

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM HORRY COUNTY
William H. Seals, Jr., Circuit Court Judge
Case No. 2024-CP-26-02537

S.C. SUPREME COURT

Appellate Case No. 2024-002023

Josephine Isom..... Appellant,

v.

Town of Atlantic Beach Municipal
Election Commission..... Respondent,

And

John David.....Intervenor.

**RESPONDENT’S AND INTERVENOR’S OBJECTIONS TO
APPELLANT’S INDEX AND RECORD ON APPEAL
AND MOTION TO STRIKE**

Respondent Town of Atlantic Beach Municipal Election Commission
and Intervenor John David jointly object to the Index and Record on Appeal
electronically submitted by Appellant Josephine Isom on September 22, 2025,
and therefore move to strike one of the materials included in the same.

The grounds for Respondent's and Intervenor's objections are that the Index and Record include a photograph that was not made an exhibit before either the Circuit Court or the municipal election commission and therefore is not appropriate for use in this Court's review of the instant case.

BACKGROUND

On August 13, 2025, this Court ordered the parties to agree upon the Record on Appeal by August 25, 2025. Pursuant to the Court's order, the parties conferred, through their counsel, regarding the Record on Appeal.

The parties managed to agree on virtually every document in the extensive record, which totaled over eight hundred pages. But Appellant pressed for the inclusion of a photograph that was not made an exhibit before either the Circuit Court or the Municipal Election Commission ("MEC"). After the parties conferred, Respondent and Intervenor both expressed their objection to the photograph's inclusion in the Record on Appeal.

The photograph at issue shows the purported election tape printout from the voting machines ("Election Tape¹") following the Town of Atlantic Beach's general election held on November 7, 2023.

¹ ROA p. 0899.

On August 25, 2025, Appellant informed this Court that the parties had conferred and agreed on the Record of Appeal except for the election tape photograph.

The parties continued negotiating the photograph's inclusion until discussions ceased on August 27, 2025.

On September 22, 2025, Appellant filed the Index and Record on Appeal along with Appellant's Final Brief which references the Election Tape. In her filing, Appellant notes the exhibit's inclusion is in dispute by Respondent and Intervenor. *See* Appellant's Final Brief at 6, ¶ 2; Index at iv, Exhibits.

STANDARD OF REVIEW

“[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and [the] Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.” Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992).

The timing, content, format, and certification of the Record on Appeal are governed by Rule 210. Specifically, Rule 210(c) provides:

The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter **which was not presented to the lower court or tribunal. . . .**

Rule 210(c), SCACR (emphasis added).

As for the Index, Rule 210(e) provides:

Every Record on Appeal shall contain an index to the principal matters therein to include orders, judgments, decisions, pleadings, pretrial matters, opening statements, testimony, motions, closing arguments, jury charges, post-trial motions and exhibits. For witness testimony, the index shall show the pages on which direct, cross, redirect and recross examination begins.

Rule 210(e), SCACR.

In considering appeals of an election commission, “it is ... essential that ... a documented record be established upon which alleged wrongdoing may receive appellate review.” Fielding v. S.C. Election Comm’n, 305 S.C. 313, 318, 408 S.E.2d 232, 235 (1991).

LAW/ANALYSIS

The reference in the Index and Inclusion in the Record of the Election Tape Is Improper Because Neither the Photograph Nor the Election Tape itself Was Made An Exhibit Before the Circuit Court or the MEC.

In its Order affirming the MEC's Decision, the Circuit Court reasoned that, in its appellate capacity, it cannot go outside the bounds of the Record presented and may not consider issues which were not raised to the MEC. See ROA at 0007, ¶ 2. Yet it appears Appellant is now attempting to have this Court do just that.

An "appellant has the burden of providing [a] court with a sufficient record upon which to make a decision." Medlock v. One 1985 Jeep Cherokee VIN 1JCWB7828FT129001, 322 S.C. 127, 132, 470 S.E.2d 373, 376 (1996). In Appellant's Final Brief filed with this Court, she references the Election Tape exhibit as "evidence" of an "initial vote count" on the night of the election. See Appellant's Final Brief at 6, lines 17-18. Even still, neither Appellant (nor any other party) made the photograph or the Election Tape itself an exhibit at either the Circuit Court or MEC meetings. Apparently, Appellant's Final Brief is the first reference to the Election Tape throughout this Appeal. Therefore, the exhibit should be excluded because it was not presented to the MEC or the Circuit Court.

Alternatively, Appellant purports that the contents of the Election Tape were referenced several times in the Record: in the MEC’s Special Meeting on April 3, 2024 (ROA at 0362, p. 13, lines 3-6 and 24-25, and p. 14, line 1²; ROA at 0365, p. 27, lines 6-15)³ and in the MEC’s Decision (ROA at 0017, ¶ 3).⁴ Of these purported references, the closest of them appears to be in the MEC’s Decision, which references the poll managers’ own initial determination of the votes. The cited transcript testimony, however, vaguely mentions the contents of the Election Tape.

Appellant has yet to cite other instances in the Record where the Election Tape or its contents are referenced. As the Circuit Court noted, “the Record

² “There was an election. 19 provisional ballots were challenged and prior to the provisional ballot hearing, Miss Isom held a substantial lead ... And so on the day of the election with the count, Miss Isom had a substantial lead.” Special Meeting of the MEC, April 3, 2024.

³ “Question: And it’s your understanding that this commission should declare you the winner of the mayoral race and not Mr. David over there; isn’t that right? Answer: Right. Question: And, again, your letter says – and correct me if I am wrong – you be declared the winner of the election for the Town of Atlantic Beach; right? Answer: Right.” Special Meeting of the MEC, April 3, 2024.

⁴ “The poll managers initially determined that, excluding the provisional ballots, Isom received sixty-two (62) votes and David received forty-nine (49) votes.”

relied on by the MEC in reaching its factual findings is **extensive**. Totaling over six hundred pages, it includes transcripts of both the November 9, 2023, and April 2, 2024, MEC hearings, along with extensive documentary evidence introduced by both [Appellant] and [Intervenor], and significant investigative records obtained directly at the MEC's behest." ROA at 0006, ¶ 4 (emphasis added). Even given such an extensive Record, Appellant has not offered other references beyond the aforementioned. Appellant has thus not shown the necessity of the exhibit's inclusion.

Moreover, by unilaterally including the Election Tape and its contents into the Record, Appellant is asking this Court to consider issues not raised at the MEC or Circuit Court. Accordingly, the exhibit should be excluded.

CONCLUSION

In sum, the Index and Record on Appeal include material not properly made an exhibit at either the MEC or Circuit Court. Respondent and Intervenor object to Appellant's attempt to file an Index and Record that is not in compliance with the Appellate Court Rules.

For these reasons, Respondent and Intervenor respectfully request this Honorable Court:

- (a) direct Appellant to remove material from the Index and Record that was not made an exhibit at the lower court or municipal election commission;
and
- (b) toll Respondent's Final Reply Brief deadline until after this Court disposes of this Joint Objection.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

COLLINS & LACY, P.C.

s/Henry D. McMaster, Jr. _____

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