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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	
	)	Case No: 2024-CP-26-05995
CARLA TAYLOR)	
	)	DEFENDANTS' NOTIFICATION
Plaintiff,	)	OF COMPLIANCE WITH
vs.	)	WRIT OF MANDAMUS
)	
Kenneth McIver, Caroline Gore)	
and Derrick Stevens in their official)	
capacities as members of the Town of)	
Atlantic Beach Municipal Election)	
Commission.)	
_____ Defendants _____)	

TO: THE HONORABLE WILLIAM H. SEALS, JR.-- JUDGE FOR FIFTEENTH CIRCUIT

The Defendants, in their official capacities with the Town of Atlantic Beach, and by and through its undersigned counsel, hereby certify that it has complied with this court's Order for Writ of Mandamus in the above-captioned matter by meeting to rule on the Swinson election protest before the court's deadline of October 19, 2024. For the reasons set forth below, Defendants request that this court deny Plaintiff's request for further relief in the matter for the reasons set forth below, and that a full hearing with proper ten (10) day notice to resolve any remaining issues raised by the Plaintiff.

I. BACKGROUND

On August 12, 2024, Plaintiff Carla Taylor initiated this action by filing a Summons and Petition for Writ of Mandamus against various defendants in their official capacities as members of the Town of Atlantic Beach Town Council, the Town of Atlantic Beach Municipal Election Commission, and the former Town Manager. On September 3rd, the Plaintiff filed a Petition which requested in pertinent part:

44. "This Petition does not ask that the Court direct that the Respondents reach any particular decision in the conduct of their mandatory obligations. Instead, this Court the authority to and should issue a writ of mandamus directing 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 referenced above." pg. 7, Plaintiff's Petition for Writ of Mandamus.

On October 9, 2024, this Court held a hearing on Plaintiff's Petition for Writ of Mandamus. After hearing arguments from counsel, the court recessed to take the matter under advisement and issued an order stating: "this Court orders the MEC to meet and rule on Swinson's election protest on or before October 19, 2024 at 4:00 p.m. If the MEC fails to meet this deadline, the Court may be forced to utilize its power of contempt as necessary." Order of Judge Seal, pg. 5 filed October 14, 2024. Attorney Billy Monckton also appeared on behalf of individuals not yet made parties to the action.

The MEC noticed and held a meeting on October 17, 2024 at which counsel for William Swinson, the candidate seeking to have his protest heard, requested a continuance since he was not properly notified of the hearing. The MEC continued the hearing until 4:00 p.m. on Thursday, October 18th, in order to comply with the Court's deadline. The Commission heard arguments from counsel for both sides and rendered a decision after the Chairman called for the vote. A court reporter was present for the proceedings, and a final written order is pending from the MEC.

II. LEGAL ARGUMENT

The MEC has abided by the Order of this Court. It has met before October 19, 2024 at 4:00 p.m. and it has rendered a decision on the Swinson appeal as also ordered. Counsel of Defendants are concerned that an attorney who recently appeared in this action, who has not established on the record his parties standing to proceed in this action, is seeking amended Orders which go beyond the scope of the Plaintiff's original petition. Due to the unusual nature of this request and the fact that the Defendants have complied with the Court's Order, Counsel for the Defendants respectfully request at least ten days notice to review the motion, authority and basis for any proposed amendments to this Court's original order.

Counsel for the Defendants also notes that he will be out of the country for a long-planned trip and unable to attend a hearing on October 22nd in person. Counsel will be in Barbados and is not confident in his ability to fully participate in an important hearing by international phone. If the Plaintiff is in disagreement with the ruling of the MEC: "The decision of the municipal election commission may be appealed to the court of common pleas within ten days after a party receives notice of it." SC Code §5-15-140 (2004). The circuit court must examine the decision for errors of law, but it must accept the factual findings of the commission unless they are wholly unsupported by the evidence. Blair v.

City of Manning, 345 SC 141, 546 S.E.2d 649 (2001). There is a process for the decision of the MEC to be examined by this court, but it would be improper for an attorney for a non-party to seek to use the power of mandamus to direct a specific decision of an election commission.

III. CONCLUSION

Defendants respectfully request a continuance of the hearing scheduled for Tuesday, October 22 as he will be outside of the country and does not believe he can adequately address the issues remotely and without proper ten day notice of opposing counsel's motion.

s/Dwayne M. Green, Esquire
PFLUG LAW FIRM
211 Scott Street
Mt. Pleasant, SC 29464
(843)647-7774
dgreen@pfluglaw.com

Conway, SC

October 18, 2024

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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-_____
)	
Appellant,)	
)	
vs.)	
)	
Kenneth McIver, Caroline Gore, and	)	<u>Notice of Appeal</u>
Derrick Stevens in their official capacities)	
as members of the Town of Atlantic Beach)	
Municipal Election Commission,)	
)	
Respondents.)	
)	

Pursuant to section 5-15-140 of the South Carolina Code, Appellant Carla Taylor, by and through the undersigned counsel, hereby appeals the Town of Atlantic Beach Municipal Election Commission’s decision from October 17, 2024, finding Shaun Swinson’s election protest challenge timely and upholding the challenge.¹

Respondents Kenneth McIver, Caroline Gore, and Derrick Stevens in their official capacities as members of the Town of Atlantic Beach Municipal Election Commission (“the Municipal Election Commission”) violated section 5-15-130 of the South Carolina Code by hearing Swinson’s protest because he did not timely file it within forty-eight hours after the closing of the polls for the Atlantic Beach Town Council election. Section 5-15-130 mandates that any election protest must be made “within forty-eight hours after the closing of the polls.” The election

¹ Although not required by law, the Municipal Election Commission has indicated to the Court that a “full report and Order will be forthcoming.” When that will be, however, is anyone’s guess. Given the delay tactics the Commission has already displayed in this dispute, Appellant Taylor feels compelled to file this appeal immediately. To the extent an order does issue, Appellant expressly reserves the right to append such order to this filing and raise any new arguments occasioned by the Municipal Election Commission’s order.

Swinson challenges took place on November 7, 2023. Yet he did not file his protest until April 3, 2024, which was much more than “forty-eight hours after the closing of the polls.” *See Exhibit A.* For this reason alone, the Municipal Election Commission erred in considering the protest because it was not timely.

Further, at the hearing on the protest, Swinson presented no evidence to meet his burden. Nor did he call any witnesses. To be sure, Swinson does not even meet the qualifications to run for office of Town Council—and by extension, is not allowed to protest the results of an election—because he has a felony conviction and it has not been fifteen years or more since he completed his sentence, including probation and parole time. *See S.C. CONST.* art. VI, § 1. The Municipal Election Commission violated the South Carolina Constitution by hearing Swinson’s untimely protest given these facts. What is more, Commissioner Derrick Stevens’ motion to uphold the protest—which the Municipal Election Commission passed—included no remedy for its decision. It is thus unclear what action the Municipal Election Commission took (or believes it took).

For all these reasons, Appellant Carla Taylor asks this Court to reverse the Municipal Election Commission decision, find Swinson’s protest untimely, and immediately declare Carla Taylor as the winner of one of the seats for the Atlantic Beach Town Council election.

Additionally, pursuant to Rule 11, SCRCP, and section 15-36-10 of the South Carolina Code, Appellant Carla Taylor asks this Court to sanction the Municipal Election Commission and the Town of Atlantic Beach for their deliberately unlawful actions in trying to prevent Carla Taylor from taking her duly elected position on the Atlantic Beach Town Council. This includes, but is not limited to, the Municipal Election Commission’s intentional delay tactics since it certified the election results on April 3, 2024; the Municipal Election Commission’s counsel making frivolous arguments that no other reasonable attorney would make under similar circumstances; the

Municipal Election Commission's counsel making misrepresentations to this Court about the nature of the Commission's vote the day before the Municipal Election Commission hearing; and the Municipal Election Commission's failure to abide by this Court's Order concerning the untimely protest of Swinson.

By filing this Notice of Appeal, Appellant Carla Taylor does not waive but expressly reserves all her rights and arguments made in her Petition for a Writ of Mandamus filed on September 3, 2024, including any and all rights to further relief thereunder. *Taylor v. McIver, et al.*, No. 2024-CP-26-5995 (S.C. Ct. of Common Pleas, Horry Cnty. filed Sept. 3, 2024). Further, notice is hereby given that Appellant may seek to consolidate this appeal with that action at a later date should it serve the interests of judicial economy.

BACKGROUND

1. Appellant Carla Taylor is a citizen and resident of the Town of Atlantic Beach. She was a candidate in the Atlantic Beach Town Council election on November 7, 2023, and received the second-highest number of votes. Thus, Taylor won one of two eligible council seats.
2. Although Taylor won, the Municipal Election Commission has refused to adhere to the election results and its certification of the race to allow Taylor to assume office.
3. Taylor brings this appeal against Kenneth McIver, Carolyn Gore, and Derrick Stevens in their official capacities as members of the Municipal Election Commission.

FACTS

4. On November 7, 2023, the Town of Atlantic Beach held elections for mayor and two council seats.
5. After the polls closed on November 7, 2023, the unofficial election results revealed Jaqueline Gore and Petitioner Taylor won the council race with 69 and 53 votes, respectively.

6. On November 9, 2023, the Municipal Election Commission met to hear challenges to several provisional ballots cast in the November 7, 2023 election. After a hearing to determine the legitimacy of the provisional ballots, Gore and Petitioner Taylor were still the top vote recipients with 71 and 69, respectively.

7. After the hearing, pursuant to section 5-15-130, Josephine Isom filed a protest to the updated unofficial election results pertaining solely to the mayoral election.

8. Section 5-15-100 of the South Carolina Code requires the Municipal Election Commission to “declare the results [of this municipal election] not later than three days following the election.” The Municipal Election Commission failed to comply with this statutory requirement.

9. Additionally, section 5-15-80 of the South Carolina Code requires the Municipal Election Commission to timely conduct a protest hearing on Josephine Isom’s protest on the outcome of the mayoral race. The Municipal Election Commission failed to comply with this statutory requirement.

10. From November 7, 2023, to April 3, 2024, the Municipal Election Commission failed to administer its ministerial duties to certify the November 7, 2023 election results or to hear Josephine Isom’s protest of the unofficial mayoral election results under sections 5-15-100 and -130.

11. The Municipal Election Commission’s failure to perform its duties forced mayoral candidate John David to file an action seeking a writ of mandamus to require the Municipal Election Commission to meet and certify the results of the election. *See David v. McIver, et al.*, No. 2024-CP-26-02042 (S.C. Ct. of Common Pleas, Horry Cnty.).

12. After John David filed his writ of mandamus, on April 3, 2024, the Municipal Election Commission held a protest hearing, nearly five months after the election to hear Isom's protest. The Municipal Election Commission determined thirteen (13) ballots were inappropriately counted and recommended the Town of Atlantic Beach Council order a new mayoral election.

13. Also at that meeting, the Municipal Election Commission certified the town council election results. The final votes certified that Gore, Petitioner Taylor, Jerry Finney, and Shaun Swinson each received 71, 69, 62, and 49 votes, respectively. Thus, Gore and Petitioner Taylor won the two council seats. Each member of the Municipal Election Commission signed and officially certified the final results. *See Exhibit B.*

14. Then, on April 4, 2024, the Municipal Election Commission forwarded the certified election to the Horry County Voter Registration and Election Commission. *See Exhibit C.*

15. Then, Petitioner Taylor was sworn into office. *See Exhibit D.*

16. On either April 4, 2024, or April 5, 2024, Swinson filed an untimely protest of the certified election results for the town council election. *Id.* at Exhibit A.

17. Pursuant to section 5-15-80, election protests must be filed within forty-eight hours after the polls close. Therefore, Swinson's protest does not meet the statutory requirement of a timely filed protest.

18. Arguably, Swinson should not have been eligible to file a protest because he should not have been a candidate for Atlantic Beach Town Council to begin with because he is a convicted felon who served six years in federal prison after a 2007 conviction. *See* WBTW News 13 article at <https://www.wbtw.com/news/grand-strand/atlantic-beach-town-council-candidate-was-convicted-and-spent-prison-time-in-virginia-is-he-eligible-for-a-seat/>.

19. 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.” S.C. CONST. art. VI, § 1.

20. Thus, the Municipal Election Commission should not have entertained Swinson’s untimely protest to the November 7, 2023 election in the first instance.

21. Even though the Municipal Election Commission certified the results in April 2024, Taylor has been unable to assume her rightful office as Atlantic Beach Town Council Member.

22. As a result, Petitioner Taylor filed an injunction to enjoin the named Defendants from refusing to recognize her as a properly serving Town Council Member. *See Taylor v. Jake Evans et al.*, No. 2024-CP-2602866 (S.C. Ct. of Common Pleas, Horry Cnty.).

23. In its response and at oral argument, the Town of Atlantic Beach and the Municipal Election Commission argued there was a process already in place to hear the protest before the Municipal Election Commission and thus Petitioner Taylor had to wait until the conclusion of that process before appealing to this Court.

24. This Court denied Petitioner 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.” *Id.*

25. On July 18, 2024, counsel for Petitioner Taylor requested the Municipal Election Commission convene to dispose of and/or hear Swinson’s election protest. *See Exhibit E.*

26. On August 19, 2024, the Municipal Election Commission held an information meeting and Atlantic Beach Town attorney, Dwayne Green, advised the Municipal Election

Commission not to act on Swinson's protest until after the conclusion of Josephine Isom's mayoral election appeal and an alleged State Law Enforcement Division ("SLED") investigation into the November 7, 2023 election. *See* Town of Atlantic Beach MEC Informational Session (Aug. 19, 2024), <https://boxcast.tv/channel/hriov7yurwsygzbggzi>.

27. But on August 21, 2024, SLED indicated that it does not have an investigation into the November 7, 2023 Town of Atlantic Beach election. *See Exhibit F*.

28. On August 21, 2024, counsel for Petitioner Taylor again requested the Municipal Election Commission immediately convene to dispose of and/or hear Swinson's election protest. *See Exhibit G*.

29. On August 26, 2024, counsel for the Municipal Election Commission responded and stated the Municipal Election Commission would not act on Swinson's election protest until it has an opportunity to consider "after-discovered" evidence from Isom's protest appeal and SLED's investigation. *See Exhibit H*.

30. The Municipal Election Commission's refusal to perform its ministerial acts and perform its statutory responsibilities forced Taylor to file a Petition for a Writ of Mandamus asking this Court to order the Municipal Election Commission to act. *See Taylor v. Kenneth McIver, et al.*, No. 2024-CP-26-5995.

31. This Court held a hearing on the petition October 9, 2024, and subsequently granted the Writ of Mandamus.

32. Specifically, the Court's October 14, 2024 Order found that the delay tactics by the Municipal Election Commission appeared to be an intentional stall tactic to prevent Taylor from getting closure and a final remedy. The Court ordered the Municipal Election Commission act by October 19, 2024. *See Exhibit I*.

33. The Court recognized Swinson's April 3, 2024 protest was untimely, given that he filed it approximately 149 days after the election. *Id.* at Ex. I.

34. Based on the above, Appellant Carla Taylor asks the Court to reverse the Municipal Election Commission's decision upholding Swinson's protest and declare Taylor the duly elected Town Council Member. Carla Taylor also seeks further relief the Court may deem just and proper including an award of attorneys' fees and costs.

Respectfully submitted,

ROBINSON GRAY STEPP & LAFFITTE, LLC

By: s/Robert E. Tyson, Jr.

Robert E. Tyson, Jr., SC Bar No. 10820

rtyson@robinsongray.com

La'Jessica M. Stringfellow, SC Bar No. 102376

lstringfellow@robinsongray.com

Post Office Box 11449

Columbia, South Carolina 29211

(803) 929-1400 Telephone

(803) 929-0300 Fax

Attorneys for Appellant

Columbia, South Carolina
October 18, 2024

Taylor v. McIver

Exhibit A

To Notice of Appeal

Shaun Swinson S
Town Council Candidate
Town of Atlantic Beach
Shaunswinsonsr@gmail.com
(843)732-4247

April 3, 2024

Town of Atlantic Beach Election Commission
Atlantic Beach, SC 29582

Subject: Appeal of Decision to Certify Ineligible Voters for Town Council Election and Not for Mayoral Race

Dear Atlantic Beach Election Commission,

I am writing to appeal the decision made by the Election Commission to certify ineligible voters for the town council 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 voters who are not eligible to vote in the town council election due to residency requirements have been allowed to cast their votes. This is a clear violation of election laws and undermines the integrity of the electoral process. Furthermore, it is deeply concerning that these ineligible voters were allowed to participate in the town council 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.

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.

I trust that the Election Commission will act swiftly and decisively to address this matter and ensure that all future elections are conducted in a fair and impartial manner. Thank you for your attention to this appeal.

Sincerely,


Shaun Swinson Sr.


Tracie L. Steele (witness)

Sent from my iPhone

Taylor v. McIver

Exhibit B

To Notice of Appeal



TOWN OF ATLANTIC BEACH
2023 ELECTION
CANVASS SHEET
CERTIFICATION OF CANDIDATES

We, the Municipal Election Commission of the Town of Atlantic Beach, hereby certify the following official results for the election of November 7, 2023.
Mayor and Council Seat for term expiring December 31, 2027.

Mayor

Josephine Isom _____

John David _____

Council

Jacqueline Gore 71

Carla Taylor 69

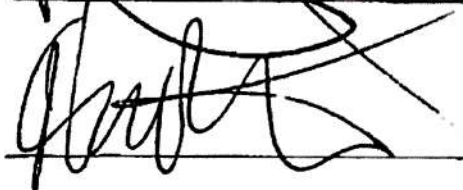
Jerry Finney 62

Shaun Swinson 48

Municipal Election Commissioners



Dated: April 3, 2024



Dated: April 3, 2024



Dated: April 3, 2024

Taylor v. McIver

Exhibit C

To Notice of Appeal

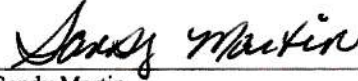
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY	)	IN THE FIFTEENTH JUDICIAL CIRCUIT
)	
Carla Taylor,	)	Civil Action No. 2024-CP-_____
)	
Plaintiff,)	
)	
vs.	)	<u>AFFIDAVIT OF</u>
	)	<u>SANDY MARTIN</u>
)	
Benjamin Quattlebaum, in his official)	
capacity as Town Manager of the Town of)	
Atlantic Beach, Jake Evans, Jacqueline)	
Gore, Edward Campbell, and John David,)	
in their official capacities as members of)	
the Atlantic Beach Town Council, and)	
Josephine Isom,)	
Defendants.)	

PERSONALLY APPEARED BEFORE ME, Sandy Martin, who first being duly sworn, deposes and state as follows:

1. I am over the age of eighteen (18) years, of sound mind, and make this affidavit based on my personal knowledge.
2. I serve as the Director of the Horry County Voter Registration and Elections Commission. I have held this position since 2000.
3. As Director of the Horry County Voter Registration and Elections Commission, I am responsible for receiving certified election results from municipality election commissions within Horry County whom conduct their own elections.
4. On April 4th, I received the Town of Atlantic Beach's November 7, 2023 certified results from Atlantic Beach Town Clerk Cheryl Perreira.
5. Accordingly, the Town of Atlantic Beach's November 7, 2023 certified election results on file with my office certify that Carla Taylor and Jacqueline Gore were the winners of

the November 7, 2023 election and are the duly-elected council members for the Town of Atlantic Beach.

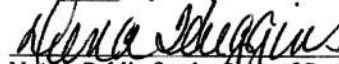
FURTHER AFFIANT SAYETH NOT.



Sandy Martin
Director
Horry County Voter Registration and
Elections Commission

SWORN TO AND SUBSCRIBED BEFORE ME

This 22nd day of April 2024.

 (L.S.)
Notary Public for the State of South Carolina

My Commission Expires: 3/12/2031

Taylor v. McIver

Exhibit D

To Notice of Appeal



Town of Atlantic Beach
717 30th Avenue South
Atlantic Beach, SC 29582
Mail PO Box 5285
N Myrtle Beach, SC 29597
Phone No 843-663-2284
Fax No 843-663-0601

Mayor

Jake Evans

Council Members

Jacqueline Gore

Edward Campbell

John David, Jr

Carla Taylor

Town Manager

Benjamin Quattlebaum

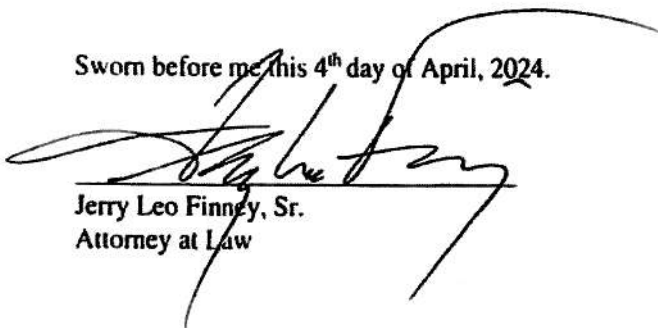
OATH OF OFFICE

I, **Carla Taylor**, do solemnly swear that I am duly qualified, according to the constitution of this state to exercise the duties of the office to which I have been elected, and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect and defend the constitution of this State and of the United States. So, help me God.

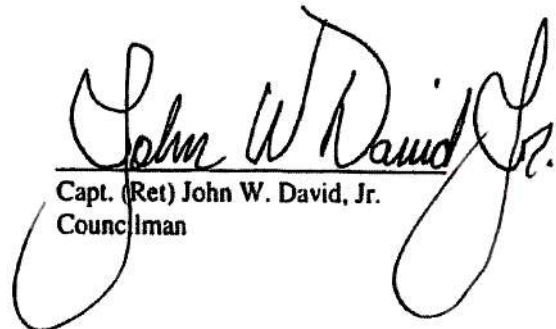
As Council Member of the Town of Atlantic Beach, I will equally, fairly and impartially, to the best of my ability, and skill, exercise the trust reposed in me, and will use my best endeavor to preserve the peace and carry into effect according to the law the purposes for which I have been elected. So, help me God.


Carla Taylor

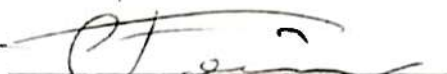
Sworn before me this 4th day of April, 2024.



Jerry Leo Finney, Sr.
Attorney at Law



Capt. (Ret) John W. David, Jr.
Councilman



Cheryl Pereira
Town Clerk

Taylor v. McIver

Exhibit E

To Notice of Appeal



ROBINSON
GRAY

Litigation + Business

ROBERT E. TYSON, JR.

DIRECT 803 231.7833

rtyson@robinsongray.com

July 18, 2024

VIA EMAIL

Ken McIver, Chairman
Town of Atlantic Beach
Municipal Election Commission

Re: Municipal Election Commission Meeting re: November 2023
Town Council Election

Dear Mr. McIver:

I represent Ms. Carla Taylor. We request you schedule a Town of Atlantic Beach Election Commission meeting to dispose of the untimely election protest filed by Shaun Swinson on April 3, 2024.

As you know, on April 3, 2024, the Atlantic Beach Municipal Election Commission certified Ms. Taylor as one of the two winners in the November 7, 2023 election for Town Council. Unfortunately, the Mayor, Town Administrator, and some members of Town Council refuse to recognize her as a member of Town Council. Even though the Town's attorney has opined the "protest" was untimely, these persons refuse to recognize her legal right to serve as a Member of Town Council.

Given their refusal to officially recognize her as a Town Council member, Ms. Taylor was forced to file a Complaint and seek an injunction requiring these persons to recognize her. On May 14, 2024, a hearing was held before Judge William Seals on the Motion for a Preliminary Injunction. On May 23, 2024, Judge Seals denied the Motion. His Order is attached.

Judge Seals impliedly ruled that the protest must be dealt with pursuant to South Carolina law. As you know, S.C. Code Ann. Sec. 5-13-130 requires that a candidate contest the results of an election "within forty-eight hours after the closing of the polls..." Clearly, this protest does not meet the statutory deadline. The statute further requires the Municipal Election Commission "to conduct a hearing on the contest within forty-eight hours after the filing of such notice [protest]..." Even though the alleged "protest" missed the statutory deadline, the Court is requiring the Municipal Election Commission rule on this "protest."



ROBINSON
GRAY

Litigation + Business

July 18, 2024
Page: 1

Thus, Ms. Taylor requests you schedule a meeting to dispose of this "protest" within 7 days of receipt of this letter.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Robert E. Tyson, Jr.

cc: Dwayne M. Green, Esq. (via email)

ELECTRONICALLY FILED - 2024 Oct 18 5:00 PM - HORRY - COMMON PLEAS - CASE#2024CP2607182

Taylor v. McIver

Exhibit F

To Notice of Appeal

From: [Wunderlich, Renee](#)
To: [Holland Jacobs](#)
Cc: [Rob Tyson](#)
Subject: RE: Atlantic Beach Town Council Investigation
Date: Wednesday, August 21, 2024 2:57:30 PM
Attachments: [image007.png](#)
[image008.png](#)

Good afternoon,

I responded to The Sun News and any other media inquiries on this matter with this sentence:

SLED does not have an investigation.

Best,
Renée

Renée Wunderlich
Director of Public Information
South Carolina Law Enforcement Division
(803) 260-3020
rwunderlich@sled.sc.gov
www.sled.sc.gov



From: Holland Jacobs <[hjacob@robinsongray.com](mailto:hjacobs@robinsongray.com)>
Sent: Wednesday, August 21, 2024 2:41 PM
To: Wunderlich, Renee <RWunderlich@sled.sc.gov>
Cc: Rob Tyson <rtyson@robinsongray.com>
Subject: Atlantic Beach Town Council Investigation

You don't often get email from [hjacob@robinsongray.com](mailto:hjacobs@robinsongray.com). [Learn why this is important](#)
CAUTION: This email originated from outside of SLED. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon,

Our firm represents Carla Taylor in an election dispute involving Atlantic Beach Town Council. I am reaching out to you regarding Atlantic Beach and a statement you gave to The Sun News. You stated that the agency does not have an investigation related to Atlantic Beach's Election. Please provide us with the statement or the correspondence you had with The Sun News?

Please let me know if you have any questions or concerns as it relates to this matter.

Kind regards,
Holland



HOLLAND JACOBS LEGAL ASSISTANT

DIRECT 803.231.7844

[VCARD](#)

ROBINSONGRAY.COM

2151 Pickens Street

Suite 500

PO Box 11449 (29211)

Columbia, SC 29201



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Supporting Green print wisely.

Taylor v. McIver

Exhibit G

To Notice of Appeal



ROBINSON
GRAY

Litigation + Business

ROBERT E. TYSON, J.D.

DIRECT 803.231.7888

rtyson@robinsongray.com

August 21, 2024

VIA EMAIL

Dwayne M. Green, Esquire
Green Law Offices
720 Magnolia Road, Suite 24
Charleston, SC 29407
dwayne@greenlawsc.com

Re: Atlantic Beach Municipal Election Commission

Good afternoon, Dwayne,

I've been made aware that you presented at an Atlantic Beach Municipal Election Commission information session on August 19, 2024. During this information session, you advised the Atlantic Beach Municipal Election Commission not to act on Shaun Swinson's April 5, 2024 protest to the November 7, 2023 town council election. I believe this advice is incorrect and a misinterpretation of the applicable municipal election statutes and case law.

Pursuant to South Carolina Code Section 5-15-130, it is clear that a candidate must contest the results of an election within **forty-eight** hours of the polls closing. Thereafter, within forty-eight hours of the filed protest, the municipal election commission must conduct a hearing to decide the issues raised in the protest. *Id.*

Mr. Swinson did not file his protest until 150 days after the polls closed on November 7, 2023. It is abundantly clear that Mr. Swinson's election protest is untimely. The Atlantic Beach Municipal Election Commission has a duty to declare the results of the election no later than three days following the election. *See* S.C. Code § 5-15-100. Failing to immediately dispose of Mr. Swinson's untimely protest is simply a delay tactic at this juncture. Further, the Atlantic Beach Municipal Election Commission's failure to act is a grave dereliction of its duties.

In the event the Atlantic Beach Municipal Election Commission erroneously decides to hear Mr. Swinson's protest, the commission must hear Mr. Swinson's protest immediately. In fact, South Carolina Code Section 5-15-130 mandates the Municipal Election Commission conduct a hearing "within forty-eight hours after the filing of such 'notice'". The Atlantic Beach Election Commission has failed to comply with state law and therefore, must act immediately.

Additionally, I believe you have misinterpreted *Gecy v. Bagwell* and use of the after-discovered evidence rule. If I understand your position, you maintain that the Municipal Election



ROBINSON
GRAY

Litigation + Business

August 21, 2024
Page 1

Commission cannot act on Swinson's untimely "protest" until there is a final decision in Ms. Isom's appeal of the election commission's decision pertaining to the mayoral election and the South Carolina Law Enforcement Division completes its investigation. This is a gross misrepresentation of the law on election protests. No result in Ms. Isom's appeal or the SLED investigation will impact Mr. Swinson's untimely filed "protest." These cases should not be treated as related or intertwined with one another. Most importantly, the after-discovered evidence rule must be applied consistently with the time constraints set out in the municipal election code. *See* S.C Code § 5-15-130.

To this end, please accept this correspondence as my official request that the Atlantic Beach Municipal Election Commission meet **no later than** Monday, August 26, 2024 to determine whether the commission will dispose of Mr. Swinson's untimely protest or conduct a hearing on the merits of his untimely protest. In the event the commission chooses to conduct a hearing on the merits of Mr. Swinson's untimely protest, I request that the hearing be held no later than Friday, August 30, 2024.

Finally, please forward a copy of Mr. Swinson's election protest as soon as possible.

I look forward to hearing from you in the next three days.

Very truly yours,

Robert E. Tyson, Jr.

cc: Kenneth Davis, Esq.

ELECTRONICALLY FILED - 2024 Oct 18 5:00 PM - Horry - COMMON PLEAS - CASE#2024CP2607182

Taylor v. McIver

Exhibit H

To Notice of Appeal

From: [Dwayne Green](#)
To: [Holland Jacobs](#)
Cc: k3840@sc.rr.com; [Rob Tyson](#); [La"Jessica Stringfellow](#)
Subject: Re: Letter from Robinson Gray in Regard to November 2023 Town Council Election (8437-1500) Taylor v. Quattlebaum
Date: Monday, August 26, 2024 3:43:36 PM
Attachments: [Screen Shot 2020-07-22 at 1.04.19 PM.png](#)

Dear Holland:

Please allow this email to serve as a formal response to Mr. Tyson's letter of August 21, 2024.

There will not be a meeting on or before August 30, 2024 as I am traveling out of state for the Labor Day weekend.

Additionally, I disagree with Mr. Tyson's interpretation of the law and the Election Commission's ability to consider after-discovered evidence. As noted in my previous correspondence, this marks at least the third time in which attorneys retained by the Town have had different legal opinions from those of Mr. Tyson.

On the previous two occasions which I have been involved(denial of motion for preliminary injunction and motion to reconsider), the court ruled in the Town's favor. We are not inclined to change our opinion because Mr. Tyson has a different opinion once again.

Mr. Tyson is free to file a writ of mandamus with the Supreme Court if his client does not have the patience to await the Commission's timely consideration of the 'after-discovered' evidence it is entitled to consider.

Have a safe and pleasant week and Labor Day weekend and thank you for forwarding the previous correspondence.

Kind regards,

Dwayne Green
(843)480-0168 (direct)



On Jul 18, 2024, at 5:07 PM, Holland Jacobs <[hjacob@robinsongray.com](mailto:hjacobs@robinsongray.com)> wrote:

Good afternoon,

Please see the attached letter from Rob Tyson regarding the above matter. Please let us know if you have any questions or concerns.

Thank you,
Holland Jacobs

<image001.png>

HOLLAND JACOBS LEGAL ASSISTANT

DIRECT 803.231.7844

VCARD

ROBINSONGRAY.COM

2151 Pickens Street

Suite 500

PO Box 11449 (29211)

Columbia, SC 29201

<image003.jpg>

<image004.jpg>

<image005.jpg>

<image006.jpg>

NOTICE: This e-mail is confidential and may contain information which is legally privileged or otherwise exempt from disclosure. If you received this message in error, please delete this message from your device.

Supporting Green print wisely.

<Letter to Ken McIver requesting meeting on Swinson Protest(39247265.1).pdf>

Taylor v. McIver

Exhibit I

To Notice of Appeal

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

Electronically signed on 2024-10-14 14:40:56 page 6 of 6

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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-26-07182
)	
Appellant,)	
)	
vs.)	
)	
Kenneth McIver, Caroline Gore, and)	
Derrick Stevens in their official capacities)	
as members of the Town of Atlantic Beach)	
Municipal Election Commission,)	
)	
Respondents.)	
)	

ORDER

This matter came before the Court on October 30, 2024 for a hearing on Appellant Carla Taylor’s appeal of the October 17, 2024 decision of Respondents Kenneth McIver, Caroline Gore, and Derrick Stevens in their official capacities as members of the Town of Atlantic Beach Municipal Election Commission (the Municipal Election Commission), finding Shaun Swinson’s election protest timely and upholding Swinson’s election protest. After careful consideration of the record, submissions to the Court, and the respective arguments made by the parties, the Court reverses the Municipal Election Commission’s decision.

BACKGROUND

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 Appellant Taylor were the two winners of the council race with 69 and 53 votes, respectively. On November 9, 2023, the Municipal Election Commission met to hear challenges to several provisional ballots cast in the November 7, 2023 election. After the hearing, Gore and Appellant Taylor were still the top two vote recipients with 71 and 69, respectively.

Also on November 9, 2023, a losing mayoral candidate filed a timely protest to the mayoral election pursuant to section 5-15-130 of the South Carolina Code. No candidate filed a protest in the town council election within the statutorily required forty-eight (48) hour period. Despite section 5-15-130 requiring the Municipal Election Commission to hear the mayoral election protest within forty-eight (48) hours of the protest being filed, the Municipal Election Commission did not meet to hear the protest until April 3, 2024.¹ After ruling on the mayoral protest at the April 3rd meeting, the Municipal Election Commission unanimously certified the town council election results. The final votes certified that Jacqueline Gore, Appellant Taylor, Jerry Finney, and Shaun Swinson each received 71, 69, 62, and 49 votes, respectively. Each of the three Municipal Election Commission members signed and certified the final results, certifying Gore and Appellant Taylor as the winners of the November 7, 2023 council race.

On April 4, 2024, Appellant Taylor was sworn into office and signed the Oath of Office. The Town Clerk, Cheryl Pereira, duly executed the Oath. The Town of Atlantic Beach transmitted Taylor's Oath of Office and the certified results of the election to the Horry County Election Commission. Sandy Martin, the Director of the Horry County Office of Voter Registration and Election Commission, certified that Appellant Taylor and Jacqueline Gore were the winners of the Town Council election.

Thereafter, on either April 3 or 4, 2024, Swinson—a candidate in the November 7, 2023 town council race—filed a protest of the certified election results for the town council election. Despite Appellant Taylor being sworn into office and the Horry County Election Commission certifying the results, the Atlantic Beach Town Council failed to recognize Appellant Taylor as a duly elected

¹ Notably, the Municipal Election Commission did not elect to schedule the belated protest hearing until mayoral candidate, John David, filed a Writ of Mandamus requesting this Court force the Municipal Election Commission to act to administer its ministerial duties and resolve the outstanding mayoral election protest.

member of the Town Council, ostensibly due to Swinson's belated election protest. The Municipal Election Commission, however, took no action to resolve Swinson's belated appeal, despite being statutorily required to do so and being advised by its legal counsel it needed to act on the untimely filed protest.

On April 26, 2024, Appellant Taylor filed an injunction to enjoin the Municipal Election Commission, Town Manager, and the other members of the Town Council from refusing to recognize her as a properly serving Town Council Member. *See Taylor v. Jake Evans et al.*, No. 2024-CP-2602866 (S.C. Ct. of Common Pleas, Horry Cnty.). In its response and at oral argument, the Municipal Election Commission argued the Court did not have jurisdiction to grant the injunction. The Municipal Election Commission further argued there was a process already in place to hear Swinson's election protest and Appellant Taylor had to wait until the conclusion of the Municipal Election Commission process before appealing to this Court. On May 23, 2024, this Court denied Appellant Taylor's injunction. This Court assumed that such an important matter would move forward in an expedited manner to resolve the untimely filed election protest.

Almost three months later after repeated requests by Appellant Taylor to act, the Municipal Election Commission held an information meeting and decided not to act on Swinson's election protest. Counsel for the Municipal Election Commission advised the Commission to not rule on Swinson's appeal until after the conclusion of the unrelated Town of Atlantic Beach mayoral election appeal and the completion of an alleged South Carolina Law Enforcement Division (SLED) investigation into alleged fraud of certain voters in the municipal election. At the time of this informational session, the Town had not asked SLED to investigate anything and subsequently had to recant this false representation to the public. Appellant Taylor continued her requests for the Municipal Election Commission to act. After the Commission ignored her requests and refused

to act, she filed a Writ of Mandamus on September 3, 2024, requesting the Court to order the Municipal Election Commission to perform its ministerial responsibilities. On September 4, 2024, concerned Atlantic Beach citizens, William Booker, Lynda Booker, Elaine Finney, Terry Finney, Sarah Blair, Linda Cheatham, and Harold Cheatham (third parties), also filed a Writ of Mandamus requesting the Court order the Municipal Election Commission to abide by the plain and unambiguous language of the South Carolina Code and require the Municipal Election Commission to perform its ministerial obligations.

On October 14, 2024, this Court granted Taylor's and the third parties' Writs of Mandamus and ordered the Municipal Election Commission to perform its ministerial duties no later than October 19, 2024. The Court expressed concern that the Municipal Election Commission appeared to be intentionally utilizing delay tactics to stall the final resolution of Swinson's election protest. Additionally, this Court noted that Swinson filed his protest approximately 149 days after the election, well outside of the time requirement pursuant to section 5-15-100. The Court also advised "it would issue a separate order as to the timeliness and applicable statutes on the process of the election results should it become necessary depending on the findings of the Commission."

On October 17, 2024, the Municipal Election Commission met and found Swinson's protest timely and voted to uphold Swinson's election challenge.² On October 18, 2024, Appellant Taylor filed a Notice of Appeal pursuant to section 5-15-140 of the South Carolina Code. That same day, counsel for Appellant and the Municipal Election Commission agreed to argue this

² A review of the hearing transcript shows Swinson presented no evidence to support his election protest claims. In fact, the only evidence he presented was his own testimony that he was not qualified to be a candidate for the November 7, 2023 election. Thus, it appears to this Court that the Municipal Election Commission's decision to uphold Swinson's election protest is wholly unsupported by the evidence presented at the hearing.

appeal before the Court on October 30, 2024. This Court acknowledged the parties' consent and scheduled the hearing on the Notices of Appeal for October 30, 2024.

STANDARD

In municipal election cases, the circuit court on appeal corrects only errors of law. *Taylor v. Town of Atl. Beach Election Comm 'n*, 363 S.C. 8, 12, 609 S.E.2d 500, 502 (2005). The court's review does not extend to findings of fact unless those findings are wholly unsupported by the evidence. *Gecy v. Blackwell*, 372 S.C. 237, 241, 642 S.E. 2d 569, 571 (2007). The court "will employ every reasonable presumption to sustain a contested election, and will not set aside an election due to mere irregularities or illegalities unless the result is changed or rendered doubtful." *Id.* (citing *Broadhurst v. City of Myrtle Beach Election Comm 'n*, 342 S.C. 373, 379, 537 S.E.2d 543, 546 (2000)).

DISCUSSION

I. Swinson's Protest Was Untimely As a Matter of Law.

It is undisputed by all parties that the Town Council election occurred on November 7, 2023. It is also undisputed that Swinson did not file his election protest until either April 3 or 4, 2024. At the protest hearing on October 17, Swinson testified and admitted he did not file his protest within forty-eight hours of the closing of the polls of the election on November 7, 2023. Rather, approximately 149 days had elapsed since the closing of the polls when Swinson filed his election protest.

Section 5-15-130 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." "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 Comm 'n*, 427 S.C. 305, 831 S.E. 2d 429, (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.”).

The plain language of section 5-15-130 is clear. A candidate must file an election protest within forty-eight hours of the polls closing. In this case, Swinson did not file his election protest within forty-eight hours of the polls closing on November 7, 2023. Thus, this Court finds that Swinson’s election protest was untimely and the Municipal Election Commission’s decision to hear the protest was an error of law. The Court reverses the Municipal Election Commission’s decision accordingly.

II. The Municipal Election Commission’s Analysis of After-Discovered Evidence is Erroneous.

Additionally, the Court finds that the Municipal Election Commission must comply with the statutory timing requirements when hearing election protests. According to the Municipal Election Commission, it could not act on Swinson’s untimely “protest” until there was a final decision on the appeal of the Municipal Election Commission’s decision pertaining to the mayoral election and until SLED completed its supposed investigation into voter qualifications of some residents of Atlantic Beach. This is not what the law requires under these circumstances. The Municipal Election Commission argues the Supreme Court ruling in *Gecy v. Bagwell*, 372 S.C. 237, 241, 642 S.E.2d 569, 571 (2007), supports its conclusion. Not so. In *Gecy*, the candidate challenging the voter qualifications filed a timely protest pursuant to section 5-15-130, which requires a candidate to file a protest within forty-eight hours after the polls close. *Id.* at 239, 642 S.E.2d at 570. The issue there was whether the “after-discovered evidence” should be excluded from the protest hearing since such a challenge could have been brought prior to the election. *Id.* at 244, 642 S.E.2d at 572. The Supreme Court allowed this evidence at the protest hearing. *Id.* But the Supreme Court never ruled

that after-discovered evidence trumps the 48-hour protest filing requirement. Nor could it. The candidate in that case “filed a timely protest of the election.” *Id.* at 239, 642 S.E.2d at 570. Thus, in this case, the Municipal Election Commission’s argument that it cannot move forward on Swinson’s appeal until all after-discovered evidence is found, irrespective of the fact that Swinson did not file a timely protest under the statutory requirements, is an error of law.

In *Dukes v. Redmond*, 357 S.C. 454, 593 S.E.2d 606 (2004), our Supreme Court again dealt with this after-discovered evidence rule. The Court held after-discovered evidence could be presented at the protest hearing. *Id.* at 457, 593 S.E.2d at 608. But, as in *Gecy*, the challenger in *Dukes* otherwise filed a timely protest. *Id.* It was not an open-ended period of wait and see what evidence might be discovered, as the Municipal Election Commission argues here.

Regardless of the outcome of the appeal in the mayoral race or the purported SLED investigation, Swinson’s protest was still untimely. The after-discovered evidence rule must be applied consistently with the time constraints set out in the municipal election code. *See* S.C Code Ann. § 5-15-130. *Gecy* did not provide otherwise. Therefore, the Municipal Election Commission’s argument that it is not timely to hear Swinson’s appeal since not all after-discovered evidence has not been developed, is erroneous.

III. Swinson Was Ineligible to Run for Office.

Swinson ran as a candidate for the Town of Atlantic Beach Town Council and finished last in a four-person race. During the October 17, 2024 Municipal Election Commission hearing, Swinson testified he was not eligible to run for Town Council in 2023. Nor will he be eligible to run for public office until 2028. As the evidence before the Municipal Election Commission establishes, Swinson is a convicted felon who pled guilty in Federal Court in 2006 and was not released from Federal Supervised Release until 2013. As a result of this evidence, the only logical

conclusion is that Swinson is not eligible to be a candidate or run as a candidate until 2028. Yet he completed a Statement of Candidacy for the General Election in the town of Atlantic Beach and attested on that form that he was not a “convicted felon” and was a qualified candidate. Based on Swinson’s October 17, 2024 testimony, this Court finds by overwhelming evidence that Swinson’s attested statements on the Statement of Candidacy were untrue.

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. This Court finds that Swinson was ineligible to be a candidate for office in the Town of Atlantic Beach Town Council race on November 7, 2023.

Additionally, section 5-15-130 states, “any *candidate* may contest the result of the election.” S.C. Code Ann. § 5-15-130 (emphasis added). The Court finds that because Swinson was ineligible to be a candidate for office, he also cannot legally protest an election under section 5-15-130, and even if it had been timely (it wasn’t), his protest should have been dismissed.

CONCLUSION

Three hundred and fifty-nine days have elapsed since the November 7, 2023 Town of Atlantic Beach election. This town council race must finally be resolved. Based on the lengthy record in this action, this Court is convinced the Municipal Election Commission would not have met to dispose of Swinson’s election protest if this Court had not ordered it do so. Further, this Court is extremely concerned by the Municipal Election Commission’s actions to delay the resolution of this Town

Council race. It appears to this Court that the Municipal Election Commission's repeated delays were frivolous and intentional to thwart the will of the people who elected Appellant Taylor to serve on Town Council. If election commissions across our country handled election protests in this manner, the very backbone of our democracy would be broken and in disarray. This matter is extremely important to democracy in our state and country.

Based on the above, the Court reverses the Municipal Election Commission's decision, finds Shaun Swinson's election protest was untimely and was not meritorious in any event because Swinson was not qualified to run as a candidate in the Town Council race, and orders that Appellant Taylor be seated as an Atlantic Beach Town Council member immediately. Because Appellant Taylor has already signed the Oath of office and been recognized by the Horry County Commission on Voter Registration and Elections as the duly elected member of Town Council, she should hereby immediately begin serving on Town Council and have all the same rights as other members of the council.

IT IS SO ORDERED!

November 1, 2024



Horry Common Pleas

Case Caption: Carla Taylor VS Kenneth McIver , defendant, et al

Case Number: 2024CP2607182

Type: Order/Other

IT IS SO ORDERED

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

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**Town of Atlantic Beach
Town Council Executive Session Meeting – 2:00 p.m.
Town Council Special Called Meeting
Thursday, May 9, 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/hriov7yurwsygzabggzi>

Executive Session – 2:00 p.m.

1. Call to Order
2. Roll Call
3. Executive Session
 - a. Legal – Administrative Contract for Interim Town Manager
 - b. Legal – Contract with Legal Counsel and Authorization to defend the Town on pending legal matters.

Special Session

1. Call To Order and Welcome.
2. Invocation, Moment of Silence/Prayer.
3. Ceremonial Matters.
4. Approval of the Agenda.

Council may make motion(s) and take action on matters related to Executive Session.

5. **Old Business – (None)**

6. **New Business**

- A. Consideration of contract for Interim Town Manager.
- B. Consideration of contract for Town Legal Counsel.

7. **Public Time**

*Individuals wishing to speak during public time must sign in and fill out a speaker's card before the meeting is called to order at 5:00 p.m. The cards will allow us to respond in writing if necessary. More than one speaker for the same subject may be consolidated. Time Limit: 3 Minutes Per Person. Sec. 9-1-2 Disruption of Court or Council: It shall be unlawful for any person to interrupt the proceedings of the municipal court, or any meeting of the council, or be guilty of disorderly conduct therein, or to commit any contempt of either.

8. **Adjournment.**