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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM MCCORMICK COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2017-002583

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

vs.

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

JOINT FINAL BRIEF OF RESPONDENTS SOUTH CAROLINA REPUBLICAN PARTY, MCCORMICK COUNTY REPUBLICAN PARTY, AND CLARKE ANDERSON STEARNS

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COUNTERSTATEMENT OF THE ISSUES ON APPEAL

I. Should the Court 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 now the law of the case?

II. Did the circuit court properly decline to issue a writ of mandamus because Appellants had an adequate legal remedy and waived their right to challenge Clarke Stearns's qualifications by failing to appeal the McCormick County Election Commission's decision to the State Election Commission?

III. Even on the merits, should the Court 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?

IV. As an additional sustaining ground, should the Court affirm because Appellants failed to act with the requisite diligence in pursuing this election protest and, therefore, their claims are barred under the laches doctrine?

COUNTERSTATEMENT OF THE CASE

This appeal arises out of a protest of an election Respondent Clarke Stearns won by a margin of seventeen percentage points, 57% to 40%, over a year and a half ago. (R. p. 13). On November 8, 2016, Appellant J.R. Jones ran as the Democratic nominee and Stearns ran as the Republican nominee in the race for sheriff of McCormick County. Id. After losing the election, Jones filed a formal protest with the McCormick County Election Commission (the Commission) in a letter dated November 16, 2016. (R. p. 26). In the notice of protest, Jones advised he was "submitting this letter in formal protest of the November 8, 2016 McCormick County Sheriff's Race" and alleged that "Mr. Stearns does not meet the qualifications set forth by the State of South Carolina." Id.

The Commission held a hearing on Jones's election protest on November 21, 2016. (R. pp. 161–210). At the hearing, Jones's counsel informed the Commission he was also there on behalf of the South Carolina Democratic Party and the McCormick County Democratic Party (collectively "Appellants"). (R. p. 165). Stearns moved to dismiss the protest. (R. pp. 171–76). In response, Appellants' counsel defended the decision to file the protest with the Commission and argued it had authority to decide issues of qualifications. (R. pp. 176–78). The Commission agreed with Appellants, denied the motion to dismiss, and proceeded to the merits of the protest. (R. pp. 208–09). After hearing arguments from both parties, the Commission denied the protest.[1] (R. p. 209). Appellants did not appeal the Commission's ruling to the State Election Commission. Instead, on December 7, 2016, Appellants filed a verified complaint in circuit court, seeking

[1] Although Appellants failed to mention the outcome of the hearing in their Statement of the Case, App. Br. at 2, the Commission did rule upon the merits of the election protest challenging Stearns's qualifications. (See R. p. 209).

various forms of equitable relief. (R. pp. 29–36). Appellants later filed an amended complaint that removed then-Governor Nikki R. Haley as a defendant. (R. pp. 45–52).

Almost a month later, on January 3, 2017, Appellants filed a motion for a temporary restraining order and a temporary injunction, and Stearns filed a response in opposition. (R. pp. 53–82). Following a hearing on January 6, 2017, the circuit court issued an order denying Appellants' motion for a temporary injunction. (R. pp. 219–318, 1–5). Appellants made no attempt to appeal this order. Aside from serving responses denying Stearns's requests for admission, Appellants took no further action to litigate this case in circuit court. (R. pp. 101–02). Nearly nine months later, Stearns filed a motion to dismiss for failure to prosecute or, in the alternative, a motion for summary judgment based upon the mootness doctrine. (R. pp. 107–14). A hearing on the motions was held on October 16, 2017. (R. pp. 319–342). The circuit court denied the motion to dismiss in a Form 4 order and took the motion for summary judgment under advisement. (R. pp. 6–8).

The parties appeared for a bench trial on October 18, 2017. (R. pp. 343–63). After counsel agreed to stipulate to the relevant facts, the circuit court determined an evidentiary hearing was not necessary. (R. pp. 352–53). The parties subsequently filed a joint stipulation of facts and submitted their respective briefs for the court's review. (R. pp. 115–41). On November 6, 2017, the circuit court issued a Form 4 order in which it gave a tentative ruling and requested that Respondents "prepare a formal order incorporating this order, the stipulations of fact, and the oral and written arguments presented." (R. pp. 9–11). Appellants then filed a motion to alter or amend judgment. (R. pp. 158–60). Prior to filing a final order, the circuit court gave the parties an opportunity to file responses to each other's post-trial briefs. (See R. pp. 142–57).

Following a complete consideration of the evidence and arguments of counsel, the circuit court issued a final order in which it denied Appellants' request for a writ of mandamus and entered a verdict in favor of Respondents. (R. pp. 12–22). The court declined to issue a writ of mandamus because Appellants had an adequate remedy at law, and Appellants waived their right to challenge Stearns's qualifications in circuit court by failing to appeal the Commission's decision to the State Election Commission. (R. p. 21). Further, the court found their claims were barred under the doctrines of law of the case, collateral estoppel, and waiver. (R. pp. 18, 20). Thereafter, the court dismissed McCormick County from the case and issued an order denying Appellants' motion to alter or amend judgment. (R. pp. 23–25). This appeal followed.

STANDARD OF REVIEW

This Court has long recognized that "[t]he law requires more than ordinary diligence on the part of those who . . . contest an election." State ex rel. Howell v. State Bd. of Canvassers, 101 S.C. 513, 515, 86 S.E. 81, 81 (1915) (quoting Boyle v. McCown, 97 S.C. 15, 19, 81 S.E. 310, 311 (1914)). Further, "[t]he Court will employ every reasonable presumption to sustain a contested election." Broadhurst v. City of Myrtle Beach Election Comm'n, 342 S.C. 373, 379, 537 S.E.2d 543, 546 (2000). Although the requested relief has been somewhat of a moving target, Appellants conceded at the outset of the bench trial—which occurred almost a year after the election they sought to contest—that the crux of the relief they were seeking at that stage was a writ of mandamus. (R. pp. 343–44). "Whether to issue a writ of mandamus lies within the sound discretion of the [circuit] court, and an appellate court will not overturn that decision unless the [circuit] court abuses its discretion."[2] Charleston Cty. Sch. Dist. v. Charleston Cty. Election

[2] Appellants contend "[t]he primary question before this Court is whether Clarke Stearns meets the statutory qualifications to be Sheriff of McCormick County," arguing for a de novo standard of review, even though they concede in the very next sentence that "[t]he [c]ircuit [c]ourt did not rule on this issue." App. Br. at 5. This is not the primary question before the Court. The only question before the Court is whether the

Comm'n, 336 S.C. 174, 179, 519 S.E.2d 567, 570 (1999). An abuse of discretion arises when the circuit court's decision was controlled by an error of law or based upon factual conclusions that are without evidentiary support. Id. "In reviewing a decision on a mandamus petition, an appellate court will not disturb the factual findings of the [circuit] court when those findings are supported by any reasonable evidence." Id. at 179–80, 519 S.E.2d at 570.

ARGUMENT

Appellants seek to raise three issues on appeal. As Appellants readily admit, the first issue was not addressed by the circuit court. In the second issue, Appellants essentially challenge their own decision on where to file this election protest. Last, in their third issue, Appellants ask this Court to issue a writ of mandamus directing the "appropriate officials"—whoever they might be—to decertify Stearns from the ballot in an election he won over eighteen months ago and to remove him from office. In raising these issues, Appellants fail to address why the circuit court refused to issue a writ of mandamus in the first place: Appellants already raised the same issue regarding Stearns's qualifications to the Commission. Appellants lost, and they never appealed that ruling. For the reasons set forth below, Appellants' arguments are without merit and the Court should affirm the circuit court's order.

I. 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 now the law of the case.

At the outset, the Court should affirm the circuit court's order pursuant to the two-issue rule because Appellants failed to appeal the circuit court's ruling on the issue of waiver and, therefore, it is now the law of the case.

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circuit court properly declined to issue a writ of mandamus because Appellants had an adequate remedy at law and waived the right to bring their challenge in circuit court after failing to appeal the Commission's decision to the State Election Commission. Thus, contrary to Appellants' assertions, this Court's review of the circuit court's order is under an abuse of discretion standard.

"Under the two-issue rule, whe[n] a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case." Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 328, 730 S.E.2d 282, 284 (2012) (quoting Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010)). Our appellate courts have long held that an unappealed ruling, "right or wrong, is the law of the case and requires affirmance." Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 160–61, 177 S.E.2d 544, 544 (1970). As this Court has noted, although the two-issue rule typically arises in the context of reviewing "general jury verdicts," it also applies to "situations not involving a jury," including the "affirmance of orders of [circuit] courts." Jones, 387 S.C. at 346, 692 S.E.2d at 903–04 (quoting Anderson v. S.C. Dep't Highways & Pub. Transp., 322 S.C. 417, 420 n.1, 472 S.E.2d 253, 255 n.1 (1996)).

In seeking to reframe the issues on appeal, Appellants failed to appeal the actual order entered by the circuit court. Importantly, Appellants failed to appeal the circuit court's holding that they "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 [circuit c]ourt." (R. p. 21); see also Parker v. Parker, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994) ("Waiver is a voluntary and intentional abandonment or relinquishment of a known right."). The word waive does not appear once in Appellants' brief, nor does any derivation of the word. In section II of their brief, Appellants only argue—in conclusory fashion without any citation to authority—the circuit court erred in its rulings upon the law-of-the-case and collateral estoppel doctrines. But Appellants assigned no error to the circuit court's analysis or holding on the issue of waiver in their brief,[3] and the court's ruling on this

[3] Further, Appellants cannot challenge the waiver issue for the first time in their reply brief. See, e.g., Glasscock, Inc. v. U.S. Fid. & Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 691–92 (Ct. App. 2001) (holding

separate and distinct ground is now the law of the case. See Buckner, 255 S.C. at 160–61, 177 S.E.2d at 544 (holding an unappealed ruling, "right or wrong, is the law of the case").

Because the circuit court's ruling on the issue of waiver is now the law of the case, this Court must affirm. See Atl. Coast Builders, 398 S.C. at 328, 730 S.E.2d at 284; Jones, 387 S.C. at 346, 692 S.E.2d at 903–04; Buckner, 255 S.C. at 160–61, 177 S.E.2d at 544; see also Rule 220(c), SCACR (asserting an "appellate court may affirm any ruling, order, decision[,] or judgment upon any ground(s) appearing in the Record on Appeal").

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

Turning to the dispositive question before the Court, the circuit court properly declined to issue a writ of mandamus because Appellants had an adequate remedy at law and waived their right to challenge Stearns's qualifications by failing to appeal the Commission's decision to the State Election Commission.

"To obtain a writ of mandamus requiring the performance of an act, the petitioner must show: (1) a duty of respondent to perform the act; (2) the ministerial nature of the act; (3) the petitioner's specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy." Wilson v. Preston, 378 S.C. 348, 354, 662 S.E.2d 580, 582–83 (2008). "Mandamus is the highest judicial writ and is issued only when there is a specific right to be enforced, a positive legal duty to be performed, and no other specific remedy." City of Rock Hill v. Thompson, 349 S.C. 197, 199, 563 S.E.2d 101, 102 (2002). "The primary purpose of a writ of mandamus is to enforce an established right and a corresponding imperative duty created or

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"an argument made in a reply brief cannot present an issue to the appellate court if it was not addressed in the initial brief" and, therefore, will be "deemed abandoned"); Bochette v. Bochette, 300 S.C. 109, 112, 386 S.E.2d 475, 477 (Ct. App. 1989) ("An appellant may not use either oral argument or the reply brief as a vehicle to argue issues not argued in the appellant's brief.").

imposed by law." Ex parte Littlefield, 343 S.C. 212, 223, 540 S.E.2d 81, 86 (2000). "When the legal right is doubtful, or the performance of duty rests in discretion, or when there is another adequate remedy, a writ of mandamus cannot rightfully be issued." In re Lyde, 284 S.C. 419, 421, 327 S.E.2d 70, 71 (1985).

Appellants agreed at the October 18, 2017 hearing that the crux of the relief they were seeking at that stage was a writ of mandamus. (R. pp. 343–44). Indeed, as the circuit court noted at the hearing, even if Appellants were to obtain a declaratory judgment, they could not receive their requested remedy—having Stearns removed from office—without the concomitant relief of a writ of mandamus. Id. Whether to issue a writ of mandamus was the only issue on which the circuit court ruled in its final order. Interestingly, Appellants offered minimal analysis on this issue:

> 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. These acts are ministerial in nature. The appellants have a right for the Sheriff of McCormick County to meet the statutory qualifications for that office. No other legal remedy exists. As seen in Question II, *supra*, the courts of our State—not the McCormick County Board of Canvassers—is the proper venue to interpret statutes and determine qualifications for elected office.

App. Br. at 11. Although Appellants give the mandamus issue short shrift, this is the only issue properly before the Court. As explained in greater detail below, the circuit court properly declined to issue a writ of mandamus because Appellants had available a known adequate remedy at law and chose not to avail themselves of that remedy.

The General Assembly has vested county election commissions[4] with the authority to "decide all cases under protest or contest that arise in their respective counties in the case of county

[4] The relevant statutes refer to a county election commission as a "county board of canvassers" and the State Election Commission as the "State Board of Canvassers." In McCormick County, the county election

officers and less than county offices, except for primaries and municipal elections." S.C. Code Ann. § 7-17-30 (Supp. 2016) (emphasis added).[5] "Appeals from county election boards are to be made to the South Carolina State Election Commission." In re November 4, 2008 Bluffton Town Council Election, 385 S.C. 632, 638, 686 S.E.2d 683, 686 (2009); see also S.C. Code Ann. § 7-17-60 (1976) ("The decision of the county board may be appealed to the State Board of Canvassers by any candidate adversely affected thereby. Notices of such appeal and the grounds thereof shall be made no later than noon Monday next following such decision by serving such notices on the chairman of the State Board."). Further, the State Election Commission's decision is subject to review by this Court. See S.C. Code Ann. § 7-17-270 (Supp. 2016) ("Appeals from decisions of the State Board shall be taken directly to the Supreme Court on petition for a writ of certiorari only based on the record of the State Board hearing and shall be granted first priority of consideration by the Court."); Rule 201(a), SCACR (providing that "review of decisions of the State Board of Canvassers in election cases shall be by petition for a writ of certiorari"). As this Court has recognized for well over a century, however, "the determination by the [c]ounty [b]oard is to stand as final and conclusive, unless its force is impaired by the action of the State Board." State v. Walker, 5 S.C. 263, 265 (1874).

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commission is called the Department of Voter Registration and Elections for McCormick County. Regardless of which moniker is assigned to these entities, they are both election commissions for all intents and purposes. See, e.g., S.C. Code Ann. § 7-17-10 (Supp. 2016) ("The commissioners of election . . . shall proceed to organize as the county board of canvassers."); S.C. Code Ann. § 7-17-210 (1976) ("The State Election Commission shall, ex officio, constitute the State Board of Canvassers.").

[5] To date, Appellants have not addressed section 7-17-30 in any filing submitted in this case. Section 7-17-20 of the South Carolina Code (1976) only addresses the vote-canvassing function of county election commissions—it has nothing to do with defining the parameters of election protests. That function of county election commissions is addressed in section 7-17-30. Failing to acknowledge the existence of the statute does not make it go away.

The Commission denied Appellants' protest challenging Stearns's qualifications at the conclusion of the hearing held on November 21, 2016.[6] (R. p. 209). Accordingly, the only means by which Appellants could seek review of that decision was by filing a notice of appeal with the State Election Commission prior to noon on Monday, November 28, 2016. See S.C. Code Ann. § 7-17-60. Appellants, however, failed to appeal the Commission's decision. Instead, Appellants filed a verified complaint in circuit court on December 7, 2016, seeking various forms of equitable relief. "While equitable relief is generally available whe[n] . . . no adequate remedy at law [exists], an adequate legal remedy may be provided by statute." Key Corp. Capital, Inc. v. Cty. of Beaufort, 373 S.C. 55, 61, 644 S.E.2d 675, 678 (2007). Indeed, a "court's equitable powers must yield in the face of an unambiguously worded statute." Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989).

Here, an adequate remedy at law does exist, and the General Assembly unambiguously provided for it in sections 7-17-30, -50, -60, -70, -250, and -270 of the South Carolina Code (1976 & Supp. 2016). See Wilson, 378 S.C. at 354, 662 S.E.2d at 582–83 ("To obtain a writ of mandamus requiring the performance of an act, the petitioner must show . . . a lack of any other legal remedy."). Nothing is inadequate about the remedy of appealing the Commission's decision to the State Election Commission. See S.C. Code Ann. § 7-17-60. Appellants still could have appealed the State Election Commission's decision to this Court. See S.C. Code Ann. § 7-17-250 & -270; Rule 201(a), SCACR. But Appellants chose to ignore the available legal remedy at their own peril, and they were not permitted to receive another bite at the apple by attempting to invoke the circuit court's equitable powers. See Santee Cooper Resort, Inc., 298 S.C. at 185, 379 S.E.2d

[6] Appellants' assertion that "[t]he only issue decided by the McCormick County Election Commission was whether Mr. Stearns got more votes than Mr. Jones," App. Br. at 9, is a misrepresentation of the record. A review of the Commission hearing transcript reveals the protest before that body, in Appellants' counsel's own words, was "based [on] qualifications." (R. p. 177).

at 123. Indeed, this Court has already held that the statutory process for protesting elections constitutes an adequate legal remedy that forecloses the possibility of seeking a mandamus. See Smith v. Hendrix, 265 S.C. 417, 422, 219 S.E.2d 312, 314 (1975) (noting the petitioner sought "to avoid the application of the protest statutes by characterizing th[e] action as a [m]andamus proceeding," and finding his argument "aborted a[t] its inception" because "he had an adequate remedy under the protest statute," and it is "settled law that where there is other adequate remedy, a writ of [m]andamus cannot rightfully issue").

Because Appellants circumvented the appellate process outlined in the protest statutes, which afforded an adequate remedy at law, the circuit court properly declined to issue a writ of mandamus in this case. The circuit court correctly noted that having it "step into the shoes of the State Election Commission by styling the action as one for equitable relief would not only create an end-run around the statute, but also would go against the longstanding principle that a party may not invoke the [c]ourt's equitable powers when an adequate remedy at law exists." (R. p. 18).

Curiously, Appellants now take the position that the Commission was not "the appropriate venue to resolve this controversy." App. Br. at 9. Appellants, however, filed the protest in that forum and asked the Commission to rule upon their challenge to Stearns's qualifications.[7] (R. pp. 26, 166–70). It makes little sense for Appellants to criticize the choice of forum when the decision of where to file this action rested solely with Appellants. Further, Appellants' argument to the circuit court and this Court is the exact opposite of what they articulated at the hearing before the Commission. In response to Stearns's motion to dismiss at the Commission, Appellants defended their decision to file the protest with the Commission, arguing the Commission could decide issues

[7] At the hearing, counsel for Appellants reiterated on multiple occasions that their challenge to Stearns's qualifications was the only question before the Commission in this election protest. (See, e.g., R. pp. 164, 166, 168, 169, 177, 207).

of qualifications. (R. pp. 176–78). According to Appellants, all of whom were represented by counsel at the Commission hearing, "nothing in the statute . . . says it is limited to voting irregularities. These are the protests of an election and we have an election in which a timely protest was filed[, and] there's nothing that says that [the Commission does not] have the power to look at the qualifications of Mr. Stearns." (R. p. 177). The Commission agreed with Appellants, denied Stearns's motion to dismiss, and ruled upon the merits of the protest. (R. pp. 208–09).

Appellants chose their path for contesting Stearns's qualifications, and they were required to follow it through to the end. Notably, the Commission reminded Appellants of their right to appeal this matter to the State Election Commission after their protest was denied. (R. p. 209). Thus, Appellants knew they had this right. But Appellants chose not to file a notice of appeal and now take the position that the Commission could not decide this case. Because Appellants voluntarily abandoned their known right to appeal the Commission's decision to the State Election Commission, they waived their right to challenge Stearns's qualifications in circuit court. See Parker, 313 S.C. at 487, 443 S.E.2d at 391 ("Waiver is a voluntary and intentional abandonment or relinquishment of a known right."). Simply put, Appellants cannot skip the statutory appellate process and then try to invoke the circuit court's equitable jurisdiction to raise the same issue. Appellants had complete control over the choice of forum, and their failure to avail themselves of a known adequate legal remedy precluded them from litigating the same issue in circuit court. In addition to the waiver analysis, Appellants' claims are barred by the law-of-the-case and collateral estoppel doctrines.

The law-of-the-case doctrine "applies to an order or ruling which finally determines a substantial right." Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) (quoting Weil v. Weil, 299 S.C. 84, 89, 382 S.E.2d 471, 473 (Ct. App. 1989)). It is

axiomatic that "[a]n unappealed ruling is the law of the case." Id. The law-of-the-case doctrine is "based upon sound policy that when an issue is once litigated and decided, that should be the end of the matter." United States v. U.S. Smelting Ref. & Mining Co., 339 U.S. 186, 198 (1950). Here, the Commission's denial of Appellants' protest constituted a final ruling on the merits that determined a substantial right. Because Appellants failed to appeal that final ruling to the State Election Commission, it became the law of the case and they were barred from litigating it again in circuit court. See Shirley's Iron Works, Inc., 403 S.C. at 573, 743 S.E.2d at 785 ("An unappealed ruling is the law of the case."); Walker, 5 S.C. at 265 (asserting that "the determination by the [c]ounty [b]oard is to stand as final and conclusive, unless its force is impaired by action of the State Board").

Additionally, Appellants' challenge to Stearns's qualifications in circuit court was barred by the collateral estoppel doctrine. "Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." Carolina Renewal, Inc. v. S.C. Dep't of Transp., 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). Our appellate courts have "repeatedly held that, under the doctrine of . . . collateral estoppel, the decision of an administrative tribunal precludes the relitigation of the issues addressed by that tribunal in a collateral action." Bennett v. S.C. Dep't of Corr., 305 S.C. 310, 312, 408 S.E.2d 230, 231 (1991). "[T]he mutuality [of parties] requirement is not necessary for application of collateral estoppel whe[n] the party against whom estoppel is asserted had a full and fair opportunity to litigate the issues." Carolina Renewal, Inc., 385 S.C. at 554, 684 S.E.2d at 782. Courts have applied collateral estoppel even when one of the parties "was not a party to the initial . . . lawsuit." Id. at 555, 684 S.E.2d at 782. As noted above, all Appellants were represented by counsel at the Commission

hearing. Thus, although Jones technically filed the initial protest, collateral estoppel still applies to all Appellants—who had a fair opportunity to litigate this issue—and their claims are barred.

Finally, Appellants failed to articulate any legal grounds supporting the remaining three elements required for a writ of mandamus to issue. 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." Cf. In re Lyde, 284 S.C. at 421, 327 S.E.2d at 71 (stating "[w]hen the legal right is doubtful, . . . a writ of mandamus cannot rightfully be issued"). More importantly, though, Appellants cannot even identify the person or entity against whom a mandamus would issue. Perhaps this struggle emanates from the fact that none of the parties on appeal have the authority to remove a sitting sheriff from office.

Although the Anderson line of cases[8] stands for the proposition that political parties can remove candidates from a primary ballot prior to the general election, Appellants have cited no legal authority under which a political party could remove a public official from office following an election and after he takes the oath of office. Indeed, none exists. And we are well past the stage of a party determining whether a candidate is qualified to run for office. Appellants seem to take the position that Stearns is no longer sheriff as a matter of law if the Court determines he does not meet the qualifications for office. App. Br. at 10. Again, Appellants failed to cite any authority in support of the proposition that Stearns would no longer be sheriff "as a matter of law." Contrary to Appellants' assertions, that is not the effect of a declaratory judgment. A court would still have to order someone to remove Stearns from office.

[8] See Anderson v. S.C. Election Comm'n, 397 S.C. 551, 725 S.E.2d 704 (2012) (per curiam); Florence Cty. Democratic Party v. Florence Cty. Republican Party, 398 S.C. 124, 727 S.E.2d 418 (2012) (per curiam); Tempel v. S.C. State Election Comm'n, 400 S.C. 374, 735 S.E.2d 453 (2012).

At this point, only the Governor of South Carolina could remove Stearns from office, and he is not a party to this lawsuit. Even if he were, the decision of whether to remove the sheriff is discretionary and, therefore, not susceptible of a mandamus. See S.C. Code Ann. § 1-3-240(A)(3) (Supp. 2017) ("Any officer of the county . . . who is guilty of malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity must be subject to removal by the Governor upon any of the foregoing causes being made to appear to the satisfaction of the Governor." (emphasis added)); In re Lyde, 284 S.C. at 421, 327 S.E.2d at 71 (asserting that, "[w]hen the legal right is doubtful, or the performance of duty rests in discretion, . . . a writ of mandamus cannot rightfully be issued").

In light of the foregoing, the Court should affirm the circuit court's order declining to issue a writ of mandamus. Appellants had a specific legal remedy, failed to avail themselves of that remedy, and waived their right to challenge Stearns's qualifications in circuit court. Further, Appellants still cannot articulate how and against whom a mandamus would issue—or any other elements required for this drastic form of relief—and, thus, their claim fails as a matter of law.

III. 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.

As a preliminary matter, the Court should decline to reach the merits of Appellants' request for a declaratory judgment regarding the certification statutes because its resolution of prior issues would be dispositive in this case. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (declining to address the remaining issues because resolution of a prior issue was dispositive). Further, for the reasons set forth above, Appellants' request for a declaratory judgment is barred because Appellants had an adequate remedy at law under the protest statutes and failed to avail themselves of this remedy. See, e.g., Smith v. S.C. Ret. Sys.,

336 S.C. 505, 527, 520 S.E.2d 339, 351 (Ct. App. 1999) ("[I]t is well settled that a court ordinarily will refuse to grant a declaratory judgment whe[n] a special statutory remedy has been provided."). If, however, the Court decides to reach the merits, the Court should affirm because (1) either the certification statute does not apply; or (2) even if it does, Stearns received certification in South Carolina pursuant to the one-year exemption under the statute and, therefore, the case is now moot.

As our appellate courts have observed, a justiciable controversy must exist before any action may be maintained. Byrd v. Irmo High Sch., 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996). "The court does not concern itself with moot or speculative questions." Sloan v. Greenville Cty., 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009). "A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy." Mathis v. S.C. State Highway Dep't, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). "Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief." Sloan, 380 S.C. at 535, 670 S.E.2d at 667.

On September 6, 2017, the South Carolina Criminal Justice Academy issued a letter certifying Stearns as a South Carolina Class One Law Enforcement Officer. (R. p. 114). Thus, Stearns is now certified in South Carolina. Given that Stearns has met any and all statutory requirements to serve as a sheriff in South Carolina, this action is now moot because a judgment, if rendered, would have no practical effect upon the existing controversy. See Mathis, 260 S.C. at 346, 195 S.E.2d at 715; Sloan, 380 S.C. at 535, 670 S.E.2d at 667.

Appellants contend that a justiciable controversy still exists because Stearns allegedly was not qualified at the time he filed to run for sheriff of McCormick County and still is not qualified. Stearns disputes this notion and directs the Court to the statute that outlines the qualifications for the office of sheriff. It does not say "all candidates for sheriff," and the Court cannot read that

language into the statute. Further, the statute does not say three years of experience as a certified law enforcement officer in South Carolina. Rather, the relevant subsection at issue requires that a sheriff have "three years experience as a certified law enforcement officer." S.C. Code Ann. § 23-11-110(A)(5)(b) (Supp. 2017). Stearns had more than three years of experience as a certified law enforcement officer in Virginia and was eligible for an exemption under the statute. As explained in greater detail below, a reasonable construction of the ambiguous statutes at issue compels a finding that Stearns meets the qualifications and, thus, should be allowed to continue serving as sheriff of McCormick County. To hold otherwise would lead to an absurd result of removing a sitting sheriff from office eighteen months after he was elected and preventing any qualified law enforcement officer who was trained in another state from serving as sheriff in South Carolina.

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the [General Assembly]." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." Miller v. Doe, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994). When a statute is ambiguous, however, a court must construe the terms of the statute according to settled rules of statutory construction. Lester v. S.C. Workers' Compensation Comm'n, 334 S.C. 557, 561, 514 S.E.2d 751, 752 (1999).

"It is well settled that statutes dealing with the same subject matter are in para materia and must be construed together, if possible, to produce a single, harmonious result." Joiner ex rel. Rivas v. Rivas, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000). "However, regardless of how plain the ordinary meaning of the words in a statute, courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not have been intended by the General

Assembly." Duke Energy Corp. v. S.C. Dep't of Revenue, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016). "If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect." Kiriakides v. United Artists Commc'ns, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994).

The statute outlining the qualifications for sheriff provides, in relevant part for Stearns, that all sheriffs must have "obtained a two-year associate degree and three years' experience as a certified law enforcement officer." S.C. Code Ann. § 23-11-110(A)(5)(b). Further, the statute indicates that, "[f]or 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 [s]ection 23-23-10." S.C. Code Ann. § 23-11-110(A)(5). Unlike the prior version of the statute, the current version of section 23-11-110 does not cross-reference the specific provision defining a law enforcement officer. Rather, it cites to the entire section outlining the purpose for adopting standards for law enforcement officers. Interestingly, in one of the first subsections of section 23-23-10, the General Assembly provided that, "nor, 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." S.C. Code Ann. § 23-23-10(B) (Supp. 2017) (emphasis added). In Stearns's view, the Court's inquiry ends here. Even when turning to the definition of law enforcement officer, that subsection provides as follows:

> "Law enforcement officer" means an appointed officer or employee hired by and regularly on the payroll of the State or any of its political subdivisions, who is granted statutory authority to enforce all or some of the criminal, traffic, and penal laws of the State and who possesses, with respect to those laws, the power to effect arrests for offenses committed or alleged to have been committed.

S.C. Code Ann. § 23-23-10(E)(1) (Supp. 2017) (emphasis added). Because subsection 23-23-10(E)(1) does not define certification, the Court must look to the relevant provisions in chapter 23

to determine what certification means in this context. See Rivas, 342 S.C. at 109, 536 S.E.2d at 375 (asserting that "statutes dealing with the same subject are in para materia and must be construed together, if possible, to produce a single, harmonious result").

Assuming some certification is necessary, as section 23-11-110 indicates, it is instructive to look at section 23-23-40. According to the certification statute,

> No law enforcement officer employed or appointed on or after July 1, 1989, by any public law enforcement agency in this State is authorized to enforce the laws or ordinances of this State or any political subdivision thereof unless he has been certified as qualified by the council, except that any public law enforcement agency in this State may appoint or employ as a law enforcement officer, a person who is not certified if, within one year after the date of employment or appointment, the person secures certification from the council . . . . Exceptions to the one-year rule may be granted by the director in these cases:
>
> . . . .
>
> > (3) upon presentation of documentary evidence that the officer-candidate has successfully completed equivalent training in one of the other states which by law regulate and supervise the quality of police training and which require a minimum basic or recruit course of duration and content at least equivalent to that provided in this chapter or by standards set by the council . . . .

S.C. Code Ann. § 23-23-40(3) (Supp. 2017). Thus, the statute vests discretion in the director of the South Carolina Criminal Justice Academy to determine whether another state's training is equivalent to that which is offered in South Carolina for purposes of certification. See id.; see also S.C. Code Ann. Regs. § 37-006(A) ("All candidates who have received law enforcement training in other states shall submit satisfactory proof of successful completion and a verified copy of the courses taken. Training will be reviewed on a case by case basis and each candidate will be given credit for any training deemed to be equivalent to training offered by the Academy. All candidates must successfully complete a training program approved by the Council.").

The qualifications and certification statutes, when read together, can only lead to one of two conclusions: (1) none of section 23-23-10 applies to sheriffs; or (2) even if it does apply, the sheriff is eligible for the one-year exemption—just as any other law enforcement officer would be—because he received training in another state. Under either interpretation, Stearns is qualified to stay in the office to which he was duly elected by a large majority of the voters of McCormick County. To the extent the latter interpretation applies, the statute contemplates Stearns taking office and then applying for the one-year exemption with the director of the South Carolina Criminal Justice Academy. Because Stearns was a certified law enforcement officer in Virginia for 31 years, he was entitled to present evidence of his qualifications to the director of the South Carolina Criminal Justice Academy under the statute. He did that and is now certified in South Carolina. See S.C. Code Ann. Regs. § 37-006(A) (noting "each candidate will be given credit for any training deemed to be equivalent to training offered by the Academy" (emphasis added)). On September 6, 2017, the South Carolina Criminal Justice Academy issued a letter certifying him as a South Carolina Class One Law Enforcement Officer. (R. p. 114). Stearns received certification because he presented satisfactory proof that he is well qualified based upon his significant law enforcement training. (R. pp. 73–77).

In sum, Stearns is qualified to serve as sheriff. Either section 23-23-10 does not apply to Stearns, or if it does, he received certification in South Carolina within one year of taking office as required under the statute. Therefore, Appellants' challenge to his statutory qualifications is now moot and this Court should affirm the circuit court's decision not to issue a declaratory judgment. As noted above, even if the Court were to agree with Appellants' interpretation of the statute, a declaratory judgment (1) is not available because Appellants had an adequate remedy at law; and (2) would have no practical effect upon the present controversy, if entered, because

Stearns could not be removed from office without the concomitant relief of an injunction or a writ of mandamus. Appellants did not appeal the circuit court's ruling on their request for an injunction, and a mandamus cannot issue for the reasons set forth in Part II, supra.

IV. As an additional sustaining ground, the Court should affirm because Appellants failed to act with the requisite diligence in pursuing this election protest and, therefore, their claims are barred under the laches doctrine.

As an additional sustaining ground, the Court should affirm the circuit court and find that Appellants waived their right to challenge Stearns's qualifications under the doctrine of laches by failing to act with the requisite diligence in pursuing this election protest. See Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision[,] or judgment upon any ground(s) appearing in the Record on Appeal."); Rule 208(b)(2), SCACR ("Respondent's brief may also contain argument asking the court to affirm for any ground appearing on the record . . . .").

This Court has long recognized that "[t]he law requires more than ordinary diligence on the part of those who . . . contest an election." State ex rel. Howell, 101 S.C. at 515, 86 S.E. at 81 (quoting Boyle, 97 S.C. at 19, 81 S.E. at 311). Pursuant to its grant of authority in article II, section 10 of the South Carolina Constitution, the General Assembly has enacted election protest procedures that "are simple, unambiguous, and expeditious." Smith, 265 S.C. at 421, 219 S.E.2d at 313. "The manifest intent of the General Assembly is that election contests be disposed of with the maximum dispatch consistent with due process of law." Id. at 421, 219 S.E.2d at 313–14. As this Court cogently observed, "[i]t is self-evident that protracted election disputes produce an instability in government inimical to the public welfare." Id. at 421, 219 S.E.2d at 314.

"Laches is an equitable doctrine which arises upon the failure to assert a known right." Strickland v. Strickland, 375 S.C. 76, 85, 650 S.E.2d 465, 470 (2007). "The equitable doctrine of laches is equivalent to the legal doctrine of waiver." Id. "Waiver is a voluntary and intentional

abandonment or relinquishment of a known right." Parker, 313 S.C. at 487, 443 S.E.2d at 391. "Both laches and waiver require a party to have known of a right[] and known that the party was abandoning that right." Strickland, 375 S.C. at 86, 650 S.E.2d at 471. As one state supreme court has held, "[l]aches may bar an action for relief in an election-related matter if the persons seeking this relief fail to act with the requisite diligence." Smith v. Scioto Cty. Bd. of Election, 918 N.E.2d 131, 133 (Ohio 2009).

A review of the record reveals Appellants failed to act with any diligence in pursuing this election protest. Cf. State ex rel. Howell, 101 S.C. at 515, 86 S.E. at 81 (quoting Boyle, 97 S.C. at 19, 81 S.E. at 311). Although Stearns filed the documents required to run for office on March 17, 2016, one of which was the affidavit confirming he was a certified law enforcement officer for the requisite period, Appellants waited until after losing the election to file a formal protest with the Commission challenging his qualifications. After losing this election protest, Appellants chose not to appeal that ruling to the State Election Commission. Cf. S.C. Code Ann. § 7-17-60. Had they done so, Appellants could have filed a petition for a writ of certiorari with this Court as early as December of 2016. See S.C. Code Ann. §§ 7-17-70, -250 & -270. Instead, Appellants missed the deadline for filing an appeal to the State Election Commission and filed a complaint seeking equitable relief in circuit court. Notwithstanding their application for a temporary restraining order and an injunction, Appellants made no attempt to request an immediate hearing. Cf. Rule 65(a) & (f)(1), SCRCP. After being asked by the circuit court whether they intended to move on their request for these drastic forms of relief, Appellants filed a motion for a temporary injunction, among other things, and the circuit court held a hearing the next day. (R. p. 238).

Appellants lost their motion for a temporary injunction, and even though their counsel acknowledged the order ruling upon the temporary injunction was appealable, Appellants made

no effort to appeal that ruling. (R. p. 235); cf. Curtis v. State, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001) (holding that "[a]n order or decree in the court of common pleas granting, continuing, modifying, or refusing an injunction is immediately appealable"). Nor did Appellants make an effort at any time to file an action in the original jurisdiction of this Court, despite the circuit court suggesting this avenue at the injunction hearing and in its order denying the motion for a temporary injunction. See (R. pp. 235, 5); cf. Rule 245(a), SCACR (noting "[i]f the public interest is involved, or if special grounds of emergency or other good reasons exist why the original jurisdiction of the Supreme Court should be exercised," a party may petition the Court to entertain the matter in its original jurisdiction).

Instead of using the potential procedural options outlined above, any of which would have moved this matter in a more expeditious manner, Appellants sat on the case for ten months and did nothing. Appellants served no written discovery and made no attempt to schedule depositions. After the third hearing on the same qualifications issue, Appellants finally decided to file an appeal with this Court over a year after the election they were protesting took place. Under these circumstances, Appellants should be equitably barred from litigating the issue regarding Stearns's qualifications pursuant to the laches doctrine. See State ex rel. Howell, 101 S.C. at 515, 86 S.E. at 81 (asserting "[t]he law requires more than ordinary diligence on the part of those who . . . contest an election" (quoting Boyle, 97 S.C. at 19, 81 S.E. at 311)); Scioto Cty. Bd. of Election, 918 N.E.2d at 133 (finding "[l]aches may bar an action for relief in an election-related matter if the persons seeking this relief fail to act with the requisite diligence"). Simply put, the Court should not permit Appellants to sleep on their rights and potentially disenfranchise a comfortable majority of the voters who wanted Stearns to serve as sheriff of McCormick County by failing to act with any diligence to have this matter decided. See Smith, 265 S.C. at 421, 219

S.E.2d at 313–14 (noting the General Assembly intended for "election contests [to] be disposed of with the maximum dispatch" as "[i]t is self-evident that protracted election disputes produce an instability in government inimical to the public welfare").

Accordingly, as an additional sustaining ground, the Court should affirm the circuit court's order because Appellants waived their right to challenge Stearns's qualifications under the equitable doctrine of laches by failing to act with the requisite diligence in this election protest.[9]

CONCLUSION

Based upon the foregoing, the Court should affirm the circuit court's order under the two-issue rule because Appellants failed to appeal the circuit court's ruling on the issue of waiver and, therefore, it is now the law of the case. Even on the merits, the circuit court properly denied Appellants' request for a writ of mandamus because they had an adequate remedy at law and elected not to avail themselves of that remedy. Appellants chose to file this election protest with the Commission, and they were required to follow the appellate procedure outlined in the protest statutes all the way through to the end. Had they done so, the parties would not still be arguing over the same issue almost two years after the election. The Court should not sanction Appellants' dilatory behavior in bringing this challenge. The law requires more of parties seeking to throw out the results of an election. Although Appellants were surprised to lose, that does not give them license to file actions in various venues until they achieve their desired result—another shot at the

[9] To the extent Appellants contend this is not an election protest, a position they adopted before the circuit court, this argument is without merit. In their notice of appeal to this Court, Appellants acknowledge that, "[p]ursuant to Rule 203(d)(1)(A)(iv), SCACR, this appeal is directly to the Supreme Court because it involves 'a final judgment from the circuit court pertaining to elections and election procedures.'" If this were only a declaratory judgment action requiring the interpretation of a statute, as Appellants seem to suggest, the parties would be arguing this case in the court of appeals and any writ of certiorari from this Court would be discretionary. See Rule 203(d)(1)(A), SCACR; Rule 242, SCACR.

election. The voters of McCormick County have spoken, and the Court should move swiftly to uphold the will of those voters.[10]

Respectfully submitted,

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[10] Pursuant to Rule 208(b)(6), SCACR, Respondents South Carolina Republican Party and McCormick County Republican Party join in this brief, as well, and adopt all arguments raised by Stearns.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM MCCORMICK COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No.: 2017-002583

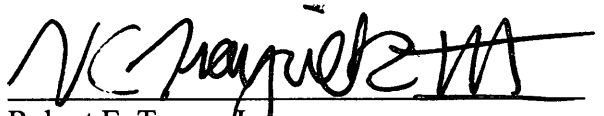
J.R. Jones, South Carolina Democratic Party, and, McCormick County Democratic Party — Appellants,

vs.

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

CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief of Respondent Clarke Anderson Stearns complies with Rule 211(b) SCACR.

By: 

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S.C. SUPREME COURT

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In the Supreme Court

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County Republican Party, Clarke Anderson Stearns, — Respondents.

PROOF OF SERVICE

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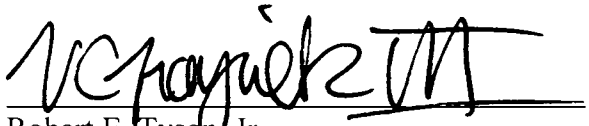
By: 

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