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Jan 07 2025

S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY)	IN THE FIFTEENTH JUDICIAL CIRCUIT
)	
William Booker, Lynda Booker, Elaine	)	Civil Action No. 2024-CP-26-_____
Finney, Terry Finney, Sarah Blair, Linda)	
Cheatham, Harold Cheatham,)	
)	
Plaintiffs,)	
)	
vs.	)	<u>PETITION FOR WRIT OF</u>
	)	<u>MANDAMUS</u>
)	
Kenneth McIver, Caroline Gore, and)	
Derrick Stevens in their official capacities)	
as members of the Town of Atlantic Beach)	
Municipal Election Commission,)	
Defendants.)	

The Plaintiffs listed above request this Court to grant a writ of *mandamus* directed to the Defendants, Kenneth McIver, Carolina Gore, and Derrick Stevens as members of the Town of Atlantic Beach Municipal Election Commission (“MEC”). In support, the Plaintiffs would show as follows:

PARTIES, JURISDICTION, AND VENUE

1. The Plaintiffs are all citizens and residents of the Town of Atlantic Beach and voted in the town election on November 7, 2023. Carla Taylor was a candidate in the November 7, 2023 town council race and received the second highest amount of votes, thus winning one of two eligible council seats. Notwithstanding winning one of the two eligible council seats, the MEC has failed to resolve an untimely filed protest to the town council race in order for candidate Carla Taylor to assume office.

2. As such, the Plaintiffs and the voters are being disenfranchised by the actions and omissions of the MEC following the November 7, 2023 municipal election, that have denied, or at least indefinitely delayed, Plaintiffs’ Constitutional and statutory rights to have their votes counted

and complete the process to confirm Carla Taylor as one of the two winners of the November 7, 2023 election.

3. In the alternative, the Plaintiffs have standing to bring this claim under the “public importance” doctrine because they are interested citizens and the matters raised in this action are “significant public importance to ensure accountability and the concomitant integrity of government action,” *S.C. Pub. Int. Found. v. S.C. Dep’t of Transportation*, 421 S.C. 110, 118, 804 S.E.2d 854, 858 (2017) (cleaned up), in the Town of Atlantic Beach and across the State.

4. This Petition for relief is brought against Respondents Kenneth McIver, Carolyn Gore, and Derrick Stevens only in their official capacities as members of the MEC.

5. This Court possesses personal jurisdiction over the parties to this Petition and subject matter jurisdiction to hear this Petition and venue is appropriate before this Court.

FACTS & REQUEST FOR RELIEF

6. On November 7, 2023, the Town of Atlantic Beach held elections for mayor and two council seats.

7. After the polls closed on November 7, 2023, the unofficial election results indicated Jaqueline Gore and Petitioner Taylor were the winners of the council race with 69 and 53 votes, respectively.

8. On November 9, 2023, the Atlantic Beach 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, Jacqueline Gore and Petitioner Taylor were still the top vote recipients with 71 and 69, respectively.

9. After the MEC hearing, pursuant to S.C. Code Ann. § 5-15-130, Josephine Isom filed a protest to the updated unofficial election results pertaining solely to the mayoral election.

10. S.C. Code Ann. § 5-15-100 requires the MEC to “declare the results [of this municipal election] not later than three days following the election.” The MEC failed to comply with this statutory requirement.

11. Additionally, S.C. Code Ann. § 5-15-80 requires the MEC to timely conduct a protest hearing on Josephine Isom’s filed protest regarding the outcome of the mayoral race. The MEC failed to comply with this statutory requirement.

12. From November 7, 2023, to April 3, 2024, the MEC 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 pursuant to S.C. Code Ann. §§ 5-15-100 and 5-15-130.

13. The MEC’s failure to perform its duties forced mayoral candidate John David to file an action seeking a writ of mandamus to require the MEC to meet and certify the results of the election. *See David v. McIver et al.*, Case No. 2024-CP-26-02042.

14. After John David filed his writ of mandamus, on April 3, 2024, the MEC held a protest hearing, nearly five months after the election in November 2023, to hear Josephine Isom’s protest. The MEC determined thirteen (13) ballots were inappropriately counted and recommended the Town of Atlantic Beach Council order a new mayoral election.

15. Also on April 3, 2024 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. Thus, Gore and Petitioner Taylor were the winners of the two council seats. Each member of the MEC signed and officially certified the final results. *See Exhibit A.*

16. Thereafter on April 4, 2024, the certified election results were forwarded to the Horry County Voter Registration and Election Commission. *See Exhibit B.*

17. Also on April 4, 2024, Carla Taylor was sworn into office. *See Exhibit C.*

18. On either April 4, 2024, or April 5, 2024, Shaun Swinson filed an untimely protest of the certified election results for the town council election.

19. Pursuant to S.C. Code Ann. § 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.

20. Arguably, Shaun Swinson should not have been eligible to file a protest as he should not have been a candidate for Atlantic Beach Town Council as 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/>

21. Section 1 of Article VI 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.

22. Thus, the MEC should not even have to entertain Shaun Swinson's untimely protest to the November 7, 2023 election in the first instance.

23. Respondent McIver, Chairperson of the MEC, advised on April 15, 2024, that he would not convene a MEC meeting to resolve Shaun Swinson's election protest because the protest was untimely. *See Exhibit D.*

24. Thereafter, despite the MEC electing not to act on Shaun Swinson's untimely filed protest, Carla Taylor has been unable to assume her rightful office as Atlantic Beach Town Council Member.

25. As a result, Carla 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.*, Case No. 2024-CP-2602866.

26. In its response and at oral argument the Town of Atlantic Beach and MEC argued there was a process already in place before the MEC and that Carla Taylor had to wait until the conclusion of that process before appealing to this Court.

27. This Court denied Carla Taylor's injunction request on May 23, 2024, and held "there is a sufficient legal process in place to determine the outcome of contest elections and that remedy at law is being pursued by all parties involved in this litigation." *Id.*

28. On July 18, 2024, counsel for Carla Taylor requested the MEC to convene to dispose of and/or hear Shaun Swinson's election protest. *See Exhibit E.*

29. On August 19, 2024, the MEC held an information meeting and Atlantic Beach Town attorney, Dwayne Green, advised the MEC not to act on Shaun 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 at <https://boxcast.tv/channel/hriov7yurwsygzbbgzi>*

30. Also 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.*

31. On August 21, 2024, counsel for Carla Taylor again requested the MEC to immediately convene to dispose of and/or hear Shaun Swinson's election protest. *See Exhibit G.*

32. On August 26, 2024, counsel for the MEC responded and stated the MEC will not act on Shaun Swinson's election protest until the MEC has an opportunity to consider "after-discovered" evidence from Josephine Isom's protest appeal and SLED's investigation. *See Exhibit H.*

33. The MEC's interpretation of after-discovered evidence is flawed.

34. No result from Josephine Isom's appeal will impact the outcome of Shaun Swinson's appeal. Moreover, Josephine Isom has not appealed any evidentiary findings made by the MEC. Josephine Isom has only appealed the MEC's remedy from her protest hearing; thus, the appellate process of Isom's appeal will not impact Petitioner Taylor's council race.

35. Further, SLED has unequivocally stated it is not investigating the November 2023 Atlantic Beach election. Thus, there is no after-discovered evidence that would impact the MEC's ability to resolve Shaun Swinson's protest.

36. Regardless the outcome of either of these events, the fact remains Carla Taylor was the second highest vote recipient from the November 7, 2023 election and is a duly elected council member.

37. Despite nearly four months to do so, Respondents have failed to carry out their foregoing official obligations under S.C. Code Ann. §§ 5-15-100; 5-15-130; and 7-17-280.

38. Even if Shaun Swinson's protest was timely filed, the MEC has failed to carry out its statutory requirements to hold a hearing within forty-eight hours of a filed protest. *See S.C. Code Ann. §5-15-130.*

39. Thus, the MEC is derelict in its duties even if Shaun Swinson's April 2024 protest was timely filed.

40. The South Carolina Legislature has provided for short election protest deadlines to ensure election results and protests are promptly resolved and the will of the people is recognized.

41. Respondents have a definite and ministerial duty to perform these functions.

42. As voters in this election, Plaintiff's have a specific legal right that requires Respondents to perform their ministerial functions.

43. Plaintiff's lack any other legal remedy that will cure the deficiencies brought upon by Respondents' failure to perform their responsibilities and mandatory obligations under the law.

44. This Petition does not ask that the Court direct that the Defendants reach any particular decision in the conduct of their mandatory obligations. Instead, this Court has the authority to and should issue a writ of mandamus directing the Defendants 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.

CONCLUSION

For these reasons, Plaintiffs request that this Court issue a writ of *mandamus* to Defendants to carry out the obligations of the Municipal Election Commission S.C. Code Ann. §§ 5-15-100; 5-15-130; and 7-17-280 as soon as possible, award Plaintiffs their attorney's fees and costs, and grant such other and further relief as is just and warranted.

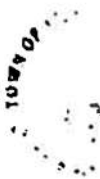
MONCKTON, HEMBREE, & HUMPHRIES, PA

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

September 5, 2024
Myrtle Beach, South Carolina

EXHIBIT A

to Petition for Writ of Mandamus



TOWN OF ATLANTIC BEACH
 2023 ELECTION
 CANVASS SHEET
 CERTIFICATION OF CANDIDATES

Whereas the Board of Election Commissioners 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.

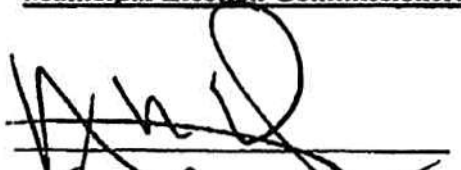
Mayor

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

EXHIBIT B

to Petition for Writ of Mandamus

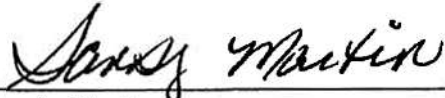
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY	)	IN THE FIFTEENTH JUDICIAL CIRCUIT
Carla Taylor,	)	Civil Action No. 2024-CP-_____
)	
Plaintiff,)	
)	
vs.	)	<u>AFFIDAVIT OF</u>
	)	<u>SANDY MARTIN</u>
Benjamin Quattlebaum, in his official)	
capacity as Town Manager of the Town 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.

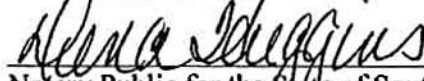
FURTHER AFFIANT SAYETH NOT.



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

EXHIBIT C

to Petition for Writ of Mandamus



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

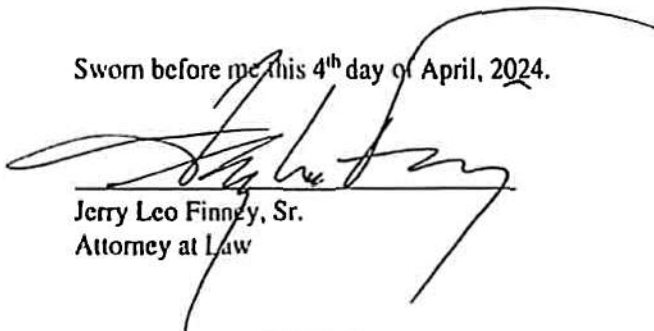
OATH OF OFFICE

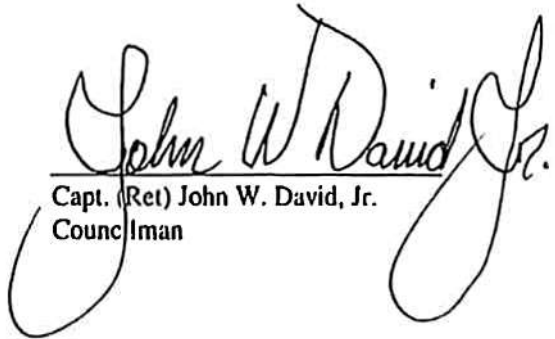
I, Carla Taylor, do solemnly swear that I am duly qualified, according to the constitution of this state to exercise the duties of the office to which I have been elected, and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect and defend the constitution of this 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

EXHIBIT D

to Petition for Writ of Mandamus

From: k3840@sc.rr.com <k3840@sc.rr.com>
Sent: Monday, April 15, 2024 4:37 PM
To: 'Dickey, Joseph' <JDickey@hsblawfirm.com>
Cc: 'benjamin.quattlebaum@aol.com' <benjamin.quattlebaum@aol.com>; 'C.D. Rhodes' <cdrhodes@popeflynn.com>; Rob Tyson <rtyson@robinsongray.com>; 'Kenneth Davis' <kdavis@boykinlawsc.com>; 'Ian T. Duggan' <ianduggan@callisontighe.com>; 'Cheryl Pereira' <cheryl@townofatlanticbeachsc.com>; 'johndavid@townofatlanticbeachsc.com' <johndavid@townofatlanticbeachsc.com>; 'elcampbell45@gmail.com' <elcampbell45@gmail.com>; 'gore_jacqui@yahoo.com' <gore_jacqui@yahoo.com>; 'evans.jake1@outlook.com' <evans.jake1@outlook.com>; 'js.isom@hotmail.com' <js.isom@hotmail.com>; 'Scott, Ronald' <rscott@hsblawfirm.com>; 'Glunt, Alex' <aglunt@hsblawfirm.com>; 'Derrick Stevens' <bossderrick25@yahoo.com>
Subject: RE: Advisory Letter Concerning Atlantic Beach November 2023 Election and Protest/Appeal Proceedings

Mr. Dickey:

This email is to acknowledge receipt of your advisory emails dated April 5th, April 12th, and now April 15th. Please see my response below.

Josephine Isoms' Protest Appeal

In accordance with the South Carolina Municipal Elections Handbook (page 23), Ms. Isom has filed an appeal to the Court of Common Pleas. I received a copy on April 12th. As stated in the Handbook, the appeal shall "act as a stay of further proceedings" pending the outcome. Therefore, no further action is required from the Commission.

Shawn Swinson Matter

Mr. Swinson delivered a letter dated April 3rd, 2024 (I received it via text and email on April 4th) with a subject, "Appeal of Decision to Certify Ineligible Voters for Town Council Election and Not for Mayoral Election."

Mr. Swinson's letter is clearly referring to the outcomes of the Mayoral Election protest hearing, asserting that he was an "aggrieved party" to the protest hearing. The Municipal Elections Handbook states "any aggrieved party may appeal to the Court of Common Pleas. Notice of appeal shall be served on the opposing parties or their attorneys and filed in the office of the clerk of court within 10 days." I informed Mr. Swinson he will need to seek assistance from an attorney.

Further, candidates are made aware of protest and appeal processes. A reminder of the appeals process occurred when we counted the unofficial results on November 7th, 2023. Your point regarding the timeliness of Mr. Swinson's notice is well known.

If Mr. Swinson plans to pursue an appeal of the decision to "certify ineligible voters for the town council," we look forward to receiving notice of his filing in the Court of

Common Pleas. Therefore, no further action is required from the Commission.

Certification of Town Council Votes

The Municipal Election Handbook states:

Certifying election results (page 20)

After canvassing, the MEC certifies the final vote totals making them official. Election results are certified by a quorum of the commission (at least two members) signing their names to a canvass sheet. Canvass sheets should contain the name of the municipality, name of the election, election date, signature blanks and certification date. Winners should be marked on the results.

During the April 3rd Municipal Election Commission Meeting, the following occurred:

Confirmation of Certification of November 7th, 2023 Town Council Election was originally listed as Item 7 on the published agenda.

Prior to approval of the agenda, the item was moved to follow the protest hearing.

The agenda, including the Confirmation of Certification of November 7th, 2023 Town Council Election, was approved by a unanimous Commission vote.

After the protest hearing, during the fourth-hour in the meeting, I announced we will now certify the Town Council Election, and I re-stated the count.

In accordance with the guiding documents of the South Carolina Law and the Municipal Elections Handbook, a quorum of Commissioners was present, and the canvass sheet, prepared by the Town Clerk containing the names of the Town Council candidates and the total votes received, was circulated for signature.

The canvass sheet read:

We, the Municipal Election Commission of the Town of Atlantic Beach, S. C., hereby certify the following official results for the election of November 7th, 2023

Each Commissioner read and signed the canvassing sheet without questions, indicating their concurrence with the language, the count, and the process. The winners were marked on the signed canvass sheet in the presence of the Commissioners and the public.

Given that all three Commissioners signed the sheet, without question or concern, we have completed the process.

Certification/ affirmation of the election results is by signature not by voice vote or motion. There is no requirement for a motion. The approving action is the signed canvass sheet. In addition, as required, the canvass sheet certifying the Council Election, has been submitted to the Horry County Elections Office in a timely fashion for closure. There is no further action required by the Atlantic Beach Municipal Elections Commission with regard to certification of the November Town Council Election.

Thank you again for your support. I look forward to receiving the draft of your report from our April 3rd Municipal Elections Commission meeting to be shared with the Town Council for informational purposes only. I will report to the Town Council that as a result of the appeal of the protest hearing, we will await the Court's directions as to the next steps rather than request that a new election date be set.

Kenneth McIver, Chairman

From: "Dickey, Joseph"
To: "k3840@sc.rr.com", "benjamin.quattlebaum@aol.com"
Cc: "C.D. Rhodes", "rtyson@robinsongray.com", "Kenneth Davis", "Ian T. Duggan", "Cheryl Pereira", "[johndavid@townofatlanticbeachsc.com](mailto: johndavid@townofatlanticbeachsc.com)", "elcampbell45@gmail.com", "gore_jacqui@yahoo.com", "evans.jake1@outlook.com", "js.isom@hotmail.com", Ronald", Alex", "Derrick Stevens"
Sent: Monday April 15 2024 2:12:56PM
Subject: Advisory Letter Concerning Atlantic Beach November 2023 Election and Protest/Appeal Proceedings

Good afternoon all:

Please find attached our firm's advisory letter concerning the current status of the November 2023 municipal elections. I apologize for it not being on letterhead previously.

In addition, it has been brought to my attention that the Town is improperly engaging in public meetings and other business via email. Whether seated or not, the Town using email, personal or Town provided, to conduct Town business and make decisions related to the Town is illegal under FOIA (assuming a quorum existed on the email). Furthermore, the Town is a council-manager form of government where no one member of Council nor the Mayor can make decisions on behalf of the Town. Much like the election commission, actions must be properly taken by the body predicated on a lawfully scheduled and held meeting. For reference, these actions were ruled upon in *Poole v. S.C. Dept. of Disabilities and Special Needs, et. al* where the DDSN commission was held to have acted unlawfully under FOIA in deciding and subsequently terminating the executive director. At a hearing on the FOIA violations, the presiding judge awarded the plaintiff executive director back pay and attorney fees dating back to the DDSN's board of commissioners unlawful actions under FOIA. In short, the Town must act as body and take appropriate votes to make any decisions much like the election commission.

As expressed in the letter, I am concerned about the actions being taken by the Town and felt the need to provide written advisory correspondence. While certainly the Town and individuals can decide to act in contrary to legal advice, those actions, after receiving written correspondence, would be deemed outside the scope of his/her official capacity.

Happy to address any questions you may have but wanted to make sure that we provided this correspondence out of an abundance of caution.

Thanks,

Joseph

Haynsworth Sinkler Boyd, P.A.



Joseph D. Dickey, Jr. | Attorney
Direct 803.540.7909 | JDickey@hsblawfirm.com

Haynsworth Sinkler Boyd, P.A.
1201 Main Street, 22nd Floor | Columbia, SC 29201
Main 803.779.3080 | Mobile 864.316.4646 | Fax 803.765.1243

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EXHIBIT E

to Petition for Writ of Mandamus



ROBERT E. TYSON, JR.
DIRECT 803 231.7838
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."



Litigation + Business

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,

A handwritten signature in black ink, appearing to read 'Robert E. Tyson, Jr.', with a flourish at the end.

Robert E. Tyson, Jr.

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

EXHIBIT F

to Petition for Writ of Mandamus

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](#)

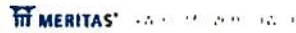
ROBINSONGRAY.COM

2151 Pickens Street

Suite 500

PO Box 11449 (29211)

Columbia, SC 29201



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EXHIBIT G

to Petition for Writ of Mandamus



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ROBERT E. TYSON, JR.

DIRECT 803.231.7838

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
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Litigation + Business

August 21, 2024
Page: 2

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 Sep 06 9:19 AM - Horry - COMMON PLEAS - CASE#2024CP2606062

Exhibit H

To Petition for Writ of Mandamus

From: [Dwayne Green](#)
To: [Holland Jacobs](#)
Cc: k3840@sc.rr.com; [Rob Tyson](#); [La"Jessica Strinofellow](#)
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 <[hjacobson@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>

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AX

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY)	IN THE FIFTEENTH JUDICIAL CIRCUIT
)	
William Booker, Lynda Booker, Elaine	)	Civil Action No. 2024-CP-26-_____
Finney, Terry Finney, Sarah Blair,)	
Linda Cheatham, Harold Cheatham)	
)	
Appellant,)	
)	
vs.	)	<u>Notice of Appeal</u>
)	
Kenneth McIver, Caroline Gore, and)	
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

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.

election protest must be made “within forty-eight hours after the closing of the polls.” The election 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, Appellants 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, SCRPC, 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. Appellants are is a citizens and residents of the Town of Atlantic Beach. Carla Taylor 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. Appellants bring 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, Carla 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, Appellants asks the Court to reverse the Municipal Election Commission’s decision upholding Swinson’s protest and declare Taylor the duly elected Town Council Member. Appellants also seeks further relief the Court may deem just and proper including an award of attorneys’ fees and costs.

Respectfully submitted,

MONCKTON, HEMBREE & HUMPHRIES, P.A.

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

Attorney for Appellants

Myrtle Beach, South Carolina
October 19, 2024

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.


Bradie L. Steele (witness)

Sent from my iPhone

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

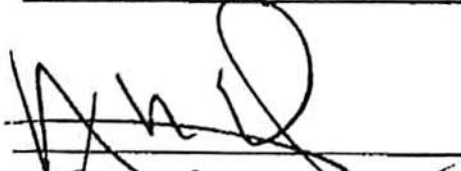
Jacqueline Gore 71

Carla Taylor 69

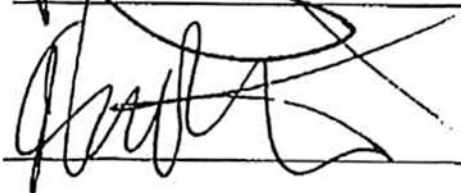
Jerry Finney 62

Shaun Swinson 48

Municipal Election Commissioners



Dated: April 3, 2024



Dated: April 3, 2024



Dated: April 3, 2024

Exhibit C

To Notice of Appeal

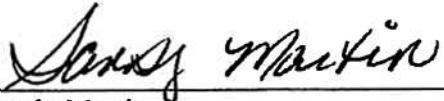
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY	)	IN THE FIFTEENTH JUDICIAL CIRCUIT
)	
Carla Taylor,	)	Civil Action No. 2024-CP-_____
)	
Plaintiff,)	
)	
vs.	)	<u>AFFIDAVIT OF</u>
	)	<u>SANDY MARTIN</u>
)	
Benjamin Quattlebaum, in his official)	
capacity as Town Manager of the 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.

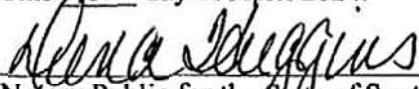
FURTHER AFFIANT SAYETH NOT.



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

Exhibit D

To Notice of Appeal



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

Mayor:

Jake Evans

Council Members

Jacqueline Gorr

Edward Campbell

John David, Jr

Carla Taylor

Town Manager:

Benjamin Quattlebaum

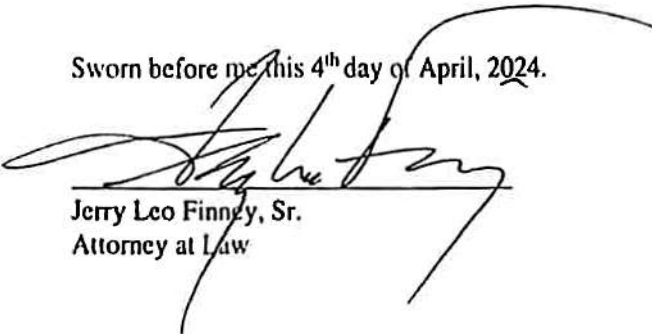
OATH OF OFFICE

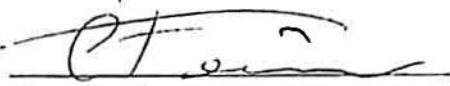
I, Carla Taylor, do solemnly swear that I am duly qualified, according to the constitution of this state to exercise the duties of the office to which I have been elected, and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect and defend the constitution of this 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


Cheryl Pereira
Town Clerk

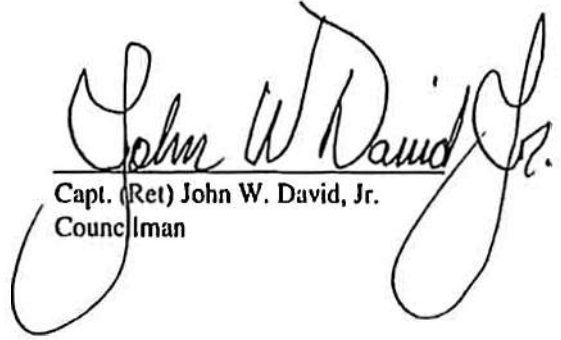

Capt. (Ret) John W. David, Jr.
Councilman

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."



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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)

July 18, 2024
Page:

ELECTRONICALLY FILED - 2024 Oct 21 9:33 AM - HORRY - COMMON PLEAS - CASE#2024CP2607193

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 <[hjacobson@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 [hjacobson@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

MERITAS WORKING TOGETHER



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Supporting Green print wisely.

Exhibit G

To Notice of Appeal



ROBINSON GRAY

Litigation + Business

ROBERT E. TYSON, JR.

DIRECT 803.231.7833

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

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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 21 9:33 AM - HORRY - COMMON PLEAS - CASE#2024CP2607193

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

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...

[<image004.jpg>](#)

[<image005.jpg>](#)

[<image006.jpg>](#)

[<image003.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>

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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