

VIRGINIA :

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

MARIA E. MARTIN,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 23006189-00
)	
NIKKI R. BALDWIN,)	
)	
Respondent.)	

PRELIMINARY RECOUNT ORDER

This matter is before the Court on the Petition for Recount filed on July 6th, 2023, by Maria E. Martin, Petitioner, as to the Republic primary election held on June 20th, 2023, for the Twenty-Ninth Senate District of Virginia. In accordance with Virginia Code § 24.2-802(B), the Court convened a preliminary hearing on July 13th, 2023, whereat the Court set various preliminary procedures which were subject to review of the entire Recount Court.

Therefore, the full Recount Court being duly designated by the Chief Justice of the Supreme Court of Virginia on July 12th, 2023, this Court does preliminarily

ADJUDGE, ORDER, and DECREE as follows:

1. All voting machine keys, poll books, statements of results, printed return sheets, print-out tapes produced by computers or other machines, ballots, notes from both the canvass and the provisional ballots meetings, and other election records or materials (the "Materials") used or produced in connection with the June 20th, 2023, primary election for the Republican party nomination for the Twenty-Ninth Senate District of Virginia seat (the "Election"), previously delivered to the Clerks of the Circuit Courts of Stafford and Prince William Counties, shall remain in the safekeeping of the Clerks, and the Clerks shall ensure that the materials remain secure and

undisturbed, except as otherwise provided in this Recount Order. All voting equipment used in the Election shall remain secure and undisturbed in the location where presently situated, and the Electoral Boards for the Counties of Stafford and Prince William shall continue to ensure the security of the equipment until released pursuant to the terms of this Recount Order.

2. To the extent not already done, pursuant to Va. Code § 24.2-668, the Clerks are ordered to: (a) secure all paper ballots and other election materials in sealed boxes (closing and sealing all openings to the boxes); (b) place all boxes in a vault or other room not open to the public or anyone other than the Clerk and their staff; (c) cause such vault or room to be securely locked at all times, except when access is necessary for the Clerk and their staff; (d) implement all other security measures, if any, taken by the Clerk with respect to trial evidence; and (e) certify in writing to this Court (i) the security measures taken by the Clerk following the Election through the date of this Preliminary Recount Order and (ii) any additional security measures taken pursuant to this Preliminary Recount Order. The Clerks shall provide the required certification to this Court by no later than 5:00 PM on July 18th, 2023. If any Clerk departed from the foregoing procedures before the entry of this Recount Order, then that Clerk shall so inform this Court in writing, explaining the nature of such departure, by no later than 5:00 PM on July 18th, 2023, via email transmission. Upon receipt of the certifications required by this paragraph, the Clerk of this Court shall immediately email the certifications to the parties.

3. On July 18th, 2023, the Clerk of Stafford County shall, while safeguarding the Materials in an unbroken chain of custody supervised by the Stafford County Sheriff, deliver the Materials to the Clerk of Prince William County. The Clerk of Prince William County shall continue to ensure the security of the Materials until releasing them to the General Registrar of Prince William County who shall continue to ensure the security of the Materials thereafter. The

Clerk of Prince William County shall thereafter secure such Materials as required in paragraph 2, above, *mutatis mutandis*.

4. Recount Teams shall be composed of one Recount Official nominated by each Candidate. There shall be one Team to count the ballots from Stafford County and there shall be two Teams to count the ballots from Prince William County. The recount shall be supervised by the General Registrars of Prince William County and Stafford County. Such Recount Officials shall be as follows, subject to removal for good cause shown:

- Stafford Team:
 - Walter Lamb (for Nikki R. Baldwin)
 - Lyn Sherman (for Maria E. Martin)
- Prince William Team 1
 - Monica Boon (for Nikki R. Baldwin)
 - Reem Nouri (for Maria E. Martin)
- Prince William Team 2
 - Sandra Lawrie (for Nikki R. Baldwin)
 - John (Jack) Kapp (for Maria E. Martin)

The Alternate Recount Officials shall be as follows:

- Mahesh Patel (for Nikki R. Baldwin)
- Patricia McManus (for Maria E. Martin)

5. The General Registrars and Recount Officials shall be Officers of this Court acting under its jurisdiction during the pendency of this proceeding. Nothing contained in this Preliminary Order or in the procedures to be established for the recount shall be construed, however, to prevent

the Parties or their representatives from communicating directly the General Registrars or their legal counsel, if any.

6. There is a hearing, with the full Recount Court, docketed on July 19th, 2023, at 2 P.M. whereat all motions shall be disposed of and the rules of procedure shall be fixed finally, and the Court shall issue a written order setting out such rules of procedure

7. The Recount Officials and the Alternate Recount Officials shall attend the recount training on July 18th, 2023, at 2 P.M. at the office of the General Registrar of Prince William County.

8. The Clerk of this Court is authorized and directed to issue the necessary summonses to compel the attendance of the Recount Officials and Alternate Recount Officials chosen by the Parties to appear at 9:00 a.m. on July 20th, 2023, at the office of the Clerk of the Circuit Court to receive such instructions and take such oaths as the Court may prescribe, and to commence the recount and redetermination of the vote. The summonses shall be on forms prescribed by this Court and shall be issued by the Clerk, who shall mail them directly to the Recount Officials and Alternate Recount Officials. The Parties are directed to cooperate with the Clerk in completing the summonses, providing address labels, and providing such other assistance as is necessary to expedite the mailing of the summonses.

9. Each Party is entitled to have present in the same room as the recount, one Recount Observer for each Recount Team. The Parties may each appoint Persons who shall qualify as Observers by submitting to the General Registrars a statement, signed by a representative of or counsel for a Party, giving the person's name and authorizing him or her to represent the candidate as an Observer. To provide necessary relief, the Parties may rotate Recount Observers so long as such rotation is at reasonable intervals. A photocopy authorization form shall suffice. Not later

than 5:00 p.m. on July 19th, 2023, the candidates shall exchange with one another and lodge with the Clerk the form of their respective authorization statements that will constitute the credentials of the Recount Observers. The Recount Observers shall have an unobstructed view of the work of the recount officials and may stand behind or sit to the outside of the recount officials as they work and may only watch and take notes. If a Recount Observer has a question, s/he should direct it to the supervising General Registrar. The Recount Observers shall have the right to communicate with their respective campaigns or legal counsel from the room(s) in which the recount is being conducted but such communication may take place only via email or text message. The parties or their representatives are prohibited from interfering with the members of the recount teams in any way, from challenging ballots, or from suggesting or instructing that ballot be challenged.

10. Neither party nor the representative of either party (including political parties and campaign committees) may undertake any in-person, telephonic, or electronic training of any Recount Official or Alternate Recount Official in their duties. No written communications from a party or his representative to any Recount Official or Alternate Recount Official, may be made *ex parte*, and any such written communication shall be simultaneously served on all counsel for the opposing party and filed with the Clerk (except that communications addressing only time and place of the recount, time and place of training offered by the Electoral Board, the availability to serve and similar administrative matter are not subject to this paragraph).

11. Pursuant Va. Code § 24.2-802.1(A), no person shall knowingly possess any firearm as defined in § 18.2-308.2:2 within 40 feet of any building or part thereof used as the place for the recount, unless such person is (a) any law-enforcement officer or any retired law-enforcement officer qualified pursuant to subsection C of § 18.2-308.016; (b) occupying his own private

property that falls within 40 feet of a polling place; or (c) an armed security officer, licensed pursuant to Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1, whose employment or performance of his duties occurs within 40 feet of any building, or part thereof, used as a place for the recount.

12. Pursuant Va. Code § 24.2-802.2(D)(1), the Recount Officials shall hand count any paper, non-scannable, ballots using the standards as promulgated by the State Board of Elections.

13. Pursuant to Virginia Code § 24.2-802.2(D)(2), for ballot scanner machines, the General Registrars shall cause the scanners to be programmed to count only the ballots cast in this Election for the above Parties and to set aside any ballots containing a write-in candidate, overvotes, and undervotes.

14. The General Registrars from each County shall select the type of ballot scanning machine, as they determine most appropriate, being either an optical scan tabulator or high-speed scanner. The programming of such scanner shall comply with the directives of this Order. For any write-in vote, undervote, or overvote, the Recount Officials shall set said vote aside. Such set aside votes, as well as any ballots not accepted by the scanner or any ballot for which a scanner could not be adequately programmed to count, shall be hand counted under the standards so promulgated by the Department of Elections.

15. The General Registrars shall ensure that logic and accuracy testing has been successfully performed on each scanner, after applicable programming but before 9A.M. July 20th, 2023, and the General Registrar shall certify to the Court that such logic and accuracy testing was done and was done to that General Registrar's satisfaction.

16. The recount of ballots cast and redetermination of the vote in the Election shall take place in a facility provided or arranged by the Clerk of this Circuit Court, beginning at 9:00 a.m.

on July 20, 2023, and continuing until it is completed. The facility provided or arranged by the Clerk shall be of sufficient size for the purposes of the recount and redetermination and shall allow for direct and proximate observation of the Recount Officials by the Recount Observers.

17. The recount shall begin on the date specified by this Preliminary Recount Order, as soon as the recount officials have taken their oaths and received their instructions and shall continue without interruption (except one hour for lunch) until completed. Should the recount require more than a single day, the recount shall cease 5 P.M. The Clerk of the Court shall then secure the recount area such that no individuals other than the securing agent of the Clerk may access the area. The recount shall resume at 9 A.M. the following day, and such procedure shall continue until the recount process is completed. At the conclusion of recount activities, all Election and recount Materials shall be delivered to the Clerk of this Circuit Court who shall secure them overnight using the security measures mandated in this Recount Order and shall deliver them to the Recount Court on the date set for its hearing in paragraph 23.

18. The recount shall be conducted according to the procedures and instructions contained in this Preliminary Recount Order. Additionally, to the extent not inconsistent with the provisions of this Recount Order, the recount shall be conducted in accordance with the State Board of Elections' *Virginia Election Recounts, Step-by-Step Instructions* and its *Ballot Examples for Handcounting Paper or Paper-based Ballots for Virginia Elections or Recounts* (both of which documents are, by this reference, incorporated into this Preliminary Recount Order). Once the recount scanners have been turned on and initialized on the morning of the recount, all machine-printed tapes or records shall remain intact and continuous until the conclusion of each precinct's recount. At the conclusion of each precinct's recount, the machine-printed tape shall be removed and a new memory card shall be inserted into the scanner. Under the direction of the General

Registrars, the Recount Teams shall run all optical scan ballots cast in the Election through the scanners. The ballots that are set aside, any ballots not accepted by the scanner, and any ballots for which a scanner could not be programmed to meet the requirements of this Preliminary Recount Order shall be hand-counted using the standards promulgated by the State Board of Election in its publication *Ballot Examples for Handcounting Paper or Paper-based Ballots for Virginia Elections or Recounts*.

20. The recount and redetermination of the vote shall consider only votes cast in the Election. It shall neither (a) include ballots not cast in the Election, including absentee or provisional ballots not counted by decision of either the Stafford County or Prince William County Electoral Boards, nor (b) exclude ballots cast in the Election. The recount and redetermination shall not take into account (i) any absentee ballots or provisional ballots sought to be cast but ruled invalid and not cast in the Election; (ii) ballots cast only for administrative or test purposes and voided by the officers of the Election; or (iii) ballots spoiled by a voter and replaced with a new ballot. There shall be only one redetermination of the vote in each precinct, and the eligibility of any voter to have voted shall not be an issue in this proceeding.

21. During the recount, the Parties may be present as well as any legal counsel, if any. However, there shall be no photographs taken, nor any audio or visual recording of any manner while the recount proceeds. At no point shall the Parties or Observers communicate with the Recount Officials. There shall be no other persons present at the recount other than those expressly allowed under this Order, the member Judges of the Recount Court and their staff, the General Registrars and their staff, and the Clerk of the Court and her staff.

22. At the conclusion of the recount, the General Registrars, with the concurrence of the Recount Officials, shall write down the number of valid ballots cast for each candidate and

shall submit the result to the Special Three-Judge Recount Court. The Recount Court shall supervise the recount and redetermination of the vote, with assistance from the Prince William County Electoral Board and, after allowing the parties to inspect challenged ballots and after determining all matters pertinent to the recount and redetermination of the vote, the Special Three-Judge Recount Court shall certify to the State Board of Elections and the Stafford and Prince William Counties Electoral Boards, the results of the recount.

23. Upon a written statement of any one Recount Official challenging a ballot, the said ballot shall be submitted to the Court for determination. However, no challenge may be raised after the conclusion of the recount, pursuant Va. Code § 24.2-802.2.

24. The Recount Court shall convene on July 21st, 2023, at 10:30 A.M. or as soon thereafter as may be, for the purpose of determining all matters raised by the Parties pertaining to the recount and redetermination of the vote, to certify the vote for each candidate to the recount, and to declare the person who received the higher number of votes to be elected.


25. Recount team members (not to include the General Registrars, General Registrars' staff, or any Electoral Board member) shall be paid at the rate of \$15 per hour.

26. Stafford and Prince William Counties shall pay the costs of conducting the recount from their fiscal year 2023 general funds.

27. The Clerk is directed immediately to send a copy of this Recount Order to the Registrars and Electoral Boards of the Counties of Stafford and Prince William.

IT IS SO ORDERED, SUBJECT TO THE RECOUNT COURT.

Entered this 17th day of July, 2023.


The Honorable Kimberly A. Irving,
Chief Judge, Thirty-First Judicial Circuit