

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM SUMTER COUNTY  
Court of Common Pleas  
George M. McFaddin jr., Circuit Court Judge

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Case No. 2022-CP-43-01870

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Reginald Evans

Appellant,

v.

Sumter County Registration Election Board

Respondent,

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**INITIAL BRIEF OF APPELLANT**

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**RECEIVED**

**APR 04 2023**

**SC SUPREME COURT**

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## STATEMENT OF ISSUES ON APPEAL

1. The Circuit Court erred in its order that: The appeal from the decision, of the Sumter County Registration/Election Board concerning the election for School Board Area Nine is DISMISSED for lack of subject matter jurisdiction, of this Court.
2. The Circuit Court erred in its order that: The appeal from the decision of the Sumter County Registration/Election Board concerning the election for Sumter City Council District 1 is DISMISSED on its merits
3. The order is based on a wholly unsupported finding of the protest hearing
4. The Circuit Court and the Respondent violated the Appellant Due Process and Voter and Civil Rights.
5. The Circuit Court erred in concluding that Appellant did not raise any, claims regarding, merit of protest when the fairly apprised, any reader of defect
6. The Circuit Court erred in excluding evidence that was relevant and admissible

## STATEMENT OF THE CASE

The Appellant moved back to Sumter October 2021, after being released from a nursing home, recovering from open heart surgery and after an amputated right leg surgery. The Appellant contacted his City Councilmember about not getting a response from Sumter City staff on his request for streetlights, reduce speed limit and lack of code enforcement in the area. The City Councilmember told me the best thing to do is write a letter to the editor of the local newspaper.

The Appellant started in January 2021 writing a series of letters to the editor titled Sumter a tale of two cities. The letters pointed out that the City and County governments used local taxes and federal funds to improve the west section of the county, spending little to no federal funds to improve the condition of the east section of Sumter. The west side of Sumter City and County is heavy populated by the white citizens and middle class. The east side of Sumter County is heavily populated by minorities and poor citizens. The Appellant reviewed Sumter Comprehensive Plan 2040, 2020 and 2000 long term plans which did not include or had any desires nor any intention of spending public tax and federal funds to improve area where Black people and other minorities live.

The Appellant appeared a number of times before City and County Councils along with Sumter School District making requests and recommendations to improve the conditions of the east side of Sumter. The above would not act or even engage in conversation with the Appellant. The above took the recommendation and attempted to use them for the west side of Sumter.

The Appellant concluded that the best way to improve the condition of the east side of Sumter and the whole county would be to seek public office and establish a charter school for the poor and disadvantaged.

The Appellant filed complaints with the United States Department of Treasury concerning the use of federal funds in Sumter, South Carolina. The Appellant also filed a complaint with the United States Department of Justice on the irregularity and possible Voting Rights Act violations by Sumter City and County.

## STATEMENT OF FACTS

Unfortunately, South Carolina courts, and especially this Court, are no strangers to the frequently dysfunctional municipal election process. Thus, the Court will and should overturn election results where mandatory statutory provisions have been violated and those violations substantially affect the free and intelligent casting of a vote, the determination of the results, an essential element of the election, or the fundamental integrity of the election. The following facts of this case:

1. In 2010 Act #0321 of 2010) General Bill, By Senator Phil Leventis: and act to amend act 387 of 2008 consolidate Sumter School Districts 2 and 17.
2. Effective May 18, 2022 under Act #0262 of 2022) General Bill, By **J. David Weeks** and G.M. Smith and without Justice Department review Sumter School Board was increase from seven members to nine members.
3. On or around July of 2022 Appellant file as candidate for Ward One of Sumter City Council.
4. On or around August 2022 Appellant filed as candidate for Area Nine of Sumter School Board.
5. On or around September 9, 2022 the respondents printed the following statement in the local newspaper: " Sumter County Voter Registration and Elections director, on Monday. Delays and issues in Columbia with the state Election Commission, which is printing of all 46 counties' new cards, have caused the slowdown, she said. Due to redistricting every 10 years to account for population shifts after U.S. Census data are collected, new electoral lines must be drawn so districts can have the same number of people in each. That means a voter may be in a new district even without having moved."
6. On or around October 8, 2022 the following was printed in the local newspaper: "The attorney for Jehovah Missionary Baptist Church says the church does not endorse political candidates and its senior pastor was merely expressing his "personal views" when he referenced a group's flyer at a recent service. That flyer endorses nine Sumter school board candidates for the nine districts up for election Nov. 8, and attorney, **State Representative J. David Weeks** spoke Monday regarding an Oct. 9 church service where the Rev. Marion Newton is shown supporting the candidates during the services, which were recorded on YouTube. The election flyer was put together by a local group named Citizens for Progress that formed and was active in the spring when the full board was split 5-4 against renewing the contract of former superintendent Penelope Martin-Knox. The group was in support of keeping Martin-Knox."
7. On November 8, 2022 General Election

8. On November 10, 2022 Appellant filed a letter of protest under Section 5-15-130 of SC Code of law for Sumter City Council Ward One and Sumter School District Area Nine Election.
9. On November 19, 2022 the respondents printed the following statement in the local newspaper: "5 runoff elections Tuesday; eligible voters who live in districts to determine 4 seats on Sumter school board and city council Ward 1."
10. On November 21, 2022 at 2:03pm Appellant protest hearing was held before the Sumter Election Commission. The Commission denied the protest.
11. On November 21, 2022 Appellant filed a Notice of Appeal with the 3<sup>rd</sup> Circuit case number 2022CP4301870.
12. On November 22, 2022 Respondent conducts a runoff election for City Council Ward One.
13. This election appeal from the decision of the Sumter County Election Commission (formally identified as the Sumter County Registration/Election Board) came before the Third Circuit for hearing on January 6, 2023. T
14. On January 10, 2023 Sumter School District did the following: "In its initial action as a board after the installation, the trustees named the Rev. Ralph Canty their new chairman and Bonnie Disney as vice chairwoman at the first regularly scheduled board meeting of the new year at the Lakewood High School Fine Arts Center on Monday."
15. The School Board elects Bonnie Disney to be Vice Chairperson while her seat Area Nine was protested pending appeal.
16. The Third Circuit filed an Order Dismiss the appeal of both City Council Ward One and Sumter School District Area Nine appeal on January 11, 2023.
17. On January 17, 2023 the Appellant motion for reconsideration.
18. On the 7th day of February 2023, at Sumter, South Carolina, that "Plaintiff's SCRCF 59(e) motion shall be, and is, hereby denied. It is further ORDERED and DONE that this court declines to set and hold a hearing to address Plaintiff's motion."
19. On or around February 28, 2023 the Respondent had their voting machine repaired or reprogrammed after the election and prior to the November 2024 elections.
20. On March 8, 2023 the Appellant filed a Notice of Appeal with the South Carolina Supreme Court.

## STANDARD OF REVIEW

In municipal election cases, this Court reviews the judgment of the circuit court upholding or overturning the decision of a municipal election commission only to correct errors of law. *Broadhurst v. City of Myrtle Beach Election Comm'n*, 342 S.C. 373, 379, 537 S.E.2d 543, 545-46 (2000). This Court's review does not extend to findings of fact unless those findings are wholly unsupported by the evidence. *Id.*

This Court will employ every reasonable presumption to sustain a contested election and will not set aside an election due to mere irregularities or illegalities unless the result is changed or rendered doubtful. *Id.*

Thus, the Court will overturn election results where mandatory statutory provisions have been violated and those violations substantially affect the free and intelligent casting of a vote, the determination of the results, an essential element of the election, or the fundamental integrity of the election." *George v. Municipal Election Comm'n of the City of Charleston*, 335 S.C. 182, 187, 516 S.E.2d 206, 209 (1999); see also *Douan v. Charleston County Council*, 357 S.C. 601, 607, 594 S.E.2d 261, 264 (2003). "The Court ... will not sanction practices which circumvent the plain purposes of the law and open the door to fraud." *Id.* (quoting *May v. Wilson*, 199 S.C. 354, 360, 19 S.E.2d 467, 470 (1942)). Accordingly, the Court will set aside an election even for a mere irregularity if there is fraud, a constitutional violation or no statutory authority.

## ARGUMENT

The November 8, 2022, Sumter County Elections were not free, not fair, and not even in Sumter County. Whether through bias,6 inadvertence, or incompetence, the Respondent failed to properly inform the citizenry of Sumter County of the correct location to exercise its right to vote. Compounding this error, the Respondent also did not properly inform the public (and the candidates) of the correct location of its primary modes of redress for the Respondent's error: the challenged ballot hearing and the election protest hearing. The effect of this systemic failure in the election process and mechanisms that regulate it is a confused, nearly clandestine election With. a miniscule turnout in the runoff of those votes. Respondent's errors demand that this election be voided. The Circuit Court's order was based on reversible errors of law. The Circuit Court made an error of law when it limited its ruling to address only errors affecting the "results" of the election. While many election contests are properly decided along these lines, the Court erroneously failed to consider the Respondent's violation of mandatory statutory provisions which substantially affected the free and intelligent casting of votes, essential elements of the election, and the fundamental integrity of the election and erroneously upheld the election in spite of uncontroverted evidence that should have led it to overturn the results. A reviewing court will overturn election results where mandatory statutory provisions have been violated and those violations substantially. affect the free and intelligent casting of a vote, the determination of the results, an essential element of the election, or the fundamental integrity of the election. *George v. Municipal Election Comm'n of the City of Charleston*, 335 S.C. 182, 187,516 S.E.2d 206, 209 (1999); see also *Douan v. Charleston County Council*, 357 S.C. 601, 607, 594 S.E.2d 261, 264 (2003).

The Circuit Court failed to do this. Additionally, the Circuit Court failed to acknowledge that "[ w ]here there is a total disregard of the statute, the violation cannot be treated as an irregularity, but it must be held and adjudicated to be cause for declaring the election void and illegal." *Gecy v. Bagwell*, 372 S.C. 237, 242, 642 S.E.2d 569, 571 (2007) 7

**A. The Circuit Court erred in its order that: The appeal from the decision, of the Sumter County Registration/Election Board concerning the election for School Board Area Nine is DISMISSED for lack of subject, matter jurisdiction, of this Court.**

On December 15, 2022 the following was printed in the local newspaper: " State Election Commission Deputy Executive Director Chris Whitmire confirmed the process Tuesday with The Item and that no documentation of an appeal for the Sumter school board District 9 race was received by his agency. "Sumter heard really two different protests there - the municipal one and the school board one - but because of the nature of them the appeals have to go in two different directions," Whitmire said. "Municipal protests are set up to be heard by municipal election commissions, and in this case, that authority has been transferred to Sumter County. So, the commission heard that municipal protest. Municipal appeals go to circuit court or the court of common pleas. School board protests are always heard by county boards, and those appeals come to us.

In accordance with South Carolina Code of Law SECTION 7-17-260. Cases decided by state board, filing and service. **The state board shall decide all cases under protest or contest that may arise in the case of federal officers, state officers, members of the State Senate and the State House of Representatives, and offices involving more than one county.** Any such protest or contest shall be filed in writing with the chairman of the board, together with a copy for each candidate in the race, not later than noon five days following the canvassing of the votes for such offices by the board;

South Carolina Code of Law SECTION 7-17-270. **Hearing of protest or contest; procedure at hearing; notice of decision; appeals.** "The board shall remain in session until a conclusion has been reached. All candidates in the protested or contested race shall be immediately notified of the board's decisions.

Appeals from decisions of the state board shall be taken directly to the Supreme Court on petition for a writ of certiorari only based on the record of the state board hearing and shall be granted first priority of consideration by the Court.

The Appellant therefore request this honorable court to review and determine: 1. Was there two different protests - the municipal one and the school board one - but because of the nature of them the appeals have to go in two different directions, Municipal appeals go to circuit court or the court of common pleas. School board protests are always heard by county boards, and those appeals go to the State Election Commission? 2. Did the Respondent follow State election laws and The Voting Right Act? 3. Did the Respondent properly notify all candidates? 4. Did the Circuit have jurisdiction?

**B. The Circuit Court erred in its order that: The appeal from the decision of the Sumter County Registration/Election Board concerning the election for Sumter City Council District 1 is DISMISSED on its merits**

The Appellant request this honorable court to review the Certified Copy of Original Record of the Proceedings Before the Sumter County Registration/Election Board. The Court will find merit in the protest. A few examples: 1. That voter registration was not properly issued to voters. 2. All percents votes were not counted. 3. A recount should have been done.

**C. The Circuit Court and the Respondent violated the Appellant Due Process and Voter and Civil Rights:**

The Circuit Court failed to do this. Additionally, the Circuit Court failed to acknowledge that "[ w ]here there is a total disregard of the statute, the violation cannot be treated as an irregularity, but it must be held and adjudicated to be cause for declaring the election void and illegal." Gecy v. Bagwell, 372 S.C. 237, 242, 642 S.E.2d 569, 571 (2007). The Respondent went forward and had a runoff election for Sumter City Council Ward One and swore in the candidate for Sumter School District and elected the candidate vice chairperson of the school board while the election process was protested and on appeal.

## CONCLUSION

The errors of law and fact that control the Circuit Court's order, and the Respondent's order it affirms, are fatal to the integrity of this election. The Appellant asks this Court to reverse the decision of the Circuit Court, thus reversing the Respondent's decision and nullifying the November election and direct the Respondent to conduct a Special Election by date set by this honorable court. Grant the Appellant and all other candidates any and all other relief this honorable court deems.

Respectfully submitted.



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