

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Judge

Appellate Case No. 2024-001889

Lower Court Case No. 2024-CP-26-07182

Carla Taylor,

Respondent,

v.

Kenneth McIver, Caroline Gore,
and Derrick Stevens in their
official capacities as member of
the Town of Atlantic Beach
Municipal Election
Commission,

Appellants.

CONSENT TO MOTION TO DISMISS

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ATLANTIC BEACH MUNICIPAL
ELECTIONS COMMISSION

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Jan 13 2025

S.C. SUPREME COURT

Introduction:

The Municipal Election Commission (the “MEC” or the “Commission”) for the Town of Atlantic Beach hereby files this return to the Motion to Dismiss filed by Carla Taylor, Respondent, in this matter on November 20, 2024 (the “Motion”). The Municipal Election Commission, acting as body and by formal action, has voted to withdraw this appeal, which vote was taken by the Commission in a public meeting, formally and properly noticed, which took place at the Atlantic Beach Community Center in Atlantic Beach, South Carolina, on November 25, 2025. Therefore, the Commission hereby consents to the Motion and requests that this honorable Court withdraw its appeal herein, which was filed November 5, 2024.

Background:

The Commission did not anticipate that this filing would be necessary, as it has communicated with and directed its prior counsel that it wished to withdraw this appeal, and that this appeal, filed by Attorney Dwayne Green on November 5, 2024, should be withdrawn. However, Attorney Green has refused to withdraw this appeal, despite receiving numerous written requests to do so.

In further support of the Commission’s request that this appeal be withdrawn, the Commission would note as follows:

1. There are no minutes or any other record of any meeting that took place wherein the Commission authorized the filing of this appeal.
2. There are no such records, and no formal or informal minutes of any such meeting, because no such meeting ever occurred.

3. Attorney Green appears to base his claim for authority to pursue this matter on individual conversations and communications that he had with individual members of the the Commission. However, Attorney Green has not filed this appeal on behalf of individual members of the Commission, but instead on behalf of Commission members *in their official capacities as members of the Town of Atlantic Beach Municipal Election Commission*. This is improper, as the Commission has never authorized this appeal in any manner, official or otherwise.

4. One of the individuals Mr. Green claims to represent in this matter, Commission Chairman Kenneth McIver, did not speak with Mr. Green concerning this matter prior to Green's filing of this appeal on November 5, 2024. Moreover, since the filing of this matter on November 5, McIver has specifically directed Mr. Green, in writing, to withdraw this appeal, which Green filed on behalf of Chairman McIver without consulting McIver, and without Chairman McIver's authorization.

5. Even if Attorney Green had spoken individually with all members of the Commission, and contained their consent (even if in writing) to file this appeal (which he did not), such communications would not constitute a "meeting" of the Commission pursuant to South Carolina's open meetings law, and therefore such communications, to the extent they may have occurred, cannot be considered a decision by the Commission of any official or other nature, nor can it be considered as authorization on behalf of the Commission, to any party, that this appeal should be filed or pursued. *See, South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, et seq.*

6. On November 11, 2024, William Booker, Interim Assistant Town Manager

for the Town of Atlantic Beach, contacted Attorney Green in writing, advising the Commission never met to approve the instant appeal, and that the Commission had not in fact approved this appeal, and that the appeal should immediately be withdrawn. Mr. Booker's letter of November 11 directed Attorney Green to "immediately" withdraw "any appeals," and that as of November 6, 2024, he was no longer "contracted to provide legal services for the Town of Atlantic Beach," and that Attorney Stephen Groves had been asked, as of November 8, to withdraw the appeal he had filed, and that Attorney Groves "should not be providing legal representation for the Atlantic Beach MEC", a reference to the Atlantic Beach Municipal Election Commission.

7. On November 25, 2024, the Commission met in a public meeting that was properly noticed and that was attended by several media outlets. In that meeting, the Commission voted to withdraw this appeal, and to authorize the undersigned counsel to communicate that information to Attorney Dwayne Green and Attorney Stephen Groves, with the instruction that this appeal should be withdrawn immediately, and without delay. *See, e.g., Atlantic Beach Municipal Election Commission gets new lawyer, cancels appeal, MyHorryNews, Nov. 29, 2024* (available at https://www.myhorrynews.com/news/atlantic-beach-municipal-election-commission-gets-new-lawyer-cancels-appeal/article_565408f6-ac3b-11ef-8f2e-176edaf21fe2.html , accessed 1/10/2025).

8. On November 26, 2024, the undersigned counsel wrote to both Attorney Dwayne Green and Attorney Stephen Groves, conveying again and in writing, the Commission's instructions that this appeal be immediately withdrawn, since the

Commission had confirmed, publicly and on the record on November 25, 2024, that this Appeal had been filed without the Commission's authorization.

9. Despite all of its various efforts to obtain the withdrawal of this appeal that was filed by its prior counsel, the Commission has been unable to obtain its prior counsel's cooperation in the withdrawal of this appeal.

10. The Commission had hoped that a filing such as this would not be necessary. Attorney Green's purported Affidavit of January 6, 2025, made this filing necessary. The Green Affidavit filed January 6 is improper; it was not requested by this Court, it was filed outside of any time limitations for responses to any current filings, and introduced whole new strains of impropriety into this very strange and unusual matter. The Commission respectfully requests that the Green Affidavit of January 6 be disregarded by this Court, and stricken from the record in this case.

CONCLUSION:

It is basic, hornbook law that an attorney cannot obtain, pursue, or continue to pursue, client representation, or to pursue a course of action in a matter such as this, without the consent of the party or parties that the attorney purports to represent. *See* S.C. Appellate Court Rules, Rule 1, Comment 6 ("Informed Consent"): "[m]any of the Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. *See, e.g.,* Rules 1.2(c), 1.6(a), 1.7(b), and 1.18(d)." Here, prior counsel has pursued an appeal, without authorization, and in the face of ongoing written

communication from and on behalf of the Commission, that the Appeal should be withdrawn. This appeal is improper, and it should not have been filed. The Commission consents to the pending Motion to Dismiss, and respectfully requests that the Court withdraw and dismiss this appeal.

Respectfully Submitted,

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Dated: January 10, 2025
Myrtle Beach, South Carolina

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ELECTIONS COMMISSION