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THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. 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.

REPLY OF APPELLANT

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August 7, 2026
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ARGUMENT IN REPLY

Respondents City of Anderson (City) and the Anderson Municipal Election Commission and its Commissioners, David Ford, Clara E. Humphrey, and Renee Fields-York (collectively, the “Commission”) argue the Decision and the Form 4 Order upholding it should be affirmed. Conspicuously absent from this dispute is the purported beneficiary of the relief granted below: Respondent Darryl Thompson who lost the election by a margin of 2-1 and then filed the Protest claiming Winbush “may” not live in Seat 5. As was the case before the Circuit Court, Thompson is a mere bystander here because, in fact, the City and the Commission¹ are Winbush’s true adversaries. Cf. Appellant’s Br., 22–23. Respondents’ arguments should be rejected for the reasons explained below.

I. The Decision is wholly unsupported by the evidence.

Respondents claim the Decision is supported by “substantial evidence” relating to Winbush’s residency in Seat 5. Resp’ts’ Br., 4. There is substantial evidence Winbush was, in fact, a resident of Seat 5 when she filed to run. There is no competent evidence to the contrary.

A. Respondents’ false claim that Campbell was sworn belies the record and what they told the Circuit Court.

Respondents claim, “Campbell was sworn in, but it was not reflected in the transcript.” Resp’ts’ Br., 3. This is an essential fiction because Campbell’s lengthy presentation was the Decision’s predicate to overturn the Election. See Appellant’s Br., 8–12, 16–18. Put differently, Respondents’ naked assertion is necessary for them to prevail here because without Campbell’s specious, unexamined assertions, there is no evidence to support the Decision. Respondents’ belated claim that Campbell offered “sworn” testimony is demonstrably false for three reasons.

¹ Thompson has not filed a brief. Accordingly, for ease of reference, “Respondents” hereafter shall refer to the City and the Commission, but not Thompson.

First, the record is exceptionally clear about who was and was not sworn. As Campbell himself explained:

MR. CAMPBELL: Good morning. We're here today to address the protest that was filed by Mr. Thompson regarding the election that occurred on April the 7th for Seat 5 of Anderson City Council. And it's a matter being brought before you today. My understanding, Mr. Thompson is here. He's representing himself. Ms. Winbush is here, represented by her attorney, Brooke Ennis. And we'll proceed forward as you speak. And then first, you're going to have *to swear them in*, and after that, we can – you'll have *to swear them in*.

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.

MR. FORD: *Let us swear in Mr. Darryl Thompson.*

MR. THOMPSON: Yes, sir.

MR. FORD: *And let us swear in Ms. Tonya Winbush.*

Whereupon, Darryl Thompson and Tonya Winbush, *first being duly sworn*, were examined and testified as follows:

ROA0082 (emphasis added). The Chair announced who was being sworn and the court reporter memorialized it in the record. Campbell's own remarks bolster this conclusion. If he intended to also be sworn, why did he repeatedly refer to the witnesses as "them"?

Second, when the Chair invited Campbell to speak, he was not sworn. The record is also clear on this point:

MR. FORD: Does the city staff have any information to share at this time?

MR. CAMPBELL: Yes, sir. Thank you, Chairman of the Board. On behalf of the city,

ROA0088. The Chair did not announce Campbell would be sworn, and the court reporter made no note in the transcript that he was. The Court should consider who is the more reliable reporter here: the actual court reporter (an independent court official) or the City attorney who was the architect of the Decision overturning the will of the voters?

Third, if Campbell was, in fact, sworn as a witness, then why didn't he tell Judge McIntosh that during the hearing? See ROA0065–072. Winbush's circuit court brief made the exact same argument she has made to this Court: Campbell's presentation was not evidence because it was not sworn. Cf. ROA0024–26. During the hearing, her counsel urged:

And so, normally, Judge, like in this case they're trying,^[2] if somebody wanted to bring a public record and have it admitted, public records can be admissible under 803. We all agree with that, but someone would have to lay a foundation through testimony. And that's what Mr. Campbell never took the oath, never testified in front of the Commission, and he wants to present that as evidence. It's improper under 603. He was never subject to any cross-examination.

See ROA0075. Campbell did not spring from his chair to correct the record. In fact, when Judge McIntosh recognized him to offer a final word in response, Campbell used his time to continue disputing Winbush's testimony. He said nothing about his own presentation as testimony.

Notwithstanding what Respondents have apparently told their appellate counsel about whether Campbell was sworn, neither side's appellate counsel was present during the Commission hearing. Respondents now claim Campbell was sworn because without it they cannot prevail. However, the record is the record, and it stands in opposition to Respondents' naked assertion.

² The Circuit Court was in the middle of a multi-day trial when it held the hearing in this case.

B. Respondents misstate the factual record.

Respondents claim the Decision was supported by evidence because the Commission “has discretion to find some evidence more persuasive or determinative[.]” Resp’ts’ Br., 4–5. While the standard of review affords the Commission some deference in its fact finding, deference has limits. The Decision must rely on “probative evidence in the record supporting the findings.” Gantt v. Selph, 423 S.C. 333, 341, 814 S.E.2d 523, 528 (2018). Thus, it is not enough to simply point to “any” evidence. This Court’s “any evidence” standard is more accurately stated as any probative evidence that supports the conclusion. See id.; see also Odom v. Town of McBee Election Comm’n, 427 S.C. 305, 307, 831 S.E.2d 429, 430 (2019) (correcting factual findings when they are “wholly unsupported by the evidence.”); Taylor v. Town of Atl. Beach Election Comm’n, 363 S.C. 8, 12, 609 S.E.2d 500, 502 (2005) (same). Herein lies Respondents’ problem.

The only evidence before the Commission was the testimony of Thompson and Winbush and the exhibits they presented. Respondents maintain this evidence is “ample” and sufficient to support the Commission’s finding. Resp’ts’ Br., 7. It is not.

Thompson testified that his belief Winbush was not a resident was based on the Kings Road deed taken from a public website. ROA0083, 0105–110. Thompson had the burden, yet this was the entirety of the evidence he presented: a deed showing Winbush owned land outside Seat 5 when she filed her candidacy and then transferred it to a trust. Owning property outside a legislative district is not evidence of residency. By that standard, many candidacies would fail. Stated in the parlance of Gantt, Odom, and Taylor, Thompson offered evidence, he just did not offer evidence probative of the contention he needed to prove. Conversely, Winbush testified that she resided at Morris Lane when she filed and she produced a residential lease agreement pre-dating her filing and her voter registration and utility bills with the Morris Lane address. See

ROA0084–85, 0112–125; see also ROA0004 (Winbush testified that “prior to filing for election, she had relocated to 309 Morris Lane”). Where residence is synonymous with domicile and domicile turns on intent, Thompson proved nothing and Winbush proved Seat 5 residence.

Respondents also misapprehend Winbush’s argument that not every scrap of paper need perfectly align to establish residency. Compare Appellant’s Br., 18–19, with Resp’ts’ Br., 7. Even if the Court were to credit Campbell’s presentation as evidence (it should not), it still proves nothing. Setting aside (for the sake of argument) the evidentiary problems, the records and statements Campbell offered were largely speculation and conjecture about property records and water usage. See Appellant’s Br., 8–11, 17–18. Those claims fail to prove anything. At most, Campbell demonstrated that Winbush had not updated her driver’s license and automobile registration, but the mere fact that those records reflect an old address does not negate competent, sworn evidence to the contrary. Common sense dictates that when you move, not every government record is immediately updated to reflect your new address, but that reality does not negate Winbush’s residency in Seat 5.

C. Campbell’s presentation is not admissible through judicial notice.

Respondents argue Campbell “simply gathered information” from the public record and “presented it to the Commission.” Resp’ts’ Br., 10. They claim this evidence was admissible under Rule 201, SCRE. Respondents are mistaken for two reasons.

First, the so-called facts proffered by Campbell are not eligible for judicial notice. “A judicially noticed fact must be one not subject to reasonable dispute in that it is either (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.” Rule 201(b), SCRE. “A trial court may take judicial notice of a fact only if sufficient notoriety attaches to the

fact involved as to make it proper to assume its existence without proof.” Martin v. Bay, 400 S.C. 140, 152, 732 S.E.2d 667, 674 (Ct. App. 2012) (quotations omitted).

Here, Campbell claimed the Kings Road deed, water usage records, and property tax records proved Winbush did not reside in Seat 5. See R.0017–020. Even assuming the veracity of those claims (the Court should not), they are not generally known or notorious within the meaning of Rule 201(b), such that no proof was required. Some of those records might have been admissible under a hearsay exception, but that sheer possibility does not relieve the proponent of the evidence from laying a proper foundation by a witness with sufficient knowledge to authenticate the record. See Rule 901, SCRE. Moreover, Campbell’s claims about these records were not true (see Appellant’s Br., 9–11), illustrating the impropriety of judicial notice and the need for a testimonial foundation. Cf. Goss v. State, 425 S.C. 101, 107–08, 820 S.E.2d 373, 376 (2018) (PCR court erred in taking judicial notice of witness testimony and then concluding it would not be credible).

Second, even assuming judicial notice could have been taken, the Commission failed to afford Winbush an opportunity to be heard on the propriety of judicial notice. Rule 201 provides that a court “shall” take judicial notice if requested “by a party and supplied with the necessary information.” Rule 201(d), SCRE. Alternatively, a court “may” take judicial notice whether requested or not. Rule 201(c), SCRE. In either case, “[a] party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed.” Rule 201(e), SCRE. “In the absence of prior notification, the request may be made after judicial notice has been taken.” Id. No aspect of Rule 201’s procedure was followed here. No party requested the Commission take judicial notice. If the Commission intended to take judicial notice on its own motion, it never announced that fact. The Decision makes no reference to judicially noticed facts.

II. The Decision’s conclusion and the procedures followed to reach it were contrary to law and violated Winbush’s rights.

Respondents claim the Commission applied the correct standard and followed the correct procedures. Resp’ts’ Br., 8. These claims should be rejected.

A. Judicial issue preservation rules do not apply to municipal election commission hearings.

Respondents argue that because Winbush did not object when Campbell presented information to the Commission,³ the issue is not preserved on appeal. Resp’ts’ Br., 10. The Court should conclude judicial issue preservation rules do not apply to municipal election commissions comprised of lay citizens charged with reviewing disputes over election results often brought by pro se parties. This conclusion is supported by three points.

First, issue preservation is a judicial doctrine that should not apply to election appeals controlled by statute. “There was no right to contest an election under the common law.” Taylor, 363 S.C. at 14, 609 S.E.2d at 503. Instead, the General Assembly is charged with “establish[ing] procedures for contested elections, and enact other provisions necessary to the fulfillment of and integrity of the election process.” S.C. CONST. art. II, § 10. Thus, “[t]he right to contest an election exists only under the state constitutional and statutory provisions, and the procedure proscribed by statute must be strictly followed.” Taylor, 363 S.C. at 14, 609 S.E.2d at 503 (quotations omitted).

Only two statutes control how issues are joined and preserved in an election protest. A protestant must “file a written notice of such contest together with a concise statement of the grounds therefor....” S.C. Code Ann. § 5-15-130. Thereafter, “any party aggrieved may appeal from such decision to the court of common pleas” by filing and serving a notice of appeal. Id. § 5-

³ The issue was presented to the Circuit Court. See ROA0010–033.

15-140. Thus, the only statement necessary to preserve an issue are the grounds set forth in the initial protest. The statutory scheme does not require judicial issue preservation rules.

This conclusion comports with the requirement that a municipal election commission conduct a hearing “as nearly as possible” in accordance with circuit court procedures and rules of evidence, see S.C. Code Ann. § 7-17-50, not in perfect accordance with courtroom rules. Some procedures, like the need to swear witnesses or the rule against hearsay, are so fundamental to a fair proceeding and generally understood that they should be deemed non-negotiable even in a lay commission setting. But judicially created issue preservation rules are not of such kind.

Second, the only election precedent Winbush is aware of considering issue preservation is Taylor, in which this Court declined to impose the sort of specificity standard for municipal election commission decisions that would be essential to adhere to judicial issue preservation rules. In Taylor, the appellant complained the commission’s decision lacked “some degree of concomitant specificity” while the respondents maintained there was “no need to require greater specificity or clarity in decisions issued by election commissions[.]” 363 S.C. at 14, 609 S.E.2d at 503. The Court declined to require findings of fact or conclusions of law, reasoning the statute did not require it. Id. at 15, 609 S.E.2d at 503–04. The Court did, however, find two issues unpreserved because the appellant “failed to raise either issue in their notice of contest letters.” Id. at 18, 609 S.E.2d at 505. This reasoning comports with Winbush’s reading of the statutory scheme.

Third, issue preservation rules that routinely vex the bench and the bar should not extend to these lay commissions. Issue preservation rules serve two primary purposes: (1) to “give the trial court a fair opportunity to rule” and (2) to “ensure that both parties are aware of the nature of the objection such that they may present their best arguments addressing that objection.” Moses v. State, 442 S.C. 263, 269, 898 S.E.2d 174, 177 (Ct. App. 2024) (quoting State v. Morales, 439 S.C.

600, 609, 889 S.E.2d 551, 556 (2023)). In forums where parties are typically represented by lawyers and the presiding officer is a judge, preservation requirements ensure appellate issues are focused in a manner that efficiently advances the law. This requirement makes little sense when the adjudicating body is a commission of lay commissioners whose sole mandate is limited to ruling on an election result. The Court recently explained it is “mindful that issue preservation rules should not be applied in a technical manner as if this is some sort of game of ‘gotcha’ elevating form over substance to trap trial lawyers so as to prevent the appeal of a legitimate issue.” Morales, 439 S.C. at 609, 889 S.E.2d at 556. Strict issue preservation should not apply to a municipal election commission because neither the parties nor the commissioners are equipped to apply technical rules and doing so will often stand in the way of getting the correct election result.

For these reasons, the Court should conclude judicial issue preservation rules do not apply.

B. The plain language of Section 5-15-130 limits post-election protests to complaints about “the result.”

Respondents maintain that no law prohibits a post-election residency challenge and none of the cases Winbush cites create such a standard See Resp’ts’ Br., 9 (citing Blair v. City of Manning, 345 S.C. 141, 143–44, 546 S.E.2d 649, 651 (2001)). This argument should be rejected for four reasons.

First, the law that prohibits post-election residency protests is South Carolina Code § 5-15-130 itself, which in its title and text are clear that the purpose of the protest procedure is to contest “the result” of an election, not a candidate’s ballot access. The plain language of a statute is the best evidence of legislative intent, and the Court will not change the meaning when the statute is unambiguous. Doe v. Keel, 440 S.C. 427, 431, 892 S.E.2d 282, 284 (2023). “The result” means the result of the vote.

Respondents cite Section 7-5-230(B) to suggest the Commission can make a residency determination. Notably, that statute concerns challenges to “the residence or domicile of an elector,” not a candidate. See S.C. Code Ann. § 7-5-230(B). In Gantt, the Court explained that section indicates that a county election board “is limited to determining the qualifications of a person who applies to register to vote, not the qualifications of a person who applies to be a candidate for election to the School Board.” 423 S.C. at 340–41, 814 S.E.2d at 527. In other words, Section 7-5-230(B) is irrelevant to a candidate residency dispute.

Second, all the municipal election cases Winbush cites—George v. Mun. Election Comm’n of City of Charleston, S.C., 335 S.C. 182, 516 S.E.2d 206 (1999), Broadhurst v. City of Myrtle Beach Election Comm’n, 342 S.C. 373, 537 S.E.2d 543 (2000), and Taylor—reinforce this conclusion because they are all examples of a protest challenging some aspect of the result.

Third, Respondents claim Winbush argues that her residency could not be challenged because it was proper to place her on the ballot. Resp’ts’ Br., 6. Winbush has never argued this. Candidate residency can be challenged, just not under Section 5-15-130. The time to challenge candidate ballot access is before the vote through a declaratory judgment action. Respondents cite Gantt, in which this Court considered a ballot-access challenge based on a school board candidate’s residency. The Gantt plaintiffs sought a declaratory judgment in circuit court that the candidate did not reside in the county and was therefore not qualified to be a candidate. 423 S.C. at 337, 814 S.E.2d at 525. The circuit court found the candidate ineligible and this Court held “the circuit court had subject matter jurisdiction over Respondents’ declaratory judgment action challenging [the candidate’s] qualifications.” Id. at 336, 814 S.E.2d at 524–25. This is the procedure Thompson should have followed to challenge Winbush’s ability to appear on the ballot *before* the election.

Fourth, Respondents’ reliance on Blair is unpersuasive. In Blair, a municipal election candidate lost by three votes and filed a protest claiming the winner did not live in the district. 345 S.C. at 142, 546 S.E.2d at 650. The loser introduced photographs of a residence, claimed it was supposed to be the winner’s residence and was not in the district, “but presented no evidence to substantiate this claim.” Id. The winner testified he rented a different address in the district and that he intended to live in the district, and the commission ruled he was a resident and qualified. Id. The circuit court declined to conduct a *de novo* hearing and affirmed. Id. at 142, 546 S.E.2d at 650. The sole question for this Court was whether S.C. Code Ann. § 7-5-240 (1976) or S.C. Code Ann. § 5-15-140 (1976) governed the standard of review for an appeal of a municipal election commission decision. See Blair, 345 S.C. at 144, 546 S.E.2d at 651 (“Accordingly, pursuant to Butler [v. Town of Edgefield, 328 S.C. 238, 493 S.E.2d 838 (1997)], the circuit court properly declined a *de novo* hearing.”). Blair never considered the question presented here.

C. The Commission’s failure to follow Section 5-15-130 exceeded its power and facilitated its lawlessness to Winbush’s detriment.

Respondents argue they did not violate Winbush’s constitutional rights because municipal election commissions “have inherent authority to investigate election-related matters within their jurisdiction.” Resp’ts’ Br., 9–10. This assertion should be rejected for three reasons.

First, Respondents cite no authority for their rapacious assertion of power to review and decide election outcomes. To the contrary, the Commission’s authority to review an election result is specific and narrow:

Within forty-eight hours after the closing of the polls, any candidate may contest the result of the election as reported by the managers by filing a written notice of such contest together with a concise statement of the grounds therefor with the Municipal Election Commission. 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. Under the statute, only a “candidate” is authorized to contest a result. A commission’s scope of review is constrained (i.e., “shall”) to (1) noticing a hearing, (2) deciding the issues raised, (3) filing a report with the evidence, and (4) notifying the parties. Conspicuously absent is the authority to “investigate” as Respondents claim here. Instead, the Commission was constrained to “decide the issues raised,” meaning the issues raised and presented by Thompson.

Second, Respondents are wrong to claim the Commission’s violations did not violate due process or the Free and Open Elections Clause and that “[n]othing in the Commission’s decision affected a voter’s right to vote.” Resp’ts’ Br., 9, 11. The citizens of Seat 5 voted by a margin of 2 to 1 for Winbush. That vote came after the candidates and their supporters raised and spent money, knocked on doors, made phone calls, and sent electioneering communications soliciting votes. Voters voted and delivered an electoral mandate to Winbush. This Court has long held that “[v]oters who have done all in their power to cast their ballots honestly and intelligently are not to be disfranchised because of an irregularity, mistake, error, or even wrongful act, of the officers charged with the duty of conducting the election, which does not prevent a fair election and in some way affect the result.” Taylor, 363 S.C. at 12–13, 609 S.E.2d at 502 (quoting Berry v. Spigner, 226 S.C. 183, 190, 84 S.E.2d 381, 384 (1954)). The Commission overturned a fair election with a process that did not treat Winbush equal to other candidates. Respondents put their thumb on the scale to change the outcome and violated state law in so doing. Due process demands a fair tribunal and the Free and Open Elections Clause requires equal treatment of the candidates

seeking public office. See Appellant's Br., 23. Winbush received neither and Respondents' actions wrongfully nullified the votes of the citizens of Seat 5.

Third, and finally, Respondents concede they did not follow statutory deadlines and procedures but overlook the nature of the prejudice. Cf. Resp'ts' Br., 12. The reason Section 5-15-130 requires notice of a hearing, a hearing, a decision, filing the record, and notice of a decision to all be accomplished within the 48-hour deadline is so protests are decided and elections are certified *quickly*. This requires the complaining party to have the receipts in hand when the protest is filed so protracted disputes like this one do not become a feature of our electoral system. Departing from that mandatory statutory procedure was neither fair nor legal and it facilitated Respondents' fishing expedition to overturn the will of the voters.

CONCLUSION

For these additional reasons, 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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