IN THE SUPREME COURT OF MISSISSIPPI

NO. 2020-EC-00257-SCT

LUTHER GENE FOLSON, JR.

v.

MARK D. FULCO

DATE OF JUDGMENT:	02/06/2020
TRIAL JUDGE:	HON. JEFF WEILL, SR.
TRIAL COURT ATTORNEYS:	WILLIE GRIFFIN KENT E. SMITH THOMAS A. WALLER
COURT FROM WHICH APPEALED:	YALOBUSHA COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	WILLIE GRIFFIN
ATTORNEYS FOR APPELLEE:	KENT E. SMITH THOMAS A. WALLER
NATURE OF THE CASE:	CIVIL - ELECTION CONTEST
DISPOSITION:	ON DIRECT APPEAL: AFFIRMED. ON CROSS-APPEAL: AFFIRMED - 11/05/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE KITCHENS, P.J., BEAM AND ISHEE, JJ.

KITCHENS, PRESIDING JUSTICE, FOR THE COURT:

¶1. Before the Court are a direct appeal and a cross-appeal concerning the 2019 general election for sheriff of Yalobusha County. Mark D. Fulco was declared the winner by a margin of two votes. Luther Gene Folson, Jr., contested the election. The trial court ordered that a special election be held because the commingling of four illegal absentee votes with legal absentee votes had made it impossible to discern the will of the voters. Folson appeals the trial court's order. This case is under expedited review. Order, ***Folson v. Fulco***, No.

2020-EC-00257-SCT (Miss. May 1, 2020); *see also* ***Waters v. Gnemi***, 907 So. 2d 307, 316 (Miss. 2005) ("[E]lection contests (both primary and general) are by their very nature required to be put on a 'fast-track' by both election officials and the courts.").

¶2. The issue on direct appeal is not whether there were illegal votes; rather the issue is whether a special election is the appropriate remedy. On cross-appeal, the issue is whether newly registered voters who had not voted in the general election should be allowed to vote in the court-ordered special election.

¶3. The trial court appropriately ordered a special election after determining that the will of the voters could not be ascertained. Fulco's cross-appeal is without merit because Mississippi law allows an elector to vote in any election as long as the elector satisfies the necessary voting requirements. Thus, we affirm the trial court's decision.

FACTS

¶4. On November 5, 2019, the general election for the office of sheriff of Yalobusha County was held. After the votes were tallied by the Yalobusha County Election Commission (YCEC), the YCEC declared Fulco the winner by a margin of two votes. The YCEC certified that Fulco had received a total of 2,569 votes to Folson's total of 2,567 votes.

¶5. On November 25, 2019, Folson filed a petition to contest the election in the Yalobusha County Circuit Court. Folson claimed that multiple absentee vote violations had occurred and that, but for those violations, he would have won the election. This Court appointed a special circuit judge to preside over the election contest.

¶6. The parties stipulated the following facts:

1. In Beat 1, North, one absentee ballot should have been rejected because the elector did not sign his ballot envelope or his application for absentee electors ballot, and this ballot was commingled with other legally cast ballots in that precinct.

2. In Beat 1, North, one elector voted absentee and in person, meaning two votes were counted for this elector. "Her absentee ballot should have been rejected but was instead counted and was commingled with the other legal absentee ballots."

3. In Beat 4, Oakland precinct, two absentee ballots should have been rejected due to the elector's [sic] failure to sign their applications for absentee ballots, and those ballots "were commingled with the total of 29 absentee ballots cast in that precinct."

4. In Beat 5, Coffeeville, one absentee ballot, which clearly indicated a vote for Fulco, was rejected when it should have been accepted and included in Fulco's total number of votes.

5. In Beat 4, Coffeeville, "none of the 25 absentee voters' names were written into the Voter Receipt Book as required by statute."

¶7. Both parties moved for summary judgment.[1] Fulco's motion for summary judgment acknowledged that illegal votes were cast and that (1) the two illegal votes from Beat 1, North, should be subtracted from Fulco's total of votes from this precinct and (2) that "all of the Beat Four[,] Oakland[,] absentee ballots should be declared void" and those votes should be subtracted from the corresponding candidate. Folson averred that he was entitled to summary judgment because there was no dispute that illegal absentee ballots were indeed counted and that the illegal ballots "should be subtracted from the total votes cast for each party and the election determined from the remaining ballots at each precinct."

[1]"Summary judgment is an appropriate procedural device capable of being utilized in election disputes." ***James v. Westbrooks***, 275 So. 3d 62, 67 (Miss. 2019) (internal quotation marks omitted) (quoting ***Rush v. Ivy***, 853 So. 2d 1226, 1229 (Miss. 2003)).

¶8. In response, on January 23, 2020, the trial judge sent an email to both parties asking "what is the remedy concerning the other legal absentee ballots with which they [one or more illegal ballots] were intermingled and counted?" Fulco argued that the appropriate remedy was to use "the rule of proportional deduction (pro-rata)," which "is a mathematical calculation wherein the number of illegal votes from each precinct must be deducted in direct proportion to the ratio of votes each candidate received in the entire precinct."[2] According to Fulco, if this method were used, "both candidates would lose two (2) votes each," and he "would still win the election by two (2) votes." Folson responded that the appropriate remedy would be for the trial court to disqualify all of the votes from Beat 1, North, and Beat 4, Oakland, because the illegal votes from those precincts were commingled with the remaining legal votes, making it impossible to distinguish the legal votes from the illegal votes.

¶9. On January 27, 2020, a bench trial and motion hearing occurred. The trial judge ordered the absentee ballots for Beat 1, North, and Beat 4, Oakland, to be tallied in the courtroom. A total of eighty-two absentee ballots had been cast in Beat 1, North: fifty-one for Fulco, twenty-eight for Folson, two no votes, and one write-in. For Beat 4, Oakland, a total of twenty-nine absentee ballots were cast: twelve for Fulco and seventeen for Folson.

¶10. "After reviewing the motions, stipulations, hearing testimony of the Circuit Clerk and arguments of counsel," the trial judge made the following ruling:

> A. As for Beat 5, Coffeeville[,] the [c]ourt finds that the one rejected ballot should in fact be counted for Mr. Fulco and so orders same. The

[2]This rule derives from a 1948 Arizona case, ***Grounds v. Lawe***, 193 P.2d 447, 541-53 (Ariz. 1948), and it has not been adopted by this Court.

count of said ballot will increase Mr. Fulco's total by one vote in the results counted in the Beat 5, Coffeeville[,] precinct.

B. As for Beat 4, Coffeeville[,] the [c]ourt finds that the 25 absentee votes not recorded in the Voter Receipt Book should remain as valid ballots, in that the statute requiring the same was directory not mandatory in nature, and that no prejudice resulted. The irregularity was "not intended to affect the integrity of the election." ***Thompson v. Jones***, 17 So. 3d 524, 526 (Miss. 2008).

C. In Beat 1, North[,] and in Beat 4, Oakland[,] the [c]ourt finds that the four 'tainted' ballots which were commingled with the 107 remaining legal ballots did in fact taint those ballots, making it impossible to determine an accurate total of votes each candidate received in those precincts.

¶11. The trial judge disagreed with both parties' suggested remedies. The trial judge reasoned that Folson's suggestion was inappropriate because

> Mr. Fulco received 51 out of 79 counted absentee ballots, or 64.5%, in Beat 1, North. To throw out all those votes would totally disenfranchise those voters. This method would also disenfranchise the 29 absentee voters in Beat 4, Oakland. This would not only be unfair to those voters but would generate a lack of public confidence, if not distrust of the election process in Yalobusha County.

¶12. As for Fulco's suggested remedy, i.e., the pro rata method, the trial judge reasoned that "[w]hile attractive on its face because it does not disenfranchise scores of innocent voters, this mathematical calculation relies heavily on political guesswork, i.e., the court is asked to make political assumptions about the remaining untainted votes which this court is not equipped to do."

¶13. Instead, the trial judge conducted the two-pronged test set forth in ***Noxubee County Democratic Executive Committee v. Russell***, 443 So. 2d 1191 (Miss. 1983), and determined that it was "impossible to tell who legitimately actually won" and to "discern the will of the

voters" in this election, which was decided by a mere two votes. Thus, the"fair and just solution to the intermingling of the 4 tainted ballots within the absentee ballot pool in Beat 1, North[,] and Beat 4, Oakland[,] precincts is to order a new election, but only in those precincts, given that the will of the voters in those two precincts is impossible to determine." The trial court's final judgment was entered on February 6, 2020. Folson filed his notice of appeal on March 5, 2020.

¶14. On February 21, 2020, Fulco filed a motion for clarification, asking the trial court to "clarify its order and declare that the only voters that will be allowed to vote in the special election ordered for Beat 1[,] North Water Valley[,] and Beat 4[,] Oakland[,] shall be the voters that were duly registered and qualified to vote in the November 5, 2019 general election precincts." In response, Folson asserted that "pursuant to Mississippi law each person who registers to vote at least thirty (30) days prior to a special election is qualified to vote in the special election." The trial court denied Fulco's motion for clarification on March 20, 2020. Fulco's notice of appeal and/or cross-appeal was filed on April 17, 2020.

¶15. On direct appeal, Folson argues that the trial judge's ruling was erroneous and that the judge should have "declar[ed] Folson the winner as required by Miss. Code Ann. § 23-15-951" after deducting the invalidated absentee ballots from the Beat 1, North, and Beat 4, Oakland, precincts. Fulco contends that the will of the voters is at issue and that Mississippi case law demands that a special election be held.

¶16. On cross-appeal, Fulco argues that newly registered voters should not be allowed to vote in the upcoming special election because the special election is a continuation of the

general election and to allow postelection registrants to vote would be unfair to prior registered voters.

STANDARD OF REVIEW

¶17. "The standard of review in an election contest is de novo for all questions of law." ***Thompson v. Jones***, 17 So. 3d 524, 526 (Miss. 2008) (citing ***Sumner v. City of Como Democratic Exec. Comm.***, 972 So. 2d 616, 618 (Miss. 2008)). "This Court also reviews the finding of facts 'by a trial judge sitting without a jury for manifest error, including whether the findings were the product of prejudice, bias, or fraud, or manifestly against the weight of the credible evidence.'" ***Id.*** (quoting ***Young v. Stevens***, 968 So. 2d 1260, 1263 (Miss. 2007)). "[W]e review the circuit court's interpretation and application of the law de novo, and its findings of fact will not be reversed if supported by substantial evidence." ***Falkner v. Stubbs***, 121 So. 3d 899, 902 (Miss. 2013) (citing ***Davis v. Smith (In re Estate of Smith)***, 69 So. 3d 1, 4 (Miss. 2011)).

DISCUSSION

I. Direct Appeal

¶18. Folson raises one issue on appeal: Did the trial court err by ordering a special election instead of determining which candidate received the greatest number of legal votes in the election under Mississippi Code Section 23-15-951 (Rev. 2018)? To answer this question, this Court first must determine whether the trial court had the authority to order a special election. If so, we then must determine whether a special election was warranted in this case.

A. Did the trial court have the authority to order a special election?

¶19. Folson argues that the sole remedy authorized by Section 23-15-951 requires the trial court to determine which candidate received the most legal votes and to declare that candidate the winner. Folson's argument is two-fold.

¶20. First, Folson contends that the trial court's ordering a special election was a "misinterpretation or misapplication of the remedy authorized by Miss. Code Section 23-15-951." Section 23-15-951 states in relevant part:

> The court shall, at the first term, cause an issue to be made up and tried by a jury, and the verdict of the jury *shall find the person having the greatest number of legal votes at the election.* If the jury shall find against the person returned elected, the clerk shall issue a certificate thereof; and the person in whose favor the jury shall find shall be commissioned by the Governor, and shall qualify and enter upon the duties of his office.

Miss. Code Ann. § 23-15-951 (Rev. 2018) (emphasis added). According to Folson, the statute plainly and unambiguously states that, in general election contests, the issue to be decided by the jury is which candidate received the "greatest number of legal votes" in the election. Miss. Code Ann. § 23-15-951.

¶21. Second, Folson contends that the trial court "used a primary election standard to resolve a general election contest[.]" Folson relies on this Court's analysis in ***Waters***, 907 So. 2d 307, and in ***Ruhl v. Walton***, 955 So. 2d 279 (Miss. 2007).

¶22. In ***Waters***, which concerned a primary election contest, the Court observed that "[t]he statutes which govern primary election contests and the statutes which govern general election contests are altogether different creatures." ***Waters***, 907 So. 2d at 315. Folson argues that the Court's pronouncement that the two are "different creatures" established that the

"will of the voters" standard applies only in primary election contests, not in general election contests.

¶23. Folson relies on ***Ruhl*** to support his argument that trial courts in general election contests are required to certify and declare the person with the most legal votes the winner of the election. The issue in ***Ruhl*** was "[w]hether the trial court erred by ordering a special election rather than certifying Ruhl the winner of the . . . general election . . . after it determined that Ruhl received the greatest number of legal votes cast." ***Ruhl***, 955 So. 2d at 281. The Court held that

> [t]he mandatory statute was clearly violated. *Since individual voter intent was not the issue*, the illegality of the mail-in absentee ballots *dictated only one possible outcome*. The tabulation of legal votes favored Ruhl, 239–220. Therefore, the special judge appropriately granted Ruhl's motion for directed verdict, but then erred in ordering a special election. Ruhl received "the greatest number of legal votes at the election." Miss. Code Ann. Section 23-15-951 (Rev. 2001).

Id. at 283 (emphasis added). Folson asserts that, as in ***Ruhl***, it was possible for the trial court to determine that he had received the greatest number of legal votes by deducting the 107 absentee ballots cast in Beat 1, North, and in Beat 4, Oakland. Folson contends that since the court invalidated the 107[3] absentee ballots, "45 absentee votes should have been deducted from the 2,567 votes received by Folson" and "63 votes should have been deducted from the 2,570 votes received by Fulco[.]" If that were done, the total votes for each candidate would

[3]Folson claimed in his brief that "[t]he actual total of votes is 108," not 107 as found by the trial court. But Folson failed to explain where the additional vote came from. The record states that the total number of votes is 107. Without more from Folson disputing the record, this Court is bound by the record and must recognize that the total of absentee ballots from Beat 1, North, and Beat 4, Oakland, is 107.

be 2,522 for Folson and 2,507 for Fulco, which would mean that Folson had "received the greatest number of legal votes cast during the election."

¶24. We find Folson's argument to be without merit. First, while the statute does provide that the jury "shall find[4] the person having the greatest number of legal votes at the election[,]" the statute does not prohibit the trial court's ordering a special election. Miss. Code Ann. § 23-15-951. Also, Folson's reliance on ***Waters*** and ***Ruhl*** is misplaced.

¶25. The distinction drawn by the Court in ***Waters*** was simply to point out the procedural differences called for under each applicable statute. Folson's interpretation of ***Waters*** is erroneous also because the Court later mentioned the importance of "assur[ing] fairness and discern[ing] the will of the voters" in election contests and "preserving the integrity of the election process and assuring that the voices of innocent voters are heard." ***Waters***, 907 So. 2d at 316.

¶26. In ***Ruhl***, the Court stated explicitly that voter intent was not an issue because a "mandatory statute was clearly violated," and the trial court itself was able to ascertain how many of those illegal votes had been cast for each candidate. ***Ruhl***, 955 So. 2d at 280, 283. Different from ***Ruhl***, voter intent is at issue in the case at hand because of the commingling of illegal votes with legal votes, which made it impossible for the trial court to know for whom the illegal absentee ballots were cast.[5] In the absence of that essential information, the

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[4]In this context the verb *find* means to determine or ascertain. *Find*, The American Heritage Dictionary of the English Language (1981).

[5]Folson was not required to prove for whom the four illegal votes were cast, only that the ballots were illegal. *See* ***O'Neal v. Simpson***, 350 So. 2d 998, 1010-11 (Miss. 1977) ("And the contestant in making his proof cannot be allowed to place on the witness stand

trial court of necessity invalidated all 107 ballots from Beat 1, North, and Beat 4, Oakland. *See* ***Thompson***, 17 So. 3d at 528 ("[T]he stain of illegality bled from those 103 ballots onto the remaining 439 ballots tainting the entire lot. Thus, the trial judge could not possibly discern the will of the absentee voters."). Without the 107 absentee ballots, the result of this highly contested election changed, calling into question the preferences of the remaining legal voters. If it were possible to identify for whom the four illegal absentee ballots had been cast, it would be unnecessary to invalidate the votes of the 103 legal electors in this highly contested election; the will of the majority of voters still could be ascertained. *See* ***id.*** ("If the legal absentee ballots could be identified, the will of the voters might be discernable.").

¶27. This Court has reasoned that there is "no valid reason for ordering a new election in a primary election contest where a sufficient number of illegal votes are counted which would change the result, or leave it in doubt, and refusing to apply the same rule in a general election contest." ***O'Neal***, 350 So. 2d at 1011. Additionally, this Court clarified in ***Stringer v. Lucas***, 608 So. 2d 1351, 1358 (Miss. 1992), that the Court's inquiry does not stop after it has determined which candidate received the greatest number of legal votes. There also must be an inquiry into whether the election conformed to the will of the voters when a significant number of legal votes has been rejected or a significant number of illegal votes has been received. ***Id.*** This Court reaffirms that during any election contest in which the will of the voters is in doubt, the trial judge has the authority to order a special election if the situation

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the qualified voters and show by them for whom they voted.").

requires it. Thus, we find that the trial judge in this case did have authority to order the special election.

B. Was a special election warranted in this case?

¶28. This Court has held that

> [t]o prevail in an election challenge, the contestant must show that there were a sufficient number of illegal votes cast or legal votes not counted to change the result or to cast uncertainty upon the result so that the will of the voters cannot be ascertained before a new election can be ordered. ***O'Neal v. Simpson***, 350 So. 2d 998, 1012 (Miss. 1977). However, *whether the number of disqualified votes is sufficient to warrant a special election depends on the particular facts of the case*, specifically, the nature of the procedural requirements violated, the scope of the violations and the ratio of illegal votes to the total votes case [sic]. ***Rogers v. Holder***, 636 So. 2d 645, 650 (Miss. 1994). Even where the percentage of illegal votes is small, this Court will still order a new election if the illegal votes are attended by fraud or willful violations of the election statutes. ***Id.*** at 651.

Straughter v. Collins, 819 So. 2d 1244, 1249 (Miss. 2002) (emphasis added).

¶29. The trial court found that "there was no fraud or intentional malfeasance alleged or suggested in this election contest[.]" "Absent any allegation of fraud, this Court has relied on a two-part test in order to determine whether to throw out an entire election or to only discount the tainted votes." ***Harpole v. Kemper Cnty. Democratic Exec. Comm.***, 908 So. 2d 129, 138 (Miss. 2005) (citing ***Russell***, 443 So. 2d at 1197). The two-pronged ***Russell*** test requires:

> First, a special election would be called when "enough illegal votes were cast for the contestee to change the result of the election . . . ." ***Russell***, 443 So. 2d at 1197. Next, a special election would be called if "so many votes are disqualified that the will of the voters is impossible to discern." ***Id.***

Stringer, 608 So. 2d at 1357.

¶30. The first prong is satisfied here because the result of the election changed. Only four illegal absentee votes were identified in this election contest. Of the four, two were from Beat 1, North, and two were from Beat 4, Oakland. In Beat 1, North, one illegal vote resulted from an elector's failure to sign his application and ballot envelope, which is required by Mississippi law. *See* Miss. Code Ann. § 23-15-627 (Rev. 2018); *see also* Miss. Code Ann. § 23-15-633 (Rev. 2018). The other illegal vote from Beat 1, North, was due to an elector's having voted twice, once by absentee ballot and once in person.[6] In Beat 4, Oakland, both illegal absentee votes were caused by two electors' failure to sign their respective absentee ballot applications. Although only four illegal absentee votes existed, those invalid votes were commingled with the legal absentee votes in those two precincts, thereby invalidating all 107 ballots cast in those precincts. *See* ***Thompson***, 17 So. 3d at 527. In ***Thompson***, the Court determined that the entire lot of ballots was tainted and that it was impossible to discern the will of the voters because the legal absentee ballots could not be distinguished from the legal ones. ***Id.*** at 527-28. All 107 absentee ballots from Beat 1, North, and Beat 4, Oakland, were rightly invalidated by the trial judge. Without those 107 absentee ballots, the result of the election changes from being in Fulco's favor to being in Folson's favor.

¶31. The second prong is satisfied also because the will of the voters cannot be ascertained. Folson argues that the will of the voters still could be ascertained because 30 percent of the votes had not been disqualified. Folson's argument suggests that a special election can be

[6]Voting more than once in the same election is a crime under Mississippi Code Section 97-13-36 (Rev. 2014). The offense is punishable by up to five years in prison. *Id.*

ordered only when the amount of disqualified votes is 30 percent or more. But this is a misinterpretation by Folson. In ***Russell***, this Court said:

> The scope of the violations and the ratio of illegal votes are significant, because even in the absence of fraud, the *disenfranchisement of a significant number of voters will cast enough doubt on the results of an election to warrant voiding it.* As a rule, *if more than thirty percent of total votes have been disqualified, a special election will be required.*
>
> On the other hand, when the percentage of illegal votes is smaller, even though the winning margin is less than the number of illegal votes, a special election may not be required.

Russell, 443 So. 2d at 1198 (citations omitted) (emphasis added). The rule mandates that a special election be held when 30 percent or more of the total votes have been disqualified. But when the percentage is lower than 30 percent, the issue becomes discretionary because "disenfranchisement of a significant number of voters would cast enough doubt on the results of an election to warrant its nullity." ***Stringer***, 608 So. 2d at 1357.

¶32. In ***Pyron v. Joiner***, 381 So. 2d 627, 630 (Miss. 1980) (emphasis added), the Court held that a special election was not warranted because "the illegal votes cast were only 1.9% of the total votes cast . . . and . . . *the result was not changed nor was any doubt or uncertainty cast on the result being in conformity with the will of a majority of the voters*[.]" Thus, a low percentage of disqualified votes alone is not enough to grant a special election. But we find that, based on the language in ***Pyron***, a low percentage could be deemed significant enough to warrant a special election if considered in conjunction with the result of the election's being changed or doubts about whether the election conformed to the will of the voters.

¶33. The invalidated absentee votes from Beat 1, North, and Beat 4, Oakland, amounts to approximately 2.1 percent of the 5,136 total votes cast. Although the number of invalidated votes in this case is lower than 30 percent, the commingling of the illegal ballots with valid ones stymied the trial court's ability to discern the will of the voters. This was a vigorously contested election that was decided by two votes. Four illegal votes were commingled with the legal votes in the two precincts, which caused 107 votes to be invalidated. Of the eleven precincts in Yalobusha County, Beat 1, North, was the second largest precinct and Beat 4, Oakland, was the fourth largest in terms of total votes counted. In Beat 1, North, 804 votes were counted, of which seventy-nine were absentee votes. Thus, 9.8 percent of electors in Beat 1, North, were disenfranchised through no fault of their own. Additionally, 64.5 percent of the absentee votes cast in Beat 1, North, were in favor of Fulco. In Beat 4, Oakland, 616 votes were counted, of which twenty-nine were absentee votes. The invalidation of all twenty-nine absentee ballots from this precinct would disenfranchise 4.7 percent of electors in Beat 4, Oakland. We find that the small percentage in this case is significant because a substantial number of the disqualified absentee electors voted for Fulco, suggesting that the new result does not match the will of those voters and possibly does not match the will of the majority of voters because Fulco had been declared the original winner of the election. Therefore, the trial judge was correct to find that the will of the voters could not be ascertained.

¶34. When the 107 votes are discounted, 2.1 percent of voters are disenfranchised, which is an amount significant enough to warrant a special election because the outcome of the

election changed and questions arose concerning whether the new result matched the will of the voters. We cannot say that the trial court's findings were manifestly wrong in this particular case. Accordingly, this Court affirms the trial court's order of a special election.[7]

II. Cross-Appeal

A. Should newly registered electors be allowed to vote in the upcoming special election?

¶35. Also before the Court is Fulco's cross-appeal, in which he argues that the "trial court committed reversible error by denying [his] Motion for Clarification and allowing new voters to register and vote in the special election in the two (2) precincts which is merely a continuation of the November 5, 2019 election." Fulco's argument relies on the trial court's verbiage in its ruling: "this [s]pecial [e]lection is in only two (2) precincts and a *continuation* of the November 5, 2019 election with the same two (2) candidates . . . ." (Emphasis added.) Fulco argues that the special election is a continuation of the November 5, 2019, election and

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[7]This Court does not make this decision lightly as we have said that

> When deciding whether a special election is warranted, we recognize competing interests which must be weighed and balanced. While the voters are not parties to this contest, their interests are paramount. Special elections are a great expense for the county and its taxpayers. Beyond that, the turnout for a special election is never as great as when there are a number of candidates on the slate. By contrast, we feel that the rights of the individual candidates cannot be allowed to overshadow the public good.
>
> As far as the public good is concerned, the rights our law gives losing candidates to contest elections form a double edged sword. While they serve to prevent the fraudulent manipulation of the public will, they necessarily provide a way for the unsuccessful candidate to use innocent human errors to his own advantage, thereby winning a second chance.

Harpole, 908 So. 2d at 144 (quoting ***Russell***, 443 So. 2d at 1197).

the special election should be limited to the same registered voters who were eligible to vote in that election.

¶36. This Court finds that a special election is a new election; it is as if the November 5, 2019, election had not occurred in the two precincts. Mississippi Code Section 23-15-833 states that "[a]ll special elections, or elections to fill vacancies, shall in all respects be held, conducted and returned in the same manner as general elections[.]" Miss. Code Ann. § 23-15-833 (Rev. 2018). Additionally, Mississippi Code Section 23-15-11 sets forth the qualifications for registered voters in Mississippi and provides that a qualified elector "shall be entitled to vote at *any* election upon compliance with Section 23-15-563." Miss. Code Ann. § 23-15-11 (Rev. 2018) (emphasis added). Black's Law Dictionary defines *any* as "[s]ome; one out of many; an indefinite number. One indiscriminately of whatever kind or quantity." *Any*, Black's Law Dictionary (6th ed. 1990). The use of the word *any* in Section 23-15-11 signals that as long as the statute is satisfied, any qualified elector can vote in any election.[8] Thus, this Court finds that there are no restrictions on newly registered electors' voting in special elections, even when they did not vote in the first election, as long as Section 23-15-11 is satisfied.

¶37. Fulco argues also that "[i]f newly registered voters were allowed to vote, citizens would move to those precincts in order to affect the special election." We find Fulco's claim

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[8]Mississippi Code Section 23-15-801 has defined *election* to mean "a general, special, primary or runoff election." Miss. Code Ann. § 23-15-801(a) (Rev. 2018); *see also* ***Boyd v. Tishomingo Cnty. Democratic Exec. Comm.***, 912 So. 2d 124, 130 (Miss. 2005) ("Miss. Code Ann. § 23-15-801(a) (Rev. 2001) . . . further separat[es] a primary election from a runoff by definition. . . . Thus, we find that a second primary is not a continuation of the first.").

in this regard to be highly speculative and unsupported by evidence. Mississippi Code Section 23-15-13(1) (Rev. 2018) controls whether an elector can vote after moving into a new voting precinct. That statute requires that the elector

> shall not be disqualified to vote, but he or she shall be entitled to have his or her registration transferred to his or her new ward or voting precinct upon making written request therefor at any time up to thirty (30) days before the election at which he or she offers to vote, and if the removal occurs within thirty (30) days of such election he or she shall be entitled to vote in his or her new ward or voting precinct by affidavit ballot as provided in Section 23-15-573.

Miss. Code Ann. § 23-15-13(1). Thus, if a voter moves into Beat 1, North, or Beat 4, Oakland, he or she may vote in the special election if Section 23-15-13(1) is satisfied.

¶38. Accordingly, this Court finds that Fulco's cross-appeal is without merit, and we affirm the trial court's denial of Fulco's motion for clarification.

CONCLUSION

¶39. Because the 107 absentee ballots from Beat 1, North, and Beat 4, Oakland, were invalidated, the result of the election for sheriff of Yalobusha County changed, and the will of the voters no longer could be ascertained. Therefore, this Court finds that the trial judge was correct to order a special election in the two affected precincts instead of declaring a winner based on the legally cast votes. We find also that newly registered electors are allowed to participate in the upcoming special election if they meet all the necessary requirements.

¶40. **ON DIRECT APPEAL: AFFIRMED. ON CROSS-APPEAL: AFFIRMED.**

RANDOLPH, C.J., KING, P.J., MAXWELL, BEAM, CHAMBERLIN, ISHEE AND GRIFFIS, JJ., CONCUR. COLEMAN, J., NOT PARTICIPATING.