

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

RECEIVED

Jun 09 2023

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

Honorable Debra R. McCaslin, Circuit Court Judge

Appellate Case No. 2023-000888

Case No. 2023-CP-26-01112

---

Michael Isom, .....Appellant,

v.

Town of Atlantic Beach Municipal Election Commission, .....Respondent.

---

MOTION TO EXPEDITE APPEAL

---

Pursuant to Rule 263(b), SCACR, Respondent Town of Atlantic Beach Municipal Election Commission (“the Commission”) respectfully requests an order expediting the above-captioned appeal, which arises from the May 12, 2023 circuit court order affirming the Order and Report of the Town of Atlantic Beach Election Commission that denied Appellant Michael Isom’s (“Appellant”) election protest and upheld the certified results of a special election declaring John W. David the winner of the special election.

**BACKGROUND AND PROCEDURAL HISTORY**

On January 17, 2023, the Town of Atlantic Beach held a special election for the position of councilmember, wherein Michael Isom, John David, and Lenny Evans were candidates. Because no candidate received a majority vote, a run-off election was held January 31, 2023. Following the results of the run-off election, the Commission held a provisional ballot and

canvassing hearing on February 2, 2023, wherein the validity of challenged ballots, including the ballot of John David, was decided. Josephine Isom, sitting councilmember and mother of Appellant, challenged Mr. David's ballot, among others, alleging that Mr. David was not a resident of the Town of Atlantic Beach. Both Ms. Isom and Mr. David testified at the hearing and presented documents to the Commission. The Commission voted on the challenged ballots and declared John David the winner.

Following the February 2, 2023 certification, Appellant filed a protest of election with the Commission. At a hearing held on February 6, 2023 concerning the protest, Appellant challenged the special election for similar reasons set forth by his mother, Josephine Isom, at the February 2, 2023 hearing. Appellant provided his mother as a witness, who did not provide testimony, but rather, relied upon the exhibits she presented at the February 2, 2023 provisional ballot and canvassing hearing. Subsequent to the protest hearing, the Commission denied Appellant's protest by Order and Report dated February 13, 2023. Appellant then filed a notice of appeal with the circuit court ten days later.

On May 12, 2023, the circuit court issued an order affirming the Commission's decision. Appellant filed a notice of appeal with this Court on June 2, 2023. The Commission now seeks to expedite this appeal in order to finalize this election, qualify an elected councilmember for the Town of Atlantic Beach, and effectuate the will of the voters.

### **GROUND FOR EXPEDITED APPEAL**

The Court's authority to control its own docket is recognized by rule and statute. Pursuant to Rule 263(b) of the South Carolina Appellate Court Rules, this Court has the ability to shorten the time prescribed for performing any act, excepting the requirements for service of the notice of appeal. South Carolina Code Section 14-3-610 further provides this Court with the authority to

hold additional terms or sessions as required by the public interest. S.C. Code Ann. § 14-3-610 (“The court may also hold such additional terms or sessions as the public interest may require . . . .”).

**I. This appeal involves matters of public interest.**

This Court has recognized that the determination of elections involves matters of public interest. For example, in *State ex rel. Harrelson v. Williams*, the Court addressed the issue of whether a nominee was qualified to be elected mayor where the nominee of a general election received a majority of votes but failed to present himself for registration and did not secure a municipal registration certificate. 157 S.C. 290, –, 154 S.E.2d 164, 165 (1930). The Attorney General’s office filed for a writ of mandamus with the Supreme Court, requesting the Court order a new election. *Id.* Respondents argued that the Court should refuse the writ because the proceeding was not one of public interest. *Id.* at –, 154 S.E. at 166. The Court disagreed:

The principles are vital and fundamental and are with reference to a matter which is the very basis of our government, to-wit, a valid and legal election . . . . It is a case falling within the principles laid down by this Court and followed generally in the matter of conduct of elections, and it is clearly the duty of this Court to declare the law in such matters.

*Id.*

Similarly, in *Breeden v. S.C. Democratic Executive Committee*, this Court held that the question of who was the nominee of a political party for the office of county auditor was a question of public interest that should be promptly decided. 226 S.C. 204, 208, 84 S.E.2d 723, 725 (1954). The Court further held that an action in circuit court would unduly delay final determination of the question, and accordingly, the Court held it had jurisdiction to hear the appeal. *Id.*

Here, the question concerning the validity of Mr. David’s ballot is one of public interest, which requires a prompt decision from this Court. *Cf. Adams v. McMaster*, 432 S.C. 225, 236, 851

S.E.2d 703, 708-09 (2020) (holding, in a challenge to a party's standing, that a resolution of the issue for future guidance was needed where the case involved the conduct of government entities and the expenditure of public funds, which required a prompt decision by the Supreme Court of South Carolina).

**II. This appeal should be expedited in accordance with the Court's previous granting of such motions in similar circumstances.**

In addition to finding election-related issues matters of public interest, this Court has granted motions for expedited appeals in similar circumstances. *See e.g., Denman v. City of Columbia*, 387 S.C. 131, 134-35, 691 S.E.2d 465, 466-67 (2010) (granting the appellant's motion to expedite where the circuit court ruled the City of Columbia was not entitled to hold a special election to fill a vacant city councilmember seat); *Willis v. Wukela*, 379 S.C. 126, 127-28, 665 S.E.2d 171, 172 (2008) (ordering an expedited briefing schedule following the appellant's motion to expedite the appeal wherein the appellant challenged the election results of the City of Florence's municipal primary elections); *see also Anderson v. S.C. Elec. Comm'n*, S.C. Sup. Ct. Order dated April 20, 2012 (granting the petitioners' motion to expedite a matter involving public interest in which time was of the essence); *Denman v. City of Columbia*, S.C. Sup. Ct. Order dated March 19, 2010 (granting the appellant's motion to expedite the appeal).

To illustrate, in *George v. Municipal Election Commission of Charleston*, this Court granted the parties' request to expedite an appeal regarding a special municipal election in Charleston. 335 S.C. 182, 184 n.1, 516 S.E.2d 206, 207 n.1 (1999). In that case, the appellants contested the results of a special municipal election that took place in 1998 to determine whether the city's elections in 1999 would change from partisan to nonpartisan. *Id.* at 184-85, 516 S.E.2d at 207-08. The upcoming elections in 1999 included elections for mayor and six council seats, and prospective candidates were required to file petitions no later than May 20, 1999. *Id.* at 184 n.1,

516 S.E.2d at 207 n.1. The Court granted the parties' request to expedite the appeal in February 1999 due to the approaching deadline and because it was "important to know whether the 1998 referendum, which changed city elections from partisan to nonpartisan, was a valid election." *Id.*

Likewise, in *Florence County v. Moore*, this Court expedited an appeal regarding the issue of when an elected official was to assume an office then-held by an appointed official. 344 S.C. 596, 598, 545 S.E.2d 507, 508 (2001). On March 10, 1999, the governor appointed the appellant, Albert Moore, to serve as treasurer of Florence County following a vacancy in the position. *Id.* at 598-99, 545 S.E.2d at 508. In the general election, which occurred in November 2000, the respondent, Dean Fowler, was elected treasurer and soon thereafter sought to assume the office, but Moore resisted, asserting he was to remain treasurer until June 30, 2001. *Id.* at 599, 545 S.E.2d at 508-09. Litigation ensued in November 2000 seeking to establish who was to serve as treasurer until June 30, 2001. *Id.* at 299, 545 S.E.2d at 509. The trial court determined Fowler was to immediately take office, and Moore appealed the ruling and sought to expedite the appeal. *Id.* at 599-600, 545 S.E.2d at 509. This Court granted Moore's motion to expedite, and in addressing the statutory method for preventing vacancies in office, the Court referenced South Carolina's public policy disfavoring such vacancies as well as the need "to prevent a hiatus in the administration of government." *Id.* at 600-02, 545 S.E.2d at 509-10.

Similar to the election-related issues in *George* and *Moore*, the issue of Mr. David's ballot's validity, which would affect the results of the Town of Atlantic Beach's election, necessitates an expedited appeal and would in turn further this State's public policy of preventing a "hiatus in the administration of government." These election results and subsequent hearings concerning challenges thereto occurred nearly four months ago, and Mr. David has not assumed his role as councilmember. *See* S.C. Code Ann. § 5-15-140 (providing the right to appeal a decision

of the municipal election commission and stating, “The notice of appeal shall act as a stay of further proceedings pending the appeal.”). This delay infringes on the will of the voters of the Town of Atlantic Beach. A lengthy appeals process will work a substantial hardship upon the Town and its constituents and will deprive the Commission of its right to a speedy disposition of this case.<sup>1</sup> An expedited appeal is therefore necessary to adhere to this State’s public policy and to address the significant public interests involved.

### CONCLUSION

For the foregoing reasons, the Commission respectfully requests the Court proceed with an immediate hearing on the issue, or in the alternative, to immediately order the following expedited schedule<sup>2</sup> in the present appeal:

- (1) Any return to this motion to be served and filed no later than 4:00 p.m., June 16, 2023;
- (2) within five days of receipt of an Order from this Court, as calculated under Rule 263(a), SCACR, Appellant shall:

---

<sup>1</sup> South Carolina grants a constitutional right to a speedy remedy. S.C. Const. art. I, § 9 (“[E]very person shall have speedy remedy therein for wrongs sustained.”). The right to a speedy remedy includes the right to a speedy appeal. *See Maner v. Maner*, 278 S.C. 377, 380, 296 S.E.2d 533, 535 (1982) (“We hold the right to a speedy remedy includes the right to a speedy appeal.”); *cf. Rylee v. Marett*, 121 S.C. 366, –, 113 S.E. 483, 487 (1922) (“A lax observance of the very reasonable regulations prescribed by statute and the rules of court for perfecting appeals can but lead to unnecessary delay in the final disposition of causes in our courts, and thus work infringement of the constitution guaranty . . . that ‘every person shall have speedy remedy therein for wrongs sustained.’”) (citations omitted). In light of this particular issue, which is one of public interest, and considering this Court’s prior decisions to expedite similar appeals, a speedy remedy includes a speedy appeal of this matter.

<sup>2</sup> This Court has previously ordered similar expedited appeal procedures. *See e.g., In re Decker*, 322 S.C. 212, 214-15, 471 S.E.2d 459, 461 (1995); *S.C. Elec. Comm’n*, S.C. Sup. Ct. Order dated April 20, 2012 (providing expedited deadlines upon granting the petitioners’ motion to expedite); *Denman v. City of Columbia*, S.C. Sup. Ct. Order dated March 19, 2010 (same).

- a. serve and file a Designation of a Record of Appeal;
  - b. serve and file his Initial Brief;
- (3) within five days of the date and service of Appellant's Brief, the Respondent shall serve and file its Designation of Record on Appeal and Initial Brief;
  - (4) within three days of the date of service of Respondent's Initial Brief, Appellant shall serve and file his Initial Reply Brief and may serve and file the Record on Appeal and its Final Brief;
  - (5) within three days of the date of service of the Record on Appeal, Respondent shall serve and file its Final Brief;
  - (6) within three days of the date of service of Respondent's Final Brief, Appellant shall serve and file his Final Reply Brief;
  - (7) oral argument, if deemed necessary by this Court, shall be held within five business days after the date for the service and filing of the last submitted Final Briefs at such time as ordered by this Court, or such other date and time as this Court may deem appropriate;
  - (8) the appellate rules and time limits for any petition for rehearing will be altered in the following manner:
    - a. any petition for rehearing shall be served and filed within three business days after receipt of this Court's opinion, exclusive of the date of receipt;
    - b. any return to the petition for rehearing shall be served and filed within three business days after receipt of the petition for rehearing;
    - c. any reply to the return shall be served and filed within three business days after receipt of the reply;

- (9) the number of copies of the Record on Appeal and briefs to be served and filed shall be the same as that provided by Appellate Court Rules; and
- (10) no extensions shall be granted, unless the moving party shall demonstrate the existence of extraordinary conditions.

Dated: June 9, 2023

**BURR & FORMAN, LLP**

By: s/Amanda A. Bailey

Amanda A. Bailey (SC Bar #71085)  
2411 Oak St., Suite 206 (29577)  
Post Office Box 336  
Myrtle Beach, South Carolina 29578-0336  
Telephone: 843-444-1107  
Fax: 843-444-4729  
Email: [abailey@burr.com](mailto:abailey@burr.com)

*Attorney for Respondent Town of Atlantic  
Beach Municipal Election Commission*