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THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. SUPREME COURT

APPEAL FROM THE EXECUTIVE COMMITTEE OF THE SOUTH CAROLINA
DEMOCRATIC PARTY

Skyler Hutto, Hearing Officer

Case No.: 2026-001483

Mark A. Tyler,.....Respondent,

v.

Evert Comer, Jr.....Appellant.

REPLY IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS

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REPLY IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS

In his Response in Opposition, Appellant concurs that his filing should be treated as a petition for writ of certiorari. (Response in Opp. p. 2).

However, Appellant argues, *unsupported by any case law*, that this Court should disregard statutory language and accept his late filing because the “delay does not prejudice the Respondent or anyone in anyway” and because the Court should not “forfeit[] important rights through a technical interpretation of election statutes.” (*Id.* at 2, 4). Appellant further argues that he could not formulate grounds to appeal until his receipt of the written order on June 22, 2026. (*Id.*) Appellant makes two contradicting arguments: First, that he was not “made known” of the result until June 22, 2026,¹ and second, that he relied on an oral pronouncement, made immediately after that decision was reached and announced on June 20, 2026, that a “written order stating the outcome will be issued by the Chairwoman following the pending proceedings.” (*Id.* at 4). These positions are mutually exclusive; Appellant cannot simultaneously claim ignorance until June 22 and reliance on a June 20 oral statement.

ARGUMENT

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). Section 2 of Act No. 213’s use of

¹ To be precise, it is unclear if Appellant is claiming that he was not told of the result until June 22, 2026, but he insinuates this by stating the following: “‘ . . . All candidates in the protested or contested [race] shall be immediately notified of the committee’s decision.’ That decision was made known to the Appellant by email by a Final Order dated June 22, 2026.”

the imperative command "must," rather than the permissive "may," placed compulsory obligations upon Appellant to perform certain acts within prescribed deadlines.

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” *USAA Cas. Ins. Co. v. Rafferty*, 439 S.C. 130, 132, 886 S.E.2d 222, 223 (S.C. 2023) (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). “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.” *Id.* “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.” *Id.* “All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.” *McClanahan v. Richland Cnty. Council*, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002). This Court has no authority to extend or expand the time in which to appeal. *See Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (S.C. 1985) (“Service of the notice of intent to appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served.” (internal citations omitted)).

Appellant's contention that his delay "does not prejudice the Respondent or anyone in anyway" is legally irrelevant. The timely service of a notice of appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served. *See Mears*, 287 S.C. at 169, 337 S.E.2d at 207.

The procedural provisions of Section 2 of Act No. 213 are plain and unambiguous, and they set the appeal clock running from the committee's **decision** and not from any later written order. Appellant was therefore required to file his petition for a writ of certiorari within ten days of the decision rendered on June 20, 2026. Any written order issued afterward is a mere formality; under the statute's clear terms, it is not the jurisdictional trigger.

That the General Assembly meant what it said is confirmed by how it has drafted other appeal statutes. When the General Assembly intends the appeal period to run from a tribunal's written order, it says so expressly. Under the Administrative Procedures Act, for example, a party seeking review of an administrative law judge's decision must serve and file the notice of appeal "not more than thirty days after the party receives the **final decision and order** of the administrative law judge." S.C. Code Ann. § 1-23-610(A)(1). Section 2 of Act No. 213 contains no comparable language. Here, rather than triggering the deadline by receipt of a written order, the General Assembly deliberately made the committee's decision the event that starts the ten-day period. The Court should give effect to that choice.

It is undisputed that Appellant represented himself, and was therefore present, at the protest hearing on June 20, 2026. That Appellant may have chosen to leave before the decision was made does not alter his responsibilities under the law. Further, Appellant cannot argue to the Court that he relied on an oral pronouncement made on June 20, 2026,² after the decision of the Committee was made and announced, while also claiming

² Response in Opp. p. 4 ("In the transcript . . . after the executive committee's vote in favor of certifying the election results, the hearing officer expressly stated, "A written order

that he had no knowledge of what that decision was until he received the written order. Appellant also offers no support for why that oral pronouncement would have tolled or extended the statutory deadline. Regardless, it is undisputed that Appellant knew of the decision at least by June 22, 2026,³ which allowed Appellant eight days to file his appeal before the statutory deadline of 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. The appeal is therefore untimely.

MERITS ARGUMENT

Appellant spends approximately half of his Response in Opposition making arguments on the merits of the appeal. (Response in Opp. pp. 5–7). Contrary to Mr. Comer’s claim that Respondent improperly attempted to litigate the merits of the appeal in his motion to dismiss, Respondent included no arguments on the underlying merits of the appeal in his motion to dismiss.

Respondent’s motion to dismiss is limited to the Court’s jurisdiction over this appeal. The Court must resolve the motion before it can reach the merits. Therefore, Appellant’s premature merits briefing is improper at this stage.

CONCLUSION

Because Appellant agrees that pursuant to the law he must first seek review through a petition for a writ of certiorari, and because he did not initiate such review within

stating the outcome will be issued by the Chairwoman following the pending proceedings.”).

³ Response in Opp. p. 4 (“That decision was made known to the Appellant by email by a Final Order dated June 22, 2026.”).

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.

Respectfully submitted,

s/Johanna C. Valenzuela

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