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**S.C. Supreme Court**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM Horry COUNTY

Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2012-CP-26-4403

Windy Price, .....Appellant,

v.

Horry County Election Commission,  
South Carolina State Election Commission,  
Jake Evans, Josephine Isom, and Charlene Taylor, ..... Defendants.

Of whom Horry County Election Commission  
And South Carolina Election Commission are ..... Respondents.

**FINAL BRIEF OF RESPONDENT  
HORRY COUNTY ELECTION COMMISSION**

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**TABLE OF CONTENTS**

i

Table of Authorities ..... iv

Statement of Issues on Appeal ..... v

Statement of the Case ..... 1

Facts ..... 2

Standard of Review ..... 5

Argument ..... 6

    I.    The Circuit Court Properly Affirmed the HEC’s Decision, Concluding  
          that Issues Related to Preclearance under the Voting Rights Act and  
          Governor Haley’s Executive Order Could not be Considered at Price’s  
          Protest of the Mayoral Election. .... 6

        A.    Challenges Based on Alleged Violations of the Voting Rights  
              Act and Corresponding Evidence are Improper and  
              Impermissible in a Municipal Election Protest. .... 6

        B.    Challenges Based on Governor Haley’s Executive Order and  
              Corresponding Evidence are Improper and Impermissible in a  
              Municipal Election Protest. .... 8

    II.   The Circuit Court Properly Affirmed the HEC’s Decision Determining  
          that Price Failed to Raise Notice Issues in Her Protest Letter and that  
          the HEC Complied with the Statutory Provisions Regarding Notice. .... 8

        A.    Price Failed to Raise Notice Issues in Her Protest Letter. .... 9

        B.    Any Defects in Notice Did Not Substantially Affect Essential  
              Elements of the Voting Process. .... 11

            1.    Changing the Polling Location Did Not Violate  
                  Mandatory State Law Because It Did Not Substantially  
                  Affect Essential Elements of the Voting Process. .... 12

            2.    Lack of Approval by the Horry County Legislative  
                  Delegation Does Not Constitute an Essential Element  
                  of the Election. .... 14

    III.  The Record Supports that Notice of the Protest Hearing Complied with  
          the Freedom of Information Act. .... 14

Conclusion .....15

**TABLE OF AUTHORITIES**

**Cases**

*Armstrong v. Atlantic Beach Mun. Election Comm'n*,  
380 S.C. 47, 668 S.E.2d 400 (2008) .....2

*Berry v. Spigner*,  
226 S.C. 183, 84 S.E.2d 381 (1954) .....5, 6

*Butler v. Town of Edgefield*,  
328 S.C. 238, 493 S.E.2d 838 (1997) .....7, 9, 10

*Cole v. Town of Atlantic Beach Election Comm'n*,  
393 S.C. 264, 712 S.E.2d 440 (2011) .....2, 5, 11, 13, 14, 15

*George v. Mun. Election Comm'n of the City of Charleston*,  
335 S.C. 182, 516 S.E.2d 206 (1999) .....5, 11

*In re: Nov. 4, 2008 Bluffton Town Council Election*,  
385 S.C. 632, 686 S.E.2d 683 (2009) .....5

*State ex rel. Davis v. State Board of Canvassers*,  
86 S.C. 451, 68 S.E.2d 676 (1910) .....10

*Taylor v. Town of Atlantic Beach Election Comm'n*,  
363 S.C. 8, 609 S.E.2d 500 (2005) .....2, 6, 9

**Statutes**

S.C. Code Ann. § 5-15-50.....13

S.C. Code Ann. § 5-15-130.....6, 7, 8, 9, 15

S.C. Code Ann. § 7-7-910(B)(2).....9, 14

S.C. Code Ann. § 7-7-1000.....9, 13

S.C. Code Ann. § 7-13-35.....9, 12, 13

S.C. Code Ann. § 30-4-80(a) .....15

**Other Authorities**

26 Am. Jur. 2d *Elections* § 434 (1996) .....10

## STATEMENT OF ISSUES ON APPEAL

- I. Did the Circuit Court Properly Affirm the HEC's Decision Concluding that Issues Related to Preclearance under the Voting Rights Act and Governor Haley's Executive Order Could Not be Considered by the HEC in Price's Protest of the Mayoral Election?**
  
- II. Did the Circuit Court Properly Affirm the HEC's Decision Determining that Price's Complaints about Public Notice Were Insufficient to Overturn the Mayoral Election when Price Failed to Raise Issues of Notice in Her Protest Letter and when the HEC Complied with the Statutory Provisions Regarding Notice?**
  
- III. Did the Circuit Court Make a Wholly Unsupported Finding of Fact when It Concluded that Notice of the Protest Hearing Complied with the Freedom of Information Act Because the HEC Provided Notice of the Protest Hearing Twenty-Four Hours in Advance?**

## STATEMENT OF THE CASE

This is an appeal of a protest of the May 22, 2012 election for the mayor of the Town of Atlantic Beach (“Atlantic Beach”) by a candidate who garnered one of the ninety-one votes cast. (*See* R. p. 0029) The result of the election was that Jake Evans was determined the winner of the election as he received eighty-four (84) of the ninety-one (91) votes cast. (*Id.*) Candidate Retha Pierce received five (5) votes, while candidate Windy Price received one (1) vote. (*Id.*) On May 24, 2012, Price protested the result of the election under the following grounds: (1) vote counting, (2) violations of state law, including secrecy of ballots and fraudulent conduct, and (3) violations of federal law. (*Id.*) On May 25, 2012, the Horry County Election Commission (“HEC”) heard Price’s protest and subsequently denied it, holding that Price presented no evidence that would allow the HEC “to determine with certainty that the result of the election would be changed or rendered doubtful.” (R. p. 0027).

On June 4, 2012, Price appealed the decision of the HEC to the circuit court. (R. pp. 0044 - 0073). On July 26, 2012, the circuit court heard Price’s appeal. On August 15, 2012, the circuit court denied and dismissed Price’s appeal, affirmed the decision of the HEC upholding the election, and concluded that “[n]one of the issues articulated by Price in any way would change the result of the May 22 election or render it doubtful.” (R. p. 0041). In response, Price filed a motion to alter or amend the circuit court’s Order Denying Appeal; however, the circuit court denied this motion on October 24, 2012 in its Form 4 Order, filed on October 29, 2012. (R. pp. 0042 – 0043). Price now appeals both the circuit court’s Order Denying Appeal and its Form 4 Order, denying the motion to alter or amend the judgment. (R. pp. 0156 – 0157).

## FACTS

The Town of Atlantic Beach (“Atlantic Beach”) has had a tumultuous and storied history with its elections. Over the past eight years, three appeals of protests of Atlantic Beach elections have been before this Court. See *Cole v. Town of Atlantic Beach Election Comm’n*, 393 S.C. 264, 712 S.E.2d 440 (2011); *Armstrong v. Atlantic Beach Mun. Election Comm’n*, 380 S.C. 47, 668 S.E.2d 400 (2008); *Taylor v. Town of Atlantic Beach Election Comm’n*, 363 S.C. 8, 609 S.E.2d 500 (2005). Subsequent to the last Supreme Court case regarding Atlantic Beach’s elections, Governor Nikki Haley issued Executive Order 2012-03 (“Executive Order”) on March 16, 2012.

In her Executive Order, Governor Haley ordered an election for the mayor and two at-large town council members for Atlantic Beach be held on May 22, 2012 or at the earliest possible date allowed by law. (R. p. 0002). Additionally, she ordered the HEC, along with the State Election Commission, “to perform the necessary official duties pertaining to the election, including noticing the election, conducting the election, counting the votes, declaring the result, and resolving any protest associated with the election.” (*Id.*)

On the same day Governor Haley issued the Executive Order, she submitted her Executive Order to the United States Department of Justice (“DOJ”) for preclearance review under section 5 of the Voting Rights Act. (R. pp. 0383 – 0385). The DOJ did not impose any objection to the voting changes in Governor Haley’s Executive Order. (R. pp. 0355 – 0356).

While the Governor’s Office was seeking preclearance, the HEC, along with the South Carolina State Election Commission, began preparing for the May 22 election,

pursuant to the Executive Order. (*See, e.g.*, R. pp. 0386 - 0387). Approximately one week after the Governor issued her Executive Order, the HEC published notice of the May 22 election in *The Sun News* on March 23, 2012, and then again on April 6, 2012. (R. p. 0446). Soon after the second publication of notice, the HEC contacted the Town of Atlantic Beach and learned that the Atlantic Beach Community Center (“Community Center”) may not be available to be the polling location due to activities associated with Atlantic Beach’s Bikers’ Week. (R. pp. 0388 - 0389). The HEC immediately began looking for an alternative location, (R. pp. 0390 - 0391), while continuing to check on the status of the Community Center (R. p. 0392). With the Community Center not being available and in an effort to keep the polling location within the confines of Atlantic Beach, the HEC located another polling location at the First Missionary Baptist Church (“Church”), only three blocks from the Community Center (R. pp. 0395 - 0396). To notify Atlantic Beach voters of the change in polling location, the HEC mailed postcards to the Atlantic Beach voters advising them of the change. (R. p. 0274, ll. 14-20).

As established in the election calendar timeline, the HEC conducted the May 22 election, including opening the absentee ballots in Conway, South Carolina on May 22, 2012, pursuant to the Executive Order. (App., p. 001; R. p. 161, l. 20 – p. 0162, l. 3). Three candidates ran for mayor of the Town of Atlantic Beach – Jake Evans, Retha Pierce, and Windy Price. (*Id.*) The HEC also held a challenged ballot hearing on May 24, 2012 in Conway, South Carolina. (R. p. 0447). Following the challenged ballot hearing, the HEC determined that Evans received eighty-four (84) of the ninety-one (91) votes cast, while Pierce received five (5) votes and Price received one (1) vote. (R. p. 0029).

Therefore, the HEC certified the election results and declared Evans the winner of the election, considering he received over 90% of the votes cast. (*Id.*)

The protests by both Pierce and Price followed. (R. p. 0029). Specifically, Price filed her protest on May 24, 2012. (R. pp. 0117 - 0118). Price's grounds for her protest were (1) vote counting, (2) violations of state law, including secrecy of ballots and fraudulent conduct, and (3) violations of federal law. (R. p. 0029). In her protest letter, Price did not reference any problems with notice of the election, the challenged ballot hearing, or the protest hearing. (R. pp. 0117 - 0118).

The HEC scheduled the protest hearing for May 25, 2012 beginning at 3:00 p.m. (R. p. 0029). The May 25, 2012 protest hearing was held for both the Price and the Pierce protests. The HEC gave notice of the protest hearing to the public twenty-four hours in advance of the protest hearing. (R. p. 0029; R. p. 0175, ll. 13-15.) Price presented her case, including offering witnesses and cross-examining Pierce's witnesses. (R. p. 0030). After the presentation of Price's and Pierce's protests, the HEC denied both protests. (R. p. 0030). The HEC filed its order denying the protest ("HEC Order") with the Horry Clerk of Court and served a copy of the order on Price on or about May 29, 2012. (R. p. 0030).

Next, Price appealed the HEC Order to the circuit court on June 4, 2012 (R. pp. 0044 - 0073). Sitting in an appellate capacity, the circuit court held oral argument on Price's appeal on July 26, 2012. (R. p. 0028). The circuit court denied Price's appeal, holding that the HEC properly did not consider Price's challenges regarding the Executive Order and alleged violations of the Voting Rights Act as the HEC lacked jurisdiction to consider such claims. (R. pp. 0033 - 0034). The circuit court also

concluded that challenges to public notice were insufficient to overturn the election because Price failed to raise it as a ground in her protest letter, and therefore not properly before the HEC. (R. p. 0034). Moreover, the circuit court concluded that even if she had raised it as a ground, the record reflects that sufficient notice of both the election and the protest hearing was given by the HEC. (R. pp. 0034 - 0035). Finally, the circuit court held that the record was void of any evidence to support her claims of vote counting, voter intimidation, and secrecy of the ballot. (R. pp. 0036 - 0040). Stating “[t]here is no evidence in the record presented to the Commission regarding irregularities with respect to any specific voters or votes case on May 22, 2012, let alone in numbers sufficient to overcome Pierce’s 79 vote deficit or Price’s 83 vote deficit,” the circuit court affirmed the decision of the HEC and denied and dismissed Price’s appeal. (R. p. 0041).

#### **STANDARD OF REVIEW**

“In municipal election cases, this Court will review the lower decision for errors of law, and will not overturn findings of fact unless those findings are wholly unsupported by the evidence.” *In re: Nov. 4, 2008 Bluffton Town Council Election*, 385 S.C. 632, 636, 686 S.E.2d 683, 685 (2009). “The Court will employ every reasonable presumption to sustain a contested election, and will not set aside an election due to mere irregularities or illegalities unless the result is changed or rendered doubtful.” *Cole*, 393 S.C. at 271-72, 712 S.E.2d at 444 (quoting *George v. Mun. Election Comm’n of the City of Charleston*, 335 S.C. 182, 186, 516 S.E.2d 206, 208 (1999)); *see also Berry v. Spigner*, 226 S.C. 183, 189-90, 84 S.E.2d 381, 384 (1954) (“Errors which do not appear to have affected the result will not be allowed to overturn an election, and every reasonable presumption will be indulged to sustain it.”)

“In the absence of fraud, a constitutional violation, or a statute providing that an irregularity or illegality invalidates an election, we will not set aside an election for a mere irregularity.” *Taylor*, 363 S.C. at 12, 609 S.E.2d at 502. “Voters who have done all in their power to cast their ballots honestly and intelligently are not to be disenfranchised because of an irregularity, mistake, error, or even wrongful act, of the officers charged with the duty of conducting the election, which does not prevent a fair election and in some way affect the result.” *Id.* at 12-13, 609 S.E.2d at 502 (quoting *Berry*, 226 S.C. at 190, 84 S.E.2d at 384).

When applying this standard to the present case, it is clear that the Order Denying Appeal of the circuit court affirming the decision of the HEC and denying and dismissing Price’s appeal should be affirmed.

### ARGUMENT

**I. The Circuit Court Properly Affirmed the HEC’s Decision, Concluding that Issues Related to Preclearance under the Voting Rights Act and Governor Haley’s Executive Order Could not be Considered at Price’s Protest of the Mayoral Election.**

The majority of Price’s complaints implicate or concern either alleged violations of the Voting Rights Act or the authority of Governor Haley’s Executive Order. Neither of these complaints was properly before the HEC or the circuit court. Both the HEC and the circuit court properly refused to consider these issues in Price’s protest, and therefore, committed no reversible errors of law.

**A. Challenges Based on Alleged Violations of the Voting Rights Act and Corresponding Evidence are Improper and Impermissible in a Municipal Election Protest.**

Municipal election protests allow for challenges solely to the results of an election. Section 5-15-130 of the South Carolina Code, entitled “Procedures for

contesting results of election,” allows a candidate to contest the results of, not the prelude to, an election. Specifically, section 5-15-130 provides that “[w]ithin forty-eight hours after the closing of the polls, any candidate may contest *the result of an election* as reported by the managers . . . .” (Emphasis added.) In other words, challenges under the Voting Rights Act cannot be considered in an election protest. In fact, a candidate lacks standing to pursue such a claim under the Voting Rights Act. *Butler v. Town of Edgefield*, 328 S.C. 238, 250, 493 S.E.2d 838 (1997) (holding aggrieved candidate lacks standing under the Voting Rights Act in an election contest).

Here, the circuit court committed no error of law by refusing to consider claims and evidence related to the Voting Rights Act. Price complains that the HEC’s failure to preclear the change in location for (1) the opening of absentee ballots, (2) the challenged ballot hearing, and (3) the election protest hearing interfered with Atlantic Beach’s minority voters’ ability to vote, and therefore, the election should be overturned. (Initial Br. of Appellant at 18-19.) Additionally, Price contends that the HEC should have admitted evidence relating to preclearance and the Executive Order because the evidence was relevant under Rule 401, SCRE because it pertains to notice<sup>1</sup>. (Initial Br. of Appellant at 25-28.) However, the HEC lacked jurisdiction to hear such claims and

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<sup>1</sup> Specifically, Price complains about the exclusion of (1) the Atlantic Beach Municipal Election Commission’s objection to preclearance and (2) the HEC’s DOJ submission for preclearance of changing the polling location. (Initial Br. of Appellant at 28.) However, this evidence has no tendency of establishing whether notice was adequately provided, a ground that Price now raises, although she failed to do so in her protest letter. The HEC properly excluded this irrelevant evidence.

Additionally, Price alleges that an incident report should have been admitted over a hearsay objection. (*Id.*) The fact that she failed to have an attorney present at the protest hearing to respond to the hearsay objection provides no support for overturning the evidentiary ruling. The circuit court did not err in refusing to overturn the evidentiary ruling.

evidence because they did not pertain to the result of the election and Price lacked standing to make such claims. Therefore, this Court should affirm the circuit court's decision and hold that it committed no errors of law by refusing to overturn the HEC Order with respect to claims and evidence related to the Voting Rights Act.

**B. Challenges Based on Governor Haley's Executive Order and Corresponding Evidence are Improper and Impermissible in a Municipal Election Protest.**

Similarly, the circuit court committed no errors of law by affirming the HEC's decision not to consider any challenges or evidence related to the Executive Order. The Executive Order directed the HEC to conduct the May 22 election and perform the necessary duties pertaining to it. The HEC complied with the Executive Order, and any claims or evidence related to the Executive Order has nothing to do with "the result of the election" as provided for in section 5-15-130, and therefore, this Court should affirm the circuit court's decision and hold that it committed no errors of law by refusing to overturn the HEC's decision with respect to claims and evidence related to the Executive Order.

**II. The Circuit Court Properly Affirmed the HEC's Decision Determining that Price Failed to Raise Notice Issues in Her Protest Letter and that the HEC Complied with the Statutory Provisions Regarding Notice.**

In her protest letter, Price raised no issues regarding notice, and even if she did, the HEC did not violate mandatory statutory provisions that would overturn the May 22 election. To maintain an election contest in South Carolina, the candidate must meet "two prerequisites," which are as follows:

'(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, [or] a statute providing that such irregularity or illegality shall invalidate the election.’

*Taylor*, 363 S.C. at 16, 609 S.E.2d at 504 (quoting *Butler*, 328 S.C. at 246, 493 S.E.2d at 842). The contest notice must to be filed together “with a concise statement of the grounds therefor . . . .” S.C. Code Ann. § 5-15-130.

Price now complains that proper notice was not given for the election. Specifically, she asserts that public notice of the election in the newspaper was not provided in accordance with section 7-13-35. (Initial Br. of Appellant at 14-15.) Next, she claims that notice of the election was not published in the newspaper on the day of the election in accordance with section 7-7-1000. (*Id.* at 15-16.) Then, she asserts that the postcards mailed to each voter in Atlantic Beach were insufficient notice. (*Id.* at 16.) Finally, she states that the HEC failed to comply with section 7-7-910(B)(2) by failing to consult with the Horry County Legislative Delegation when the polling location was changed from the Community Center to the Church (*Id.* at 16-19.) Price claims that all of these alleged actions were violations of mandatory state law. However, Price never raised them in her protest letter. Moreover, even if she did and even if there were such violations, they were not violations of mandatory state law, warranting a new election.

**A. Price Failed to Raise Notice Issues in Her Protest Letter.**

Because Price’s protest letter makes no references to notice, any defects in notice were not properly before the HEC. Section 5-15-130 requires a protestor to provide a “concise statement of the grounds” of his protest. “The notice in an election contest ‘should briefly state facts or a combination of facts sufficient to apprise the contestee of the cause for which his election is contested, it being insufficient to allege generally that fraud was committed, or to allege mere conclusions of the pleader.’” *Butler*, 328 S.C. at

245-46, 493 S.E.2d at 842 (quoting 26 Am. Jur. 2d *Elections* § 434 (1996)). After all, “[t]he purpose of the notice requirement is to adequately inform the contestee as to the nature of the contest.” *Id.* Although “technical precision in pleading should not be required [for election contests], still reason and justice require that the grounds relied upon should be stated plainly and clearly that the contestee may prepare to meet them without unnecessary labor or expense.” *Id.* at 247, 493 S.E.2d at 843 (quoting *State ex rel. Davis v. State Board of Canvassers*, 86 S.C. 451, 458-59, 68 S.E.2d 676, 679 (1910)).

Here, Price gave no notice of her issues concerning notice defects in her protest letter, dated May 24, 2012. (R. pp. 0117 - 0118). In fact, she makes no direct claims against the HEC and how it, specifically, conducted the election. Her vague reference to “[e]vidence will show that more people stayed away from the polling place on May 22, 2012 as a result of information that was not provided to all candidates and all voters[.]” is not directed toward notice. (*See id.*) Rather, it appears to be a reference to “specific individuals to orchestrate a winning election for specific candidates[.]” including those in Governor Haley’s office. (*Id.*) An intent to provide notice as a protest ground cannot be gleaned from this statement.<sup>2</sup> Consequently, Price failed to provide notice defects as a ground for her protest, and therefore, the circuit court did not commit an error of law when it affirmed the HEC Order, concluding that notice was not properly raised.

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<sup>2</sup> At the protest hearing, Price stated that one of her protest grounds is “violations of state law,” and now she is asserting that these statements were adequate notice of her grounds. (Initial Br. of Appellant at 23-25.) However, this ground is too broad to provide adequate notice. *See Butler*, 328 S.C. at 247, 493 S.E.2d at 843 (“A general allegation of fraud is insufficient to notify the contestee as to the cause for the contest.”). Price’s logic would allow candidates to plead “violations of state law” and then at the protest hearing argue a panoply of statutory and case law protest grounds, leaving the other candidates and the HEC wholly unprepared to address the protest grounds.

**B. Any Defects in Notice Did Not Substantially Affect Essential Elements of the Voting Process.**

The HEC substantially complied with all statutes concerning notice. Because courts employ every reasonable presumption to sustain a contested election, they have developed an analytical framework to determine whether the statutory provisions governing elections are mandatory or directory. *George*, 335 S.C. at 186, 516 S.E.2d at 208. “Generally, courts consider the provisions of elections laws mandatory when the statute expressly declares that a particular act is essential to the validity of an election, or when a party seeks enforcement of the law in a direct proceeding before the election takes place.” *Cole*, 393 S.C. at 274, 712 S.E.2d at 445. However, to avoid disenfranchising voters after they had participated in an election, courts will construe statutes employing words, such as “shall” or “must,” as merely directory, rather than mandatory, if the challenging party alleges no fraud or fails to prove fraud. *Id.* On the other hand, a court can construe such a statute mandatory after an election when “the provisions substantially affect the free and intelligent casting of a vote, the determination of the results, an essential element of the election, or the fundamental integrity of the election.” *Id.* (quoting *George*, 335 S.C. at 187, 516 S.E.2d at 208). Here, all alleged defects in notice do not substantially affect the free and intelligent casting of a vote or determine the results of the election and do not impact the essential elements or the fundamental integrity of the election. Therefore, there were no violations of mandatory statutory provisions, warranting a new election.

**1. Changing the Polling Location Did Not Violate Mandatory State Law Because It Did Not Substantially Affect Essential Elements of the Voting Process.**

The HEC provided the requisite notice for the May 22 election, and therefore, the circuit court did not commit a clear error of law when it refused to overturn the May 22 election based on alleged defects of notice. Section 7-13-35 of the South Carolina Code provides that the authority conducting the election must publish two notices of the election, including the location of the polling places, in a newspaper of general circulation in the county or municipality. “The first notice must appear not later than sixty days before the election and the second notice must appear not later than two weeks after the first notice.” S.C. Code Ann. § 7-13-35.

Here, the HEC published notice of the May 22 election in *The Sun News* on March 23, 2012, which was sixty days before the May 22 election and approximately one week after Governor Haley issued her Executive Order on March 16, 2012. (R. p. 0446). The HEC published its second notice on April 6, 2012. (*Id.*) Both March 23 and April 6 notices provided that the election would be held at the Community Center. However, after running the April 6, 2012 notice, the Town of Atlantic Beach informed the HEC that the Community Center was no longer available, and it would have to use the Church as its new polling location. (R. pp. 0338 – 0339). In response, the HEC sent out postcards to all registered Atlantic Beach voters, notifying them of the new polling location.<sup>3</sup> (R. p.

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<sup>3</sup> Price also argues that the postcards, themselves, were insufficient to provide notice. Specifically, she contends that postcards had been returned to the post office and that the polling location was described with a North Myrtle Beach, rather than an Atlantic Beach address. (Initial Br. of Appellant at 16.) However, there is no testimony in the record from a voter that he or she did not receive a postcard or that he or she was confused by the polling location having a North Myrtle Beach address.

00274, ll. 14-20). Therefore, any deviation from section 7-13-35 was remedied by mailing notice to each voter. Moreover, there is no testimony from a voter that he or she was confused or prejudiced by the newspaper and postcard notices. The record does not support a ruling that section 7-13-35 is mandatory as there is no evidence of fraud or that these notices “substantially affect[ed] the free and intelligent casting of a vote, the determination of the results, an essential element of the election, or the fundamental integrity of the election.” *Cole*, 393 S.C. at 274, 712 S.E.2d at 445. The circuit court did not commit a clear error of law when it found that publication in *The Sun News*, along with the mailing of the postcards, satisfied notice requirements for the May 22 election.<sup>4</sup>

Additionally, Price complains that the record is devoid of evidence that the HEC published the location of the polling place in the newspaper on May 22, the day of the election, and therefore, the HEC failed to satisfy the mandate of section 7-7-1000. (Initial Br. of Appellant at 15-16.) A lack of evidence in the record of Price’s protest does not translate into a mandatory statutory violation, requiring the election to be overturned. The burden to overturn the election is Price’s, not the HEC’s. There is no testimony in the record to support that even one voter was confused or prejudiced by the alleged lack of election day notice publication. Any issues with notice and the changed polling location do not rise to the level of overturning the May 22 election.

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<sup>4</sup> The circuit court relied on section 5-15-50 when it held that the publication of notice “is more than sufficient to comply with the statutory requirement that notice be given 60 days prior to any election.” (R. p. 0035). The analysis remains the same under section 7-13-35, which also requires notice to be given sixty days or later before the election.

**2. Lack of Approval by the Horry County Legislative Delegation Does Not Constitute an Essential Element of the Election.**

Section 7-7-910(B)(2) is merely directory, and not mandatory, as the statute's provisions do not "substantially affect the free and intelligent casting of a vote, a determination of the results, an essential element of the election, or the fundamental integrity of the election." *Cole*, 393 S.C. at 274, 712 S.E.2d at 445. Section 7-7-910(B)(2) of the South Carolina Code provides that when a designated polling place becomes unavailable "as a result of an emergency situation," the authority conducting the election will "designate an alternative polling place" and must receive the approval of the legislative delegation if the designation occurs more than seven days prior to the election.

Again, Price did not raise notice to the Horry County Legislative Delegation as a protest ground in her protest letter. Nor did she raise it at the protest hearing. Failing to obtain the Horry County Legislative Delegation's approval is not a violation of mandatory state law. At the protest hearing, there was no testimony from voters about how input from the Horry County Legislative Delegation would have impacted them or the election. There was no testimony that the failure to obtain the Horry County Legislative Delegation's approval challenged the fundamental integrity of the election. In other words, there is no support – legally or factually – that section 7-7-910(B)(2) should be considered mandatory, rather than directory.

**III. The Record Supports that Notice of the Protest Hearing Complied with the Freedom of Information Act.**

Because the media was notified twenty-four hours prior to the May 25, 2012 protest hearing, the HEC met the Freedom of Information Act ("FOIA") requirements regarding notice of meetings. FOIA provides that public bodies should provide twenty-

four hours notice before its meetings, excluding emergency meetings. S.C. Code Ann. § 30-4-80(a). The circuit court held the HEC met the requirement. Specifically, the circuit court found that public notice was provided twenty-four hours prior the protest by referring to colloquy between Russell W. Hall, III, commissioner for the HEC, and Price. (R. pp. 0035 - 0036). Hall stated “[w]e gave twenty-four hour notice via the news media. As soon as we decided we would have the hearing we did that.” (R. p. 0175, ll. 13-15.)<sup>5</sup> This testimony provides sufficient support for the circuit court’s finding that the HEC complied with FOIA by giving public notice of the hearing twenty-four hours prior to the protest hearing. Given the recent controversies surrounding Atlantic Beach’s elections, the HEC properly anticipated a protest would be forthcoming and provided notice to the public, including the candidates, of the hearing date and time. Therefore, this Court should not overturn the circuit court’s finding of fact.

### CONCLUSION

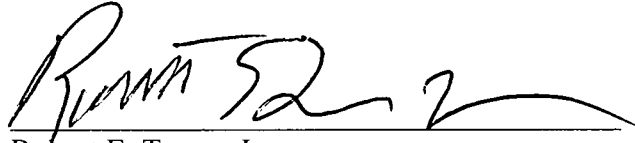
For the reasons stated herein, this Court should affirm the orders of the circuit court.

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<sup>5</sup> FOIA does not impose a twenty-four hour requirement to notify particular, individual citizens of meetings. Additionally, FOIA does not serve as an end run around section 5-15-130 which requires the protest hearing to be held within forty-eight hours after the filing of a protest notice and “after due notice to the parties concerned.” Moreover, this Court has already concluded that “the main purpose of [section 5-15-130] is to expeditiously finalize protested municipal elections in the interest of realizing the voters’ will and seamlessly transitioning governmental offices.” *Cole*, 393 S.C. at 274, 712 S.E.2d at 446.

Considering the litigious nature of Atlantic Beach elections, it is not unreasonable to conclude that Price should have been consulting counsel and compiling all necessary evidence at least by May 22, 2012 when she knew she did not have the necessary votes to be declared the winner. In fact, Price is no stranger to this Court, as she was an appellant in *Cole v. Town of Atlantic Beach Election Comm’n*, 393 S.C. 264, 712 S.E.2d 440 (2011).

Respectfully submitted,



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**Attorneys for Horry County Election Commission**

May 8, 2013

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM HORRY COUNTY

Court of Common Pleas

J. Derham Cole, Circuit Court Judge

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Case No. 2012-CP-26-4403

---

Windy Price, .....Appellant,

v.

Horry County Election Commission,  
South Carolina State Election Commission,  
Jake Evans, Josephine Isom, and Charlene Taylor, ..... Defendants.

Of whom Horry County Election Commission  
and South Carolina Election Commission are ..... Respondents.

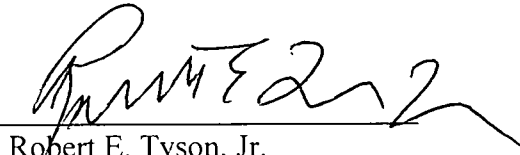
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**CERTIFICATE OF COUNSEL**

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The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

May 8, 2013

  
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THE STATE OF SOUTH CAROLINA  
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**PROOF OF SERVICE**

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I, the undersigned of Sowell Gray Stepp & Laffitte, LLC, attorneys for the Respondent, Horry County Election Commission certify that I have served a copy of the Final Brief of Respondent Horry County Election Commission upon all parties to the appeal by depositing a copy in the United States Mail, postage prepaid, on May 13, 2013 addressed as follows:

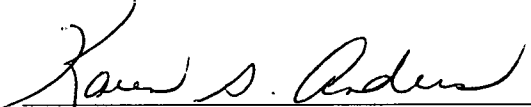
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MAY 13 2013

**SC Court of Appeals**

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May 13, 2013