

The Supreme Court of South Carolina

Dorchester County Democratic Party and Richard Hayes,
Respondents,

v.

Dorchester County Republican Party (Carroll Duncan, as Chairman), Colleton County Republican Party, Berkeley County Republican Party, Charleston County Republican Party, South Carolina Republican Party (Matt Moore as Executive Director & Chad Connolly as Chairman), Dorchester County Election Commission (Joshua Dickard as Executive Director), Colleton County Election Commission, Berkeley County Election Commission, Charleston County Election Commission, South Carolina State Election Commission (Marci Andino, as Executive Director & Chris Whitmire as Director of Public Information and Training), Sean Bennett, Mike Rose and Tony Piscatella, Defendants, of whom Dorchester County Republican Party (Carroll Duncan, as Chairman), Colleton County Republican Party, Berkeley County Republican Party, Charleston County Republican Party, South Carolina Republican Party (Matt Moore as Executive Director & Chad Connolly as Chairman), Dorchester County Election Commission (Joshua Dickard as Executive Director), Colleton County Election Commission, Berkeley County Election Commission, Charleston County Election Commission, South Carolina State Election Commission (Marci Andino, as Executive Director & Chris Whitmire as Director of Public Information and Training), Sean Bennett and Tony Piscatella, are Respondents, and Mike Rose, is Appellant.

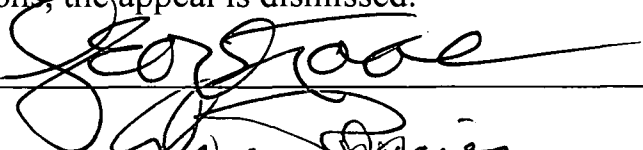
Appellate Case No. 2012-212691

ORDER

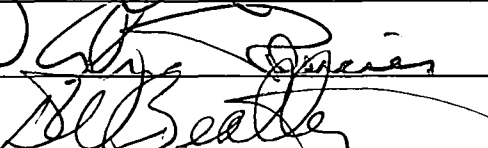
This is an appeal from an order of the circuit court holding Respondent Sean Bennett met the requirements of S.C. Code Ann. § 8-13-1356(B) (Supp. 2011) and was properly certified as the winner of the Republican primary for Senate District 38. Appellant, Mike Rose, who was allowed to intervene in the case before the circuit court, appealed the circuit court order. Bennett now moves to dismiss Rose's appeal. Rose has filed a return opposing the motion to dismiss.

Pursuant to S.C. Code Ann. § 7-17-560 (Supp. 2011), all protests or challenges to primary elections for Senate seats must be filed with the political party's State Executive Committee no later than noon on the Monday following the canvassing of votes.

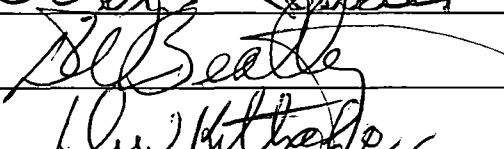
We find this action was improperly commenced in the circuit court since none of the parties attempting to protest the results of the primary exhausted the remedies set forth by the General Assembly. Where an adequate administrative remedy is available to determine a question of fact, one must pursue the administrative remedy or be precluded from seeking relief in the courts. *Hyde v. S.C. Dep't of Mental Health*, 314 S.C. 207, 442 S.E.2d 582 (1994). Declaratory relief is not generally available to one who has not exhausted administrative remedies. *Garris v. Governing Bd. of S.C. Reinsurance Facility*, 319 S.C. 388, 461 S.E.2d 819 (1995). See also *Brackenbrook N. Charleston, LP v. County of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004) (because taxpayers had an administrative refund remedy available to them, the circuit court erred in refusing to dismiss the action filed in circuit court for tax refunds without prejudice). Because this action was initiated in circuit court instead of by way of the procedure set forth by the General Assembly to protest primary elections, the appeal is dismissed.



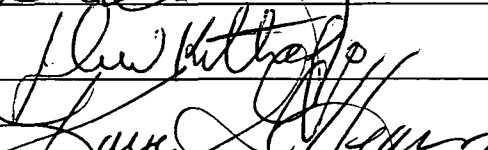
C.J.



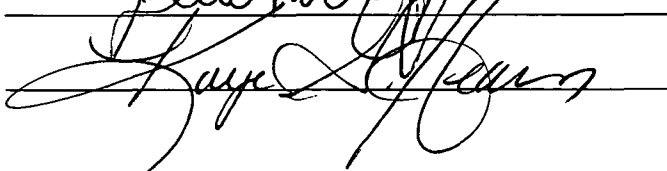
J.



J.



J.



J.

Columbia, South Carolina

September 5, 2012

cc:

Mike Rose

Joel W. Collins, Jr.

Amy Lynn Neuschafer

Logan McCombs Wells

J. Todd Kincannon

Christopher John Murphy

Robert Douglas Robbins

Mary Elizabeth (Liz) Crum

Amber B. Martella

Ariail Burnside Kirk

Karl Smith Bowers, Jr.

Matthew Todd Carroll

Tanya Amber Gee

James Emerson Smith, Jr.

Dylan Ward Goff

Samuel W. Howell, IV

Alan Boyd Linkous

Andrew T. Shepherd