A. Yes.

21 Q. But you knew you attempted to register to  
22 vote, right?

23 A. Well, I went there to get a drivers license.  
24 The thing to vote came up later.

1 Q. So you knew you were registering to vote,  
2 right?

3 A. Um hum.

4 Q. And you knew also that the DMV didn't have  
5 your correct address, correct?

6 A. No, I wouldn't say that. I didn't know if  
7 they didn't have it or I didn't have it. And I thought  
8 maybe, maybe it is West Washington. We had lived here a  
9 couple of weeks.

10 Q. You knew there was some confusion about what  
11 your address was; you would agree with that, wouldn't  
12 you?

13 A. Yes.

14 Q. But at no point between July of 2018 and June,  
15 2019 did you check to see if your registration was  
16 correct and you were in the correct precinct, did you?

17 A. No.

18 Q. In fact, you didn't check that until after the  
19 election, correct?

20 A. Correct.

21 Q. Because not only did you know, based on your  
22 conversation at the DMV, that there was a problem with  
23 your registration, but you also knew on the day that you  
24 voted that there was a problem with your registration?

1           A.       No, I didn't know there was a problem. I  
2 thought I was misinformed.

3           Q.       You were told that you were not going to vote  
4 normally, that you would have to vote a provisional  
5 ballot, correct?

6           A.       On the day that we voted early?

7           Q.       Yes.

8           A.       Yes.

9           Q.       And at that time, were you told it was because  
10 you weren't in the poll book for Harpers Ferry, correct?

11          A.       Correct.

12          Q.       And, yet, you didn't go to the County Clerk  
13 the next day, did you?

14          A.       No. I went to see my sister who was dying  
15 from ALS.

16          Q.       And when did you get back from that trip?

17          A.       Probably Friday of that week.

18          Q.       When did you find out about the West  
19 Washington, Washington issue? And you understand what I  
20 am referring to when I say that, correct?

21          A.       When did I find out what?

22          Q.       When did you find out that the alleged problem  
23 with your registration had to do with the West Washington  
24 and Washington Street?

1           A.     I saw a video on Facebook of the canvassing, I  
2 think, is the first time I saw it or heard about it.

3           Q.     And then did you speak to Mr. Carden about the  
4 issue?

5           A.     No.

6           Q.     Never?

7           A.     I didn't know that was even -- why would I do  
8 that?

9           Q.     I am just asking if you ever spoke to  
10 Mr. Carden?

11          A.     I never spoke to Mr. Carden until I saw him in  
12 line, in the grocery store one night.

13          Q.     When was that?

14          A.     Pardon me?

15          Q.     When was that?

16          A.     Two months ago maybe, a month ago.

17          Q.     So, during the pendency of this contest?

18          A.     During the what?

19          Q.     You have spoken with Mr. Carden since the  
20 election?

21          A.     I have spoken with Mr. Carden since the  
22 election, yes, I have.

23          Q.     And you have spoken with him about the  
24 election, hadn't you?



1           A.     No.  We spoke about the house that was being  
2 built next to where he lives.

3           Q.     You never had any communication with  
4 Mr. Carden, whatsoever, about your provisional ballot, or  
5 the fact that your vote was part of this election  
6 contest, or about whether you were actually registered in  
7 Harpers Ferry?

8           A.     No, I didn't.  I didn't personally, when I saw  
9 him at the grocery store.

10          Q.     You did or you did not?

11          A.     I did not.

12          Q.     Have you ever had any e-mail communication  
13 with Mr. Carden about this issue?

14          A.     I have never e-mailed anybody.

15          Q.     You testified that you live at 800 Washington  
16 Street, is that correct?

17          A.     Yes.

18          Q.     800 Washington Street is not a home though, is  
19 it?

20          A.     It depends on who you are, I guess.  It's a  
21 home for me.

22          Q.     It's not a single family home, is it?

23          A.     No.

24          Q.     It's actually a business?

- 1 A. Yes.
- 2 Q. So you claim to reside at a business?
- 3 A. Yes, I claim to reside at a business.
- 4 Q. Do you work at that business?
- 5 A. I do.
- 6 Q. What's the name of the business?
- 7 A. Harpers Ferry Guesthouse.
- 8 Q. Okay. So when you are at 800 Washington  
9 Street, you are working?
- 10 A. No. I am working if somebody is there. If  
11 nobody is there, I am not working. I am just living.
- 12 Q. How often do you work there?
- 13 A. I would be working there today if I wasn't  
14 here.
- 15 Q. I appreciate that, but my question is, how  
16 often do you work there?
- 17 A. I can't say. It's a bed and breakfast.
- 18 Q. How often is it full?
- 19 A. Every weekend now. It depends on the season.
- 20 Q. Do you have guests during the week sometimes?
- 21 A. Pardon me?
- 22 Q. Do you have guests during the week sometimes?
- 23 A. Yes.
- 24 Q. When did you start working there?

1 A. September of last year.

2 Q. And who owns that property?

3 A. My son in law and daughter.

4 Q. Do you pay them rent?

5 A. No.

6 Q. And you get to stay there because you work for  
7 them there, right?

8 A. I could probably stay there without working.

9 Q. But you don't, do you?

10 A. No.

11 Q. You get to stay there because you work for  
12 them?

13 A. I work there because I don't want to stay  
14 there without working.

15 Q. Does anyone else work there?

16 A. My wife does.

17 Q. And you and your wife are the only people that  
18 work there?

19 A. Most of the time. Other people work there  
20 sometimes.

21 Q. Such as who?

22 A. The owner and his wife.

23 Q. Who lives at 122 Rosedale Drive, Stephens  
24 City, Virginia?

- 1 A. I have no idea.
- 2 Q. You don't live there?
- 3 A. No.
- 4 Q. Have you ever lived there?
- 5 A. I have.
- 6 Q. When did you stop living there?
- 7 A. July of last year.
- 8 Q. Did you sell it?
- 9 A. I did.
- 10 Q. Who did you sell it to?
- 11 A. I can't remember his name.
- 12 Q. Do you own any other property in Stephens  
13 City?
- 14 A. No.
- 15 Q. Do you have any other family in Stephens City?
- 16 A. Yes.
- 17 Q. Who lives there?
- 18 A. My daughter lives there.
- 19 Q. Do you stay with her?
- 20 A. No.
- 21 Q. Never?
- 22 A. In Stephens City?
- 23 Q. Um-hum.
- 24 A. No.

1 Q. Do you go by Mack sometimes?

2 A. I do.

3 Q. Do you have a Facebook account?

4 A. Yes.

5 Q. Now, I didn't print this out because I wanted  
6 to make sure we had the most up to date information  
7 possible. I'm going to walk over and show you. I'll  
8 have copies for the Counsel afterwards.

9 Is this your Facebook account, Mr. McCarty?

10 A. Yes, it is.

11 Q. I'm going to open up this little tab here  
12 called, "About Mack." And it says right there under  
13 places he's lived, tell me what that says?

14 A. Stephens City, Virginia.

15 Q. And what's it say under that?

16 A. Kingsport, Tennessee.

17 Q. What's it say under Stephens City, Virginia?

18 A. Current city.

19 Q. Did it say Harpers Ferry anywhere on there?

20 A. I didn't look.

21 Q. Does it say Harpers Ferry anywhere?

22 A. No, it doesn't.

23 Q. So you hold yourself out as living in Stephens  
24 City sometimes?

1 A. Pardon me?

2 Q. Sometimes you hold yourself out as living in  
3 Stephens City, correct?

4 A. That's incorrect.

5 Q. Mr. McCarty, are you registered to vote in any  
6 other states?

7 A. No.

8 Q. Are you sure you don't remain registered to  
9 vote in Virginia?

10 A. Yes.

11 Q. Do you pay personal property taxes here in  
12 West Virginia?

13 A. No. Oh, wait. In West Virginia, personal  
14 property taxes, sure.

15 Q. Is your vehicle registered here?

16 A. Pardon me?

17 Q. Is your vehicle registered here?

18 A. Yes.

19 MR. DONOVAN: No more questions.

20 REDIRECT-EXAMINATION

21 BY MR. BAILEY:

22 Q. So, Mr. McCarty, I think you said you are not  
23 a regular user of the Facebook account, you don't update  
24 it on a regular basis?

1 A. Never.

2 Q. Do you have your wallet with you today?

3 A. I do.

4 Q. Pull your drivers license out. What's it say  
5 or show as the governing body; is that a West Virginia  
6 drivers license?

7 A. It's a West Virginia drivers license.

8 Q. What's the address on that drivers license?

9 A. 800 Washington Street.

10 Q. Is that where you lay your head every night  
11 when you go to bed?

12 A. Yes.

13 Q. Is that where your wife lays her head when she  
14 goes to sleep?

15 A. Yes.

16 MR. BAILEY: I will excuse him, unless  
17 you have got follow up.

18 MAYOR BISHOP: Is there any follow up?

19 MR. RITCHIE: I do, just one thing.

20 RE-CROSS-EXAMINATION

21 BY MR. DONOVAN:

22 Q. You are not a regular user of your Facebook  
23 account, is that correct?

24 A. Not a regular, yes.

1 Q. How frequently do you use it?

2 A. Pardon me?

3 Q. How frequently do you use it?

4 A. I couldn't really answer that. Sometimes I  
5 don't look at it for a couple of weeks, and sometimes I  
6 look at it every day.

7 Q. When is the last time you posted something?

8 A. Probably yesterday. No. Posted something,  
9 I'm not sure what that means. I have never posted  
10 anything. I have liked stuff.

11 Q. When is the last time you liked something?

12 A. Yesterday.

13 Q. You have posted something, haven't you, on  
14 your Facebook wall?

15 A. Do you mean in the years that I have had it?

16 Q. Yes.

17 A. Like yesterday.

18 Q. Well, you just said never, but I'm asking you  
19 if you want to correct yourself?

20 A. Yes, I have probably posted something that  
21 might have been over a year ago.

22 Q. Is this a post from December 6, 2018?

23 A. Yes, I believe I did that.

24 Q. And that's after you claimed you established



1 residency in Harpers Ferry, correct?

2 A. Yes.

3 Q. Yet, at that point, you are holding yourself  
4 out publicly as being a resident of Stephens City,  
5 Virginia?

6 MR. BAILEY: Objection to the form of  
7 the question, but you can answer.

8 THE WITNESS: I never changed my I  
9 never changed my Facebook thing.

10 MR. DONOVAN: I have nothing else.

11 MR. BAILEY: I am done with the  
12 witness. As far as I am concerned, he can stay in the  
13 room. You can stay present for the rest of the  
14 proceeding. It's up to you.

15 I am going to go ahead and call Mr. McCarty, his  
16 wife, Linda McCarty. She's going to swear you in as a  
17 witness.

18 Whereupon,

19 LINDA MCCARTY,  
20 having been duly sworn, testified on oath as follows:

21 DIRECT EXAMINATION

22 BY MR. BAILEY:

23 Q. Good morning.

24 A. Good morning.

1 Q. Can you state your name, please.

2 A. Linda S. McCarty.

3 Q. Ms. McCarty, where do you reside?

4 A. 800 Washington Street, Harpers Ferry.

5 Q. How long have you lived there?

6 A. We moved in, if I am correct on this, they  
7 moved our furniture there the 16th of August 2018.

8 Q. Have you lived there consecutively from then  
9 until today?

10 A. Yes, um-hum.

11 Q. And that's where you resided when you tried to  
12 cast a vote in the municipal election of Harpers Ferry?

13 A. Yes.

14 Q. And you were denied, you were told that you  
15 had to cast a provisional ballot when you tried to vote  
16 in this election, is that correct?

17 A. Correct.

18 Q. Tell the governing body here when you  
19 registered to vote in West Virginia?

20 A. Let's see, we moved here officially the 16th  
21 of August.

22 Q. Of 2018?

23 A. Of 2018. And we went that next week to the  
24 DMV to get our tags, and licenses, and our voter

1 registration. It took us five trips to get that done  
2 because we didn't have the proper stuff to prove that we  
3 lived there.

4           And so we finally got past the first one, and  
5 then we got up to the magic window. The first thing she  
6 said is, "Your address is wrong."

7           And I said, "No. We live at 800 Washington  
8 Street."

9           She said, "No, you live at 800 West Washington  
10 Street."

11           And I said, "No, we don't."

12           So this went back and forth, and back and forth,  
13 and we just finally said whatever, not knowing anything  
14 about it, except I was dealing with cancer, and I was  
15 tired, and I wanted to go home. So we just did it, but  
16 we didn't realize.

17           We voted that next fall in the national state  
18 election, but we had to go to Charles Town to vote at the  
19 courthouse. And that didn't ring a bell for me because I  
20 thought, well, maybe they do things different in West  
21 Virginia. I don't know. Maybe if you vote in a state or  
22 national election, you do it at the county seat.

23           Q.       So when you voted in the national election,  
24 you did it in Charles Town?

1           A.       We did it in Charles Town.  Nobody said a  
2 word.  And then we came up this year to vote in the city  
3 election for Town Council, and came to the courthouse  
4 I mean, to the City Hall here.  And we got upstairs and  
5 they said, you aren't in the ballot book or poll book.  
6 And I said, "We are bound to be.  I have got my  
7 registration right here."

8                   And they said, "Oh, they have got you registered  
9 for the 15th District."  And I thought, well, isn't this  
10 the 15th District.  No, it's the 14th District.

11           Q.       So it didn't say on your voter registration  
12 card Bolivar?

13           A.       Yes.

14           Q.       And you didn't know where 15 was?

15           A.       I had no idea.  I was just about in tears  
16 then.  It was hard for me to get up those steps.  My  
17 sister in law was dying.  We voted early because we had  
18 to go to Greenville, South Carolina because she was  
19 dying.

20                   They said, "You can vote a provisional ballot."  
21 And I said, "What is that?"  And she explained it to me  
22 and I thought, yes, okay.

23                   And so we did.  And she said, "I don't think you  
24 can expect any problems.  We have had provisional ballots

1 before. They always go through. Don't worry about it."

2 So, we did.

3 Then my daughter called us in Greenville, South  
4 Carolina and said, "They threw out your vote."

5 I am 78 years old, and I have voted in every  
6 election since I was 21 years old. And this has never  
7 happened before, and it absolutely broke my heart. So we  
8 got into this mess. And I'm ready to move. I just  
9 thought, is this what we've got in Harpers Ferry.

10 I am not going to cry.

11 MR. BAILEY: I don't have any more  
12 questions. Thank you, ma'am.

13 CROSS-EXAMINATION

14 BY MR. DONOVAN:

15 Q. Thank you for being here today, Ms. McCarty.  
16 I don't have much.

17 You said your sister called you and told you?

18 A. My daughter.

19 Q. Your daughter called you and told you that  
20 they had thrown out your ballot. What did you do next?

21 A. Well, we stayed down in Greenville, South  
22 Carolina and we came home. To be honest, we didn't know  
23 what to do. We didn't know what to do.

24 And some people called us from the town and said

1 they were going to have a meeting and see if there was  
2 anything we could do about this. And we went to that,  
3 and then we found out.

4 Then all this other stuff started happening of  
5 people getting together and trying to get our ballots  
6 read.

7 Q. Was one of the people from the town who called  
8 you Mr. Carden?

9 A. Mr. Carden, no. No, I didn't know any of  
10 these people. I didn't know who anybody was until we  
11 went when they recounted the votes. And I was sitting  
12 there, and there was a woman behind us. And I said, "Who  
13 are these people sitting up at the table?" And she said,  
14 "That's Barbara," and said, "That's the mayor."

15 I said, "That's the Mayor?" After the meeting,  
16 I introduced myself. I didn't know who they were.

17 Q. So who was it from City Hall that called you?

18 A. I wasn't anybody from the City. It was just  
19 another town citizen, and I didn't know them until we  
20 went to that meeting.

21 Q. A moment ago, you said that some people from  
22 the town called you. You just meant some fellow citizens  
23 then, not people from the Town Council?

24 A. No. Just fellow citizens.

1 Q. When was the first time you ever had a  
2 conversation with Mr. Carden about this?

3 A. You know, I don't know. We bumped into him  
4 weeks and weeks and weeks later at Martin's one night,  
5 and we introduced ourselves. I don't think we talked so  
6 much about this as we did just living in Harpers Ferry.

7 Q. Did you talk about this contest at all?

8 A. I'm trying to think. I don't think it was  
9 anything more than I've seen. After this happened, we  
10 started coming to Town Council meetings, if we could. If  
11 not, we watched it on TV.

12 And I told him -- I think I told him that I  
13 remember seeing you at Town Council meetings. We talked  
14 about where he lived, and where we lived, and that was  
15 pretty much it.

16 Q. How is it that your motor vehicle registration  
17 came to be changed to Washington Street instead of West  
18 Washington Street?

19 A. Because we went there as soon as this happened  
20 and we got home from South Carolina, we went immediately  
21 to the DMV, and we told them that the address was wrong,  
22 and we wanted our licenses changed and made right.

23 And she started arguing again. And I said, "No,  
24 we do not live at West Washington Street." I said, "The

1 street signs in front of our house say Washington Street.  
2 West Washington starts at Union Street."

3 And she final said, okay. And she just hit a  
4 few buttons and that was it. And we have both got the  
5 right address, and our drivers license now, and our voter  
6 registration and everything. It got changed because we  
7 just stood there and said no.

8 Q. So it's your testimony that you corrected your  
9 voter registration at the DMV?

10 A. Yes. We went back to the same DMV on Route 9.

11 Q. Not with the County Clerk?

12 A. Uh-hum.

13 Q. Not with the County Clerk's Office?

14 A. No. This was at the magic window in front of  
15 the DMV.

16 Q. Did anyone from the County Clerk's Office ever  
17 contact you to determine whether lived at 800 Washington  
18 Street?

19 A. No, no.

20 Q. Ms. Painter testified earlier this morning  
21 that you had a conversation with her. Are you familiar  
22 with Ms. Painter?

23 A. Ms. Who?

24 Q. Ms. Painter?



1 A. What's her first name?

2 Q. Her name is Nikki?

3 A. Yes. I called her one day when this was all  
4 going on. And I said, "I have to hear this from you." I  
5 said, "I'm just talking to people in town and I want to  
6 know what's going on. And I want to know why."

7 And she said, she told me, she said, "Your Town  
8 Council broke the law, and their integrity is seriously  
9 compromised."

10 Q. Ms. Painter told you that?

11 A. Yes.

12 Q. Earlier, I had asked you if you had spoken  
13 with anyone at the County Clerk, and you said, no?

14 A. That was the Election Commission Office. Is  
15 that the Clerk?

16 Q. I thought you were confused. Ms. Painter is  
17 an employer of the County Clerk?

18 A. It's called the Election Commission in Charles  
19 Town. And that's the person -- I thought she said her  
20 name was Mickie, but then I found out it was Nikki.

21 Q. And she told you that the town's integrity was  
22 seriously compromised?

23 A. Yes.

24 Q. Did she tell you what that was based on?

1 A. No, because I felt the same way.

2 Q. Do you have a Facebook account, Ms. McCarty?

3 A. Do I have a Facebook account?

4 Q. Um-hum.

5 A. Yes.

6 Q. Is it fair to say that your current city on  
7 Facebook is Stephens City, Virginia?

8 A. That my what?

9 Q. You indicate to people on your Facebook  
10 account that you live in Stephens City, Virginia?

11 A. No.

12 When we moved, I told all of my friends on  
13 Facebook that we had moved from Stephens City to Harpers  
14 Ferry.

15 Q. How did you tell them that?

16 A. I just sent a message.

17 Q. Do you still have that message?

18 A. Oh, I don't know.

19 I mean, my friends on Facebook, I am very  
20 selective. My friends on Facebook are my friends in  
21 life, and they know where I am and what I am doing. If  
22 somebody is on Facebook and I don't know them, I delete  
23 them.

24 MR. DONOVAN: Thank you. I don't have

1 any more questions.

2 MR. BAILEY: I don't have any more  
3 follow up. Ma'am, you are done testifying. You are able  
4 to stay in the courtroom during the proceeding.

5 I call Mr. Adam Hutton.

6 Whereupon,

7 ADAM HUTTON,  
8 having been duly sworn, testified on oath as follows:

9 DIRECT EXAMINATION

10 BY MR. BAILEY:

11 Q. State your name.

12 A. Adam Hutton.

13 Q. What is your address?

14 A. 900 Washington Street.

15 Q. How long have you resided there?

16 A. March 1st.

17 Q. Of 2019?

18 A. Yes.

19 Q. Where did you live before Harpers Ferry?

20 A. Washington, D.C.

21 Q. Did you register to vote in the state of West  
22 Virginia?

23 A. Yes.

24 Q. When did you do that?

1           A.       When I registered my drivers license? I think  
2 it was April 20th, what's on my drivers license.

3           Q.       So you went to the DMV to get your West  
4 Virginia drivers license?

5           A.       Yes.

6           Q.       And at that time, you chose to go through them  
7 to register to vote?

8           A.       Yes.

9           Q.       Tell me about that process, please?

10          A.       From what I remember, it's when you register  
11 your drivers license and you transfer from out of state,  
12 there is a check box you check to register to vote. I  
13 don't remember if I filled in anything in the-mail. I  
14 don't think I did.

15          Q.       Was there any discussion when you were at the  
16 DMV at that time about using West Washington Street as  
17 your address?

18          A.       No.

19          Q.       What did they put on your drivers license, as  
20 far as your street?

21          A.       West Washington.

22          Q.       Did you call them into question about that or  
23 did you just know where West Washington started, or  
24 ended, or anything like that?

1           A.       So I use the Post Office address for my house,  
2 which is West Washington Street.

3           Q.       And your physical address is what number on  
4 Washington Street?

5           A.       So, my physical address is 900 Washington  
6 Street. If I type that into the Post Office, it gets  
7 corrected to 900 West Washington Street.

8           Q.       And that's just how they have decided, "they"  
9 being the Government, has decided they are going to  
10 characterize it, the U.S. Government?

11          A.       I guess. I have no idea.

12          Q.       You still get your mail?

13          A.       I chose West Washington to get my mail.

14          Q.       Did you register to vote because you want to  
15 participate in free elections?

16          A.       Yes.

17          Q.       And when did you learn that you were denied  
18 your right to choose a ballot during a municipal election  
19 of Harpers Ferry?

20          A.       So when I came here to vote, the folks that  
21 were taking my ballot said that there may be some  
22 discrepancy with the 900 West versus 900. I think they  
23 mentioned that it's happened before, what the 900  
24 Washington versus 900 West Washington, but then when I

1 found out it wasn't counted was over e-mail. I don't  
2 remember from whom.

3 Q. So did they tell you the day you tried to  
4 vote, that your name did not appear in the Harpers Ferry  
5 Poll Book?

6 A. Yes.

7 Q. And then they gave you the option of casting a  
8 provisional ballot, is that correct?

9 A. Yes.

10 Q. You are clearly a resident within the  
11 corporate boundaries of Harpers Ferry?

12 A. I believe so.

13 Q. Let me show you a map. I'm going to show you  
14 what's been marked as Contesters Exhibit 5. Orient  
15 yourself with that, and let me know if you find your lot?

16 A. Yes.

17 Q. And can you hold that up to the governing body  
18 here and point to where your lot is?

19 A. The No. 86, 900.

20 Q. Thank you. And that's where you were residing  
21 on the day you tried to vote in this election?

22 A. Yes.

23 Q. That's where you resided on the date you  
24 registered to vote?

1 A. Yes.

2 Q. And you believe that your ballot that you cast  
3 should be counted, don't you?

4 A. I'll leave that to this group to decide.

5 Q. You want them to follow the law?

6 A. I would leave that to this group to decide.

7 MR. BAILEY: Okay. That's all the  
8 questions I have.

9 CROSS-EXAMINATION

10 BY MR. DONOVAN:

11 Q. Good morning, Mr. Hutton. Thank you for being  
12 here.

13 You don't really want to be here today, do you?

14 A. Not particularly.

15 Q. In fact, the only reason you are here today is  
16 because you received a subpoena, isn't it?

17 A. Not entirely.

18 Q. You did receive a subpoena...

19 A. Yes.

20 Q. ...to be here.

21 When this issue came up, you told some of your  
22 neighbors that you thought that you didn't really want to  
23 be involved in this contest, didn't you?

24 A. Not that I didn't want to be involved. I

1 would say that I didn't expect this to be involved.

2 Q. You told them that you thought that the error  
3 that it was your responsibility to make sure your  
4 registration was correct, didn't you?

5 A. Yes.

6 Q. When did you first learn that you had a  
7 problem with your registration? And forgive me if you  
8 already answered that question. It was when you voted  
9 provisionally?

10 A. Yes.

11 Q. And when did you learn that the problem was  
12 this West Washington, Washington distinction?

13 A. So I learned of the West Washington versus  
14 Washington distinction based on, actually, when I bought  
15 the house, but it was not with regards to voting. It was  
16 with regards to getting mail.

17 Q. When did you learn that, that was an issue  
18 with your provisional ballot?

19 A. When I came here to vote.

20 Q. Someone told you at the polling place that it  
21 was the West Washington?

22 A. Yes.

23 Q. At that time, did you take any steps to get it  
24 fixed?



1 A. No.

2 Q. Did you ever talk to the County Clerk about  
3 it?

4 A. No.

5 Q. Did you ever talk to the DMV about it?

6 A. No.

7 Q. Did you, at some point, receive an e-mail from  
8 Mr. Carden about this? You said you couldn't recall who  
9 you received an e-mail from.

10 Q. Could it have Kevin Carden?

11 A. I honestly don't remember.

12 Q. Did you receive an e-mail from Ms. Bainbridge?

13 A. Yes.

14 Q. What was the subject of the e-mail?

15 A. The subject of the e-mail was about this  
16 ongoing well, this might be happening, it's about the  
17 election. And that was about it.

18 Q. Do you have a copy of that e-mail?

19 A. I may.

20 Q. Would you be willing to provide it to the  
21 Council?

22 A. If it's required.

23 MR. BAILEY: I'm going to object to any  
24 evidence coming in after the close of evidence today, but

1 we'll just note my objection.

2 MR. DONOVAN: No one said that the  
3 evidence is closing today.

4 BY MR. DONOVAN:

5 Q. Was Ms. Bainbridge requesting anything of you?

6 A. I don't believe so.

7 Q. Did she ask you -- you don't think she was  
8 asking you to participate in the complaint relating to  
9 the problems arising from this election?

10 A. I don't think she asked me to. I think she  
11 informed me that it may be coming up.

12 Q. And did you respond to her?

13 A. I believe so, but I don't remember that I  
14 commented on participating in this.

15 Q. You didn't respond that you wanted to be  
16 involved?

17 A. As far as I know, no.

18 Q. But if you saw that e-mail, it might help you  
19 remember?

20 A. It would, yes.

21 Q. Do you want to take a break, and do you have  
22 your phone with you today?

23 A. Not on me.

24 Q. Did somebody take it from you?

1 A. Yes.

2 Q. Could you pull up that e-mail on that phone?

3 A. I may be able to, if I can find it.

4 MR. DONOVAN: I'd like to ask for a  
5 brief recess to allow Mr. Hutton to pull up that e-mail.  
6 You don't even have to submit it for the record. I just  
7 want to ask you some questions about it.

8 Could we have a recess, five minutes?

9 MAYOR BISHOP: Five minutes.

10 MR. DONOVAN: Of course, we'd ask  
11 Mr. Hutton not have any communication with any of the  
12 lawyers. Thank you, so much.

13 MAYOR BISHOP: Five minutes.

14 - - - -

15 (Short Recess.)

16 - - - -

17 MAYOR BISHOP: Okay. We are back in  
18 session. The same rules apply.

19 BY MR. DONOVAN:

20 Q. Thank you, Mr. Hutton. I am grateful for your  
21 cooperation and this won't take much longer.

22 Did you have an opportunity to review that  
23 e-mail?

24 A. Yes, I did.

1 Q. When was it sent?

2 A. Late June.

3 Q. You have it in front of you, right?

4 A. Yes. I can pull it up. June 19th.

5 Q. June 19th. And who was it sent to you?

6 A. Ms. Pechuekonis.

7 Q. Can you spell that, for the record?

8 A. P-E-C-H-U-E-K-O-N-I-S.

9 Q. And who else? Were people cc'd, were there  
10 other recipients of this e-mail?

11 A. Betsy Bainbridge.

12 Q. Any others?

13 A. That's it.

14 Q. And having reviewed your e-mail, is your  
15 recollection consistent with how you testified to it  
16 earlier?

17 A. Yes.

18 Q. Would you be willing to read the substance of  
19 it?

20 A. It's really long.

21 MR. BAILEY: Objection, on hearsay.

22 THE WITNESS: Okay. It's just long.

23 This is Lynn Pechuekonis at Rock Haven Bed and  
24 Breakfast: I don't know if you have had heard this, that

1 your vote has been counted, but if you'd like to learn  
2 more, see the invitation at the end of this. It's really  
3 great down most of the time.

4 Q. And what was the invitation below?

5 A. The invitation is, "This is just a gathering  
6 to educate residents and develop a plan of action." And  
7 then there is more information regarding that.

8 Q. Were other recipients indicated on the  
9 invitation?

10 A. Not that I see.

11 Q. When you say "invitation," do you mean like an  
12 electronic outlet information or sort of like a little  
13 flier?

14 A. No.

15 Actually, I never even opened it. I have to put  
16 a roof on my head. It's a copy of the Virginia State  
17 Election Municipal Canvass document.

18 Q. So you were so uninterested in that, you never  
19 even zoned in on the invitation?

20 A. No. It's an invitation in an e-mail. I  
21 didn't open the Pdf to read the canvass document.

22 Q. Mr. Hutton, I think you responded.

23 Mr. Bailey asked you whether you wanted your  
24 vote counted or not, and I think you said it was up to

1 the Council; is that accurate?

2 A. Correct.

3 Q. And would it be fair to say that in making  
4 that decision, that you would prefer that they follow the  
5 law?

6 A. That's a philosophical question.

7 Q. You want them to follow the law, don't you?

8 A. I would agree that the spirit of the law is  
9 something that should be followed.

10 MR. DONOVAN: Thank you. Nothing else.

11 REDIRECT-EXAMINATION

12 BY MR. BAILEY:

13 Q. Mr. Hutton, I can tell you don't want to get  
14 involved. I can tell by your answers.

15 Is it fair to say, you made the effort to  
16 register to vote; correct?

17 A. Um-hum.

18 Q. And you made the effort to come to town to  
19 cast a ballot?

20 A. Yes.

21 Q. You wanted your vote to count?

22 A. Yes.

23 MR. BAILEY: We don't have any more  
24 questions. You are free to stay or do whatever you'd

1 like. You are released as a witness.

2 And that is the end of my presentation of  
3 evidence. I just rest on the testimony today, the Notice  
4 of Election Contest, the pleadings that were filed  
5 previously, and I am done.

6 MAYOR BISHOP: I think you asked at the  
7 beginning that you have ten minutes at the end for  
8 closing statements.

9 MR. DONOVAN: Typically, we would  
10 defer.

11 I know we just took a recess to deal with that  
12 issue, which was unanticipated. It would be normal to  
13 take a break between the close of their evidence and the  
14 start of ours so we can consider who, and if anyone, we'd  
15 like to call in our case in chief. And we'd typically do  
16 that before the closing statement for either side.

17 MAYOR BISHOP: Okay. So you are  
18 suggesting a brief break?

19 MR. DONOVAN: Could we take ten  
20 minutes?

21 MAYOR BISHOP: Okay, 10 after 12, Ladies and  
22 Gentlemen.

23 - - - -

24 (Brief Recess.)

1 - - - -

2 MAYOR BISHOP: Okay. We are back in  
3 session.

4 MR. DONOVAN: So the contesters have  
5 rested their case; right?

6 MR. BAILEY: Unless it needs to be  
7 continued from time-to-time during a three month period.

8 MR. DONOVAN: Contestees would call  
9 Nancy Case.  
10 Whereupon,

11 NANCY CASE,  
12 having been duly sworn, testified on oath as follows:

13 DIRECT EXAMINATION

14 BY MR. DONOVAN:

15 Q. Good morning, Ms. Case. Thank you for being  
16 here, although I guess you had to be here.

17 A. Yes. Good afternoon.

18 Q. Goodness, it is afternoon.

19 Ms. Case, you are one of the contestants in this  
20 proceeding; is that correct?

21 A. I am, sir.

22 Q. And you are a candidate for City Council?

23 A. I was.

24 Q. Okay.



1           And, you are not certified by the Board of  
2 Canvassers as one of the winners of that election, is  
3 that correct?

4           A.       That is correct.

5           Q.       At what point did you decide to initiate this  
6 election contest?

7           A.       Either the tail end of June, or more  
8 accurately, I would say the first week of July.

9           Q.       Ms. Case, you were part of a group of  
10 candidates in this election who ran on what's called a  
11 platform of "Make It Happen," is that accurate?

12          A.       That's inaccurate.

13          Q.       Was that not something you supported?

14          A.       I am not a member of that group called Make It  
15 Happen, and to my knowledge, there was no one who was a  
16 candidate for Town Council who was on a platform.

17          Q.       Okay. Were you supported by that group?

18          A.       I believe that I was. I wasn't here, sir.

19          Q.       You don't know if they supported you or not?

20          A.       I believe that they did.

21                   MR. BAILEY: I'm going to object.

22                   Kind of a standing objection to her testimony as  
23 relevant to the issue of these provisional ballots, but  
24 that's my objection that stands. I don't know how it's

1 relevant to this.

2 MR. DONOVAN: And while we're at it,  
3 I'm going to lead the witness since she is an opposing  
4 party, even though I called her on direct.

5 MR. BAILEY: Yes. No objection.

6 BY MR. DONOVAN:

7 Q. How did you come to the decision to initiate  
8 this election contest?

9 MR. BAILEY: Objection, to the extent  
10 it calls for any communication she had with counsel,  
11 legal counsel.

12 BY MR. DONOVAN:

13 Q. And to be clear, that is something that you  
14 should not answer, even notwithstanding our agreement to  
15 preserve an objection.

16 Let me be clear, I am not asking you to divulge  
17 any communication between you and any of your attorneys.

18 Aside from that, how did you come to the  
19 decision to initiate this election contest?

20 A. After much thought, I'll say initially I was  
21 reticent to it. It was my own decision to do it, to see  
22 that these provisional votes were counted. I didn't like  
23 what I witnessed.

24 Q. Did you communicate with any of the members of

1 the existing Town Council about your decision?

2 A. Not that I am aware of.

3 Q. Have you communicated with Mr. Carden, to the  
4 extent that he is not a member of the Council, about  
5 there?

6 A. Not that I recall, sir.

7 Q. At any point, have you had any communication  
8 with Mr. Carden about the outcome of the election or the  
9 nature of your ballot, the nature of the provisional  
10 ballots, or about your challenge in this election  
11 contest?

12 A. Not that I recall, sir.

13 Q. Is it possible that you have forgotten?

14 A. Certainly.

15 Q. It's only been a couple months, so it's odd  
16 for you to say that you don't recall.

17 Have you or have you not had any communication  
18 with Mr. Carden about this?

19 A. About this, not that I recall.

20 Q. Do you communicate with Mr. Carden about other  
21 things?

22 A. Yes, sir.

23 Q. Are you friends?

24 A. He is a nice guy. I like him what.

1 Q. What sort of things do you communicate with  
2 Mr. Carden about?

3 A. Well, I sent an e-mail about the fact that the  
4 Planning Commission wouldn't be having meetings. I asked  
5 him if he was ready to start talking about dark sky  
6 lighting ordinances soon, things like that.

7 MR. DONOVAN: I don't have any  
8 stickers. What exhibit are we up to?

9 MR. BAILEY: This will be six.

10 - - - -

11 (Whereupon, Exhibit No. 6 was hereby marked for  
12 identification.)

13 - - - -

14 BY MR. DONOVAN:

15 Q. Ms. Case, do you recognize this document?

16 A. I believe this is our original Notice of  
17 Election Contest.

18 Q. It's your original one. Is there an amended  
19 one?

20 A. Oh, no. Sorry.

21 Q. That's okay. I just wanted to make sure I  
22 didn't miss anything. It happens.

23 And this page is attached to the end of the  
24 document, and it's called a Sworn Verification of

1 Contester Nancy Singleton Case.

2 Do you recognize that?

3 A. Yes.

4 Q. Is that your signature?

5 A. It is.

6 Q. And do you understand that by signing this,  
7 you are verifying that all the allegations in this  
8 document are true, to the best of your knowledge?

9 A. Yes.

10 Q. Paragraph 21 of this document says, "On June  
11 19, 2019, Town Council Candidates Nancy Singleton Case  
12 and Deborah A. McGee requested an official recount of the  
13 June 11th municipal results and further urged the Board  
14 of Canvassers to consider all provisional ballots." Is  
15 that accurate?

16 A. That's accurate, and a perfect example of an  
17 e-mail communication that I forgot whenever I officially  
18 requested a recount of the election. My apologies.

19 Q. When did you make that official request?

20 A. Again, I don't recall. I'm sure you know.

21 Q. Actually, I don't know because I haven't seen  
22 it.

23 Do you know if it was ever submitted to the Town  
24 Council?

1           A.       Well, I know I sent it to Mr. Carden.  And I'm  
2   sure he submitted it to the Town Council because we had a  
3   recount on the 26th.  So sometime prior to the 26th of  
4   June, myself, well, I will just say for myself, submitted  
5   a request for recount.

6           Q.       And you think that was an e-mail?

7           A.       Yes.  I know that it was.

8           Q.       And you think it was submitted on June 19th?

9           A.       I don't know if it was submitted on June 19th.

10          Q.       This here was submitted on June 19th?

11          A.       I'll take your word for it.  I'm sorry.

12          Q.       Did you submit a check?

13          A.       I did not.

14          Q.       So you submitted an e-mail request for a  
15   recount, but you did not submit the check that's required  
16   by statute?

17          A.       I personally did not.

18          Q.       Did someone submit it on your behalf?

19          A.       I believe that, yes, they did.

20          Q.       And who is that person?

21          A.       I am not 100 percent certain, but I believe it  
22   might have been either Kurt or Debbie McGee, my  
23   counterpart in contesting this election.

24          Q.       So it's your understanding you didn't need to

1 submit your own check; as long as there was one check for  
2 the entire recount, that was good enough?

3 A. Yes.

4 Q. I just want to be crystal clear about this.  
5 You are not suggesting that Ms. McGee or her husband  
6 submitted an additional check for you.

7 Your understanding is the check that they  
8 submitted on their behalf was good enough for the both of  
9 you?

10 A. The amount was the correct amount for bond, I  
11 think it's called, and, yes, it was the dollar amount  
12 required for bond, for both of us.

13 I may have gotten clarification, but I don't  
14 recall who I got that clarification from. It might have  
15 been -- I just don't know.

16 Q. So earlier when I asked you if you had, had  
17 any communication with Mr. Carden, you said no.

18 You said no?

19 A. No, I don't think I said that. I said I don't  
20 recall.

21 Q. You said you didn't recall. Now, you recall.  
22 And having thought about it further, do you  
23 recall any others?

24 A. I just said that I may have contacted someone

1 to get clarification on the bond amount, whether or not  
2 it was an amount that needed to be two separate checks or  
3 one to cover the total amount, but I don't recall who I  
4 asked. It could have been Mr. Carden that I asked that  
5 question.

6 As the election supervisor, he could have been  
7 the person I asked, but it also could have been someone  
8 else.

9 Q. Who is paying for this election contest?

10 MR. BAILEY: Objection, to the extent  
11 are you saying who is paying for the filing or who is  
12 paying for the attorneys fees?

13 MR. DONOVAN: Both.

14 MR. BAILEY: Well, I'm going to object  
15 to disclosing my fee agreement.

16 MR. DONOVAN: I'm not asking what your  
17 fee agreement is. I am just asking who is paying the  
18 fees. That is not protected by the attorney/client  
19 privilege.

20 MR. BAILEY: Well, I'm going to  
21 instruct her, she is not to go into attorney fees, who's  
22 attorney fees, who is paying, and how much. I'm going to  
23 instruct her not to answer.

24 BY MR. DONOVAN:



1 Q. Is someone paying an attorney to represent you  
2 in this case? You can answer that.

3 A. May I answer that?

4 MR. BAILEY: What's the question.

5 Q. Is someone paying an attorney to represent her  
6 in this case?

7 MR. BAILEY: Yes, you can answer that.

8 A. An individual. Someone is not.

9 Q. Is an entity paying an attorney to represent  
10 you in this case?

11 A. No, an entity is not paying for me.

12 Q. So if it's not someone and it's not an entity,  
13 what is it?

14 A. May I answer that?

15 MR. BAILEY: Um-hum.

16 A. It's many someone's.

17 Q. And who are those many someone's?

18 A. I do not know.

19 Q. Is one of those many someone's a woman named  
20 Karen Schaufeld?

21 A. I believe that, yes, she has made a  
22 contribution.

23 - - - -

24 (Whereupon, Exhibit No. 7 was hereby marked for

1 identification.)

2 - - - -

3 Q. I'm going to hand you a letter.

4 MR. BAILEY: Preserve objection. I  
5 have got an objection on hearsay.

6 BY MR. DONOVAN:

7 Q. I'm going to hand you what's been marked as  
8 Exhibit 7, and you can take a look at that.

9 MR. BAILEY: Do you have a copy of it?

10 MR. DONOVAN: I think we do.

11 THE WITNESS: I am familiar with this.

12 MR. BAILEY: May I see it, please? I'm  
13 not familiar with the letter, but I was present at a  
14 meeting where it was read.

15 Q. Now, could I ask you to read -- I'm sorry.

16 Did I ask you if you are familiar with her?

17 A. I am familiar with the contents of the letter.

18 Q. Are you familiar with the author of the  
19 letter?

20 A. Yes, I know who she is.

21 Q. And you said she is one of the people who's  
22 contributed?

23 A. She is one of the persons that's contributed,  
24 yes.

1 Q. Do you know what she does for a living?

2 A. I do not.

3 Q. Could you read the last paragraph of this  
4 letter, starting with, "It is?"

5 A. "It is with all of this in mind and responding  
6 to a call to our hearts and what we know to be right and  
7 to the greatness of the ideas that have time and again  
8 been proven here in Harpers Ferry that we have decided to  
9 financially support, as individuals, the efforts to  
10 restore confidence in the election process in Harpers  
11 Ferry.

12 Regardless of what the outcome may be, it is  
13 important that every legitimate vote is counted and that  
14 the voice of the people is heard.

15 None of this is inconsistent with the many  
16 efforts we have supported in the past in other states and  
17 communities to assure that all persons in our great  
18 democracy are informed and have an opportunity for  
19 meaningful participation.

20 How much more appropriate is it then that we  
21 support efforts to afford the same opportunity to the  
22 residents of Harpers Ferry, a town that we have grown to  
23 love for many years and to which we, like many of you,  
24 have invested in its future."

1                   MR. DONOVAN: You did a much better job  
2 of reading that than I would have. Thank you.

3                   That's all I have. I'm going to give this to  
4 the Court Reporter.

5                   MR. BAILEY: No questions.

6                   MR. DONOVAN: We would call Debbie  
7 McGee.

8 Whereupon,

9   DEBORAH MCGEE,  
10 having been duly sworn, testified on oath as follows:

11   DIRECT EXAMINATION

12 BY MR. DONOVAN:

13           Q.       Good morning, Ms. McGee.

14           A.       Good afternoon.

15           Q.       Good afternoon, my mistake again.

16                   You were in the courtroom for Ms. Case's  
17 testimony, weren't you?

18           A.       I was.

19           Q.       So I'm going to ask you some of the questions,  
20 I want to make sure the record is clear.

21                   Do you recognize what we admitted into evidence  
22 as Exhibit 6?

23           A.       I do.

24           Q.       And like Ms. Case, you also verified, signed

1 your name to verify the allegations?

2 A. I did.

3 Q. Have you personally seen the written request  
4 that Ms. Case allegedly sent requesting a recount on the  
5 19th?

6 A. Actually, I wrote -- I believe I was the one  
7 that actually submitted the letter or my husband actually  
8 submitted it to Mr. Carden prior to the deadline. He was  
9 at a Town Council meeting and he gave it with the check  
10 to Mr. Carden, on behalf of Nancy and myself. I would  
11 not be absolutely certain that the letter said both of  
12 us. I'm not certain. Nancy had e-mailed it prior,  
13 earlier in the day.

14 Q. Did you see that e-mail personally?

15 A. I did.

16 Q. Was it cc'd to you, were you copied on that  
17 e-mail?

18 A. Yes. I know what a cc is. I think it  
19 probably was. I was teaching during the day, so I don't  
20 exactly remember.

21 - - - -

22 (Whereupon, Exhibit No. 8 was hereby marked for  
23 identification.)

24 - - - -

1 Q. I do have a copy of this one and I have a few  
2 copies for the Council.

3 We can provide additional ones later, Mr. Mayor.

4 Ms. McGee, this is marked as Exhibit 8. Do you  
5 recognize this letter?

6 A. Yes. This is it, yes.

7 Q. Do you want to take a minute to look at it or  
8 are you familiar with it?

9 A. Well, I am not familiar with it and I don't  
10 write these kinds of letters very often.

11 Q. Well, let me ask you this, Ms. Case's name is  
12 there at the top, and it's addressed to Mr. Carden, is  
13 that correct?

14 A. Right, right.

15 Q. And down at the bottom, it's signed Deborah  
16 McGee. Is that your signature?

17 A. Yes, it is.

18 Q. Did Ms. Case sign this?

19 A. She was out of town. Her sister had passed  
20 away or was in her last days.

21 Q. Is Ms. Case's name in here at all on this  
22 document?

23 A. No.

24 Q. I think you testified earlier that your

1 husband brought this to Mr. Carden. Why did he bring it  
2 to Mr. Carden?

3 A. He is in charge. He is the town recorder, and  
4 he is in charge of election. And he is the one that  
5 would be -- documents that are sent to Town Council  
6 should probably go through him.

7 Q. Is that your understanding of what the West  
8 Virginia Code requires?

9 A. Absolutely not. I am not familiar with that.

10 Q. Was this document delivered to Mr. Carden via  
11 e-mail?

12 A. No, no.

13 Q. Or by hand delivery?

14 A. No. It was hand delivered.

15 Q. Along with the check?

16 A. Along with the check.

17 Q. And it was in an envelope, is that what you  
18 said?

19 A. That's a very good question. I don't know.  
20 Perhaps it was. I honestly don't know.

21 Q. But not delivered by you personally?

22 A. It was not delivered by me personally.

23 Q. But it's your testimony you believe it was  
24 delivered on June 19th?

1           A.       If that's a Monday, that is the deadline that  
2 it had to be in. That would be when it was delivered  
3 because it was delivered within hours of the deadline.

4           Q.       How do you know that it was delivered that  
5 day?

6           A.       Because I live with my husband and he verified  
7 that, he told me.

8           Q.       Did you have any other way to confirm that?

9           A.       He did get a receipt, yes. We have a receipt  
10 from Kevin that he received it.

11          Q.       Okay. What kind of receipt?

12          A.       I think it was -- I know, at least, that we  
13 have the receipt for the check that was proffered for it,  
14 and it says for the election recount. I am not certain  
15 that I have a copy of the letter that says received. I  
16 am not certain about that.

17          Q.       You never got an e-mail or anything to confirm  
18 it?

19          A.       No, I don't think so.

20          Q.       Do you have a copy of that receipt that you  
21 received for the check?

22          A.       Yes. It's on my desk.

23          Q.       Would you be willing to provide that to the  
24 Council?



1           A.       Sure.

2                   MR. DONOVAN:  No more questions.

3                   THE WITNESS:  Thank you.

4                   MR. PREMACK:  What's the exhibit number  
5 on the letter?

6                   MAYOR BISHOP:  Exhibit 8.

7                   MR. DONOVAN:  Contestees call Kevin  
8 Carden.

9                   MR. BAILEY:  I've got a couple of  
10 objections.

11                   I've got an objection based on relevance that  
12 this witness would have on the issue that you're going to  
13 ask him about, the residence, and for provisional ballots  
14 for the poll vote.

15                   Anything he would say about is duplicative of  
16 what's already presented.

17                   And if you're calling him on the issue of bias,  
18 I think we can establish three of your clients are  
19 sitting on this governing body tribunal today.  I don't  
20 know how, based on the questions you're asking these  
21 witnesses, like did you contact Mr. Carden, it seems like  
22 you are setting up some sort of argument of bias or  
23 improper communication.

24                   This entire Tribunal is tainted by the people

1 who are sitting on it because they are the candidates in  
2 the very election we are challenging. So that's my  
3 standing objection to it.

4 MR. DONOVAN: In response, I would say  
5 on the relevancy issue, the testimony of other witnesses  
6 today has established that Mr. Carden has firsthand  
7 information about communications with the County Clerk,  
8 for example, and about the way by which those  
9 registrations were corrected. In fact, he may be the  
10 only one who has some of that information.

11 Mr. Bailey also neglected to recognize that  
12 another issue in this case is the standing of the  
13 contestants to bring it in the first place. And I think  
14 the testimony of Ms. Case and Ms. McGee established,  
15 again, that Mr. Carden is perhaps the only one who has  
16 some of the critical evidence necessary to determine  
17 whether they can even bring this in the first place.

18 Finally, as to bias, your point is taken. You  
19 have, obviously, gone to the Circuit Court and lost in  
20 the attempt to have these Council members recused. The  
21 reason or the basis for their conflict is the contestants  
22 have chosen to name them. The basis for Mr. Carden's  
23 conflicts are different and regent.

24 They include his communications with witnesses

1 in this case, and they include his relationship to  
2 individuals, names, and witnesses in this case, including  
3 the fact, just by way of proffer to the Court, that one  
4 of the ballots that was originally contested in this case  
5 claims to have been registered to vote in Mr. Carden's  
6 home.

7 I think those are, obviously, facts that are  
8 relevant and need to be put on record at that time.

9 MR. BAILEY: Clearly, the provisional  
10 ballot is not an issue today. This is what I predicted  
11 to this Tribunal. It's a straightforward issue. There's  
12 four provisional ballots. Were they property registered,  
13 did they live here when they voted, that's the issue.

14 He is trying to make this a circus. You don't  
15 have to allow him to do this, and you don't have to allow  
16 him to do that. This is ridiculous. It's an insult to  
17 the Tribunal. I didn't call Ms. Thompson as a witness.  
18 I didn't call Mr. Johnson when I could have done that to  
19 go through these things. I thought that would be  
20 insulting. This is the Tribunal. And I don't think that  
21 you all should allow it?

22 MR. PREMACK: There was a list that was  
23 agreed upon beforehand.

24 MR. DONOVAN: Yes, it was. In fact, we

1 let Mr. Bailey know in advance that we would be calling  
2 Mr. Carden today.

3 MR. PREMACK: And Mr. Carden  
4 represented our interest in communicating with both to  
5 try and mediate.

6 MR. BAILEY: The indication I had about  
7 Mr. Carden was an e-mail last night, and I don't believe  
8 Ms. Callis was copied on the e-mail. I don't know. I  
9 was not privy to any conversation between them and  
10 Ms. Callis about whether Mr. Carden would be required to  
11 testify in this matter.

12 MR. PREMACK: Did you guys communicate  
13 with Ms. Callis your intention?

14 MR. DONOVAN: Yes, we did communicate  
15 with Ms. Callis our intention.

16 R. PREMACK: And she did not  
17 communicate that to you?

18 MR. BAILEY: No.

19 MR. DONOVAN: I was under the  
20 impression that she had. We have discussed this, by my  
21 recollection, many times. My recollection could be  
22 wrong. I am not accusing Mr. Bailey.

23 MR. BAILEY: No. I heard issues of  
24 never have I heard issues of alleged bias.

1           In other words, we are trying to disqualify  
2 certain members of the Council, that you were going to  
3 try to, or whether Mr. Carden should be disqualified.  
4 And I did yesterday, at a hearing, there was some mention  
5 of calling members as witnesses. And Judge McLaughlin  
6 said, well, calling them as a witness, you can't call  
7 them as a witness to try to disqualify them.

8           MR. DONOVAN: Well, Judge McLaughlin  
9 would have zero jurisdiction to that.

10           MR. BAILEY: I am not suggesting that  
11 she did. I am saying that's was her communication about  
12 certain witnesses on the Tribunal.

13           It was my intention to not call any of these  
14 folks as witnesses because, frankly, I think it makes a  
15 mockery of the entire Tribunal.

16           MR. DONOVAN: Ethical rules exist.  
17 It's not a mockery. Ethical rules exist that  
18 specifically address this circumstance in the judicial  
19 cannons. In this case, there's special rules that  
20 discusses the possibility of a Judge being called as fact  
21 a witness in a case. It typically does require recusal  
22 in those circumstances.

23           My understanding is that's how Ms. Callis  
24 advised the Council, that if a person were called, then

1 the person would have to recuse themselves.

2 As you have heard ad nauseam, our legal position  
3 is those recusals are superseded by the West Virginia  
4 Supreme Court's ruling that the rule of equity requires a  
5 quorum because no one else can.

6 That said, the bottom line is I can't force  
7 Mr. Carden to testify today. I can ask him to. And if  
8 he refuses, it would be appropriate under the law for the  
9 finders of fact to draw inferences about why he refused  
10 to testify today.

11 MR. PREMACK: Just to be clear, we have  
12 been instructed by our attorney to allow any evidence,  
13 noting objections, because none of us have legal training  
14 but, again, my understanding, this was arranged.

15 MR. DONOVAN: That's correct. I'm just  
16 saying I can't force him to testify if he doesn't want  
17 to.

18 MR. BAILEY: And I agree with that. I  
19 would just say that when you do your analysis about  
20 whether or not -- I mean, because it would be  
21 extraordinary to ask a judicial officer in a trial to  
22 testify. And the analysis would be, he better have  
23 really direct, relevant evidence that is critical to the  
24 case. In a murder trial, he saw who shot the guy, that

1 kind of thing.

2           Of course, then he would be disqualified, but I  
3 think that is a fishing expedition and I just think it's  
4 improper, but I'll stand by my previous objection and  
5 Mr. Carden can make a decision.

6           MR. CARDEN: I will say I was not  
7 notified that I would be a witness today by any party,  
8 including you. And we were advised by our general  
9 counsel for the Corporation of Harpers Ferry that if we  
10 were called as witnesses, we would need to recuse  
11 ourselves. I don't believe that I have any information  
12 that could be contributory to this case that has not  
13 already been presented.

14           MR. DONOVAN: That's fine.

15           For the record, I wanted to proffer to the Court  
16 in addition to what I have previously suggested, I  
17 believe Mr. Carden could testify about, I do believe, his  
18 role in investigating and acting as a liaison with the  
19 County Clerk's Election Office creates the basis for  
20 potential conflict. It makes him a fact witness, among  
21 other things.

22           I do also believe that Mr. Carden has unique  
23 testimony concerning when the requests for recount in  
24 this case were received, how they were received, how they

1 were communicated to the Council, and those issues go  
2 directly to the standing of the contestants to even be  
3 here today, but I do understand Mr. Carden's decision.  
4 I, obviously, can't force him to do it. I want to make  
5 clear that, that some but not all of the testimony that  
6 we believe would have been elicited today.

7 MR. PREMACK: I think by not declaring  
8 a witness list beforehand puts us in a really difficult  
9 position as a judicial body. I'm not sure if it would be  
10 relevant or beneficial for us to recess to discuss it.

11 MR. BAILEY: The only thing that I  
12 would add is that I could make the entire Board of  
13 Canvassers fact witnesses, if that's the way we're going  
14 to proceed. You are all witnesses because you all sat as  
15 Board of Canvassers.

16 We could go through and take testimony from each  
17 and every one of you on every issue. I just think it's  
18 not helpful. It's not relevant to the issue that you  
19 have before you, which is whether or not these four  
20 provisional ballots should have been accepted.

21 That's your issue; were they residents, were  
22 they registered. We know they weren't in the poll book.  
23 And you are going to have to decide whether that  
24 technical error should have been ignored and they should



1 have been accepted. All this other stuff is just stuff.

2 MR. DONOVAN: We have said all we're  
3 going to say about this. We have, obviously preserved  
4 our objection. We proffered to the Court what the  
5 testimony would be, why it is necessary and relevant.  
6 Given our objection and Mr. Carden's decision not to  
7 testify, all we can do to move to closing at this point.

8 MR. CARDEN: I would also like to point  
9 out that we do not have legal counsel representing us  
10 today or advising us today, which I believe you had have,  
11 but we don't.

12 MR. PREMACK: I think we should  
13 continuing moving forward.

14 MR. DONOVAN: We are resting our case  
15 in chief. However, we do want to note our request that  
16 the record in this case remain open until such time as a  
17 decision is rendered by the Court.

18 Obviously, this hearing is our opportunity to  
19 present live testimony under oath, and with the Court's  
20 ability to judge the credibility of that testimony in  
21 person.

22 However, there may be additional documents which  
23 would be admissible as records, public records, or  
24 admissible under other rules or concepts. We are not

1 really dealing with the rules of evidence here.

2           So Mr. Bailey and I are trying to work it out  
3 together, but the bottom line is, we do ask the Court to  
4 keep the record open for the submission of such  
5 additional evidence as may be necessary and appropriate.

6           MR. PREMACK: Mr. Bailey, do you have  
7 any objection to that?

8           MR. BAILEY: Well, the statute allows  
9 continuances from time to time to present evidence. I  
10 would absolutely preserve my objection to additional  
11 evidence coming in that I don't think is admissible, but  
12 if it's public record stuff, if it's public record, it  
13 probably is admissible.

14           But in other words, if there's e-mails from  
15 somebody and we don't have a witness to say whether or  
16 not that e-mail, whether they wrote it, I would object to  
17 anything like that.

18           Our hands are tied because you are the Tribunal.  
19 You decide what's admissible and what's not.

20           MR. PREMACK: Your bench memorandums  
21 are due Friday, close of business.

22           MR. BAILEY: I thank you. Because  
23 that's actually what I was going to follow-up on. I  
24 intend to abide by that.

1           We have asked the Court Reporter to provide us a  
2 transcript by Wednesday. I am certainly going to meet  
3 that deadline. I'm going to present the evidence that  
4 was presented today and give it to you.

5           MR. DONOVAN: My only response to that  
6 is, just to clarify for everyone, our bench memorandums  
7 were actually due yesterday. We did not receive one from  
8 Mr. Bailey.

9           What's actually due next week is findings of  
10 fact and conclusions of law.

11           MR. BAILEY: Yes. I choose not to.

12           MR. PREMACK: I would like us to be  
13 able to reserve the right to confer with our Counsel and  
14 determine if, or at which point, we would like to close  
15 that window to submit additional evidence, and until such  
16 time, leave it open.

17           That may be decided fairly soon that it be  
18 closed, but I think it's in our interest to preserve that  
19 right, but not to close the window, just because we don't  
20 want to make any missteps, but not leave it open ended,  
21 on the same token, not to make any mistakes.

22           MR. DONOVAN: With that, we do rest our  
23 case.

24           MR. BAILEY: Proceed to closing?

1                   MAYOR BISHOP: Yes.

2                   MR. BAILEY: Again, thank you all for  
3 your attention today on a Saturday.

4                   This is a really critical issue. You know, the  
5 right to free elections, fair elections these are  
6 significant rights, and sitting here today, you are  
7 judging whether or not to protect the rights of the  
8 citizens that you represent.

9                   These are folks you live with. This is Linda  
10 and George McCarty who sat here and told you she has  
11 voted in every election since from a very young age -- I  
12 don't remember -- 21. Thank you.

13                   You ought to use your position as governing body  
14 members to protect your citizens' very important right to  
15 vote, and you don't have to jump over a bunch of hurdles  
16 or do back flips to do so. 3-141(e) tells you if a voter  
17 isn't in your poll book due to a technical error,  
18 omission, a mistake, you may disregard it and accept the  
19 provisional ballot, if it's readily ascertainable.

20                   These folks have shown you they live on  
21 Washington Street. They clearly are residents in your  
22 town. They are your neighbors. They did their civic  
23 duty, and went and registered to vote. They did their  
24 civic duty by showing up here to cast a vote. And the

1 reason they were denied is because of a bureaucratic  
2 nightmare; DMV, Post Office addresses.

3           Are you going to deny your citizens the right to  
4 vote based on these kind of bureaucracies or are you  
5 going to protect them from those kind of governmental  
6 impediments; what are you going to do? Do you want your  
7 legacy to be that we care about our citizens and we  
8 respect their rights, and we are going to do everything  
9 we can to protect those rights or are you going to do  
10 exactly what I predicted at the beginning of this case,  
11 which is talk about Facebook accounts and where somebody  
12 lived, stuff that is not even at issue.

13           You would have to twist the facts every which  
14 way to come to the conclusion that they didn't live on  
15 Washington Street the day they registered, and they  
16 didn't live on Washington Street the day they came in  
17 here to try to cast their vote. And to the extent that  
18 you're going to blame Mr. and Mrs. McCarty that they  
19 didn't back to the DMV and fight with them for the sixth  
20 time to get it straight, in fact, they did. God bless  
21 them, they actually went back and got it straight, but  
22 they didn't do it before they cast their ballot, or they  
23 should have known that when they get a precinct card that  
24 says Precinct 15, that puts them on notice somehow that

1 they are not in the Harpers Ferry Poll Book is  
2 ridiculous. I don't know that. I wouldn't be able to  
3 tell you what a precinct number was. I suggest most  
4 people in this room wouldn't know what that stands for.  
5 This is a governmental nightmare, bureaucracy, and you  
6 ought not penalize your own citizens and neighbor. You  
7 ought to protect them from it and you have the right to  
8 do it. The law is on your side. You don't have to twist  
9 the law 15 different ways to grant their provisional  
10 ballot. You do have to strain your interpretation and  
11 really try to find, oh, we got you on this one. That's  
12 what they do at the DMV. Don't be the DMV. Be the  
13 governing body of Harpers Ferry. Protect your citizens  
14 and make sure every vote counts. Count the votes. Thank  
15 you.

16 MR. RITCHIE: Members of the Government  
17 governing body, I appreciate and I understand  
18 Mr. Bailey's energy and his emotion, but here, the law  
19 does not require gymnastics. The law is straightforward.

20 A ballot cast in a municipal election shall not  
21 be counted where the voter is not properly registered to  
22 vote in the municipality.

23 Under the West Virginia Code, they use the  
24 phrase "duly registered" and that is the location applied

1 to the Municipal Supreme Board of Appeals has determined  
2 a duly registered voter, quote, "must be registered and  
3 cast his or her ballot the municipal precinct in which he  
4 or she resides."

5           As you have heard, evidence demonstrates that  
6 the provisional voters -- that were not in the Harpers  
7 Ferry Poll Book, that is the official voter registration  
8 records under law for the Corporation of Harpers Ferry.  
9 Of course, voter registration requirements exist for a  
10 reason. They are critical safeguards to prevent fraud  
11 and manipulation of elections.

12           Although not completely foolproof, a uniform  
13 registration imposed by state law and adopted by this  
14 town serves these purposes. Imagine if voter  
15 registration requirements were not in force.

16           Imagine what could happen if people could swing  
17 into town for a short time, sleep over at a friend of  
18 family member's house, and show up to vote, knowing they  
19 could assert these facts later in a contest, but you  
20 won't need to imagine it.

21           We go along with how my friends at other's  
22 houses blames bad registration, no problems. Mistaken  
23 registration, it's okay. No registration, just vote  
24 anyway. Maybe, just maybe, some outside interest will

1 pay to buy anyone who stands in your way.

2           And let's talk about the one vote, the one  
3 ballot that was dropped today, Jamie Newhoff, from this  
4 contest. Mr. Bailey is not trying to count this one  
5 because, apparently, as Mr. Bailey indicated, she was  
6 registered to vote in Berkeley County. He didn't say she  
7 doesn't live here. He said she is registered over there.  
8 What's the problem with that? Isn't that just a clerical  
9 error, but that's a problem. Which is it?

10           We think the law is the law. Lucky for us,  
11 we're a nation of laws. And under the facts presented  
12 here today, the law, as it is, requires the Town Council  
13 to reject the election contest challenge in full. Thank  
14 you.

15                           MR. BAILEY: Just briefly, rebuttal.

16           There is a difference between the Newhoff issue  
17 and the other four voters are she didn't do what she was  
18 supposed to do. She didn't re register in Jefferson  
19 County. She was still registered in Berkeley. She  
20 didn't change it, and that's why we dropped it. That's  
21 why she is different than the other four voters, because  
22 we do respect the law.

23           The law is there to protect your citizens. It's  
24 definitely to stop voter fraud, but ask yourselves this



1 question, under the law, and you have the right to ignore  
2 technical errors like this: Linda and George McCarty,  
3 were they instigating voter fraud when they showed up  
4 here to cast their ballot. Was Adam Hutton? Was Leah  
5 Howell? She was a candidate, by the way. No, there was  
6 no voter fraud.

7           You can follow the law. You should follow the  
8 law. The laws are important, but they are there to  
9 protect your citizens, not to use the law, turn it upside  
10 down on its head so that you can deprive your citizens  
11 and your neighbors of their right to vote.

12           It's your legacy that you're going to leave.  
13 You are sending a message to the citizens that you  
14 represent and I'll just leave you with this, as far as  
15 consistency under the law. You may want to look at the  
16 minutes from June 17, 2013, where the Town Council  
17 sitting there considered two provisional ballots because  
18 the names of the voters were not in the poll book. This  
19 is in your minutes. Ms. Thompson made a motion to accept  
20 both provisional ballots, even though their names weren't  
21 in the poll book, probably because she knew they were  
22 citizens and it was accepted.

23           Be consistent. Protect your citizens. Do the  
24 right thing. Thank you.

1                   MAYOR BISHOP: Mr. Bailey, were you the  
2 attorney during that election that you just talked about?

3                   MR. BAILEY: The Town Council, I was  
4 probably a town attorney. I can tell you I have never,  
5 as town attorney, been asked a question about an  
6 election. I have never given legal advice on Councils'  
7 elections.

8                   MAYOR BISHOP: Anything else?

9                   MR. BAILEY: No. I think that's it.  
10 Thank you.

11                   MAYOR BISHOP: Okay. This proceeding  
12 is adjourned.

13                                   - - - -

14                   (Whereupon, the hearing was hereby adjourned at  
15                                   1:00 p.m.)

16                                   - - - -

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COURT REPORTER'S CERTIFICATION

I, JACKIE SMITH, Court Reporter and Notary Public for the State of WEST VIRGINIA, do certify that the foregoing hearing testimony was duly taken by me stenographically at the time and place, and for the purpose therein mentioned and that same was accurately transcribed to the best of my ability, and I further certify that I am not interested in the result of said litigation, either directly or indirectly.

Given under my hand this 24th day of August, 2019.

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JACKIE SMITH  
Court Reporter and Notary Public