

RECEIVED

Jan 07 2025

S.C. SUPREME COURT

E

X

H

I

B

I

T

Y

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY)	IN THE FIFTEENTH JUDICIAL CIRCUIT
)	
Carla Taylor,)	Civil Action No. 2024-CP-26-05995
)	
Plaintiff,)	
)	
vs.)	
)	
Kenneth McIver, Caroline Gore, and)	<u>ORDER GRANTING PETITIONERS'</u>
Derrick Stevens in their official capacities)	<u>WRIT OF MANDAMUS</u>
as members of the Town of Atlantic Beach)	
Municipal Election Commission,)	
)	
Defendants.)	
)	

This matter came before the Court pursuant to Carla Taylor’s Petition for Writ of Mandamus and William Booker, Lynda Booker, Elaine Finney, Terry Finney, Sarah Blair, Linda Cheatham, and Harold Cheatham’s (hereinafter “Atlantic Beach citizens”) Petition for Writ of Mandamus pursuant to Rule 65(f) of the South Carolina Rules of Civil Procedure. A hearing was held on October 9, 2024. Based on the record and the respective arguments by the parties, the Court makes the following findings of fact and conclusions of law, and grants Petitioners’ Writ of Mandamus.

FINDINGS OF FACTS

On November 7, 2023, the Town of Atlantic Beach held elections for mayor and two council seats. After the polls closed on November 7, 2023, the unofficial election results reflected Jaqueline Gore and Petitioner Taylor were the two winners of the council race with 69 and 53 votes, respectively. On November 9, 2023, the Atlantic Beach Municipal Election Commission (hereinafter “MEC”) met to hear challenges to several provisional ballots cast in the November 7, 2023 election.

After the MEC hearing, Jacqueline Gore and Petitioner Taylor were still the top two vote recipients with 71 and 69, respectively.

Also on November 9, 2023, a timely protest to the mayoral election was filed pursuant to South Carolina Code Section 5-15-130. No protest was filed in the town council election within the statutorily required forty-eight (48) hour period. On April 3, 2024, the MEC held a belated protest hearing, to hear the mayoral election protest. At that same MEC meeting, the MEC certified the town council election results. The final votes certified that Jacqueline Gore, Petitioner Taylor, Jerry Finney, and Shaun Swinson each received 71, 69, 62, and 49 votes, respectively. Each member of the MEC signed and officially certified the final results certifying Gore and Petitioner Taylor as the winners of the November 7, 2023 council race.

Then, on either April 4, 2024 or April 5, 2024, Shaun Swinson, a candidate for the November 7, 2023 town council race, filed an untimely protest of the certified election results for the town council election. To date, the MEC has not met to resolve Swinson's election protest.¹

On September 3, 2024, Petitioner Taylor filed a Writ of Mandamus, requesting that this Court direct the Respondents to abide by the plain and unambiguous language of the South Carolina code of laws and require the MEC to perform its ministerial obligations. On September 4, 2024, Petitioner Atlantic Beach citizens filed a Writ of Mandamus, requesting that this Court direct the Respondents to abide by the plain and unambiguous language of the South Carolina code of laws and require the MEC to perform its ministerial obligations.

¹ Counsel for Respondents previously told this court "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." See May 23, 2024 Order Denying Plaintiff's Temporary Injunction in *Taylor v. Jake Evans et al.*, Case No. 2024-CP-2602866. It is apparent that referenced legal process was not pursued by the Respondents.

STANDARD

“The primary purpose of a writ of mandamus is to enforce an established right and to enforce a corresponding imperative duty created or imposed by law.” *Wilson v. Preston*, 378 S.C. 348, 354, 662 S.E.2d 580, 582-83 (2008) (citing *Riverwoods, LLC v. Cnty of Charleston*, 349 S.C. 378, 563 S.E.2d 651 (2002)). “A writ of mandamus is a coercive writ that orders a public official to perform a ministerial duty.” *City of Rock Hill v. Thompson*, 349 S.C. 197, 200, 563 S.E.2d 101, 102 (2002) (citing *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 512 S.E.2d 106 (1999)).

“To obtain a writ of mandamus requiring the performance of an act, the petitioner must show: (1) a duty of respondent to perform the act; (2) the ministerial nature of the act; (3) the petitioner's specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy.” *Wilson*, 378 S.C. at 354, 662 S.E.2d at 583 (citing *Riverwoods, LLC v. Cnty of Charleston*, 349 S.C. 378, 563 S.E.2d 651 (2002)). “Whether to issue a writ of mandamus lies within the sound discretion of the trial court, and an appellate court will not overturn that decision unless the trial court abuses its discretion.” *Wilson*, 378 S.C. at 354, 662 S.E.2d at 583 (citing *Charleston Cnty. Sch. Dist. v. Charleston County Election Comm'n*, 336 S.C. 174, 519 S.E.2d 567 (1999)). “Mandamus is based on the theory that an officer charged with a purely ministerial duty can be compelled to perform that duty in case of refusal.” *Id.*

DISCUSSION

Petitioners have met the elements to obtain a writ of mandamus. Title 5 of the South Carolina Code of Laws distinctly defines the duties of a municipal election commission. South Carolina Code Section 5-15-100 states in part, “[w]ithin forty-eight hours after the closing of the polls, any candidate may contest the result of the election as reported by the managers Within forty-eight hours after the filing of such notice, the Municipal Election Commission shall, after due notice to

the parties concerned, conduct a hearing on the contest, decide the issues raised, file its report . . . notify the parties concerned of the decisions made, and when the decision invalidates the election, the council shall order a new election as to the parties concerned.” (emphasis added). The MEC has a mandatory duty to perform the act of meeting to resolve any filed protest, whether timely or untimely.

Swinson’s town council election protest was filed approximately 149 days after the closing of the polls.² Since Swinson filed his election protest, approximately 190 days have elapsed. Although the MEC has a statutory duty to conduct a hearing on a candidate’s election protest, to date, the MEC has not met to do so. Holding a meeting to resolve the protest is ministerial in nature. It is required by law.

The Court is extremely concerned that the MEC has failed to act to resolve Mr. Swinson’s protest in a timely manner as proscribed by South Carolina Code Section 5-15-130. The MEC’s failure to conduct a hearing to resolve Mr. Swinson’s protest, is an egregious dereliction of its statutory responsibilities. Approximately 339 days have elapsed since the November 7, 2023 town council election. It appears to this Court that the delay could be an intentional stall tactic to prevent Petitioner Taylor from getting closure and a final remedy on the issue of her election.

This Court also finds that Petitioners have no other remedy at law in which to resolve Mr. Swinson’s untimely election protest. Thus, this Court orders the MEC to meet and rule on Swinson’s

² “In South Carolina, the right to contest an election exists only under our constitutional and statutory provisions, and ‘the procedure proscribed by statute must be strictly followed.’” *Odom v. Town of McBee Election Commission*, 427 S.C. 305 (2019) (quoting *Taylor v. Roche*, 271 S.C. 505, 509, 248 S.E.2d 580, 582 (1978)); *see also* S.C. Const. art. II, § 10 (“The General Assembly shall ... establish procedures for contested elections, and enact other provisions necessary to the fulfillment and integrity of the election process.”). Statutes which are in derogation of the common law must be strictly construed. *See Doe v. Brown*, 331 S.C. 491, 496, 489 S.E.2d 917, 920 (1997).

election protest on or before October 19, 2024 at 4 p.m. If the MEC fails to meet by this deadline, the Court may be forced to utilize its power of contempt as necessary.

IT IS SO ORDERED!

October 10, 2024



Horry Common Pleas

Case Caption: Carla Taylor VS Kenneth McIver , defendant, et al
Case Number: 2024CP2605995
Type: Order/Other

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

**E
X
H
I
B
I
T
Z**



**Town of Atlantic Beach
Municipal Election Commission Meeting – 4:00 p.m.
Wednesday, October 16, 2024
Atlantic Beach Community Center
1010 32nd Avenue South, Atlantic Beach, SC 29582
A G E N D A**

FOIA: This meeting was posted at least 24 hours in advance at the Town Hall and Community Center, faxed to the following media North Myrtle Beach Times, Sun News, WBTW, WMBF, WPDE, WMIR, TOAB WEBSITE:
: <https://boxcast.tv/channel/hriov7yurwsygzbggzi>

1. Call to Order.
2. Invocation.
3. Approval of Agenda.
4. Shaun Swinson's Appeal.
5. Adjournment.

**E
X
H
I
B
I
T**

AA



**Town of Atlantic Beach
Municipal Election Commission Meeting – 4:00 p.m.
Thursday , October 17, 2024
Atlantic Beach Community Center
1010 32nd Avenue South, Atlantic Beach, SC 29582
A G E N D A**

FOIA: This meeting was posted at least 24 hours in advance at the Town Hall and Community Center, faxed to the following media North Myrtle Beach Times, Sun News, WBTW, WMBF, WPDE, WMIR, TOAB WEBSITE:

: <https://boxcast.tv/channel/hriov7yurwsygzbggzi>

1. Call to Order.
2. Invocation.
3. Approval of Agenda.
4. Shaun Swinson's Appeal.
5. Adjournment.

**E
X
H
I
B
I
T**

AB

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TOWN OF ATLANTIC BEACH
MUNICIPAL ELECTION COMMISSION MEETING

BEFORE: KENNETH McIVER, Chairman
DERRICK STEVENS, Commissioner
CAROLYN GORE, Commissioner

DATE: OCTOBER 17, 2024

TIME: 4:00 p.m.

LOCATION: ATLANTIC BEACH COMMUNITY CENTER
1010 32nd AVENUE SOUTH
ATLANTIC BEACH, SC

REPORTED BY: CAROL T. LUCIC, RPR, RMR

CLARK BOLEN COURT REPORTING & VIDEO CONFERENCING
CHARLESTON, SC 29407
843-762-6294
WWW.CLARKBOLEN.COM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

ON BEHALF OF THE MUNICIPAL ELECTION COMMISSION:

THE PFLUG LAW FIRM, LLC

BY: DWAYNE M. GREEN, ESQ.

211 Scott Street

Mt. Pleasant, SC 29464

ON BEHALF OF SHAUN SWINSON, SR.:

BOYKIN & DAVIS, LLC

BY: KENNETH A. DAVIS, ESQ.

220 Stoneridge Drive

Columbia, SC 29210

ON BEHALF OF WILLIAM BOOKER, LYNDIA BOOKER, ELAINE
FINNEY, TERRY FINNEY, SARAH BLAIR, LINDA CHEATHAM,
and HAROLD CHEATHAM:

MONCKTON, HEMBREE & HUMPHRIES, P.A.

BY: WILLIAM H. MONCKTON, VI, ESQ.

1300 Professional Drive

Suite 102

Myrtle Beach, SC 29577

1 ON BEHALF OF CARLA TAYLOR:

2 ROBINSON GRAY STEPP & LAFITTE

3 BY: ROBERT E. TYSON, JR., ESQ.

4 2151 Pickens Street

5 Suite 500

6 Columbia, SC 29211

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

CERTIFICATE OF REPORTER 50

TAYLOR EXHIBITS

NO.		PAGE
1	Shaun Swinson appeal, 4/3/24	36
2	Certification of candidates, 4/3/24	39
3	Order granting petitioners' writ of mandamus, 10/10/24	42
4	Summons and petition for writ of mandamus filed by Mr. Tyson	42
5	Summons and petition for writ of mandamus filed by Mr. Monckton	42

CITIZENS EXHIBITS

NO.		PAGE
1	Article VI, Section 1 of SC State Constitution	42

SWINSON EXHIBITS

NO.		PAGE
1	Decision on Ms. Isom's election protest	43
2	Certification of candidates, 4/3/24	43

(Exhibits attached.)

1 CHAIRMAN McIVER: We're going to be
2 getting started just as soon as possible. We're
3 almost ready, I think.

4 MR. DAVIS: Mr. Swinson was given a work
5 assignment that was prescheduled, and so he's about
6 15 minutes out, so I would ask that we hold off
7 until 4:15 if possible if we don't have any
8 objections.

9 MR. MONCKTON: I don't have any objection.

10 MR. DAVIS: Thank you for your indulgence.

11 CHAIRMAN McIVER: It's about 4:17. On the
12 recommendation of Mr. Swinson's attorney we're
13 going to go ahead and get started. We're going to
14 introduce ourselves for the reporter here. My name
15 is Kenneth McIver. I'm the chairman of the
16 Atlantic Beach Municipal Election Commission.

17 MR. STEVENS: Derrick Stevens.

18 MS. GORE: Carolyn Gore.

19 MR. GREEN: Dwayne Green, attorney.

20 CHAIRMAN McIVER: At this time if we would
21 please stand for the invocation.

22 (Invocation)

23 MR. MONCKTON: Mr. Chairman, can I mention
24 something before we get started? There have been
25 some emails back and forth between myself and

1 counsel for the Election Commission. I think
2 before we get started pursuant to Section 5-15-130
3 of the South Carolina Code there needs to be a vote
4 amongst the Commission that Mr. Swinson's protest
5 was timely filed before we go forward. I know
6 that's a house cleaning thing, but I think there is
7 some question about whether or not you all have
8 approved his protest as being timely. If you
9 intend to hear the protest today, I think you're
10 going to have to do that prior to you hearing the
11 protest, that there would have to be a vote amongst
12 the Commission that Mr. Swinson's protest is timely
13 before you can go forward. Thank you.

14 CHAIRMAN McIVER: The nature of this
15 meeting is to continue what we started yesterday.
16 We made considerations for the attorneys. I do
17 want to point out the nature of the meeting
18 yesterday was not to be a hearing. It was a
19 discussion amongst the Commissioners with the
20 consultation of our counselors.

21 To continue with what the attorney has
22 said, is there a motion to rule on the timeliness
23 of Mr. Swinson's protest?

24 MR. DAVIS: Mr. Chair, I think
25 Mr. Monckton presented yesterday on that timeliness

1 issue. I only presented on the continuance. I
2 have a couple of passages regarding the timeliness
3 issue.

4 MR. GREEN: Mr. Chair, just to get
5 everything on the record and in light of everything
6 we do want to get everything on the record. There
7 was no vote yesterday on the timeliness, but both
8 sides can present arguments as to the timeliness,
9 and that will be part of the vote. So there will
10 be a vote taken, but in terms of timing, if both of
11 you all will present your arguments on that, and
12 then the Commission will make a vote on that.

13 MR. MONCKTON: A point of order,
14 Mr. Chairman. In order to hear a protest the
15 Commission has to decide before you have a protest
16 hearing whether or not it is timely because there
17 is an issue with the timeliness. You can't just go
18 right into a protest hearing. The Commission is
19 going to have to vote to decide whether or not
20 Mr. Swinson's protest was timely before you can go
21 into a protest hearing.

22 That's the first thing you have to do is
23 to decide whether or not it is timely and it's a
24 valid protest before you can hear it. That is a
25 requirement of the Commission to make that vote.

1 It's not a hear it and we argue about it later.
2 You have to do that presumptively. Before you have
3 any protest hearing you have as a Commission to
4 decide whether or not it is a timely protest.

5 CHAIRMAN McIVER: Again, the whole nature
6 of our meeting was not to be a hearing. So I do
7 seek a motion that we listen -- that we vote on the
8 timeliness of Mr. Swinson's protest.

9 MR. DAVIS: There is going to be a record
10 from this proceeding, and I have not presented on
11 the timeliness issue. I would like to point the
12 Commission to the case law which supports going
13 forward with this protest.

14 MR. GREEN: Just a point of order again.
15 Once again, we're hearing from both attorneys. As
16 the attorney for the town we have to set the
17 procedure. So the procedure we're going to do is
18 to hear from both sides before we take a vote, and
19 that will include any argument that either side has
20 on timeliness.

21 To your point, the vote on timeliness
22 could be taken after we hear from both of you, and
23 that could be the first vote heard, and then the
24 second vote can be on the protest itself.

25 MR. MONCKTON: So I understand to be

1 clear, the Commission is going to vote on the
2 timeliness after the protest hearing?

3 MR. GREEN: After they hear from both
4 sides on the issue of timeliness.

5 MR. MONCKTON: On timeliness only.

6 MR. GREEN: On timeliness.

7 MR. MONCKTON: Okay.

8 CHAIRMAN McIVER: We're going to seek
9 approval of the agenda as presented.

10 MR. STEVENS: I second the motion.

11 CHAIRMAN McIVER: The motion has been
12 seconded for approval of the agenda. It has been
13 seconded. Those in favor?

14 MR. STEVENS: Aye.

15 CHAIRMAN McIVER: Aye. The motion has
16 passed.

17 We will move to Item No. 4, Shaun
18 Swinson's appeal. Again, we're under an order from
19 the Court to get this resolved, so we're going to
20 listen to the timeliness of Mr. Swinson's appeal,
21 and we will start off with Mr. Swinson's attorney.
22 If he has anything when he comes in, he can also
23 present his side.

24 MR. DAVIS: Mr. Chair, Members of the
25 Commission, thank you for hearing from us on this

1 important issue. I'm Kenneth Davis from the law
2 firm of Boykin & Davis. We represent Mr. Shaun
3 Swinson with regard to this protest.

4 We believe the protest to be timely based
5 upon the manner in which the election results were
6 certified; i.e., in November of 2023 there was an
7 interruption in the process based upon some alleged
8 wrongdoing of a prior Commission member. That
9 prior Commission member was removed from the
10 Commission, and then there was a time period the
11 Town Council spent trying to reconstitute a
12 Commission to go forward, and that was no fault of
13 Mr. Shaun Swinson. After various machinations a
14 hearing was ultimately set for April 3 at which
15 time -- completion of the process including a
16 hearing on the protest were all set for April 3,
17 and at said time the results of the election were
18 certified, but also at the same time the Commission
19 determined that 13 voters who participated in the
20 process had their votes thrown out after they had
21 been allegedly commingled with the other ballots.

22 So at that point is when Mr. Swinson
23 understood that there were ineligible voters who
24 had been originally counted in the voting polls.
25 Specifically the facts were raised in the mayoral

1 portion protest; however, it's one election, one
2 ballot. So after-acquired evidence that
3 Mr. Swinson learned about from the mayoral protest
4 hearing justified him making his protest, and I
5 think the case law Gecy vs. Bagwell supports the
6 notion that after-acquired evidence; i.e., evidence
7 which was learned after the election has occurred
8 can be the basis for a protest, and if that
9 evidence is not learned until April because of the
10 process employed by the Commission, Mr. Swinson has
11 to exercise his rights for what was put before him.

12 I think we hear from conversations about
13 statutes and mandatory timelines. Well, in the
14 case of Cole versus Town of Atlantic Beach, a 2011
15 case, our Supreme Court in the State of South
16 Carolina visited this notion of how mandatory
17 timelines can be. In particular, the Court said:
18 "Courts generally consider the provisions of
19 election laws mandatory when the statute expressly
20 declares that a particular act is essential to the
21 validity of an election or when a party seeks
22 enforcement of the law in a direct proceeding
23 before the election takes place. In the interest
24 of avoiding the disenfranchisement of voters after
25 an election has taken place a statute that uses

1 seemingly mandatory terms such as "shall" or "must"
2 will be considered directory if the party seeking
3 enforcement alleges no fraud or if that party fails
4 to prove fraud."

5 To my understanding the issue regarding
6 timeliness is a straight statutory interpretation
7 challenge and is not a challenge based upon any
8 alleged fraud by anyone, nor has there been put
9 forth any evidence of fraud in any delay. So our
10 Supreme Court said in that circumstance language
11 that appears mandatory like "shall" or "must" is
12 not mandatory; you look at the common sense and the
13 facts of the particular case.

14 Again, the Court said: "Courts justly
15 consider the main purpose of an election law,
16 namely, the obtaining of a fair election and an
17 honest return as paramount in importance to the
18 minor requirements which prescribe the formal steps
19 to reach that end, and in order not to defeat the
20 general design are frequently led to ignore such
21 innocent irregularities of election officers as are
22 free of fraud and have not interfered with a full
23 and fair expression of the voters' choice."

24 So, again, the Court reiterates this
25 notion that the processes are there, but more

1 important than the processes is the fairness to the
2 voters in the election process, and if there is no
3 allegation of fraud by the election officers, then
4 time frame irregularities can be set aside in
5 making a determination as to matters of timeliness
6 of a protest.

7 I guess my final point from that Cole
8 case, the Court said: "5-15-130 requires the
9 Municipal Election Commission to take a number of
10 actions within 48 hours of the candidates filing
11 protests - conduct a hearing, decide the issues,
12 file a report that includes the transcribed
13 testimony and exhibits with the County Clerk,
14 notify the parties of the decision and order a new
15 election if necessary. We believe the main purpose
16 of this law is to expeditiously finalize protested
17 municipal elections in the interest of realizing
18 the voters' will and seamlessly transitioning
19 governmental offices. Therefore, insubstantial
20 deviations from these provisions would not
21 ordinarily"; i.e., 5-15-130, "require a Court to
22 nullify a protest hearing decision."

23 So, again, the Court is saying that absent
24 this fraud the concerns for the voters' decision is
25 paramount, and matters such as timelines and

1 whether a particular function was done may be set
2 aside if there is no allegation or evidence of
3 fraud, and there is nothing that we've heard that
4 is suggestive of any fraud by any party in causing
5 the delay in the certification of the results from
6 November until April.

7 On that basis we ask that the Commission
8 find that this protest is timely. Thank you for
9 your time.

10 CHAIRMAN McIVER: Thank you. At this time
11 we ask the other party present their case.

12 MR. TYSON: Good afternoon, Members of the
13 Commission. I'm Rob Tyson. I'm the attorney for
14 Carla Taylor, the duly elected Town Council person
15 that for some reason people don't want to see, and
16 so hopefully we're here today and she will be
17 positively seated.

18 Just a couple of comments. Mr. Monckton
19 is going to finish up, but just a couple of points
20 just real quick. I wanted to read you the statute
21 just so that we're real clear, and these are facts.
22 This isn't me arguing; these are facts.

23 The section is 5-15-130 of the state law,
24 and it says: "Procedures for contesting results of
25 the election." So that's the title. So if you

1 want to contest an election, this is how you do it.
2 The state law tells you how to do it. It says in
3 the first sentence: "Within 48 hours after the
4 closing of the polls any candidate may contest the
5 results of the election as recorded by the managers
6 by following a written notice of such contest
7 together with a concise statement," and it goes on.
8 Then you've got a responsibility as a Commission to
9 have a hearing on that within 48 hours. That's a
10 fact. That's the law. There's no two cents about
11 that.

12 Next fact: Mr. Swinson filed a protest on
13 April 3. That's not within 48 hours of when the
14 polls closed. When the polls closed -- what day
15 was the election? November 7. There was no way in
16 the world that this Commission can hear this
17 protest under state law when it says you've got to
18 do it within 48 hours.

19 Mr. Davis stands up and says it's only
20 when the results are certified. That's not what
21 the state law says. We just read that to you. I
22 don't think there is any doubt about it.
23 Mr. Dickey, the former lawyer, references the April
24 3 letter as untimely. Mr. Green stands up in court
25 and says we've got to deal with this protest that

1 was filed on April 3.

2 Mr. Davis wants to argue about this
3 protest that was filed on April 3. That's not
4 within 48 hours. You don't have the ability to
5 hear the protest, and if you need further evidence
6 of that, the order that the Chairman referenced
7 earlier, Judge Seals' order, talks about it being
8 an untimely protest because all of the parties
9 understand it's not consistent with state law.

10 So we respectfully request that you deny
11 this request to have a protest hearing, you don't
12 move forward, and you recognize Ms. Taylor as the
13 properly elected Town Council person. I'll turn it
14 to Mr. Monckton.

15 MR. MONCKTON: Mr. Chairman, Commission,
16 I'm not going to go back over the statute.
17 Co-counsel just did it. Mr. Davis presented me a
18 case, Mr. McIver, which I think you spoke about
19 yesterday. It was Cole versus Town of Atlantic
20 Beach. It's a 2011 Supreme Court case, and I'm
21 going to read to you the holding in the case so
22 everybody is crystal clear on what the Supreme
23 Court thinks about what is going on here.

24 "The attempt by members of the Municipal
25 Election Commission and the Town Manager to prevent

1 Cole and Price from establishing residency were
2 deplorable. The manner in which the MEC conducted
3 the protest hearing causes us great concern and
4 makes us question whether future election protests
5 can be properly conducted in Atlantic Beach without
6 direct monitoring by the State Election Commission.
7 Nearly every Atlantic Beach municipal election held
8 in recent history has found its way to this court.
9 We have grown weary of the shenanigans engaged in
10 by all parties involved in the election process in
11 Atlantic Beach and will not hesitate to issue
12 sanctions if the election laws of this state
13 continue to be blatantly disregarded."

14 You understand the time. 5-15-130, it
15 says that a protest has to be filed within 48
16 hours, and our Supreme Court is warning you not to
17 make a mistake. Thank you.

18 MR. GREEN: Mr. Monckton, I have a
19 question of you. If you would just state it for
20 the record, it would be helpful. There is a case
21 of Dukes versus Redmond which considers
22 after-acquired evidence. Do you have a position on
23 whether or not an election --

24 MR. MONCKTON: In those cases --

25 MR. GREEN: Just for the record if I could

1 just finish the question.

2 MR. MONCKTON: Sure.

3 MR. GREEN: Do you have an opinion one way
4 or the other on whether or not an Election
5 Commission may properly consider after-acquired
6 evidence by a candidate who presents credible
7 evidence?

8 MR. MONCKTON: In those cases the protest
9 was timely filed within the 48 hours. Here the
10 protest was not filed timely in 48 hours. It was
11 not filed until 2024, August 3, August 4, which is
12 way outside the 48-hour time frame.

13 So in those cases you discussed the
14 protest was timely filed and evidence was found out
15 later. In this case Mr. Swinson did not file the
16 protest within 48 hours. If you don't file the
17 protest within 48 hours, you don't get to come back
18 at some future time and bite the apple because our
19 Supreme Court has said elections need to be
20 transparent, quick, and resolved.

21 This has been going on for almost a year
22 now, and our Supreme Court is very crystal clear on
23 this matter that these matters need to be resolved
24 expeditiously. That's why on the timeliness issue
25 before this goes any further the Commission needs

1 to vote affirmatively or negatively, whether or not
2 this protest is timely under the law of 5-15-130 of
3 the South Carolina code. Thank you.

4 MR. GREEN: Mr. Monckton, let me just ask
5 one more question in followup so we have a clear
6 record because, as you know, a Court will be likely
7 reviewing this. Is it your position that if there
8 is not a protest filed within 48 hours of the polls
9 closing, that that candidate is then barred from
10 presenting any after-acquired evidence to the
11 Election Commission?

12 MR. MONCKTON: It's not my opinion. It's
13 state law.

14 MR. GREEN: Can you cite --

15 MR. MONCKTON: 5-15-130. It says very
16 clearly you have to file within 48 hours after the
17 closing of the polls.

18 MR. GREEN: And that bars after-acquired
19 evidence?

20 MR. MONCKTON: There are no exceptions in
21 that statute.

22 MR. GREEN: Thank you. I just wanted that
23 for the record. Thank you.

24 MR. TYSON: Commissioners, Chairman, let
25 me just help Mr. Green on this or Mr. Monckton or

1 just add something to it. At your August
2 informational meeting your attorney referenced this
3 case. I immediately wrote a letter explaining how
4 after-acquired evidence works. I just want to make
5 sure that that letter that's dated August 21, 2024,
6 gets entered into the record because, as
7 Mr. Monckton said, after-discovered evidence -- the
8 issue in the case that Mr. Green discussed with you
9 was a different type issue. It's not the same one
10 that you have here today.

11 In that case the issue was somebody filed
12 a protest in a timely manner within the 48 hours
13 just like Ms. Isom did; she filed a protest. She
14 knows the rules. She did it. I don't know why
15 Mr. Swinson didn't, but she did it. You're
16 supposed to file it within the 48 hours, and then
17 you're supposed to have your hearing.

18 So the question in that case was is there
19 any evidence that has been discovered after the
20 election and before your protest hearing that you
21 would hear -- can that evidence be used as part of
22 the protest to carry the day on the protest? One
23 of the people said no, no, no. You can't do it
24 then. The argument was you're supposed to bring
25 that argument before the election, and the Court

1 said no. You can use after-discovered evidence if
2 it's after the election and before the protest
3 hearing assuming all of the other time constraints
4 are filed.

5 So we don't think it's a relevant case
6 here. When the protest wasn't filed in a timely
7 manner, you're not required to use after-discovered
8 evidence, and if you took that logic -- and I think
9 we pointed it out in the letter -- you're going to
10 have to wait forever before we got a protest, and
11 you all wouldn't have to hear anything because
12 you're just going to sit and wait for whatever
13 evidence might come up, and that's not how the law
14 is written or interrupted. Thank you.

15 CHAIRMAN McIVER: Mr. Davis.

16 MR. DAVIS: Yes, sir, just a brief
17 rebuttal. They mentioned a court case. That's not
18 conclusive evidence. Mr. Swinson, even though it
19 was his appeal that was the subject of that case,
20 he was not named as a party in that lawsuit, so
21 under the law of res judicata that decision is not
22 preclusive as to any issues regarding Mr. Swinson.

23 Again, secondly, going back to the Cole
24 case -- and Mr. Monckton read some very harsh words
25 from the Court -- that was a case where the court

1 first laid out the framework that says you can set
2 aside mandatory language when there is no fraud.
3 In that case the Court said there was some shady
4 behavior on the part of the election officials,
5 which distinguishes itself from this case.

6 This is a pure application of the statute
7 where the Court said "shall" and "must" can be set
8 aside in these circumstances. Basically this is a
9 unique circumstance where again there is one ballot
10 in Atlantic Beach. There is mayor and council on
11 the same ballot. So in the mayoral race this
12 Commission threw out 13 voters, but the same
13 ineligible voters also participated in the council
14 decision.

15 Mr. Swinson did not have knowledge of that
16 until he did. So again we ask that the Commission
17 look at the Cole decision and look at the words
18 from our State Supreme Court about when you can set
19 aside words such as "shall" and "must." We concede
20 that 5-15-130 says "shall" and "must," but our
21 Supreme Court says "shall" and "must" can be set
22 aside when there is no fraud and in circumstances
23 where the will of the voters is paramount.

24 This is that same case when 13 votes in
25 the mayoral race were thrown out, but for some

1 reason the City Council race was allowed to stand
2 even though the same 13 ineligible voters voted in
3 both elections.

4 CHAIRMAN McIVER: I have a question for
5 you, Mr. Davis. In the mayoral race you had two
6 people running. If you subtract 13, you can see
7 the difference. When you're having a four-person
8 race, where do you take the votes from?

9 MR. DAVIS: The issue is whether or not it
10 affects the outcome of the election, and what
11 happens is if you take away 13 votes, then the
12 outcome of the election is -- a gap between two and
13 three is only seven votes. If you take away 13 --
14 your election I'm saying is the top two of the four
15 that participated. It's not this person against
16 that person. It's two of four.

17 MR. STEVENS: Actually it was 18, wasn't
18 it, 18 votes?

19 MR. DAVIS: There were 18 challenges. The
20 final ruling from the hearing was 13. Five were
21 kind of adjudicated differently, but 13 was
22 actually the final number.

23 MR. GREEN: Just a point of order, towards
24 Mr. Monckton's point, there was first an issue of
25 timeliness that the Commission needs to vote on

1 first, whether or not in light of both sides'
2 arguments the appeal or the protest is timely, and
3 I think after you find it's timely, then you would
4 get into the further arguments.

5 So to honor the request of the plaintiff
6 we do want to have whatever final discussion
7 amongst the Commission and a vote on timeliness
8 before hearing anything else.

9 CHAIRMAN McIVER: Okay. Were you
10 finished, Mr. Davis?

11 MR. DAVIS: Again, the Court said that you
12 can set aside "shall" and "must" words such as in
13 5-15-130 when there is no allegation of fraud or
14 evidence of fraud, and none of this is before us
15 here today, so we ask that the Commission
16 adjudicate the protest as being timely. Thank you.

17 CHAIRMAN McIVER: Thank you. Anything
18 else?

19 MR. TYSON: Yes, sir. I just forgot this
20 case. This is just one more case. It was another
21 case that Mr. Green referred to. It's the Odom
22 versus the Town of McBee case. It's 2019. It's a
23 Supreme Court case. They had a town election
24 commission, too, and the issue was there about
25 timelines. This is a simple statement that the

1 Court made. It said: "The right to contest an
2 election exists only under the state's
3 constitutional and statutory provisions, and the
4 procedure prescribed by statute must be strictly
5 followed." Then the Court goes through a whole lot
6 of analysis why, and the argument obviously is you
7 have an election on a Tuesday, you file a protest
8 by Thursday, and then you have your hearing after
9 that so you can honor the voters' wishes, and so
10 thus the Supreme Court has blessed that over and
11 over and over that the timelines must be strictly
12 followed. Thank you.

13 CHAIRMAN McIVER: Thank you. We're going
14 to close out the hearing part.

15 MR. GREEN: I just want to thank both
16 sides for presenting those arguments. Again, the
17 issue here -- and I just want to make sure this is
18 also on the record -- it goes with Dukes versus
19 Redmond, and in that case it was a specific
20 consideration of voters who were not in fact city
21 residents and therefore ineligible to vote in a
22 municipal election, so that, of course, wasn't
23 discovered until after.

24 So that's the novel question that we're
25 all here for. That's why we respectfully heard

1 from both sides is to first hear whether or not
2 it's timely and then secondly go into the matter.
3 So thank you both for all that. I just want to
4 make sure we have a clear record for any judicial
5 review.

6 CHAIRMAN McIVER: Thank you. We're going
7 to close out the hearing part of it and turn over
8 to discussion by the Commissioners, and if there is
9 a motion to be made, we're going to go ahead and do
10 that if there is any discussion. Again, we're
11 talking about the timeliness of Mr. Swinson's
12 protest.

13 MR. STEVENS: I would like to make a
14 motion to hear Mr. Shaun Swinson's appeal.

15 CHAIRMAN McIVER: We just heard it. We're
16 just going to take a vote whether or not
17 Mr. Swinson appeal was timely.

18 MR. STEVENS: Timely. I make a motion
19 that it was timely.

20 CHAIRMAN McIVER: A motion has been made
21 to agree that Mr. Swinson's motion was timely. Do
22 we have a second?

23 MS. GORE: I second that motion.

24 CHAIRMAN McIVER: The motion has been
25 seconded. All those in favor that Mr. Swinson's

1 motion was timely vote in the affirmative.

2 MR. STEVENS: Aye.

3 MS. GORE: Aye.

4 CHAIRMAN McIVER: I vote no, and the
5 motion has carried.

6 We are here only to discuss the timeliness
7 of Mr. Swinson's appeal. I'm glad you made it in.
8 Commissioners, I seek a motion for adjournment.

9 MR. GREEN: You heard the second part.
10 That first motion was requested by the plaintiff.
11 Now the second part is hearing what you were
12 starting to hear, which was the arguments on
13 substance. So you all can hear that, and that's
14 what the judge asked us to make a decision on that,
15 not merely the timeliness, but the substance of
16 those.

17 MR. McIVER: I thought it was just the
18 timeliness.

19 MR. GREEN: So you will be hearing briefly
20 from both sides, and then you can make a vote on
21 that as well.

22 CHAIRMAN McIVER: So we hear their
23 arguments, whatever arguments on the other issues.

24 MR. GREEN: You hear from both sides. So
25 the request was from Mr. Monckton to first hear the

1 motion of timeliness, so that motion was first
2 heard, and now the second is to hear the substance
3 of both sides as to the protest. So that's the
4 next part.

5 CHAIRMAN McIVER: Okay. We're going to
6 sort of shorten up that time period to listen to
7 the other parts of it. My understanding until we
8 got advice from our counsel was that we're just
9 listening to the timeliness, but, Mr. Davis, if you
10 would present other supporting evidence that you
11 would like to present.

12 MR. DAVIS: Again, thank you all for
13 agreeing to hear from Mr. Swinson in this important
14 matter affecting the Town of Atlantic Beach.

15 On April 3 the Commission made a
16 determination in a protest in the mayoral challenge
17 that 13 voters were deemed ineligible based upon
18 not having sufficient residency to qualify as
19 voters for the purpose of election, and that was
20 specifically provided in the mayoral protest, and
21 the Commission decided that a new election would be
22 ordered, the outcome being in doubt. There was a
23 one point gap and 13 votes, and a one point gap in
24 an election makes a difference; however, the
25 Commission had a similar doubtful result -- even

1 though there was no protest filed at that point,
2 the Commission still had to look at the whole
3 election and determine whether to certify the
4 election, and that was the point of
5 Mr. Swinson's -- initially his pro se protest was
6 that the same body that threw out 13 votes in the
7 mayoral race because the election was in doubt
8 because of the one vote gap went forward with
9 certifying the results in the council race even
10 though there was a resulting doubt.

11 There were two council seats up. There
12 were four people who were candidates to fill those
13 two seats, and you pick the top two, but the gap
14 between two and three is only seven, and so if 13
15 votes are out and the gap is only seven between two
16 and three, then the election results are in doubt.
17 So if the election results are in doubt in the
18 mayoral race, they are similarly in doubt in the
19 council race, meaning that if a new election is
20 ordered in the mayoral race, residents certified
21 the results of the council race as being final, I
22 think the law and fairness would require that the
23 City Council results also be set aside and a new
24 election ordered because it's the same ballot. I
25 mean there is not a separate ballot that people are

1 using for the mayoral race that's independent of
2 the City Council race, and so if the ballots are
3 tainted for mayoral purposes, they are also tainted
4 for City Council purposes, the result being in
5 doubt, then the same result should apply to the
6 council race.

7 Of course, there are some other things
8 that have been discussed at various hearings and
9 such about whether or not there were ballots in
10 trash cans at one point or another or removed from
11 the counting table on that evening, and to the
12 extent there were any findings on that from the
13 prior hearing again we kind of reiterate that.

14 There was a lot of irregularity, and again
15 I think you all know that there was a Commissioner
16 who was removed and replaced in this process. So
17 there was some -- somebody observed some
18 irregularity and misconduct to the level of the
19 drastic result of removing a Commissioner. So
20 against that backdrop we ask that the Commission
21 make the same decision with regard to the City
22 Council race that it did with the mayoral race;
23 i.e., order a new election.

24 So we thank you for your time.

25 CHAIRMAN McIVER: Thank you, sir.

1 MR. MONCKTON: May it please the
2 Commission, since we're doing a hearing, I would
3 like to call Mr. Swinson as a witness.

4 CHAIRMAN McIVER: Mr. Swinson.

5 MR. MONCKTON: He can stand at the
6 microphone. I'm loud enough.

7 CHAIRMAN McIVER: If you would please
8 state your full name.

9 MR. SWINSON: Shaun Swinson, Sr.

10 CHAIRMAN McIVER: Go ahead.

11 EXAMINATION

12 BY MR. MONCKTON:

13 Q. Mr. Swinson, you ran for City Council on
14 the November 7, 2023, election; is that correct?

15 A. Correct.

16 Q. Did you file a protest on November 9,
17 2023?

18 A. No, I didn't.

19 Q. When did you file a protest?

20 A. It was filed in April.

21 Q. April 3 or April 4 of 2024?

22 A. Yes.

23 Q. I have to ask you these questions,
24 Mr. Swinson.

25 Were you convicted of a drug offense in

1 2007?

2 A. It was money laundering.

3 Q. Money laundering in 2007.

4 How much time did you serve?

5 A. It was in 2006.

6 Q. 2006.

7 How much time did you receive?

8 A. 72 months.

9 Q. When were you released?

10 A. I was released in 2011.

11 Q. 2011.

12 When were you released from supervised
13 release?

14 A. 2013.

15 Q. 2013.

16 When you filed with the Town of Atlantic
17 Beach to run for Town Council, did you fill out a
18 form?

19 A. Indeed.

20 Q. On that form did you fill out that you
21 were qualified to run for Town Council?

22 A. Yes, to my knowledge.

23 Q. To your knowledge.

24 Are you aware that Section 1 Article VI of
25 the South Carolina State Constitution says you must

1 complete all of your sentence regarding parole and
2 probation and be off of that for a period of 15
3 years before you can run for any public office?

4 A. I was not aware. I have no knowledge of
5 that particular statute.

6 Q. It's not a statute. It's in our state
7 constitution.

8 If you were aware of that and you were
9 released in 2013 plus 15 years is 2008, would you
10 have been eligible to run for Town Council?

11 A. To my knowledge it was from conviction.

12 Q. Conviction. However, Article VI, Section
13 1 states -- and I'll repeat it here for you
14 verbatim -- "No person may be popularly elected to
15 and serve in any office in this state or political
16 subdivision unless he possess the qualifications of
17 an elector, is not disqualified by age as
18 prescribed in this constitution, and has not been
19 convicted of a felony under state or federal law."

20 Was your money laundering charge a felony?

21 A. Yes.

22 Q. It says no person can file or run for
23 public office 15 years or more after the completion
24 date of the service of the sentence. So if you
25 finished your sentence in 2013, according to the

1 state constitution you're not eligible to run for
2 Town Council, are you?

3 A. Was it stated on the form?

4 Q. I do not know what was stated on the form,
5 but are you in compliance the state laws and state
6 constitution?

7 A. I'm in compliance with the form, what is
8 stated on the form.

9 Q. That's fine. I'm just going to ask you
10 this question: If you were released in 2013,
11 according to the state constitution you have not
12 gone 15 years and been off of that sentence, have
13 you?

14 A. I don't know.

15 Q. You don't know?

16 A. No.

17 Q. For the record you were convicted in 2006
18 and released from supervised release in 2013;
19 correct?

20 A. Correct.

21 MR. MONCKTON: No further questions.

22 MR. TYSON: Just a handful of questions if
23 I can.

24 EXAMINATION

25 BY MR. TYSON:

1 Q. Mr. Swinson, I'm going to show you a
2 letter. Mr. Swinson, have you seen that letter
3 before?

4 A. Yes.

5 Q. What is it?

6 A. It's an appeal.

7 Q. It's your appeal. What is its date?

8 A. April 3, 2024.

9 Q. When was the election?

10 A. November 7, 2023.

11 Q. 48 hours after November 7 would be what?

12 A. The 9th.

13 Q. So this isn't within 48 hours; correct?

14 A. Well, information wasn't to my knowledge
15 at the time. When I discovered this, that's when I
16 made the appeal.

17 Q. I understand, but April 3 is not within 48
18 hours. We just want to make sure that everybody
19 understands that fact; right?

20 A. It was within 48 hours of when I
21 discovered this new evidence.

22 MR. TYSON: I'm going to give you a copy
23 for the record, too. I'm sure you have it, but
24 let's make sure we get that in the record.

25 (Taylor Exhibit 1 marked for

1 identification.)

2 Q. I'll show you one more. Have you seen
3 this sheet before?

4 A. No.

5 Q. Let's look through it. It says it's the
6 certification of candidates for the Town of
7 Atlantic Beach; right? That's what the top says?

8 A. I guess, yes.

9 Q. And then it says this is about the
10 election on November 7 and it's for the mayor and
11 the council seat, and then down there on the
12 council it says what the four vote totals were;
13 right?

14 A. Uh-huh.

15 Q. Jacqueline Gore got 71 votes and Carla
16 Taylor got 69. So those were the two winners;
17 right?

18 A. Allegedly, yes.

19 Q. Let's look down there, Municipal Election
20 Commissioners. You see there are three signatures
21 there; right?

22 A. Uh-huh.

23 Q. Each of these people right here have
24 already certified that Carla Taylor is the winner;
25 correct?

1 A. Okay.

2 Q. I'm just asking you on this form they
3 signed their names, and they said 71, 69, 62, and
4 48, and those are the results certifying the
5 candidates?

6 A. When was this signed?

7 Q. April 3.

8 A. And I filed April 4, within 48 hours.

9 Q. Mr. Davis just stood up and said 13 votes
10 were thrown out.

11 MR. DAVIS: 18.

12 MR. TYSON: 18 were challenged, and 13
13 were thrown out.

14 Q. Let me just ask it this way: Do you know
15 what the vote total was on November 7?

16 A. No. There was so much discrepancy.

17 Q. The unofficial results on the night of
18 November 7 were 69 to 53 and then 62 to 48.

19 So you came in fourth place with 48 votes;
20 right?

21 A. Uh-huh.

22 Q. And then this Commission had a hearing two
23 days later to discuss the provisional ballots and
24 the challenged ballots; right? Were you aware of
25 that?

1 A. No.

2 Q. At that meeting the vote total became 71
3 to 69 to 62 to 48.

4 You're still in fourth place; right?

5 A. Uh-huh.

6 Q. So the votes that changed, two votes went
7 to Ms. Gore, the winner, so she went from 69 to 71,
8 and Ms. Taylor's votes went from 53 to 69. So
9 that's 16 votes.

10 MR. STEVENS: No, that's not right.

11 MR. TYSON: Excuse me?

12 CHAIRMAN McIVER: Go ahead.

13 MR. STEVENS: You're adding the 18 votes
14 that were challenged.

15 MR. TYSON: That's right. So 69 to 71 is
16 two votes, and then if you add 53 to 69, that
17 totals 18. So the 18 challenged votes went to the
18 first and the second place; right?

19 MR. STEVENS: No.

20 MR. TYSON: He has got to present his
21 case. You all can hear the evidence afterwards and
22 decide what to do.

23 MR. GREEN: Mr. Tyson, what might be
24 helpful if you're just reading figures to him, if
25 you can hand that up to the Commission. Do you

1 have copies of those? All of that can be
2 considered by the Commission, but it may just be
3 more expedient.

4 CHAIRMAN McIVER: I have that, yes.

5 MR. GREEN: On behalf of the plaintiff
6 we're going to stipulate this into evidence,
7 Mr. Tyson, and the figures in there.

8 MR. TYSON: Mr. Green, we're not the
9 plaintiffs.

10 MR. DAVIS: I have an objection.

11 MR. TYSON: I just want to be clear.
12 We're not the plaintiffs. We don't have a burden
13 here. They've got the burden. They're contesting
14 it. We're defending the election results. Okay?

15 MR. GREEN: Thank you.

16 MR. DAVIS: I have an objection to the
17 line of questioning to the extent that he's asking
18 him to do calculations. The witness is not
19 required to do calculations.

20 MR. GREEN: We've moved past that. Let's
21 wrap up if we can.

22 (Taylor Exhibit 2 marked for
23 identification.)

24 MR. TYSON: Here is the point of that.
25 We're wrapping it up. This Commission's unofficial

1 results on the night of Tuesday had 18 votes that
2 they added on Thursday, so if you take Mr. Davis'
3 argument and you pull the 18 back out, then you go
4 right back to where you came from.

5 MR. STEVENS: No.

6 MR. TYSON: Mr. Stevens doesn't agree with
7 that.

8 MR. STEVENS: No, I do not.

9 MR. TYSON: The point is you've got to
10 show -- for him to be successful, for him to have
11 any evidence before you, which he didn't put up any
12 evidence, but for you to be successful you've got
13 to show that it affects the election results, and
14 if you look at Ms. Taylor's numbers and the first
15 place winner, their votes will always be first and
16 second. So the election results don't result in
17 anything there.

18 The second point I would just make to kind
19 of conclude that, on April 3 when you all ruled,
20 when Mr. Stevens signed the certification results
21 and when Mr. McIver signed them and when the madam
22 here signed them also, you all certified the
23 results, under state law Mr. Swinson had the
24 opportunity to protest that by filing an appeal
25 with the Circuit Court, not a protest to you all.

1 He had under state law the opportunity to do that.

2 He didn't do that.

3 I just want to be clear. We think it's
4 wrong that you're hearing this. We understand you
5 voted that way. We want you to see that the person
6 who has got the burden of proof hasn't put in any
7 evidence whatsoever for you to hear anything to
8 make this decision. Third, if you look at the
9 election results, there is nothing in this
10 challenge where the fourth place, the person who is
11 filing the challenge, can ever become a winner.

12 So that's what you're bound by under state
13 law is to look at whether it affects the results of
14 the election. So we just respectfully request that
15 you deny the protest.

16 Just quickly the other part of it is
17 Mr. Monckton has got copies of the two mandamuses
18 that were filed with the Court, and we want to make
19 sure that those are offered as evidence into the
20 record so you see those two. Then the last part
21 about that is to make sure -- and I think,
22 Mr. Green, you referenced it and, Mr. Chairman, you
23 did, too -- that you have the order from Judge
24 Seals instructing you to meet. So those would be
25 the last three exhibits that we would like to be

1 introduced. Thank you.

2 (Taylor Exhibits 3 through 5 marked for
3 identification.)

4 MR. MONCKTON: Attorney for the Election
5 Commission, I sent you via email Section 1, Article
6 VI of the South Carolina Constitution, and I want
7 that made part of the record as well.

8 (Citizens Exhibit Nos. 1 and 2 marked for
9 identification.)

10 CHAIRMAN McIVER: Mr. Swinson, do you have
11 anything you want to say?

12 MR. DAVIS: If the Commission has a
13 question for Mr. Swinson, that's one thing, but
14 he's represented by counsel in this proceeding.

15 MR. GREEN: We can tie it up. We have to
16 hear from counsel, and then we should be ready for
17 the final decision.

18 CHAIRMAN McIVER: Mr. Davis.

19 MR. DAVIS: Just in reply, we ask that the
20 Commission take notice of the prior Isom protest
21 and its findings thereto wherein again that's a
22 matter that's common knowledge with an
23 order adopted by the Commission. So we ask that
24 the Commission enter its order from the April 3
25 hearing into evidence because again Mr. Swinson's

1 complaint is that this is a two of four race, and
2 13 votes being tossed out when it's two and three
3 is a seven vote gap and is sufficient doubt on the
4 outcome to have the same result in the council
5 election that was granted in the mayoral election.
6 You ordered a new election, so we think it stands
7 in both races.

8 I would again enter in the opinion of the
9 adjudicating Court, their order from the April 3
10 hearing into evidence and the findings therein
11 including the 13 ineligible voters and the number
12 from the certifications of the votes.

13 (Swinson Exhibit Nos. 1 and 2 marked for
14 identification.)

15 MR. GREEN: Mr. Chair, may I make a brief
16 statement?

17 CHAIRMAN McIVER: Yes.

18 MR. GREEN: I want to thank both counsel
19 for your presentations. All of this, of course, is
20 on the record because we know that this will be
21 reviewed by a Court. Rather than emailing, I'm
22 going to ask that any of those items that you want
23 to be included in the record, to please submit them
24 to Madam Court Reporter rather than to me. I just
25 don't want to miss anyone, and the same thing with

1 anything that you're emailing. So again we want
2 the Court to have a complete record of everything
3 that was decided here.

4 I want to thank both counsel also for your
5 courteousness. That's very important, and I think
6 that we have gotten all legal points.

7 MR. MONCKTON: Can I have two minutes,
8 Mr. Chairman?

9 CHAIRMAN McIVER: One quick thing. I just
10 want to reference so that we make sure that you're
11 sending the correct information to the court
12 reporter. What are those documents that you
13 emailed Mr. Green?

14 MR. MONCKTON: I emailed Mr. Green the
15 South Carolina Constitution Section 1, Article VI,
16 which is qualifications for a candidate.

17 Just briefly -- and I'll sit down --
18 Mr. Swinson's protest is that he's a valid legal
19 candidate. Mr. Swinson testified he pled guilty
20 and was convicted in 2006 of money laundering. He
21 did not complete his sentence until 2013. That is
22 evidence you have in your record, and you can go
23 back and you can talk to the Election Commission
24 attorney. Mr. Swinson is invalid, and it's illegal
25 for him to run for office pursuant to the

1 constitution.

2 If it's illegal for him to run for office,
3 then this protest has zero merit because he's not a
4 candidate. You have to be a candidate to run for
5 office. You have to be a legal valid candidate to
6 run for office. Based upon his testimony and the
7 South Carolina State Constitution, which I've cited
8 and you all can go back into executive session and
9 talk to counsel about that, there is no way he is a
10 legal candidate, and if he's not a legal candidate,
11 he can't protest because he's not a candidate.

12 If you decide to uphold the protest, you
13 are violating the South Carolina State Constitution
14 as well as any potential orders. So you need to
15 understand that he is not a valid candidate based
16 upon his own testimony, and the South Carolina
17 Constitution is not "may" or "shall." It's pretty
18 crystal clear on what you've got to do.

19 So the state constitution says he's not a
20 valid candidate. His own record says he's not a
21 valid candidate, and if he's not a valid candidate,
22 he can't protest the election. Thank you.

23 MR. GREEN: Mr. Monckton, if I may just
24 get this on the record as well, the only function
25 and jurisdiction of this Commission is to determine

1 as you noted earlier the timeliness of the appeal
2 and whether or not it's a proper protest. Your
3 arguments go to standing, but this Commission isn't
4 charged with disqualifying candidates.

5 MR. MONCKTON: I completely disagree.
6 This Commission deals with residency, this
7 Commission deals with candidacy, and this
8 Commission has been given evidence today that he
9 was a convicted felon and he was not outside the 15
10 years to be a candidate. You can't just say, oh, I
11 didn't hear that. You've heard it. He made
12 himself available. He is not a valid candidate.
13 He is not a valid candidate.

14 We're going to be meeting with Judge Seals
15 on Tuesday. I'm going to present this to him as
16 well, but he is not a valid candidate based upon
17 his own testimony and the facts and our
18 constitution. If you uphold this protest, you are
19 telling the Court you're disregarding the
20 constitution and you're disregarding the law, and
21 that will have consequences. Thank you.

22 MR. DAVIS: Again, I think we get a final
23 say on this. This party has the burden of proof.

24 CHAIRMAN McIVER: Go ahead.

25 MR. DAVIS: Again, this Commission should

1 follow the law including the statutes and the case
2 law, any constitutions, any said Court orders and
3 such. There is no Court order that says that if
4 you don't rule in a particular fashion, then you
5 may suffer consequences. I want to point that out
6 to the Commission. There is no current Court order
7 that says that you all can't make a decision within
8 your discretion.

9 A writ of mandamus is an order, a writ
10 from the Court to order you to have the hearing or
11 make a decision about whether to hear the appeal or
12 not, the protest. That's one thing. What is
13 within your discretion is whether you uphold or
14 deny the protest. That's a discretionary function,
15 and anything beyond the case that was filed with
16 the writ of mandamus, which was to order you all --
17 and, again, Mr. Swinson, even though his rights
18 were affected, no one bothered to name him as a
19 party to that proceeding, but nonetheless there is
20 nothing saying that you can't make a decision
21 within your discretion. You've heard the evidence
22 from both sides, and we ask that you make a
23 decision within your discretion.

24 CHAIRMAN McIVER: Thank you, Mr. Davis.
25 Is there anything else?

1 MR. GREEN: One last thing I'll just note
2 for the record, and this again is the standard for
3 maintaining an election contest. "Allegations of
4 irregularities or illegalities, the contest notice
5 must specifically allege irregularities or
6 illegalities in the election process, and, two,
7 there must be an impact on the election results.
8 The alleged irregularities or illegalities must
9 have changed or rendered doubtful the result of the
10 election barring instances of fraud, constitutional
11 violations, or statutory provisions that invalidate
12 the election." These prerequisites are derived
13 from the case of Butler versus Town of Edgefield,
14 and that's at 493 S.E. 2nd 838, and that's a 1997
15 case.

16 So thank you all again. Thank you for the
17 civility on both sides. I'll just turn it back
18 over to the commission.

19 CHAIRMAN McIVER: Again, on behalf of the
20 Commissioners thank you both for coming, and I
21 know, Mr. Swinson, you came a long distance, so
22 thank you for coming as well. We have to sort of
23 rule on this protest hearing, and I just want to
24 seek a motion that we -- the motion will be that we
25 uphold or deny Mr. Swinson's protest.

1 MR. STEVENS: I would like to make a
2 motion to uphold Mr. Swinson's protest.

3 CHAIRMAN McIVER: A motion has been made.
4 Do we get a second?

5 MS. GORE: I'll second it.

6 CHAIRMAN McIVER: A motion has been made
7 and seconded. All those in favor?

8 MR. STEVENS: Aye.

9 CHAIRMAN McIVER: Ms. Gore, did you vote?

10 MR. STEVENS: She said aye.

11 CHAIRMAN McIVER: I vote no. We have
12 voted to uphold Mr. Swinson's protest.

13 Commissioners, I seek a motion for
14 adjournment.

15 MR. STEVENS: I second.

16 CHAIRMAN McIVER: A motion has been
17 properly made. Do we get a second?

18 MS. GORE: Second.

19 CHAIRMAN McIVER: All those in favor?

20 MR. STEVENS: Aye.

21 MS. GORE: Aye.

22 CHAIRMAN McIVER: And aye. The motion
23 carries. Thank you all very much.

24 (The meeting adjourned at 5:15 p.m.)

25

1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF CHARLESTON

4 I, Carol T. Lucic, Registered Professional
5 Reporter and Notary Public for the State of South
6 Carolina at Large, do hereby certify that the
7 foregoing meeting was taken at the time and
8 location therein stated; that the meeting was
9 recorded stenographically by me and thereafter
10 transcribed by computer-aided transcription; and
11 that the foregoing is a full, complete, and true
12 record of the meeting.

13 I further certify that I am neither
14 related to nor counsel for any party to the cause
15 pending or interested in the events thereof.

16 Witness my hand, I have hereunto affixed
17 my official seal on October 21, 2024, at
18 Charleston, Charleston County, South Carolina.

19 Carol T. Lucic
20 NCRA MERIT REPORTER
21 REGISTERED PROFESSIONAL REPORTER

22 My Commission expires: November 27, 2027

23
24
25