

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

Dec 03 2024

APPEAL FROM HORRY COUNTY
In the Court of Common Pleas

S.C. SUPREME COURT

William H. Seals, Jr. Circuit Judge

Appellate Case No. 2024-001908

Lower Court Case No. 2024-CP-26-07193 & 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' REPLY IN SUPPORT OF MOTION TO DISMISS

Pursuant to Rule 240(f), SCACR, Respondents, by and through the undersigned counsel, submits this Reply in support of Respondents' motion to dismiss this action in full. For the reasons that follow, as well as those set forth in the motion to dismiss, the Court should grant Respondents' motion.

INTRODUCTION

In response to Respondents' motion to dismiss, Appellants Kenneth McIver, Caroline Gore, and Derrick Stevens in their official capacities as members of the Town of Atlantic Beach

Municipal Election Commission (“Appellants”) focused their argument on South Carolina Code Section 7-13-810 for the proposition that after-discovered evidence trumps the 48-hour filing requirement found in South Carolina Code Section 5-15-130. However, Appellants do not cite any case law to support this proposition and are without any legal basis for this position. The concept of after-discovered evidence does not trump the procedural filing requirement of S.C. Code Ann. § 5-15-130. None of Appellants’ arguments in response to Respondents’ motion to dismiss change the fact that an election protest must be filed within 48 hours of the polls closing and that Candidate Shaun Swinson failed to do so.

ARGUMENT

I. Candidate Swinson’s election protest was untimely.

Because Candidate Swinson’s election protest was untimely, this appeal should be dismissed. It is unequivocal that election protests must be filed within 48 hours of the polls closing on election day. *See* S.C. Code Ann. § 5-15-130. As a matter of law, there is no flexibility or exemption from this time requirement, nor should there be. Our statutory election scheme has been adopted to resolve protests in a timely manner and to give voters finality over the results of an election. Appellants’ argument that protests can be brought when there is after-discovered evidence contradicts the statutory requirements to handle protests on an expedited basis.

Further, Appellants obstinately ignore the plain black letter law and how it has been applied in conjunction with after-discovered evidence. After-discovered evidence has been addressed by this Court in conjunction with timely filed election protests. *See* *Gecy v. Bagwell*, 372 S.C. 237, 241, 642 S.E.2d 569, 571 (2007); *Dukes v. Redmond*, 357 S.C. 454, 593 S.E.2d 606 (2004). These cases make clear, that after-discovered evidence is applicable in situations with a timely filed election protest. Appellants have not offered a legally sound rationale for disregarding the law enacted by

the legislature and the clear decisions of this Court. As a result, there is no question of law that needs to be decided in this matter. As a matter of law, Candidate Swinson’s protest was untimely and after-discovered evidence does not extend and/or supersede the 48-hour time requirement found in S.C. Code Ann. § 5-15-130.

II. Candidate Swinson was ineligible to be a candidate.

Appellants ignore the fact that Candidate Swinson was not eligible to be a candidate in the November 7, 2023 election and thus should not have been allowed to file a protest in the first instance. Article VI section 1 of the South Carolina Constitution states,

[n]o person may be popularly elected to and serve in any office in this State or its political subdivisions unless he possesses the qualifications of an elector, is not disqualified by age as prescribed in this Constitution, and has not been convicted of a felony under state or federal law However, notwithstanding any other provision of this Constitution, this prohibition does not apply to a person who has been pardoned under state or federal law or to a person who files for public office fifteen years or more after the completion date of service of the sentence, including probation and parole time.

S.C. CONST. art. VI, § 1. By Candidate Swinson’s own admission, he is a convicted felon who is not yet eligible to be a candidate. Additionally, section 5-15-130 states, “any *candidate* may contest the result of the election.” S.C. Code Ann. § 5-15-130 (emphasis added). Thus, Appellants’ appeal must be summarily dismissed as a matter of law because Candidate Swinson was ineligible to be a candidate for office and could not legally protest an election.

III. Appellants did not have authority to appeal.

It does not appear that Appellants possessed the requisite authority to file this appeal. First, Appellants did not publicly meet and vote to appeal Judge Seals’ November 7, 2024 Order. Second, the Atlantic Beach Town Council did not meet and vote to approve Appellants’ request to appeal Judge Seals’ Order. It appears that Appellants are acting outside of their official capacity and

without authority as this appeal is not a sanctioned action. Thus, this appeal is improperly before this Court and should be summarily dismissed.

CONCLUSION

This matter has been ongoing since November 7, 2023. Approximately 391 days have elapsed since Atlantic Beach citizens casted their ballots and elected Candidate Taylor to Atlantic Beach Town Council. Appellants have employed endless delay tactics to prevent Candidate Taylor from assuming her duly elected position. Appellants' continuous egregious actions are an insult to the one of the bedrock principles of our nation—free and fair election democracy. As such, Candidate Taylor reserves her rights under Rule 260, SCACR, to seek sanctions against Appellants for continuing this egregious delay in finalizing the November 7, 2023 elections results by way of this appeal and failing to respond to this motion to dismiss in a meaningful way. Because the election statutes and case law are clear, Respondents respectfully requests this Court put an end to Appellants' duplicitous endless schemes and dismiss this appeal.

MONCKTON, HEMBREE, & HUMPHRIES, PA

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
December 3, 2024