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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the 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.

APPELLANTS FINAL REPLY BRIEF

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INTRODUCTION

Appellants McBee Election Commission, Charles Short, Charles Sutton, and Hewitt Dixon write this Reply solely to address new arguments raised by Respondent Glenn Odom and to correct his efforts to revise history.

Before delving into the issues, the comment from Respondent's counsel that counsel for Short, Sutton, and Dixon are somehow perpetuating the former president's gripes about a stolen election is beyond the pale. To be clear, Appellants are not vaguely arguing systemic voter fraud across the nation, state, or even the county without any evidence to back up their accusations. Rather, at issue in this case is a specific questionable ballot practice in a specific town of 867 performed by a specific individual associated with a specific campaign that led to a specific number of challenged votes (28) in favor of that individual's preferred candidate that could have affected the outcome of two specific local races in the 2020 Town of McBee election. What is more, that specific individual has a history of shady voting practices for the candidate in question. Indeed, the McBee Election Commission so found in a previous election protest hearing, and that ruling was never appealed to this Court.

Yet Respondent contends Appellants filed a frivolous election protest and procured false affidavits. The undersigned take great issue with these spurious accusations. As to the latter, Respondent's allegation is unsubstantiated and simply not true. As to the former, it appears Respondent simply does not understand election law.[1] To bring a successful election protest, one must demonstrate that a specific number of irregularities or illegalities render the outcome of the election doubtful. Appellants did that and prevailed before the MEC. The circuit court, however, essentially retried the case on appeal and took its own view of the evidence—instead of looking to

[1] This is further evidenced by Respondent's curious motion to dismiss the appeal.

correct errors of law—and gave Respondent a pass. Respondent even admits the circuit court engaged in its own factfinding, arguing such findings are entitled to deference. But that completely butchers the standard of review. The MEC's factual findings, not that of the circuit court, were entitled to deference.

In trying to pin Appellants with irrelevant lawsuits filed in other jurisdictions on unrelated matters, Respondent conveniently overlooks a critical distinguishing fact here: Short, Sutton, and Dixon *prevailed* before the McBee Election Commission. The MEC found what Baker did was wrong. So should this Court. For the reasons that follow, as well as those set forth in Appellants' opening brief, the Court should reverse the circuit court and remand with instructions to reinstate the MEC's order requesting that the McBee Town Council order a new election.[2]

ARGUMENT

I. Appellants' arguments regarding the circuit court's limited scope of review and the violations of sections 7-15-380 and 7-13-770 are preserved for appellate review.

"Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide [the Court] with a platform for meaningful appellate review." *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006). At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).

[2] As an additional note, contrary to counsel's certification to this Court, Respondent's designation of matter does contain "matter which is irrelevant to the appeal." Rule 209(c), SCACR. His brief and designation rely upon "matter which was not presented to the lower court" in *this* action. Rule 210(c), SCACR. The petition for a writ of mandamus has nothing to do with this appeal, and it was not presented to the circuit court in the appeal from the MEC. It was an entirely separate action that resulted in a ruling against Respondent that he did not appeal. When confronted, Respondent's counsel agreed it was not relevant to the issues on appeal but thought it was relevant procedural history. It is not. To avoid delaying disposition of this appeal, Appellants have elected not to file a motion to strike and would simply reserve the right to seek costs for Respondent "unjustifiably designat[ing] irrelevant matter to be included in the Record on Appeal." Rule 222(c), SCACR.

"When an issue is raised to but not ruled upon by the trial court, the issue is preserved for appeal only if the party raises the same issue in a Rule 59(e) motion." *Id*. at 515, 673 S.E.2d at 829.

"Of course, a party is not required to use the exact name of a legal doctrine in order to preserve the issue." *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011). But "the issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge." *Id*. The "Court will not apply the rules of error preservation so rigidly as to bar an otherwise properly presented issue." *Chastain v. Hiltabidle*, 381 S.C. 508, 516, 673 S.E.2d 826, 829 (2009). Error preservation "is not a 'gotcha' game aimed at embarrassing attorneys or harming litigants." *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012). And it is "good practice for [the Court] to reach the merits of an issue when error preservation is doubtful." *Id.* at 330, 730 S.E.2d at 285.

Turning to the first ground, Appellants repeatedly reminded the circuit court of its limited scope of review. In fact, it was the very first argument raised at the December 21, 2020 hearing:

> The first thing I want to talk about is the standard of review and I know I don't need to tell you this, you know it better than anybody here in this hearing but I'll just lay down the foundation. In municipal election cases we review the judgement of the Circuit Court of holding or overturning the decision of a Municipal Election Commission to correct errors of law. And your honor that is Gecy versus Bagwell, 642 S.E.2d 569 a South Carolina Supreme Court case in 2007. And I'm sure you're well aware of the Gecy case, and I hope I'm pronouncing that correctly. So that's the standard and review.

(R. p. 674, lines 5-15). *Gecy* specifically states that a circuit court's standard of "review does not extend to findings of fact unless those findings are wholly unsupported by the evidence." 372 S.C. 237, 241, 642 S.E.2d 569, 571 (2007). Appellants Short, Sutton, and Dixon also raised the issue in their memorandum in support of their motion to reconsider, arguing the circuit court "does not have the authority to question the admission or exclusion of evidence of the

MEC unless the MEC abused its discretion in making that decision." (R. p. 434). Because this issue was raised both in the hearing and in a Rule 59(e) motion, the issue is preserved. Respondent's argument to the contrary is specious.

Similarly, since the very beginning of the election protest, Short, Sutton, and Dixon have argued that Baker did more than merely help voters apply for absentee ballots. Indeed, in the hearing, the circuit court asked whether Baker witnessed the absentee ballots or just assisted with requesting the absentee ballots, and the response was that it is difficult to tell because Baker violated other statutory provisions. (R. p. 687, line 13-688, line 7). To the extent the argument that Baker did more than merely violate section 7-15-330 in the December 21, 2020 hearing left anything to chance, it was cleared up in Short, Sutton, and Dixon's memorandum in support of their motion to reconsider. Indeed, they argued it was "evident throughout the record that Ms. Baker's actions were not merely assisting absentee voters to self-register for an application online. In some instances . . . Ms. Baker was stepping into the role of the voter and taking all actions necessary to complete the entire voting process." (R. p. 431).

For Respondent to now say Short, Sutton, and Dixon never argued to the circuit court that Baker did more than just help voters apply for absentee ballots to preserve the issue for appeal is disingenuous. Because Respondents argued to the circuit court that Baker assisted voters through the entire voting process, the argument that the election should be overturned because Baker violated sections 7-15-380 and 7-15-770 is appropriate for this Court's review.

II. There is ample evidence that Baker improperly requested more than 10 absentee ballots for electors.

In his brief, Respondent argues no evidence supports the MEC's finding that Baker requested ten or more absentee ballots in violation of section 7-15-330. Respondent's argument

rests on two shaky pillars: (1) Baker only testified she witnessed 28 ballots, not that she requested 28 ballots; and (2) there is no exact figure on how many ballots Baker requested or witnessed. Appellants will address each in turn.

A. Baker's testimony that she would not be surprised that her name appeared on at least 28 ballots is sufficient for the MEC to find that she assisted voters in requesting 10 to 28 ballots.

Respondent argues that the testimony from the protest hearing actually indicates that Baker only witnessed up to 28 ballots, not that she helped request 28 ballots. In doing so, he is attempting to parse Baker's testimony line by line, ignoring the context of the testimony. Throughout her testimony, Baker was evasive and forgetful about the number of individuals she assisted in the voting process. Initially, Baker said she did not recall the number of individuals with whom she met. (R, p. 58, lines 3-5). When more than ten was suggested, she said that would be reasonable. (*Id*. lines 6-7). She was also asked whether she helped more than twenty and again did not recall the exact figures. (*Id.* lines 8-9). When more than fifty was suggested, only then did Baker suggest between ten and fifteen. (*Id.* lines 11-14).

As the testimony progressed, Baker was asked how she helped the voters in the voting process. She claimed that she would first help the voter obtain the ballot and "never touch the ballot." (*Id*. lines 15-25). Once the ballot was received, Baker said that she said she would help answer questions on the ballot and if the person needed someone to witness, she signed as a witness. (R. p. 581, lines 1-7). When asked how many times she witnessed someone's ballot, Baker guessed ten to fifteen again—which is the exact same number to which she testified earlier when asked how many people she helped at all with the voting process. (*Id.* lines 8-13).

The entire context of this testimony relates to both requesting and witnessing absentee ballots. Baker herself did not disconnect the two actions. She never testified that she requested

absentee ballots for some people and then witnessed absentee ballots for others. Rather, Baker described a two-part process in which she helped the voter request the ballot, and once the ballot was received, she would assist with answering questions about the ballot and then witness the absentee ballot when necessary. Both requesting and witnessing the absentee ballots were part of the same process and Baker used the same figure (10 to 15) for both, indicating that she believed they were talking about the same process. As a result, when counsel for Short, Sutton, and Dixon asked Baker whether it would surprise her to learn her name appeared on 28 ballots and she said it would not, Baker was admitting to not only witnessing 28 absentee ballots, but to assisting in the requesting and witnessing of at least 28 absentee ballots.

Because the context of Baker's testimony plainly indicates that she not only requested but also witnessed the same number of absentee ballots, the MEC could reasonably rely on Baker's admission that it would not surprise her to learn that her name was on 28 absentee ballots to conclude that she was admitting to requesting and witnessing at least 28 absentee ballots.

B. The MEC did not need an exact tally of Baker's illegal or irregular activity to conclude that it should request a new election.

Respondent claims that because Baker did not keep an exact count of the individuals with whom she met and for whom she requested and witnessed absentee ballots, there was not enough evidence to request a new election. This argument falls flat.

All that needs to be shown is that there was enough illegal or irregular activity so as to render the outcome of the election doubtful. *Broadhurst v. City of Myrtle Beach Election Comm'n*, 342 S.C. 373, 381–82, 537 S.E.2d 543, 546 (2000) (citing *In re Bamberg Ehrhardt School Bd. Election*, 337 S.C. 561, 524 S.E.2d 400 (1999); *George v. Mun. Election Comm'n of City of Charleston*, 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*.

In support of his argument, Respondent cites *Fielding v. S.C. Election Comm'n*, 305 S.C. 313, 408 S.E.2d 232 (1991). *Fielding*, however, is inapposite. In that case, a poll watcher had witnessed the sale of votes for $2.50 which was then exchanged for Wild Irish Rose Wine. 305 S.C. at 315, 408 S.E.2d at 233. When asked how many votes he had seen purchased, the watcher could only say that it happened "all day," although he later admitted he had only been at the precinct for twenty to twenty-five minutes. *Id.* A poll manager also estimated that approximately 75% of the voters received assistance to vote when only 27% actually needed it. *Id.* Another poll manager also estimated that "a very large percentage of voters received assistance when they did not need it." *Id.*

Fielding is distinguishable in nearly every aspect. Unlike in *Fielding*, where the testimony came from a poll watcher and two poll managers who could only testify as to the illegal conduct that observed, the testimony here is from the person who actually committed the illegal conduct. In *Fielding*, the witnesses could not even ascribe a minimum number of votes that they observed being illegally cast, and only gave generalities like "as long as you wanted to watch" and "a large percentage" and "75% of black voters" with no explanation for the estimations other than their limited observations. Here, on the other hand, we have a specific number admitted to by Baker—at least 28. This is a specific number, and not a general estimation.

Respondent erroneously reads *Fielding* to mandate an additional requirement on the MEC that any testimony of illegal conduct must be accompanied by documentation. That is not the case. Rather, this Court was pointing out that since there was no numerical figure identified by any witness and no documentation supporting their generalized observations, the Court had no way to determine whether the minimum number of votes necessary to warrant a new election had been cast illegally. In particular, the Court noted that the evidence relied upon rose, at best, "to the level of conjecture, speculation, and surmise." *Id.* at 317, 408 S.E.2d at 234. But this case does not rest upon speculation, conjecture, and surmise. Instead, we have an individual admitting that she was involved with the requesting and witnessing of at least 28 ballots—a stark contrast to the testimony relied upon by the Board of Canvassers in *Fielding*.

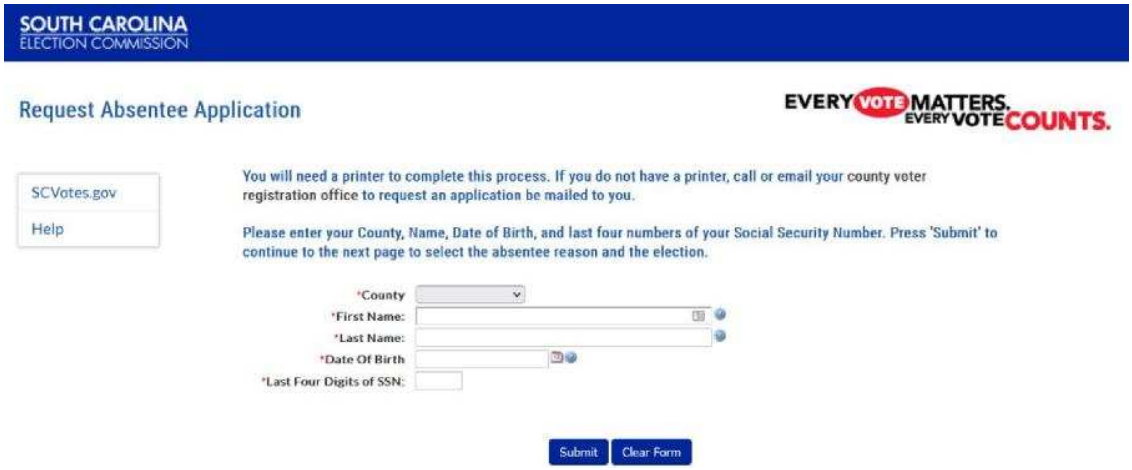
It appears Respondent is arguing that because Baker did not place a cap on the number of votes she improperly influenced, the MEC cannot overturn the election. Yet Baker's testimony shows she requested and witnessed enough absentee ballots that, if deemed unlawful, would render the outcome of the election doubtful. After all, 28 votes deducted from Odom, Linton, and Liles would change the outcome of the election. If Respondent's argument were upheld, it would open the door to illegal activity in our elections. As long as someone did not reveal the exact number of votes they illegally influenced, the election could not be overturned. That is not the law in South Carolina. Because 28 illegally cast votes are sufficient to change the outcome of the election, the Court should uphold the MEC's conclusion that a new election should be ordered.

III. Baker violated section 7-15-330 of the South Carolina Code.

A. Requesting a ballot through the State Election Commission website necessarily requires requesting the ballot through the mail.

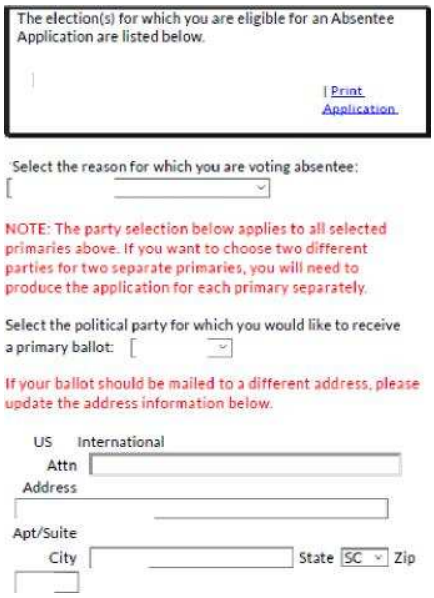
In his brief, Respondent seems to argue that section 7-15-330 only contemplates being registered with the county to request absentee ballots via phone or by mail and, thus, any person

can request the absentee ballot through a website. Not so. Step 1 for requesting an absentee ballot through the State Election Commission website appears as follows:

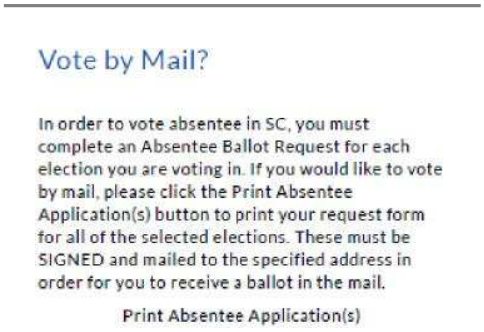


https://info.scvotes.sc.gov/eng/voterinquiry/VoterInformationRequest.aspx?PageMode=Absentee Request (R. p. 701).[3] Once a voter selects the county, enters personal information, and clicks "submit," the voter is taken to a screen to select the reason for voting absentee and an option to select upcoming elections in which the voter may request an absentee ballot.

[3] All information used to proceed to the next step on the Election Commission's website has been redacted.



https://info.scvotes.sc.gov/Eng/VoterInquiry/AbsenteeRequest.aspx (R. pp. 702-03). After clicking "Complete Application" at the bottom of the website, the voter is taken to a third screen where the voter receives information about the voter's precinct and voting districts.



Vote by Mail?

In order to vote absentee in SC, you must complete an Absentee Ballot Request for each election you are voting in. If you would like to vote by mail, please click the Print Absentee Application(s) button to print your request form for all of the selected elections. These must be SIGNED and mailed to the specified address in order for you to receive a ballot in the mail.

Print Absentee Application(s)

https://info.scvotes.sc.gov/Eng/VoterInquiry/PlanYourVisit.aspx (R. pp. 704-05). Upon clicking the "Print Absentee Application" at the bottom of the page, the absentee ballot pops up in PDF format with the voter's information filled in.

South Carolina Application for Absentee Ballot

Election: Application No: Ballot Style:

Name:

Precinct: Runoff Ballot Requested:

Walk-in Applicant: Identification Provided: Party:

Mailing Address for Absentee Ballot:

Voting Districts:
Congressional:
Senate:
House:
CityCouncil:
School:
SchoolAL:
CityCouncil:
Municipality:
MagistrateJuryArea:

Complete the steps below and return this application to the address at the bottom of this form

Step 1 **Check the appropriate box to indicate the reason you are requesting an absentee ballot:**

- ☐ 1. Member of the Uniformed Services on Active Duty
- ☐ 2. Member of the Merchant Marine
- ☐ 3. Spouse or dependent of a member of the Uniformed Services or Merchant Marine
- ☐ 4. U.S. Citizen temporarily residing outside of the United States due to employment, service with the American Red Cross, USO, Peace Corps, etc.
- ☐ 5. U.S. Citizen permanently residing outside of the United States
- ☐ 6. Physical Disability, Illness or Injury
- ☐ 7. Student, their spouse or dependents residing with them who are outside their county of residence
- ☒ 8. For reason of employment will not be able to vote on Election Day
- ☐ 9. Government employee, their spouse or dependents residing with them, who are outside their county of residence on Election Day
- ☐ 10. Person on Vacation who will be outside their county of residence on Election Day
- ☐ 11. Serving as a juror in a state or federal court on Election Day
- ☐ 12. Admitted to the hospital as emergency patient on the day of the election or within a four-day period before the election
- ☐ 13. Death or funeral in the family within a three-day period before the election
- ☐ 14. Confined to jail or pre-trial facility pending disposition or arrest or trial
- ☐ 15. Attending a sick or physically disabled person on Election Day
- ☐ 16. Certified poll watcher, poll manager, county registration board or election commission member or staff working on Election Day
- ☐ 17. Persons sixty-five years of age or older
- ☐ 18. For religious reasons, I do not wish to vote on Saturday (**valid for Presidential Preference Primary only**)

Step 2

I do swear or affirm that I am a qualified elector, that I am entitled to vote in this election, and that I will not vote again during this election. The information above is true in all respects, and I hereby apply for an absentee ballot for the reason indicated above. Any person who fraudulently applies for an absentee ballot in violation of this section, upon conviction, must be punished in accordance with Section 7-25-20.

Signature: _____ Date _____

Phone: _____ Email Address: _____

(Email and phone used for emergency contact purposes or military/overseas citizens ballots only)

Step 3

If you would like your ballot to be mailed to an **address other than the one listed above,** please indicate the correct address below:

Street Address: _____

City, State, Zip: _____

Active Duty Military and Overseas Voters:

Active duty military personnel and their dependents assigned outside of their county of residence and overseas citizens may vote by fax or email. All other ballots will be mailed via the U.S. Postal Service. If you are eligible and would like to receive your ballot by fax or email, please indicate your preference here:

- ☐ Fax (___)____-_____
- ☐ Email *(Provide email address above)*

EVERY VOTE MATTERS. EVERY VOTE COUNTS.

https://info.scvotes.sc.gov/Eng/VoterInquiry/AbsenteeApplication.pdf?PersonId=6464621&ElectionId=21583&Runoff=0&QSHelperHash=3D2D75C551EC4C27E5ED6B7D5F120CFF94AA8773 (R. p. 706). The absentee ballot directs the voter to mail to the address listed in the box that is circled above.

As seen above, even when one requests an absentee ballot "online," the voter only enters information into a website that then prefills the voter's information into a PDF which the voter still has to print off, sign, and return by mail. Thus, while Respondent claims this process could not be contemplated by section 7-15-330, that is simply not the case. The process was specifically designed to comply with that statute. Because a voter still mails in an absentee ballot application when the ballot is "requested" online, Respondent's alleged third process was not available and did not allow Baker to skirt South Carolina law governing who can request an absentee ballot.

B. The circuit court exceeded its scope of review by substituting its factual findings for that of the MEC and misapplied the law.

1. The circuit court cannot make factual findings when sitting in an appellate capacity.

Respondent, oddly enough, agrees that the circuit court—acting in an appellate capacity—made a factual finding in its December 29, 2020 Order. (Resp. Final Br. p. 22-23). He then argues this Court lacks authority to make factual findings because it is an appellate court. (*Id*. at 21-22). Respondent's arguments have thus come full circle, and he is now making the same argument to this Court about its authority to review factual findings of the circuit court that Appellants made to the circuit court regarding its ability to review factual findings of the MEC. Respectfully, Respondent cannot have it both ways.

Simply put, the circuit court exceeded its authority by becoming a factfinder in its December 29, 2021 Order. This contravened decades of election law in South Carolina. *See Gecy*,

372 S.C. at 241, 642 S.E.2d at 571 ("The review does not extend to findings of fact unless those findings are wholly unsupported by the evidence."); *Taylor v. Town of Atl. Beach Election Comm'n*, 363 S.C. 8, 12, 609 S.E.2d 500, 502 (2005); *Blair v. City of Manning*, 345 S.C. 141, 144, 546 S.E.2d 649, 651 (2001) ("[T]he circuit court lacks authority to conduct full hearings on election challenges because the circuit court is by statute an appellate court in such circumstances."); *Butler v. Town of Edgefield*, 328 S.C. 238, 248, 493 S.E.2d 838, 843 (1997) ("Section 5-15-140 does not provide the circuit court with express or implied authority to conduct a full hearing when one is denied by the municipal election commission. The circuit court, in this situation, is by statute an appellate court.").

Because the circuit court cannot make factual findings when hearing an appeal from a municipal election commission, the Court should reverse the circuit court's order overturning the MEC's decision.

2. "Assisting" individuals with filling out absentee ballot application requests runs afoul of section 7-15-330.

Appellants have amply addressed whether Baker did more than request absentee ballots for electors in their opening brief and above. The testimony from Baker and the witnesses at the protest hearing demonstrates that Baker did more than just assist electors with filling out their own absentee ballots. *See* R. p 579, lines 7-9) ("I took time off, unpaid time off to assist the citizens in voting if they would like to."); R. p. 581, lines 3-4 ("If they needed help as far as which in what to put what, I answer questions."); R. p. 586, lines 17-18 ("When you helped people vote, did you have anything to do with how they voted?"); R. p. 647, lines 13-14 ("I asked her to help me to, you know, vote."); R. p. 54, lines 11-12 ("[T]wo young people came to my house to assist with the registration and voting."). But even if Baker did not help the individual actually vote, and just helped electors complete the online application for an absentee ballot, that still violates section 7-15-330.

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.

By claiming she was only "helping" individuals request their own absentee ballot application, Baker believes that she has found a loophole in section 7-15-330. The statute was designed to limit outside interference with an elector's votes by restricting who can be involved in the absentee ballot application process. Whether an individual is requesting an absentee ballot for another person on their own or exerting pressure on the person to complete the application themselves, the outcome is the same—interference with the elector's vote. Irrespective of whether a person is applying for an absentee ballot or just pulling the strings for someone applying for an absentee ballot, section 7-15-330 requires that the person be registered with the county. Permitting individuals to "assist" others in filling out their own requests for absentee ballots without properly registering with the county opens the door to all different kinds of impermissible election activities. The goal is not to restrict voters from being able to apply for absentee ballots, but to ensure that when voters do apply for absentee ballots, those applications are not the result of undue influence.

Because applying for an absentee ballot for someone is fundamentally the same thing as someone standing over the voter while telling the voter what to fill in on the absentee ballot application, section 7-15-330 requires that the individual register with the county. Baker was not registered with the county when she assisted at least 28 voters apply for absentee ballots and then helped them vote. Accordingly, the Court should uphold MEC's decision ordering a new election.

IV. As Respondent now seems to concede, the section 7-15-330 violations were sufficient to overturn the election.

Interestingly, in his brief, Respondent pivots from his argument to the circuit court that a section 7-15-330 violation can never serve as a basis for overturning an election. (*See* Resp. Final Br. p. 23); *cf.* (R. p. 694, lines 14-19); (R. pp. 445-46). The circuit court, however, adopted Respondent's argument in its order, stating "There is no statutory authority for overturning an election based on a violation of S.C. Code Ann. 7-15-330, even if there were one." (R. p. 14). Now, Respondent admits that this was incorrect. That alone is reason enough to reverse the December 29, 2021 Order.

Respondent further argues because nobody testified that Baker asserted undue influence on them, her section 7-15-330 violations are benign. In other words, no harm, no foul. An elector does not need to confess that they have had an undue influence exerted on them for it to be evidence. The people of McBee are well aware that Glenn Odom, an individual singularly responsible for Alligator Rural Water Authority's existence, was running for mayor. They further knew that Baker worked for Alligator. Yet there was Baker, in the middle of the day, coming to their homes to "assist" them with applying for absentee ballots. Others, like Rayshawn Bracey, testified that they requested an absentee ballot at Alligator and actually voted at Alligator. (R. p. 641, line 7- p. 642, line 16). When electors are asked to register to vote, and then actually vote, at the place of business of one of the candidates running for office, undue influence is an inescapable conclusion.

Further, Baker helped June Wright request an absentee ballot when Wright testified she did not know how to read. (R. p. 646, line 17- p. 647, line 10). Wright did testify that she voted how she wanted, but respectfully, it is unclear how she could know that. Situations like this are the very reason section 7-15-330 exists in the first place. If Baker had been properly registered

with the county to help Wright vote, there would be some level of confidence that Baker was filling out the ballot in accordance with Wright's wishes. As it sits, Wright had to rely on an employee of Odom—a candidate for mayor—to ensure the ballot was filled out correctly. Even if Baker did nothing more than "assist" electors in requesting absentee ballots in their homes and at the water department, this would be sufficient to warrant overturning the election. Respondent tries to parse helping request an absentee ballot and assisting with voting as if the two are not intertwined. But one cannot divorce the two. Once a candidate's undue influence is exerted over an individual at the beginning of the voting process, there is no way to remove that taint when the vote is cast.

Indeed, this Court has repeatedly held that where there is broad evidence of violations of the fundamental integrity of an election, there need not be specific evidence of intimidation or fraud. *E.g.*, *Edwards v. Abrams*, 270 S.C. 87, 91–93, 240 S.E.2d 643, 645–46 (1978); *Corn v. Blackwell*, 191 S.C. 183, 4 S.E.2d 254 (1939); *State ex rel. Birchmore v. State Bd. of Canvassers*, 78 S.C. 461, 468–69, 59 S.E. 145, 147 (1907); *see also George*, 335 S.C. at 190, 516 S.E.2d at 209 ("Although the records in [*Edwards, Corn, and Birchmore*] revealed no actual proof of intimidation or fraud, the procedures substantially affected an essential element of the election (secrecy of the ballot), as well as the fundamental integrity of the election.").

After all, preventing undue influence and promoting election integrity are fundamental precepts rooted in the South Carolina Constitution. *See* S.C. CONST. art. II, § 1 (stating "[a]ll elections by the people shall be by secret ballot," and the right to vote "shall be protected by laws regulating elections and prohibiting, under adequate penalties, all undue influence from power, bribery, tumult, or improper conduct"); 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."); *see also Anderson v. S.C. Election Comm'n*, 397 S.C. 551, 556, 725 S.E.2d 704, 706 (2012) (per curiam) ("Integrity in elections is foundational."). Consistent with its constitutional charge, S.C. CONST. art. II, § 10, the General Assembly has enacted laws to ensure the integrity of our elections. *E.g.*, S.C. Code Ann. § 7-15-330.

Here, Baker's actions undermined the integrity of the September 1, 2020 election in McBee. Wearing the veil of the water department, Baker, who has identified herself with Odom, approached electors and offered to "assist" them with applying for absentee ballots.[4] Even if that was all she did, this action—standing alone—would be sufficient to warrant the elector being concerned about crossing Baker. The idea that someone affiliated with a candidate and the water department can go door to door, sign people up to request absentee ballots, then return to their home and ask them if they needed help casting the ballot should concern any fair-minded person. This type of behavior that the General Assembly falls squarely under the umbrella of conduct the General Assembly sought to prohibit when enacting section 7-15-330.

Because Baker's assisting electors requesting absentee ballots alone would be sufficient to warrant a new election, the Court should reverse the circuit court and uphold MEC's order requesting a new election.

V. There is evidence that Baker was a paid volunteer of the Odom campaign.

Respondent argues that there is no evidence that Baker was a paid campaign volunteer of the Odom campaign because there was no evidence presented at the hearing that Baker ever

[4] Turning to Respondent's contention that Appellants misstated the testimony of Elizabeth Murphy and June Wright, (Resp. Br. at 9), Appellants concede the sentence in question was inartfully drafted. *See* Apps.' Final Br. at 13 ("Given that Baker was not an authorized representative for Wright and Murphy, requesting absentee ballots without their knowledge was a violation of section 7-15-330."). The point Appellants sought to drive home is that the voters did not understand the extent of the significant role Baker played in this process. The undersigned apologize for any confusion caused by this sentence.

received any funds from the Odom campaign. (Resp. Final Brief, p. 27). According to Respondent, at best, there was only evidence presented that Baker and Odom worked at the same company. (*Id*. at 27-28). Respondent further argues that while there may be evidence that Baker was a paid campaign volunteer in the 2016 election, there is no evidence she was a paid campaign volunteer in the 2020 election. (*Id*. p. 28-29). In so arguing, Respondent tries to escape this inconvenient truth by saying the MEC cannot rely on its prior decisions. (*Id.* p. 28-29).

Circumstantial evidence gives rise to inferences to be drawn by the trier of fact. *White v. White*, 212 S.C. 440, 48 S.E.2d 189 (1948). "Any fact in issue may be proved by circumstantial evidence as well as direct evidence, and circumstantial evidence is just as good as direct evidence if it is equally as convincing to the trier of the facts." *St. Paul Fire & Marine Ins. Co. v. Am. Ins. Co.*, 251 S.C. 56, 59-60, 159 S.E.2d 921, 923 (1968). However, "[i]nferences of fact, like fullbacks on football teams, do not ordinarily run backward." *Hite v. Ed Smith Lumber Mill, Inc.*, 309 S.C. 185, 187, 420 S.E.2d 860, 862 (Ct. App. 1992) (quoting *Winburn v. Ins. Co. of N. Am.*, 287 S.C. 435, 440, 339 S.E.2d 142, 146 (Ct. App. 1985)). Considerable latitude is allowed counsel in drawing inferences and deductions from evidence and in arguing the same to the factfinder. *Lesley v. Am. Sec. Ins. Co.*, 261 S.C. 178, 199 S.E.2d 82 (1973). And "[v]erdicts should be based on deductions drawn by the jury from the evidence presented." *Harper v. Bolton*, 239 S.C. 541, 549, 124 S.E.2d 54, 58 (1962).

In the protest hearing, Short, Sutton, and Dixon presented evidence that Baker worked for Alligator and that Odom was still listed on Alligator's website as the manager. (R. p. 575, lines 15-23; R. p. 584, line 2- p. 585, line 13). While Baker claimed that Odom no longer worked at Alligator, she admitted that she saw Odom at Alligator within the last two weeks, indicating that he did still work there. (R. p. 577, line 3- p. 578, line 4). Baker alleged that she took unpaid time off work to make calls and go

door-to-door with her own laptop and printer to assist the citizens of McBee with registering to vote and with voting. (R. p. 579, lines 10-18; R. p. 582, lines 21-25). Despite Baker's claim that she took unpaid time off work to perform her voter registration and assistance operation, Rayshawn Bracey testified that he requested an absentee ballot at the "water tower place." (R. pp. 641, line 15- p. 642, line 13). In other words, the evidence showed Baker was performing voter registration and assistance activities at Alligator on the clock during business hours for her employer. What is more, the MEC took judicial notice of its prior ruling that Baker was a paid campaign volunteer of Odom in the 2016 election. (R. p. 19). Based on these facts, the MEC—as the factfinder—certainly could conclude that Baker was assisting with requesting absentee ballots and with voting during business hours at the direction of Odom, who controlled her paycheck as the general manager of Alligator.

Finally, although Respondent argues that the MEC cannot take judicial notice of its prior decisions because it is constrained by section 1-23-330, he again misunderstands South Carolina election law. That statute applies to state agencies. *See* S.C. Code Ann. §1-23-310(2) (defining "agency" in the article as "each *state* board, commission, department, or officer, other than the legislature, the courts, or the Administrative Law Court, authorized by law to determine contested cases" (emphasis added)). The MEC is a municipal commission, not a state board. *Cf. Owen Steel Co., Inc. v. S.C. Tax Comm'n*, 281 S.C. 80, 84, 313 S.E.2d 636, 638 (Ct.App. 1984) ("Contrary to the arguments advanced by the parties, the Board of Review is an 'agency' as defined by the APA. It is a statewide board appointed by the Governor."); *see also James Acad. of Excellence v. Dorchester Cty. Sch. Dist. Two*, 376 S.C. 293, 300, 657 S.E.2d 469, 473 (2008) ("'Agency' means each state board."). As such, section 1-23-330 is inapplicable.

Indeed, Respondent whistles past the context of this case. This is not an administrative agency proceeding under Title 1. Rather, it is a municipal election protest that falls under the canopy of Title 5. Section 5-15-10 states that all municipal "elections shall be conducted pursuant to Title 7, mutatis mutandi, except as otherwise provided for specifically in Chapters 1 through 17." Under Title 7, protest hearings shall be conducted "as nearly as possible in accordance with the procedures and rules of evidence observed by the circuit courts of this state." S.C. Code Ann. § 7-17-50. Thus, we return to the South Carolina Rules of Evidence. *Id.*; *see also* Rule 1101(b), SCRE. While the MEC's finding may not be convenient for Respondent, the MEC's previous order was capable of judicial notice. *See* Rule 201(b), SCRE. Baker's prior conduct on behalf of Respondent was relevant and entitled to great weight.

Because the record contains evidence that Baker was being paid directly or indirectly through Odom for requesting absentee ballots and assisting with voting, the circuit court erred in substituting its own findings—and in blithely asserting that such allegations were "false"—and the Court should uphold the MEC's decision to request a new election. *See Taylor*, 363 S.C. at 14, 609 S.E.2d at 503 (holding the circuit court "must accept the factual findings of the commission unless they are wholly unsupported by the evidence"); *see also Small v. Pioneer Mach., Inc.*, 329 S.C. 448, 465, 494 S.E.2d 835, 843 (Ct. App. 1997) ("The fact finder is imbued with broad discretion in determining credibility or believability of witnesses. Quintessentially, an operative factor in evaluating credibility of a witness is inconsistency.").

CONCLUSION

For the foregoing reasons, the Court should reverse the circuit court's ruling and uphold the MEC's order requesting a new election. The circuit court exceeded its scope of review and misapplied the law in excusing Baker's unlawful electioneering activities on behalf of Respondent.

Respectfully submitted,

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November 20, 2021