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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Judge

Appellate Case No.: 2026-001506
Lower Court 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
Capacity As Municipal Election Commissioners, and Darryl Thompson..... Respondents.

FINAL BRIEF OF RESPONDENTS

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COUNTERSTATEMENT OF THE ISSUES ON APPEAL

- I. Whether the circuit court properly found the Anderson Municipal Election Commission's decision was supported by evidence?
- II. Whether the Anderson Municipal Election Commission's review of Darryl Thompson's protest was proper?

COUNTERSTATEMENT OF THE CASE

This case arises out of the April 7, 2026, election for Seat 5 on City Council in Anderson, South Carolina. Two candidates appeared on the ballot: Appellant Tonya Winbush and Respondent Darryl Thompson. Winbush received 135 votes and Thompson received 68 votes.

On April 9, 2026, Thompson filed a written protest with the Anderson County Board of Voter Registration and Elections, which the Board forwarded to the City of Anderson Municipal Election Commission (the Commission). The protest stated: “It has come to my attention that my opponent, Tonya Winbush, in this week’s Election may not be a resident of ward 5. Therefore I am filing a protest with your office to determine whether she meets the requirements to run for office in ward 5.” (R. p. 194).

That same day, the Commission met to canvass the vote and received the protest. The Commission scheduled a hearing for April 14, 2026, and directed City staff to investigate the residency issue. Both Winbush and Thompson received notice of the hearing. (R. pp. 191-200). The Commission heard the protest on April 14, 2026. Thompson appeared pro se, and Winbush was represented by counsel. (R. pp. 82-83).¹

Thompson and Winbush testified under oath, and Thompson presented two exhibits. (*Id.*). Thompson’s first exhibit was a printout of the Anderson County Public Access System, showing Winbush owned property located at 741 Kings Road, Anderson, South Carolina, which is outside of Seat 5’s boundaries. (R. p. 105). Thompson’s second exhibit was a deed from March 12, 2026, filed March 26, 2026, showing Winbush transferred 741 Kings Road to herself as trustee of the

¹ Respondents are aware of Appellant’s reference to a motion to dismiss made before the Municipal Election Commission. However, the transcript before the Commission does not show Appellant raising this motion.

Fourth Star Revocable Trust. (R. pp. 106-111). Importantly, the deed lists the grantee's (Winbush's) address as 741 Kings Road. (*Id.*).

Winbush testified that she resided at 309 Morris Lane, Anderson, South Carolina, when she filed her application for candidacy for Seat 5 on January 29, 2026, but that "she no longer stayed there." (R. p. 84, line 13-p. 85, line 10). Following her candidate filing, she moved to 411 Smith Street, Anderson, South Carolina, "[b]ecause the renovations [at 309 Morris Lane were] taking longer," and she "had to move into another place that was more feasible and livable that [she] could dwell in." (R. p. 85, lines 7-18). She submitted leases, voter registration updates, and utility bills for both addresses. (R. p. 84, line 7-p. 86, line 18). Her lease commenced on March 20, 2026. (R. p. 126)). So, according to Winbush, she resided at the Kings Road address from when she filed on January 29, 2026, until March 20, 2026. Winbush further testified the Kings Road property is family property held in trust for her four daughters, two of whom live there. (R. p. 87, lines 3-14).

City Attorney Rame Lambert Campbell presented a notebook of documents, including Winbush's driver's license listing the Kings Road address (issued February 2020 and valid through 2028), two vehicles Winbush registered at 741 Kings Road in February 2026 (which is after filing), and City water usage records. (R. p. 88, line 5-p. 98, line 6). Campbell was sworn in, but it was not reflected in the transcript.

After deliberation, the Commission announced it would not certify the election. (R. p. 98, lines 9-15). On April 17, 2026, the Commission issued a written Decision invalidating the election. (R. pp. 4-5). The Decision stated: "Based 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." (*Id.*).

On April 27, 2026, Winbush appealed to the Anderson County circuit court under section 5-15-140 of the South Carolina Code. (R. pp. 10-11). The circuit court affirmed the Decision on July 7, 2026, finding “NO ERRORS OF LAW AND THE FACTUAL FINDINGS ARE SUPPORTED BY EVIDENCE.” (R. pp. 1-3).

Winbush filed this appeal on July 8, 2026. (R. pp. 292-300).

STANDARD OF REVIEW

“In municipal election cases, [this Court] review[s] the judgment of the circuit court upholding or overturning the decision of a municipal election commission to correct errors of law. The review does not extend to findings of fact unless those findings are wholly unsupported by the evidence.” *Gecy v. Bagwell*, 372 S.C. 237, 241, 642 S.E.2d 569, 571 (2007) (per curiam); *Taylor v. Town of Atl. Beach Election Comm’n*, 363 S.C. 8, 15, 609 S.E.2d 500, 502 (2005). Under this deferential standard, the findings of fact reached by the lower tribunal cannot be disturbed if there is any probative evidence in the record supporting the findings. *Gantt v. Selph*, 423 S.C. 333, 342, 814 S.E.2d 523, 532 (2018). “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.” *Broadhurst v. City of Myrtle Beach Election Comm’n*, 342 S.C. 373, 379, 537 S.E.2d 543, 546 (2000).

ARGUMENT

I. The circuit court correctly found the Commission’s decision was supported by evidence.

At its April 14 hearing, the Commission reviewed substantial evidence relating to Winbush’s residence during her candidacy for Seat 5. Thompson presented evidence that Winbush continued to reside at a property outside of Seat 5’s boundaries, and Winbush presented evidence she was eligible to be elected.

Appellant conflates the Commission’s discretion in reviewing the evidence as “appl[ying] 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.” (App.’s Br. at 21). Not so. The Commission has discretion to find some evidence more persuasive or determinative, and the Court cannot interfere with the Commission’s findings when any evidence supports those findings. *See Gantt*, 423 S.C. at 342, 814 S.E.2d at 532. The Commission’s Decision details all evidence presented to it, including, but not limited to: Thompson’s two exhibits; Winbush’s decision to register two cars at 741 Kings Road in February 2026 (some six weeks after she filed to run for Seat 5); and utility bills from Morris Lane, including a water bill that shows no usage of water while she allegedly lived there. (R. pp. 172-290). Because there is evidence supporting the Commission’s decision not to certify the April 7 election, the Court should affirm.

Winbush’s claim that the Commission’s finding is “wholly unsupported by the evidence” misapplies both the record and the applicable legal standard. (App.’s Br. at 15). True, our courts have repeatedly held that Courts review municipal election commission factual findings only when they are “wholly unsupported by the evidence.” *Cole v. Town of Atl. Beach Eletion Comm’n*, 393 S.C. 264, 712 S.E.2d 440 (2011); *see also Odom v. Town of McBee Election Comm’n*, 427 S.C. 305, 831 S.E.2d 43 (2023). But the Commission’s decision easily clears this low threshold.

The Anderson City Code requires “[c]andidates seeking office from a particular district [to] be residents of the district at any time they offer for election and during their entire terms of office.” Anderson City Code § 38-3. The South Carolina Code clarifies when a candidate is a resident of the applicable district, stating “[a] person’s residence is his domicile . . . 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). For a candidate changing residences, the statute clarifies when that change occurs:

“[f]or 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.” S.C. Code Ann. § 7-1-25(B). The statute also lists eleven factors to consider when determining a candidate’s intent regarding his domicile, though those factors are not exhaustive. S.C. Code Ann. § 7-1-25(D). When an election commission receives a residency challenge, that commission considers these factors. S.C. Code Ann. § 7-5-230(B).

Here, Thompson presented the Commission with evidence that Winbush had not abandoned her prior home when she registered as a candidate for the Anderson City Council Seat 5. While Winbush testified she did not live at 741 Kings Road, the Commission decided “Winbush had not abandoned her residence and domicile at 741 Kings Road at the time she filed to run, or thereafter.” (R. pp. 4-5).

Making three arguments on the issue, Appellant attempts to dissect the Commission’s decision, claiming no evidence supports it. All three arguments fail in light of the evidence presented at the April 14 hearing.

First, Appellant argues she automatically established residency in Seat 5’s boundaries when she registered as a candidate and listed 309 Morris Lane as her address. (App.’s Br. 16). Because it was proper to place Winbush on the ballot, she argues, her residency could not be challenged. (*Id.*). Both these points go against the plain language of section 7-1-25, which requires the Commission to review a candidate’s domicile after it is challenged. S.C. Code Ann. § 7-5-230(B) (“*When a challenge is made* regarding the residence or domicile of an elector, the board must consider the provisions of Section 7-1-25(D).” (emphasis added)). If not for the opposing candidate’s protest, a candidate potentially could participate in a scheme to defraud the

Commission by agreeing to a sham lease in the desired district to prove residency but never move into the new domicile.

Second, Appellant contends the testimony and information from city staff was not evidence the Commission could consider. (App.'s Br. at 16–18). Information produced by the City Attorney was contained in public records, so the Commission was entitled to review it. *See* Rule 201, SCRE. The record contained ample other evidence, such as Thompson's exhibits and also Winbush's exhibits, supporting the Commission's finding that Winbush had not abandoned her residence at King's Road. The Commission had the authority to weigh this evidence and conclude that Winbush's residence remained outside the boundaries of Seat 5. *See Gantt*, 423 S.C. at 342, 814 S.E.2d at 532. Even if the Court discounts the information the City Attorney presented, Thompson's exhibits provide sufficient evidence to support the Commission's decision to order a new election. *See id.*

Finally, Appellant argues Thompson's exhibits and testimony provide no evidence because “[i]mplicit 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.” (App.'s Br. at 18–19). But nothing suggests the Commission applied this heightened standard in reviewing Thompson's protest. The Commission applied the correct standard and merely found against Winbush.

This Court's standard is to “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.*” *Broadhurst*, 342 S.C. at 379, 537 S.E.2d at 546 (emphasis added). Rather than engage with the Commission's standard, Appellant creates her own standard, excluding the presumption requirement to create a baseline mandate for the Commission to view

all evidence in favor of the non-protesting candidate. (App.'s Br. at 21–22). That is not the standard. The Commission had to employ every reasonable presumption to sustain a contested election unless irregularities or illegalities changed the election's result. A candidate's failure to meet residency qualifications renders that candidate ineligible, which directly affects whether the election result is valid. *See* Anderson City Code § 38-3; *see also Taylor*, 363 S.C. at 16, 609 S.E.2d 500 at 504. Thompson's protest highlighted the residency issue. Thus, the Commission was well within its bounds to hear the protest post-election and refuse to certify the results.

Even when Appellant analyzes the eleven factors contained in section 7-1-25(D), she misinterprets the Commission's standard and the Court's standard on appeal. Reversal is not appropriate if the statute's eleven factors "weigh heavily in favor of Winbush." (App.'s Br. at 19). Reversal is appropriate only if the Commission's "findings are wholly unsupported by the evidence." *Taylor*, 363 S.C. at 12, 609 S.E.2d 500 at 502.

They are not. The Commission declined to certify the April 7 election, and evidence supported this decision. The circuit court affirmed, agreeing on the record that evidence supports the decision, and the Court should affirm too.

II. The Commission's review of Thompson's protest was proper.

In addition to challenging the Commission's decision outright, Appellant's arguments about the Commission's procedures hold no merit. Appellant must distort South Carolina law to support her sweeping claims. The Commission applied the correct standard and followed the correct procedures when it reviewed the protest and evidence presented and then declined to certify the April 7 election. The Court should not give weight to Appellant's supplemental arguments.

a. A candidate's residency can be challenged before the election is certified.

No South Carolina law prohibits a protest of a candidate's residency after votes are cast. Thompson's protest challenged the April 7 election by arguing Winbush is not a resident in Seat 5's boundaries. *See Blair v. City of Manning*, 345 S.C. 141, 143–44, 546 S.E.2d 649, 651 (2001) (an appeal contesting a candidate's residency after the election is governed by section 5-15-140).

None of the case law Appellant cites, (App.'s Br. at 21–22), creates such a strict standard or timeline to challenging a candidate's residency. Instead, the Commission and this Court must apply the traditional standard for an election contest: “(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 500 at 504. Here, the illegality is Winbush's residence. Just as with non-resident voters who participate in elections and sway the majority vote, *see Dukes v. Redmond*, 357 S.C. 454, 456, 593 S.E.2d 606, 607 (2004), a non-resident candidate who carries the majority vote invalidates the election. *See* S.C. Code Ann. § 7-5-610.

b. Winbush was not denied due process of law or her rights under the Free and Open Elections Clause.

The Commission's decision to decline to certify the April 7 election did not violate Appellants rights under the United States or South Carolina Constitutions. Appellant misinterprets the City Attorney's role helping the Commission resolve where Appellant resided. (App.'s Br. at 22). Section 5-15-130 does not prohibit a municipal election commission from gathering information relevant to deciding a protest. In fact, the statute requires the Commission to “conduct a hearing on the contest” and “decide the issues raised.” S.C. Code Ann. § 5-15-130. Municipal election commissions have inherent authority to investigate election-related matters within their

jurisdiction. This authority complies with their statutory duty to “decide the issues raised” in a protest. *Id.*

The protest here raised a specific factual question: whether Winbush resided in Seat 5’s boundaries? The Commission was well-within its authority to investigate and request assistance from staff to compile relevant public records bearing on the issue raised in the protest.

The City Attorney collected relevant information and presented it to the Commission. The Commission included this information in the record, and Winbush’s attorney did not object. Therefore, Appellant’s argument is not preserved. *See State v. Black*, 319 S.C. 515, 521–22, 462 S.E.2d 311, 315 (Ct. App. 1995) (“Failure to object when the evidence is offered constitutes a waiver of the right to object.”); *see also Wilder Corp. v. Wilke*, 330 S.C. 70, 76, 497 S.E.2d 731, 733 (1998) (“It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.”).

Even so, the City Attorney played no further role in the protest challenge. He did not partake in the examination of witnesses or any other facet of the hearing. He simply gathered information that already was available in the public record and presented it to the Commission. That the records harmed Appellant’s position does not change the fact that the Commission properly requested and received information from the City Attorney.

Rather than point to specific evidence in the record that violated her right to a fair tribunal, Appellant contends the Commission violated her due process right by taking notice of adjudicative facts. (App.’s Br. at 23). Allowing evidence into the record produced by the City Attorney “was capable of an accurate and ready determination to verify its accuracy.” *See* Rule 201(b)–(c), SCRE (allowing a court to take judicial notice of facts “(1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources

whose accuracy cannot reasonably be questioned”); *see also* S.C. Code Ann. § 7-17-50 (“The chairman of the board 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.”).

Appellant also argues the Commission and City Attorney’s actions violated her rights under the Free and Open Elections Clause. That Constitutional provision provides that “[a]ll elections shall be free and open, and every inhabitant of this State possessing qualifications provided for in this Constitution shall have an equal right to elect officers and be elected to fill public office.” S.C. CONST. art. 1, § 5. “[T]he Clause is satisfied when every voter has an unhindered opportunity to cast a ballot free from intimidation, every voter gets one vote, and each voter has an equal influence with that of every other elector.” *League of Women Voters of S.C. v. Alexander*, 446 S.C. 591, 611, 921 S.E.2d 660, 671 (2025).

Nothing in the Commission’s decision affected a voter’s right to vote. Either Winbush lived in the district or she didn’t. Here, the Commission, based on evidence from both parties, determined she did not and refused to certify the election because of it. The Commission’s hearing did not impede Appellant’s ability to vote or the value of her vote.

c. Winbush experienced no prejudice from the Commission’s procedures.

Appellant concludes by arguing she experienced prejudice from the Commission’s failure to follow the procedural requirement set forth in section 5-15-130. Yet Appellant fails to articulate any prejudice she actually experienced from the protest hearing process. Her due process rights were not violated because she was afforded a full opportunity to be heard; was able to appear with counsel to represent her interests; was able to present evidence; and was able to cross-examine witnesses before an impartial tribunal. *See Vora v. Lexington Med. Ctr.*, 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003) (holding the procedural due process requirements, at a minimum, “include

(1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses”). Not receiving her desired result does not now turn the process into one that allegedly violated her rights.

Here, both candidates received an additional three days before the election challenge hearing. (R. pp. 191-200). No party to the hearing received a benefit which prejudiced another, and all parties had the opportunity to present their evidence to give the Commission the full picture regarding Appellant’s residency.

In reviewing the conduct of election commissions, this Court is reluctant to reverse an election commission’s decision based on a procedural technicality. *See George v. Mun. Election Comm’n*, 335 S.C. 182, 186, 516 S.E.2d 206, 208 (1999). While the *George* Court analyzed an election commission’s failure to follow technical requirements when it certified a contested election, *id.*, the same principle applies when a Commission denies certification but fails to follow a technical requirement unrelated to its substantive decision.

Appellant’s argument that “the City’s attorneys could not have investigated Thompson’s naked Claim,” (App.’s Br. at 25), does not infuse the Commission’s perceived technical error with substantive impact. When a procedural error changes the substantive scope of an election challenge, dismissal is appropriate. *See Butler v. Town of Edgefield*, 328 S.C. 238, 245–46, 493 S.E.2d 838, 842 (1997) (affirming the circuit court’s dismissal of an election challenge when the protestor “failed to provide ‘a concise statement of the grounds’ for his contest”).

The Commission followed its procedures, and Appellant was given a full and fair opportunity to present her case. She lost.

CONCLUSION

Based on the above, the Court should affirm the circuit court's ruling, affirming the Commission's decision to decline to certify the results of the April 7, 2026, election for Anderson City Council Seat 5. The circuit court appropriately concluded there was evidence supporting the Commission's decision.

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Columbia, South
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