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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
In the 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
members of the Town of Atlantic Beach Municipal Election
Commission Appellants.

RESPONDENT CARLA TAYLOR’S MOTION FOR COSTS AND SANCTIONS

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Pursuant to Rule 222, SCACR, Respondent Carla Taylor, (“Councilwoman Taylor”), by and through the undersigned counsel, hereby moves for costs and financial sanctions against Appellants for instituting this patently frivolous appeal. For the reasons that follow, the Court should award costs to Councilwoman Taylor and impose financial sanctions on Appellants for their continuous blatant election obstruction and malfeasance.

BACKGROUND

Appellant Atlantic Beach Municipal Election Commission is no stranger to this Court. In fact, over a decade ago, this Court issued a “strong admonishment of the MEC and other involved parties, who worked diligently to obstruct the town council election process.” *Cole v. Town of Atl. Beach Election Comm'n*, 393 S.C. 264, 275, 712 S.E.2d 440, 446 (2011). This Court noted that “[n]early every Atlantic Beach municipal election held in recent history has found its way to this Court.” *Id.* Even more, this Court expressed unease with the Atlantic Beach MEC because “[t]he manner in which the MEC conducted the protest hearings cause[d the Court] great concern” and questioned “whether future election protests c[ould] be properly conducted in Atlantic Beach without direct monitoring by the State Election Commission. *Id.*”

Unfortunately, the Appellant MEC has continued their abhorrent systemic practice of obstructing town council election processes. It is time for Appellant MEC to suffer the consequences their deliberate nefarious actions.

In the latest effort to obstruct the will of the people, Appellants intentionally stalled and obstructed Councilwoman Taylor from assuming office by blatantly disregarding settled South Carolina law and case precedent. Appellants manufactured a long, drawn-out series of events stemming from the November 7, 2023, Town of Atlantic Beach election for mayor and two council seats in order to subvert the will of Atlantic Beach voters. Because of Appellants’ blatant disregard

for the law, 436 days elapsed before Appellants' meritless challenge to Councilwoman Taylor's right to assume office was definitively resolved.

After the polls closed on November 7, 2023, the unofficial election results reflected Jaqueline Gore and Councilwoman Taylor were the two winners of the council race with 69 and 53 votes, respectively. On November 9, 2023, Appellant MEC met to hear challenges to several provisional ballots cast in the November 7, 2023 election. After the hearing, Gore and Councilwoman Taylor were still the top two vote recipients with 71 and 69, respectively.

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

¹ It is worth noting Appellants did not act until mayoral candidate John David filed a Writ of Mandamus to require Appellants to meet and certify the results of the November 7, 2023 election. See John David v. Kenneth McIver et al., No. 2024-CP-262042 (S.C. Ct. of Common Pleas, Horry Cnty.).

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

Thereafter, on April 5, 2024, Swinson—a candidate in the November 7, 2023 town council race—filed a protest of the certified election results for the town council election. Despite Councilwoman Taylor being sworn into office and the Horry County Election Commission certifying the results, the Atlantic Beach Town Council failed to recognize Councilwoman Taylor as a duly elected member of the Town Council, ostensibly due to Swinson's belated election protest. Appellant MEC, however, took no action to resolve Swinson's belated appeal, despite being statutorily required to do so and being advised by its legal counsel it needed to act on the untimely filed protest. Frustrated with the procedural limbo, Councilwoman Taylor filed an injunction to enjoin the named Defendants from refusing to recognize her as a duly elected Town of Atlantic Beach Council Member. *See Taylor v. Jake Evans et al.*, No. 2024-CP-2602866 (S.C. Ct. of Common Pleas, Horry Cnty.). At the injunction hearing, Appellants' counsel represented to the court that a process was already underway to resolve the election protest and that Councilwoman Taylor had to wait her turn to receive a final conclusion from Appellants before appealing to the circuit court for relief. Relying on the representations made by Appellant's counsel, the circuit court denied Councilwoman 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 all parties involved in this litigation."

Despite the representations Appellants' counsel made to the circuit court, Appellants did not convene to resolve the untimely filed protest. On July 18, 2024, Councilwoman Taylor's counsel requested in writing that Appellants convene to resolve the untimely filed election protest. Appellants never responded to this request. Instead, on August 19, 2024, Appellants held an information meeting and decided not to act on Swinson's election protest. Appellants' counsel advised the Commission to not rule on Swinson's appeal until after the conclusion of the unrelated Town of Atlantic Beach mayoral election appeal and the completion of an alleged South Carolina Law Enforcement Division (SLED) investigation into alleged fraud of certain voters in the municipal election. At the time of this informational session, the Town had not asked SLED to investigate anything and subsequently had to recant this false representation made to the MEC and to the public. On August 22, 2024 and August 26, 2024, Councilwoman Taylor's counsel again implored Appellants and their counsel to convene to resolve the untimely filed protest. This request was met with disdain by Appellants' counsel.

Left with no other recourse, on September 3, 2024, Councilwoman Taylor filed a Writ of Mandamus requesting the circuit court order Appellants to perform their ministerial responsibilities. On September 4, 2024, concerned Atlantic Beach citizens, William Booker, Lynda Booker, Elaine Finney, Terry Finney, Sarah Blair, Linda Cheatham, and Harold Cheatham (third parties), also filed a Writ of Mandamus requesting the circuit court order Appellants to abide by the plain and unambiguous language of the South Carolina Code and require Appellants to perform its ministerial obligations.

On October 14, 2024, the lower court granted Councilwoman Taylor's and the third parties' Writs of Mandamus and ordered Appellants to perform their ministerial duties no later than October 19, 2024. The lower court expressed concern that Appellants appeared to be intentionally

utilizing delay tactics to stall the final resolution of Swinson's election protest. Additionally, the lower court noted that Swinson filed his protest approximately 149 days after the election, well outside of the time requirement pursuant to section 5-15-100.

On October 17, 2024, Appellants met and found Swinson's protest timely and voted to uphold Swinson's election challenge.² On October 18, 2024, Councilwoman Taylor filed a Notice of Appeal pursuant to section 5-15-140 of the South Carolina Code. On October 30, 2024, the lower court heard the parties' respective arguments. On November 5, 2024, the lower court filed its Order finding (1) Swinson's protest was untimely as a matter of law; (2) Appellant MEC's misapplied the concept of after-discovered evidence; and (3) Swinson was ineligible to run for office and therefore cannot legally protest an election under South Carolina Code Section 5-15-130. The lower court ordered that Councilwoman Taylor should immediately began serving on the Atlantic Beach Town Council. Thereafter, Appellants appealed this Order.

STANDARD

Pursuant to Rule 222, Councilwoman Taylor moves for costs to be assessed against Appellants as permitted under the rule as Appellants appeal was dismissed on January 16, 2025. In addition to the costs permitted under Rule 222(b), Councilwoman Taylor moves for additional costs to be imposed due to the extraordinary circumstances presented via Appellants' systemic and abhorrent election interference practices by way of sanctions.

² A review of the hearing transcript shows Swinson presented no evidence to support his election protest claims. In fact, the only evidence he presented was his own testimony that he was not qualified to be a candidate for the November 7, 2023 election pursuant to Article VI section 1 of the South Carolina Constitution. Thus, Candidate Swinson was also not eligible to bring an election protest since he was not qualified to be a candidate in the election. Further, Appellants acted without any discussion of the legal arguments presented or received any legal advice regarding the same. Appellants simply chose to continue an election farce with complete disregard of South Carolina law.

ARGUMENT

It is more than apparent that Appellant MEC has not embraced this Court's previous admonishments and thus this Court should require more severe consequences by way of financial sanctions in order to deter further election abuses and obstruction. Despite its numerous refusals to comply with the laws and administer elections fairly, Appellant MEC has continued to disregard its ministerial duties and the law. This appeal is simply the latest iteration of Appellant MEC's problematic actions. Appellant MEC does not have an isolated incident problem, Appellant MEC has an institutional and systemic problem that has pervaded many of Atlantic Beach's elections for over a decade. Enough is enough.

Every Atlantic Beach election should not require court interference or find its way before this Court. In *Cole*, this Court warned Appellant MEC that the Court had "grown weary of the shenanigans engaged in by all parties involved in the election process at Atlantic Beach, and w[ould] not hesitate to issue sanctions if the election laws of this State continue to be blatantly disregarded." 393 S.C. at 275, 712 S.E.2d at 446. Appellant MEC did not heed the Court's warning. In fact, at every step of the November 2023 election, Appellant MEC has constantly thumbed its nose at the Court's guidance and has acted with blatant disregard and contempt of the law. Without financial sanctions, Appellant MEC will continue to run amok and unchecked to create future shenanigans.

From the time Appellants filed their appeal to receipt of this Court's Order dismissing the appeal, Councilwoman Taylor's attorney's fees amount to **\$11,160.00**. Additionally, Councilwoman Taylor's costs and expenses to respond to this frivolous appeal amount to **\$50.00**. An affidavit by the undersigned counsel describes in greater detail the fees incurred while

responding to Appellant’s meritless appeal.³ See Exhibit A. Extraordinary circumstances are certainly present due to Appellants’ egregious dereliction of their ministerial duties and complete disregard for the black letter law. Therefore, Councilwoman Taylor respectfully ask this Court to find it appropriate to impose financial sanctions on Appellants and award Councilwoman Taylor attorneys’ fees as they relate to this appeal.⁴

CONCLUSION

For these reasons, the Court should assess costs and impose financial sanctions on Appellants.

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³ Counsel for Councilwoman Taylor can submit the legal invoices associated with these fees to the Court for in-camera review if requested. Alternatively, the legal invoices can be made available for review by opposing counsel subject to a confidentiality order.

⁴ As a policy consideration, it is worth noting that election disputes are often costly and time consuming. As a result, many bad actors, such as Appellants, are often allowed to wreak havoc in contempt of the law because many electors do not have the resources and financial means and ability to challenge institutional bodies like Appellant MEC in order to hold such institutions accountable. Imposing financial sanctions on Appellant MEC also further sends a message to other institutions to think twice before disregarding South Carolina law and obstructing the will of South Carolina voters.