

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

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Reginald Evans)
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Plaintiff-Appellant)
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Vs.)
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)
Sumter County Election Commission)
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Defendant-Respondent)
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_____)

Civil Action No. 3:23-3918 JFA SV#

NOTICE OF REMOVAL

Removed from:

Supreme Court of the State of
South Carolina

Appellate Case No. 2023-000382

RECEIVED

AUG 09 2023

TO: Clerk of the U.S. District Court for the District of South Carolina, Columbia Division. **S.C. SUPREME COURT**

PLEASE TAKE NOTICE THAT Plaintiff-Appellant Reginald Evans, hereby removes to this Court the state court action described herein, pursuant to 28 U.S.C. §§1332, 1441, 1446, and 1447. Pursuant to 28 U.S.C. § 1446(d) and this Court’s Local Rules, copies of this Notice of Removal are being served on all parties at the addresses listed in Plaintiffs’ state court complaint and are being filed in the Supreme Court of the State of South Carolina.

INTRODUCTION

This is an election protest case. Appellant Reginald Evans (“Evans” or “Appellant”) was a candidate for two public offices in a public election held in Sumter County on November 8, 2022. He was one of two candidates for Sumter County School District Board Area Nine, and one of five candidates for Sumter City Council District One. Evans lost both races, receiving 62 of 999 votes cast in the five-candidate race for City Council. Evans received 652 vote in the

School Board race. Evans' notice of contest of the election results was filed with the Sumter County Registration/Election Board (referred to in the caption of this action as the Sumter County Election Commission) on November 10, 2022. The notice of contest cited S.C. Code § 5-15-30 and stated that it was a contest of the elections for both the School District Board Area Nine and Sumter City Council District One. The notice specified two reasons for the contest: (1) information that persons outside of Council District One and School District Board Area Nine were allowed to vote, and (2) two precincts (Morris College and Folsom Park) showed "undervotes" for City Council compared to total votes. Evans contends that receiving 652 in one election and 62 in the other election is too big of a difference and is requesting the ballots be recounted. There may have been a computer error because of appearing on two ballots.

The Sumter County Registration/Election Board ("Election Board") held a hearing on the notice of contest on November 21, 2022, and denied Evans' protest for both elections. The transcript of the hearing and related documents is contained in the Election Board's Record of Proceedings.

While an appeal filed, the Defendant-Respondents held a runoff election between the top two vote-getters for the City Council seat was held on November 22, 2022. Evans was not a candidate in the runoff election. On the runoff election date, at 3:29 p.m., Evans filed with the Court of Common Pleas a "Notice Appeal" from the "order and judgment of the Sumter County Election Commission Dated November 21, 2022." (Notice of Appeal showing Clerk of Court recorded stamp for November 22, 2022, the Notice of Appeal was given at the hearing.) The Notice contained no grounds for appeal, asserted no allegations or specifications of errors by the Election Board, and asserted no other basis for relief.

On December 9, 2022, the Election Board filed in the circuit court case a Record of Proceedings before the Election Board. The Election Board filed a Return to the Notice on December 14, 2022. The Return, among other things, denied any error of law or unsupported findings by the Election Board, and denied any showing by Evans of any election illegalities or irregularities sufficient to require a new election (the request to recount the ballots). The Return also asserted that the City of Sumter previously had transferred total responsibility for conducting municipal elections (including responsibility for election contests) to the Election Board pursuant to S.C. Code § 5-15-145, and that appeals from Election Board decisions on the results of municipal elections were to be taken to the circuit court. The Return further asserted that the circuit court lacked subject matter jurisdiction of an appeal from a County School District Board election. (the Defendant-Respondent made a judicial ruling)

A hearing on the merits of Evans' appeal to circuit court was held before the Honorable George M. McFaddin, Jr., Circuit Court Judge, on January 6, 2023. Following the hearing, Judge McFaddin issued, on January 11, 2023, an Order dismissing the appeal concerning the School Board seat based on lack of subject matter jurisdiction, and dismissing on the merits the appeal concerning the City Council seat. (Order filed January 11, 2023.) A motion "to reconsider" was filed by Evans on January 17, 2023. The motion stated no specific grounds and alleged only that the circuit court "erred in its ruling" on each of the election appeals. (Motion filed January 17, 2023.) An Order by Judge McFaddin denying the motion was filed on February 7, 2023. (Order filed February 7, 2023.) The Circuit Court did not allow Plaintiff -Appellant to file an Initial Brief or required the Respondent to file a brief. The Circuit Court did not have or review the transcript of the Sumter Election Commission hearing.

Evans filed his notice of appeal to The South Carolina Supreme Court on March 8, 2023. Based on the operation of S.C. Code § 5-15-120 (which provides, in part, that “and in the case a contest is finally filed the incumbents shall hold over until the contest is finally determined.”) and S.C. Code § 5-15-40 (which provides, in part, that “The notice of appeal [from the municipal election commission to the court of common pleas] shall act as a stay of further proceedings pending the appeal.”), the successful candidate in the runoff election for Sumter City Council District One has been unable to be sworn into office. The School Board swore the candidate while election is on appeal and elected the candidate to be vice-chairperson of the Sumter County School Board. Currently the City of Sumter is allowing the candidate to act as the informal Ward One City Councilman and attend executive sessions. The incumbent of Ward One passed away before the run-off election. The seven thousand citizens of Ward One are paying taxes and city is conducting business without any representation for Ward One of the City Council.

BASIS FOR REMOVAL

I. Removal is Proper Because This Court Has Subject Matter Jurisdiction Pursuant to 28 U.S.C. §§ 1332 and 1441(b).

Pursuant to 28 U.S.C. § 1332, this Court has jurisdiction over this action because it involved the Plaintiff-Appellant rights under the Constitution First Amendment: The prohibition of abridgment of the "right to petition" originally referred only to the Congress and the U.S. federal courts. The incorporation doctrine later expanded the protection of the right to its current scope, over all state and federal courts and legislatures, and the executive branches of the state and federal governments.

II. Removal is Proper Because This Court Has Subject Matter Jurisdiction Pursuant to 28 U.S.C. §§ 1332 and 1441(b).

Pursuant to 28 U.S.C. § 1332, this Court has jurisdiction over this action because it involved the Plaintiff-Appellant rights under the Constitution Fourteenth Amendment: "A state shall not violate a citizen's privileges or immunities; shall not deprive any person of life, liberty, or property without due process of law; and must guarantee all persons equal protection of the laws. **The question is did the state follow the federal and state of South Carolina election laws?**

III. Removal is Proper Because This Court Has Subject Matter Jurisdiction Pursuant to 28 U.S.C. §§ 1332 and 1441(b).

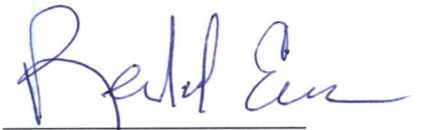
Pursuant to 28 U.S.C. § 1332, this Court has jurisdiction over this action because it involved the Plaintiff-Appellant rights under the Constitution Fifteenth Amendment: prohibits the use of race, color, or previous condition of servitude in determining which citizens may vote. **The question is did the Defendant-Respondent properly counted the votes in the election? And did the Defendant-Respondent redraw the voting line to dilute the Black Citizens vote.**

IV. Removal is Proper Because This Court Has Subject Matter Jurisdiction Pursuant to 28 U.S.C. §§ 1332 and 1441(b).

Pursuant to 28 U.S.C. § 1332, this Court has jurisdiction over this action because it involved the Plaintiff-Appellant rights under the Voting Rights Act of 1965. The Court declared that the Fifteenth Amendment "commands that the right to vote shall not be denied or abridged on account of race or color, and it gives Congress the power to enforce that command. The Amendment is not designed to punish for the past; its purpose is to ensure a better future." **The question is because the Defendant-Respondent was not required to get pre-clearance of their changes in District boundaries was the Plaintiff-Respondent, other candidates and the citizens of Sumter had their voting rights abridged?**

WHEREFORE, Plaintiff-Appellant Reginald Evans, respectfully gives notice that the above-captioned civil action pending in the Supreme Court of the State South Carolina is removed to this Court, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1447. That the United States Attorney General for South Carolina review the election for Sumter County's 2020 and 2022 election results.

Dated: August 9, 2023



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