

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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Jun 20 2023

S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY
Debra R. McCaslin, Circuit Court Judge

Case No.: 2023-CP-26-01112, Circuit Court

Michael Isom..... Appellant,

v.

Town of Atlantic Beach Municipal Election Commission..... Respondents.

**APPELLANT’S RESPONSE IN OPPOSITION
TO RESPONDENT’S MOTION TO EXPEDITE APPEAL**

Appellant, Michael Isom (hereinafter “Isom”), by undersigned counsel, respectfully submits this response in opposition to Respondent’s Motion to Expedite Appeal in this case. The motion should be denied because the schedule it proposes gives inadequate time for a brief and the term for which a Special Election was held ends December 2025.

BACKGROUND

The Town of Atlantic Beach (the “Town”) held a Special Election on January 17, 2023, and subsequent Run-off Election on January 31, 2023. A provisional ballot and canvassing hearing for the Run-Off Election was held on February 4, 2023, at 10:00 a.m. in which challenged ballots, including the ballot of John David, were decided. At the canvassing hearing, Appellant presented evidence showing that John David was not a resident of the Town. At the conclusion of the hearing, the vote was certified with John David declared the winner.

Thereafter, Appellant filed a timely protest of the election results. This election protest went before the Town’s Election Commission (the “Commission”) at the Election Protest Hearing

noticed and held on February 6, 2023, at 4:00 p.m. Interested parties present at the hearing were Candidates Michael Isom and John David. Candidate Lenny Evans was not present.

The Commission denied Appellant's protest. Subsequently, Appellant filed a Notice of Appeal with the Circuit Court on February 23, 2023. The Circuit Court affirmed by order dated May 12, 2023, and this appeal followed on June 2, 2023.

ARGUMENT

I. THIS CASE DOES NOT PRESENT THE URGENCY NECESSARY FOR AN EXPEDITED APPEAL, WHEN THE TERM FOR WHICH THE SPECIAL ELECTION WAS HELD ENDS IN DECEMBER 2025.

The Special Election held on January 17, 2023, was to fill the seat left open by former councilman the late James Dewitt II. The term for this seat expires December 31, 2025. Since the term of the office being contested does not end until 2025, this case does not present the urgency necessary for an expedited appeal.

This case is unlike any of the cases cited by Respondent in its Motion. Willis v. Wukela involved an expedited hearing request of a candidate and was urgent because there was a two-month gap between the date of appeal and a statutory date to be interpreted by the Court. 379 S.C. 126, 665 S.E.2d 171 (2008). Florence County v. Moore also involved an expedited hearing request of a candidate and was urgent because the term of office being contested ended seven (7) months after the appeal was filed. 344 S.C. 596, 545 S.E.2d 507 (2001). Denman v. City of Columbia was yet another case involving an expedited hearing request of a candidate and was urgent because the issue involved whether an election should be held within a period of less than thirty days after the appeal was filed. 387 S.C. 131, 691 S.E.2d 465 (2010). George v. Municipal Election Commission involved an appeal following a November 1998 election regarding the manner of election for an

election to be held in 1999 in which candidates had to file by May 20, 1999. 335 S.C. 182, 516 S.E.2d 206 (1999).

This case, unlike the cases cited by Respondent, does not involve a matter that needs to be decided in less than six months. Further, unlike the cases cited by Respondent, the expedited appeal request is not being made by a candidate but instead is being made by the Commission. While a candidate may have an interest in an expedited consideration, the Commission is deemed a neutral body, which does not and should not have any interest in when a candidate is seated on the Town Council.

II. THE TOWN OF ATLANTIC BEACH ELECTION COMMISSION IS A NEUTRAL BODY RESPONSIBLE FOR CONDUCTING FAIR AND QUALITY ELECTIONS AND SHOULD NOT APPEAR TO BE PARTISAN.


The Commission is responsible for conducting a fair and quality election. The desire of the Commission to expedite the appeal warrants some apprehension. Most recently, the Chairman of the Commission has made some partisan comments regarding the candidates.¹ The remarks, in addition to this Motion, may indicate that the Commission, while sitting as an adjudicative body, is more engrossed with putting their preferred candidate in the position of councilmember instead of conducting a fair and quality election to ensure that the qualified candidate is chosen. Granting an expedited hearing would further that improper interest.

CONCLUSION

For the foregoing reason, we respectfully request that the Court denies Respondent's Motion to Expedite Appeal.

¹ In a May 2, 2023 article posted in MyHorryNews.com (Exhibit A) Election Commission Chairman Joe Montgomery is quoted as saying "We feel confident that we will win. I think the lawsuit is frivolous [Isom] has the right to do that. I think the residency requirement should be as it is." In addition at the February 2, Certification of Election meeting, Chairman Montgomery, before the Commission had made a ruling, states "I know he [John David] has been here for 30 days;..." Transcript page 6, lines 2-3 (Exhibit B).

June 20, 2023

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