

In the State of South Carolina
Appeal Before the S.C. State Republican Party Executive Committee

July 8, 2022

Appellant: Candidate Mark Lazarus

v.

Appellee: Candidate Johnny Gardner

Pursuant to the relevant election laws of South Carolina and on behalf of Appellant Mark Lazarus, we hereby file our formal appeal of the July 7, 2022 decision of the Horry County Republican Party Executive Committee. In addition to other grounds for a new election cited herein, this appeal is also filed due to the Horry County Republican Party Executive Committee's erroneous and illegal decision to prevent Mr. Lazarus from having a protest hearing on the false premise that Mr. Lazarus' filed protest was not timely filed.

In fact, Mr. Lazarus' protest was timely filed as a matter of law. Pursuant to S.C. Code 7-17-520, a party has until "not later than noon Monday following the declaration by the County Committee of the result of the election." Since the Monday following the confirmation of the election result was on the Federal Holiday of July 4, the deadline to file a protest was extended to noon on July 5, 2022, as confirmed by the S.C. State Election Commission. Mr. Lazarus filed his protest prior to noon on July 5, 2022, thus his filing was timely.

Moreover, numerous errors, omissions, and failures of law in conducting the protest filed by Candidate runoff election, to wit:

1. Republican voters in Horry County were deprived of their right to vote when the Horry County Board of Voter Registration and Elections (hereinafter "Board") mistakenly sent Democrat ballots to vote absentee in the Republican June 28 runoff election, which renders the outcome doubtful and may have changed the outcome of this election.
2. After the error was identified, corrected ballots were reportedly sent to 1,377 voters who requested absentee ballots to vote in the runoff election, but only 140 of those ballots were received by last Tuesday's deadline and counted, likely due to no regular U.S. postal service. In light of the fact that Mr. Lazarus only lost the election by 260 votes, the difference of 1,237 ballots that were not counted due to the sole and exclusive error of the Board render the outcome of this election doubtful. *See Broadhurst v. City of Myrtle Beach Election Commission, 342 S.C. 373 (2000).*
3. The Board received 183 Republican and 79 Democrat votes that were cast prior to the election and received by the Board on Wednesday, June 29. In addition, 25 more ballots were received by the Board on June 30, but the Board refused to even open, much less

count, those votes that came in late, despite the fact that the error was exclusively the Board's mistake. The Board refused to open and count those ballots, thus potentially depriving Mr. Lazarus of an additional 183 ballots that were cast that would have been allocated to him under the applicable case law.

4. In determining whether an irregularity in the conduct of an election is 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, **and that all rejected (uncounted), legal ballots shall be added to the total number counted for the declared losing candidate.**" *Easler v. Blackwell*, 195 S.C. 15, 19, 10 S.E.2d 160, 162 (1940). As a result, any and all rejected, uncounted legal ballots *must* be added to Mr. Lazarus' vote count.
5. Moreover, the Court has rejected the principle of "proportionate withdrawal" (i.e., deducting from the winner's total the same percentage of illegally cast votes as votes cast for the winner in the relative precinct). *Creamer v. City of Anderson*, 240 S.C. 118, 124 S.E.2d. 788 (1962).
6. The State Election Commission says that every vote matters and every vote counts, but every vote did not count in this election due to the numerous errors and omissions that occurred in this election. It is undisputed that there were 1,377 GOP voters who timely requested a ballot by mail, but only 142 of those ballots were received by last Tuesday's deadline. Furthermore, the 208 whose ballots that arrived one or two days "late" due to no fault of their own rendered another 1027 voters disenfranchised.
7. Accordingly, we respectfully request that the Horry County Republican Party Executive Committee grant this protest and hold a new election pursuant to the election laws of South Carolina, free of the numerous mistakes and abnormalities that occurred in the election of June 28, 2022, so that the Republican voters of Horry County have a free and fair opportunity to exercise their franchise.

Respectfully,

BOWERS LAW OFFICE LLC



Karl S. Bowers, Jr.