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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM THE EXECUTIVE COMMITTEE OF THE SOUTH CAROLINA
DEMOCRATIC PARTY

Skyler Hutto, Hearing Officer

Case No.: 2026-001483

Mark D. Tyler,.....Respondent,

v.

Evert Comer, Jr.....Appellant.

MOTION TO DISMISS

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MOTION TO DISMISS

Pursuant to Rules 203(d)(3) and 240 of the South Carolina Appellate Court Rules, Respondent Mark D. Tyler moves to dismiss the above-captioned appeal. As more fully set forth below, the appeal must be dismissed because Appellant Comer has failed to timely perfect his appeal. Appellant's filing suffers from two separate jurisdictional defects. First, the governing statute requires review to be sought by petition for a writ of certiorari, not by a notice of appeal. Second, the statute requires service within ten days of the Executive Committee's decision. Appellant satisfied neither requirement. Accordingly, this Court lacks jurisdiction over Comer's appeal, and we urge the Court to dismiss the appeal.

STANDARD FOR DISMISSAL

"The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004).

Moreover, Rule 260(a) SCACR requires the clerk of court to issue an order of dismissal whenever an appellant has failed to comply with the requirements of these Rules. See Rule 260(a), SCACR. Appellant has violated Rule 201(a) which states that "[a]ppeal may be taken, ***as provided by law***, from any final judgment . . ." Rule 201(a) SCACR (emphasis added).

PROCEDURAL HISTORY

On Monday, June 15, 2026, Appellant Evert Comer filed a protest regarding the June 9, 2026 Democratic Primary. The Executive Committee of the South Carolina Democratic Party ("Executive Committee") made and announced its decision regarding

Appellant Comer's protest on Saturday, June 20, 2026. See Comer's Notice of Appeal and the attached South Carolina Democratic Party Executive Committee Final Order ("Following cases presented to the assembled committee from both parties, a motion was made and seconded to uphold the results of the Bamberg County, County Council District 6 election."). The Executive Committee issued its written order on June 22, 2026. *Id.*

Ten days after "the decision" was June 30, 2026. Appellant did not serve and file his Notice of Appeal until July 2, 2026, which was two days after the expiration of the statutory deadline.

ARGUMENT

Appeals from election protest decisions by the state executive committee are controlled by 2026 S.C. Act No. 213, Section 2.¹ The process outlined in Section 2 of Act No. 213 also applies to protests involving political party primaries. Act No. 213, § 3 ("The results of any political party primary shall be declared by the party conducting the election. Protests and contests shall be filed, heard, and decided in the manner set forth in Section 7-17-560² and 7-17-570.³").

Section 2 of Act No. 213 states that any appeal from decisions made by the Executive Committee (1) "**must** be taken directly to the Supreme Court **on petition for a writ of certiorari,**" and (2) that notice "**must** be served **within ten days** of the state executive committee's **decision.**" (emphasis added). The statute does not say ten days

¹ Act No. 213 was signed by the Governor on May 19, 2026, became effective on June 5, 2026, and repealed former sections 7-17-520 through 7-17-550, 7-17-580, and 7-17-590. Act No. 213, § 4. Act No. 213 has not yet been codified by the South Carolina Legislative Council. While certain Sections of Act No. 213 do not go into effect until January 1, 2027, all other Sections took effect upon approval by the Governor. See Act No. 213, § 14.

² Act No. 213, § 1.

³ Act No. 213, § 2.

from the written decision. See, e.g., *Cole v. Town of Atl. Beach Election Comm’n*, 393 S.C. 264, 270 n.7, 712 S.E.2d 440, 444 n.7 (S.C. 2011) (noting the protestors filed their appeal within ten days of the close of the protest hearings and before the issuance of the written order). This statutory deadline reflects the urgency of election protests. See, e.g., *Cole*, 393 S.C. at 272, 712 S.E.2d at 444 (acknowledging that “delay ultimately undermined the legislative purpose behind requiring the expeditious handling of election disputes”).

The procedural provisions of Section 2 of Act No. 213 are clear and unambiguous. They place mandatory obligations on Appellant to meet the statutory deadline. The statute’s use of the imperative command “must,” rather than the permissive “may,” placed compulsory obligations upon Appellant to perform certain acts within prescribed deadlines. “Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” *Media General Communications v. South Carolina Dept. of Revenue*, 388 S.C. 138, 694 S.E.2d 525, 530 (2010) (citing *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)).

Appellant may contend the appeal period ran from the written order issued on June 22, 2026. The statute, however, does not reference a written order. It, instead, requires service within ten days of the state executive committee’s “decision.” Where the General Assembly selected one triggering event and omitted another, courts may not rewrite the statute to incorporate language the legislature declined to include.

Appellant Comer failed to comply with **both** statutory requirements, first, by filing the appeal as a notice of appeal and not as a petition for a writ of certiorari and, second, by failing to file the petition on or before June 30, 2026. Appellant Comer did not file and serve his notice of appeal until July 2, 2026. See Comer v. Tyler Notice of Appeal. Appellant's appeal is therefore untimely.

CONCLUSION

Because Appellant neither sought review through a petition for a writ of certiorari nor initiated review within the ten-day period mandated by Act No. 213, this Court lacks jurisdiction over the proceeding. The appeal should therefore be dismissed.

Should the Court deny this motion and treat the appeal as timely, Respondent requests the opportunity to oppose the petition for certiorari as the statute clearly requires that any challenge to the decision be in the form of a petition for writ of certiorari.

The undersigned counsel certifies that, to the best of her knowledge, information, and belief, there are good grounds to support this motion and the motion is not interposed for delay.

Respectfully submitted,

s/Johanna C. Valenzuela

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