

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

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S.C. SUPREME COURT

Appeal from the Court of Common Pleas
For Horry County
Honorable William H. Seals, Jr. Circuit Judge
Civil Action Nos.: 2024-CP-26-06062 and 2024-CP-26-07193
Appellate Case No.: 2024-001908

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

Respondents,

v.

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

Appellants.

**RESPONSE IN OPPOSITION
TO
MOTION TO DISMISS APPEAL**

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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 submits this response in opposition to the *Motion to Dismiss* filed by the Respondents, William Booker, Lynda Booker, Elaine Finney, Sarah Blair, Linda Cheatham, and Harold Cheatham (the “Citizen Respondents”),¹ in the above-captioned dual consolidated appeals. The Election Commission respectfully requests this Supreme Court to deny the Citizen Respondents’ dismissal request as meritless and permit this matter of important public interest to proceed to a decision, albeit in an expedited manner.

I. STATEMENT OF RELEVANT FACTS

On 3 April 2024, the Election Commission met to, in part, hear the election protest appeal of Josephine Isom – a candidate for the position of mayor of the Town of Atlantic Beach (“Atlantic Beach”).² Ms. Isom, who lost the mayoral race by a single vote, asserted

¹ It the Citizen Respondents’ Petition for Writ of Mandamus they asserted the had standing to participate in this election dispute as they were “being disenfranchised by the actions and omissions of the [Election Commission] following the November 7, 2023 municipal election” (Petition, para. 2) or, alternatively, “under the ‘public importance’ doctrine because they [we]re interested citizens and the matters raised in th[eir] action [we]re [of] ‘significant public importance to ensure accountability and the concomitant integrity of government action.’ ” (*Id.*, at para 3 (*quoting South Carolina Public Interest Foundation v. South Carolina Dept. of Transportation*, 421 S.C. 110, 118, 804 S.E.2d 858, 858 (2017) (cleaned up)). At least the parties agree this matter is of significant public concern.

² 2024.04.03 MEC Transcript, p.7, line 17 – p.8, line 22. See Transcript of 3 April 2024 Meeting of the Town of Atlantic Beach Municipal Election Commission (the “2024.04.03 MEC Transcript”). Copies of the relevant pages from the 2024.04.03 MEC Transcript are collectively

19 people voted in the 7 November 2023, mayoral election who, she believed, were not residents of Atlantic Beach and, therefore, ineligible to vote.³ In fact, Ms. Isom testified she personally reviewed the local property tax records and other records and concluded several of the challenged voters were not Atlantic Beach residents.⁴ Another witness, Irene Armstrong (“Ms. Armstrong”), a long-time Atlantic Beach resident, testified to the facts a number of the challenged voters were not, in fact, verified and authentic Atlantic Beach residents and, in turn, should not have been permitted to vote in the mayoral election.⁵ Based upon the testimony and other evidence presented during the hearing, the Election Commission voted to exclude the votes of some 12 or 13 electors who voted in the mayoral election.⁶ Ultimately, the Election Commission concluded:

[B]ased on the foregoing findings of fact and the fact that the now invalid votes are no longer segregated, the final vote count of the November 7, 2023, mayoral election is deemed significantly doubtful and the mayoral election is hereby deemed invalid.⁷

Notwithstanding the Election Commission’s clear recognition and acknowledgment that **not less than 12 ineligible voters had voted in the 7 November 2023 election**, the Election Commission then proceeded to certify the results of the Town Council election as

attached hereto as **Exhibit “A”** and incorporated herein by reference as are all other included exhibits.

3 *Id.*

4 *Id.*, at p.17, line 12 – p.19, line 15; p.28 ,line 4 – p.30, line 20.

5 *Id.*, at p.45, line 6 – p.46, line 10; p.49, line 3 – p.53, line 25. The Atlantic Beach election ballot for the 7 November 2023 election was a single ballot and contained the ability to vote in both the election of Atlantic Beach mayor, as well as in the election of the several members of the Atlantic Beach Town Council.

6 *Id.*, at p.96, line 14 – p.99, line 12.

7 *Id.*, at p.99. line 13 – p.100, line 8.

being proper and valid even though the candidates for the Town Council positions appeared on the same ballot as the candidates for Atlantic Beach mayor – two elections, but a single consolidated ballot.⁸

Shaun Swinson, Sr. (“Mr. Swinson”), a candidate for one of the seats on the Atlantic Beach Town Council, was very disturbed by the Election Commission’s election certification decision. On 4 April 2024,⁹ Mr. Swinson sent an election protest/challenge letter, dated 3 April 2024, to the Election Commission in which he specifically stated:

I am writing to **appeal the decision made by the Election Commission to certify ineligible voters for the [T]own [C]ouncil election but not for the mayoral race.** I believe that this decision is unjust and goes against the principles of fair and democratic elections.

It has come to my attention that **9 [nine] voters who are ineligible to vote in the [T]own [C]ouncil election due to residency requirements have been allowed to cast their votes.** This is a clear violation of elections laws and undermines the integrity of the election process. Furthermore, it is deeply concerning that these **ineligible voters were allowed to participate in the [T]own [C]ouncil election while being excluded from the mayoral race.**

It is imperative that all elections are conducted in a fair and transparent manner, and that the integrity of the electoral process is upheld. All voters should be held to the same standards and eligibility requirements, regardless of the specific race they are voting in. **Allowing ineligible voters to participate in one election while excluding them from another sets a dangerous precedent and erodes public trust** in the electoral system.

⁸ *Id.*, at p.100, lines 9-17 (Jacqui Gore 71 votes, Carla Taylor 69 votes, Jerry Finney 62 votes, and Shaun Swinson 48 votes).

⁹ 2024.10.17 MEC Transcript, p.31, lines 13-22. See Transcript of 17 October 2024 Meeting of the Town of Atlantic Beach Municipal Election Commission (the “2024.10.17 MEC Transcript”). Copies of the relevant pages from the 2024.10.18 MEC Transcript are collectively attached hereto as **Exhibit “B”**

I respectfully request that the Election Commission reevaluate its decision and take immediate action to rectify this situation. All ineligible votes cast in the town council election should be **invalidated**, and measures should be put in place to prevent similar incidents from occurring in the future.¹⁰

II. ARGUMENT AND CITATION OF AUTHORITY

As set forth in the Election Commission's original *Notice of Appeal*, in its *Amended Notice of Appeal*, and in its *Motion for Stay and for Expedited 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 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.

It clearly appears the Citizen Respondents' dismissal motion is principally predicated on the proposition Mr. Swinson was legally prohibited from filing his 3 April 2024 election protest since it was made at a time more than 48 hours after the 7

¹⁰ 2024.04.03 Swinson Protest Letter, pp.1-2 (Fifth emphasis in original, others supplied); 2024.10.17 MEC Transcript, p.35, lines1-21. See Letter from Shaun Swinson, Sr. to Town of Atlantic Beach Election Commission dated 3 April 2024 (the "2024.04.03 Swinson Protest Letter"). A copy of the 2024.04.03 Swinson Protest Letter is attached hereto as **Exhibit "B"**.

November 2023 election was held.¹¹ While this assertion would normally be correct,¹² it completely ignores other relevant and applicable South Carolina law which provides, in pertinent part, as follows:

A candidate may protest an election in which he is a candidate . . . when the protest is based in whole or in part on evidence discovered after the election. This evidence may include, but is not limited to, **after-discovered evidence of voters who have voted in a precinct or for a district office other than the one in which they are entitled by law to vote.**¹³

This is precisely the type of election protest/challenge Ms. Isom initiated in the first instance and, moreover, exactly what Mr. Swinson did on 3 April 2024, once he became aware for the hearing testimony a number of individuals had voted in both the mayoral and the Town Council elections when they were clearly ineligible to do so. Mr. Swinson's protest was even more material to the sanctity of the overall election process given the fact the Election Commission voted to invalidate the mayoral results due to the participation of the ineligible voters while, at the same time, agreeing to confirm the results of the Town Council election completely aware those very election results were similarly inexorably tainted by the fraudulent votes of the ineligible electors.

The Election Commission heard Mr. Swinson's protest during its 18 October 2024 meeting. Mr. Swinson asserted it was during the previously referenced 3 April 2024 Election Commission meeting where he first became aware of the extensive evidence of

¹¹ Mr. Booker's Motion to Dismiss is essentially a carbon copy of the Motion to Dismiss filed by Carla Taylor, the Respondent in Appellate Case No. 2024-01889.

¹² See S.C. Code Ann. § 5-15-130 (Thomson Reuters West 2022). See also Broadhurst v. City of Myrtle Beach Election Commission, 342 S.C. 373, 384, 537 S.E.2d 543, 548 (2000).

¹³ See S.C. Code Ann. § 7-13-810 (Thomson Reuters West 2022) (Emphasis added).

demonstrable voter fraud¹⁴ in which ineligible voters participated in the 7 November 2023 Atlantic Beach municipal elections where their respective primary residences was elsewhere.¹⁵ After Mr. Swinson hearing this evidence, he immediately realized its import on his Town Council election since the 7 November 2023 election was “one election, one ballot.”¹⁶ He then authored the 2024.04.03 Swinson Protest Letter and filed it on 4 April 2024 with the Election Commission.

The Election Commission’s 18 October 2024, meeting/hearing addressed the principal question of whether the Election Commission was legally authorized to hear Mr. Swinson’s appeal based upon the timeliness of the appeal.¹⁷ Since Mr. Swinson’s challenge to the results of the Town Council election was based solely on the demonstrated election fraud disclosed in the 3 April 2024 Election Commission hearing, Mr. Swinson argued his challenge/protest was not bound by the “48 hour” time frame contained in S.C. Code Ann. § 5-15-130 and, therefore proper. By a 2-1 vote the Election Commission ruled Mr. Swinson’s appeal was filed timely and that the Election

¹⁴ Even though a voter may assert otherwise, for him or her to vote in an election in a municipality where they do not reside cannot be characterized anything less than voter fraud. As noted by the United States Court of Appeal for the Fourth Circuit, in Republican National Committee v. North Carolina Board of Elections, this type of improper and illegal voter activity involves “ ‘three uncertain intervening events: (1) an ineligible voter must be afforded the opportunity to commit fraud; (2) the ineligible voter will in fact commit fraud; and (3) the fraud will not be prevented.’ ” Republican National Committee v. North Carolina Board of Elections, 120 F.4d 390, 411 (4th Cir. 2024) (Diaz, C.J., concurring) (quoting Republican National Committee v. Aguilar, 2024 WL 4529358, at *5 (D.Nev, 18 Oct. 2024) (disagreeing with Green v. Bell, 2023 WL 2572210 (W.D.N.C., 20 Mar. 2023)). The illegal voting in this case covered all three events.

¹⁵ 2024.10.17 MEC Transcript, p.10, line 4 – p.14, line 8.

¹⁶ *Id.*, at p.10, line 18 – p.11, line 11.

¹⁷ *Id.*, at p.7, line 13 – p.8, line 4.

Commission would hear the appeal.¹⁸ After concluding Mr. Swinson’s election protest was timely, the Election Commission moved to consider the merits of Mr. Swinson’s challenge.¹⁹ Based upon the evidence and the legal authority the Election Commission, again in a 2 to 1 margin, “voted to uphold Mr. Swinson’s protest” and, in effect, to declare the 7 November 2023 Town Council null and void.²⁰

Instead of waiting for the Election Commission to follow the mandates of S.C. Code Ann. § 5-15-130²¹, including issuing a formal report/order memorializing its decision, the Citizen Respondents immediately appealed the Election Commission’s oral “decision” to the Circuit Court and expeditiously obtained a hearing seeking to and ultimately succeeding to overturn, as a *fait accompli*, the Election Commission’s still, as yet unwritten “decision”.²² It is from the Circuit Court’s order overruling the Election Commission and seating Ms. Taylor as an ostensible *bona fide* member of Town Council that the Election Commission has now appealed.

The Citizen Respondents have failed to set forth any credible argument justifying this Supreme Court to dismiss this appeal. While arguing Mr. Swinson’s protest was untimely, they have completely ignored applicable South Carolina law which clearly

18 *Id.*, at p.26, line 15 – p.27, line 5.

19 *Id.*, at p.27, line 9 – p.28, line 4.

20 *Id.*, at p.49, lines 1-12.

21 The Election Commission was required to “conduct a hearing on the contest, decide the issues raised, [and] file its report together with all recorded testimony and exhibits with the [Horry County] clerk of court . . .” See S.C. Code Ann. § 5-15-130.

22 Again, the Citizen Respondents’ Notices of Appeal to the Circuit Court, while bearing the same caption herein, simply were carbon copies of Ms. Taylor’s similar submissions. Moreover, the Circuit Court’s two orders presently under appeal in this consolidate matter read exactly the same as the one under appeal in Appellate Case No. 2024-001889. Only the captions have been switched out and the Citizen Respondents are only peripherally referenced.

authorized Mr. Swinson's challenge. This Supreme Court should not dismiss this important appeal as the determination of the validity and accuracy of any public election is a matter of the utmost public importance, especially for the electorate effected by the particular involved election. While this election contest dispute has been lengthy, the citizens of Atlantic Beach deserve a final and binding determination. This Supreme Court is the best arbiter to render such a full and final resolution. This Supreme Court should not allow political machinations and political posturing to eliminate this Supreme Court's opportunity to address this dispute.

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. This is especially true where, as here, the ineligible voters likely changed the election results in the Town Council election, even though they had been declared ineligible in the mayoral election.

III. 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 deny the Citizen Respondents' meritless *Motion to Dismiss*.

Respectfully submitted:

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