

THE STATE OF SOUTH CAROLINA
In the Supreme Court

ON PETITION FOR AN APPEAL

APPEAL FROM HORRY COUNTY
In the Court of Common Pleas

William H. Seals, Jr. Circuit Judge

Appellate Case No. 2024-001908

Lower Court Case No. 2024-CP-07193 & 2024-CP-26-06062

William Booker, Lynda Booker, Elaine Finney, Sarah Blair, Linda Cheatham, Harold Cheatham, Respondents,

v.

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

Appellants. _____

RESPONDENTS' RETURN TO MOTION TO STAY

William H. Monckton, VI. S.C. Bar No. 65167
Monckton, Hembree & Humphries, P.A.
1300 Professional Drive, Suite 102
Myrtle Beach, South Carolina 29577
Phone: 843.946.6556/Fax 843.946.6996
wmonckton@myrtlebeachlawfirm.net
Attorney for Respondents

RECEIVED

Nov 22 2024

S.C. SUPREME COURT

Pursuant to Rule 240(e), SCACR, Respondents submit this return in opposition to Appellants' Motion for a Stay. As illustrated more fully below, Appellants' request for a stay is more of the same intentional and deliberate actions taken by Appellants to delay the will of the people and further obstruct Carla Taylor's ability to serve as a duly elected member of Atlantic Beach council. Further, a stay would allow the same bad actors to continue to run rampant under the guise of a stay. This election matter has lingered for approximately 378 days with little resolution due to the Appellants' bad acts and the machinations of a few members of council who do not wish to relinquish their town council seats and/or power.

In the event this Court may deem it appropriate to entertain Appellant's motion, Respondents contend that such a stay should be lifted and to that end, Respondents can file a Motion to Lift the Stay if the Court desires. A stay does not promote the interests of justice, fairness, or the sanctity of South Carolina elections. In fact, a stay would do just the opposite. A stay would only allow the bad actors who have a long and storied history of bad acts in Town of Atlantic Beach elections to continue to proliferate.

Respondents are filing a Motion to Dismiss contemporaneously with the filing of this Return. Respondents maintain, as a matter of law, the appeal should be dismissed outright. However, if the Court disagrees and allows the appeal to move forward, Respondents support Appellants' Motion for Expedited Appeal.

For the reasons below, the Court should deny the motion for stay; rather, it should grant Respondents' Motion to Dismiss, thereby ending this appeal and allowing Carla Taylor to continue serving as a duly elected member of the Atlantic Beach Town Council.

Background

Since November 7, 2023, Appellant Municipal Election Commission (“Appellant MEC”) has continuously and egregiously acted in dereliction of its ministerial duties. As a result, Carla Taylor has been stonewalled from assuming office as a duly elected council member. It took filing two separate mandamus actions, a motion for a preliminary injunction, and finally, an appeal of an illegal Municipal Election Commission decision before Carla Taylor was recognized as the rightful and properly elected council member for the Town of Atlantic Beach on November 7, 2024. Now Appellants continue this charade and file this appeal and seek once again to prevent Carla Taylor from serving on Town Council. Appellant MEC’s contemptible actions are described in detail below and should not be allowed to continue.

Appellant MEC’s egregious and intentional efforts to prevent Carla Taylor from assuming office as a duly elected council member is sufficient to demonstrate why a stay is not appropriate. Otherwise, Appellant MEC’s intentional stall tactics will continue to thwart democracy. Respondents briefly summarize the MEC’s actions as follows:

Carla Taylor was one of two top vote recipients for two open council seats on November 7, 2023. After the November 7, 2023 election, Appellant MEC failed to timely certify the election results and conduct a protest hearing to resolve Candidate Josephine Isom’s protest of the Mayoral election filed on November 9, 2023. Appellant MEC did not elect to act until Candidate John David filed a Writ of Mandamus to require the MEC to meet and certify the results of the November 7, 2024 election. *See John David v. Kenneth McIver et al.*, No. 2024-CP-262042 (S.C. Ct. of Common Pleas, Horry Cnty.).

Thereafter, on April 3, 2024, approximately 148 days since the November 7,

2024 election, Appellant MEC met and conducted a hearing on Candidate Isom's mayoral protest. At that hearing, the MEC certified the town council election results. Carla Taylor was promptly sworn into office and the certified election results were relayed to the Horry County Election Commission.

On April 4, 2024, Candidate Shaun Swinson filed an untimely protest to the town council election. Although untimely, Appellant MEC refused to resolve Candidate Swinson's untimely protest within forty-eight hours as proscribed in South Carolina Code section 5-15-130. In fact, the MEC Chairperson advised on April 15, 2024, that he would not convene a MEC meeting to resolve Candidate Swinson's protest because the protest was untimely.

Carla Taylor filed an injunction to enjoin the named Defendants from refusing to recognize her as a duly elected Town of Atlantic Beach Town Council Member. *See Taylor v. Jake Evans et al.*, No. 2024-CP-2602866 (S.C. Ct. of Common Pleas, Horry Cnty.). At the injunction hearing, counsel for Appellant MEC represented to the court that a process was already in place before the MEC and that Carla Taylor had to wait her turn to receive a final conclusion from the MEC before appealing to the circuit court for relief. The trial court relied on the representations of MEC's counsel and denied Carla Taylor's injunction request on May 23, 2024, and held "there is a sufficient legal process in place to determine the outcome of contest elections and that remedy at law is being pursued by all parties involved in this litigation."

After the Court's decision, Appellant MEC refused to meet in a timely fashion to deal with the untimely protest. In fact, two months after the denial of the motion for an injunction, Appellant MEC had done nothing. On July 18, 2024, Counsel for Carla Taylor requested the MEC

to convene to dispose of and/or hear Candidate Swinson's untimely election protest. On August 19, 2024, the MEC held an information meeting and counsel for Appellants advised the MEC not to act on Candidate Swinson's protest until after the conclusion of Candidate Isom's mayoral election protest appeal and an alleged State Law Enforcement Division ("SLED") investigation into the November 7, 2023 election. On August 21, 2024, Carla Taylor's counsel inquired with SLED about the alleged investigation and was informed there was no such open investigation. On September 3, 2024, the Atlantic Beach town manager admitted there was no current SLED investigation underway and that he had merely sent a request for an investigation on August 22, 2024, after MEC's counsel advised the MEC to wait for the conclusion of SLED's investigation to act.

On August 21, 2024, Carla Taylor's counsel sent another request to Appellants' counsel asking the MEC to immediately convene to dispose of and/or hear Candidate Swinson's election protest. In response, Appellants' counsel wrote that Carla Taylor should have the patience to await the Commission's timely consideration of any 'after-discovered' evidence. Clearly, this indicates Appellants had no intention to seat Carla Taylor; rather, it intended to use sham legal arguments and other delay tactics to avoid following the people's will.

On September 3, 2024, Respondents were forced to file a Writ of Mandamus to force the MEC to act. *See Booker v. Kenneth McIver, et al.*, No. 2024-CP-26-06062 (S.C. Ct. of Common Pleas, Horry Cnty.). On October 14, 2024, the Court ruled in Taylor's favor and ordered Appellant MEC to meet and rule on Candidate Swinson's protest by October 19, 2024.

On October 16, 2024, Appellants met to determine whether to hear Candidate Swinson's protest. MEC Commissioner Stephens moved to hear Candidate Swinson's appeal

without any discussion or receiving any legal advice. The meeting was continued. On October 17, 2024, Appellants convened again and voted to hear Candidate Swinson's untimely protest. At no point prior to voting on whether Candidate Swinson's protest was timely, did the members of the MEC receive legal advice or discuss the legal arguments raised concerning the untimely protest or discuss the arguments from counsel. Then, the MEC voted to uphold Candidate Swinson's election protest. Again, the MEC did not discuss the merits of Candidate Swinson's protest or receive legal advice from counsel prior to voting. Even more egregiously, the MEC decision came after Candidate Swinson failed to present evidence to the MEC to support the MEC's decision.

Respondents promptly appealed the MEC decision. On October 30, 2024, a hearing was held before the Honorable William H. Seals, Jr. After careful deliberation and consideration, the Court reversed the MEC decision concluding the protest was untimely and that due to Mr. Swinson's criminal history, he was not eligible to run, much less protest, even if the protest were timely. This background is intended to give the Court a complete context of why a stay is not warranted. The MEC has ignored the law and should not be allowed to continue its disregard of the law, by staying Judge Seals' order.

Alternatively, Respondents respectfully request the Court grant its Motion to Dismiss. If the Court does not grant the motion to end this flawed appeal, Respondents support this appeal be expedited. Appellants should not be able to continue to use flawed legal arguments to prevent the will of the people who elected Taylor to serve on the Atlantic Beach Town Council.

Respectfully submitted,

By: s/William H. Monckton, VI.
William H. Monckton, VI. S.C. Bar No. 65167
Monckton, Hembree & Humphries, P.A.
1300 Professional Drive, Suite 102
Myrtle Beach, South Carolina 29577
Phone: 843.946.6556/Fax 843.946.6996
wmonckton@myrtlebeachlawfirm.net
Attorney for Respondents

Myrtle Beach, South Carolina
November 22, 2024