THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas
Roger E. Henderson, Circuit Court Judge

Case No. 2020-CP-13-00785

Appellant Case No. 2021-000165

Glenn Odom, ... Respondent,

v.

McBee Election Commission,
Charles Short, Charles Sutton, and Hewitt Dixon, ...Appellants.

BRIEF OF APPELLANTS

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STATEMENT OF THE CASE

This case arises out of the September 1, 2020 election for Mayor and two open seats on Town Council in the Town of McBee. The Town of McBee Municipal Election Commission (the MEC) certified the results of the election for the two open seats on Town Council as follows: James Linton: 211; Robbie Liles: 201; Charlie Sutton: 191; Hewitt Dixon: 174; Dawn Boykin: 34; Write-In: 1. The MEC certified the mayoral election results to be: Glenn Odom: 213; Charlie Short 203; Write-In: 2.

Short, Sutton, and Dixon filed a timely protest of the September 1, 2020 election with the MEC. The MEC then conducted a hearing on the contest via Zoom that began on September 4, 2020, and concluded on November 13, 2020. Testimony was taken from nine witnesses, including six voters, a handwriting expert, a private investigator, and Sydney Baker—an Alligator Rural Water Authority employee who assisted voters with applying for, filling out, delivering absentee ballots, and voting. After considering the testimony presented at the hearing, on November 19, 2020, the MEC entered an order holding (1) that it did not believe Baker's testimony that she was not a paid volunteer of Glenn Odom's campaign; and (2) that her involvement with the application for and delivery of between 10 and 28 ballots was, therefore, a violation of section 7-15-330 of the South Carolina Code. What is more, the MEC held the section violation rendered the outcome of the election doubtful.[1]

Respondent appealed the MEC's decision to the circuit court and ultimately filed a second amended notice of appeal on November 20, 2020. In this notice, Respondent requested that the circuit court reverse the MEC's order and declare him, Linton, and Liles the election winners. A hearing on Odom's appeal was held before the Honorable Roger E. Henderson on December 21, 2020. At the

[1] Neither Linton nor Liles have formally opposed the MEC's November 19, 2020 Order.

hearing, Odom argued there was no evidence that Baker was a paid employee of the Odom campaign or that she violated any law. According to Odom, section 7-15-330 permits any qualified elector to request an absentee ballot for any other person, without exception. He further argued that the MEC's reliance on its finding in the 2016 contest was improper as it was not part of the record. Finally, Odom argued section 7-14-420 requires that any absentee ballot challenge be made on the date of the election and that none of the ballots requested and/or delivered by Baker were challenged on the date of the election. (Odom Memorandum in Support of Appeal, p 1-3; Tr. of December 21, 2020 Hr'g, p. 3:4-6:2). For their part, MEC, Short, Sutton, and Dixon argued Baker violated section 7-15-330 and other election laws by providing improper assistance to voters in requesting absentee ballots and in the voting process and, therefore, the MEC's decision should stand. (Tr. of December 21, 2020 Hr'g, p. 6:8-13:21).

On December 29, 2020, Judge Henderson granted Odom's appeal, making the following findings: (1) the only evidence was Baker assisted electors in making their requests for absentee ballots; (2) the MEC was without evidence that Baker was a paid volunteer of the Odom campaign staff; (3) the MEC improperly relied on its 2016 decision involving Baker and Odom in its November 19, 2020 decision; (4) Baker's request of absentee ballots for voters was not a violation of section 7-14-330; and (5) even if Baker did violate section 7-15-330, that was not sufficient to render the outcome of the election doubtful.

The next day, Short, Sutton, and Dixon filed a motion to reconsider. In a memorandum in support filed on January 7, 2021, Short, Sutton, and Dixon argued (1) there was evidence that Baker did more than merely assist electors in requesting absentee ballots and that her conduct did violate South Carolina law, rendering the outcome of the election doubtful; (2) it was proper for the MEC to consider prior decisions in its November 19, 2020 decision; and (3) evidence in the record supported

the decision of the MEC. (Short, Sutton, Dixon Memorandum in Support of Motion to Reconsider). Odom filed a memorandum in opposition, making similar arguments to those made at the December 21, 2020, hearing. (*See* Appellants' Opposition to Motion to Reconsider). On January 21, 2021, the circuit court denied the motion to reconsider. (Order Denying Defendants' Motion for Reconsideration). This appeal follows.

FACTS

This is the latest in a long line of disputed elections and lawsuits in the Town of McBee involving Glenn Odom. Since the 2016 election, each election has spawned election protests related to Odom. The 2016 election was overturned after Baker delivered 35 out of 45 absentee ballots for the mayoral election to the polls. (MEC Order, Exhibit 1). Odom subsequently lost the February 21, 2017, new election and then lost his appeal challenging the results of that election. In the 2018 town council election, Odom successfully defended a challenge involving provisional ballots of tenants in trailers he moved to town just before the voter registration deadline. Odom's tenants had not legally connected water or power at the time they were registered to vote.

Unfortunately, the contentious nature of McBee elections continued in the September 1, 2020 election for two open seats on Town Council and for the office of Mayor. Now, the citizens of McBee are faced with another election in which Baker is alleged to have both applied for and delivered absentee ballots in the 2020 mayoral and town council election. At the provisional ballot hearing held pursuant to section 7-13-830 of the South Carolina Code, the MEC certified Linton and Liles as the winners of the two open seats on Town Council and Odom as the winner of the mayoral race. Short, Sutton, and Dixon immediately filed a protest with the MEC, arguing Odom's campaign provided improper assistance in the absentee ballot process. (Notice of Protest).

During the hearing, the challengers presented evidence demonstrating that Baker—an employee of Alligator Rural Water & Sewer Co. (Alligator Water), a company led by Odom—"volunteered" by going door to door with her personal iPad and printer, asking voters whom she did not know if they would like to request an absentee ballot. (Transcript of Protest Hearing, pp. 9:2-18; 12:21-13:5). She mainly targeted people who were working or over the age of 65. Baker went on to admit that once the ballot was obtained, she would answer questions for the individual "as far as which in what to put what" and would witness the ballot signature if it was "an old person." (Tr. of Protest Hr'g, p. 11:1-6). But Baker denied that Odom had any involvement with Alligator Water and said he was no longer the company's general manager. (*Id*. at 14:2-7). When confronted with a printout from the Alligator Water website showing Odom was still employed as the general manager, Baker reiterated that Odom was no longer employed by Alligator Water and claimed the information on the website was outdated. (*Id*. at 14:9-15:7). She did, however, admit that Odom was her supervisor at Alligator Water in the past. (Tr. of Protest Hr'g, p. 15:17-20).

Of the 418 votes cast in the September 1, 2020 election, 167 (approximately 40%) were cast by absentee ballot. (Absentee Voter Detail, p. 13; MEC Order, p. 1). During the protest hearing, Baker admitted that she helped filling out somewhere between 10 to 15 absentee ballots, and stated it would not surprise her to know she witnessed up to 28 absentee ballots. (Tr. of Protest Hr'g, pp. 10:14, 11:8-21). Incredibly, this means Baker witnessed approximately 17% of the absentee ballots cast in the election, and would have had some involvement with 6.7% of the total votes in the election.

The MEC found Baker's actions of helping electors both apply for absentee ballots and then vote absentee violated section 7-15-330, which only allows the voter or a member of the voter's immediate family to request an absentee ballot. (MEC Order, p. 3). The MEC further referenced Baker's actions in the 2016 McBee election—which was overturned due to Baker's improper delivery

of 35 to 45 absentee ballots—and found Baker's testimony at the September 4, 2020 hearing not credible. (MEC Order, P. 4). Odom then appealed the MEC's decision to the Court of Common Pleas for Chesterfield County.

On appeal, the circuit court substituted its own factual findings for that of the MEC, exceeding the scope of review permitted in municipal election cases. Indeed, the circuit court said one of the factual findings was "false." (Cir. Ct. Order at 2). The circuit court also found that violations of section 7-15-330 were not grounds for ordering a new election because the statute did not provide for such a remedy, turning its back on a mountain of precedent from this Court holding the exact opposite in election cases. These fundamental errors of law cannot be sustained on appeal.

ARGUMENTS

I. The circuit court erred in finding that Baker only assisted electors in making their own requests for an absentee ballot because she helped the electors vote in violation of sections 7-15-380 and 7-13-770 of the South Carolina Code.

In its order, the MEC ruled, in part, that the evidence presented indicated Baker helped request and fill out between 10 to 15 absentee ballots. (MEC Order, p. 3). But the circuit court held that "the evidence in this case is that Ms. Baker only assisted electors in making his or her own request for an absentee ballot." (Cir. Ct. Order, p. 2). The circuit court erred in substituting its own factual findings for that of the MEC.

To be sure, "[t]he circuit court, sitting in an appellate capacity, does not conduct a de novo hearing or take testimony. The circuit court must examine the decision for errors of law, but it must accept the factual findings of the commission unless they are wholly unsupported by the evidence." *Taylor v. Town of Atlantic Beach Election Comm'n*, 363 S.C. 8, 14–15, 609 S.E.2d 500, 503 (2005) (citing *Blair v. City of Manning*, 345 S.C. 141, 546 S.E.2d 649 (2001); *Butler v. Town of Edgefield*, 328 S.C. 238, 248, 493 S.E.2d 838, 843 (1997)).

Absentee ballots include an oath that must be signed by the elector. The oath states, in part, "I hereby swear (or affirm . . . that I have received no assistance in voting my ballot that I would not have been titled to receive had I voted in person at my voting precinct." S.C. Code Ann. § 7-15-380. Section 7-13-770 specifically outlines the type of assistance which may be rendered to voters who require assistance. In particular, voters who require assistance can receive assistance with their vote from a family member or a person of the voter's choice and a poll manager. S.C. Code Ann. § 7-13-770(A).

Here, the circuit court erred in finding no evidence that Baker did anything other than assist electors in making their own request for an absentee ballot. In the protest hearing, Baker was asked about her involvement in the most recent municipal election. Her initial response was not that she helped individuals request absentee ballots, but, instead, that she "took time off, unpaid time off *to assist the citizens in voting* if they would like to." (Tr. of Protest Hr'g, p. 9:7-9) [emphasis added]. She not only admitted to helping fill out requests for absentee ballots (Tr. of Protest Hr'g, p. 9:3-10:25), but also admitted that once the ballot was received, she would answer questions "as far as which in what to put what." (Tr. of Protest Hr'g, p. 11:1-7). Indeed, Odom's attorney even presumed Baker helped people by asking her during the hearing, "When you helped people vote, did you have anything to do with how they voted?" (Tr. of Protest Hr'g, p. 16:17-18). And Baker admitted to doing more than just requesting absentee ballots.

Further, the testimony of several witnesses confirmed. June Wright testified at the protest hearing that Baker "help[ed] me, I asked her to help me to, you know, vote." (Tr. of Protest Hr'g, p. 76:13-14). Mr. Wright's testimony is especially important because he testified that he could not read and, thus, would require assistance to vote as outlined in section 7-13-770 of the South Carolina Code. (Tr. of Protest Hr'g, p. 76:20-23). Another voter, Elizabeth Murphy, testified that Baker and another

person came to her house to "assist with the registration and voting." (Tr. of Protest Hr'g, p. 54:12). For her part, Baker testified that she was helping "citizens" vote. (Tr. of Protest Hr'g, p. 9:5). That said, Baker never once claimed that she was assisting relatives. Cf. S.C. Code Ann. § 7-15-330.

The circuit court, of course, only has the authority to review the MEC's decision regarding errors of law, and it must accept the MEC's factual findings unless there is no evidence to support the decision. *See Taylor*, 363 S.C. at 14–15, 609 S.E.2d at 503. In the present case, the circuit court ignored the evidence demonstrating that Baker did more than just assist in requesting absentee ballots. What is more, the circuit court substituted its own judgment for the credibility of the witnesses and stated the MEC's factual findings on this point were "false." But Baker testified that she helped with the voting process, and Wright and Murphy both confirmed as much. Under these circumstances, the circuit court exceeded its scope of review and erred as a matter of law.

Because evidence supports the MEC's conclusion that Baker violated sections 7-15-380 and 7-13-770(A) by assisting voters to whom she was not related with the voting process, the circuit court erred in reversing the MEC's decision to ask the Town Council to order a new election.

II. The circuit court erred in finding that violations of section 7-15-330 cannot serve as a basis for overturning an election.

The circuit court erred as a matter of law in holding that violations of section 7-15-330 cannot serve as the basis for overturning an election because the only penalty contained in the statute is for a misdemeanor. (Cir. Ct. Order, p. 3).

To bring an election contest under South Carolina law, a challenger must comply with the following requirements: "(1) the contest notice must allege irregularities or illegalities; and (2) the alleged irregularities or illegalities must have changed or rendered doubtful the result of the election in the absence of fraud, a constitutional violation, and a statute providing that such irregularity or illegality shall invalidate the election." *Butler v. Town of Edgefield*, 328 S.C. 238,

246, 493 S.E.2d 838, 842 (1997) (citing *Yonce v. Lybrand*, 254 S.C. 14, 18, 173 S.E.2d 148, 150 (1970); *Harrell v. City of Columbia*, 216 S.C. 346, 355, 58 S.E.2d 91, 96 (1950); *State ex rel. Welsh v. Jennings*, 79 S.C. 246, 248, 60 S.E. 699, 700 (1908); *State ex rel. Birchmore v. State Bd. of Canvassers*, 78 S.C. 461, 467, 59 S.E. 145, 146–47 (1907)).

In their notice of contest, Short, Sutton, and Dixon alleged that "a representative of Mr. Odom took improper procedures and steps regarding absentee ballots." (Notice of Contest, p. 2). Indeed, Baker improperly assisted voters in violation of section 7-15-330. They further alleged that these irregularities rendered the outcome of the election doubtful. (Id. p. 3). After all, the irregularities or illegalities must (1) have changed or rendered doubtful the result of the election in the absence of fraud; (2) be a constitutional violation; or (3) of a nature in which a statute provides that the irregularity or illegality shall invalidate the election. *See Broadhurst v. City of Myrtle Beach Election Comm'n*, 342 S.C. 373, 381, 537 S.E.2d 543, 547 (2000) ("In the absence of fraud, a constitutional violation, or a statute providing an irregularity or illegality invalidates an election, the Court will not set aside an election for a mere irregularity."); *In re Bamberg Ehrhardt Sch. Bd. Election,* 337 S.C. 561, 567-68, 524 S.E.2d 400, 404 (1999) ("Such an irregularity will not set aside the election unless there is fraud, a constitutional violation, or it is specifically provided by statute that the irregularity shall invalidate the election.").

The circuit court misstated South Carolina law regarding when an irregularity or illegality is sufficient to invalidate an election. Indeed, the order presumes that a statute must specifically authorize invalidating the election for an election law violation to warrant such relief. But this reads out the first part of the test that allows the Court to order a new election if "the alleged irregularities or illegalities . . . changed or rendered doubtful the result of the election." *Butler*, 328 S.C. at 246, 493 S.E.2d at 842. Upholding the circuit court's interpretation of *Butler* and its

progeny would require invalidating decades of precedent and make contesting an election virtually impossible. The Court need not reach so far. Contrary to the circuit court's holding, the violated statute does not have to specifically provide for an election invalidation to entitle those challenging the results to a new one. A review of this Court's precedent confirms as much.

For example, in *Broadhurst*, the allegations centered on malfunctioning voting machines. 342 S.C. at 378-380, 357 S.E.2d at 545–46. Although section 7-13-1120 of the South Carolina Code does not contain a provision requiring the invalidation of an election for its violation, the Court upheld the Myrtle Beach Election Commission's decision invalidating the election because its violation in that instance rendered the outcome of the election doubtful. *Id*. at 386, 357 S.E.2d at 549. Similar decisions were reached in cases in which the election laws allegedly violated did not contain provisions requiring the invalidation of an election for their violation. *See, e.g.*, *George v. Mun. Election Comm'n of Charleston*, 335 S.C. 182, 516 S.E.2d 206 (1999) (invalidating an election where violations of sections 7-13-730, 7-13-611, and 7-13-1370 occurred); *Gecy v. Bagwell*, 372 S.C. 237, 642 S.E.2d 569 (2007) (requiring new election where alleged violations of sections 7-5-110, 7-5-120, 7-7-940, 7-5-440, 7-7-920, and 7-13-810 occurred).

If the circuit court's interpretation of *Butler* is correct, a local election commission can only invalidate an election when too many ballots are delivered to a polling place. *See* S.C. Code Ann. § 7-13-1140 ("If the number of votes cast by any type ballot or on machines in any polling place exceeds the number listed on the polling list by ten percent or more, the county executive committee or the county board of voter registration and elections . . . shall order a new primary or election . . . ."). After all, section 7-13-1140 is the only statute that specifically calls for a new election. Thus, under the circuit court's interpretation, intentional, egregious violations of election law would be insufficient to warrant invalidating an election. Respectfully, that undermines the

very spirit and intent of our state's election laws. Such an interpretation would potentially encourage candidates to engage in nefarious conduct because it would be extremely rare that even open and obvious violations of election laws would invalidate an election.

III. The circuit court erred in finding no violations of section 7-15-330.

Next, in its appellate capacity, the circuit court erred in finding no violations of section 7-15-330 in this case. (Henderson Order, p. 3).

"The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature." *Bryant v. State*, 384 S.C. 525, 529, 683 S.E.2d 280, 282 (2009). "The statutory language must be construed in light of the intended purpose of the statute." *Florence Cty. Democratic Party v. Florence Cty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418 (2012). "This Court will not construe a statute in a way which leads to an absurd result or renders it meaningless." *Id*. Section 7-15-330 limits those who can request absentee ballots for electors and specifically forbids paid volunteers for any candidate from requesting absentee ballots for electors. S.C. Code Ann. § 7-15-330. The statute not only limits who can serve as an authorized representative, but also limits the method by which an authorized representative can request an absentee ballot for an elector. *Id*. The General Assembly's intent, of course, was to limit interference with absentee voting by restricting who can request absentee ballots.

South Carolina law permits the following individuals to request absentee ballots: (1) an elector; (2) a member of the elector's immediate family; or (3) a qualified representative, who is a qualified elector himself, if that person signs an oath that is kept on file with the board of voter registration and election. S.C. Code Ann. § 7-15-330. Baker testified that she was helping "citizens" apply for absentee ballots and vote absentee. (Tr. of Protest Hr'g, p. 9:5-9, 10:21-25). However, she was not helping 10–15 family members apply for absentee ballots. Nor was she

requesting all those absentee ballots for herself. Nevertheless, Baker testified that she was not registered with Chesterfield County to help electors request absentee ballots. (Tr. of Protest Hr'g, p. 9:19-10:2). This was improper.

The State Election Commission website contains a form on which someone can request an absentee ballot. *See* Request Absentee Application, Absentee Voting, S.C. STATE ELECTION COMM'N (last visited June 17, 2021) https://info.scvotes.sc.gov/eng/voterinquiry/VoterInformationRequest.aspx?PageMode=AbsenteeRequest. Upon reaching this website, the opening page asks the voter to fill in certain information to begin the process of requesting an absentee ballot. Specifically, the voter must fill in the county, first and last name, date of birth, and last four digits of the individual's Social Security number. (*Id*.). After providing this information, the individual is taken to another page where the individual selects the election for which he or she wishes to request an absentee ballot and the reason for requesting an absentee ballot. (*Id*.). Once the applicant clicks submit, he or she is brought to a page that confirms the information already entered and a button that, if clicked, will generate the absentee ballot application. (*Id*.). When the absentee ballot application is opened, the individual must print it out, sign it, and return it to the office of voter registration and elections. (*Id*.).

On the Absentee Voter Detail, Wright appears to have requested the absentee ballot himself via the internet following the process outlined above. (Absentee Voter Detail, p. 12.). When questioned at the protest hearing, however, he denied that Baker helped him request a ballot and, instead, testified that Baker actually ordered the ballot for him. (Tr. of Protest Hr'g, p. 75:4-6). Wright did not request an absentee ballot himself, and he testified that he only asked Baker for help with obtaining an absentee ballot, and then a ballot arrived in the mail. (Tr. of Protest Hr'g,

p. 76:17-23; 77:5-17). Based upon Wright's testimony, Baker was requesting ballots for electors in the election without their knowledge.

Murphy's testimony confirms this. On the Absentee Voter Detail, Murphy appears to have requested an absentee ballot herself via the internet. (Absentee Voter Detail, p, 8). Murphy testified, however, that she did not request an absentee ballot online. (Tr. of Protest Hr'g, p. 56:19-24). Indeed, Murphy does not even use the internet. (*Id*., p. 56:5-18).

In the protest hearing, Baker testified that she was not registered with Chesterfield County to help people request absentee ballots. (Tr. of Protest Hr'g, p. 9:19-10:2). Given that Baker was not an authorized representative for Wright or Murphy, requesting absentee ballots without their knowledge was a violation of section 7-15-330. But Baker's assistance with requesting absentee ballots also violated section 7-15-330. The restriction on who can request and how they can request absentee ballots naturally extends to who can assist with electors requesting absentee ballots. Baker's conduct was equivalent to Baker requesting the absentee ballot for the elector herself. She filled in the information, printed the application, and put the application in the mail. Baker testified that she "had a mobile office" with a "printer in my truck." (Tr. of Protest Hr'g, p. 12:21-23.). While some electors testified that they wanted absentee ballots, Baker did all the work.

And this improper assistance matters too. This was not some voter registration drive organized by the League of Women Voters. Instead, Baker—who along with Odom had a storied past for actions in previous McBee elections—was going to strangers' homes to help them apply and vote absentee. As an employee of Alligator Water, which provides an important utility service, who was affiliated with a candidate for mayor, she could have exerted all kinds of improper influence over these individuals. Odom will undoubtedly argue no harm, no foul because these individuals wanted absentee ballots. Under section 7-15-310, while an authorized representative

must be acting with the voter's permission, he or she must also be registered with the county and sign an oath. S.C. Code Ann. § 7-15-330. Therefore, the thrust of section 7-15-330 is to avoid having absentee ballots requested by people who are not registered with the county to minimize election interference. When the actions of an individual "assisting" with requesting absentee ballots is tantamount to requesting the absentee ballot itself and that individual is not registered with the county, the statute has been violated.

In the circuit court's view, anyone with any level of involvement in the election and the voting process can assist with procuring an absentee ballot application online without having to register with the county as an authorized representative. Respectfully, that turns the statute on its head. Applying that view to this record, someone can actively canvass and solicit absentee votes, assist those hand-selected voters throughout the entire voting process, and not be required to register as an authorized representative. Someone employed by a candidate, previously found to be a campaign volunteer of said candidate and adjudicated to be involved in unlawful absentee voting practices on behalf of the said candidate, may provide any manner of assistance to a significant amount of absentee voters without consequence. Someone may lawfully request and mail in an absentee ballot application for a voter who cannot read and is not even present when the request is made without having to register as an authorized representative. Someone who attests under oath that they never used the internet and did not request their application online can nevertheless "self-register" through the internet for their application in official county records.

This order creates a glaring hole in the fabric of election integrity and opens the door to rampant absentee voter fraud. South Carolina law does not allow violations of this magnitude to be ignored, regardless of whether they can be definitively tied to the election outcome. So long as the improper conduct renders the result doubtful, the Court should order a new election. If Baker's

conduct is permitted, candidates will simply plant "unpaid" volunteers at utility providers to push electors into voting absentee and doing everything for them. The unpaid volunteer then could arrive at the home of the individual to answer questions about how to fill out the absentee ballot and to witness the absentee ballot. This would compromise the integrity of future elections held in South Carolina.

Because the evidence presented to the MEC demonstrated Baker violated section 7-15-330, the circuit court erred in substituting its judgment for that of the MEC and finding on appeal that no violations of section 7-15-330 occurred.

IV. The circuit court erred in concluding no evidence supported the MEC's finding that Baker was a paid volunteer for Odom's campaign.

In its order, the circuit court took issue with the MEC's failure to believe the testimony of Baker that she was an unpaid volunteer. The circuit court stated that the MEC's finding that Odom was still listed as the general manager of Alligator Water on the company's website was of no consequence and that the MEC improperly used its 2016 decision as a basis for its decision in this case. (Henderson Order, p. 2). But these conclusions were improper because the circuit court stepped beyond its role of reviewing for errors of law and conducted its own evaluation of the believability of the witnesses presented to the MEC. This displayed itself in two areas: (1) Baker was not a reliable witness, and her testimony lacked credibility; and (2) Baker has a history of violating election statutes for Odom as a paid campaign member. Appellants will address each in turn.

A. The MEC, as the trier of fact, was allowed to discount Baker's testimony because it was not credible.

A fundamental principle of any trial is the trier of fact's right not to accept uncontradicted evidence as truth if there is a reason for disbelief. *See Johnson v. Painter*, 279 S.C. 390, 392, 307 S.E.2d 860, 861 (1983) ("The court does not always have to accept uncontradicted evidence as

establishing the truth; however, it should be accepted unless there is reason for disbelief." (citing *Elwood Constr. Co. v. Richards*, 265 S.C. 228, 217 S.E.2d 769 (1975))).

In this case, Baker's testimony lacked credibility. First, she testified that Odom did not work at Alligator Water anymore, but that he came into the office from time to time, and she had seen him at Alligator Water at least once in the last week. (Tr. of Protest Hr'g, p. 7:8-8:19). Later, when it was revealed that Odom was still listed as the general manager on Alligator Water's website, she claimed that this was incorrect despite the fact that it was her job to update the website. (Tr. of Protest Hr'g, p. 14:9-15:12). Baker also gave contradictory statements regarding the assistance she provided to voters after they received their ballots. Initially, Baker testified that she would answer questions for those filling out ballots "as far as which in what to put what." (Tr. of Protest Hr'g, p. 11:1-7). Yet Baker subsequently claimed she did not even see the people vote. (Tr. of Protest Hr'g, p. 16:23:24). This is nonsensical because Baker was admittedly helping them fill out ballots. (Tr. of Protest Hr'g, p. 11:1-7).

Baker's testimony further lacked credibility specifically as to her role in helping the citizens of McBee vote. Essentially, she testified that she was taking unpaid time off from her job, driving around in a personal truck with a personal printer and iPad, and knocking on doors to ask whether anyone needed help voting. (Tr. of Protest Hr'g, p. 9:3-18, 12:21-13:9). Baker, however, was not registered to help citizens fill out absentee ballots and made no note of those she helped. (Tr. of Protest Hr'g, p. 9:19-21, 10:9-14). It also just so happened that her admitted former supervisor was running for mayor. (Tr. of Protest Hr'g, p. 15:13-20).

The MEC was not required to simply take at face value the claim that Baker, unconnected with any organization, just decided one day to take off work and drive door to door all over the Town of McBee in her personal capacity to help people register to vote out of the goodness of her heart just

because she said so. Nor was it required to turn a blind eye to Baker's contradictory testimony on what she did when she actually went into those citizens' homes or ignore Baker's attempt to minimize her connection with Odom, who was a candidate for mayor. Allowing the circuit court to overturn the MEC's decision on such grounds eliminates the MEC's ability to make any factual determination. Under the circuit court's reasoning, if someone says they did not do something, then the MEC must take their word for it despite the person's lack of credibility. That is not the law. And the circuit court is not permitted to substitute its own judgment on the believability of witnesses for the MEC. Yet, that is what the circuit court did here. According to the circuit court, the MEC's finding regarding Baker's status and actions was "false."

Because the MEC had ample evidence to discredit the testimony of Baker and its findings are supported by any evidence in the record, the Court should reverse the circuit court's order and uphold the MEC's decision to request a new election.

B. The MEC properly relied on its 2016 election decision.

While the evidence specified above is sufficient to support the MEC's decision without the 2016 decision, contrary to the circuit court's finding, the MEC could properly rely on its own decision from 2016 in rendering a decision on the instant election protest.

At the outset, it is worth explaining why the 2016 election order is even relevant in this case. In the September 6, 2016 mayoral election, Odom received 200 votes, and John Campolong garnered 192. (2016 Election Order, p. 2). The election results indicated that nearly 31% of the ballots were cast absentee, and 88% of those absentee ballots were cast for Odom. (2016 Election Order, p. 2). Campolong contested the election results and a hearing was held. At the hearing, it came to light that Baker delivered 47 absentee ballots. Odom admitted that Baker was an employee of his, but he claimed that he did not direct Baker to engage in campaign work. According to Odom, if she did any

campaign work, it must have been done on her own time as an unpaid status. (*Id*, p. 3). In that case, the MEC found that Odom's testimony was unreliable and not credible. (*Id.*)

Yet here we are again. As in 2016, Baker and Odom both claim that Baker was taking time off work to "volunteer" to help people register to vote for the mayoral election. The MEC already found that this claim was unreliable and not credible coming from Odom. The MEC certainly could take notice of this decision when determining whether an identical claim coming from Baker in the 2020 election was credible and reliable.[2]

"The admission and rejection of evidence is largely within the sound discretion of the trial judge, and the exercise of this discretion in either admitting or rejecting evidence will not be reviewed by the [appellate court]absent a clear showing that the trial judge abused his discretion, committed legal error in its exercise, and prejudiced the appellant's rights." *Cudd v. John Hancock Mut. Life Ins. Co.*, 310 S.E.2d 830, 833 (Ct. App.1983). "A court can take judicial notice of its own records, files, and proceedings for all proper purposes including facts established in its records." *Freeman v. McBee*, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct. App. 1984). "When a court takes judicial notice of a fact it 'admit[s] into evidence and consider[s], without proof of the facts, matters of common and general knowledge.'" *Dep't of Social Servs. v. Janice C.*, 678 S.E.2d 463, 466, 383 S.C. 221 (Ct. App. 2009) (*quoting Moss v. Aetna Life Ins. Co.*, 267 S.C. 370, 377, 228 S.E.2d 108, 112 (S.C. 1976).

Judicial notice applies to facts of "such common knowledge that it is accepted by the general public without qualification or contention, or its accuracy may be ascertained by reference to readily available sources of indisputable reliability." *Bowers v. Bowers*, 349 S.C. 85, 94, 561 S.E.2d 610, 615 (Ct. App. 2002); *see also* Rule 201(b), SCRE ("A judicially noticed fact must be one not subject

[2] Notably, Odom did not appeal the MEC's 2016 decision, and a new election was held on February 21, 2017, in which he lost 219 to 202. Odom protested the election, lost, and ultimately lost an appeal to the circuit court.

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."). "Judicial notice may be taken at any stage of the proceeding." Rule 201(f), SCRE.

Election matters are general knowledge from which judicial notice may be taken. *See, e.g.*, *Gardner v. Blackwell*, 167 S.C. 313, ___, 166 S.E. 338, 342 (1932) (stating "this court may take judicial notice" of "the history and conduct of general elections in this state"); *Middleton v. Andino*, 488 F. Supp. 3d 261, 267 n.3 (D.S.C. 2020) (taking "judicial notice of several facts and statistics" from, among other sources, the website of the "South Carolina Election Commission"); *Fusaro v. Cogan*, 930 F.3d 241, 246 n.3 (4th Cir. 2019) (taking judicial notice of the Maryland State Board of Elections' "documents describing the [l]ist [of registered voters] as matters of public record").

Here, the MEC took proper notice of its 2016 decision when Appellants asked the MEC to consider how it dealt with similar issues in the past:

> There's no secret --we've been --McBee has been down this road before. And my heart breaks for the folks in McBee having gone down this road time and time again. And I know you're familiar based on that one Carmichael case. Which the Carmichael case clearly says that when you have a high level of absentee votes, you should be suspect. And in this case we have a high level of absentee votes and I would say you --you should be suspect. The key ingredient in that suspect should be this. When you look at the numbers --and urge you to do this when you go back and deliberate.

(Tr. of Protest Hr'g., p. 87:16-88:4). In their closing, Appellants noted, "We also believe that if you look back at what the MEC has done in prior McBee situations, that that precedent has been established by the MEC clearly states that a new election should be established." (*Id*. at p. 88:19-23).

It is common knowledge to the citizens of McBee, and certainly to the members of the MEC, that there have been repeated issues with the town's elections. It is further common knowledge to

McBee's citizens and the MEC that the 2016 election was overturned because the MEC did not find then-candidate Odom's testimony about his campaign relationship with Baker credible and that Baker has a history of interfering in McBee elections through absentee votes. The happenings of 2016 are common knowledge sufficient to be the basis of judicial notice. *Cf. Sloan v. Greenville Cty.*, 380 S.C. 528, 537, 670 S.E.2d 663, 668 (Ct. App. 2009) ("tak[ing] judicial notice of [the court's] own docket").

Because the election issues raised in the 2016 election are common knowledge, the MEC properly relied on its 2016 decision in issuing the order in this case.

V. The circuit court erred in finding Baker's violations of sections 7-15-330, 7-15-380, and 7-13-770 did not render the outcome of the election doubtful.

Contrary to the circuit court's holding, Baker's statutory violations rendered the result of the election doubtful, and the Court should order a new one.

"In the absence of fraud, a constitutional violation, or a statute providing an irregularity or illegality invalidates an election, the Court will not set aside an election for a mere irregularity. Irregularities or illegalities which do not appear to have affected the result of the election will not be allowed to overturn it." *Broadhurst*, at 381–82, 537 S.E.2d at 546 (citing *In re Bamberg Ehrhardt School Bd. Election*, 337 S.C. 561, 524 S.E.2d 400 (1999); *George*, 335 S.C. 182, 516 S.E.2d 206; *Butler v. Town of Edgefield*, 328 S.C. 238, 493 S.E.2d 838 (1997); *Greene*, 314 S.C. 449, 445 S.E.2d 451; *Fielding v. S.C. Election Comm'n*, 305 S.C. 313, 408 S.E.2d 232 (1991); *Bolt v. Cobb*, 225 S.C. 408, 82 S.E.2d 789 (1954); *Harrell v. City of Columbia*, 216 S.C. 346, 58 S.E.2d 91 (1950)). To determine whether an irregularity is sufficient to render the result of the election doubtful, "the rule deducible from the decisions is that all illegally cast ballots shall be deducted from the total number counted for the declared winning candidate, and that all rejected (uncounted), legal ballots shall be added to the total number counted for the declared losing candidate." *Id*. (quoting *Easler v. Blackwell*, 195 S.C. 15, 19, 10 S.E.2d 160, 162 (1940)).

Baker's conduct—requesting absentee ballots for electors without their knowledge, assisting in requesting absentee ballots, assisting in voting, and being tied to the Odom campaign—all call the election's outcome into question. This is not the first time Odom's campaign has had a brush with our state election laws, particularly those governing absentee voting. Baker testified that she had personally assisted somewhere between 10 and 15 voters request absentee ballots. (Tr. of Protest Hr'g, p. 10:14). She also admitted that she witnessed somewhere between 10 and 28 absentee ballots. (*Id*., p. 11:8-21). The certified results of the Town Council election had a total difference of 37 votes between the candidate with the most votes (Linton) and the candidate with the least votes (Dixon) for the two open seats. (MEC Oder, p. 1-2). The difference in the mayoral election was 10 votes. (MEC Order, p. 1-2). Thus, deducting 28 votes from Linton and Odom and adding it to Dixon and Short could change the outcome of the election for both town council election and mayor. Because removing absentee ballots with which Baker provided unlawful assistance would change the outcome of the election, the outcome of the election is rendered doubtful, and a new election should be ordered.

In *George*, this Court held that not providing voters with voting booths violated the South Carolina Constitution and South Carolina statutory law because it stripped voters of their ability to vote in secret, making the election void and requiring a new election. 335 S.C. 182, 516 S.E.2d 206. The Court noted that no overt voter fraud had been alleged, but the arguments were presented only by stipulations that the booths had not been provided. "Appellants conceded no one testified he or she saw the vote made by another person, no one testified he or she refused to vote due to the method of voting, and no one testified he or she was confused or intimidated during the process." *Id*. at 185. However, the Court found that these blatant constitutional and statutory violations were of such a high degree that they necessitated a new election. As the Court held,

"where there is a total disregard of the statute, it cannot be treated as an irregularity, but it must be held and adjudicated to be cause for declaring the election void and illegal." *Id*. at 187 (quoting *Moon v. Seymour*, 182 Ga. 702, 186 S.E. 744, 745 (1936)). In doing so, the Court reiterated the importance of curbing major statutory violations, regardless of whether fraudulent activities are definitively shown. After all, "[t]he Court . . . will not sanction practices which circumvent the plain purposes of the law and open the door to fraud." *Id*. (emphasis added).

The same total constitutional and statutory disregard occurred in the September 1, 2020 Town of McBee election, and this practice has the potential to open the door to fraud. There is a constitutional right in South Carolina to an open election free from undue and unwarranted influence. *See* S.C. CONST. art. I, § 5 ("All elections shall be free and open, and every inhabitant of this State possessing the qualifications provided for in this Constitution shall have an equal right to elect officers and be elected to fill public office."). To protect that right, the South Carolina Constitution gave the General Assembly authority to enact laws for monitoring elections, contesting them, and restricting candidates and those acting on their behalf from exerting improper influence on voters. *See* S.C. CONST. art. II, § 10 ("The General Assembly shall provide for the nomination of candidates, regulate the time, place and manner of elections, provide for the administration of elections and for absentee voting, insure secrecy of voting, establish procedures for contested elections, and enact other provisions necessary to the fulfillment and integrity of the election process.").

As this Court has repeatedly recognized, "[i]ntegrity in elections is foundational." *Anderson v. S.C. Election Comm'n*, 397 S.C. 551, 556, 725 S.E.2d 704, 706 (2012) (per curiam). Although some have cheapened the phrase "election integrity" in recent years, it is still critical to preserving our constitutional republic. Simply put, people must have faith in the outcome of

elections. Here, many in the Town of McBee do not. But we can never allow folks to circumvent the law to win an election by just sweeping it under the rug. When someone can prove their case, as Appellants have here, by demonstrating a specific unlawful practice that renders the outcome of the election doubtful due to a specific number of contested votes, the Court must set aside the election results and order a new election. That is the only way to prevent future contests from continuing to arise each time Glenn Odom runs for office in the Town of McBee. The General Assembly created a legal framework for assisting absentee voters that balanced a person's right to vote absentee with the ability of all other voters to have an open and free election. Frankly, it set a low bar. Pretty much anyone can help a voter apply for an absentee ballot as long as he or she registers as an authorized representative. The only exception the General Assembly made was for paid campaign staff. And this statutory scheme was designed to prevent the exact situation that occurred in McBee when Baker improperly influenced voters on behalf of the Odom campaign.

A review of the record reveals the statutes were violated. These statutes must be strictly followed. Baker was not merely helping absentee voters self-register for an application online. In some instances, like that of Wright, Baker was stepping into the role of the voter and taking all actions necessary to complete the entire voting process. To do that lawfully, she had to be a registered authorized representative. She was not. In 2016, the MEC was concerned with the level of influence then-candidate Odom had over the election through Baker and absentee votes. Unfortunately, Baker is at it again and has continued those unsanctioned practices in this election. The MEC must have the ability to protect its elections and close the door to potential fraud by taking action when repeat offenders have disregarded the law and influenced the outcome of their elections. Under these circumstances, the only remedy is a new election because Baker's conduct—taken in its entirety—renders the outcome of the election doubtful.

CONCLUSION

For the foregoing reasons, the Court should reverse the circuit court's ruling and uphold the MEC's order asking the McBee Town Council to order a new election.

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