

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas
J. Derham Cole
Circuit Court Judge

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APR 24 2013

S.C. Supreme Court

Case No.: 2012-CP-26-4403
Appellate Case No.: 2012-213489

Windy Price.....Appellant,

v.

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

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

RECORD ON APPEAL

J. C. Nicholson, III
Office of the Atty. General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
803.734.9916 (O)
803.734.3677 (F)
JCNicholson@scag.gov
Attorney for SC Election
Commission

Robert E. Tyson, Jr.
Sowell Gray
P.O. Box 11449
Columbia, SC 29211
803.929.1400 (O)
803.929.0300 (F)
rtyson@sowellgray.com
Attorney for Horry
County Election
Commission

Christine Companion Varnado
Jason Scott Luck
Seibels Law Firm, P.A.
127 King St., Ste 100
Charleston, SC 29401
843.722.6777 (O)
843.722.6781 (F)
cvarnado@seibelsfirm.com
jluck@seibelsfirm.com
Attorneys for Rev. Windy Price

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The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.


Christine Companion Varnado
cvarnado@seibelsfirm.com
Jason Scott Luck
jluck@seibelsfirm.com
SEIBELS LAW FIRM, P.A.
127 King Street, Suite 100
Charleston, SC 29401
843.722.6777 (phone)
843.722.6781 (telefax)

Attorneys for Appellant

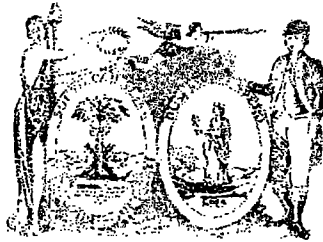
19 April 2013

State of South Carolina
Executive Department

FILED

MAR 16 2012

Mark Hammond⁸
SECRETARY OF STATE



Office of the Governor

EXECUTIVE ORDER NO.

2012-03

WHEREAS, on November 1, 2011, the Town of Atlantic Beach held an election for Mayor and two at-large Council seats; and

WHEREAS, the results of that election were protested; and

WHEREAS, on November 5, 2011, the Municipal Election Commission for the Town of Atlantic Beach held a public hearing regarding the election protest. During this hearing, the Municipal Election Commission heard testimony and took evidence regarding voting irregularities associated with the November 1, 2011 election. At the conclusion of the hearing, the Municipal Election Commission declared the results of the November 1, 2011 election void and ordered that a new election for Mayor and two at-large Town Council members would be held within 180 days; and

WHEREAS, the Municipal Election Commission still has not reduced its November 5, 2011 ruling to a written order, nor has it set a date for the new election; and

WHEREAS, Section 5-15-50 of the South Carolina Code of Laws (1976), as amended, requires at least sixty days notice for municipal elections; and

WHEREAS, because of the Municipal Election Commission's delay, it is now too late for the Municipal Election Commission to conduct a new election for Mayor and Town Council members within the time period it previously ordered and comply with the notice requirements of Section 5-15-50; and

WHEREAS, Section 7-13-1170 of the South Carolina Code of Laws (1976), as amended, provides as follows: "When any election official of any political subdivision of this State charged with ordering, providing for, or holding an election has neglected, failed, or refused to order, provide for, or hold the election at the time appointed, or if for any reason the election is declared void by competent authority, and these facts are made to appear to the satisfaction of the Governor, he shall, should the law not otherwise provide for this contingency, order an election or a new election to be held at the time and place, and upon the notice being given which to him appears adequate to insure the will of the electorate being fairly expressed. To that end, he may designate the existing election official or other

person as he may appoint to perform the necessary official duties pertaining to the election and to declare the result.”; and

WHEREAS, this is the second consecutive election for Mayor or Town Council that the Municipal Election Commission has overturned; and

WHEREAS, Town of Atlantic Beach election controversies have reached the South Carolina Supreme Court on three prior occasions. These controversies have highlighted problems in the Town’s electoral process such as: poll workers not following proper procedures for challenged ballots (*Taylor v. Town of Atlantic Beach Election Commission*, 363 S.C. 8, 609 S.E.2d 500 (2005)); voters being denied the right to vote despite establishing residency (*Armstrong v. Atlantic Beach Municipal Election Commission* 380 S.C. 47, 668 S.E.2d 400 (2008)); and the Municipal Election Commission failing to comply with the statutory procedure for contesting election results (*Cole v. Town of Atlantic Beach Election Commission*, 393 S.C. 264, 712 S.E.2d 440 (2011)); and

WHEREAS, the South Carolina Supreme Court, in *Cole v. Town of Atlantic Beach Election Commission*, expressed grave doubts about the ability of the Municipal Election Commission to properly conduct future elections; and

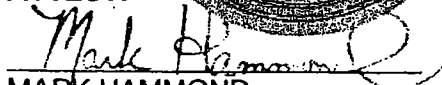
WHEREAS, the Horry County Election Commission and the State Election Commission are competent and qualified to conduct and supervise an election in the Town of Atlantic Beach; and

WHEREAS, continued controversy in this election will erode the public trust in our system of municipal elections, and a properly conducted and supervised election is necessary to ensure the full and fair expression of the citizenry’s choice for these elective offices.

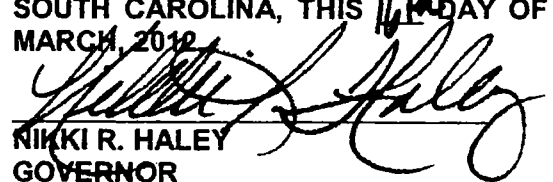
NOW, THEREFORE, pursuant to the authority vested in me by the Constitution and Statutes of the State of South Carolina, I hereby (a) order that a new election be held for the office of Mayor and two at-large Town Council members of the Town of Atlantic Beach on May 22, 2012 or at the earliest possible date and time after sixty days notice has been provided to the citizenry and as is permitted by the United State Department of Justice; and (b) designate the Horry County Election Commission and 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.



ATTEST:


MARK HAMMOND
SECRETARY OF STATE

GIVEN UNDER MY HAND AND THE
GREAT SEAL OF THE STATE OF
SOUTH CAROLINA, THIS 16th DAY OF
MARCH, 2012.


NIKKI R. HALEY
GOVERNOR

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

MUNICIPAL ELECTION COMMISSION
OF THE TOWN OF ATLANTIC BEACH

IN RE:)
WINDY PRICE, MISTY UMPHRIES, and)
JAMES VANFLEET, Protestants.)

ORDER

This is an Order of the Municipal Election Commission of the Town of Atlantic Beach (the "Election Commission") regarding the protests filed by Windy Price, Misty Umphries, and James Vanfleet (collectively, the "Protestants") of the results of the election held in the Town of Atlantic Beach on November 1, 2011 (the "2011 Election"). For the reasons discussed below, the results of the 2011 Election are OVERTURNED, and a new election is ordered.

Procedural Background

1. The Town's municipal elections are conducted under the nonpartisan election and runoff election method provided in S.C. Code Ann. §5-15-62. Under this method, candidates for a single office, such as mayor, must receive a majority of the votes cast for that office in order to be elected. When more candidates are seeking election to two or more offices (constituting a group) than there are offices to be filled, the majority is ascertained by dividing the total vote cast for all candidates for the office by the number of offices to be filled and then dividing the result by two. If no candidates for a single office or if an insufficient number of candidates for a group of offices fail to receive a majority, a runoff election must be held in accordance with the statute.
2. On Tuesday, November 1, 2011, the Election Commission conducted a municipal election for the Town of Atlantic Beach (the "Town"), for the offices of Mayor and two Town Council seats. Jake Evans, Retha Pierce, and Windy Price were the only

candidates on the ballot for Mayor of the Town; Josephine Isom, Monique Pointer, Charlene Taylor, James B. Van Fleet, and Misty D. Umphries were the only candidates on the ballot for two seats on the Town Council of the Town. Donnell Thompson was a write-in candidate for Town Council.

3. There is only one precinct and one polling place in the Town. Upon the close of the polling place and the counting of the votes by the poll managers in accordance with S.C. Code Ann. § 5-15-120, the totals of the votes cast in the 2011 Election were as follows:

<u>Candidates for Mayor</u>	<u>Votes</u>
Evans	49
Price	12
Pierce	13

<u>Candidates for Town Council</u>	<u>Votes</u>
Isom	47
Taylor	48
Pointer	14
Umphries	12
Van Fleet	12

4. There were 59 challenged ballots in the 2011 Election. Of these, 51 were cast in the polling place on Election Day; 8 were cast in the Absentee Precinct. The Election Commission conducted a hearing regarding provisional and challenged ballots as required by South Carolina law, specifically S.C. Code Ann. §§ 5-15-100 and 7-13-830 on Thursday, November 3, 2011. At the challenged ballot hearing, 21 of the challenged ballots were counted.
5. Upon conclusion of the challenged ballot hearing, the Election Commission certified the results of the 2011 Election as required by South Carolina law,

specifically S.C. Code Ann. §5-15-100, as follows:

<u>Candidates for Mayor</u>	<u>Votes</u>
Evans	55
Price	21
Pierce	18

<u>Candidates for Town Council</u>	<u>Votes</u>
Isom	53
Taylor	55
Pointer	16
Umphries	21
Van Fleet	16
Thompson	8

All of Thompson's votes for Town Council were write-in votes. In accordance with S.C. Code Ann. § 5-15-62, a majority vote for the office of Mayor was determined to be 48 votes. A majority of votes for the office of Town Council was determined to be 43 votes. Accordingly, Evans was certified as the winner of the mayoral election and Isom and Taylor were certified as the winners of the two Town Council seats.

6. Timely protest of the 2011 Election was filed by each of the Protestants with the Election Commission within 48 hours after the closing of the polls in compliance with S.C. Code Ann. § 5-15-130.
7. On Saturday, November 5, 2011, the Election Commission held a protest hearing in which candidates and their attorneys were allowed to inspect the ballots of the 2011 Election and to present evidence and argument to the Election Commission with respect to the Protestants' protest of the certified results of the 2011 Election. At the conclusion of the hearing, the Election Commission, by unanimous vote, voided the results of the 2011 Election and called for a new election for Mayor and two Town Council seats within 180 days.

Findings of Fact

The Atlantic Beach Community Center was the Town's only polling place in the 2011 Election. It contains a large room that easily could have been set up to provide for secret balloting on the voting machines as well as for those voters casting paper ballots (such as for challenged ballots or failsafe ballots). The setup of the polling place in previous elections had used the entire floor space of the community center, which is about five times larger than the space actually used in the 2011 Election. In the 2011 Election, Poll Clerk Constance Busbee limited the polling area to a space of approximately 26 feet by 26 feet. Inside this space, the two voting machines were about three feet apart. The poll worker working the sign-in books and poll list was at a table about five feet from the voting machines. Poll watchers for candidates Evans, Isom, and Taylor lined up directly in front of the voting machines about ten feet away from the voting machines and the provisional ballot table to be used for voters casting paper ballots.

The provisional ballot table was less than one foot from the voting machines. Poll workers, poll watchers, and voters casting paper ballots were all working at the provisional ballot table when a challenged ballot was cast by the voter, even if voters were already seated and voting at the provisional ballot table. Although Commissioner Nicole Kenion told Poll Clerk Busbee that the table was too close and that people could see voters' ballots, Ms. Busbee did not initially respond. Commissioner Kenion asked that the table be moved and that the voting machines be separated more. However, Joe Montgomery, asserting his leadership of one faction of candidates, told Ms. Busbee that the setup of the room was fine. Ms. Busbee responded to Commissioner Kenion that she did not want to walk that far. There was no further discussion of the room setup.

Approximately one hour after the polls opened, former town manager William Booker entered the room with a woman, Laura Best who remained at the poll until after it closed. Ms. Best

presented herself as being from the State Attorney General's office to monitor the election. She gave directives to the poll clerk, and witnesses at the protest hearing testified that she was seen at one of the voting machines and the provisional ballot table several times. After a poll watcher challenged a ballot, Ms. Best called that poll watcher outside into the lobby and threatened her with a lawsuit from the Attorney General's office for violating the civil rights of voters by challenging their ballots. The testimony at the protest hearing was that two of the candidates had poll watchers who, with their supporters remained inside the polling place most of the day, in discussion with Ms. Best while she made a series of telephone calls and took pictures of voters. Ms. Best's conduct did not resemble that of an objective monitor. Commissioner Kenion asked Mr. Webb to find out if Ms. Best had any identification. Mayor Pro Tem Carolyn Cole invited Ms. Best outside to introduce herself. Ms. Best initially stated that her name was "West" and would not give a first name. She did not have any identification except for the lapel pins on her jacket that had Attorney General on them. Telephone calls made to the Attorney General's office revealed hours later that Ms. West was not from their office. Upon presentation of her identification to Atlantic Beach Police Officer Valerie Brown, it was confirmed that Ms. West was Ms. Best. When Ms. Best was given the telephone to speak to the representative from the Attorney General's Office she was told that she had no authority to represent herself as being from their office, she stated that she had the personal cell phone number of Attorney General Alan Wilson and that she had spoken to him that morning and told him what she was going to do in Atlantic Beach and that he told her it was a good idea. The Atlantic Beach Police Department took a report as a part of its ongoing investigation into election law violations. According to the Atlantic Beach Police Department, Ms. Best is a resident of Richland County with a criminal history. Interim Town Manager Benny Webb sent a letter to the State Attorney General's Office seeking information about Ms. Best's role

at the election on their behalf. The State Attorney General's Office sent a letter to the Town informing them that Ms. Best was not there on their behalf or at their direction.

The polling place had seats set up from a previous council meeting with a center aisle and seats on both sides of the aisle. Candidates Evans and Taylor and their supporters occupied seats on one side of the aisle for the entire day. The candidates walked back and forth greeting voters, talking to the poll clerk, standing over the voters seated and casting their ballots at the provisional ballot table, and often standing over the shoulder of voters at the machines. Other supporters of Evans, Isom, and Taylor stationed themselves at the door of the polling place and created a hostile environment for anyone to walk through. Several arguments occurred between voters and the crowd surrounding the door. At one point Interim Town Manager Webb and Lenearl Evans, Candidate Evans' brother, got into an argument. The crowd inside rushed the door, while the crowd outside surrounded Mr. Webb. Evidence presented at the Protest Hearing included town resident Janie Isom saying, "someone should pick up something and bust him in his head."

The Election Commission determined that word spread in the four block town about the chaos inside the polling place and the voter intimidation happening at the door and inside the polling place as voters walked down the aisle before and after voting. If a voter were perceived as an Evans, Taylor, or Isom supporter, that voter was welcomed and embraced. If not, the voter was heckled and glared at. Part of the intimidation involved the owners of apartments in Atlantic Beach, which has relatively few options for residents to rent places to live. Landlords, Earlene Woods, Candidate Evans' mother, Lenearl Evans, Esco McFadden, and James Dewitt, positioned themselves in the polling place in the afternoon and did not leave. There was testimony from residents they were afraid to come to the polls. At the protest hearing, when questioned about whether or not any of these voters were willing to sign affidavits about whom they voted for and

the intimidation factor, Margie Smith, a registered voter who moved out of town prior to the election stated that she would not give names because of the retaliation factor. Commissioners Kenion and Hudson witnessed the incidents, informed the police, and still received no assistance. Ms. Kenion testified that in 2008 residents signed their names to notarized affidavits about Taylor and Armstrong, they lost their homes, and the public housing authority in Atlantic Beach was demolished. The Election Commission determined that the intimidation factor was real. Residents were threatened with the loss of their homes prior to the 2011 Election.

The Election Commission finds that the number of people milling around in the small space allocated for voting created congestion and uncontrolled access to the voting machines and the paper ballots while voters voted on the voting machines and cast paper ballots at the provisional ballot table.

Conclusions of Law

In municipal election cases, every reasonable presumption is to be employed to sustain a contested election, and an election is not to be set aside due to mere irregularities or illegalities unless the result is changed or rendered doubtful. *Sims v. Ham*, 275 S.C. 369, 271 S.E.2d 316 (1980); *May v. Wilson*, *supra*.

The statutory provisions regulating the conduct of elections are numerous and detailed. S.C. Code Ann. §§ 7-13-10 to -2220 (1976 & Supp. 1998); S.C. Const. art. II, § 10. The Election Commission recognizes that perfect compliance in every instance is unlikely, and knows that the Courts are loathe to nullify an election based on minor violations of technical requirements. To that end, the courts have developed principles to determine whether such provisions are mandatory or directory.

The State Supreme Court has held that, as a general rule, such provisions are mandatory in

two instances: when the statute expressly declares that a particular act is essential to the validity of an election, or when enforcement is sought before an election in a direct proceeding. After an election in which no fraud is alleged or proven, when the Court seeks to uphold the result in order to avoid disenfranchising those who voted, such provisions are merely directory even though the Legislature used seemingly mandatory terms such as "shall" or "must" in establishing the provisions. "Courts justly consider the main purpose of such laws, namely, the obtaining of a fair election and an honest return, as paramount in importance to the minor requirements which prescribe the formal steps to reach that end, and, in order not to defeat the general design, are frequently led to ignore such innocent irregularities of election officers as are free of fraud, and have not interfered with a full and fair expression of the voter's choice." *George et al. v. Municipal Election Commission*, 335 S.C. 182, 516 S.E.2d 206 (S.C. 1999); citing *State ex rel. Parler v. State Bd. of Canvassers*, 79 S.C. 414, 419, 60 S.E. 967, 968-69 (1908); accord *Laney v. Baskin*, 201 S.C. 246, 253, 22 S.E.2d 722, 725 (1942); *Smoak v. Rhodes*, 201 S.C. 237, 241, 22 S.E.2d 685, 686 (1942); *Killingsworth v. State Executive Comm. of Democratic Party*, 125 S.C. 487, 492, 118 S.E. 822, 824 (1921); *State ex rel. Davis v. State Bd. of Canvassers*, 86 S.C. 451, 460, 68 S.E. 676, 680 (1910).

According to the Supreme Court in *George*, the Courts still may deem such provisions to be mandatory after an election - and thus capable of nullifying the results - 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. *George, supra*; citing *Zbinden v. Bond County Community Unit School Dist. No. 2*, 2 Ill. 2d 232, 117 N.E.2d 765, 767 (Ill. 1954); *Lewis v. Griffith*, 664 So. 2d 177, 186 (Miss. 1995); *O'Neal v. Simpson*, 350 So. 2d 998, 1005-09 (Miss. 1977); *Mittelstadt v. Bender*, 210 N.W.2d 89, 94 (N.D. 1973). Furthermore, "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." *Moon v. Seymour*, 182 Ga. 702, 186 S.E. 744, 745 (Ga. 1936); accord *Lewis v. Griffith*, *supra*. "The Court . . . will not sanction practices which circumvent the plain purposes of the law and open the door to fraud." *Mav v. Wilson*, 199 S.C. at 360, 19 S.E.2d at 470.

In *George*, the Charleston Municipal Election Commission learned in September 1998 that it had to organize a special election to be held November 3, 1998, the same day as the general election. Voters would decide whether the city's elections would be changed from partisan to nonpartisan. That Commission traditionally had worked with Charleston County officials during elections, using the county's electronic voting machines and getting help from county precinct workers. This time, county election officials were unable to assist the Commission due to the length and complexity of the ballots in county, state, and national races, although the county did provide some poll managers in the city election. On election day, city voters signed in at their polling places and cast their ballots in county, state, and national races on the county's electronic voting machines. The machines were contained in separate booths that ensured voters' privacy. City voters then walked to a nearby table six to eight feet in length. They signed in again and were given a punch-card ballot to vote on the city referendum. After voting, they dropped the ballots in a sealed cardboard box on the table. Commission officials instructed poll managers to allow voters who desired more privacy to step away from the table, turn around, or shield their ballot by holding it behind the ballot box while completing it.

Much like in the *George* case, voters in the 2011 Election generally cast their ballots using one of two voting machines that were equipped with booths as approved by the State Election Commission. However, 51 voters cast challenged ballots in the polling place on Election Day.

These 51 voters were directed by the poll workers to the provisional ballot table which was not equipped with voting booths or other means of preserving the secrecy of the ballot while it was being completed by each voter. In fact, there was testimony at the Protest Hearing to the effect that other people, including poll workers, poll watchers, and people associated with various political campaigns, were from time to time seated at or standing adjacent to the provisional ballot table. Much like the voters in the referendum in the *George* case, the challenged ballot voters in Atlantic Beach on Election Day were not provided adequate facilities to ensure secrecy of their ballots.

The State Constitution mandates that "[a]ll elections by the people shall be by secret ballot" S.C. Const. art. II, § 1. ¹ Secret ballots have been required since at least 1907, when the State Supreme Court interpreted a provision in the original 1895 Constitution for voting "by ballot" to mean voting by secret ballot. *State ex rel. Birchmore v. State Bd. of Canvassers*, 78 S.C. 461, 468-69, 59 S.E. 145, 147 (1907); see also *State v. Shaw*, 9 S.C. 94, 132-45 (1877) (plainly indicating, while interpreting the 1868 state constitution, that voting "by ballot" impliedly means by secret ballot). Section 1 of Article II was amended in 1971 to include the term "secret ballot." Act No. 277, 1971 Acts 319.

The State Legislature explicitly has declared "the right to vote of each person so entitled and the secrecy of the ballot shall be preserved at all times." S.C. Code Ann. § 7-13-130 (1976). That legislative goal is evident in several statutory provisions. See S.C. Code Ann. § 7-13-1830 (1976) (after helping a voter understand how to use a voting machine, the poll managers "shall, before the voter has voted, retire and such voter shall cast his ballot in secret"); S.C. Code Ann. § 7-13-771(D) (Supp. 1998) (after an elderly or handicapped person votes in his or her vehicle

¹ Section 1 of Article II states in full:

All elections by the people shall be by secret ballot, but the ballots shall not be counted in secret. The right of suffrage, as regulated in this Constitution, shall be protected by laws regulating elections and prohibiting, under adequate penalties, all undue influence from power, bribery, tumult, or improper conduct.

outside a polling place, the voter "must fold [the ballot] so that the secrecy of the ballot is preserved and return it to the managers waiting outside the vehicle. The managers shall carry the ballot to the ballot box, taking care not to violate the secrecy of the ballot, and after detaching the stub, deposit the ballot in the ballot box"); S.C. Code Ann. 7-13-1380 (1976) ("The State Election Commission in specifying the form of the ballot shall provide for ballot secrecy in connection with write-in votes").

History demonstrates the importance of the secret ballot. In the early years of our nation, voters expressed their preferences orally or by a showing of hands. With the advent of paper ballots in the late 1700s, individuals prepared their own hand written ballots at home, marked them, and took them to the polling place. Later, political parties and candidates printed their own specially colored or designed paper ballots for voters to use. None of the methods was secret and all were open to widespread intimidation of voters, fraud, and violence. *Burson v. Freeman*, 504 U.S. 191, 200-206, 112 S. Ct. 1846, 1852-54, 119 L. Ed. 2d 5, 15-19 (1992) (upholding Tennessee statute prohibiting solicitation of votes and display of campaign materials within 100 feet of entrance to polling place); G.H. Utter and R.A. Strickland, *Campaign and Election Reform: A Reference Handbook*, 8-9 (1997); Wright and Graham, *Federal Practice and Procedure: Evidence*, § 5632 (1992) (discussing history of secret ballot in connection with rejected rule of evidence on voter's privilege).

The State Supreme Court has held that secrecy of the ballot was violated when a husband and wife were allowed to enter the voting booth together and discuss their vote, *Edwards v. Abrams*, 270 S.C. at 91-93, 240 S.E.2d at 645-46; when the numbering system for ballots and voter sign-in lists could be used to identify a particular voter's ballot, *Corn v. Blackwell*, 191 S.C. 183, 4 S.E.2d 254 (1939); and when voters were required to place their ballots in "for" and "against"

boxes that plainly revealed their choice. *Birchmore v. State Bd.*, 78 S.C. at 471-72, 59 S.E. at 148. Although the records in those cases 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. "While in this particular instance it is possible that no evil results followed from the mode in which the election was conducted, yet we cannot be unmindful of the fact that we must be guided by those general principles of law and policy that will enable us to determine future litigations, under the election laws of the state consistently." *Birchmore v. State Bd.*, 78 S.C. at 472, 59 S.E. at 148 (nullifying election results).

The Election Commission concludes that the 2011 Election challenge is not one in which we are faced with minor violations of technical requirements. The history of the secret ballot, the precedents of the South Carolina courts, and the statutes persuade us that preservation of the secrecy of the ballot is an essential element of the electoral process. Although there was presented at the protest hearing ample evidence of voter intimidation or fraud in the 2011 Election, it is not necessary for the Election Commission to find that fraud or intimidation accompanied the violation of secrecy of the ballot. That is because the *George* case holds that the absence of voting booths or other reasonable alternatives to protect the secrecy of the ballot of voters casting paper ballots in affects the fundamental integrity of the election. See *George*, citing *Edwards v. Abrams*, *supra*; *Corn v. Blackwell*, *supra*; *Birchmore v. State Bd.*, *supra*. The Election Commission cannot condone the method of challenged ballot voting employed in the polling place for the 2011 Election because it would unwisely sanction a practice that "circumvents the plain purposes of the law and opens the door to fraud" and intimidation. *May v. Wilson*, 199 S.C. at 360, 19 S.E.2d at 470.

There were 51 challenged ballots cast in the polling place in the 2011 Election. Of the challenged ballots, 21 were counted and included in the final certified results. The Election Commission has concluded that these 21 ballots are illegal or irregular because the secrecy of the ballot was denied to the voters who cast these 21 votes. Many decisions of the South Carolina courts confirm the rule that irregularities, sufficient to cause doubt as to the result, will nullify an election. *Easler et al. v. Blackwell et al.*, 195 S.C. 15, 10 S.E.2d 160 (1940), citing *Johnston v. City of Charleston*, 1 S.C.L. 441, 1 Bay 441; *Gunter v. Gayden*, 84 S.C. 48, 65 S.E. 948; *Davis v. State Board of Canvassers*, 86 S.C. 451, 68 S.E. 676; *Clarke v. McCown*, 107 S.C. 209, 92 S.E. 479; *Abernathy v. Wolfe*, 117 S.C. 545, 109 S.E. 275; *Callison v. Peebles*, 102 S.C. 256, 86 S.E. 635; see also *Dukes v. Redmond*, __ S.C. __, __ S.E.2d __ (____). "In determining whether or not irregularities in the conduct of an election are sufficient to render the result 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...." *Easler v. Blackwel, supra*; citing *Johnston v. City of Charleston, supra*. Following the methodology in the *Easler* case, when 21 votes are deducted from each certified winning candidates' vote totals in the Mayor's race and the two Town Council races, the results of all of these elections are rendered in doubt because no candidate received the necessary majority vote to be elected to office; each race would require a runoff election under the provisions of S.C. Code Anno. Section 5-15-62(b). Consequently, the Election Commission has no choice but to declare the 2011 Election void, and order a new election to be conducted.

Additional Sustaining Grounds

As discussed above, because of the nature of the constitutional violations found in the conduct of the voting by the challenged ballot voters, it is not necessary for this Election Commission to find that fraud or intimidation were present during the 2011 Election. However, as an additional sustaining ground, this Election Commission additionally finds that fraud and intimidation were present at the polling place in the 2011 Election.

In the *George* case, the State Supreme Court described how elections were conducted in this nation prior to the use of secret ballots in American elections. "Polling places on Election Day, unlike today's typical experience of waiting quietly in line, often were 'scenes of battle, murder, and sudden death.' In addition to real violence, sham battles were staged to frighten away elderly and timid voters. *Burson v. Freeman*, 504 U.S. at 202-04, 112 S. Ct. at 1853-54, 119 L. Ed. 2d at 16-17. One writer described Election Day in 1856, for example, as a 'knock-down, dragged-out fight' in many areas of the country. Thugs forced voters at the polls to reveal their voting ticket, then beat or shot them and forcibly tore up the opposing party's ticket if they refused to vote as ordered. Sheriffs were unable to find men willing to risk their lives to control the violent mobs. In his 1931 autobiography, journalist Lincoln Steffens, commenting on a more peaceable form of vote solicitation, observed that the going rate for a vote in his Connecticut hometown was \$2.50 to \$2.75. J. Mitchell, *How to Get Elected: An Anecdotal History of Mud-Slinging, Red-Baiting, Vote-Stealing and Dirty Tricks in American Politics*, 45-46, 88 (1992)." Unfortunately for Atlantic Beach, this description of elections in the days before the secret ballot comes close to describing the polling place in Atlantic Beach during the 2011 Election.

The Supreme Court in *George* went on to state that in order "to combat violence and corruption, most states adopted the secret ballot - sometimes called the Australian ballot system

because it was first used in that country - and other measures in the 1880s and 1890s. *Burson v. Freeman*, *supra*; Utter & Strickland, at 42-46. When explaining the importance of the secret ballot to our system of representative democracy, the reasons most often given are to reduce or eliminate the potential intimidation of voters, to reduce or eliminate the chance for voters who are willing to sell their votes to prove they have 'delivered the goods' by allowing someone to watch them cast their ballot, and to ensure the overall integrity of the electoral process. *State ex rel. Edwards v. Abrams*, 270 S.C. 87, 92, 240 S.E.2d 643, 645-46 (1978); *Peterson v. City of San Diego*, 34 Cal. 3d 225, 666 P.2d 975, 976, 193 Cal. Rptr. 533 (Cal. 1983); *Moon v. Seymour*, 186 S.E. at 745; *Clark v. Quick*, 377 Ill. 424, 36 N.E.2d 563, 566 (Ill. 1941); *Evans v. Reiser*, 78 Utah 253, 2 P.2d 615, 625 (Utah 1931), *superseded by statute on other grounds as stated in Mosier v. Gilmore*, 635 P.2d 55 (Utah 1981); *Sims v. Atwell*, 556 S.W.2d 929, 933 (Ky. Ct. App. 1977); 26 Am.Jur.2d *Elections* §§ 299, 328 (1996).” These reasons for the secret ballot are also good for Atlantic Beach.

But secrecy of the ballot was denied to the challenged ballot voters voting in the polling place at the 2011 Election, and it resulted in the fraud and intimidation that were the avowed reasons for going to secret ballots in American elections. There was fraud perpetrated most of the time that the polling place was open by Laura Prather Best impersonating a representative of the State Attorney General’s Office. She arrived at the polling place in Atlantic Beach and was introduced by William Booker as being from the Attorney General’s Office. She then introduced herself to others as being in the same capacity. Ms. Best spent the day seated with candidates Jake Evans and Charlene Taylor, and another woman allegedly impersonating a federal official. She claimed to be an employee of the South Carolina Attorney General’s office on assignment to monitor the election in Atlantic Beach. Best had unfettered access to the poll manager, voting machines, ballots, etc. and made decisions within the polling place before it was discovered that

she was not from the Attorney General's office. Throughout the day, as Ms. Best talked to Joe Montgomery, candidates Taylor and Evans and on her cell phone, she announced that she was talking to Sandy Martin of the Horry County Election Commission. In a letter dated November 29, 2011, Mary Frances Jowers, Assistant Attorney General confirms that Ms. Laura Best is not an employee of the Attorney General's Office.

Ms. Best took control of the polling place and remained there until the polls closed. This fraudulent act was accompanied by intimidation of the voters. Mr. Booker and his wife, former MEC Commissioner Lynda Booker and candidates Jake Evans and Charlene Taylor spent most of the day with Ms. Best inside the polling place. A group of people joined them and created an atmosphere that resembled a combination pep rally and gang activity. The Bookers would come and go at intervals as would some others but throughout the day the crowd remained, often loud, and creating some event that distracted poll workers, poll watchers, and voters. Ms. Best, poll watchers, and candidates Evans and Taylor spent time conferring with the poll clerk at the provisional ballot table and voting machines. Ms. Best removed poll watcher Patricia Bellamy from the polling place to prevent her from challenging non-resident voters. While Ms. Bellamy was absent from the room she was threatened by Ms. Best and Paul Scott.

During the course of the day, there were no long lines at the polling place. Congestion in the small space was mostly poll workers, poll watchers, candidates, audience members, and confused voters. The room was simply set up to accommodate the poll workers, poll watchers, and the audience. Voters who were issued challenged ballots at the polling place voted at the table with a person sitting next to them voting with no way to conceal their ballot. The poll worker sat in front of voters at the table while they voted or the poll watcher was standing over the voter to fill out the challenge ballot envelope. Ms. Best, Candidates Evans and Taylor approached the voting

machines and provisional ballot table on several occasions. Evans and Taylor did so more than Ms. Best. Voters complained to Commissioners about people standing over their shoulders while they voted.

Not only was secrecy of the ballot compromised in the conduct of the 2011 Election, but it was accompanied by and may well have caused fraud and intimidation that undermined the integrity of the electoral process that election day. The Election Commission has no recourse but to overturn the results of the 2011 Election conducted in this manner and order a new election to be held.

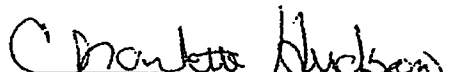
Conclusion

Based upon the findings of fact set forth above, and the application of the conclusions of law discussed above, it is the unanimous decision of the Municipal Election Commission of the Town of Atlantic Beach, South Carolina, that the certified results of the municipal election held on November 1, 2011, be OVERTURNED and that a new election for the offices of Mayor and Town Council be ordered conducted within 30 days from the date hereof.

AND IT IS SO ORDERED. Dated this 22 day of May, 2012.

MUNICIPAL ELECTION COMMISSION OF THE
TOWN OF ATLANTIC BEACH


Nicole Kenion, Chair


Charlette Hudson, Commissioner

State of South Carolina)
)
County of Horry) Before the Horry County Election
Commission (Horry County Board of
Canvassers)

Rev. Windy Price,)
)
Protestant,)
)
In re:)
Town of Atlantic Beach, Election of)
Mayor, May 22, 2012)
)

Order of the Election Commission

This matter is before the Horry County Election Commission to consider the election protest of Reverend Windy Price challenging the results of the election for Mayor of the Town of Atlantic Beach held on May 22, 2012. The protest was filed on May 24, 2012. By notice given pursuant to the South Carolina Freedom of Information Act, a hearing was held by the Commission on May 25, 2012 beginning at 3:00 p.m. for the purpose of hearing all protests filed concerning the May 22, 2012 election. The protestant attended the hearing. Ms. Retha Pierce, another candidate for the election, also attended the hearing, as did Mr. Jake Evans, the candidate receiving the most votes for Mayor.¹ All Commissioners were

¹ Ms. Retha Pierce also filed a protest of the May 22, 2012 election for Mayor, which was presented immediately following the presentation of Rev. Price's protest. Rev. Price and Ms. Pierce were allowed to ask questions as part of each other's protest, and Mr. Jake Evans was allowed to ask questions in both. The Commission voted on each protest separately at the conclusion of Ms. Pierce's protest. No protests were filed with respect to the two seats on the City Council and the time for filing any protest with respect to those seats now has passed. *Smith*

present except for Commissioner Wiley ("Rob") Taylor, who was unable to attend the hearing.

Horry County conducted the May 22, 2012 election pursuant to Executive Order 2012-03 issued by Governor Nikki R. Haley and filed with the Secretary of State on March 16, 2012. The Executive Order transferred the responsibility for conducting the election and handling the protests of the election to Horry County. The State of South Carolina sought and received preclearance from the United States Department of Justice for the transfer of election authority prior to conducting the election.

Rev. Price alleged a substantial number of problems with the election, generally summarized as follows:

- Vote counting.
- Violations of state law, including secrecy of ballots and fraudulent conduct.
- Violations of federal law.

In evaluating a protest, the Commission is required to apply all reasonable presumptions to sustain an election and must not set aside the results of an election for mere irregularities unless the result is changed or rendered doubtful. *Knight v. State Bd. of Canvassers*, 297 S.C. 55, 56, 374 S.E.2d 685, 686 (1988). "[A]ll reasonable inferences must be drawn in favor of the validity of the contested

v. Hendrix, 265 S.C. 417, 219 S.E.2d 312 (1975) (candidate seeking to protest election must file within the time limits set forth by statute); see also *Taylor v. Roche*, 271 S.C. 505, 248 S.E.2d 580 (1978) (same).

election." *Trapp v. S. Carolina Bd. of State Canvassers*, 273 S.C. 163, 169, 255 S.E.2d 670, 673 (1979). "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." *Berry v. Spigner*, 226 S.C. 183, 189-90, 84 S.E.2d 381, 384 (1954). The protest must establish the possible effect on election results with certainty because an election cannot be overturned on the basis of speculation or conjecture. *Fielding v. S. Carolina Election Comm'n*, 305 S.C. 313, 317, 408 S.E.2d 232, 234 (1991). In determining if an irregularity is sufficient to render the result doubtful, the Commission must consider any illegally cast ballots and any uncounted legal ballots proved by the protestant, and deduct the illegally cast ballots from the votes cast for the winning candidate and add the uncounted legal ballots to the votes cast for the losing candidate. See *Broadhurst v. City of Myrtle Beach Election Comm'n*, 342 S.C. 373, 382, 537 S.E.2d 543, 547 (2000).

Although it identifies general issues regarding the election, the protest letter does not identify any specific illegally cast votes or illegally rejected votes. Much of the protest letter is directed toward the Executive Order and a complaint that the Executive Order "is based on and contains fraudulent information submitted as a legal document to the United States Department of Justice" and that "[a]ll subsequent acts predicated on the initial illegal acts cannot be legal." There are general allegations of voter intimidation and that the election was not fair. These

allegations are not sufficient to afford the Commission or the prevailing candidate with notice of the protestant's contentions. *Taylor v. Town of Atlantic Beach Elec. Comm'n*, 363 S.C. 8, 17, 609 S.E.2d 500, 504 (2005).

At the hearing, Rev. Price presented argument on the issues identified in the Protest, and called as witnesses Patricia Bellamy and Carolyn Cole. Ms. Bellamy provided no substantive testimony regarding any specific votes cast or not cast, and her testimony generally considered of a complaint about the process by which this election came to be conducted by Horry County. Ms. Bellamy generally complained about the consistency of how challenged votes were treated, but provided no specific evidence regarding any of the challenges by which the Commission could ascertain whether any irregularity occurred. She testified generally about problems with secrecy of the ballot, but her testimony appeared to the Commission to involve a complaint not about situations in which persons voted outside of a partitioned booth but instead about the allegation that it generally was known which candidate was supported by many persons in the town. Ms. Bellamy also complained about curbside voting, but her testimony did not contain any particulars or specifics by which the Commission could determine whether any irregularities actually occurred and, if so, the nature and extent of those alleged irregularities. See *Davis v. Cayce*, 166 S.C. 372, 164 S.E. 883 (1932) (protest that the books of registration had not been kept open as required by statute denied

because there was no evidence that anyone had been denied the chance to vote); *see also Fielding*, 305 S.C. at 317, 408 S.E.2d at 234 (rejecting issues in protest as based on conjecture, speculation, and surmise because no one "who testified could identify a definitive number of alleged illegal votes cast"; testimony about vote buying "was totally without substantiation as to either the giver or receiver"; testimony concerning illegal assistance "was based upon the subjective opinion of the poll watcher"; and "no documentation whatsoever of any of the alleged irregularities was presented, only the uncorroborated opinions of individuals").

Ms. Cole also generally complained in her testimony about the Executive Order and the preclearance process. She testified about intimidation, but referenced the presence of a person who allegedly identified themselves as being with the South Carolina Attorney General's office at the November 1, 2011 election conducted by the Town of Atlantic Beach. She made no allegation that such person attended this election. She also stated that people were being as nice as possible and that she thought people made their own decisions in determining whether to vote. Most importantly, she failed to identify specific instances of problems with votes counted or not counted, let alone instances in sufficient number that would permit this Commission to conclude that the results of the election were doubtful. *See Davis*, 166 S.C. at 372, 164 S.E. at 883; *Fielding*, 305 S.C. at 317, 408 S.E.2d at 234.

To summarize, these witnesses complained about emails, about general procedures, and about preclearance. They made general allegations about voter intimidation and about secrecy of the ballot, but gave no specific examples of any of these or any specific voters impacted by these alleged irregularities. The protestant and her witnesses complained at length about the Executive Order and referenced the Supreme Court's decision regarding a prior Town of Atlantic Beach election, *see Cole v. Town of Atl. Beach Election Comm'n*, 393 S.C. 264, 712 S.E.2d 440 (2011), but they did not identify or provide evidence of how the votes and the result would have been different on May 22, 2012. In short, there was no credible evidence supporting specific instances in which questionable votes were cast or legitimate votes were disqualified and, thus, no evidence by which the Commission could determine that the results of the election were doubtful.

In point of fact, the argument of Rev. Price and the evidence she presented or sought to present through testimony substantially were directed toward the Executive Order and the preclearance submission.² However, the issues

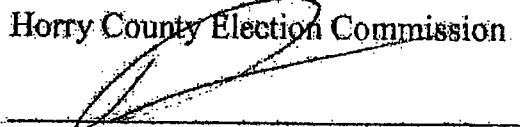
² During the presentation of her protest, Rev. Price referenced certain emails and other evidence pertaining to preclearance and the Executive Order. Although these materials were introduced into the record for purposes of Rev. Price's protest and were referenced by Ms. Pierce, this evidence was not considered by the Commission because it was not relevant to the issues actually before the Commission. Rev. Price was allowed to submit this evidence for the purpose of making a record in that regard should she seek to appeal from this decision. This evidence therefore was not considered by the Commission. However, even if it had been considered, the Commission notes that none of this evidence identified questionable votes or issues that would have afforded the Commission a basis for overturning the election or rendered doubtful the results of the election.

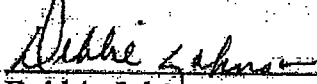
surrounding the Executive Order and the preclearance submission were not considered by the Commission because it had no jurisdiction or authority to consider such issues in this forum, S.C. Code Ann. § 5-15-130 (permitting candidates to "contest the *result* of the election") (emphasis added). The Commission repeatedly advised the candidates that it was limited to considering whether the results of the May 22, 2012 election as it actually was conducted were rendered doubtful. *Id.* Like Ms. Pierce, Rev. Price never presented any evidence to demonstrate any impact of the preclearance submission or the Executive Order on the votes actually cast or to show that other votes would have been cast on May 22, 2012. See *Butler v. Town of Edgefield*, 328 S.C. 238, 246, 493 S.E.2d 838, 842 (1997) (noting that only evidence of actual fraud, a Constitutional violation, or violation of a specific statutory directive are sufficient to overturn an election in the absence of actual evidence that the result is doubtful). Rev. Price never produced any evidence to substantiate any impact on the May 22, 2012 voting, let alone in numbers sufficient to make the result of the election doubtful or questionable. See *Fielding*, 305 S.C. at 317, 408 S.E.2d at 234 (refusing to overturn election based on evidence that was conjecture, speculation, and surmise). The entirety of the evidence was based on the issuance of the Executive Order coupled with arguments that it should never have been issued, none of which

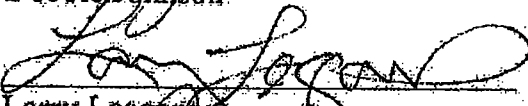
impacted the vote on May 22, 2012 based on the evidence presented to the Commission. *See id.*

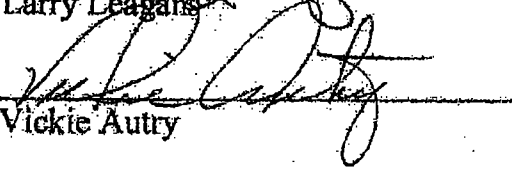
Therefore, the Commission was not presented with any evidence that would allow it to determine with certainty that the result of the election would be changed or rendered doubtful. Accordingly, at the conclusion of the protest hearing, the Commission members present at the hearing unanimously denied Rev. Price's protest and upheld the results of the May 22, 2012 election for Mayor of the Town of Atlantic Beach.

Horry County Election Commission


Russell W. Hall, III, Chair


Debbie Johnson


Larry Leagans


Vickie Autry

May ~~22~~²⁹, 2012
Conway, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Windy Price,

Appellant,

vs.

Horry County Election Commission
South Carolina Election Commission
Jake Evans, Josephine Isom,
Charlene Taylor

Respondents.

COURT OF COMMON PLEAS

Order Denying Appeal

Civil Action No. **2012-CP-26-4403**

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CLERK OF COURT

This matter is before the Court regarding an appeal from the denial of a municipal election protest involving the Town of Atlantic Beach. S.C. Code Ann. § 5-15-140 (appeals concerning municipal election protests must be filed with the court of common pleas); *see In re November 4, 2008 Bluffton Town Council Election*, 385 S.C. 632, 640, 686 S.E.2d 683, 688 (2009) (appeals from municipal election protests decided by a county election board must be filed in circuit court). A hearing was held by the Court on July 26, 2012 in Conway, South Carolina. Appellant Windy Price was represented by Christine Varnado; the Horry County Election Commission was represented by Tracey Green; and the South Carolina Election Commission was represented by Assistant Attorney General J.C. Nicholson. Appellant Price's appeal is denied and the decision of



to Horry County the responsibility for conducting the election and handling the protests of the election. The State of South Carolina sought and received preclearance from the United States Department of Justice for the transfer of election authority prior to conducting the election. Horry County applied for preclearance to move the precinct location from its normal location prior to the election, but received preclearance and approval for that change on June 11, 2012, after the election was held.

At the conclusion of the election and following a hearing regarding challenges to certain ballots cast in the election, the Horry County Election Commission determined that 91 votes had been cast, of which 84 were in favor of Jake Evans for Mayor; five in favor of Retha Pierce for Mayor; and one in favor of Windy Price for Mayor. The Commission therefore determined that Jake Evans was the winner of the election.

Price timely protested the May 22 election, alleging the following problems with the election:

- Vote counting.
- Violations of state law, including secrecy of ballots and fraudulent conduct.
- Violations of federal law.

By public notice given and published by the Commission 24 hours before the hearing pursuant to the South Carolina Freedom of Information Act, a hearing was held by the Commission on May 25, 2012 beginning at 3:00 p.m. for the purpose of hearing all protests filed concerning the May 22, 2012 election.

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Both Price and the current mayor of the Town of Atlantic Beach, Retha Pierce, were present at the hearing. Jake Evans, the candidate receiving the most votes for Mayor in the May 22 election, attended the hearing as well. The Commission heard presentations from both Price and Pierce, and Evans was permitted to cross-examine witnesses.

At the conclusion of the hearing, the Commission denied the protests of Price and Pierce. The Commission's orders were filed with the Horry County Clerk of Court and served on the parties on or about May 29, 2012. As required by South Carolina Code Section 5-15-130, a transcript of the hearing with exhibits, both those that were allowed into evidence by the Commission and those that were accepted to allow the protestants to create a record, were filed with the Horry County Clerk of Court on June 4, 2012. Price timely appealed from the decision of the Commission.

Standard of Review

Appellate Review

This Court sits in an appellate capacity in reviewing the decision of the Commission. It therefore considers only the issues presented to the Commission. *See Butler v. Town of Edgefield*, 328 S.C. 238, 248, 493 S.E.2d 838, 843 (1997). Moreover, the Court is not to conduct a de novo hearing of the issues or to take any testimony regarding the decision of the Commission. It must review the decision of the Commission for errors of law, but must accept all factual findings

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of the Commission unless they are not supported by the evidence. *Taylor*, 363 S.C. at 12, 609 S.E.2d at 502.

Analysis

The Supreme Court repeatedly has instructed that elections must not be overturned for mere irregularities or illegalities unless the result would be changed or rendered doubtful. *Cole*, 393 S.C. at 271-72, 712 S.E.2d at 444; *Taylor*, 363 S.C. at 12, 609 S.E.2d at 502; *Knight v. State Bd. of Canvassers*, 297 S.C. 55, 56, 374 S.E.2d 685, 686 (1988). “[A]ll reasonable inferences must be drawn in favor of the validity of the contested election.” *Trapp v. S. Carolina Bd. of State Canvassers*, 273 S.C. 163, 169, 255 S.E.2d 670, 673 (1979). “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.” *Berry v. Spigner*, 226 S.C. 183, 189-90, 84 S.E.2d 381, 384 (1954). And, importantly, a protest cannot be granted unless the protestant establishes the effect on the election results with certainty because an election cannot be overturned on the basis of speculation or conjecture. *Fielding v. S. Carolina Election Comm’n*, 305 S.C. 313, 317, 408 S.E.2d 232, 234 (1991). Thus, courts must avoid disenfranchising voters when there has been no interference with “a full and fair expression of the voter’s choice.” *George v. Mun. Election Comm’n of City of Charleston*, 335 S.C. 182, 186, 516 S.E.2d 206, 208 (1999) (quoting *State ex rel. Parler v. Jennings*, 79 S.C. 414, 419, 60 S.E.2d 967, 968-69 (1908)).

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Recognizing that there are “numerous and detailed” statutory provisions governing elections, the Court has set forth an analytical framework for determining when the statutory provisions governing elections are mandatory or directory. *George*, 335 S.C. at 186, 516 S.E.2d at 208. Statutory provisions are mandatory if the statute itself declares that its provisions are “essential to the validity of an election” or if enforcement of the statutory provisions is sought before the election is conducted. *Id.* After the election, if there is no proof of fraud, the court must treat the statutory provisions as “merely directory even though the Legislature used seemingly mandatory terms such as ‘shall’ or ‘must’ in establishing the provisions.” *Id.* The court should consider these provisions to be mandatory after an election only if 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.* The purpose of this analytical framework is a judicial goal of upholding the election in order to avoid disenfranchising voters. *Id.*

1. Challenges to the Executive Order were not cognizable in the protest hearing.

Price’s primary challenge to the election is based on an alleged misapplication and violation of South Carolina Code Section 7-13-1170 in the Governor’s issuance of the Executive Order. The Commission refused to consider Price’s arguments regarding the Executive Order, concluding that any review of that order was beyond its jurisdiction. The Commission was correct.

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South Carolina Code Section 5-15-130 permits a candidate to contest the result of an election, but the challenge to the Executive Order pertains to who conducted the election and not the election itself. None of the arguments or information pertaining to the Executive Order submitted by Price pertains to the actual conduct or results of the May 22 election. Price contended before this Court that some of the persons criticized by the Supreme Court in *Cole v. Town of Atlantic Beach Election Commission* were involved in the process by which the Executive Order was issued. Even assuming that is true, however, the issuance of the Executive Order has nothing to do with the actual conduct or result of the election and, thus, is not a permissible subject for a protest under section 5-15-130. The candidates recognized as much at the hearing, because a witness called by Price acknowledged during the protest hearing that the Commission could not adjudicate the Governor's Executive Order. [See Hrg. Tr. 71:23-25 ("[N]o one's asking you to overturn the governor's order. That would be totally out of your purview.") (Witness Cole called by Price).]² Any challenge to the Executive Order should have been brought in a separate proceeding against the Governor. See *Easler v. Maybank*, 191 S.C. 511, 5 S.E.2d 288 (1939) (proceeding brought directly against the Governor in the original jurisdiction of the Supreme Court regarding the Governor's responsibility under a predecessor

² Ms. Pierce also acknowledged that the Commission had no authority to review or reverse the Governor's Executive Order. [Hrg. Tr. 109:25-110:3 ("It's not bringing you something for you to make a decision about anything the governor ordered or about anybody else's input relative to this scenario.")].

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version of § 7-13-1170). This issue does not support overturning the Commission's decision.

2. *Alleged violations of federal election laws were not cognizable in the protest hearing.*

Price contends that federal election laws were violated with respect to preclearance of portions of the election process under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. The Commission committed no error of law in refusing to consider issues related to preclearance because that is an issue of federal law that may not be raised as part of a protest proceeding. *See Butler*, 328 S.C. at 249-50, 493 S.E.2d at 844-45 (rejecting consideration of Voting Rights Act claims on appeal from municipal election protests on grounds of jurisdiction as well as a candidate's lack of standing to raise such claims in the protest context). The Commission did not commit an error of law on this issue.

3. *Public notice.*

Price complains about public notice of the election. She contends that notice should have been posted in the town where the election was held. However, because Price did not raise any claims regarding notice in her protest letter, that issue was not properly before the Commission. *See S.C. Code Ann. § 5-15-130* (requiring a "concise statement of the grounds" for the protest); *Butler*, 328 S.C. at 248, 493 S.E.2d at 843 (holding that circuit court could not consider issues not presented to the Commission). The record reflects that Sandy Martin, Executive Director of the Horry County Election Commission, testified that the



Commission sent postcards to voters about the election, where it would be held, and the time and date of the election. [Hrg. Tr. 117:14-20.] Martin further testified that public notice was published twice in the Sun News.³ [Hrg. Tr. 116:4-10.]

The publication of notice in the Sun News, especially when coupled with the postcards sent to the voters, is more than sufficient to comply with the statutory requirement that notice be given 60 days prior to any election. S.C. Code Ann. §5-15-50. And although Price complained about not receiving a calendar of events regarding the election process, that is not required by the statute. *See* S.C. Code Ann. §5-15-50. The Supreme Court has affirmatively rejected an effort to protest an election based on a notice that was not published by the Election Commission and not a form of notice required by the statute. *Butler*, 328 S.C. at 246, 493 S.E.2d at 842. Price is not entitled to protest the election based on the failure to do something not required by the statute, especially when the residents of Atlantic Beach were given public notice and were advised of the polling place change.

Price further complains about notice of the protest hearing itself. But the evidentiary record before the Commission reflected that public notice of the protest hearing was given 24 hours before it was conducted. [*See* Hrg. Tr. 18:6-

³ Price contends that the record reflects that "most people" do not receive the Sun News. However, the record does not support that conclusion because there is no evidence regarding the newspaper's subscription list or any evidence to permit a conclusion that "most people" do not receive or read the Sun News.



22.] The statute requires that the protest hearing be held within 48 hours after a candidate files a protest letter, so the protest necessarily is conducted on an expedited schedule. *See* S.C. Code Ann. §5-15-130; *see also Cole*, 393 S.C. at 274-75, 712 S.E.2d at 446 (“We believe the main purpose of [§ 5-15-130] is to expeditiously finalize protested municipal elections in the interest of realizing the voters’ will and seamlessly transitioning government offices.”).

The record reflects that Price acknowledged that she personally “was told on that point verbally, not through written notice, verbally, tomorrow at 3 PM” when she filed her protest letter and “asked the question, when, where, and at what time would this protest be held?” [Hrg. Tr. 22:2-7.]⁴ Section 5-15-130 requires only “due notice to the parties concerned.” The notice given to Price complies with this requirement, especially in light of the expedited schedule prescribed by the statute. This contention does not support overturning the Commission’s decision.

4. *Vote counting.*

Price’s complaints about the vote counting generally involve unsubstantiated allegations involving a purported conspiracy by candidates Evans, Taylor, and Isom. These unsubstantiated assertions do not support

⁴ Price referenced video evidence that she allegedly was unable to produce due to the short time prior to the hearing, but she could have called witness to testify regarding the events that allegedly were video recorded. To the extent that the witnesses actually called did testify to certain incidents that would have been the subject of the video recording, the Commission concluded that the record did not support overturning the election. The Court finds that there is no factual basis or issue of law that would support reversing the decision of the Commission in that regard.



overturning the election. *See Fielding*, 305 S.C. at 317, 408 S.E.2d at 234 (refusing to overturn election based on evidence that was conjecture, speculation, and surmise). More to the point, there were no challenges lodged at the polling place that were based on anything other than residency or identification and, thus, no record to support overturning the election on this basis. *See id.*, 305 S.C. at 318, 408 S.E.2d at 234-35. And although Price now raises the issue of an absentee ballot cast by a voter allegedly in a coma, there was absolutely no evidence introduced at the hearing regarding this issue that appears for the first time on appeal. These unsubstantiated and unpreserved allegations do not support a determination that the Commission erred in its decision. *See Fielding*, 305 S.C. at 317, 408 S.E.2d at 234; *Berry*, 226 S.C. at 191-92, 84 S.E.2d at 385.

Price also contends that if "the election had been decided by resident voters there would most likely have been a run-off between Evans and one of the other candidates Pierce or Price." [Rev. Price Br. p.26.] There is no evidentiary basis in the record to support this conclusion because Evans received 84 votes for Mayor, whereas Pierce received five votes and Price received one vote. Under any view of the voting, including eliminating all of the challenged ballots from the counting, Evans received no less than 55 votes and also received a majority of the votes. However, there was no evidence introduced at the protest hearing to support that the Commission erred in its treatment of any of the challenged votes at the hearing on ballot challenges. There were some allegations about a report by an Atlantic Beach police officer, but no police officer was called to testify at



the protest hearing. In short, there is no evidence that would support Price's assertion beyond unsubstantiated allegations of the type disavowed by the Supreme Court. *See Fielding*, 305 S.C. at 317, 408 S.E.2d at 234 (refusing to overturn election based on evidence that was conjecture, speculation, and surmise); *Berry*, 226 S.C. at 191-92, 84 S.E.2d at 385 (rejecting protest based on indefinite evidence). This ground does not support overturning the decision of the Commission.

5. *Voter intimidation and secrecy of the ballot.*

Finally, Price complains about voter intimidation and secrecy of the ballot. [Rev. Price Br. p.28.] But the apparent target of that complaint is the Governor, contending that she threatened people to turn out for the election. [*Id.*] Price further complains of voter intimidation tactics used in the election and contends that people "simply stayed away from a polling place and an election that in every way was designed to expose their lack of support for certain candidates as people who did not come to the church and vote for them." [*Id.*] However, no one testified at the hearing that they were intimidated in staying away from the polling place. Price said in her closing argument—which was unsworn—that she "chose not to participate in this election because [she] was not comfortable with the issues involving preclearance." [Hrg. Tr. 104:23.] Although she further stated that the election was held in a place where her opponents had intimidated her, [Hrg. Tr. 105:3-8,] she provided no sworn testimony or evidence to support any such assertion. Moreover, other than unsubstantiated allegations,

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there was no evidence introduced by Price as to why that particular church was selected as a polling place.⁵

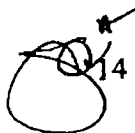
Patricia Bellamy was present at the polling place. [E.g., Hrg. Tr. 33:18-19.] Carolyn Cole, called as a witness by Price, was present at the polling place, [e.g., Hrg. Tr. 56:1-13 (giving observations on election day),] and testified that "everybody ... was being as nice as possible under the circumstances." [Hrg. Tr. 74:25-75:1.] Cole further testified that "I don't think people were held away. *I think people made their own decisions.*" [Hrg. Tr. 96:17-18 (emphasis added).] Cole also testified that she did not vote. [Hrg. Tr. 59:7-11; *see also* Hrg. Tr. 97:25-98:1.] There was no testimony from any witnesses regarding intimidation of witnesses and no evidence aside from generalized allegations. The record therefore supports the Commission's determination, and there is no evidence to support the assertion that voters were intimidated and did not turn out in the election *See Davis v. Cayce*, 166 S.C. 372, 164 S.E. 883 (1932) (protest that the books of registration had not been kept open as required by statute denied because there was no evidence that anyone had been denied the chance to vote); *see also Fielding*, 305 S.C. at 317, 408 S.E.2d at 234 (rejecting issues in protest as based on conjecture, speculation, and surmise because no one "who testified could identify a definitive number of alleged illegal votes cast"; testimony about vote buying "was totally without substantiation as to either the giver or receiver";

⁵ The Court takes judicial notice that the selected church is 0.3 miles from the community center.

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testimony concerning illegal assistance "was based upon the subjective opinion of the poll watcher"; and "no documentation whatsoever of any of the alleged irregularities was presented, only the uncorroborated opinions of individuals").

The issue pertaining to secrecy of the ballot as presented to the Commission apparently was based upon an assertion that it was generally known whom a particular voter supported as a candidate, not the issue of whether people were casting a vote in a voting booth. Booker testified that he "live[s] in a community where people communicate, people talk about who they are for and who they are not." [Hrg. Tr. 136:15-17.] There was no evidence of a failure to provide persons with the benefit of a voting booth and certainly no evidence that any such alleged failure was systemic. *See Taylor*, 363 S.C. at 18, 609 S.E.2d at 505 (holding that a small number of persons casting challenged ballots without the benefit of a voting booth constituted an irregularity that did not affect the result of the election). Because the record supports the Commission's determination and does not contain sufficient evidence to overturn the election, Price is not entitled to relief on this issue.



Conclusion

The candidate receiving the most votes for mayor, Evans, won with 84 votes according to the official tally certified by the Commission. Pierce received five votes and Price received one vote. There is no evidence in the record presented to the Commission regarding irregularities with respect to any specific voters or votes cast on May 22, 2012, let alone in numbers sufficient to overcome Pierce's 79 vote deficit or Price's 83 vote deficit. The Court is mindful of the Supreme Court's repeated admonition that elections should not be overturned unless the result is changed or rendered doubtful. None of the issues articulated by Price in any way would change the result of the May 22 election or render it doubtful. The Court therefore finds that the factual findings of the Commission are supported by the evidence and that the Commission did not commit an error of law in denying Price's protest and upholding the results of the election conducted on May 22, 2012. The decision of the Commission therefore is **AFFIRMED** and Price's appeal is **DENIED** and **DISMISSED**.



J. Derham Cole,
Presiding Judge, Fifteenth Judicial Circuit

August 15, 2012

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

FORM 4
FILED
HORRY COUNTY
2012 OCT 29 PM 4:23

JUDGMENT IN A CIVIL CASE

CASE NO. 2012- CP-26-04403

Windy Price

Horry County Election Commission, et al.

MELANIE HUGGINS-WARD
CLERK OF COURT

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Court

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Plaintiff's motion to alter or amend the judgment pursuant to Rule 59(e) is denied.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2053
Judge Code

Oct. 24, 2012
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Christine C. Varnado
127 King St., Suite 100
Charleston, SC 29401

ATTORNEY(S) FOR THE PLAINTIFF(S)

Tracey C. Green
P.O. Box 8416
Columbia, SC 29202

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2012-CP-26-

12 4403

Windy Price)

Appellant,)

vs.)

Horry County Election Commission)
South Carolina Election Commission)
Jake Evans, Josephine Isom,)
Charlene Taylor)

Respondents.)

MOTION HEARING AND APPEAL

FILED
HORRY COUNTY
2012 JUN -4 PM 4:45
MELANIE HUGGINS-WARD
CLERK OF COURT

Windy Price.....Appellant,

vs.

Horry County Election Commission.....Respondent

South Carolina Election Commission.....Respondent

Jake Evans, Josephine Isom, and Charlene Taylor.....Respondents

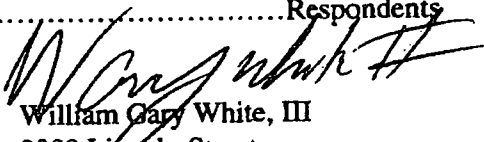

William Gary White, III
2009 Lincoln Street
Columbia, SC 29201
(803) 767-3953
Attorney for Appellant

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II. Governor Nikki Haley's Executive Order No.2012-03 was based on fraudulent information and used as justification to circumvent and violate state and federal election laws which increased confusion, voter intimidation, violated secrecy of the ballot, and discouraged candidates and voters from participating in the electoral process and disenfranchised resident voters who supported candidates other than Jake Evans, Josephine Isom, and Charlene Taylor. If the initial act is illegal then none of the resulting actions can be legal.	
III. The Horry County Election Commission and the South Carolina Election Commission are not proper as the authorities to conduct the Atlantic Beach town council election and hear the candidates' protests.	
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TABLE OF AUTHORITIES

Constitution

S.C. Constitution Article II, § 10

Statutes

S.C. Code Ann. §5-15-30

S.C. Code §5-15-145

S.C. Code §5-15-140

S.C. Code §7-13-35

S.C. Code §7-5-220

Cases

Baird v. Charleston County, 333 S.C. 519, 511 S.E. 2d 69 (1999)

Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R.51.10

STATEMENT OF ISSUES ON APPEAL

- I. Did Governor Nikki Haley fail to comply with the requirements of S.C. Section 7-13-1170 to facilitate a scheme by William Booker, Jake Evans, Sandy Martin and Marci Andino to remove the Atlantic Beach Municipal Election Commission's authority over the newly scheduled town council election?**
- II. Was Governor Nikki Haley's Executive Order No. 2012-03 used as the justification to violate state and federal election laws and create confusion and intimidation factors sufficient to discourage candidates opposing Jake Evans, Charlene Taylor and Josephine Isom from participating in the electoral process and to disenfranchise resident voters who supported other candidates?**
- III. Are the South Carolina Election Commission and the Horry County Election Commission proper as the authorities to conduct the Atlantic Beach town council election and hear the candidates' protests?**
- IV. Is there sufficient evidence in the record to overturn the decision of the Horry County Election Commission and set aside the election?**

STATEMENT OF THE CASE

This appeal arises from the decision of the Horry County Election Commission to validate the May 22, 2012, Atlantic Beach Town Council election. The need for the May 22, 2012 election arises from the decision of the Municipal Election Commission (MEC) to overturn the November 1, 2011 election. The need to overturn the November 1, 2011 election arises from an ongoing vendetta William Booker and the former MEC comprised of Booker's wife, Lynda Booker and Alice Graham have against Appellant Price stemming from the 2009 town council election where the Appellant won as a write-in candidate. Appellant Price had brought suit against Atlantic Beach in the U.S. District Court resulting from the actions of Jake Evans, Charlene Taylor, Josephine Isom, Alice Graham, Lynda Booker and William Booker. The U.S. District Court upheld eight of the twelve causes of action and moved the litigation forward. The parties reached a settlement with the Appellant in November 2011. While waiting for the case pending before the S.C. Supreme Court, William Booker hatched a new plot to control the outcome of the Atlantic Beach town council election that included assistance from a state representative in House District 104, Marci Andino of the S.C. Election Commission, Sandy Martin of the Horry County Election Commission and Governor Nikki Haley by and through her attorney, Swati Patel to dismantle the town's MEC.

In February 2011, William Booker, town manager of Atlantic Beach hired Linda Cheatham, a friend from Richmond, Virginia to work as assistant town manager and chief finance officer for the Town of Atlantic Beach. Emails between Horry County officials, Sandy Martin and Sanford Graves show that on March 16, 2011, Linda Cheatham were seeking to "disband" the town's Municipal Election Commission. In an email Horry County informed Linda Cheatham that there was not sufficient time for Horry County to agree to take over the management of the town's election in November 2011.

The S.C. Supreme Court heard the matter of *Cole v. Town of Atlantic Beach* on April 5, 2011 and filed Opinion No. 26996 on July 7, 2011 in the matter of *Carolyn Cole and Windy Price v. Town of Atlantic Beach Election Commission* with Josephine Isom and Charlene Taylor as Intervenor. The Supreme Court cited William Booker's role in trying "to obstruct the town council election process...." The Supreme Court noted, "the

attempts by members of the MEC and the town manager to prevent Cole and Price from establishing residency was deplorable." Cole and Appellant Price took their seats on July 26, 2011. They joined Councilman Donnell Thompson in terminating Booker as town manager.

On September 2, 2011 Windy Price filed a Statement of Candidacy to appear on the ballot as a candidate for mayor in the November 1, 2011 election.

November 1, 2011 Election

On Tuesday, November 1, 2011, the Town of Atlantic Beach held municipal elections for mayor and to fill two seats on its town council. Three names appeared on the ballot for mayor: Jake Evans, Retha Pierce, Windy Price; five names appeared on the ballot for council: Josephine Isom, Monique Pointer, Charlene Taylor, Misty Umphries, and James Vanfleet.

William Booker arrived with a woman, Laura Best, whom he introduced as being from the Office of the S.C. Attorney General. Ms. Best continued the charade all day, introducing herself to candidates, voters, the MEC, and town officials as a representative from the S.C. Attorney General's office. She remained in the polling place from approximately 8:00 a.m. until after the polls closed with unfettered access to the voting machines, poll manager, poll workers, and voters. On several occasions she held up her cell phone and announced that she was in conversation with Sandy Martin of the Horry County Election Commission. Inside the polling place, Best nested with William Booker and candidates Charlene Taylor and Jake Evans who spent most of the day inside the polling place. Lynda Booker and Alice Graham arrived at the polling place and spent a short while with Ms. Best. Ms. Best stopped Atlantic Beach Concerned Citizens President Patricia Bellamy from challenging non-resident voters and threatened her with a lawsuit from the Attorney General. Mary Jowers of the S.C. Attorney General's Office sent a letter to the Town of Atlantic Beach confirming that Ms. Best was not an employee on assignment from their office. Best was arrested on or about April 25, 2012.

After the challenged ballot hearing, the election was certified with Jake Evans, Charlene Taylor and Josephine Isom as winners.

On November 4, 2011 William Booker sent an email to Sandy Martin copied to Alice Graham attaching the protest documents of Windy Price, Misty Umphries, and James Vanfleet.

The election protest hearing was held on November 5, 2011 and afterwards the MEC overturned the election and ordered a new election to be held within 180 days. The MEC cited voter intimidation, violations of secrecy of the ballot, and fraudulent acts, including those related to the voting machines of William Booker, Joe Montgomery, Jake Evans, et. al., that disenfranchised resident voters in favor of non-resident voters to affect the outcome of the election. The MEC maintained that the actions of the parties involved exceeded the acceptable level of tolerance for mere or innocent irregularities but were knowingly and willfully fraudulent and interfered with the full and fair expression of the voter's choice and left the results doubtful.

Voting Machines

One of the voting machines used in the Atlantic Beach town council election on November 1, 2011 was not registered to the state of South Carolina or Horry County and was listed as having been discarded and destroyed as of 2006. The MEC witnessed voters being steered to the machine in question on Election Day. At the close of the polls, the machine recorded an unusual voting pattern different from the results of the absentee ballots and the challenged ballots and primarily in favor of the three candidates who ran as a team: Jake Evans, Charlene Taylor, and Josephine Isom.

The MEC directed the Atlantic Beach Police Department (ABPD) to secure the voting machines until they could determine how investigations into the voting machines are conducted. The ABPD secured the two voting machines in the locked evidence room.

The Town of Atlantic Beach contacted Professor Duncan Buell of the University of South Carolina, a well-known expert on the voting machines used in South Carolina. The MEC learned that contrary to popular belief the machines can be tampered with to change election results in a variety of ways, are fairly easy to program, and can be programmed to do what is called "mapping." Mapping allows the voter to see a name on the screen and choose that name but the machine is programmed to send that vote to another candidate without the voter's knowledge. The candidates, voters, and MEC

raised questions about the significance of sending the majority of voters to the machine in question when two machines were available were inexplicable when compounded by the unusual voting pattern. The Appellant was surprised and concerned that the S.C. Election Commission and the Horry County Election Commission were more interested in punishing Atlantic Beach, the candidates and voters for raising questions about the machine than about investigating the situation.

On December 13, 2011, the Horry County Sheriff's Department confiscated the voting machines from the evidence room by order of Judge Brad Mayer as a claim and delivery action. According to emails received in a Freedom of Information Act request, the claim and delivery action against the Town of Atlantic Beach was initiated by Marci Andino of the South Carolina Election Commission and Sandy Martin of the Horry County Election Commission.

Two hearings were held before Judge Mayer in December 2011 pertaining to the voting machines. Jake Evans, Charlene Taylor and Josephine Isom sided with Horry County against the Town of Atlantic Beach and the Municipal Election Commission. Attorney Sanford Graves, a participant in the email chain between Sandy Martin and Marci Andino, William Booker, and Governor Haley's office, argued for Horry County. Mr. Graves argued against the MEC's authority to call for an inspection and/or investigation of the voting machines arguing erroneously that the Supreme Court Opinion in *Cole v. Town of Atlantic Beach* was referencing the newly appointed MEC, an argument that would surface later in the Governor's Executive Order No. 2012-3.

In an email on February 1, 2012 to Chris Whitmire of the S.C. Election Commission, Professor Buell expressed concern about the voting machine not being on the November 2010 list of machines owned by the state of South Carolina and stated, "apparently that machine is officially listed as having been discarded and destroyed as of 2006. That it would then surface in a disputed election is going to trigger some concerns."

In an email dated April 30, 2012 from Rick Wrigley to Marci Andino and Chris Whitmire he informs them that, "the Atlantic Beach municipal election audit reveals no exceptions. There are no memory or CRC errors. All data transfers appear to be normal..." In emails between Sandy Martin and Marci Andino they raised the question

of whether or not to inform Atlantic Beach officials about the pending audit. Atlantic Beach is not informed about the audit. On May 7, 2012, S.C.Now.com reported "Voting Machines Used in Atlantic Beach to go back into service."

MEC's Ongoing Judicial Process

Despite the concerns about the voting machine situation, the MEC continued with its judicial process. On December 14, 2011, the MEC, after giving 24-hour notice in compliance with the Freedom of Information Act, held a meeting and announced to the public they had received the transcript from the protest hearing and they would put the transcript, exhibits and other documents on file with a written order at the Horry County Clerk of Court's office as soon as they hired an attorney to write the order. The MEC also announced May 8, 2012 as the date for the new election and informed the public that the Atlantic Beach Police Department's investigation into election fraud, voter fraud, and voter registration fraud was ongoing.

The MEC reaffirmed its commitment to hold a fair election in the town where all resident registered voters could come to the polls without fear. They stated they had made initial contact with the League of Women Voters to monitor the election. Professor Duncan Buell had been contacted to address the issues with the voting machines. The Atlantic Beach Police Department was still investigating election law violations. The MEC stated it would be using poll watchers and managers from neighboring counties. The meeting ended with the MEC stating they would notice a public meeting once the order and transcript was put on file.

Joe Montgomery, a former mayor of Atlantic Beach who had been removed by the Governor in 1996 for misconduct in office arising from charges of embezzling money from local businesses surfaced on November 1, 2011 as the spokesperson and poll watcher for Jake Evans. Mr. Montgomery asserted that the MEC was not in control of the election and was one of the people in on the scam with an impersonator from the S.C. Attorney General's office. Booker's ongoing strategy to remove the MEC appointed by the newly seated council was still underway. Commissioner Miller resigned in December 2011. Commissioner Charlette Hudson rents an apartment from Joe Montgomery. He increased pressure on her to vacate the apartment, an old tactic used to remove the voters

in the Atlantic Beach Housing Authority Commissioner Hudson is moving to a new residence in Atlantic Beach and the MEC still has a quorum.

The MEC continued to send its information to one attorney at a time. Attorney, Sam Howell entered an agreement with the town in April 2012 and wrote the order. The order was put on file at the Horry County Clerk of Court's office with the transcript, exhibits and other documents on May 23, 2012.

Due to the bike fest event and clean up, time spent on the pre-clearance issues surrounding the May 2012 election the MEC scheduled the meeting at the earliest possible date, June 4, 2012 at 3:00 p.m.

Governor's Office Joins Effort to Interrupt MEC's Process

Mr. Montgomery announced in Town Council meeting during the public comment section that Governor Nikki Haley was taking over the election from the Municipal Election Commission.

Mayoral Candidate and Councilmember Jake Evans sent a letter to Swati Patel, attorney for the Governor seeking her help with the election on February 21, 2012. Attorney Swati Patel of the Governor's Office contacted the town of Atlantic Beach and left a message stating, "we need to get these people seated." Commissioner Kenion left a voice mail for Ms. Patel informing her that the process was ongoing and the town would be contracting with an attorney for the MEC and the attorney would then communicate with her.

On March 12, 2012, Swati Patel, sent a draft of the Governor's Executive Order by email to Marci Andino at 12:17 p.m. Marci Andino sent the draft order to Sandy Martin on the same day at 12:22 p.m.

In an email from Sandy Martin to Marci Andino dated March 14, 2012 at 2:17 p.m., Sandy Martin asks, "Marci, can we use this information that the Governor is getting ready to call for the new election to get our machines back or is it a secret until its done."

In an email from Marci Andino to Sandy Martin dated March 14, 2012 at 2:39 p.m., Marci responds, "no, it is a draft. Please do not release a copy. I would ask the county attorney to officially ask for the machines...."

In an email to Marci Andino from Sandy Martin dated March 14, 2012 at 2:42 p.m. Sandy Martin states, "I wasn't going to give him a copy, just tell him that the Governor's office was working on one." The Appellant does not know to whom "he" refers.

Governor Nikki Haley issued Executive Order No. 2012-03 invoking S.C. Section 7-13-1170 as the authority which allowed her to appoint the South Carolina Election Commission and the Horry County Election Commission to handle the election and set the new election date for May 22, 2012.

**Town Submits Freedom of Information Act Requests
to Governor's Office, S.C. Attorney General, S.C. Election Commission
and Horry County**

The Town of Atlantic Beach submitted a Freedom of Information Act request to Horry County, the Governor's Office, and the State Attorney General's Office to sort through the rumors and conspiracy theories about the involvement of public officials at the county and state level trying to affect the outcome of the town's election. Patricia Bellamy of Atlantic Beach Concerned Citizens and the Appellant requested the documents received by the town from its FOIA requests. Ms. Bellamy contacted the U.S. Department of Justice on to find out about pre-clearance since none of the initial FOIA requests received by the Governor's Office, S.C. Election Commission, S. C. Attorney General's Office or the Horry County Election Commission included an application to DOJ. After a second FOIA request to Horry County they submitted a copy of the application they sent to DOJ. Horry County submitted the name of William Booker as its minority contact from DOJ. The decision to do so was discussed in emails between Sandy Martin and Marci Andino.

Pre-Clearance from the United States Department of Justice

The Governor's Office submitted an application to the United States Department of Justice seeking pre-clearance to change the authority handling the election to the South Carolina Election Commission and to change the date to May 22, 2012.

Horry County applied to the United States Department of Justice for pre-clearance to change the polling place.

The MEC, voters and others objected to the applications for pre-clearance submitted by Governor Haley and the Horry County Election Commission. The MEC learned that DOJ was under the impression that the town of Atlantic Beach agreed with the changes. The MEC submitted its objection to the Governor's application to change the authority handling the election and date change and to Horry County's application to change the polling place from the Atlantic Beach Community Center to the First Missionary Baptist Church in Atlantic Beach to the U.S. Department of Justice. The Appellant submitted her objection along with several citizens of the Town of Atlantic Beach.

Pre-clearance was received by the Governor's office on May 18, 2012 with a disclaimer that the Attorney General's failure to interpose an objection does not prevent them from enjoining subsequent litigation. The DOJ wanted an explanation for the failure of Horry County and the town to complete an agreement and requested that they satisfy DOJ's inquiry into the 2007 election.

Pre-clearance was not received for the polling place change. Horry County Election Commission Chair Russell Hall stated that DOJ informed them that pre-clearance was not forthcoming on the polling place issue until July 1, 2012.

May 22, 2012 Election Day

The re-do of the November 1, 2011 election was held on Tuesday, May 22, 2012 at the First Missionary Baptist Church in Atlantic Beach, S.C. The absentee ballots were opened at 9:00 a.m. in Conway, S.C., twenty-six miles away.

Challenge Ballot Hearing

The Challenge Ballot Hearing was held on May 24, 2012 in Conway, S.C. at 10:00 a.m. None of the parties responsible for the election applied for pre-clearance for this change.

Election Protest Hearing

Windy Price filed a timely appeal on May 24, 2012 protesting the legitimacy of the election, citing fraud, violations of federal and state law, issues with vote counting and secrecy of the ballot. Appellant Price was served with a notice from the Horry County

Sheriff's Department on Friday, May 25, 2012 at 8:03 a.m. informing her that the protest hearing would be held at the Voter Registration Office in Conway, South Carolina at 3:00 p.m. on the same day. None of the parties responsible for the election applied for pre-clearance on this change of location for the hearing.

The Chairman of the Horry County Election Commission Russell Hall presided with three additional members and their attorney present. Chairman Hall denied the MEC's request to be heard as interveners. Chairman Hall denied Appellant Retha Pierce's request for a continuance to allow the appellants to have their attorneys present.

The Horry County Election Commission ruled on May 25, 2012 to deny the Appellants' protest and issued a written order on May 29, 2012 to allow an election to stand where only 15% of the resident voters participated and the candidates did not receive 50% plus one majority vote. The Horry County Election Commission's decision to uphold the election is not within their jurisdiction as they are seated improperly by an Executive Order that did not meet the requirements of S.C. § 7-13-1170. A legal act cannot be predicated on an illegal act. The MEC had not ceased in its process, failed or neglected to do its duty. Failure to apply for or obtain pre-clearance is a violation of the Voting Rights Act of 1965, 28, C.F.R. 51.41.

FACTS

The Town of Atlantic Beach has a council-manager form of government as provided for under S.C. Code Ann. §5-13-10, et.seq. Its council is composed of the mayor and four at-large council members. Elections in Atlantic Beach are held in odd-numbered years.

Under Atlantic Beach's council-manager form of government, the town manager holds the position at the pleasure of the town council. S.C. Code Ann. § 5-13-130(1). William Booker, former town manager, was hired by Jake Evans, Charlene Taylor and Josephine Isom.

The Atlantic Beach MEC is appointed by the Town Council and is composed of three members. In December 2010, Nicole Kenion was removed from the Commission by Jake Evans, Charlene Taylor and Josephine Isom. Councilmembers Cole, Price and Thompson reappointed Commissioner Kenion in September 2011 along with Commissioners Charlette Hudson and Delayne Miller.

STANDARD OF REVIEW

1. The Circuit Court, sitting in an appellate capacity, does not conduct a de novo hearing, or take testimony regarding the decision of the Horry County Election Commission; 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 Commission*, 363 S.C. 8, 12, 609 S.E. 2d 500, 503 (S.C. 2005).
2. The Circuit Court may not consider issues not raised to the Horry County Election Commission. See *Butler v. Town of Edgefield*, 328 S.C. 238, 493 S.E. 2d 838 (1997).
3. Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41.

ARGUMENT

This appeal arises from the decision of the Horry County Election Commission to certify the Atlantic Beach town council election of May 22, 2012, Appellant Windy Price raised the following issues:

Misapplication and Violation of S.C. §7-13-1170

The Governor's Office failed to comply with the requirements of S.C. §7-13-1170. The Atlantic Beach Municipal Election Commission was involved in an ongoing judicial process involving the November 1, 2011 Atlantic Beach town council election. On November 5, 2011 the MEC overturned the election and ordered a new election to be held within 180 days.

The MEC received two notices from Mabry Court Reporting informing them that completion of the transcript was delayed. Each time the MEC received a notice, copies were delivered to all candidates.

On December 13, 2011, the MEC received the transcript from the protest hearing. In compliance with the Freedom of Information Act, the MEC gave the public 24 hour notice of a MEC meeting to be held on December 14, 2011.

At the December 14, 2011 MEC meeting, the MEC informed the public that it had received the transcript and outlined the steps it would follow. The next step was to hire an attorney who would take the transcript, exhibit, and other documents and write the order. Once the order was written, the order, transcript, exhibits and other documents would be put on file at the Horry County Clerk of Court's office. The public was told that the MEC would submit the documents to one attorney at a time until they found one willing to represent the MEC, write the order, and agree upon financial terms. Terms could not be reached with the first attorney. The next attorney, Sam Howell entered an agreement with the Town in April 2012 after the MEC was delayed by Councilman Jake Evans support for the former town manager's failure to provide support to the MEC in the daily operation and fiscal management of the town. Mr. Howell filed the MEC's written order from the November 1, 2011 election on May 23, 2012. This was exactly five days longer than it took the previous MEC when their actions to delay the filing were

documented as deliberate acts. This MEC documented that its actions were not deliberate attempts to delay the process but was done with all deliberate speed and keeping all of the parties informed. The previous MEC in the 2009 election *Cole and Price v. Town of Atlantic Beach* did not put the written order on file until May 19, 2010 and when it was put on file, it was done so by Commissioner Nicole Kenion. The difference between the former and current MEC's delay was a matter of intent. The Supreme Court Opinion No. 26996 describes the actions of Commissioners Alice Graham, Lynda Booker, and William Booker to delay the transcript being put on file and efforts to deny the appellants' day in court. The current MEC's best efforts to preside over the town's first fair election for town residents in over 30 years was bolstered by the Supreme Court's order which served as both strong encouragement and a deterrent to illegal conduct in forthcoming elections. However the MEC was blindsided by William Booker's new scheme to "disband" the MEC and gain control of the electoral process.

William Booker hired Linda Cheatham, a friend from Richmond, Virginia as assistant town manager and chief finance officer. In an email dated March 16, 2011, Ms. Cheatham emails Sandy Martin and requests a transfer of authority to conduct elections from the MEC to Horry County. On March 16, 2011 Sandy Martin responds with questions about whether or not this would include filing. On Thursday, March 17, 2011, Linda Cheatham inquires about costs. On Thursday, March 17, 2011, Sandy Martin responds and copies Sanford Graves letting Ms. Cheatham know the cost will be greater since the County will be paying all bills. She informs her that she is working with Mr. Graves on the issue. After a series of emails, on March 21, 2011 Mr. Graves asserts that he will take the lead on the matter of transferring authority for Atlantic Beach elections after speaking with Gary Baum at the South Carolina Election Commission, Ms. Cheatham, and leaving a message for then town attorney John Zilinsky. He states that, "AB generally wants to disband, or not (re-appoint) their election commission. This conversation is taking place while the matter of *Cole v. Town of Atlantic Beach* is being considered by the S.C. Supreme Court. He offers that "Gary Baum says that the Code section allows us to make whatever agreement we want to make." Booker's scheme to disband the MEC was thwarted when Horry County only wanted to take part of the responsibility for the election. Graves stated "election day is approximately 232 days off,

calculating for a 2-reading AB Ordinance (to be aspirationally completed June 6) (77d); 3-reading Council ordinance (from June 7) (36-d); 60-day DOJ pre-clearance; and a 75-day pre-election filing period, 248 days are required." It is clear from this email that the state, county, and town knew exactly what was involved in crafting an agreement for the town and county to work together on Atlantic Beach elections. On April 4, 2011, the day before the S. C. Supreme Court hearing in Cole v. Town of Atlantic Beach Mr. Graves emails Sandy Martin and tells her that Ms. Cheatham called him over a week ago and that he told her what the county was willing to accept from them, that at that level they would still need their commissioners, and that time was of the essence taking into consideration the time required for muni & county legislation, DOJ filing, election filing, and advertising. He goes on to state that he told her "specifically there did not seem to be enough time to complete the process for a November 2011 election." On April 5, 2011, the day of the Supreme Court hearing, Mr. Graves emails Linda Cheatham about "her desire to disband your election commission. He informed her that "based on the level of services the County is willing to provide at this time, your goal regarding the commission cannot be reached under state law." (S.C. §5-15-145)

On November 1, 2011, Election Day, in Atlantic Beach, William Booker enters the polling place with Laura Best, later discovered to be a known white GOP operative. She introduced herself as a representative of the S.C. Attorney General's office assigned to make sure Atlantic Beach's election ran properly. Ms. Best was arrested in April 2012 for impersonating a public official.

On February 21, 2012 Jake Evans sends a letter to Swati Patel attorney for the Governor's office asking the Governor to intervene in the town's election on his behalf.

Section 7-13-1170 was invoked by the Governor as a favor to friends who were seeking to remain in control of the electoral process even after having been removed from office by the council members seated by the Supreme Court in July 2011. Booker has a history of schemes to try and affect the outcome of Atlantic Beach elections for personal gain and they are duly noted in the Supreme Court's Opinion No. 26996 pertaining to the 2009 election and in the Atlantic Beach Police Department's investigation of the 2011 election. In the May 22, 2012 election, Booker was seeking to bypass the process and

timeline required by state and federal law to achieve an agreement between the municipality and the county as presented to Ms. Cheatham by Sanford Graves.

The current MEC had not neglected, failed, or refused to order, provide for, or hold the election at the time appointed as required by §7-13-1170.

The law also allows the Governor to invoke §7-13-1170 if for any reason the election is declared void by competent authority. The competency of the MEC is not in question. The law also requires that the facts are made to appear to the satisfaction of the Governor, he shall, should the law not otherwise provide for this contingency, order an election to be held at the time and place, and upon the notice being given which to him appears adequate to insure the will of the electorate being fairly expressed. To that end, he may designate the existing election official or other person as he may appoint to perform the necessary official duties pertaining to the election and declare the result." It is in Governor Haley's failure to objectively and transparently assess the situation in Atlantic Beach that the spirit and intent of the law is lost and the application of the law is then without merit and baseless. A series of contradictions ensue in the order to conceal the Governor's bias and fraudulent information.

Governor Haley states in her order that this is the second consecutive election for Mayor or Town Council that the Municipal Election Commission has overturned. This is incorrect. The former Municipal Election Commission consisting of Alice Graham, a person with a history of election fraud cited in the 2007 and 2009 elections before the South Carolina Supreme Court (*Armstrong v. Pierce* and *Cole v. Municipal Election Commission*) overturned two consecutive elections 2007 and 2009. The current MEC overturned the 2011 election.

Governor Haley states in her order that town of Atlantic Beach election controversies have reached the South Carolina Supreme Court on three occasions and notes the types of problems. She states that the South Carolina Supreme Court, in *Cole v. Town of Atlantic Beach Election Commission*, expressed grave doubts about the ability of the Municipal Election Commission to properly conduct future elections;" The Supreme Court is referencing the election commission consisting of Alice Graham and Lynda Booker whose misconduct is described in detail in S.C. Supreme Court Opinion No. 26996. Nicole Kenion was the third commissioner and the only commissioner that

wrote the dissenting opinion and was removed from the election commission by Jake Evans, Charlene Taylor, and Josephine Isom.

If Governor Haley believes that Atlantic Beach's history of election controversies is sufficient to relieve its MEC from its lawful obligation to oversee elections then the same must be said for the South Carolina Election Commission and the Horry County Election Commission. Specifically, in matters of Atlantic Beach, it was Horry County's Sandy Martin who defied the S.C. Supreme Court's order at the request of the losing attorney and put a write in space on a run-off ballot in *Armstrong v. Pierce* causing the election to be held three times: twice between Pierce and Armstrong, the original candidates in the election contest and once between Charlene Taylor and Retha Pierce after the scheme to put Taylor in as a write-in candidate against Pierce. It was Ms. Martin who was subpoenaed by Appellant Price in the 2009 town council election that failed to show up for the hearing even after confirming that she would be there. It was a circuit court judge in Horry County in *Armstrong v. Pierce* who refused to enforce the Supreme Court's order when Pierce's attorney presented the matter to him. It was a Horry County circuit court judge who aided Taylor and Isom's efforts to remain seated on the town council by refusing to add the case to the docket. It was Gary Baum of the S.C. Election Commission who needed an Attorney General's opinion to determine whether or not the Supreme Court's order in *Armstrong v. Pierce* was legal. It was Mr. Baum who upheld MEC Commissioner Graham's false information about the reason for continuing the protest hearing in the 2009 election despite a transcript that showed all commissioners present at the hearing. It was Chris Whitmire of the S.C. Election Commission who reported to the media immediately following the 2011 Atlantic Beach election that none of the Commissioners were trained which was false. It is the S.C. Election Commission who failed to respond to the Freedom of Information Act request from the Atlantic Beach Concerned Citizens about the voting machines in the state that resulted in a lawsuit.

It was the S.C. Election Commission and the Horry County Election Commission that had the voting machines used in Atlantic Beach confiscated by the Horry County Sheriff and used the Governor's order as an excuse to have the machines released to their custody. They claimed to have them audited and discussed in their emails as to whether

or not they should notify Atlantic Beach to be present for the audit. The State Election Commission announced that the audit did not reveal any problems; however, they did not disclose that in an email from Professor Duncan Buell, he informed Chris Whitmire that the machine in question was not on the 2010 list of voting machines in the state of South Carolina. The State nor the county addressed the impersonator from the Attorney General's office at the November 1, 2011 election in Atlantic Beach and her relationship with all the parties alleged to be the winning candidates, their contacts for the Governor's office and their DOJ submissions. The State and County Election Commissions have demonstrated an extreme bias in matters pertaining to Atlantic Beach and should not have been the appointed authorities to handle the election. A close examination of their actions reveal decisions designed to disenfranchise a significant portion of the registered voters in the Town of Atlantic Beach and deny their participation in the entire electoral process including the election, opening of absentee ballots, challenge ballot and protest hearings by knowingly placing the opening of the absentee ballots and post-Election Day events twenty-six miles away from a population that does not have public transit and many of them without vehicles or jobs and during bikefest when travel is more complicated than usual.

Atlantic Beach handled its election controversies in the manner proscribed by state law through the MEC, the Circuit Court, and the Supreme Court. William Booker, Alice Graham, Jake Evans, Charlene Taylor, and Sandy Martin have a documented history before the South Carolina Supreme Court of tactics to undermine voters to affect the outcome of elections in Atlantic Beach. The tactic this time sought to bypass the existing laws, the MEC, the Circuit Court and most particularly the South Carolina Supreme Court. The emails between county and state officials reveal efforts to affect the outcome of the election in Atlantic Beach dating back to March 2011. William Booker testified that his vote for the Governor gave him access to the Governor's office. The emails reveal there was a concerted effort to keep the Governor's order a "secret" until it was done. There was no transparency and no attempt at fact finding before the Governor executed the order.

It is the State of South Carolina that is under the Voting Rights Act as a result of its history of voting rights abuses not the town of Atlantic Beach. None of the states,

counties, or towns should be punished for using the legal system to address their election disputes no matter how many times it takes. These matters belong before the courts and not in a unilateral and cloaked process that only demonstrated the Governor's willingness to abuse power for influential friends whose real objective in Atlantic Beach is to seat a government that is willing to play footsy with them for oceanfront development.

Governor Haley misrepresents the facts about the MEC in Executive Order 2012-03 uses those misrepresentations to justify appointing the South Carolina Election Commission and the Horry County Election Commission but the emails beginning with Booker's assistant town manager, Linda Cheatham, his actions on election day with the fraudulent representative from the S.C. Attorney General's office, an email on November 4, 2011 from him to Sandy Martin, copying Alice Graham, and Sunny Frye, the court reporter who withheld the transcript in the 2009 election, containing the protest documents of Appellant Price, Misty Umphries and James Vanfleet in November 2011 when neither he, Martin, Graham or Frye had any official role in Atlantic Beach elections. Booker seeks to control the outcome of the Atlantic Beach election scheduled in 2012 and is aided by Sandy Martin, Marci Andino, and a representative who provides access to the Governor's office.

It is unclear as to whether or not Governor Haley knew that the Supreme Court was referring to the wife of William Booker, the same man she, Sandy Martin, and Marci Andino used for the minority contact in the pre-clearance applications to the Department of Justice. When William Booker was asked by Retha Pierce at the protest hearing, "What gave you the authority to represent the town and to keep the town officials and the town council out of knowing what was going on." He responded, "I am a citizen, there are people put in place for me to talk to as my representatives. The Governor, I get to vote for her, the representatives, the people at the town hall, the people who work at the State Election Commission, the County Election Commission. Any place where people are working on behalf of the community, I, as a citizen, have the right to talk to them." (Election Protest Transcript, p. 129: 7-18) No one is questioning Mr. Booker's right to talk to anyone, but conspiracies to break the law are beyond mere conversation.

Violations of Federal and State Election Laws

Executive Order No. 2012-3 was a personal favor and not a response to a situation that did not have other alternatives in the law. The law is designed to settle matters; not to convolute or worsen situations. Governor Haley's involvement simply made matters worse in Atlantic Beach. Rather than work with the town's current MEC to conduct a fair election, she continued an aggressive and punitive posture towards them as if she believed what she wrote in her order about the S.C. Supreme Court's opinion of them. She used her executive power to weigh in on the bike fest controversy in Horry County where Atlantic Beach is host of the fourth largest bike rally in the nation bringing almost a quarter of a million black bikers and their friends and family on to the four streets for Memorial Day weekend by setting the election on Tuesday of the week of the 32nd annual bike fest. This decision along with the decision to appoint the South Carolina Election Commission and Horry County Election Commission to conduct the election triggered the need for expedited pre-clearance from DOJ. To obtain that Governor Haley submitted false information to the United States Department of Justice that the MEC had violated S.C. §7-13-1170 and was the same MEC the South Carolina Supreme Court stated that it "had no confidence in its ability to properly conduct future elections." After the Supreme Court Opinion was filed on July 7, 2011, Commissioner Lynda Booker resigned. The newly seated Town Council removed Alice Graham and reappointed Nicole Kenion. Ms. Kenion was one of two citizens who filed pro se to the S.C. Supreme Court in 2007 to alert the Court that its order was not being followed in Horry County. In the 2009 election, Commissioner Kenion filed the dissenting opinion providing facts about the abuse of election laws by fellow commissioners Alice Graham and Lynda Booker. The matter was handled by the Town Council of Atlantic Beach as it should have been. It was Mr. Booker and Joe Montgomery who undermined the MEC's efforts to conduct a fair election in the town of Atlantic Beach on November 1, 2011 with shenanigans that may appear to be brilliant ways to circumvent the election laws at the time of conception but nonetheless make all of the parties guilty of violating election laws.

The Governor's Office, the South Carolina Election Commission and the Horry County Election Commission failed to seek pre-clearance for all of the changes they implemented in the 2012 Atlantic Beach town council election. In an email Sandy

Martin raises the question to Marci Andino as to whether or not other changes can be made relative to the election.

In a letter dated May 18, 2012 from T. Christian Herren, Jr. of the Chief Voting Section of the Department of Justice to Swati Patel, responded, "the Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes." On Election Day, when Sandy Martin was asked by Patricia Bellamy of Atlantic Beach Concerned Citizens to provide a copy of the pre-clearance letters to answer candidates' and voters' questions about the legality of the election, they told her they left it in Conway. One of the poll workers stated that it should be posted but was told by Marci Andino to do her job. The confusion continued at the election protest hearing when Chairman Russell Hall said, "...I just want to make a couple of points. We do have pre-clearance for the actual election. What we don't have pre-clearance...What we don't have pre-clearance for, my understanding, we don't have pre-clearance for moving the polling place. I believe we have spoken with DOJ. They have until the first of July to get it to us. They told us that. We're not going to give it to you until the 1st of July. They had 60 days. I guess they're following their time line. We do not have that. That is absolutely correct. We did not find out that the polling place was going to move until, I think, the beginning of April or the beginning of May. As soon as we found out we got that letter to them. Did not get any return from them. Made a phone call. They have better things to do than talk to Horry County, it sounds like. They will have it by the 1st of July." (Election Protest Hearing Transcript, p. 27, 3:23).

In its letter to DOJ, the MEC explains the politics of Atlantic Beach and why the polling place should not be changed to either of the churches in the town where two of the candidates are trustees and/or members versus the church closest to where most of the residents live on the east side of Highway 17 and Appellant Price is the pastor. Setting the election in the First Baptist Church was tantamount to holding an election especially for candidates Jake Evans, Josephine Isom, and Charlene Taylor who ran as a team. It heightened the voter intimidation piece present in the November 2011 election and

stripped away secrecy of the ballot by making people easily identifiable as supporters or non-supporters by your willingness or unwillingness to go to the church and vote.

Horry County Election Commission and the South Carolina Election Commission did not apply for pre-clearance on other changes to the election process: change of location to open absentee ballots, challenge ballot hearing, and election protest hearing from Atlantic Beach to Conway, South Carolina, twenty-six miles away from the voters and candidates. Candidate James Vanfleet did not have transportation or funds to travel to Conway, even to take his mother and wife whose votes were challenged by the poll workers and not counted during the Challenge Ballot Hearing.

The Governor's interference in the election created confusion for voters and candidates and sought to pick winners and losers rather than an objective and legal election that would have been fair to all participants.

Public Notice of Election

The Horry County Election Commission posted a notice of the election in the legal section of the Sun News in compliance with the law but failed to notice the election in the town where the election was being held.

The Appellant argues that public notice in the newspaper about the general terms of the election did not satisfy the requirement in the law that notice be posted in the town where the election was being held. Most of the residents of the town of Atlantic Beach are not subscribers to the Sun News. Appellant Retha Pierce said, "we've heard it testified to how we have a tradition, a custom in Atlantic Beach of putting those notices on the town hall. And the citizens are used to getting information from there. Did you inquire with anyone at the Atlantic Beach Town Hall of any way to assist you in helping to get the information to voters. Sandy Martin responded, "no ma'am."

She asked Martin, "Did you feel it necessary to do an adequate job of notifying all of the public in Atlantic Beach. Martin responded, "well, we sent postcards to every voter in the town of Atlantic Beach, notifying them of the election and where it would be and the time, and the date period." Appellant Pierce explained there are problems with people receiving their mail in Atlantic Beach. Martin had a stack of postcards on the table on Election Day that were returned. When asked how many was in the stack, they replied they didn't know." (Election Protest Hearing Transcript, p. 117, 5:12)

The Appellant argues that candidates Evans, Taylor, and Isom appeared to have access to information that other candidates and voters did not. The Appellant nor the public was provided with dates and deadlines for voter registration, filing for candidacy, filing statements of Economic Interests with the State Ethics Commission are all deadlines that occurred before the candidates meeting held in the neighboring city of North Myrtle Beach.

Respondent MEC states in its order that it complied with the Freedom of Information Act when noticing matters about the election. The Appellant argues that the State Election Commission and the Horry County Election Commission failed to comply with the Freedom of Information Act. The Freedom of Information Act provides for minimum 24 hour notice before a public meeting is held. The Horry County Election Commission had a notice posted on the door of the Appellants home at 8:03 a.m. by the Horry County Sheriff's Department noticing the meeting for the protest hearing at 3:00 p.m. in Conway, South Carolina. The protest hearing for elections in Atlantic Beach is normally held on the Saturday following the election at the polling place within the 48 hour period required by law. The appellant's attorney was prepared to attend on Saturday but the change without sufficient notice to the appellant interfered with the appellant's ability to have legal counsel present for the hearing. In an email April 12, 2012 Sandy Martin informs Sanford Graves that she "just spoke with Marci from the State Election Commission concerning the upcoming election in Atlantic Beach. We anticipate a protest from the election so I will need a county attorney to conduct the hearing. She recommended, if the County does not want to participate, using Tracy Green who used to be on the State Commission." Horry County had pre-selected its attorney and had him at the election hearing. The Appellant deserved the same opportunity to be represented by legal counsel. The hearing was not held at the old or new polling place.

The South Carolina Election Commission and the Horry County Election Commission are not legally situated as the authorities to conduct the Atlantic Beach town council election and hear the candidates' protests. If the Executive Order granting the South Carolina Election Commission and Horry County Election Commission authority to manage the election is predicated on an illegal act that includes fraudulent information, and tampering with an election, then subsequent acts and/or decisions cannot be legal.

There is sufficient evidence in the record to overturn the decision of the Horry County Election Commission.

Vote Count

In the November 1, 2011 election, voter intimidation and secrecy of the ballot issues prevailed as in prior elections with candidates Evans, Taylor, and Isom. The goal is to provide a system of reward and punishment for people who do not vote for them. If you live in one of their apartments, you are evicted. When the majority of the tenants in public housing did not support Taylor and Evan's sister Irene Armstrong, they targeted the housing authority for demolition by installing a board to carry out the dastardly deed. Voters who had signed a petition that went to the S.C. Supreme Court lost their homes and voting rights in the town. William Booker devised a scheme to keep people away from the polls that included thugs surrounding the entry way, landlords and candidates. Taylor and Evans remained inside the polling place most of the day with a woman impersonating an official from the Attorney General's office assigned to handle the election and prevent non-resident voters from being challenged. To increase the numbers in favor of Evans, Taylor and Isom, nonresident voters are allowed to vote while nonresident voters are prevented from coming to the polling place or voting absentee. Evans published and distributed a list of the names of people that allegedly supported him Taylor and Isom after the polls closed and before the Challenge Ballot hearing. A substantial number of votes were challenged as being nonresident voters. If the election had been decided by resident voters there would most likely have been a run-off between Evans and one of the other candidates Pierce or Price.

In the May 2012 election, by creating the confusion for voters again, the Governor's office, South Carolina Election Commission and Horry County Election Commission became complicit in the strategy to allow only the supporters of Taylor, Isom, and Evans to vote in the election. The results are the same as the November 1, 2011 election because the State and County Election Commissions failed to provide an election where all of the registered resident voters who wished to participate in the election could do so.

Of the 92 voters who participated in the election held at the church where Josephine Isom and Charlene Taylor are members, 32 of them were not residents of Atlantic Beach. The Atlantic Beach Police Department's investigation into election fraud, including voter fraud and voter registration fraud reveals that nonresidents are allowed to register at the Horry County Voter Registration office. When the Atlantic Beach Police Department provided a list of the names of those challenged that do not live in Atlantic Beach, the Commission rejected this as hearsay and allowed those votes to stand thus increasing the number of votes for Evans again by nonresident voters.

Five votes were challenged by the Horry County Election Commission for administrative reasons and though two of them are residents of Atlantic Beach and the wife and mother of one of the candidates, the HEC refused to count their votes. The Horry County Election Commission did not count the votes of any of the people they challenged and counted all of the 32 nonresident voters challenged by Patricia Bellamy. The Commission applied a different standard for those they challenged versus those challenged by Bellamy. The HEC used matching drivers' licenses and voter registration cards as the requirement for voting in an election rather than as the pre-requisite. The requirement according to the law is that the voter is a resident of the municipality.

One of the absentee ballots could not have been returned by the voter in question because she was in a coma prior to and after the deadline for absentee voting and has since passed.

If the town has 426 registered voters and approximately 367 of them still reside in the town.

There were five (5) administrative challenges; and all 5 were rejected based on residency.

Patricia Bellamy challenged 32 voters based on residency and the HEC accepted all of them.

One absentee ballot was counted that had not been turned back in for a total of 5 absentee ballots instead of 4. The one invalid vote was from a person who was in a coma and has since passed.

92 minus 38 votes equals 55 votes which is approximately the same number of people that Evans, Taylor, and Isom allowed to vote in the November 1, 2011 election.

Six of the votes cast went to Windy Price (1) and Retha Pierce (5). When these votes are subtracted the count is only 49 votes for Evans.

Evans, nor Taylor and Isom receive 50% of the vote plus one in an election where 85% of the voters did not participate.

The May 22, 2012 election had 15% of the town's voting population, down 10% from the November 1, 2011 election. It is impossible for Jake Evans, Charlene Taylor, and Josephine Isom to receive 79, 76, and 79 votes of the 55 legal votes cast in the May 22, 2012 election.

Voter Intimidation and Secrecy of the Ballot

Voter intimidation was raised to a new level in Atlantic Beach when the Governor's office decided to intervene in the election at the request of William Booker, Joe Montgomery, and Jake Evans. The Governor went on television the night before the election threatening people to turn out for the election. People familiar with voter intimidation tactics and the lengths to which Evans, Isom, and Taylor have gone to pre-determine their vote and target them if they are considered non-supporters, simply stayed away from a polling place and an election that in every way was designed to expose their lack of support for certain candidates as people who did not come to the church and vote for them.

CONCLUSION

The results of the May 22, 2012 election are as doubtful as the November 1, 2012 election. The nonresident voters will continue to hijack the elections from the resident voters as long as the Municipal Election Commission is not permitted to do the job it is legally assigned to do. The MEC will continue working with the ABPD to conclude its investigation and bring those guilty of election fraud including voter and voter registration fraud to face charges and deter such activity in future elections. The MEC will purge the roles as a result of its work with the citizens and ABPD so that resident voters will vote in town elections. They have a plan for neutral monitors from the League of Women Voters and to use poll workers from neighboring counties as the law allows. These are the major steps needed to restore public confidence in the town's

elections and not more confusion, bias, and illegal activities that reach as high as the Governor's office. The development agenda for the oceanfront property that is Atlantic Beach cannot be disguised by the Governor's office as an attempt to assist the voters of Atlantic Beach. The Governor's agenda was to seat the people that are connected to her influential friends in the development business and preserve their interest in Atlantic Beach. The vote belongs to the citizens.

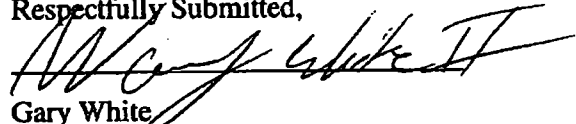
A careful review of the emails obtained from Horry County shows that the parties authorized to oversee the election participated in William Booker's scheme including the Governor. In their efforts to pick the winners and losers in Atlantic Beach they broke federal and state election laws and tampered with an election to affect the outcome. They should be charged accordingly. The emails also revealed the degree of disdain and mockery Horry County has for the town of Atlantic Beach and its unwillingness to help make the process easier for the voters in Atlantic Beach in general. The Atlantic Beach election should be returned to the town's Municipal Election Commission. The MEC should set a new date for a "real" election and every effort should be made to have that election in a neutral polling place at a time when most of the voters will have the opportunity to go to the polls without fear and with the full knowledge that their ballots are secret. The Horry County Circuit Court should reverse the South Carolina Election Commission and the Horry County Election, declare the Governor's Executive Order 2012-03 illegal, and acknowledge that the failure to receive pre-clearance for the polling place and other changes to the election does not have the effect of law and gives rise to an illegal election.

Atlantic Beach's election controversies have exposed the vulnerability in the state's election laws and opened the door for the state and its voters to seek better understanding of who is in control of the voting machines and how they are used legally and illegally.

Governor Haley interfered with an ongoing judicial process in a most egregious and blatant disregard for the facts and deliberately concealed the process from public view. It is no doubt that Atlantic Beach is a troubled municipality struggling with democratic principles. The issues facing the town today are less of its former street crime and its willingness to take its disputes into the court system. That is progress. Governor

Haley's abuse of the law, actions and tone targeting one of the smallest and poorest municipalities in the state can only be compared to those of a bully. It is an abuse of the executive power as a personal favor to "fix" an election in the town of Atlantic Beach which is about oceanfront development and not concern for the disenfranchised black voters who were inconvenienced every step of the way from setting the date of the election during black bikers weekend to decisions to prevent the voters from participating in the entire election process by holding the town's election events in Conway, S.C. rather than in the town of Atlantic Beach. I pray the Horry County Circuit Court will allow the law to prevail, reverse the Horry County Election Commission and set aside the election of May 22, 2012.

Respectfully Submitted,



Gary White
2009 Lincoln Street
Columbia, SC 29201
Phone: (803) 767-3953
SC BAR 40-6074

Attorney for Appellant

Columbia, South Carolina
June 4, 2012

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
)

Windy Price,

Appellant,

vs.

Horry County Election Commission
South Carolina Election Commission
Jake Evans, Josephine Isom,
Charlene Taylor

Respondents.

C/A NO.: 12-20-CP-26-4403

FILED
HORRY COUNTY
2012 JUN 25 AM 9:02
MELANIE HUGGINS-WARD
CLERK OF COURT

Brief in Opposition of Horry County Election Commission

For the reasons that follow, the Horry County Election Commission ("Commission") opposes the appeal filed by Rev. Windy Price from the decision of the Commission to deny her election protest and respectfully asserts that Rev. Price's appeal should be denied.

Factual and Procedural Background

On May 22, 2012, Horry County Election Commission ("Commission") conducted an election for Mayor and for two Town Council seats for the Town of Atlantic Beach. Horry County acted pursuant to Executive Order 2012-03 [Exhibit 1] issued by Governor Nikki R. Haley and filed with the Secretary of State on March 16, 2012. The Executive Order transferred the responsibility for conducting the election and handling the protests of the election to Horry

County. The State of South Carolina sought and received preclearance from the United States Department of Justice for the transfer of election authority prior to conducting the election. Horry County applied for preclearance to move the precinct location from its normal location prior to the election, but received preclearance and approval for that change on June 11, 2012, which was after the election was held.

At the conclusion of the election and following a hearing regarding challenges to certain ballots cast in the election, the Horry County Election Commission determined that 91 votes had been cast, of which 84 were in favor of Jake Evans for Mayor; five in favor of Retha Pierce for Mayor; and one in favor of Windy Price for Mayor. [Exhibit 2a] The Commission therefore determined that Jake Evans was the winner of the election. The Commission also determined that 81 votes were cast for Josephine Isom for Town Council; one vote for Monique Pointer; 79 votes for Charlene Taylor; three votes for James B. Van Fleet; and one write in. The Commission therefore determined that Josephine Isom and Charlene Taylor were the winners of the Town Council election.

There were no protests filed with respect to the Town Council election. The Atlantic Beach Municipal Election Commission ("MEC") filed a protest, but the Commission denied that protest on the basis that the MEC was not a proper party to file an election protest. S.C. Code Ann. § 5-15-130 ("Within [48] hours

after the closing of the polls, any *candidate* may contest the result of the election"). There is no appeal from that decision before this Court.

Rev. Windy Price and Ms. Retha Pierce timely filed a protest of the election. Rev. Price alleged a substantial number of problems with the election, generally summarized as follows:

- Vote counting.
- Violations of state law, including secrecy of ballots and fraudulent conduct.
- Violations of federal law.

Ms. Pierce generally identified the following issues in her protest letter:

- Voter fraud (tainted process).
- No transparency.
- No proper involvement/communication to the Atlantic Beach public.
- Voter intimidation.
- Deliberate manipulation of the results.
- Excessive violations of voters' civil rights and the federal Voting Rights Act.

The Commission held a hearing on May 25, 2012 beginning at 3:00 p.m. By notice given pursuant to the South Carolina Freedom of Information Act, a hearing was held by the Commission on May 25, 2012 beginning at 3:00 p.m. for the purpose of hearing all protests filed concerning the May 22, 2012 election. Both Rev. Price and Ms. Pierce were present. Mr. Jake Evans, the candidate receiving the most votes for Mayor, attended the hearing as well. All Commissioners were present except for Commissioner Wiley ("Rob") Taylor, who was unable to attend the hearing. The Commission heard presentations from

both Rev. Price and Ms. Pierce, and Mr. Evans was permitted to cross-examine witnesses.

At the conclusion of the hearing, the Commission denied both protests. Written orders were signed by the Commission and filed with the Horry County Clerk of Court and served on the parties on or about May 29, 2012. [Exhibit 3] Thereafter, a transcript of the hearing with exhibits, both those that were allowed into evidence by the Commission and those that were accepted to allow the protestants to create a record, were filed with the Horry County Clerk of Court on June 4, 2012. Rev. Price and Ms. Pierce timely appealed from the decisions of the Commission.

Standard of Review

Appellate Review

As recognized by Rev. Price, this Court sits in an appellate capacity in reviewing the decision of the Commission. Issues not presented to the Commission may not be considered by this Court. *See Butler v. Town of Edgefield*, 328 S.C. 238, 248, 493 S.E.2d 838, 843 (1997). Moreover, the Court is not to conduct a de novo hearing of the issues or to take any testimony regarding the decision of the Commission. Rather, it must review the decision of the Commission for errors of law, but must accept all factual findings of the Commission unless they are not supported by the evidence. *Taylor v. Town of Atlantic Beach Elec. Comm'n*, 363 S.C. 8, 12, 609 S.E.2d 500, 503 (2005).

Standard for Evaluating Election Protests

The Commission properly recognized that, in evaluating a protest, it was required to apply all reasonable presumptions to sustain an election and that it was enjoined against setting aside the results of an election for mere irregularities unless the result of the election would be changed or rendered doubtful. *Knight v. State Bd. of Canvassers*, 297 S.C. 55, 56, 374 S.E.2d 685, 686 (1988). “[A]ll reasonable inferences must be drawn in favor of the validity of the contested election.” *Trapp v. S. Carolina Bd. of State Canvassers*, 273 S.C. 163, 169, 255 S.E.2d 670, 673 (1979). “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.” *Berry v. Spigner*, 226 S.C. 183, 189-90, 84 S.E.2d 381, 384 (1954). The protest must establish the possible effect on election results with certainty because an election cannot be overturned on the basis of speculation or conjecture. *Fielding v. S. Carolina Election Comm’n*, 305 S.C. 313, 317, 408 S.E.2d 232, 234 (1991). In determining if an irregularity is sufficient to render the result doubtful, the Commission was required to consider any illegally cast ballots and any uncounted legal ballots proved by the protestant, and deduct the illegally cast ballots from the votes cast for the winning candidate and add the uncounted legal ballots to the votes cast for the losing candidate. See *Broadhurst v. City of Myrtle Beach Election Comm’n*, 342 S.C. 373, 382, 537 S.E.2d 543, 547 (2000).

Analysis

1. Challenges to the Executive Order were not cognizable in the protest hearing.

The first seven pages of Rev. Price's argument (pp.15-21) pertain almost exclusively to an alleged misapplication and violation of South Carolina Code Section 7-13-1170 by the Governor. The recitation involves issues and events allegedly pertaining to the November 5, 2011 election that was overturned by the Town of Atlantic Beach Municipal Election Commission ("MEC") and that resulted in issuance of the Governor's Executive Order. Nowhere in any of these seven pages is there any argument or reference to evidence regarding the election actually conducted on May 22, 2012 by the Commission.

Like at the hearing, Rev. Price expends much effort complaining about the Executive Order, an argument asserted in her protest as a contention that the order "is based on and contains fraudulent information submitted as a legal document to the United States Department of Justice" and that "[a]ll subsequent acts predicated on the initial illegal acts cannot be legal." However, as the Commission correctly determined, a challenge to the Executive Order was not properly raised as part of a protest of the election results by a candidate. *See* S.C. Code Ann. § 5-15-130 (permitting candidates to "contest the *result* of the election") (emphasis added). Moreover, both Rev. Price and Ms. Price acknowledged during the protest hearing that they understood that the Commission could not adjudicate the Governor's Executive Order. [*See* Hrg. Tr.

71:23-25 (“[N]o one’s asking you to overturn the governor’s order. That would be totally out of your purview.”) (Witness Cole called by Rev. Price); Hrg. Tr. 109:25-110:3 (“It’s not bringing you something for you to make a decision about anything the governor ordered or about anybody else’s input relative to this scenario.”) (Pierce)]. Therefore, because the issue of the Executive Order was not properly presented to the Commission, and the Commission correctly refused to consider that issue, this Court also cannot consider the propriety of the Executive Order.

Furthermore, the Supreme Court has held that declaring an election under the predecessor of section 7-13-1170 is ministerial in nature if the statutory predicates are met. *Easler v. Maybank*, 191 S.C. 511, 5 S.E.2d 288 (1939). Although the Court considered the contingency set forth in the statute as to whether an election was declared void by competent authority, the Court held that the duty to “order an election, or a new election to be held” is ministerial in nature if any of those facts exist. *Id.* Importantly for this proceeding, the Court rendered that decision based on an action brought directly against the Governor in a separate proceeding outside of and independent from an election protest. *Id.* Similarly, any challenge to the Executive Order should have been brought independently against the Governor because the Governor is not a proper party to an election protest and because the Executive Order has nothing to do with the result of the election once held. *See* S.C. Code Ann. §5-15-130.

2. *Alleged violations of federal election laws were not cognizable in the hearing.*

Rev. Price then expends several pages (pp.21-24) arguing that federal election laws were violated with respect to preclearance. The Commission refused to consider issues any arguments related to preclearance because that is a federal issue that may not be raised as part of a protest proceeding. *See Butler*, 328 S.C. at 249-50, 493 S.E.2d at 844-45 (rejecting consideration of Voting Rights Act claims on appeal from municipal election protests on grounds of jurisdiction as well as standing to raise such claims in the protest context). Moreover, preclearance was granted by the Department of Justice on May 18, 2012 for the changes required by the Executive Order and was granted on June 11, 2012 for the move of the polling place. Similar to the issues involving section 7-13-1170, any action complaining about preclearance should have been brought in a different forum against different parties. The Commission correctly determined that issues involving preclearance may not be raised in a protest hearing.

3. *Public notice.*

Rev. Price next complains (pp.24-26) about public notice of the election. She contends that notice should have been posted in the town where the election was held. However, because Rev. Price did not raise any issues regarding notice in her protest letter, that issue was not properly before the Commission. Ms. Martin testified that the Commission sent postcards to voters about the election,

where it would be held, and the time and date of the election. [Hrg. Tr. 117:14-20.]¹ Ms. Martin further testified that public notice was published twice in the Sun News. [Hrg. Tr. 116:4-10.] The publication of notice in the Sun News,² especially when coupled with the postcards sent to the voters, is more than sufficient to comply with the statutory requirement that notice be given 60 days prior to any election. S.C. Code Ann. §5-15-50; *see also Butler*, 328 S.C. at 246, 493 S.E.2d at 842. And although Rev. Price complained about not receiving a calendar of events regarding the election process, that is not required by the statute. *See* S.C. Code Ann. §5-15-50.

~~Rev. Price further complains about notice of the protest hearing itself. But~~ the evidentiary record before the Commission reflected that public notice of the protest hearing was given 24 hours before it was conducted. [See Hrg. Tr. 18:6-22.] The statute requires that the protest hearing be held within 48 hours after a candidate files a protest letter, so the protest necessarily is conducted on an expedited schedule. *See* S.C. Code Ann. §5-15-130. And, again, a calendar of

¹ Rev. Price states that "Appellant Pierce explained there are problems with people receiving their mail in Atlantic Beach." Rev. Price Br. p.24. However, there was no evidence to support this assertion beyond the unsworn testimony of the protestants.

Rev. Price further contends that "Martin had a stack of postcards on the table on Election Day that were returned. When asked how many was in the stack, they replied they didn't know." Rev. Price Br. p.24. The brief cites to page 117 of the hearing transcript in support of this assertion. However, no statement by Sandy Martin to that effect may be found on page 117 or anywhere else in the hearing transcript.

² Although the candidates did not challenge the dates of publication as an issue, only the fact of its publication in the Sun News, the Court may wish to take judicial notice of the fact that notice was published in the Sun News on March 23, 2012 and April 6, 2012. In any event, the record reflects that notice was timely published and the protestants did not adduce any evidence that it was not.

events regarding the election process is not required by the statute. *See id.* As Rev. Price acknowledged, she personally “was told on that point verbally, not through written notice, verbally, tomorrow at 3 PM” when she filed her protest letter and “asked the question, when, where, and at what time would this protest be held?” [Hrg. Tr. 22:2-7.] Only Ms. Pierce directly raised the issue of the timing of the protest hearing through a motion on the grounds that she needed to seek assistance of counsel, but neither she nor Rev. Price identified their attorneys or provided any communications from those attorneys. Finally, given the allegations of the notice of appeal that hinge almost entirely on issuance of the Executive Order and preclearance, neither Rev. Price nor Ms. Pierce have shown how they were harmed by the schedule. The Commission therefore properly rejected any claim that improper notice of the protest hearing was given.

4. *Vote counting.*

Rev. Price next complains about the vote count (pp.26-28). Much of the argument involves unsubstantiated allegations involving an apparent conspiracy by candidates Evans, Taylor, and Isom. These unsupported assertions do not support overturning the election. *See Fielding*, 305 S.C. at 317, 408 S.E.2d at 234 (refusing to overturn election based on evidence that was conjecture, speculation, and surmise). More to the point, there were no challenges based on anything other than residency or identification and, thus, no record to support overturning the election. *See id.*, 305 S.c. at 318, 408 S.E.2d at 234-35.

Rev. Price does, however, present arguments regarding challenges made to certain allegedly nonresident voters and contends that if “the election had been decided by resident voters there would most likely have been a run-off between Evans and one of the other candidates Pierce or Price.” Rev. Price Br. p.26. However, Rev. Price’s arguments are erroneous and, even if taken as true, do not support overturning the election.

The official canvass of the May 22, 2012 election shows that 91 votes were cast. Even if all of the 29 provisional ballots cast for Jake Evans had been subtracted from his total vote count, he would nevertheless be left with 55 votes (84 votes - 29 votes=55 votes). Because an outright majority of the total votes cast or attempted to be cast would be 46 votes ($91 \text{ votes} / 2 = 45.5$; rounded up to 46), Mr. Evans received a number of votes cast sufficient to avoid a runoff election. *See* S.C. Code Ann. §5-15-62.

However, even if certain votes were not properly cast, those should not be counted for purposes of determining a majority. Thus, under Rev. Price’s argument that 38 votes were improperly counted,³ those votes would be subtracted from the total votes cast. Thus, if the 38 votes were subtracted from the 91 votes cast, that would equal 53 votes. A majority of 53 votes would be 27 votes. Even under Rev. Price’s argument, Mr. Evans has 48 votes, Rev. Price Br.

³ The County does not concede this issue, but accepts it only for the purpose of explaining the erroneous basis for the argument.

p.28, which still is a majority of the votes cast in the election under her theory of the vote count.

It should be noted that Rev. Price makes several erroneous assertions in her vote count analysis. First, there were 91 votes counted, not 92. Second, Patricia Bellamy challenged 28 voters, not 32, and all on the basis of residency. Third, Ms. Bellamy withdrew her challenge to one individual, leaving 27 challenges she presented that were rejected by the Commission, not 32.

Finally, there was no evidence introduced at the protest hearing to support that the Commission erred in its treatment of any of the challenged votes. There was no evidence introduced at the protest hearing regarding any of these voters.

In her brief, Rev. Price complains that the Commission erred with respect to two voters challenged on the grounds of identification, but there was no evidence introduced at the protest hearing with respect to either of those alleged voters.

Rev. Price also complains that one absentee ballot should not have been counted because the voter was in a coma. Rev. Price Br. p.27. Not only was there no actual evidence of this adduced at the protest hearing, this issue was not even articulated at the protest hearing. Therefore, this Court may not consider these issues. *See Fielding*, 305 S.C. at 317, 408 S.E.2d at 234 (refusing to overturn election based on evidence that was conjecture, speculation, and surmise).

5. Voter intimidation and secrecy of the ballot.

Finally, Rev. Price complains about voter intimidation and secrecy of the ballot (p.28). But the target of that complaint is directed toward the Governor,

contending that she threatened people to turn out for the election. *Id.* Rev. Price further complains of voter intimidation tactics used in the election and contends that people "simply stayed away from a polling place and an election that in every way was designed to expose their lack of support for certain candidates as people who did not come to the church and vote for them." *Id.*

There is no evidence in the record to support any of these allegations. Carolyn Cole, called as a witness by Rev. Price, testified that "everybody ... was being as nice as possible under the circumstances." [Hrg. Tr. 74:25-75:1.] Ms. Cole further testified that "I don't think people were held away. I think people made their own decisions." [Hrg. Tr. 96:17-18.] And a witness called by Ms. Pierce, William Booker, testified on cross-examination that he thought 90 votes was a good turnout in a special election and that the town only had about 140 votes in a major election with months of preparation and a long election campaign. [Hrg. Tr. p.134:4-14.]

The record therefore supports the Commission's determination, and there is no evidence to support the assertion that voters were intimidated and did not turn out in the election *See Davis v. Cayce*, 166 S.C. 372, 164 S.E. 883 (1932) (protest that the books of registration had not been kept open as required by statute denied because there was no evidence that anyone had been denied the chance to vote); *see also Fielding*, 305 S.C. at 317, 408 S.E.2d at 234 (rejecting issues in protest as based on conjecture, speculation, and surmise because no one "who testified could identify a definitive number of alleged illegal votes cast";

testimony about vote buying "was totally without substantiation as to either the giver or receiver"; testimony concerning illegal assistance "was based upon the subjective opinion of the poll watcher"; and "no documentation whatsoever of any of the alleged irregularities was presented, only the uncorroborated opinions of individuals"). In sum, even taken as true, the allegations by Rev. Price are insufficient to justify overturning the election.

The testimony at the hearing pertaining to secrecy of the ballot apparently was based upon an assertion that it was generally known whom a voter supported, not the issue of whether people were casting a vote in a voting booth.

However, Mr. Booker testified that he "live[s] in a community where people communicate. People talk about who they are for and who they are not." [Hrg. Tr. 136:15-17.] There was no evidence of a failure to provide persons with the benefit of a voting booth and certainly no evidence that any such alleged failure was systemic. *See Taylor*, 363 S.C. at 18, 609 S.E.2d at 505 (holding that a small number of persons casting challenged ballots without the benefit of a voting booth constituted an irregularity that did not affect the result of the election). Rev. Price therefore is not entitled to relief on this issue even if it was properly raised to the Commission.

6. Conclusion.

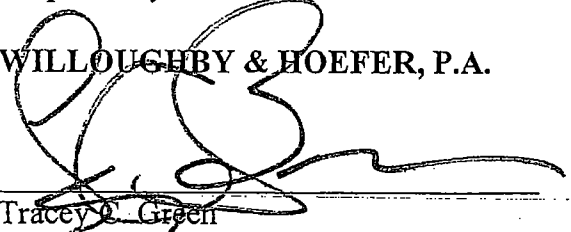
Rev. Price concludes with a continued challenge to the Executive Order. In there, she contends that this Court "should reverse the South Carolina Election Commission and the Horry County Election [Commission], declare the

Governor's Executive Order 2012-03 illegal, and acknowledge that the failure to receive pre-clearance for the polling place and other changes to the election does not have the effect of law and gives rise to an illegal election." Rev. Price Br. p.29. That prayer for relief is consistent with the fact that the protestants have at all stages challenged the election on the basis of the Executive Order and the Voting Rights Act preclearance process, not on the actual results of the election. *See Butler*, 328 S.C. at 246, 493 S.E.2d at 842 (noting that only evidence of actual fraud, a Constitutional violation, or violation of a specific statutory directive are sufficient to overturn an election in the absence of actual evidence that the result is doubtful). Because the Commission properly determined that none of those issues are cognizable in an election protest and because there is no other evidence in the record to support overturning the election, the decision of the Commission should be affirmed.

Conclusion

For these reasons, as well as the reasons set forth in the argument on this issue before the Court, the Horry County Election Commission respectfully requests that this Court deny the appeal of Ms. Retha Pierce and uphold the decision of the Commission to affirm the results of the election conducted on May 22, 2012.

Respectfully submitted,


WILLOUGHBY & HOEFER, P.A.

Tracey Q. Green
PO Box 8416
Columbia, SC 29202
tgreen@willoughbyhoefer.com
(803) 252-3300

Attorney for Horry County Election
Commission

Columbia, South Carolina
June 25, 2012

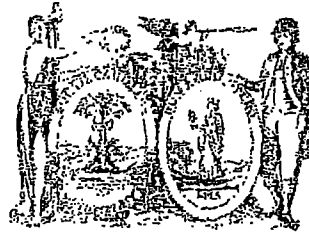
Exhibit 1

State of South Carolina
Executive Department

FILED

MAR 16 2012

Mark Hammond⁸
SECRETARY OF STATE



Office of the Governor

EXECUTIVE ORDER NO.

2012-03

WHEREAS, on November 1, 2011, the Town of Atlantic Beach held an election for Mayor and two at-large Council seats; and

WHEREAS, the results of that election were protested; and

WHEREAS, on November 5, 2011, the Municipal Election Commission for the Town of Atlantic Beach held a public hearing regarding the election protest. During this hearing, the Municipal Election Commission heard testimony and took evidence regarding voting irregularities associated with the November 1, 2011 election. At the conclusion of the hearing, the Municipal Election Commission declared the results of the November 1, 2011 election void and ordered that a new election for Mayor and two at-large Town Council members would be held within 180 days; and

WHEREAS, the Municipal Election Commission still has not reduced its November 5, 2011 ruling to a written order, nor has it set a date for the new election; and

WHEREAS, Section 5-15-50 of the South Carolina Code of Laws (1976), as amended, requires at least sixty days notice for municipal elections; and

WHEREAS, because of the Municipal Election Commission's delay, it is now too late for the Municipal Election Commission to conduct a new election for Mayor and Town Council members within the time period it previously ordered and comply with the notice requirements of Section 5-15-50; and

WHEREAS, Section 7-13-1170 of the South Carolina Code of Laws (1976), as amended, provides as follows: "When any election official of any political subdivision of this State charged with ordering, providing for, or holding an election has neglected, failed, or refused to order, provide for, or hold the election at the time appointed, or if for any reason the election is declared void by competent authority; and these facts are made to appear to the satisfaction of the Governor, he shall, should the law not otherwise provide for this contingency, order an election or a new election to be held at the time and place, and upon the notice being given which to him appears adequate to insure the will of the electorate being fairly expressed. To that end, he may designate the existing election official or other

person as he may appoint to perform the necessary official duties pertaining to the election and to declare the result."; and

WHEREAS, this is the second consecutive election for Mayor or Town Council that the Municipal Election Commission has overturned; and

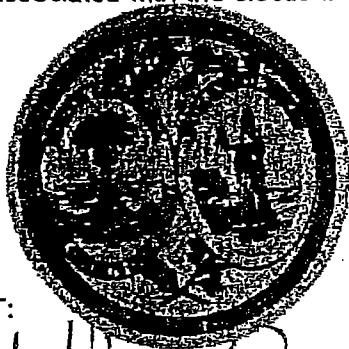
WHEREAS, Town of Atlantic Beach election controversies have reached the South Carolina Supreme Court on three prior occasions. These controversies have highlighted problems in the Town's electoral process such as: poll workers not following proper procedures for challenged ballots (*Taylor v. Town of Atlantic Beach Election Commission*, 363 S.C. 8, 609 S.E.2d 500 (2005)); voters being denied the right to vote despite establishing residency (*Armstrong v. Atlantic Beach Municipal Election Commission* 380 S.C. 47, 668 S.E.2d 400 (2008)); and the Municipal Election Commission failing to comply with the statutory procedure for contesting election results (*Cole v. Town of Atlantic Beach Election Commission*, 393 S.C. 264, 712 S.E.2d 440 (2011)); and

WHEREAS, the South Carolina Supreme Court, in *Cole v. Town of Atlantic Beach Election Commission*, expressed grave doubts about the ability of the Municipal Election Commission to properly conduct future elections; and

WHEREAS, the Horry County Election Commission and the State Election Commission are competent and qualified to conduct and supervise an election in the Town of Atlantic Beach; and

WHEREAS, continued controversy in this election will erode the public trust in our system of municipal elections, and a properly conducted and supervised election is necessary to ensure the full and fair expression of the citizenry's choice for these elective offices.

NOW, THEREFORE, pursuant to the authority vested in me by the Constitution and Statutes of the State of South Carolina, I hereby (a) order that a new election be held for the office of Mayor and two at-large Town Council members of the Town of Atlantic Beach on May 22, 2012 or at the earliest possible date and time after sixty days notice has been provided to the citizenry and as is permitted by the United State Department of Justice; and (b) designate the Horry County Election Commission and 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.



ATTEST:


MARK HAMMOND
SECRETARY OF STATE

GIVEN UNDER MY HAND AND THE
GREAT SEAL OF THE STATE OF
SOUTH CAROLINA, THIS 16TH DAY OF
MARCH, 2012.

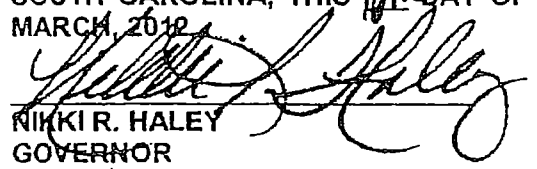

NIKKI R. HALEY
GOVERNOR

Exhibit 2

DISTRICT CANVASS

Horry County
Town of Atlantic Beach General
May 22, 2012

OFFICIAL

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PAGE 001.002

5 PRECINCTS	RV EO GT IE SR TS E R E D		BC AA LS LT O T S		TP UE RR NC OE UN TT A G E		Mayor				Town Council 2 TO BE ELECTED				
							JE av ka en s (NON)	RP ei te hr ac e (NON)	WP ir nl dc ye (NON)	W ri te - I n (NON)	JI os so em ph i n e (NON)	MP oo ni in qt ue er (NON)	CT ha ay rl lo er n e (NON)	JB F a l m ve eae snt (NON)	W ri te - I n (NON)
0103 Atlantic Beach	0	53					48	4	1	0	48	0	47	2	1
0750 Absentee	0	5					5	0	0	0	5	0	3	0	0
0800 Emergency	0	3					2	1	0	0	1	1	3	0	0
0850 Failsafe	0	0					0	0	0	0	0	0	0	0	0
0900 Provisional	0	30					29	0	0	0	27	0	26	1	0
GRAND TOTALS	0	91					84	5	1	0	81	1	79	3	1

Horry County Elections Commission

[Signature]
[Signature]
[Signature]
[Signature]

Date: 5/25/12

TOWN OF ATLANTIC BEACH CERTIFICATION HEARING

5/24/2012

LIST OF CHALLENGES

VOTER	REASON	CHALLENGER	COUNTED
<u>LAVINIA R NICKOLSON</u>	RESIDENCY	PATRICIA BELLAMY	YES
<u>KENNETH MCLAURIN</u>	RESIDENCY	PATRICIA BELLAMY	YES
<u>WANNETTA KEEL</u>	RESIDENCY	PATRICIA BELLAMY	YES
<u>STEVEN PRATHER</u>	RESIDENCY	PATRICIA BELLAMY	YES
<u>RAVEN PRATHER</u>	RESIDENCY	PATRICIA BELLAMY	YES
<u>HENRY RANDALL</u>	RESIDENCY	PATRICIA BELLAMY	YES
<u>FRANCES SANDERS</u>	RESIDENCY	PATRICIA BELLAMY	YES
<u>CHRISTINA SUTTON</u>	RESIDENCY	PATRICIA BELLAMY	YES
<u>SHALINI TAILOR</u>	RESIDENCY	PATRICIA BELLAMY	YES
<u>RICARDO NARANJO</u>	RESIDENCY	PATRICIA BELLAMY	YES
<u>PORSHELLHIA WATERS</u>	RESIDENCY	PATRICIA BELLAMY	YES
<u>BETTY WEATHERS</u>	RESIDENCY	PATRICIA BELLAMY	YES
<u>JENNICE POINTER</u>	RESIDENCY	PATRICIA BELLAMY	YES
<u>MONIFA FRANKLIN</u>	RESIDENCY	PATRICIA BELLAMY	YES
<u>MELTON GORE</u>	RESIDENCY	PATRICIA BELLAMY	YES
<u>CATHERINE EGAN</u>	RESIDENCY	PATRICIA BELLAMY	YES
<u>LENERAL EVANS</u>	RESIDENCY	PATRICIA BELLAMY	YES
<u>LEE WOODS</u>	RESIDENCY	PATRICIA BELLAMY	WITHDREW
<u>MARTIN SIENKIEWICZ</u>	IDENTIFICATION	PAULINE LEVESQUE	YES
<u>CORNELIUS BECK</u>	RESIDENCY	PATRICIA BELLAMY	YES
<u>CORY BOONE</u>	RESIDENCY	PATRICIA BELLAMY	YES
<u>EMMITTE FERGUSON</u>	RESIDENCY	PATRICIA BELLAMY	YES
<u>JAMES GILLESPIE</u>	RESIDENCY	PATRICIA BELLAMY	YES
<u>JOYCE FRANKLIN</u>	RESIDENCY	PATRICIA BELLAMY	YES
<u>JAMES DEWITT</u>	RESIDENCY	PATRICIA BELLAMY	YES
<u>JOAN DANAHER</u>	RESIDENCY	PATRICIA BELLAMY	YES
<u>ETTA DEWITT</u>	RESIDENCY	PATRICIA BELLAMY	YES
<u>STACEY HUDGENS</u>	RESIDENCY/ID	CHRISTOPHER CLAGG	WITHDREW
<u>RITA TUCKER</u>	RESIDENCY	PATRICIA BELLAMY	YES
<u>WILLIAM NICHOLAS</u>	RESIDENCY	PATRICIA BELLAMY	YES
<u>MARY VANFLEET</u>	ID	PAULINE LEVESQUE	NO
<u>CYNTHIA DUCKSWORTH</u>	ID	PAULINE LEVESQUE	NO
<u>LAVERNE JOHNSON</u>	ID	SHELLEY RIDEOUT	NO
<u>CHARLES MONTGOMERY</u>	ID	PAULINE LEVESQUE	NO

34	TOTAL CHALLENGES SUBMITTED	
28	CHALLENGES COUNTED	(EVIDENCE SHOWN BY CHALLENGER INSUFFICIENT)
2	CHALLENGES COUNTED	(CHALLENGER WITHDREW CHALLENGE)
4	CHALLENGES NOT COUNTED	(VOTERS DID NOT PROVIDE PROPER ID)

Exhibit 3

State of South Carolina)
) Before the Horry County Election
) Commission (Horry County Board of
County of Horry) Canvassers)

Rev. Windy Price,)
)
) Protestant,)
)
In re:)
Town of Atlantic Beach, Election of)
Mayor, May 22, 2012)
)

FILED
HURRY COUNTY
2012 MAY 29 PM 4:33
MELANIE HUGGINS-WARD
CLERK OF COURT

Order of the Election Commission

This matter is before the Horry County Election Commission to consider the election protest of Reverend Windy Price challenging the results of the election for Mayor of the Town of Atlantic Beach held on May 22, 2012. The protest was filed on May 24, 2012. By notice given pursuant to the South Carolina Freedom of Information Act, a hearing was held by the Commission on May 25, 2012 beginning at 3:00 p.m. for the purpose of hearing all protests filed concerning the May 22, 2012 election. The protestant attended the hearing. Ms. Retha Pierce, another candidate for the election, also attended the hearing, as did Mr. Jake Evans, the candidate receiving the most votes for Mayor.¹ All Commissioners were

¹ Ms. Retha Pierce also filed a protest of the May 22, 2012 election for Mayor, which was presented immediately following the presentation of Rev. Price's protest. Rev. Price and Ms. Pierce were allowed to ask questions as part of each other's protest, and Mr. Jake Evans was allowed to ask questions in both. The Commission voted on each protest separately at the conclusion of Ms. Pierce's protest. No protests were filed with respect to the two seats on the City Council and the time for filing any protest with respect to those seats now has passed. *Smith*

present except for Commissioner Wiley ("Rob") Taylor, who was unable to attend the hearing.

Horry County conducted the May 22, 2012 election pursuant to Executive Order 2012-03 issued by Governor Nikki R. Haley and filed with the Secretary of State on March 16, 2012. The Executive Order transferred the responsibility for conducting the election and handling the protests of the election to Horry County. The State of South Carolina sought and received preclearance from the United States Department of Justice for the transfer of election authority prior to conducting the election.

Rev. Price alleged a substantial number of problems with the election, generally summarized as follows:

- Vote counting.
- Violations of state law, including secrecy of ballots and fraudulent conduct.
- Violations of federal law.

In evaluating a protest, the Commission is required to apply all reasonable presumptions to sustain an election and must not set aside the results of an election for mere irregularities unless the result is changed or rendered doubtful. *Knight v. State Bd. of Canvassers*, 297 S.C. 55, 56, 374 S.E.2d 685, 686 (1988). "[A]ll reasonable inferences must be drawn in favor of the validity of the contested

v. Hendrix, 265 S.C. 417, 219 S.E.2d 312 (1975) (candidate seeking to protest election must file within the time limits set forth by statute); see also *Taylor v. Roche*, 271 S.C. 505, 248 S.E.2d 580 (1978) (same).

election.” *Trapp v. S. Carolina Bd. of State Canvassers*, 273 S.C. 163, 169, 255 S.E.2d 670, 673 (1979). “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.” *Berry v. Spigner*, 226 S.C. 183, 189-90, 84 S.E.2d 381, 384 (1954). The protest must establish the possible effect on election results with certainty because an election cannot be overturned on the basis of speculation or conjecture. *Fielding v. S. Carolina Election Comm’n*, 305 S.C. 313, 317, 408 S.E.2d 232, 234 (1991). In determining if an irregularity is sufficient to render the result doubtful, the Commission must consider any illegally cast ballots and any uncounted legal ballots proved by the protestant, and deduct the illegally cast ballots from the votes cast for the winning candidate and add the uncounted legal ballots to the votes cast for the losing candidate. *See Broadhurst v. City of Myrtle Beach Election Comm’n*, 342 S.C. 373, 382, 537 S.E.2d 543, 547 (2000).

Although it identifies general issues regarding the election, the protest letter does not identify any specific illegally cast votes or illegally rejected votes. Much of the protest letter is directed toward the Executive Order and a complaint that the Executive Order “is based on and contains fraudulent information submitted as a legal document to the United States Department of Justice” and that “[a]ll subsequent acts predicated on the initial illegal acts cannot be legal.” There are general allegations of voter intimidation and that the election was not fair. These

allegations are not sufficient to afford the Commission or the prevailing candidate with notice of the protestant's contentions. *Taylor v. Town of Atlantic Beach Elec. Comm'n*, 363 S.C. 8, 17, 609 S.E.2d 500, 504 (2005).

At the hearing, Rev. Price presented argument on the issues identified in the Protest, and called as witnesses Patricia Bellamy and Carolyn Cole. Ms. Bellamy provided no substantive testimony regarding any specific votes cast or not cast, and her testimony generally considered of a complaint about the process by which this election came to be conducted by Horry County. Ms. Bellamy generally complained about the consistency of how challenged votes were treated, but provided no specific evidence regarding any of the challenges by which the Commission could ascertain whether any irregularity occurred. She testified generally about problems with secrecy of the ballot, but her testimony appeared to the Commission to involve a complaint not about situations in which persons voted outside of a partitioned booth but instead about the allegation that it generally was known which candidate was supported by many persons in the town. Ms. Bellamy also complained about curbside voting, but her testimony did not contain any particulars or specifics by which the Commission could determine whether any irregularities actually occurred and, if so, the nature and extent of those alleged irregularities. *See Davis v. Cayce*, 166 S.C. 372, 164 S.E. 883 (1932) (protest that the books of registration had not been kept open as required by statute denied

because there was no evidence that anyone had been denied the chance to vote); *see also Fielding*, 305 S.C. at 317, 408 S.E.2d at 234 (rejecting issues in protest as based on conjecture, speculation, and surmise because no one "who testified could identify a definitive number of alleged illegal votes cast"; testimony about vote buying "was totally without substantiation as to either the giver or receiver"; testimony concerning illegal assistance "was based upon the subjective opinion of the poll watcher"; and "no documentation whatsoever of any of the alleged irregularities was presented, only the uncorroborated opinions of individuals").

Ms. Cole also generally complained in her testimony about the Executive Order and the preclearance process. She testified about intimidation, but referenced the presence of a person who allegedly identified themselves as being with the South Carolina Attorney General's office at the November 1, 2011 election conducted by the Town of Atlantic Beach. She made no allegation that such person attended this election. She also stated that people were being as nice as possible and that she thought people made their own decisions in determining whether to vote. Most importantly, she failed to identify specific instances of problems with votes counted or not counted, let alone instances in sufficient number that would permit this Commission to conclude that the results of the election were doubtful. *See Davis*, 166 S.C. at 372, 164 S.E. at 883; *Fielding*, 305 S.C. at 317, 408 S.E.2d at 234.

To summarize, these witnesses complained about emails, about general procedures, and about preclearance. They made general allegations about voter intimidation and about secrecy of the ballot, but gave no specific examples of any of these or any specific voters impacted by these alleged irregularities. The protestant and her witnesses complained at length about the Executive Order and referenced the Supreme Court's decision regarding a prior Town of Atlantic Beach election, *see Cole v. Town of Atl. Beach Election Comm'n*, 393 S.C. 264, 712 S.E.2d 440 (2011), but they did not identify or provide evidence of how the votes and the result would have been different on May 22, 2012. In short, there was no credible evidence supporting specific instances in which questionable votes were cast or legitimate votes were disqualified and, thus, no evidence by which the Commission could determine that the results of the election were doubtful.

In point of fact, the argument of Rev. Price and the evidence she presented or sought to present through testimony substantially were directed toward the Executive Order and the preclearance submission.² However, the issues

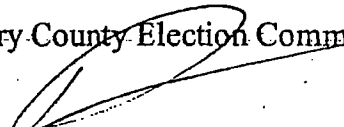
² During the presentation of her protest, Rev. Price referenced certain emails and other evidence pertaining to preclearance and the Executive Order. Although these materials were introduced into the record for purposes of Rev. Price's protest and were referenced by Ms. Pierce, this evidence was not considered by the Commission because it was not relevant to the issues actually before the Commission. Rev. Price was allowed to submit this evidence for the purpose of making a record in that regard should she seek to appeal from this decision. This evidence therefore was not considered by the Commission. However, even if it had been considered, the Commission notes that none of this evidence identified questionable votes or issues that would have afforded the Commission a basis for overturning the election or rendered doubtful the results of the election.

surrounding the Executive Order and the preclearance submission were not considered by the Commission because it had no jurisdiction or authority to consider such issues in this forum. S.C. Code Ann. § 5-15-130 (permitting candidates to “contest the *result* of the election”) (emphasis added). The Commission repeatedly advised the candidates that it was limited to considering whether the results of the May 22, 2012 election as it actually was conducted were rendered doubtful. *Id.* Like Ms. Pierce, Rev. Price never presented any evidence to demonstrate any impact of the preclearance submission or the Executive Order on the votes actually cast or to show that other votes would have been cast on May 22, 2012. *See Butler v. Town of Edgefield*, 328 S.C. 238, 246, 493 S.E.2d 838, 842 (1997) (noting that only evidence of actual fraud, a Constitutional violation, or violation of a specific statutory directive are sufficient to overturn an election in the absence of actual evidence that the result is doubtful). Rev. Price never produced any evidence to substantiate any impact on the May 22, 2012 voting, let alone in numbers sufficient to make the result of the election doubtful or questionable. *See Fielding*, 305 S.C. at 317, 408 S.E.2d at 234 (refusing to overturn election based on evidence that was conjecture, speculation, and surmise). The entirety of the evidence was based on the issuance of the Executive Order coupled with arguments that it should never have been issued, none of which

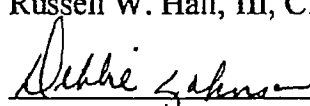
impacted the vote on May 22, 2012 based on the evidence presented to the Commission. *See id.*

Therefore, the Commission was not presented with any evidence that would allow it to determine with certainty that the result of the election would be changed or rendered doubtful. Accordingly, at the conclusion of the protest hearing, the Commission members present at the hearing unanimously denied Rev. Price's protest and upheld the results of the May 22, 2012 election for Mayor of the Town of Atlantic Beach.

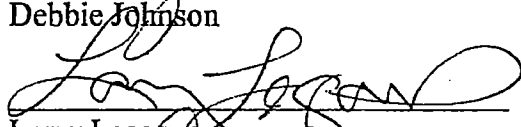
Horry County Election Commission



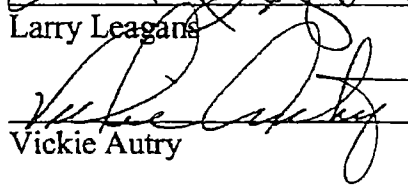
Russell W. Hall, III, Chair



Debbie Johnson



Larry Leagans



Vickie Autry

May ^{29th}, 2012
Conway, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-26-04403

WINDY PRICE,

Appellant,

v.

HORRY COUNTY ELECTION
COMMISSION, SOUTH CAROLINA
ELECTION COMMISSION, JAKE
EVANS, JOSEPHINE ISOM, AND
CHARLENE TAYLOR,

Respondents.

NOTICE OF MOTION AND MOTION
TO ALTER OR AMEND THE
JUDGMENT PER RULE 59(e)

HORRY COUNTY
12 SEP 10 PM 3:53
CELANIE HUGGINS-WARD
CLERK OF COURT

TO: TRACEY C. GREEN, ESQUIRE, ATTORNEY FOR HORRY COUNTY ELECTION
COMMISSION, AND J. C. NICHOLSON, III, ESQUIRE, ATTORNEY FOR HORRY
COUNTY ELECTION COMMISSION

PLEASE TAKE NOTICE that Appellant Rev. Windy Price, through her undersigned attorneys, will move before the Court, on such date and time as the Court may appoint, to alter or amend pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure the Court's Order Denying Appeal, received by Appellant on August 28, 2012. The grounds for this motion are set forth below.

I. THE COURT ERRED IN FINDING THAT REV. PRICE DID NOT RAISE ANY CLAIMS REGARDING NOTICE IN HER PROTEST LETTER AND, THUS, THE ISSUE WAS NOT PROPERLY BEFORE THE HEC.

Rev. Price's May 24, 2012 "Request for Election Protest Hearing" is lengthy and points out numerous irregularities and problems with the May 22, 2012 election held by the HEC. The Court is incorrect, however, in finding that Rev. Price did not include within her protest a claim regarding improper notice. In part, Rev. Price asserted that:

The confusion for candidates and voters was a direct result of the action taken by specific individuals to orchestrate a winning election for specific candidates. **Evidence 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.**

Exhibit A, Protest Letter, p.1 (emphasis added). The paragraph goes on to specifically cite the date of the election and the change in the polling location as significant problems leading to the aforementioned confusion. *Exhibit A at p.2.* While Rev. Price did not use the word “notice”, the intent of this paragraph is clearly sufficient to set forth a claim that the voters were not given proper notice of the election process as required by state law, and specifically of the date and the location of the election. In addition, at the hearing Rev. Price repeatedly listed as one of the grounds of her protest “violation of state election laws.” [Tr. p.54, l.17-21.]

Pursuant to S.C. Code §5-15-130, the notice of protest must include a “concise statement of the grounds for the election protest.” The Supreme Court has long held, however, that “technical precision in pleading” is not required for election contests. *State ex rel. Davis v. State Bd. of Canvassers*, 86 S.C. 451, 458-459, 68 S.E. 676, 679 (1910). All is required is that the notice “briefly state facts or a combination of facts sufficient apprise the contestee of the cause for which his election is contested” *Gecy v. Bagwell*, 372 S.C.237, 243, 642 S.E.2d 569, 572 (2007) (quoting and distinguishing *Butler v. Town of Edgefield*, 328 S.C. 238, 245-2, 746, 493 S.E.2d 838, 842 (1997) in which the protestant only made vague assertions of fraud). The court held in *Gecy* that the protestor’s assertion that “persons who had not provided accurate information for the voter rolls were nonetheless allowed to cast full ballots” was sufficient to set forth a claim that challenged voters were allowed to cast ballots in a precinct where they no longer resided in violation of S.C. Code §7-5-440. Likewise, Rev. Price’s assertions in her letter

of protest were sufficient to allege a claim for lack of proper notice in violation of state election laws.

Moreover, issues concerning notice were addressed by Rev. Price and the HEC during the hearing and the HEC received evidence on these issues without objection or expression of surprise. [See, e.g., Tr. p. 82, 1.10-11: Witness Carolyn Cole testified: "Here you change the absentee balloting process willy nilly without notice to the people . . ."; Tr. 115-118: Witness Sandy Martin, HEC Director of Registration and Elections, gave testimony concerning the notice of the election process.]

II. THE ORDER WAS BASED ON ERRORS OF LAW.

The Court made an error of law when it limited its ruling to address only errors affecting the "results" of the election. While many election contests are properly decided along these lines, the Court erroneously failed to consider the HEC's violation of mandatory statutory provisions which substantially affected the free and intelligent casting of votes, essential elements of the election, and the fundamental integrity of the election and erroneously upheld the election in spite of uncontroverted evidence that should have led it to overturn the results. *See George v. Municipal Election Comm'n of the City of Charleston*, 335 S.C. 182, 516 S.E.2d 206 (1999); *Douan v. Charleston County Council*, 357 S.C. 601, 594 S.E.2d 261 (2003). The Court failed to acknowledge that "[w]here there is a total disregard of the statute, the violation cannot be treated as an irregularity, but it must be held and adjudicated to be cause for declaring the election void and illegal." *Gecy v. Bagwell*, 372 S.C. at 242, 642 S.E.2d at 571.

A. THE COURT SHOULD HAVE FOUND THAT IN CHANGING THE POLLING LOCATION, THE HEC FAILED TO COMPLY WITH MANDATORY STATE LAW AND, AS A RESULT, SUBSTANTIALLY AFFECTED ESSENTIAL ELEMENTS OF THE VOTING PROCESS AND THE FREE AND FAIR CASTING OF BALLOTS.

Along with secrecy of the ballot, the location of the polling place is a key component in ensuring fair and free elections. As the South Carolina Supreme Court noted in *George*, “[p]olling places on Election Day, unlike today’s typical experience of waiting quietly in line, often were ‘scenes of battle, murder, and sudden death.’ In addition to real violence, sham battles were staged to frighten away elderly and timid voters.” 335 S.C. at 188-89, 516 S.E.2d at 209 (quoting *Burson v. Freeman*, 504 U.S. 191, 202-04, 112 S.Ct. 1846, 1852-54 (1992)). In fact, the United States Supreme Court has made it clear beyond dispute that the location, safety, and accessibility of a polling place have a direct effect on a person's ability to exercise his franchise. In holding that the use of polling places at locations calculated to intimidate blacks from entering was a practice or procedure which violated Section 1973 of the Voting Rights Act, the Supreme Court stated:

We think it clear that the location of polling places constitutes a “standard, practice, or procedure with respect to voting.” The abstract right to vote means little unless the right becomes a reality at the polling place on election day. The accessibility, prominence, facilities, and prior notice of the polling place's location all have an effect on a person's ability to exercise his franchise.

Perkins v. Matthews, 400 U.S. 379, 387, 91 S.Ct. 431 (1971).

Thus, providing the public with accurate information concerning the location of the sole polling place in the election was a fundamental aspect of the HEC’s duties. Pursuant to S.C. Code §7-13-35, the entity charged with conducting a municipal election must publish two notices of the election in a newspaper of general circulation in the municipality. The notices must include the location of the polling place. S.C. Code §7-13-35. This is mandatory language affecting a fundamental aspect of the election.

Here, the record reflects that the HEC posted notices on March 23, 2012 and April 6, 2012 in the legal section of *The Sun News* in an effort to comply with the law, but those notices listed the polling location as “the Atlantic Beach Community Center . . . as set by law” instead of the First Missionary Baptist Church, where the election was held. Accordingly, the public notice in the newspaper about the general terms of the election did not satisfy the mandatory requirements of S.C. Code §7-13-35.

In instances where polling locations are changed in municipal elections, in addition to the advance notice as required by S.C. Code §7-13-35, the authority charged with conducting the election must also publish the location for the precinct in the newspaper on the day of the election. S.C. Code §7-7-1000. There is no evidence in the record indicating that the HEC met this mandatory, statutory requirement either. In fact, when asked whether the HEC did an adequate job of notifying the public in Atlantic Beach about the election, Sandy Martin testified only that the HEC sent postcards to the voters in an attempt to advise them about the changed location. In short, the HEC failed to comply with the statutory mandate to publish notice of the polling location in the newspaper on the date of the election.

The sufficiency of the postcards to serve as written notice to the voters of a change in the polling location as required by S.C. Code §7-7-10 is also in question. Ms. Pierce testified there are problems with people receiving their mail in Atlantic Beach and that many residents did not receive the cards. At the challenged ballot hearing, Ms. Martin had a stack of postcards on the table that had been returned by the post office. When asked how many cards were in the stack, she replied that she “didn’t know.” Moreover, the postcards gave the address of the church as

North Myrtle Beach rather than in Atlantic Beach, further adding to the voters' potential confusion. *See Exhibit C.*

In addition, the HEC failed to comply with the requirements of S.C Code §7-7-910(B)(2) in changing the polling location from the Community Center to the First Baptist Church. Section 7-7-910(B)(2) requires that where, as in the May 2012 election, a designated polling place is "unavailable for use during an election as a result of an emergency situation,"¹ the authority charged by law" may designate an alternative location, but the new location must be approved by the majority of the legislative delegation. The HEC failed to submit the polling place change to the Horry County Legislative Delegation for their approval, much less obtain such approval. In fact, the HEC's Voting Rights Act submission to the Department of Justice wrongly asserts that the HEC is the sole entity responsible for making and approving the change and makes no mention of the Code's requirement concerning the legislative delegation. *See Exhibit B.* The HEC appeared to be unaware of this mandatory statutory requirement.

As Rev. Price asserted in her initial demand for a protest hearing, "the confusion for candidates and voters was a direct result of the actions taken by specific individuals to orchestrate a winning election for specific candidates. Evidence 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." Even William Booker admitted to there being confusion among the electorate. It not necessary to determine how many voters failed to receive

¹ Pursuant to §7-7-910(B)(1), "[f]or purposes of this subsection, an 'emergency situation' means the designated polling place is not available for use as a polling place on the election day after the first notice of the election is published." Here, per its May 1, 2012, Voting Rights Act submission to the D.O.J., the HEC indicated that it received notice that the Community Center was not available for the election after it had published both notices of the election, thus making it an emergency situation subject to this section.

notice of the polling location change as a result of the HEC's failure to follow several mandatory requirements. The record clearly reflects that voter turnout was lower than in the previous elections. As a result of these several failures to comply with mandatory state law and local custom concerning the location and prior notice of the polling place, there was considerable confusion among the electorate in Atlantic Beach affecting these fundamental aspects of the voting process meriting overturning the election.

B. THE COURT ERRED IN FAILING TO FIND THAT THE CHANGE IN THE LOCATION OF THE CHALLENGED BALLOT HEARING AND PROTEST HEARING ALSO AFFECTED ESSENTIAL ELEMENTS OF THE ELECTION PROCESS.

While the HEC took steps to apply for preclearance from the Department of Justice for approval of some aspects of the election process, they failed to submit the change of location for opening absentee ballots, the challenged ballot hearing, and the election protest hearing from Atlantic Beach to Conway, South Carolina, twenty-six miles away from the voters' and candidates' residences. For its convenience, the HEC commenced the opening of absentee ballots at 9:00 a.m. on election day at the HEC's offices in Conway, rather than in the Town as had been the previous practice. The challenged ballot hearing was held on Thursday, May 24, 2012, at 10:00 a.m. also in Conway, rather than in the Town, as was done in past elections. Conway is over 26 miles from the Town. There is no public transit system available with service to Conway, and many residents are known to be without private means of transportation. As a result, many residents who would have attended these events were precluded from doing so. For example, candidate James Vanfleet did not have transportation or funds to travel to Conway, even to take his mother and wife whose votes were challenged by the poll workers and not counted during the challenged ballot hearing. Sandy Martin, Director of the HEC, admitted that

her office did not seek preclearance for these changes from the U.S. Department of Justice pursuant to the Voting Rights Act.

As recognized by the U.S. Supreme Court, locating key elements of the electoral process in places remote from black communities poses significant barriers to these minority voters' ability to exercise their rights in relation to the voting process. See *Perkins*, 400 U.S. at 387. These changes of the Town's standard practices constitute further grounds for overturning the election.

III. THE ORDER IS BASED IN PART ON A FINDING OF FACT WHOLLY UNSUPPORTED BY ANY EVIDENCE.

The Circuit Court improperly found that the HEC gave public notice of the protest hearing 24 hours before the hearing pursuant to and in compliance with the Freedom of Information Act ("FOIA"). It appears that this finding of fact was based on an unsupported statement of fact within the HEC's initial order denying the protest and was adopted by the Circuit Court. While the Circuit Court's review generally "does not extend to findings of fact" where, as in this instance, such "findings are wholly unsupported by the evidence" the Court has authority to make new findings that are supported by the evidence. See *George*, 335 S.C. at 186, 516 S.E.2d at 208. All of the evidence in the record and indeed the limits of time support only a finding that the HEC failed to comply with FOIA in providing notice about the protest hearing. FOIA requires a minimum 24 hour notice before a public meeting is held. S.C. Code §30-4-80. Actions taken in violation of the public meeting provisions of the FOIA are invalid. See S.C. Code §30-4-100; *Piedmont Public Services District v. Cowart*, 319 S.C. 124, 459 S.E.2d 876 (Ct. App. 1995). Both Retha Pierce and Rev. Price timely protested the May 22nd election. Rev. Price's protest was filed first and was clocked-in as being received by the HEC on May 24, 2012,

at 4:56 p.m. *Exhibit A, Protest Letter*.² The HEC held the protest hearing at 3:00 p.m. on Friday, May 25, 2012, **less than 24 hours after Rev. Price's filing**. It would have simply been impossible for the HEC to have provided such notice in a manner that complied with FOIA's requirements since it did not know that a hearing was necessary until after 4:00 p.m. on the previous day. In addition, the HEC failed to provide any evidence in the record documenting when its written public notice of the hearing was disseminated. To the contrary, Chairman Hall admitted that the HEC did not give written notice 24 hours prior to the hearing, but asserted that "[a]s soon as we decided we would have the hearing" they gave notice to the local media. [Tr. p.17-18.]

It is not necessary that Rev. Price or any member of the public prove injury as a result of the HEC's failure to follow FOIA's requirements in order for a court to declare invalid actions taken in violation of the Act. See S.C. Code §30-4-100(a); *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 547 S.E.2d 862 (2001). In fact, any member of the public could bring forth a suit seeking the same relief during the course of the next year. *Id.* Nonetheless, the effect of this change had a significant impact on Rev. Price's ability to put forth her claim at the protest hearing. The protest hearings for elections in Atlantic Beach are normally held on the Saturday following the election at the polling place within the 48 hour period required by law. Rev. Price's attorney was prepared to attend on Saturday but the change without sufficient notice to the appellant interfered with the appellant's ability to have legal counsel present for the hearing. HEC Chairman Russell Hall denied a request for a continuance to allow Ms. Pierce and Rev.

² As indicated by the stamps on the first page of *Exhibit A*, the Protest Letter, it was clocked-in as being received by the HEC at 4:56 p.m. on May 24, 2012. Rev. Price filed a copy with the Horry County Clerk of Court at 4:43 p.m. that same day. There is a third time-stamp on the document of 2:37 p.m. Looking at the second page of the letter, however, it is clear that the 2:37 p.m. time-stamp was that of the Town of Atlantic Beach MEC, an entity that did not conduct the election and had no authority regarding the protest hearing.

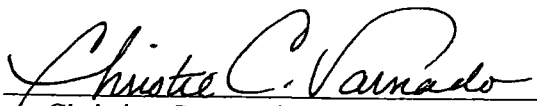
Price to have their attorneys present. He further denied Rev. Price's request for permission to submit a video recording containing certain evidence after the hearing as she had not had an opportunity to transmit the video into a playable format in time for the hearing, given the short notice that she had received. Accordingly, Rev. Price suffered prejudice by the HEC's failure to follow FOIA's requirements. Even if it found that the errors and irregularities in the election process administered by the HEC were not sufficient to rise to the level necessary to overturn the election, the Court should have found that the HEC's failure to provide proper notice of the protest hearing in compliance with FOIA would at minimum require that the HEC hold a new hearing.

CONCLUSION

As set forth above and in Rev. Price's other filings with the Court, along with her Proposed Order Granting the Appeal attached hereto as *Exhibit D*, all of which are incorporated herein by reference, the Court's Order contained several errors. Rev. Price respectfully requests that the Court alter or amend its Order to correct the above-mentioned errors and find that Rev. Price's appeal should have been granted, the decision of the Horry County Election Commission reversed, and the election results nullified. At minimum, however, the Court should alter its Order to find that the Horry County Election Commission failed to give proper notice of the protest hearing in compliance with FOIA, that its actions taken in violation of FOIA are invalid, and that the HEC must hold a new hearing following proper notice in compliance with FOIA.

Respectfully submitted by:

THE SEIBELS LAW FIRM, P.A.

By: 
Christine Companion Varnado
cvarnado@seibelsfirm.com
127 King Street, Suite 100
Charleston, SC 29401
843.722.6777
843.722.6781 (fax)

ATTORNEY FOR WINDY PRICE

September 7, 2012

Charleston, South Carolina

Certificate of Service
Case No.: 2012-CP-26-04403

I, Katharina Garvin, of Seibels Law Firm, P.A. do hereby certify that a true and accurate copy of *Motion to Alter or Amend* in the forgoing action was properly addressed and sent via US mail, postage paid, to counsel of record as follows:

J. C. Nicholson, III, Esquire
Office of the Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549

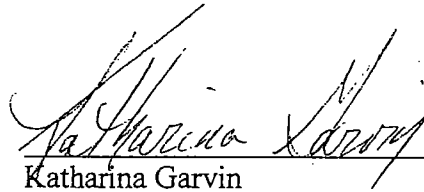
Sanford Graves, Esquire
Office of Horry County Attorney
PO Box 1236
Conway, SC 29528-1276

Tracey C. Green, Esquire
Willoughby & Hoefer, P.A.
P.O. Box 8416
Columbia, SC 29202

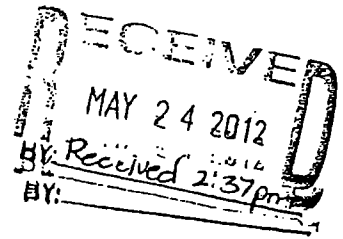
William Gary White, III, Esquire
2009 Lincoln Street
Columbia SC 29201-2003

HORRY COUNTY
12 SEP 10 PM 3:54
MELANIE HUGGINS-WARD
CLERK OF COURT

September 7, 2012


Katharina Garvin

Windy Price
1009 A 32nd Avenue South
Atlantic Beach, SC 29582



May 24, 2012

Marci Andino
South Carolina Election Commission

Sandy Martin
Horry County Election Commission

FILED
HORRY COUNTY
2012 MAY 24 PM 4:43
MELANIE HUGGINS-WARD
CLERK OF COURT
RECEIVED
MAY 24 2012
ELECTIONS OFFICE
5/24/2012
4:56
ec
Submitted by Windy Price

Re: Request for Election Protest Hearing

I, mayoral candidate, Windy Price, am protesting the decision of the South Carolina Election Commission and the Horry County Election Commission to uphold the results of the May 22, 2012 election in the Town of Atlantic Beach.

The South Carolina Supreme Court provides a standard of review for elections held in the state of South Carolina which is stated as, "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. George, supra: Sims v. Ham, 275 S.C. 369, 271 S.E. 2d 316 (1980). This standard should be applied to the Atlantic Beach town council election held on May 22, 2012. The election should be set aside not for mere irregularities or illegalities but for substantial irregularities and illegalities that violated the election laws of the state of South Carolina, the voting rights act, and individual voting rights including secrecy of the ballot. The election was shrouded in fraud and now participants in the fraudulent election scheme seek to adjudicate their own misconduct and violations of the law. Voter intimidation, the abuse of power, and failure to provide due process and transparency has tried to mask itself as legal authority.

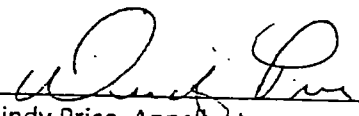
One of the major players cited in the 2009 election fraud issue in the South Carolina Supreme Court's Opinion No. 26996 filed July 7, 2011, returned and participated in the 2012 election fraud scheme exposing himself and his associates in county and state government and the lengths they would go to pick winners and losers in Atlantic Beach elections, a right that belongs to the town's residents. The will to win clouded the judgment of those charged with upholding the law which resulted in the Governor's Executive Order No. 2012-03 which interrupted and interfered with a judicial process. The order is based on and contains fraudulent information submitted as a legal document to the United States Department of Justice. All subsequent acts predicated on the initial illegal acts cannot be legal.

The confusion for candidates and voters was a direct result of the actions taken by specific individuals to orchestrate a winning election for specific candidates. Evidence 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. Early in the process it was clear that the Governor's office was



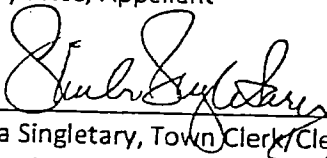
working with the same people who harassed me in the 2009 election and violated my rights and those of my supporters and anyone who did not support them. The election was "special" because it was handled by the Governor's office at the request of a particular candidate. The date of the election and the polling place was set to inconvenience as many voters as possible. By putting the election in the church of two of the three running mates, a message was sent throughout the community that this was their election. The voter intimidation component was greater in this election than on November 1, 2011. Instead of the "thug" mentality surrounding the entrance to and inside of the polling place no one was afforded secrecy of the ballot. This time the offending candidate did not need to print your name on a list and circulate it throughout town as one of his supporters. If you didn't come to the church on May 22, 2012, they knew you were not a supporter and would be targeted as is the history of Atlantic Beach.

The numbers produced in this election are and should be similar to the numbers in the November 2011 election because once again supporters of Evans, Taylor, and Isom are free to vote while supporters of other candidates are not. Of the 426 registered voters, only 89 voted in this election and that is with those aforementioned candidates newly registered voters. The pattern repeats itself and the voters are more fearful that it is becoming more difficult to have a fair election in the town. No one knows yet what the voters will decide until they are given a fair election in which they can vote the candidates of their choice. The election results of May 22, 2012 are the result of election fraud and voter intimidation; the results are more than doubtful and in a fair election where all who wish to vote without fear and in secrecy, I believe like most of the voters the outcome of the election will be different and/or results that are credible.


Windy Price, Appellant

May 24, 2012
Date

2:26 pm
Time


Sheila Singletary, Town Clerk/Clerk to MEC
Town of Atlantic Beach

May 24, 2012
Date

2:37 pm
Time

Horry County Clerk of Court

Date

Time

Horry County Election Commission

Date

Time



THE COMMON LAW IS THE WILL OF *Mainland* ISSUING FROM THE *Life* OF THE *People*

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Electronic Submission Under Section 5 of the Voting Rights Act

Confirmation of Submission 4548

Information of Person Making Submission

Submission ID: 4548

Submission Time: 2012-05-01 15:12:48

Name: Sxxxx N. Mxxxx

Title: Director/Horry County Registration & Election

Street: xxxxxxxxxxxx

City: Conway

State: South Carolina Zipcode: 29526

Phone: 843-xxx-xx26

Email: xxxxxxxx@horrycounty.org

Jurisdiction Covered by Submission

Name of Submitting Jurisdiction/Entity Horry County

In what state is your jurisdiction located? South Carolina

In what county

Jurisdiction Affected

If not from list, then enter jurisdiction:

Detail of Change Submitted

28 CFR §51.27 & §1.28(b)

Each submission should contain the required information or documents to enable the Attorney General to make the required determination pursuant to section 5 with respect to the submitted change affecting voting:

- A copy of any ordinance, enactment, order, or regulation embodying a change affecting voting and provide the date of its enactment or adoption and its effective date.
We are requesting your expedited consideration to move the Atlantic Beach precinct to 1st Missionary Baptist Church located at 2808 Hwy 17 S, Atlantic Beach. This change will be for the special election held on May 22nd only.
- A copy of any ordinance, enactment, order, or regulation embodying the voting practice that is proposed to be repealed, amended, or otherwise changed and provide the date of compliance with Section 5.
All Election Commission and Voter Registration Board members are in agreement to the change.
- A clear statement of the change explaining the difference between the submitted change and the prior law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting.
The County and State are conducting this election due to a Governor's order requiring us to do so. The Atlantic Beach MEC usually conducts their own elections. We were just informed that we would not be able to use the normal voting location for their special election.
- Identification of the person or body responsible for making the change and the mode of decision (e.g. act of state legislature, ordinance of city council, administrative decision by the registrar).
Horry County Reg. & Elections is responsible for making the change. All board members in agreement. The change is being made on an emergency basis.
- A statement identifying the statutory or other authority under which the jurisdiction undertakes the change and a description of the procedures the jurisdiction was required to follow in deciding to undertake the change.
I contacted Town Hall in Atlantic Beach for alternative locations since they informed us the normal voting location was booked. The town didn't give me any choices so I contacted the church and asked to use it for one time only. Both boards agreed. I did not send to the Delegation because we do not typically handle elections for Atlantic Beach, and the change is for only one election.
- A statement that the change has not yet been enforced or administrated, or an explanation of why such a statement cannot be made.
We will implement this change for the May 22 special election only. It will be moved back to the regular location after this election.
- Where the change will affect less than the entire jurisdiction, an explanation of the scope of the change.
This change will affect voters in the Town of Atlantic Beach only. We will be mailing all voters a postcard advising them their voting location will change for the special election only. We will also notify the media.
- A statement of the reasons for the change.

0119



The change is being made because the town has scheduled an event in the Community Center we normally use as a voting location. This is an emergency, and a temporary move. There is approximately three blocks between the two locations.

- i. A statement of the anticipated effect of the change on members of racial or language minority groups. In addition, per §51.28(b), include the names, addresses, daytime telephone numbers, and organizational affiliation (if any) of racial and language minority group members residing in the jurisdiction who can be expected to be familiar with the proposed change or who have been active in the political process.

Atlantic Beach - 352 active voters - 208 black - 120 white - 24 other Minorities to contact: Mike Frazier (Board Chairman) 843-915-8436 or 843-421-1591 Mr. Booker (AB resident) 1-804-513-1322

- j. A statement identifying any past or pending litigation concerning the change or related voting practice.

The County and State has been mandated by the Governor to conduct this election for the Town of Atlantic Beach because of problems that incurred during their last election in November 2011.

- k. For redistricting and annexations: the items listed under §51.28(a)(1) and (b)(1); for annexations only: the items listed under §51.28(c)(3).

n/a

- l. Other information that the Attorney General determines is required for an evaluation of the purpose or effect of the change. Such information may include items listed in §51.28 and is most likely to be needed with respect to redistrictings, annexations, and other complex changes. In the interest of time such information should be furnished with the initial submission relating to voting changes of this type. When such information is required, but not provided, the Attorney General shall notify the submitting authority in the manner provided in §51.37.

Attachments

The following attached files provide additional information for this submission. Following the file name is the file's current status.

U.S. DEPARTMENT OF JUSTICE 350 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001

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RECEIVED
MAY 23 2012



Dear Atlantic Beach Voter:

Please be advised that the Atlantic Beach Town Election will be held on May 22, 2012.
Your voting location for this election has changed. You will be voting at:

1st Missionary Baptist Church
2808 Highway 17 S
N. Myrtle Beach SC 29582

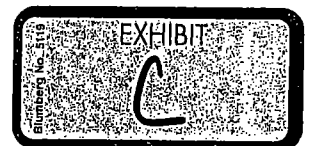
0121



Dear Atlantic Beach Voter:

Please be advised that the Atlantic Beach Town Election will be held on May 22, 2012.
Your voting location for this election has changed. You will be voting at:

1st Missionary Baptist Church
2808 Highway 17 S.
N. Myrtle Beach SC 29582



STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

WINDY PRICE,)
)
Appellant,)
)
v.)
)
HORRY COUNTY ELECTION)
COMMISSION, SOUTH CAROLINA)
ELECTION COMMISSION, JAKE)
EVANS, JOSEPHINE ISOM, AND)
CHARLENE TAYLOR,)
)
Respondents.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-26-04403

ORDER GRANTING APPEAL

This matter concerns an appeal from the denial of an election protest for the race for mayor of the Town of Atlantic Beach conducted by the Horry County Election Commission ("HEC") on May 22, 2012. The Court heard the appeal on July 26, 2012, in Conway, South Carolina, at which time Appellant Rev. Windy Price and Respondents HEC and South Carolina Election Commission ("SCEC") were represented by counsel. Despite being served with the pleadings in this matter, Respondents Jake Evans, Josephine Isom, and Charlene Taylor have not made an appearance in the appeal and did not present any argument at the hearing.¹

After consideration of the arguments made by counsel at the hearing, the parties' briefs, the Order issued by the HEC, and the materials in the record of the protest hearing, as well as the challenged ballot hearing which were incorporated in the record of the protest hearing via reference, the Court hereby grants Rev. Price's appeal and reverses the decision of the HEC upholding the election.

¹ Jake Evans was the candidate in the race for mayor who was declared the winner of the election by the Horry County Election Commission. Josephine Isom and Charlene Taylor were candidates in the race for town council seats, which was conducted at the same election.



PROCEDURAL HISTORY

Unfortunately, the courts in South Carolina are no strangers to the long history of problems with the municipal election process in the Town of Atlantic Beach. In order to put Rev. Price's election protest in its proper context, it is necessary to first refer to this history, as well as to more recent events that led up to the May 22, 2012 election.

Since 2005, the South Carolina Supreme Court has heard three cases concerning Atlantic Beach elections. See *Cole v. Town of Atlantic Beach Election Comm'n*, 393 S.C. 264, 712 S.E.2d 440 (2011); *Armstrong v. Atlantic Beach Municipal 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). In its 2011 opinion, the Supreme Court described as "deplorable" and "astonishing" the "shenanigans" of former town manager William Booker and former Atlantic Beach Municipal Election Commission ("MEC") members Linda Booker (William Booker's wife) and Alice Graham in their attempts to prevent Carolyn Cole and Rev. Price from establishing residency in the Town and in working "diligently to obstruct" and delay the election process to prevent Cole and Rev. Price from being sworn into office following their election to the town council in November of 2009. *Cole*, 393 S.C. at 275, 712 S.E.2d at 446. The Supreme Court vacated the MEC's decision to de-certify the 2009 election and ordered the restoration of the original certification of Cole and Price as winners.

As a result, Cole and Rev. Price took their seats on the town council on July 26, 2011. Thereafter, they joined Councilman Donnell Thompson in terminating William Booker as town

manager.² In addition, they replaced Linda Booker and Alice Graham with new members on the MEC.

On Tuesday, November 1, 2011, the Town of Atlantic Beach again held municipal elections for mayor and to fill two seats on its town council. Three names appeared on the ballot for mayor: Jake Evans, Retha Pierce, and Rev. Windy Price; five names appeared on the ballot for council: Josephine Isom, Monique Pointer, Charlene Taylor, Misty Umphries, and James Vanfleet.

On election day in November of 2011, William Booker arrived at the Town of Atlantic Beach Community Center, which served as the sole polling place for the election, with Laura Best, whom he introduced as being from the Office of the South Carolina Attorney General. Ms. Best continued the charade all day in the polling place with unfettered access to the voting machines, poll managers, and voters. On several occasions, she held up her cell phone and announced that she was in conversation with Sandy Martin, Executive Director of the HEC. The election managers and clerk lost control over the process. Ms. Best nested with William Booker and candidates Charlene Taylor and Jake Evans who spent most of the day inside the polling place. Linda Booker and Alice Graham arrived at the polling place and spent a short while with Ms. Best, as well. With Ms. Best's "blessing," supporters of Taylor and Evans formed a virtual gauntlet through which voters were forced to pass before they could reach the registration desk and voting machines. Persons known to be supporters of Taylor and Evans were welcomed

² The Town of Atlantic Beach has a council-manager form of government as provided for under S.C. Code Ann. §5-13-10, et. seq. Its council is composed of the mayor and four at-large council members. Elections in Atlantic Beach are generally conducted by the three-member Municipal Election Commission held in odd-numbered years. Under Atlantic Beach's council-manager form of government, the town manager holds the position at the pleasure of the town council. S.C. Code Ann. § 5-13-130(1). William Booker was hired by Jake Evans, Charlene Taylor and Josephine Isom as town manger.

warmly and allowed to vote unobstructed. Residents believed to be supporters of candidates other than Taylor and Evans were greeted with hostility and intimidation and were made to vote in such a manner that their ballots could be seen by the group hanging about the polls. Ms. Best stopped Patricia Bellamy from challenging certain voters believed to be non-residents of the Town and threatened her with a lawsuit from the Attorney General. Late in the day, Mary Jowers of the South Carolina Attorney General's Office sent a letter to the Town of Atlantic Beach confirming that Ms. Best was not an employee on assignment from their office, but by that time it was too late to prevent much of the harm done to the process.

The November 1, 2011 election was certified with Jake Evans, Charlene Taylor and Josephine Isom as winners. Following an election protest hearing held on November 5, 2011, the MEC overturned the election and ordered a new election to be held within 180 days, citing voter intimidation, violations of secrecy of the ballot, and fraudulent acts, including those related to the voting machines, and misconduct of William Booker, Joe Montgomery, Jake Evans, and Laura Best to disenfranchise resident voters in favor of non-resident voters to affect the outcome of the election. The MEC found that the actions of the parties involved exceeded the acceptable level of tolerance for mere or innocent irregularities but were knowingly and willfully fraudulent and interfered with the full and fair expression of the voter's choice and left the results doubtful.

On December 14, 2011, the MEC held a public meeting after due notice and informed the public that the new election would be held on May 8, 2012. The new members of the MEC reaffirmed the Commission's commitment to hold a fair election in the town where all resident registered voters could come to the polls without fear. They stated they had made initial contact

with the League of Women Voters to monitor the election and planned to employ poll managers from neighboring counties to conduct the election.

While the MEC was working to locate an attorney who would draft the Order addressing the November 2011 election and making plans to move forward with the new election, William Booker contacted Governor Haley's office in an effort to circumvent the process.

On March 16, 2012, the Governor issued Executive Order No. 2012-03, which ordered a new election pursuant to S.C. Code Ann. §7-13-1170, to be held on May 22, 2012 "or at the earliest possible date and time after sixty days notice has been provided to the citizenry" and designated that the HEC and SCEC perform the duties necessary to carrying out the election process. The Governor's Order was premised on incorrect information asserting that the MEC had not set a date for the new election and implying that the members of the MEC who set aside the results of the November 2011 election were the same members about whom the Supreme Court expressed doubts in their ability to properly conduct an election in *Cole*, rather than the newly-appointed members who had no involvement with the actions decried by the Court.

The date selected by the Governor in the Order for the election fell within the middle of the Town of Atlantic Beach's 32nd Annual Bike Fest. Atlantic Beach is host of the fourth largest bike rally in the nation, which brings almost a quarter of a million black bikers and their friends and family onto the four streets that make up the Town. After publishing the two newspaper notices concerning the election in *The Sun News*, the HEC learned that as result of planned biker week activities the Town's Community Center, which has been the sole polling location for several past elections, was unavailable on the planned election day. Rather than move the date of the election, which it had authority to do pursuant to the Order, the HEC pressed forward with

the election during biker week and decided to move the polling location to the First Missionary Baptist Church, where candidates Charlene Taylor and Josephine Isom are members and serve as church leaders. As witnesses Patricia Bellamy and Carolyn Cole testified, they and several other members of the community, including Rev. Price who is the head minister of another church, had been previously told that they were not welcome on the First Missionary Baptist Church premises. They further testified that the First Missionary Baptist Church was viewed by members of the community as being associated with one faction or group of candidates. In an effort to advise voters concerning the change in the polling location, the HEC sent out postcards to the electorate providing the name of the new polling location but giving the street address in North Myrtle Beach. The HEC admitted that it did not publish the location change in any newspaper nor did it post notice of the change of the polling location on the door of the town hall, as is the custom in the Town. Many of the postcards were returned to the HEC by the post office and, thus, failed to reach the voters. Incredibly, the individual that the HEC used as its minority contact to provide the Department of Justice with information concerning this change in the polling location and its effect that the location change would have on the electorate was none other than William Booker.

Despite its awareness of the concerns with moving forward with the election during biker week at a location seen as anything but neutral, the HEC, with the blessing of the SCEC, held the re-do of the November 2011 election on May 22, 2012. Voter turnout was low – approximately 90 voters of a possible 367 to 426. As admitted by Mr. Booker, this was considerably fewer voters than turned out during a previous election “that everyone knew about” and was not tainted by “confusion” as was the case in the May 2012 election.

For its convenience, the HEC commenced the opening of absentee ballots at 9:00 a.m. on election day at the HEC's offices in Conway, S.C., rather than in the Town as had been the previous practice. The challenged ballot hearing was held on Thursday, May 24, 2012, at 10:00 a.m. also in Conway, S.C., rather than in the Town, as was done in past elections. Conway is over 26 miles from the Town. There is no public transit system available with service to Conway, and many residents are known to be without private means of transportation. As a result, many residents who would have attended these events were precluded from doing so. Sandy Martin, Director of the HEC, admitted that her office did not seek preclearance for these changes from the U.S. Department of Justice pursuant to the Voting Rights Act.

At the challenged ballot hearing, the HEC refused to accept into evidence police reports or to hear testimony from a police officer who was present with evidence that several of the voters who cast the challenged ballots were not residents of the Town, ruling such evidence as hearsay. Following the challenged ballot hearing, the HEC certified the election results in the race for mayor as follows: 84 votes for Jack Evans, 5 for Retha Pierce, and 1 for Rev. Windy Price.

Both Retha Pierce and Rev. Price timely protested the May 22 election. Rev. Price's protest was filed first and was clocked-in as being received by the HEC on May 24, 2012, at 4:56 p.m. Her protest is based on the following grounds: lack of proper notice of the election and the election process; improper change in the polling location; election fraud; voter intimidation; lack of secrecy of the ballot; and failure to provide due process and transparency.

The HEC held the protest hearing at 3:00 p.m. on Friday, May 25, 2012, rather than on the following Saturday, as had long been the practice in the Town. The hearing was again held

in Conway, S.C., as opposed to a location within the Town limits, as again had long been the custom. HEC Chairman Russell Hall presided at the protest hearing. Chairman Hall denied the MEC's request to be heard as interveners and denied a request for a continuance to allow Ms. Pierce and Rev. Price to have their attorneys present. He further denied Rev. Price's request for permission to submit a video recording containing certain evidence after the hearing as she had not had an opportunity to transmit the video into a playable format in time for the hearing given the short notice that she had received. The HEC heard testimony from five witnesses, in addition to the presentations by Ms. Pierce and Rev. Price, which were also delivered as testimony. Jake Evans was permitted to cross-examine the witnesses and both protesting candidates were permitted to pose questions to the witnesses and register objections regardless of which candidate "called" the witness, thus treating the whole process as one as opposed to two separate, independent hearings. Chairman Hall refused to consider any of the documentary evidence submitted by both protesters deeming it irrelevant and refused to hear significant portions of testimony offered concerning allegations of fraud and voter intimidation as irrelevant. At the conclusion of the proceedings, the HEC ruled to deny the protests and, thereafter, issued a written order on May 29, 2012. Rev. Price timely filed her appeal from the decision of the HEC on June 4, 2012.

STANDARD OF REVIEW

The matter comes before the Court pursuant to S.C. Code §5-15-140. Municipal elections are governed by Title 7 of the S.C. Code, except as provided Chapters 1-17 of Title 5. S.C. Code §5-15-10. In municipal election cases, the Circuit Court, sitting in an appellate capacity, does not conduct a de novo hearing, or take testimony regarding the decision of the

election commission; the Circuit Court must examine the decision below for errors of law. *Taylor v. Town of Atlantic Beach Election Commission*, 363 S.C. 8, 12, 609 S.E. 2d 500, 503 (2005). The Circuit Court's review "does not extend to findings of fact unless those findings are wholly unsupported by the evidence." *George v. Municipal Election Comm'n of the City of Charleston*, 335 S.C. 182, 186, 516 S.E.2d 206, 208 (1999). While the Court "will employ every reasonable presumption to sustain a contested election," the Court will set aside an election where irregularities or illegalities affect the result or render it doubtful. *George*, 335 S.C. at 187, 516 S.E.2d at 208. Thus, the Court will overturn election results where mandatory statutory provisions have been violated and those violations 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.* at 187, 516 S.E.2d at 209; see also, *Douan v. Charleston County Council*, 357 S.C. 601, 607, 594 S.E.2d 261, 264 (2003). "The Court . . . will not sanction practices which circumvent the plain purposes of the law and open the door to fraud." *Id.* (quoting *May v. Wilson*, 199 S.C. 354, 360, 19 S.E.2d 467, 470 (1942)). Accordingly, the Court will set aside an election even for a mere irregularity if there is fraud, a constitutional violation or on statutory authority.

ANALYSIS

I. THE HEC'S ORDER WAS BASED ON AN ERROR OF LAW.

The HEC made an error of law when it limited its jurisdiction to address only errors affecting the "results" of the election, which it defined only in terms of the number of votes challenged and the number of votes received by each candidate. The HEC erroneously held that it was required only to "consider any illegally cast ballots and any uncounted legal ballots proved

by the protestant, and deduct the illegally cast ballots from the votes cast for the winning candidate and add uncounted legal ballots to the votes cast for the losing candidate.” Order of the Election Commission at 3. As a result, it refused to consider any evidence that did not go to the vote count, asserting that it was limited to “considering whether the results of the May 22, 2012 election as it actually was conducted were rendered doubtful” looking only for indications of “sufficient” numbers of votes questioned. *Id.* at 7. While many election contests are properly decided along these lines, the HEC failed to acknowledge the settled caselaw set forth above indicating that as the body that conducted the election, it also had a duty to ensure that the election process was legally conducted. By applying the incorrect standard, the HEC disregarded and often refused to hear cogent, relevant evidence concerning the election process itself. Therefore, it failed to consider its own violation of mandatory statutory provisions which substantially affected the free and intelligent casting of votes, essential elements of the election, and the fundamental integrity of the election and erroneously upheld the election in spite of uncontroverted evidence that should have led them to overturn the results.

II. IN CHANGING THE POLLING LOCATION, THE HEC FAILED TO COMPLY WITH MANDATORY STATE LAW AND, AS A RESULT, SUBSTANTIALLY AFFECTED ESSENTIAL ELEMENTS OF THE VOTING PROCESS AND THE FREE AND FAIR CASTING OF BALLOTS.

Along with secrecy of the ballot, the location of the polling place is a key component in ensuring fair and free elections. As the South Carolina Supreme Court noted in *George*, “[p]olling places on Election Day, unlike today’s typical experience of waiting quietly in line, often were ‘scenes of battle, murder, and sudden death.’ In addition to real violence, sham battles were staged to frighten away elderly and timid voters.” 335 S.C. at 188-89, 516 S.E.2d at 209 (quoting *Burson v. Freeman*, 504 U.S. 191, 202-04, 112 S.Ct. 1846, 1852-54 (1992)). In fact, the

United States Supreme Court has made it clear beyond dispute that the location, safety, and accessibility of a polling place have a direct effect on a person's ability to exercise his franchise. In holding that the use of polling places at locations remote from black communities, or at places calculated to intimidate blacks from entering was a practice or procedure which violated Section 1973 of the Voting Rights Act, the Supreme Court stated:

We think it clear that the location of polling places constitutes a "standard, practice, or procedure with respect to voting." The abstract right to vote means little unless the right becomes a reality at the polling place on election day. The accessibility, prominence, facilities, and prior notice of the polling place's location all have an effect on a person's ability to exercise his franchise.

Perkins v. Matthews, 400 U.S. 379, 387, 91 S.Ct. 431 (1971).

Thus, providing the public with accurate information concerning the location of the sole polling place in the election was a fundamental aspect of the HEC's duties. Pursuant to S.C. Code §7-13-35, the entity charged with conducting a municipal election must publish two notices of the election in a newspaper of general circulation in the municipality. The notices must include the location of the polling place. S.C. Code §7-13-35. Here, the record reflects that the HEC posted notices on March 23, 2012 and April 6, 2012 in the legal section of *The Sun News* in an effort to comply with the law, but those notices listed the polling location as "the Atlantic Beach Community Center . . . as set by law" instead of the First Missionary Baptist Church, where the election was held. Accordingly, the public notice in the newspaper about the general terms of the election did not satisfy the mandatory requirements of S.C. Code §7-13-35.

In instances where polling locations are changed in municipal elections, in addition to the advance notice as required by §7-13-35, the authority charged with conducting the election must also publish the location for the precinct in the newspaper on the day of the election. S.C. Code

§7-7-1000. There is no evidence in the record indicating that the HEC met this statutory requirement either. In fact, when asked whether the HEC did an adequate job of notifying the public in Atlantic Beach about the election, Sandy Martin testified only that the HEC sent postcards to the voters in an attempt to advise them about the changed location. In short, the HEC failed to comply with the statutory mandate to publish notice of the polling location in the newspaper on the date of the election.

The sufficiency of the postcards to serve as written notice to the voters of a change in the polling location as required by S.C. Code §7-7-10 is also in question. Ms. Pierce testified there are problems with people receiving their mail in Atlantic Beach and that many residents did not receive the cards. At the challenged ballot hearing, Ms. Martin had a stack of postcards on the table that had been returned by the post office. When asked how many cards were in the stack, she replied that she “didn’t know.” Moreover, the postcards gave the address of the church as North Myrtle Beach rather than in Atlantic Beach, further adding to the voters’ potential confusion.

In addition, the HEC failed to comply with the requirements of S.C Code §7-7-910(B)(2) in changing the polling location from the Community Center to the First Baptist Church. Section 7-7-910(B)(2) requires that where, as in the May 2012 election, a designated polling place is “unavailable for use during an election as a result of an emergency situation,”³ the authority charged by law” may designate an alternative location, but the new location must be approved by

³ Pursuant to §7-7-910(B)(1), “[f]or purposes of this subsection, an ‘emergency situation’ means the designated polling place is not available for use as a polling place on the election day after the first notice of the election is published.” Here, per its May 1, 2012, Voting Rights Act submission to the D.O.J., the HEC indicated that it received notice that the Community Center was not available for the election after it had published both notices of the election, thus making it an emergency situation subject to this section.

the majority of the legislative delegation. The HEC failed to submit the polling place change to the Horry County Legislative Delegation for their approval, much less obtain such approval. In fact, the HEC's Voting Rights Act submission to the Department of Justice wrongly asserts that the HEC is the sole entity responsible for making and approving the change and makes no mention of the Code's requirement concerning the legislative delegation. The HEC appeared to be unaware of this mandatory statutory requirement.

The HEC compounded the potential for confusion and frustration of the voter's ability to access the polling location by moving forward with this election at a new location during Bike Fest. Per the Governor's Order, the HEC had the authority to hold the election at another date based on the language that indicates that the election should be held on May 22nd "or at the earliest possible date and time". As all Horry County residents are well aware, the traffic and congestion during this festival, as well as the activities many Town residents engage in makes this time period perhaps the most inconvenient of all in which to hold an election in Atlantic Beach.

Finally, the HEC failed to follow the customary practices in the Town in order to ensure that voters were made aware of this significant change in the voting process. Witnesses testified that many of the residents of the Town of Atlantic Beach are not subscribers to *The Sun News*. Instead, they follow a tradition or custom in Atlantic Beach of putting public notices on the door of the town hall and the citizens are used to getting information from there. Ms. Martin admitted that the election notices were not posted at the town hall and that the HEC did not attempt to work with the MEC or the town government to aid in providing information about the election to the town residents. While compliance with such town customs is not mandated, the HEC's lack

of effort in this regard is indicative of the attitude taken by the HEC in its conduct of the election. Instead of taking care to comply with both the letter and the spirit of the law in order to ensure that this municipality with a troubled past in terms of election procedure was provided with a fair election, the HEC exhibited contempt for the residents and town officials and cut many corners in its efforts to conduct the process bringing to mind to many of the electorate the attitude displayed in the Jim Crow era by the all-white HEC in regard to this largely African-American community. This attitude is further reflected in several of the HEC's emails submitted into the record by Rev. Price, which are rife with examples of derogatory and dismissive comments, as well as indications that the HEC looked on this election as an unwanted duty.

As Rev. Price asserted in her initial demand for a protest hearing, "the confusion for candidates and voters was a direct result of the actions taken by specific individuals to orchestrate a winning election for specific candidates. Evidence 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." Even William Booker admitted to there being confusion among the electorate. It not necessary to determine how many voters failed to receive notice of the polling location change as a result of the HEC's failure to follow several mandatory requirements. The record clearly reflects that voter turn out was lower than in the previous elections. Some voters were uncertain as to whether this election held in the church known to be attended by one faction of the candidates was being held lawfully. Witnesses testified that they had been ordered off the church premises on previous occasions and felt the location was hostile to them. There is sufficient evidence in the record to indicate that voters in this town who are all to familiar with voter intimidation tactics and the lengths to which a certain faction has gone to

pre-determine their vote and target them if they are considered non-supporters, simply stayed away in fear from a polling place they felt they would be controlled by certain candidates that were members of the congregation. As a result of these several failures to comply with mandatory state law and local custom concerning the location and prior notice the polling place, there was considerable confusion among the electorate in Atlantic Beach affecting these fundamental aspects of the voting process meriting overturning the election.

III. THE CHANGE IN THE LOCATION OF THE CHALLENGED BALLOT HEARING AND PROTEST HEARING ALSO AFFECTED ESSENTIAL ELEMENTS OF THE ELECTION PROCESS.

While the HEC and SCEC took steps to apply for preclearance from the Department of Justice for approval of some aspects of the election process, they failed to submit the change of location for opening absentee ballots, the challenged ballot hearing, and the election protest hearing from Atlantic Beach to Conway, South Carolina, twenty-six miles away from the voters' and candidates' residences. For its convenience, the HEC commenced the opening of absentee ballots at 9:00 a.m. on election day at the HEC's offices in Conway, rather than in the Town as had been the previous practice. The challenged ballot hearing was held on Thursday, May 24, 2012, at 10:00 a.m. also in Conway, rather than in the Town, as was done in past elections. Conway is over 26 miles from the Town. There is no public transit system available with service to Conway, and many residents are known to be without private means of transportation. As a result, many residents who would have attended these events were precluded from doing so. For example, candidate James Vanfleet did not have transportation or funds to travel to Conway, even to take his mother and wife whose votes were challenged by the poll workers and not counted during the challenged ballot hearing. Sandy Martin, Director of the HEC, admitted that

her office did not seek preclearance for these changes from the U.S. Department of Justice pursuant to the Voting Rights Act.

As recognized by the U.S. Supreme Court, holding that key elements of the electoral process in locations remote from black communities pose significant barriers to these minority voters' ability to exercise their rights in relation to the voting process. See *Perkins*, 400 U.S. at 387. These changes of the Town's standard practices constitute further grounds for overturning the election.

IV. THE HEC FAILED TO PROVIDE MANDATORY STATUTORY PUBLIC NOTICE OF THE PROTEST HEARING.

On an additional point, even if the errors and irregularities in the election process administered by the HEC were not sufficient to rise to the level necessary to overturn the election, their failure to provide proper notice of the protest hearing would at minimum require this Court to order a new hearing. The HEC failed to comply with the Freedom of Information Act ("FOIA") in providing notice about the protest hearing. FOIA requires a minimum 24 hour notice before a public meeting is held. S.C. Code §30-4-80. Actions taken in violation of the public meeting provisions of the FOIA are invalid. See S.C. Code §30-4-100; *Piedmont Public Services District v. Cowart*, 319 S.C. 124, 459 S.E.2d 876 (Ct. App. 1995). Both Retha Pierce and Rev. Price timely protested the May 22nd election. Rev. Price's protest was filed first and was clocked-in as being received by the HEC on May 24, 2012, at 4:56 p.m. Rev. Price was given written notice of the hearing via a letter posted on her door at 8:00 a.m. on May 25th. The HEC claimed that it provided public notice 24 hours prior to the hearing in compliance with FOIA, but such notice would not be possible given the fact that it did not receive notice that a protest had been filed until 4:56 p.m. on the previous day. In addition, the HEC failed to provide any

evidence in the record documenting when its written public notice of the hearing was disseminated.

It is not necessary that Rev. Price prove injury as a result of the HEC's failure to follow FOIA's requirements in order for a court to declare invalid actions taken in violation of the Act. See S.C. Code §30-4-100(a); *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 547 S.E.2d 862 (2001). Nonetheless, the effect of this change had a significant impact on Rev. Price's ability to put forth her claim at the protest hearing. The protest hearings for elections in Atlantic Beach are normally held on the Saturday following the election at the polling place within the 48 hour period required by law. Rev. Price's attorney was prepared to attend on Saturday but the change without sufficient notice to the appellant interfered with the appellant's ability to have legal counsel present for the hearing. HEC Chairman Russell Hall denied a request for a continuance to allow Ms. Pierce and Rev. Price to have their attorneys present. He further denied Rev. Price's request for permission to submit a video recording containing certain evidence after the hearing as she had not had an opportunity to transmit the video into a playable format in time for the hearing given the short notice that she had received. Accordingly, Rev. Price suffered prejudice by the HEC's failure to follow FOIA's requirements.

CONCLUSION

For the reasons discussed above, Rev. Price's appeal is **GRANTED**. The decision of the Horry County Election Commission is **REVERSED** and the election results are nullified.

J. Durham Cole
Presiding Judge, Fifteenth Judicial Circuit

_____, South Carolina

_____, 2012

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
Windy Price,	)	C/A NO.: 12-20-CP-26-4403
	)	
Appellant,	)	
	)	
vs.	)	
	)	
Horry County Election Commission	)	
South Carolina Election Commission	)	
Jake Evans, Josephine Isom,	)	
Charlene Taylor	)	
	)	
Respondents.	)	
	)	

Memorandum in Opposition to Motion of Windy Price to Alter or Amend the Judgment

For the reasons that follow, the Horry County Election Commission ("Commission") opposes Rev. Windy Price's motion to alter or amend ("Motion") this Court's August 23, 2012 Order ("Order") denying her appeal from the Commission's denial of her protest of the May 22, 2012 election for Mayor of the Town of Atlantic Beach, South Carolina.

Analysis

A. This Court properly determined that Rev. Price did not raise any claims regarding notice in her protest letter and, in any event, properly rejected the substance of her notice claims.

Contrary to Rev. Price's arguments, [see Motion pp.1-2,] the phrase in her protest letter "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” does not even remotely provide notice of a contention that the County did not provide adequate notice of the election. That is especially so given that the sentence preceding that phrase states that the “confusion for candidates and voters was a direct result of the action taken by specific individuals to orchestrate a winning election for specific candidates.”¹ [Motion p.2 (quoting protest letter).] Although the official notice for an election is issued by the County, *see Butler v. Town of Edgefield*, 328 S.C. 238, 246-47, 493 S.E.2d 838, 842-43 (1997), the sentence in Rev. Price’s protest letter does not reference the County but instead vaguely impugns unnamed but allegedly “specific individuals.”

There are other aspects of the language identified by Rev. Price that do not indicate it was directed to the official notice issued by the County. The phrase “stayed away from the polling place” suggests not a lack of awareness on the part of the unnamed voters who did not attend, but a conscious decision by these unnamed voters not to attend even though they were aware of the election. The term “information” is a broad and vague term, especially in this context, and did not serve to place the winning candidate or the County on notice as to the nature of Rev. Price’s protest. *See Butler*, 328 S.C. at 246, 493 S.E.2d at 842

¹ Although elections for positions on the Town Council also were held on May 22, 2012, no candidates filed any protest of the results of those elections and, thus, those elections now are final. Thus, Rev. Price has challenged only the mayoral election, for which the Commission declared Jake Evans the winner. Josephine Isom and Charlene Taylor were candidates for the Town Council elections held on May 22, 2012 and, thus, are not a party to any dispute over the mayoral election. Moreover, given the posture of this case, none of the candidates are proper parties to this current proceeding.

("The purpose of the notice requirement is to adequately inform the contestee as to the nature of the contest.").

The case law cited by Rev. Price also does not assist her argument. *Gecy v. Bagwell*, 372 S.C. 237, 642 S.E.2d 569 (2007) did not involve an issue of challenging the required notice of the election. The *Gecy* decision also did not change the requirement that a protest letter must "inform the contestee as to the nature of the contest," *Butler*, 328 S.C. at 246, 493 S.E.2d at 842, a requirement not met by the vague statement in Rev. Price's letter. *Gecy* only held that the protest letter was sufficient *in that case* to meet the notification requirement. Accepting the argument that the protest letter in this case sufficiently set forth a claim about adequate notice of the election would be to allow a protest letter to pass muster using the proverbial "needle in a haystack" and would be contrary to the statutory law and the precedent of the Supreme Court. *See* S.C. Code Ann. § 5-15-130 (requiring a "concise statement of the grounds").

In any event, even if properly presented, Rev. Price's argument about notice of the election should be rejected. The Order addresses the substance of any issues of notice, which also were addressed by the Commission in its decision denying the protest. The Commission correctly determined that the required statutory notice was given by the County for the election. The Commission also correctly determined that notice was given of the protest hearing. These rulings all are based upon testimony and evidence actually

presented at the protest hearing. Therefore, this argument affords no basis for altering or amending the Order.

B. Rev. Price has failed to identify any error of law supporting her argument for altering or amending the Order.

Rev. Price contends that the change of the polling place constituted a basis for reversing the County's decision to deny her protest. However, many of her arguments in this regard could have been but were not raised previously, either to the Commission or to this Court. Moreover, these arguments do not present any error of law, let alone an error sufficient to justify overturning the election.

(1) Rev. Price did not previously raise any issue regarding allegedly mandatory state laws regarding the polling place and does not now identify any credible basis for altering or amending the Order in this respect.

(a) Rev. Price cannot raise new issues for the first time on appeal and cannot present those issues for the first time in a motion to alter or amend.

For the first time, Rev. Price attacks the published notices as violating certain statutes by directing persons to the wrong polling place. [See Motion pp.4-6.] Previously, her arguments were directed at the alleged failure to obtain preclearance prior to changing the location of the polling place. [See, e.g., Motion Hrg. & Appeal Br. pp.23-24 (discussing preclearance of polling place location).] Because Rev. Price could have, but did not raise this argument previously to the Commission or to this Court, it should be rejected on that basis alone. See *Hickman v. Hickman*, 301 S.C. 455, 456-57, 392 S.E.2d 481, 482 (Ct. App. 1990) (holding that new arguments cannot be presented for the first time in a Rule 59(e) motion) (citing *Johnson v. City of Richmond*, 102 F.R.D. 623, 623

(E.D. Va. 1984)). This is especially so given that the posture of the proceeding before this Court is that of an appeal. *See Butler*, 328 S.C. at 248, 493 S.E.2d at 843 (“The circuit court, in this situation, is by statute an appellate court.”). That is to say, issues not presented to the Commission cannot be raised on appeal to this Court. *Id.* (rejecting effort to present argument to circuit court never presented to the Election Commission); *see also, e.g., State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) (“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal.”).

(b) *Rev. Price has not in any event met her burden of proving that the alleged irregularities with notice affected the result of the election.*

Rev. Price makes no argument that the notices of the election were incorrect when they were published and, importantly, also introduced no evidence that the notices were incorrect when published. Instead, she now argues that the notices were incorrect because the polling place identified in the notice ultimately was not the polling place used. She disregards the fact, relied upon by the Commission, that postcards were sent to registered voters regarding the location of the polling place. [Hrg. Tr. 117:14-20.] Those postcards, an example of which is attached to the Motion as Exhibit C, notify the voter that the “voting location for this election has changed.” [Motion, Exh. C (emphasis in original).] The record further reflects that a change was made because the

Atlantic Beach Community Center scheduled an event pertaining to bike week. [Hrg. Tr. 124:20-25; *see also* Hrg. Tr. 100:8-103:1 (witness Carolyn Cole discussing fact that an event was scheduled at the Community Center and that, on election day, “they moved food, water, and supplies in and out of there all day”).] The record thus reflects that there was a problem with holding the election in the Atlantic Beach Community Center, that the Commission took steps to resolve that problem, and that it gave notice of the change in the polling place. Despite having the burden of proof, Rev. Price did not establish any record to show that notification of the change in polling place was not sufficient or that the result of the election would have been different due to these alleged problems.

(c) *Rev. Price did not previously allege a failure to comply with South Carolina Code Section 7-7-1000 and also did not meet her burden to prove a violation of that statute.*

Rev. Price next contends that the change in the polling place did not comply with South Carolina Code Section 7-7-1000. This argument also should be rejected because it was not raised in the protest letter and appears for the first time in the Motion. [See Motion Hrg. & Appeal Br. p.3 (omitting § 7-7-1000 from Table of Authorities).] Moreover, section 7-7-1000 does not apply here because it addresses pooling precincts in municipal elections. S.C. Code Ann. § 7-7-1000 (“[A] municipality may pool one or more precincts with other precincts and have one voting place for all of these pooled precincts”). In other words, the statute addresses situations in which multiple precincts may be combined by a municipality for an election if certain conditions are met. The

Town of Atlantic Beach does not pool precincts because it has only one precinct and there is no evidence in the record to the contrary. Because Rev. Price had the burden of proof at the hearing, it was her burden to establish a record that section 7-7-1000 applied. Rev. Price did not, however, even allege a violation of section 7-7-1000 at the hearing, let alone introduce any evidence with respect to compliance with that statute. This issue therefore does not support altering or amending the Order. *See Butler*, 328 S.C. at 248, 493 S.E.2d at 843; *see also*, *e.g.*, *Dunbar*, 356 S.C. at 142, 587 S.E.2d at 693-94.

(d) *The allegations by Rev. Price in the Motion with respect to the postcards sent by the County already have been considered and rejected by this Court and in any event are unsupported by the record.*

Rev. Price next complains that the postcards were insufficient to advise voters of the change in the polling place. This issue already has been considered and rejected by this Court and by the Commission. She contends that Retha Pierce, the other losing mayoral candidate, "testified there are problems with people receiving their mail in Atlantic Beach," [Motion p.5,] but Ms. Pierce made that unsworn statement while purportedly asking a question. [Hrg. Tr. 117:21-24.] The argument regarding evidence introduced at the challenged ballot hearing, which was held on Thursday, May 24, 2012, also does not assist Rev. Price because none of that evidence was introduced at the protest hearing held on Friday, May 25, 2012. In fact, even though Sandra Martin, Executive Director of the Commission, testified at the hearing, no one asked her about these events allegedly occurring at the challenged ballot hearing. [See Hrg. Tr.

115:14-124:17.] Therefore, the record contains no evidence to support Rev. Price's argument in this regard.

(e) *Rev. Price did not previously allege a failure to comply with South Carolina Code Section 7-7-910(B)(2) and also did not meet her burden to prove a violation of that statute.*

Rev. Price next turns to an argument based on South Carolina Code Section 7-7-910(B)(2). Like section 7-7-1000, this statute also appears in this election protest case for the first time in the Motion, and was not raised at the protest hearing or in her initial arguments on appeal. [See Motion Hrg. & Appeal Br. p.3 (omitting § 7-7-910(B)(2) from Table of Authorities).] This argument also was not presented in the protest letter. Therefore, Rev. Price should not now be permitted to raise this argument. *See Hickman*, 301 S.C. at 456-57, 392 S.E.2d at 482.

In any event, Rev. Price had the burden of proof, and she did not establish any record regarding compliance—or the alleged lack thereof—with section 7-7-910(B)(2) and she also did not establish any record proving that the result of the election would have been different if the alleged failure to comply with section 7-7-910(B)(2) had not occurred. To the extent that there is any evidence in the record, Ms. Martin testified that a board member went to the Community Center and “put the sign up.” [Hrg. Tr. 125:25-126-1;] *see* S.C. Code Ann. § 7-7-910(B)(4) (“Every attempt must be made to notify electors of the alternative polling place before the election on the day of the election through the media and *by posted notice at the designated polling place.*”) (emphasis added).

In sum, the record reflects that the County made every substantial effort to notify voters of the changes in the polling place and Rev. Price has not met her burden to establish a record demonstrating otherwise or that the result of the election would have been different.²

(f) *Because the statutes identified for the first time in the Motion are not mandatory and because the claims are brought post-election, the analytical framework set forth in George v. Municipal Election Commission of the City of Charleston requires a holding that Rev. Price is not entitled to relief even if she had properly articulated the statutes in the protest hearing.*

Finally, Rev. Price incorrectly contends that her newly-identified statutory provisions all were mandatory and, thus, that the alleged failure to follow these statutory provisions mandates overturning the election. Under the analytical framework set forth by the Supreme Court, this argument is without merit—even assuming these arguments properly were raised before their appearance in the Motion. Recognizing that there are “numerous and detailed” statutory provisions governing elections, the Supreme Court has set forth an analytical framework for

² Contrary to Rev. Price’s assertion, [see Motion pp.6-7,] it is in fact “necessary to determine how many voters failed to receive notice of the polling location change as a result of the HEC’s failure to follow several mandatory requirements” because it is her burden to prove that the result of the election would have been different but for the problems. Rev. Price’s further assertion, [see Motion p.7,] that the “record clearly reflects that voter turnout was lower than in the previous elections” is an effort to avoid this burden and instead claim a presumption of prejudice. Rev. Price’s burden is to prove that the result of **THIS** election would have been different as a result of the irregularities she fairly identified in her protest letter and established at the protest hearing. As previously argued by the Commission and as correctly determined in the Order, Rev. Price failed to establish any evidence that the result of **THIS** election would have been different, especially in light of the margin of victory of the winning candidate and her failure to adduce any evidence regarding any specific votes cast on May 22, 2012.

determining when the statutory provisions governing elections are mandatory or directory.” *George v. Mun. Election Comm’n of City of Charleston*, 335 S.C. 182, 186, 516 S.E.2d 206, 208 (1999); *see also* *Cole v. Town of Atl. Beach Election Comm’n*, 393 S.C. 264, 273-74, 712 S.E.2d 440, 445-46 (2011) (repeating framework and citing *George*). Statutory provisions are mandatory if the statute declares that its provisions are “essential to the validity of an election” or if enforcement of the statutory provisions is sought before the election is conducted. *Id.* After the election, the statutory provisions are “merely directory even though the Legislature used seemingly mandatory terms such as ‘shall’ or ‘must’ in establishing the provisions.” *Id.* A court should consider these provisions to be mandatory after an election only if 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.*

Rev. Price has failed to establish the existence of any of the preconditions set forth by the Supreme Court in *George*. Neither section 7-7-1000 nor section 7-7-910(B) declares that their provisions are “essential to the validity of an election.” Moreover, Rev. Price did not seek enforcement of these provisions before the election and her post-election protest provided no record sufficient to show that the alleged failure to comply with either of these statutes “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.” *George*, 335 S.C. at 186, 516 S.E.2d at 208. The alleged failure to notify members of the legislative delegation in no way satisfies the *George* standard because it does not pertain to the ability of voters to freely and intelligently cast a ballot. Instead, the record supports the contention that voters were notified of the precinct change through postcards mailed to registered voters and by a notice posted on the Atlantic Beach Community Center. Again, Rev. Price had the burden of proof, and she failed to establish a record regarding any of these issues. She is not entitled to relief now.

(2) Rev. Price is not entitled to relief based on alleged failures to obtain preclearance for any aspect of the election process in this matter.

Rev. Price continues to complain that the County allegedly did not obtain preclearance for various aspects of the election process, such as the location for opening absentee ballots, the location of the challenged ballot hearing, and the location of the election protest hearing. [Motion p.7.] As the Commission determined and this Court agreed, preclearance is a federal issue that may not be raised as part of a protest proceeding. *See Butler*, 328 S.C. at 249-50, 493 S.E.2d at 844-45 (rejecting consideration of Voting Rights Act claims on appeal from municipal election protests on grounds of jurisdiction as well as standing to raise such claims in the protest context). Any action complaining about preclearance should have been brought in a different forum against different parties. The Commission correctly determined that issues involving preclearance may not be raised in a protest hearing. This issue does not support granting the Motion.

C. Rev. Price's South Carolina Freedom of Information Act ("FOIA") argument is erroneous and, like the preclearance argument, has been alleged in the wrong forum.

Contrary to Rev. Price's next contention, FOIA does not entitle her to relief in this forum even if any of her arguments regarding FOIA are correct. Like most of her other claims, any challenge to the application of that statute should be brought in another forum because she is only entitled to contest the result of the election. *See* S.C. Code Ann. § 5-15-130 (permitting *candidates* to "contest the *result* of the election") (emphasis added). FOIA has nothing to do with the result of the election. Analogous to the reasoning in the *Butler* decision regarding the Voting Rights Act, the basis for Rev. Price's arguments in this case is an alleged deficiency in votes and not a vindication of the right of public disclosure. [See Motion p.9 ("In fact, any member of the public could bring forth a suit seeking the same relief during the course of the next year.");] *cf. Butler*, 328 S.C. at 249, 493 S.E.2d at 844 (concluding that candidate had no right to bring voting rights claim as part of election protest in part because candidate was suing only regarding the alleged loss of votes). Any challenge by Rev. Price to the notice given to voters in this proceeding must be made in the context of whether voters were able to cast a ballot freely and intelligently, not whether there was strict compliance with FOIA. *Cf. Butler*, 328 S.C. at 249, 493 S.E.2d at 844. Finally, FOIA contains no statement that its provisions are mandatory with respect to the conduct of an election or of a protest hearing. *See George*, 335 S.C.

at 186, 516 S.E.2d at 208. Therefore, any argument for relief based on a failure to strictly comply with the provisions of FOIA should be rejected.

Moreover, Rev. Price is incorrect that “[a]ll of the evidence in the record and indeed the limits of time support only a finding that the HEC failed to comply with FOIA in providing notice about the protest hearing.” [Motion p.8.] Because the protest hearing was held beginning at 3:00 p.m. on Friday, May 25, 2012, but her protest letter was not filed until 4:56 p.m., Rev. Price states that it “would have simply been impossible for the HEC to have provided such notice in a manner that complied with FOIA’s requirements since it did not know that a hearing was necessary until after 4:00 p.m. on the previous day.” [Motion pp.8-9.] However, it was stated at the hearing by the Chair of the Commission that “[e]ven prior to us having a protest [the Commission] notified the media.” [Hrg. Tr. 16:1-2.] It was further stated by the Chair as follows:

Some people were aware of it in case there was a protest. I don’t think we had our first protest until about 4:45 or so. *And we notified the media ahead of time.* Once we had the actual protest, we went to work to get the candidates notified.

[Hrg. Tr. 16:3-8 (emphasis added).]³ And the Chair also stated that “[w]e gave 24-hour notice via the news media. As soon as we decided we would have the hearing we did that.” [Hrg. Tr. 18:13-15.]

³ Therefore, contrary to Rev. Price’s allegations, [see Motion p.9,] the Chair of the Commission in no way admitted that the notice of the protest hearing was not given 24 hours prior to the hearing. Rev. Price had the burden of proving her allegations at the hearing and she cannot meet that burden by arguing that the Commission was required

In other words, the Commission scheduled the meeting and then provided public notice 24 hours before the meeting was convened. This complied with the requirements of FOIA. *See* S.C. Code Ann. § 30-4-80. Thus, contrary to Rev. Price's argument, the Commission in fact did schedule a protest hearing before any protests were filed and gave public notice of that meeting, then gave "due notice" to the contestants as required by section 5-15-130. [*See* Hrg. Tr. 17:12-18; 18:18-22.] Given the history of election protests in Atlantic Beach,⁴ preparing for or expecting a protest to be filed in this case was not unreasonable. Anticipating that protests would be filed was especially appropriate given the statutory requirement for protests in municipal elections to be heard within 48 hours after filing. *See* S.C. Code Ann. §5-15-130; *see also* *Cole*, 393 S.C. at 274-75, 712 S.E.2d at 446 ("We believe the main purpose of [§ 5-15-130] is to expeditiously finalize protested municipal elections in the interest of realizing the voters' will and seamlessly transitioning government offices.").

Finally, Rev. Price is using FOIA to attack not the scheduling of the election itself, but the scheduling of the protest hearing at which no one casts a ballot. As discussed above, she is not entitled to raise this issue on behalf of the

to provide evidence of compliance with FOIA or by drawing incorrect inferences from the statements actually made by the Chair.

⁴ As noted in the Order, the South Carolina Supreme Court stated that it "has unfortunately become familiar with the Town of Atlantic Beach's municipal elections, and the disputes that inevitably accompany them." *Cole*, 393 S.C. at 267 & n.1, 712 S.E.2d at 442 & n.1 (citing *Armstrong v. Atlantic Beach Mun. Election Comm'n*, 380 S.C. 47, 668 S.E.2d 400 (2008); *Taylor v. Town of Atlantic Beach Elec. Comm'n*, 363 S.C. 8, 12, 609 S.E.2d 500, 502 (2005)).

general public in this proceeding. And to the extent she raises that issue with respect to the notice that she received personally, the Order correctly rejects her contentions in this regard. The record reflects that Rev. Price acknowledged that she individually "was told on that point verbally, not through written notice, verbally, tomorrow at 3 PM" when she filed her protest letter and "asked the question, when, where, and at what time would this protest be held?" [Hrg. Tr. 22:2-7.]⁵ Section 5-15-130 requires only "due notice to the parties concerned." The notice given to Rev. Price complies with this requirement, especially in light of the expedited schedule required by statute.

Rev. Price also complains about alleged timing issues that precluded her attorney's appearance at the protest hearing, but she did not raise that issue at the protest hearing. Only Ms. Pierce directly raised the issue of the timing of the protest hearing through a motion on the grounds that she needed to seek assistance of counsel, but neither she nor Rev. Price identified their attorneys or provided any communications from those attorneys.⁶ Finally, given the allegations of the notice of appeal that hinge almost entirely on issuance of the Executive Order and preclearance, neither Rev. Price nor Ms. Pierce have shown

⁵ It is worth noting that Rev. Price knew what to expect based on her own statement in the record that she has been involved in three protest elections for the Town of Atlantic Beach. [Hrg. Tr. 23:23-24.]

⁶ As a basis for the prejudice she allegedly suffered, Rev. Price again references video evidence that she allegedly was unable to produce due to the short time prior to the hearing. As previously contended, she could have called witnesses to testify regarding the events that allegedly were video recorded; to the extent she did, the Commission concluded that the record did not support overturning the election. As this Court determined in the Order, Rev. Price is not entitled to relief on this claim.

how they were harmed by the schedule. The Commission therefore properly rejected any claim that improper notice of the protest hearing was given.

Therefore, even assuming that a FOIA issue may be raised in this proceeding, the record in fact does support a conclusion that timely notice was given under FOIA. The record further supports a determination that Rev. Price failed to meet her burden to prove that problems with giving notice resulted in a deprivation of voters' opportunity to vote such that the result of the election would have been different. Rev. Price had the burden to prove that any irregularities or inadequacies in notice impacted the conduct of the protest hearing and the record is devoid of that. She has failed to state any new ground in the Motion that justifies her request to alter or amend the Order in this regard.

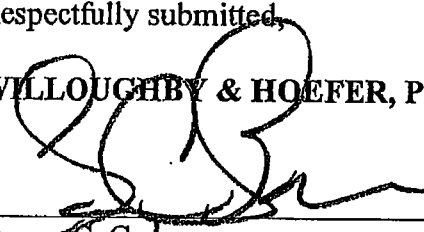
[Conclusion and Signature Block on Next Page]

Conclusion

For the reasons set forth above, in the Order, and in the previous briefing and argument on this issue before the Court, the Horry County Election Commission respectfully requests that this Court deny the appeal of Rev. Windy Price and uphold the decision of the Commission to affirm the results of the Atlantic Beach election for Mayor conducted on May 22, 2012.

Respectfully submitted,

WILLOUGHBY & HOEFER, P.A.



Tracey C. Green
PO Box 8416
Columbia, SC 29202
tgreen@willoughbyhoefer.com
(803) 252-3300

Attorney for Horry County Election
Commission

Columbia, South Carolina
September 18, 2012

**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 Election Commission,
Jake Evans, Josephine Isom, and
Charlene Taylor Respondents.**

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

NOTICE OF APPEAL

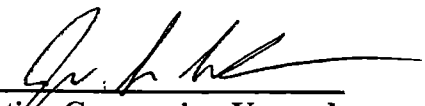
Appellant Windy Price appeals the August 15, 2012, and October 24, 2012, orders of Judge J. Derham Cole (attached). The Appellant received written notice of the entry of the October 24, 2012 order (denying her motion to alter or amend) on November 2, 2012.

[signature page follows]

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S.C. SUPREME COURT



Christine Companion Varnado
cvarnado@seibelsfirm.com
Jason Scott Luck
jluck@seibelsfirm.com
SEIBELS LAW FIRM, P.A.
127 King Street, Suite 100
Charleston, SC 29401
843.722.6777 (phone)
843.722.6781 (telefax)

Attorneys for Appellant

27 November 2012

Other counsel of Record:

J. C. Nicholson, III, Esquire
Office of the Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
803-734-9916 (O)
803-734-3677 (F)
JCNicolson@ag.state.sc.us
Attorney for SC Election Commission

Tracey C. Green, Esquire
Willoughby & Hoefer, P.A.
P.O. Box 8416
Columbia, SC 29202
803-252-3300 (O)
803-256-8062 (F)
tgreen@willoughbyhoefer.com
Attorney for Horry County Election
Commission

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
ELECTIONS COMMISSION
PROTEST HEARING

DATE: April 25, 2012
TIME: 4:00 PM
LOCATION: Voter Registration Office
1515 4th Ave
Conway, SC
REPORTED BY: LINDA A. MAHONEY, Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 BOARD MEMBERS:

2 RUSSELL W. HALL, III

3 VICKIE AUTRY

4 DEBORA JOHNSON

5 LARRY LEAGANS

6

7 SPEAKERS:

8 REVEREND WINDY PRICE

9 JAKE EVANS

10 RETHA PIERCE

11 SANDRA MARTIN

12 DANA HUGGINS

13 NICOLE KENION

14 WITNESSES:

15 PATRICIA BELLAMY

16 CAROLYN COLE

17 SANDRA MARTIN

18 WILLIAM BOOKER

19 JOE MONTGOMERY

20

21 ALSO PRESENT:

22 TRACEY GREEN, ESQ.

23 JERRY S. MABRY

24

25

1 MR. HALL: I'll call the meeting to
2 order. My name is Russell Hall and each one of the
3 commissioners will introduce themselves. Start at
4 the end.

5 MS. AUTRY: Vickie Autry.

6 MS. JOHNSON: Debra Johnson.

7 MR. LEAGANS: Larry Leagans.

8 MR. HALL: This is a quorum. We are
9 missing one of our commissioners who was unable to
10 be here today, but there's five of us and four of us
11 here, so we do have a quorum.

12 Before we get started with the protest
13 that we called today, we have to address a matter
14 concerning the absentee ballot. Please identify
15 yourself for the record.

16 MS. HUGGINS: My name is Dana Huggins.
17 I'm the administrative assistant with the Horry
18 County Registration and Elections Office.

19 What I have here is an official report
20 that I printed from our elections resulting system.
21 And what we did was the absentee that we've counted
22 on election day, we counted in the unofficial
23 results, but they were left off the printout that
24 the commission signed yesterday.

25 So the totals that were given out

1 yesterday were just a little bit short of what the
2 vote should be.

3 This is now the official results that
4 we have for the candidates.

5 MR. HALL: We're going to sign that
6 now.

7 MS. COLE: Can we ask a question?
8 Since this is kind of outside of this part of the
9 rest of the hearing, can I ask a question?

10 MR. HALL: Sure.

11 MS. COLE: My name is Carolyn Cole.
12 The question that I have is about the absentee
13 ballots.

14 On the election day I was monitoring
15 also. And I want to know -- no one told us when the
16 absentee ballots were going to be opened. Because
17 we were waiting for that information. And it's my
18 understanding they were opened in Conway rather than
19 in Atlantic Beach. Is that true?

20 MR. HALL: That's correct. That's
21 correct. Hold on. I do have that note. There is a
22 public notice for the general election.

23 Part of the pertinent part for your
24 question reads: At 9 AM on election day the County
25 Election Commission shall begin the process of

1 examining the absentee ballots. Examination will be
2 held at the County Election Office, 1515 4th Avenue
3 in Conway.

4 MS. PIERCE: Did you get preclearance
5 for that from the Department of Justice?

6 MR. HALL: Preclearance for the notice.

7 MS. COLE: One more and I'm done.

8 MR. HALL: That's fine.

9 MS. COLE: I would like to ask whether
10 or not any of those notices in Atlantic Beach --
11 when we have our elections or anything that goes on
12 in Atlantic Beach -- we're not big subscribers of
13 the Sun News or the North Myrtle Beach Times. We
14 post our notices generally on the door of the
15 community center and the door of the town hall.

16 Were any of those notices posted there?

17 AUDIENCE MEMBER: That I am not aware
18 of. It was in the Sun News. That's where we
19 typically --

20 MS. COLE: So the answer is no?

21 MR. HALL: The answer is no. That's
22 correct.

23 MS. COLE: Thank you.

24 MR. HALL: We'll go ahead and sign
25 those. Thank you for that question.

1 MS. PIERCE: I have a follow up to that
2 news situation. Was that the only place you put the
3 notice, in the Sun News?

4 AUDIENCE MEMBER: In the Sun News, it
5 ran twice.

6 MS. PIERCE: Twice in the Sun News.
7 Thank you.

8 REVEREND PRICE: Were any of the
9 candidates privileged to that? Reverend Windy
10 Price, councilwoman for the Town of Atlantic Beach.

11 Was any of the candidates privileged to
12 that information?

13 MR. HALL: What information?

14 REVEREND PRICE: The absentee ballots
15 in Conway.

16 MR. HALL: We had a public notice.
17 Everybody in Horry County was privy to that
18 information. We're going to dispense with the
19 public questions and finish this and then we'll move
20 on to the protest.

21 The totals for Jake Evans now is 84.
22 For Retha Pierce is five. For Windy Price is one,
23 write-in is zero. For Josephine Isom, 81. Monique
24 Pointer, one. Charlene Taylor 79. James B.
25 Vanfleet three, write-in one.

1 Thank you. I'll take a few more
2 questions. And then we'll start with the protest.

3 MS. KING: My name is Nicole Kenion.
4 You're the chair of the election commission? What's
5 your name, sir?

6 MR. HALL: Russell Hall.

7 MS. KING: When you stated the result
8 totals were included in the absentee -- now you're
9 adding more to it?

10 MR. HALL: Incorrect. Thank you for --
11 let's clear that up.

12 MS. KING: That's what you stated.

13 MR. HALL: When was that?

14 MS. KING: On election day, Tuesday.

15 MR. HALL: That's right. They were
16 included in those totals, but they forgot to include
17 them in the totals for yesterday when I read them
18 off. They were included there. I think numerous
19 people up there took pictures of the results.

20 You guys can certainly use that as a
21 reference. I don't see them here. Several of the
22 folks were taking pictures of it. We gladly allowed
23 everybody. Yes, ma'am. Yes, ma'am.

24 AUDIENCE MEMBER: First, I do have --

25 MR. HALL: Open for the examination.

1 AUDIENCE MEMBER: Absentee, curbside,
2 and challenged. I do have all of that here.

3 MR. HALL: If they need to see it,
4 they're more than welcome to compare that with the
5 results we have. Certainly open to everybody to see
6 that, certainly.

7 All right. We're going to go ahead
8 with the first protest. And that one is the -- make
9 sure I get that right one -- the Atlantic Beach
10 Election Commission made a protest.

11 I'm going to go ahead and motion to --
12 not to hear that particular protest because we do
13 not have the jurisdiction to do so. Pursuant to --
14 excuse me -- 5-15-100, the only individuals allowed
15 to protest the election are the candidates.

16 So I move to not hear that protest
17 because we lack jurisdiction to do so pursuant to
18 that statute.

19 MR. LEAGANS: Second.

20 MR. HALL: All in favor? All ayes.
21 None opposed.

22 Thereafter, we have two protests from
23 candidates and we've decided to do it in the order
24 we received them. And the way this is going to move
25 forward is we'll have a five-minute opening and then

1 opening statement. Thereafter, the protestor will
2 submit the evidence and bring in witnesses that they
3 wish for our consideration.

4 And after that, it's concluded, we'll
5 have a 10-minute closing.

6 And before we get started with that,
7 for housekeeping purposes, Ms. Price, your protest
8 was done first.

9 Do you have any witnesses that you will
10 bring?

11 REVEREND PRICE: Yes, I do. Concerned
12 citizen, Patricia Bellamy will be one of my
13 witnesses.

14 MR. HALL: Ms. Bellamy.

15 REVEREND PRICE: Also Councilwoman
16 Carolyn Cole. Councilwoman for the Town of Atlantic
17 Beach will be my other witness.

18 MR. HALL: Any other witnesses?

19 REVEREND PRICE: No.

20 MR. HALL: You're more than welcome to
21 move around. We've given you that podium if you
22 would like to use that for stuff. Limit your
23 opening to five minutes and thereafter you can
24 present your evidence.

25 MS. PIERCE: Are you taking motions

1 before any person begins protesting?

2 MR. HALL: I'll hear your motion for
3 your particular protest.

4 MS. PIERCE: My motion couldn't -- my
5 name is Retha Pierce. I'm the two questions on the
6 record that didn't give a name. But I can't make a
7 motion to continue the event or the entity, whatever
8 we're doing here, if someone has already been
9 allowed to start.

10 MR. HALL: Now that you've mentioned
11 that, it does seem reasonable. Go ahead and make
12 that motion.

13 MS. PIERCE: That's supposed to be on
14 record.

15 MR. HALL: We'll consider that you're
16 motioning to continue.

17 MS. PIERCE: I'm one of candidates for
18 mayor. My motion -- first of all, if you don't
19 mind, you're the preceding officer? Could you state
20 your name?

21 MR. HALL: Russell W. Hall, III.

22 MS. PIERCE: And the location of --
23 tell us that before we make the motion.

24 MR. HALL: Horry County Elections
25 Commission, Conway, South Carolina.

1 MS. PIERCE: Hearing for the elections
2 that was May 22nd and was certified yesterday.

3 MR. HALL: Sounds like you know better
4 than I do.

5 MS. PIERCE: We are where? You said
6 Conway? We're holding the protest hearing for the
7 Atlantic Beach election of May 22nd, which was
8 certified yesterday, May 24th.

9 MR. HALL: That's correct.

10 MS. PIERCE: I, again, restate my name
11 as Retha Pierce, one of the mayoral candidates. I
12 would like to move that there be a continuance of
13 this protest hearing on the basis that some of the
14 candidates -- on the basis that candidates did not
15 have a chance to have their lawyers come today.

16 In the past, Atlantic Beach
17 elections -- the protest hearing has always been on
18 Saturday, within 48 hours.

19 To finalize the challenge ballots on
20 Thursday, yesterday, and then to tell us to be here
21 at 3:00, even though there was an attempt to bring
22 the lawyers, I mean, the lawyers are not here. You
23 have a lawyer there.

24 So I move that this be continued, the
25 protest hearing of Atlantic Beach, South Carolina

1 that Horry County administered on May 22, 2012,
2 which was certified on Thursday, May 24, 2012.

3 MR. HALL: Thank you, ma'am. I've
4 reviewed the statute. We did think long and hard
5 about when to have the hearing. We felt this was a
6 good time to have it and within the bounds of the
7 statute. It certainly follows the statutory
8 process.

9 MS. PIERCE: An amendment to that since
10 you're following statutory requirement. It's
11 supposed to be within 48 hours and that motion is
12 simply for the candidates who are protesting to have
13 the right to have their attorney present during the
14 protest. Thank you.

15 MR. HALL: We would certainly never
16 disallow someone to have an attorney here. As far
17 the hearing today, I'm going to move the body to not
18 grant the motion.

19 MS. PIERCE: Thank you.

20 MR. HALL: Anybody got a second?

21 MR. LEAGANS: Second.

22 MR. HALL: All in favor? None opposed.

23 MS. PIERCE: Thank you. I figured
24 that. Thank you.

25 REVEREND PRICE: Councilwoman Windy

1 Price. In my opening I would like to say that I am
2 mayoral candidate Windy Price, am protesting the
3 decision of the South Carolina Election Commission
4 and the Horry County Election Commission to uphold
5 the results of the May 22, 2012 election in the Town
6 of Atlantic Beach, and the certification of the
7 election results after the challenge ballot hearing
8 on May 24, 2012.

9 I would like to start by getting some
10 of the formalities out of the way. First, the board
11 composition. How many constitute this board? How
12 many members?

13 MR. HALL: Five.

14 REVEREND PRICE: How many are white,
15 how many are black, and how many are others?

16 MR. HALL: Five white on the board.

17 REVEREND PRICE: No blacks and no
18 others?

19 MR. HALL: No, ma'am. Voter
20 registration is made up of three African-Americans
21 and two whites.

22 REVEREND PRICE: Concentrating on this
23 panel here.

24 MR. HALL: I do want to point out, I
25 volunteered for this position and I asked to be on

1 this. Somebody didn't come to me. We are missing a
2 member. And we do give public notice. If anybody
3 wants to be on this board and work through the
4 problems we work through for protested and contested
5 elections, I certainly encourage you to do so.

6 REVEREND PRICE: Thank you. Ms. Pierce
7 may have formally asked you this before: For the
8 record and for my clarification, what is this
9 hearing formally called?

10 MR. HALL: Protest hearing protesting
11 the election and certification of the Atlantic Beach
12 election that happened on the 22nd of May for the
13 mayoral position. That's what this protest is
14 about.

15 REVEREND PRICE: What organization is
16 conducting the hearing?

17 MR. HALL: Horry County Election
18 Commission pursuant to an order given by Governor
19 Nikki Haley. I don't know what the date of that is.
20 Let me see if I have that order.

21 MR. EVANS: March 16th, I believe.

22 MR. HALL: It was filed March 16th.
23 That's under the authority that I've been told.
24 That's why we're conducting this election.

25 REVEREND PRICE: Thank you. Next

1 question: Who is the presiding officer?

2 MR. HALL: Russell Wilton Hall, III.

3 REVEREND PRICE: Would that be you?

4 MR. HALL: That's me. Yes, ma'am.

5 REVEREND PRICE: Ms. Pierce may have
6 asked this as well: Again, for my clarification,
7 where are we located today?

8 MR. HALL: We are located at the Horry
9 County Election Commission building in Conway, South
10 Carolina, 4th Avenue.

11 AUDIENCE MEMBER: 1515.

12 MR. HALL: 1515. In Conway, South
13 Carolina. For Conway, South Carolina.

14 REVEREND PRICE: Did you request
15 preclearance from the US Department of Justice to
16 have it away from the Town of Atlantic Beach?

17 MR. HALL: I'm not sure about that.
18 I'm not sure about that. I do not have that answer.

19 REVEREND PRICE: How did you notice the
20 public about this hearing?

21 MR. HALL: The public -- we didn't
22 feel -- the concerned parties, we made phone calls.
23 We did send the sheriff -- I don't know if they were
24 able to get the notices. I think calls and
25 summonses by the sheriff's office. And then the

1 media was notified. Even prior to us having a
2 protest we notified the media.

3 Some people were aware of it in case
4 there was a protest. I don't think we had our first
5 protest until about 4:45 or so. And we notified the
6 media ahead of time. Once we had the actual
7 protest, we went to work to get the candidates
8 notified.

9 REVEREND PRICE: It is a custom in the
10 Town of Atlantic Beach for putting notices on the
11 doors of town hall, the community center.

12 Did you post any of these notices in
13 Atlantic Beach about this hearing?

14 MR. HALL: Not today's hearing.

15 MS. PIERCE: Did you post them in any
16 of the local newspapers?

17 MR. HALL: No.

18 REVEREND PRICE: Did you announce it on
19 broadcast media as a public service announcement or
20 paid advertisement?

21 MR. HALL: We -- I'm not sure.

22 AUDIENCE MEMBER: We don't pay for the
23 advertising.

24 MR. HALL: Was it all three of the
25 major networks?

1 AUDIENCE MEMBER: Uh-huh.

2 MR. HALL: We did that prior to having
3 the protest.

4 REVEREND PRICE: We would like to have
5 that admitted into the records of this hearing --

6 MR. HALL: The public's aware of that.
7 We'll gladly introduce that into evidence.

8 REVEREND PRICE: Thank you. The
9 sheriff's office posted a notice of this on my door
10 at 8:03 AM this morning, May 25, 2012. So
11 unfortunately, I didn't get a 24-hour notice.

12 MR. HALL: Like I said, I looked at the
13 statutory makeup and we did what we could within the
14 bounds as best we could. Due notice, no timeframe
15 on that. And just to reiterate. That's 5-15-100 in
16 the South Carolina Code of Law. We followed that as
17 closely as we could and due notice -- I don't know
18 if there's a definition of that.

19 REVEREND PRICE: I would like to have
20 entered into the records my posting from the
21 sheriff's office. Whoever's handling the exhibits,
22 you can do so.

23 MR. HALL: I would also like to add as
24 in a judicial proceeding, the individual noticed
25 that the hearing shows up, that's proof of notice.

1 I would like to put that in the transcript also.

2 REVEREND PRICE: Twenty-four hour
3 written notice.

4 MR. HALL: Anything -- we need to hand
5 that to the court reporter.

6 REVEREND PRICE: Did you give 24-hour
7 written notice that the hearing may be --

8 MR. HALL: Exhibit 2. Exhibit 1 will
9 be the public notice.

10 REVEREND PRICE: The question is: Did
11 you give 24-hour written notice that this hearing
12 would be here today?

13 MR. HALL: We did not. We gave 24-hour
14 notice via the news media. As soon as we decided we
15 would have the hearing we did that.

16 REVEREND PRICE: Did you give
17 24-written notice to the public?

18 MR. HALL: The answer to that is: We
19 gave, via the media, notice of the hearing. We gave
20 written notice to the concerned parties as best we
21 could. Due notice to them in writing and via a
22 phone call.

23 REVEREND PRICE: In the past elections
24 we would receive a calendar of events from MEC
25 showing the dates from filing of candidacy, to the

1 elections, challenged ballots, and protest hearings
2 as soon and as possible.

3 Why did you choose to have the hearing
4 here in Conway rather than in Atlantic Beach?

5 MR. HALL: This is where we have our
6 hearings as the election commission.

7 REVEREND PRICE: The election was for
8 the Town of Atlantic Beach.

9 MR. HALL: We held the election there.
10 The actual hearings, we decided, to be held here.

11 REVEREND PRICE: I need to get clarity
12 as to why I'm here today pro se.

13 I am here representing myself because
14 of your failure to give proper notice and the fact
15 that you scheduled this election and the election
16 events during Bike Fest, and on Memorial Day
17 weekend.

18 I consider your failure to give me and
19 the town proper notice of a continuation of your
20 part to disadvantage voters, candidates, citizens of
21 Atlantic Beach, to give yourself the advantage,
22 which is evidence of your will to win at all costs
23 and violating rights and laws. Violating rights of
24 laws is of little consequence to you.

25 My next question: Who's swearing me in

1 and who will be swearing in my witnesses today?

2 MR. HALL: The court reporter.

3 REVEREND PRICE: How will the exhibits
4 be handled?

5 MR. HALL: She's going to mark them.
6 And just to let you know, pursuant to statute, they
7 will be going to the Clerk of Court's office. We're
8 required to do so with any exhibits and testimony.
9 Those will be going to the Clerk of Court's office
10 pursuant to that same statute, 5-15-100. There's
11 like a paragraph that pretty much spells it all out
12 for municipal elections.

13 REVEREND PRICE: You did not allow
14 enough time for video footage to be transferred to
15 discs to be included as exhibits.

16 I would like to enter them by reference
17 and when the transfer is complete, that the actual
18 discs be added to the records of our proceeding.

19 MR. HALL: My understanding is the
20 evidence has to come to the hearing. We have a very
21 short time to make a decision. I mean, we're not
22 willy nilly making times up. I have to follow
23 within this amount of time you had to protest, this
24 amount of time I have to vote, this amount of time
25 for the hearing, this amount of time for the Clerk

1 of Court's office.

2 I don't have the discretion to change
3 that statutory authority. I'm following Ms. Haley's
4 order and the statute.

5 I can't say I'm not going to follow the
6 law. I don't do that. And I didn't schedule the
7 election, Nikki Haley did. They commissioned us to
8 oversee it.

9 REVEREND PRICE: Let the record reflect
10 there will be video footage that I would choose to
11 enter into the record that will incriminate members
12 of this panel and those who are involved in this
13 election and I'm being denied access to be able to
14 do that at this point.

15 MR. HALL: Are you wanting to enter
16 that right now into evidence?

17 REVEREND PRICE: I'm saying that the
18 timeframe that you all have scheduled this for is
19 very inconvenient. We're used to it being in
20 Atlantic Beach, our protest being on Saturdays. And
21 at the challenge ballot hearing it was unclear as to
22 when this protest would be heard. And also the
23 information was given that if we get a protest, we
24 got to vote on if there will be a protest.

25 This is not the normal way that we have

1 seen the elections handled and the protest hearing.
2 When I turned in my protest I asked the question,
3 when, where, and at what time would this protest be
4 held?

5 I was told on that point verbally, not
6 through written notice, verbally, tomorrow at 3 PM,
7 which is a very inconvenient time.

8 What I'm saying is, because it was spur
9 of the moment, the information, disinformation,
10 video coverage that I need to enter into the record,
11 I can't get it today because of the rush to have
12 this protest hearing on this particular day.

13 So what I'm saying is what I would be
14 entering what will possibly be incriminating
15 evidence of members of this body as governing this
16 election and this panel. And I'm being denied the
17 opportunity to be able to enter that at a later
18 time.

19 MR. HALL: That's right.

20 REVEREND PRICE: I want the record to
21 know.

22 MR. HALL: Correct. The evidence needs
23 to be entered today. That's fine. I don't mind the
24 record showing that.

25 REVEREND PRICE: For the record, let me

1 state that I am protesting your ability to preside
2 over this election and this election hearing.

3 The records of emails between Sandy
4 Martin, Marcy Andino, Sanford Graves, Chris
5 Whitmire, Swati Patel, and others indicate that you
6 are not a neutral party in this matter, but that you
7 took the deliberate action to position yourself in
8 control of the Atlantic Beach election.

9 Tampering with it, took actions to
10 control the outcome of the election. And that you
11 provided false information in your application to
12 the United States Department of Justice. And that
13 you used your minority contact to DOJ, Will Booker,
14 who the Supreme Court cited in it's opinion on July
15 7, 2011 as committing election fraud along with his
16 wife, former MEC commissioner Linda Booker, and
17 Alice Graham.

18 As early as November the 4th, 2011
19 Mr. Booker is sending Sandy Martin a copy of the
20 election protest from the November 1, 2011 Atlantic
21 Beach Town Council election filed by Janice Fleet
22 (pho) Missy Humphries, and myself.

23 This is my third protested election in
24 the Town of Atlantic Beach. All three have been
25 motivated by fraud and conspiracy and tampering with

1 vital evidence where I was ordered a lawsuit in the
2 federal courts by Judge Wooten, that the
3 individuals, mainly Linda Booker and some of the
4 members of the town council government, for
5 violating my rights to be a candidate and to have a
6 fair election.

7 It's hard to understand. What does it
8 take to have a fair election in this municipality?
9 As a candidate no one should have went through what
10 I went through not once, not twice, but three times.

11 The Horry County and the state, I
12 expected better. Nikki Haley, I don't know why she
13 did what she did, but it was out of order. I
14 expected better behavior. But yet, here I am again
15 in another protest for even worse situations that
16 surrounded the election that I ran for council in in
17 the Town of Atlantic Beach in 2009.

18 The emails clearly show that there's a
19 conspiracy to pick and choose who will be the
20 leaders of Atlantic Beach and not the people making
21 that choice themselves.

22 For that reason, we are here today.
23 It's reported that William Booker was also the
24 person brought by Laura Best, the woman arrested for
25 impersonating a public official in a scam in the

1 polling place on November 1, 2011.

2 Ms. Best has noted to everyone that she
3 was on the telephone with Sandy Martin. She turned
4 out to be a fraud.

5 Someone in the polling place saying,
6 I'm with the attorney general's office. She walks
7 in on the arm of Will Booker. The same Will Booker
8 who the South Carolina Supreme Court blasted in this
9 order that later seated myself and Councilwoman Cole
10 on the Town of Atlantic Beach after 18 months of
11 being delayed for shenanigans, as Chief Justice Toal
12 put it.

13 Ms. Martin, it appears that you and
14 Will Booker have a vested interest in the outcome of
15 the Atlantic Beach Town Council election.
16 Mr. Booker's personal employment issue as town
17 manager and his development agenda is pretty
18 superficial.

19 You have to dig a little deeper for
20 yourself. Why you're so invested in the outcome of
21 Atlantic Beach election, I don't know.

22 We're going to hear testimony today
23 that I will present to show that you played a
24 significant role in the election controversy in
25 Atlantic Beach in 2007 and also now.

1 The emails that I've read showing that
2 you are in conversations with people in Atlantic
3 Beach, namely Jake Evans, William Booker, and Joe
4 Montgomery, and you knew information that you all
5 provided together to the Governor's office and DOJ
6 that was false information, which led us to an
7 illegal election, which led us to a protest today
8 that still doesn't have preclearance from the
9 Department of Justice as of today.

10 Mr. Booker's pattern of election fraud
11 was established in the 2009 election. Ms. Martin
12 and the South Carolina Election Commission have
13 established their pattern, too.

14 The pattern of election fraud was
15 established with Amanda Bailey in the 2007 election.
16 Both of you defiled the Supreme Court order and this
17 election when Chris Whitmire stepped out saying that
18 none of the MEC commissioners had been trained,
19 which was a lie.

20 I'm also protesting your authority to
21 preside over this protest hearing. I'm asking in
22 the interest of justice that you do not use your
23 position today to prevent me from establishing a
24 thorough record, to conceal information, or obstruct
25 justice.

1 If I'm allowed to continue, I would
2 like to call my first witness.

3 MR. HALL: Yes, ma'am. I just want to
4 make a couple points. We do have preclearance for
5 the actual elections. What we don't have
6 preclearance -- is that right?

7 What we don't have preclearance for, my
8 understanding, we don't have preclearance for moving
9 the polling place. I believe we have spoken with
10 DOJ. They have until the 1st of July to get it to
11 us. They told us that. We're not going to give it
12 to you until the 1st of July.

13 They had 60 days. I guess they're
14 following their timeline. We do not have that.
15 That is absolutely correct. We did not find out
16 that the polling place was going to move until, I
17 think, the beginning of April or the beginning of
18 May.

19 As soon as we found out we got that
20 letter to them. Did not get any return from them.
21 Made a phone call. They have better things to do
22 than talk to Horry County, it sounds like. They
23 will have it by the 1st of July.

24 REVEREND PRICE: I'd like to enter into
25 the record the request -- the letter from The

1 Department of Justice that Swati Patel received and
2 forwarded to us regarding the preclearance issue
3 governing this election that you just held.

4 And if my attorney was here he would
5 read this from a legal standpoint. Give it us in
6 layman's term. This letter clarifies that this
7 election should not have happened if the Town of
8 Atlantic Beach had not -- was not in compliance.

9 For the record, I'd like to read the
10 letter.

11 Dear Ms. Patel, this reference to the
12 schedule --

13 MR. HALL: Are you putting that into
14 evidence?

15 REVEREND PRICE: I'm entering it into
16 evidence.

17 Ms. Patel, this reference to the
18 schedule for conducting the May 22, 2012 special
19 general election including conduct of the election
20 by the Horry County Election Commission and the
21 State Election Commission for the Town of Atlantic
22 Beach in Horry County, South Carolina, submitted to
23 the Attorney General pursuant to Section 5 of the
24 Voting Rights Act of 1965, 42 USC 1973C.

25 We received your submission on

1 March 19, 2012. The Attorney General does not
2 interpose any objection to specific changes.
3 However, we note that Section 5 expressly provides
4 that the failure of the Attorney General to object
5 does not bar us to put litigation to enjoin the
6 enforcement of the change.

7 Procedures for the administration of
8 Section 5 are the Voting Rights Act of 1965, 28 CFR,
9 51 41.

10 This office refers to our January 12,
11 ~~2009 letter copy enclosed, which requested~~
12 submission under the Section 5 of election change
13 following the South Carolina Supreme Court's order
14 directing the town to rerun the November 6, 2007
15 mayoral election.

16 These changes include, but not limited
17 to, the selection of the election date for this
18 election, and a joint election agreement between the
19 Town of Atlantic Beach and Horry County, South
20 Carolina with respect to rerunning the mayoral
21 election.

22 We have not received a response to our
23 correspondence. Unless the town receives a
24 declaratory judgment from the United States District
25 Court for the District of Columbia or the Attorney

1 General interpose no objection to the specific
2 changes, they are not legally enforceable.

3 Clark versus Romeir, 500 US 646
4 (1991-12) CFR 5110. To enable us to meet our
5 responsibilities to enforce the Voting Rights Act,
6 please inform us of action the town plans to take
7 concerning this matter.

8 If you have any questions, please call
9 Abigail Olson 202-305-0787, of our staff. Refer to
10 file 2009-0037 in any response to this letter so
11 ~~that your correspondence will be channeled properly.~~

12 Sincerely, T. Christine Harriett, (pho)
13 Chief Voting Section.

14 Put this into the record. That letter
15 clearly states that the Town of Atlantic Beach needs
16 to be in agreement with this election being held in
17 order for it to have the preclearance status.

18 As councilperson with the Town of
19 Atlantic Beach, I know that the Town of Atlantic
20 Beach was not in agreement.

21 We understood that Nikki Haley's order
22 for the election filed within a very high populated
23 time in a very popular festival, was not a good time
24 to have an election.

25 The Town of Atlantic Beach took that

1 stand and stood on that stand.

2 For the record, I would like to enter
3 the Town of Atlantic Beach documentation presented
4 to the Department of Justice in relation to its
5 concern about the election being held on May 22nd.
6 If I can have those documents.

7 These are all the documents provided to
8 the Department of Justice on behalf of the Town of
9 Atlantic Beach in regards to their standing with the
10 agreement to have the election on May 22nd. Let the
11 record reflect them.

12 MR. HALL: For housekeeping, that part
13 of the protest -- you're protesting the actual
14 election itself?

15 REVEREND PRICE: And the entire
16 procedure. The entire procedure surrounding this
17 election.

18 Also, at this time, if I may, can I
19 call my first witness -- dealing with today as it
20 relates to this election that I view as illegal. I
21 will be dealing with three points: Vote count,
22 violation of state laws, voter intimidation, secrecy
23 of ballot, and fraud. And also the final violation
24 of federal election laws.

25 My first witness I would like to call

1 is Ms. Patricia Bellamy.

2 PATRICIA BELLAMY,
3 being first duly sworn, testified as follows:

4 EXAMINATION

5 BY REVEREND PRICE:

6 Q. Ms. Bellamy, were you present on
7 election day?

8 A. Yes, I was. I got to the polls just
9 before 7. The polls were not officially open yet.
10 Yes, I was. I stayed all day.

11 Q. Do you have anything that you can share
12 with this body as it relates to the vote count in
13 the Town of Atlantic Beach on election day? How
14 many voted?

15 A. Well, from what we gathered, it was 89
16 people that voted total, the count of all of the
17 people voted.

18 Q. Was that total count, was that unusual
19 compared to previous elections?

20 A. Sure. Yeah. Supposedly there's 420
21 voters in the Town of Atlantic Beach. Really only
22 352 or 357 voters. That's not even half. You
23 didn't have half the people turn out.

24 Q. Ms. Bellamy, in relation to violation
25 of state election laws, did you see anything on

1 election day, anything about this election that
2 related to voter intimidation?

3 A. Let me say this: I watched when the
4 state election people came in as well as Horry
5 County election people, when the candidates Jake
6 Evans, Charlene Taylor, and Josephine Isom
7 approached. Everybody shook each other's hands,
8 patted each other on the back. It was very clear
9 everybody was friends.

10 I too -- by being the concerned citizen
11 president, we forwarded the town the emails. To
12 just correct Pastor Windy Price, it started
13 March 17, 2011 when Ms. Linda Cheatham was directed
14 by her boss, William Booker, to notify about
15 dismantling the MEC. Just before you went to the
16 Supreme Court after 2011, got the judgment July 7,
17 2011. We have them as well.

18 When we were there at the voting polls
19 a young lady clearly just cussed and went all out.
20 Ms. Martin called the sheriff on his personal cell
21 phone and he instructed her to call 911. The Town
22 of Atlantic Beach has a police department. Nobody
23 removed this woman from the poll. She stayed
24 outside four or five minutes cussing, doing just
25 what she wanted to do. People were laughing. It

1 was funny.

2 We took the innuendos about the Town of
3 Atlantic Beach and its people that we're going to
4 conduct this election differently. We're not going
5 to 10:00. We'll give you the right hour to come in.

6 It was very disdained, being rude, and
7 petty -- you know, sit down and watch it. When I
8 know there is a candidate, Charlene Taylor, was in
9 the office periodically, only 10 feet from the
10 voting place.

11 You put us at a church where we were
12 all asked to leave and we have it on videotape. Get
13 out. Ms. Cole sat there and Rose Stanley told her,
14 you're in the right place now. You're in the right
15 territory. Excuse me.

16 You have to understand, we choose the
17 church that Charlene Taylor goes to church at.

18 You have two churches in the Town of
19 Atlantic Beach. You didn't try to get another
20 church because you picked the place you wanted to
21 pick.

22 This is what was wrong with that: In
23 sitting in there knowing I had already been asked to
24 get out was a very hard thing for me to do. I went
25 anyway. As concerned citizens we used the State

1 Election Commission since -- in January -- who
2 refused to answer the freedom of information that we
3 wanted to know about the voting machines that were
4 gathered in 2010. Duncan Buell sent you an email
5 which we have privy to which is part of these
6 emails, that said one of the machines that you did
7 have in 2010 was discarded in 2006. How did it end
8 up in Atlantic Beach?

9 These things are very important to us.
10 When we filed this we asked for it. We filed this
11 on January 20th. -- Never received anything. But I
12 watched Mr. Whitmire walk in. I watched him stand
13 outside and greet all the people that they were part
14 of.

15 Very obvious to all of us. Those
16 emails are very clear. This has been going on for
17 quite some time. What's the statement in the
18 emails? We can pretty much do what we want to do.
19 Standing here in Horry County having this protest
20 hearing and not in the Town of Atlantic Beach. I'm
21 just going to go back, on 5-15-130 as to the parties
22 concerned, 5-15-130, you have to make sure all the
23 parties are served as to the parties concerned.

24 That means when she didn't get hers
25 until 8:00 today, I would have said -- I could have

1 asked for a continuance because if it's within 48
2 hours the challenge ballot hearing had to happen
3 within 48 hours. You didn't do that one on
4 Wednesday. You waited 48 hours and you did it on
5 Thursday.

6 If it's within 48 hours to hold the
7 protest hearing, 48 hours. If you're going to have
8 this one within 48, you had to be here 48 hours
9 later. If it was within 48 hours you could have had
10 this tomorrow.

11 Then again, like you say, we're running
12 it. We can do what we want to do. Your emails are
13 very telling. Derogatory towards Atlantic Beach.
14 Very rude because it means we have no respect for
15 you.

16 I'm telling you how I felt sitting in
17 the voting place. It was as if a group of white
18 people walked in and said, we are going to put you
19 niggers in check. You understand me? When I
20 watched you walk out with master and the other ones
21 in the house, you got the house niggers and the
22 other ones. That's how I felt about it. Watched
23 them shake your hand and everything, friends.

24 When Pastor Price walked in the voting
25 place, none of them shook her hand, none of them

1 greeted her. What made one candidate better than
2 another candidate?

3 Carolyn Cole was there, nobody shook
4 her hand. None of you, just each other.

5 Okay. I'm glad we're going to
6 introduce this into evidence.

7 Just for the record, under the Freedom
8 of Information Act I asked Ms. Martin -- I gave it
9 to you yesterday. I asked for proof that you got
10 preclearance to change the place where you hold the
11 protest and the absentee ballot hearing. In any
12 election, in any community it is held within that
13 community, anywhere.

14 You don't have Myrtle Beach bringing it
15 to Horry County. I'm sure they are conducted in
16 Surfside, Myrtle Beach, anywhere else. It was total
17 disdain for the Town of Atlantic Beach. That was
18 very clearly seen.

19 If it's 200 yards from the polling
20 place, Ms. Isom lives right across from the church.
21 I promise you it's not 200 feet or 200 yards from
22 it. Candidates were there all day walking around.
23 Mr. Booker stayed there all day as well.

24 It's clear that this was your contact
25 person with the DOJ. When you took the MEC from

1 2009 and you gave it to Nikki Haley and you lined
2 this up as if this was the MEC that was not
3 following the orders, that was wrong. Because I
4 also have those emails as well. I have all the
5 information, and I've read it.

6 When we went to court with Horry County
7 about the voting machines, Mr. Graves stood up and
8 said Horry County don't want to do another election
9 in Atlantic Beach. We're going to ask for that
10 transcript, too.

11 It's just the way it was done. Then
12 when you get the voting machines and you're emailing
13 and you decided you're going to run the machine, you
14 ask yourselves, should we contact the Town of
15 Atlantic Beach? We don't have to tell them, do we?
16 Even though the voting machines were in question.

17 Because you all weren't important
18 enough. We're going to keep this among ourselves.
19 Somebody had to get that voting machine back.
20 Because Duncan Buell, who worked on many, many of
21 these machines, explained that this machine was
22 discarded in 2006 and showed up in the election in
23 the Town of Atlantic Beach.

24 MR. HALL: I want to make clear, are we
25 talking about the machines from the May 22nd

1 elections?

2 THE WITNESS: When each time the
3 curbside voter came, you picked that machine up and
4 you took it outside to let someone vote. According
5 to the state law and the statutes I've read, you
6 should have given them these provisional ballots.

7 The machines weren't working. If you
8 knew you were going to have an election on May 22nd,
9 you should have plugged them in and let the battery
10 be charged.

11 We went through unplugging and changing
12 the batteries, but each machine just happened to go
13 outside. And each time you brought it back, you put
14 it in a different place.

15 So we watched it. We videotaped that.
16 It was quite interesting to see. A curbside vote.
17 Unfortunately, you don't have your video. But Ms.
18 Charlotte Hudson from the MEC videotaped where the
19 person was actually sitting beside them, machine in
20 their hand, and a person sitting on the passenger
21 side.

22 I personally questioned when he came
23 back in. I said, I thought by law you had to give
24 them a provisional ballot? Why would you take a
25 voting machine out into the public? Anybody can

1 push any number they want to. You say they can't.

2 Okay. We want to talk about
3 irregularities on the voting day. There were quite
4 a few. When I heard you say yesterday it was one of
5 the best run elections from your perspective and
6 your point of view, because you did it, and that's
7 why.

8 MR. HALL: That's a point of view.

9 THE WITNESS: Right. I'm putting my
10 view on record. That's how it exactly went. I was
11 very disappointed.

12 Even yesterday everything was
13 considered hearsay, even the police reports and the
14 officer was here. That's another set of your
15 disrespect for the Town of Atlantic Beach. If it's
16 not the people -- certain people put it in. And
17 that's just the way it is.

18 MR. HALL: Anything else?

19 BY REVEREND PRICE:

20 Q. Thanks you, Ms. Bellamy.

21 Ms. Bellamy, is there anything you
22 would like to elaborate on for this panel as it
23 relates to federal election law that was not adhered
24 to as it relates to this election?

25 A. 5-15-130. If she didn't get her notice

1 until this morning, let's get real. Let's take it
2 another notch. You told it to the media. Do you
3 know everybody don't have TV? You know some people
4 don't have cable on their homes? Everybody does not
5 subscribe to TV or the Sun News.

6 Not only do we have to post notices,
7 we're under court order where we have to send it out
8 to a gentleman named Mr. Paul Curry. You have to
9 send it to him by mail. Even if everybody got the
10 agenda by posting it on the wall, we have to
11 especially send him one.

12 So when you said -- you didn't do it
13 written. You didn't. By the media? Everybody
14 don't have a TV.

15 When she told you that she didn't
16 receive it until this morning at 8:00, you did not
17 properly notice in 24 hours. That's the law. You
18 have to give 24-hour notice, written notice, to the
19 public.

20 REVEREND PRICE: I would like to enter
21 into the record Ms. Bellamy's letter to Ms. Martin
22 hand delivered, May 22, 2012.

23 She says in this letter, Dear Ms.
24 Martin, I am a citizen and a registered voter in the
25 Town of Atlantic Beach, South Carolina.

1 I would like to have a copy of the
2 preclearance letters from the United States
3 Department of Justice granting Governor Nikki
4 Haley's request to set the date for this election
5 held on May 22, 2012 changing the authority to
6 oversee the election from town's Municipal Election
7 Commission to the South Carolina Election
8 Commission, Marcy Andino, and the Horry County
9 Election Commission, Sandy Martin. And changing the
10 polling place to the First Baptist Church.

11 ~~Thank you, Patricia Bellamy. CC~~
12 Charlotte Hudson, commissioner.

13 Also, I'd like to enter into the record
14 the Concerned Citizens freedom of information
15 request to the State Election Commission office
16 regarding the voting machines. I would like to
17 enter that into the record.

18 Also enter into the record a May 24,
19 2012 letter, again to Ms. Martin from Ms. Patricia
20 Bellamy to the Election Commission of Horry County.

21 I'm a registered voter in the Town of
22 Atlantic Beach, South Carolina. I'm writing to
23 submit this on record that I disagree with the
24 absentee ballot being held at 9 AM on Tuesday,
25 May 22, 2012 in Horry County, in the Horry County

1 Registrar's Office, why no one would challenge it
2 being at two different locations simultaneously.

3 I'm referring to the absentee ballot
4 being held at Horry County Registrar's office and
5 the election being held in the Atlantic Beach
6 Baptist Church.

7 Normally, the absentee ballot is held
8 at the same location as the election to allow the
9 challenger any absentee voters.

10 The challenge ballot hearing is being
11 held at the Horry County Election Commission office,
12 which is 25 miles from the church, from the actual
13 voting place.

14 If preclearance was granted to hold the
15 election at the church location, then where is the
16 preclearance to change the location for the
17 challenge ballot hearing?

18 More specifically, where's evidence of
19 preclearance authorization? Why it may seem that
20 you are running this hearing, you cannot do as you
21 please. It is unfair to the residents of Atlantic
22 Beach, South Carolina whom this special election was
23 to represent in this town.

24 I want to raise the issues of who
25 determined where the absentee ballots, challenged

1 ballots, and a protest hearing is to be heard.

2 If you asked the US Department of
3 Justice for preclearance, all voting procedures
4 should have occurred at one location, which is the
5 Atlantic Beach First Baptist Church.

6 Sincerely, Patricia Bellamy, 407 30th
7 Avenue South.

8 There was another enclosed letter that
9 went with the letter from the Department of Justice
10 that Swati Patel received that he forwarded to the
11 county election commissioner. And it was the
12 enclosure. (sic) I'd like to enter that as well.
13 And it's Ms. Amanda Bailey.

14 That will be all, Ms. Bellamy.

15 THE WITNESS: I need to get back to
16 work.

17 MR. HALL: Ms. Pierce and Mr. Evans do
18 have an opportunity to cross-examine you as do the
19 other candidates.

20 Ms. Pierce, do you have any questions
21 for Ms. Bellamy?

22 MS. PIERCE: No questions.

23 MR. EVANS: No. The people of Atlantic
24 Beach have spoken. I don't have any questions.

25 THE WITNESS: Not all the people. Only

1 89.

2 EXAMINATION

3 BY MS. PIERCE:

4 Q. He triggered to me to ask a question.

5 Ms. Bellamy, since you said that you
6 stayed at the polling place all day, did you notice
7 whether or not Mr. Evans was in the area of voting?

8 A. He would only come in occasionally and
9 he would walk out. For the most part he stayed
10 outside.

11 ~~It was the greeting that you saw going~~
12 on. And after reading the emails it makes you
13 really understand how everybody was so friendly with
14 one another. The tall black gentleman who kept
15 talking to Ms. Charlotte Hudson and to Ms. Kenion, I
16 don't know who he was, if he was from the state, he
17 continually tried to engage me in conversation.

18 I'm not one that gets engaged in
19 conversation when I already see you for what you
20 are. I already knew that these emails went back and
21 forth. I'm not going to smile with you. It's not
22 my style.

23 I see the way you already view us and
24 joked about us sitting in the polling place as if
25 Atlantic Beach could not do anything correct.

1 To say that the MEC that was in place
2 had not done what they had done for 180 days on May
3 8th, they had done what they were supposed to do.

4 If you read the order correctly from
5 Nikki Haley, you would see she says, there's no
6 other process in place. There was. They were on
7 their way of doing the process.

8 I find it interesting that we didn't
9 even get a copy of the transcript if it was still in
10 the hands of the MEC.

11 ~~We'll have to see how Nikki Haley got~~
12 ~~that.~~

13 Q. One final question relative to one of
14 the voters, Ms. Mary Vanfleet.

15 A. I didn't challenge --

16 Q. What I'm saying is, I understand at the
17 challenge ballot hearing yesterday her vote was
18 completely not accepted by the committee that was
19 accepting them.

20 But I have a question in that you were
21 there the whole day, because my understanding was
22 that she had brought back the required documents
23 that she was asked to bring back in order to prove
24 whatever she needed to prove and that many heard
25 that committee or the people say that her vote --

1 everything would be confirmed, that she will be all
2 right.

3 A. Let me tell you.

4 Q. Is that true?

5 A. Ms. Vanfleet, with the election
6 commission, said her vote wasn't counted. She
7 showed them where -- this is the only documentation
8 she would need. She did go back and came back,
9 brought her stuff from the bank, from where she was
10 getting her medicine from, proof, I think she
11 brought something from the money that she received
12 from the government. They said, we will note this.
13 And they did note this.

14 Yesterday when they didn't count her
15 vote, I found that so interesting because Charles
16 Montgomery had the right ticket that said Atlantic
17 Beach, his driver's license said Columbia, South
18 Carolina. It was a vote that you all had
19 challenged. You all did not accept it. I
20 challenged Etta Dewitt, who had the exact same
21 circumstance as Charles Montgomery, which you
22 counted.

23 I didn't understand what made the
24 difference. Her driver's license read Conway, 4414
25 or 1447 Conway. And someone spoke from the audience

1 and said they own property in Atlantic Beach. They
2 live in Conway. Property owners. And then all the
3 sudden -- what made it interesting was her paperwork
4 was just as Mr. Montgomery's. His address said
5 Columbia, South Carolina. Hers said Conway, South
6 Carolina.

7 You threw his out because you all had
8 challenged it, but you kept hers because I had
9 challenged it. Go back and review your transcript
10 of when you threw Charles Montgomery's out.

11 MR. HALL: Is that part of the protest?

12 THE WITNESS: Ms. Pierce is asking me a
13 question.

14 MR. HALL: The cross-examination is
15 confined to the protest. She can ask the question.

16 REVEREND PRICE: She said that she had
17 been in the polling place all day, so I asked her a
18 question about her observations while she was in the
19 polling place, which is acceptable.

20 Anyway, the last question -- I do have
21 one more.

22 BY MS. PIERCE:

23 Q. Do you think being an observer and
24 knowing the things that you know from the scenario
25 that maybe Ms. Mary Vanfleet's vote might have been

1 treated that way because she's too friendly to Retha
2 Pierce?

3 A. I understand that you had asked her son
4 -- which was strange because her name is Mary
5 Vanfleet. She -- her son, James Vanfleet was
6 running. I thought they would make that connection.
7 Everybody knew it. She knew Ms. Woods, I've taken
8 her to the hospital before. I know they are friends
9 with Mayor Pierce. I've taken her to the hospital
10 several times when she asked me to or when they need
11 to get food... Nobody counted her vote.

12 Yesterday when you all conducted
13 yourselves, you asked the public if they had
14 anything to say. And when the public didn't, that
15 was closed.

16 But every time I stood up to say
17 anything or to put anything on the record, you
18 allowed the public to have something to say. This
19 body just made me believe the emails even more.

20 It was in favor of whatever anybody
21 else had to say. You didn't care what we had to
22 say. We were the other factions that Nikki Haley
23 did not care about because she used her judicial
24 powers to make sure this election happened for Jake
25 Evans, Charlene Taylor, and Josephine Isom.

1 The Horry County Election Commission
2 will be doing the same thing. The emails are very,
3 very telling. I read every one of them.

4 Is that it?

5 MS. PIERCE: No further questions.

6 MR. HALL: Sir?

7 MR. EVANS: I don't have any questions.

8 REVEREND PRICE: I would like to ask a
9 few more questions.

10 MR. HALL: Go ahead.

11 EXAMINATION

12 BY REVEREND PRICE:

13 Q. Can you give us your take of the
14 secrecy of ballots on election day?

15 A. When we say the secrecy of the ballot,
16 it was no secret of who was voting for whom. We
17 watched people bring them back from the curb to make
18 sure they vote. You watched around 4:00 when there
19 was a such a big lull, then you saw people going out
20 and starting to gather people. You could tell
21 people they were home in bed and people were
22 knocking on their door, come out and vote.

23 One thing that -- I got a call from a
24 friend of mine named Joe Willard who explained to
25 me -- called me, y'all go out and vote. Nikki Haley

1 said you better go out and vote. I said, Nikki Haley
2 can't tell me what to do, I'm grown. This is my
3 conversation with him.

4 Watching what was going on at the
5 polls, everybody knew who was voting for whom. It
6 was no secret. Just watching it, it was very well
7 known.

8 I also protested the same election on
9 November 1st. The same people that you see, I have
10 a record of it, I knew who it was. What got
11 interesting was you had 12 new people to register to
12 vote for this election for 2012. We had about 12 of
13 them.

14 Now, I also noticed that people didn't
15 vote on November 1st who were residents of Atlantic
16 Beach and who owned a home did not vote in it. Yet
17 they were on the voter registration list and already
18 learned from the Atlantic Beach Police Department,
19 from the MEC asking them for the continuation of the
20 investigation. We know these people never lived
21 there in the first place.

22 It is real strange, the secrecy of the
23 ballot. It wasn't so secret. We knew. Anybody
24 sitting there and watching this election for quite a
25 while, we knew.

1 Q. Thank you, Ms. Bellamy.

2 The other question I would like to ask
3 of you: You were at the challenge ballot hearing?

4 A. Yes, I was.

5 Q. Could you tell us about that procedure,
6 what you observed?

7 A. As I said earlier, the report was
8 hearsay. Even the Atlantic Beach Police Department
9 report was termed hearsay, although the officer was
10 here. Anything I was going to present was going to
11 be hearsay.

12 At the polls that day, Joe Montgomery
13 informed me, Sabrina Kenion and I were having a talk
14 between one another. She said, why are you
15 challenging? You do this every time. I get tired
16 of seeing the Town of Atlantic Beach in the news.

17 I said, until there's a fair and
18 impartial legislation in the Town of Atlantic Beach,
19 I will always sit here's. It's my right to do so.
20 You can dislike what I do. If I respect whoever
21 you're watching the polls for, I want you to respect
22 who I'm watching the polls for.

23 But Joe Montgomery, the key contact
24 person with you all from the state and Horry County,
25 informed me -- he was talking to her and he said it

1 was a private conversation. You were yelling.
2 Don't worry about it. Horry County is going to
3 count the vote. You ain't got to worry about that.
4 These folks are going to get counted. I said, oh, I
5 see. When I stood here, I understood where that was
6 coming from. He was just that sure.

7 REVEREND PRICE: I would like to enter
8 into the records the Town of Atlantic Beach incident
9 reports regarding non-residents and residents they
10 were not able to locate that presented at the
11 challenge ballot hearing that was reviewed as
12 hearsay.

13 MR. HALL: You're entering them into
14 evidence not because of what's written on them?

15 REVEREND PRICE: Because of the protest
16 and the information that it relates to.

17 MR. HALL: That's still hearsay. That
18 hasn't changed.

19 REVEREND PRICE: Thank you,
20 Ms. Bellamy. That's all I have.

21 THE WITNESS: If you will all excuse
22 me.

23 REVEREND PRICE: I ask that you all
24 will bear with me in seeing that I am doing this pro
25 se. Had I had enough time my attorney would have

1 been here with me. I'm sure he will be enjoining me
2 at later times as this procedure continues to carry
3 on.

4 My next witness I would like to call is
5 Councilwoman Carolyn Cole. I ask that she be
6 provided with a chair for my personal reasons.

7 CAROLYN COLE,
8 being first duly sworn, testified as follows:

9 MR. HALL: Both of you are allowed to
10 object. When you're up here making your protest,
11 ~~Mr. Evans will be allowed to object to anything.~~

12 I failed to state that when the other
13 witness was talking. You do have that right to
14 object.

15 MS. PIERCE: I knew I could object.

16 REVEREND PRICE: My protest was three
17 subject matters. Both count, violation of state
18 election laws, including voter intimidation, secrecy
19 of ballots, and fraud, and also violation of federal
20 election laws. It's within these venues that I'll
21 be questioning Ms. Cole. And she'll be presenting
22 more on those matters.

23 EXAMINATION

24 BY REVEREND PRICE:

25 Q. Ms. Cole, as it relates to vote

1 count -- before I ask you the question, I want to
2 read Paragraph 2 on Page 2 of my protest.

3 The numbers produced in this election
4 are and should be similar to the numbers in the
5 November 2011 election because once again,
6 supporters of Evans, Taylor, and Isom are free to
7 vote while supporters of other candidates are not.

8 Of the 426 registered voters only 89
9 voted in this election. That is with those
10 aforementioned candidates, newly registered voters.

11 The pattern repeats itself and the
12 voters are more fearful. That is becoming more
13 difficult, it's causing us to have even more
14 difficulty to have a fair election in the town.

15 No one knows yet what the voters will
16 decide until they are given a fair election in which
17 they can vote for the candidate of their choice.

18 The election results on May 22, 2012
19 are the results of election fraud and voter
20 intimidation. The results are more than doubtful.

21 And in a fair election where all who
22 wish to vote without fear and in secrecy, I believe,
23 like most voters, the outcome of the election will
24 be different and the results are the results that
25 are credible.

1 Ms. Cole, can you share with this panel
2 and this body anything that you noticed on the
3 election day or about this election procedure as it
4 relates to the vote count?

5 A. As it relates to vote count, let me say
6 first, I'm going to be a little slow in terms of
7 deliberating on my answer and so forth because I am
8 dealing with a kidney stone. So I'm on a little
9 pain medication. I'm going to do this a little
10 slower than normal. I'm not incoherent. I need to
11 ~~pause a minute to be really clear.~~

12 So you are asking me what I observed on
13 election day relative to vote count? My thoughts on
14 vote count?

15 Q. Yes, ma'am.

16 A. The most -- Ms. Bellamy covered a lot
17 of the things about how we -- how it looked on
18 election day. Election day was a throwback to a
19 time long passed.

20 And when you read the history of voting
21 in this country and you look at some of the things
22 that were done to identify who votes what from color
23 coated ballots, and all of these things of the past
24 that brought us to this extremely important voting
25 system in the first place, you look at us in

1 Atlantic Beach and you realize there's something
2 very wrong when we have arrived at a place in the
3 21st Century where white people did walk into the
4 polling place and assert that we are in charge, we
5 are here to do something that you can't do for
6 yourselves.

7 That was a real moment to me of how far
8 we haven't come. And that is also after having read
9 the emails that were received in the request.

10 When you saw that you knew that you
11 were not imagining what you were seeing. That it
12 did come with that kind of tone, that level. That
13 was sad.

14 I think people tried to be as pleasant
15 as they possibly could under the circumstances. I
16 think on both sides of the coin people have been put
17 in an awful predicament as we tried to work through
18 all of the aspects of democracy in Atlantic Beach.

19 So on voting day what was most apparent
20 is the number of people who absolutely refused to
21 come out to participate in the election.

22 And in talking to people I had -- when
23 I left for a little while some of the people that
24 talked to me and wanted to know why was I there -- I
25 was a write-in candidate in 2009. The people who

1 were being denied the right to vote at that time
2 going through the issues when Mr. Booker set in play
3 a method of keeping Councilwoman Price off the
4 ballot, that's our issues that the Supreme Court
5 addresses in this order.

6 When he set that in motion, that was
7 another affront to us trying to get democracy. And
8 when people say we've had those election
9 controversies in Atlantic Beach, this is true. No
10 doubt about it.

11 But Atlantic Beach is struggling to be
12 a democracy, as it should. Contrary to -- try to
13 ignore what the media has to say. What is most
14 important is what is actually being done in Atlantic
15 Beach, because those are the things that are not
16 sexy and not fun.

17 My grandfather and a lot of people I
18 hear say, it's like making sausage. It's ugly, but
19 when it gets done, it's pretty good.

20 Atlantic Beach election controversy is
21 trying to sort out how to have a fair election in
22 the town. And the most obvious thing on that day
23 was that people from -- whether they were supporters
24 of yours, whether they were supporters of Ms.
25 Pierce's, or whether they simply said, I'm not going

1 as long as there is confusion surrounding whether or
2 not this is legal.

3 Whether you heard discussions from
4 people about the Voting Rights Act, and how many
5 people struggled and suffered for that to be in
6 place. You heard different people saying why they
7 weren't going. The majority of the people that I
8 talked to, and the reason I didn't vote myself in
9 this election, I made a decision that the Voting
10 Rights Act is important to me as an African-American
11 woman, if you want to define me that way, because
12 I'm a mixed race woman, and a person -- just as a
13 women first, this is very important.

14 This is what gave us the rights that we
15 have. I'm not going to go out there and think
16 someone asked whether or not they could post the
17 letter from the DOJ saying that it was okay. No one
18 would do that. There's a lot of simple things that
19 could have clarified some of these issues in this
20 election.

21 People kind of acted as if their backs
22 were up. They were vested in a way that said, we
23 are going to do this and only this. We don't care
24 about doing anything that will make it simpler or
25 easier for the voters, the candidates.

1 So that was the most obvious thing.
2 The number of people that stayed home and the number
3 of people who phrased it this way. If the Governor
4 of the State of South Carolina -- if Governor Haley
5 wants to hold -- at the request of William Booker
6 and Joe Montgomery and Jake Evans by way of his
7 letter that we received under the Freedom of
8 Information Act, if Governor Nikki Haley wants to
9 hold a special election in a place --

10 MR. EVANS: Objection. What was the
11 question from her? Can I object? What was the
12 question she asked?

13 REVEREND PRICE: She was elaborating on
14 vote count.

15 MR. EVANS: Didn't count the vote.
16 This is getting a bit extreme.

17 MR. HALL: Could you finish it up?

18 THE WITNESS: If length is what he's
19 talking about, not the extremity of the act, then I
20 don't think that extreme is where we need to be.

21 MR. HALL: That's my responsibility.
22 When you object, talk to me. And then if you need
23 to respond, talk to me. I do apologize for that. I
24 appreciate that. If you could wrap it up.

25 THE WITNESS: The response is: The

1 majority of people, people stayed home. The comment
2 is that if Governor Nikki Haley wants my request of
3 Mr. Booker, Jake Evans by way of his letter to the
4 governor, and by way of Joe Montgomery, if she wants
5 to hold a special elections for Jake Evans so that
6 all can see and strip away the secrecy of the ballot
7 and everything else from us and our voting rights,
8 let her hold a special election for Mr. Evans.
9 That's the comment.

10 BY REVEREND PRICE:

11 Q. Do you feel that this, in your opinion,
12 was a special election for Jake Evans, Charlene
13 Taylor, and Josephine Isom?

14 A. I do. I think the way people phrased
15 it was a surprise. Yeah. Under careful
16 consideration, I felt that way.

17 Q. Thank you, Ms. Cole.

18 Ms. Cole, this whole election procedure
19 ordered by Governor Nikki Haley as it relates to the
20 violation of state law, including voter
21 intimidation, secrecy of ballot, fraud, do you have
22 anything to share with this panel of your
23 observations in relation to all of those items?

24 Let's start with voter intimidation
25 first.

1 A. I think the people's response by not
2 turning out to participate in this election said --
3 except for, basically, Mr. Evans' supporters, I
4 think it spoke to the level of intimidation.

5 Even when the governor goes on TV and
6 says, I'm weary of Atlantic Beach, well, those of us
7 who have chosen to be public servants, it can be
8 frustrating.

9 But you don't become weary of the
10 efforts to function in the democratic process. It's
11 slow, at times it's painful, but you still have to
12 participate.

13 It wasn't a good thing to hear from the
14 governor in knowing full well that you're saying
15 your weary of Atlantic Beach and its election
16 controversy. We look at the order that was put
17 together. The order contains two pieces of false
18 information.

19 Q. Can you elaborate on that false
20 information?

21 A. Well, the first piece is when she says
22 that the MEC did not set a date for the new
23 election. The MEC did call a meeting on
24 December 14th, told the public that the election
25 will be within 180 days and will be on May 8th.

1 So the governor, the people who are in
2 the emails talking to the governor's office, these
3 are the people who knew that there was an election
4 scheduled or planned for the Town of Atlantic Beach.

5 The other piece of fraudulent
6 information to me in that document is that when the
7 governor says -- cites Supreme Court's order of July
8 7, 2011, she speaks about the MEC, the governor's
9 office believing that the MEC is not capable of
10 doing its job, she's -- that order from the Supreme
11 Court is not talking about that MEC.

12 One of the things -- when we stood
13 before Justice Toal, she made it clear, you are not
14 going to get different results in Atlantic Beach as
15 long as you keep leaving the same people in place.

16 Justice Toal had already seen Alice
17 Graham in 2007, they had also seen the videotape of
18 Alice Graham in 2007, and knowing what she had
19 already done to subvert the election laws and
20 violate the election laws in the State of South
21 Carolina.

22 Again, in 2009 we deal with the same
23 thing with Mr. Booker. And then we come around to
24 this 2011 election and Mr. Booker has come up with
25 another scam, another scam of bringing in someone

1 and let's pretend that person is from the attorney
2 general's office. These people are either slow or
3 stupid enough that they would be duped by this.

4 MR. EVANS: Objection.

5 MR. HALL: I'll have to sustain that
6 objection as it pertains the slow enough or stupid
7 enough.

8 THE WITNESS: That's how I feel. Are
9 you saying that you'd like for me not to use certain
10 words?

11 MR. HALL: Right.

12 THE WITNESS: Certainly. But nigger
13 was okay?

14 MR. HALL: She said it pretty fast and
15 nobody --

16 THE WITNESS: That was how she felt.

17 MS. AUTRY: It's not okay.

18 THE WITNESS: She didn't -- not the
19 offense of the word, it was the actions that took
20 place that precipitated it.

21 MR. HALL: I prefer you talk to me.

22 MS. PIERCE: And we can't hear.

23 THE WITNESS: That second piece of
24 information that was fraudulent was because
25 Mr. Booker himself knew that it was referring to him

1 and his wife and Alice Graham as the MEC. And that
2 the Town Council of Atlantic Beach had already
3 removed Alice Graham, his wife resigned just before
4 the Supreme Court order -- after the Supreme Court's
5 order came down. And this was not the same. So
6 either Governor Haley was misled or everybody knew
7 that.

8 MR. HALL: Can I stop you. I want to
9 make it clear to the candidates and the public,
10 we're following the order. I don't know what
11 information Ms. Haley had and I'm certainly not part
12 of these emails to Ms. Haley.

13 THE WITNESS: Your name is mentioned a
14 couple times.

15 MR. HALL: My name may have been
16 mentioned. I personally have not written an email.
17 I can assure you.

18 THE WITNESS: Not directly to
19 Ms. Haley. You are mentioned.

20 MR. HALL: Because I am a chairman,
21 they are going to mention my name. That being said,
22 we're following the order in making decisions. It's
23 the law of the land as far as we're concerned.

24 THE WITNESS: It is relevant. We can't
25 cherry-pick the laws. The laws of the land -- this

1 is what a protest is about. Part of this is about.

2 As we all strive to follow the law,
3 that on each side -- that perhaps, if Ms. Haley had
4 taken a moment and said, you know what, when these
5 battles are being fought out in the court system,
6 each side is brought to the table and information is
7 presented, there's a lot more transparency.

8 When you do it behind closed doors --
9 as one of these emails states to Ms. Martin, asked
10 the question, when she initially gets the
11 governor's -- the draft of the governor's order, she
12 asked Marcy Andino -- let's get this on the record:
13 Is this something -- as a matter of fact, give me a
14 moment. We'll put this on the record. Is it
15 something we should tell somebody about or is it a
16 secret?

17 This is what we're talking about in
18 terms of how we got to holding a special -- such a
19 special, special election.

20 BY REVEREND PRICE:

21 Q. Can you locate that email?

22 REVEREND PRICE: We'd like to enter
23 that email into the records. We're going to enter
24 the entire book of emails into the record, but at
25 this time we're going to ask Ms. Cole to locate that

1 particular email. And would you read that to us?

2 MR. HALL: So you guys know what
3 authority and what jurisdiction I have, I don't have
4 the jurisdiction to say this election is not a fair
5 election.

6 I do not have that jurisdiction.
7 Governor Haley can't say -- I don't have that
8 authority. That would have to go through another
9 court system.

10 All we're commissioned to do is certify
11 ~~this vote you're here the protest and determine this~~
12 election.

13 The stuff that occurred on election day
14 was done properly. I'm making that clear to you
15 guys so you know where my boundaries are.

16 THE WITNESS: I think we understand it.
17 What is happening is that you're here and we're here
18 because of the executive order.

19 MR. HALL: That's fair.

20 THE WITNESS: Within those boundaries
21 we understand what you're doing. And we understand
22 that we're processing everything through that order
23 and how that order came to be, and how we're all
24 here today, and what kind of impact it had on our
25 voters.

1 Even for the Governor of the State
2 South Carolina to go on TV and say basically, you
3 better come out and vote. We've done this. I made
4 this decision.

5 Two pieces of fraudulent information
6 that you didn't check into to make sure what you
7 were doing. It took people's word that they either
8 mislead or intentionally bought into it.

9 And that's the one-sidedness of what is
10 being discussed here about having an election where
11 most of the people don't come out to participate. I
12 think I'm clear.

13 MR. HALL: You're definitely clear. I
14 appreciate that.

15 THE WITNESS: This would be Item
16 Number -- these item numbers are all submitted to
17 the Department of Justice. But this is an email
18 from Sandy Martin, Wednesday, March 14, 2012 at 2:17
19 PM to Marcy Andino. The subject is Atlantic Beach.

20 Marcy, can we use this information that
21 the governor is getting ready to call the new
22 election to get our machines back or is it a secret
23 until it's done?

24 MS. MABRY: You want to enter that?

25 THE WITNESS: Yes, ma'am. Would you go

1 to your March 14th -- we put all of them emails that
2 as a Town of Atlantic Beach that we got from Horry
3 County. We're going to enter the entire book.

4 REVEREND PRICE: The book will contain
5 that particular one.

6 MR. EVANS: Okays. Is she a witness
7 or --

8 REVEREND PRICE: She is a witness.
9 Sorry.

10 MR. HALL: On that note, we're going to
11 ~~take a five-minute break.~~ I know we're been here a
12 little while. We'll take a five-minute break.
13 We'll get the opportunity to look that stuff up and
14 if anybody needs to use the restroom.

15 (A recess transpired.)

16 MR. HALL: Back on the record. A
17 couple more housekeeping. I appreciate the
18 conversation we've been having concerning the order.

19 I just want to reiterate, I'm following
20 the order. That's all I can do. You can protest
21 and make those -- whatever motion, whatever appeals
22 you need to make to the court. They can determine
23 that. I cannot.

24 I'm asking that we stop any evidence
25 with respect to that. I think we've had enough to

1 preserve the record and you can certainly put all
2 these emails on the record for preservation
3 purposes, so it's on the record.

4 We do want it on the record for your
5 sake, but we're not going to consider it because
6 it's not within my jurisdiction or our jurisdiction
7 to consider it. Does that make sense?

8 I'll be glad to put it in for
9 preservation purposes. You have a right to do that.
10 But anything with respect to the order, I can't make
11 a decision on and I'm going not to make a decision
12 on.

13 REVEREND PRICE: I'm not asking you to
14 make a decision on the order, but it's through the
15 fraudulent information that's in the order that we
16 are in this place today and that this election is --
17 in all the factions that we're bringing to your
18 attention through this protest regarding this
19 election. So I cannot sit here and give Nikki Haley
20 a pass when she started the whole process.

21 MR. HALL: I'm not asking you to give
22 anybody a pass. I'm asking you to do what you need
23 to do with Governor Haley in the proper form.

24 THE WITNESS: We're not asking to you
25 do that.

1 MR. HALL: I'm letting you know, I
2 think we've heard -- as a commission, we've heard
3 enough about the orders. You had mentioned state
4 election law, the voter count.

5 REVEREND PRICE: Federal law.

6 MR. HALL: That would also be done in a
7 court of law. I can't make a determination.

8 THE WITNESS: There seems to be a
9 disconnect in terms of what we understand. I was
10 asked to come here to testify today relative to
11 issues surrounding this election. It is not your
12 decision that -- I don't think they are trying --
13 what we're saying is we're trying to give you the
14 facts as to what we know. It all happens to
15 surround this election.

16 And as Councilwoman Price said, this
17 is -- we're all here today because of decisions that
18 were made. We need preclearance for certain things
19 because certain decisions were made.

20 Preclearance for you to handle this in
21 the first place is because of the order. And if the
22 information in the order was fraudulent that brought
23 us here -- no one's asking you to overturn the
24 governor's order. That would be totally out of your
25 purview.

1 But for us not to be able to testify as
2 to what impact it had on all of us being in this
3 predicament, it's all relevant.

4 MR. HALL: Right. What I'm saying is, I
5 think we've heard enough to understand your position
6 on it.

7 THE WITNESS: I think we've made the
8 point.

9 MR. HALL: You definitely have. We're
10 asking you to move on from that and talk about --
11 you have talked about the secrecy of the ballot.

12 THE WITNESS: She asked the question --

13 MR. HALL: One more housekeeping, you
14 can ask her questions and then she can give short
15 answers and you continue to ask questions. It's
16 kind of a back and forth rather than this open, long
17 conversation. Does that make sense?

18 REVEREND PRICE: We will do our very
19 best.

20 MR. HALL: Thank you.

21 BY REVEREND PRICE:

22 Q. You have referred to this election
23 being, quote, a special election.

24 Do you have anything that you would
25 like to present that we can enter into evidence as

1 to why that is your feeling?

2 A. Are you talking about in terms -- in
3 general, it was being called a special election.

4 Are you referring to the comment that I
5 made calling it Jake Evans' special election, about
6 the public's perception and my perception?

7 Q. Yes, ma'am.

8 A. For those of us who chose not to
9 participate, everybody didn't have the same reasons.

10 There's a letter dated February 21,
11 2012 to Swati Patel from Jake Evans and he says,
12 enclosed is a copy of the Town of Atlantic Beach
13 Municipal Election Committee Protest held on
14 November 5, 2011.

15 I understand this is what is needed for
16 the governor to schedule a new election, appoint an
17 authority to execute and oversee the election, and
18 to declare the winners based on the will of the
19 election.

20 I trust this will be done in an
21 expeditious manner. Respectfully, Jake Evans.

22 In addition to this letter, which is a
23 part of the package that went to the Justice
24 Department -- in addition to this letter, when
25 Ms. Patel made the first phone call over to Atlantic

1 Beach, I was in the office and she said, I'm calling
2 Swati Patel, I am calling because we need to seat
3 these people.

4 So we were still at the point of --
5 there was discussion in the office that day, one of
6 the MEC members was there and she said, our job is
7 to hold a fair election, not to seat anybody.

8 MR. HALL: Thank you.

9 BY REVEREND PRICE:

10 Q. Ms. Cole, before we took a break there
11 were some emails.

12 REVEREND PRICE: Mr. Chairman, the
13 email that Ms. Cole will be referring to has already
14 been entered into the record with the package that
15 went to the Department of Justice on behalf of the
16 Town of Atlantic Beach.

17 I would like Ms. Cole at this point to
18 elaborate on some of the emails as it relates to the
19 voter intimidation, secrecy of ballots, and fraud
20 surrounding this election.

21 MR. HALL: We need to speak just to
22 that.

23 THE WITNESS: Stay with me on the voter
24 intimidation. My point is, the manner in which
25 everybody -- as I said, was being as nice as

1 possible under the circumstances.

2 It was clear that we all understand
3 there are factions in Atlantic Beach. And I think
4 the package that went to the Department of Justice
5 from the Municipal Election Commission is clear.

6 I think they outlined it better than
7 anybody else in terms of what those factions are,
8 even down to one church versus another church.

9 So it was clear on the election day
10 that it was an election where one faction was
11 present and others were not.

12 In terms of the intimidation, whether
13 there were thugs at the door -- as I've heard this
14 said over and over again, whether there were thugs
15 at the door as was done on November 1st, whether
16 there was a person inside the polling place
17 pretending to be an official from the attorney
18 general's office, whether there was -- and holding
19 up the phone and saying, I'm talking to Sandy
20 Martin, or whether there's people that you have to
21 walk down an aisle on election day, landlords, et
22 cetera, trying to see who's voting for whom or who
23 is turning out for the election.

24 Whether it's that level of
25 intimidation, or it's the more white collar crime

1 version of intimidation where the governor is there
2 on TV saying, you better go out and vote in this
3 election because I'm weary of Atlantic Beach. And
4 whether it's people saying, I'm not going to post
5 the letter on the door to let you know whether the
6 elections is legal or not that we got from the DOJ.
7 I'm not going to.

8 So the level of intimidation was just
9 as great for the May 22, 2011 election as it was for
10 the November 1st election. They had two different
11 styles of intimidation.

12 BY REVEREND PRICE:

13 Q. Did you notice in any of those emails
14 any impartiality towards the candidates or the town
15 of Atlantic Beach and degrading of the town through
16 those who were corresponding in the emails?

17 A. I think that when I look at the letters
18 that went from the Town of Atlantic Beach -- Bennie
19 Webb wrote a letter to Sandy Martin telling her
20 specifically that he wanted the Town of Atlantic
21 Beach, that the council had asked that no one who
22 was involved in elections from the last 10 years in
23 Atlantic Beach be involved again.

24 It was clear in those letters that
25 Atlantic Beach was trying to make sure that we got

1 other poll managers, poll workers in there to
2 participate. Race wasn't a factor. Whether or not
3 they were white or black wasn't a factor.
4 Definitely wanted different people at the table.

5 And so to me it was clear that Atlantic
6 Beach was looking for neutrality.

7 There was stuff there --

8 MR. MELFORD: May 22nd election?

9 THE WITNESS: About the November
10 election that we had already established that we
11 were looking for neutrality.

12 MR. HALL: Let's keep it to the
13 May 22nd.

14 THE WITNESS: It's very hard to do one
15 without the other because the decision to be where
16 we are is predicated on what happened then.

17 MR. HALL: I can't make a decision
18 about anything prior --

19 THE WITNESS: We're not asking you --

20 MR. HALL: For our purposes, that's
21 what the protest vote is about.

22 THE WITNESS: Still relevant.

23 MR. HALL: It's about this election.

24 THE WITNESS: when you read through
25 the emails there's -- the neutrality does not exist

1 there for Ms. Martin.

2 I think Ms. Martin should have recused
3 herself. She has an email in here where she states
4 one of her board members asked, is there a way that
5 we don't have to help them anymore? That email is
6 mocking Atlantic Beach, paying for it's election
7 expenses.

8 Atlantic Beach -- a check arrives from
9 Atlantic Beach, Ms. Martin notifies Mr. Graves and
10 she says, we just wanted you to know we received a
11 check from Atlantic Beach today for their expenses.
12 He writes back, run to the bank. And she writes,
13 yeah, and hope it don't bounce back.

14 The Town of Atlantic Beach has never
15 had, as I am aware of, any check to bounce to Horry
16 County.

17 MR. HALL: Fair enough. All those are
18 preserved for the record.

19 THE WITNESS: It shows that --

20 MR. HALL: What I'm asking you is,
21 let's move on beyond that. We're clear that there's
22 emails there. We're also clear that there's some
23 things that are not nice.

24 THE WITNESS: Not very nice at all.
25 And it shows that people really did not want to do

1 anything that was going to really neutralize the
2 environment in which we can have this election.

3 Instead, what you read is that from
4 county officials, state officials, and some of --
5 three or four people in Atlantic Beach that you see
6 having a real impact on this election and an adverse
7 impact on trying to position the neutrally so that
8 we can have the people walk away with no doubt in
9 their mind that they had fair election.

10 MR. HALL: Thank you.

11 BY REVEREND PRICE:

12 Q. Ms. Cole, the violation of federal,
13 state --

14 MR. HALL: Federal law, we can't make a
15 decision on based on that, too.

16 THE WITNESS: Federal law is about the
17 preclearance.

18 MR. HALL: When we're making a ruling,
19 if you guys go to the federal courts and they
20 determine that we or the state didn't do something
21 right, they will take care of that. I'm letting you
22 know.

23 THE WITNESS: Thank you. In terms of
24 state law, I think that first, violations of the
25 state law do occur with the order. And the

1 misapplication and misuse of the Section 11 --
2 whatever it is Governor Haley cites. That's the
3 first one as to why she's stepping in to do this in
4 the first place.

5 MR. HALL: Again, let me restate the
6 state law with respect to the vote on May 22nd.

7 THE WITNESS: May 22nd.

8 MR. HALL: I can't do anything about
9 this order or what Nikki Haley said in this order.

10 All I can do is -- I apologize. All we
11 can do is make a determination whether what occurred
12 on May 22nd --

13 THE WITNESS: I understand.

14 MR. HALL: Keep it at that. We still
15 have one more individual to work through.

16 THE WITNESS: That was the first one.

17 The information that went -- the citing
18 of the Supreme Court. And then where we are
19 required in the State of South Carolina to have
20 preclearance because of the Voting Rights Act, then
21 we didn't do that.

22 Everything that followed that was about
23 the change of the polling place, the authority, who
24 was going to run the election. All of that was
25 predicated on that piece of false information.

1 And someone should have cleared that up
2 early on so that we could have not violated the rest
3 of the laws.

4 As we got into federal law, the
5 preclearance issues and the violating of the federal
6 law just continued. I'm going to say what it is.

7 MR. HALL: We can't make any
8 determination on federal law, any determination.

9 THE WITNESS: When you took
10 responsibility for the election, you took
11 responsibility for the preclearance, you took
12 responsibility for everything that was going to
13 happen after that. We can't pick and choose.

14 MR. HALL: I'm saying that we're going
15 figure out what happened on May 22nd and that
16 preclearance -- if we've done something --

17 THE WITNESS: I'm going there for you.
18 When we got to the preclearance relative to the
19 polling place, we moved forward without any -- they
20 specifically tell you in the letter that there's a
21 role for the town to play in this.

22 We need to understand that you've come
23 together and that you have agreed on some things.
24 But that's totally disregarded.

25 In terms of moving -- the preclearance

1 is for everything. When we move the polling place
2 off of the -- from the town hall to the community
3 center in 2001, we had to have preclearance from the
4 Justice Department to do that.

5 Didn't matter that we could look out
6 there and say, this makes more sense to everybody.
7 It's larger, got more parking, got bathroom
8 facilities, whatever. We still had to go through
9 the paperwork of the preclearance.

10 Here you change the absentee balloting
11 process willy nilly without notification to the
12 people in a way that the people -- making it about
13 all of the people of Atlantic Beach and not just a
14 select people in Atlantic Beach.

15 The preclearance issue for the
16 challenge ballot hearing, you moved it over here to
17 Conway without any regard for the people of Atlantic
18 Beach.

19 Today's hearing, without any regard for
20 the people of Atlantic Beach.

21 These were all of the things that
22 should have gone into -- let's get preclearance.

23 What the MEC and what the town council,
24 as best I know, we were really clear with the MEC.
25 No matter how long it takes -- Justice Toal was very

1 clear with us. We will accept a time lag even when
2 the opposing side did it for all the wrong reasons,
3 that she cites in her order.

4 She said, we will accept that because
5 we know that we imposed a deadline about these
6 elections that is difficult. Those were her words
7 to the manager.

8 However, it is the intent, what did you
9 intend to do here? The MEC as -- when every time --

10 MR. HALL: Are we talking May 22nd?

11 THE WITNESS: Leading up to. When we
12 get something, we're going to take the time to do
13 what is necessary so that this time when we reset --
14 we're not going to have an election in a way that
15 Mr. Booker, Laura Best, or Joe Montgomery, or
16 anybody else can walk in there and take over.

17 They had already made arrangements with
18 the League of Women Voters to come in and monitor
19 the election.

20 MR. HALL: May 22nd?

21 THE WITNESS: Not for the May 22nd. May
22 8th was their date.

23 MR. HALL: I have no authority over the
24 May 8th.

25 THE WITNESS: Going back to the false

1 reason why we're sitting in here today.

2 MR. EVANS: Objection.

3 MR. HALL: I'm going to have to ask you
4 to move on from that.

5 THE WITNESS: Those are the federal
6 laws that I believe were violated that we just
7 simply decided that preclearance and the Voting
8 Rights Act was of little consequence.

9 And that even by way of their own
10 words, in these emails they say, the governor has
11 ~~given us a letter between Marcy Andino and Sandy~~
12 Martin where they say when she asked the question
13 about changing the polling -- changing the hearing
14 for the challenge ballots over to Conway, she asked
15 her -- Sandy asked Marcy, can we do this? And,
16 basically, Marcy writes back, we can do anything we
17 want to. The governor gave us the right to do that.
18 So it is that attitude that was brought into this
19 Atlantic Beach election.

20 When the people who walked there -- in
21 terms of your secrecy of the ballot issue, in 2011
22 on the night of the election, Mr. Evans provided a
23 letter to the community with a list of names on it
24 of the people he said voted for him.

25 MR. EVANS: Objection. Hearsay.

1 THE WITNESS: No. It's a part of the
2 record, Mr. Evans.

3 MR. EVANS: I didn't provide anything.
4 You want to enter that?

5 THE WITNESS: Yes, you did. I'm sorry
6 I'm talking about the letter from the record from
7 the protest hearing.

8 Do we need to enter the transcript?
9 It's part of the protest hearing, from our protest
10 hearing.

11 MR. HALL: May 22nd election?

12 THE WITNESS: November 11th. I'm going
13 to tie it together. In November 2011 he produced a
14 list. On May 22nd --

15 MR. EVANS: Objection. She don't know
16 who the list came from. It did not come from me. I
17 didn't produce anything. Hearsay.

18 THE WITNESS: Everybody who walked into
19 the church, your name -- you were then identified.
20 All of your secrecy of the ballot was gone. Because
21 only one faction voted in the Town of Atlantic
22 Beach.

23 MR. EVANS: Hearsay. Objection. It's
24 all hearsay.

25 REVEREND PRICE: I'd like to enter into

1 the evidence a letter from Bennie Webb to Swati
2 Patel in regards to the overturn of the
3 November 2011 election which led us to the election
4 that we are having now.

5 MR. HALL: You can preserve the record.
6 I'm going to exclude that as hearsay and also as
7 irrelevant.

8 REVEREND PRICE: Let the record reflect
9 that a letter from the Town of Atlantic Beach
10 including reasons why that first election was
11 overturned which has to do with the factions that we
12 are talking about today --

13 MR. HALL: I have no control over the
14 first or May election. We're talking about the May
15 22nd election.

16 THE WITNESS: I think we can say
17 honestly, the election of May 22, 2012 is an
18 election that was called for by Mr. Evans.

19 MR. EVANS: Objection.

20 THE WITNESS: That information was
21 presented by the same people that the Supreme Court
22 cited as being involved in election fraud, and we
23 are right back at this.

24 MR. HALL: I'm going to object. Asked
25 and answered. Thank you.

1 REVEREND PRICE: As it relates to the
2 challenge ballot hearing, I enter into the record
3 the Notice of Hearing on Provisional Ballots for
4 this election, May 22nd. Your provisional ballot
5 for people to come to Conway.

6 Also, I'd like to put in the record the
7 Supreme Court orders which states the law.

8 MR. HALL: You can enter.

9 REVEREND PRICE: In this order we still
10 have the same shenanigans and deplorable behaviors
11 by the same people that the South Carolina Supreme
12 Court referenced in that particular order. We're
13 back here again because of these same people.

14 I'd like to enter into the record my
15 freedom of information request for the package that
16 I submitted on behalf of the Town of Atlantic Beach
17 that we sent to the Department of Justice on the
18 Freedom of Information Act.

19 MR. HALL: That's irrelevant to today.

20 THE WITNESS: No, it isn't. It's your
21 application for preclearance.

22 MR. HALL: I'm objecting to that and
23 sustaining my own objection.

24 REVEREND PRICE: This is my freedom of
25 information request to the town for the documents

1 that I already submitted.

2 MR. HALL: You can preserve for the
3 record. That is not evidence.

4 REVEREND PRICE: Also, as it relates to
5 preclearance --

6 MR. HALL: I'm not doing anything to do
7 with preclearance.

8 REVEREND PRICE: Preclearance is a very
9 important issue of this election.

10 MR. HALL: For this purpose, that would
11 be -- the proper venue would be a court, Federal
12 Court. That's all I'm saying. I don't have the
13 jurisdiction to make decisions on that.

14 If you think we've done something
15 outside of the law with respect to preclearance,
16 that needs to be taken up with the Federal Court or
17 state courts. Not at this hearing.

18 REVEREND PRICE: I respectfully
19 disagree with you because everything about this
20 election should have been cleared through the
21 Department of Justice, so if you did not do that
22 then for this reason the fraud process of this --

23 MR. HALL: They will give us an order
24 and let us know.

25 MR. EVANS: Is she through with this

1 witness?

2 REVEREND PRICE: For the record, I
3 would like to be noted that I am being refused to
4 enter evidence of the department application from
5 Sandy Martin for preclearance which will incriminate
6 members who are here on this panel and those who are
7 involved in this election process. I am being
8 denied the opportunity to present this.

9 MR. HALL: You can preserve it for the
10 record. It's not going to be in evidence.

11 REVEREND PRICE: ~~I want to preserve it~~
12 for the record.

13 MR. HALL: Absolutely. You have that
14 right.

15 BY REVEREND PRICE:

16 Q. Ms. Cole, is there anything else?

17 A. My final thought is that conversation
18 about disbanding the MEC started with Ms. Linda
19 Cheatham in March 2011.

20 MR. HALL: I'm going to object to that.
21 No further discussion on that. No further
22 discussion on that.

23 THE WITNESS: I'm not saying about --

24 MR. HALL: Any further thoughts, you
25 want to talk to the MEC. Objection and sustaining.

1 THE WITNESS: Tell me when I can talk.
2 Tell me when.

3 MR. HALL: If you're talking about the
4 22nd of May. If you go before that, I don't want to
5 hear it anymore. We've heard plenty and she's got
6 to ask you a direct question, if there's any
7 thoughts.

8 BY REVEREND PRICE:

9 Q. Ms. Cole, were there any other concerns
10 that you had in regards to the May 22nd election
11 that led you to believe that it was fraudulent, it
12 was illegal, or that it violated the rights of the
13 voters through secrecy of ballots?

14 A. The intimidation piece -- I'll step out
15 and say, once they put the election in the church,
16 one person stated it was a lot like putting in an
17 election in the -- we don't have -- the elections
18 are not supposed to be partisan elections.

19 We know that our situation is factual.
20 And so to put it in one church versus another in the
21 Town of Atlantic Beach was like putting it in
22 headquarters of one of the other parties.

23 And in addition to that, there were two
24 things that happened that day that also stood out
25 for me.

1 An intimidation piece, that is Rose
2 Stanley. Rose Stanley is one of the members of the
3 church who was very aggressive on the day that they
4 were holding a Housing Authority meeting there and
5 we went in and she asked, before you could set your
6 foot in the door, most unusual greeting in church,
7 someone says, get out. And get off --

8 MR. EVANS: Objection. This was in a
9 meeting that had nothing to do with May.

10 THE WITNESS: You can't talk for me.
11 All right. I'm going to make this -- Rose Stanley
12 on May 22nd was the same person who was present all
13 day long in that place. Not only was she present,
14 but we have established by US Supreme Court, people
15 can photograph or take a video, picture, anything
16 they want to pretty much.

17 I took a picture of her. And when she
18 would come out and stand in these areas or let
19 people see her. This intimidation stuff is going
20 around. Those of you who don't know, certain people
21 walk into the room, show yourself. If certain
22 people -- otherwise, you stay back.

23 When finally I'm taking the picture of
24 her and she comes out and she mouths right into the
25 polling place beside my -- kiss my -- then she bends

1 over -- there's a picture -- and pulls at her pants.

2 This is going on while all of you are
3 acting as if we're having such a great election.

4 The other part of it is Paul Curry.

5 Paul Curry, who is under a restraining order to --
6 under a judge's order not to be anywhere in the town
7 for meetings -- in the town unless there is a
8 meeting and certain places in the town. He's not to
9 be near the Prices.

10 Reverend Price is a candidate, which
11 will effectively keep her away from the polls also
12 by him making himself a poll watcher and staying
13 there --

14 MR. EVANS: Objection. He didn't make
15 himself a poll watcher.

16 MR. HALL: I'm go to overrule that.

17 THE WITNESS: Positioning himself in
18 the doorway, positioning himself on the ground and
19 so forth, that was also having an effect on who is
20 coming to vote. So this -- those were the other
21 observations that I had for that day.

22 REVEREND PRICE: Thank you, Ms. Cole.
23 I'd like to summarize at this time.

24 MR. HALL: I have given you so much
25 leeway. Do you have cross?

1 MR. EVANS: Yes, I do.

2 EXAMINATION

3 BY MR. EVANS:

4 Q. You stated there other churches in
5 Atlantic Beach. Can you tell me what that other
6 church is that the election didn't take place at?

7 A. The other church is the Atlantic Beach
8 Christian Methodist Episcopal Church.

9 Q. Who is the pastor at that church?

10 A. The pastor at the Christian Methodist
11 Episcopal Church is Reverend Windy Price.

12 Q. Do you think that may have been a
13 conflict of interest or not a good thing to have the
14 election at a candidate's church?

15 A. Ms. Taylor is a candidate, and Ms.
16 Josephine Isom attends that same church.

17 Q. She's not a pastor of the church.

18 A. Let me say, if we're going to argue --

19 Q. Hold on a minute. I'm asking the
20 questions here.

21 A. I grew up Catholic, I don't know.

22 MR. HALL: He is asking you.

23 BY MR. EVANS:

24 Q. I asked you a question.

25 A. Do I think it would be a conflict --

1 Q. Let me give it to you so there won't be
2 no confusion about what I'm asking you.

3 A. Okay.

4 Q. Do you think it would have been not --
5 if not a conflict, maybe not a good idea to have the
6 election held at the church that a candidate for
7 mayor in this race -- to have the election at her
8 church?

9 A. I don't think it was good idea to hold
10 an election at any church where any of the
11 candidates were affiliated.

12 Q. Okay. Let me ask you this question:
13 You are a town councilwoman for the Town of Atlantic
14 Beach?

15 A. I am.

16 Q. What is your address?

17 A. My address is 1009A 32nd Avenue South,
18 Apartment A.

19 Q. And who else lives at that address?

20 A. Councilwoman Windy Price.

21 Q. May I ask you, is that an apartment?

22 A. Yes, it is.

23 Q. And how many bedrooms are in that
24 apartment?

25 A. Two.

1 Q. How many children does Ms. Windy Price
2 have?

3 A. She has --

4 MR. HALL: Keep cross to the same
5 materials.

6 MR. EVANS: It's about the election.
7 She's on this voter registration role and the
8 address she gave me is not what's on here. That's
9 what I'm trying to clear up here.

10 THE WITNESS: I used to live at 412.
11 What else do you want?

12 BY MR. EVANS:

13 Q. Excuse me. Just back up a minute.

14 A. Did I change my precinct?

15 Q. Get back to the question on the table.
16 You didn't answer my first question I asked you.

17 How many children does Ms. Price have?

18 A. I told you, she was three.

19 Q. Do they reside with you guys as well?

20 A. Yes.

21 Q. And she also has a husband?

22 A. Yes.

23 Q. In a two-bedroom apartment. That's
24 where you reside?

25 MS. PIERCE: Object. Object.

1 THE WITNESS: Yes.

2 MS. PIERCE: Objection.

3 BY MR. EVANS:

4 Q. You're in the voter registration roll
5 as living at 412 32nd Avenue South. You do not live
6 there anymore. This is as current as of May 22,
7 2012. You're on here for 412 32nd Avenue South.

8 That is not where you live?

9 A. No. I don't live with Ms. Pierce
10 anymore.

11 Q. 412 32nd Avenue is whose address?

12 A. I don't live with Ms. Pierce anymore.

13 Q. Let me go to something else.

14 You think that people were held away
15 from the polls and didn't participate in this
16 election?

17 A. I don't think people were held away. I
18 think people made their own decisions.

19 Q. So in your estimate, if everybody voted
20 in this election who you think should have voted,
21 how many votes do you think would have been on the
22 books for May 22nd?

23 A. I think at the point where Atlantic
24 Beach -- looking at concerned citizens data, looking
25 at police department data, I think at the point

1 where people really feel that there is a fair
2 election being held, where they are not going to
3 experience any retaliation for coming out to cast
4 their vote, I think you're going to see about 200
5 and some people out there actually voting.

6 When you take the fear factor out of
7 voting in Atlantic Beach, I think that's what you're
8 going to get.

9 Q. I've been in Atlantic beach for 50
10 years.

11 MR. HALL: Ask the questions.

12 BY MR. EVANS:

13 Q. Do you know how many voted in the other
14 election or how many voted in this election?

15 MR. HALL: Object to the other
16 location.

17 BY MR. EVANS:

18 Q. How many people voted in this
19 particular election?

20 A. They just gave the numbers.
21 Ms. Huggins just gave the numbers, I think, at the
22 beginning of this hearing.

23 MR. HALL: Eighty-nine people voted.

24 BY MR. EVANS:

25 Q. Did you vote in this election?

1 A. I said, no, I did not.

2 Q. Do you know whether Ms. Price voted in
3 this election or not?

4 A. I can't answer that.

5 REVEREND PRICE: Objection.

6 MR. HALL: Sustained.

7 BY MR. EVANS:

8 Q. Ms. Cole, you weren't a candidate in
9 this election, were you?

10 A. No, I'm not.

11 Q. I think I have one more question for
12 you.

13 Did you tell anybody that there wasn't
14 an election on May 22nd before May 22nd appeared or
15 did you ask anybody not to take part in this
16 election?

17 A. No.

18 Q. Did you receive a postcard notifying
19 you that the election would be at the church and not
20 at the community center?

21 A. I didn't receive a postcard.

22 Q. Me and you sit on town council
23 together. That was brought up in a council meeting.
24 Do you remember that?

25 MS. PIERCE: Objection. Leading the

1 witness.

2 THE WITNESS: I've seen a postcard in
3 the name of a couple of people, but I did not
4 receive a postcard or -- I didn't receive a
5 postcard.

6 BY MR. EVANS:

7 Q. You think maybe that was because you're
8 on the voter registration as living at Ms. Pierce's
9 house? I think they went to the address that's on
10 the voter registration roll.

11 A. Ms. Pierce is generally very good
12 about -- whatever differences we may have, she's
13 very good about giving me my mail. And I also
14 filled out a change of address with the United
15 States Post Office and they send my mail to me.

16 MR. HALL: Sir, that's all.

17 BY MR. EVANS:

18 Q. I'm going to wrap this up. This is the
19 last question.

20 I think the County Election Commission
21 was told that the election could not take place at
22 the community center.

23 Do you know, as a councilperson, what
24 they were told, why they couldn't have the election
25 at the community center?

1 MS. PIERCE: Objection.

2 THE WITNESS: I don't know anything
3 about that.

4 If you rule on her objection, I'll do
5 whatever you say.

6 MR. HALL: Restate the question.

7 BY MR. EVANS:

8 Q. I'll put it this way: Do you know of
9 anything that was supposed to be taking place at the
10 community center on election day of May 22nd?

11 A. I do.

12 Q. Do you mind telling us what that is?

13 A. Back in February we had made
14 arrangements with a woman, Gwen Singletary, who
15 worked Bike Fest before. We reached out to her and
16 told her we wanted to do something related to the
17 children.

18 So they had planned to bring in a
19 children's carnival into the parking lot and into
20 the building. They had a whole series of things
21 that they were getting sponsored to happen for the
22 children for Atlantic Beach. That was the initial
23 event.

24 MR. HALL: Housekeeping, for the
25 record, I objected on relevance, objected on

1 relevance about where the witness lived. Not that
2 she saw the notice. Make clear for the record, she
3 saw someone else's notice. Go ahead.

4 BY MR. EVANS:

5 Q. So that initial event -- so there was
6 another event as well. You mind telling us what
7 that was?

8 A. The second event was after
9 Ms. Singletary got a letter from -- emails went back
10 and forth between her and Ms. Martin regarding the
11 community center.

12 And I think Ms. Singletary in one of
13 her emails made it clear that what we were trying to
14 do was negotiate a situation of trying to back out
15 of what we had originally started with
16 Ms. Singletary.

17 These people let us know that they had
18 already gotten their carnival, they've already
19 invested money. They weren't very happy about us
20 calling them to tell them that this wasn't going to
21 happen. We backed out of it.

22 As we're backing out of that, the
23 police department is trying to decide what are they
24 going to use -- where we normally hold court. What
25 are we going do now about a holding area for people

1 that are arrested. We don't make that drive to J.
2 Reuben Long during Bike Fest.

3 In the past we have done a lot of
4 different things. Try to squeeze people into town
5 hall. When I was there as a manager we rented a
6 trailer and parked it outside the door and used
7 that. You know what our financial situation is --

8 Q. That's enough of that answer. That's
9 enough.

10 A. -- the court in the holding area.

11 MR. HALL: What other questions?

12 BY MR. EVANS:

13 Q. What actually took place at the
14 community center on May 22nd?

15 A. On the 22nd we were very blessed not to
16 have to have court there, but they were moving in
17 and out all day. And I went over there and checked
18 after I heard someone say there's nothing happening
19 there. We have two staging areas --

20 MR. EVANS: Objection. Hearsay.

21 THE WITNESS: -- two staging areas.
22 And that's the town hall, that's the community
23 center. They moved -- if you go in there and look,
24 probably shifted some things, they moved food,
25 water, and supplies in and out of there all day,

1 locking that door each time they came.

2 MR. HALL: That's her answer. Accept
3 it for what it is. Any other questions?

4 MR. EVANS: I'm done.

5 MS. PIERCE: No further questions.

6 MR. HALL: I promised you a five-minute
7 opening and ten-minute closing. I'm going to renege
8 on that promise. Three-minute closing because you
9 had a 20-minute opening. And everybody kind of
10 mentioned that to me. I apologize. I should have
11 cut you off and let you go into your evidence.

12 I still think you do need to have a
13 close to kind of wrap everything together.

14 MS. PIERCE: I'm supposed to get equal
15 time.

16 REVEREND PRICE: You want me to do my
17 close after Ms. Pierce?

18 MR. HALL: No. Do yours.

19 REVEREND PRICE: As a pastor I
20 understand the importance of being on time.
21 Sometimes I can be long-winded. I do apologize if I
22 inconvenienced anyone with a long opening statement.

23 In summary, I'd like to, for the
24 record, say that the South Carolina Supreme Court
25 provides a standard of review for elections held in

1 the State of South Carolina which is stated as, the
2 court will employ every reasonable presumption,
3 sustain a contested election, and would not satisfy
4 the election due to mere irregularities or
5 illegalities unless a result is changed or rendered
6 doubtful.

7 George, supra: Sims v. Ham, 275, SC,
8 369, 271, SE 2d 316, 1980: The standard should be
9 applied to Atlantic Beach Town Council election held
10 on May 22, 2012. The election should be set aside
11 not for mere irregularities or illegalities, but for
12 substantial irregularities and illegalities that
13 violate the election laws of the State of South
14 Carolina.

15 The voting rights and individual's
16 rights include secrecy of ballots. The election
17 should show in the fraud and not participate in the
18 fraudulent election schemes that seek to adjudicate
19 their own misconduct and violation of the law.

20 Voter intimidation, the abuse of power,
21 and failure to provide due process in transparency
22 has tried to mask itself as legal authority.

23 I, as a mayoral candidate, chose not to
24 participate in this election because I was not
25 comfortable with the issues regarding preclearance.

1 I did not want to participate in an illegal
2 election.

3 Also, the place that was chosen without
4 preclearance was a place that I was asked to get out
5 of. A place where my opponents and their supporters
6 intimidated me and caused me to file several
7 lawsuits because of my rights being violated as a
8 voter.

9 I have a church in the Town of Atlantic
10 Beach. My church was vandalized three days -- a
11 week before the election happened. My church has
12 been attacked on several occasions by town issues
13 and I don't understand why.

14 I didn't understand how one church can
15 have a preference over another.

16 I am the pastor of the Atlantic Beach
17 CME Church. But being a pastor is no different than
18 being a member, holding a steward office. So I've
19 written Ms. Cole. If it had to be at a church, then
20 let it be at your church and at a church where
21 candidates do attend.

22 I was never contacted, nor was any of
23 my staff contacted to see if our church would be a
24 possibility.

25 I can only assume that my church was

1 vandalized to make sure it would not be available.

2 For the first time in the history of
3 our existence in Atlantic Beach as a church we could
4 not have service on that Sunday morning because of
5 the vandalism that took place. Entire floors had to
6 be replaced. That was heart wrenching.

7 Do I think it was tied to this May 22nd
8 election and the choosing of the polling place? I
9 think it was. I can't prove it today, but I think
10 it was.

11 I hope you all make the best decision
12 today. I have lost faith in this entire election
13 process. I have lost faith in South Carolina, Horry
14 County because of three elections that I had to go
15 through that has been contested.

16 I expect a vote for the candidates that
17 traditionally won. If it comes back different, I
18 will be very surprised.

19 But I hope that you can look at the
20 matters concerning this election. It is an issue of
21 fraud. Preclearance is very important and it should
22 be considered in any election.

23 Ancestors died for the right to vote
24 and to vote without intimidation factors. I hope
25 you remember that as you deliberate over your

1 decision. Thank you.

2 MR. HALL: We're going to take five
3 minutes.

4 (A recess transpired.)

5 MR. HALL: I let her talk a little
6 long. Part of the reason is, if you notice, when
7 she was speaking she was also introducing evidence.
8 That was second part of what I said she would be
9 doing. She did her opening and the second part
10 together. I kind of let that go a little bit.

11 What I'm asking of candidates is if
12 it's something she's already gone over, please
13 consider not reiterating it because I will say
14 that's enough of that. We've heard it. Got it in
15 the record.

16 If it's new material, we'll be glad to
17 hear something to your particular case. We'll be
18 glad to hear a five-minute opening. Present your
19 evidence, and we'll let you close.

20 MS. PIERCE: Good afternoon. I would
21 like to quickly reestablish our presider while I'm
22 here.

23 MR. HALL: Russell W. Hall, III.

24 MS. PIERCE: And we are located at?

25 MR. HALL: 1515 4th Avenue in Conway,

1 South Carolina. That's the Horry County Election
2 Commission building.

3 MS. PIERCE: We are in the process of
4 a?

5 MR. HALL: In the process of hearing
6 Retha Pierce's protest.

7 MS. PIERCE: All right. This is the
8 protest of the results of the May 22, 2012 Town of
9 Atlantic Beach election, along with the
10 certification from May 24, 2012.

11 This is the official protest from Retha
12 Pierce. Thank you.

13 Now, as you stipulated, I will try not
14 to cover -- especially in detail -- some things that
15 I've already heard.

16 I will say in my introduction that I'm
17 going to talk about five -- six elements that I
18 think caused the election to be an improper election
19 and illegal election.

20 Now, I realize that you cautioned her
21 many times to not give -- when I say her, I am a
22 referring to the previous candidate, Ms. Price. I
23 realize that you cautioned her several times not to
24 talk about evidence or information that really leads
25 into why there is a protest here in the first place.

1 There's no way that we can really
2 isolate the May 22nd election from the November 1st
3 election. This is a continuation really of what
4 started November 1st when they ordered a new
5 election.

6 In my introductory statement I
7 definitely want to contain the fact that we're
8 supposed to be a democracy in the United States of
9 America governed by the Constitution wherein we have
10 rights, voters rights and other rights.

11 Whether it's the May 22nd or whatever
12 election, there are laws within this country by
13 which we are guided and by which we must observe and
14 we're supposed to be following.

15 However, my experience for the last
16 several elections that I've been a part of have been
17 one wherein there's obvious voter fraud, which I am
18 using as one of my elements today, and no
19 transparency with a case like the May 22nd one here
20 because of the governor's order.

21 I realize that you have said you can't
22 do this and you can't do that as far as making
23 decisions relative to the governor's order, but
24 that's not what the election is about.

25 It's not bringing you something for you

1 to make a decision about anything the governor
2 ordered or about anybody else's input relative to
3 this scenario.

4 But if it's a protest hearing, then we
5 are supposed to be giving our version of why we
6 protest under the constitution, or having that right
7 for freedom of speech under the Constitution. We
8 want to cut it as much as we can to prolong time.

9 In order to make the case that we need
10 to make, it is good that we are allowed to preserve
11 certain things, because in dealing with the Court of
12 Appeals, for example, and any court beyond this
13 protest, no information would be allowed that's not
14 preserved. And we need to preserve it in a way that
15 they know it was a part of the proceedings.

16 Just to say that you can hand over that
17 or this, we've heard enough of it, when it goes to
18 the Court of Appeals or wherever it goes, we have to
19 have the proper documentation to show that this is
20 the evidence that was entered at X level.
21 Otherwise, the Court of Appeals or any other court
22 will not accept it.

23 MR. HALL: Ma'am, hold you. When you
24 preserve for the Court of Appeals, whether my
25 objection or their objection shouldn't have been

1 sustained, they will review that evidence or they
2 will kick it back down. That's why we're preserving
3 it for the record.

4 If I say it's irrelevant and the Court
5 of Appeals goes, no, you're wrong, Mr. Hall. It is
6 relevant. That's why it's preserved for the record.
7 Not going to be excluded from Appeals Court.

8 MS. PIERCE: I understand that
9 perfectly. And I understand you saying it's
10 preserved for the record. Perhaps you don't
11 understand what I'm saying.

12 I understand what you're saying is
13 correct. You have the right to say whether it's
14 relevant or not. What I'm saying is, whether it
15 goes to the Court of Appeals, I'm dealing with the
16 Court of Appeals. When it goes to the court of
17 appeals, if you don't stipulate -- if they don't
18 know exactly what you're referring to with preserved
19 evidence, then they don't know. They don't know
20 that it's being preserved.

21 All I'm saying is, when I heard the
22 previous ones giving certain evidence -- and I can
23 understand you don't want to sit here a long time
24 perhaps because this is not important to anybody
25 except someone who has been violated. The ones

1 doing the violating, time is of the essence. I
2 understand that.

3 What I'm saying is, when I heard made
4 mention of certain things -- now, I personally
5 listened. As a candidate, I would want to know the
6 details -- not every little detail, enough about
7 that document, let's say, to know that when the next
8 level looks at it, they know for a fact this is the
9 preserved evidence. This is the preserved
10 information that the person was trying to get over.
11 ~~That's all I'm saying.~~

12 So anyway, number three element is, I
13 feel that there was no proper involvement, voter
14 intimidation, some of the things that I've heard.

15 Five, deliberate manipulation and
16 controlled desired results, and excessive violations
17 of voter rights and so forth.

18 And I notice you did not ask me if I
19 had witnesses, but I do.

20 After I give me introduction?

21 MR. HALL: Just because I didn't ask,
22 you still get an opportunity to bring them.

23 MS. PIERCE: I want to make sure I know
24 the correct procedure. I need to know who to
25 follow.

1 MR. HALL: Let's establish that now.

2 MS. PIERCE: That's all I was asking.

3 When I finish with the introduction, I'll call
4 whomever. Thank you very much.

5 Now, just very quickly, I think there's
6 been voter fraud. I think the process has been
7 tainted. I realize that nobody can stop the
8 governor from giving an order. But I'm thinking
9 that the May 22, 2012 election designed to assure a
10 win. That's why I'm considering it voter fraud and
11 tainted process.

12 It was designed to assure a win from
13 the status quo candidates. Jake Evans, Charlene
14 Taylor, and Josephine Isom.

15 I am for fairness and I'm for
16 accountability. If you want to pick your people --
17 like they day one when I came to Atlantic Beach and
18 I first went for office, Jake Evans and his
19 sister --

20 MR. EVANS: Objection.

21 MR. HALL: This is opening.

22 MS. PIERCE: -- told me, no
23 trespassing. I cannot come on their property to
24 campaign, even though they have people staying there
25 who pay Section 8 money.

1 Even to this election, May 22nd, from
2 the very beginning to the May 22nd election, I'm not
3 allowed to talk to anybody.

4 And then I've noticed people have
5 consequences if they even talk to me. And they're
6 told you, you know, not to vote for me, even from
7 day one.

8 And so to me, that is an involvement
9 with the process, and that is an illegal action for
10 landlords to be doing in the first place. They
11 actually had the police involved. I'm not
12 interested in going to jail anymore than I'm already
13 going. Because I am falsely now.

14 Anyway, I think this election was
15 designed to involve and assure a win for the status
16 quo candidate. It started with day one. They want
17 me not to be a candidate so they involve the
18 citizens, especially those that live in their
19 apartments. They throw them out if they don't vote.

20 Somebody stopped me this election and
21 told me that yesterday the word was from Mr. Evans'
22 mother, that she was going to put them out if they
23 didn't vote for her son. That's hearsay. I can
24 believe it because I've had enough hearsay that
25 happened to me to know when you hear things, they

1 come true. It's reality.

2 MR. HALL: It's been seven minutes.

3 MS. PIERCE: Okay. I'm going to rush
4 this. This is the sixth. We've got voter fraud.
5 And you have -- I would like for my protest, the
6 results of May 22, 2012 Town of Atlantic Beach
7 election to be preserved and to be used in evidence.
8 So you got that. I don't have to go through the
9 whole thing, like you said. I will call a few
10 witnesses.

11 MR. HALL: Sure.

12 MS. PIERCE: I would like to start with
13 Sandy Martin, please.

14 SANDRA MARTIN,
15 being first duly sworn, testified as follows:

16 EXAMINATION

17 BY MS. PIERCE:

18 Q. Ms. Martin, would you give us your
19 whole name, please?

20 A. Sandra Martin.

21 Q. Your position with the Horry County
22 Elections?

23 A. Director of registration and elections.

24 Q. Okay. I heard some testimony earlier
25 when you were asked -- not you, someone was asked

1 about how different ones were informed, how were
2 people informed about the proceedings relative to
3 the election.

4 And I understood you to say that the
5 only method of announcing or putting information --
6 public information out to the citizens and the
7 potential voters was through the Sun News? Did I
8 understand that correct?

9 A. Public notice twice. That's what's
10 required.

11 Q. I also heard enough information for me
12 to ask the question, concerned parties only were the
13 ones that were given phone calls about the meeting.

14 MR. HALL: Are you asking her or
15 directing that to me?

16 MS. PIERCE: You're the one that said
17 that? That's later then. I heard it. I was trying
18 to clarify.

19 BY MS. PIERCE:

20 Q. Ms. Martin, did you involve the
21 Atlantic Beach Municipal Election Commission at all
22 in the election process?

23 A. No, ma'am.

24 Q. So that would mean you did not
25 correspond with them at all as far as public

1 noticing?

2 A. No, ma'am. I put the notice in the Sun
3 News, and I sent it to the state to make sure I did
4 it correctly before I did it.

5 Q. We've heard testified to how we have a
6 tradition, a custom in Atlantic Beach of putting
7 those notices on the town hall. And the citizens
8 are used to getting information from there.

9 Did you inquire with anyone at the
10 Atlantic Beach town hall of any way to assist you in
11 helping to get the information to voters?

12 A. No, ma'am. And I didn't receive any
13 calls from anyone at the town.

14 Q. Did you feel it necessary to do an
15 adequate job of notifying all of the public in
16 Atlantic Beach?

17 A. Well, we sent postcards to every voter
18 in the Town of Atlantic Beach notifying them of the
19 election and where it would be, and the time, and
20 the date.

21 Q. Considering mail was not as it should
22 be -- somebody strung mine from down the street
23 recently out of my box and destroyed it, quite a bit
24 of mail tampered with, did you not have other ways
25 of getting with the people in Atlantic Beach to

1 ensure that all factions were covered and
2 knowledgeable about the election?

3 A. We've had several news media -- Lisa,
4 our public information officer, sent several items
5 to the media to be sent repeatedly about the
6 election.

7 Q. You didn't feel it necessary to involve
8 Atlantic Beach at all? Public officials, town
9 officials, town council, or anybody, to help get the
10 word out about election, to know the particulars
11 involved with the election?

12 A. I did. When I was trying to get a poll
13 in place, I spoke with or I emailed and spoke with
14 people at the town.

15 Q. So I'm understanding you to say at no
16 time did you feel it necessary to enjoin the
17 Atlantic Beach Government or the town officials or
18 anybody to help with the election?

19 A. We were under governor's order to do
20 the election. I called the town to try to get a
21 location. You know, I offered up more suggestions.
22 Two were involved. And they told me one or the
23 others was fine. That's what we did.

24 Q. How long have you worked with
25 elections?

1 A. Twenty-eight years.

2 Q. Are you familiar with the law?

3 A. Yes.

4 Q. Do you know that preclearance is
5 necessary for every aspect of an election based on
6 the voter rights?

7 A. We sent in a preclearance on an
8 emergency basis.

9 Q. Do you know in your line of work --
10 MR. HALL: Irrelevant.

11 MS. PIERCE: It's not irrelevant. I
12 heard you say that earlier. That's on the record.
13 You keep saying it's irrelevant.

14 MR. HALL: I hope it's on the record.

15 MS. PIERCE: No person is supposed to
16 change the election place. That's the law. It has
17 nothing to do with you making a decision, or your
18 board making a decision. It's the law. And to say
19 that is irrelevant for a protest hearing where it
20 was not done --

21 MR. HALL: May 22nd.

22 MS. PIERCE: I'm talking about May
23 22nd. There's no other election I'm talking about.
24 There was supposed to be preclearance.

25 MR. HALL: I'm not going to make a

1 decision.

2 MS. PIERCE: You're not supposed to.
3 You're supposed to decide whether or not there was
4 fraud, there was voter intimidation, whether or not
5 the issues brought before you -- that's what you're
6 supposed to do.

7 MR. HALL: Irrelevant. Move on,
8 please.

9 MS. PIERCE: You call it irrelevant. I
10 hope it's on there.

11 MR. HALL: It's on there, about five
12 times.

13 MS. PIERCE: You did have a point.
14 There are certain levels that take care of certain
15 things.

16 MR. HALL: The court system -- I think
17 you have a valid argument. You just have the valid
18 argument in the wrong forum, is all I'm saying,
19 ma'am.

20 MS. PIERCE: Thank you.

21 BY MS. PIERCE:

22 Q. Ms. Martin, one other question for you.
23 Am I understanding you to say you don't know you're
24 supposed -- procedure to follow in dealing with
25 voters?

1 A. No, ma'am. I didn't say that.

2 Q. Well, some of the things that were not
3 done that were supposed to be done that were brought
4 out -- what are the reasons why they are not done?
5 Did we have an election that we didn't have
6 preclearance for?

7 A. We sent in the preclearance like we're
8 supposed to on an emergency basis. We were told to
9 proceed. That's what we did.

10 Q. ...Nevermind that. Let me say it this
11 way: My understanding of what happens at DOJ is
12 that you're posed to wait until you get a
13 determination letter back.

14 In other words, it looks like Horry
15 County just went ahead as is pointed out --

16 MR. HALL: That's all irrelevant.

17 MS. PIERCE: Anything that's the law is
18 irrelevant. Thank you.

19 MR. HALL: And not a question.
20 Questions, please.

21 MS. PIERCE: Yes. The next question.
22 When I ask a question don't say it's irrelevant when
23 it's relevant.

24 BY MS. PIERCE:

25 Q. Next question: I understood you to say

1 you sent a letter to DOJ?

2 A. Yes, ma'am. I sent a submission.

3 Q. A submission?

4 MR. HALL: Ma'am, that's irrelevant.

5 And asked and answered. Please move on. You've
6 asked that question several times.

7 BY MS. PIERCE:

8 Q. Getting back to Atlantic Beach, how did
9 you arrive at the places that you gave as choices to
10 have an election in Atlantic Beach?

11 A. We offered up to use the community
12 center, we suggested town hall, the church was
13 offered, and we discussed the airport, using a
14 building at the airport.

15 Q. What would you say is the reason why no
16 town officials were allowed to know what was going
17 on with the elections?

18 A. I sent an email to the town requesting
19 other venues, and if those four were okay, if we
20 could use the community center or move it to town
21 hall, or if the church was fine.

22 Q. My question is not that. I understand
23 your answer to that.

24 My question is: Why were they not
25 involved in what was happening when you first

1 approached the governor?

2 A. I didn't.

3 Q. You're saying you did not approach the
4 governor?

5 A. No, I didn't.

6 Q. All right. Ms. Martin, there seems to
7 be a trend in every election that there is a certain
8 faction that this county caters to.

9 Do you know why?

10 A. No, ma'am. I don't know what you're
11 referring to.

12 Q. It appears to have happened on May
13 22nd. The ones who were running for this office on
14 May 22nd, things were made -- they knew everything
15 from the very beginning to the end, the town knew
16 nothing of how things came about. The MEC was not
17 even given information.

18 Even if the county was put in charge of
19 the elections, is it not proper for you to still
20 pass the information out to us so that all citizens,
21 all factions know?

22 A. All citizens were notified of the place
23 change. That was the only thing we did. The
24 governor set the date of the election.

25 MS. PIERCE: I thank you, Ms. Martin.

1 REVEREND PRICE: I want to cross.

2 EXAMINATION

3 BY REVEREND PRICE:

4 Q. Ms. Martin, was the town in agreement
5 and support at this election of the May 22, 2012
6 election date?

7 A. That date was not set by me. I didn't
8 set the date.

9 Q. To your knowledge, were they in
10 agreement as a town, as a whole, in agreement?

11 A. I don't know.

12 Q. Did the town ever mention to your
13 office or to you that that date would not be good
14 because of the festival event?

15 A. I don't recollect that they did.

16 REVEREND PRICE: Thank you.

17 MS. PIERCE: Thank you, Ms. Martin.

18 EXAMINATION

19 BY MR. EVANS:

20 Q. One question, Sandy. When you
21 contacted the Town of Atlantic Beach to question
22 about the community center, what were you told was
23 happening at the community center on May 22nd?

24 A. Another venue going on related to bike
25 week.

1 Q. And when you were in town on May 22nd
2 during the election, did you happen at any time --
3 you've been in the community center before --

4 MS. PIERCE: Objection. That's already
5 been covered. Save time. That's already been
6 covered.

7 MR. HALL: I appreciate your objection.
8 I'll either overrule it or sustain it.

9 MS. PIERCE: Objection.

10 MR. HALL: You got three or four hats
11 going on. I appreciate that. He's on cross, and on
12 cross you can ask questions again. If you're the
13 questioner, you can't continually ask the same
14 question. Overruling.

15 MS. PIERCE: He can be objected to.

16 MR. HALL: You can object to him all
17 day long. Overruled.

18 BY MR. EVANS:

19 Q. On May 22nd when you were in the Town
20 of Atlantic Beach, did you observe anything at all
21 going on at the community center since you were told
22 that there were activities there?

23 A. I did not go to the community center.

24 Q. Thank you.

25 A. A board member went and put the sign

1 up, but I didn't.

2 MS. PIERCE: Thank you, Ms. Martin. I
3 call to the stand Mr. William Booker.

4 WILLIAM BOOKER,
5 Being first duly sworn, testified as follows:

6 EXAMINATION

7 BY MS. PIERCE:

8 Q. Restate your complete name, please.

9 A. William Booker, Jr.

10 Q. What is your relationship to Atlantic
11 Beach?

12 A. I'm a citizen.

13 Q. You're a citizen. What is your former
14 relationship to the Town of Atlantic Beach?

15 A. I was the town manager at the time.

16 Q. Mr. Booker, your name came up in
17 earlier evidence that you were one of those who got
18 the date for this -- your name is down rather, for
19 being the contact person.

20 How did that come about?

21 A. I don't know what you're talking about.

22 Q. Let me clarify then. From the
23 testimony earlier, it was established that you were
24 listed as the contact person in some emails.

25 There's some emails that we have privy --

1 A. What emails?

2 Q. Emails relative to this election.

3 You're the contact person.

4 A. I don't understand your question.

5 Q. The contact person for getting the
6 election done. You represented to the DOJ as the
7 minority?

8 A. I'm a citizen of Atlantic Beach. I
9 send lots of emails. I'm not a contact person for
10 anything other than myself. So I'm not clear what
11 your question is.

12 Q. Are you saying you had no part in
13 helping to establish or cause the May 22nd election
14 to come about?

15 A. I had part of a -- I was a concerned
16 citizen complaining that on the previous election,
17 the election commission that worked under Carolyn
18 Cole's direction, they did whatever she told them to
19 do. Overturned the citizens -- overwhelming vote to
20 elect the same three people that got elected again.
21 The Municipal Election Commission that were under
22 Carolyn Cole's direction failed to order an election
23 and we needed to have an election.

24 We the citizens in this democracy have
25 a right to vote for the people that represent us.

1 And that election --

2 MR. HALL: Sir, that's irrelevant.

3 THE WITNESS: Thank you.

4 BY MS. PIERCE:

5 Q. Mr. Booker, were you present for the
6 public meeting that the Atlantic Beach MEC held
7 wherein they gave out information relative to --

8 A. What public meeting?

9 Q. The public meeting where they had
10 promised the citizens that they would have -- once
11 they got the transcript from the November
12 election --

13 A. When was the meeting?

14 Q. I don't have the date in front of me.
15 When they promised they would bring to
16 the public information once they got a transcript
17 from that initial protest hearing, were you present?

18 A. Let me answer the question. As far as
19 I know, the Municipal Election Commission never
20 owned up to even having a transcript.

21 MR. HALL: That's irrelevant. That's
22 irrelevant.

23 BY MS. PIERCE:

24 Q. Mr. Booker, you said as a citizen you
25 took part in what happened to bring this election

1 about?

2 A. I voted on May 22nd.

3 Q. No. Prior to that.

4 A. I complained to everybody I could that
5 I wanted the opportunity to vote for the people that
6 ran the town.

7 Q. What gave you the authority to
8 represent the town and to keep the town officials
9 and the town council out of knowing what was going
10 on?

11 A. I'm a citizen. There are people put in
12 place for me to talk to as my representatives. The
13 governor, I get to vote for her, the
14 representatives, the people at the town hall, the
15 people who work at State Election Commission, the
16 County Election Commission. Anyplace where there
17 are people working on behalf of the community, I, as
18 a citizen, have the right to talk to them.

19 Q. That is a true point, Mr. Booker. You
20 have a right as a citizen to exercise your concerns
21 to any of your representatives. But what gave you
22 the right to act on behalf of the town?

23 A. I wasn't acting on behalf of the town.
24 I was acting on my own.

25 Q. To overstep the boundaries of the --

1 MR. HALL: He answered the question.

2 THE WITNESS: I acted on behalf of me,
3 one citizen.

4 BY MS. PIERCE:

5 Q. You're saying as one citizen that you
6 got all this done? Is this because you said you
7 know how to talk to white people?

8 MR. EVANS: Objection.

9 THE WITNESS: I think you're giving me
10 more credit than I deserve.

11 BY MS. PIERCE:

12 Q. I've heard you say that.

13 A. What?

14 Q. That you know how talk to white
15 people.

16 MR. EVANS: Objection.

17 BY MS. PIERCE:

18 Q. Many more you have said that to.

19 THE WITNESS: Do I have to be filmed in
20 here?

21 MR. HALL: Yeah.

22 BY MS. PIERCE:

23 Q. How did this come about? The whole
24 process, we feel like this is an improper election
25 and that one faction, the people -- like you say --

1 A. Who is we?

2 Q. We as citizens.

3 MR. HALL: Ask a question about the May
4 22nd election.

5 MS. PIERCE: It's fine. You're
6 supposed to have another election at some point.
7 You overstepped the Town of Atlantic Beach and you
8 have people that you say listen to you.

9 MR. HALL: Please ask questions.

10 BY MS. PIERCE:

11 Q. Why did you feel it was your right to
12 overstep the government officials and town council
13 to bring about a new election, even if you do have
14 the right to vote --

15 MR. HALL: Asked and answered. Asked
16 and answered. You've already asked the question
17 ma'am, and it's been answered.

18 BY MS. PIERCE:

19 Q. Mr. Booker --

20 A. Yes.

21 Q. -- you said you wanted to vote for who
22 you wanted to and you have that right as a citizen.

23 Do you think you have the right to
24 usurp the laws of this town?

25 A. Tell me I how I usurp the laws.

1 Q. Because you and others took a part to
2 carry out actions.

3 A. Like what?

4 Q. Like what you did.

5 A. What did I do?

6 Q. You did not involve the town.

7 MR. HALL: I'm going to cut this whole
8 line of questioning out. You ask questions, and all
9 you can do is answer.

10 BY MS. PIERCE:

11 Q. Why did you not involve the town --

12 A. In what?

13 Q. -- in trying to get the election?

14 MR. HALL: That's been asked and
15 answered. He's answered the question. You may not
16 be satisfied with the answer, but he's answered the
17 question.

18 MS. PIERCE: It has not been answered.
19 Here again, it's a sign of where you're one-sided
20 with what you do.

21 No further questions, Mr. Booker.

22 It proves that Horry County is with
23 you, the state's with you, in violation of Supreme
24 Court. You're excused, please.

25 REVEREND PRICE: I have a cross.

1 BY REVEREND PRICE:

2 Q. Mr. Booker, it has been placed on the
3 record with the information that the town submitted
4 to the Department of Justice that per the governor's
5 office you and Joe Montgomery -- Joe Montgomery is a
6 contact person, you are the minority contact person
7 for the election that was held on May 22nd.

8 How did you get involved in being one
9 of the contact persons?

10 A. For the governor's office?

11 Q. From the governor's office to the
12 Department of Justice.

13 A. I didn't know I was the contact person
14 for the governor's office to the Department of
15 Justice.

16 Q. It's in the record.

17 A. I hear you saying that.

18 MR. HALL: He's answered the question.

19 THE WITNESS: I didn't know that I was
20 the contact person for the governor's office to the
21 Department of Justice.

22 BY REVEREND PRICE:

23 Q. It's on the record.

24 A. I hear you. How did I get to do that?
25 I don't know.

1 MR. EVANS: I have one question.

2 EXAMINATION

3 BY MR. EVANS:

4 Q. Mr. Booker, in the election on May
5 22nd, I think it was estimated that there were 90
6 votes cast out of Atlantic Beach. And you've been
7 in Atlantic Beach in a couple of other elections.

8 In your estimate, would you think 90
9 votes is a great turnout for a special election?

10 A. I think 90 votes for a special election
11 is really good. We only had 140 in a major election
12 that everyone knew about. And that was months of
13 preparation, and a long election campaign, and signs
14 all over the town.

15 And when this particular one came up
16 there were some people trying to create confusion.
17 They were saying there will not be an election.
18 Some of the officials of the town were spewing out
19 that there will not be an election.

20 So with all that confusion and to have
21 90 people coming out and voting, I think it was
22 great. I also think they sent a very strong message
23 when there were 244 votes cast for three people and
24 the four other four people in the election only got
25 10. Really clear that people in the town know who

1 they want.

2 MS. PIERCE: Cross.

3 BY MR. EVANS:

4 Q. One other question I'm going to ask
5 since you brought it up. I think it was 140 votes
6 cast in that election. And I think maybe -- tell me
7 if I'm correct or wrong -- there were about 50 or
8 better challenged votes and denied, so that election
9 possibly had less votes than this one?

10 A. At the end of the day when you add them
11 up, it was probably about the same. Might have been
12 a few less or more, but it was about the same thing.

13 MR. EVANS: Thank you. That's it.

14 MR. HALL: You're done with cross.
15 Just on what he asked. Nothing else. What he
16 asked.

17 REVEREND PRICE: Talking about --

18 MS. PIERCE: I have a question to him.
19 Would he like -- I would like for him to elaborate,
20 since they discussed how many went out and made the
21 comparison, why some of the ones that didn't go were
22 saying that as long as the Evanses paid people to
23 vote, nobody would win.

24 MR. EVANS: Objection.

25 THE WITNESS: I never heard that. I

1 will tell you is that all the candidates in the
2 election voted except two that I can see from
3 looking at the records. And then there are
4 supporters for those candidates who refused to vote.

5 BY MS. PIERCE:

6 Q. How do you know who supports whom in
7 the election?

8 A. Because of my involvement in the
9 community, talking to them, they tell me who they
10 are going to support.

11 Q. Your voters tell you?

12 A. You going to let me talk?

13 Q. I gave you a question. Go ahead.

14 A. I don't know how you want to portray
15 the community. I live in a community where people
16 communicate. People talk about who they are for and
17 who are they are not.

18 A lot of those conversations are very
19 civil. We say, I don't want to vote because of
20 this. And I like this person because of that.
21 That's way most of the people that I know
22 communicate.

23 Now, there is some faction, I agree, a
24 tiny -- five or six people who do their own thing.

25 Most of the other people in the town

1 communicate with one another. We don't agree, but
2 we get along.

3 Q. I agree with, Mr. Booker, that they do
4 talk just the way you do. That's why I've heard you
5 say, if you don't vote for Jake Evans, my son,
6 you're going to be put out.

7 MR. EVANS: Objection. Objection.

8 MR. HALL: Sustained.

9 BY MS. PIERCE:

10 Q. I would like to say, you have
11 established that fact that you know who the people
12 are going to vote for. Thank you, Mr. Booker.

13 Can I have him return for one more
14 question?

15 MR. HALL: If it's not about what he
16 asked, he's not going to answer the question.
17 That's all I got to say. If it's not about what he
18 asked -- redirect is only related to what he crossed
19 on. As soon as it comes out of your mouth and it's
20 wrong --

21 MS. PIERCE: We already know the
22 direction of this. We're going to go ahead. We
23 will omit that question. We'll ask Mr. Joe
24 Montgomery to come up and maybe he'll answer it.

25 MR. MONTGOMERY: I'll object, but I

1 really don't respect --

2 MR. HALL: If you would just go up.

3 JOE MONTGOMERY,

4 being first duly sworn, testified as follows:

5 EXAMINATION

6 BY MS. PIERCE:

7 Q. Mr. Montgomery, your name came up
8 earlier relative to the setting of the May 22nd
9 election.

10 One question for you: Could you tell
11 us on what basis your involvement was in setting up
12 the May 22nd election?

13 MR. HALL: Irrelevant.

14 MS. PIERCE: To ask him about his
15 involvement in setting up the election is not
16 irrelevant. It came up.

17 MR. HALL: I said irrelevant. I have
18 been ignored a couple times. I'm not going to be
19 ignored anymore. It's irrelevant.

20 BY MS. PIERCE:

21 Q. Mr. Montgomery, who did you talk to at
22 the governor's office other than --

23 MR. HALL: Irrelevant. I'm going to
24 ask him to sit down if you continue that line of
25 questioning.

1 MS. PIERCE: It's already established
2 that you are not going to be able to answer certain
3 questions. Thank you. You may return.

4 MAYOR PIERCE: Can I give my final
5 remarks?

6 MR. HALL: You have until 6:20.

7 MS. PIERCE: I have 10 minutes for my
8 final remarks.

9 I'd simply like to say I am protesting
10 this election as stated earlier for the six reasons.

11 I feel like I voter fraud has been
12 involved. I feel like voter intimidation has been
13 involved. There's been no proper involvement, no
14 transparency.

15 And I know you don't like for the
16 governor's name to keep coming up because she set
17 the election and I realized the public -- you have
18 to do exactly what the governor said and that
19 citizens who are presenting ourselves are not free
20 to have a mind, to stand for what is right. You
21 have to do what the governor said. I understand
22 that.

23 What we're doing is protesting what we
24 know is a violation of the law, because the governor
25 is the executive branch, she can set any election.

1 The legislature stipulates how she was
2 supposed to do it. Not through people on the side
3 going on -- they're right about citizens. They can
4 express their concerns. They have the right to say
5 what they are not in favor of and say what they
6 object to.

7 They have no right to usurp a
8 government's power in the Town of Atlantic Beach.

9 Through your emails you've shown your
10 disrespect for Atlantic Beach. You've shown your
11 desire for wanting to go and take it over. The
12 reason a lot of things have been done to a lot of
13 people.

14 You've shown your desire to have
15 certain people be there. They can carry out your
16 wishes and you can control it from the outside.
17 You've shown that.

18 You've shown the Supreme Court of South
19 Carolina you have no respect for Atlantic Beach.
20 You have no respect for the Supreme Court. You've
21 shown them that.

22 When they stipulated how you're
23 supposed carry out these elections, you've shown
24 them because of the buddy system, who we think we
25 want in office, we can and go and violate the rules

1 and regulations of a town, and we can pay no
2 attention to the government.

3 And when you're in the government, even
4 when you were making laws to break laws, you had
5 people who supported you.

6 When the Supreme Court sent down an
7 order from past elections of what should be done,
8 you went out there just like you're doing now. Paid
9 people who are trying to do right, no attention.
10 Paid people that tried to be fair, no attention.
11 Paid people who were not in your corner doing what
12 you needed to do, no attention. You paid the South
13 Carolina Supreme Court no attention when they told
14 you what to do and to stay away from voter fraud.

15 Mr. William Booker is named in that
16 last order from the Supreme Court as having no kind
17 of involvement like that. Because he is free like
18 everybody else as a citizen to support whomever he
19 would like to, that's fine. There's nothing wrong
20 with doing that. He has a right to do that. That's
21 his freedom.

22 But you have no right to go in and take
23 over an independent municipality. You can have
24 people falsely jailed, falsely -- set up things and
25 put them in jail and then become and acting mayor

1 and then decide you want to violate the Supreme
2 Court's order. You can decide you want to get back
3 in office and have people that support you.

4 Is it right? No. It's not right.

5 Does he have a right to exercise his vote? Yes.

6 Everybody does. But everybody deserves a right to
7 be represented correctly and fairly under the
8 Constitution of the United States of America.

9 You should decide, I want this group of
10 black people to lead because they're going to help
11 me through my development in Atlantic Beach and
12 they're going to keep intimidating people.

13 If you don't vote for who I want you to
14 vote for, I'll put you out. We got proof of what
15 you've done, but you stick together.

16 We got proof of people saying -- they
17 are too timid, too intimidated to stand up for
18 themselves.

19 Yes, I'm here. I'm here protesting
20 this election on the basis of -- that governor has a
21 right to set an election. She had no jurisdiction
22 to act on citizens outside of the government
23 improperly, and especially those who have been
24 communicating back and forth with people in Horry
25 County and treating Atlantic Beach like we're some

1 laughing stock. You've had the laughing time, and
2 putting people in jail that don't belong there. And
3 now you've got your laughing time in violating
4 people's rights.

5 You got people who want to protect
6 people who violated things in the past. They think
7 if they get back in they can stop them from being
8 accountable. It doesn't make it right. It does not
9 make it right.

10 You can team up with whomever you'd
11 rather be there and rather not see somebody else be
12 there. I'm not ashamed of the fact that even though
13 you burned my 36-year home. You put me in jail many
14 times when I shouldn't have gone there. You can
15 laugh.

16 Mayor -- former Mayor Irene Armstrong,
17 the sister of Jake Evans, who said in the last
18 meeting that nobody else will ever get back in
19 office. You'll see to that. That's why you got rid
20 of housing people.

21 You misplaced 54 homes of innocent
22 black people in Atlantic Beach because you tried to
23 defeat an election. They didn't just start May
24 22nd. They started when they started doing what
25 they did when they went to the governor. To have

1 the governor come in on an election that the
2 Municipal Election Commission should have been able
3 to do their job -- they told the public, when we get
4 the transcript, we'll come to you. They did. They
5 were trying to a get a lawyer to help them write an
6 order. Most people don't have that kind of skill.

7 But do they have people sitting in
8 places, high officials in places? Do they have a
9 friend of the governor who looks out for her
10 friends, her personal friends, whom she knows wants
11 Atlantic Beach, too? Just take it over.

12 Do they have somebody in high places to
13 make laws to cover people who continue to do voter
14 fraud, intimidation of voters, who continue to do
15 things that are not even human? Some of you do.
16 Not even humane. I can speak of it because I know
17 it from experience.

18 I'm here protesting because this
19 election should have never happened. Governor Haley
20 by law, by the legislature, has the right to set an
21 election. Nobody never says she doesn't have a
22 right to set an election at the proper time.

23 I consider the May 22nd election
24 premature because somebody is trying to look out for
25 their friends, trying to put certain people in so

1 you can do whatever you want to to Atlantic Beach
2 and to certain people.

3 And by all means, get rid of Retha
4 Pierce, whom we tried to get rid of from day one.
5 About a month after she was elected in 2007 and
6 defeated. Former Mayor Irene Armstrong, the very
7 county policeman seen talking to her many nights on
8 her street, who worked with the Officer Rizzo, Randy
9 Rizzo, who was there. Who told me, no trespassing
10 on our property. Refused to let me campaign.
11 Refused to let me talk to people who pay rent. And
12 a lady that I tried to take food to who was part of
13 my outreach, forbade me to go her house to take her
14 food. That's right.

15 The former Mayor Irene Armstrong, the
16 sister of brother Evans, Jake Evans, has done.

17 In addition to telling people, we don't
18 want them in our town. You don't want us in that
19 town because of corruption and evilness.

20 You got a record of her saying you
21 loaned the town money. The town has paid you over
22 \$200,000 back. Money you've never loaned. You want
23 to keep on doing what you do.

24 But I tell you one thing, those of you
25 who help them, you want the black faces in

1 leadership that you pulled plugs -- they are greedy.
2 They are out for power, just like you are.

3 You got this thing about who you want
4 in Atlantic Beach because you want Atlantic Beach.
5 I want you to know, somebody's watching.

6 He has much more power than I do. He's
7 the greatest of lawyers. And the judge of all
8 judges.

9 MR. HALL: I'm moving the commission to
10 meet with counsel prior to making a decision. And
11 we'll go into executive session for the purpose of
12 seeking legal advice. Anybody second that motion?

13 MR. LEAGANS: Second.

14 MR. HALL: All in favor? None opposed.

15 We will reconvene in about 10 minutes.
16 No sooner than 10 minutes.

17 (Executive Session.)

18 MR. HALL: I'm going to call the
19 meeting can back to order.

20 First thing I'd like to do is -- we're
21 back in order. I've asked the deputy to ask the two
22 interested parties, the two other candidates, Ms.
23 Pierce and Ms. Price, to let them know we're back on
24 the record. He indicated to me that they are here
25 and they are not coming in. I'd like to preserve

1 that for the record.

2 That being said, I want a motion from
3 the committee to move the committee to come out of
4 executive session. Anybody second?

5 MR. LEAGANS: Second.

6 MR. HALL: All in favor.

7 For the record, we went into executive
8 session for one reason only. That was to talk with
9 our attorney to make sure we understand the standard
10 and review -- no deliberation held, and no
11 discussion was conducted while we were in executive
12 session concerning the protest, other than the legal
13 matters we asked directly to our attorney.

14 I'm going to read the standards and the
15 review as I understand them. Three sections to
16 read.

17 Our court has held that every
18 reasonable presumption will be indulged to sustain
19 an election. Unless the result of an election is
20 changed or rendered doubtful, it will not be set
21 aside on the count of mere irregularities.

22 It is well-settled law in this state,
23 the State of South Carolina, that all reasonable
24 inferences must be drawn in favor of the validity of
25 the contested election.

1 It is well established that an election
2 is presumed valid -- presumed valid and should only
3 be overturned when voting irregularities occur in
4 such numbers as to affecting the outcome of the
5 election.

6 It has also been stated that possible
7 effects on election results must be shown with
8 certainty as an election may not be overturned on
9 the basis of speculation or conjuncture.

10 Those are the standards of review by
11 which we will determine whether to grant or deny the
12 protest.

13 I would like to state for the record,
14 we did at the beginning, but we did not consider the
15 protest of the Atlantic Beach Election Commission
16 because we did not have jurisdiction to do to. As a
17 jurisdictional matter, whether they had a valid
18 protest or not, not a candidate.

19 Before I -- this is going to be
20 brief -- before I get to the protest, again, I want
21 to thank everybody at the election commission and in
22 Atlantic Beach for this election.

23 I believe if the folks of this country
24 had as much spirit in their election as Atlantic
25 Beach does and less apathy towards the electoral

1 process, we would actually -- contrary to popular
2 belief -- have a better nation.

3 So I want to say that and I want to
4 thank everybody in Atlantic Beach, all the
5 contestants, all the folks that protested. Our
6 democracy, in my mind, works. People get their day
7 in court or in this case, get their day in front of
8 the commission. Thank you all. Thanks for --
9 Sandy, thank you so much. Thank you, Dina -- Dana.
10 I apologize for that.

11 ~~All that being said, we're going to go~~
12 ahead and move onto the motion. And I will make
13 that first with Candidate Price's protest. I move
14 to the board to deny the protest of Candidate Price.

15 Is there a second?

16 MS. JOHNSON: Second.

17 MR. HALL: All in favor? All ayes. We
18 deny the protest of Candidate Price by unanimous
19 vote of all the present board members.

20 I make a motion to deny the protest of
21 Candidate Pierce.

22 Do I have a second for that motion?

23 MS. AUTRY: Second.

24 MR. HALL: All in favor. None opposed.
25 Once again, let the record reflect that

1 Candidate Pierce's protest has been denied. The
2 meeting is adjourned.

3 (The hearing concluded at 6:49 PM)

4 (EXH. 1, Notice, was marked.)

5 (EXH. 2, Posting, was marked.)

6 (EXH. 3, Letter, was marked.)

7 (EXH. 4, DOJ Documents, was marked.)

8 (EXH. 5, Letter, May 22, 2012,
9 was marked.)

10 (EXH. 6, Request From Concerned
11 Citizens, was marked.)

12 (EXH. 7, Letter, May 29, 2012,
13 was marked.)

14 (EXH. 8, Letter to Amanda Bailey,
15 was marked.)

16 (EXH. 9, Book of Emails, was marked.)

17 (EXH. 10, Notice of Hearing,
18 was marked.)

19 (EXH. 11, Provisional Ballots,
20 was marked.)

CERTIFICATE OF REPORTER

I, Linda A. Mahoney, Court Reporter
and Notary Public for the State of South Carolina at
Large, do hereby certify that the foregoing
transcript is a true, accurate and complete record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 30th day of May, 2012
at Horry County, South Carolina.

Linda A. Mahoney, Court Reporter
My Commission expires
October 12, 2017

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS
2012-CP-26-4403

COUNTY OF Horry

WENDY PRICE

-vs-

Horry County Election
Commission, et al,
Defendants.

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July 26, 2012

B E F O R E:

HONORABLE J. DERHAM COLE

A P P E A R A N C E S:

CHRISTINE C. VARNADO, Esquire
Attorney for the Plaintiff

TRACEY C. GREEN, Esquire
J. C. NICHOLSON, III, Esquire
Attorneys for the Defendants

Henry P. Young
Court Reporter

1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: All right, this is Price versus
3 Horry County Election Commission, the State
4 Election Commission, Josephine Isom and Charlene
5 Taylor. This is Windy Price's appeal of a denial
6 of an election protest.

7 MS. VARNADO: Yes, sir.

8 THE COURT: All right, I will hear from you.

9 MS. VARNADO: May it please the Court, I'm
10 Christian Varnado and I represent Reverend Windy
11 Price who is here to my right.

12 Your Honor, this is a protest of the May
13 election in Atlantic Beach and my client Reverend
14 Price was a mayorial candidate in that election.
15 But in order to understand the basis of this
16 protest I think it is important to understand a
17 little bit of a history of the process in Atlantic
18 Beach. Atlantic Beach is a small area, about four
19 blocks, on the other side of 17 between Myrtle
20 Beach and North Myrtle Beach. They have had a long
21 history of difficulties with conducting fair
22 elections and in fact there are three cases of
23 recent nature that have gone up to the Supreme
24 Court dealing with Atlantic Beach and all three, I
25 think, are interesting reading in understanding the

1 background of this case but the most important is
2 the most recent case which was Cole versus Town of
3 Atlantic Beach, 393 South Carolina Reporter 264,
4 and this was a 2011 decision by Justice Toal.

5 And in that decision which again involved the
6 protest of an election, Justice Toal identified
7 three key individuals, a William Booker and a Miss
8 Graham and a Mrs. Booker and those folks the Court
9 called out and noted that she gave a strong
10 admonishment to those folks who worked diligently
11 to obstruct the town council election process, the
12 attempts by these folks to prevent Miss Cole and
13 Miss Price from establishing residency were
14 deplorable. The manner in which the MEC conducted
15 the protest hearings causes us great concern and
16 makes us question whether future election processes
17 can be properly conducted in Atlantic Beach.

18 And as a result, since she found, the
19 Justice found that the protest, the mechanism of
20 the protest and the way that the MEC handled the
21 protest was improper. She determined that, she
22 upheld the initial results of the election and
23 ordered that the appellant be immediately seated.
24 The key information in this is that Mr. Booker who
25 was called out by Justice Toal as obstructing the

1 election process again appears in the election
2 process that we have a challenge about today.

3 William Booker is a former town administrator
4 and he was fired after the Supreme Court's opinion
5 seating Cole and Price. Thereafter it became time
6 to have another election. Now we have a new
7 Municipal Election Commission in the town of
8 Atlantic Beach and new folks on the council and a
9 new mayor. They put forth an election on November
10 11th, 2011. At that election the same folks who
11 were called out by Justice Toal in the previous
12 case showed up and conducted the election process,
13 including bringing in a woman who impersonated an
14 employee of the Attorney General's office, who
15 claimed she was there to monitor the election. The
16 woman came in arm in arm with Mr. Booker and
17 proceeded to obstruct the election process.

18 They also set up sort of a gauntlet of types
19 where folks had to walk in through a lineup of one
20 particular faction in order to make it to the
21 voting booth and then the voting booth area,
22 instead of using the local Community Center they
23 compressed it into one small area and so folks had
24 people looking over their shoulders when they were
25 doing paper ballots and practically looking over

1 their shoulders at the machines.

2 And so following that virtual circus of an
3 election process the Atlantic Beach Municipal
4 Election Commission overturned that election due to
5 the problems with the process and ordered new
6 elections take place on May 8th, 2012. In the
7 meantime, as they were making those preparations,
8 Mr. Booker and his friend Mr. Montgomery got in
9 contact with the governor's office and via the
10 governor's office they convinced Governor Hailey to
11 order a new election in Atlantic Beach and taking
12 the election out of the hands of the new MEC and
13 putting it into the hands of the Horry County
14 Election Commission.

15 The Horry County Election Commission had had
16 a history of problems with the town based on the
17 prior, the November 11th election and so there was
18 friction and there are emails in the record going
19 back and forth evidencing the Horry County Election
20 Commission's contempt for the current
21 administration at Atlantic Beach.

22 As a result of the governor's order an
23 election was ordered and Horry County Election
24 Commission was ordered to take over the election
25 and it was to take place on May 22nd, 2012. May

1 22nd, 2012, is in the middle of bike week hosted by
2 Atlantic Beach. As a result the Community Center
3 where elections are normally held was unavailable.
4 Therefore at the last moment the election was moved
5 to a church.

6 This church, Your Honor, is the church at
7 which some of the candidates are members and active
8 participants and moreover a church associated with
9 one particular faction in the town and a church
10 whereby Reverend Price, Miss Pierce and several
11 other folks who are supporters of theirs had been
12 ordered out on several occasions and told they were
13 not welcome in that building.

14 Nonetheless, the Horry County Election
15 Commission went forward with the election in the
16 church on May 22nd. What they failed to do,
17 however, was to provided a written notice of the
18 change. They failed to give adequate notice of the
19 election precleared by the Department of Justice
20 and they failed to then later hold their protest
21 hearings in accordance with the law.

22 Now, the Circuit Court's role in what an
23 election appeal of this matter is is to examine the
24 decision of the Election Commission for errors of
25 law and the judge must accept the factual findings

1 by the Commission unless wholly unsupported by the
2 evidence. In this instance, Your Honor, there are
3 both errors of law and there are findings of fact
4 wholly unsupported by the evidence.

5 First of all, in the Election Commission's
6 order they take the position that they have only
7 the jurisdiction to address errors in the results
8 of the election. That is incorrect, Your Honor.
9 They have also the responsibility to address errors
10 in the process of the election. What they
11 restricted their ruling to is merely looking at the
12 results, in essence saying did the protesting
13 candidate come forth with sufficient evidence to
14 alter the vote count.

15 In this instance, however, just like in the
16 previous Atlantic Beach case, the Cole versus
17 Atlantic Beach case when Justice Toal overturned
18 the election, it was the whole process that was
19 tainted. When the whole process is tainted it is
20 not counting whether there is enough votes to
21 overturn the election, but it is significant that
22 mandatory statutory provisions have been violated
23 and that those violations have interfered with the
24 full and fair expression of the voters' choice.

25 Such provisions are mandatory in this

1 election after there is a challenge, when the
2 provisions would substantially affect the free and
3 intelligent casting of the vote and such election,
4 the fundamental integrity of the election. And
5 that is the area that I believe we will be
6 presenting to you today, which is errors that
7 fundamentally affected the integrity of the
8 election and essential elements of the election.

9 In addition, the Court will set aside an
10 election even for minor irregularity if there is
11 fraud, constitutional violation or a violation of
12 statutory authority. By applying the wrong
13 standard the election, Horry County Election
14 Commission disregarded and often refused to hear
15 cogent and relevant evidence that my client
16 attempted to put into the record and as a result
17 they made their findings of fact based on an
18 incomplete record. She did her best to proffer
19 some of the evidence but other evidence due to the
20 timing of the protest election, which I will
21 address in a minute, she was unable to get into the
22 record at the time of the hearing and they wouldn't
23 accept it later.

24 But by applying the wrong standard the
25 Election Commission failed to address the

1 overriding sense by a large portion of the Atlantic
2 Beach residents that the process was unfair, run by
3 insiders of a particular faction in a mockery of
4 the election process.

5 By having the all white Horry County Election
6 Commission come in hand in glove with Mr. Booker
7 and certain other of his factions to run an
8 election of mainly African American voters was
9 viewed by many as a slap in the face and viewed by
10 many as harking back to the Jim Crow days where
11 those of the white race were in charge and could
12 dictate and manipulate votes of African Americans
13 and accepting the votes to help them and rejecting
14 and hindering the process for those who they
15 believe would vote against their cause.

16 Without Department of Justice preclearance
17 they moved the absentee ballot opening, the
18 challenge ballot hearing and the protest hearing
19 out of Atlantic Beach where it was typically held
20 and moved it to Conway where it is over 30 miles
21 away in the middle of biker week and affecting a
22 community where transportation is a considerable
23 factor.

24 Let's start with Reverend Price's challenge
25 to public notice of the election process. The

1 calendar of events was not published and made
2 available in the way they normally have been to
3 candidates and people, residents of Atlantic Beach.
4 Traditionally and historically the election process
5 is posted on the Community Center and on the town
6 hall at Atlantic Beach. During the protest hearing
7 the folks from the Horry County election Commission
8 admitted they did not post the locations, the time,
9 all the notice, public notice of the election at
10 the town hall or at the Community Center. They
11 published it, Your Honor, in the, and this was part
12 of the record below, they published it in the Sun
13 News which as the evidence was developed during the
14 hearing most people in Atlantic Beach don't receive
15 this publication but it was published in the Sun
16 News twice but the publication in the Sun News had
17 the election taking place at the Community Center.
18 The election took place at the church.

19 So, then they sent out postcards at some
20 point to voters changing the location, announcing
21 the change of the location to the Community Center,
22 from the Community Center to the church, the First
23 Missinoary Baptist Church. But even that notice
24 was confusing in that First Missionary Baptist
25 Church is given an address not in Atlantic Beach,

1 but in North Myrtle Beach.

2 And so one of the first jobs that the
3 Election Commission must do is give proper public
4 notice to the electorate about the election and in
5 this instance they failed to follow their statutory
6 duty and in this instance it is significant enough
7 to merit overturning the election in and of itself.

8 And as was developed at the hearing, evidence
9 showed that more people stayed away from the
10 polling place of that election as a result of the
11 information that was not provided to the candidates
12 and the voters. There was widespread confusion
13 about the voting process and never did they post on
14 the town hall where the election would be, where
15 the folks normally go to find their information.

16 As I discussed, holding the election and
17 polling location in a church affiliated with one
18 faction of the town and in a church with a history
19 of retribution, faction with a history of
20 retribution and intimidation toward other members
21 of the town.

22 There is in Justice Toal's opinion the
23 account of what happened when Reverend Price and
24 Miss Cole attempted to establish residency in the
25 town. There is also documented history about how

1 when they were, when this faction was aware that
2 certain voters who lived in a housing development
3 were not voting their way they condemned the
4 housing development. With that history the Horry
5 County election Commission should have come in with
6 kid gloves and at least made sure that they dotted
7 every i and crossed every t. Unfortunately the
8 email showed the contempt with which they held the
9 process. At worst it was a headache to them and
10 something they didn't want to do. They reluctantly
11 did it and then it was then moving everything that
12 they were doing, they were doing it more for their
13 convenience than ensuring the election process was
14 fair and equitable in Atlantic Beach.

15 The election at the church was tainted by the
16 fact that folks were afraid to go to the church.
17 They had been kicked out of that church before,
18 they had been told they weren't welcome, they were
19 afraid to even go and, as the testimony states, no
20 people were held away at the election, they were
21 afraid to even go, maybe, they were afraid to go,
22 not wanting to deal with and be faced with the
23 problems they had faced previous elections where
24 they were taken, somewhere where they clearly were
25 not welcome. It resulted in a lack of secrecy of

1 the ballot by, most importantly, intimidation.

2 Next, Your Honor, the challenge in the
3 location of the opening of the absentee ballots and
4 the challenged ballot hearing and the protest
5 hearing, while advertised in the Sun, what happened
6 was the Horry County Election Commission did not
7 get preclearance from the Department of Justice.
8 It is my understanding it has never had
9 preclearance from the Department of Justice for
10 moving those processes out of the town of Atlantic
11 Beach where they had traditionally been held and
12 moving them almost 30 miles away.

13 Folks of Atlantic Beach traditionally know
14 that those ballots, the absentee ballots are
15 counted at the location, they are in Atlantic
16 Beach, they are counted at the Community Center,
17 and the challenged ballots hearing, a challenged
18 ballot hearing, just to be clear, is when a voter
19 is challenged at the polls, where it is asserted
20 they are for some reason not entitled to vote at a
21 particular election.

22 Following the election, and this was on the
23 Thursday following, that hearing was held and that
24 is where the voter needs to show up and defend
25 their ability, to the reason why they believe their

1 vote should be counted. Moving it 30 miles away
2 rendered it impossible for several folks to even
3 make that trip for the challenge.

4 Again, also noting it is biker week, this is
5 some people's only opportunity to make money during
6 the year, Your Honor, and definitely most people
7 are working during this time and again the
8 challenge of the location wasn't posted at the
9 town, in the town hall like it was normally posted.

10 At the challenged ballot hearing the Election
11 Commission refused to hear certain evidence offered
12 by some of the challengers that a large number of
13 voters who they eventually allowed to cast their
14 vote had been deemed, following an investigation by
15 the Atlantic Beach police department, to not reside
16 in the town. The police officer who conducted the
17 investigation was there at the hearing and prepared
18 to testify but the police officer was not allowed
19 to testify and the records, the incident reports
20 concerning those voters not being residents of the
21 town and therefore not eligible to vote was deemed
22 to be hearsay and refused to be considered. At the
23 protest hearing they should have allowed that
24 evidence in and it should have been considered.
25 That is a fundamental error in that process.

1 Next, the protest hearing which was following
2 the certification by the Horry County Election
3 Commission of the results of the election which
4 took place immediately following the contested
5 ballot hearing and that was on Thursday.
6 Candidates then had certain period of time to file
7 a protest. My client filed a protest the next day
8 at 4:45, the next day, 4:45. She was told at that
9 time, she asked when the protest hearing would be
10 because that time and location and information had
11 not been made public, and she was told it would be
12 on Friday, excuse me, on Saturday. I'm sorry, she
13 filed the protest at 4:45 on Thursday and she was
14 told that the challenged ballots hearing would be
15 3:00 o'clock on Friday but she was given nothing in
16 writing and nothing verified until the next morning
17 at 8:00 a.m. when a notice was delivered to her
18 indicating that the protest hearing would be held
19 that afternoon, that Friday afternoon at 3:00
20 o'clock.

21 Traditionally, Your Honor, protest hearings
22 held in Atlantic Beach have always been held on the
23 following Saturday and again they have always been
24 held at the polling location. In this instance it
25 was moved to Conway. Again, no preclearance for

1 this change.

2 The prejudice to my client with holding the
3 protest hearing with less than 24 hours of notice
4 left her without ability to get a lawyer there.
5 Her lawyer would have been available on Saturday,
6 couldn't get there on Friday, and not enough time
7 to get evidence prepared of the videotapes to
8 submit it at the hearing and she was denied the
9 opportunity to submit it later.

10 As you know, Your Honor, South Carolina falls
11 under the Voting Rights Act and one of the
12 provisions in the Voting Rights Act requires that
13 before changes in the election process can be made
14 that the change needs to be precleared by the
15 Department of Justice to make sure that no
16 prejudice and no harm to minorities or others is
17 being perpetrated by the change.

18 Now, the Horry County Election Commission
19 submitted the proper, submitted information to the
20 Department of Justice for preclearance. What they
21 failed to do, however, for preclearance to hold the
22 election, but they did not submit timely the
23 information for preclearance for the change of the
24 election location and so preclearance was not
25 available for changing the election location at the

1 time the election was held.

2 Moreover, it is my understanding the
3 information to the Department of Justice also did
4 not include changing the location of the counting
5 of the absentee ballots or for the protest hearing
6 or for the challenged ballot hearing, to move it
7 out of Atlantic Beach to Conway. And my
8 understanding, that has never been precleared and
9 never been asserted.

10 But also during that process the Horry County
11 Election Commission used as its minority
12 representative William Booker, the individual
13 called out by Justice Toal in her previous opinion,
14 and so to the extent that the Department of Justice
15 is checking to find out if this change is
16 acceptable, they were directed to the primary mover
17 and shaker behind the previous violation of
18 election laws.

19 In addition, Your Honor, my client has
20 challenged the legality of the election process
21 initially coming from the governor's office and the
22 process by which the governor has applied Section
23 7-13-1170 in order to order this election. In her
24 order, Your Honor, she called out the Municipal
25 Election Commission and confused them with the

1 previous Election Commission that was mentioned in
2 Justice Toal's previous ruling. This was a new
3 Election Commission, new parties on the Election
4 Commission.

5 In addition, her order asserted that the
6 Election Commission had not called for a new
7 election, when indeed the Atlantic Beach Municipal
8 Election Commission had ordered an election to take
9 place on May 8th, 2012, which following the
10 Justice's order, the governor's order, that of
11 course didn't go forward but so the basis, the
12 fundamental basis underlying the governor's order
13 was flawed.

14 Then, Your Honor, my client points out that
15 you can look at the vote count and the number of
16 folks who came to polls, compared the number of
17 eligible voters and assert that there are,
18 according to the Horry County Election Commission,
19 there are 420 registered voters. My client asserts
20 there is more likely approximately 350 who are
21 actually town residents. 89 voters showed up for
22 this election in November, I mean in May, and it
23 has been my client's position that that is further
24 evidence that this election process was tainted by
25 fraud, by intimidation and falsity and manipulation

1 and that it should be overturned and a new election
2 ordered or at the minimum, Your Honor, a new
3 hearing held by the Horry County Election
4 Commission at which they are directed to hear not
5 only challenges that could potentially affect the
6 result but actually challenges to the process
7 itself as the law requires.

8 Thank you.

9 THE COURT: Okay.

10 MR. GREEN: Thank you, Your Honor. I think
11 it is important, Your Honor, I filed a brief a
12 while back but I have a copy of it, may I approach?

13 THE COURT: Please.

14 MR. GREEN: I have already provided opposing
15 counsel with it.

16 Thank you, Your Honor.

17 THE COURT: Okay.

18 MR. GREEN: I think it is important for the
19 record in this case to realize that there were two
20 witnesses at the hearing, not counting Reverend
21 Price who argued. The witnesses were Patricia
22 Bellamy and Carolyn Cole and that was it. You can
23 read the record. I think the record is on file but
24 I have a copy for the Court if you would like that
25 as well.

1 THE COURT: I will need one if you have copy
2 of it because I don't have it.

3 MR. GREEN: I do. Let me hand that up as
4 well.

5 This is the transcript, Your Honor, and a
6 copy of the exhibits as well.

7 Beg the Court's indulgence.

8 I think these are on file with the Clerk of
9 Court pursuant to statute but I'm just providing
10 you with copies.

11 There were two witnesses and a review of the
12 transcript, and that transcript has Mayor Pierce's
13 protest as well as the last part, those witnesses
14 complained about the executive order issued by the
15 governor. There was very little testimony, in fact
16 I submit there was no substnative testimony about
17 any problem with the voting in the election. There
18 were generalized allegations about problems,
19 generalized complaints but Miss Cole didn't even
20 vote, nor did Reverend Price. I don't know if Miss
21 Bellamy voted or not, she didn't stay and the
22 record does not reflect that. So, there is no
23 voter who testified anything about the process,
24 about voting, no voter, no potential voter
25 testified that they were held away, no affidavit.

1 I will get to the timing in a minute, but
2 their complaint about the time, there were no
3 affidavits, there was no nothing, nothing that
4 would allow the Commission, that would support the
5 Commission overturning an election and the Court is
6 crystal clear that every presumption in favor of
7 sustaining the election must be sustained, not
8 supposed to overturn them lightly. There was
9 nothing that would have supported it. Most of it
10 was about, was about the executive order.

11 We submit the Commission, the Commission
12 determined and we submit determined accurately a
13 protest hearing is not the place to determine, to
14 review a governor's executive order issued under an
15 election statute. There is no dispute, especially
16 based on counsel's statement, there was an election
17 held at town of Atlantic Beach last fall that was
18 overturned by the town election commission.

19 Another election was supposed to be scheduled
20 in 180 days, that was going to be I think in May,
21 May 6th, early May, you've got to notice it within
22 60 days. None of that happened, so no election was
23 going to be happening, nobody disputes that an
24 election was needed but it didn't happen, it wasn't
25 scheduled. The statute allows the governor to go

1 in and do that when facts appearing to her
2 satisfaction suggest that an election official such
3 as the town election commission has refused to
4 schedule or provide for holding an election.

5 But again, we submit the governor can't be a
6 party to a protest hearing because she's not an
7 election official, she's not part of the election
8 process. You would have to sue her separately. I
9 cite to a case in my brief, Maybank versus -- I
10 can't remember the last name of it, but there was
11 an original jurisdiction Supreme Court case brought
12 over this statute that the governor relied on.
13 That is when they should have challenged it, before
14 the election, that goes to who is going to hold the
15 election.

16 And we would also submit that under, if you
17 look at the Butler decision which is cited in my
18 brief as well, the Court said there is no standing
19 in an election protest to raise Voting Rights Act
20 challenges, which makes sense, that is a federal
21 law matter. That same logic, though, applies that
22 the Court, that the Court and the Commission should
23 consider challenges to the governor's executive
24 order. It doesn't pertain to the conduct of the
25 election itself.

1 Their complaint about, I don't even think
2 they are complaining about who conducted, excuse
3 me, that there was an election held, they just
4 don't like Horry County holding it pursuant to the
5 governor's order. But the governor's order is not
6 a proper subject of the protest process. It
7 doesn't have anything to do with how that election
8 was conducted.

9 And I don't even know, the Butler case talks
10 about candidates don't have standing to raise
11 Voting Rights Act challenges because they are not
12 really raising them as voters, they are raising
13 them as a candidate. Well, I think the town
14 election commission or somebody would have been the
15 party to challenge the governor's executive order
16 because a candidate doesn't, a candidate isn't
17 injured by an election being held, they are only
18 injured if the election is conducted in a way that
19 doesn't count some votes or does it improperly or
20 things like that.

21 So we submit, as I explained in the brief, as
22 the Commission set forth in its order, the
23 executive order was not a proper subject for the
24 protest hearing and so there was evidence, it is in
25 that record, it was accepted by the Commission but

1 to make a record so that you review it, but
2 virtually all of it, if not all of it, relates to
3 the executive order, emails going back and forth
4 talking about this, whatever, that doesn't have
5 anything to do with how the election was conducted,
6 it has to do with who was going to conduct the
7 election. Once you get past that, Your Honor,
8 there is nothing in the record that even suggests
9 overturning the election other than generalized
10 allegations.

11 There are two cases and I have them cited in
12 my brief, but Berry v. Spigner and Fielding versus
13 the South Carolina Election Commission, you can't
14 overturn an election for generalized allegations.
15 It's got to be specific information. It can't be
16 generalized allegations about fraud, it can't be
17 generalized allegations about people being held
18 away, people being bribed to vote with alcohol, it
19 can't be generalized statements. It's got to be
20 specific evidence. And there is none of that in
21 that record, none.

22 What is in the record, there were
23 allegations, counsel referenced some evidence about
24 intimidation, there is nothing in the record
25 supporting intimidation. There were generalized

1 statements by Miss Bellamy and Miss Cole that
2 people stayed away because it was a church but
3 there is no evidence that anybody stayed away.
4 Miss Cole said she didn't vote because she didn't
5 want to vote. She also testified that everybody
6 was being as nice as possible. So, there is no
7 evidence of intimidation, there is no evidence,
8 nobody has testified, "Well, I wanted to go vote
9 but because it was in the church there that had
10 this history of violent events or threats I didn't
11 vote." There is nothing.

12 Miss Cole also testified she didn't think
13 people were held away. She thought people made
14 their own decisions. That is in the hearing
15 transcript, page 96, I cited that in my brief as
16 well, Your Honor.

17 There is some discussions about notice of the
18 election. Notice was given consistent with the
19 statutory requirement. Postcards were sent, public
20 notice was published twice in the Sun News. There
21 was a reference in counsel's argument that nobody
22 in the town of Atlantic Beach reads the Sun News.
23 Well, I'm not sure, I think that may have been part
24 of the record but that's one person and besides,
25 that is what the statute says to do, and the Butler

1 decision cited in my brief focused on whether they
2 complied with the statutory requirement.

3 Counsel raised an issue about this calendar
4 of events and that is not dissimilar to sort of an
5 informal paper notice that was at issue in Butler.
6 The statute doesn't require a calendar of events,
7 it doesn't require any of that. It just requires
8 notice of the election to be published and when
9 there was a problem with where the election was
10 going to be held they sent out postcards. That is
11 correct and they notified everybody about it.

12 There was some efforts, some discussions
13 whether the town, I think the record reflects
14 ultimately they decided it needed to be held in
15 this church, that was the only available place so
16 that is where they held it. But that was sent out
17 to the voters of record at their address of record
18 about the polling place change, even though again
19 under Butler preclearance is not a proper issue for
20 a protest hearing, it was precleared, was
21 precleared after the changes, that is not atypical
22 with the Justice Department, so there was
23 preclearance of the polling place change but again
24 we submit that is not a proper part of this protest
25 hearing or this appeal.

1 Notice of the hearing, it was given pretty
2 quickly. The municipal election statute has an
3 unbelievably short time frame, things have to
4 happen really quick. It has to be absolutely
5 within 48 hours after the protest is held, protest
6 is filed. The county chose to hold it the next
7 day, 24 hour notice was given, a hearing was held,
8 counsel acknowledged in her argument, Miss Price
9 acknowledged at the hearing she was told and when
10 she filed her protest when the hearing was going to
11 be held. It is quick, that's what the statute
12 requires. If you look back at the Atlantic Beach
13 cases going to the Supreme Court part of the
14 problem that they have had is not complying with
15 that quick time frame.

16 And while we're on the prior cases of the
17 town of Atlantic Beach I would like to point out
18 there was some discussion, some argument that the
19 Municipal Election Commission, the composition of
20 it has changed since the Cole decision. I don't
21 know that, I'm not sure it's pertinent. What I
22 would say, though, is that the Court in that
23 decision held that, the statements were, "The manner
24 in which the MEC conducted the protest hearings
25 causes us great concern." And part of the issue

1 in the Cole case was not complying with the
2 statutory time frame, even repeatedly so and makes
3 us question whether future election protests can be
4 properly conducted in Atlantic Beach without direct
5 monitoring by the State Election Commission.

6 Nearly every Atlantic Beach municipal election held
7 in recent history has found its way to this court.

8 And then finally, "We have grown weary of the
9 shenanigans engaged in by all parties involved in
10 the election process in Atlantic Beach and will not
11 hesitate to issue sanctions if the election laws of
12 this state continue to be blatantly disregarded."

13 So, after that case, just accepting that the
14 composition of the Election Commission had changed,
15 they overturned the next election that was held and
16 then didn't timely schedule another one, even
17 though it is undisputed there was a mayor position
18 to be filled. And that is when the governor issued
19 the order and that is not inconsistent with what
20 the Supreme Court held in the Cole case.

21 Now let me step back. Again, notice was
22 given, notice was given pursuant to the statute and
23 notice was provided. There was some argument about
24 the turnout. There was turnout. There is no
25 testimony about somebody saying they were held

1 away, none whatsoever, just supposition by
2 witnesses who don't know, no affidavit.

3 There was some argument about the challenged
4 ballot hearing. Well, none of that evidence, I
5 think there was an attempt to put in the officer's
6 incident report if I remember right, even though
7 I'm not sure it was specifically identified, but I
8 don't recall that. I don't recall the officer
9 being called to the hearing, protest hearing, I
10 don't recall anybody whose vote was at issue in the
11 challenged ballot hearing being called as a
12 witness, no affidavits from those individuals,
13 either the ones that were ultimately excluded by
14 the State, excuse me, the Horry County Election
15 Commission or the ones that were allowed to cast a
16 vote, their vote was accepted. No testimony from
17 any of those witnesses, there is nothing from, the
18 only person who was at the challenged ballot
19 hearing that testified was Miss Bellamy and she
20 provided no specific information about what went on
21 at that challenged ballot hearing and she certainly
22 didn't have testimony from anybody else or
23 affidavits.

24 So, I think counsel's argument today and the
25 brief that was filed by Reverend Price's other

1 counsel was, is a focus on the executive order, it
2 is a focus on who conducts the election, not how
3 it's conducted, not the results of that election.
4 It's a complaint about Mr. Booker. Mr. Booker
5 wasn't called to testify by Reverend Price, he did
6 testify in Miss Pierce's portion of the protest
7 process but all the questions had to do with his
8 involvement in the executive order, it didn't have
9 anything to do with what happened on that election
10 day, on May 22nd.

11 Those emails, like I said, they weren't
12 considered by the Commission. The order notes that
13 but they are in the record, they allowed her to
14 preserve the record.

15 There was preclearance for the election being
16 held and like I said, ultimately preclearance was
17 obtained for the move of the polling place. Again
18 we submit that is not a proper part of the election
19 protest.

20 Bear with me just a minute, Your Honor,
21 please.

22 So, Your Honor, I think that about wraps up,
23 I rely on my brief for the rest of my argument.
24 What I would submit is that the lack of any
25 substantive evidence that this Court could, excuse

1 me, that the Commission could even remotely even
2 rely on the overturn of election is speculative and
3 conjectural. Berry versus Spigner, Fielding versus
4 South Carolina Election Commission, again both in
5 my brief, they prohibit you from relying on that
6 type evidence. The preclearance issues that
7 counsel has raised, those aren't proper subject for
8 protest hearing and I think the Butler decision
9 supports me on that.

10 The factual findings made by the Commission
11 are entirely consistent with the evidence because
12 there was no evidence that would support
13 overturning the election. Based on that record the
14 Commission was required to apply all reasonable
15 presumptions to sustain the election and couldn't
16 set aside the results for mere irregularities
17 unless the result would be challenged or rendered
18 doubtful. The winning candidate was Mr. Evans and
19 if you look at the count of his vote, even if every
20 challenged ballot was stricken he still would have
21 a majority to win the election, so there is nothing
22 to support overturning the election and nothing to
23 support anything contrary to the direction from the
24 Supreme Court to resolve every reasonable
25 presumption in favor of the validity of the

1 election.

2 So if the Court has no questions I thank you
3 for your time.

4 THE COURT: All right, thank you.

5 MR. NICHOLSON: Good afternoon, Your Honor.
6 I'm Jason Nicholson on behalf of the State Election
7 Commission. I would echo Mr. Green's comments
8 regarding the record and regarding the lack of
9 evidence of actual problems presented at the
10 protest hearing.

11 As far as my client goes, there have actually
12 been no real allegations made against my client
13 except that the executive director of the Election
14 Commission communicated with the Horry County
15 election director via email but again my client did
16 not actually conduct the election and did not
17 conduct the protest hearing. We under normal
18 circumstances, for the Municipal Election
19 Commission you appeal those to the Circuit Court.
20 The State Board of Canvassers which as the State
21 Election Commission says, but this process, my
22 client is outside of this process other than giving
23 guidance to the county election commission
24 concerning conducting the election and I would also
25 note that for any of the allegations regarding the

1 Voting Rights Act, the particular type Voting
2 Rights Act violation they are alleging, which is
3 lack of preclearance, I would submit this Court
4 lacks jurisdiction to hear that at all. There is
5 one court can hear a Section 5 voting rights
6 violation of the type claimed here, and that is a
7 three judge panel of federal courts, two District
8 Court judges and one Circuit Court judge, that is
9 the venue for voting rights allegations, including
10 a lack of preclearance but I will note the
11 governor's office did receive preclearance to
12 conduct the election by the Horry County Election
13 Commission and the State Election Commission even
14 though we did not conduct it on May 8th, 2012, and
15 the polling place change was received after the
16 election was held but again that is standard
17 protocol for preclearance with the Department of
18 Justice.

19 Again, I would echo Mr. Green's comments that
20 the majority of the allegations simply seem to be
21 directed toward the executive order itself and that
22 is not a proper subject for a protest hearing.
23 There are ways to challenge that, 7-13-1170 gives
24 the governor authority to conduct the election,
25 there is a way to challenge that, protest hearing

1 of an election is not proper venue for that. I
2 believe it is Butler, Butler versus Town of
3 Edgefield, 1997, Your Honor, that echos that.

4 And again, if you look at the numbers for the
5 voters, nothing changes the results. Again, Your
6 Honor, my client fully didn't do anything with
7 regard to this election, so I'm not entirely sure
8 why we were sued, we didn't conduct the election,
9 we didn't conduct the protest hearing and even if
10 there was an appeal beyond the County Election
11 Commission, there was nothing for us to do, it
12 comes here because it was a municipal election. I
13 just don't think there has been any allegations
14 against my client.

15 THE COURT: Okay, thank you.

16 Miss Varnado?

17 MS. VARNADO: Thank you, Your Honor. Two
18 things. First of all, as you will note in the
19 transcript, there was actually in addition to Miss
20 Bellamy and Miss Cole, Sandra Martin, William
21 Booker and Joel Montgomery also testified as
22 witnesses. Now, remembering that Reverend Price
23 and Miss Pierce appeared pro se because they didn't
24 have time to get counsel due to the short notice,
25 but if you look at page 54 of the transcript Mr.

1 Hall, who ran the election, ran the protest
2 hearing, presided over it, he allowed each
3 candidate to in essence, they both presented their
4 case in tandem and Miss Price, Reverend Price was
5 permitted to object in Miss Pierce's portion and
6 Miss Pierce was permitted to object in Miss Price's
7 portion and so that the question, it became in
8 tandem, so in general we submit that all of the
9 witnesses together, whether they were testifying,
10 whether they were initially asked questions by Miss
11 Pierce or Reverend Price, that they all should be
12 considered as part of the one process because you
13 are both allowed to make, you are both allowed to
14 object, and he let them go back and forth in each
15 other's portions of the hearing and in essence were
16 merged.

17 Counsel argues there were no affidavits and
18 no voters who were present at the protest hearing
19 and that again was part of Reverend Price's
20 objection to the process going forward on the
21 Friday following the election as opposed to the
22 Saturday following the election which has been
23 traditionally done in Atlantic Beach. There wasn't
24 time, there wasn't time to get those folks there,
25 also to get them all the way to Conway instead of

1 in town, in the middle of biker week, and there
2 wasn't time to get their lawyers there and there
3 wasn't time to get these affidavits.

4 Nonetheless, they did put into the record and
5 Miss Bellamy who was the primary challenger of
6 several voters at the challenged ballot hearing
7 also testified about the incident reports and the
8 testimony from the police officer. Now, again the
9 folks that were running the protest hearing are the
10 same folks who ran the challenged ballot hearing
11 and when she again wanted to put that incident
12 report, when they wanted to put that incident
13 report into evidence they again said, "That's
14 hearsay, we won't consider it," so it is in the
15 record, they preserved the record, they attempted
16 to argue it, they just were stymied at the
17 challenged ballot hearing and protest hearing by
18 the issue was considered to be hearsay and wouldn't
19 be considered by the presiding body.

20 There is evidence folks stayed away proffered
21 by Miss Cole, and also further evidence was to be
22 offered but denied, which was the video footage
23 they wanted to put in but were denied because they
24 couldn't get it processed in time to be available
25 and therefore the Election Commission refused to

1 consider it.

2 But what Miss Cole testified, I lost the page
3 and I apologize, that this is the church where she
4 and others have been told they were not welcome,
5 they could not come there and therefore although
6 people were trying to be nice, people weren't held
7 away in terms of someone physically in this
8 instance weren't blocking their entry physically
9 into the church location but by virtue of putting
10 it in this hostile environment people stayed away.
11 And that is what is in the record. You don't need
12 60 people to testify to that, Your Honor, you just
13 need one and that is sufficient evidence,
14 especially in this situation where it is very
15 specific and very clear.

16 The issue about notice, Your Honor, I beg to
17 differ with counsel that they complied with
18 preclearance, with notice. There wasn't 24 hour
19 notice, my client at 4:45 filed the first protest,
20 the hearing was held at 3:00 o'clock the next day.
21 It is absolutely impossible for there to have been
22 24 hours written notice in compliance, absolutely
23 impossible, given the time of the protest and that
24 violation itself, Your Honor, it is a mandatory
25 violation and a mandatory should require in and of

1 itself overturning this election, and again they
2 have testified also to the prejudice they suffered
3 because of it.

4 As I believe they have admitted, there is no
5 preclearance for moving the absentee ballot count,
6 the challenged ballot hearing or protest to Conway.
7 There was testimony at the protest hearing about
8 the prejudice to people moving these things to that
9 location and we argue that the legitimacy of the
10 election itself is absolutely within the
11 jurisdiction of this Court and whether the Court
12 has the jurisdiction to review a Department of
13 Justice Voting Rights Act challenge on the merits
14 of the Voting Rights Act challenge certainly plays
15 into the legality of the election process itself
16 and again plays into the fact this election was
17 illegal and especially the specific part where they
18 moved things without proper notice.

19 An additional point is again counsel keeps
20 focusing back to the older line of cases in which
21 the Court would refuse to consider an election
22 challenge unless you were in a situation where you
23 can say we had 100 voters and we had a hundred
24 challenges, 50 challenges, and based on that we
25 subtracted all the challenged ballots, that would

1 be enough votes to affect the outcome of the
2 election so therefore we will overturn the
3 election. That is one type of election challenge.
4 This election challenge is not to that type of
5 process. It is to the process of the election
6 itself and the process was fundamentally flawed and
7 in violation of mandatory statutes of the State and
8 therefore should be overturned.

9 Thank you, Your Honor.

10 THE COURT: Miss Varnado, let me ask you
11 this. I understood Mr. Green to say neither Miss
12 Price nor Miss Bellamy nor Miss Cole actually voted
13 in the election, is that true?

14 MS. VANADO: Yes, sir, that is my
15 understanding, Your Honor.

16 THE COURT: But they are not claiming that
17 they were denied the right to vote?

18 MS. VARNADO: They are claiming by virtue of
19 the fact that the election was held in a hostile
20 environment that they were denied their right to
21 vote.

22 THE COURT: So part of their protest is that
23 someone prevented them from voting?

24 MS. VARNADO: That by holding the election in
25 a hostile location that it rendered the process

1 with such level of intimidation that folks did not
2 come out to vote.

3 THE COURT: So neither Miss Price nor Miss
4 Bellamy nor Miss Cole showed up at the polling
5 location?

6 MS. VARNADO: No, Miss Bellamy was at the
7 poll location, I don't know about whether she
8 testified she voted or not. And my client tells me
9 that she didn't feel safe to vote because there was
10 an individual there who is under harassment order
11 to stay away from her and so she did not feel safe.

12 THE COURT: All right. Miss Varnado, did you
13 file a brief?

14 MS. VARNADO: There was with the initial
15 protest and I can --

16 THE COURT: Do you have a copy?

17 MS. VARNADO: Yes, Your Honor.

18 THE COURT: Thank you. Is there anything
19 else from anyone?

20 All right, I will review the briefs and
21 transcript of the hearing and the exhibits and
22 applicable law and issue an order.

23 MS. VARNADO: Thank you, Your Honor.

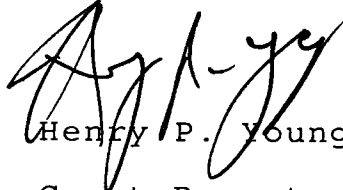
24 MR. NICHOLSON: Thank you.

25 (Hearing Concluded).

1
2
3
4 I, the undersigned Henry P. Young, Official
5 Court Reporter for the Eighth Judicial Circuit of
6 the State of South Carolina, do hereby certify that
7 the foregoing is a true, accurate, and complete
8 transcript of record of all the proceedings had and
9 evidence introduced in the trial of the captioned
10 case in the Circuit Court for Horry County, South
11 Carolina, on the 26th day of July, 2012.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14 December 28, 2012
15
16

17 
18 Henry P. Young
19 Court Reporter
20
21
22
23
24
25



Registration and Elections
1515 4th Avenue
Conway, South Carolina 29526



Return Service Requested

Rev. Windy Price
1009 32nd Ave S Apt A
Atlantic Beach SC 29582

Exhibit "2"

2012 MAY 25 AM 8:03

HORRY COUNTY
SHERIFF'S OFFICE

NOTICE OF PROTEST HEARING

The Election for the Town of Atlantic Beach, held on May 22, 2012, Has been protested. This notice is to inform you that a hearing is Scheduled for Friday, May 25th, 2012 at 3 pm. It will be held in the Elections Office located at 1515 4th Ave, Conway SC.

Horry County Election Commission



Civil Rights Division

TCH:RSB:RPL:AAO:par
DJ 166-012-3
2009-0037
2012-1467

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

May 18, 2012

Swati S. Patel, Esq.
Chief Counsel
Office of the Governor
P.O. Box 12267
Columbia, South Carolina 29211

Dear Ms. Patel:

This refers to the schedule for conducting the May 22, 2012, special general election, including conduct of the election by the Horry County Election Commission and the State Election Commission, for the Town of Atlantic Beach in Horry County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on March 19, 2012.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41.

This also refers to our January 12, 2009, letter (copy enclosed), which requested submission under Section 5, of election changes following the South Carolina Supreme Court's order directing the town to rerun the November 6, 2007, mayoral election. These changes include, but are not limited to, the selection of the election dates for this election and a joint election agreement between the Town of Atlantic Beach and Horry County, South Carolina, with respect to rerunning the mayoral election.

We have not received a response to our correspondence. Unless the town receives a declaratory judgment from the United States District Court for the District of Columbia or the Attorney General interposes no objection to the specified changes, they are not legally enforceable. *Clark v. Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the town plans to take concerning this matter. If you have any questions, please

E. Hubert "Z"

call Abigail Olson (202-305-0787) of our staff. Refer to File No. 2009-0037 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Christian Herren, Jr.', written over the printed name.

T. Christian Herren, Jr.
Chief, Voting Section

Enclosure



Town of Atlantic Beach

717 30th Avenue South
Atlantic Beach, SC 29582
Phone: 843 663-2284
Fax: 843 663-0601

Town Council
Mayor Retha Pierce
Mayor Pro Tem Carolyn Cole
Councilmember Jake Evans
Councilmember Rev. Windy Price

May 14, 2012

VIA FEDERAL EXPRESS

Ms. Abigail Olson
Voting Section
Civil Rights Division
Room 7254 -NWB
Department of Justice
1800 G St., N.W.
Washington, DC 20006

Re: Submission Under Section 5 of the Voting Rights Act
File No. 2012-1467 and File No. 2012-2699

Dear Ms. Olson:

This letter is concerning the municipal special election in the Town of Atlantic Beach, South Carolina ("Atlantic Beach") scheduled for May 22, 2012 (the "Special Election") ordered by South Carolina Governor Nikki Haley pursuant to Executive Order No. 2012-03. The undersigned, constituting all of the current members of the Municipal Election Commission of the Town of Atlantic Beach ("MEC"), object to the changes being made in the voting practices as a result of the Governor's call of the Special Election, and respectfully request that the Attorney General of the United States interpose an objection to the proposed changes pursuant to the provisions of the Voting Rights Act of 1965, as amended.

Our reasons for objecting to the Special Election and requesting the Attorney General to interpose an objection to the changes made to the election process as proposed for the Special Election are summarized below.

Executive Order No. 2012-03 Misapplication of the Law

In paragraph four of Executive Order No. 2012-03, Governor Nikki Haley states that the Municipal Election Commission had not set a date for the new election. A letter drafted by the town's interim Town Manager was sent to Ms. Swati Patel informing her of the Election Commission's reasons for overturning the election and in the final paragraph requests that the Governor set a date of May 8,

0357

Exhibit 4

2012 for the new election. Please note that Joe Montgomery, a citizen who claims to work for Candidate Jake Evans asserted before the Town Council that he was in contact with the Governor's office and it was the Governor's duty to set the date for the new election and not the town's Election

Commission. The Election Commission believed its responsibility was to set the date, but facing conflicting opinions and without benefit of an attorney, the Election Commission chose to have the town manager or town clerk propose the date to the Governor's office in a letter in which all of the Commissioners and candidates were notified.

The Election Commission had previously announced that they would hold a public meeting as soon as the transcript from the protest hearing arrived. The transcript arrived on December 13, 2012. The Municipal Election Commission noticed a meeting for December 14, 2011 and met in the Community Center where they outlined the next steps in their process. The public was informed that all of the election documents including the transcript would now be sent to attorneys until one could be hired to write their order. Once the order was written, it would be put on file with all exhibits and other documentation in the Horry County Clerk of Court's office. Commissioner Nicole Kenion stated that once the documents were on file the Respondents would have ten (10) days to appeal the MEC's decision. Candidate Jake Evans was present at the meeting representing himself, and candidates Josephine Isom, and Charlene Taylor. He responded saying that they did not want to appeal the decision. Commissioner Kenion told him the MEC would follow through with the process so that no one would later claim they did not have options when making their decisions.

In paragraph five of Executive Order No. 2012-03, Governor Haley states that "because of the Municipal Election Commission's delay, it is now too late for the Municipal Election Commission to conduct a new election for Mayor and Town Council members within the time period it previously ordered and comply with the notice requirements of Section 5-15-50." The use of the words "previously ordered" indicates the Governor's office was aware that the MEC had set a date for the new election. The Governor's office never engaged the Municipal Election Commission in a discussion about setting the date for the new election choosing instead to work at the request of some of Councilman Jake Evan's supporters and Councilman Jake Evans in his letter to the Governor's office dated February 21, 2012.

In paragraph six of the Executive Order No. 2012-03, Governor Haley cites §7-13-1170 of the South Carolina Code of Laws (1976), as amended, as the law that authorizes her action against the Municipal Election Commission. The law gives the Governor the authority "when any election official of any political subdivision of this State charged with ordering, providing for, or holding an election has neglected, failed, or refused to order, provide for, or hold the election at the time appointed, or if for any reason the election is declared void by competent authority, and these facts are made to appear to the satisfaction of the Governor, he shall, should the law not otherwise provide for this contingency, order an election or a new election to be held at the time and place, and upon the notice being given which to him appears adequate to insure the will of the electorate being fairly expressed. To that end,

he may designate the existing election official or other person as he may appoint to perform the necessary official duties pertaining to the election and to declare the result."

The MEC did not neglect, fail or refuse to order a new election. It is unclear to the MEC and the general public as to how the facts surrounding the November 1, 2011 and the proposed special election were made satisfactory to Governor Haley when she was communicating with members of one faction in Atlantic Beach including former town manager William Booker and Joe Montgomery whose actions on Election Day are under investigation. On April 25, 2012, Laura Best was arrested for impersonating state or local officials in connection with a sham legal process. Ms. Best is described by local media as a former Horry County GOP leader. She arrived at the polling place in Atlantic Beach and was introduced by William Booker as being from the Attorney General's Office. She then introduced herself to others as being in the same capacity. Ms. Best spent the day seated with candidates Jake Evans and Charlene Taylor, and another woman allegedly impersonating a federal official. She claimed to be an employee of the South Carolina Attorney General's office on assignment to monitor the election in Atlantic Beach. Best had unfettered access to the poll manager, voting machines, ballots, etc. and made decisions within the polling place before it was discovered that she was not from the Attorney General's office. Throughout the day, as Ms. Best talked to Joe Montgomery, candidates Taylor and Evans, she also talked on her cell phone and announced that the person to whom she was talking was Sandy Martin of the Horry County Election Commission. In a letter dated November 29, 2011, Mary Frances Jowers, Assistant Attorney General confirmed that Ms. Laura Best is not an employee of the Attorney General's Office.

During the Election Protest Hearing, the Appellants raised the issue of the voting machines. Commissioners Kenion and Hudson were present at the polling place for the entire day. They watched as voters were being steered to a particular machine. It was revealed that the machine in question was not registered to the State of South Carolina, but to an unknown account in Florida, and identified by the company as being discarded. The MEC had the Atlantic Beach Police Department secure the machine in the evidence room until they could determine how to proceed with an investigation and audit of the machine. In an unprecedented move, Horry County had the Sheriff's Department seize the machine from the town. The emails obtained through the FOIA request and the trial before the magistrate judge show an unusual and exaggerated reaction from Horry County and the State Election Commission about the voting machines. Ms. Martin seeks to use the Governor's order as a way to retrieve the machines that were sealed in the Sheriff's Department and in no danger of being tampered with by anyone in Atlantic Beach. The Atlantic Beach Concerned Citizens presented the MEC with a copy of their FOIA request to the State Election Commission to obtain the serial numbers and locations of all voting machines in South Carolina. The request was made in January 2012 and to date they have not received a response. The town sought the advice of Professor Duncan Buell, an expert on the voting machines. In an email dated February 1, 2012 he informs Chris Whitmire of the South Carolina Election Commission that the machine in question is not on the 2010 list. The voting machines have since been released and according to the emails subjected to an audit. Based on the emails, the state and county election commission pondered whether or not to include Atlantic Beach and the public in the process of

unsealing the machines. The South Carolina Election Commission reports that the audit results were fine.

The voters of Atlantic Beach raised questions about the voting machine as it relates to their election and upcoming state elections and the presidential election. The MEC learned that it is possible to program these voting machines to see one name on the screen but have that recorded as a vote for someone else. The MEC felt that the matter of the machines was something the state and county commissions should have been working with them to address. Their responses simply raised more questions for the town and the entire state of South Carolina about its relationship with proprietary equipment and contractual agreements on voting machines that subvert the sunshine laws. The investigation into all matters pertaining to the November 2011 election is still ongoing and other arrests may be forthcoming.

Governor Haley's interpretation and application of §7-13-1170 violates the spirit and intent of the law and could only have been enacted if there was no other provision in the law to handle election controversies. South Carolina law provides for thorough examination of election issues beginning with the MEC, and through the Circuit Court and Supreme Court. The Supreme Court has been unwilling to make law for specific interests in Atlantic Beach and has applied the law as it would to all municipalities in the State in a very public process as mandated by the State Legislature. In an email from Marci Andino to Sandy Martin, both received a draft of Governor Haley's order in which Swati Patel is seeking comments and edits from them. In a subsequent email from Sandy Martin to Marci Andino, Martin asked, "can we use this information that the Governor is getting ready to call for the new election to get our machines back?? Or is it a secret until it's done." Governor Haley's involvement in this election appears to be on behalf of the same people that have devised schemes in the past to circumvent the court system. The MEC believes that Governor Haley has violated §7-13-1170 and that every subsequent action taken is based upon the violation of that law including informing the public prior to March 9, 2012 that the Governor's office was in charge of the Election, the appointment of other entities to handle the election, setting the date, and applying for pre-clearance.

In paragraphs eight and nine of Executive Order No. 2012-03, Governor Haley summarizes the Town of Atlantic Beach's election controversies that have been ruled on by the South Carolina Supreme Court and states "that the South Carolina Supreme Court, in *Cole v. Town of Atlantic Beach Election Commission*, expressed grave doubts about the ability of the Municipal Election Commission to properly conduct future elections." Governor Haley does not state that the South Carolina Supreme Court, in its Opinion No. 26996 heard April 5, 2011 and filed July 7, 2011 cites the misconduct and violation of election laws and names the responsible parties including Commissioners Alice Graham and Lynda Booker, along with Commissioner Booker's husband, former town manager, William Booker. Commissioner Booker resigned from the MEC after the Supreme Court's order was filed. Commissioner Graham, who has a history of ignoring the South Carolina Supreme Court's orders in the 2007 and 2009 elections, was removed from the MEC by the Atlantic Beach Town Council. Councilman Jake Evans, William Booker, and Joe Montgomery, for personal gain, lobbied Governor Haley to affect the outcome of the Atlantic Beach town council election. Governor Haley used her executive power to bypass a

pending judicial proceeding and continued to be duplicitous in the town's election process. The Governor interfered with the newly constituted MEC's ability to do its duty and misrepresented the current MEC as the violators of the law cited in *Cole v. Town of Atlantic Beach Election Commission*.

In paragraph ten of Executive Order No. 2012-03, Governor Haley states, "the Horry County Election Commission and the State Election Commission are competent and qualified to conduct and supervise an election in the Town of Atlantic Beach." In the matter of *Taylor v. Town of Atlantic Beach* it was the Horry County Election Commission, the State Election Commission, and the Horry County Circuit Court judge that refused to enforce the South Carolina Supreme Court's Order. It was Municipal Election Commissioner Nicole Kenion, who in her capacity as a private citizen, in conjunction with another citizen, Patricia Bellamy, that filed pro se to the South Carolina Supreme Court and alerted them that the Court's order was not being followed. The negligence of the South Carolina Election Commission and the action of the Horry County Election Commission caused the re-do of the town's mayoral run-off election between candidates Irene Armstrong and Retha Pierce. If the State Election Commission and the Horry County Election Commission had not attempted to bypass the South Carolina Supreme Court, the town would have had the requisite two elections (an election and a run-off election) instead of three elections (an election and two run-offs). Afterwards, both Kenion and Bellamy along with other citizens were targeted in a series of events that included the removal of those voters and the demolition of the federal Housing Authority where they lived in Atlantic Beach.

In the matter of *Cole v. Town of Atlantic Beach*, when Commissioners Graham and Booker violated the law regarding the initial protest hearing, the State Election Commission was notified but once again chose to support their actions. The South Carolina Supreme Court did not. Commissioner Nicole Kenion wrote the dissenting opinion for the Municipal Election Commission and Patricia Bellamy was granted *Amicus Curiae* status by the South Carolina Supreme Court. There is evidence in the 2007 and 2009 election cases before the South Carolina Supreme Court and emails and letters obtained recently from Horry County and the Governor's office through the Freedom of Information Act pertaining to the 2011 and upcoming 2012 elections that support the MEC's contention that neither the State Election Commission nor the Horry County Election Commission are prepared to conduct an election in the Town of Atlantic Beach "necessary to ensure the full and fair expression of the citizenry's choice for these elective offices. Emails from William Booker to Sandy Martin copying Alice Graham as early as November 2011 lend credibility to the conspiracy theories that circulate throughout the county.

The MEC contends that there are neutral parties with no vested interest in the outcome of the town's elections that can assist with the town's elections. To that end, the town was directed to contact the League of Women Voters to monitor the election and was looking to neighboring counties for assistance with poll managers and poll workers.

The initial telephone call to the Town of Atlantic Beach from the Governor's Office via Attorney Swati Patel is when she stated, "we need to seat these people." The Municipal Election Commission has the job of holding a fair election without regard for the outcome of the election. The Governor's Office has failed to make its process transparent and available to all parties concerned as is in the court system at every level. The Governor's interference in the Municipal Election Commission's judicial process has

introduced more bias and fueled speculation about election fraud conspiracies and the political influence of outside interests in the development issues in Atlantic Beach. The Town of Atlantic Beach is the last predominantly black oceanfront municipality left in the nation born out of segregation. It is the last undeveloped property of its size on the Grand Strand. At the center of election controversies is whether or not the town will remain an independent municipality or face annexation. Governor Haley's actions and the surrounding controversies that have ensued give the appearance of trying to affect the outcome of the election for the benefit of influential friends rather than efforts to resolve current election issues and deter future election problems in the town.

Selection of May 22, 2012 as the Date for the Special Election

The selection of May 22, 2012, as the date of the Special Election will have a discriminatory effect on the voting in the Special Election by members of protected classes of minority racial groups. Tuesday, May 22, 2012, will be in the middle of Atlantic Beach Bike Fest. The chilling effects of Bike Fest in our small, four-square-block municipality cannot be over emphasized. The congestion of over a half million people, including bikers, will effectively bring gridlock to our community, has done so for over 31 years, and will undoubtedly do the same for this 32nd year and prevent the residents from getting to the polls. The commitment of the entire law enforcement department of Town government to monitoring Bike Fest will prevent any assistance from them for the election. As you can read in the enclosed Report on the municipal election in November 2011, the services of our community's law enforcement officers will be needed for the Special Election. Sandy Martin of the Horry County Election Commission, in an email, dated April 23, 2012 requests the use of North Myrtle Beach's fire station at 33rd. Merideth Smith responds that after speaking with the city manager, the public safety director, and the city attorney using their fire station is not an option. The reason cited is their involvement with Harley Week and the station will be very busy." If Harley Week and Atlantic Beach Bike Fest have approximately the same number of attendees and this is the first year when both events coincide, it stands to reason that if North Myrtle Beach which borders Atlantic Beach's streets, 29th – 32nd on both sides is going to be busy, then certainly it is not difficult to comprehend that Atlantic Beach and its two facilities will be busy.

The selection of May 22, 2012 in the middle of Bike Fest was a tactical maneuver to favor one faction of voters in the Town versus the other. This date is used to make it almost impossible for voters to get to the polls, vote the candidate of their choice and participate in the entire process. It is designed to deny voters the right to participate in the challenge ballot and/or protest process. Voters and candidates of one faction were not given deadlines for filing for candidacy, absentee voting, etc. They were only given the training session for candidates to be held in North Myrtle Beach which occurred after the filing and absentee voting deadlines.

Change of Polling Place

As the direct result of selecting May 22, 2012, as the date for the Special Election, there is also the need to change the only polling place that the Town has used to hold its elections. The Town has used the Community Center as its only polling place for at least twelve years. Unfortunately, the

Community Center is unavailable for use as a polling place on May 22nd because the Municipal Court and the Atlantic Beach Police Department will be using the facility. Initially, vendors from New York and Chicago had requested the facility and its parking lot for a children's carnival and events during Bike Fest. The town had to back out of this arrangement when it could not make other arrangements for its Municipal Court and a holding area for those arrested during Bike Fest. Under those circumstances, the election will need to be relocated if the Special Election is held on May 22nd. The Horry County Election Commission proposes to use Atlantic Beach First Baptist Church as the polling place for the Special Election. The members of the MEC object to that for several reasons. First, that Church has never been used as a polling place in the Town elections. It will be completely confusing to the voters to go to the Community Center, only to learn that they must then go to the Church to vote. All of this will occur with the congestion and confusion of Bike Fest. The Church traditionally parks cars and has vendors on its grounds during Bike Fest. Also, a Housing Authority Board meeting was held at the church recently and the Board Chair and a church member, without any provocation, yelled at councilmembers and citizens they deem to be their opposition, to leave the church. The incident was videotaped. It is easily predictable that having the election in the church will have a chilling effect on the voters' participation in this special election.

Second, membership in this Church is associated with one of the political factions in Town politics. The municipal elections are conducted on a non-partisan basis. That removes party politics from the equation. But it obviously does not remove politics from the equation. Instead, politics of personality dominate Atlantic Beach. And several key members of one faction and two of the candidates are members of this Church. The result will be that many voters who do not support that faction will remain at home on Election Day instead of entering the home church of key members of that faction. The effect would be no more chilling than if the polling place were put in the headquarters of a political party.

Change of Authority for Conducting the Special Election

The Governor's Executive Order not only selects a very poor date for the special election, thereby causing a change in polling place for the special election, but the Executive Order also directs that the Special Election be conducted by the Horry County Election Commission and the State Election Commission. This is in complete derogation of South Carolina law which provides that municipal elections shall be conducted by the Municipal Election Commission. See S.C. Code Anno. Section 5-15-90. By replacing the Municipal Election Commission with the County Election Commission, the Governor has, in effect, undermined the governmental powers and authority of the Town of Atlantic Beach.

Atlantic Beach is a majority African-American community. According to the 2010 Census, 82.5% of the residents of the Town are African-American. The Mayor and all members of the Town Council are African-American. State law provides that Atlantic Beach elections are to be conducted by the municipal election commission appointed by this Town government. Yet the Governor's Executive Order completely undermines the credibility and authority of the Town government. This shift of responsibility for conducting the Special Election to the Horry County Election Commission will have a chilling effect on the participation of the African-American voters in the Town. They will see their elected municipal officials being pushed aside by the State powers, and it will send a very bad message to them: their

votes really don't count. Even though they elected their Town government, their Town government is being disregarded for this election. It will be conducted by the State Government authorities and imposed on the residents of Atlantic Beach. There could be no more chilling effect on the African-American voters.

Bias Already Evident

The bias of the two parties ordered by the Governor's Office is already evident in the emails and letters that transpired between the two agencies and their failure to make information available to all citizens. A review of the emails shows both Marci Andino and Sandy Martin along with other county officials mocking the town and showing disdain for it and its elected officials. In one email, Ms. Martin states that one of her board members, "to request me finding out if we could just not help them anymore." They discuss the cost of the election and whether or not they will receive their money from the town for handling the election. When Ms. Martin announces the County has received its check, County attorney Sanford Graves responds "run to the bank." Sandy Martin says, and hope it doesn't bounce back. None of us are aware of the town ever having a "bounced check" to Horry County. Horry County collects property taxes for the town and is never at risk of being unable to collect its money from the town in the same manner as other creditors. The election schedule was never posted in the Town of Atlantic Beach in the places where the citizens expect meeting notices: on the doors of the Town Hall and the Community Center. If you were in the faction supported by Ms. Martin, you had a schedule that included registration, absentee voting, etc. Most of the citizens and the MEC did not have this information until it was received last week with the FOIA request. Ms. Martin has solicited input into the town's elections from one faction in Atlantic Beach and a host of outsiders whose motives are questionable. In one email, she proposes that a North Myrtle Beach Election Commissioner serve as a poll worker in the Atlantic Beach election. Issues between the two municipalities are historical and loom large. The MEC and/or the Town Council have not been copied on any of the correspondence between the State and County election commissions nor has it received copies of the pre-clearance applications and supporting documentation submitted by the Governor or the Horry County Election Commission. The South Carolina Election Commission and the Horry County Election Commission proceeded with the media campaign for the election as if pre-clearance is eminent and only perfunctory which has created more public suspicion about the process. The issues raised in the Atlantic Beach election should have set the stage for a positive working relationship between the South Carolina Election Commission, the Horry County Election Commission and the MEC, instead the stage has been set for legal challenges in both state and federal courts to seek a fair election in the town of Atlantic Beach. The MEC maintains that our democracy is required for this country's smallest towns just as is required for its largest cities.

As recently as today, May 14, 2012, some of the candidates were told to review their filing status in light of the South Carolina Supreme Court's decision to remove candidates from ballots who failed to file timely Statements of Economic Interest with the State Ethics Commission. Candidate Price contacted the Ethics Commission and was told that she was still required to file and that though it is late she must do so. She is concerned as to how her opponents knew to file and she and other candidates did not. Once again the opportunity to clarify this by the parties assigned by Governor Haley to manage

the election did not address this issue. Candidate Price filed against the town and former MEC in U.S. District Court pertaining to the 2009 election. The matter was settled. Unfortunately, the Governor's aggression and the open hostility and disdain for the town by her staff, Marci Andino of the S.C. Election Commission, Sandy Martin of the Horry County Election Commission and other Horry County public officials and employees as evidenced in their emails and their actions has put individuals in an election matter into the same legal predicament the MEC was seeking to avoid.

For the reasons stated above, we respectfully request that the Attorney General interpose his objection to the changes being sought by the Governor in the conduct of the Special Election. The Municipal Election Commission is fully prepared to call and conduct the Special Election in compliance with all State law and in a manner that will not chill the participation of minority groups in the Special Election.

Sincerely,

Nicole Kenion, Chair
Atlantic Beach Municipal Election Commission

Charlette Hudson, Commissioner
Atlantic Beach Municipal Election Commission

cc: Atlantic Beach Town Council
Mayor Retha Pierce
Mayor Pro Tem Carolyn Cole
Councilman Jake Evans
Councilwoman Windy Price

Sam Howell, Esq.
MEC Attorney

Kenneth Davis, Esq.
Town Attorney

Calvin Blanton, Interim Town Manager
Sheila Singletary, Town Clerk

Attachments

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Attachments

1. March 14, 2011
Email from Sanford Graves to Sandy Martin
Cc: Arrigo Carotti, John Weaver
Re: Atlantic Beach Election (November 2011)
"Sandy, I spoke with the Administrator on what we discussed about the Atlantic Beach election situation. I would like to see a written request For service from AB so that we can respond appropriately to what they are asking for before you respond to them or Election Chairman Debbie Johnson in absolute terms. I believe the written request will assist us in knowing exactly what AB needs and can expect by our reply..."
2. March 16, 2011
Email to Sandy Martin from Linda Cheatham
Re: Transfer of Authority to Conduct Municipal Elections to Horry County
"Ms. Martin, please review the town of Atlantic Beach's request to transfer authority. Please let me know if any additions are needed. our consideration."

"Dear Ms. Martin: The Town of Atlantic Beach would like to transfer all election responsibilities previously performed by the municipal election commission for the next 3-5 years. I understand that this request is permissible according to South Carolina code of Laws, section 5-15-145, if the governing bodies of the municipality and the county agree to adopted by ordinances."

Note: Linda Cheatham was hired by William Booker.
3. March 21, 2011
Email from Sanford Graves to Sandy Martin
CC: John Weaver, Arrigo Carotti
Re: Atlantic Beach Expenses
"Sandy, I will take the lead on this. I spoke with Gary at the Sate and with Ms. Cheatham at Atlantic Beach. I have also left a message with John Zilinsky on Friday, but have not heard back from him. AB, generally, wants to disband, or not (re-) appoint, their Election Commission. While we have assisted this jurisdiction and other municipalities in the past, this request takes our assistance to a new level. Gary Baum says the Code section allows us to make whatever agreement we want to make. In my discussion with Ms. Cheatham, given our willingness to take only part of the responsibility, they will be unable to disband their EC. Ms. Cheatham is new to the job and was not certain, based on our brief conversation, as to how they wanted to proceed in this matter. I referred her to Mr. Baum for guidance and to

clarify what they really wanted to do in light of what we might agree to. I also told her time was of the essence...."

4. Email from Sandy Martin to Sanford Graves
Re: Atlantic Beach
"Good morning Sam, anything happening with Atlantic Beach? I am going to be off a good bit this month and I just want to check and see what the status is with them..."
5. April 4, 2011 Email from Sanford Graves to Sandy Martin
Cc: Arrigo Carotti
Re: Atlantic Beach
"Ms. Cheatham called me over a week ago. I told her what services The County was willing to accept from them, that at that level they Would still need their commissioners, and that time was of the essence Taking into consideration there did not seem to be enough time to complete the process for a November 2011 election..."
6. April 5, 2011 SC Supreme Court hears 2009 Atlantic Beach election case
7. April 5, 2011 Email from Sanford Graves to abfinancelcheatham@sc.rr.com
CC: Sandy Martin, Arrigo Carotti
Re: AB Municipal Elections
"Ms. Cheatham-This message is to follow-up on our last discussion regarding the Town of Atlantic Beach's request to transfer election authority to Horry County. When we last spoke, it was your intention to disband your election commission. However, based on the level of services the County is willing to provide at this time, your goal regarding the commission cannot be reached under state law. We also discussed that time was critically important given the numerous time constraints leading up to the November 2011 municipal elections....Please let me know what your plans and intentions are looking forward in this matter and how we might assist you..."
8. July 7, 2011 SC Supreme Court Rules in Favor of Cole and Price
Opinion No. 26996
9. November 4, 2011 Email from William Booker to Sandy Martin
Cc: Alice.addertongraham@aol.com; Martin.Sandy;
sunny12@sccoast.net
Re: Atlantic Beach Election Protests
Attachments: Atlantic Beach Appeal
"Attached are the two election protest documents.
Regards, William Booker
10. November 4, 2011 Email from Sandy Martin to Dena Huggins
Fwd: Atlantic Beach Election Protests

Re: Atlantic Beach Election Protests
 "Call me and tell me what this says Sandra N. Martin
 Begin forwarded message:
 from William Booker to Sandy Martin
 Cc: Alice.addertongraham@aol.com; Martin.Sandy;
sunny12@sccoast.net
 Re: Atlantic Beach Election Protests
 Attachments: Atlantic Beach Appeal
 "Attached are the two election protest documents.
 Regards, William Booker

- 11. December 12, 2011 Ltr from Interim Town Manager Benny Webb to Swati Patel
 Re: Town of Atlantic Beach New Election Date and Explanation
 For Overturn of Election (Draft)

- 12. December 15, 2011 Email from Sandy Martin to Sanford Graves
 Re: On not being forced to help Atlantic Beach with election

- 13. December 19, 2011 Email from Amy Callaway to Sanford Graves
 Re: Intellius , giving name of campaign manager for Jake Evans

- 14. December 16, 2011 Email from Swati Patel to Marci Andino
 Re: Atlantic Beach
 "I spoke to Mr. Webb, the Town Administrator, today and he assured
 me that the order would get to us early next week. If I don't get it next
 week, we'll explore other options."

- 15. February 21, 2012 Ltr from Jake Evans to Swati Patel
 Re: Copy of Transcript from Election Protest Hearing
 Confirming Transcript needed by Governor to
 provide Assistance with scheduling a new election
 and appointing an authority to oversee the election
 and to declare the winners...

- 16. February 21, 2012 Email from Sandy Martin to Anne Wright, Sanford Graves, Arrigo Carotti
 Cc: Lisa Bourcier
 Re: Atlantic Beach
 Jeering at Town's Check to Pay Election Expenses

- 17. March 12, 2012 Email from Swati Patel to Marci Andino
 Forwarding Marci the draft of the Governor's Order

- 18. March 12, 2012 Email from Marci Andino to Sandy Martin
 Re: Draft of Governor's Order for New Election in Atlantic Beach

- 19. March 12, 2012 Email from Sandy Martin

To: johnsod@sccoast.net, iamdoublel@sc.rr.com, Rob Taylor
(wiley2jeanne@yahoo.com), Vickie Autry (mygirls4@sccoast.net)
Cc: Russell Hall (lawyerhall@yahoo.com)

Re: Atlantic Beach

"Chairman Hall requests that someone from the election commission be present at Atlantic Beach all day when the date is made official..."

20. March 12, 2012 Email from Sandy Martin to Marci Andino
"Do you see a problem with the certification hearing being held in my Office instead of Atlantic Beach?"
21. March 12, 2012 Email from Marci Andino to Sandy Martin
"No, not if the Governor's order specifics that the county do all tasks associated with conducting the election."
22. March 12, 2012 Email from Sandy Martin to Marci Andino
"My chairman wants to know if we can have them vote on paper?"
23. March 12, 2012 Email from Marci Andino to Sandy Martin
"Only absentee by mail, provisional or emergency."
24. March 14, 2012 Email from Sandy Martin to Marci Andino
Re: Atlantic Beach
"I wasn't going to give him a copy, just tell him the Governor's office was working on one..."
25. March 14, 2012 Email from Marci Andino to Sandy Martin
Re: Atlantic Beach
"No, it is a draft. Please do not release a copy...
I would ask the county attorney to officially ask for the machines. Several months have passed since the magistrate said to 'work it out' and nothing has happened.
26. March 14, 2012 Email from Sandy Martin to Marci Andino
Re: Atlantic Beach
"Marci, can we use this information that the Governor is getting ready to call for the new election to get our machines back?? Or is it a secret until its done?"
27. March 16, 2012 Email from Simone Martin to Swati Patel
Re: Executive Order 2012-03
"Please find attached a copy of..."
28. March 16, 2012 Email from Swati Patel to Marci Andino
Re: Executive Order 2012-03, Ordering New Election in Town of AB
"Marci, please find attached the filed copy of the Order. Please forward to Horry County as soon as possible...."

29. March 16, 2012 Email from Marci Andino to Chris Whitmire
Fwd: Executive Order 2012-03, Ordering New Election in Town of AB

30. March 16, 2012 Email from Chris Whitmire to Sandy Martin
Fwd: Executive Order 2012-03, Ordering New Election in Town of AB

31. March 16, 2012 Email from Sandy Martin to Sanford Graves, Arrigo Carroti, Lisa Bourcier, Anne Wright
Fwd: Executive Order 2012-03, Ordering New Election in Town of AB

32. March 16, 2012 Email from Lisa Bourcier to Al Allen, Bob Grabowski, Brent Schulz, Schwartzkopf, Gary Loftus, Harold Worley, Jody Prince, Marion Foxworth, Paul Prince, Paul Price, Tom Rice, Pat Hartley, Steve Gosnell, Paul Whitten, Anne Wright
Cc: Sandy Martin, Arrigo Carotti, Sanford Graves
Re: Executive Order 2012-03, Ordering New Election in Town of AB
Attachments: 2012-03, Ordering New Election in Town of AB.pdf
"Attached is a copy of an Executive Order issued today by Governor Haley ordering a new election in the Town of Atlantic Beach to be held for the office of Mayor and two at-large Town Council members of the town of Atlantic Beach on May 22, 2012. The election will be conducted by Horry County. The candidates will be as follows:

Atlantic Beach Candidates

Mayor – Jake Evans
Retha Pierce
Windy Price

Council (2 at-large)
Josephine Isom
Monique Pointer
Charlene Taylor
Misty D. Umphries
James B. Van Fleet

33. March 16, 2012 Email from Sandy Martin to Sanford Graves
Re: Executive Order 2012-03, Ordering New Election in Town of AB
"Now, you can convince them to release the machines!!!!"

34. March 16, 2012 Email from Sanford Graves to Sandy Martin
Re: Executive Order 2012-03, Ordering New Election in Town of AB
"I will certainly point out the fact that the machines have no relevance To any active controversy as a result of this order. But I do not have An abundance of confidence that I could convince a majority of Their council of anything, based on what I have seen in the past.

35. March 16, 2012 Email from Sanford Graves to Sandy Martin
Cc: Arrigo Carroti
Re: Executive Order 2012, Ordering New Election in Town of AB
"What level of services are we committed to, if any?"
36. March 16, 2012 Email from Sandy Martin to Sanford Graves
Re: Executive Order 2012, Ordering New Election in Town of AB
"All... I have to publish the notice, get poll workers, set up election, etc..."
37. March 16, 2012 Ltr from Swati Patel to Chief, Voting Section, Department of Justice
Re: Request for Expedited Review of Voting Change Submission
Made by Executive Order 2012-03 ("Order" affecting voting) issued
By Governor Nikki R. Haley of South Carolina ("submitting authority")
Pursuant to Section 5 of the Voting Rights Act of 1965, as amended.
38. March 20, 2012 Email from Sandy Martin to Sanford Graves
Cc: Anne Wright
Re: Atlantic Beach
"As you know the Governor has ordered that we conduct the election
for Atlantic Beach. The notice is going to be \$600. I was wondering if
you think we should have some sort of agreement with them to ensure
that we get our money back for this election. Also, am I allowed to
charge for the Election Commission time on this election...?"
39. March 20, 2012 Email from Sanford Graves to Sandy Martin
Cc: Arrigo Carroti, Anne Wright
Re: Atlantic Beach

"Agreements which define the expectations of parties reduce
uncertainty generally, but I am not certain how well it will work
in this circumstance. The town has no manager and the Council is
reportedly dysfunctional making it unclear who on their side would
agree to anything. Our best hope is that a functional board would be
elected and who would address such billings in a responsible manner.
We did eventually get our money for the outstanding bill from a
previous election.... And, I think it is clear that we keep our hands
on our equipment at all times."
40. March 20, 2012 Email from Sandy Martin to Sanford Graves
Cc: Arrigo Carroti, Anne Wright
Re: Atlantic Beach
"I have not checked on the preclearance. The last I spoke with Marci at
The state she said she thought the Governors' office would handle it.
Atlantic Beach always runs their own ads, I usually have no part of
that..."
41. March 20, 2012 Email from Sandy Martin to Marci Andino

- "Will the Governor's office handle the pre-clearance for the Atlantic Beach election?"
42. March 20, 2012 Email from Marci Andino to Sandy Martin
Re: Atlantic Beach
"Yes, Swati mentioned doing the preclearance."
43. March 23, 2012 Email from Chris Whitmire to Sandy Martin
Cc: Dena Huggins, Marci Andino
Re: Atlantic Beach Election Calendar
Attachment: 2012-05-22 Atlantic Beach Municipal Election Calendar.doc
"Sandy, here is a tentative Atlantic Beach election calendar. Some of the dates are TBD. When we figure those out, I'll send an updated calendar"
44. April 12, 2012 Email from Sandy Martin to Marci Andino, Chris Whitmire
Re: Atlantic Beach
"Question?...can a city commissioner work the polls for a different City or Town's election? We have a Commissioner for the City of NMB that would be a GREAT poll manager for Atlantic Beach. I know they can't work for us, but does the same rules apply for Municipalities?"
45. April 26, 2012 From Lisa Bourcier's iPad
"Reatha will be on camera saying there will be no election in AB on May 22 and that Nikki Haley broke the law."
46. April 26, 2012 Email from Arrigo Carotti to Lisa Bourcier
Cc: Sandy Martin, Sanford Graves
Re: TV 15 @ 6pm tonight
"My feeling is we should not disseminate this out of house at this time."
47. April 27, 2012 Email from Lisa Bourcier to Sandy Martin
Re: Atlantic Beach Election
"Unless I hear from the town by Tuesday, we will be voting at the 1st Missionary Baptist Church on 29th. You heard anything?"
48. April 27, 2012 Email from Sandy Martin to Lisa Bourcier
"I wouldn't tell it yet. Tuesday, we will announce..."
49. April 26, 2012 Email from Dan Golden, Editorial Writer, Sun News to Lisa Bourcier
Re: AB Elex
"...Don't really need anything else, but being a good journalist, I just want to check my source. AB told you that they can't hold the election in the normal place on May 22? And it's up to you to find another location? Any idea if that will delay the election?"

Voting Machines

50. December 13, 2011 Email from Marci Andino to Swati Patel
"Just wanted to check with you to see if you have received the order from Atlantic Beach. On a related subject, the county had to get a court order and send law enforcement to get the voting machines from the town. The town had refused to return the voting machines to the county after the election."
51. December 14, 2011 Email from Sandy Martin to Sanford Graves
CC: Anne Wright
Re: Atlantic Beach Audits
"Sam, Marci said we need to do audits on the two machines from Atlantic Beach when we get them back....Is it your opinion that we need witnesses to watch us do this, do it publicly, invite AB? What are your thoughts?"
52. February 1, 2012 Email from Chris Whitmire to Duncan Buell
It is my understanding that the voting machines are still in the possession of the Horry County Sheriff's Department. To my knowledge, no resolution between the county and city has been reached. The SEC has not been provided with any audit files and has conducted no audit. Therefore, the SEC has no audit data or audit reports to provide."
53. February 2, 2012 Email from Duncan Buell to Chris Whitmire
Re: Fwd: FOIA – January 5, 2012
"As you are probably aware, I have been providing advice to the city on What they might be able to get from looking at the data or the machines (and doing my best to make sure the out-and-out conspiracy theories get squashed as quickly as possible). I am aware that it's Something of a legal mess. But one of my concerns is that the data will Disappear as well as any ability to determine whether the machines were in fact functioning properly. One of the two machines does not show up in the November 2010 data, and apparently that machine is officially listed as having been discarded and destroyed as of 2006. That it would then surface in a disputed election is going to trigger some concerns.
54. April 11, 2012 Email from Marci Andino to Judge Brad Mayers
Cc: Sandy Martin, Swati Patel, Arrigo Carroti, J.C. Nicholson, Chris Whitmire

Re: Letter Concerning Town of Atlantic Beach
"Please see the attached letter expressing my concerns about the election materials/voting machines used in the Town of Atlantic Beach election in November 2011.

Note: J.C. Nicholson is in the State Attorney General's Office.

55. April 11, 2012 Ltr from Marci Andino to the Honorable Bradley Mayers, Magistrate
Cc: Sandy Martin, Arrigo Carotti, Nicole Kenion, Swati Patel
56. April 11, 2012 Ltr form Sandy Martin to Sanford Graves
FW: Letter Concerning Town of Atlantic Beach
Letter to Magistrate – Atlantic Beach and Voting Machines 4-2012.pdf
FYI
57. April 27, 2012 Email from Marci Andino to Sandy Martin
Re: AB
"Sheack has the database, but we haven't seen any machines yet.
58. April 27, 2012 Email from Sandy Martin to Marci Andino
Cc: Sanford Graves
Re: AB
"Marci, sorry it seems we had a misunderstanding. Our attorney would like to know what day next week would be a good time for them to bring them? And a time...
59. April 30, 2012 Email from Rick Wrigley to Marci Andino, Chris Whitmire
Cc: Sheack Abraham, Arlene Criswell
Audit of Atlantic Beach Municipal Election

"The Atlantic Beach Municipal Election Audit reveals no exceptions. There are no memory or CRC errors. All data transfers appear to be Normal. I also visually inspected the EL152 file for the two machines used in the election; 5108518 and 5128013. The logs are unremarkable Except both iVos have a user generated error during set up...5128013 also has one PEB failure that appears to be a poll worker error. Neither log shows activity between the time the iVos were shut down just after 7 on election night and today when SEC read the audit data. I will place the reports and data on the L drive for our records...
60. April 30, 2012 Email from Sandy Martin to Sanford Graves, Lisa Bourcier
FW: Audit of Atlantic Beach Municipal Election
Attachments: Atlantic Beach 2011 Municipal Election Audit Reports.pdf
"FYI."

Pre-Clearance

61. May 1, 2012 Email from Sandy Martin to Marci Andino
Re: ABeach

"Marci, who should I put as the minority contacts on this Justice submission? Should it be my board members or possibly Mr. Booker and Mr. Montgomery... or just not put any...maybe me...or you????"

62. May 1, 2012 Email from Marci Andino to Sandy Martin
Re: ABeach
"Either would be fine."
63. May 1, 2012 Email from Sandy Martin to Michael Frazier, psquare5@sccoast.net, chetzer@sc.rr.com
"We are conducting the Atlantic Beach election on May 22. They will Not allow us to use the community center for their election. Do you have any problems with us moving it to 1st Missionary Bapt. Church, 2902 Hwy 17 S, Atlantic Beach...only three blocks apart... Please let me Know asap. Thanks!!!
64. May 1, 2012 Email from Maurice Jones
"Sandy, let get it done"
65. May 1, 2012 Email from Sandy Martin to Maurice Jones
"Thank you!!! I may put you down as a contact for the Justice Dept."
66. May 9, 2012 Email from Town Administration to Sandy Martin
Re: Town of Atlantic Beach Municipal Election – FOIA Request (Information Needed)
"Ms. Martin, Town of Atlantic Beach's FOIA documents were picked Up from Horry County Public Information office yesterday (May 8, 2012). While there were multiple copies of the same documents, the pre-clearance application to the Department of Justice and letters of support from the minority community were not included. Also, in the FOIA correspondence there are several references to an individual with the initials "J.C." Please help us by identifying the full name of "J. C." as it relates to the Town of Atlantic Beach's Municipal Election FOIA request."

Election Protest

67. March 16, 2012 Email from Sandy Martin to Sanford Graves
Re: Executive Order 2012-03: Ordering New Election in the Town of Atlantic Beach
"And the election commission will oversee and hear any protest."
68. April 12, 2012 Email from Sandy Martin to Arrigo Carroti, Sanford Graves
Cc: Anne Wright, Lisa Bourcier
Re: Atlantic Beach
"I just spoke with Marci from the State Election Commission concerning the upcoming election in Atlantic Beach. We anticipate a protest from

the election so I will need a County attorney to conduct the hearing. She recommended, if the County does not want to participate, using Tracey Green who used to be on the State Commission. Please advise. Lisa, Chris Whitmire will be calling you to discuss media relations. FYI – we are setting up a meeting with Chris Whitmire (SEC) and all candidates from Atlantic Beach. He will train them on proper election day procedures. Thanks...”

Note: The meeting will be held in the City of North Myrtle Beach.

Polling Place

69. April 13, 2012

Email from Sandy Martin to atlanticbeach@sc.twcbc.com

CC: Marci Andino

Re: Election

“To Whom it may concern: I would like to ask permission to use the Community Center on May 22nd to conduct the Atlantic Beach Town Election. There is a possibility of a runoff on June 5th. We would need the building opened by 6:15 a.m. Please let me know at your earliest convenience if this is permissible. Thanks in advance...”

70. April 19, 2012

Email from Sheila Singletary, AB Town Clerk to Sandy Martin

“Dear Ms. Martin, please know that we have received your request to Use the Community Center on May 22nd to conduct the Atlantic Beach Town Election. At present the Community Center is booked for a different event, we are currently trying to work out change schedules For the event and will communicate the updated changes with you as soon as we can. Respectfully, ...”

71. April 19, 2012

Email from Sandy Martin to Town Administration

Cc: Marci Andino, Sanford Graves

Re: Election

“Thank you for letting me know. Please let me know the decision as soon as possible so that I can move the location if necessary. Thanks,...”

72. April 23, 2012

Email from Sandy Martin to atlanticbeach@sc.twcbc.com

CC: Marci Andino, Sanford Graves

FW: Election

“Ms. Singletary, please respond to my request of using the Community Center by May 1st so that I can send a precinct location change to the Justice Department if necessary. If I do not hear from you, I will proceed with making the change. I look forward to hearing from you, and thanks for all your help.”

73. April 23, 2012

Email from Sandy Martin to Merideth Smith

"Hi Meredith...hope you are doing well...We may have a problem with using the Community Center for AB's election. If this happens, would it be possible to use the Fire Station on 33rd? (May 22nd) Please advise.

74. April 24, 2012

Email from Meredith Smith to Sandy Martin

"Sandy, I spoke with the City Manager after your call this a.m. After Consulting the Public Safety Director and the City Attorney he advises that using the Fire Station at 33rd is not an option. We will be involved with Harley Week and the station will be very busy. Sorry that we cannot help."

75. April 25, 2012

Email from Sandy Martin to atlanticbeach@sc.twcabc.com

CC: Marci Andino, Sanford Graves

Re: Atlantic Beach Election

"We are getting very close to your election day on May 22nd. Please Let me know if the Community Center will be available. If not, how About consider one of these other options:

1 – Atlantic Beach Town Hall

2 – Atlantic Beach First Baptist Church

3 – Pitching a tent in the parking lot of the Community Center

4 – Grand Strand Airport

We are trying hard to keep your precinct within your Town. Please help us in securing a suitable location. I look forward to hearing from you as soon as possible."

Note: The polling place was moved from Town Hall in 2001 because it is small, no parking or handicap accessibility. During Bike Fest, the Town Hall is congested handling vendors, ABPD, and other issues.

The issue of our precinct and North Myrtle Beach listed as addresses on Some of our voter registration cards and Atlantic Beach as our precinct has been raised in a lawsuit pending before the U.S. District Court.

76. April 26, 2012

Email from Marci Andino

To Sandy Martin

Re: Atlantic Beach

"Check out First Missionary Baptist Church. Hwy 17 @ 29th Rev. Drayton."

77. April 30, 2012

Email from Sandy Martin to Marci Andino

Re: AB

"How does this sound for the postcard...Dear Atlantic Beach Voter: Please be advised that the Atlantic Beach Town Election will be held on May 22, 2012. Your voting location for this election has changed. You will be voting at: 1st Missionary Baptist Church 2902 Hwy 17 S, North Myrtle Beach, SC Please be sure you have the proper ID when you go to the polls to vote.

78. April 30, 2012 Email from Marci Andino to Sandy Martin
Re: AB
"I think it sounds good. You might want to put "for this election" in bold.
79. May 11, 2012 Copy of post card received by some voters (post marked)
- Note: Voter Registration rolls have not been purged. Attached card was sent to non-resident of Atlantic Beach. The State and Horry County Voter Registration office continue to identify Atlantic Beach addresses as being in the city of North Myrtle Beach.
80. May 1, 2012 Email from Sandy Martin to Michael Frazier, Maurice Jones, chetzer@sc.rr.com
"We are conducting the Atlantic Beach election on May 22. They will not allow us to use the community center for their election. Do you have any problems with us moving to 1st Missionary Baptist Church, 2902 Hwy 17 S, Atlantic Beach...only three blocks apart... Please let me know as asap. Thanks!!!"
81. May 1, 2012 Email from Vickie Autry to Sandy Martin
Re: Atlantic Beach
"That is fine with Vickie, Debbie, & Larry

Attorney General's Office

82. November 29, 2011 Ltr from Attorney General's Office, Assistant Attorney General Mary Ann Jowers
"Confirming Laura Best is not employed by the Attorney General's Office
83. December 16, 2011 Email from Sanford Graves to Marci Andino
Re: Atlantic Beach (AB)
"Ms. Andino, I have talked with J.C. several times today about our Atlantic Beach issue. I am searching for records from the AB – MEC which indicates the series of events dealing with their election on November 1, 2011. The Horry County Clerk of Court indicates that she Has no filings from AB for this election. Also, I wanted to contact you to see if you were available for a phone conference with myself and the County Attorney, Arrigo Carotti.
84. April 26, 2012 News Article, [sc now.com](http://scnow.com)
Former Horry GOP leader arrested stemming from Atlantic Beach election
85. May 9, 2012 Email form Lisa Bourcier to atlanticbeach@sc.twcbc.com
CC: Sandy, Sanford Graves

"Hi Sheila, J.C. Nicholson is an Attorney with the Office of the South Carolina Attorney General..."

Rep. Tracy R. Edge

86. September 20, 2009 News Article, Carolina Politics Online
"State Rep. Tracy Edge, R – North Myrtle Beach, released a letter Friday Calling on Gov. Mark Sanford to remove Atlantic Beach Mayor Retha Pierce from office. Would the town of Atlantic Beach be better off with a different mayor?...I think the answer is yes, without a doubt."
87. February 17, 2011 Ltr to Rep. Edge from William Booker
88. July 27, 2011 New Article Sun News "Atlantic Beach fires almost entire staff
"Town Council members said they are investigating allegations That Booker might have misappropriated town funds, according to Fisher. Booker denied those allegations on Wednesday. "The town Has been making good progress in improving its financial situation, getting audits completed and creating a financial system," Booker said. State Rep. Tracy Edge, R-North Myrtle Beach, said Atlantic Beach appeared to be making progress under Booker's guidance and he is worried that will be erased under the new leadership. "I had been a strong critic of Atlantic Beach, but with a dedicated council in place they had hired professional management to manage the town and lead the police department, which led me to getting involved in revitalizing the town," said Edge, whose district includes Atlantic Beach. "But with the firing of the staff, I will block and stop any state dollars from coming into Atlantic Beach. I've got the power to stop these funds and I will use it." Edge, a senior member of the House Ways and Means Committee and of all commerce and economic development appropriations, said he and other state officials – including the attorney general's office and the State Law Enforcement Division – "will watch this crowd like never before and not hesitate to seek indictments and bring charges if they don't operate by the laws of this state. Two longtime Atlantic Beach residents who have closely monitored town activities and the political landscape had opposite views on what impact the changes will have on their community...."
89. August 11, 2011 Ltr from Mayor Pro Tem Carolyn Cole to Rep. Tracy Edge
90. September 1, 2011 Ltr from Mayor Pro Tem Carolyn Cole to Rep. Tracy Edge
91. November 12, 2011 News Article, Columbia Political Buzz Examiner
"State Rep. Tracy Edge and State Sen. Dick Elliott, both of Horry County Are among a long list named in a \$20 million federal lawsuit claiming an Array of charges ranging from election fraud, to impersonating federal

Agents to trying to get rid of the town of Atlantic Beach...."

Municipal Election Commission

92. November 21, 2011 Email from Marci Andino to Sandy Martin
"Hi Sandy, do you have a copy of the order issued by the Atlantic Beach MEC?"
Re: Atlantic Beach
93. November 21, 2011 Email from Sandy to Marci Andino
Re: Atlantic Beach
"No maam. I was not given one."
94. November 21, 2011 Email from Marci Andino to Sandy Martin
Re: Atlantic Beach
"Can you contact the MEC and ask them to forward a copy of the order to the Governor's Office?"
95. December 14, 2011 Agenda MEC Meeting
96. New Election Schedule (Proposed)
97. December 16, 2011 Memo to Benny Webb from Councilwoman Windy Price
Re: Election
"...Are you still working with the MEC on getting pre-clearance with DOJ to reschedule the election..."
98. January 11, 2012 Email from Sandy Martin to Anne Wright
Re: Reg. & Election Update
"Okay, just wanted to be sure. I was told yesterday that the Governor has appointed an attorney to work with Atlantic Beach to get the order done from the election (the one they claim was already done). Ms. Andino spoke with the attorney and asked him to try and expedite the process of them releasing our machines."
99. January 11, 2012 Email from Arrigo Carotti to Anne Wright and Sanford Graves
"Don't know what order Sandy is referring to."
100. Email from Sandy Martin to Sanford Graves
Re: Reg & Elections Update

"It was the order from their election hearing – ordering a new election. I will email Marci and see what his name was."

101. February 8, 2012

Email from Marci Andino to Sandy Martin

Re: Atlantic Beach

"I talked to the Governor's Office on Monday of this week. At that time, They were still waiting for the order. I am not aware that they received Anything from Atlantic Beach or issued a Writ of Election."

102. February 8, 2012

Email from Sandy Martin to Marci Andino

"Marci, I have had some calls from the media this morning concerning Atlantic Beach's new election. Have you heard anything from the Governor's office concerning a new election for them?"

103. February 8, 2012

Email from Sandy Martin to Marci Andino

"Is there not a penalty or something they could do to them for not providing that order?"

104. February 8, 2012

Email from Marci Andino to Sandy Martin

"No, the law is silent."

105. October 19, 2011

Ltr to Sandy Martin from Benny Webb

Re: "I am requesting that no one who has participated in the Town Of Atlantic Beach elections in the past ten years be assigned by the Horry County Election Commission to assist in the November 1, 2011 Town of Atlantic Beach Election...."

106. August 24, 2011

Ltr to Sandy Martin from Benny Webb

Re: Town's Compliance with Supreme Court Order Preclearance Issues and not enough time to meet federal Voting rights laws to have Horry County and town cooperate on Election."

107. October 20, 2011

Ltr to Sandy Martin from Benny Webb

Re: Poll Managers, Clerks, Workers

108. October 21, 2011

Ltr from Nicole Kenion to Candidates

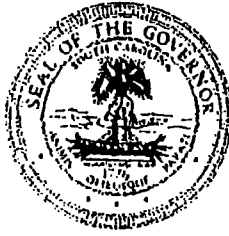
Re: Importance of Having Fair Election

109. October 26, 2011

Ltr from Nicole Kenion to Benny Webb

Re: Requesting Investigation of Inflated Voter Registration Roll

110. October 26, 2011 Ltr from Benny L. Webb to Nicole Kenion
Re: Response to Request for Assistance with Voter Reg Roll
111. December 12, 2011 Email from Mike McCarthy to Atlantic Beach@sc.rr.com
Transcript
112. December 12, 2011 Email to Town Clerk from Mike McCarthy
Seeking Tape from D. Price to Include with Transcript
113. December 14, 2011 Email to Marci Andino from Benny Webb
Re: Requesting Thorough Investigation of Voting Machines.
114. November 30, 2011 Article, Sun News: Audit Shows Problems with 2010 Horry County
Election
115. December 2, 2011 Ltr from Sheila Singletary to Benny Webb
Transcript Delay
116. December 2, 2011 Ltrs from Sheila Singletary to Commissioners and Candidates
Re: Transcript Delay
To: Kenion, Hudson, Miller
Evans, Isom, Pierce, Price, Taylor, Umphries, Vanfleet
117. November 30, 2011 Email from Michael McCarthy to Atlantic Beach
Re: Delay in Delivering Protest Hearing Transcript
118. December 27, 2011 "Ltr from US DOJ, Thomas Perez, Assistant Attorney General
Re: Response to Webb's letter to DOJ bringing the election
Issues to their attention:
119. Municipal Election Commission Report on Atlantic Beach Town Council
Election 2011
120. Order: In Process by Attorney Sam Howell



State of South Carolina Office of the Governor

NIKKI R. HALEY
GOVERNOR

1205 PENDLETON STREET
COLUMBIA 29201

March 16, 2012

VIA OVERNIGHT MAIL

Chief, Voting Section
Civil Rights Division
Room 7254 - NWB
Department of Justice
1800 G St. N.W.
Washington, D. C. 20006

RE: Request for Expedited Review of Voting Change Submission made by Executive Order 2012-03 ("Order" affecting voting) issued by Governor Nikki R. Haley of South Carolina ("submitting authority") pursuant to Section 5 of the Voting Rights Act of 1965, as amended.

Dear Chief of Voting Section:

On behalf of Governor Nikki R. Haley, I am submitting the enclosed Order issued today by Governor Haley for preclearance review pursuant to Section 5 of the Voting Rights Act of 1965, as amended, and the administrative guidelines set out in 28 C.F.R. Part 51. Pursuant to 28 C.F.R. § 51.34, I am requesting expedited consideration of this request for the reasons set forth in this letter.

In accordance with 28 C.F.R. § 51.27 the following information relevant to this Order is provided for your consideration:

- (1) **Action Embodying Change:** A copy of the Order, which is the action embodying change affecting voting, is enclosed. This Order was issued March 16, 2012.
- (2) **Change Affecting Voting:** This Order may be subject to preclearance because it substitutes the South Carolina State Election Commission and the Horry County Election Commission for the Atlantic Beach Municipal Election Commission as the authorities to conduct a municipal election for the Town of Atlantic Beach. (Copies of statutes creating municipal election commissions and authorizing county election commissions to conduct municipal elections enclosed.)

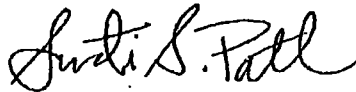
- (3) **Reason for the Change:** On November 5, 2011, the Atlantic Beach Municipal Election Commission declared the results of the Town's November 1, 2011 Election void, leaving in place incumbents who had lost the popular vote. (See enclosed transcript of November 5, 2011 protest hearing before the Atlantic Beach Municipal Election Commission.) In the months since then, the Municipal Election Commission has failed to set a new election date. In a 2011 decision, the South Carolina Supreme Court expressed serious concerns about the Atlantic Beach Municipal Election Commission's ability to conduct a lawful municipal election due to repeated misconduct by the commissioners. (Cole v. Town of Atlantic Beach Election Commission, 393 S.C. 264, 712 S.E.2d 440 (2011) (copy enclosed).) In order to ensure that the new election is expeditiously set and lawfully conducted, the Governor is designating the State Election Commission and the Horry County Election Commission as the authorities to conduct the election.
- (4) **Date on Which Change Will Take Effect:** The new election will be held on May 22, 2012, which takes into consideration the requirement of South Carolina Code § 5-15-50 that municipal elections be conducted on at least 60 days notice. (Copy of statute enclosed.)
- (5) **Statutory Authority:** Section 7-13-1170 of the South Carolina Code of Laws (1976), as amended, provides as follows: "When any election official of any political subdivision of this State charged with ordering, providing for, or holding an election has neglected, failed, or refused to order, provide for, or hold the election at the time appointed, or if for any reason the election is declared void by competent authority, and these facts are made to appear to the satisfaction of the Governor, he shall, should the law not otherwise provide for this contingency, order an election or a new election to be held at the time and place, and upon the notice being given which to him appears adequate to insure the will of the electorate being fairly expressed. To that end, he may designate the existing election official or other person as he may appoint to perform the necessary official duties pertaining to the election and to declare the result." (Copy of statute enclosed.) The South Carolina State Election Commission and Horry County Election Commission are competent authorities to conduct elections in the Town of Atlantic Beach, which is located in Horry County, South Carolina. These facts were made to appear to the satisfaction of the Governor.
- (6) **Statement of Anticipated Effect on Minorities:** There is no anticipated effect on members of any racial or language minority group by setting this date for the special election or by having the State Election Commission and Horry County Election Commission conduct this special election.
- (7) **No Past or Pending Litigation:** There has not been any litigation concerning this potential change, though the South Carolina Supreme Court expressed extreme concerns about allowing the Atlantic Beach Municipal Election Commission to continue conducting elections in Cole v. Town of Atlantic Beach Election Commission, 393 S.C. 264, 712 S.E.2d 440 (2011) (copy enclosed).

Chief, Voting Section
March 16, 2012
Page 3

We are requesting an expedited review of this Order because the results of the November 1, 2011 Election have been declared void and incumbents have been permitted to retain their seats since that point, potentially against the will of the voters. (Copies of local newspaper stories covering this election enclosed.)

Please contact me if you have any questions.

Sincerely,



Swati S. Patel
Chief Counsel

Contact Information:

Swati S. Patel
Chief Counsel
Office of the Governor
P.O. Box 12267
Columbia, South Carolina 29211
Direct Line: (803) 734-5095
Fax: (803) 734-5167
swatipatel@gov.sc.gov

cc: Ms. Marci Andino, Executive Director, S.C. State Election Commission (w/encl)

Enclosures

Martin, Sandy

From: Whitmire, Chris [cwhitmi@elections.sc.gov]
Sent: Friday, March 23, 2012 4:47 PM
To: Martin, Sandy
Cc: Huggins, Dena; Andino, Marci
Subject: Atlantic Beach Election Calendar
Attachments: 2012-05-22 Atlantic Beach Municipal Election Calendar.doc

Sandy,

Here is a tentative Atlantic Beach election calendar.
Some of the dates are TBD. When we figure those out, I'll send an updated calendar.

Thanks.

Chris Whitmire
Director of Public Information & Training

South Carolina State Election Commission

Post Office Box 5987
Columbia, S.C. 29250
Tel: 803.734.9070
Fax: 803.734.9366
scVOTES.org



EVERY VOTE MATTERS.
EVERY VOTE COUNTS.

This message originates from the South Carolina State Election Commission. If you have received this message in error, we would appreciate it if you would immediately notify the South Carolina State Election Commission by sending a reply e-mail to the sender of this message. Thank you.

**ELECTION CALENDAR
ATLANTIC BEACH MUNICIPAL ELECTION
HORRY COUNTY
MAY 22, 2012**

- not later than First public notice of election.
March 23
- not later than Second public notice of election appears (not later than two weeks after first).
April 6
- April 7 Deadline to mail primary absentee and instant runoff ballots (if necessary) to military and overseas citizens. 7-15-406
- April 12 County election commission should have in office absentee ballots available. 7-13-320 (F)
*Although this date may not be met, ballots should be made available as soon as possible.
- April 21 Last day to register to vote in special primary election.
- May 22 **Election Day**
- May 23 CEC transmits unofficial results and audit data to SEC.
- 7:00 p.m.
May 24 Protest deadline. (entity with which protests filed TBD)
- May 25 Final certification no later than this date (Specific dates and bodies conducting certification TBD)
- June 5 **Election Runoff Day** (if necessary and if results determined by majority) Post-election calendar dates follow same timeline as original election

Graves, Sanford

From: Martin, Sandy
Sent: Thursday, April 19, 2012 4:14 PM
To: Town Administration
Cc: Andino, Marci; Graves, Sanford
Subject: RE: Election

Ms. Singletary,

Thank you for letting me know. Please let me know the decision as soon as possible so that I can move the location if necessary.

*Thanks,
Sandy Martin*

From: Town Administration [<mailto:atlanticbeach@sc.twcbc.com>]
Sent: Thursday, April 19, 2012 3:56 PM
To: Martin, Sandy
Subject: RE: Election

Dear Ms. Martin,

Please know that we have received your request to use the Community Center on May 22nd to conduct the Atlantic Beach Town Election. At present the Community Center is booked for a different event, we are currently trying to work out change schedules for the event and will communicate the updated changes with you as soon as we can.

Respectfully,

Sheila Singletary
Town Clerk
Town of Atlantic Beach
717 30th Avenue South
Atlantic Beach, SC 29582
Tel: 843 663-2284 ext.21
Fax: 843 663-0601
Email: atlanticbeach@sc.twcbc.com

From: Martin, Sandy [<mailto:MartinS@HorryCounty.org>]
Sent: Friday, April 13, 2012 10:27 AM
To: atlanticbeach@sc.twcbc.com
Cc: Andino, Marci
Subject: Election

To whom it may concern:

I would like to ask permission to use the Community Center on May 22nd to conduct the Atlantic Beach Town Election. There is a possibility of a runoff on June 5th. We would need the building opened by 6:15 am.

Please let me know at your earliest convenience if this is permissible.

Thanks in advance

*Sandy Martin
Elections Director*

*Sandra N. Martin
Reg. & Elections Director
1515 4th Ave
Conway SC 29526
843-915-8526*

**EVERY VOTE MATTERS.
EVERY VOTE COUNTS.**

Graves, Sanford

From: Martin, Sandy
Sent: Monday, April 23, 2012 11:46 AM
To: atlanticbeach@sc.twcbc.com
Cc: Andino, Marci; Graves, Sanford
Subject: FW: Election

Ms. Singletary,

Please respond to my request of using the Community Center by May 1st so that I can send a precinct location change to the Justice Department if necessary. If I do not hear from you, I will proceed with making the change.

I look forward to hearing from you, and thanks for all your help.

Sandy Martin

From: Martin, Sandy
Sent: Thursday, April 19, 2012 4:14 PM
To: 'Town Administration'
Cc: 'Andino, Marci'; Graves, Sanford
Subject: RE: Election

Ms. Singletary,

Thank you for letting me know. Please let me know the decision as soon as possible so that I can move the location if necessary.

*Thanks,
Sandy Martin*

From: Town Administration [<mailto:atlanticbeach@sc.twcbc.com>]
Sent: Thursday, April 19, 2012 3:56 PM
To: Martin, Sandy
Subject: RE: Election

Dear Ms. Martin,

Please know that we have received your request to use the Community Center on May 22nd to conduct the Atlantic Beach Town Election. At present the Community Center is booked for a different event, we are currently trying to work out change schedules for the event and will communicate the updated changes with you as soon as we can.

Respectfully,

Sheila Singletary
Town Clerk

Martin, Sandy

From: Smith, Merideth [mjsmith@nmb.us]
Sent: Tuesday, April 24, 2012 11:51 AM
To: Martin, Sandy
Subject: RE:



Sandy,

I spoke with the City Manager after your call this a.m. After consulting the Public Safety Director and the City Attorney he advises that using the Fire Station at 33rd is not an option. We will be involved with Harley week and the station will be very busy.

Sorry that we cannot help.

Merideth Smith

From: Martin, Sandy [mailto:MartinS@HorryCounty.org]
Sent: Monday, April 23, 2012 10:02 AM
To: Smith, Merideth
Subject:

Ili Meredith....hope you are doing well... We may have a problem with using the Community Center for AB'S election. If this happens, would it be possible to use the Fire Station on 33rd? (May 22nd)

Please advise

Sandra N. Martin
Reg. & Elections Director
1515 4th Ave
Conway SC 29526
843-915-8526



EVERY VOTE MATTERS.
EVERY VOTE COUNTS.

Town Administration

From: Martin, Sandy [MartinS@HorryCounty.org]
Sent: Wednesday, April 25, 2012 9:18 AM
To: atlanticbeach@sc.twcbc.com
Cc: Andino, Marci; Graves, Sanford
Subject: Atlantic Beach Election

We are getting very close to your election day on May 22nd. Please let me know if the Community Center will be available. If not, how about consider one of these other options:

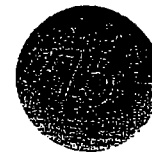
- 1 – Atlantic Beach Town Hall*
- 2 - Atlantic Beach 1st Bapt. Church*
- 3 – Pitching a tent in the parking lot of the Community Center*
- 4 – Grand Strand Airport*

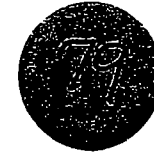
We are trying very hard to keep your precinct within your Town. Please help us in securing a suitable location. I look forward to hearing from you as soon as possible.

*Thanks,
Sandy Martin*

Sandra N. Martin
Reg. & Elections Director
1515 4th Ave
Conway SC 29526
843-915-8526

EVERY VOTE MATTERS
EVERY VOTE COUNTS

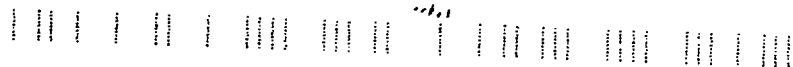




Dear Atlantic Beach Voter:

Please be advised that the Atlantic Beach Town Election will be held on May 22, 2012.
Your voting location for this election has changed. You will be voting at:

1st Missionary Baptist Church
2808 Highway 17 S
N. Myrtle Beach SC 29582

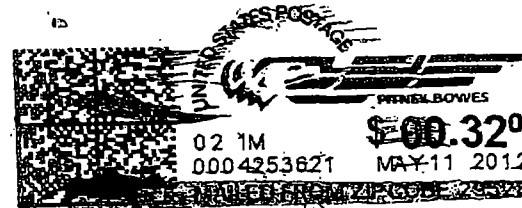


0393



Registration and Elections
1515 4th Avenue
Conway SC 29526

RETURN SERVICE
REQUESTED



02 1M

0004253621

\$00.32⁰

MAY 11 2012

0273

Lester D Jr. Hammond
502 30th Ave S
N Myrtle Beach, SC 29582



0394

Martin, Sandy

From: chetzer@sc.rr.com
Sent: Tuesday, May 01, 2012 11:15 AM
To: Martin, Sandy
Subject: Re: (No subject)

Ok

Sent from my HTC on the Now Network from Sprint!

----- Reply message -----

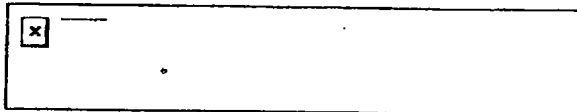
From: "Martin, Sandy" <MartinS@HorryCounty.org>
Date: Tue, May 1, 2012 10:36 am
Subject:
To: "Frazier, Michael" <FrazieJa@HorryCounty.org>, "Jones, Maurice" <JonesM@HorryCounty.org>, "psquare5@sccoast.net" <psquare5@sccoast.net>, "chetzer@sc.rr.com" <chetzer@sc.rr.com>

We are conducting the Atlantic Beach election on May 22. They will not allow us to use the community center for their election. Do you have any problems with us moving it to 1st Missionary Bapt. Church, 2902 Hwy 17 S, Atlantic Beach... only three blocks apart...

Please let me know asap.

Thanks!!!

Sandra N. Martin
Reg. & Elections Director
1515 4th Ave
Conway SC 29526
843-915-8526



Martin, Sandy

From: Vickie Autry [mygirls4@sccoast.net]
Sent: Tuesday, May 01, 2012 1:27 PM
To: Martin, Sandy
Subject: Re: Atlantic beach



That is fine with Vickie, Debbie, & Larry

Sent from my iPhone

On May 1, 2012, at 10:27 AM, "Martin, Sandy" <MartinS@HorryCounty.org> wrote:

<image001.gif>

We are not being allowed to use the Community Center for the May 22nd election. Do you have a problem with moving the precinct to the 1st Missionary Baptist Church located at 2902 Hwy 17 S, Atlantic Beach.

Please email me your response asap.

Thanks.

Sandra N. Martin

Reg. & Elections Director

1515 4th Ave

Conway SC 29526

843-915-8526

<image002.jpg>



DEC 1 2011

ALAN WILSON
ATTORNEY GENERAL

November 29, 2011

Benny L. Webb
Interim Town Manager
Town of Atlantic Beach
717 30th Avenue South
Atlantic Beach, SC 29582

Re: Your Letter dated November 18, 2011

Dear Mr. Webb:

Your letter to the Attorney General dated November 18, 2011, has been referred to me for review. I can confirm Ms. Laura Prather Best is not employed by the Attorney General's Office and has never been employed by the Attorney General's Office. In addition, she has not been authorized by anyone in the Office to appear or otherwise represent the Office in any manner.

If you have any questions or need anything further, please do not hesitate to contact me.

Yours very truly,

Mary Frances Jowers

Mary Frances Jowers
Assistant Attorney General

82

0397

Patricia Bellamy

407 30th Avenue South
Atlantic Beach, SC 29582

May 24, 2012

Sandy Martin – Registrations & Elections Director
Horry County Elections
1515 4th Avenue
Conway, SC 29526

Dear Ms. Martin:

To the Election Commission of Horry County, I am a registered voter in the Town of Atlantic Beach, SC. I am writing to submit this on record that I disagree with the absentee ballot being held at 9:00 a.m. on Tuesday, May 22, 2012 in Horry County in the Horry County Registers office while no one could challenge at two different locations simultaneously. I am referring to the Absentee Ballot being held at Horry County Registers office and the Election being held at the Atlantic Beach Baptist Church. Normally the Absentee Ballot is held at the same location as the election to allow for challenging any absentee voter. The challenge ballot hearing is being held at Horry County Election Commission office which is twenty-five miles from the church where the actual voting took place. If pre-clearance was granted to hold the election at the church location, then where is the pre-clearance to change the location for the challenge ballot hearing. More specifically where is evidence of both pre-clearance authorizations? While it may seem that you are running these hearings, you cannot do as you please. It is unfair to the residence of Atlantic Beach, SC whom this special election was to represent in this town.

I want to raise the issue of who determines where the absentee ballot, challenge ballot and the protest hearings is to be heard. If you ask the US Department of Justice for pre-clearance then all voting procedures should have occurred at one location which was the Atlantic Beach First Baptist Church.

Sincerely,

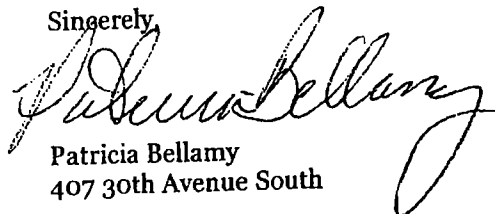

Patricia Bellamy
407 30th Avenue South

Exhibit 7

E

**Town of Atlantic Beach
Municipal Election Commission
Atlantic Beach Challenged Ballot Hearing**

Non-Residents

Cory R Boone
Etta Dewitt
James Dewitt
Catherine Egan
Emitte Ferguson
James Gillespie
Melton Gore
Charles Montgomery
Frances Sanders
Lee Woods

Unable to Locate
Cynthi Ducksworth
Monifa Franklin
Stacey Hudgens
Laverne Johnson
Christina Sutton
Shalini Tailor
Betty Weathers
Phillip Randall
Henry Randall
Ricardo Naranjo

0399

Exhibit "G"

AB - Atlantic Beach PD INCIDENT REPORT

AGENCY I.D.
SCORI SC0260100

CASE NUMBER

12000423

NCIC

INQ ENTD

EVENT	INCIDENT TYPE				COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM				
	1. 0353 - Voting / Fraudulent registration or voting				☐ No ☒ Yes	☐ No ☐ Yes	11 - Government/Public Building		☐ Individual ☐ Business ☐ Financial Institution ☐ Government ☐ Religious Organization ☒ Society/Public ☐ Other ☐ Unknown ☐ Law Enforcement Officer				
	2.				☐ No ☐ Yes	☐ No ☐ Yes							
	3.				☐ No ☐ Yes	☐ No ☐ Yes							
	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET AND NAME AND NUMBER)				SUBDIVISION		ZIP CODE		WEAPON TYPE				
	717 30th Ave S Atlantic Beach						29582						
	INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE / TIME 24 HR. CLOCK		AREA		GRID			
	5/22/2012	20:00				DISP. DATE: 5/23/2012 DISP. TIME: 16:31 TIME ARRIVED: 16:32 DEPART TIME:		100					
	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)			RELATIONSHIP TO SUBJECT		RES	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE	
	Kenion, Nicole						B	F		N			
	ADDRESS					CITY		STATE	ZIP CODE				
	1009 32nd Ave S Apt C					Atlantic Beach		SC	29582				
VICTIM NO. 1	VICTIM'S NAME (LAST, FIRST, MIDDLE)			RELATIONSHIP TO SUBJECT		RES	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE	
	Society/Public			1 2 3									
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
	ADDRESS					CITY		STATE	ZIP CODE		LOCATION		
	VISIBLE INJURY (VICT. 1) ☒ No ☐ Yes EXPLAIN: COMPLAINT OF ANY NON-VISIBLE INJURIES: ☒ No ☐ Yes VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☒ NO ☐ DUNK DRUGS ☐ YES ☒ NO ☐ DUNK TYPE:												
	J = THIS JURISDICTION S = STATE O = OUT OF STATE U = UNKNOWN												
SUBJECT NO. 1	☒ SUBJECT		NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
	☐ RUNAWAY		Dewitt, Etta Lee		B	F	74	N	11/29/1937				
	☐ WANTED		FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		NCIC NUMBER								
	☐ WARRANT		ADDRESS		CITY		STATE	ZIP CODE		LOCATION NO.			
	☐ ARREST		4474 Highway 319 E		Conway		SC	29526					
	☐ JAIL		SUBJECT (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☐ DUNK		ARRESTED NEAR OFFENSE SCENE: ☐ No ☐ Yes		DATE / TIME OF OFFENSE		DATE / TIME OF ARREST				
	☐ SUMMONS		DRUGS ☐ YES ☐ NO ☐ DUNK		TOTAL # ARRESTED:		5/22/2012 8:00 pm						
NARRATIVE	On the above date the responding officer was advised of challenged voters that may not live within the city limits. The Municipal Election Commissioner gave the responding officer the information to investigate. With the assistance of the Department of Motor Vehicle, patrol, and door to door, the responding officer was able to find that the subjects do not reside in the town of Atlantic Beach. The individuals violated the following South Carolina election laws: Section 7-5-610, Who is entitled to vote in municipal elections. Every citizen of this State and of the United States: (1) Of the age of eighteen years and upwards; (2) Having all the qualifications mentioned in Section 7-5-120; (3) Who has resided within the corporate limits of any incorporated municipality in this State for thirty days previous to any municipal election; (4) Who has been registered for county, state, and national elections as herein required; is entitled to vote at all municipal elections of his municipality. Further investigation will follow.												
	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY						JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY						
PROPERTY	TYPE(GROUP)											TOTAL VALUE	
	STOLEN												
	DAMAGED												
	BURNED												
	RECOVERED												
	SEIZED												
ADMINISTRATIVE	SUBJECT IDENTIFIED ☐ No ☒ Yes		SUBJECT LOCATED ☐ No ☒ Yes		☒ Active ☐ Adm. Closed ☐ Unfounded		☐ Arrested Under 18 ☐ Arrested 18 and Over		☐ Ex-Clear Under 18 ☐ Ex-Clear 18 and Over				
	REASON FOR EXCEPTIONAL CLEARANCE: ☐ Death of Offender ☐ Prosecution Declined ☐ Extradition Denied ☐ Victim Refused to Cooperate ☐ Juvenile/No Custody ☐ Not Applicable												
	REPORTING OFFICER(S)		DATE		DEPT. NO.		APPROVING OFFICER		DATE		DEPT. NO.		
	B2407 - Brown, Valerie		5/23/2012		928								
							FOLLOW UP INVESTIGATION ☐ No ☐ Yes		OFFICER				

SUPPLEMENTAL INCIDENT REPORT

AGENCY I.D.
SCORI SC0260100

CASE NUMBER

12000423

NCIC

INQ ENTD

☒ ORIGINAL REPORT ☐ SUPPLEMENTAL REPORT ☐ INVESTIGATIVE FOLLOW UP ☐ ADDITIONAL STOLEN PROPERTY ☐ MODIFIES ORIGINAL
☐ CASE STATUS CHANGE ☐ ADDITIONAL RECOVERED PROPERTY ☐ FIELD CONTACT INFO

PAGE 2 OF 7 PAGES

VICT / SUBJ I.D. OVERFLOW	☐ COMPLAINANT ☐ VICTIM ☒ SUBJECT ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS ☐	NAME (LAST, FIRST, MIDDLE) Dewitt, James B	VICTIM RELATIONSHIP TO SUBJECT 1 2 3	RES S	RACE B	SEX M	AGE 77	DATE OF BIRTH 9/28/1934	ETH N
	HEIGHT WEIGHT HAIR EYES FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC. --								
	ADDRESS 4474 Highway 319 E		CITY Conway		STATE SC	ZIP CODE 29526	LOCATION NO.	DAY PHONE	EVENING PHONE
	VICTIM NO. VISIBLE INJURY: ☐ No ☐ Yes EXPLAIN:		COMPLAINT OF NON-VISIBLE INJURIES: ☐ No ☐ Yes		VICTIM USING ALCOHOL: ☐ YES ☐ NO ☐ UNK		DRUGS: ☐ YES ☐ NO ☐ UNK TYPE:		
	SUBJECT NO. 2 USING ALCOHOL: ☐ YES ☐ NO ☐ UNK								
	USING DRUGS: ☐ YES ☐ NO ☐ UNK TYPE:								

VICT / SUBJ I.D. OVERFLOW	☐ COMPLAINANT ☐ VICTIM ☒ SUBJECT ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS ☐	NAME (LAST, FIRST, MIDDLE) Egan, Catherine Frances	VICTIM RELATIONSHIP TO SUBJECT 1 2 3	RES S	RACE W	SEX F	AGE 28	DATE OF BIRTH 7/29/1983	ETH N
	HEIGHT WEIGHT HAIR EYES FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC. --								
	ADDRESS 3676 N Pointe Blvd		CITY Little River		STATE SC	ZIP CODE 29566	LOCATION NO.	DAY PHONE	EVENING PHONE
	VICTIM NO. VISIBLE INJURY: ☐ No ☐ Yes EXPLAIN:		COMPLAINT OF NON-VISIBLE INJURIES: ☐ No ☐ Yes		VICTIM USING ALCOHOL: ☐ YES ☐ NO ☐ UNK		DRUGS: ☐ YES ☐ NO ☐ UNK TYPE:		
	SUBJECT NO. 3 USING ALCOHOL: ☐ YES ☐ NO ☐ UNK								
	USING DRUGS: ☐ YES ☐ NO ☐ UNK TYPE:								

NARRATIVE			JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY	JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY

VEH. / GUN / ETC. 1	STATUS ☐ STOLEN ☐ RECOVERED ☐ FOUND ☐ TOWED ☐ SUSPECT ☐ VICTIM	TYPE ☐ VEHICLE ☐ GUN ☐ BOAT ☐ LICENSE PLATE ☐ SECURITIES, STOCKS ☐ ARTICLE	VIN AND/OR LICENSE NO.	BOAT HULL NO. AND/OR REG. NO.		
	SERIAL AND/OR OWNER APPLIED NO.			STATE		
	YEAR OF REGISTRATION		YEAR OF EXPIRATION	YEAR	MAKE	TYPE
	MODEL	STYLE	COLOR	BRAND NAME	CALIBER	
	NIC. NO.	DENOMINATION	ISSUER	SECURITIES DATE		
	MISCELLANEOUS					

PROPERTY	TYPE(GROUP)	STOLEN	DAMAGED	BURNED	RECOVERED	SEIZED	TOTAL VALUE

ADMINISTRATIVE	SUBJECT IDENTIFIED ☐ No ☒ Yes	SUBJECT LOCATED ☐ No ☒ Yes	☒ Active ☐ Adm. Closed ☐ Unfounded ☐ Arrested Under 18 ☐ Arrested 18 and Over	☐ Ex-Clear Under 18 ☐ Ex-Clear 18 and Over	
	REASON FOR EXCEPTIONAL CLEARANCE: ☐ Death of Offender ☐ Prosecution Declined ☐ Extradition Denied ☐ Victim Refused to Cooperate ☐ Juvenile/No Custody ☐ Not Applicable				
	REPORTING OFFICER(S) B2407 - Brown, Valerie	DATE 5/23/2012	DEPT. NO. 928	APPROVING OFFICER	DATE
			FOLLOW UP INVESTIGATION ☐ No ☐ Yes		OFFICER

0401

SUPPLEMENTAL INCIDENT REPORT

AGENCY I.D.
SCORI SC0260100

CASE NUMBER

12000423

NCIC

INQ ENTD

☒ ORIGINAL REPORT ☐ SUPPLEMENTAL REPORT ☐ INVESTIGATIVE FOLLOW UP ☐ ADDITIONAL STOLEN PROPERTY ☐ MODIFIES ORIGINAL
☐ CASE STATUS CHANGE ☐ ADDITIONAL RECOVERED PROPERTY ☐ FIELD CONTACT INFO

PAGE 3 OF 7 PAGES

VICT / SUBJ I.D. OVERFLOW

☐ COMPLAINANT
☐ VICTIM
☒ SUBJECT
☐ RUNAWAY
☐ WANTED
☐ WARRANT
☐ ARREST
☐ JAIL
☐ SUMMONS
☐ _____

NAME (LAST, FIRST, MIDDLE)				VICTIM RELATIONSHIP TO SUBJECT			RES	RACE	SEX	AGE	DATE OF BIRTH	ETH
Ferguson, Emmet				1	2	3	S	B	M	52	9/4/1959	N
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	EVENING PHONE			
4533 Bruin Dr				Little River	SC	29566						
VICTIM NO. VISIBLE INJURY: ☐ No ☐ Yes				COMPLAINT OF NON-VISIBLE INJURIES: ☐ No ☐ Yes		VICTIM USING ALCOHOL: ☐ YES ☐ NO ☐ DUNK						
EXPLAIN:						DRUGS: ☐ YES ☐ NO ☐ DUNK TYPE:						
SUBJECT NO. 4 USING ALCOHOL: ☐ YES ☐ NO ☐ DUNK												
USING DRUGS: ☐ YES ☐ NO ☐ DUNK TYPE:												

VICT / SUBJ I.D. OVERFLOW

☐ COMPLAINANT
☐ VICTIM
☒ SUBJECT
☐ RUNAWAY
☐ WANTED
☐ WARRANT
☐ ARREST
☐ JAIL
☐ SUMMONS
☐ _____

NAME (LAST, FIRST, MIDDLE)				VICTIM RELATIONSHIP TO SUBJECT			RES	RACE	SEX	AGE	DATE OF BIRTH	ETH
Gillespie, James R				1	2	3	S	U	M	50	10/8/1961	U
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	EVENING PHONE			
608 19th Ave				Myrtle Beach	SC	29577						
VICTIM NO. VISIBLE INJURY: ☐ No ☐ Yes				COMPLAINT OF NON-VISIBLE INJURIES: ☐ No ☐ Yes		VICTIM USING ALCOHOL: ☐ YES ☐ NO ☐ DUNK						
EXPLAIN:						DRUGS: ☐ YES ☐ NO ☐ DUNK TYPE:						
SUBJECT NO. 5 USING ALCOHOL: ☐ YES ☐ NO ☐ DUNK												
USING DRUGS: ☐ YES ☐ NO ☐ DUNK TYPE:												

NARRATIVE

JURISDICTION OF THEFT
LAW ENFORCEMENT AGENCY

JURISDICTION OF RECOVERY
LAW ENFORCEMENT AGENCY

VEH. / GUN / ETC. 1

STATUS
☐ STOLEN
☐ RECOVERED
☐ FOUND
☐ TOWED
☐ SUSPECT
☐ VICTIM

TYPE
☐ VEHICLE
☐ GUN
☐ BOAT
☐ LICENSE PLATE
☐ SECURITIES, STOCKS
☐ ARTICLE

VIN AND/OR LICENSE NO.				BOAT HULL NO. AND/OR REG. NO.			
SERIAL AND/OR OWNER APPLIED NO.							STATE
YEAR OF REGISTRATION				YEAR OF EXPIRATION	YEAR	MAKE	TYPE
MODEL	STYLE	COLOR	BRAND NAME		CALIBER		
NIC. NO.	DENOMINATION	ISSUER	SECURITIES DATE				
MISCELLANEOUS							

PROPERTY

TYPE (GROUP)							TOTAL VALUE
STOLEN							
DAMAGED							
BURNED							
RECOVERED							
SEIZED							

ADMINISTRATIVE

SUBJECT IDENTIFIED ☐ No ☒ Yes	SUBJECT LOCATED ☐ No ☒ Yes	☒ Active ☐ Adm. Closed ☐ Unfounded	☐ Arrested Under 18 ☐ Arrested 18 and Over	☐ Ex-Clear Under 18 ☐ Ex-Clear 18 and Over
REASON FOR EXCEPTIONAL CLEARANCE: ☐ Death of Offender ☐ Prosecution Declined ☐ Extradition Denied ☐ Victim Refused to Cooperate ☐ Juvenile/No Custody ☐ Not Applicable				
REPORTING OFFICER(S)	DATE	DEPT. NO.	APPROVING OFFICER	DATE
B2407 - Brown, Valerie	5/23/2012	928		
FOLLOW UP INVESTIGATION ☐ No ☐ Yes			OFFICER	

SUPPLEMENTAL INCIDENT REPORT

AGENCY I.D.
SCORI SC0260100

CASE NUMBER

12000423

NCIC

INQ ENT0

☒ ORIGINAL REPORT ☐ SUPPLEMENTAL REPORT ☐ INVESTIGATIVE FOLLOW UP ☐ ADDITIONAL STOLEN PROPERTY ☐ MODIFIES ORIGINAL
☐ CASE STATUS CHANGE ☐ ADDITIONAL RECOVERED PROPERTY ☐ FIELD CONTACT INFO

PAGE 4 OF 7 PAGES

VICT / SUBJ I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)				VICTIM RELATIONSHIP TO SUBJECT			RES	RACE	SEX	AGE	DATE OF BIRTH	ETH
	☐ VICTIM	Gore, Melton Levi				1	2	3	S	B	M	47	11/15/1964	N
	☒ SUBJECT	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
	☐ RUNAWAY	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	EVENING PHONE			
	☐ WANTED	2501 Highway 111				Little River	SC	29566						
	☐ WARRANT													
☐ ARREST														
☐ JAIL														
☐ SUMMONS														
☐														

VICT / SUBJ I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)				VICTIM RELATIONSHIP TO SUBJECT			RES	RACE	SEX	AGE	DATE OF BIRTH	ETH
	☐ VICTIM	Montgomery, Charles				1	2	3	S	B	M	48	12/14/1963	N
	☒ SUBJECT	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
	☐ RUNAWAY	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	EVENING PHONE			
	☐ WANTED	321 Carlton Dr				Columbia	SC	29223						
	☐ WARRANT													
☐ ARREST														
☐ JAIL														
☐ SUMMONS														
☐														

NARRATIVE		

VEH. / GUN / ETC. 1	STATUS	TYPE	VIN AND/OR LICENSE NO.		BOAT HULL NO. AND/OR REG. NO.			
	☐ STOLEN	☐ VEHICLE						
	☐ RECOVERED	☐ GUN	SERIAL AND/OR OWNER APPLIED NO.		STATE			
	☐ FOUND	☐ BOAT	YEAR OF REGISTRATION		YEAR OF EXPIRATION	YEAR	MAKE	TYPE
	☐ TOWED	☐ LICENSE PLATE	MODEL	STYLE	COLOR	BRAND NAME	CALIBER	
	☐ SUSPECT	☐ SECURITIES, STOCKS	NIC. NO.	DENOMINATION	ISSUER	SECURITIES DATE		
	☐ VICTIM	☐ ARTICLE	MISCELLANEOUS					

PROPERTY	TYPE (GROUP)	STOLEN	DAMAGED	BURNED	RECOVERED	SEIZED	TOTAL VALUE

ADMINISTRATIVE	SUBJECT IDENTIFIED ☐ No ☒ Yes	SUBJECT LOCATED ☐ No ☒ Yes	☒ Active ☐ Adm. Closed ☐ Unfounded		☐ Arrested Under 18 ☐ Arrested 18 and Over		☐ Ex-Clear Under 18 ☐ Ex-Clear 18 and Over	
	REASON FOR EXCEPTIONAL CLEARANCE: ☐ Death of Offender ☐ Prosecution Declined ☐ Extradition Denied ☐ Victim Refused to Cooperate ☐ Juvenile/No Custody ☐ Not Applicable							
	REPORTING OFFICER(S)		DATE	DEPT. NO.	APPROVING OFFICER		DATE	DEPT. NO.
	B2407 - Brown, Valerie		5/23/2012	928	FOLLOW UP INVESTIGATION ☐ No ☒ Yes		OFFICER	

מחלקת המחקר - מנהל

SCOR: SC0260100

12000423

INQ	ENTD

PAGE 5 OF 7 PAGES

VICT / SUBJ I.D. OVERFLOW

VICT / SUBJ I.D. OVERFLOW

NARRATIVE

VEH. / GUN / ETC. 1PROPERTY

ADMINISTRATIVE

0404

AD - Atlantic Beach PD SUPPLEMENTAL INCIDENT REPORT

AGENCY I.D.
SCORI SC0260100

CASE NUMBER

12000423

NCIC

INQ ENTD

☒ ORIGINAL REPORT ☐ SUPPLEMENTAL REPORT ☐ INVESTIGATIVE FOLLOW UP ☐ ADDITIONAL STOLEN PROPERTY ☐ MODIFIES ORIGINAL
☐ CASE STATUS CHANGE ☐ ADDITIONAL RECOVERED PROPERTY ☐ FIELD CONTACT INFO

PAGE 6 OF 7 PAGES

VICT / SUBJ I.D. OVERFLOW	☐ COMPLAINANT ☐ VICTIM ☒ SUBJECT ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS ☐	NAME (LAST, FIRST, MIDDLE) Tailor, Shalini P	VICTIM RELATIONSHIP TO SUBJECT 1 2 3			RES S	RACE U	SEX U	AGE 20	DATE OF BIRTH 9/19/1991	ETH U
		HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC. --					
		ADDRESS 3100 Highway 17 S			CITY North Myrtle Beach	STATE SC	ZIP CODE 29582	LOCATION NO.	DAY PHONE	EVENING PHONE	
		VICTIM NO. VISIBLE INJURY: ☐ No ☐ Yes EXPLAIN:			COMPLAINT OF NON-VISIBLE INJURIES: ☐ No ☐ Yes		VICTIM USING ALCOHOL: ☐ YES ☐ NO ☐ DUNK DRUGS: ☐ YES ☐ NO ☐ DUNK TYPE:				
		SUBJECT NO. 10 USING ALCOHOL: ☐ YES ☐ NO ☐ DUNK USING DRUGS: ☐ YES ☐ NO ☐ DUNK TYPE:									

VICT / SUBJ I.D. OVERFLOW	☐ COMPLAINANT ☐ VICTIM ☒ SUBJECT ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS ☐	NAME (LAST, FIRST, MIDDLE) Weathers, Betty	VICTIM RELATIONSHIP TO SUBJECT 1 2 3			RES S	RACE U	SEX F	AGE 49	DATE OF BIRTH 3/17/1963	ETH U
		HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC. --					
		ADDRESS Unknown			CITY Moncks Corner	STATE SC	ZIP CODE 29461	LOCATION NO.	DAY PHONE	EVENING PHONE	
		VICTIM NO. VISIBLE INJURY: ☐ No ☐ Yes EXPLAIN:			COMPLAINT OF NON-VISIBLE INJURIES: ☐ No ☐ Yes		VICTIM USING ALCOHOL: ☐ YES ☐ NO ☐ DUNK DRUGS: ☐ YES ☐ NO ☐ DUNK TYPE:				
		SUBJECT NO. 11 USING ALCOHOL: ☐ YES ☐ NO ☐ DUNK USING DRUGS: ☐ YES ☐ NO ☐ DUNK TYPE:									

NARRATIVE		
	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY	JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY

VEH. / GUN / ETC. 1	STATUS ☐ STOLEN ☐ RECOVERED ☐ FOUND ☐ TOWED ☐ SUSPECT ☐ VICTIM	TYPE ☐ VEHICLE ☐ GUN ☐ BOAT ☐ LICENSE PLATE ☐ SECURITIES, STOCKS ☐ ARTICLE	VIN AND/OR LICENSE NO.		BOAT HULL NO. AND/OR REG. NO.				
			SERIAL AND/OR OWNER APPLIED NO.					STATE	
			YEAR OF REGISTRATION			YEAR OF EXPIRATION	YEAR	MAKE	TYPE
			MODEL	STYLE	COLOR	BRAND NAME	CALIBER		
			NIC. NO.	DENOMINATION	ISSUER	SECURITIES DATE			
			MISCELLANEOUS						

PROPERTY	TYPE (GROUP)						TOTAL VALUE
	STOLEN						
	DAMAGED						
	BURNED						
	RECOVERED						
	SEIZED						

ADMINISTRATIVE	SUBJECT IDENTIFIED ☐ No ☒ Yes	SUBJECT LOCATED ☐ No ☒ Yes	☒ Active ☐ Adm. Closed ☐ Unfounded	☐ Arrested Under 18 ☐ Arrested 18 and Over	☐ Ex-Clear Under 18 ☐ Ex-Clear 18 and Over	
	REASON FOR EXCEPTIONAL CLEARANCE: ☐ Death of Offender ☐ Prosecution Declined ☐ Extradition Denied ☐ Victim Refused to Cooperate ☐ Juvenile/No Custody ☐ Not Applicable					
	REPORTING OFFICER(S) B2407 - Brown, Valerie	DATE 5/23/2012	DEPT. NO. 928	APPROVING OFFICER	DATE	DEPT. NO.
				FOLLOW UP INVESTIGATION ☐ No ☐ Yes	OFFICER	

0405



THE UNITED STATES DEPARTMENT OF JUSTICE

SEARCH THE SITE

SEARCH

Home About Us 1548 Services Civil Rights Division Section 5 Electronic Voting Submission

that has been submitted. If information, please call 800-253-3931 and refer to electronic voting submission number

Electronic Submission Under Section 5 of the Voting Rights Act

Confirmation of Submission 4548

Information of Person Making Submission

Submission ID: 4548

Submission Time: 2012-05-01 13:12:48

Name: SXXXX N. MXXXX

Title: Director/Horry County Registration & Election

Street: XXXXXXXXXXXXX

City: Conway

State: South Carolina Zipcode: 29526

Phone: 843-XXX-XX26

Email: XXXXXXXX@horrycounty.org

Jurisdiction Covered by Submission

Name of Submitting Jurisdiction/Entity Horry County

In what state is your jurisdiction located? South Carolina

In what county

Jurisdiction Affected

If not from list, then enter jurisdiction:

Detail of Change Submitted

28 CFR §51.27 & §51.28(h)

Each submission should contain the required information or documents to enable the Attorney General to make the required determination pursuant to section 5 with respect to the submitted change affecting voting:

- a. A copy of any ordinance, enactment, order, or regulation embodying a change affecting voting and provide the date of its enactment or adoption and its effective date.

We are requesting your expedited consideration to move the Atlantic Beach precinct to 1st Missionary Baptist Church located at 2808 Hwy 17 S, Atlantic Beach. This change will be for the special election held on May 22nd only.

- b. A copy of any ordinance, enactment, order, or regulation embodying the voting practice that is proposed to be repealed, amended, or otherwise changed and provide the date of compliance with Section 5.

All Election Commission and Voter Registration Board members are in agreement to the change.

- c. A clear statement of the change explaining the difference between the submitted change and the prior law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting.

The County and State are conducting this election due to a Governor's order requiring us to do so. The Atlantic Beach MEC usually conducts their own elections. We were just informed that we would not be able to use the normal voting location for their special election.

- d. Identification of the person or body responsible for making the change and the mode of decision (e.g. act of state legislature, ordinance of city council, administrative decision by the registrar).

Horry County Reg. & Elections is responsible for making the change. All board members in agreement. The change is being made on an emergency basis.

- e. A statement identifying the statutory or other authority under which the jurisdiction undertakes the change and a description of the procedures the jurisdiction was required to follow in deciding to undertake the change.

I contacted Town Hall in Atlantic Beach for alternative locations since they informed us the normal voting location was booked. The town didn't give me any choices so I contacted the church and asked to use it for one time only. Both boards agreed. I did not send to the Delegation because we do not typically handle elections for Atlantic Beach, and the change is for only one election.

- f. A statement that the change has not yet been enforced or administrated, or an explanation of why such a statement cannot be made.

We will implement this change for the May 22 special election only. It will be moved back to the regular location after this election.

- g. Where the change will affect less than the entire jurisdiction, an explanation of the scope of the change.

This change will affect voters in the Town of Atlantic Beach only. We will be mailing all voters a postcard advising them their voting location will change for the special election only. We will also notify the media.

- h. A statement of the reasons for the change.

0406

Exhibit "14"

The change is being made because the town has scheduled an event in the Community Center we normally use as a voting location. This is an emergency, and a temporary move. There is approximately three blocks between the two locations.

- i. A statement of the anticipated effect of the change on members of racial or language minority groups. In addition, per §51.28(h), include the names, addresses, daytime telephone numbers, and organizational affiliation (if any) of racial and language minority group members residing in the jurisdiction who can be expected to be familiar with the proposed change or who have been active in the political process.

Atlantic Beach - 352 active voters - 208 black - 120 white - 24 other Minorities to contact: Mike Frazier (Board Chairman) 843-915-8436 or 843-421-1591 Mr. Brooker (AB resident) 1-801-512-1322

- j. A statement identifying any past or pending litigation concerning the change or related voting practice.

The County and State has been mandated by the Governor to conduct this election for the Town of Atlantic Beach because of problems that incurred during their last election in November 2011.

- k. For redistricting and annexations: the items listed under §51.28(a)(1) and (b)(1); for annexations only: the items listed under §51.28(c)(3).

u/a

- l. Other information that the Attorney General determines is required for an evaluation of the purpose or effect of the change. Such information may include items listed in §51.28 and is most likely to be needed with respect to redistrictings, annexations, and other complex changes. In the interest of time such information should be furnished with the initial submission relating to voting changes of this type. When such information is required, but not provided, the Attorney General shall notify the submitting authority in the manner provided in §51.37.

Attachments

The following attached files provide additional information for this submission. Following the file name is the file's current status.

U.S. DEPARTMENT of JUSTICE

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**Municipal Election Commission
Report
Atlantic Beach Town Council Election 2011**

Summary

The Municipal Election Commission submits this report on the 2011 Atlantic Beach Town Council Election to document the facts before and after the election from the Commissioners' viewpoint with the hope that it will provide insight into their interpretation of the election laws and their decision-making process. The Commission's goal was to hold a fair election in the Town of Atlantic Beach where all resident registered voters could come to the polls and cast their ballots in secret without fear of the kind of retaliation that has become as much a part of Election Day as the voting itself. After the polling place opened and closed on November 1, 2011 and the vote count was conducted out of the public view, the two MEC Commissioners present on Election Day knew the Town had not met its goal. The Commissioners had witnessed the takeover and set up of the polling place in a manner that compromised the secrecy of the ballot and allowed poll watchers, candidates, voters, and onlookers to control the polling place and violate the rights of other voters. The issue of voter fraud was introduced with a phony representative from the Attorney General's office and her access to the voting machines and provisional ballots. The door was also opened for fraud when the poll clerk took the voting machine out of the building for curbside voting and when the final count was done in private.

On Election Day, a variety of tactics were used to intimidate MEC Commissioners, some of the candidates, and voters that went beyond verbal harassment and threats to threats of physical violence. Former town manager William Booker escorted a woman, Laura Prather Best, into the polling place about an hour after the polls opened and presented her as a representative from the State Attorney General's Office. Ms. Best introduced herself as a

representative of the S.C. Attorney General's Office to Mayor Pro Tem Carolyn Cole, Commissioner Nicole Kenion, Interim Town Manager Benny Webb, and Town Clerk/Municipal Election Commission Clerk Sheila Singletary. Ms. Best took control of the polling place and remained there until the polls closed. Mr. Booker and his wife, former MEC Commissioner Lynda Booker and candidates Jake Evans and Charlene Taylor spent most of the day with Ms. Best inside the polling place where they sat with Paul Scott and a yet to be named woman. A group of people joined them and created an atmosphere that resembled a combination pep rally and gang activity. The Bookers would come and go at intervals as would some others but throughout the day the crowd remained, often loud, and creating some event that distracted poll workers, poll watchers, and voters. Ms. Best, poll watchers, and candidates Evans and Taylor spent time conferring with the poll clerk at the provisional ballot table and voting machines. Ms. Best removed poll watcher Patricia Bellamy from the polling place to prevent her from challenging non-resident voters. While Ms. Bellamy was absent from the room she was threatened by Ms. Best and Paul Scott. In violation of the law, Poll Clerk Constance Busbee took the questionable voting machine out of the building three times to allow curbside voting. None of the poll watchers accompanied her. One of the curbside voters was the spouse of candidate Charlene Taylor.

The setup of the polling place in previous elections used the entire floor space of the community center which is about five times larger than the space actually used on November 1, 2011. In this election, Ms. Busbee limited the use of space to approximately 26 x 26. Inside this space, the voting machines were about three feet apart. The provisional ballot table and the voting machines were [#] feet apart. The poll workers, poll watchers, and voters were all working at the provisional ballot table when a ballot was challenged even if voters were already seated and voting. The poll worker working the sign in sheet was at a table about five feet from the voting machine. Poll watchers for Evans, Isom, and Taylor lined up directly in front of the voting machine about

ten feet away from the machines and the provisional ballot table. The number of people milling around in the small space allocated for voting created congestion and uncontrolled access to the voting machines and paper ballots and may have contributed to mistakes on the poll sign in sheets, the voting machines, and the paper ballots. At the end of the day the poll clerk produced two different zero tapes with two different sets of signatures and different times for the same date and same machines. There is no tape from the machines that is consistent with the poll lists showing the number of people that allegedly voted on the machine. There are inconsistencies with the challenge ballot poll list, challengers, and ballots. There is double voting, voting by unregistered voters, votes that should not have been counted and votes that should have been counted.

In an attempt to address the issue of fraudulent registration, the Atlantic Beach Police Department helped the MEC identify the residents of the town and the voter registration roll was considerably reduced. Less than five resident voters that should have been counted were not counted which are noted as errors. Still this is an improvement over the 2009 election when eleven resident voters were rejected solely on the basis of race. In the 2009 election the Atlantic Beach Concerned Citizens organized a Get Out the Vote Campaign that encouraged voters who were leaving town to avoid the harassment and intimidation of Election Day not to give up their vote but to vote absentee. Most of the white voters in 2009 voted absentee and most of their votes were not counted. In the 2011 election, Atlantic Beach Concerned Citizens' campaign encouraged white voters to come to the polls. No one anticipated the harassment activity at the entry and exit door and inside the polling place that interfered with and deterred voting on November 1st. The Atlantic Beach Police Department should have taken control of the situation and asked those voters to move away from the door and out of the polling place. The dilemma for them was how to enforce the law and not become a

part of the intimidation. The ABPD erred on the side of not doing enough rather than doing too much.

The observations of the Commissioners weighed heavily in its decision to de-certify the election along with evidence presented by the candidates protesting the election. The MEC agrees with the protesting candidates that laws that provide for secret ballots and public counting, civil rights and voting rights and protection from voter intimidation were violated and that these violations were substantial and sufficient to overturn the election. The MEC also considered the impact of its decision on the voters who came out and cast their ballots in earnest. The MEC believes those voters are in the minority compared to the resident registered voters and the non-resident voters challenged and unchallenged who participated in the harassment and intimidation of other resident registered voters and deterred them from coming to the polling place. The ABPD investigated the addresses of over 160 registrants on the Atlantic Beach voter registration roll. Twelve of them had addresses in Atlantic Beach. The MEC's decision may inconvenience those who voted in earnest with having to vote a second time but it gives the majority of resident registered voters a chance to exercise their right to vote in secret without fear of intimidation or retaliation and confirms the MEC's commitment to oversee an election in the town that is free of election fraud and won by legal voters with a legal count and not by those with the will to win by any means necessary.

The MEC must demonstrate to the voters, candidates, the public, and the Supreme Court that it can and will enforce the election laws of this state. For the first time, the MEC has enlisted the help of the ABPD to enforce election law violations which will send a strong message to violators that there are consequences for their actions and hopefully this will serve as a deterrent to such violations in future elections. The MEC is calling for a state and federal investigation into election fraud, voter registration fraud, and voter fraud in Atlantic Beach that also includes staff members in the Horry County

Election office and the Department of Motor Vehicles and some state officials with an expressed vested interest in the outcome of the town's elections. People without proper identification were allowed to register to vote in Atlantic Beach. Law enforcement agencies have turned a blind eye to the perpetrators of election fraud identified in the Supreme Court's order issued July 2011. Representative Tracy Edge, a local real estate developer, has been most vocal about his unwillingness to accept the Supreme Court's order of July 2011 that seated Carolyn Cole and Windy Price on the Atlantic Beach Town Council and most dogged in his pursuit of former Mayor Retha Pierce's indictment despite court proceedings that cleared her of any wrong doing. Rep. Edge has weighed in against individuals in the town's current government but has been silent on the election issues such as the woman pretending to be from the Attorney General's Office, the questionable voting machine, and the inflated voter registration rolls in the town. Preliminary findings suggest the illegal registrants and voters may be a part of an organized effort to affect the outcome of the town's election.

In past town elections, Gary Baum of the State Election Commission spoke before obtaining the facts and was often in favor of those who were later discovered by the South Carolina Supreme Court as being the violators of the state's election laws. Immediately following the November 1, 2011 election Chris Whitmire of the State Election Commission was quoted in the media as saying that none of the town's MEC officials had been trained which is not true. Commissioner Kenion received training directly from Gary Baum. She also completed the online training portion for poll workers to update her training. Commissioners Hudson and Miller completed the online portion of the training. Commissioners Kenion and Hudson went to Maysville in September and observed the town's election from opening of the polls to final count. In Maysville they met experienced poll workers and added Mr. Wallace Black, Poll Clerk for the town of Maysville, as an advisor whom they could call upon. Commissioner Kenion was concerned about Joe Montgomery and

Stephanie Simmons dominating the polling place and the manner in which Ms. Busbee was deferring to them. She directed Mr. Webb to call Mr. Wallace Black, and ask him to come and observe the polling place set up, closing of the polls, and vote counting. Mr. Wallace had anticipated telephone calls from the Commissioners but had not planned to be physically present. He told her that he would arrive before the polls closed and he did. Ms. Busbee insisted over the Commissioners' and Mr. Black's objections that everyone leaves the room for the final count. The MEC is left with incorrect and inconsistent tapes from the voting machines. Counting ballots in private violated state election law, eroded public confidence, and rendered the results of the election doubtful.

The credibility and validity of one of the voting machines raises new issues for the MEC, the Town of Atlantic Beach, Horry County, and the State of South Carolina. When Candidate Misty Umphries gave the manufacturer the serial numbers of the voting machines used in the Atlantic Beach election she was told that one of the machines is registered to an unknown account in Florida, last serviced in 2006, and discarded. The question is how the machine ended up in Atlantic Beach. The poll clerk was seen by Commissioners steering voters to this machine on Election Day and it recorded the highest number of votes and the most unusual voting pattern. The absentee ballots and the opened challenged ballots show a mixed voting pattern among the three mayoral candidates and the five council candidates. The same voting pattern did not continue on the machine. Atlantic Beach adds it concerns about voting machines to the ongoing statewide dialogue. The MEC has enlisted the help of a professor from the University of South Carolina to audit the voting machine and the League of Women Voters to monitor the town's future elections.

After the Challenge Ballot Hearing on November 3, 2011, it was clear to the Municipal Election Commission that the issues on Election Day had left them with a large number of unregistered voters still voting in the town's election, an inaccurate count, and confusing and unexplainable numbers. The

MEC's decision was not to certify the election. They contacted attorney Charles Boykin to pose the question. Mr. Boykin had a conflict in that he was defending cases that involved some of the candidates. He referred the MEC to the State Election Commission. Commissioner Kenion told Marci Andino, Director of the State Election Commission that the MEC did not want to certify the election. Ms. Andino told her that the MEC is required to certify the election so that the protest deadline could be met and so as not to deny the candidates' right to protest. The MEC certified an election under protest that was not worthy of certification to protect the rights of any potential protestors. Certification of the election minimized the MEC's concerns and cast the entire election into losers versus winners based on a count that is tainted, cannot be validated and has produced results that are more than doubtful. The MEC's decision to de-certify the election and hold a new election stands unless appealed to the Horry County Circuit Court. Mabry Court Reporting notified the MEC that the transcript from the Protest Hearing will be ready on December 5, 2011. The MEC will put the transcript, exhibits, the order and this report on file with the Horry County Circuit Court once the attorney has read the transcript and written the order. Mabry Court Reporting sent notices to the Town regarding delays with the completion of the transcript. Notices were forwarded to all of the parties concerned. Once the order is filed, the candidates have ten days to appeal the MEC's decision. If there is no appeal by the Respondents, the MEC will present its decision to the Town Council and ask Council to set a date for a new town council election in 2012.

While waiting for the transcript, the Town Manager began receiving calls from the Governor's office about the status of the election which has raised concerns for those familiar with the state's election laws. It is unusual for the Governor's office to intervene in the legal process at this stage to interfere with the legal process. A letter was received from the Attorney General's office confirming that Ms. Best was not in Atlantic Beach representing their office on Election Day. On December 13, 2011, Judge Bradley Mayers signed a court

order to remove the voting machines from the evidence room in the Town of Atlantic Beach where Commissioner Nicole Kenion asked the ABPD to place them in protective custody until the transcript arrived and they could set a date for an MEC meeting in which the public would be informed of a date and time that they could witness the removal of the machines for the audit. The State Election Commission urged this action in partnership with Horry County. AB Police Chief Mike Bordner is the sole custodian of the key to the Evidence Room. He was not at work and had not been notified in advance that the Sheriff's office would be arriving to pick up the machines. Councilman and Candidate Jake Evans authorized Phil's Lock and Key to unlock the police chief's office. The evidence room is entered through the chief's office by a separate lock and key. As they were about to enter the Evidence Room, Chief Bordner called and told them he would be at the office shortly. Atlantic Beach's election history is also an interesting study of Horry County judges rulings in matters pertaining to the town's elections. In 2007 in the matter of *Armstrong v Pierce*, the lower court judge refused to enforce the Supreme Court's order and the citizens had to notify the High Court that its order was not being enforced. In 2009, the judge allowed the extended timeline in the lower court that prevented the case from going to the Supreme Court in accordance with the time line that was perceived by many as the appellants' strategy to remain in office beyond their time. On December 13, 2011, Judge Mayers' order to remove the voting machine from Atlantic Beach at the urging of the State Election Commission and the Horry County Election Commission continues to raise more questions about the machine's ownership and usage. All of the Commissions should share a common interest in finding out as much about the machine as possible considering the Atlantic Beach election and the upcoming primaries.

Narrative

Election History

The Chair of the Commission, Nicole Kenion, is extremely familiar with the problems associated with the Town of Atlantic Beach's elections. An analysis of the issues presented is incomplete without providing Ms. Kenion's history and some events leading up to and after the election.

Commissioner Kenion filed pro se to the South Carolina Supreme Court in 2008 to alert the Court that its order regarding the 2007 election was not being followed by the Town. She also wrote the dissenting MEC opinion in the 2009 election where the MEC was overturned by the South Carolina Supreme Court. The town council, consisting of two of the candidates in the 2009 and 2011 elections, Josephine Isom and Charlene Taylor along with Jake Evans, removed Ms. Kenion from the MEC. She responded by filing a lawsuit challenging the constitutionality of the town ordinance that prevented anyone from serving on a board or commission who had a lawsuit against the town. Former Commissioner, Lynda Booker, a central figure in the 2009 election controversy resigned from the Commission leaving two positions open which Evans, Isom, and Taylor filled with Carolyn Gore and Rose Stanley

In July 2011, the South Carolina Supreme Court ruled on the 2009 election and agreed with Ms. Kenion to overturn the election and seat Carolyn Cole and Windy Price. The Horry County Solicitor's office dropped a hit and run charge against Mayor Retha Pierce which enabled her to take her seat. Joined by Councilman Donnell Thompson, the Council discussed the scathing order from the South Carolina Supreme Court that rebuked and chastised the town for its failure to comply with the state's election laws. The town council made running a fair and impartial election a priority. The Town Council removed the former chair of the MEC, Alice Graham. Ms. Graham had been at the center of election controversies in Atlantic Beach since the 1990's. She, Lynda Booker, and former town manager William Booker violated election laws in the 2009

election and were notable in the Supreme Court's order. In response to the South Carolina Supreme Court's order in 2008 not to put a write in space on a run-off ballot between two candidates in the 2007 election, Ms. Graham had the write-in space put on the ballot and announced at the MEC meeting on December 24, 2007 that "the Supreme Court's order was only a law if you choose to follow it." The South Carolina Supreme Court made the town re-do the election which caused three elections: the original, the run-off, and the do-over, all of which were won by the original winner of the election, Retha Pierce. The Town Council agreed that Ms. Graham had politicized the work of the MEC in violation of her oath of office. The Town Council reinstated Nicole Kenion after removing her replacement, Ms. Gore. The Council removed Ms. Stanley after she spoke at public time about getting rid of the current Council. Mayor Pro Tem Cole stated that Ms. Stanley was following in the footsteps of the former MEC and the Council's request for a commission that could conduct a fair and impartial election was not her priority. Council added two new commissioners: Charlette Hudson, a resident of Atlantic Beach with no apparent ties to the parties involved in the previous election controversies and Delayne Miller. The MEC was composed of two black females and one white female.

At issue in Atlantic Beach is the changing demographics in which the predominantly black town has found itself with a substantial white, Hispanic, and Moroccan population and new black residents. Efforts to prevent newcomers and non-blacks from voting surfaced in the 2009 election where most of the white votes were rejected during the Challenge Ballot Hearing. The Town of Atlantic Beach through its MEC must meet the challenge of protecting the civil rights and voting rights of all of its citizens.

Taylor and Isom supporters which include some local media continue to dismiss the Supreme Court's order to seat Cole and Price and negate their authority as council members. One media outlet advised the town to defy a circuit judge's order to pay Cole after she won a lawsuit involving a contract

dispute with the town in 2010. The attitude that the previous council and William Booker were the authorized town officials infected the polling place at the November 1st election. Mr. Booker escorted a woman into the polling place that introduced herself as a representative from the State Attorney General's Office on assignment to oversee the Town of Atlantic Beach's election. William Booker and his wife former MEC Commissioner Lynda Booker were cited in the Supreme Court's order for the deplorable and unlawful acts they committed to prevent Windy Price and Carolyn Cole from becoming residents of the Town of Atlantic Beach.

The Town Council sought assistance with the 2011 election from the U.S. Attorney's office and was directed to Michelle McCloud at the U.S. Department of Justice. Ms. McCloud agreed to take the matter to her superiors for consideration. There was no response from DOJ prior to the election.

The Town Council inquired about having Horry County to manage its election but there wasn't enough time to get the appropriate ordinances in place between the county and the municipality before the November 1st election. Horry County provides the poll workers, the equipment and the supplies for the town's elections so on behalf of the Town Council, Interim Town Manager Benny Webb requested that none of the poll clerks and workers affiliated with town elections in the last ten years be sent to Atlantic Beach for the 2011 election. This would automatically eliminate Stephanie Simmons and her daughter whose mother, Rose Stanley had been removed from the MEC. Both mother and daughter had become controversial figures in the 2009 election and allegedly steered voters to benefit specific candidates. There also had been arguments between Simmons and white voters attempting to vote at the polls. Sandy Martin of the Horry County Election Commission honored the town's request. Horry County provided the town with a list of poll clerks and poll workers from which to choose a clerk and two poll workers. The town chose Constance Busbee as its poll clerk and Ishmael Collazo as its poll worker. In anticipation of sabotage, the MEC chose a person to train and use

as a poll worker for the November 1st election and one back up in case of an emergency, either Derrick Stanley or Kantrese Wright, both of whom completed the online training. On Election Day it was clear that poll clerk Constance Busbee was not the impartial assistance the Town was seeking from Horry County.

Recent news reports quote Chris Whitmire of the State Election Commission as saying that none of the Atlantic Beach commissioners had training prior to the election. Ms. Kenion completed her commissioner's training in 2008 with Gary Baum of the State Election Commission. Before the election, Ms. Kenion also completed the online training program for the poll workers as a refresher course. Commissioners Hudson and Miller also completed the online training. Commissioners Kenion and Hudson, Interim Town Manager Benny Webb, Atlantic Beach Police Chief Michael Bordner, and Atlantic Beach Concerned Citizens' President Patricia Bellamy traveled to Maysville, a town of similar size and demographics as Atlantic Beach, where they witnessed commissioners and poll workers manage the town's September 2011 election from opening of the polls to closing and the final count. The MEC was not only trained but had developed a network of people to call if they ran into problems on Election Day. Commissioner Miller's work schedule created attendance issues which prevented her from attending the Maysville training and left two of the three commissioners presiding at the Election Protest Hearing. The Town Council and MEC must address Commissioner Miller's work schedule and ability to attend meetings and trainings.

Sheila Singletary, the Town Clerk, did double duty as the Municipal Election Commission's clerk. Ms. Singletary created a notebook for the November 2011 election that contained correspondence, a calendar, and notices for Election Day, Challenge Ballot Hearing, and Protest Hearing, if necessary. As time for the election approached, Ms. Kenion and Ms. Singletary reviewed the notices and published them one at a time at Town Hall and the Community Center in compliance with the law.

Voter Registration

The Municipal Election Commission received a voter registration roll for the Town of Atlantic Beach from the State Election Commission dated October 3, 2011 containing the names of 380 registered voters. After reviewing the list, the MEC knew it needed to be purged. On November 1, 2011, Election Day, the voter registration roll contained the names of 420 registered voters.

On October 26, 2011, the Town Council held a meeting in which Patricia Bellamy inquired about the number of voters on the voter registration list. She also stated that when comparing the 2011 list with her 2009 and 2007 lists she realized names had been added to the 2011 list that had been removed in 2009. Ms. Bellamy stated that various individuals had added a person to their homes that do not live in Atlantic Beach. She stated her concern that the November election would be hijacked by non-resident voters and asked if the Town was going to address the matter. Joe Montgomery, a former town mayor, stated that he realized all of the people on the roll did not live in Atlantic Beach but it was mostly an error due to the failure to purge the rolls every four years. His comment did not answer the question of how people once removed had been added back to the 2011 list. The Town Council directed Mr. Webb to bring the matter to the attention of the MEC for them to address the matter. The MEC, already aware of the problem was working with the Atlantic Beach Police Department to correct it. Voters registered to physical addresses in the town that never existed and those that no longer exist such as the Atlantic Beach Housing Authority were removed. The Atlantic Beach Police Department took the opportunity to make address corrections for emergency services. The ABPD put landlords with an unusually high number of former residents and a number of occupied units inconsistent with information reported for business licensing under observation. Property managers, employees and residents assisted with identifying town residents. The Town also brought in a code enforcement official to assess the safety needs of high volume rental units

which also presented the opportunity to gauge occupancy. State and county tax records were reviewed along with town records.

The Evans Motel where candidate Jake Evans allegedly resides refused to allow the code official on property. The Woods Apartments listed approximately 96 people registered to 607 31st Avenue South and an additional five people living at the home address at 613 31st Avenue South. For a period of almost 60 days, the ABPD noted the cars at the location and the occupied units. After Police Chief Michael Bordner and Code Enforcement Officer Craig Hearst assessed physical locations, and the town's finance manager reviewed the business license records, Ms. Earlene Woods, the landlord at the Woods Apartments turned in a list containing approximately 77 names of former tenants. Chief Bordner and Mr. Hurst also visited the properties of Amy Breunig and properties managed by Nancy Waters. Candidates while campaigning also confirmed vacant properties. The Atlantic Beach Concerned Citizens conducted its own research and citizen patrols. Just days before the election the MEC received a new voter registration roll and the number had increased to 420 people. According to the 2010 census 334 people live in Atlantic Beach and 25% of them were under the voting age. Most of the Housing Authority of Atlantic Beach's residents had been forced out of town after the 2009 election and the 54 units demolished; yet the town's 2011 voter registration roll exceeded the 2010 census count. The available living space in the town of Atlantic Beach cannot accommodate the number of registered voters on the list.

Former police chief Eric Lewis and former town manager William Booker informed current police officers and residents that they had already won the election and would be returning to their former positions as town employees. The ABPD received information that a number of the voters were a part of an organized effort involving one of the local white churches and Rep. Tracy Edge to help reinstate William Booker and the former police officers. Upon closer investigation, the MEC identified a number of registered voters like Cynthia

Phillips, a resident of North Myrtle Beach living in an apartment on Edge Dr. but registered to vote in Atlantic Beach. The ABPD and the Atlantic Beach Landowners Association mailed the law (S.C. Section 7-25-20) pertaining to false voter registration to over 100 people believed to be falsely registered to the Town of Atlantic Beach.

The Atlantic Beach Police Department assisted the MEC in paring down the list of registered voters. Undoubtedly a few people were not removed from the voter registration list that should have been and some others were omitted that shouldn't have been. It was not a perfect process and did not yield perfect results. Unlike the 2009 election when white voters were targeted as non-residents and their votes summarily thrown out; this was an honest effort to have only the legal residents of Atlantic Beach vote in the town's election without regard for race.

Other voter registration issues included people that registered to vote but did not receive their voter registration cards. Commissioner Hudson's landlord, Joe Montgomery, registered her to vote and told her that it was sent to Conway. After she was appointed to the Commission, she questioned Mr. Montgomery about her voter registration card and she was told that her application had been given to Jake Evans. Councilman Evans did not vote for Ms. Hudson to be appointed to the MEC and did not turn in her voter registration application. Shortly after her appointment to the MEC, the issue was raised as to whether she could serve on the Commission and not be a registered voter in the town. Mr. Montgomery took her to Conway where she registered to vote after the deadline. Commissioner Hudson could not vote in the 2011 election.

Harold Cheatham appeared on the MEC's first voter registration roll but not on the final list; yet he voted absentee. On some rolls Mr. Cheatham's name was handwritten as the last registrant. The ABPD confirmed that Harold Cheatham and Linda Cheatham are not residents of Atlantic Beach.

Jerry Kitchens and Kristen Kitchen registered to vote at the same time. He received his voter registration card but she didn't. Ms. Kitchen voted on a provisional ballot and has since received her voter registration card.

The question is still unanswered as to how so many people who do not live in the town of Atlantic Beach could register to vote in Atlantic Beach.

Filing for Candidacy

The filing period for candidates opened on August 19, 2011 at 12:01 p.m. and closed on September 2, 2011 at 12:00 noon. The notice on the door listed the Town Hall's special hours of operation during the filing period as closing at 5:00 p.m. No potential candidates came to file after 12:00 noon. Interim town manager Benny Webb accepted the filing fees and handed out packages to the candidates that included an election handbook and instructions for completing Statements of Economic Interest and Campaign Disclosure forms for the State Ethics Commission. Three candidates filed to run for mayor: Jake Evans, Retha Pierce, and Windy Price. Five candidates filed to run for two council seats: Josephine Isom, Monique Pointers, Charlene Taylor, Misty Umphries, and James Vanfleet. Mr. Vanfleet complained that he did not receive the candidate's package when he filed. Statements of Economic Interest were reportedly late for Pierce, Pointers, and Vanfleet. In the 2009 election, a candidate was removed from the ballot for being late while another tardy candidate was allowed to remain on the ballot. The MEC's position on the tardy filing of forms to the State Ethics Commission is a late penalty and not removal from the ballot. Mr. Webb contacted the candidates who had not filed and reminded them of the penalty for failure to file and encouraged them to do so immediately. All candidates who filed for mayor and council appeared on the ballot.

Campaigning

The Municipal Election Commission is not allowed to participate in any campaign activities. Candidates Charlene Taylor and Josephine Isom leveled such a charge at Commissioner Kenion in the 2009 election. The MEC did not want this to be an issue for the current MEC but Commissioner Hudson had received a campaign button from candidate Umphries. Her landlord, Joe Montgomery, entered her apartment and removed the button. They had words about his unauthorized entry into the apartment and he threatened to expose that she had campaign material. She discussed the matter with Ms. Kenion who determined that the item was received prior to her appointment. They reviewed the law. Candidate Charlene Taylor went to Commissioner Hudson's home and invited her to their campaign fish fry. She reminded Ms. Taylor that she could not attend a campaign event. None of the protesting candidates raised issues about the conduct of the MEC during the campaign process.

During the campaign Mayor Retha Pierce, a candidate, reported a verbal assault in which she stated that she was threatened by Lenearl Evans when he believed she was campaigning on his mother's property. The ABPD did not write an incident report. Candidate Misty Umphries filed a complaint with the Atlantic Beach Police Department after she was verbally assaulted by Bobby Morse, the alleged property manager for campaigning at the Woods' Apartments. Ms. Umphries reported that Mr. Morse yelled, "get your white a _ _ off of this property." Bobby Morse planted himself in front of the door at the polling place on Election Day and did not leave. Mr. Morse was one of the most aggressive participants in the harassment of voters and candidates during the election.

Candidates Price and Umphries reported vote buying to the ABPD after a resident told them that Candidate Evans had already paid him. Other allegations and rumors of vote buying that included furniture purchases and

rent payments were reported. These matters are under investigation by the ABPD.

Polling Place

On Election Day, Constance Busbee and Derrick Stanley arrived at the polls and began the set up. Ishmael Collazowas a no-show. Ms. Busbee said she had someone else she could bring in rather than work with all new people. She contacted Marcus Johnson. He arrived in the afternoon on Election Day.

Ms. Busbee set up the machine, printed a zero tape and gave it to Derrick Stanley to sign with the time as 6:59:11. She posted the tape on the door with their two signatures. About two hours later Joe Montgomery came in and handed Ms. Busbee a tape and said, "here's your zero tape, it fell off the door." The MEC has two zero tapes for the same machines. The zero tape signed by Constance Busbee, Derrick Stanley, and Marcus Johnson is at 6:59:46. Marcus Johnson, the experienced poll worker who came at Ms. Busbee's request arrived at approximately 1:45 p.m. and was not there at the time of the morning printing and signing of the zero tape. It is a difference of seconds and signatures.

Stephanie Simmons arrived shortly after the polls opened with a letter stating that she was a poll watcher for Josephine Isom. Despite the town's efforts to keep her from infecting the polling place she insisted on being present. She can be seen on the videotape arguing with Mr. Black, the observer from Maysville, because he wanted to remain in the room to observe the closing process and count. Ms. Simmons an experienced poll worker did not object to the citizens being asked to leave for the private counting of the ballots.

County workers were also present setting up voting machines for the Seacoast and McLeod Hospital referendum. When Ms. Kenion asked the poll watchers to leave the building and allow for set up of the room, Joe

Montgomery, a poll watcher for Charlene Taylor, asserted himself as leader of the six poll watchers for Evans, Isom, and Taylor and refused to leave the building. He collected the letters from the poll watchers and when Ms. Kenion reached for them, he told her he did not trust her and gave them to one of the workers for the hospital referendum. The poll workers' letters are not in the MEC's file for AB Election 2011.

The Atlantic Beach Community Center is the town's only polling place. It is a large room and could easily have been set up to provide for secret balloting. Interim Town Manager Webb was setting a break area with coffee on the other side of the room. Ms. Busbee set the sign in table and two voting machines up and gave a second table to the poll watchers for Evans, Isom, and Taylor. Commissioner Kenion questioned where the people voting on paper ballot would be placed. It was agreed they would take the table from the poll watchers and use it for the provisional ballot voters. Once the table was in place it was less than one foot from the voting machine. The voting area had been set up in a small cube. Commissioner Kenion told Ms. Busbee that it was too close and that people could see people's ballots. Ms. Busbee did not respond initially. Commissioner Kenion asked that the tables be moved to the front of the room and the provisional ballot table re-positioned and the machines separated more. Mr. Joe Montgomery continued to assert himself as the unofficial leader. He told Ms. Busbee that the room set up was fine. Ms. Busbee responded to Commissioner Kenion that she did not want to walk that far. There was no further discussion about the room set up.

Approximately one hour after the polls opened, former town manager William Booker entered the room with a woman, Laura Best who remained at the poll until after it closed. Ms. Best presented herself as being from the State Attorney General's office to monitor the election. She gave directives to the poll clerk and was seen at one of the voting machines and the provisional ballot table several times. After a poll watcher challenged a ballot, Ms. Best called her outside into the lobby and threatened her with a lawsuit from the Attorney

General's office for violating the civil rights of voters by challenging their ballots. Two of the candidates had poll workers but they and their supporters remained inside the polling place most of the day with minimal absences in discussion with Ms. Best while she made a series of telephone calls and took pictures of voters. Ms. Best's conduct did not resemble that of an objective monitor. Commissioner Kenion asked Mr. Webb to find out if Ms. Best had any identification. Mayor Pro Tem Carolyn Cole invited Ms. Best outside to introduce herself. Ms. Best initially stated that her name was "West" and would not give a first name. She did not have any identification except for the lapel pins on her jacket that had Attorney General on them. Telephone calls made to the Attorney General's office revealed hours later that Ms. West was not from their office. Upon presentation of her ID to Atlantic Beach Police Officer Valerie Brown, it was confirmed that Ms. West was Ms. Best. When Ms. Best was given the telephone to speak to the representative from the Attorney General's Office she was told that she had no authority to represent herself as being from their office, she stated that she had the personal cell phone number of Attorney General Alan Wilson and that she had spoken to him that morning and told him what she was going to do in Atlantic Beach and that he told her it was a good idea. The Atlantic Beach Police Department took a report as a part of its ongoing investigation into election law violations. According to the ABPD, Ms. Best is a resident of Richland County with a criminal history. Interim Town Manager Benny Webb sent a letter to the State Attorney General's Office seeking information about Ms. Best's role at the election on their behalf. The State Attorney General's Office sent a letter to the Town informing them that Ms. Best was not there on their behalf or at their direction.

The polling place had seats set up from a previous council meeting with a center aisle and seats on both sides of the aisle. Candidates Evans and Taylor and their supporters occupied seats on one side of the aisle for the entire day. The candidates walked back and forth greeting voters, talking to the poll clerk,

standing over the voters seated and casting their ballots at the provisional ballot table, and often standing over the shoulder of voters at the machines. Other supporters of Evans, Isom, and Taylor stationed themselves at the door of the polling place and created a hostile environment for anyone to walk through. Several arguments occurred between voters and the crowd surrounding the door. At one point Interim Town Manager Webb and Lenearl Evans, Candidate Evans' brother got into an argument. The crowd inside rushed the door, while the crowd outside surrounded Mr. Webb. On the tape presented at the Protest Hearing, town resident Janie Isom can be seen and heard saying, "someone should pick up something and bust him in his head."

Word quickly spread in the four block town about the chaos inside the polling place and the voter intimidation happening at the door and inside the polling place as you walked down the aisle before and after you voted. If you were perceived as an Evans, Taylor, or Isom supporter, you were welcomed and embraced. If not you were heckled and glared at. The town has limited living space available. Landlords, Earlene Woods, Candidate Evans' mother, Lenearl Evans, Esco McFadden, James Dewitt, positioned themselves in the polling place in the afternoon and did not leave. Residents were appealing to the Commissioners that voters were telling them they were afraid to come to the polls. At the protest hearing, when questioned about whether or not any of these voters were willing to sign affidavits about whom they voted for and the intimidation factor, Margie Smith, a registered voter who moved out of town prior to the election stated that she would not give names because of the retaliation factor. News Reporter Isacc Bailey dismissed the lack of people willing to come forward as indication of no such intimidation. Commissioners Kenion and Hudson witnessed the incidents, informed the police, and still received no assistance. Ms. Kenion recalled that in 2008 residents signed their names to notarized affidavits about Taylor and Armstrong, they lost their homes and the public housing authority in Atlantic Beach was demolished. The intimidation factor is real. Residents were threatened with the loss of their

homes prior to the election and after the election several people current on their rent were harassed by landlords until they moved out.

Municipal Clerk, Sheila Singletary witnessed former Mayor Irene Armstrong, Candidate Evans' sister in the woods adjacent to the polling place with what appeared to be a camera or binoculars aimed toward the glass doors to the polling place. She inquired as to what she was doing and was told that she was showing an apartment. There was no other person accompanying her and this event is still unclear. Later when Ms. Armstrong came to vote she was challenged by Patricia Bellamy. Ms. Bellamy said she challenged the vote because allegedly Ms. Armstrong lives in Conway. Ms. Armstrong yelled curse words at Ms. Bellamy while Candidates Evans, Taylor, Laura Best and other supporters applauded, cheered and egged her on. Ms. Armstrong left the polling place and returned a few minutes later and voted on the provisional ballot.

After 5:00 p.m. one or both of the voting machines began a loud, repetitive ticking sound that lasted for about two minutes. Ms. Bellamy asked what's wrong with the machine. No one responded. The noise stopped and people continued to vote.

During the course of the day, there were no long lines at the polling place. Congestion in the small space was mostly poll workers, poll watchers, candidates, audience members, and confused voters. The room was simply set up to accommodate the poll workers, poll watchers, and the audience. There were 51 challenged ballots at the polling place and most of them voted at the table with a person sitting next to them voting with no way to conceal their ballot. The poll worker sat in front of voters at the table while they voted or the poll watcher was standing over the voter to fill out the challenge ballot envelope. Ms. Best, Candidates Evans and Taylor approached the voting machines and provisional ballot table on several occasions. Evans and Taylor did so more than Ms. Best. Voters complained to Commissioners about people

standing over their shoulders while they voted. Voters also complained about being steered to one machine or the other without explanation. One voter stated that, Ms. Busbee put her hands on his waist and pulled him back from the machine as he was preparing to vote and told him he couldn't vote on that machine. He said he was not given an explanation since both were vacant. The same voter had someone peer over his shoulder while he was at the machine. According to him, he tried to use his body to conceal his vote. Commissioners saw this type of activity repeat itself all day. Sometimes the clerk would insert a cartridge into the machine prior to the vote and at other times not. Voters were being steered to the machine on the left which recorded the highest number of votes. The poll watchers were extremely concerned with the number of voters on the sign in sheet for the machine and kept coming to the table to check the number after every two to three voters.

Patricia Bellamy of Atlantic Beach Concerned Citizens was poll watching on behalf of Misty Umphries. Nearing closing time, Ms. Bellamy went to vote and Sabrina Reed yelled "Challenge" and the reason given was so that Ms. Bellamy could see what it feels like. This is not a legal challenge. The poll clerk did not respond. Ms. Bellamy voted on the provisional ballot.

Three voters voted curbside. Ms. Busbee took the machine to the car for them to vote. None of the poll watchers accompanied her. Curbside voters are required to vote on provisional ballots. Though Ms. Busbee took the machine out, these three votes are not registered as a part of the total count on the machine. According to the poll sign in sheet 74 voters voted inside on the machine and according to the poll sign in sheet for curbside voters, 3 voted on the machine for a total of 77 votes. None of the tapes presented for the Atlantic Beach voting machines records 77 votes. The only tape that has 77 votes is the hospital referendum machine.

Voters complained that when they tried to write in Donnell Thompson's name, they could not. One voter said the word "Dane" appeared and would not allow her to insert any more letters.

A council member received an anonymous tip suggesting the town check its voting machines. Candidate Umphries asked for the serial numbers of the machines and contacted the manufacturer. One of the machines is registered to an unknown account in Florida and was recorded as discontinued and no longer in use. The voting machine in question is the one that has the highest number of votes recorded on it and is the machine that the majority of voters were steered to by the poll clerk. It is also the machine that had the most exposure to people other than voters and poll workers. The voting machine issue combined with the polling place atmosphere and other incidents taking place in the room at the same time created opportunities for fraud and raises a lot of questions about the roles and extent to which non-residents are willing to assume to affect the outcome of elections in this undeveloped oceanfront town. The MEC is concerned about the voting machine and implications for all elections in South Carolina. Commissioner Kenion directed the ABPD to hold the machines in protective custody in the evidence room until arrangements can be made for the auditing of the machine. The Commission will do what is necessary to have the people with expertise in such matters audit the machine so as to avoid any concerns about electronic voting in future elections in Atlantic Beach.

Mr. Wallace Black, the Poll Clerk for the town of Maysville was asked to come and observe the polling place set up, closing of the polls, and vote counting in Atlantic Beach at the request of Commissioner Nicole Kenion. After the polls closed on Election Day, Ms. Busbee told the Commissioners to tell the people to leave the building so that she could get the count. Commissioner Kenion told her that the people stay and watch. Ms. Busbee told the people to leave the building. Mr. Black told Ms. Busbee that "the count should not be done away from the public" and added "we don't do it that way." He followed

that concern with a question about the voting machine tapes. He asked Ms. Busbee why she printed three tickets. She said, "this is my job. I've been doing this for over 18 years." When Ms. Busbee was done she posted the tape on the door for the people to see and left.

Challenge Ballot Hearing

The Challenge Ballot Hearing was held on November 3, 2011 at 8:00 a.m. Commissioners Kenion, Hudson, and Miller were present. The MEC considered the town's election history and anticipated that with the inflated voter registration roll there would probably be a substantial number of challenged ballots.

On November 4, 2011, the night before the Challenge Ballot Hearing, Candidate Jake Evans circulated a letter and spreadsheet containing the names of the voters, the challenger and whether or not they voted for him. The letter and spreadsheet were presented to the MEC by a voter representing himself and other voters who asked how Candidate Evans would know which of the challenged ballots were for him and why he would publish such a list in the community. The voter contended that Candidate Evans and his associates had access to their ballots. The list was put into evidence at the Protest Hearing by Candidates Price and Umphries who had also received a copy from voters. This document was confirmation to some voters that they had not cast their ballots in secret.

On Election Day when Ms. Busbee asked Commissioner Kenion the time of the challenge ballot hearing to note on the information she was giving to the voters, she was told 8:00 a.m. Joe Montgomery told Ms. Busbee 10:00 a.m. The MEC clerk posted the notice for the hearing as 8:00 a.m. At the hearing, Commissioner Kenion discovered that Ms. Busbee had accepted the time given to her by Joe Montgomery. When the audience complained about the time discrepancy, the MEC told them anyone who came to the hearing at 10:00 would be heard.

According to the poll list there are 51 challenged ballots from the polling place and eight (8) absentee challenged ballots for a total of 59 challenged ballots. The challengers were Patricia Bellamy, Constance Busbee, Michael Isom, Marcus Johnson, and Sabrina Reed. Ms. Busbee had Derrick Stanley pre-print challenge ballot envelopes in the name of Patricia Bellamy. Challenged ballots were assigned to Ms. Bellamy that she did not challenge. There are challenged ballots that are not signed for on the poll list. There are 35 unopened ballots and only 3 of those are signed by the voters. There are seventeen (17) challenged ballots filled out at the poll opened and counted and only three of the envelopes are signed by the voters. All eight (8) of the challenged absentee ballot envelopes were signed by the voters. Some of the signatures on the poll sign in sheet are illegible. A space on the sign in sheet for the signature and one for printing the name would have helped resolve issues relative to the voters at the polls.

The MEC had a list of voters that had been confirmed as non-residents of Atlantic Beach by the Atlantic Beach Police Department. (See ABPD Investigative Report.) The ABPD used a variety of sources including DMV records, tax records, town records, police reports, Intellius, observation, and witnesses to confirm residency. A person must be a resident of the town at least 30 days prior to voting. Some people have voter registration cards dated within the 30 day period but do not live in the town. Some others obtained identification cards and SC Drivers licenses after October 25th and would not have been confirmed as residents unless other sources used confirmed their residency. Approximately five (5) resident voters were rejected in error which is an improvement over the eleven (11) that were rejected in error in the 2009 election.

The voters whom they could not confirm or deny as residents were presented at the Challenge Ballot hearing.

Two people voted twice: on paper and on the machine and signed both lists. There are 47 numbered strips cut from the tops of the ballots and those strips begin with the number 006. The numbers 001, 003, 004, and 005 are missing. There is a fully marked ballot with the strip intact numbered 002 and a sealed ballot envelope also marked 002. There are no poll worker's initials on numbers 007, 010, and 042. Strip number 052 is signed by poll worker MJ but there is no number 52 on the challenged ballot poll list. The unused ballots begin with 053. Patricia Bellamy's ballot is in one of the pre-set envelopes showing her as challenging her own vote. The approach to the election and the manner in which the ballots were handled was careless which led to the violations of the election laws in the polling place on Election Day.

The Ballot Count

The first ballot count on Election Day was the opening of the absentee ballots at 3:00 p.m. Ms. Busbee said she did not know anything about the absentee ballot process and how it was to be conducted. Commissioners Kenion and Hudson sat at the provisional ballot table and checked the signatures on the back of twelve (12) absentee ballots. Eight of them were challenged. The Commissioners opened four separating the ballots from their envelopes. In the Mayor's race, Price received two and Evans and Pierce received one each. In the council race, all of the candidates received votes including Donnell Thompson, a write in candidate. The next count came from the machines after the polls closed and the results were Evans 49 for mayor, and Taylor and Isom 48 and 47 respectively. Pierce and Price for mayor received 13 and 12 votes respectively. Council candidate Pointers received 14 votes and Umphries and Vanfleet received 12 each. The next count was the opened challenged ballots. The MEC accepted 21 of the 59 challenged ballots. Price received most of the votes for mayor and Umphries and Vanfleet received most of the votes for council. All of the candidates received a share of the votes including write in candidate Donnell Thompson. The greatest difference between the candidates' votes occurred on the voting machines. The final count for

mayor was Evans 55, Price 21, and Pierce 18. The final count for council members was Taylor 55, Isom 53, Umphries 21, Pointers 16, Vanfleet 16, and Donnell Thompson 8. Evans, Isom, and Taylor campaigned as a team as did Price and Umphries.

Protest Hearing

Timely protests were filed by Windy Price, Misty Umphries, and James Vanfleet. The MEC held the protest hearing on Saturday, November 5, 2011. All candidates were present except James Vanfleet who was absent due to illness. Commissioners Kenion and Hudson were present. Commissioner Miller was absent. When Commissioner Kenion asked Candidates Evans, Isom, and Taylor to be sworn in so they could ask questions of them, they refused to do so and sat in the audience throughout the hearing commenting from the floor. Attorney David Canty was present but initially presented that he was not there as legal counsel for any of the candidates. After Mr. Gary White, attorney for Ms. Price and Ms. Umphries called Carolyn Cole as his first witness, Mr. Canty stated that he would be representing Jake Evans and would like to cross examine Ms. Cole. He did so. Stephanie Simmons was present but refused to come forward when asked to do so by the MEC. She said she would not testify because she had not received a subpoena. Mr. White presented his case.

At the conclusion of the hearing, the MEC deliberated for less than one hour and voted publicly to de-certify the election. The MEC's decision to de-certify the election and order a new election can be broken down into two parts. The first part deals with the Commissioners' observations at the polling place and the second part is the consideration given to the issues raised by the protestors.

It is the Commission's strong belief that the Town of Atlantic Beach failed to hold a lawful election where resident registered voters of all races could come to the polls and vote a secret ballot for the candidate of their choice

and have those ballots counted in full public view without fear of retaliation from landlords and other voters. The voter intimidation and voter suppression effort was obvious at the polls on Election Day. Despite the MEC's best efforts to eliminate the hostility surrounding the entrance and exit to the polling place and within the polling place, it was impossible to do without additional law enforcement personnel which the town did not have. Candidates, poll workers, and citizens violated numerous election laws that if obeyed would have preserved the secret ballot, protected the voting rights and civil rights of individual voters. Mr. Booker's introduction of Laura Best, misrepresenting herself as an official from the Attorney General's office with decision-making authority in the Atlantic Beach election and access to the voting machines and ballots cast doubt on the entire election and the results. The situation with Ms. Best is unexplainable. If candidates Evans, Taylor, and Isom believe they had the kind of support that would give them an overwhelming majority, why participate in the fraudulent act with Ms. Best. It is her access, and that of the candidates, poll watchers, and the audience to the voting machines and ballots and the counting of the ballots out of the public view that heighten the suspicion surrounding the outcome of the election and render it doubtful. When absentee ballots and challenged ballots were counted, the voters's displayed a wide range of choices that were inconsistent with the campaign teams of Evans, Isom and Taylor, Price and Umphries, or Pierce, Pointers, and Vanfleet. It is only on the voting machine that the pattern reflects team voting which appears to be unlikely. The introduction of the fraudulent representative from the Attorney General's office, her control of the polling place and access to the voting machines raises the question of whether the voting machine allegedly registered to an unknown account in Florida, last serviced in 2006 and now discontinued was tampered with. A review of reports on the ES & S Ivotronic Touchscreen answers the question of whether or not the machine can be tampered with. The details in the actual reports may be beyond the MEC's comprehension but summarized it simply means "the process for calibrating the touchscreens allows poll workers or someone else to manipulate specific

regions of the screen, so that a touch in one region is registered in another. Someone attempting to rig an election could thus arrange for votes for one candidate to be mapped to the opponent. If one candidate has a check box in one place and a different candidate has it in a different place, you can set it up, so that if you press on one candidate, it gets recorded for another candidate. But if you press on the other candidate, it gets recorded correctly for that candidate. You can make it work perfectly normally in most of the screen, but have it behave the way you want in small parts of it." This quote is credited to Matt Blaze, a computer scientist at the University of Pennsylvania who led one of three teams that co-wrote the report on the machines.

The MEC witnessed the steering of voters to a specific machine and observed the actions of the voters who sat inside and those that guarded the door to prevent access by other voters whom they considered to be supporters of other candidates. A significant number of voters participated in preventing other voters from casting their ballots and casting that ballot in secret. The tainted election exceeds issues between winning and losing candidates and extended to the inclusion of voters, poll watchers, poll workers, and non-residents of the town of Atlantic Beach. The MEC contends that it is difficult to preserve the rights of the voters who are engaged in unlawful acts and pits voters against voters.

The MEC did not want to certify the results of the election based on the violations of the law that exceeded "mere irregularities or illegalities." Commissioner Kenion contacted Marci Andino of the State Election Commission and the Chair was told that the Commission must certify the results to meet the state mandated deadline for the protest hearing. This directive to certify the election automatically transferred the issues raised by the MEC itself to the candidates and creates the illusion that the matter before the MEC is simply disgruntled losing candidates versus the winners of the election. The MEC, under protest, followed the directive of the State Election Commission and certified the election to comply with the timeline established

by S.C. 5-15-130 and to preserve the rights of the protestors and voters whom they represent. The MEC contends that an election that violated basic civil rights, voting rights, and most of the election laws of the state of South Carolina and introduced a fraudulent act to gain access to the polling place with the intent to influence the outcome of the election by stealing votes and voters' rights is not an election that should be upheld in America, in the state of South Carolina, in Horry County, or the tiny town of Atlantic Beach.

Legal

In contested town elections before the Supreme Court in 2003, 2007, and 2009, the Court has not changed its standard of review for these election cases. Nicole Kenion, Chair of the MEC has been involved as a voter in the 2003 election, then as a pro se registered voter who alerted the Supreme Court that its order in the 2007 election was not being followed by the town or enforced by the Horry County Election Commission and Circuit Court. In 2009, when the MEC voted to de-certify the election, Ms. Kenion, a member of the MEC filed the dissenting opinion arguing for the election to be upheld. The MEC used the South Carolina Supreme Court's standard for overturning an election which states that the Court will not overturn an election for mere irregularities or illegalities. The violations the Commission considered beyond mere irregularities or illegalities went to the core of the voter's rights and are stated as follows.

1. "All elections by the people shall be by secret ballot, but the ballots shall not be counted in secret."Article II, Section 1, South Carolina Constitution
2. Section 5-15-120, Vote Counting
"Immediately upon the closing of the polls at any municipal election, the managers shall count publicly the votes cast and make a statement of

the whole number of votes cast in such election together with the number of votes cast in such election together with the number of votes cast for each candidate for mayor and councilman and transmit this information to the municipal election commission.”

3. Section 5-15-130, 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.
4. Qualifications for Registration, Article II, Section 5, South Carolina Constitution.

Violations of the following laws also contributed to the atmosphere of lawlessness during Atlantic Beach’s November 1, 2011 election.

1. Section 7-5-120, Qualifications for Registration; Persons Disqualified
2. Section 7-13-810, Prevention of Illegal Voting or Taking too Much time; Challenging Voters
3. Section 7-13-740, Speaking to Voters Prohibited
4. Section 7-13-760, Time When Voter Must Leave Booth and Voting Place; Voter Must be Alone in Booth and must not talk while voting
5. Section 7-25-210, Vandalizing or Removing Political Campaign Sign; Exceptions; penalty.
6. Section 7-5-610, Who is Entitled to Vote in Municipal Elections
7. Section 7-5-620, Production of Identification and Proof of Residence

8. Section 7-13-771, Voting by Handicapped and Elderly Electors Who Cannot Enter the Polling Place or Cannot Stand In Line to Vote
9. Section 7-25-20, Fraudulent Registration or Voting
10. Section 7-5-610, Who is Entitled to Vote in Municipal Elections?
11. Section 7-25-60, Procuring or Offering to Procure Votes by Bribery
12. Section 7-25-70, Procuring or Offering to Procure Votes by Threats
13. Section 7-25-80, Threatening, Intimidating or Abusing Voters
14. Section 7-25-160, Willful neglect or corrupt conduct on part of managers
15. Section 7-25-170, Willful neglect or corrupt conduct by officers other than managers
16. Section 7-25-190, Illegal Conduct at Elections Generally
17. Section 7-25-50, Bribery at Elections, Cross Reference: Corruption of Public Officers(Section 16-9-210, 16-9-250, 16-9-280, 16-9-300)

As long as the Town of Atlantic Beach's government shows its disregard for the election laws of this state, the candidates and the voters will continue to violate the laws and the registered voters residing in the town will continue to be suspicious of and doubt the outcome of every election. The MEC decision is based in part on the candidates' protest but equal or greater weight is applied to the Commissioners' own observations at the polls on Election Day and the information provided by the Atlantic Beach Police Department.

The preliminary investigation into the Atlantic Beach election matter reveals that candidates and former town officials may have participated in the attempts to "fix" the election. The preliminary results also reveal an organized effort to solicit and register voters that do not live in the town of Atlantic Beach and with no plans to move into Atlantic Beach. This effort may involve county and state officials and employees. The MEC is asking the Town Council to join it in asking for a federal investigation into election fraud in Atlantic Beach, Horry County and the State of South Carolina and the related causes for such violations in the Town of Atlantic Beach specifically.

Atlantic Beach has an obligation to each and every voter to comply with the state election laws. It is extremely important that the Town of Atlantic Beach and its MEC not walk away from this election having sanctioned the violations of the election laws. Atlantic Beach, as a predominantly black town faced with changing demographics will not be allowed to disenfranchise voters along racial lines in the guise of long term versus recent residents of the town. The MEC will not tolerate the violations of the election laws. There is no room in America and the State of South Carolina for even one of its tiniest towns to disregard the significance of the vote which is fundamental and essential to American democracy. The MEC believes its decision is deeply rooted in the law and that they have taken a stand for the rights of the voters.

The MEC ordered a new election to be held in 180 days or so ordered. The Town of Atlantic Beach on behalf of the MEC is coordinating the monitoring of the new election with the League of Women Voters. The MEC will utilize this time to complete the ABPD investigation, audit of the voting machine, and correct the problems identified with the November 1, 2011 and to put poll workers in place that can be trusted to run a legal and fair election for the registered resident voters in Atlantic Beach.

Cases involving Secrecy of Ballot

1. George v. Municipal Election Commission of the City of Charleston, 335 S.C. 182, 186, 516 S.E.2d 206, 208, (1999).
2. Parler v. Jennings, 79, S.C. 414, 419, 60 S.E. 967, 968 – 969 (1908)
3. Zbinden v. Bond County Cmty. Unit Sch. Dist. No. 2, 2 Ill.2d 232, 117 N.E.2d 765, 767 (1954)/

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PO BOX 10000
MYRTLE BEACH, SC 29577
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COUNTY OF
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COUNTY OF

State of South Carolina,
County of Myrtle Beach,
I, the undersigned, Clerk of Court,
do hereby certify that the within
copy is a true and correct copy
of the original as the same
appears in the records of the
County of Myrtle Beach.

Witness my hand and the seal of the
County of Myrtle Beach at Myrtle Beach,
South Carolina, this 23rd day of March,
2012.

CLERK OF COURT
MYRTLE BEACH, SC
29577

NOTICE OF APPLICATION
Notice is hereby given that I, the undersigned, Clerk of Court, do hereby certify that the within copy is a true and correct copy of the original as the same appears in the records of the County of Myrtle Beach.

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COUNTY OF
MYRTLE BEACH
COUNTY OF

State of South Carolina,
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do hereby certify that the within
copy is a true and correct copy
of the original as the same
appears in the records of the
County of Myrtle Beach.

Witness my hand and the seal of the
County of Myrtle Beach at Myrtle Beach,
South Carolina, this 23rd day of March,
2012.

CLERK OF COURT
MYRTLE BEACH, SC
29577

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MYRTLE BEACH, SC 29577
DEPT. OF
COUNTY OF
MYRTLE BEACH
COUNTY OF

State of South Carolina,
County of Myrtle Beach,
I, the undersigned, Clerk of Court,
do hereby certify that the within
copy is a true and correct copy
of the original as the same
appears in the records of the
County of Myrtle Beach.

Witness my hand and the seal of the
County of Myrtle Beach at Myrtle Beach,
South Carolina, this 23rd day of March,
2012.

CLERK OF COURT
MYRTLE BEACH, SC
29577

NOTICE OF APPLICATION
Notice is hereby given that I, the undersigned, Clerk of Court, do hereby certify that the within copy is a true and correct copy of the original as the same appears in the records of the County of Myrtle Beach.

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Get the best local deals up to 90% off, delivered daily right to your inbox.

Sign up today, it's free! Go to dealsaver.com/myrtlebeach

dealsaver™

PUBLIC NOTICE
TOWN OF ATLANTIC BEACH
GENERAL ELECTION

The Myrtle Beach Election Commission announces the General Election for the Town of Atlantic Beach to be held on Tuesday, May 22, 2012.

The following offices shall be included in this election:

Mayor and (2) Council

The polling place for this election will be the Atlantic Beach Community Center, 1411 2nd Ave S, Atlantic Beach, as set by law.

People desiring to vote in the upcoming election must be registered by April 21, 2012. To register, one must contact the County Board of Elections.

Registered voters who cannot vote in person may be eligible to vote by absentee ballot. Voters wishing more information should contact their County Election office.

This is a nonpartisan election and no party affiliation shall be placed on the ballot.

The polls shall be open at 7:00 AM on election day, and close at 7:00 PM.

At 5:00 AM on election day the County Election Commission shall begin the process of establishing the election ballot. This meeting will be held at the County Election Office, 1515 4th Ave, Conway.

On Thursday, May 3rd at 10:00 AM the County Election Commission will hold a meeting to determine the validity of ballots challenged in the election. The hearing will be held at the Election Office in Conway.

SUN PUBLISHING COMPANY, INC.
PO BOX 406 • MYRTLE BEACH, SC 29578-0406

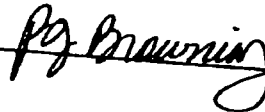
Horry County Registration & Elections
1515 4th Avenue
Conway, SC 29526

March 29, 2012

Newspaper: The Sun News
Ad Number: 1284324
Date(s) of Publication: March 23, 2012

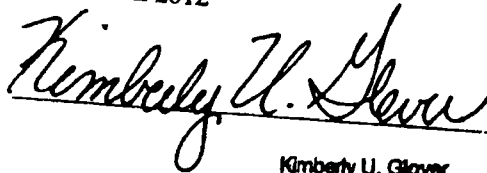
AFFIDAVIT OF PUBLICATION: State of South Carolina
County of Horry

Before me, Pamela J. Browning, a Notary Public personally appeared who, after being duly sworn, deposes and says: That she is publisher of the Sun Publishing Company, Inc., at Myrtle Beach, South Carolina. In the county and state aforesaid: that the above ad(s) was (were) printed and published in said newspaper, on said date(s).



Pamela J. Browning

Sworn to and subscribed before me this 29th day of March 2012.



Kimberly U. Glover
Notary Public
South Carolina
My Commission Expires
January 20, 2020

SUN PUBLISHING COMPANY, INC.

PO BOX 406 • MYRTLE BEACH, SC 29578-0406

Horry County Registration & Elections
1515 4th Avenue
Conway, SC 29526

April 6, 2012

Newspaper: The Sun News

Ad Number: 1284324

Date(s) of Publication: March 23, 2012 April 6, 2012

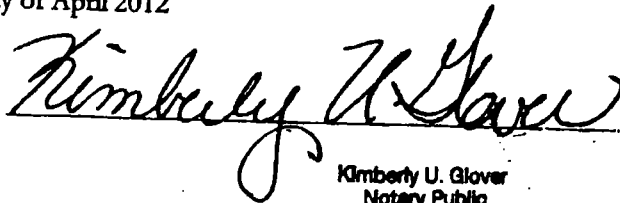
AFFIDAVIT OF PUBLICATION: State of South Carolina
County of Horry

Before me, Pamela J. Browning, a Notary Public personally appeared who, after being duly sworn, deposes and says: That she is publisher of the Sun Publishing Company, Inc., at Myrtle Beach, South Carolina. In the county and state aforesaid: that the above ad(s) was (were) printed and published in said newspaper, on said date(s).



Pamela J. Browning

Sworn to and subscribed before me this 6th day of April 2012



Kimberly U. Glover
Notary Public
South Carolina
My Commission Expires
January 20, 2020

The County Board of Canvassers is required to determine the validity of all provisional ballots have been challenged are allowed to

This provisional ballot hearing will be held:

Date May 24, 2012
 Time 10:00am
 Address 1515 4th Avenue
 City Conway South Carolina

- ★ You and.
- ★ Prior to your
- ★ If you the

- ★ You are entitled to be present at this hearing.
- ★ You are entitled to be represented by legal counsel and to present evidence in your behalf.
- ★ If your vote was challenged for not providing proper ID when registering to vote by mail: You must provide this ID prior to or at the provisional ballot hearing for your vote to be counted.

- ★ Go to web Click the i
- ★ Or call 1.86 Refe Votin

SOUTH CAROLINA
 ELECTION COMMISSION

This notice was issued as required by Section 7-13-830 of the 1976 South Carolina Code of Laws

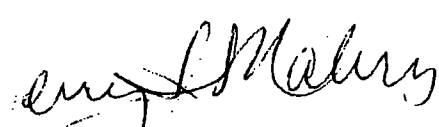
EXHIBITS FOR PROTEST HEARING DATED 5/23/12

1. PUBLIC NOTICE IN SUN NEWS.
2. POSTING FOR HEARING
3. LETTER TO PATEL
4. LETTER TO SANDY MARTIN FROM PATRICIA BELLAMY
5. LETTER TO SANDY MARTIN
6. LIST OF VOTING MACHINES
7. LETTER FROM SANDY MARTIN
8. LETTER TO PATE
9. INCIDENT REPORT
10. PRESERVED LETTER FROM WEBB TO PATEL
11. PRESERVED NAMES OF ELECTION COMMISSION
12. PRESERVED REVERSAL
13. LETTER FROM PRICE
14. PRESERVED
15. BOOKLET WITH EMAILS
16. PROTEST FOR PIERCE

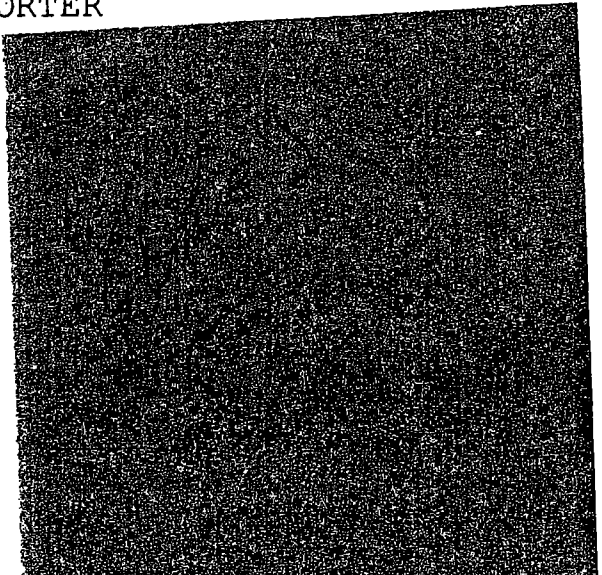
MS. SANDY MARTIN
HORRY COUNTY BOARD OF ELECTIONS
CONWAY, SOUTH CAROLINA 29526

THE ATTACHED ARE EXHIBITS WHICH WERE INTRODUCED INTO
EVIDENCE DURING THE PROTEST HEARING HELD AT THE HORRY
COUNTY BOARD OF ELECTIONS OFFICE ON MAY 25, 2012, AND
WHICH WERE NOT HANDED TO THE COURT REPORTER.

1. PUBLIC NOTICE OF HEARING IN NEWSPAPER
2. POSTING FOR HEARING
3. LETTER TO PATEL FROM WHOMEVER


JERRY S. MABRY
NOTARY PUBLIC AND VERBATIM
REPORTER

HORRY COUNTY
12 JUN -4 PM 2:09
MELANIE HUGGINS-WARD
CLERK OF 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
Appellate Case No.: 2012-213489

RECEIVED

APR 24 2013

S.C. Supreme Court

Windy Price. Appellant,

v.

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

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

CERTIFICATE OF SERVICE

I certify that I have served the *Appellant's Record on Appeal* on the Clerk of the Supreme Court at P.O. Box 11330, Columbia, SC 29211 and on counsel for the Respondents by serving copies of the same via U.S. Mail on April 23, 2013 to the following:

J. C. Nicholson, III, Esquire
Office of the Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
803-734-9916 (O)
803-734-3677 (F)
JCNicolson@scag.gov
Attorney for SC Election Commission

Robert E. Tyson, Jr., Esquire
Sowell Gray
P.O. Box 11449
Columbia, SC 29211
803-929-1400 (O)
803-929-0300 (F)
rtyson@sowellgray.com
Attorney for Horry County Election
Commission


Erin Magera
Legal Assistant

23 April 2013