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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
William H. Seals, Jr., Circuit Court Judge


Appellate Case No. 2024-002023
Case No.: 2024-CP-26-02537, Circuit Court

Josephine Isom..... Appellant,

v.

Town of Atlantic Beach Municipal Election Commission..... Respondents.

APPELLANT’S AMENDED FINAL BRIEF

By: 
Charles J. Boykin (SC Bar #65149)
Kenneth A. Davis (SC Bar #66416)
Tierney F. Goodwyn (SC Bar #102035)
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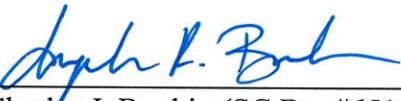
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STATEMENT OF ISSUE ON APPEAL

WHETHER THE TRIAL COURT ERRED IN FINDING THERE EXISTED SUFFICIENT EVIDENCE IN THE RECORD TO UPHOLD THE DECISION OF THE MUNICIPAL ELECTION COMMISSION.

STATEMENT OF THE CASE

Appellant, Josephine Isom, appeals the Order Denying Appellant's Appeal and Affirming Order and Report of Town of Atlantic Beach Municipal Election Commission of the Honorable William H. Seals, Jr., dated November 13, 2024.

The Town of Atlantic Beach (the "Town") held a General Election on November 7, 2023. A provisional ballots hearing was held on November 9, 2023. Josephine Isom filed a protest of the election results, and, as a result, a hearing was held on April 3, 2024. The Town Municipal Election Commission ordered a new election at the April 3, 2024 hearing.

On April 3, 2024, Josephine Isom filed a Notice of Civil Appeal in the Court of Common Pleas for Horry County. A motions hearing for the appeal was held on September 18, 2024. On November 13, 2024, the Circuit Court entered an Order of the Honorable William H. Seals, Jr. denying the appeal of Josephine Isom and affirming the Order of the Town Municipal Election Commission.

Josephine Isom filed a Notice of Appeal and served a copy on the Town Municipal Election Commission on November 27, 2024.

STATEMENT OF FACTS

Appellant was one of two candidates for the position of Mayor in the Town's general election held on November 7, 2023, along with John David ("David"). (R. p. 13, ¶1) When votes were counted the night of the election, Isom received sixty-two (62) votes and David received forty-nine (49) votes. Nineteen (19) votes were not counted and were set aside for a provisional

ballots hearing. Id. At the provisional ballots hearing, held on November 9, 2023, eighteen (18) votes were accepted, and one provisional ballot was excluded. Id. As a result of the provisional ballots hearing, David’s vote total increased by sixteen (16) votes and Isom’s vote total increased by two (2) votes. Thus, vote totals were sixty-five (65) votes for David and sixty-four (64) votes for Isom.

On November 9, 2023, Isom timely filed a protest of the election results, challenging the inclusion of the nineteen (19) provisional ballots. (R. p.270). Fifteen (15) of the challenged ballots protested by Isom were identical to those received at the provisional ballots hearing. After a number of delays not directly related to Isom’s protest, the Town Municipal Election Commission held a hearing on Isom’s protest on April 3, 2024. (R. p.16 ¶1). At the hearing, Isom withdrew challenges to five (5) of the ballots, resulting in fourteen (14) remaining votes challenged. (R. p.17 fn. 3). The Town Municipal Election Commission determined that each of the fourteen (14) votes were cast fraudulently and declined to include the votes in the final count. No party has appealed that ruling. (R. p.21 ¶1). Instead of certifying Isom as the winner with the excluded votes, the Town Municipal Election Commission instead ordered a new election on the basis that the challenged ballots were commingled and thus not distinguishable from the remaining ballots. Id. Isom appeals the decision to order a new election. (R. p.272-273).

STANDARD OF REVIEW

Normally, when exercising its appellate jurisdiction, the Court “shall review the findings of fact as well as the law.” S.C. Const. Art. V, § 5. The South Carolina Appellate Court Rules grant the State Supreme Court the authority to review any “final judgment from the circuit court pertaining to elections and election procedure.” Rule 203(d)(1)(iv), SCACR; S.C. Code Ann. § 14-8-200(b)(5). This allows the appeal to be presented directly to the South Carolina Supreme Court

and bypass the South Carolina Court of Appeals.

In election cases, the Court has authority to correct errors of law; however, review does not extend to findings of fact unless those findings are wholly unsupported by the evidence. George v. Municipal Election Comm'n of Charleston, 335 S.C. 182, 516 S.E.2d 206 (1999). The Court will employ every reasonable presumption to sustain a contested election and will not set aside an election due to mere irregularities or illegalities unless the result is changed or rendered doubtful. Cole v. Town of Atl. Beach Election Comm'n, 393 S.C. 264, 271-272, 712 S.E.2d 440, 444 (2011).

ARGUMENT

I. The Circuit Court Erred in Upholding the Decision of the Town Municipal Election Commission When the Findings of Fact Are Wholly Unsupported by the Evidence.

The Circuit Court erred in affirming the decision of the Town Municipal Election Commission to order a new election. In its Order, the Circuit Court reasoned that the record below does not support a finding that the initial count of votes resulted in Josephine Isom receiving sixty-two (62) votes and John Davis receiving forty-nine (49) votes. However, evidence of these initial vote counts is included in the record below as evidenced by the Town Municipal Election Commissions Decision in paragraph one.¹

As discussed further below, the vote totals following the Town Municipal Election Commission hearing on April 3, 2024, are easily ascertainable and not inextricably commingled to affect the outcome of the election. Thus, a new election is not necessary to determine the winner

¹ R. p. 13, ¶ 1.

of the election, and the Circuit Court erred in affirming the decision of the Town Municipal Election Commission.

II. This Court Should Reverse the Legal Error of the Circuit Court and Declare Isom The Winner of The General Election.

Instead of certifying Isom as the winner after the exclusion of fraudulent ballots, the Town Municipal Election Commission instead ordered a new election on the basis that the votes were commingled, and therefore, not distinguishable. The Town Municipal Election Commission's order cites the case of Odom v. Town of McBee Municipal Election Commission, 427 S.C. 305, 831 S.E.2d 429 (2019), for the proposition that if fraudulent votes are commingled, then the remedy is to order a new election. However, the use of Odom was misplaced, as the Odom case actually stands for the proposition that a new election should be ordered only if the results cannot otherwise be determined. Specifically, the Court found:

[S]ection 5-15-130 plainly requires a new election only when the Commission's decision "invalidates the election." The statute required the Commission to "decide the issues raised," and one of the issues raised by Odom's contest was whether the four votes should be counted. When the Commission decided the votes were legally cast, the Commission should have decided the votes should be counted.

Odom, 427 S.C. at 434 (internal citations omitted). The Odom court distinguished Odom from three other cases² "in which there was no way to tell for whom the disputed votes were cast;

² See Broadhurst v. City of Myrtle Beach Election Comm'n, 342 S.C. 373, 381-82, 537 S.E.2d 543, 547 (2000); Easler v. Blackwell, 195 S.C. 15, 19, 10 S.E.2d 160, 162 (1940); and Gecy v. Bagwell, 372 S.C. 237, 239, 245, 642 S.E.2d 569, 570, 573 (2007).

consequently, the only conceivable conclusion was that the results of the election were in doubt, and the only remedy in those cases was a new election.”

In this case, as in Odom, the results were ascertainable. While Odom itself was a “vote-inclusion” case, the logic of Odom also applies in a “vote-exclusion” case, as the results can be ascertained by reviewing the actual factual record of the case.

Here, it is evidenced in the Record that the Town Municipal Election Commission determined that each of the fourteen (14) votes challenged by Isom were cast fraudulently and declined to include the votes in the final count. As stated above, when votes were counted the night of the election, Isom received sixty-two (62) votes and David received forty-nine (49) votes. Following the provisional ballots hearing, the vote totals were sixty-five (65) votes for David and sixty-four (64) votes for Isom. Consequently, at most, two (2) of the fourteen (14) challenged votes were cast for Isom, meaning at least the other twelve (12) votes were cast for David. Construed in the light most favorable to David, Isom’s vote total would be reduced to sixty-two (62) and David’s vote total would be reduced to fifty-three (53), meaning that Isom should be declared the winner.

Even though the Circuit Court accepted the Commission’s determination that the ballots challenged by Isom were not absolutely identical to the provisional ballots, Isom should still have been declared the winner because there was an overlap in Isom’s protest challenges with fifteen (15) of the nineteen (19) provisional ballot challenges, meaning there were four (4) ballots for which there was no overlap. Even if each of the four (4) ballots that did not overlap were excluded from Isom’s total, Isom would still have fifty-eight (58) votes to David’s fifty-three (53).

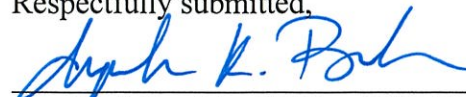
Thus, the Circuit Court erred in affirming the decision of the Town Municipal Election Commission including the incorrect application of Odom to justify ordering a new election.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

December 29, 2025

Respectfully submitted,



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CERTIFICATE OF COUNSEL

The undersigned certifies that this Amended Final Brief of the Appellant contains no matter which is irrelevant to the appeal.

Dated this 29th day of December 2025

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