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VIA EMAIL: supctfilings@sccourts.org
The Honorable Patricia A. Howard
Clerk of Court
Supreme Court of South Carolina
1231 Gervais Street
Columbia, South Carolina 29201

Re: William Booker v. Kenneth McIver, et al
Appellate Case No.: 2024-001908

Dear Clerk:

On January 6, 2025, Appellants Kenneth McIver, Caroline Gore, and Derrick Stevens, in their official capacities as members of the Town of Atlantic Beach Municipal Election Commission, filed an affidavit from Attorney Dwayne Green and extensive exhibits in support of their motion to stay and in opposition to Respondent Carla Taylor's motion to dismiss the appeal. Respondent respectfully declines to respond on the merits. Because Appellants' untimely filing is improper, the Court should either strike or disregard it.

For appellate motions, the rules allow only for a return and a reply. See Rule 240(e)–(f), SCACR. Respondent filed her motion to dismiss the appeal and return opposing Appellants' motion to stay on November 20, 2024. Appellants filed their return opposing Respondent's motion to dismiss the appeal on November 26, 2024. But Appellants did not file a reply in support of their motion to stay. Instead, Appellants filed a 34-page affidavit from their counsel—along with 30 voluminous exhibits—some 41 days later. But see Rule 240(f), SCACR (allowing 5 days to file a reply).

Appellants cite no authority in support of their ability to submit this improper and untimely filing. Further, Appellants seek to "include matter [that] was not presented to the lower court or tribunal." Rule 210(c), SCACR. That is true with respect to both the arguments raised in the affidavit—which reads more like a brief—and the exhibits appended to it.

"Nearly every Atlantic Beach municipal election held in recent history has found its way to this Court." Cole v. Town of Atl. Beach Election Comm'n, 393 S.C. 264, 275, 712 S.E.2d 440, 446 (2011). Over a decade ago, this Court accompanied its decision "with strong admonishment of the MEC and other involved parties, who worked diligently to obstruct the town council election protest." Id. "The manner in which the MEC conducted the protest hearings cause[d]" the Court "great concern." Id. Regrettably, Appellants are up to the same "shenanigans" that led the Court

to promise it would "not hesitate to issue sanctions if the election laws of this State continue to be blatantly disregarded." Id.

Under state law, "[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 by filing a written notice of such contest together with a concise statement of the grounds therefor with the Municipal Election Commission." S.C. Code Ann. § 5-15-130. The election at issue here was held on November 7, 2023. Shaun Swinson—who is not even a party to this appeal—initiated this protest on April 3, 2024. That was 148 days, not 48 hours, after the election. So, this case is over. Neither Appellants nor any court has jurisdiction over this untimely protest. Even more, Appellants fail to acknowledge or address the fact that Shaun Swinson was not an eligible to be a candidate in the November 7, 2023 election, much less file an untimely protest.

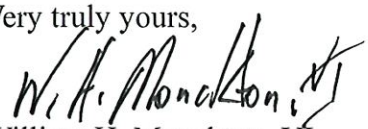
And Appellants' "after-discovered evidence" argument is patently frivolous because it contravenes the plain language of the statute in question and this Court's precedent. See S.C. Code Ann. § 7-13-810 (stating a protest can be "based in whole or in part on evidence discovered after the election" (emphasis added)); Gecy v. Bagwell, 372, S.C. 237, 244–45, 642 S.E.2d 569, 572–73 (2007) (same).

Yet Appellants continue to persist with this appeal—without the protestor in tow and presumedly without authority—solely to prevent the lawfully elected representatives of the Town of Atlantic Beach from serving the people. For these reasons, Respondent has moved for sanctions in the lower court.

Appellants now disregard the rules of this Court too. Appellants did not seek leave to file a reply out of time. Nor did they seek leave to supplement the record with their voluminous filing. Further, their filing is irrelevant to the issue before the Court, was not raised below, was "taken solely for the purposes of delay," is "not in compliance with these Rules," and is "frivolous." Rule 269, SCACR. Given the prior and continuing shenanigans from Appellants, coupled with the checkered past of the Atlantic Beach MEC, sanctions are necessary to discourage "like conduct in the future." Id. Respondent will therefore file a motion at the appropriate time.

In the interim, Respondent respectfully requests that this Court either strike or disregard Appellants' untimely and improper filing as it considers the pending motions, dismiss the appeal, and award such further relief it deems just and proper.

Very truly yours,



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