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S.C. SUPREME COURT

**STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT**

Appeal from the Court of Common Pleas
For Horry County
Honorable William H. Seals, Jr. Circuit Judge
Civil Action Nos.: 2024-CP-26-07182
Appellate Case No.: 2024-001889

Carla Taylor,

Respondent,

v.

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

Appellants.

**RESPONSE IN OPPOSITION
TO
CONSENT TO DISMISS APPEAL**

Dwayne M. Green, Esquire
S.C. Bar No.: 9559
PFLUG LAW FIRM
211 Scott Street
Mount Pleasant, South Carolina 29464
Telephone: 843.647.7774
E-Mail: dwayne@greenlawsc.com

Stephen P. Groves, Sr., Esquire
S.C. Bar No.: 7854
BUTLER SNOW LLP
25 Calhoun Street, Suite 250
Charleston, South Carolina 29401
Telephone: 843.277.3704
Telecopier: 843.277.3701
E-Mail: Stephen.Groves@butlersnow.com

*Attorneys for the Appellants,
Kenneth McIver, Carolina Gore, and Derrick
Stevens in their official capacities as members
of the Town of Atlantic Beach Municipal Election
Commission*

TO: THE HONORABLE JUSTICES OF THE SUPREME COURT OF SOUTH CAROLINA:

COMES NOW the Appellants, Kenneth McIver, Carolina Gore, and Derrick Stevens in their official capacities as members of the Town of Atlantic Beach Municipal Election Commission (the “Election Commission” or “MEC”),¹ pursuant to Rules 240, 241(a) of the South Carolina Appellate Court Rules, in conjunction with S.C. Code Ann. § 14-8-200(b)(5) (Thomson Reuters West 2023) and S.C. Code Ann. § 15-15-140 (Thomson Reuters West 2023S, and respectfully submits this response in opposition to the *Consent to Motion to Dismiss*² filed by the Rogue Election Commission in the above-captioned appeal.³

1 At the time of the appeal in this matter the Election Commission was composed on Chairman Kenneth McIver (“Mr. McIver”), Commissioner Derrick Stevens (“Mr. Stevens”), and Commissioner Caroline Gore (“Ms. Gore”). Green Affidavit, para. 46. See Affidavit of Dwayne M. Green, Esquire sworn to on 6 January 2025 (the “Green Affidavit”). A copy of the Green Affidavit was previously filed with this Supreme Court on 6 January 2025 and is **incorporated herein by reference as if re-filed as part of the oppositional response**. Mr. Stevens and Ms. Gore authorized this appeal. *Id.*, at paras. 74-77.

2 Although the undersigned have been extensively involved in this appeal from the beginning and they were not served with or otherwise provided a copy of the Consent to Motion to Dismiss dated 10 January 2025, and filed 13 January 2025. This type of action is a prime example of why the maintenance of a pre-appeal *status quo* in an election dispute is of significant importance and a practical necessity if the relevant appellate court is to have the opportunity to consider the parties’ dispute in the first instance, much less be given the chance to render a meaningful decision on the merits. See generally Braxton v. Stokes, 2024 WL 2116057, at 5 (S.D.Ala., 10 May 2024) (quoting United States v. Lambert, 695 F.2d 536, 539-540 (11th Cir. 1983)). When the *status quo* is not imposed, actions much like those taking place herein, most assuredly will occur to prevent a decision on the merits thereby relegating the truth and the validity of the election process to the whims of those wheeling governmental power. See generally Cheyenne-Arapaho Election Board v. Mosqueda, 1997 WL 1146135, at *1 (Sup.Ct. Cheyenne-Arapaho Tribes , 16 Jan. 1997). (“In the course of an ongoing election dispute, the Supreme Court of the Cheyenne–Arapaho Tribes directed that the former occupants of three seats on the Tribes’ Business Committee were to ‘hold over’ in office pending resolution of the resulting litigation.”); Republican Party of North Carolina v. North Carolina State Board of Elections, 1994 WL 265955, 3 (4th Cir. 1997) (acknowledging maintenance of “*status quo* pending resolution of th[e] litigation.”).

3 As a result of the Circuit Court’s 2024.11.04 Reversal Order (Green Affidavit, para. 65, Exhibit “AE”), which is currently the subject of this present appeal, as well as the associated Booker v. McIver consolidated appeal (Appellate Case No. 2024-001908) (Green Affidavit, para. 75), the member and voting composition of the Atlantic Beach Town Council changed (the “Rogue

The Election Commission respectfully requests this Supreme Court to deny the Rogue Election Commission's superficial "consent" to the dismissal of this appeal as meritless and instituted solely to deprive this Supreme Court of the opportunity to address the merits of this matter.

Attorney Green's affidavit filed herein on 6 January 2025, clearly and succinctly sets forth the facts surrounding the Town of Atlantic Beach's 7 November 2023 mayoral and town council election mess and the voting fraud ultimately proven to have occurred.⁴ The Rogue Town Council and its associated Rogue Election Commission clearly do not want this Supreme Court to delve into this case, view all of the evidence, and address the merits of the parties' respective arguments. This position, of course, begs the question – why? If the Rogue Town Council and the Rogue Election Commission are so convinced of the correctness of their collective positions concerning the validity of both the mayoral and Town Council elections, why are the Rogue Town Council and the Rogue Election Commission using every opportunity and available means to prevent this Supreme Court from "looking under the hood" of the 7 November 2023 election? When the Election Commission invalidate the mayoral election due to voter fraud, that election invalidation necessarily had to have impacted the Town Council election as the two offices (mayor and Town Council) w=used the very same election ballot.

Town Council"). On 8 November 2024, the Rogue Town Council removed Mr. Stevens and replaced him with Joe Montgomery ("Mr. Montgomery") (the "Rogue Election Commission") which also changed the membership and voting composition of that body. Green Affidavit, paras. 83-89.

⁴ "Election fraud perverts democracy and constitutes a grave offense, not only against the opposing candidate but against society as a whole." O'Caná v. Salinas, 2019 WL 1414021, at *11 (Tex.App., 29 Mar. 2019, pet. denied).

The Rogue Election Commission appears to agree with the Respondent, Carla Taylor (“Ms. Taylor”), on the proposition Shaun Swinson, Sr. (“Mr. Swinson”) was legally prohibited from filing his election protest⁵ since it was made at a time more than 48 hours after the 7 November 2023 election was held.⁶ Under normal circumstances this assertion would be correct,⁷ but this is not the usual situation. This bold, yet not relevant preposition, completely ignores South Carolina law which provides, in pertinent part, as follows:

A candidate may protest an election in which he is a candidate . . . when the protest is based in whole or in part on evidence discovered after the election. This evidence may include, but is not limited to, after-discovered evidence of voters who have voted in a precinct or for a district office other than the one in which they are entitled by law to vote.⁸

This is precisely the type of election protest/challenge Josephine Isom (“Ms. Isom”) initiated in the first instance⁹ and, moreover, exactly what Mr. Swinson did on 3 April 2024, once he became aware for the hearing testimony a number of individuals had voted

⁵ Green Affidavit, para. 32, Exhibit “M”. While Mr. Swinson’s protest letter was dated 3 April 2024, it was apparently not delivered to the Election Commission until 4 April 2024.

⁶ Ms. Taylor also asserted Mr. Swinson did not have standing to assert an election challenge since he was not constitutionally permitted to run for office due to a prior felony conviction. The effect of Ms. Swinson’s prior felony conviction on his ability to run for office is an issue to be determined by this Supreme Court, not simply asserted by someone challenging his status.

⁷ See S.C. Code Ann. § 5-15-130 (Thomson Reuters West 2022). See also Broadhurst v. City of Myrtle Beach Election Commission, 342 S.C. 373, 384, 537 S.E.2d 543, 548 (2000).

⁸ See S.C. Code Ann. § 7-13-810 (Thomson Reuters West 2022) (Emphasis added).

⁹ Green Affidavit, para. 14, Exhibit “F”. Ms. Isom has also filed an appeal to this Supreme Court concerning the Election Commission’s decision to invalidate the mayoral election and request the Town Council to hold another mayoral election. *Id.*, at paras. 31, 93, Exhibits “O”, “AQ”.

in both the mayoral and the Town Council elections when they were clearly ineligible to do so.¹⁰ Mr. Swinson’s protest was even more material to the sanctity of the overall election process given the fact the Election Commission already voted to invalidate the mayoral results due to the participation of the ineligible voters while,¹¹ at the same time, agreeing to confirm the results of the Town Council election¹² completely aware those very election results were similarly inexorably tainted by the fraudulent votes of the ineligible electors.¹³

The Rogue Election Commission should be prohibited from “consenting” to Ms. Taylor’s request to dismiss this appeal has Ms. Taylor failed to assert any credible argument justifying dismissal. Moreover, the Rogue Election Commission is just that “rogue” and should not be held to speak for the Election Commission which authorized this appeal in the first instance. This Supreme Court should ignore the Rogue Election Commission’s superficial “consent” and decline to dismiss this important appeal as the determination of the validity and accuracy of any public election is a matter of the utmost public importance, especially for the electorate effected by the particular involved election.

¹⁰ *Id.*, at para. 32, Exhibit “M”.

¹¹ *Id.*, at paras. 26-28, Exhibit “C”.

¹² *Id.*, at paras. 29-31, Exhibit “C”.

¹³ Even though a voter may assert otherwise, for him or her to vote in an election in a municipality where they do not reside cannot be characterized anything less than voter fraud. As noted by the United States Court of Appeal for the Fourth Circuit, in Republican National Committee v. North Carolina Board of Elections, this type of improper and illegal voter activity involves “ ‘three uncertain intervening events: (1) an ineligible voter must be afforded the opportunity to commit fraud; (2) the ineligible voter will in fact commit fraud; and (3) the fraud will not be prevented.’ ” Republican National Committee v. North Carolina Board of Elections, 120 F.4d 390, 411 (4th Cir. 2024) (Diaz, C.J., *concurring*) (*quoting* Republican National Committee v. Aguilar, 2024 WL 4529358, at *5 (D.Nev, 18 Oct. 2024) (*disagreeing with* Green v. Bell, 2023 WL 2572210 (W.D.N.C., 20 Mar. 2023)). The illegal voting in this case covered all three events.

This is particularly true for the Town of Atlantic Beach which admittedly been involved in a number of election protests and subsequent appeals to this Supreme Court concerning election challenges in the past. Those election disputes continue even today, but hopefully will end with this Supreme Court's final determination and resolution of the seemingly never-concluded 7 November 2023 election.

While this election contest dispute has been lengthy, the citizens of Atlantic Beach deserve a final and binding determination. This Supreme Court is the best arbiter to render such a full and final resolution. This Supreme Court should not allow Ms. Taylor's political machinations, together with those of the Rogue Town Council and the Rogue Election Commission, to prevent this Supreme Court from having the opportunity to address this dispute on the merits.

Regardless of the outcome of this appeal, the electorate needs to have faith and trust in the electoral process and to know improper voting has not taken place. Given the small size of Atlantic Beach's electorate, a minimal number of votes going one way or the other can and, indeed, often does significantly change the outcome of a close election. This is especially true where, as here, the ineligible voters likely changed the election results in the Town Council election, even though they had been declared ineligible in the mayoral election.

Based upon the foregoing arguments and citation of authority the Appellants, Kenneth McIver, Carolina Gore, and Derrick Stevens in their official capacities as members of the Town of Atlantic Beach Municipal Election Commission, respectfully requests this Supreme Court to deny Ms. Taylor's Motion to Dismiss.

Respectfully submitted:

PFLUG LAW FIRM

By: *Dwayne M. Green*

Dwayne M. Green, Esquire
S.C. Bar No.: 9559
211 Scott Street
Mount Pleasant, South Carolina 29464
Telephone: 843.647.7774
E-Mail: dwayne@greenlawsc.com

Stephen P. Groves, Sr., Esquire
S.C. Bar No.: 7854
BUTLER SNOW LLP
25 Calhoun Street, Suite 250
Charleston, South Carolina 29401
Telephone: 843.277.3704
Telecopier: 843.277.3701
E-Mail: Stephen.Groves@butlersnow.com

*Attorneys for the Appellants,
Kenneth McIver, Carolina Gore, and Derrick Stevens
in their official capacities as members of the Town of
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Charleston, South Carolina

13 January 2025