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S.C. SUPREME COURT

EXHIBIT

“A”

**TOWN OF ATLANTIC BEACH, SOUTH CAROLINA
MUNICIPAL ELECTION COMMISSION**

<p>STATE OF SOUTH CAROLINA</p> <p>TOWN OF ATLANTIC BEACH</p> <p>IN RE: JOSEPHINE ISOM CONTEST OF NOVEMBER 7, 2023, MUNICIPAL MAYORAL ELECTION</p>
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Case No: 2024-CP-26-02533

DECISION

RENEE N. ELVIS
CLERK OF COURT
Horry County, SC

2024 MAY 16 P 1:15

FILED
HORRY COUNTY

INTRODUCTION AND PROCEDURAL HISTORY

In accordance with S.C. Code Ann. § 5-15-130, on November 9, 2023, at 4:43 p.m. Mayoral Candidate Josephine Isom (“Isom”) filed a notice of a protest with the Municipal Election Commission for the Town of Atlantic Beach, South Carolina (“MEC”) contesting the results of the November 7, 2023, municipal election for the Mayoral Candidacy (“Election”). Specifically, Isom protested the Election on the grounds that nineteen (19) individuals, who were not residents of the Town, fraudulently casted votes, thus improperly preventing Isom from being named the winner of the Election. Initial results of the November 7, 2023, Mayoral Election were Josephine Isom with 62 votes and John David with 49 out of 111 total votes cast. After the November 9, 2023¹ Provisional Ballot hearing, the MEC performed a recount using the accepted provisional ballots giving Isom a total of 64 votes and David a total of 65 votes out of 129 votes casted at the time.

On November 10, 2023, the MEC convened to recount the votes cast in the Election after provisional ballots were accepted and to certify the election. Prior to certification, Mayor Jake Evans objected to the MEC continuing with the proceedings since the MEC had failed to retain a

¹ Based on the November 9, 2023 Provisional Ballot Hearing Transcript, the following individuals’ ballots were challenged: Marvirstine Y. Briggs-Fisher, Nadiyah Vaughan, Erika Vaughan, Diane Hill, Naim Vaughan, Knowledge Divine, Jean Anne Rhymer, Traci Cooper, Carlisle Cooper, Noble Cooper, III, Noble Cooper, Jr., Derrick Mayes, Juliana Hines, Elaine Finney, Jerry Finney, Sr., Jerry Finney, Jr., Colleen Finney, Terrance Graves, and Glynes Cheatham.

court reporter to transcribe the proceedings as required under state law. The MEC recessed to presumably obtain a court reporter in order to preserve a complete record of the proceedings in accordance with state law. Later, the Town of Atlantic Beach Town Council (“Town Council”) held an emergency meeting where Town Council decided by a majority vote to remove individual members from the MEC. In response, Mayoral Candidate John David (“David”) filed a petition to the South Carolina Supreme Court to address Town Council’s actions along with a motion for emergency relief. Both actions were dismissed by the South Carolina Supreme Court along with a motion to intervene filed by former MEC Chairman Joe Montgomery (“Montgomery”).

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HORRY COUNTY, S.C.

On December 11, 2023, Town Council met and reconstituted the MEC. As a part of reconstituting the MEC, Town Council voted to remove Montgomery from the MEC for violating S.C. Code Ann. § 7-13-75. The MEC’s decision to remove Montgomery was based on the fact that Montgomery attended campaign events and openly supported David in the Election. On December 11, 2023, Town Council met and appointed commissioner Derrick Stevens to replace Montgomery as a member of the MEC.

After reconstituting a full MEC, Town Council was again delayed in holding a protest hearing due to constant and repeated threats of litigation from David and his attorney. Eventually, David agreed to allow the South Carolina State Election Commission (“State Commission”) to administer the protest hearing and to close out the Election. At that time, Town Council requested the State Commission’s involvement through correspondence with the Governor’s office. The Governor’s office declined to direct the State Commission to assist in resolving the contest. In doing so, the Governor’s office suggested that Town Council turn over its municipal elections to Horry County, South Carolina (“Horry County”). Town Council and David agreed to do so, but Horry County declined to exercise jurisdiction over matters pertaining to the November 2023 municipal elections.

On February 28, 2024, the MEC met and authorized its legal counsel to issue subpoenas to challenged voters, Richland County, and Horry County to obtain information that would assist in reaching a determination during the forthcoming protest hearing. In addition, the MEC authorized its legal counsel to compile public information that would assist the MEC in making a determination at the forthcoming hearing.

After Horry County declined jurisdiction, the MEC scheduled the protest hearing for March 20, 2024. However, commissioner Derrick Stevens and commissioner Carolyn Gore, notified acting MEC Chair Kenneth McIver (“McIver”) that they had a family emergency in the hours leading up to the hearing, preventing them from attending. Consequently, on March 20, 2024, McIver –on behalf of the MEC– made a brief statement notifying the public that the MEC could not move forward in hearing the election contest due to lack of a quorum. McIver also publicly received information submitted by Isom and David in support of their respective positions as well as public information received by the MEC in response to subpoenas issued, as authorized by the MEC, to assist them in administering the protest hearing.

Thereafter, McIver unilaterally rescheduled the protest hearing to be held on March 27, 2024, and a certification hearing to be held the day prior on March 26, 2024. The MEC met on March 26, 2024, for the purported certification. All members of the MEC were present for this public meeting. During this meeting, the MEC voted to not hold the certification of the municipal election and instead, voted to publicly receive legal advice for a matter of public concern regarding the integrity of the Election. In doing so, the MEC was apprised that confidential attorney-client privileged information and documents only shared and provided during the MEC’s executive session had been provided to David in breach of privilege and in violation of statute § 30-4-70.²

² On March 5, 2024, David emailed the Town of Atlantic Beach Town Manager, Benjamin Quattlebaum, objecting to the proceedings and actions of the MEC and providing a copy of confidential attorney-client privileged information

The MEC then voted to publicly be polled as to whether any member disclosed the privileged information. All commissioners, after being duly sworn, affirmed that they had not broken privileged or otherwise violated the ethics code regarding MEC executive session. The MEC voted to schedule the election protest hearing on April 3, 2024, at the Atlantic Beach Community Center, to hear and decide upon Isom's Election protest.

The MEC held the election protest hearing on April 3, 2024, at the Atlantic Beach Community Center. All members of the MEC were present for this public meeting. The MEC received evidence and heard testimony from Isom and Irene Armstrong, an Election poll watcher ("Armstrong"). The MEC admitted into evidence Agency Exhibit A, Isom Exhibit B, and David Exhibit C. The MEC also admitted additional exhibits submitted by David, which included the November 9, 2023, Provisional Ballot Challenge Hearing Transcript and executed affidavits and other accompanying residency-related exhibits from Traci Cooper; Noble P. Cooper, Jr.; Noble P. Cooper, III; Carlisle C. Cooper; Jamar McLaurin; Julianna Hines; Marvirstine Briggs-Fisher; Erika Vaughan; K.G. Divine; Glynes Cheatham; and Diane Hill. These same individuals were subpoenaed by the MEC but failed to comply with the subpoenas and instead provided David's counsel affidavits to submit to the MEC.

The MEC retired to executive session at the conclusion of the parties' presentations to receive legal advice. Upon returning to public session, the MEC moved and by majority vote found that, upon review of the evidence considered, the voters challenged by Isom were not residents of the Town of Atlantic Beach, South Carolina and had, in fact, fraudulently voted in the Election.

FINDINGS OF FACT

1. Town Council held an election on November 7, 2023, for the Mayoral Candidacy. The polls for the Election closed at 7:00 p.m. on November 7, 2023.

and documents of the MEC, which attorney-client privileged information and documents should not have been in David's possession.

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2. On the day of the Election, eighteen (18) ballots were challenged and one mail-in vote was reviewed, which were accordingly deemed provisional ballots. Eric Lewis challenged two votes, and Armstrong challenged sixteen votes. By way of background, Armstrong was a poll watcher at the Election for Town Council candidate, Jacqueline Gore. Prior to the Election, Armstrong took it upon herself to request the voter registration list for the Town of Atlantic Beach from the election commission in Columbia, South Carolina. After reviewing the list, Armstrong believed that several individuals who casted votes were not residents of the Town of Atlantic Beach. Armstrong then challenged the individuals' votes she believed were cast fraudulently.

3. The poll managers initially determined that, excluding the provisional ballots, Isom received sixty-two (62) votes and David received forty-nine (49) votes.

4. On November 9, 2023, the MEC held a hearing to address the provisional ballot challenges. After reviewing the evidence, the MEC denied each challenge to the provisional ballots. The MEC then accepted the nineteen (19) provisional ballots and commingled the challenged provisional ballots with the remaining ballots to determine the final Election count. Town Council determined that David received sixty-five (65) votes and Isom received sixty-four (64) votes.

5. S.C. Code Ann. § 5-15-130 provides that "within forty-eight [48] 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." Isom timely filed a notice of election contest on November 9, 2023, at 4:43 p.m., providing a concise statement of the grounds for her contest.

6. Specifically, Isom alleged that nineteen (19) individuals fraudulently casted votes in the Election.³ The 19 individuals alleged as fraudulent voters by Isom are distinguishable, in part, from the eighteen (18) individuals challenged by Armstrong and Lewis. For instance, Isom challenged the votes of Timaj G. Divine and Jamar McLaurin, but neither Isom nor Lewis challenged those votes. Conversely, Lewis challenged the votes of Jean Anne Rhymer and Derrick Mayes, but Isom did not challenge those voters. In any event, all ballots cast by the nineteen (19) individuals alleged as fraudulent voters by Isom were comingled with all Election ballots prior to the filing of Isom's Election protest.

7. Pursuant to S.C. Code Ann. § 5-15-130 and the South Carolina Freedom of Information Act, the MEC, Isom, David, and the public were provided due notice of the April 3, 2024 Election contest hearing.

8. Pursuant to S.C. Code Ann. § 7-5-610, eligible citizens of South Carolina are only entitled to vote in municipal elections if they resided within the municipality's corporate limits for 30 days prior to the municipal election and who are registered to vote in that respective county.

³ At the start of the Election contest hearing, Isom informed the MEC that she was no longer challenging the following individuals' votes: James J. Chapel; Colleen T. Finney; Elaine G. Finny; Jerry L. Finney; and Jerry L. Finney, Jr., leaving 14 challenged votes before the MEC as part of the grounds for the Election contest.

9. S.C. Code Ann. § 7-1-25 establishes that “[a] person’s residence is his domicile” and defines as “a person’s fixed home where he has an intention of returning when he is absent. A person has only one domicile.” For voting purposes, the following factors are considered in determining a person’s domicile: (1) a voter’s address reported on income tax returns; (2) a voter’s real estate interests, including the address for which the legal residence tax assessment ratio is claimed pursuant to Section 12-43-220(c); (3) a voter’s physical mailing address; (4) a voter’s address on driver’s license or other identification issued by the Department of Motor Vehicles; (5) a voter’s address on legal and financial documents; (6) a voter’s address utilized for educational purposes, such as public school assignment and determination of tuition at institutions of higher education; (7) a voter’s address on an automobile registration; (8) a voter’s address utilized for membership in clubs and organizations; (9) the location of a voter’s personal property; (10) residence of a voter’s parents, spouse, and children; and (11) whether a voter temporarily relocated due to medical care for the voter or for a member of the voter’s immediate family.

10. Isom presented testimony regarding the residency status of Carlisle Cooper; Noble Cooper, Jr.; Noble Cooper III; and Traci Cooper at the time of the Election. Isom’s testimony was based on public property tax records and business records she collected. In addition, Isom submitted Isom Exhibit B to the MEC, which included Horry County property tax records for the property that the Coopers claimed as their residence at the time of the Election. In addition, Agency Exhibit A included additional Horry County and Richland County property tax records. In 2022 and 2023, the Horry County tax records show that the property in the Town of Atlantic that the Coopers claim as their address was taxed at 6% rather than at the 4% ratio given to those claiming legal resident status. Additionally, a certificate of occupancy for the property was not issued until after the Election on January 11, 2024. Traci Cooper’s vehicle was also registered with Richland County for the 2019 to 2023 tax years.

11. On the other hand, David submitted affidavits on behalf of Noble P. Cooper, Jr.; Noble P. Cooper, III; Traci Cooper; and Carlisle C. Cooper.⁴ The Affidavit of Noble P. Cooper, Jr. attested that he was domiciled and was a resident of the Town of Atlantic Beach, South Carolina on November 7, 2023. Attached to the affidavit was a vehicle registration dated March 14, 2024, and a driver’s license with an Atlantic Beach address. The Affidavit of Noble P. Cooper, III attested that he was domiciled and was a resident of the Town of Atlantic Beach, South Carolina on November 7, 2023. The Affidavit of Traci Cooper attested that she was domiciled and was a resident of the Town of Atlantic Beach, South Carolina on November 7, 2023. But attached to the affidavit was a vehicle registration dated March 14, 2024, a driver’s license with an Atlantic Beach address, and a letter dated March 12, 2024, removing the 4% legal resident ratio from their property located in Richland County, South Carolina.

12. Isom called Armstrong as an additional witness, and Armstrong presented testimony regarding the residency status of Glynes Cheatham, K.G. Divine, Timaj G. Divine, Jamar McLaurin, Julianna Hines, Nadiyah Vaughan, Erika Vaughan, Naim Vaughan, Diane Hill, and Marvirstine Briggs-Fisher. Armstrong based her testimony on public property tax records, voter registration records, and business records at the time of the Election. Armstrong testified that

⁴ Both Noble P. Cooper, Jr. and Traci Cooper were subpoenaed by the MEC to appear at the protest hearing, but neither attended.

these individuals were not qualified as residents of the Town of Atlantic Beach, South Carolina for the Election.

13. For Glynes Cheatham, in 2022 and 2023, the Horry County tax records indicate that the property in the Town of Atlantic Beach that Cheatham claims as her address was taxed at 6% rather than at the 4% ratio given to those claiming legal resident status. The address listed on the tax information is an address located in Virginia. The property was also issued a business license by the Town of Atlantic Beach to operate a for profit business, which is apparently for a vacation rental business. David also submitted information on behalf of Glynes Cheatham, which included a driver's license with an Atlantic Beach address, voter registration, and receipts for electricity and cable.⁵

14. For K.G. Divine, in 2022 and 2023, the Horry County tax records indicate that the property in the Town of Atlantic Beach received a 4% legal residence ratio. However, the property in the Town of Atlantic Beach that K.G. Divine claims as his legal residence was issued a business license to operate a short term property rental company. The tax assessor records in Philadelphia from 1999 until 2023 show that K.G. Divine and his wife live in an owner-occupied home in Philadelphia. David also submitted an affidavit on behalf of K.G. Divine,⁶ which attested that he was domiciled and was a resident of the Town of Atlantic Beach, South Carolina on November 7, 2023. K.G. Divine further attested that he has resided in the Town of Atlantic Beach, South Carolina since July 2, 2019. Attached to the affidavit was a driver's license with an Atlantic Beach address as well as cable, water, and electric bills for the Atlantic Beach property.

15. Timaj G. Divine registered to vote in Horry County on October 4, 2023, for the first time. However, the subpoena requests issued by the MEC with the Richland County and Horry County treasurer's offices and assessor's offices did not yield any results. No information was submitted by David on behalf of Timaj G. Divine.⁷

16. Jamar McLaurin registered to vote in Horry County on October 24, 2023, for the first time. However, the subpoena requests issued by the MEC with the Richland County and Horry County treasurer's offices and assessor's offices did not yield any results. David submitted an affidavit on behalf of Jamar McLaurin, which attested that he was domiciled and was a resident of the Town of Atlantic Beach, South Carolina on November 7, 2023. K.G. Jamar McLaurin further attested that he has resided in the Town of Atlantic Beach, South Carolina since October 6, 2023.

17. Juliana Beck-Hines registered to vote in Horry County on September 29, 2023, listing her address as an Atlantic Beach address but included a mailing address for property located in Pawley's Island, Georgetown County, South Carolina. Agency Exhibit A and Isom Exhibit B also indicate that for the tax years from 2021 to 2022, Juliana Beck-Hines received a 4% legal resident ratio on her property located in Georgetown County, South Carolina. In addition, from 2021 to 2023, her vehicle was registered in Georgetown County, South Carolina. On the other hand, David submitted an affidavit on behalf of Julianna Beck-Hines.⁸ The affidavit attested she

⁵ Glynes Cheatham was subpoenaed by the MEC to appear at the protest hearing, but did not attend.

⁶ K.G. Divine was subpoenaed by the MEC to appear at the protest hearing, but did not attend.

⁷ Timaj Divine was subpoenaed by the MEC to appear at the protest hearing, but did not attend.

⁸ Julianna Hines-Beck was subpoenaed by the MEC to appear at the protest hearing, but did not attend.

was domiciled and was a resident of the Town of Atlantic Beach, South Carolina on November 7, 2023, and that she has resided in the Town of Atlantic Beach, South Carolina since August 4, 2023. Attached to the affidavit was a driver's license with an Atlantic Beach address and her voter registration for Horry County.

18. For Marvirstine Briggs-Fisher, in 2022 and 2023, the Horry County tax records indicate that the property in the Town of Atlantic Beach that Marvirstine Briggs-Fisher claims as her address was taxed at 6% rather than at the 4% ratio given to those claiming legal resident status. The address listed on the tax information is an address located in Wake County, North Carolina. The Atlantic Beach property was also issued a business license by the Town of Atlantic Beach to operate a for profit business, which is apparently for a vacation rental business. David submitted information on behalf of Marvirstine Briggs-Fisher, which included a driver's license with an Atlantic Beach address and her voter registration for Horry County.

19. For Diane Hill, in 2022, the Horry County tax records indicate that the property in the Town of Atlantic Beach that Hill claims as her address was taxed at 6% rather than at the 4% ratio given to those claiming legal resident status. David also submitted an affidavit on behalf of Diane Hill. The affidavit attested she was domiciled and was a resident of the Town of Atlantic Beach, South Carolina on November 7, 2023, and that she has resided in the Town of Atlantic Beach, South Carolina for decades. Attached to the affidavit was her voter registration card and other documents with the Atlantic Beach address on them. Absent from this list was a driver's license with an Atlantic Beach address.

20. Nadiyah Vaughan registered to vote in Horry County on August 15, 2023. On his voter registration application, he listed a Maryland address as his mailing address. The Horry County tax records indicate that the property in the Town of Atlantic Beach that he claims as his address was taxed at 6% rather than at the 4% ratio given to those claiming legal resident status for 2023. And his tax information also includes the Maryland address. The property that the Vaughan's claims as their primary residence is also listed with a property management company as a vacation rental home.

21. Erika Vaughan's name was not listed on the Horry County voter's registration list in Isom Exhibit B. Armstrong testified that she received the voter's registration list for this Election. The tax records from Maryland indicate that Erika Vaughan owns a home in Maryland that is listed as her principal residence. David submitted information on behalf of Erika Vaughan, which included a military identification card that did not include an address and voter registration card for Horry County. The voter registration card did not include any information for when the voter registration card was issued.

22. Naim Vaughan's name was not listed on the Horry County voter's registration list in Isom Exhibit B. The tax records from Maryland indicate that Naim Vaughan owns a home in Maryland that is listed as his principal residence.

DECISION ON ISOM'S ELECTION PROTEST

Based on the above findings of fact, the testimony presented by Isom and Armstrong, the exhibits admitted into evidence, the arguments of counsel, and other relevant evidence presented at the hearing and discovered after the Election, the MEC finds that the following individuals were not residents of the Town of Atlantic Beach pursuant to S.C. Code Ann. § 7-2-20 and § 7-2-21 and therefore were not qualified to vote in the Election: Carlisle Cooper; Noble Cooper, Jr.; Noble Cooper III; Traci Cooper; Glynes Cheatham; K.G. Divine; Timaj G. Divine; Jamar McLaurin; Julianna Hines; Nadiyah Vaughan; Erika Vaughan; Naim Vaughan; Diane Hill; and Marvirstine Briggs-Fisher. The MEC further finds that the votes cast by the above-listed 14 individuals were fraudulently cast in the Election and therefore declines⁹ to include these votes in the final count for the Mayoral Election for the Town of Atlantic Beach, South Carolina. *See Broadhurst v. City of Myrtle Beach Election Commission*, 342 S.C. 373, 382 (2000) (“In determining whether an irregularity in the conduct of an election is sufficient to render the result doubtful, ‘the rule deducible from the decisions is that all illegally cast ballots shall be deducted from the total number counted for the declared winning candidate, and that all rejected (uncounted), legal ballots shall be added to the total number counted for the declared losing candidate.’”) (citing *Easler v. Blackwell*, 195 S.C. 15, 19 (1940))

The ballots cast by the above-listed 14 individuals were inextricably commingled with the other remaining and validly cast ballots in the Election. Because the challenged provisional ballots do not entirely overlap with the voters challenged by Isom, the MEC further finds and determines that the prior stated results of the Election are, in the least, significantly doubtful, and are likely to

⁹ The removal of the 14 fraudulently cast votes causes the total votes cast in the Election to decrease to 115. Based on a total vote count of 115, candidate Isom or candidate David would need to receive or to have received a minimum of 58 votes.

be completely inaccurate. *See Odom v. Town of McBee Election Commission*, 427 S.C. 305, 311 (2019) (“If an irregularity occurs during the course of an election, the election must be invalidated and a new election held only if the irregularity was of the sort that renders doubtful the result of the election.”) (citing *Broadhurst* at 381-82). Accordingly, the MEC declares the Election invalid and requests that Town Council order a special election, specific to Mayoral Candidates Josephine Isom and John David, as soon as such a special election can be scheduled in accordance with state law. *See Odom* at 314, “. . . [Elections] in which there was no way to tell for whom the disputed votes were cast; consequently, the only conceivable conclusion was that the results of the election were in doubt, and the only remedy in those [elections] was a new election.”

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 Horry County
 May 16 2024
 REBECCAH N. ELVIS
 CLERK OF COURT
 HORRY COUNTY
 SOUTH CAROLINA

IN WITNESS THEREOF, THE MUNICIPAL ELECTION COMMISSION, TOWN OF ATLANTIC BEACH, SOUTH CAROLINA has caused this Decision to be signed in its name by its members, attested by the Town Clerk, the Seal of said Town to be impressed hereon, and this Decision to be dated as of the 2 day of May, 2024 and thereafter filed together with all recorded testimony and exhibits with the Clerk of Court of Horry County, South Carolina.

**MUNICIPAL ELECTION COMMISSION,
TOWN OF ATLANTIC BEACH, SOUTH
CAROLINA**

Kenneth McIver, Commissioner

[Signature]

Derrick Stevens, Commissioner

[Signature]

Carolyn Gore, Commissioner

Attest:

[Signature]

Cheryl Pereira, Town Clerk

(SEAL)