

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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**MAY 24 2018**

APPEAL FROM MCCORMICK COUNTY  
Court of Common Pleas  
R. Lawton McIntosh, Circuit Court Judge

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S.C. SUPREME COURT

Appellate Case Number 2017-002583

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J.R. Jones, South Carolina Democratic Party, and  
McCormick County Democratic Party, ..... Appellants,

v.

South Carolina Republican Party, McCormick County  
Republican Party, and Clarke Anderson Stearns, ..... Respondents.

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***Initial Reply Brief of Appellants***

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James E. Smith  
JAMES E. SMITH, JR., P.A.  
1422 Laurel Street  
Columbia, SC 29201

E. Charles Grose, Jr.  
The Grose Law Firm, LLC  
404 Main Street  
Greenwood, SC 29646

William H. Alexander  
Law Office of William H. Alexander, LLC  
PO Box 449  
Barnwell, SC 29812

Tommy L. Stanford  
Stanford & Associates PC  
307 Main St  
Greenwood, SC 29646

***Attorneys for the Appellants***

## TABLE OF CONTENTS

Table of Contents.....	i
Table of Authorities .....	ii
Arguments.....	1
Question I	
The Circuit Court erred as a matter of law by not ruling that Clark Stearns does not meet the qualifications to be Sheriff of McCormick County, pursuant to S.C. Code Ann. § 23-11-110, when it was stipulated that Mr. Starnes did not have three years of experience as a law enforcement officer certified by the State of South Carolina .....	1
Question II	
The Circuit Court erred when it concluded the McCormick County Election Commission is the proper venue to challenge Clarke Stearns' qualifications to be Sheriff of McCormick County by interpreting S.C. Code Ann. § 23-11-110.....	3
Question III	
The Circuit Court erred by not issuing a writ of mandamus directing the appropriate officials withdraw certification of Clarke Stearns as meeting the qualifications to be Sheriff of McCormick County and take the steps necessary to remove him from office.....	5
Question IV	
Appellants did not fail to act with the requisite diligence in pursuing this lawsuit, and this Court should reject Respondent's request to affirm the circuit court based on the doctrine of laches as an additional sustaining ground. ....	7
Conclusion .....	9

## TABLE OF AUTHORITIES

### Cases

<i>Anderson v. S.C. Election Comm'n</i> , 397 S.C. 551, 725 S.E.2d 704 (2012).....	4, 5
<i>Florence Cty. Democratic Party v. Florence Cty. Republican Party</i> , 398 S.C. 124, 727 S.E.2d 418 (2012).....	5, 8
<i>I'On, L.L.C. v. Town of Mt. Pleasant</i> , 338 S.C. 406, 526 S.E.2d 716 (2000).....	8
<i>In re Miller</i> , 393 S.C. 248, 713 S.E.2d 253 (2011).....	7
<i>Janasik v. Fairway Oaks Villas Horizontal Prop. Regime</i> , 307 S.C. 339, 415 S.E.2d 384 (1992).....	4
<i>JRS Builders, Inc. v. Neunsinger</i> , 364 S.C. 596, fn. 2, 614 S.E.2d 629, fn. 2 (2005) ....	4, 5
<i>Pascoe v. Wilson</i> , 416 S.C. 628, 788 S.E.2d 686 (2016).....	6
<i>S.C. Pub. Interest Found. v. S.C. Dep't of Transportation</i> , 421 S.C. 110, 804 S.E.2d 854 (2017).....	6
<i>State v. Brown</i> , 284 S.C. 407, 326 S.E.2d 410 (1985).....	8
<i>Tempel v. S.C. State Election Comm'n</i> , 400 S.C. 374, 735 S.E.2d 453 (2012) .....	5
<i>Town of Mt. Pleasant v. Roberts</i> , 393 S.C. 332, 713 S.E.2d 278 (2011).....	1

### Statutes

S.C. Code Ann. § 2-1-150.....	7
S.C. Code Ann. § 7-17-10.....	3, 4
S.C. Code Ann. § 23-11-110.....	1, 2, 3, 4, 5, 6, 8
S.C. Code Ann. §25-1-2260.....	7
§ 23-11-110(A)(5).....	1, 2

### Rules

Rule 41(b), SCRCP.....	7
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## ARGUMENTS

### Question I

**The Circuit Court erred as a matter of law by not ruling that Clark Stearns does not meet the qualifications to be Sheriff of McCormick County, pursuant to S.C. Code Ann. § 23-11-110, when it was stipulated that Mr. Starnes did not have three years of experience as a law enforcement officer certified by the State of South Carolina.**

Whether Clarke Starnes meets the statutory qualifications to be a Sheriff in South Carolina is the central issue before this Court. The respondents attempt to recast that issue as:

Even on the merits, the Court should affirm because the ambiguous certification statute does not apply to sheriffs, and even if it does, Stearns obtained certification in South Carolina pursuant to the one-year exemption in the statute and, thus, the case is now moot.

Brief of Respondents at 15. This statement is incorrect for three reasons.

First, as discussed in the Brief of Appellants, at 5-8, S.C. Code Ann. § 23-11-110 is not ambiguous. The plain meaning of § 23-11-110(A)(5) requires Mr. Stearns to have three years of experience as a law enforcement officer certified by the South Carolina Criminal Justice Academy pursuant to section 23-23-10, *et. seq.* “Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011).

Second, the respondents incorrectly suggest “the certification statute does not apply to sheriffs.” Brief of Respondent at 15-16. S.C. Code Ann. § 23-11-110(A) opens by stating, “All sheriffs in this State must have the following qualifications.” After setting forth the educational and experience requirements to be sheriff, this subsection concludes,

“For purposes of this section, a ‘certified law enforcement officer’ is a person who has been issued a certificate as a law enforcement officer pursuant to Section 23-23-10. The certification requirement, accordingly, applies to sheriffs. Respondents rely on the following statement in section 23-23-10: “[N]or, unless specifically stated, may anything in this chapter affect any sheriff, or other law enforcement officer elected under the provisions of the Constitution of this State.” Brief of Respondents at 18 (emphasis supplied by Respondents). As seen, section 23-11-110(A)(5) makes this chapter applicable to the qualifications to be sheriff. Respondents position, therefore, is without merit.

Third, the respondents attempt to confuse the issue by contending Mr. “Stearns received certification in South Carolina pursuant to the one-year exemption under the statute and, therefore, the case is not moot.” Brief of Respondents at 16. The appellants, in fact, stipulated, “Mr. Stearns obtained his certification as a law enforcement officer in South Carolina from the South Carolina Criminal Justice Academy on September 6, 2017.” R. \*. That Mr. Stearns is now certified to be a law enforcement officer in our state still does not satisfy the experience requirement of section 23-11-110. As of the date of filing of this initial Reply Brief of Appellants, Mr. Stearns has 257 days experience as a law enforcement officer certified by the State of South Carolina, meaning he still does not meet the experience requirements to be a sheriff in our state. The case, therefore is not moot. Mr. Stearns lack of qualifications to be Sheriff is an ongoing statutory violation, which could be challenged by any citizen of McCormick County at any moment.

## Question II

**The Circuit Court erred when it concluded the McCormick County Election Commission is the proper venue to challenge Clarke Stearns' qualifications to be Sheriff of McCormick County by interpreting S.C. Code Ann. § 23-11-110.**

In their opening brief, at 8-10, Appellants explained why the McCormick County Election Commission was not the proper venue to challenge Mr. Stearns qualifications to be Sheriff. The authority of the election commission is a straight-forward application of S.C. Code Ann. § 7-17-10, *et. seq.* In their brief, Respondents attempt to recast this issue as:

The Court should affirm under the two-issue rule because Appellants did not appeal the circuit court's ruling on the issue of waiver and, therefore, it is not the law of the case.

Brief of Respondents at 5-7. And:

The circuit court properly declined the writ of mandamus because Appellants had an adequate remedy and waived their rights to challenge Stearns's qualifications by failing to appeal the Commission's decision to the State Election Commission.

Brief of Respondents at 7-15.

Respondents' two-issue rule argument is the proverbial "red herring." The circuit court did not include waiver in the detailed Form 4 ordered on November 6, 2017. R. \*. The more detailed order dated November 28, 2017 concluded, "The plaintiffs voluntarily and intentionally abandoned a known legal right by failing to appeal the Commission's decision to the State Election Commission and, therefore, waived the right to challenge Stearns's qualifications in this Court." R. \*. The Circuit Court's conclusion of law on waiver was dependent on the McCormick County Election Commission being the proper forum to challenge Mr. Stearns's qualifications to be sheriff. Appellants appealed this issue. If the McCormick County Election commission is not the proper forum to challenge

Mr. Stearns's qualifications, there is nothing to be waived. Stated another way, without a right to have the McCormick County Election Commission interpret S.C. Code Ann. § 23-11-110, nothing could be waived. *Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 344, 415 S.E.2d 384, 387 (1992) (“A waiver is a voluntary and intentional abandonment or relinquishment of a known right.”).

When arguing the McCormick County Election Commission was the proper forum to challenge Mr. Stearns's qualifications to be Sheriff, Respondents never address two important points. First, this Court recognized the distinction between being “asked to judge a disputed legislative election” and “to interpret a statute.” *Anderson v. S.C. Election Comm'n*, 397 S.C. 551, 555 725 S.E.2d 704, 706 (2012). Second, “the construction of a statute is a judicial function and responsibility.” *JRS Builders, Inc. v. Neunsinger*, 364 S.C. 596, 600, fn. 2, 614 S.E.2d 629, 631, fn. 2 (2005). Nothing in S.C. Code Ann. § 7-17-10, *et. seq.* grants a county commission the authority to interpret the meaning of a statute. Respondents continuously attempt to recast this issue as a dispute about the results of the election. It is not. The dispute is whether Mr. Stearns meets the experience requirements of section 23-11-110, a matter that requires the judiciary's intervention. As seen, Mr. Stearns' lack of qualifications is an on-going statutory violation, which could be challenged by any citizen at any moment.

### Question III

**The Circuit Court erred by not issuing a writ of mandamus directing the appropriate officials withdraw certification of Clarke Stearns as meeting the qualifications to be Sheriff of McCormick County and take the steps necessary to remove him from office.**

Section II of the Respondents' Brief also responds to Question III in Appellants' opening brief. Respondents, however, primarily focus on their assertion that the McCormick County Election Commission was the appropriate venue to interpret section 23-11-110. As seen, Respondents attempt to portray this dispute as a disputed election rather than an action "to interpret a statute," *Anderson*, 397 S.C. at 555, 725 S.E.2d at 706, when "the construction of a statute is a judicial function and responsibility." *JRS Builders, Inc.*, 364 S.C. at 600, fn. 2, 614 S.E.2d at 631, fn. 2. As this Court recognized in *Anderson*, the distinction between a disputed election and construction of a statute means a protest to the election commission was not an adequate remedy at law.

Respondents suggest, "Appellants cited no authority in support of their argument that a losing candidate, as well as the state and local party with which he is affiliated, has an alleged specific 'right for the Sheriff of McCormick County to meet the statutory qualifications for that office.'" Brief of Respondent at 14. First, this statement is not correct because Appellants rely on cases where this Court has recognized the right of citizens of our state to challenge the qualifications of a candidate. *See, e.g., Anderson, Florence Cty. Democratic Party v. Florence Cty. Republican Party*, 398 S.C. 124, 727 S.E.2d 418 (2012), *Tempel v. S.C. State Election Comm'n*, 400 S.C. 374, 735 S.E.2d 453 (2012). Second, Respondents cannot seriously argue the citizens of McCormick County do not have a right for their Sheriff to meet the qualifications for that office deemed necessary by our General Assembly. Third, this assertion is a thinly veiled attempt to

suggest Appellants do not have standing to bring this action, a claim Respondents did not make in the circuit court. Appellants have public importance standing. See *S.C. Pub. Interest Found. v. S.C. Dep't of Transportation*, 421 S.C. 110, 118, 804 S.E.2d 854, 859 (2017) (“[W]hen deciding whether to confer public importance standing, courts must take these competing policy concerns into consideration, and must also determine whether the party presents an issue of public importance and whether future guidance on that issue is needed.”). As seen, Mr. Stearns’s lack of qualifications is an on-going statutory violation, which could be challenged by any citizen at any moment. This Court’s intervention is needed not only to address Mr. Stearns’s qualifications pursuant to section 23-11-110 but also to provide guidance to the political parties to ensure this situation does not arise again in the future. If Respondents prevail in this case, public safety could be jeopardized by future elections of sheriffs that do not meet the statutory qualifications.

Finally, regarding Respondents’ suggestion that Appellants did not identify the person or entity against whom a mandamus would issue, Brief of Respondent at 14, Appellants’ Brief, at 11, argued, “Mr. Stearns had a duty to complete his filing affidavit accurately. The McCormick County Republican Party and South Carolina Republican Party had duties to certify only a candidate that met the statutory qualifications.” Mr. Stearns must correct his affidavit. The chairs of the McCormick County Republican Party and South Carolina Republican Party must decertify Mr. Stearns. Because of the “integrity of the parties involved,” *Pascoe v. Wilson*, 416 S.C. 628, 630, 788 S.E.2d 686, 687 (2016), Appellants are confident Respondents will comply with such a determination by this Court.

#### Question IV

**Appellants did not fail to act with the requisite diligence in pursuing this lawsuit, and this Court should reject Respondent's request to affirm the circuit court based on the doctrine of laches as an additional sustaining ground.**

This Court must reject Respondents' argument for two reasons.

First, the circuit court denied Respondents' motion to dismiss for failure to prosecute. R. \*. By written order dated October 18, 2017, the circuit court ruled, "Defendant's motion to dismiss for failure to prosecute [is] denied due to plaintiff attorney's service in the legislature and National Guard." R. \*. *See also* S.C. Code Ann. §§ 2-1-150 and 25-1-2260. The circuit court's ruling on this matter was supported by materials presented at the October 16, 2018 hearing. R. \*. The circuit court, accordingly, did not abuse its discretion. *In re Miller*, 393 S.C. 248, 256, 713 S.E.2d 253, 257 (2011) ("When reviewing a motion to dismiss for failure to prosecute pursuant to Rule 41(b), SCRCPP, an appellate court may reverse the trial court's decision upon an abuse of discretion. An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions." (internal citations and quotations omitted)).

Second, Respondents did not raise the doctrine of laches below. As this Court has held:

While the current rules do not require the respondent to present an issue to the lower court in order to raise it as an additional sustaining ground, an appellate court is less likely to rely on such a ground when the respondent has failed to present it to the lower court. In such cases, the appellate court likely would perceive it as being unfair or unwise to resolve a case on a ground never mentioned by the respondent prior to appeal. Stated another way, the respondent may raise an additional sustaining ground that was not even presented to the lower court, but the appellate court is likely to ignore it.

*I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 421, 526 S.E.2d 716, 724 (2000). This Court, therefore, should not consider the doctrine of laches as an additional sustaining ground.

As seen, Mr. Stearns' lack of qualifications is an on-going statutory violation, which could be challenged by any citizen of McCormick County at any moment. This Court's intervention is needed not only to address Mr. Stearns's qualifications pursuant to section 23-11-110 but also to provide guidance to the political parties to ensure this situation does not arise again in the future.

Finally, Respondents' Brief has an undertone suggesting this Court should excuse a failure to comply with section 23-11-110 if the candidate can sneak that lack of qualifications past the general election. This position offends the public policy of our state expressed in section 23-11-110. *State v. Brown*, 284 S.C. 407, 410, 326 S.E.2d 410, 412 (1985) ("The public policy of this State is derived by implication from the established law of the State, as found in its Constitution, statutes, and judicial decisions."). Although removal from office might seem to be a drastic measure, this Court has warned political parties that improperly certify candidates for office proceed "at their own peril." *Florence Cty. Democratic Party*, 398 S.C. at 130, 727 S.E.2d at 421. *And see Tempe* (ordering special primary election after unqualified candidate appeared on ballot).

## CONCLUSION

This Court should reverse the Circuit Court, enter an order declaring Clark Stearns does not meet the qualifications to be Sheriff of McCormick, and direct the appropriate officials take the steps necessary to decertify Mr. Stearns as candidate and remove him from office.

Respectfully Submitted,

By: 

James E. Smith  
JAMES E. SMITH, JR., P.A.  
1422 Laurel Street  
Columbia, SC 29201  
(803) 993-9800

E. Charles Grose, Jr.  
The Grose Law Firm, LLC  
404 Main Street  
Greenwood, SC 29646  
(864) 538-4466

William H. Alexander  
Law Office of William H. Alexander, LLC  
PO Box 449  
Barnwell, SC 29812  
(803) 571-0039

Tommy L. Stanford  
Stanford & Associates PC  
307 Main St  
Greenwood, SC 29646  
(864) 229-3987

*Attorneys for Appellants*

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*Certificate of Service*

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I certify that I have served the Initial Reply Brief of Appellants and Designation of Matter to be Included in the Record on Appeal on the respondents by placing a copy in the United States Mail, postage prepaid, on the date reflected below, addressed to:

Robert E. Tyson, Jr., Esquire  
Vordman Carlisle Traywick, Esquire  
SOWELL GRAY ROBINSON STEPP & LAFFITTE, LLC  
1310 Gadsden Street  
Post Office Box 11449  
Columbia, SC 29211

*Attorneys for Respondent Clarke Anderson Stearns*

Karl S. Bowers, Jr., Esquire  
BOWERS LAW OFFICE LLC  
P.O. Box 50549  
Columbia, South Carolina 29250

*Attorney for Respondents South Carolina Republican Party and  
McCormick County Republican Party*



William H. Alexander  
Law Office of William H. Alexander, LLC  
PO Box 449  
Barnwell, SC 29812  
(803) 571-0039

May 21, 2018