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S.C. SUPREME COURT

**STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT**

Appeal from the Court of Common Pleas
For Horry County
Honorable William H. Seals, Jr. Circuit Judge
Civil Action Nos.: 2024-CP-26-07182
Appellate Case No.: 2024-_____

Carla Taylor,

Respondent,

v.

Kenneth McIver, Carolina Gore, and Derrick Stevens
in their official capacities as members of the Town of
Atlantic Beach Municipal Election Commission,

Appellants.

**MOTION FOR STAY
AND
EXPEDITED APPEAL**

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Kenneth McIver, Carolina Gore, and Derrick
Stevens in their official capacities as members
of the Town of Atlantic Beach Municipal Election
Commission*

TO: THE HONORABLE JUSTICES OF THE SUPREME COURT OF SOUTH CAROLINA:

COMES NOW the Appellants, Kenneth McIver, Carolina Gore, and Derrick Stevens in their official capacities as members of the Town of Atlantic Beach Municipal Election Commission (the “Election Commission” or “MEC”), pursuant to Rules 240, 241(a) of the South Carolina Appellate Court Rules, in conjunction with S.C. Code Ann. § 14-8-200(b)(5) (Thomson Reuters West 2023) and S.C. Code Ann. § 15-15-140 (Thomson Reuters West 2023S, and respectfully requests this Supreme Court to issue an order:

- A. Staying the enforcement of the order under appeal in this matter until such time as this Supreme Court may render a decision upon the merits of this election contest; and
- B. Establishing an expedited appellate briefing and scheduling process in order that this Supreme Court will have the opportunity to address this important matter of public interest as quickly as is practical under the facts and circumstances involved herein.

As set forth in the Election Commission’s original *Notice of Appeal*, as well as in its *Amended Notice of Appeal*, the Election Commission has initiated this appeal based upon the following grounds:

1. The Circuit Court erred in exercising subject matter jurisdiction over the premature appeal by the Respondent, Carla Taylor (“Ms. Taylor”), from the Election Commission’s decision rendered on 18 October 2024 prior to the Election Commission’s issuance of a final written decision in contravention of S.C. Code Ann. § 5-15-140 (Thomson Reuters West 2023).
2. The Circuit Court erred in failing to recognize and/or acknowledge the Election Commission’s explicit statutory authority under S.C. Code Ann. § 7-13-810 (Thomson Reuters West 2023) to consider after-discovered evidence of voter fraud.

3. The Circuit Court erred in disregarding the Supreme Court's precedent in Gecy v. Bagwell, 372 S.C. 237, 241, 642 S.E.2d 569, 571 (2007), which specifically authorizes consideration of after-discovered evidence of improper voter residency claims.

ARGUMENT AND CITATION OF AUTHORITY

A. A Stay To Preserve The Status Quo Is Necessary

It is axiomatic that the determination of the validity and accuracy of any governmental election, whether a municipal, county, state and/or federal, is a matter of the utmost public importance, especially for the electorate effected by the particular election at issue. This election contest dispute has been going on for many, many months and the citizens of the Town of Atlantic Beach deserve a final and binding determination. Fortunately, this Supreme Court is the very best arbiter and decision maker to render such a full and final resolution. Nevertheless, this Supreme Court potentially may never have the opportunity to address this dispute as the Circuit Court has ordered:

[Ms.] Taylor be seated as an Atlantic Beach Town Council member ***immediately*** [on the basis that since Ms.] Taylor has already signed the Oath of office and been recognized by the Horry County Commission on Voter Registration and Elections as the duly elected member of Town Council, she should hereby ***immediately*** begin serving on Town Council and have all the same rights as other members of the council.¹

With Ms. Taylor's directed "elevation" to the Atlantic Beach Town Council, the Circuit Court has significantly altered the *status quo ante* creating a scenario in which there is the attendant distinct likelihood the altered *status quo ante* on the Atlantic Beach

¹ See Order of the Honorable William H. Seals, Jr., Circuit Judge issued on 4 November 2024, and filed on 5 November 2024 (the "2024.11.05 Order"). A copy of the 2024.11.05 Order is attached hereto as **Exhibit "A"** and incorporated herein by reference as are all other attached exhibits.

Town Council will undertake an effort to short circuit this matter on a permanent basis. Regardless of the ultimate outcome of this election contest, derailing this appeal deprives the Atlantic Beach electorate of a proper determination by this Supreme Court of this controversy. Moreover, absent a final judicial resolution, the “validity of Ms. Taylor’s “election” to the Atlantic Beach Town Council will be irreparably forever tainted due to the pervasive evidence that various individuals cast ballots in the election involving her candidacy even though there were not full-time residents of Atlantic Beach and, thereby, neither proper nor legally registered voters.²

In an election contest or dispute, it is imperative that the judicial body considering the controversy maintain the status quo³ pre-election and the most expeditious way to perform such is to impose a stay of the lower court’s order. In fact, South Carolina law addresses this issue, at least in part, specifically stating:

Within ten days after notice of the decision of the municipal election commission, any party aggrieved thereby may appeal from such decision to the court of common pleas. Notice of appeal shall be served on the opposing parties or their attorneys and filed in the office of the clerk of court within ten days. **The notice of appeal shall act as a stay of further proceedings pending the appeal.**⁴

² “Election fraud perverts democracy and constitutes a grave offense, not only against the opposing candidate but against society as a whole.” O’Cana v. Salinas, 2019 WL 1414021, at *11 (Tex.App., 29 Mar. 2019, pet. denied).

³ “The term ‘status quo’ is a legal term that Justices of Supreme Courts - whether they personally like it or not - enforce during the pendency of an appeal. Generally, ‘status quo’ means the existing condition or state of affairs[and] [w]hen an appeal is filed, it is necessary for the existing condition or state of affairs to remain constant.” Cheyenne-Arapaho Election Board v. Mosqueda, 1997 WL 1146135, at *1 (Sup.Ct. Cheyenne-Arapaho Tribes , 16 Jan. 1997). See also Lane v. Williamson, 307 S.C. 230, 233, 414 S.E.2d 177, 179 (Ct.App. 1992) (“*Black’s Law Dictionary* defines ‘status quo’ as ‘[t]he existing state of things at any given date.’”) (Alteration in original).

⁴ See S.C. Code Ann. § 5-15-140 (Thomson Reuters West 2023) (Emphasis added).

Furthermore, the South Carolina Appellate Court Rules appropriately provides for an automatic stay of the relief directed in the order and/or decision therein on appeal in a civil action pending a final resolution of the appeal, unless lifted by an appropriate order of the lower court or the relevant appellate court, stating:

As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court.⁵

Importantly, the imposition of a stay in this type of appeal acts to preserve this Supreme Court’s jurisdiction to address the validity of the allegation of voter fraud which, as noted, significantly taints the legality of Ms. Taylor’s position as a member of the Atlantic Beach Town Council.⁶

An appellate court’s maintenance of the *status quo ante*⁷ in an appeal of an election dispute is a practical necessity. As the United States District Court for the Southern District of Alabama noted in Braxton v. Stokes, “ [p]reservation of the status quo enables the court to render a meaningful decision on the merits.’ ”⁸ In fact, Texas law

⁵ Rule 241(a), SCACR.

⁶ See generally Jackson v. Leon County Election Canvassing Board, 214 So.3d 705, 708 (Fla. 1st DCA 2016).

⁷ “[T]he status quo is ‘the last uncontested status between the parties which preceded the controversy until the outcome of the final hearing.’ ” Tulsa Firefighters Ass’n, IAFF Local 176, AFL-CIO v. City of Tulsa, Okla., 834 F.Supp.2d 1277, 1286 (N.D.Okla. 2011) (citing Dominion Video Satellite, Inc. v. EchoStar Satellite Corp., 269 F.3d 1149, 1155 (10th Cir. 2001) (citing SCFC, ILC, Inc. v. Visa, USA Inc., 936 F.2d 1096, 1100 n.8 (10th Cir. 1991) (Internal quotation omitted in original)).

⁸ Braxton v. Stokes, 2024 WL 2116057, at 5 (S.D.Ala., 10 May 2024) (quoting United States v. Lambert, 695 F.2d 536, 539-540 (11th Cir. 1983)).

provides “[t]he perfecting of an appeal in an election contest [automatically] suspends the execution of the [trial] court’s judgment pending the disposition of the appeal without the necessity for a supersedeas bond.”⁹ The United States District Court for the Western District of Texas, in Casarez v. Val Verde County, stated that “maintaining the *status quo* [in an election contest by the use of] a preliminary injunction [did] not disserve the public interest.”¹⁰ In Village of Blooming Grove v. Village of Kiryas Joel Board of Trustees, the Supreme Court of New York, Orange County, stayed the effective date of a local law involving property annexation during the pendency of the litigation proceedings.¹¹

All-in-all, this Supreme Court should recognize the existence of a stay of the relief Ms. Taylor was granted in the Circuit Court’s 2024.11.05 Order as mandated by Rule 241(a), SCACR, in conjunction with S.C. Code Ann. § 5-15-140. Alternatively, this Supreme Court should impose a stay in order to maintain both the *status quo ante*, as well as this Supreme Court’s jurisdiction to hear and decide this election contest as it is unquestionably an important matter of public interest.

⁹ See V.C.T.A. Election Code § 232.016 (1986). See generally Trevino v. Segovia, 2024 WL 3891850, at *4 (Tex.App., 21 Aug. 2024); De La Paz v. Gutierrez, 2019 WL 1891137, at *7 (Tex.App., 29 Apr. 2019). See also Mosqueda, 1997 WL 1146135 (“In the course of an ongoing election dispute, the Supreme Court of the Cheyenne–Arapaho Tribes directed that the former occupants of three seats on the Tribes’ Business Committee were to ‘hold over’ in office pending resolution of the resulting litigation.”); Republican Party of North Carolina v. North Carolina State Board of Elections, 1994 WL 265955, 3 (4th Cir. 1997) (acknowledging maintenance of “status quo pending resolution of th[e] litigation.”).

¹⁰ Casarez v. Val Verde County, 957 F.Supp. 847, 865 (W.D.Tex. 1997).

¹¹ Village of Blooming Grove v. Village of Kiryas Joel Board of Trustees, 49 Misc.3d 1212(A), 28 N.Y.S.3d 651, 215 WL 6828949, at *4 (N.Y.Sup.Ct., 5 Nov. 2015). See also City of Greensboro v. Guilford County Board of Elections, 120 F.Supp.3d 479, 483 (M.D.N.C. 2015) (Acknowledging equities and public interest “favored a return to the pre-existing status quo pending resolution of th[e] lawsuit.”).

B. An Expedited Briefing/Argument Schedule Is Necessary

As noted previously, this election contest is an important matter of public interest to the citizens of the Town of Atlantic Beach. Regardless of the outcome of this appeal, the electorate needs to have faith and trust in the electoral process and to know improper voting has not taken place. Given the small size of Atlantic Beach's electorate, a minimal number of votes going one way or the other can and, indeed, often does significantly change the outcome of a close election.

In light of the public importance of this appeal, the Election Commission respectfully requests this Supreme Court to issue an order establishing an expedited appellate briefing and argument process so that this Supreme Court may resolve this election contest in an accelerated time frame.

CONCLUSION

Based upon the foregoing arguments and citation of authority the Appellants, Kenneth McIver, Carolina Gore, and Derrick Stevens in their official capacities as members of the Town of Atlantic Beach Municipal Election Commission, respectfully requests this Supreme Court to issue an order recognizing a stay of the relief under appeal pursuant to Rule 241(a), SCACR, in conjunction with S.C. Code Ann. § 5-15-140, or, alternatively, to impose a stay in order to maintain the status quo in existence before the 2024.11.05 Order and to maintain this Supreme Court's jurisdiction to hear and decide this appeal.

Secondarily, the Appellants respectfully request this Supreme Court is issue an accelerated briefing and argument schedule in order that this matter may be expeditiously addressed and decided.

Respectfully submitted:

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Charleston, South Carolina

10 November 2024

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PROOF OF SERVICE

I, Stephen P. Groves, Sr., Esquire do hereby certify that a copy of this Motion for Stay and Expedited Appeal (together with the referenced order) was served on this **SUNDAY, the 10th day of NOVEMBER 2024**, (a) upon this South Carolina Supreme Court via electronic means (supctfilings@sccourts.org) and (b) upon counsel for the Respondent via e-mail (rtyson@robinsongray.com and lstringfellow@robinsongray.com).

Signed: *Stephen P. Groves, Sr.*
Stephen P. Groves, Sr., Esquire

Charleston, South Carolina

10 November 2024