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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from the
COURT OF COMMON PLEAS, ANDERSON COUNTY
The Honorable R. Lawton McIntosh, Circuit Judge

Appellate Case No. 2026-001506
Case No. 2026-CP-04-001100

Tonya Winbush.....Appellant,

v.

City of Anderson, South Carolina;
Anderson Municipal Election Commission;
David Ford, Clara E. Humphrey, and Renee
Fields-York, in their Official Capacities as
Municipal Election Commissioners;
and Darryl Thompson.....Respondents.

INITIAL BRIEF OF APPELLANT

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July 14, 2026
Columbia, South Carolina.

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INTRODUCTION

Appellant Tonya Winbush won the April 7, 2026, Election for Seat 5 on the Anderson City Council and defeated her opponent, Respondent Darryl Thompson, by a margin of two to one. Thompson filed a vague two-sentence Protest claiming Winbush “may” not live in Seat 5. Respondent Anderson Municipal Election Commission and its commissioners, Respondents David Ford, Clara Humphrey, and Renee Fields-York, (collectively, the “Commission”) broke the law by failing to follow the procedure set forth in S.C. Code Ann. § 5-15-130 and asked the attorney for Respondent City of Anderson to investigate Winbush’s residency. Without taking the oath or any cross-examination, the City attorney made a presentation of “information” the City gathered to (in its view) bolster the Protest. The Commission’s Decision cited this so-called evidence to invalidate the will of the voters based on the false conclusion that it “appears” Winbush did not reside in Seat 5 when she filed.

Winbush appealed the Decision to the Court of Common Pleas for Anderson County under S.C. Code Ann. § 5-15-140. The Circuit Court heard the appeal then kept it under advisement for eight weeks before issuing a Form 4 Order affirming the Decision without any explanation.

Winbush noticed this appeal the next day. The Court has jurisdiction under S.C. Code Ann. § 14-8-200(b)(5) and Rule 203(d)(1)(A)(iv), SCACR.

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STATEMENT OF THE ISSUES

- I. Whether an election loser can contest his opponent's residency after votes are cast when South Carolina Code § 5-15-130 merely allows a candidate to contest "the result" of an election?
- II. Whether a candidate who established a domicile, testified about her intent, and produced evidence to corroborate her testimony can be deemed not to "reside" in the district where she was elected?
- III. Whether a required legal presumption in favor of upholding election results has been followed when an election commission ignores the evidence submitted by the winner in support of her residency?
- IV. Whether an election commission violates its charge under Section 5-15-130 to "decide the issues raised," due process, and the Free and Open Elections Clause by prosecuting a protest as its own rather than acting as an impartial tribunal?
- V. Whether an election commission's failure to meet deadlines under Section 5-15-130 requires vacating a decision that prejudiced the winner with a commission-led fishing expedition for evidence to overturn the election?

STATEMENT OF THE CASE

On April 7, 2026, the City conducted municipal elections. Two candidates filed and appeared on the ballot for Seat 5¹: Tonya Winbush and Darryl Thompson. Winbush defeated Thompson² by a vote of 135 to 68. R0102.³

On April 9, 2026, Thompson sent a letter (the "Protest") to the Anderson County Board of Voter Registration and Elections (not the Commission). The two-sentence Protest read:

It has come to my attention that my opponent, Tonya Winbush, in this week's Election may not be a resident of ward 5.

¹ A map of Seat 5 is at: www.cityofandersonsc.com/wp-content/uploads/2024/09/Council-Districts_Seat-5_09-16-24.pdf.

² Thompson is the son of the incumbent City Councilwoman, Beatrice Thompson, who did not seek reelection.

³ Citations to "R. __" below refer to the record filed with the circuit court, which will be reorganized pursuant to Rule 210, SCACR and re-labeled in the Record on Appeal as "ROA__."

Therefore I am filing a protest with your office to determine whether she meets the requirements to run for office in ward 5.

R.0111. No supporting materials were enclosed, and no further allegations were made.

Also on April 9, at 9:30 am, the Commission met to canvass the vote. See R.0101. According to the minutes, a county board employee presented the Protest to the Commission. Id. A protest hearing was scheduled for April 14, 2026, at 9:30 am, and “City staff was directed to investigate the issue.” Id. That same day, Chair Ford sent notice to Winbush and Thompson that the Commission would hold a hearing “on issues concerning the protest[.]” R.0108–0109.

On April 14, 2026, the Commission held a hearing on the Protest. Thompson appeared *pro se*. R.0006. Winbush was represented by Brooke Ennis, Esq., of Upstate Law, who filed a motion to dismiss the Protest, arguing that Thompson (1) improperly filed his protest with the county board, instead of the Commission, (2) failed to state facts sufficient to constitute a colorable protest, and (3) should have contested Winbush’s right to appear on the ballot in circuit court before ballots were printed. R.0208–0211.

The person who effectively presided over the hearing was not the Chair, who appeared to have no idea whatsoever as to the procedure, but an attorney for the City. See R.0006 (“MR. FORD: Okay. Who’s swearing them in? MR. CAMPBELL: You do. MR. FORD: No. Who am I swearing in? MR. CAMPBELL: You swear everybody that’s going to talk today.”).

Thompson testified that he protested because he did not believe Winbush was a resident of Seat 5. R.0007. He submitted “two pieces of information that [led him] to that conclusion.” Id. Without objection, he entered a single-page printout from the Anderson County Public Access System and Services (ACPASS) website (Ex. 1) into evidence with a deed downloaded from the website (Ex. 2) that Thompson claimed, “indicates that Ms. Winbush lives at 741 Kings Road,

which is not in Ward 5.” R.0007, 0024–029. Thompson offered no further evidence and the entirety of his Protest rested on his conclusion drawn from the Kings Road deed.

Winbush testified that she resided at 309 Morris Lane, Anderson, South Carolina when her candidacy began on January 29, 2026, and she produced a residential lease (Ex. 3), dated January 26, 2026, with her name on it for that address. R.0008, 0031–040; see also R.0092 (Statement of Intention of Candidacy (SIC)). The property at Morris Lane is in Seat 5. R.0008. When Winbush moved to Morris Lane, she changed her voter registration (R.0008–09), which was entered into evidence (Ex. 4) and indicates Winbush was registered at the Morris Lane address. R.0041. Winbush also testified that she had city water bills and a Duke Energy bill at Morris Lane. R.0009. Those bills—\$42 for Electric City Utilities in March 2026 and \$26.78 for Duke Energy from February 21 to March 23, 2026—were entered into evidence. R.0042 (Ex. 5), 0043–044 (Ex. 6).

However, Winbush did not stay at Morris Lane “because the renovations [at the property] were taking so long, [she] had to move into another place that was more feasible and livable that [she] could dwell in.” R.0009. Accordingly, on March 12, 2026, Winbush signed a lease agreement (Ex. 7) for a residential property located at 411 Smith Street, Anderson, South Carolina and moved to that location. R.0009–010, 0045–086. The property at Smith Street is also in Seat 5. R.0009. When she moved to Smith Street, Winbush (again) updated her voter registration (Ex. 8), which was placed into evidence. R.0010, 0087. Winbush also transferred her utility billing address to Smith Street. See R.0010, 0088 (Ex. 9). All Winbush’s personal belongings are at Smith Street, and she testified, “[t]hat’s where I intend to stay.” R.0011.

Winbush also testified about the Kings Road deed. She agreed that the Kings Road property is not in Seat 5 but explained she did not reside there. R.0010–011. In fact, she testified:

The Kings Road address is on family property, and the intent and the evidence that the opponent produced is a deed being placed in the trust of the property. I have four daughters, and my oldest daughter lives there. My youngest daughter, she lives there during the summer because she's at USC. And so my whole intent, because this property is a part of the family property or estate, is to make sure that the property gets placed in the trust and that my children continue to own the property for -- for family generations to come. So that was the intent.

R.0011. The Kings Road deed indicates the property was transferred to “Tonya Lashawn Winbush, as Trustee of The Fourth Star Revocable Trust dated March 12, 2026....” R.0025.

Thompson and Winbush took the oath before they provided testimony to the Commission. The only other person to present information to the Commission was City attorney Rame Lambert Campbell, Esq., who had previously told the Chair that the Chair would “swear everybody that’s going to talk today.” See R.0006. That wasn’t true. Campbell never took the oath. See R.0012–022. Nevertheless, upon the invitation of the Chair (“Does the city staff have any information to share at this time?”), Campbell stated:

MR. CAMPBELL: Yes, sir. Thank you, Chairman of the Board. On behalf of the city, at the municipal elections meeting we had with you all on April the 9th, regarding validating the votes that had come in on April 7th, and *he directed us to at least look into it initially and present some facts that we found*. The information we found was basically through the resources that the city has, as well as through public access. I did -- I’ll hand up the notebook that I put together for you all to review. I’ll give one to everybody.

(Whereupon, Mr. Campbell’s Exhibit No. 10 was marked for identification purposes.)

R.0012–013, 0089–0207 (emphasis added). After placing 118 pages of unauthenticated hearsay into “evidence,” Campbell made the following unsworn claims and conclusions:

First, Campbell claimed the Protest hearing was timely. R.0012–013. More on that below.

Second, Campbell explained that when Winbush filed to run, her candidacy appeared to be in good order. “Ms. Winbush, when she filed her candidacy, she presented a month-to-month rental lease for 309 Morris Lane. That was signed on January 26th, and she also produced a signed water contract utility.” R.0013, 0151–52, 0155–57. Campbell stated further, “And as far as I can tell, everything was proper, and she was properly performed [sic] to have her name placed on the ballot.” R.0013–014. He concluded, “she appeared to be, based upon that, a valid candidate.” *Id.* Turning to what the City attorneys purportedly found, Campbell reiterated again: “Based on what we found and some of the information that Ms. Winbush has provided, *she was residing at 309 Morris Lane.*” R.0015 (emphasis added).

Third, Campbell then presented a copy of Winbush’s driver’s license (R.0153) and noted the address was Kings Road. R.0015–016. The license indicates it was issued in February 2020 and does not expire until 2028. See R.00153; see also R.0186–87.

Fourth, Campbell presented three vehicle registrations with Winbush’s name and the Kings Road address on the registration and speculated:

So basically, one car in her sole name is still registered to 741, and the other two cars that she is co-signor or co-owners with, are both listed back to Kings Road. Before that, to my knowledge, she’s not paying any city of Anderson taxes to one of the vehicles.

R.0016–17. No further information was provided in reference to City vehicle taxes, what ordinance imposes this tax, or what system(s) Campbell reviewed to support his suggestion that Winbush should be paying one.

Fifth, Campbell acknowledged that the Kings Road property “is family land” and that he knew “the Winbushes have a lot of property in that area.” R.0017. But then, discussing the deed transferring the Kings Road property to the Winbush family trust, he inexplicably concluded: “This trust is a revocable trust, and she is the trustee of the revocable trust. The -- the four-star revocable

trust is dated March the 12th, 2026, so she's technically trustee over her own trust." R.0017. There are no trust documents in the record. The only witness with personal knowledge of the trust and its beneficiaries is Winbush who testified two of her daughters live at Kings Road and that the property is held in trust for her four daughters. See R.0011.

Sixth, Campbell speculated about property taxes:

And I do know that when you typically change your primary residence, you would have to at least file something with the county -- with the county tax collector's office. If you're dealing with tax breaks, going from four percent to six percent, that's no longer your primary residence. We did not see any information regarding that, that she intended to abandon that on -- on that issue.

R.0018. It is unclear what the "that" is to which Campbell is referring. The City's exhibit binder does not include any property tax records (see R.0090) and Winbush deeded the Kings Road property to the trust and moved to a leased property. It is unclear what sort of tax filing Campbell believes she should have made *for a leased property she does not own*.

Seventh, Campbell concluded Winbush was not living at Morris Lane because the City's water meter purportedly did not change from January to March. R.0018–19 (citing R.0163–64). He claimed, "My understanding of this, that means in the 50 days that she was residing in 309 Morris Lane, this water was on, no water was used." R.0019. There was no testimony concerning the basis for his "understanding," no testimony about what these records were or how they were generated, no testimony about the water department's meter reading practices, and no testimony about the accuracy of these readings. However, according to these water department documents, the City was billing Winbush for *something* from January to March. See R.0160 (indicating she paid \$42 in February and was billed \$24 for two weeks in March). Likewise, Campbell concluded Winbush did not use any water at her Smith Street residence either based on his examination of

City water records. See R.0019–20. Notwithstanding Campbell’s opinion, the City also charged Winbush money for her Smith Street water service. R.0173–78.

Campbell sought to bolster his conclusion that a purported lack of water usage proved Winbush was not residing at Morris Lane or Smith Street with another water department report for Kings Road (R.0180) purportedly showing usage of “500 gallons, 500 gallon, 600, 400, so there was usage there at that residence.” R.0020. Curiously, however, while Campbell concluded there were *hundreds* of gallons being used at Kings Road and *nothing* being used at Morris Lane or Smith Street, a bill for 500 gallons at Kings Road was only \$39.82 (compare R.0181, with R.0180), which is similar to the bills for Morris Lane and Smith Street for \$42 (R.0159), \$24 (R.0160), and \$42 (R.0175). Put differently, the only conclusion the water records support is either that Campbell had no idea what he was talking about or that City record keeping is inaccurate.

Following Campbell’s presentation, the Chair closed the meeting for deliberation. R.0022. When the Commission returned, the Chair announced, “After hearing from both parties regarding the protest, we’ve reached the decision to not certify this election at this time.” Id. The entire hearing, including deliberations, took just 47 minutes. See R.0003, 0022.

On April 17, 2026, the Chair signed a Decision invalidating the Election. R.0001–02. The Decision cites the Kings Road deed signed by Winbush as grantor on March 12, 2026, to her as trustee for the trust and observes, “[t]he grantee’s address on the deed is 741 King Street [sic], which is not in the city.” R.0001. The Decision states that Winbush testified she moved to Morris Lane, which is in Seat 5, prior to filing to run and presented the Commission with a lease for Morris Lane and an application for water service. Id. That is not accurate: Winbush presented water bills, not a mere application. Cf. R.0042 (Ex. 5). The Decision is silent about the Morris Lane energy bill (R.0043 (Ex. 6)), her voter registration (R.0041 (Ex. 4)), and her move to Smith

Street or the utilities and voter registration update to that address. The Decision is also silent about where she keeps personal belongings and, critically, Winbush’s own testimony about her intent.

The Decision explains that after the Protest was received, the Commission requested “the City attorneys investigate[] the matter and [that they] presented a notebook containing documents relevant to the issue.” R.0001. The Decision concludes, “[b]ased upon the evidence submitted, it appears that Ms. Winbush had not abandoned her residence and domicile at 741 Kings Road at the time she filed to run, or thereafter.” R.0002. Based on this conclusion, the Commission invalidated the Election.

On April 20, 2026, Winbush received notice of the Decision through her attorney. On April 27, 2026, Winbush filed a notice of appeal and appeal with the circuit court. ROA___. On May 13, 2026, the City, Commission, and Commissioners filed a brief. ROA___.

On May 15, 2026, the Circuit Court heard argument and took the appeal under advisement. ROA___. Seven weeks later, on June 30, 2026, Winbush’s counsel sent email correspondence to Chambers inquiring as to whether there was any additional information the parties could provide to assist the Circuit Court in reaching a ruling, explaining:

As Your Honor knows, this dispute concerns the outcome of the April 7, 2026, Election for City Council Seat 5. Under South Carolina Code Section 5-15-40, members of city council serve four-year terms with the retiring incumbent’s term ending today, which will leave the residents of Seat 5 without representation until this dispute is resolved.

ROA___. On July 7, 2026, the Circuit Court issued a five-sentence Form 4 Order affirming the Decision. ROA___. The extent of the Circuit Court’s reasoning was that it found “NO ERRORS OF LAW AND THE FACTUAL FINDINGS ARE SUPPORTED BY EVIDENCE.” ROA___ (emphasis original). This appeal followed.

STANDARD OF REVIEW

In municipal election cases, the Court reviews the judgment of a circuit court only to correct errors of law and does not extend to findings of fact “unless those findings are wholly unsupported by the evidence.” Odom v. Town of McBee Election Comm’n, 427 S.C. 305, 307, 831 S.E.2d 429, 430 (2019) (quoting Taylor v. Town of Atl. Beach Election Comm’n, 363 S.C. 8, 12, 609 S.E.2d 500, 502 (2005)).

ARGUMENT

The Court should reverse or vacate the Decision and order the Commission to certify the Election result for one or more of the following five reasons.

I. The Protest should have been dismissed because the purpose of an election protest is to dispute the result, not ballot access.

The Protest disputes Winbush’s residency. It has nothing to do with the Election’s result. Therefore, the Commission should have granted Winbush’s motion to dismiss (ROA___), and it erred in failing to dismiss the Protest.

South Carolina Code § 5-15-130, concerning “Procedures for contesting results of election[,]” allows a candidate for municipal office to “contest the result of the election” The defining characteristic of any colorable municipal election protest is a complaint about *the result*, not a complaint about a candidate’s ballot access.

There are two prerequisites to maintaining an election contest in South Carolina: (1) the contest notice must allege irregularities or illegalities; and (2) the alleged irregularities or illegalities must have changed or rendered doubtful the result of the election in the absence of fraud, a constitutional violation, or a statute providing that such irregularity or illegality shall invalidate the election.

Taylor, 363 S.C. at 16, 609 S.E.2d at 504.

Municipal election precedents reinforce the conclusion that protests must dispute the result. For example, in Taylor, the Court affirmed a decision to uphold an election where the protestant failed to prove that the late opening of the polls and irregular handling of 22 ballots affected the result or were the product of fraud or a legal violation. See 363 S.C. at 18, 609 S.E.2d at 505. Likewise, in George v. Mun. Election Comm’n of City of Charleston, the Court invalidated an election because the failure to conduct the election with voting booths and secret ballots were “essential element[s] of the election and the fundamental integrity of the electoral process.” 335 S.C. 182, 193, 516 S.E.2d 206, 212 (1999). So too in Broadhurst v. City of Myrtle Beach Election Comm’n, where a new election was necessary because a voting machine’s failure to count votes in a precinct called the result into doubt. 342 S.C. 373, 382, 537 S.E.2d 543, 547 (2000). Unlike these cases, the result here is not in dispute.

The purpose of this Protest was to overturn an *undisputed* result by contesting Winbush’s right to appear on the ballot. The time to litigate candidate ballot access disputes is after filing but *before* people vote. E.g., Anderson v. S.C. Election Comm’n, 397 S.C. 551, 554, 725 S.E.2d 704, 705 (2012) (enjoining hundreds of filed candidates from appearing on the ballot due to filing errors); S.C. Democratic Party v. S.C. Labor Party, et al., 2022-CP-40-04077 (S.C. Cir. Ct. Aug. 18, 2022) (enjoining filed candidates who failed to follow statutory nomination procedure from appearing on the ballot because “once ballots are prepared, printed, and disseminated to election workers and voters, there is no relief for the injury.”).

Section 5-15-130 is plain that after people vote, all that remains to be disputed is the result. When a protestant fails at the threshold to submit a colorable protest alleging irregularity or illegality, an election commission is not obliged to initiate a time-consuming formal hearing; it should simply dismiss the protest. Butler v. Town of Edgefield, 328 S.C. 238, 247, 493 S.E.2d

838, 843 (1997) (“general” allegation of fraud “insufficient”). Here, Thompson makes no claim that the result—a defeat of 2 to 1 at the ballot box—was the product of fraud, irregularity, or illegality. The people voted; he lost. The absence of a dispute about that fact should have been fatal to the Protest and grounds to grant Winbush’s motion to dismiss or for the Circuit Court to reverse the Decision.

II. The conclusion that Winbush was not a resident of Seat 5 when she filed is unsupported by the evidence.

Anderson City Code requires “Candidates seeking office from a particular [City Council] district shall be residents of the district at the time they offer for election and during their entire terms of office[.]” Anderson City Code § 38-3. The Decision concludes Winbush “appears” to “had not abandoned her residence and domicile” at Kings Road when she filed to run. R.0002. That conclusion is not just wrong, but wholly unsupported by the evidence and should be reversed.

A. A person’s residence is his domicile, which turns on intent.

Title 7 of the South Carolina Code equates residence with domicile, which asks where the individual intends to return.

A person’s residence is his domicile. “Domicile” means a person’s fixed home where he has an intention of returning when he is absent.
A person has only one domicile.

S.C. Code Ann. § 7-1-25(A). Case law holds likewise. “Domicile means the place where a person has his true, fixed and permanent home and principal establishment, to which he has, whenever he is absent, an intention of returning.” Roesler v. Roesler, 396 S.C. 100, 107, 719 S.E.2d 275, 279 (Ct. App. 2011) (quotations omitted). “The true basis and foundation of domicile is the intention, the *quo animo*, of residence.” Id.; see also QUO ANIMO, Black’s Law Dictionary (12th ed. 2024) (“With what intention or motive.”).

B. Winbush resided in Seat 5 when she filed to run.

Winbush established residency at Morris Lane, in Seat 5, on January 26, 2026. R.0008, 0031–040. Her voter registration and utilities are registered at that address. R.0008–09, 0041–044. She filed her Statement of Intention of Candidacy on January 29, 2026, using that address. R.0092. On March 12, 2026, she had to move to another residence during renovations at Morris Lane, and the new residence (Smith Street) is also in Seat 5. Again, she signed a lease and (again) updated her voter registration and updated her utility billing address. R. 0009–010, 0045–088. She testified that that is where she intends to stay. R.0011.

This evidence is conclusive and should have been treated as such by the Commission. Even according to Campbell, it was proper to place Winbush on the ballot. See R.0013–014. The only thing that has changed vis-à-vis Winbush and Seat 5 is that she had the audacity to win the Election. If anything should have been inferred from the evidence, it is that Winbush made a repeated effort to ensure her residence, and with it her political life, was physically rooted in Seat 5. When she needed to move from Morris Lane, she chose another residence also in Seat 5. She was fastidious in updating her voter registration, not once but twice. Both decisions illustrate a conscious decision (i.e., intent) for her status as a citizen, voter, and candidate to be set in Seat 5.

C. There is no evidence supporting the Decision’s conclusion because the “information” submitted by the City was not evidence.

None of the information relied upon by the Decision is evidence because it was not the product of sworn testimony subjected to scrutiny through cross-examination.

A board hearing an election protest “shall provide for and conduct the hearing as nearly as possible in accordance with the procedures and rules of evidence observed by the circuit courts of

this State.” S.C. Code Ann. § 7-17-50;⁴ see also Muni. Election Comm’n Handbook, p. 23 (Dec. 2017) (same).⁵ This means witnesses must be sworn and subject to cross-examination. Id. It is elemental that “[b]efore testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness’ conscience and impress the witness’ mind with the duty to do so.” Rule 603, SCRE. Likewise, hearsay is not admissible except as provided by the Rules of Evidence or statute. Rule 802, SCRE.

However, here, the Decision relies on the presentation of a City attorney who was never sworn or cross-examined. Indeed, a review of the transcript indicates that 10 of the 20 pages of the proceeding was the unsworn, unexamined presentation by Campbell opining about what he believed the City’s binder full of documents purportedly established. See R.0012–22. Some of these claims are false on their face (like the claim the hearing was timely), while others were so ridiculously implausible that it strains credulity to think Campbell would have been competent to testify to them even if he had been properly sworn.

For example, Campbell laid no foundation about the water bills that he claimed evidenced no water usage at Winbush’s residence, but hundreds of gallons of usage at Kings Road. Who generated those records? How and how often does the City take meter readings? How accurate are those readings and are there ever errors? And if no water was being used at Winbush’s Seat 5

⁴ While this statute concerns protest hearings by *county* boards of canvassers, the South Carolina Code provides that “Municipal primary, general and special elections shall be conducted pursuant to Title 7, *mutatis mutandi*, except as otherwise provided for specifically in Chapters 1 through 17.” S.C. Code Ann. § 5-15-10. *Mutatis mutanda* means “being altered according to the circumstances” or “with the necessary changes.” MUTATIS MUTANDIS, Black’s Law Dictionary (12th ed. 2024). This means that Title 7 applies when Title 5 or local election laws are otherwise silent.

⁵ Available at: www.masc.sc/sites/default/files/uploads/election-administration/election-handbook.pdf.

residences, then why were the amounts on those bills so similar to Kings Road where hundreds of gallons were purportedly being used?

Similarly with Campbell's speculation about property taxes. He made a vague assertion that "[w]e did not see anything" (R.0018) where Winbush changed where she took her four percent residential tax benefit, but there is nothing in the record about this aside from his vague assertion. Moreover, exactly where would Winbush take the four percent? She no longer owns Kings Road, the trust does, and she was leasing the Morris Lane and Smith Street properties. Nevertheless, the Decision claims that the auditor's records show Kings Road continues to be assessed as Winbush's residence. R.0001. It does not. At most, the auditor's record shows it has not been updated since Winbush transferred Kings Road to the family trust in March.

The way to test the reliability of evidence is through the crucible of cross-examination. See Crawford v. Washington, 541 U.S. 36, 61 (2004). The Commission failed to afford Winbush an opportunity to confront her principal antagonist and it never pressed him to lay a foundation sufficient to establish authenticity of dozens of pages of exhibits or cite an exception to the rule against hearsay to justify their consideration. See Rule 802, 803, 901, SCRE. Most troubling is that his lengthy presentation was not even subject to the penalty of perjury that attaches with the oath that must be taken as a precondition to providing any testimony. See Rule 603, SCRE.

Simply put, the Decision is wholly unsupported by any evidence because none of what the City presented was evidence.

D. The Decision applies a meaning for the statutory term "reside" that the Legislature rejected.

The Decision applies a notion of what it means to "reside" in a district that the General Assembly rejected when it enacted S.C. Code Ann. § 7-1-25(A). Implicit in the Decision's reasoning is the notion that unless every address on every scrap of paper with some bearing on an

individual's life matches precisely at the time of filing, then they have not established residency to a sufficient extent that they can run for public office in a district. That is simply not the rule.

This type of reasoning has been employed before. In 1975, the Court invalidated a candidate's bid for Governor on the grounds that he was not a "resident." Ravenel v. Dekle, 265 S.C. 364, 218 S.E.2d 521. The Court reasoned, when the S.C. Constitution required a gubernatorial candidate to be a "citizen and resident" for five years prior to election day, residency meant "one actually and physically living in the place for a time" as compared to citizenship, which the Court treated as grounded in intent, akin to domicile. See id. at 373–75, 218 S.E.2d at 526–27.

In 1999, the Legislature adopted a different view when it first enacted Section 7-1-25 to expressly equate residence with domicile. The new statute explained, "For voting purposes, a person has changed his domicile if he (1) has abandoned his prior home and (2) has established a new home, has a present intention to make that place his home, and has no present intention to leave that place." Act. No. 103, 1999 S.C. Acts 382 § 1(B); S.B. 373, 113th Gen. Assemb., 1st Reg. Sess. (S.C. 1999). Thus, in adopting Section 7-1-25, residency was now synonymous with domicile, which turns on intent.

In 2011, the statute was updated to its current form, for the purpose explained in the bill's title: "SO AS ...TO PROVIDE FACTORS TO CONSIDER IN DETERMINING A PERSON'S INTENTION REGARDING HIS DOMICILE FOR VOTING PURPOSES[.]" See Act No. 27, 2011 S.C. Acts 90; H.R. 3003, 119th Gen. Assemb., 1st Reg. Sess. (S.C. 2011).

These 11 non-exclusive considerations are set forth at S.C. Code Ann. § 7-1-25(D) and weigh heavily in favor of Winbush.

Subsections (D)(1), (6), and (11) either do not apply or the record is silent on them.

Subsection (D)(2), concerning real estate interests and the address for tax assessment ratio, should weigh in Winbush's favor because she has two leases in Seat 5 and there is no evidence in the record concerning her property tax assessment. Subsection (D)(3), concerning physical mailing address, weighs in Winbush's favor as evidenced by the mailing address proved on her sworn statement of intention of candidacy and utility bill mailing addresses. See, e.g., R.0088, 0092. Subsection (D)(8), concerning the address used for membership in clubs and organizations, speaks to civic engagement. Voting and office seeking are forms of civic engagement and Winbush has twice updated her voter registration to reflect Seat 5 addresses. This factor should weigh in her favor. Subsection (D)(9), concerning location of personal belongings, weighs in her favor because she testified her personal property is located at Smith Street. Subsection (D)(10), concerning residence of parents, spouse, and children, weighs in Winbush's favor, because when she signed the Morris Lane and Smith Street leases, her daughter appeared on both. See R.0031, 0046.

Subsection (D)(5), concerning the voter's address on legal and financial documents, does not weigh in anyone's favor since the predicate for the Decision is the complaint that the address on some of Winbush's documents are different.

The Commission might reasonably claim just two of the factors in support of the Decision: Subsection (D)(4), concerning DMV identification, and Subsection (D)(7), concerning automobile registration. Those documents bear the old Kings Road address.

The purpose of adopting a definition of reside that is synonymous with domicile and driven by intent is to avoid outcomes like Ravenel that turn on a rigid insistence on longstanding ties to a specific place before crediting an individual's claim that they live where they, in fact, live. To that end, the 11 factors in Section § 7-1-25(D) should not simply be tallied up and weighed against one another. The touchstone for residence is still intent. The purpose of the 11 non-exclusive factors is

to help discern intent. Here, they substantively weigh in Winbush's favor for reasons explained above. Nevertheless, even if the Court were to engage in a simple tallying, it should still find that the factors tip in Winbush's favor by a score of 5 to 2.

The Decision fails to conduct any analysis of the factors. Instead, it applies a far too demanding standard that insists *all* of Winbush's papers should align perfectly before she could hope to claim she moved her residence. That is the wrong standard because it abandons intent as the central inquiry and runs afoul of Section 7-1-25.

* * *

For these reasons, the Court should conclude the Decision is without evidentiary support and contrary to law when it concluded Winbush did not reside in Seat 5 and reverse on that basis.

III. The Decision applies the wrong legal standard.

The Decision should also be reversed because the Commission failed to apply the proper legal presumption in favor of upholding election results whenever possible.

A commission reviewing a protest must "employ every reasonable presumption to sustain a contested election[.]" Broadhurst, 342 S.C. at 379, 537 S.E.2d at 546. That did not happen here. Instead of looking to sustain the election and placing the burden on Thompson to overcome that presumption, the Decision presumes invalidity by giving no weight to Winbush's testimony and corroborating evidence. The Decision does not mention her testimony concerning her intent, her voter registration, her electric bill, or her personal belongings. See R.0001. It implicitly rejects her explanation about placing Kings Road in trust for her daughters in favor of unconfirmed suspicion. See id. It credits the presentation of the City attorney as dispositive (see id.) even though there are reasonable alternative views consistent with residency in Seat 5, like the explanation Winbush simply had not had a chance to update her vehicle registration and driver's license with the DMV.

Moving is a pain and no one can be expected to immediately update every account and registration with the many private and government entities with whom we interact as part of daily life, particularly when those accounts have not expired or come due. Yet that is precisely what the Decision contemplates. That is a presumption of invalidity that seems calculated to invalidate the Election. Where there is an otherwise reasonable explanation consistent with the facts, the Court should conclude the Decision applied an improper presumption and reverse on that basis.

IV. The Commission violated the procedure in Section 5-15-130, and Winbush's rights, by directing City staff to investigate and prosecute Thompson's Protest.

Section 5-15-130 provides that "any candidate may contest the result of the election" while the Commission is asked to "conduct a hearing on the contest" and "decide the issues raised[.]" From the text, three things are plain about the Commission's failure to follow the law.

First, Thompson was the person responsible for presenting a case against Winbush. It was *his* Protest and contest. Thompson came to the hearing with a deed from a public website indicating Winbush is the trustee of a family trust that holds the Kings Road deed. That evidence doesn't prove anything about where Winbush was domiciled. As the trustee, Winbush holds the property for the benefit of others, TRUSTEE, Black's Law Dictionary (12th ed. 2024), in this case, her daughters. See R.0011. Thompson had the burden of production and proof, and his evidence proved nothing.

Second, by directing City attorneys to collect and present information that the Decision treats as evidence, the Commission was no longer deciding the issues presented by the litigants; the Commission and its City attorneys became *the* dominant litigant pressing the case against Winbush and the Election. It is as if the umpire snatched the bat from the batter, pulled a ball from his pocket and lofted it above the plate, then hit the ball over the fence, and declared the home team the winner. It is a fundamental violation of the Commission's role under Section 5-15-130.

Third, because the Commission and the City were Winbush’s true adversaries, she was denied due process of law under the federal and state Constitutions, as well as her equal right to “be elected to fill public office” under the S.C. Constitution’s Free and Open Elections Clause. See U.S. CONST. amend. XIV; S.C. CONST. art. I, §§ 3, 5. “It is axiomatic that a fair trial in a fair tribunal is a basic requirement of due process.” Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 876 (2009) (cleaned up). The touchstone of the Free and Open Elections Clause is equal treatment that does not obstruct the franchise or give more weight to one candidate over another. Cf. League of Women Voters of S.C. v. Alexander, 446 S.C. 591, 610–11, 921 S.E.2d 660, 671 (2025) (discussing in context of voters). Here, Winbush received neither. The Commission enlisted the City to press Thompson’s Protest for him. That renders the Commission far afield from the neutral tribunal that Winbush was due under due process and the Free and Open Elections Clause.

Accordingly, the Commission’s failure to follow the procedure in Section 5-15-130, and decision to instead insert itself as a litigant in the Protest was grounds to reverse or vacate that the Circuit Court wrongly ignored.

V. The Commission’s failure to comply with deadlines set by Section 5-15-130 was prejudicial to Winbush.

The Court should also vacate the Decision due to the Commission’s repeated failure to fulfill the statutory deadlines for its work where that failure was prejudicial to Winbush and contrary to the procedure the Legislature intended.

South Carolina law required the Commission to follow the following procedure when a protest has been received:

Within forty-eight hours after the filing of such notice, the Municipal Election Commission *shall*, after due notice to the parties concerned, conduct a hearing on the contest, decide the issues raised, file its report together with all recorded testimony and exhibits with the clerk of court of the county in which the

municipality is situated, notify the parties concerned of the decisions made, and when the decision invalidates the election the council shall order a new election as to the parties concerned.

S.C. Code Ann. § 5-15-130 (emphasis added). “Under the rules of statutory interpretation, use of words such as ‘shall’ or ‘must’ indicates the legislature’s intent to enact a mandatory requirement.” Collins v. Doe, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002). Further, under the series-qualifier canon, there is a presumption that a prepositive modifier applies to *all* parallel serial verbs (e.g., hearing, decision, filing, notice) that follow. See SERIES-QUALIFIER CANON, Black’s Law Dictionary (12th ed. 2024); see also Facebook, Inc. v. Duguid, 592 U.S. 395, 402–03 (2021) (applying postpositive qualifier to antecedent verbs and discussing canon).

Applying that canon here, the most natural and obvious way to read Section 5-15-130 is to apply the 48-hour mandate to *all* the parallel verbs (i.e., conduct, decide, file, notify) that follow. Thus, within two (2) days of receiving a protest, Section 5-15-130 requires the Commission to take five actions: send notice of the hearing, conduct the hearing, decide, file the decision and record with the clerk, and send notice of the decision. That did not happen here.

The Protest was received on April 9. The Commission held the hearing *five days later* on April 14. During his presentation, Campbell told the Commissioners, “everything is within the time frame of [5-15-130]” because Thompson filed his protest within 48 hours “[a]nd this hearing is filed and being heard within 48 hours of notice.” R.0012. That is not what the statute says. The hearing should have been conducted on or before April 11, not within 48 hours of sending notice. Moreover, even under Campbell’s erroneous reading of Section 5-15-130, the hearing was untimely because, as Campbell told the Commission, “Notice was given on April the 10th by City Attorney Franklin McClain.” R.0013. According to the handwritten date on the Decision, it was issued on April 17, but Winbush did not receive notice until April 20. The Commission did not

bother to file the Decision with the Anderson County Clerk of Court until May 5, 2026, *after* Winbush filed her appeal noting the Commission's failure to make a timely filing. Aside from the initial notice, none of the serial verbs (i.e., hearing, decision, filing, notice) occurred within the 48-hour deadline.

The Commission's failure to abide by the statutory scheme facilitated its lawlessness. Simply put, the City's attorneys could not have investigated Thompson's naked claim that Winbush "may" not be a resident if the Commission had acted in accordance with the 48-hour procedural deadline. And rightly so. The purpose of having short municipal election protest deadlines is to prevent precisely this type of debacle whereby a sore loser makes a vague claim in furtherance of a fishing expedition to invalidate a candidacy *after* the voters have spoken.

In Taylor, the Court rejected the argument that an election commission's written order needed to follow a particular format with findings of fact and conclusions of law, akin to an Administrative Procedures Act hearing, explaining that all Section 5-15-130 requires is that "an election commission conduct a hearing, decide the issues raised, file a report with the testimony and exhibits, and notify the parties of the decision." 363 S.C. at 15, 609 S.E.2d at 503. The Court reasoned that the statute required nothing more, and the reason nothing more is required is because protest proceedings are supposed to be completed *quickly* and election results certified. Precedent requires that election results be sustained, even in the face of irregularity, "unless the result is changed or rendered doubtful." Id. at 12, 609 S.E.2d at 502.

Under this standard, the complaining party needs to have the receipts in hand when the protest is filed. Thompson did not, and the Commission's departure from the statutory deadlines worked to prejudice Winbush and the voters. Here, the Commission followed neither the letter nor

the spirit of the law. The Circuit Court overlooked this fact, but for this additional reason, the Decision should be vacated.

CONCLUSION

For the reasons stated above, the Court should reverse or vacate the Decision and Form 4 Order and order the Commission to certify the Election results for Seat 5.

Respectfully submitted,

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